THE LAW TIMES

THE

JOURNAL AND RECORD

OF

THE LAW AND THE LAWYERS.

FROM SEPTEMBER, 1852, TO MARCH, 1853.

VOLUME XX.

LONDON:
PUBLISHED AT THE OFFICE OF THE LAW TIMES,
29, ESSEX-STREET, STRAND.

1853.

THE

LAW TIMES REPORTS

OF

All the Cases Argued and Determined

IN ALL THE

COURTS OF LAW AND EQUITY, IN BANKRUPTCY, INSOLVENCY, NISI PRIUS, THE CRIMINAL COURTS, AND IN IRELAND;

FROM SEPTEMBER, 1852, TO MARCH, 1853.

VOLUME XX.

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29, ESSEX-STREET, STRAND.

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G.B. - - - - - - Great Britain.
G.B. & I. - - - - Great Britain and Ireland.
U.K. - - - - - The whole of the United Kingdom.

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London:—Printed by JOHN CRADOCK, of 29, Essex-street, Strand, in the City of Westminster, at his Printing-office, 13, Princes-street, New Turnpike-road, in the Parish of St. Pancras, in the County of Middlesex; and Published by the said JOHN CRADOCK, at 29, Essex-street aforesaid.—Saturday, August 28th, 1852.

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THE LAW TIMES.

SATURDAY, SEPTEMBER 25, 1852.

THE NEXT GREAT LAW REFORM.

Law Reform, beyond all other reforms, is self-promoting. One change *compels* many more. Law is *a system* more or less perfect, all the parts of which are mutually dependent, and are regulated with reference each one to the others. The consciousness of this relationship and of the extreme difficulty of altering any part without altering and possibly reconstructing the whole, was the true obstacle that impeded for so many years the beginning of Law Reform. Statesmen and Legislators shrank from the labour and the responsibility; the Lawyers were loath to promote anything that involved the sweeping away of their tediously acquired knowledge, and the recommencement of the study of their profession when they should be pursuing the profitable practice of it. But society will outgrow its wisest institutions: the most stubborn must yield to necessity. Our legal system was unsuitable to modern times; public opinion decreed a change, and of that change we are now witnessing the first steps,—or we should rather call them the first *strides*.

Manifestly these are but the beginnings of still greater change. The establishment of the County Courts, the Reform of the Equity Courts, and of the Common Law Courts, are only parts of a series of Reforms that must be extended to the rest of our tribunals. Two Courts yet remain for revision, the Ecclesiastical Courts and the Magistrates' Courts. When these are reformed, the cycle of *administrative* reform will be completed; there will then remain the still more difficult and extensive task of reforming the law itself.

Foremost in the number and magnitude of their abuses, and therefore the proper subject of the next great Law Reform, are the Ecclesiastical Courts. If the Court of Chancery has been the subject of more censure, it is only because it affects a greater number of persons and larger interests. The abuses of the Ecclesiastical Courts are not inferior to those which have been swept from the Equity Courts amid the applauding shouts of the whole country. These abuses are not denied; they have been denounced in Parliament and in the press for many years; measure after measure has been introduced into the House of Commons for their abolition; but although they found no defenders in speech, they have hitherto succeeded, through some backstairs influence, in defeating all attempts to reform them. But there is hope now that even the Court of Chancery has been reformed. Lord DERBY has acknowledged the necessity and promised the attention of the Government to this subject. The handwriting is upon the wall. This must be the next Law Reform. At this very time, to our knowledge, an able, active, and influential member of the Legislature is preparing himself for the coming struggle.

But it will not be disposed of so easily as either of its predecessors. There was no question in any mind as to the propriety of preserving the Common Law Courts and the Equity Courts; the only difference of opinion was as to *the extent* of their *reform*. It is otherwise with the Ecclesiastical Courts. The first question to be determined with them is this—shall they not be *abolished* altogether? Only if that be resolved in the negative, will the manner of their reform come to be considered? But it would be a waste of thought and time to treat of *that* until the propriety of their combined existence in any shape shall have been submitted to discussion and decision.

The Ecclesiastical Courts are a relic of the domination of the Roman Catholic Church. They are an anomaly in a Protestant country. They were founded upon the assumption that there are certain subjects peculiarly within the province of Ecclesiastical authority, as doctrine and morals. To these priestcraft cunningly added a jurisdiction over wills and intestacies, on the daring assumption that the former was the last act of a man's life, and therefore under the direct inspection of the Church, and the latter a duty with which the Church was intrusted by those who died within its pale, by virtue of its ministration of the last offices of religion. Such a claim might be recognised in a Roman Catholic country, or even in a Protestant country, if all the people were of one faith, members of the one church, and therefore subject to its jurisdiction. But neither of these conditions exists in England. We are Protestant, and our people are divided into a multitude of sects. Yet here do we perceive in all its original audacity the claim of an Ecclesiastical power, to determine questions of doctrine and morals, to grant or withhold divorce, to take possession of and control the wills of the whole community, to levy an enormous revenue for its permission to next of kin to administer the properties of those who die intestate.

Why anything so monstrous as this has been so long submitted to with patience in a country where anything in the shape of an infringement of religious liberty is usually assailed with vehement outcries, is one of those problems of English character that perplex the foreigner and confound the philosopher. But so it is. A tribunal whose origin, foundation, structure, and practice is wholly at variance with the religion, the habits, the opinions, and the prejudices of the people, not only exists, but has successfully thwarted the endeavours of successive Governments to reform it, and remains at this moment with all its anomalies and abuses in full vigour, when even the Court of Chancery, which was believed to be impregnable, has been compelled to yield to the spirit of the times.

Having given some thought to the subject, we have come to the unhesitating conclusion that the Ecclesiastical Courts ought to be *abolished*, their jurisdiction transferred to the Civil Tribunals, and Wills confided to the custody of the State.

The reasons for this, and the manner of doing it, we propose to submit to our readers in another article.

NEW CHANCERY PRACTICE.(a)

In our last number several of the sections of the Act 15 & 16 Vict. c. 84, are examined, which effect considerable improvement in the procedure of the

(a) Continued from p. 203, ante.

Court of Chancery with relation to the *parties* to suits. One source of considerable expense under the old system, arose from the rule with regard to *misjoinder*. For instance, if any person who was joined as co-plaintiff should, by any act, or by conduct amounting to assent or acquiescence, have disentitled himself to relief, all the co-plaintiffs were bound by it, and were deprived in that suit of the relief which they might otherwise have had. It therefore became a common practice to have a single plaintiff, and that plaintiff, if possible, an infant, who could not by any act or omission have prejudiced his right to relief, the other parties interested being made defendants. By these rules and from these considerations it was necessary frequently to have a very large number of persons defendants in a Chancery suit, who might all appear by separate solicitors, and all put in separate answers. (Ch. Comm. Rep. p. 8.)

To prevent these inconveniences, the 49th section of the Act provides that no suit in the court is to be dismissed by reason only of the *misjoinder* of persons as plaintiffs therein, but wherever it appears to the Court that notwithstanding the conflict of interest in the co-plaintiffs, or the want of interest in some of the plaintiffs, or the existence of some ground of defence affecting some or one of the plaintiffs, the plaintiffs, or some or one of them, are or is entitled to relief, the Court is to have power to grant such relief, and to modify its decree, according to the special circumstances of the case, and for that purpose to direct such amendments, if any, as may be necessary, and at the hearing before such amendments are made, to treat any one or more of the plaintiffs as if he or they was or were a defendant or defendants in the suit, and the remaining or other plaintiff or plaintiffs was or were the only plaintiff or plaintiffs on the record; and where there is a misjoinder of plaintiffs, and the plaintiff having an interest shall have died leaving a plaintiff on the record without an interest, the Court may, at the hearing of the cause, order the cause to stand revived as may appear just, and proceed to a decision of the cause, if it see fit, and give such directions as to costs or otherwise as may appear just and expedient.

The two following sections of the Act, viz. the 50th and 51st, giving power to the Court to administer *partial* and *declaratory relief*, will in a great many cases put an end to much unnecessary expense and delay. Formerly, it was a well-known rule of the Court, not to execute trusts *partially*, nor to make a decree *merely declaratory*. For instance, if a question arose upon the construction of a testator's will, the Court would not consider the question except in a suit for administering the estate, and after taking the accounts and ascertaining the property. It is needless to speculate upon the origin of the rule, but if the unfortunate suitors were no gainers by suits unnecessarily protracted, there certainly were persons whose incomes were not diminished by every additional step which that complicated farrago of injustice, called Chancery Practice, compelled the suitor to take. Assuming, however, that the rule originated and was perpetuated by an over-anxiety to do complete justice, it is now almost universally acknowledged that in all those cases where only partial or declaratory relief was sought, it overshot the mark, and rendered it the most prudent course to a person, especially a poor one, having the clearest rights, to make considerable concessions to an unscrupulous, and perhaps wealthy, opponent, rather than have recourse to a tribunal where the cost of justice was often equal to, sometimes even greater than, the value of the subject-matter in dispute. The evils occasioned by the rule were in some degree remedied by Sir GEORGE TURNER'S Act (13 & 14 Vict. c. 35), which enabled parties *by agreement* to take the opinion of the Court upon a special case. By the 50th section no suit in the court is to be open to objection on the ground that a *merely declaratory decree or order* is sought thereby, and it is to be lawful for the Court to make binding declarations of right without granting consequential relief.

By the 51st section, power is given to the Court to adjudicate on questions arising between parties notwithstanding that they may be *some only* of the parties interested in the property respecting which the question may have arisen, or that the property in question is comprised with other property in the same settlement, will, or other instrument, without making the other parties interested in the property respecting which the question may have arisen, or interested under the same settlement, will, or other instrument, parties to the suit, and without requiring the whole trusts and purposes of the settlement, will, or other instrument to be executed under the direction of the Court, and without taking the accounts of the trustees or other accounting parties, or ascertaining the particulars or amount of the property touching which the question or questions may have arisen: and it is provided that, if the Court shall be of opinion that the application is *fraudulent* or *collusive*, or for some other reason ought not to be entertained, it is to have power to refuse to make the order prayed.

The delay and expense occasioned by making numerous parties to suits, was greatly aggravated under the old Chancery practice, by the necessity of filing, on the death or the transmission of the interest of any of them, what are termed bills of revivor and supplement. This may be seen from the following brief outline of the old practice:—"On the death of a plaintiff, his legal personal representative or heir, as the case might be, filed a fresh bill against all the parties to the original suit, who were all served, and had all to enter appearances; each separate solicitor taking an office copy of the bill of revivor, for which he paid office fees. Similar proceedings took place on the marriage of a female plaintiff. Sometimes one of several plaintiffs died, or was married, and the legal personal representative or husband was disinclined to go on as plaintiff. In this case the other plaintiffs filed their bill of revivor against all the old defendants and the new parties. If a defendant died, a similar bill was filed against his personal representative or heir. In cases of simple revivor, after the lapse of a few days, and no objection being taken, an order of course was obtained for reviving the suit, as it was technically called; the suit being, until revivor, considered abated or suspended. In cases of revivor it nevertheless happened frequently that an answer must be put in, and the cause formally heard, and a decree taken. The ordinary instance of this was when the person dead was an accounting party, and it was necessary to obtain a decree charging his assets with the debt to be found due from him. The cases, moreover, in which a simple order of revivor would suffice were comparatively rare. If the transmission of interest were anything other than simple transmission by marriage, heirship, executorship, or grant of administration, the bill was obliged to be what was called a bill of supplement. If there was a devise, or a marriage settlement, or a bankruptcy or insolvency, or a change of office, as in the case of a bishop, or incumbent, or the like, or if a new person had come into existence interested in the subject of the suit, a bill was in that case filed, to which answers were required, and all the formalities of a hostile Chancery suit gone through in order to obtain what was called the usual supplemental decree; that is, a decree directing that the proceedings in the original suit might be carried on between the parties in the supplemental suit in the same way as between the original parties." (Ch. Comm. Rep. 20.)

The Act substitutes a very simple process for these useless and expensive formalities. For upon any suit becoming abated by *death*, *marriage*, or *otherwise*, or *defective*, by reason of *some change* or *transmission of interest* or *liability*, it is not to be necessary to exhibit any bill of revivor, or supplemental bill, in order to obtain the usual order to revive such suit, or the usual or necessary decree or order to carry on the proceedings; but an order to the effect of the usual order to revive, or of the usual supplemental decree, may be obtained as of course *upon an allegation of the abatement of such suit, or of the same having become defective, and of the change or transmission of interest or liability*; and an order so obtained, when *served* upon the party or parties who, according to the present practice of the Court, would be defendant or defendants to the bill of revivor or supplemental bill, is from the time of such service to be binding on such party or parties, in the same manner in every respect, as if such order had been regularly obtained according to the existing practice of the Court; and such party or parties are thenceforth to become a party or parties to the suit, and are to be bound to enter an appearance thereto in the office of the Clerks of Records and Writs, within such time and in like manner as if he or they had been duly served with process, to appear to a bill of revivor or supplemental bill filed against him or them; and it is provided that it is to be open to the party or parties so served, within such time after service, as in that behalf prescribed by any general order of the Lord Chancellor, to apply to the Court by motion or petition, *to discharge such order*, on any ground which would have been open to him on a bill of reviver or supplemental bill, stating the previous proceedings in the suit, and the alleged change or transmission of interest or liability, and praying the usual relief consequent thereon: and it is provided also, that if any party so served is *under any disability other than coverture*, such order is to be of no force or effect as against such party, until a guardian or guardians ad litem have been duly appointed for such party, and such time have elapsed thereafter as prescribed by any general order of the Lord Chancellor in that behalf. (Sec. 52.) By one of the general orders having reference to this section, "any party under no disability, or under the disability of coverture, who may be served with an order to revive any suit, or to carry on the proceedings therein, may apply to the Court to discharge such order within *twelve days after such service*; and any party being under any disability, other than coverture, who may be so served, may apply to the Court to discharge such order *within twelve days after the appointment of a guardian or guardians ad litem* for such party; and until such period of twelve days have expired, such order is to have no force or effect as against such last-mentioned party. (Order 43.)

Another source of great and unnecessary expense was often occasioned by what are termed *supplemental bills*. These were rendered necessary by a merely technical rule of the Court, viz. that anything which had occurred since the original institution of the suit could not be introduced into a bill by way of amendment; and that there must be a new bill, with a new subpœna, a new appearance, and a new answer, in order to bring such supplemental matter before the Court. The origin of such a technical rule may, like many others tending to increase the fees of the officials of the court, be readily conceived; nor perhaps, since salaries have been substituted for fees, is its existence down to the present time much to be wondered at, as there may have been others (always excepting the suitors) who may to a considerable extent have profited by it. It is now abolished, and after the commencement of this Act it is not to be necessary to exhibit any supplemental bill in the court for the purpose only of stating or putting in issue facts or circumstances which may have occurred after the institution of any suit; but such facts or circumstances *may be introduced by way of amendment* into the original bill of complaint in the suit, *if* the cause is otherwise in such a state as to allow of an amendment being made in the bill, and *if not*, the plaintiff is to be at liberty to state such facts or circumstances on the record, in such manner and subject to such rules and regulations with respect to the proof thereof, and the affording the defendant leave and opportunity of answering and meeting the same, as shall in that behalf be prescribed by any General Order of the Lord Chancellor. (Sec. 53.) The General Order is as follows:—"If the plaintiff in any cause which is not in such a state as to allow of an amendment being made in the bill shall desire to state or put in issue any facts or circumstances which may have occurred after the institution of the suit, he may state the same, and put the same in issue by filing in the Record and Writ Clerk's office a statement either *written* or *printed*, to be annexed to the bill; and such proceedings by way of answer, evidence, and otherwise, are to be had and taken upon the statement so filed, as if the same were embodied in a supplemental bill: provided always, that the Court may make any order which it shall think fit for accelerating the proceedings thereunder, or proceedings therein, in any manner which may appear just and practicable." (Order 44.)

THE NEW COMMON LAW PRACTICE.

XXII. AMENDMENT.

To put an end as far as possible to merely formal objections, a larger power of amendment has now been vested in the Courts and Judges, and the 222nd section provides that the Courts, "and every Judge thereof, and any Judge sitting at Nisi Prius," may at all times amend "all defects and errors in any proceeding in civil causes, whether there is anything in writing to amend by or not, and whether the defect or error be that of the party applying to amend or not." Such amendment is to be made with or without costs, and on such terms as the Court or Judge shall deem fit. And lest any possible question should arise as to the extent of the power thus given, it is further expressly enacted that "all such amendments as may be necessary for the purpose of determining

in the existing suit the *real question in controversy between the parties* shall be so made."

After this it will be almost impossible for any suit to go off upon any question of form—all will be decided upon their merits. What object will be gained by an objection in point of form to any pleading or proceeding, if the only result be an order for its amendment? The Judges have shewn by their leanings against formal objections for some years past that they will carry out this provision in the spirit in which it was framed.

XXIII. RULES AND ORDERS TO BE MADE BY THE JUDGES.

It is manifest that such great changes could not be effected in the procedure and practice of the Common Law, without leaving unprovided for much that no sagacity could anticipate in the application of that which was new to much that still remains of what is old. Unforeseen difficulties and doubts must for a long time to come be arising continually, as circumstances present themselves in novel combinations, and the solution of which would be impracticable, if the Courts were restrained by the strict terms of an Act of Parliament, designed to trace out rather the outline than the details of a great measure of reform. The Legislature has accordingly wisely invested the Courts with very extensive powers for regulating by rules of their own framing, from time to time as occasion offers, the practice of the Courts in accordance with, and for the better carrying out of the design of the statute. The 223rd section recites that "*in order to enable the Courts and Judges to carry the Act thoroughly into effect*," the Judges, or any eight or more of them, of whom the chiefs of each of the said Courts shall be three, may from time to time, "make all such general rules and orders for the effectual execution of this Act, and of the intent and object thereof, and for fixing the costs to be allowed for or in respect of the matters herein contained, and the performance thereof, and for apportioning the costs of issues, and for the purpose of enforcing conformity of practice in the allowance of costs in the said courts, and of insuring as far as may be practicable an equal division of the business of taxation among the Masters of the said courts." They are also empowered to exercise the jurisdiction given them by the "Pleading Act" of last session (which has never been carried into operation), "with respect to any matter herein mentioned relative to *practice* or *pleading*; and the provisions of that Act as to the rules, orders, and regulations made in pursuance thereof shall be held applicable to any rules if made in pursuance of this Act." So that the Judges have now full power to make any further alterations they may deem to be necessary either in pleading or practice, or for the regulation and disposal of the business of their courts.

They are also empowered to frame *new writs* and *forms of proceeding* necessary to give effect to the provisions of the Act, and to make rules for the government of the officers of the courts.

XXIV. INJUNCTIONS AND ORDERS TO STAY PROCEEDINGS.

Injunctions and orders to stay proceedings in any action, suit, or proceeding at law or in equity, issued by any Court, are to take effect upon any other court, upon production to such Court, or the Judge thereof, of such writ of injunction, rule, or order, upon which all further proceedings contrary thereto shall be stayed, and thenceforth any that may be taken shall be utterly null and void.

XXV. GENERAL PROVISIONS.

The Queen in Council is empowered to extend the provisions of this Act to any Court of Record. The provisions, so far as they are applicable, are to extend immediately to the Palatine Courts. The Act is not to extend to Scotland or Ireland. It is to be cited by the short title of "The Common Law Procedure Act, 1852."

REMARKS.

The reader will have observed that the improvements effected by this statute are almost wholly limited to the procedure previously to trial. It does nothing to facilitate, or simplify, or improve the trial itself, by regulating anew the periods for the Assizes, or the places for holding them; it makes but slight alterations in the regulations of Juries: it does nothing to raise the character of the Common Jury, or to abolish the injustice of the Special Jury: it imposes no checks upon that greatest of the abuses by which justice is so often defeated—the motion for a new trial. Without the further changes which the Act entirely omits, all the many improvements it has effected are almost worthless; for to facilitate procedure is of little practical utility if the interval that must elapse before trial can be had is not abbreviated also. The Act provides ample security against the defeat of justice by parties seeking to reverse a judgment by appeal to a Court of Error, but it does nothing to prevent that much more frequent and more favourite, because more easy, method of defrauding a successful adversary of the fruits of his verdict by the motion for a new trial and the delay thus obtained, and which delay is in nine cases out of ten the sole object of the application. We know not whether these further improvements are under the consideration of the Common Law Commissioners, or if that body deems its duties done. If so it be, we trust that the Government will issue a *new* Commission, charged expressly with the business of re-arranging the Circuits, increasing the Assizes to four in the year, and making more perfect provision for sending the Judges to the suitors, instead of bringing the suitors to the Judges. Lord Derby's Ministry enjoys the honour of having *passed*, if not of having *framed*, the greatest measures of Law Reform that this country has ever seen. We trust they will complete the work so well begun for them by others, and so wisely adopted by themselves, by those further improvements of which the credit both of inception and completion may belong to them alone.

PROFESSIONAL INCOMES, SINECURES, AND MONOPOLIES.

If the returns to the commissioners of the professional incomes of lawyers in 1852 were carefully analysed, they would disclose some remarkable facts. It would be interesting to ascertain how very few of the ten thousand gentlemen in Mr. Tilsey's list who have devoted their lives to the study and practice of the English law—who have expended so many years in *statu pupillari*, and paid such large sums to acquire the degree of Barrister or Attorney,—make, at this moment, the large profits which the public give the lawyers credit for making;—how many make a reasonable per centage on the heavy sums they have sunk in *paying their footing*;—how many have been compelled to make the disheartening acknowledgment that from the profession of a lawyer, carried on during the last year, they have made *no net profits at all*.

The income-tax proceedings operate cruelly, it must be confessed, on this class. Some think it hard to have to pay a tax on professional earnings at all. It is still more hard for a professional man to have to acknowledge that his profession has been to him a *failure*,—that any day it might truly be said of him—

> If to account for all their various evil,
> Lawyers hereafter go unto the devil,
> This man hath done so little by the laws,
> He'll surely go below without a cause.

The world has long been accustomed to make merry at the expense of "brieflees barristers" and "pettifogging attorneys;" and the unthinking crowd, regarding success as the chief test of merit, are apt, whilst they pay honour to the lawyer who thrives, to view with something more than suspicion the less prosperous members of the fraternity. Need it be wondered at, then, that professional men among themselves too often over-estimate those who enjoy a large share of the profits of the profession, and depreciate others who have a small share? The pluralist rector who derives 10,000*l.* from the money annually expended in law costs in the Prerogative Court of Canterbury,—the six clerks whose sinecure share of Chancery suit expenditure is confirmed by a statute of Queen, Lords, and Commons,—are once in a dozen years dragged in their golden trappings before the public, that they may be duly execrated, but then retire into sweet seclusion, and enjoy their *otium cum dignitate*. The struggling practitioner, meanwhile, whose income may equal that of the deputy's deputy of one of these great sinecurists, is coolly regarded as the hungry and grasping lawyer, sneered at by the vulgar rich, dreaded by the ignorant poor, and too often visited with unmerited contempt.

A classified list of all the sinecures and monopolies which at this day actually exist in the profession of the law would shew how directly injurious they are, not only to the public, but to the Profession generally, and its working members particularly. For every Registrar who has a patent for making a fortune without doing more than eating, drinking, sleeping, and signing his name,—for every son of a great man, who, by family influence, succeeds to office or practice,—there are, at least, fifty deserving men who are unjustly forced into the background, deprived of the legitimate advantages of honourable competition, and too often driven to less worthy expedients to keep up appearances.

There are, of course, monopolies which cannot be avoided—which exist by the general voice of the public, and which the public have always the power to control—the monopoly of *custom*, as it may be called, for instance. The eminent firm of A. B. C. and the eminent barrister, Mr. Q. enjoy a species of monopoly of this kind. Hundreds of others may be able to conduct the business every whit as well,—generally speaking, indeed, a great deal better, from being able to devote more time to it; but clients, big with the importance of their particular cause, may prefer its being even neglected by men of eminence, to being attended to by men of less note. Amongst this kind of monopolies is the monopoly of Parliamentary business, by which two or three dozen gentlemen, wholly freed from legal restrictions, are enabled to secure to themselves the exclusive practice of almost the only really profitable branch of professional practice, to the exclusion of the less favoured crowd of practitioners. There are other monopolies which it is difficult but not impossible to prevent,—for example, the monopoly arising from family influence. The son of an influential country magistrate will most likely be pushed into practice as effectually as a bench of magistrates is capable of aiding him. The son or the nephew of any other man of influence will probably enjoy all the practice that the father or the uncle can secure for him, whilst perhaps the great agency firm of X. Y. Z. may be able to spread out the different branches of their families into the sunshine of respectable mediocrity on either side of Westminster Hall in easy country quarters, and among the silent conveyancers and special pleaders of Lincoln's-inn and the Temple.

But it is not of such monopolies we desire to speak. The cure for any abuses which they may give rise to is, for the most part, within the power of the Profession itself. No positive law can remedy them. There are, however, prejudicial monopolies in the profession of the law which the Legislature can remedy, and which the heavily-taxed members of the Profession may fairly require to be remedied.

Is not the whole system of Doctors' Commons—Doctors, Proctors, Registrars, and all—such a monopoly, with all the additional evils of the family influence system in the bargain? Mr. Moore rightly asks why public odium should be directed against him, when there are so many other sinecurists and monopolists in existence? We think he is right. The public is indebted to him for bringing the question of the existence of sinecures and monopolies to a fair trial. We would not deal out to Mr. Moore one-sided justice. We would abolish all monopolies and all sinecures wherever they are to be found. Revolutionary as it may seem, we are quite prepared for a mere Attorney or Solicitor, responsible to the Courts at Westminster, being entrusted with the duties which the law of the church has religiously reserved for the exclusive benefit of the Proctors.

Give John Bull a small taste for office-smashing, and we shall probably see his virtuous indignation excited against these very improper places. Let a few persons hold lanterns in the proximity, and the profession of the law will at last get rid of the nuisance. It will not then require the amount of an ordinary fortune to advance so as to be qualified to conduct the business of a Parliamentary or Patent Agent, to conduct suits in Chancery or the Ecclesiastical Courts; and, what is of not less importance to professional men, legal monopolies must be carried away by the same tide, and the practical monopolies which the present system encourages must immediately follow.

THE ATTORNEY; (*a*)

HIS EDUCATION, PRACTICE, AND DUTIES.

CHAPTER XXV.

RECOVERY OF DEBTS.

The subjects on which an attorney is consulted, are almost as various as are the affairs

(*a*) By the Editor of the Law Times.

of life. Theoretically, he is the adviser of his client on *legal* matters; practically, he is their adviser on all matters in which the counsel is desired of a man of good sense, sound judgment, and knowledge of the world, and whose interest and duty it is to deal faithfully with him. Such advisers can rarely be found within the circle of a man's personal friends. Few are disinterested; fewer still are competent to advise on subjects out of the immediate range of their special pursuits; even if competent, it is an unpleasant office when performed gratuitously; such advice is carelessly given on the one side, thanklessly received on the other. But advice-giving is an Attorney's *business*, and he fits himself for it accordingly. The client pays for it, and is entitled to the fullest hearing of his case, the most careful consideration of the course to be advised, and the most active assistance in carrying into execution whatever may have been resolved upon. There is another cause for an Attorney being usually selected as the *general* as well as *legal* adviser of his client. Few persons are willing to confide their difficulties and troubles to their friends. In despite of the poets and essayists, who have enlarged with so much rapture on the duties and advantages of friendship, the instinct of almost every one of us is to withhold from our friends the confession of our own faults, follies, or misfortunes. It wounds our pride to be pitied, and we know that even our best friends would not afterwards hold us in the same esteem as before. Therefore it is, you will find, soon after you begin to practise, that a considerable portion of the business that is committed to you is not strictly legal, or to be performed in your character as an Attorney, but has grown out of your other more important and influential character as the general adviser and agent of persons who have other affairs to occupy their time and thoughts, and find it more profitable to pay you to think and act for them in matters out of their regular business, than to do so for themselves.

Having in an earlier part of this treatise told you what are the studies by which you should qualify yourself for this office, and how you might be best prepared for business when it comes, it will probably be the most convenient course now to consider in succession each of the most important branches of business upon which an Attorney is likely to be engaged, and to describe as minutely as possible what is the course to be pursued in each, from its commencement to its conclusion. And here it is necessary to premise, that it is not our purpose to exhibit the *legal procedure*, for which reference must be made to the books of practice, but only to describe the office arrangements and methods, the rules that should govern your conduct in respect to it. Thus we propose in this manner to review what is to be done by you when a client comes to consult you on the sale or purchase of an estate, the bringing or defending of an action, the conduct of parish business, or proceedings in the County Court or before a Magistrate, in Bankruptcy or Insolvency, to compound with creditors, or make his will, or to prove one, or to conduct an election for him, or insure his life, or manage a trust, or an executorship, or to promote or oppose a bill in Parliament, and so forth, until we have treated of the principal branches of a country Attorney's practice, that being the most various in its character, and demanding the greatest amount of skill and knowledge, a fact not recognised by the profession in London, but nevertheless strictly true.

We begin with that which, at all events at the commencement of your practice, will be the most frequent duty required of you,—*the Recovery of Debts.*

The client who has first introduced himself to you at your office is a tradesman, who brings a list of debts which he desires you to recover; and here, at the very outset of your career, you will be met by a difficulty, which we will endeavour to remove, although at the risk of offending some prejudices.

Your client will probably ask upon what terms you will undertake the desired task. You will remember that the regular charge is 3s. 6d. for each letter, with attendances, &c. You look at the list of debts, and you see twenty or thirty names of debtors, with debts varying, it may be, from 2*l.* to 20*l.* You mentally calculate that if you have but one letter and one attendance for each, your bill will be a formidable one, that would swallow up a considerable portion of the moneys you are likely to recover, and that you would not afterwards be likely again to see the face of your client within your office. You prudently hesitate to answer. You fear the loss of a client on one side, and on the other the rules you have heard about the duty of adhering to the regular charges. Your client sees your hesitation, and proposes his own terms. "I have a great number of debts to collect; some are good, some bad; I cannot afford to pay lawyers' charges for every letter and attendance, it would be better to lose my debt altogether. I don't want to be troubled with bills either. If you like to take the trouble of writing a letter and the chance of what you may get from the debtor, you shall have five per cent. on all that is recovered. If you won't do that, I must find somebody who will. There's an accountant at the County Court who offers to do it for one per cent. But I prefer to employ a regular lawyer, if he will be reasonable in his charges."

And is it *not* reasonable? *Could* what are called the *regular* charges be endured by such business? Is not an arrangement of this sort equitable for both parties? You will be sufficiently well paid for the trouble of writing a few short circular letters; your client will be pleased to know that he will not be required to pay unless he has obtained an equivalent advantage. But your profit is not limited to the five per cent. you obtain from him. You demand the regular charge for the letter from the debtor, and although this is rarely paid, if the demand is settled without further proceedings, if resort to legal process should become necessary, you will then receive your costs from the defendant. Thus it is advantageous even as a pecuniary arrangement.

But it is not less so in other ways. Collecting debts is the best and easiest introduction to practice for a young attorney who is making his own business. It brings to his office a great number of persons, many of whom are creditors as well as debtors, and if they are pleased with the manner in which the debt has been collected *from* themselves, they are very likely to employ him to recover other debts *for* themselves. It happens not unfrequently that a debtor in embarrassed circumstances, when pressed for a debt, determines to offer a composition, or to relieve himself by bankruptcy or insolvency, and he employs the attorney who is already acquainted with his difficulties by suing him, to conduct him to the desired settlement. Thus does the practice of a skilful attorney roll together, one matter leading to another, in a manner most full of hope to those who have the tact and ability to avail themselves of opportunities.

We must therefore so far depart from the traditions of the Profession, as to recommend you to accept the proposal of your client, and to undertake the collection of his debts for payment of five per cent. on all that are paid, in addition, of course, to all moneys actually paid by you out of pocket. Then, taking your Day-Book, you make your first entry, setting down the name of your client, the terms on which you have undertaken the collection, and the list of debts to be recovered.

Proceed immediately to the performance of your task. Address a formal application to each of the debtors in the list. Let it be short, lawyer-like, and plain, carefully avoiding anything like impertinence or incivility. It may run thus:—

"Sir,—I am instructed by Mr. A. of B. to apply to you for the sum of 5l. due to him; for which, if not paid to me by Saturday next, the 27th inst. with 3s. 6d. the costs for this letter, legal proceedings will be taken against you."

If the debt is paid without more, you can only ask the costs of the letter; you cannot compel them, if refused. In such case you must accept the debt, and give a receipt for it.

But if no notice be taken of your application, do not avail yourself of it to commence proceedings immediately, except in special cases, where there is reason to fear that the debtor will abscond, or that you will be anticipated by others; but write a second letter, referring to the first, and somewhat more peremptory; as thus:—

"Sir,—No notice having been taken by you of my application for the 5l. due to Mr. A. I now beg to inform you that unless it be paid to me, together with my costs, by Wednesday next, legal proceedings for its recovery will be taken, without further notice."

When the time appointed has expired, go to your client to ascertain if payment has been made to him, or if he has any objection to proceedings being commenced. Take from him a *warrant to sue*, printed forms of which should always be kept upon your table for use, and then proceed in due form of law.

And now a question will occur to you upon which we will say a few words in this place, as it is one that must in future often present itself to the practitioner. Where shall you bring your action,—in the Superior Court or in the County Court? For your costs, and consequently *your* profits, will be greater in one than in the other.

Upon this we can offer but one rule of conduct: consider only the interest of *your client*. Go where *he* can obtain his debt most surely, speedily, and cheaply, and with the least trouble. Do for him as you would do for yourself, if you were about to recover your own debt. That which most profits him will, in the end, most profit you. A great deal more is to be gained by the reputation of being a prompt and successful collector of debts than by the difference in amount of costs in a few actions.

But the most important, and, unhappily, most often-neglected duty remains—to pay over the debts you recover as soon as you have received them. If your client lives not far off, let not a day pass without giving to him the moneys you have received. Be assured that nothing will secure for you so high a reputation as this; no conduct is so pleasing to clients or so certain to secure them. Seeing your promptitude and punctuality of payment in this, they will soon come to confide to you matters of more importance, and they will be sure to make it known to their neighbours, that there is an Attorney from whom they receive their debts as soon as paid to him, and that they have *not* in your case, as we fear it is too often found, and as, indeed, is proverbial among tradesmen, that it is more trouble to procure the debt from the Attorney who has recovered it than from the debtor, and, therefore, that it is useless to employ an Attorney to recover debts for them. Be it your care to prove that this prevailing opinion of tradesmen is not a just one; that you, at least, are prompt of payment; that you have no wish to keep in your hands for a moment longer than you can help it, money that is not your own, nor to run the risk of confusing it with your own.

And the advantage of such prompt payment will be as great to yourself as to your clients. It will avoid the danger that too much besets Attorneys, of mingling the moneys of their clients with their own, and, forgetting the limits of each, spending the one as the other, and thus involving themselves in inextricable difficulties. If you keep in your hands, or at

your bankers, only the money that is actually your own, handing to your clients *their* money as soon as you receive it, you will certainly secure their confidence and your own stability.

THE LEGISLATOR.

NEW STATUTES.

15 VICTORIA, A.D. 1852.

[In this record of Legislation only the Statutes of practical utility are given at length. Of the others an abstract or the titles only are presented.]

CAP. LIII.

An Act to provide for the Exercise of certain Powers vested in the Bishop of Quebec in respect of Districts severed from his diocese. (June 30, 1852.)

CAP. LIV.

An Act further to facilitate and arrange proceedings in the County Courts. (June 30, 1852.)

This Act has already been published entire at p. 123.

CAP. LV.

An Act to extend the Provisions of "The Trustee Act, 1850." (June 30, 1852.)

We give this statute entire.

Whereas it is expedient to extend the provisions of the Trustee Act, 1850: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same,

1. *Court of Chancery may make an Order for vesting the estate, in lieu of conveyance by a party to the suit after a decree or order for sale.*—That when any decree or order shall have been made by any Court of Equity directing the sale of any lands for any purpose whatever, every person seised or possessed of such land, or entitled to a contingent right therein, being a party to the suit or proceeding in which such decree or order shall have been made, and bound thereby, or being otherwise bound by such decree or order, shall be deemed to be so seised or possessed or entitled (as the case may be) upon a trust within the meaning of the Trustee Act, 1850; and in every such case it shall be lawful for the Court of Chancery, if the said Court shall think it expedient for the purpose of carrying such sale into effect, to make an order vesting such lands, or any part thereof, for such estate as the Court shall think fit, either in any purchaser or in such other person as the Court shall direct; and every such order shall have the same effect as if such person so seised or possessed or entitled had been free from all disability, and had duly executed all proper conveyances and assignments of such lands for such estate.

2. *Power to make an order for vesting the estate, on refusal or neglect of a trustee to convey or release.* — That sections numbered seventeen and eighteen in the Queen's printer's copy of the Trustee Act, 1850, be repealed; and in every case where any person is or shall be jointly or solely seised or possessed of any lands or entitled to a contingent right therein upon any trust, and a demand shall have been made upon such trustee by a person entitled to require a conveyance or assignment of such lands, or a duly authorised agent of such last-mentioned person, requiring such trustee to convey or assign the same, or to release such contingent right, it shall be lawful for the Court of Chancery, if the said Court shall be satisfied that such trustee has wilfully refused or neglected to convey or assign the said lands for the space of twenty-eight days after such demand, to make an order vesting such lands in such person, in such manner and for such estate as the Court shall direct, or releasing such contingent right in such manner as the Court shall direct; and the said order shall have the same effect as if the trustee had duly executed a conveyance or assignment of the lands, or a release of such right, in the same manner and for the same estate.

3. *Power to make an order for the transfer or receipt of dividends of stock in name of an infant trustee.*—That when any infant shall be solely entitled to any stock upon any trust, it shall be lawful for the Court of Chancery to make an order vesting in any person or persons the right to transfer such stock, or to receive the dividends or income thereof; and when any infant shall be entitled jointly with any other person or persons to any stock upon any trust, it shall be lawful for the said Court to make an order vesting the right to transfer such stock, or to receive the dividends or income thereof, either in the person or persons jointly entitled with the infant, or in him or them together with any other person or persons the said Court may appoint.

4. *On neglect to transfer stock for twenty-eight days, order may be made vesting right to transfer in such person as the Court shall appoint.*—That where any person shall neglect or refuse to transfer any stock, or to receive the dividends or income thereof, or to sue for or recover any chose in action, or any interest in respect thereof, for the space of twenty-eight days next after an order of the Court of Chancery for that purpose shall have been served upon him, it shall be lawful for the Court of Chancery to make an order vesting all the right of such person to transfer such stock, or to receive the dividends or income thereof, or to sue for and recover such chose in action, or any interest in respect thereof, in such person or persons as the Court may appoint.

5. *On like neglect by executor, similar order may be made.*—When any stock shall be standing in the sole name of a deceased person, and his personal representative shall refuse or neglect to transfer such stock or receive the dividends or income thereof for the space of twenty-eight days next after an order of the Court of Chancery for that purpose shall have been served upon him, it shall be lawful for the Court of Chancery to make an order vesting the right to transfer such stock, or to receive the dividends or income thereof, in any person or persons whom the said Court may appoint.

6. *Bank of England and companies to comply with such orders.*—When any order being or purporting to be under this Act, or under the Trustee Act, 1850, shall be made by the Lord Chancellor intrusted as aforesaid, or by the Court of Chancery, vesting the right to any stock, or vesting the right to transfer any stock, or vesting the right to call for the transfer of any stock, in any person or persons, in every such case the legal right to transfer such stock shall vest accordingly; and the person or persons so appointed shall be authorised and empowered to execute all deeds and powers of attorney, and to perform all acts relating to the transfer of such stock into his or their own name or names, or otherwise, to the extent and in conformity with the terms of the order; and the Bank of England, and all companies and associations whatever, and all persons shall be equally bound and compellable to comply with the requisitions of such person or persons so appointed as aforesaid, to the extent and in conformity with the terms of such order, as the said Bank of England, or such companies, associations, or persons would have been bound and compellable to comply with the requisitions of the person in whose place such appointment shall have been made.

7. *Indemnity to Bank and companies so obeying.*—That every order made or to be made, being or purporting to be made under this or the Trustee Act, 1850, by the Lord Chancellor intrusted as aforesaid, or by the Court of Chancery, and duly passed and entered, shall be a complete indemnity to the Bank of England, and all companies and associations whatsoever, and all persons, for any act done pursuant thereto; and it shall not be necessary for the Bank of England, or such company or association, or person, to inquire concerning the propriety of such order, or whether the Lord Chancellor intrusted as aforesaid, or the Court of Chancery, had jurisdiction to make the same.

8. *Power to appoint new trustees in lieu of persons convicted of felony.*—That when any person is or shall be jointly or solely seised or possessed of any lands or entitled to any stock upon any trust, and such person has been or shall be convicted of felony, it shall be lawful for the Court of Chancery, upon proof of such conviction, to appoint any person to be a trustee in the place of such convict, and to make an order for vesting such lands, or the right to transfer such stock, and to receive the dividends or income thereof, in such person to be so appointed trustee; and such order shall have the same effect as to lands as if the convict trustee had been free from any disability, and had duly executed a conveyance or assignment of his estate and interest in the same.

9. *Power to the Court to appoint new trustees where there is no existing trustee.*—That in all cases where it shall be expedient to appoint a new trustee, and it shall be found inexpedient, difficult, or impracticable so to do without the assistance of the Court of Chancery, it shall be lawful for the said Court to make an order appointing a new trustee or new trustees, whether there be any existing trustee or not at time of making such order.

10. *Chancellor may make orders for appointment of trustees, without it being necessary that it should be made in Chancery, &c.*—In every case in which the Lord Chancellor intrusted as aforesaid has jurisdiction under this Act, or the Trustee Act, 1850, to order a conveyance or transfer of land or stock, or to make a vesting order, it shall be lawful for him also to make an order appointing a new trustee or new trustees, in like manner as the Court of Chancery may do in like cases, without its being necessary that the order should be made in Chancery as well as in lunacy, or be passed and entered by the registrar of the Court of Chancery.

11. *As to powers of persons intrusted with the care of lunatics.*—That all the jurisdiction conferred by this Act on the Lord Chancellor, intrusted by virtue of the Queen's sign manual with the care of the persons and estates of lunatics, shall and may be had, exercised, and performed by the person or persons for the time being intrusted as aforesaid.

12. *Act to be construed as part of Trustee Act, 1850.*—That this Act shall be read and construed according to the definitions and interpretations contained in the second section of the Trustee Act, 1850, and the provisions of the said last-mentioned Act (except so far as the same are altered by or inconsistent with this Act) shall extend and apply to the cases provided for by this Act, in the same way as if this Act had been incorporated with and had formed part of the said Trustee Act, 1850.

13. *All orders made under Trustee Act, 1850, or this Act, to be chargeable with the same stamp duty as deeds of conveyance.*—That every order to be made under the Trustee Act, 1850, or this Act, which shall have the effect of a conveyance or assignment of any lands, or a transfer of any such stock as can only be transferred by stamped deed, shall be chargeable with the like amount of stamp duty as it would have been chargeable with if it had been a deed executed by the person or persons seised or possessed of such lands, or entitled to such stock; and every such order shall be duly stamped for denoting the payment of the said duty.

CAP. LVI.

An Act for regulating the Qualifications of Pharmaceutical Chemists. (June 30, 1852.)

CAP. LVII.

An Act to provide for more effectual Inquiry into the Existence of corrupt Practices at Elections for Members to serve in Parliament. (June 30, 1852.)

Whereas it is expedient to make more effectual provision for inquiring into the existence of corrupt practices at elections of members to serve in Parliament: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. *Upon address of Houses of Parliament, her Majesty may appoint commissioners to make inquiry into corrupt practices at elections.*—Where by a joint address of both Houses of Parliament it shall be represented to her Majesty that a Committee of the House of Commons appointed to try an election petition, or a committee of that House appointed to inquire into the existence of corrupt practices in any election or elections of a member or members to serve in Parliament, have reported to the House that corrupt practices have, or that there is reason to believe that corrupt practices have, extensively prevailed in any county, division of a county, city, borough, university, or place in the United Kingdom electing or sharing in the election of a member or members to serve in Parliament, at any election or elections of such members or member, and the Houses shall thereupon pray her Majesty to cause inquiry to be made under this Act, by persons named in such address, such persons being (where the inquiry to be made relates to a place in England or Ireland) barristers-at-law of not less than seven years' standing, or (where such inquiry relates to a place in Scotland) advocates of not less than seven years' standing, and not being Members of Parliament, or holding any office or place of profit under the Crown, other than that of a recorder of any city or borough, it shall be lawful for her Majesty, by warrant under her royal sign manual, to appoint the said persons to be commissioners for the purpose of making inquiry into the existence of such corrupt practices; and in case any of the commissioners so appointed die, resign, or become incapable to act, it shall be lawful for the surviving or continuing commissioners or commissioner to act in such inquiry as if they or he had been solely appointed to be commissioners or a sole commissioner for the purposes of such inquiry, and (as to such sole commissioner) as if this Act had authorised the appointment of a sole commissioner; and all the provisions of this Act concerning the commissioners appointed to make any such inquiry shall be taken to apply to such surviving or continuing commissioner or commissioners.

2. *Commissioners to be sworn.*—Every commissioner appointed in pursuance of this Act shall, before beginning to act in the execution of this Act, take the following oath (that is to say),

"I, A. B., do swear, that I will truly and faithfully execute the powers and trusts vested in me by an Act intituled [*here insert the title of the Act*], according to the best of my knowledge and judgment. So help me God."

And every such commissioner appointed in England or Ireland shall take such oath before a Justice of the Court of Queen's Bench or Common Pleas, or a Baron of the Court of Exchequer, in England or Ireland respectively; and every such commissioner appointed in Scotland shall take such oath before a Judge of the Court of Session in Scotland.

3. *Secretary and clerks to be appointed.*—It shall

be lawful for any commissioners appointed under this Act to appoint, and at their pleasure to dismiss, a secretary, and so many clerks, messengers, and officers as shall be thought necessary by one of her Majesty's Principal Secretaries of State, for the purpose of conducting the inquiry to be made by them, and to pay to such secretary, clerks, messengers, and officers such salaries and allowances as shall be thought reasonable by the Commissioners of her Majesty's Treasury.

4. *Place of meeting.*—The commissioners appointed under this Act to make inquiry as aforesaid in relation to any county, division of a county, city, borough, university, or place, shall, upon their appointment, or within a reasonable time afterwards, go to such county, division of a county, city, borough, university, or place, and shall from time to time hold meetings for the purposes of such inquiry at some convenient place within the same, or within ten miles thereof, and shall have power to adjourn such meetings from time to time, and from any one place to any other place within such county, division of a county, city, borough, university, or place, or within ten miles thereof, as to them may seem expedient; and such commissioners shall give notice of their appointment, and of the time and place of holding their first meeting, by publishing the same in some newspaper in general circulation in such county, division of a county, city, borough, university, or place, or the neighbourhood thereof: Provided always, that such commissioners shall not adjourn the inquiry for any period exceeding one week, without the consent and approbation of one of her Majesty's Principal Secretaries of State.

5. *Commissioners may hold meetings in London and Westminster.*—Provided also, That it shall be lawful for the said commissioners, with such consent and approbation as aforesaid, to hold meetings of the said commissioners in the cities of London or Westminster, and to adjourn the same from time to time, as they may deem fit.

6. *Inquiry by the commissioners.*—Such commissioners shall, by such lawful means as to them appear best, with a view to the discovery of the truth, inquire into the manner in which the election in relation to which such committee as aforesaid may have reported to the House of Commons, or where the report of such committee has referred to two or more elections, the latest of such elections, has been conducted, and whether any corrupt practices have been committed at such election, and if so, whether by way of the gift or loan or the promise of the gift or loan of any sum of money or other valuable consideration to any voter or voters, or to any other person or persons on his or their behalf, for the promise or the giving of his or their vote or votes, or for his or their refraining or promising to refrain from giving his or their vote or votes, at such election, or for his or their procuring or undertaking to procure the votes of other electors at such election, or whether by the payment of any sum of money or loan or other valuable consideration whatsoever to any voter, or to any other person on his behalf, before, during, or after the termination of such election, by way of head money, or in compliance with any usage or custom in the county, division of a county, city, borough, university, or place to which the inquiry relates, or how otherwise, or whether any sum of money or other valuable consideration whatsoever has been paid to any voter, or to any other person on his behalf, after the termination of such election, as a reward for giving or for having refrained from giving his vote at such election; and in case such commissioners find that corrupt practices have been committed at the election into which they are hereinbefore authorised to inquire, it shall be lawful for them to make the like inquiries concerning the latest previous election for the same county, division of a county, city, borough, university or place; and upon their finding corrupt practices to have been committed at that election it shall be lawful for them to make the like inquiries concerning the election immediately previous thereto for such county, division of a county, city, borough, university, or place, and so in like manner from election to election, as far back as they may think fit; but where upon inquiry as aforesaid concerning any election such commissioners do not find that corrupt practices have been committed thereat, they shall not inquire concerning any previous election; and such commissioners shall from time to time report to her Majesty the evidence taken by them, and what they find concerning the premises, and especially such commissioners shall report with respect to each election the names of all persons whom they find to have been guilty of corrupt practice at such election, and as well of those who have given bribes for the purchase or for the purpose of purchasing the votes of others as of those who have themselves received money or any other valuable consideration for having given or having refrained from giving, or for the purpose of inducing them to give or to refrain from giving their votes at such election, and also the names of all persons whom they find to have given to others, or to have received themselves, payments by way of head money, or as a reward for giving or refraining from giving their votes at such election, and all other things whereby in the opinion of the said commissioners the truth may be better known touching the premises.

7. *Reports to be laid before Parliament.*—Every report which such commissioners make to her Majesty in pursuance of this Act shall be laid before Parliament within one calendar month next after such report is made, if Parliament be then sitting; or if Parliament be not then sitting, then within one calendar month next after the then next meeting of Parliament.

8. *Power to send for persons and papers.*—It shall be lawful for such commissioners, by a summons under their hands and seals, or under the hand and seal of any one of them, to require the attendance before them, at a place and time to be mentioned in the summons, which time shall be a reasonable time from the date of such summons, of any persons whomsoever whose evidence, in the judgment of such commissioners or commissioner, may be material to the subject-matter of the inquiry to be made by such commissioners, and to require all persons to bring before them such books, papers, deeds, and writings, as to such commissioners or commissioner appear necessary for arriving at the truth of the things to be inquired into by them under this Act; all which persons shall attend such commissioners, and shall answer all questions put to them by such commissioners touching the matters to be inquired into by them, and shall produce all books, papers, deeds, and writings required of them, and in their custody or under their control, according to the tenor of the summons: provided always, that no statement made by any person in answer to any question put by such commissioner shall, except in cases of indictment for perjury committed in such answers, be admissible in evidence in any proceeding, civil or criminal.

9. *Persons implicated in corrupt practices who may be examined, and shall make a faithful discovery, indemnified.*—For the more effectually prosecuting any inquiry under this Act, every person who has been engaged in any corrupt practice at or connected with any election of members or a member to serve in Parliament for any county, division of a county, city, borough, university, or place to which any inquiry under this Act relates, and who is examined as a witness, and gives evidence touching such corrupt practice before the commissioners appointed under this Act to make such inquiry, and who, upon such examination, makes a true discovery to the best of his knowledge touching all things to which he is so examined, shall be freed from all penal actions, forfeitures, punishments, disabilities, and incapacities, and all criminal prosecutions to which he may have been or may become liable or subject at the suit of her Majesty, her heirs or successors, or any other person, for anything done by such person or persons in respect of such corrupt practice; and no person shall be excused from answering any question put to him by such commissioners on the ground of any privilege, or on the ground that the answer to such question will tend to criminate such person.

10. *Witnesses examined not to be indemnified unless they shall have a certificate from the commissioners.*—Where any witness is so examined as aforesaid, such witness shall not be indemnified under this Act unless he receive from such commissioners a certificate in writing under their hands, stating that such witness has, upon his examination, made a true disclosure touching all things to which he has been so examined; and if any action, information, or indictment be at any time pending in any court against any person so examined as a witness in manner above mentioned, for any corrupt practice at any election to which the inquiry made by such commissioners had reference, such court shall, on the production and proof of such certificate, stay the proceedings in any such action, information, or indictment, and may, in its discretion, award to such person such costs as he may have been put to by such action, information, or indictment.

11. *Commissioners to examine on oath, &c.*—It shall be lawful for any such commissioners, or one of them, to administer an oath, or an affirmation where an affirmation would be admitted in a Court of Justice on the ground of religious scruples, to all persons who are examined before them touching the things to be inquired into by them under this Act.

12. *Penalty for non-attendance, or refusing to give evidence.*—If any person on whom any summons shall have been served, by the delivery thereof to him or by the leaving thereof at his usual place of abode, fail to appear before the said commissioners at the time and place specified in such summons, it shall be lawful for the said commissioners to certify such default under their hands and seals, or under the hand and seal of any one of them, to any of her Majesty's Superior Courts in England or Ireland or to the Court of Session in Scotland, or to the Lord Ordinary on the bills in the said Court, as the case may be; and thereupon such Court or Judge shall proceed against the person so failing to attend, in the same manner as if the said person had failed to obey any writ of subpœna, or any process issuing out of the said Court; and if any person so summoned to attend as aforesaid, and having appeared before the said commissioners, shall refuse to be sworn, or to make answer to such questions as are put to him touching the matters in question by the said commissioners, or to produce and shew to the said commissioners any papers, books, deeds, or writings being in his possession or under his control, which the commissioners may deem necessary to be produced; or if any person shall be guilty of any contempt of the said commissioners or their office, the said commissioners shall have such and the same powers to be exercised in the same way as any judge of any of her Majesty's Superior Courts of England or Ireland, or of the Court of Session in Scotland, sitting under any commission, may now by law exercise in that behalf; and all headboroughs, gaolers, constables, and bailiffs shall and they are required to give their aid and assistance to the said commissioners in the execution of their office.

13. *Penalty for false swearing, &c.*—Every person who, upon examination upon oath or affirmation before any commissioners to be appointed under this Act, wilfully gives false evidence, shall be liable to the pains and penalties of perjury.

14. *Expenses of witnesses.*—The said commissioners shall have power, if they deem fit, to award to any witness summoned to appear before them a reasonable sum for his or her travelling expenses, and for his or her maintenance according to a scale to be determined and approved of by the Commissioners of her Majesty's Treasury, and the said commissioners shall certify to the said Commissioners of her Majesty's Treasury the names of the said witnesses, together with the sums allowed to each, and the said commissioners shall pay to the said witnesses the said sums so allowed as aforesaid, out of any money which may be provided by Parliament for the purposes of the said commission.

15. *Expenses of the inquiry.*—It shall be lawful for the Commissioners of her Majesty's Treasury to make an order for the payment of the necessary expenses of any inquiry under this Act; and every commissioner to be appointed under this Act shall be paid, at the conclusion of the inquiry, over and above his travelling and other expenses, such sum as the Commissioners of her Majesty's Treasury think fit; and any commissioners so appointed shall, after the termination of their last sitting, and after they have made their report to her Majesty, as hereinbefore directed, lay or cause to be laid before the Commissioners of her Majesty's Treasury a statement of the number of days they have been actually employed in the inquiry made by them, together with an account of the travelling and other expenses of each of such commissioners; and the Commissioners of her Majesty's Treasury shall make an order for the payment to each commissioner of the sum which the Commissioners of her Majesty's Treasury shall so think fit to be paid to him, and in respect of his travelling and other expenses, which said payments shall be made out of any money which may be provided by Parliament for that purpose.

16. *Protection of commissioners.*—That the commissioners shall have such and the like protection and privileges, in case of any action brought against them for any act done, or omitted to be done, in the execution of their duty, as is now by law given by any Act or Acts now or hereafter to be in force to justices acting in the execution of their office.

17. *Limitation of actions.*—No action shall be brought against any commissioners appointed under this Act, or any other person whomsoever, for anything done in the execution of this Act, unless such action be brought within six calendar months next after the doing of such thing.

THE MAGISTRATE,

AND PAROCHIAL AND MUNICIPAL LAWYER.

Queries.

GAME CERTIFICATES—RABBITS.

With reference to 52 Geo. 3, c. 93, sched. L, can your professional readers point out any case deciding that a gentleman may alone, under a written direction or authority from the owner or tenant of land, take or destroy rabbits thereon (as under 11 & 12 Vict. c. 29, he may hares by virtue of an annually registered authority) in the personal absence of such owner or tenant, without subjecting himself to game certificate duty? LEX.

Sept. 20.

THE MILITIA.

The East Riding.—The whole of the volunteering militia force in the Hull district appeared for one day this week, to go through the usual legal form of attestation before the magistrates of the Hull Bench. The "force" consisted of one person only; and we may take this occurrence to be a fair example of the absolute failure of the scheme upon which it may be

said the present ministry attained office. Difficulties unforeseen and unprovided for have, in fact, arisen, which bid fair to render the volunteering project perfectly nugatory. Besides the immediate effect of a large demand for labour in more productive and legitimate occupations than that of playing at soldiers, we have the operation of a newly-discovered obstacle to the embodiment of a national corps of volunteers. It consists of the peculiar provisoes inserted in the rules of societies established for the relief of members in case of sickness, denying such relief to persons who may enter either the regular army, the police, or the militia force. The members of such benefit clubs constitute the mass from whom it was expected that the volunteer levy would be obtained; and the obvious disadvantage much more than out-balancing the very meagre inducement offered in the shape of pay, has no doubt caused the failure, so far as voluntary enlistment into the militia is concerned. Clubs or societies, such as we allude to, will, through their officers, devise means of meeting the difficulty, by equalising, so to speak, the rates of insurance against risk; but so long as the individual disadvantage exists—and it cannot be destroyed—it makes one of the most formidable difficulties to the establishment of a permanent militia force.

West Essex.—The enrolling of volunteers for this corps proceeds with more success than was at one period anticipated, up to the present time 38 having been attested in the Chelmsford division, and 27 in that of Dengie; and 100 of the men have now been raised. What will be the total number required for the regiment is as yet uncertain. The number, 1,049 men, applies to the whole county, the authorities being directed to raise that number for both regiments, but in what proportion these will be divided has not yet been finally decided on. In reference to the arrangement that has been made as to the 6*l.* bounty, the reason for this and for not paying it all down at once is apparent enough, for there is too much cause to fear that many of the men, having obtained the whole of the money, would be found missing when the muster roll was called for training; but it is not improbable that if a guinea were paid on attestation, and the 10s. transferred to the last year of service, it would much facilitate the process of enrolment. It should be known that the 5s. for bringing in a volunteer is payable to any person as well as the constable, and in cases where recruits have induced companions to join them as comrades in the corps, and have brought them in, they have received the money.

Bristol.—Only one volunteer for the militia has appeared at Bristol; at Southampton there were two.

City of London.—On Tuesday, the aldermen, deputies, and common-councilmen of the City assembled within their respective wards, for the purpose of providing the required number of men for the city of London royal regiment of militia, in compliance with the orders issued by the Court of Lieutenancy, and also to make a return of those volunteers who have been approved of and attested. The aldermen presided at their respective wardmotes. Notwithstanding that recruits are eligible (subject to the approval of the Secretary-at-War) up to the age of forty-five, and of the height of five feet three inches, the recruiting for this service proceeds very slowly; and it is a singular fact that up to the present time not one freeman has enlisted, and comparatively few persons who reside in the City have joined the corps; and although the staff of the regiment in Bunhill-row, and the various ward officers, are indefatigable in their exertions to obtain recruits, it is doubtful when the number (600) will be made up.

Wales.—General meetings of the lieutenants of the various Welsh counties have been held, and the customary steps taken for the enrolment of the various quotas of men for each county. In Carmarthenshire no great difficulty is expected in procuring a sufficient number of men as volunteers. In Flintshire, however, great disinclination has been manifested against volunteering, a fact which may be traced to the harvest operations having given full work to the labourers. Now that agricultural operations are not so pressing, it is deemed that volunteers will be more plentiful. No fewer than 670 men are required for the county of Glamorgan, for the raising of which number the ballot will be necessary, as the iron trade and its adjunct the coal trade, are in full activity, and labour is not over-abundant.

Lancashire.—Misstatements having crept into the newspapers relative to the militia establishment, we find upon enrolment for the 2nd Lancashire (the Liverpool) regiment is going forward as rapidly and as satisfactorily as possible. The enrolment commenced in Liverpool on the 4th inst. and up to the 18th the number actually enrolled was 601. The number examined by the medical inspector was 746, of whom 145 were rejected. At Prescott, on the 17th and 18th inst. 191 volunteers were enrolled; many of these are labourers at Knowsley, and to whom Lord Derby has promised half-wages during the militia training. It is expected that the present week will furnish, voluntarily, the complement for this district.

JOINT-STOCK COMPANIES' LAW JOURNAL.

A case of some importance to the owners of land abutting on a projected line of railway, was tried at Nisi Prius before Cresswell, J. at Stafford Assizes. (*Doe dem. Armistead* v. *The North Staffordshire Railway Company*, 19 Law T. Rep. 374.) It was a question on the construction of that part of the Lands Clauses Consolidation Act, which defines the powers of railway companies to take land. The local Act for the formation of a railway empowered the company to enter upon, take, and use such lands as were delineated and described in the books of reference for the purposes of the railway. The company having taken possession of land under the 8 Vict. c. 18, s. 85 (the Lands Clauses Consolidation Act, which was incorporated with their special Act), the powers of which are confined to such lands as are required to be purchased or used for the purposes and under the powers of that or special Acts, it was held by Cresswell, J. that the right of the company to take possession of land necessary for the railway, under the above specified provisions, was not confined to land without which the railway could not be constructed, but extended to such land *as was reasonably necessary for the advantageous use of the railway*; and the question what land was reasonably necessary was for the jury, and so left to them. Cresswell, J. in his address to the jury, after referring to some decisions in the Q. B. as to the power of a company to take land, said—"That Court has decided every point but the one, whether the land is necessary for the railway. The company has the right to take the land described in the book of reference, but has only power to take what is necessary for the railway. The word 'necessary' does not mean that without which the railway cannot be constructed from A. to B. It extends to such land as is reasonably necessary for the advantageous use of the railway. For instance, houses, sidings, and standings for carriages are reasonably necessary, although not absolutely necessary. Therefore I advise you to consider the question with reference to what you think is reasonably required for the advantageous use of railways. This question cannot be judged of by a person who knows nothing of the intentions of the company, but the engineer tells you positively the land is required for sidings and buildings for carriages. It is true it has not been yet applied to those purposes, but the company had no sooner taken possession of the land than the action was commenced. That seems to me to be a clear answer why they have not hitherto used it. The question you have to consider is, whether you think these two roods and six perches of land was land that the company would reasonably require for the use of their railway."

Another point decided in the same case is reviewed under its proper heading in another column.

WINDING UP.

The National Land Scheme.—The inquiry directed by the Court of Chancery under the Act of Parliament for winding up and disposing of the estates of this company, terminated on Tuesday, so far as regards the first estate located under the title of O'Connorville. The proceedings were directed to the purpose of fixing the future rents to be paid by the allottees in possession, who had established their titles, and with the view also of assessing the aggregate value of the estate for public auction. The result of the inquiry on this point is important, involving as it does the material question, as to whether the present class of occupants can remain upon the soil, and so still continue to concentre themselves upon the settlement, or whether they will have to make way for a different class of persons. The valuations made by Mr. Woodthorpe, surveyor, for Mr. Goodchap, the official manager, assisted by Mr. Roxburgh, assessor, and Mr. J. Tucker, his solicitor, were upon the principle defined by the Act of Parliament, which directs that the allottees shall be entitled to their respective allotments, subject to the payment to the company and their assigns, of a perpetual fee farm rent-charge for the allotment, to be fixed by the official manager, and calculated according to the actual value of the allotment for occupation at the time of fixing the rent. Proceeding on this principle the two-acre allotments were valued at a rent of 6*l.* 12s.; the three-acre allotments at 9*l.* 5s.; and the four-acre allotments at from 10*l.* 10s. to 11*l.* 10s. The valuations made by Mr. Roche and Mr. Caffall, on behalf of the allottees, were respectively 4*l.* 12s. for the two-acre allotments; 6*l.* 13s. for the three-acre allotments; and 8*l.* 4s. to 9*l.* 2s. for the four-acre allotments. Several of the allottees were examined on the subject, and in their evidence stated as the result of three or four years' experiment, that no one could cultivate a two-acre allotment and pay more than 2*l.* per acre; that it would be impossible to pay the rent intended to be imposed, and that when the rent-charges of 6*l.* 12s. came to be sold in the market they would not realise 4*l.* It was contended on behalf of the allottees, that the value assessible in respect of occupation depended not on the fertility of the land only, but upon its particular situation; and, in the present case, the estate was situated at a distance from any market town, and in an altogether isolated district, and there was no source independent of the land, of an indifferent quality in itself, from which the occupants would receive benefit or profit, neither was there any demand on the neighbouring farms for their services. This being the case, the value, it was argued, for occupation should be determined by ascertaining if the produce of the land, after maintaining the labour necessary for producing and bringing it to market, yielded any and what profit to the cultivator, on the principle propounded by Adam Smith, "that rent, considered as the price paid for the use of land, is naturally the highest the tenant can afford to pay in the actual circumstances of the land." The experience derived from the experimental working of the O'Connorville system of land labour and allotments went to shew that the produce of the land, after maintaining the labour for bringing it to market, yielded little or no profit, and that the land did not produce a greater quantity of food than was sufficient to maintain the labour necessary for bringing it to market, and that even if there is any surplus it is not more than sufficient to replace the stock employed in the labour. After considerable discussion, the official manager and assessor fixed the future rents payable at the valuation of their assessor, with permission to the parties to appeal. In dealing with the question of "back rent," as it is termed—that is to say, rent not paid by the present occupiers, considerable allowances, tantamount almost to a remittance of the rents in several cases, were made. Had the back rents been enforced, it was not thought probable they would be paid, and the only alternative would have been the ejectment of the defaulters.

REAL PROPERTY LAWYER AND CONVEYANCER.

Several cases upon the construction of wills and other points of interest in equity were reported in our last two numbers. In *Re Barton's Trust*, 19 Law T. Rep. 362, the interest of a sum of money was bequeathed to A. for life, and after her death, the capital was given amongst B. C. D. and E. in such a manner as made them equally joint tenants. B. married, and her husband became bankrupt. She died, and subsequently A. the tenant for life, died. It was held by Vice-Chancellor Turner, on a division of the fund, that C. D. and E. the other surviving joint-tenants were entitled, in preference to the assignees of the husband of B. who had become bankrupt. A curious case is *Blundell* v. *Gladstone*, 19 Law T. Rep. 354. The Court there admitted evidence to throw light upon a latent ambiguity in testator's will. A testator having two farms, A. and B. in C. both in the occupation of the same tenant, D. by his will made a general devise of all his real estates (except the hereditaments thereinafter particularly devised), including all estates vested in him upon trust, or by way of mortgage, to trustees, their heirs and assigns; nevertheless as to such trust and mortgage estates, subject to the subsisting trusts and equity, or right of redemption thereof. In a subsequent part of the will, the said testator devised his farm with the appurtenances in C. in the possession of D. unto the Rev. T. R. in fee. Evidence was admitted which shewed that both by the testator's ancestor and himself it was considered that B. one of the farms in C. was held upon trust for the Roman Catholic priest for the time being at L. It was held by Lord Chancellor Truro, reversing the decision of the late Vice-Chancellor of England, that as the testator considered he held the estate B. upon the trusts before-mentioned, he must be taken to have intended to devise estate B. to the trustees as a trust estate, and that it was immaterial whether the trusts were valid or invalid; and that estate A. (as being excepted from the former devise) was intended to be devised to the Rev. T. R. who, having died in the testator's lifetime, it lapsed for the benefit of the testator's heirs-at-law.

In *Peard* v. *Kekewich*, 19 Law T. Rep. 360, several questions as to construction, accumulation, power of appointment, and the divesting of interests, found solution. S. P. by his will, gave and devised certain property to G. P. for life, remainder to such of G. P.'s children as he should appoint, and in default of appointment remainder to the children equally as tenants in common in tail. G. P. by his will bequeathed, devised, and appointed to trustees in trust for his eldest son G. S. P. his heirs, executors, &c. to be conveyed, assigned, and assured to him when and as he should attain the age of twenty-three; and if he should die before twenty-one, then to the use of the second, third, &c. son of G. P. in tail, with remainder over. He then directed the payment out of the rents of annuities for the benefit of his wife and children, and subject thereto, to invest the residue of the rents and profits in government or real securities, to accumulate, and also "to accumulate the accumulations in like manner until his son G. S. P. (who was born at the death of S. P.), or &c. should attain the age of twenty-three, and then to pay, assign, and make over all such securities and accumulations to G. S. P. &c. for his own absolute use and benefit." It was held by the MASTER of the ROLLS that the will of G. P. was a good exercise of the power of appointment created by the will of S. P. That G. S. P. took an estate in fee, liable to be divested in case of his death under twenty-one. That the accumulation directed by G. P. in favour of G. S. P. who was born at the death of S. P. or such other son as should attain twenty-three, was valid as to G. S. P. But the Court thought such a trust for sons not in esse at the time of the creation of the power would not be valid.

A curious question, and one not likely to arise frequently, was considered in *Edlestone* v. *Collins*, 19 Law T. Rep. 371. The point there raised was, whether a conditional surrender of copyhold property of inheritance, belonging to a married woman, made by her and her husband, the acknowledgment having been taken, after the examination of the lady, by a deputy-steward who was *an infant*, was valid. It was held by Vice-Chancellor TURNER, that the officer being ministerial, and not judicial, the surrender was good. A case deserving attention, where a point was settled as to marshalling assets, is reported in *Robinson* v. *Geldard*, 19 Law T. Rep. 365. It was there held on appeal from a judgment of the late VICE-CHANCELLOR of ENGLAND, that although according to general rule personalty savouring of realty and pure personalty, will not be marshalled so as to throw the general legacies on the former, and to leave the latter for the payment of the charitable legacies, if the testator shews a clear intention to give priority to the charitable legacies with reference to the pure personalty, the Court will give effect to such intention.

Another question as to which takes precedence as a charge on pure personalty, charitable or general legacies, was decided in the same case. The testator gave legacies to charities to be raised and paid out of such of his ready money, goods, and personal effects as he might or could by law charge with the payment of the same; and he gave other legacies for charitable purposes. The LORD CHANCELLOR held, reversing the decree of the Court below, that the charitable legacies were a primary charge on the pure personalty, in preference to the general legacies.

THE LAW OF MORTMAIN.

THE select committee of the House of Commons appointed to consider the policy of extending the Law of Mortmain, so as to include personal estate, and generally whether any alteration should be made in the law as it affects testamentary or other dispositions in favour of religious, charitable, or permanent objects, have presented the following report:—

Your committee have, in the last and present sessions of Parliament, examined several witnesses of different positions in life, and belonging to various religious communities, with the view of obtaining full information concerning the subject of inquiry referred to them for investigation. Your committee have also had before them a report made in the year 1844, on the same subject, by a select committee of the House of Commons, together with the evidence that was taken upon that occasion. It will be found on reference to that report that not only were the origin and progress of the law of mortmain in England explained at that time by witnesses of great learning and ability, but that also the law on this and kindred subjects in other parts of the empire, and in many foreign countries, was submitted to a careful and elaborate inquiry.

Before making any suggestion for a specific alteration of the law, or answering the particular question referred to your committee, namely, whether it be expedient that the law of mortmain should be extended so that it should include personal estate, it will be convenient to state what are the material provisions now existing upon the subject. With this object, and to render the past legislation intelligible, attention must first be directed to the distinction which exists between the word "mortmain," in its original and technical meaning, and the same word in its modern and popular acceptation. The strict meaning of the word "mortmain" is the conveyance of lands to a corporation having a perpetual succession and existence. The popular meaning of the word is the vesting of land or other property either in a corporation or in individuals, in such a form as that the produce or beneficial interest becomes permanently applicable to religious or charitable objects.

When land is conveyed to a corporation it ceases to be subject to the ordinary laws of devise and descent, because the corporation, the legal owner, is an undying body, intended in its original constitution to last for ever. Thus the lands of such religious houses as existed in former times, of a municipal corporation, or of an incorporated railway company, continue in the same legal ownership without devolution from individual to individual. This is the original application of the word "mortmain."

Where, however, lands are given to individual trustees, to be held by them upon charitable or religious uses, the legal ownership is subject to continued change, either when new trustees are appointed and the land is conveyed to them, or when by the deaths of trustees it descends upon their heirs or survives to their co-trustees. In gifts of this nature a Court of Equity fixes upon the produce or beneficial interest of the lands, and compels the legal owners, whosoever they may be, to apply it to the religious or charitable purposes to which it was devoted, so that in these cases, not strictly of mortmain, but of mortmain in its popular signification, the objects to which the land is applied remain fixed and unchangeable, though the legal holders are subject to alteration. This distinction between the original and the present meaning of the word "mortmain" may appear to be in some respects rather one of form than of substance, but it will be found to enter materially into the law of the subject, and to be necessary for a correct understanding of the statutes now in force.

The ancient statutes which prohibit the alienation of land to corporations, are separate and distinct from the more modern Acts which apply to the vesting of land in trustees for charitable purposes, and it will be convenient first to consider the law arising under the former class of Acts before proceeding to the more important questions which arise under the modern statutes.

In the early periods of the history of the country the practice of giving land to trustees was not known, and the only mode by which at that time the produce of land could be made permanently applicable to a perpetual charitable or religious object was, by vesting the land in a religious house or other corporate body. To prevent the practice of giving lands to religious houses or other corporate bodies, there are a series of statutes, commencing with Magna Charta, and continuing down to the time of the Reformation, either prohibiting or placing various restrictions upon such alienations in mortmain These statutes are, many of them, quite obsolete, and it is not now necessary to refer to them further than to say, that their general effect is that land cannot be vested in a corporation, except by license from the Crown, or under the power of the particular Act by which the corporation is created. By the 7 & 8 Wm. 3, c. 33, the Crown possesses a general power to confer licences upon corporations to hold lands in mortmain. Moreover in Acts of Parliament passed for the purpose of creating corporations either for trade or for any great work, such as railroads, dock, canals, and a variety of other purposes, it is the practice to permit a certain limited quantity of land to be held in mortmain.

With reference to those statutes which prohibit or place restrictions upon the vesting of land in corporate bodies, some points of practical importance have been brought before the notice of your committee, wherein an improvement of the law might be effected. It is expedient to dispose of these in the first instance. On this point, your committee would refer to the evidence of Mr. Barber, the secretary to the Chancery Commission, which will be found at page 336. It appears from his statement that there are two defects in the law for which a remedy ought to be provided.

In the first place, it is doubtful whether such trading bodies as happen to be incorporated can take any valid security upon land, unless they are expressly empowered so to do by Act of Parliament. For instance, in a case that occurred in practice, doubts were entertained whether a Scotch corporation could advance money upon the security of railway mortgages, and other property of that description. The doubt arose under the statute 15 Rich. 2, c. 5, which is one of the old statutes that prohibited alienations in mortmain according to the strict meaning of the word. There does not appear to be any necessity for such a restriction upon trading corporations, and your committee are of opinion that the law should be made clear upon this subject. The other defect in the law on this head, pointed out in Mr. Barber's evidence, concerning which there is no doubt, is more important. It is this. Trading corporations, when they have legally advanced money upon land, are unable to realise their security by foreclosure, or otherwise acquiring possession of the land itself, without danger of immediate absolute forfeiture to the Crown. A case of this kind occurred some years ago, which may be mentioned as an instance of the evil. The University Assurance Society was incorporated by letters patent on the 28th of June, 7 Geo. 4, with power to hold lands not exceeding the value of 1,000*l.* a year. The corporation, having lent money on mortgage of lands exceeding that sum in value, and having received an intimation that they had thereby exceeded their powers, themselves brought their case before the law officers of the Crown, and thereupon a commission was issued to five barristers, for the purpose of inquiring into the subject. An inquisition was taken under that commission, and it was found that the corporation had exceeded their power, and taken on mortgage lands of a much greater value than 1,000*l.* a year. The lands were declared forfeited, and passed into the hands of the Crown. An Act of Parliament was subsequently obtained, by which the mortgages were confirmed, and the corporation allowed to lend money on mortgage, with the restriction, however, that if they came into possession as mortgagees, the land should be sold and the money realised within a certain period. It appears from Mr. Barber's evidence, that a similar privilege has been specially conferred by Act of Parliament in other cases, and that the period of five years has been taken as the time during which a corporation should have the power of selling land acquired by them in any suit for foreclosure or other proceeding for the enforcement of a security for money.

Your committee are of opinion that privileges of this description should be made general, and should not be confined to particular trading corporations. They therefore think that the statute 15 Rich. 2, c. 5, should be repealed, and its material provisions re-enacted with reference to modern times, in such form as that, first, corporations should without doubt be able to advance money on the security of real estates; secondly, that they should be compelled to sell or dispose of land coming into their actual possession upon the realisation of their securities within a certain limited period, and that subject to this restriction they should be at liberty to adopt the same remedies as private individuals to enforce the repayment of money they had advanced.

Before concluding this branch of the subject it may be observed that there is this distinction between a void gift in mortmain under these ancient statutes, and a void gift to a religious or charitable use under the more modern Act, namely, that in the former case, that is, of a corporation illegally attempting to acquire land, a title accrues to the Crown, which takes the property as forfeited; whereas in the case of a void gift to individual trustees for a charitable or religious use, the Crown acquires no right, but the heir, or next of kin of the testator, or the donor himself, as the case may be, becomes entitled to the property.

It may be well here to mention the 43rd Eliz. c. 4, which, although it did not, in direct terms, either impose or take off any restriction upon the alienation of land to charitable purposes, yet had an effect upon the decisions of the Courts of Law, and was considered to shew a tendency in the Legislature in favour of charities. The title of the Act, and the principal object in view, was to redress the misemployment of real or personal estate given to charitable uses. The construction put upon this Act by the Courts authorised appointments to corporations for charitable uses, and even enlarged the devising capacity of testators by rendering valid devises to those uses by a tenant in tail, and also by a copyholder without a previous surrender to the use of a will.

Your committee will now proceed to consider the more important branch of the inquiry submitted to them, namely, the prohibitions or restraints imposed upon alienations of property to religious or charitable purposes. It appears that the 9th Geo. 2, c. 36, is, for all practical purposes, the first statute which affects gifts of this description, and that this statute, though in some respects modified by subsequent legislation, is the modern law upon the subject. It is therefore desirable, in the first instance, to state its provisions with accuracy.

The preamble of the statute is as follows:—"Whereas gifts or alienations of lands, tenements, or hereditaments in mortmain are prohibited or restrained by Magna Charta and divers other wholesome laws, as prejudicial to and against the common utility; nevertheless this public mischief has of late

greatly increased by many large and improvident alienations or dispositions made by languishing or dying persons, or by other persons, to uses called charitable uses, to take place after their deaths, to the disherison of their lawful heirs."

(To be continued.)

CONDITIONS OF SALE.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Whilst reading your valuable reports not long ago, I met with a decision, to the effect that the words "by and at the expense of the purchaser," in a condition of sale relating to the production of deeds, threw upon him the whole expense not only of preparing, but also of perusal by the covenantor's solicitor, and execution by the covenantor himself of the covenant to produce. A similar point having presented itself in my practice, I am wishful to refer to this case, but cannot, because I have forgotten its title. Can any of your readers refer me to it? If not, can they inform me of any other case to that effect, or what is the usual practice under similar conditions of sale? The words being "Every deed of covenant to be entered into in pursuance of this condition shall be prepared by and at the expense of the person or persons requiring the same."

A SUBSCRIBER.

NEW WILLS ACT.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I fear it will be found that the new Act, 15 Vict. c. 24, for the Amendment of the Laws with respect to the execution of Wills, is totally inoperative as regards the wills of *females*.

In reading up the important statutes of last session, as a long-vacation exercise, it has struck me that such is the case, the interpretation clause of the Act in question being confined to the word "will," while the material enacting clause (the 1st) speaks of the wills of *males* only.

Surely it cannot be contended that the words "every will" made use of in the first and second sections supply the omissions I have indicated.

I am sir, yours, &c.

22nd Sept. 1852. J. M. T.

Queries.

A. B. and C. are three married women, and coheiresses. A.'s husband purchases B. and C.'s shares. The whole of the premises are to be conveyed to D. to the use of A.'s husband in fee. In addition to the ad valorem duty on the purchase money of B. and C.'s shares, is a deed stamp of 1*l.* 15s. necessary by reason of A.'s share being also conveyed?—W. T.

COUNTY COURTS.

CONCURRENT JURISDICTION.

WE have received on application the following statement from the gentleman who reported the case of *Norman* v. *Marchant*, 21 L. J. Rep. 256, Ex.:—"The head-note, the argument, and the judgment shew that the *decision only* was that the original contract was a material part of the cause of action, and being signed within the jurisdiction of the County Court within which the defendant dwelt, the cause of action arose in some material point within the jurisdiction of that County Court. For this the report may be relied on as authority. The statement that the plaintiff and defendant resided more than twenty miles apart was improperly inserted. The error will be corrected in the forthcoming number of the *Law Journal*."

ADVOCACY.

TO THE EDITOR OF THE LAW TIMES.

SIR,—In reference to the letter of Mr. Field Roberts contained in your publication of the 21st ulto. he will be surprised to learn that it is a common rule in this part of the world to evade the Act he refers to, by getting the client to retain an Advocate-attorney (resident perhaps thirty miles off), and for the latter to employ the real and ordinary attorney of the client as his agent to do all the work except the talking in court. In my humble opinion the clause referred to is one of the many abortions of modern legislation. Suppose a client chose to retain four or ten attorneys (as counsel are sometimes retained) in his cause, half of them talkers, and the rest plodding chamber lawyers, where is the law to prevent him?

I am, Sir, yours, &c.

Wimborne, 23rd Sept. 1852. F. W. F.

ATTORNEYS' COSTS IN COUNTY COURTS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—With reference to the question of costs in the County Courts, permit me to suggest, through you, that assistance may be derived by referring to the schedule of costs contained in the 11 & 15 Vict. c. 57, being the Irish Civil Bill Act. I do not observe in it any costs in interpleader cases, which are perhaps the most difficult and responsible which fall within an Attorney's province.

I am, Sir, yours, &c.

G. J. SHAW.

8, Furnival's-inn, Sept. 20, 1852.

ASSISTANT CLERKS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I was glad to see the letter of "An Assistant Clerk," in your last week's LAW TIMES, as it is bringing a grievance to light, of which the promoters of the new County Courts are quite unaware. The case is by no means a solitary one, and there is no doubt every one will admit that a remedy should be applied. It is granted that the new County Courts are a great boon to the country, and so far from being an expense to the nation, they are, in the whole, a considerable source of revenue. But then in some districts the receipts are utterly inadequate to remunerate the parties who have to work them out. In fact, so far from being a benefit to the officers, in some places they are worked at a positive loss to the clerks out of their own private purses. It is plain that in such cases the clerks ought to be remunerated out of the surplus arising from other districts.

Hoping to see a remedy applied to this injustice,

I am, Sir, yours, &c.

ANOTHER ASSISTANT CLERK.

NEW SCALE OF FEES.

TO THE EDITOR OF THE LAW TIMES.

SIR,—The following circular, issued with a view to furnish suggestions useful in the framing a scale of costs and charges in the County Courts, has been adopted and circulated in this neighbourhood:—

"Sir,—At a meeting holden on the evening of the 9th inst. by a few gentlemen of the legal profession, to deliberate upon what "suggestions to communicate" to the five Commissioners appointed to frame a scale of costs and charges in the County Courts as between Attorney and client and party and party, Messrs. ——— were appointed a committee to receive, collect, and revise information as to what costs and charges should be allowed, particularly with reference to cases in which members of the Profession may have been concerned, involving a considerable loss of time and expense in preparing for trial, for which no remuneration could be obtained from the losing party; also in attendances on reference by order of Court.

"A general meeting of the members of the Profession, to assist the committee, is requested for Thursday next, the 16th inst. at the Law Library, at 8 p.m.—Yours, &c."

If the same course were taken in other places, a fund of information would be obtained which would be available for many purposes besides the matter just now in hand. The course resolved upon at the within-mentioned meeting was for each attorney to *write out* the particulars of each case in which he had been concerned, involving a considerable loss of time in preparing for trial, whether for plaintiff or defendant, for which no costs were recoverable from the losing party; and to *transmit the information*, with the name of the case and before whom tried, and where, to the secretary of the five judges, in order that they might have information before them shewing the gross injustice of the present system of refusing costs for preparing for trial, &c.

I am, Sir, yours, &c.

Preston, Lancashire. ONE, &c.

SIR,—A circular has been issued by the secretary to the judges appointed for settling the new scale of costs in the County Courts, to the various Law Societies, asking for information to guide them in preparing the list of fees. Allow me to throw out a hint in the LAW TIMES to the various attorneys practising in the County Courts, to draw out a list of cases which have occurred in their own experience, where there has been considerable labour bestowed in preparing to try cases for either plaintiff or defendant in the County Court, giving the names of the cases, and where tried; and stating the nature of the case, and the labour bestowed; all which to be sent in to the secretary to the judges in question. I have not the slightest doubt that an amount of information would in this way be laid before the judges that would convince the most illiberal of the inadequacy of the remuneration allowed to the attorneys in preparing cases for trial in the County Courts.

I am, Sir, yours, &c.

ONE, &c.

THE LAWYER.

Summary.

EQUITY.—A case, in which the mode of dealing with a fund paid into court for the benefit of a lunatic was settled by the LORD CHANCELLOR, is reported in *Leaf* v. *Coles*, 19 Law T. Rep. 356. In that case the dissolution of a partnership had been decreed, because of the lunacy of one of the partners, and large sums had been paid into Court to the separate account of the lunatic in respect of his share of the capital and profits of the business. The LORD CHANCELLOR, on the complete recovery of the lunatic, ordered the fund to be paid out to him. Some important points to Solicitors, for which, when reviewing the case last week, we could not find space, were decided by the MASTER of the ROLLS, in *Re Geidge*, 19 Law T. Rep. 359. The Solicitors' Act (6 & 7 Vict. c. 73) provides "that no order of course to tax a bill shall be directed after a verdict shall have been obtained, or a writ of inquiry executed in any action for the recovery of the demand of such attorney or solicitor." The Court held, that the words "writ of inquiry executed" were put in for the purpose of shewing that a mere judgment obtained by the party was not to prevent his obtaining the order of course; so that the Act provides that the order of course shall go in every case where there has either not been a verdict in a contested action or not been a writ of inquiry, where the judgment goes by default, to assess the amount of damages. That consequently, where a solicitor brought an action for a bill of costs, and obtained judgment by default, for want of a plea, and then the client obtained an order of course to tax, and there was no writ of inquiry executed, the order of course was not irregular or invalid on that account. Sed quære (for in the case of an action for debt, there is no writ of inquiry), the judgment is final. That, however, there having been previously to obtaining the order of course three several applications made to the Courts of Common Law, one of which had been granted upon terms, and afterwards abandoned, and the other two refused, that was a material circumstance which ought to have been mentioned to the officer from whom the order of course was obtained, and as it was not, the order of course must be discharged with costs. This case should be noted in PULLING'S serviceable book, "The Law of Attorneys." A point of practice, under the Trustee Act of 1850, was settled in *Re Prescott's Trust*, 19 Law T. Rep. 371. That was a petition by tenant for life of a fund to have a vesting order under the Trustee Act 1850. Vice-Chancellor KINDERSLEY said, that as the Act only provided a summary remedy, instead of the proceeding by bill; the cestuis que trust interested in the fund *must be* before the Court, as if the remedy had still been by bill. A case interesting to creditors, whose credits are secured by bond, is *Coles* v. *Waters*, 19 Law T. Rep. 371. A deed of composition recited the debts as simply debts, without stating whether they were simple contract debts or by specialty, rating them in proportion to the amount of debts owing to the creditors respectively. The Court held that the simple contract debts were not thereby turned into specialty debts carrying interest; and, furthermore, that those creditors whose debts were secured by bond could not receive more for principal and interest than the amount of the penalty in which the bond was taken. In *Miles* v. *Durnford*, 19 Law T. Rep. 369, A. the surviving executor of B. filed a bill to set aside a mortgage of assets made by C. the deceased executor of B. A. was also the administrator of C. It was held by the LORDS JUSTICES, that A. might, notwithstanding he filled these two characters, file a bill to set aside the deed of C.; also, that the mortgage made by C. must be considered as primâ facie good, although the money was originally advanced to him without security, and that in the absence of evidence impeaching it, the bill filed for setting it aside ought to be dismissed. A curious question as to a contract to settle a marriage portion contained in a letter was considered in *Moorhouse* v. *Colvin*, 19 Law T. Rep. 370. The statement of facts necessary to the understanding of the case is so long, that we can only here refer to it, as deserving attention. A case where the question arose whether a trust to accumulate came within the Thellusson Act, 39 & 40 Geo. 3, c. 98, is reported in *Browne* v. *Buckton*, 19 Law T. Rep. 372. The testator devised his freehold estates to trustees in trust, to accumulate the rents during the life of his niece, and on her decease to stand seised of the estates to the use of her first and other sons in tail. The

Court held, that the trust for accumulation became void at the end of twenty-one years from the testator's death; that the void accumulations were undisposed of, and therefore that, as regarded the residuary personal estate of the testator, the accumulations thereof, from the period of twenty-one years after the testator's death, belonged to the personal representative of the sole next of kin of the testator at the time of his death. In the clauses for the maintenance and advancement of the children of his niece, the testator termed the provision which he had made for them sometimes "their portions," and sometimes "their portions or shares." The Court held, that such provision was not one within the meaning of the 2nd section of the Thellusson Act, and did not prevent the operation of the 1st section of that Act.

COMMON LAW.—Touching the admissibility of letters written by a director of a railway company to the lessor of the plaintiff in an action of ejectment brought against the company, there is the case of *Doe dem. Armistead*, 19 Law T. Rep. 374. That was an action of ejectment brought by a landowner o recover land taken by a railway company. A question arose, in the course of the trial, whether letters writen to the lessor of the plaintiff by one of the directors, who had executed a bond to him under the Lands Clauses Consolidation Act, 8 Vict. c. 18, s. 85, were admissible in evidence against the company. It was held by CRESSWELL, J. that they were admissible. Two other points in the law of evidence were also reported last week. In *Anderson* v. *Whalley*, 19 Law T. Rep. 365, it was held by TALFOURD, J. that a ship's log *written by the mate*, but read by the captain, about a week after it was written, might be used by the captain to refresh his memory. And in *Camfield* v. *Bond*, 19 Law T. Rep. 365, which was an action for slander, it was held by JERVIS, C.J. that the plaintiff may give in evidence other slanderous words than those alleged in the declaration in order to shew the animus of the speaker. In the same case there was a variance between the slanderous words alleged in the declaration and those proved; the Court refused to amend the declaration, and let the case go to the jury, because the words proved were not actionable.

THE MERCANTILE LAWYER.

Summary.

ALREADY the Absconding Debtors' Arrest Act has been found of great value in protecting the rights of creditors against fraudulent debtors. We have observed it put in force, in various parts of the country, with the best effect. One case is reported in our last number. (*Powell* v. *Hayes*, 19 Law T. Rep. 373.) In that case a debtor, who resided in Ireland, stated it to be his intention to leave a place in England, where he then was, in the presence of his creditor, "for Ireland and foreign parts, and to reside abroad." On affidavit of this by the debtor, a Commissioner of Bankrupts forthwith issued a warrant for his arrest. It should be remembered, that the power of issuing such a warrant is by this Act extended also to the Judges of the County Court, so as to be applicable with speed and facility all over the kingdom.

PROCEEDINGS OF LAW SOCIETIES.

SOCIETY FOR PROMOTING THE AMENDMENT OF THE LAW.

NINTH ANNUAL REPORT OF THE COUNCIL.

THE chief subjects that have occupied the attention of the Society during the past year have been the removal of the distinction between the procedure of the courts of law and equity in this country; the reconstruction of the Masters' office, involving its gradual abolition; the enfranchisement of copyholds; the simplification of the transfer of land; the relations between the bar, the attorney, and the client; and the establishment of a law school, with a provision for an effective examination before granting a law degree on admission to the bar.

On the first subject—the fusion of law and equity—our special committee on law and equity procedure have presented a third report, not only recommending several measures for the immediate adoption of the Legislature, but giving the outlines of a code by means of which this great change might be effected.

The subsequent appearance of the first report of the Chancery Commissioners, and the introduction of the bills founded upon it, have afforded us the gratification of seeing not only the views, but in some cases the very words of our reports and resolutions proposed for the sanction of Parliament under the highest auspices.

We therefore trust that in procedure at least, as eventually we hope in all other respects, law and equity will soon be wholly united.

On this subject we refer with pleasure to the second visit which our Society received last autumn from its distinguished member, Mr. David Dudley Field, of New York, and to the additional evidence which he has supplied (and which has since been increased by a communication from the state of Missouri) of the satisfactory working of the conjoined courts of law and equity in America. Your council have no wish to hasten prematurely a change so extensive and important as this. They have only to express their conviction that it is as practicable and advisable in this country as it has been proved by experience to be practicable and advisable in the United States of America. They willingly accept as an instalment of justice the following opinion of the Chancery Commissioners in their first report, signed as it is by three Equity Judges, one Common Law Judge, and several eminent counsel, and statesmen not of the legal profession:—

> We have arrived at the conclusion that, without abolishing the distinction between law and equity, or blending the courts into one court of universal jurisdiction, a practical and effectual remedy for many of the evils in question may be found in such a transfer or blending of jurisdiction, coupled with such other practical amendments, as will render each Court competent to administer complete justice in the cases which fall under its cognizance.
>
> We think that the jurisdiction now exercised by Courts of Equity may be conferred upon Courts of Law, and that the jurisdiction now exercised by Courts of Law may be conferred upon Courts of Equity, to such an extent as to render both courts competent to administer entire justice without parties in the one court being obliged to resort to the aid of the other.

These are valuable admissions, and are surely sufficient justification to this society for introducing the great question of a fusion of law and equity in this country to the notice of the Legislature and the public.

A Bill has been since brought in to effect the alterations proposed by the Commissioners, and both in its provisions and in the debates respecting them in Parliament the principle of a fusion of jurisdictions has received great support. It was, indeed, generally admitted that its accomplishment in effect, if not in name, is not far distant. By this measure also several improvements suggested and recommended by this society as to the printing of legal proceedings, and the introduction of viva voce evidence into Courts of Equity, will become law.

With respect also to the office of Master in Chancery, we have to congratulate the Society on the introduction by the Lord Chancellor of a Bill containing provisions almost identical with those which our equity committee have recommended, and in execution of the plan reported by the Chancery Commissioners, and fully adopted by the late Government, which issued the commission. This measure will prevent the delay now arising from proceedings commenced before a Judge being referred either in whole or in part to the Master. On the 12th day of January last a resolution was carried at a meeting of this Society recommending this change, and the gradual abolition of the office of Master in Chancery, and we can only express a hope that its doom is sealed, and that a procedure so mischievous both in theory and practice is practically swept away. Although a specific resolution for the abolition of the Masters' office was only come to by the Society on the 12th of January, yet the proposition for the abolition of the Masters' office, and the completion of the whole business in a suit by the Judge, has been for many years before the Society, where it has gradually advanced in favour, and has at length proved triumphant. It is right also to say that it was much considered and much evidence adduced upon it in a committee of the House of Lords, which sat last summer, and reported the opinions as well as the other evidence of witnesses in its favour.

A Bill for the improvement of the procedure of the Common Law Courts has also passed through most of its stages. It rests on the authority of the Common Law Commissioners, and has received high professional sanction. This Bill doubtless contains many important and useful provisions, but your council are desirous of stating their opinion that the remedies proposed leave many of the evils in the procedure of the Superior Courts of Common Law still existing, and that until these are remedied the County Courts will be preferred by the suitor, who will demand, and with justice, the extension of their jurisdiction. Considering the long period allowed for the preparation of this Bill, the high authorities under whose sanction it was introduced, and the many revisions it has undergone, it was not unreasonable to expect something complete in conception and careful in execution. Some partial improvements have been made, but the leading principle—the abolition of forms of action—has been sacrificed. The Bill may be allowed to be a slight improvement, but not a permanent settlement of common law procedure. There is, moreover, a very serious defect in the execution, which will be the certain cause of endless disputes and enormous expense. In order to save a few weeks' labour to the draughtsman, it is left quite uncertain which of the innumerable statutes applying to procedure are repealed, and which are still in force. The old rules of court are also left in the same position. In order to understand the new system the practitioner must master the old, and then, after careful comparison, qualify the enactment by introducing into its construction all those principles which it does not abrogate by necessary implication. The amount of expense, uncertainty, and vexation thus introduced is incalculable. The present system, faulty as it is, is at any rate well understood. It is distressing to contemplate how much money must be spent in clearing up mere points of form before the new one can be placed in an equally satisfactory position. These considerations become yet more important when it is remembered that this new code is intended to enter into competition with the County Courts, in which the litigant is not called upon to expend one farthing for any purpose except the very merits of the suit.

Our fears may be unfounded, but there is some ground to apprehend that the new element of expense and uncertainty thus introduced without any corresponding amelioration, together with the references which may be made to the Court, amounting to as many as three-and-forty in a single suit, will finally decide in favour of the County Courts the question between central and local judicature.

The present state of the Ecclesiastical Courts loudly calls for large alteration and amendment, and your council have made a reference on this subject to a committee.

Your council have witnessed with much satisfaction the introduction of a Bill this session for the compulsory enfranchisement of copyholds, giving as well to the lord as to the tenant power to demand such enfranchisement. This Bill, after passing through the House of Commons without opposition, was referred to a select committee of the House of Lords, by whom it was carefully considered, and your council anticipate great benefit from the adoption of a measure as to which there is so general a concurrence of opinion, and which is calculated to remove a great obstacle to the cultivation of the land and to the erection of buildings. An elaborate report on this subject was lately presented by one of your committees, which gave rise to much interesting discussion. It was received by the society, and elicited a resolution affirming the advantage of a compulsory enfranchisement of copyholds. Here also this society has endeavoured to act as a pioneer to the Legislature, to discuss the legal difficulties of the subject with a view to ascertain the true principle on which the Legislature may properly and safely proceed; and again the efforts of the society have been successful.

With the subject of copyholds is connected that of the transfer of land, the copyhold tenure and its incidents frequently imposing, as is well known, a heavy tax on such transfer. On this subject, so important in all its bearings, one of your committees—the committee on the law of property—has submitted to the society a paper in which a former recommendation of the same committee for assimilating the transfer of land to that of stock has been again brought before the society. If this can be effected, it is difficult to say who would be most benefited, the owners of land by the increase of the value of their property, or the people at large by the strong motive which the prospect of possessing land would afford for greater frugality.

Your council consider that the plan proposed in the paper just mentioned is not only deserving of the utmost attention, but, as coming from an eminent and experienced solicitor, affords great hope that this difficult and most important question may be solved, and may be conducted to a practical and satisfactory result.

Little real progress has yet been made towards the establishment of a good law school, with effective examinations; the late recommendation of the inns of court your council cannot but consider as insufficient; but we trust that both the Profession and the public at large are becoming more and more alive to the necessity for such a provision, and that the heads of the inns of court are becoming more aware of the serious responsibility which rests upon them in this respect. We are glad to find the subject of legal education mentioned in the report of the commissioners appointed to inquire into the state of the revenues of the University of Oxford, and are gratified at seeing the opinion of this society adduced in support of a proposal by the commissioners to apply a portion of the funds of the university to imparting a knowledge of the laws of the country. We hope to see the same recommendation in the report on the University of Cambridge, and that in the course of a few years there

will be at each of these seats of learning an efficient law school.

Still more do your council hope and believe that from the present inns of court will at length arise a complete and satisfactory law university, endowed with the funds originally vested in those societies for legal education, and which cannot be better devoted than to the purpose of teaching the law. Nor can your council entertain a doubt that if the benchers do not so apply these funds, their proper application will be enforced by the Legislature. Thus the law student would have an opportunity of commencing and afterwards continuing his studies under able professors, both in the Universities and in London, with all the advantages that the wealth of those bodies and of the inns of court could command. While on this subject, we would throw out the suggestion that interesting and instructive popular lectures on the laws of the country might be given at Mechanics' Institutions and other similar places. The publicity of our courts of justice, the presence of a jury of fellow-country-men, and the practice of oral examination, render our trials matters of universal interest, and several branches of the law, by means of such lectures, might be brought to the knowledge of the community which is bound to obey them.

(To be continued.)

CORRESPONDENCE.

BATHS AND WASHHOUSES.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I think your correspondent of last Saturday's TIMES, will find all needful information on applying to the secretary of the society for promoting the building of baths and washhouses for the labouring classes, George Woolcott, esq. 18, Buckingham-street, Strand, who will probably know all the solicitors who have acted for the established institution; and I may mention (for the information of humane members of the profession) that a pamphlet of a very practical character for the use of those interested in the establishment of these excellent institutions in our large towns and cities, can be obtained, perhaps by post from him, at the cost of the materials of printing, &c. in about ten days from this time, as I was informed at the office.

I am, Sir, yours, &c. LEX.

LEGAL INTELLIGENCE.

RECOVERY OF DEBTS IN THE CITY OF LONDON.—On the 29th inst. the new Act "For the more easy Recovery of Small Debts and Demands within the City of London, and the Liberties thereof" will come into force, from which day the Acts 10 & 11 Vict. c. 71, and the 11 & 12 Vict. c. 152, will be repealed. There are 139 clauses in the Act, comprising some of the principal provisions in the County Courts Acts. From the commencement of the Act actions may be commenced for sums amounting to 50*l.* and in cases where the parties agree, actions beyond that amount may be tried. The judge of the Sheriffs' Court is to preside under this Act, and the court is to be holden at Guildhall, or where the corporation shall direct. The Act provides for the performance of the duties of clerks, bailiffs, and other officers connected with the Court. The officers may be paid by salaries instead of fees. A prison may be provided for the purposes of the Act, and money borrowed. All suits are to be by plaint. A jury of five may be summoned when required by either party. As in the County Courts Acts, an appeal is given under this Act to the Superior Courts on points of law, or the admission or rejection of evidence. Defendants may be summoned on unsatisfied judgments and committed to prison, which imprisonment is not to operate in discharge of the debts. Among the powers conferred by the Act on the city of London is one to obtain possession of small tenements, where the tenant holds over, without bringing an action of ejectment. The fees to be charged are set forth in a schedule annexed to the Act.

PUBLIC EXAMINATION OF WITNESSES IN THE COURT OF CHANCERY.—A new feature in the practice of the Court of Chancery, to commence from the 1st of November next, will be the public examination of witnesses orally in the Court of Chancery when required. Evidence may be given by affidavit, and in answer to interrogatories. It is provided by the 31st section of the 15th and 16th Vict. c. 86, that all witnesses to be examined orally shall be so examined by or before one of the examiners of the Court, or by an examiner to be specially appointed by the Court, the examiner to be furnished by the plaintiff with a copy of the bill and of the answer, if any, in the cause, and such examination shall take place in the presence of the parties, their counsel, solicitors, or agents, and the witnesses so examined orally shall be subject to cross-examination and re-examination, and such examination, cross-examination, and re-examination shall be conducted, as nearly as may be, in the mode now in use in courts of common law with respect to a witness about to go abroad, and not expected to be present at the trial of a cause.

THE COURT OF CHANCERY AND THE COMMON LAW COURTS.—In order to avoid the expense of sending cases from the Court of Chancery to the Common Law Courts two provisions of an important character have been inserted in the new Chancery Act, cap. 86. The 61st section states that "it shall not be lawful for the said Court of Chancery, in any cause or matter to direct a case to be stated for the opinion of any Court of Common Law, but the said Court of Chancery shall have full power to determine any questions of law which, in the judgment of the said Court of Chancery, shall be necessary to be decided previously to the decision of the equitable question at issue between the parties." And by the 62nd section it is enacted that "in cases where, according to the present practice of the Court of Chancery, such Court declines to grant equitable relief until the legal title or right of the party or parties seeking such relief shall have been established in a proceeding at law, the said Court may itself determine such title or right without requiring the parties to proceed at law to establish the same."

AFFIDAVITS.—A great improvement will take place under the new Act with respect to affidavits filed in the Court of Chancery. It is provided that every affidavit shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and as nearly as may be shall be confined to a distinct portion of the subject. From the 1st of November the practice of engrossing bills on parchment is also to be discontinued, and a printed bill is to be filed instead in the Court of Chancery; and by one of the new Chancery Acts, which will shortly take effect (15 & 16 Vict. c. 86), the Lord Chancellor is empowered, in consequence of the additional duties imposed on the examiners of the Court of Chancery in the viva voce examination of witnesses, to increase their salaries from the 1st November next to 1,500*l.* a year each.—*Globe.*

JUDGMENTS BY THE LORD CHANCELLOR.—It is enacted by the new Chancery Act (c. 80), that a retiring Lord Chancellor may deliver written judgments within six weeks after his resignation. It is stated that it has frequently happened that after cases have been fully heard by the Lord Chancellor in the Court of Chancery and are standing for judgment, the Lord Chancellor has delivered up the Great Seal without being able, by reason of other urgent public business, to deliver judgment therein, and much inconvenience and expense to the parties has been thereby occasioned.

INJUNCTIONS.—A new practice will shortly be adopted in the Court of Chancery with respect to injunctions. It is provided by the 58th sect. of 15 & 16 Vict. c. 86, that the practice of the Court of Chancery with respect to injunctions for the stay of proceedings at law shall be, so far as the nature of the case will admit, assimilated to the practice of such court with respect to special injunctions generally, and such injunctions may be granted upon interlocutory applications, supported by affidavit, in like manner as other special injunctions are granted by the Court.

PROCEEDINGS AGAINST EXECUTORS.—It is provided by the 45th section of the 15 & 16 Vict. c. 86, that it shall be lawful for any person claiming to be a creditor, or a specific pecuniary or residuary legatee or the next of kin, or some or one of the next of kin, of a deceased person, to apply for and obtain as of course without a bill or claim filed, or any other preliminary proceeding, a summons from the Master of the Rolls, or any of the Vice-Chancellors, requiring the executor or administrator, as the case may be, of such deceased person to attend before him at chambers for the purpose of shewing cause why an order for the administration of the personal estate of the deceased should not be granted.

CONVEYANCING COUNSEL.—Another feature in the new Chancery practice about to be adopted will be the appointment of conveyancing counsel. It is lawful, according to the 41st section of the 15 & 16 Vict. c. 80, for the Lord Chancellor to nominate any number of conveyancing counsel, in actual practice, not less than six, who shall have practised as such for ten years at least, to be the conveyancing counsel upon whose opinion the Court, or any judge thereof, may act in the cases mentioned, and to supply such vacancies in such list from time to time, and to distribute the business among such counsel in such order and manner, as the Lord Chancellor shall deem fit. By the preceding section, the Court and judges sitting at chambers are empowered to receive and act upon the opinion of conveyancing counsel in actual practice in all cases in which, according to the present practice of the Court and the Master's office, it has been usual for the Master to require or receive the opinion and aid of conveyancing counsel. The Taxing-Master is to regulate the fees to be paid to conveyancing counsel.

NOTICES OF NEW LAW BOOKS.

Popular Tables, arranged in a new form for ascertaining, according to the Carlisle Table of Mortality, the Value of Lifehold, Leasehold, and Church Property, Renewal Fines, the Public Funds, annual average Price of Interest on Consols from 1731 to 1851, *and various interesting and useful Tables.* By CHARLES M. WILLICH, Actuary to the University Life Assurance Society. London: Longmans. 1852.

AFTER an examination of the contents of this book, we unhesitatingly pronounce it one of the most serviceable and complete of the kind ever laid before the public. It furnishes in a clear and easily accessible form precisely the information most needed (and that, too, with indifferent facilities for obtaining it) by the practical man, and will be found, as a work of ready reference, equally adapted to the office or chambers of the man of business and to the library table of gentlemen. Its "getting up" is equally liberal and tasteful.

The author has endeavoured to render the various subjects of which he treats less intricate than they usually are, by a simple arrangement of the figures, shewing at once both the number of years' purchase, and the present worth of 100*l.* a-year. By this means a correct idea of the value of any property is conveyed at sight; and, if required, an exact valuation of any amount of annuity or rental may be readily extracted. Preferring the Carlisle to the Northampton Table of Mortality, as giving a closer approximation to the actual duration of human life, the author has adopted it in the calculations, whose result here appears in tables. He has supplied, at the instance of some stewards of manors, in Table 29, a desideratum long felt, shewing the fine payable for the renewal of two lives in a similar lease. Not less serviceable to those "who wish to enjoy a certain high rate of interest on their investments, while, from the state of the money market, they can only re-invest the surplus income at a low rate of interest," is Table 15, shewing the present worth of a lease, estate, or annuity of 100*l.* for a given term of years certain, supposing the purchaser to take thereout five, six, or seven per cent. as an available interest on his purchase-money advanced, while only able to re-invest the surplus beyond the available interest, so as to make three, three and a-half, four, or five per cent. in order to replace the purchase-money or capital. A variety of desirable information of a general nature, comprising amongst other matters, interest-tables, annual averages of wheat, value of tithe rent-charges, coins and currency tables, measures of extent and capacity, value of annuities chargeable with legacy duties, and examples of the charge of those duties, add to the completeness of a work which will be found fully to bear out our opinion and recommendation, and will approve its value to every buyer.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

HERBERT.—On the 19th inst. at 55, Burton-crescent, the wife of George Herbert, esq. barrister-at-law, of a son.

LEWIS.—On the 19th inst. at Putney-hill, the wife of Charles Warner Lewis, esq. barrister-at-law, of a daughter.

MADDOX.—On the 14th inst. the wife of John Mortimer Maddox, esq. of Guildford-street, Russell-square, solicitor, of a son.

MAY.—On the 22nd inst. at 10, Inverness-road, Bayswater, the wife of Thomas Baker May, esq. barrister-at-law, of a daughter.

SEYMOUR.—On the 20th inst. at 29, Thurloe-square, Brompton, the lady of William Digby Seymour, esq. M.P. of a son and heir.

SYMONS.—On the 18th inst. at the Vineyard, Herefordshire, the wife of Jelinger Symons, esq. barrister-at-law, of a son.

MARRIAGES.

BEADON, William Hammet, of the Middle Temple, esq. eldest son of William Beadon, esq. of Otterhead, Devon, to Fanny Adele Lambart, eldest daughter of the late Captain John Clayton Cowell, of the Royals, on the 14th inst. at Enmore, Somerset.

HAZEL, Edward Wells, esq. solicitor, to Ann Hester, eldest daughter of J. S. Browning, esq. on the 21st inst. at St. Giles's Church, Oxford.

POSTANS, Richard Broadhurst, solicitor, eldest son of Richard Postans, esq. of Shelly Priory, Stoke-by-Nayland, Suffolk, to Adelaide Louisa, youngest daughter of the late George MacDermott, staff-surgeon, on the 21st inst. at St. Pancras Church.

DEATHS.

BANKES, Robert George, esq. one of her Majesty's Justices of the Peace for the division of Kesteven, Lincolnshire, and formerly of the 16th Regiment of Infantry, at his residence, at Heckington, Lincolnshire, on the 11th inst.

CARR, A. Morton, esq. barrister-at-law, late solicitor of Excise, at Twickenham, on the 18th inst. aged 53.
HAMBOTT, Henry Augustus, of Queen-square, Bloomsbury, solicitor, on the 18th inst. aged 42.
HOLLAND, JOHN, esq. barrister-at-law, at Bombay, on the 12th of July.
JOHNSON, Phillip, esq. of 9, Lincoln's-inn-fields, at his own residence, Fitzroy-lodge, Kentish-town, on the 16th inst. aged 52.
LAW, Margaret Hope, fourth daughter of James Law, esq. of 18, Fludyer-street, Westminster, W. S. and Parliamentary agent, on the 16th inst. at Epping, aged 16.
MASON, Henry Bence, esq. of the White-house, Wareham, Norfolk, on the 18th inst. at his residence, aged 68.
WEBB, Sir John, Knt. C.B. K.C.H. late Director-General of the Ordnance Medical Department, for many years a justice of the peace and deputy-lieutenant of the county of Kent, on the 16th inst. at his residence, Chatham Lodge, Woolwich-common, aged 79.

JOURNAL OF PROPERTY.

Public Sales.

By Mr. MANN, at the Mart, Sept. 3.—A reversion to the sum of 1,000*l.* Consols, receivable at death of a lady now 56 years of age, free of legacy-duty—400*l.*

Absolute reversion to one-fifth part of 4,000*l.* sterling, secured by mortgage on freehold property at Maidstone, to which share the purchaser will be entitled at the death of a lady 70 years of age—510*l.*

A reversion to one-fifth part of 3,000*l.* Three per Cent. Consols, receivable at the death of a lady now in her 77th year—445*l.*

Ten 100*l.* shares in the Romford Gas Company, 100*l.* called and paid, now paying a dividend of 6*l.* per cent. per annum—55*l.* per share.

Leasehold residence, No. 1, Northumberland-terrace, Regent's-park-road, near Primrose-hill-park, let at 70*l.* per annum, held for 94 years unexpired, at 12*l.*—750*l.*

Leasehold house, No. 2, Northumberland-terrace, estimated to produce 75*l.* per annum, held for 94 years at 12*l.*—740*l.*

Leasehold house, No. 3, Northumberland-terrace, estimated to produce 70*l.* per annum, held for ninety-four years unexpired at 9*l.*—720*l.*

Leasehold house, No. 6, Northumberland-terrace, estimated to produce 60*l.* per annum; term, ninety-four years, at 8*l.*—630*l.*

By Mr. W. R. GLASIER.—Eight houses, Nos. 19 to 26, Peter-street, Southwark, producing a rental of 193*l.* per annum, held for sixty-seven years, at ground-rents amounting to 35*l.* 1*s.*—1,070*l.*

By Messrs. DUNN and GUBB, at the Mart, Sept. 3.—About fifty lots of freehold ground, at Croydon, went off with spirited competition at from 50*l.* to 130*l.* per lot.

By Mr. MOORE, at the Mart, Sept. 16.—In six lots, a copyhold house, let at 18*l.* per annum, forming part of the Cooper's Arms public-house, Poplar; a stationer's shop, with garden, and two small houses, let at 40*l.* per annum, adjoining the Cooper's Arms; a house and shop, No. 40, Robinhood-lane, let at 24*l.* per annum; nine houses in Burdett's-place, adjoining, let at 100*l.* per annum; all copyhold, and held of the manor of Hebonheath, at a fine of 10*s.* and a quit-rent of 3*d.* per house; and a corner leasehold dwelling-house, No. 19, Woolmore-street, Poplar, let at 16*l.* 18*s.* per annum. Term, fifty-eight years; ground-rent, 3*l.*—1,850*l.*

In one lot, a leasehold estate, comprising thirteen houses, in Wolverley-street, Bethnal-green-road, let at 157*l.* 6*s.* Term, thirty years; ground-rent averages 2*l.* 12*s.* 4*d.* each house.—315*l.*

A small freehold house, No. 4, Victoria-street, Shadwell, let at 15*l.* 12*s.* per ann.—110*l.*

In thirteen lots, copyhold ground-rents, houses, and building-ground, with reversions at short periods, situate in Spring-garden-place, Richmond-place, and Church-road, Stepney, producing nearly 200*l.* per ann. Held for ever of the manor of Hebonheath, at trifling quit-rents.—3,305*l.*

In one lot, eight acres of freehold building land, at Frimley, Surrey, and presenting two excellent frontages for building three cottage residences—130*l.*

In two lots, two leasehold dwelling-houses, on the Mercers' estate, being Nos. 54 and 55, King-street, Stepney, let at 48*l.*; term, sixty-nine years; ground-rent, 4*l.* each house—530*l.*

A freehold cottage residence, in Globe-road, Mile-end, annual value 30*l.*—425*l.*

A leasehold dwelling-house, on the Mercers' estate, No. 6, Wilson-street, Stepney, let at 22*l.*; term, seventy-four years; ground-rent, 3*l.* 10*s.*—230*l.*

In one lot, a leasehold double-fronted house, with a building adjoining, suitable for a chapel or school, situate No. 1, Oxford-street, Cambridge-road, Mile-end, let at 28*l.* 18*s.*; term, thirty-one years; ground-rent, 8*l.*—100*l.*

MONEY MARKET.

English Funds.	Sat.	Mon.	Tues.	Wed.	Thurs.	Fri.
Bank Stock	..	..	228†	..	..	..
3 ℘ Cent. Reduced Annuities	..	..	..	..	..	..
3 ℘ Cent. Consols Annuities	100⅛	100	100⅛	100⅛	100	100
Consols for Account	100⅛	100⅛	100⅛	100⅛	100⅛	100⅛
New 5 ℘ Cent. Annuities	..	..	..	..	..	..
New 3½ ℘ Cent. Annuities	..	..	..	..	..	..
Long Annu. (exp. Jan. 5, 1860)	..	..	..	..	..	..
Do. 30 yrs. (exp. Oct. 10, 1859)	..	..	..	..	..	..
Do. 30 yrs. (exp. Jan. 5, 1860)	..	6⅛	..	..	..	..
India Stock	..	..	277	..	..	..
India Bonds (1,000*l.*)	87	87	87	..	..	..
Do. do. (under 1,000*l.*)	84	87	..	..	..	..
South Sea Stock	..	..	..	111⅛	..	..
Do. do. Old Annuities	..	..	..	..	..	..
Exchequer Bills, 1,000*l.* June	70*	67*	71*	74*	70*	71*
Do. do. 500*l.* June	74*	67*	71*	..	72*	..
Do. do. Small, June	70*	67*	71*	67*	72*	67*

* Premium. † For account.

M. VECHTE'S GOODWOOD VASE.—This vase or cup, which was one of the prizes at the last Goodwood races, has attracted more attention than is usually bestowed upon mere racing cups, and the appreciation of its merits in the highest quarter in the country has resulted in a command for a fac simile reproduction by the artist. Those who feel interested in the progress of the fine arts can satisfy themselves that it is a work of no ordinary merit by going to see it at Messrs. Hunt and Roskell's, in Bond-street. The artist, M. Vechte, is a foreigner, and, though it would be invidious to compare or contrast his work with that of native artists, it may be allowable to say, that what he has produced may be usefully studied by Englishmen. The vase has the purity of the Greek school and the elaborate execution of the times of Cellini. It is altogether a very superior piece of workmanship.—*Times, Sept.* 23.

THE GAZETTES.

Bankrupts.

Gazette, Sept. 21.

DEELEY, BENJAMIN STEER, engineer, Buckley-st. Whitechapel, Oct. 2, at eleven, Nov. 6, at twelve, Basinghall-st. Off. as. Nicholson. Sols. Tucker and Sons, Sun-chambers, Threadneedle-st.; and Messrs. Wright, Birmingham. Petition, Sept. 16.

HOPKINS, JOHN LOVETT, draper, Star-corner, Bermondsey, Oct. 5, at twelve, Nov. 2, at half-past eleven, Basinghall-st. Off. as. Groom. Sols. Sole and Turner, Aldermanbury. Petition, Sept. 8.

LAWRENCE, JAMES FREDERICK, paper-maker, Wookey Hole, Somersetshire, Oct. 6 and Nov. 3, at eleven, Bristol. Off. as. Hutton. Sols. Bevan, Bristol. Petition, Sept. 11.

MILES, HENRY and CHARLES, drapers, Old-road, Lime-house, and Giles-row, Mile-end-road, Oct. 7, at half-past one, Nov. 9, at two, Basinghall-st. Off. as. Groom. Sol. Mason, Ironmonger-lane, Cheapside. Petition, Sept. 15.

WILLSON, ROBERT, grocer, Cambridge, Oct. 1, at twelve, Nov. 11, at two, Basinghall-st. Off. as. Groom. Sols. Hare, Mitre-court, Temple, and Robinson, Cambridge. Petition, Sept. 11.

Gazette, Sept. 24.

ASHTON, HERBERT, and SPRIGGS, STEWARD, otherwise SPRIGGS, STEWARD STEVENSON, warehousemen, Aldermanbury, Oct. 7, at two, Nov. 15, at one, Basinghall-st. Com. Holroyd. Off. as. Edwards. Sols. Sole and Turner, Aldermanbury. Petition, Sept. 13.

MACGREGOR, HENRY, merchant, Liverpool, Oct. 7 and 28, at eleven, Liverpool. Com. Stevenson. Off. as. Turner. Sol. Hore, Lower Castle-street, Liverpool. Petition, Sept. 22.

MOYLE, THOMAS, draper, Deansgate, Manchester, Oct. 6 and Nov. 9, at twelve, Manchester. Off. as. Fraser. Sols. Sale, Worthington, and Shipman, Manchester. Petition, Sept. 20.

PAULING, GEORGE CLARKE, and SHARP, ROBERT CHAPMAN, merchants and contractors, Manchester, Oct. 6 and Nov. 10, at twelve, Manchester. Off. as. Pott. Sols. Sale, Worthington, and Shipman, and Worthington and Earle, Manchester. Petition, Sept. 21.

ROEBUCK, JOHN and WILLIAM, woollen cloth manufacturers, Bank End Mill, near Holmfirth, Yorkshire, Oct. 14, and Nov. 5, at eleven, Leeds. Com. West. Off. as. Young. Sols. Kidd, Holmfirth; and Bond and Barwick, Leeds. Petition, Sept. 20.

TURNER, WILLIAM, engineer and millwright, Wells-road, Bath, Oct. 5 and Nov. 4, at eleven, Bristol. Com. Hill. Off. as. Acraman. Sols. Pain and Bartrum, Bath; and Bevan, Bristol. Petition, Sept. 14.

TRASELL, OSBORN ENGALL, timber merchant and sawyer, Norwich, Oct. 5 and Nov. 15, at two, Basinghall-st. Com. Holroyd. Off. as. Edwards. Sols. Messrs. Linklater, Sise-lane, Cheapside; and Woolbright, Norwich. Petition, Sept. 13.

Assignments for the Benefit of Creditors.

Gazette, Sept. 14.

Brown, F. W. boot and shoe dealer, High Holborn, Aug. 23. Trusts. T. Dunkley, manufacturer, and C. J. Rymer, leather seller, Northampton. Sol. H. C. Elliott, Lincoln's-inn-fields.—*Coombes*, J. corn dealer, factor, and seedsman, Stroud, Kent, Sept. 7. Trusts. R. Hills, banker, and J. Harrison, oil cake manufacturer, Dartford. Sol. C. R. Gibson, Dartford.—*Prosser*, W. draper, Shoreditch, Aug. 28. Trusts. T. Coath, Bread-st. and W. Nevill, Gresham-st. warehousemen. Sols. Sole, Turner, and Turner, Aldermanbury.

Gazette, Sept. 17.

Derbyshire; W. and E. *Bedson*, S. and *Derbyshire*, G. joiners and builders, Longton, Stafford, Aug. 28. Trusts. T. Dimmock, Stoke-upon-Trent, T. Wood, Burslem, and C. Perks, Burton-on-Trent, timber merchants. Sols. W. and E. Clarke, Longton.

Partnerships Dissolved.

Gazette, Sept. 7.

Brien, R. *Harding*, J. F. and *Hodson*, F. surgeons and apothecaries, Spencer-st. Clerkenwell, as regards Hodson, Sept. 4.—*Clark*, J. and J. grocers, Halifax, Aug. 21.—*Dale*, R. and *Morris*, J. commission agents, Liverpool, Aug. 24.—*Down*, J. and W. ironmongers, smiths, and braziers, Coburg-place, Bayswater, Sept. 6. Debts paid by W. Down.—*Dunster*, W. H. and *Booker*, A. attorneys-at-law and solicitors, Henrietta-st. Cavendish-sq. Sept. 1. Debts paid by Dunster.—*Firmstone*, T. *Dimmack*, E. B. and *Thompson*, J. coal and ironmasters, Wolverhampton, as regards Firmstone, Oct. 30. Debts paid by remaining partners.—*Footman*, J. *Pretty*, W. *Nicholson*, A. F. and *Skeet*, J. linen drapers and mercers, Woodbridge, as regards Skeet, Aug. 25.—*Gill*, J. and *Goodby*, R. fustian manufacturers, Manchester, Sept. 4. Debts paid by Gill.—*Graham*, G. and *Lee*, J. ship brokers and coal exporters, Hartlepool, Sept. 1. Debts paid by Graham.—*Hammond*, C. R. and W. H. breeches maker, Oxford-st. Sept. 4.—*Hancock*, W. and *Charlesworth*, W. fellmongers and leather dressers, Ticknall, Sept. 1. Debts paid by Hancock.—*Jacob*, A. P. and E. auctioneers and coal merchants, Liverpool, Sept. 2. Debts paid by Jacob.—*Lucas*, G. W. and *Austin*, C. W. ship and insurance brokers and commission agents, Bristol, Sept. 1.—*Markoe*, C. *Price*, L. R. and *Jonson*, F. Vera Cruz, Republic of Mexico, June 30.—*Maxted*, W. J. C. and *Wootton*, C. linen and woollen drapers, haberdashers, hosiers, and silk mercers, Chatham, Sept. 1. Debts paid by Maxted.—*Morrison*, G. and *Parker*, H. manufacturers of brace bits and joiners' tools, Sheffield, Sept. 3.—*Owen*, D. sen. and jun. ironmongers, Rye, Jan. 1.—*Parker*, W. B. and *Hall*, I. attorneys and solicitors, Manchester, June 30. Debts paid by Hall.—*Pierce*, S. E. and J. curriers and leather sellers, Tunbridge and Tunbridge Wells, Aug. 2.—*Ross*, H. H. and *Morison*, W. silk mercers and drapers, Liverpool, Sept. 4. Debts paid by Ross.—*Skidmore*, T. E. and *Parkhouse*, J. coal, coke, timber, salt, cement, and seed merchants, and wharfingers, Rickmansworth, July 31.—*Stoddart*, E. and *Simonds*, E. W. ironmongers, Ashford, Sept. 6.—*Walker*, T. and *Colton*, W. nurserymen and seedsmen, Chester, Aug. 31. Debts paid by Colton.—*Weldon*, W. and *Carter*, W. W. mercers and drapers, Stockton-on-Tees, July 29. Debts paid by Weldon.—*Whitehead*, W. J. and J. linen and woollen drapers, York, Aug. 21.—*Whitehorn*, T. and *Cooper*, T. H. printers, bookbinders, &c. Williton, Saint Decuman's, Sept. 1. Debts paid by Whitehorn.—*Whitelegg*, J. W. and J. cotton spinners and manufacturers, Stockport, Sept. 4. Debts paid by J. Whitelegg.—*Whitaker*, J. W. and *Wodehouse*, G. architects and surveyors, Bolton, Sept. 4.

Gazette, Sept. 10.

Andrews, T. and A. B. surgeons and apothecaries, Canterbury, Sept. 1.—*Barnes*, E. and *Gray*, J. H. feather bed, mattress, paillasse, and flock manufacturers, Kingsland-basin, Kingsland-road, Sept. 6. Debts paid by Barnes.—*Coslett*, T. E. and *Pemberton*, T. L. coalmasters and cement and blacking manufacturers, Sedgley, Aug. 14. Debts paid by Coslett.—*Gray*, J. and *Keen*, R. J. opticians, Liverpool, Aug. 14. Debts paid by Gray.—*Haigh*, W. and *Platt's*, M. woollen drapers and tailors, Keighley, Sept. 6. Debts paid by Haigh.—*Holt*, J. of Leeds, and *Holt*, W. of Horton, Bradford, organ builders, Aug. 20.—*Hooper*, C. W. and B. leather, hide, and bark factors, Seething-lane, Tower-st. Sept. 9.—*Johnston*, E. and *Ironside*, C. O. merchants, Liverpool, Oct. 1, 1851. Debts paid by Johnston.—*Mathews*, T. Castle Cary, and T. jun. Misterton and Crewkern, manufacturers, Aug. 27.—*Pemberton*, S. and *Coslett*, T. E. coalmasters, Sedgley, Mar. 25.—*Watson*, J. M. and *Major*, S. porter dealers, Liverpool, Sept. 7. Debts paid by Watson.

Gazette, Sept. 14.

Abell, W. and *Owen*, L. drapers, Holyhead, Sept. 13.—*Barber*, E., C. and R. manufacturers of naphtha, ammonia, and black varnish, and manufacturing chemists, Cow-lane, Newton Heath, June 2. Debts paid by E. Barber.—*Beadle*, R. and J. and *Wright*, T. attorneys and solicitors, Carlisle, Sept. 8.—*Clarke*, T. R. *Willmot*, W. and *Best*, B. preserved provision merchants, Holloway-terrace, and King-st. Tower-hill, Sept. 13.—*Deane*, J. S. and *Taylor*, J. general merchants and oil refiners, Liverpool, Aug. 6.—*Driver*, R. *Leaver*, S. and *Sutcliffe*, J. K. cotton manufacturers, Halliwell, as regards Sutcliffe, Sept. 10. Debts paid by remaining partners.—*Flintoff*, T. and *Co.* mustard manufacturers and general dealers and commission agents, Newcastle-upon-Tyne, July 24.—*Hardy*, A. *Hillas*, R. and M. worsted manufacturers, Lower Woodlands, North Bierley, Bradford, Sept. 9. Debts paid by Hardy.—*Higgins*, C. H. and E. T. and *Knowles*, S. F. Birkenhead, June 30.—*Hill*, J. M. and *Pattinson*, J. joiners and cabinet makers, Carlisle, Sept. 6.—*Knock*, G. *Clarke*, J. I. linen drapers, Piccadilly, Sept. 10. Debts paid by Knock.—*MacDonald*, A. and *Gollan*, J. G. ship and insurance brokers and general commission merchants, Leadenhall-st. Sept. 11.—*Macrae*, A. S. and *Tomlinson*, W. D. general brokers, Liverpool, Sept. 11.—*Miles*, H. and C. drapers, Old-road, Limehouse, and Giles'-row, Cambridge-road, Mile-end-road, Sept. 10.—*Nobbs*, R. and Phillips, H. linen drapers, Portman-place, Edgware-road, Sept. 1.—*Owens*, O. and T. grocers and general-shop keepers, Pontesbury, Sept. 8.—*Plant*, W. and *Bentley*, T. plumbers, glaziers, painters, paper hangers, &c. Longton, Sept. 9.—*Sherwin*, R. and W. brushmakers, Macclesfield, Sept. 10.—*Smith*, T. and *Butcher*, R. corn, seed, coal merchants, and maltsters, Bungay and Beccles, Aug. 30.—*Stevens*, J. and *Park*, G. B. architects and surveyors, Manchester and Macclesfield, Sept. 10. Debts paid by Stevens.—*Tatham*, M. *Horsfall*, S. and *Foulds*, J. worsted spinners and farmers, Cold Edge, in Warley, Halifax, Sept. 9.—*Tookey*, W. W. and *Selby*, J. silk mercers, linen and woollen drapers, and haberdashers, Oundle, Sept. 1. Debts paid by Tookey.—*Tylee*, J. P. and *Bennett*, T. chemists and druggists, Bridge-st. Bath, Aug. 14.—*Williamson*, J. B. and *Heywood*, J. cotton manufacturers, Preston, Sept. 1. Debts paid by Williamson.

Gazette, Sept. 17.

Beacock, H. and *Fletcher*, J. machine makers, Winterton, Sept. 4.—*Brearley*, A. and *Schofield*, J. breakers up of cotton waste, Trough Syke-mill, near Bacup, Sept. 15.—*Drew*, W. and *Pike*, E. A. ironmongers, braziers, and smiths in general, Plymouth, Sept. 15. Debts paid by Drew.—*Edkin*, JB. and *Gibson*, E. ship brokers and commission agents, Harrington, June 19, 1847.—*Forgan* W. and D. bakers, Hatton-garden, Sept. 13. Debts paid by D. Forgan.—*Gardner*, J. and *Urquhart*, A. merchants, St. Helen's-place, Bishopsgate-st. Sept. 13.—*Greenhalgh*, H. and *Holford*, J. watchmakers and jewellers, Manchester, Aug. 16. Debts paid by Mr. J. Greenhalgh.—*Horton*, R. G. sen. and jun. surgeons, Leeds, Sept. 14. Debts paid by Horton, sen.—*Johnston*, W. and *Reid* J. and J. tea dealers and grocers, Sunderland, South Shields and North Shields, Sept. 8.—*Lloyd*, P. and *Davies*, D. grocers and provision dealers, Liverpool, Sept. 15.—*Land*, W. H. and *Bushell*, J. maltsters, hoymen, and corn porters, Herne and Sturry, Sept. 14.—*Parkinson*, J. and T. brass founders, late of Bury, Sept. 13. Debts paid by John Parkinson.—*Penny*, W. and *Nash*, W. brewers, Newport, Sept. 14. Debts paid by Penny.—*Sparks*, J. sen. and jun. provision and wine and spirit merchants, Liverpool, Aug. 16.—*Tatley*, L. and *Knowles*, H. cotton manufacturers, Manchester, Sept. 9. Debts paid by Tatley.—*Tisdale*, T. and *Oakley*, W. A. auctioneers, appraisers, and general valuers, Shrewsbury, Sept. 14. Debts paid by Tisdale.—*Ward*, W. R. and M. A. printers and stationers, Upper Dorset-place, Clapham-road, Dec. 20.

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To Readers and Correspondents.

"Looker-on."—*The great length of the communication forwarded precludes our insertion of it at present. The subject has, moreover, been of late fully discussed. We are obliged by the scale of charges sent to the committee of County Court judges, and will endeavour to make it serviceable.*

"G. C. E." *will see that his reply has been anticipated by another.*

"A. B."—*We insert no anonymous queries.*

The extraordinary pamphlet from Birmingham will be noticed next week. It was reserved for the writer of the former article on the same subject, who has only just returned to town.

"A Law Student."—*No.*

"W. B."—*When completed, it will be published in one volume.*

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THE LAW TIMES.

SATURDAY, OCTOBER 2, 1852.

ASSURANCE OFFICES.

An unseemly strife is raging in the newspapers between the old and the new Assurance Offices—unseemly, because it is not decently conducted. Attacks upon the new offices come with an ill grace from the paid servants of the old offices. It looks too much like the mere abuse of rivals, and the tone of the assailants betrays too plainly a personal motive to carry much weight with the public. To be serviceable, such a discussion should have taken the shape of a calm, disinterested inquiry, apart from personalities, how far the public welfare is likely to be advantaged or endangered by the multitude of new offices that have sprung into being during the last three or four years. The subject is one of immense importance to the community, and it is right that attention should be given to it by the press; but it is not right to leave the conduct of the controversy to those who have a direct personal and pecuniary interest in the result, and who cannot, therefore, be expected to deal with the question impartially.

Standing aloof from the conflict, let us endeavour to contemplate the subject of contention, as Lawyers should, with an eye to practical results. Is the existing law defective? If so, how can it be amended?

Stripped of the accompaniments of interested malevolence, there remains enough to justify serious alarm, and to call for legislative interference. It is undoubtedly true that a vast number of new Assurance offices have been commenced [illegible] unjustifiable surprises, many of them without capital, without responsible shareholders, with directors wholly unknown to the public, or, if known, only discreditably; with officers who are in fact only the projectors of the society, and by whom and for whom the whole scheme has been concocted. The schemes themselves have nothing really new in them; they are but the old plans of assurance put forth in a different form of words. The expenses are enormous, the funds next to nothing, and the probable, nay, almost certain, result, will be the defrauding of the credulous people who trust to promising prospectuses, without making some inquiry into the characters of the promoters, and the social position of the directors.

This it is against which some legislative protection is required. The rule of *caveat emptor* is not applicable to the case of assurance offices. Assurance is a present payment for the purchase of something which is not to be given until a distant period, usually when the purchaser himself is dead. It does not so much affect the fortunes of the present as of future generations; the people who want protection are not the living and mature in judgment, who *can* protect themselves, and to whom alone the maxim of *caveat emptor* applies, but the unborn, the infant, the distant, the weak in mind and body. These are the parties whom an assurance affects, on whose behalf the bargain is made, and who, being unable to take care of themselves, have a right to claim the care of the Legislature.

There is another reason for subjecting Assurance Offices to some stringent supervision of the Government. They alone, of all speculations, receive everything at the present time pay it back again in *futuro*; hence they offer a wider margin for fraud or improvidence, greater temptation to rogues, and a more easy bait for fools, than any other form of cheating.

The only principle upon which an Assurance Office can be conducted with safety to the public and justice to the assured is sufficiently simple and intelligible. The calculations of assurance are based upon the assumption that *all* the premiums received are immediately invested, so as to yield interest. If this be not done, the office is unsafe; where it *is* done faithfully, the most entire confidence may be placed in the solvency of the Society. The expenses of establishing and conducting the business ought to be borne entirely by the subscriptions of the shareholders, in return for which they are entitled to a share of the profits. If, in any office, the expenses are paid out of premiums, and not out of the subscribed capital, there is danger to the public and injustice to the assured.

Now, all that is required for the security of the public against fraudulent or improvident Assurance Offices, is such a provision for the soundness of the scheme and the wisdom of the management, that the principle we have above described should be strictly observed.

This may be accomplished by a statute of no great difficulty or length, and we venture to suggest the following outline of such an one, which we had purposed to have brought under the notice of the Legislature.

We propose the appointment by the Board of Trade of two or more *Official Auditors* of Assurance Offices.

Before any such Office is established, the scheme to be submitted to the Official Auditors, together with the proposed tables of rates of premiums, the names and addresses of the shareholders, and of the first directors and officers.

That it should be the duty of the Official Auditors to cause an inquiry to be made into the *bona fides* of the scheme, the sufficiency of the shareholders, and the characters of the directors and officers.

That, having inquired, they should report thereupon to the Board of Trade.

That upon such report being received, and the scheme approved, the Board shall require such an amount of the capital to be paid up as may be deemed necessary for the public security, but not to exceed a sum to be specified in the Act.

That upon payment of such sum the Board of Trade shall grant a license to the office to commence business.

That the Official Auditors shall audit the accounts of *all* Assurance Offices, either singly or in conjunction with the Auditors of the Company, and report the same to the shareholders and to all who are assured therein, and also to the Board of Trade, who shall publish annually the collected reports of all the offices for the information of the public generally.

The expenses of the Act to be defrayed by a charge upon each office of a small per centage upon the annual receipts, and by fees, to be paid for investigating new schemes and licensing new offices.

This is, of course, but a rude outline of the plan we propose for securing the public against the dangers that threaten from fraudulent or unsafe Life Assurance Offices. It would, we believe, provide a perfect remedy against the ruin that may be anticipated if such unsound speculations as have been witnessed of late are permitted to proceed without restraint or responsibility.

But in any measure that may be proposed for this purpose it must be expressly provided that it is to be applicable, so far as the public is concerned, to *all* existing offices without exception. Wanting this, the law would be almost worthless. The public require to know, from an impartial authority, what is the actual condition as to responsibility of every Assurance Office, old as well as new, that they may select such as will give them the largest advantages, combined with the greatest security.

PROBABLE RESULTS OF THE RECENT LAW REFORMS.

The Lawyers are speculating upon the probable consequences of the recent Law Reforms to the fortunes of the Profession. The inquiry is as interesting as it is important.

One thing only is *certain*, and that is, that the profits of each particular case will be materially diminished. The abbreviation of procedure will abbreviate the Lawyer's Bill in the same proportion. Unless there be an increase in the number of cases, the total sum of the emoluments of the Profession must be subjected to an alarming reduction.

The problem to be solved, therefore, is this; *will* there be an increase in the sum of business, to what extent, and in what direction?

Turn, first, to the Equity Courts, for there the changes have been greatest. What are their prospects? The reductions in the costs of a suit, and consequently in the profits of the Lawyer are enormous. Will there be an equal increase in the number of suits?

We are inclined to think that such there will be. The *reformed* Court of Chancery, instead of being the worst, will be the best tribunal for obtaining speedy and [illegible] justice. It will certainly attract to itself a vast amount of business which hitherto has not existed, because justice was prohibited by the cost of obtaining it. Not only this, but many matters that are now, by an effort of legal ingenuity, brought under the cognizance of the Common Law Courts, will invoke the same ingenuity to bring them within the jurisdiction of the more accessible Equity Courts. Hence do we anticipate for the business of the Equity Courts an extension greater than even their most ardent reformers have calculated upon.

But will this bring to the practitioners there an equivalent for what they lose by the new forms?

We doubt if it will do so with the Bar. The merciless lopping off of consulting and employment of Counsel can scarcely be compensated by the anticipated increase in the amount of business generally. In Equity [illegible]

able portion of the new business the Bar will not participate at all. Counsel in the Equity Courts will certainly be sufferers, and to a greater extent, we fear, than they have yet surmised.

It is otherwise with the Attorneys. The increase of business will bring increased emolument to them, for, unlike Counsel, they *must* be employed in every matter, however slight. The country Attorneys will especially profit by the change. Hitherto they have been almost excluded from the profits of Chancery practice, because the expenses were so great that they could not afford the necessary outlay and the long investment of capital. The business of Equity was, for the most part, monopolized by a few wealthy metropolitan firms. But *now* every country Solicitor will be enabled to undertake and conduct Equity business, and even to transact a considerable portion of it without the help of an agent. Neither in extent of outlay, nor in the time for which the investment must be made in costs and fees, will a Chancery suit henceforth be more beyond the means of the Solicitors in the provinces than was formerly an action at law. The advantages that will thus accrue to them are very great, and we have no doubt that, in a short time, when the changes in procedure begin to be understood and appreciated, the entire profits of the Attorney from Chancery Practice will not only be considerably greater than they were before, but they will be diffused through the whole Profession, instead of being gathered by a few.

It is otherwise with the Common Law Courts. There the Bar and the Attorneys will equally suffer. The changes in Procedure have almost ousted the Bar from employment; and, although the Attorneys must continue to be engaged in every suit, their profits will be considerably curtailed. The Bar is deprived of all its income, not trifling in the total, arising from the drawing and signing of pleas, the motions of course, and other lesser duties, by which juniors were assisted to support themselves while waiting for the better business. The mere Lawyer of the Bar, significantly termed "the heavy junior," will be utterly banished from the Courts: he will be a hindrance rather than a help in a cause under the new order of things.

Nor is there in this case either for the Bar or the Attorney the prospect of compensation for diminished profits in individual actions by an equivalent increase in their number. An increase there will be to some extent, particularly in actions for recovery of debts, consequent upon the cheap and speedy process that has been provided, and in which the Superior Courts will now rival the County Courts. But for the trial of disputes there will be no such attraction, and, therefore, no such increase, because the reform has stopped short at the very point where it was most needed, and has rendered its cheapened and abbreviated procedure worthless, by omitting to provide also for more frequent trial.

The conclusion, then, at which we arrive, after much consideration of the prospects of the Profession, may be summed up thus.

The Bar will lose much by the Equity Reforms, and still more by the Common Law Reforms.

The Attorneys will gain largely by the Equity Reforms; they will lose something by the Common Law Reforms.

Whether the gain by the one will be greater than the loss by the other is a problem which only experience can solve.

But we are inclined to think that, *upon the whole*, the Attorneys will be considerable gainers, and the Bar as great losers, by the Law Reforms that have been effected and are in progress.

LABOURS OF LORD ST. LEONARDS.

We feel much indebted to a correspondent for directing our attention to a fact which certainly should be known to the Profession and the public, for it is as highly creditable to the industry of Lord St. Leonards, as are the judgments themselves to his ability. We cannot do better than quote from our correspondent:—

On reading your interesting article on the "Statistics of the Appeal Business of the House of Lords," in your paper of the 21st of August, it appeared to me that if, instead of merely giving the total number of cases heard and decided during the last session, you had distinguished between the work done by each of the two Chancellors, "their relative exertions in the despatch of business," would have been "the more readily seen." The number of cases heard and decided by each of them respectively is,—

	Heard.		Decided.
Lord Truro	3	..	1
Lord St. Leonards.....	32	..	32
Total.....	35	..	33

Thus it is seen that Lord St. Leonards has decided *every case* that he has heard, not leaving one single judgment in arrear, which has not occurred (as appears by the tables you give) for *upwards of a quarter of a century* at the very least.

I may also remark that Lord St. Leonards gave judgment at the close of the arguments in twenty-five cases out of the thirty-two heard by him.

KERR'S NEW COMMON LAW PRACTICE.

We are requested to state that this work has been delayed solely that it may possess that which gives the principal value to a Book of Practice—a *complete* and *copious* Index. An Index cannot be prepared until a book is printed; and to make a very full Index to a Law book is a work of much time and labour. As this was designed to be a distinguishing feature of Mr. Kerr's *New Common Law Practice*, it has been determined that, for the sake of a few days, so useful a part of it should not be restricted. The delay in publication has entirely arisen from this cause, and it is one which, we are confident, will be rather applauded than complained of by the Profession. The volume is expected to be ready in about ten days—in good time for any practical purpose—for the Act does not come into operation for three weeks.

Mr. Crockford will supply the printed and lithographed forms required for service of writs, and other *prescribed* processes, at the end of next week. Copies of writs will be printed on sheets of ruled paper for special endorsement of accounts, bills of exchange, promissory notes, &c. under the provisions for that purpose; and affidavits of service will be adapted to the new Act.

NEW CHANCERY PRACTICE.(a)

The mode, under the old practice of taking accounts in the Master's offices, was, it is well known, open to many objections. The system of taking accounts by charge and discharge, state of facts and counter state of facts, and all this often with considerable intervals in the tedious process of a Chancery suit, is now, it is to be hoped, for ever put an end to.

By the 54th section of 15 & 16 Vict, c. 86, power is given to the Court, in any case where any account is required to be taken, to give such *special directions*, if any, as it may think fit with respect to the mode in which the account is to be taken or vouched, and such special directions may be given, either by the decree or order directing such account, or by any subsequent order or orders, upon its appearing to the Court that the circumstances of the case are such as to require such special directions; and particularly power is given to the Court, in cases where it thinks fit so to do, to direct that in taking the account *the books of account* in which the accounts required to be taken have been kept, *or any of them*, are to be taken as *primâ facie evidence of the truth of the matters therein contained*, with liberty to the parties interested to take such objections thereto as they may be advised. (Sec. 54.)

The utility of these powers being conferred on the Court is apparent, as it often happened under the old system that accounts were directed extending over a long series of years, or which had been long closed, and when, by the loss of evidence from deaths or other accidents, there was very great difficulty in vouching the accounts. By the strict practice it was necessary in all cases to prove each item in the account by independent evidence, though there might be no real dispute between the parties as to many of the items. The expense of this course of proceeding and the hardship to parties, especially after a great lapse of time, were very great. In many cases, also, where the accounts were long and complicated, it was absolutely impossible to take them judicially, if all the items were questioned and vouched.

Again, with respect to certain accounts—as, for instance, partnership and mercantile accounts, where there are books to which both parties have had access, it is but right that, primâ facie, those accounts should be deemed accurate. The 54th section of the Act does not say to whom the Court is to give such special directions as to the mode of taking accounts; but it is presumed that it means either to the chief clerks, who, under the 29th section of 15 & 16 Vict. c. 80, may, if the Judge so directs, take accounts; or to an accountant or actuary, whose assistance the Court may avail itself of under the 42nd and 43rd sections of the last-mentioned Act.

Next come some very useful clauses, enabling the Court to do, at an early stage of the cause, what, under the old system, to the great inconvenience and often loss of the parties, it was obliged to delay until the hearing.

If after a suit has been instituted in relation to any real estate, it appears to the Court that it will be necessary or expedient that the same or any part thereof should be sold for the purposes of such suit, the Court may direct the sale thereof *at any time after the institution thereof*, and it is to be as valid as if directed to be made by a decree or decretal order *on the hearing*; and any party to the suit in possession of such estate, or in receipt of the rents and profits thereof, is to be compelled to deliver up such possession or receipt to the purchaser or such other person as the Court shall direct. (Sec. 55.)

Before any estate or interest is put up for sale under a decree or order of the Court, an *abstract of the title* thereto, with the approbation of the Court, is to be laid before some *conveyancing counsel*, to be approved by the Court, for his opinion thereon, to the intent that the said Court may be the better enabled to give such directions as may be necessary respecting the conditions of sale of such estate or interest, and other matters connected with the sale thereof; and when an estate or interest is so put up for sale, a time for the delivery of the abstract of title thereto to the purchaser or his solicitor is to be specified in the said conditions of sale. (Sec. 56.)

Where any real or personal property forms the subject of any proceedings in the Court, and it is satisfied that the same will be more than sufficient to answer all the claims thereon which ought to be provided for in such suit, power is given to the said Court *at any time after the commencement of such proceedings*, to allow to the parties interested therein, or any one or more of them, the whole or part of the *annual income* of such real property, or *a part of such personal property*, or a part or the whole of the *income* thereof, up to such time as the said Court shall direct, and for that purpose to make such orders as may appear to the said Court necessary or expedient. (Sec. 57.)

A great improvement is next effected in the practice of the Court in granting injunctions. According to the old practice, where a party *requiring discovery* was a defendant to an action-at-law, and sought, by means of what was called the *common injunction*, to stay or control the proceedings in the action, until the plaintiff at law (defendant in equity) had fully answered the bill, *the common injunction was obtained of course, in case a full answer was not given within a short time after the suit commenced.* The abuses occasioned by means of the common injunction are thus graphically stated by the Chancery Commissioners. "Bills," they observe, "are continually filed, *ostensibly for discovery*, the real and known object being no other than to gain delay by means of an injunction. In such suits, the *plaintiff's object is not to obtain a full answer, but to entrap the defendant into put-*

(a) Continued from p. 2, ante.

ting in an answer technically insufficient; and the statements in the bill not being on oath, the case alleged as a foundation for the inquiries may be, and frequently is, wholly fictitious. The practice of the Court, which in this branch more than any other is full of technicality, is too often *made an engine of more oppression and vexation, involving the parties in litigation in points wholly beside the merits of the case.*" (Ch. Comm. Rep. 23.)

Again, there are cases where the Court interposes, to restrain actions at law *upon the merits*, that is to say, where there are certain circumstances in the case not cognisable in a Court of Law, which render it unjust that the action should go on. In these cases, as a general rule, the Court of Chancery exercised this jurisdiction *only by decree or decretal order, and not by interlocutory order, unless* it could be shewn from the answer of the plaintiff in the action, without other materials, that the action ought to be stayed. Now, the plaintiff at law might often be an executor or assignee, and ignorant of the circumstances of the case, or his answer might be untrue; and it not unfrequently happened, that after the plaintiff in the action had been allowed to recover judgment and issue execution, the Court of Chancery, *at the hearing of the cause*, determined, upon the evidence, that the action ought never to have been brought, and ordered the plaintiff at law to repay the amount recovered by him, with the costs of the action.

By the Act, it is provided that the practice of the Court with respect to *injunctions for the stay of proceedings at law*, so far as the nature of the case will admit, is to be assimilated to the practice with respect to special injunctions generally, and such injunctions may be granted upon interlocutory applications supported by affidavit, in like manner as other special injunctions are granted by the said Court. (Sec. 58.)

By the new orders, "no injunction for stay of proceedings at law is to be granted, *of course for default of appearance or answer* to the bill." (Order 45.)

In order to put an end to the question, which often arose when the plaintiff applied for a special injunction or a receiver or the like, or when the defendant moved to dissolve a special injunction, as to *how far the plaintiff might read affidavits in opposition to the defendant's answer*, the rules of the Court, in which cases sometimes admitted, and sometimes excluded such affidavits, and were, to use the language of the Chancery Commissioners, "arbitrary and not clearly settled," it is enacted by the 59th section, that upon application by motion or petition to the Court in any suit depending therein for an injunction or a receiver, or to dissolve an injunction, or discharge an order appointing a receiver, *the answer of the defendant for the purpose of evidence on such motion or petition, is to be regarded merely as an affidavit* of the defendant, and affidavits may be received and read in opposition thereto. (Sec. 59.)

Power is next given to the Court in case any of the directions contained in the Act with respect to the practice and course of proceeding in the court by *mistake* of parties fails to be followed in any suit or proceeding therein upon payment of such *costs* as such Court may direct, to make order, *giving effect* to and *rectifying* such proceedings as may be justified by the merits of the case. (Sec. 60.)

Under the old system, it often happened at the hearing of the cause, that what is termed a *question of law* arose, generally some question turning on the construction of an Act of Parliament, or of a will or deed, as to which it was considered, that *either party, if he desired it*, was entitled to the *opinion of a Court of Law*, and a special case was thereupon in general directed for the opinion of a Court of Law, before which the whole matter was discussed. This, however, proved ultimately the source of great expense, for, although in former times, Equity Judges considered themselves bound by such opinion, it became by degrees to be the practice, that if the opinion was not satisfactory to the Equity Judge, to send the case to another court, and sometimes even to a third. And instances have occurred in which, after obtaining opinions from more than one Court of Law, the Court of Chancery has declined to adopt any of them, and has at last decided upon its own view of the case. However convenient such a practice may have been to Equity Judges, it certainly was often most expensive to the suitor, and even assuming that an Equity Judge is not competent to deal with such questions, still they may by a recent enactment obtain the assistance of the Judges of the Courts of Common Law, when they find it necessary. Those considerations induced a majority of the Houses of Parliament to insist upon the insertion in the Act of the following section, in pursuance of the recommendation of the Chancery Commissioners, *viz.*—"*It shall not be lawful* for the said Court of Chancery, in any cause or matter, *to direct a case to be stated for the opinion of any Court of Common Law*, but the said Court of Chancery shall have full power to determine any questions of law which, in the judgment of the said Court of Chancery, shall be necessary to be decided previously to the decision of the equitable question at issue between the parties." (Sec. 61.)

The next section of the Act will also in many cases be productive of considerable saving in the expenses of suits. It enacts that "in cases where, according to the present practice, the Court declines to grant equitable relief until the legal title or right of the party or parties seeking such relief shall have been established in a proceeding at law, the said Court *may* itself determine such title or right without requiring the parties to proceed at law to establish the same." (Sec. 62.)

Next, as to *General Rules and Orders*, the Lord Chancellor *with the advice and assistance of* the Master of the Rolls, the Lords Justices of the Court of Appeal in Chancery, and the Vice-Chancellors, or any *three* of them, may, and they are required from time to time to make general rules and orders for carrying the purposes of the Act into effect, and for regulating the times, and form, and mode of procedure, and generally the practice of the said court, in respect of the matters to which the Act relates, and for regulating the fees and allowances to all officers of the court and solicitors thereof, in respect to such matters, and, *so far as may be found expedient, for altering the course of proceeding therein-before prescribed in respect to the matters to which the Act relates, or any of them*; and such rules and orders may from time to time be rescinded or altered by the like authority; and all such rules and orders are to take effect as General Orders of the said Court. (Sec. 63.)

All General Rules and Orders of the Lord Chancellor, *with such advice and assistance* as aforesaid, are, immediately after the making and issuing thereof, to be laid before both Houses of Parliament, if Parliament be then sitting, or if Parliament be not then sitting within *five days* after the next meeting thereof; and it is provided that if either of the Houses of Parliament, by any resolution passed within *thirty-six days* after such Rules or Orders have been laid before them, resolve that the whole or any part of such Rules or Orders ought not to continue in force, in such case the whole, or such parts thereof as are so included in such resolution, are, from and after such resolution, to cease to be binding. (Sec. 64.)

The 65th section, after reciting that the present examiners of the Court have been heretofore appointed for the purpose only of taking the depositions of witnesses in private, and upon written interrogatories prepared by counsel; and that the public examination of witnesses orally, under the provisions of the Act, will materially alter the nature of the duties, and increase the responsibility of the said examiners: it is, therefore enacted, that it shall be lawful for the Lord Chancellor, and he is thereby empowered to order and direct a sum to be paid to each of the said examiners out of the fund entitled "The Suitors' Fee Fund," from and after the 1st of November, 1852, such a sum as shall, together with the sums now payable, make up the annual sum of one thousand five hundred pounds; and it is provided, that if either of the present examiners should feel himself unable, or should decline to continue his services in the same office, upon the conditions provided under the Act, it shall be lawful for the Lord Chancellor to order to be paid to such examiner retiring an annuity of an amount not exceeding three-fourths of the salary which he has hitherto received. (Sec. 65.)

Then comes the interpretation clause, by which in the construction of the Act, the words "bill of complaint" is to mean also and include information; the word "affidavit" is to mean also and include affirmation; the expression "Lord Chancellor" is to mean and include the Lord Chancellor, Lord Keeper, and Lords Commissioners of the Great Seal of the United Kingdom for the time being; and the expression, "General order of the Lord Chancellor," is to mean general order of the Lord Chancellor, *with such advice and assistance as aforesaid*. (Sec. 66. See Order 48.)

The Act is to commence and take effect from and after the first day of November next, and power is given to the Lord Chancellor, *with such advice and assistance as aforesaid*, to make and issue any such general rules or orders as aforesaid, at any time *after* the passing of the Act, so as the same be not made to take effect *before* the time appointed for the commencement of the Act. (Sec. 67. See Order 47.)

It may here be mentioned, that the 46th of the new Orders prescribes that "the power of the Court to enlarge or abridge the time for doing any act or taking any proceeding in any cause or matter, upon such, if any, terms as the justice of the case requires, is unaffected by such Orders."

THE LEGISLATOR.

NEW STATUTES.

15 Victoria, A.D. 1852.

[In this record of Legislation only the Statutes of practical utility are given at length. Of the others an abstract or the titles only are presented.]

Cap. LVIII.

An Act to continue certain Turnpike Acts in Great Britain. (June 30, 1852.)

Cap. LIX.

An Act to continue the Poor Law Board. (June 30, 1852.)

Poor Law Board further continued.—Whereas by the late Act of the eleventh year of her Majesty, chapter one hundred and nine, provisions were made for the constitution and appointment of commissioners for administering the law for the relief of the poor in England, secretaries, inspectors, and other officers, which provisions will expire at the end of the session of Parliament held next after the twenty-third day of July in the present year, and it is expedient that such provisions should be continued for a limited time: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that the commissioner appointed by her Majesty the Queen, or to be appointed by her Majesty, her heirs and successors, under the authority of the said Act, together with every person by the said Act constituted by virtue of his office such commissioner, and every secretary, inspector, and other officer and person appointed or to be appointed by the commissioners under the provisions of the recited Act, shall be empowered, unless he shall previously resign or be removed, to hold his office, and exercise the powers thereof, until the twenty-third day of July, one thousand eight hundred and fifty-four, and thenceforth until the end of the then next session of Parliament; and until the expiration of the said period it shall be lawful for her Majesty, her heirs and successors, from time to time, at pleasure, to remove the commissioner or commissioners for the time being appointed by her Majesty, or to be appointed by her Majesty, her heirs and successors, and upon every vacancy in the office of the commissioner or commissioners so appointed, or to be appointed by her Majesty, her heirs and successors, either by removal, death, resignation, or otherwise, to appoint, as in the said Act is described, some other fit person to the said office.

Cap. LX.

An Act to continue an Act of the 12th year of her present Majesty, for amending the Laws relating to Savings Banks in Ireland. (June 30, 1852.)

Cap. LXI.

An Act to amend the Laws relating to Summary Proceedings for Penalties and Forfeitures under the Acts relating to the Excise. (June 30, 1852).

Whereas under and by virtue of an Act passed in the session of Parliament holden in the seventh and eighth years of the reign of King George the Fourth, chapter fifty-three, and of other Acts in that behalf, an information for the recovery of any penalty imposed by any Act of Parliament relating to the revenue of excise, and incurred for or by reason of any offence committed against any such Act, or for the condemnation of any goods, commodities, or chattels seized as forfeited under or by virtue of any such Act, may be exhibited before, and be heard, adjudged, and determined by any three or more of the Commissioners of Inland Revenue where the offence shall have been committed, or the person or persons committing the same shall be found, or where the goods, commodities or chattels shall have been seized as aforesaid within the limits of the chief office of inland revenue in London, and where the offence shall have been committed, or the person or persons committing the same shall be found, or the goods, commodities, or chattels shall have been seized as aforesaid in any part of the

United Kingdom out of the said limits, such information may be exhibited before any one or more, and heard, adjudged, and determined by any two or more of her Majesty's justices of the peace for the county, shire, division, city, town, or place wherein the offence shall have been committed, or the person or persons committing the same shall be found, or the goods, commodities, or chattels shall have been seized as aforesaid. And whereas it is expedient that her Majesty's justices of the peace shall have and exercise concurrent jurisdiction with the Commissioners of Inland Revenue in relation to any such offence, person, matter, or thing as aforesaid respectively committed, found, or seized within the limits of the chief office of Inland Revenue: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. *Informations for penalties or forfeitures under the excise laws within the limits of the chief office may be heard and determined either by Commissioners of Inland Revenue or justices of the peace.*—For the recovery of any penalty imposed by any Act or Acts relating to the revenue of excise, and incurred for or by reason of any offence committed against any such Act or Acts, or for the condemnation of any goods, commodities, or chattels seized as forfeited under or by virtue of any such Act or Acts, where the offence shall have been committed, or the person or persons committing the same shall be found, or where the goods, commodities, or chattels shall have been seized as aforesaid within the limits of the chief office of Inland Revenue in London, an information thereupon may be exhibited, heard, adjudged, and determined either before any three or more of the said Commissioners of Inland Revenue, or before any metropolitan police magistrate sitting at any metropolitan police court; and such commissioners and magistrate respectively shall and they are hereby required, upon any such information having been so exhibited as aforesaid, to proceed to hear and determine the same, and give judgment thereon, and to award and grant a warrant or warrants for the due execution and carrying into effect of such judgment, in like manner as Commissioners of Inland Revenue and justices of the peace respectively are now by law required, directed, or authorised to do on any information exhibited before or heard or determined by them respectively under or by virtue of any Act or Acts in force relating to the revenue of excise.

2. *Commissioners may hear and determine informations at chief office or elsewhere within its limits.*—It shall be lawful for the said Commissioners of Inland Revenue to hear and determine any such information as aforesaid either at the chief office of Inland Revenue, or at any other place within the limits of the said chief office, as the said commissioners may in that behalf appoint.

3. *Officers of Inland Revenue, or persons employed by the Commissioners or Solicitor, may conduct proceedings before justices.*—It shall be lawful and competent to and for any officer of Inland Revenue, or any person employed or authorised by the Commissioners of Inland Revenue or the Solicitor of Inland Revenue in that behalf, to prosecute, conduct, or defend any complaint, information, or other proceeding to be heard or determined by or before any justice or justices of the peace in any part of the United Kingdom relating to any duty, matter, or thing under the care or management of the said commissioners, whether such officer or person shall be admitted and enrolled as an attorney, solicitor, advocate, or writer to the signet in any Court of Law or Equity or not, anything in any Act to the contrary thereof notwithstanding.

CAP. LXII.

An Act to alter and amend certain Acts relating to the Woods, Forests, and Land Revenues of the Crown. (June 30, 1852.)

CAP. LXIII.

An Act to amend the Laws relating to the Valuation of rateable Property in Ireland. (June 30, 1852.)

CAP. LXIV.

An Act to continue and amend the Metropolitan Sewers Act. (June 30, 1852.)

CAP. LXV.

An Act to continue and amend an Act passed in the Fourteenth Year of the Reign of her present Majesty, to consolidate and amend the Laws relating to Friendly Societies. (June 30, 1852.)

13 & 14 *Vict. c.* 115.—Whereas the Act of the fourteenth year of the reign of her present Majesty, chapter one hundred and fifteen, will expire at the end of the present session of Parliament, and it is expedient that the same should be amended and further continued: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. *Acts relating to friendly societies passed previously to 10 Geo. 4, c. 56, to continue in force as to such societies.*—All and every the Act and Acts of Parliament passed previous to the passing of the Act of the tenth year of the reign of King George the Fourth, chapter fifty-six, relating to friendly societies, shall, notwithstanding anything contained in the Act of the fourteenth year of the reign of her present Majesty, chapter one hundred and fifteen, be deemed and taken to continue and be in force, and to have continued and been in force from the time of the passing of the said last-mentioned Act, as regards each and every society established under any of the said previous Acts, or to which the same may be applicable, to such and the same extent and in the like manner as before and at the time of the passing of the said Act of the fourteenth year of the reign of her present Majesty, chapter one hundred and fifteen, except so far as any of the provisions of the said Act respectively affect or are applicable to such societies; but each and every society established under any Act or Acts of Parliament relating to friendly societies passed previous to the passing of the said Act of the fourteenth year of her present Majesty, chapter one hundred and fifteen, may come under the provisions of that Act, by having their rules certified in conformity thereto, and thereupon the provisions of the Act or Acts under which such society has been established shall cease as to such society, except as to any offences committed, or penalties or liabilities incurred, or bond or security given, or proceedings taken, under such Acts.

2. *Payment of salaries and expenses of registrars.*—The commissioners of her Majesty's Treasury may allow the registrars of Friendly Societies in England, Scotland, and Ireland respectively to retain out of the fees to be received by them respectively under the said Act of the fourteenth year of the reign of her present Majesty, chapter one hundred and fifteen, such sum as will defray the salary due to them respectively, and also such sum as will defray the expenses from time to time allowed by the said commissioners for office rent, salaries of clerks, stationery, computation of tables, and for such other expenses as may be incurred by them respectively by the authority of the said commissioners, and the balance, if any, shall be paid over to the account of the Consolidated Fund of the United Kingdom of Great Britain and Ireland; and the said commissioners shall from time to time regulate the manner in which such fees are to be received, kept, and accounted for; and if such fees shall not in any year be sufficient to defray such salary and expenses, the balance shall be paid out of the said Consolidated Fund; and the deficiency of the fees to defray the salaries and expenses of the office of Registrar of Friendly Societies in England since the passing of the said Act of the fourteenth year of the reign of her present Majesty, chapter one hundred and fifteen, shall be paid out of the said Consolidated Fund.

3. *Trustees of friendly societies to furnish accounts to the Commissioners of the National Debt.*—The trustees of every friendly society established under any Act or Acts of Parliament relating to friendly societies which shall have deposited or which shall deposit any portion of its funds with the Commissioners for the Reduction of the National Debt, shall furnish such accounts and returns relating thereto as shall from time to time be required by the said commissioners; and it shall not be lawful for the said trustees to pay any portion of its funds to the said commissioners until they shall have satisfied the said commissioners, in such manner and by such returns and accounts as the said commissioners shall require, that they are duly authorised by law to make such payment to the said commissioners.

4. *Recited Act further continued.*—The said Act of the fourteenth year of the reign of her present Majesty, chapter one hundred and fifteen, shall be further continued to the first day of October in the year one thousand eight hundred and fifty-three, and to the end of the then next session of Parliament.

CAP. LXVI.

An Act to continue an Act of the eleventh Year of her present Majesty for the better prevention of Crime and Outrage in certain parts of Ireland. (June 30, 1852.)

CAP. LXVII.

An Act to continue the powers of applying for a Sale of Lands under the Act for facilitating the Sale and Transfer of Incumbered Estates in Ireland. (June 30, 1852.)

CAP. LXVIII.

An Act for the application of certain money accrued from Fines and Forfeitures in Ireland in aid of certain Distressed Unions and Electoral Divisions in that Country. (June 30, 1852.)

CAP. LXIX.

An Act to confirm certain Provisional Orders of the General Board of Health. (June 30, 1852.)

We give this statute entire.

Whereas the General Board of Health have, in pursuance of the Public Health Act, 1848, made, published, and deposited, according to the provisions of that Act, certain provisional orders mentioned in the schedule to this Act annexed, and it is expedient that the said orders should be confirmed: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same,

1. *Confirming provisional orders of the General Board of Health.*—That the provisional orders of the General Board of Health referred to in the schedule annexed shall, from and after the passing of this Act, so far as the same are authorised by the said Public Health Act, be absolute, and be as binding and of the like force and effect as if the provisions of the same had been expressly enacted in this Act.

2. *Woolwich Dockyard, &c. exempted from operation of Act.*—Nothing herein contained or referred to shall sanction or authorise any interference with the watching, paving, and lighting, or internal regulations for the time being of her Majesty's dockyard, or of any barracks, fortifications, military or other premises, under the control or authority of the officers of her Majesty's Ordnance in or near the parish of Woolwich; and, notwithstanding anything herein contained or referred to, it shall not be lawful for the Local Board of the said parish, or any person whomsoever, to enter into and upon any land which is now or which may at any time hereafter be vested in the Lord High Admiral of the United Kingdom of Great Britain and Ireland, or in the Commissioners for executing the office of Lord High Admiral of the said United Kingdom, or in the Master General or principal officers of her Majesty's Ordnance for the time being, or to make, construct, or set up any sewer, drain, or any work, article, or thing of any description on, in, under, over, or through any such land or the foreshore in front of any such land, or which may affect the same land or foreshore, without the previous consent of the said Lord High Admiral, or of the said Commissioners, or the said Master General or principal officers of her Majesty's Ordnance, signified in writing under the hand of the Secretary of the Admiralty or of the Secretary of the Board of Ordnance, as the case may be, and then according to such plan, and in such manner, and upon such terms and conditions, and under such restrictions as may be signified in writing; and if any such sewer, drain, work, article, or thing be made, constructed, or set up, or be commenced to be made, constructed, or set up contrary hereto, it shall be lawful for the Lord High Admiral or the said Commissioners, or the said Master General or principal officers of her Majesty's Ordnance, as the case may be, if he or they think fit, to fill up, remove, and abate the same, and restore the site thereof to its former state and condition at the cost of the said Local Board.

3. *First election for parish of Walsoken.*—The first election of the six persons to be elected for and in respect of the parish of Walsoken, as members of the Local Board of Health for the district of Wisbech and Walsoken, for the purposes of main sewerage only, which comprises the said parish of Walsoken, shall take place on the eighteenth day of August, in the year of our Lord one thousand eight hundred and fifty-two.

4. *First election and nomination of local board for Woolwich.*—The first election of the eighteen persons to be elected to form a part of the Local Board of Health for the district of Woolwich, for the purposes of the said Public Health Act, shall take place on the eighteenth day of August, in the year of our Lord one thousand eight hundred and fifty-two; and that the nomination of the three persons to be nominated by the superintendent of her Majesty's dockyard, the commanding royal engineer, the storekeeper of her Majesty's ordnance, and the officer in command for the time being of the Royal Artillery in the parish of Woolwich aforesaid, to form the other members of the Local Board of Health within and for the said district for the purposes of the said Public Health Act, shall take place on the eighteenth day of August, in the year of our Lord one thousand eight hundred and fifty-two.

5. *Water containing sewage, &c. not to be discharged into the Avon without being filtered.*—Nothing in the said Public Health Act, or in the provisional order contained in the schedule to this Bill applying the said Act to the district of Leamington, shall be taken to give power to the Local Board of Health of the said district, or to any other parties now or any future periods, to discharge into the river Avon, or into the river Leam, contiguous thereto, any sewage or water containing sewage, unless such sewage or water shall, before its discharge into the said river or rivers, be filtered so as

to be free from noxious and offensive matter, and shall be first certified to be free from such matter by the General Board of Health, under their hands and official seal, after examination and report thereon by one of their superintending inspectors; and that if the said Board of Health shall at any time hereafter cease to exist, it shall be competent for parties aggrieved by such discharge to cause the same to be inspected, and the nuisance to be abated, by the order of any two justices of the peace at petty sessions assembled in the division of the county of Warwick in which the town of Leamington is situated.

6. *First election of Local Board for Leamington.*—The first election of the fifteen persons to be elected to form and constitute the Local Board of Health for the district of Leamington in the county of Warwick, for the purposes of the said Public Health Act, shall take place on the eighteenth day of August, in the year of our Lord one thousand eight hundred and fifty-two; and the first election of the one person to be elected for and in respect of the main sewerage district described in the schedule annexed to the provisional order of the General Board of Health applying the Public Health Act 1848, to the aforesaid district of Leamington, and to form with the aforesaid Local Board of Health the Leamington Main Sewerage Local Board, for the purposes of the above-recited Act, shall also take place on the eighteenth day of August, in the year of our Lord one thousand eight hundred and fifty-two.

7. *Chairman at first election for Leamington.*—At the first election of the Local Board of Health for the district of Leamington, as constituted by the order in the schedule to this Act, in case William Carpenter, esq. from illness or other sufficient cause, shall be unable to exercise or discharge the powers or duties vested in or imposed upon him by the Public Health Act and the said order in respect of the said first election, Mr. John Bowen, of Leamington, ironmonger, shall exercise and perform such of the said duties as remain to be exercised or performed instead of John Henry Thomas, named in the said order; and the notices of qualification in the said order mentioned shall, in default of the said William Carpenter, be given to the said John Bowen at his house in Leamington, instead of the said John Henry Thomas.

8. *Act incorporated with Public Health Act.*—This Act shall be deemed to be incorporated with the Public Health Act, and shall be as if this Act and the Public Health Act were one Act.

9. *Short title of Act.*—In citing this Act in any other Act of Parliament, or in any proceeding, instrument, or document whatsoever, it shall be sufficient to use the words and figures, "The Public Health Supplemental Act, 1852 (No. 2)."

SCHEDULE to which the foregoing Act refers.

Wisbeach	Woolwich
Walsoken	Stratford-upon-Avon
Salisbury	Leamington
Ashby-de-la-Zouch	Newbury.

CAP. LXX.

An Act for authorising the Occupation of the House of Correction recently erected by and for the City of London, at Holloway, in the County of Middlesex. (June 30, 1852.)

CAP. LXXI.

An Act to amend an Act of the Ninth and Tenth Years of her present Majesty for the Embankment of a Portion of the River Thames. (June 30, 1852.)

CAP. LXXII.

An Act to grant a Representative Constitution to the Colony of New Zealand. (June 30, 1852.)

CAP. LXXIII.

An Act to make Provision for a permanent Establishment of Officers to perform the Duties at Nisi Prius, in the Superior Courts of Common Law, and for the Payment of such Officers and of the Judges' Clerks by Salaries, and to abolish certain Offices in those Courts. (June 30, 1852.)

We give this statute entire.

Whereas the officers in the Superior Courts of Common Law who perform the duties at Nisi Prius hold their offices and appointments during pleasure, and such officers and the clerks at the judges' chambers are remunerated by fees received by them from the suitors, and it is expedient to provide a permanent establishment of such officers, and that they and the said clerks be paid by salaries, and that the fees now payable by the suitors be diminished: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. *Marshal and clerk at Nisi Prius in the Court of Queen's Bench and marshals in the Courts of Common Pleas and Exchequer abolished, and their duties to be performed by the associate respectively.*—From and after the twenty-fourth day of October after the passing of this Act the offices of marshal and clerk at Nisi Prius in the Court of Queen's Bench, and marshal in the Courts of Common Pleas and Exchequer, shall be and are hereby abolished; and all acts, duties, and services now and heretofore done, performed, and rendered by such marshals and clerk at Nisi Prius respectively shall be done, performed, and rendered by the associates in the Courts of Queen's Bench, Common Pleas, and Exchequer, who shall also continue to perform all acts, duties, and services now done, performed, and rendered by them in respect of the several offices now held by them respectively; and such acts, duties, and services, when so done, performed, and rendered by the said associates, or their successors, or any of them, shall be good and valid in law to all intents and purposes; and all lawful powers and authorities now and heretofore vested in or exercised by the marshal and clerk at Nisi Prius in the Court of Queen's Bench, and the marshals in the Courts of Common Pleas and Exchequer, by virtue or in right of their respective offices, shall be vested in and exercised by the said associates in the Courts of Queen's Bench, Common Pleas, and Exchequer respectively.

2. *Records, &c. to be transferred to associates.*—All the records, books, papers, and documents, of and concerning the duties and business of the several offices of the Courts of Queen's Bench, Common Pleas, and Exchequer, so abolished as aforesaid, shall, on or before the twenty-fourth day of October, one thousand eight hundred and fifty-two, be delivered by the several offices of the said Courts respectively now having the custody of the same, into the custody and possession of the associates in the Courts of Queen's Bench, Common Pleas, and Exchequer respectively, to be by them kept and preserved; and searches may be made, and copies or extracts of and from the said records, books, papers, and documents shall and may be had and taken, at such times and in such manner as hath been the accustomed practice in the several offices hereby abolished; and the officers, whose offices are hereby abolished, shall and they are hereby required, on or before the said twenty-fourth day of October, one thousand eight hundred and fifty two, to pay over to the associates of the said Courts respectively all and every sum and sums of money, if any, which shall have been paid into and shall be in their hands by virtue of their said respective offices, and to render an accurate account thereof to the said associates of the said Courts respectively.

3. *The Chief Justices or the Chief Baron of the said Courts respectively to appoint future associates.*—When and so often as any vacancy shall occur in any of the said offices of associate in either of the said Courts respectively, by death, resignation, or otherwise, it shall and may be lawful for the Lord Chief Justice or Lord Chief Baron of the Court in which such vacancy shall occur, to nominate and appoint some fit and proper person to fill such vacant office.

4. *Clerks, not exceeding two, to be appointed by the associates, subject to approval of the Chief Justices or Chief Baron of the said courts respectively.*—The associates in the Courts of Queen's Bench, Common Pleas, and Exchequer, and their successors, shall and may, in and for the discharge of the duties of their respective offices, have not exceeding two clerks, as the Lord Chief Justice or the Lord Chief Baron of the court for the time being to which such associates respectively belong shall determine to be necessary and proper; and all such clerks shall and may be appointed by the associates of the said courts respectively for the time being, with the sanction and approval of the Lord Chief Justice or Lord Chief Baron of the court to which such associate shall belong; and such clerks as are appointed shall hold their offices during pleasure.

5. *Offices to be provided for the associates in the offices of the courts, or their vicinity.*—Convenient offices shall be provided by the Commissioners of her Majesty's Treasury for the transaction of the business of the office of associate in the Courts of Queen's Bench, Common Pleas, and Exchequer, in the offices of the said respective courts, or their immediate vicinity; and the places for such offices shall be fixed by the Lord Chief Justice, or Lord Chief Baron of the said courts respectively, as soon as possible after the passing of this Act, and may be changed by them from time to time as occasion may require.

6. *In case of sickness or other reasonable cause, the duties of the associates may be performed by deputy.*—If the said associates, or any or either of them, shall, from sickness or other unavoidable cause, have occasion to be absent from the business of their or his office for a longer period than two months at any one time, then and in every such case it shall and may be lawful for the Lord Chief Justice or Lord Chief Baron for the time being of the court to which such officer shall belong to give leave of absence by his order in writing to such officer, and, if necessary, to appoint a deputy in his place during such time as shall be expressed in such order; and the name of such deputy, and also the cause and time of such absence, shall be stated in such order; and such deputy may, if occasion require it, be changed by the Lord Chief Justice or Lord Chief Baron; and every deputy so appointed shall be paid by the principal for whom he shall act such remuneration for his services as the said Lord Chief Justice or Lord Chief Baron shall direct in such order, not being in any case less than one third of the amount fixed and settled by this Act as the salary of such principal officer.

7. *Power to Treasury to fix salaries of judges' marshals.*—A fixed sum, to be settled for the several circuits respectively by the said Commissioners of her Majesty's Treasury, by and with the sanction of the said Lord Chief Justices and Lord Chief Baron, shall be hereafter paid by way of salary to each of the judges' marshals on each Spring and Summer Circuit, and to the marshal of the senior judge on the winter circuit, and on a special commission, for his services thereon; such sum to be paid to the marshal upon notice in writing being given by the judge by whom such marshal is appointed, of the name and address of the person whom he has appointed to be his marshal, and of the circuit which such judge has chosen, or the commission to which he has been appointed, to the Lords Commissioners of her Majesty's Treasury for the time being, who shall, upon the receipt of such notice, pay the sum so fixed on as aforesaid for such circuit or commission to the person therein mentioned as having been appointed to be marshal.

8. *Clerks to be appointed by the judges.*—It shall be lawful for the Lord Chief Justices and Lord Chief Baron each to appoint three clerks, one of whom is to act as crier on the circuit, and in London and Middlesex, and for the other justices and barons each to appoint two clerks, one of whom is to act as crier on the circuit; and such clerks shall perform all the duties heretofore performed by the judges' clerks; and shall hold their offices during the pleasure of the judges by whom they are appointed, or if continued by their successors during the pleasure of such successors.

9. *Present officers reappointed to hold their offices during good behaviour.*—And whereas it is expedient that the several officers of the said Superior Courts, set forth and described in Schedule (A) to this Act annexed, who now hold their offices and appointments during pleasure, should be reappointed, and should hold such offices and appointments during good behaviour: be it enacted, that the persons now holding the offices and appointments in the said Schedule (A) as such officers, shall be and the same are hereby appointed and declared to be such officers in the said Superior Courts, and they and their successors shall respectively hold such offices and appointments during good behaviour.

10. *Treasury to cause table of fees to be prepared, and submitted to judges for approval.*—And whereas it is expedient that a new table or tables of fees proper to be taken in the said Superior Courts, and their several offices, and at the judges' chambers, and by the clerks of assize acting as associates on the circuits, should be prepared with reference to the various changes and alterations which have been or may be made in the process, practice, and proceedings of those Courts, and to the diminution of expense, where practicable, to the suitors: be it enacted, that it shall and may be lawful for the Commissioners of her Majesty's Treasury, and they are hereby required, forthwith to prepare or cause to be prepared a table or tables of fees, specifying what fees are proper to be demanded and taken in the said courts and offices, at the judges' chambers, and on the circuits, and what fees should be abolished; and such table or tables shall be laid for approval before the judges of the said courts; and the said judges, or any six or more of them, of whom the Lord Chief Justices and Lord Chief Baron shall be three, are hereby empowered and required, as soon as conveniently may be, to revise and settle the said table or tables of fees so prepared as aforesaid, and from time to time to add to, or reduce, alter, or amend the same, as they may deem necessary and proper, and the said table or tables of fees so revised and corrected as aforesaid from time to time to allow and sanction, by affixing their signatures respectively thereto, and to establish the same in and for the said courts; and the said Commissioners of her Majesty's Treasury are required so soon and as often as each table or tables of fees have been sanctioned and allowed by the judges, to cause the same to be inserted and published in the *London Gazette*; and from and after such publication no other fees than those sanctioned and allowed as aforesaid shall on any pretence whatever be demanded or taken by any officer or clerk of the said courts in respect of any duty or service to which such table or tables of fees may relate; provided that until the publication of such table or tables of fees under the authority aforesaid, the fees now lawfully taken by the said officers and clerks shall and may continue to be taken.

11. *Officers and clerks not to act as barristers, attorneys, or agents.*—No person holding the office of associate in the Courts of Queen's Bench, Common Pleas, and Exchequer, or the appointment of judges' clerk, or of clerk in any of the offices of the Superior Courts, shall, either directly or indirectly, act as a barrister, attorney, or solicitor, or as agent of any attorney or solicitor, in any Court of Law or Equity in the United Kingdom, either separately or in partnership with any other, during such time as he shall hold such office of associate, or act as such clerk; provided always, that nothing in this Act contained shall operate to prevent any attorney or solicitor, or agent of any attorney or solicitor, now practising in any Court of Law or Equity, and now holding any office or appointment mentioned in this Act, from continuing to practise as such attorney, solicitor, or agent, notwithstanding this Act.

12. *Treasury to fix salaries of officers and clerks—Power to raise salaries.*—It shall and may be lawful for the said Commissioners of her Majesty's Treasury, and they are hereby authorised and required, by and with the sanction of the Lord Chief Justices and the Lord Chief Baron, to fix and appoint an annual sum by way of salary to the several officers and clerks whose offices and appointments are respectively set forth and described in the schedule (B) to this Act annexed, which salaries they shall be entitled to receive in lieu of all fees and emoluments now received by such officers and clerks respectively; and the said commissioners, with such sanction as aforesaid, shall have power, on each vacancy in any such office or appointment, to revise the salary attached thereto, and to fix another salary in lieu thereof, having regard to the nature, duties, and responsibility of such office or appointment; and such salaries, together with the necessary expenses of the respective offices, shall be payable and paid by equal quarterly payments on the thirty-first day of March, the thirtieth day of June, the thirtieth day of September, and the thirty-first day of December in every year, together with a proportional part of such annual sum for the time which at the decease of the person entitled thereto shall have elapsed since the last payment thereof; provided always, that if any of the officers or clerks appointed or to be appointed under the provisions of this Act shall be entitled to and in the receipt of compensation allowance awarded to them under any Act or Acts of Parliament regulating or relating to their respective offices or appointments, which shall exceed the amount of salary fixed and determined as aforesaid, such officers and clerks respectively shall be entitled to and shall receive the full amount of such compensation allowance by way of salary so long as they shall respectively hold their offices or situations; and in cases wherein such compensation allowance shall be less than the amount of salary so fixed and determined as aforesaid, the same shall merge and be considered as part of and included in the said salary.

13. *Salaries, how charged.*—The salaries and compensation allowances by way of salary hereinbefore granted to the several officers and clerks of the said courts respectively, and also the salaries and compensation allowances by way of salary, if any, which shall and may be granted to the several officers and clerks under the provisions of this and any other Act or Acts of Parliament regulating or relating to the same, together with the necessary and unavoidable expenses of the said offices respectively, shall be paid and payable out of and be charged and chargeable upon the fees received by the said officers and clerks in the said courts respectively; and the surplus of such fees arising in each of the said courts, after the payment of the said salaries and expenses, shall be paid into the receipt of the Exchequer to the credit of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, at such times and in such manner as the Commissioners of her Majesty's Treasury for the time being shall think proper to direct; and in the event of the fees so received by the said officers and clerks respectively of any of the said courts being at any time insufficient to defray the said salaries and compensations, if any, and other necessary expenses, it shall be lawful for the said Commissioners of her Majesty's Treasury, and they are hereby authorised and required, to direct the amount of such deficiency to be charged upon and paid out of the said Consolidated Fund.

14. *Officers to render accounts of fees received to the Treasury.*—The said officers and clerks, mentioned and described in schedule (C) to this Act annexed, shall respectively cause all fees received by them, and all disbursements made thereout for salaries and other necessary expenses, to be duly and regularly entered in one or more books, to be kept for that purpose in their offices, distinguishing the fees received under their several heads, and also the particulars and amount of every disbursement; and shall quarterly, within one month after the thirty-first day of March, the thirtieth day of June, the thirtieth day of September, and the thirty-first day of December in every year, render a true and faithful account in writing to the Commissioners of her Majesty's Treasury for the time being of all such fees and disbursements, in such form of account, and with such particulars of receipt or otherwise, and accompanied by such vouchers, as the said Commissioners of her Majesty's Treasury shall from time to time think proper to require and direct; and if upon examination of any such account it shall appear to the said Commissioners of her Majesty's Treasury that any fees have not been duly accounted for, or that any unreasonable or improper charge or deduction has been made in such account, it shall be lawful for the said Commissioners of her Majesty's Treasury finally to settle and adjust the same in such way as they may think reasonable and proper, and the said officers and clerks of the said courts by whom such account shall have been rendered shall and they are hereby required to alter and amend the said account accordingly: provided always, that the officers and clerks of the said courts respectively shall submit their books of account to the inspection of the said Commissioners of her Majesty's Treasury, or any person or persons whom they may employ for that purpose, whenever the said officers and clerks shall be required so to do.

15. *Allowance to officers on their retirement from office*—4 & 5 *Wm.* 4, *c.* 24.—Every person appointed or to be appointed under the provisions of this Act as an officer of the said courts respectively, who shall hereafter resign his office or situation with the sanction and under the authority of the Lord Chief Justice or Lord Chief Baron of the Court to which he shall belong, in consequence of his being incapable, from infirmity of mind or body, to discharge the duties thereof, shall be entitled to receive such superannuation allowance as the said Commissioners of her Majesty's Treasury shall think proper to direct; and in ascertaining and awarding the amount of such superannuation allowance the said Commissioners of her Majesty's Treasury shall take into consideration the whole period during which any such person shall have been permanently employed in any office or situation in either of the said courts, or in any other public office or situation, prior to the passing of this Act, and shall proceed according to the principles laid down by an Act passed in the fourth and fifth years of the reign of his said late Majesty, intituled "An Act to alter, amend, and consolidate the Laws for regulating the Pensions, Compensations, and Allowances to be made to Persons in respect of their having held civil Offices in his Majesty's Service;" and all such sums and allowances which shall be so awarded and granted under the authority aforesaid shall be paid and payable and be charged and chargeable in the same way as is herein-before provided in respect of the salaries of the officers of the said courts respectively, and the necessary expenses of the said offices.

16. *Ushers and subordinate officers, and their deputies, to render accounts of fees to Treasury.*—And whereas the ushers, courtkeepers, messengers, assistants, and other subordinate officers of the said Superior Courts, and attendants on the judges (other than the judges' clerks herein-before mentioned) are entitled to receive fees from the suitors in the said court, and it is expedient that the said suitors should be relieved from the payment of such fees, and that adequate salaries should be provided for such officers, assistants, and attendants: be it enacted, that all persons holding any subordinate offices or appointments in any of the said Superior Courts, as ushers, courtkeepers, messengers, assistants, and the like, or as attendants on the judges (other than the judges' clerks herein-before mentioned), and their deputies, shall respectively, on or before the twenty-fourth day of October, one thousand eight hundred and fifty-two, render a true account in writing to the said Commissioners of her Majesty's Treasury of all fees and emoluments received or claimed to be received by them, or on their behalf, and also of the annual value of all such fees and emoluments received by them, or on their behalf, and also of the annual salary, allowances, or profits allowed to or received by them respectively, whether as principals or deputies, and also of the nature and amount of disbursements, if any, in respect of any of such offices or appointments, for the space of five years next preceding the passing of this Act; and the accounts so rendered shall be in such form, and with such particulars of receipt or otherwise, and accompanied by such vouchers, as the said Lords Commissioners shall from time to time think proper to require and direct.

17. *Fees of such subordinate officers may be abolished.*—It shall and may be lawful for the said Commissioners of her Majesty's Treasury, and they are hereby empowered, by and with the consent of the said Lord Chief Justices and the Lord Chief Baron, to abolish all or any of the fees set forth in such accounts, and a list or lists, specifying the nature or description of the fees so to be abolished, shall thereupon be published by and under the authority of the said Commissioners of her Majesty's Treasury in the *London Gazette*; provided that until such publication all fees that now are or may be legally received in respect of such subordinate offices or appointments, shall and may continue to be received as heretofore.

18. *The number of subordinate officers to be fixed by Treasury, with the sanction of the Chief Justices and Chief Baron.*—It shall and may be lawful for the said Commissioners of her Majesty's Treasury, and they are hereby empowered and required, by and with the sanction of the Lord Chief Justices and the Lord Chief Baron, as soon as conveniently may be, to ascertain and fix the number of ushers, courtkeepers, messengers, and other subordinate officers, and assistants to the said Superior Courts, and of attendants on the judges (other than the judges' clerks hereinbefore mentioned), which shall be sufficient for the due performance of the duties required to be rendered in respect of such subordinate offices and appointments, and for the necessary attendance on the judges; and a list or lists of the offices and appointments, when so fixed and ascertained, shall thereupon be published by and under the authority of the said Commissioners of her Majesty's Treasury in the *London Gazette*, and from and after such publication all such of the said offices and appointments as are not contained in such list or lists shall be, and the same are hereby declared to be abolished.

19. *Subordinate officers to be appointed by the Chief Justice and Chief Baron respectively.*—It shall and may be lawful for the Lord Chief Justices and the Lord Chief Baron respectively for the several courts to appoint fit and proper persons to perform the duties of the said several subordinate offices and appointments, when such offices and appointments shall have been fixed and ascertained in the manner hereinbefore provided: provided always, that the persons who now perform the duties of such subordinate offices and appointments shall be reappointed to such offices and appointments, if they shall be found willing and competent to discharge the duties thereof, in preference to any person who shall not have performed such duties prior to the passing of this Act; and when and so often as any vacancy shall occur by death, resignation, or otherwise, in any such office or appointment, it shall and may be lawful for the Lord Chief Justice or Lord Chief Baron of the Court, in which such vacancy shall occur, to nominate and appoint some fit and proper person to fill such vacancy; and all persons to be appointed to such offices or appointments shall hold their respective offices during the pleasure of the Court to which they shall respectively belong.

20. *Power to increase or reduce the number of such subordinate officers.*—If at any time after the passing of this Act it shall be found that the establishment of such subordinate officers, assistants, or attendants in any of the said Superior Courts is either excessive or insufficient for the due performance of the duties required to be rendered by such officers, assistants, or attendants, it shall and may be lawful for the Lord Chief Justice or Lord Chief Baron of the Court, in which any alteration with respect to such establishment may be deemed necessary, to notify the same in writing to the said Commissioners of her Majesty's Treasury, stating therein the circumstances which may have caused any increase or diminution of such establishment to be necessary; and thereupon the said Commissioners of her Majesty's Treasury may, and they are hereby authorized and required, from time to time by their warrant to increase or reduce such establishment, as the case may require; and, by and with the sanction of the said Lord Chief Justice or Lord Chief Baron of the Court in which such alteration is deemed necessary, to make such provision for the carrying into effect such alteration, both with respect to regulating the salaries and otherwise, as may be thought proper.

21. *Salaries of subordinate officers to be fixed by Treasury, with sanction of the Chief Justices and Chief Baron, and to be paid out of Consolidated Fund.*—It shall and may be lawful for the said Commissioners of her Majesty's Treasury, and they are hereby authorised and required, by and with the sanction of the Lord Chief Justices and Lord Chief Baron, to fix and appoint an annual sum to be paid by way of salary to each and every of such subordinate officers, assistants, and attendants, who shall be re-appointed or appointed under the provisions of this Act; and such salaries, together with the necessary expenses (if any) of such offices and appointments, shall be payable and paid by equal quarterly payments on the thirty-first day of March, the thirtieth day of June, the thirtieth day of September, and the thirty-first day of December in every year, together with a proportional part of such annual sum for the time which at the decease of the person entitled thereto shall have elapsed since the last payment thereof; and such salaries and expenses shall be paid out of and charged and chargeable upon the said Consolidated Fund of the United Kingdom of Great Britian and Ireland: provided always, that the officers, assistants, and attendants, the value of whose offices or amount of whose salaries or official incomes have been already fixed and ascertained under and by virtue of any Act or Acts of Parliament regulating or relating to their said offices or salaries, shall be entitled during their tenure of office respectively to receive the amount of salary or official income now received by

them, if such amount exceed the salary to be fixed by the Commissioners of her Majesty's Treasury as aforesaid under this Act; and in case such amount shall be less than the salary so fixed by the said Commissioners of her Majesty's Treasury, the same shall merge and be considered as part of and included in the said salary.

22. *Compensation to hereditary chief proclamator and hereditary chief usher.*—And whereas the hereditary chief proclamator in the Court of Common Pleas, and the hereditary chief usher in the Court of Exchequer, in right of their respective offices, are entitled to appoint certain officers in the said Courts of Common Pleas and Exchequer, who by themselves or their deputies perform the duties of their respective offices; and it is expedient that the said offices of hereditary chief proclamator and hereditary chief usher should be abolished; and that a fit and proper compensation should be awarded to George Henry Walker Heneage, esquire (being the person who now holds these offices), upon the abolition thereof; be it enacted, that it shall and may be lawful for the said Commissioners of her Majesty's Treasury, and they are hereby authorised to pay to the said George Henry Walker Heneage, esquire, during his life, and after his death to such person or persons as would have been entitled to hold such offices, or either of them, upon satisfactory proof of his, her, or their being so entitled, such annual sum as the commissioners may find to be a fair and reasonable compensation for the loss of the said offices; and in estimating such compensation, the average annual amount of profit arising from the said offices respectively for the thirty years next preceding the passing of this Act shall be taken into consideration; and such annual sum shall be paid out of and charged and chargeable upon the said Consolidated Fund of Great Britain and Ireland.

23. *Compensation to officers appointed by hereditary chief proclamator or hereditary chief usher, and to subordinate officers.*—Every person holding any office or appointment in the said Courts of Common Pleas or Exchequer under any grant, deed, or other appointment from the said hereditary chief proclamator, or hereditary chief usher, and every other subordinate officer, assistant, or attendant, whose office shall be abolished under the provisions of this Act, and who shall not be re-appointed to any office in any of the said Superior Courts, shall be entitled to receive such a sum in gross, or such an annual sum, as the said Commissioners of her Majesty's Treasury may fix and appoint, as a fair and reasonable compensation for the loss of any such office or appointment; and such sums by way of compensation shall be paid out of and charged and chargeable upon the said Consolidated Fund of Great Britain and Ireland; and the said Commissioners of her Majesty's Treasury are hereby authorised and required to fix the amount of such sums to be paid by way of compensation, and to pay the same to the said persons whose offices shall have been abolished under this Act.

24. *Not to affect existing messengers of Exchequer.*—That nothing herein contained shall affect the rights of the existing four patent messengers of the Court of Exchequer, but there shall be paid to each of the present messengers of the said court, during their respective lives, the amount of the annual salaries or allowances to which they are now respectively entitled.

25. *Appointments to be made without pecuniary consideration.*—All appointments of officers and clerks to be made by virtue of this Act shall be so made without any pecuniary or other consideration whatsoever, directly or indirectly, to be paid or received for the same; and all such officers and clerks shall execute their duties in person, and shall give their attendance in court or elsewhere, and shall conduct the business of their several departments or offices at such places and hours, whether in Term time or Vacation, and in every respect in such manner as the Lord Chief Justices or the Lord Chief Baron, and the other justices and barons of the said Courts respectively shall from time to time order and direct.

26. *Officers and clerks not to receive gratuities on pain of dismissal.*—If any officer of the said Courts, or any clerk appointed or to be appointed under or by virtue of this Act, or any person whatever employed in the offices of the said Courts, shall, for anything done or pretended to be done relating to his office or employment, or under colour of doing anything relating to his office or employment, or for forbearing to do any act properly appertaining to his said office, demand, take, receive, or accept, or allow any person whatsoever to take for him, or on his account, or for or on account of or in trust for him or any other person named by him, any gratuity, perquisite, or reward, or anything of value, other than the salary or remuneration allowed or to be allowed to every such officer, clerk, or person aforesaid, he shall forfeit a sum of fifty pounds, to be recovered by action of debt at the suit of her Majesty's Attorney-General, and upon judgment being recovered therein he shall be incapable of any longer holding his office or employment.

27. *No compensation to be allowed for loss of right of appointment.*—In the event of any reduction being hereafter made in the number of the officers or clerks created or authorised by this Act, the Lord Chief Justices, Lord Chief Baron, Justices, Barons, and Associates of the said Courts respectively for the time being, shall not be entitled to compensation for the loss of any right of appointment vested in them, or any of them, by virtue of this Act.

28. *Certain fees on circuit abolished.*—And whereas upon the circuits of the judges of assize and gaol delivery, a fee of six shillings and eightpence is now paid on every cause to the marshals of the judges of assize for the use of the judge: be it enacted, that the said fee and all other payments upon the circuits to or to the use of the said judges, shall be and they are hereby abolished.

29. *Account to be laid before Parliament.*—The said Commissioners of her Majesty's Treasury shall cause to be laid before Parliament, within fourteen days of its first meeting in every year, an account, made up to the thirty-first day of December previous, both with respect to the said offices, and with respect to all other offices in the Superior Courts of Law, of all charges on the Consolidated Fund, by way of compensation or otherwise, and of the gross and net receipts of fees in each of the said offices, and of all charges and disbursements deducted therefrom, and of all amounts fixed by way of remuneration for any of the holders of the said offices respectively, and of any salaries fixed under the powers of this Act, and of all salaries charged on the said fees during the year then last elapsed, and after the first such account shall have been presented, then during the two years last elapsed, with a statement of the increase or decrease of any of the said items of account in the second of such years as compared with the first.

30. *Duties to be performed in person.*—Where it shall be made to appear to the said commissioners that any of the hereinbefore mentioned officers omits to perform the duties of his office in person, the said commissioners, unless it shall be shewn to their satisfaction that such omission arises from temporary and unavoidable causes, and they shall in writing approve of such omission for a period not exceeding at any one time six months, shall, as the case may be, require the whole of the fees due to or received by such officer for his own use during the time of such omission to be accounted for and paid over as aforesaid, or shall cease to allow or pay any salary otherwise due to such officer during the time of such omission.

31. *Fees of marshal's men and judge's bailiff abolished.*—The fees heretofore received on the circuit by the marshal's man and the judge's bailiff respectively, shall be and are hereby abolished: and no fee, gratuity, or reward whatsoever shall be demanded or accepted by any one exercising or claiming to exercise either of the said offices, or by any servant or other person attending the circuit in any subordinate office or employment.

32. *As to performance of duties of hereditary chief usher and messenger of the Court of Exchequer.*—And whereas, by reason of abolishing the office of hereditary chief usher of the Court of Exchequer, and the offices of the said Court appointed by that officer, it becomes necessary to make provision for the duties hitherto performed by the said hereditary chief usher and persons, styled "Messengers of the Court of Exchequer," holding offices or places in the patronage of and appointed by the said hereditary chief usher: the duties hitherto performed by the said hereditary chief usher and messengers of the Court of Exchequer, so far as regards the process issued and issuing from the office of her Majesty's remembrancer in the Court of Exchequer, and of the treasurer of the governors of the bounty of Queen Anne, on the seal day next after each and every term, shall, from and after the abolition of the said offices of messengers of the Court of Exchequer, be discharged by her said Majesty's remembrancer, and his officers under his direction, and the officers of the said treasurer of the governors of the bounty of Queen Anne, and shall be in all respects as valid and effectual to all intents and purposes as if performed by the said hereditary chief usher and messengers of the Court of Exchequer as heretofore, any law or usage to the contrary notwithstanding; and that it shall not be necessary in future for the process hereinbefore referred to to be sealed before or in the presence of the cursitor baron of the said Court of Exchequer on the said seal days as heretofore, but the same may be issued from the office of her said Majesty's remembrancer, and the office of the treasurer of the governors of the bounty of Queen Anne, and be respectively sealed in the office of her said Majesty's remembrancer, who has the custody or keeping of the great seal of the Exchequer.

SCHEDULE (A).

Officers and Clerks of the Judges in the Superior Courts re-appointed by this Act.

Associate in the Court of Queen's Bench.
Associate in the Court of Common Pleas.
Associate in the Court of Exchequer.

SCHEDULE (B).

Officers and Clerks who are to be paid by Salaries instead of Fees.

The Associates in the Queen's Bench, Common Pleas, and Exchequer.
Senior Clerk in the offices of the Associates in the Queen's Bench, Common Pleas, and Exchequer.
Junior Clerks in those offices.
Clerk of Assize for the performance of the duties of Associate on the Northern Circuit.
Clerk of Assize for the performance of the duties of Associate on the Western Circuit.
Clerk of Assize for the performance of the duties of Associate on the Oxford Circuit.
Clerk of Assize for the performance of the duties of Associate on the Midland Circuit.
Clerk of Assize for the performance of the duties of Associate on the Home Circuit.
Clerk of Assize for the performance of the duties of Associate on the Norfolk Circuit.
Clerk of Assize for the performance of the duties of Associate on the North Wales Circuit.
Clerk of Assize for the performance of the duties of Associate on the South Wales Circuit.

Judges' Clerks.

Principal Clerks of the Lord Chief Justices of the Queen's Bench and Common Pleas, and Lord Chief Baron of the Exchequer.
Chamber Clerks to the same.
Third Clerks to the same.
Principal Clerks to the other judges and barons.
Chamber Clerks to the same.

SCHEDULE (C).

Associates in the Courts of Queen's Bench, Common Pleas, and Exchequer.
Marshals on the Circuits.
Clerks of Assize as Associates.
Judges' Clerks.

THE MAGISTRATE,

AND PAROCHIAL AND MUNICIPAL LAWYER.

Summary.

THE approach of the Quarter Sessions reminds us that nothing has yet been done to carry in operation the *Expenses of Prosecutions Act*, which was pressed upon the Legislature with so much urgency in the Session of 1851. The purpose of that Act is to empower the SECRETARY OF STATE to regulate the costs of prosecutions at Quarter Sessions. Sir GEORGE GREY, under whose auspices it was carried, suffered it to sleep for a whole twelvemonth, alleging want of leisure as the cause. Mr. WALPOLE's excuse at first was the valid one that he was new to office, and other matters of more urgency demanded his attention. But the recess has given him an opportunity to look into the subject, and the public and the Profession have a right to expect that a statute passed two sessions ago should not be suffered to remain longer in abeyance. The Judges, and, we believe, the Government, are of opinion that prosecutions at Quarter Sessions are not always properly conducted; they object to the indecent spectacle of a chairman conducting prosecutions, and playing the double part of Judge and Counsel; they think that criminal justice should not thus be brought into contempt; and they are of opinion that a Magistrate ought not to attempt to do what the Judges have declared that *they* will not and cannot do. The Expenses of Prosecutions Act was expressly intended to meet this as well as some other defects in the administration of criminal justice at Quarter Sessions, and therefore the Home Secretary should be called upon to enforce its provisions without further delay.

Answers to Queries.

GAME CERTIFICATES—RABBITS.

52 Geo. III. c. 93, sched. L.—I think your correspondent, "Lex," of last week's LAW TIMES, will find what he requires in "Cases respecting Assessed Taxes determined by the Judges (No. 1070), 1834."

J. J. W.

MILITIA ACT.

A CORRESPONDENT asks in your last paper whether attorneys are exempt from serving in the militia?

It appears to me that they are not entitled to any such exemption. The 32nd section of the 15 & 16 Vict. c. 50, enacts "that all the provisions of the

said Act (*i. e.* 42 Geo. 3, c. 90) and of any Acts amending the same not hereby repealed, shall, subject to the provisions of this Act, and so far as the same are not inconsistent herewith, extend and be applicable to the militia to be raised under this Act, and to all purposes thereof."

It follows, therefore, that as the exempting clause in the 42 Geo. 3, c. 90, namely, the 33rd section, does not include *attorneys*, neither are they excepted by any of the subsequent Acts, nor by the 21st section of the last Act, they are liable to serve either in person or by substitute in the militia. W. H. F.

Chichester, 23th Sept. 1852.

THE WELCH MILITIA.—In some districts of the principality the volunteering for the militia is proceeding rapidly, and the requisite number of men will speedily be procured; whereas in other parts men enrol themselves so slowly that recourse must be had to the ballot. In Montgomeryshire a large body of active and able-bodied young men have volunteered, and it is said that there will be a greater number of applicants than is required for the present year to form the Montgomeryshire militia. The quota for Carmarthen have nearly all been procured, there being an abundance of applications. In the various divisions of the county, the volunteering has proceeded most satisfactorily. In Pembrokeshire, on the contrary, the enlisting is very tardy, and the requisite number, it is expected, will not be procured by voluntary enrolment. This will also be the case with the enlistment for the counties of Flint and Glamorgan.

THE MILITIA.—The cost of the militia now raising, for the year ending the 31st of March, 1853, is estimated at 386,715*l.* In the present year the number to be raised is 50,000, and 100,000*l.* is put down as "bounty and recruiting charges payable within the year, taken at the rate of 2*l.* per man, payable partly on enrolment, and partly at the termination of the training and exercise, or by monthly allowance."

Out of nearly 100 volunteers required from Woolwich alone, the authorities will not be able to raise a dozen, on account of its being a military garrison. —*Kentish Mercury.*

DECREASE IN PAUPERISM.—From a return to the House of Commons printed, it appears that in outdoor and indoor relief there was a decrease of 222,937 persons at the Lady-day quarter of 1851, compared with the Lady-day quarter of 1850. In England, at the Lady-day quarter of 1850, there were 289,960 indoor paupers relieved, and 1,519,348 outdoor; while in the corresponding period of 1851 the numbers were—indoor 276,395, and outdoor 1,313,934. In Wales, in the first period, there were 8,087 indoor, and 100,290 outdoor; and in the second period 8,088 indoor, and 96,331 outdoor. In England and Wales the number in the receipt of indoor relief at Lady-day quarter of 1850 was 298,047, and at the like period of 1851, 284,483, being a decrease of 13,564, while in outdoor relief the number was 1,619,628 in the first, and 1,410,265 in the second period, being a decrease of 209,373, and a total in the classes of the year of 222,397.—*Sun.*

THE LANCASHIRE MAGISTRACY.—From a list of the county magistrates, just published, we find that 479 gentlemen are qualified as justices of the peace for this county—viz. 32 in the hundred of Amounderness, 62 in Lonsdale, 83 in Blackburn, 21 in Leyland, 121 in West Derby, and 160 in Salford. The list comprises the names of three earls, one eldest son of an earl, two younger sons of an earl, one baron, one younger son of a baron, one right honourable, nine baronets, six knights, 23 members of Parliament, and 28 clergymen.—*Liverpool Mercury.*

Six men are to be selected from each division of the Metropolitan Police to form a police force for Australia. The pay will be 7*s.* 6*d.* a day, with passage and all expenses paid: each volunteer will have to engage to serve five years, or incur a penalty of 30*l.*

The *Gazette* contains a notice that the following place has been duly licensed for the solemnisation of marriages therein:—Wesleyan Methodist Chapel, Giggleswick, Yorkshire.

REAL PROPERTY LAWYER AND CONVEYANCER.

Summary.

No cases are so interesting to so great a number of our readers as those which relate to the *Law of Vendor and Purchaser*, and therefore it is that we make it a rule to pay such particular attention to them. Of this class was *Ayles* v. *Cox*, 20 Law T. Rep. 4. There one of the conditions of sale was, that "if any mistake or error be made or discovered in the description of the premises, or any other whatever shall appear in the foregoing particulars, such mistake or error shall not annul the sale, but a compensation or equivalent shall be given or taken, as the case may be, such compensation or equivalent to be settled by the Master, in case the parties differ." One of the lots was described as being "copyhold," but it turned out to be partly *freehold*. Was this an error of description, for which only compensation could be claimed? The Court held that it was not; that the vendor had "sold a different thing from that which, by the conditions of sale, he purported to sell," &c.; and that, therefore, a good title could not be made. "It may be said it is better, but it is not what the purchaser bargained for, and he has a right to have copyhold if he wishes."

A somewhat curious case, under a will bequeathing charity, is that of *Ex parte The Incumbent, &c. of Brompton*, 20 Law T. Rep. 5. Money was given by will for the benefit of the poor of *the town of K.* There was no market-town of K. but a place called the town of K. was situate in the parish of K. and in an adjoining parish, but without bounds to distinguish them. The trustees were ordered to apportion the charity. It was also decided that, under the 22nd sec. of 8 & 9 Vict. c. 70, the Court had the power of appointionment.

The construction of *Wills* continues to occupy a considerable portion of the reports from the Courts of Equity. Three were contained in last week's number. Of these the facts are usually too complicated to be described in a summary, and therefore, unless they lay down or illustrate some general principle of law which ought to be borne in mind by the Lawyer, we do not introduce them to particular notice here. One of the most frequently recurring questions is whether an interest given by a will is vested or not. This point arose in *Goodman* v. *Drury*, 20 Law T. Rep. 6. A. by will charged lands with an annuity of 15*l.* to B. and after her death with payment of 100*l.* to each of the three children of B. and which sum he bequeathed to each of them accordingly, and he directed it to be paid within six months after the decease of B. or to such of them as should be then living. One of the children died in B.'s lifetime. Was it a vested interest? Vice-Chancellor PARKER held it *not* to be so. He said that, "when there was a gift of personal estate to a legatee, the postponement of the payment to a future period did not prevent the legacy from vesting. This, however, was not the case where there was a gift of money charged on real estate. Whatever might be the terms of a gift of money charged on land, if the payment should be postponed, the legacy would not vest until the time of payment." This concise statement of the rule should be committed to memory by the reader.

An important statute of the last session for extending the provisions of the Trustee Act, 15 & 16 Vict. c. 55 (20 Law T. 5), was last week published in extenso. It empowers the Court of Chancery to vest the estate in purchasers by order (after a decree or order for sale), in lieu of a conveyance by the party to the suit; as also on the refusal or neglect of a trustee to convey or release, for the transfer or receipt of dividends of stock standing in the name of an infant trustee. Where any person neglects or refuses to transfer stock, or receive dividends, or sue for, or recover, any chose in action, for twenty-eight days after order made, the Court is empowered by order to vest the right in such person as it may appoint, and so where there is such neglect or refusal by an executor. The Bank of England and all companies having stock, are directed to comply with such orders of the Court, and are indemnified for obedience to them. Another section empowers the Court to appoint new trustees where any trustee is convicted of felony, and where there is no existing trustee, and a general power is given to the LORD CHANCELLOR to make orders for the appointment of trustees, without an application to the Court, in all cases in which he has jurisdiction to order a conveyance or transfer of land or stock, or to make a vesting order. This Act is to be construed as part of the Trustee Act of 1850, and all orders made under that or this Act, for the transfer or vesting of property, are to be chargeable with the same stamp duty as deeds of conveyance.

MORTGAGE DEBENTURES.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Having perused your article on this subject in the LAW TIMES of the 18th instant, also other articles in previous numbers of the LAW TIMES which I have not now before me, I take the liberty of enclosing you a hasty sketch of a "scheme" which, I venture to think, would facilitate the completion of your views and wishes; also a short form of the "heading of a charge," or mortgage.

If your views could be established, I am convinced the landowners would be greatly benefited, and I fear not for the Profession.

It will afford me much pleasure if my suggestions should render you any assistance, but if you do not entertain them pray commit them to the flames, and you will not offend.

Sir, your very obedient servant

March, Sept. 23. J. H. J. WOODWARD.

SCHEME.

A. To establish a local registration of titles.

B. To appoint public valuers in each county.

C. An abstract of title certified by counsel to be registered.

D. The estate to be valued by two valuers.

E. The certificate of valuation to be registered.
The title-deeds to be deposited with the registrar before any charges are made.

F. Complying with the above requisites, the owner of an estate to be at liberty to issue charges or mortgages to the amount of two-thirds the value of the estate.
The charges to be signed by the owner of the estate, and witnessed by a solicitor.
The charges not to be issued until registered.
The charges to be numbered, and to take priority according to their date or registration.
The charges to be of any amount the owner of the estate may think proper, but the whole of the charges not to exceed two-thirds the value of the estate.
The charges to be transferable by a short form of indorsement.

G. The indorsers to be liable, or not, as they may think proper, to state in the certificate of indorsement.
Each transfer to be immediately registered, and to have no effect until registered.
The registration of all documents to be certified by the registrar, and a seal of the office to be attached.

H. The indorsee of a charge to be entitled to a power of sale, in case of default, in payment of principal or interest, at the times fixed by the charge.

NOTES.

A. The registration to be voluntary. All persons would be glad to avail themselves of it who wished to raise money.

B. If public valuers were appointed, and there might be many in each county, the parties investing their capital would, in all probability, be satisfied of their respectability and integrity.

C. The abstract and title deeds could be referred to by the parties advancing the money, and if the title were certified to be a good title by a gentleman of standing, the estate would be of greater value in the market, and consequently the charges more easily negotiable.

D. The valuers would also give additional value to the security according to their standing. They might be paid by fees of 3*l.* 3*s.* a-day, according to the time required in making the valuation.

E. The certificate of valuation ought to be registered for the perusal of the party investing his money, and to enable him to make inquiries as to the respectability and competency of the valuers, &c.

F. The charges are limited to two-thirds of the value of the estate, as it is assumed beyond that amount they would not be negotiable in the market: of course the owner would be at liberty to issue more if parties would advance the money; but these further charges should be different to the others, so that the public might easily detect them.

G. In the indorsement the words "not liable," or "liable," can be inserted, which would be sufficient.

H. The condition upon which each holder of a charge should be allowed to exercise the power of sale requires further consideration; also many other matters connected with the scheme.

HEADING OF A CHARGE.

A. Estate in the parish of Cromer, in the county of Norfolk, consisting of 300 acres of land, the property of A. B. of Cromer aforesaid, esquire.

B. First charge £2,000 0 0
Title certified by A. B. esq. barrister-at-law.
Valuation made by C. D. of Cromer aforesaid, land valuer; and E. F. of the same place, land valuer.
Valuation £3,000 0 0
Two-thirds of valuation 2,000 0 0

C. Here insert the form of the charge setting forth a true description of the estate. The term of years for which the money is borrowed, and whether subject to be called in by notice or not, &c. and the rate of interest.

NOTES.

A. The heading of the charge, if made in this form, would shew at a third sight view the situation of the estate, the tenure of it, the barrister who certified the title, the valuation and the name of the valuer, and the amount for which the charges would be really valuable.

B. A second charge should state above the amount for which such charge is made, the amount of the first charge in the following form:—

First charge	£1,000	0	0
Second charge	500	0	0

and so on in all future charges, so that the holder of any charge might know the amount of all charges that take priority over the one he holds. By this means he would also know whether two-thirds of the valuation were raised.

C. The form of the charge might, I think, be very short and simple, and the interest might be paid and received at the office of registration.

"NEW WILLS ACT."

I do not see the difficulty pointed out by "J. M. T." I think if he will read the 3rd section of the Act of 15 Vict. c. 24, he will find that the word "will" shall, in the construction of this Act, be interpreted in like manner as the same is directed to be interpreted under the provisions in this behalf contained in the Act of 1 Vict. The 1st section of 1 Vict. c. 26, enacts, "That every word importing the masculine gender only shall extend and be applied to a female as well as a male." J. W. S.

Answers to Queries.

CONDITIONS OF SALE.

The case to which "A Subscriber" alludes, in your paper of the 25th inst. relating to the construction of conditions of sale, is, I presume, *Gabriel* v. *Smith*, 17 Law T. Rep. 61. W. H. F.

Chichester, Sept. 27, 1852.

COSTS OF CONVEYANCE.

Do not remember any reported case such as referred to in "A Subscriber's" query, in your last number; but in a case occurring in my own practice, the words were, that "the purchaser should bear the expense of all deeds of covenant," &c. Such a deed was required from a stranger, which I (acting for the purchaser) prepared and forwarded to the vendor's solicitors, who got the draft perused and the engrossment executed, but required me to pay the charges of the covenanter's solicitor. I demurred to this, contending that the condition, being similar in form to that which says, "the purchaser shall be at the expense of his own conveyance," only threw upon him the cost of preparing it, leaving to the vendor the cost of getting it perused and executed. The point was left to counsel, who advised that the purchaser was bound to pay the charges of the covenanter's solicitor, he being a stranger; but that if the vendor had been himself the covenanting party, he must have paid his own solicitor's charges.

In the case, however, quoted by your correspondent, I think no question can arise, as the words of the condition merely say that the deed shall be *prepared* at the purchaser's expense; and as the vendor has not guarded against the costs of perusal and execution, they, of course, fall upon him.

September 28, 1852. L.

COUNTY COURTS.

LATE CASES ON THE LAW AND PRACTICE OF THE COUNTY COURTS.(a)

V. CASES RESPECTING QUESTIONS OF SET-OFF.

The principle of set-off not having been, like the other questions which have engaged our attention in the present series, created or originated by any enactment in the County Courts Act, but having subsisted long anterior to the establishment of these tribunals,—although it is one which is very frequently raised in the litigation of questions in these courts,—demands a brief inquiry into its nature before we proceed at once to consider the cases which have been adjudicated upon it. The defence of set-off does not even exist at Common Law. It is founded on the statute 2 Geo. 2, c. 22, s. 28, made perpetual by the statute 8 Geo. 2, c. 24, s. 4, by which it is enacted that "where there are mutual debts between the plaintiff and the defendant, and if either party sue or be sued as executor or administrator, where there are mutual debts between the testator or intestate and either party, one debt may be set against the other;

(a) By Charles Hamley, Esq. Barrister-at-Law.

and such matter may be given in evidence upon the general issue, or pleaded in bar, as the nature of the case shall require, so as at the time of pleading the general issue, where any such debt of the plaintiff, his testator, or intestate, is intended to be insisted on in evidence, notice shall be given of the particular sum or debt so intended to be insisted on, and upon what account it became due, or otherwise such matter shall not be allowed in evidence under such issue."

It is provided by sec. 5 of the 8 Geo. 2, that by virtue of the preceding clause, mutual debts may be set off against each other, as before mentioned, although such debts be of a different nature; but that in cases where either of the debts accrues by reason of a penalty contained in any bond or specialty, the same shall be pleaded, and the plea shall state how much is justly due on either side, and the plaintiff shall have judgment of the just balance only.

A set-off has been defined to mean a cross debt, for which an action might be maintained by the defendant against the plaintiff; and it is very different from a mere right to a reduction of his demand or claim to defeat it, on account of some matter connected therewith. (Chitt. cont. 841). Thus the defendant may shew, without the aid of the statute of set-off, that the sum sought to be recovered was named in satisfaction of a claim which he had on the plaintiff. (*Dale* v. *Sollett*, 4 Burr. 2133.) But if A. agree to do work for a certain sum, and afterwards B. purchase some of the materials for A. which are worked up by A. the money expended by B. on that account must be set off, and cannot be given in evidence under the general issue. It is also necessary to plead a set-off, although the plaintiff has in an account given credit for the goods sold by the defendant to the plaintiff, such account not being final or settled, and no balance being struck. (*Fothergill* v. *Jones*, 1 C. & P. 133.) So if it be agreed between a master and servant that the latter shall pay out of his wages for all goods lost by his negligence, the value of goods thus lost may, in an action for wages, be deducted therefrom by virtue of the agreement. (*Le Loir* v. *Bristow*, 4 Campb. 134.) So in an action to recover money for dyeing goods, the defendant may, at Common Law, prove as a defence, that there is a custom of the trade that the amount of damage done to goods dyed may be deducted from the price of the dyeing. (*Bamford* v. *Harris*, 1 Stk. R. 343.) And although there can be no set off in replevin, even in the instance of an advowry for rent (*Salsford* v. *Fletcher*, 4 T. R. 512, per Lord Kenyon, C.J.); yet as the landlord's just claim is only to the balance of rent issuing from the premises, after his ground-rent and land-tax imposed upon him, in respect of the premises, or any annuity, &c. he may have charged thereon are satisfied, the tenant has a Common Law right to plead in bar that he has satisfied such prior claims for the landlord. (*Salsford* v. *Fletcher*, 4 T. R. 511; *Taylor* v. *Samira*, 6 Taunt. 624.)

We may here also observe, that it is not compulsory on the defendant to avail himself of his right of set-off. He may satisfy the plaintiff of the whole of his debt, and then resort to an action for the money due from the plaintiff. (*Laing* v. *Chatham*, 1 Camp. 252.) But if the evidence of the debt claimed to be due from the plaintiff to the defendant be doubtful, the fact of the defendant having omitted to set it off when he had an opportunity, might induce the jury to find against the demand. (Chitt. Cont. 843.) If the defendant's set-off exceeds the plaintiff's demand, an action lies for the surplus. (*Hennell* v. *Fairbarn*, 3 Esp. R. 104.) A plaintiff who arrests for the whole of his side of an account, without giving credit for an acknowledged or clear debt due to the defendant, may be treated as having acted maliciously, and without probable cause. (*Austin* v. *Debram*, 3 B. & C. 139.)

It is to be observed, however, that the statute does not apply except in the case of mutual debts; that is, to claims in the nature of a debt reduced or reducible to a certain or specific pecuniary amount, and recoverable in an action ex contractu, as assumpsit, debt, or covenant. (*Morley* v. *Inglis*, 5 Scott, 314.) Nor is a set-off available in an action for not accepting a bill of exchange for the price of goods, if the suit was commenced before the expiration of the period the bill was to run. (*Hutchinson* v. *Reed*, 3 Camp. 329.) But in case of bankruptcy, a defendant may set off a debt due to him from the bankrupt against a claim by the assignees against the defendant, for not accepting a bill of exchange in part payment of goods sold by the bankrupt to the defendant. (*Gibson* v. *Bell*, 1 Bing. N.C. 743.)

The general principle in all these cases is that the demand sought to be set off must be of a liquidated nature; and in general the defendant must address the same evidence in support of a set-off, as he would be bound to produce if he was suing for the recovery of the debt claimed to be due to him.

Having now considered the principle which regulates the law of set-off, and a few of the leading cases bearing on this subject, we will proceed to review those particular decisions on this point which have arisen out of questions that have been tried before the County Courts.

In the following case, the main point raised with regard to the question of set-off was, whether the reduction of a debt to less than 20*l.* by set-off, had the effect of bringing the case within the jurisdiction of the County Court. The plaintiff brought his action in a Superior Court against the defendant for, and proved a debt of, more than 20*l.* There were cross accounts between the parties, which had not been balanced. The defendant pleaded and proved a set-off, which reduced the plaintiff's claim below 20*l.* and the verdict passed accordingly. A rule nisi having been obtained under 9 & 10 Vict. c. 95, s. 129, for leave to enter a suggestion upon the roll to deprive the plaintiff of his costs, on the ground that he ought to have sued in a County Court, it was held, that the case did not come within the Act. *Woodhams* v. *Newman*, 1 Cox & Mac. 231: Wilde, C.J. observed in this case, while delivering his judgment, that it was clear that before a verdict in the Superior Court can have the effect of depriving the plaintiff of his costs, the action must have been one for which a plaint might have been entered in the County Court. Now, was that the case here? Was this such an action as should have been brought in the County Court? In construing this Act we must not confine our attention to one clause, but look at all the clauses in the Act that bear upon the matter we have to decide. The 58th section is considered material, and as assisting us in the construction of the 129th section. The 58th section enacts, "that all pleas of personal actions, where the debt or damage claimed is no more than 20*l.* whether a *balance of account or otherwise*, may be holden in the County Court without writ." Now, it is said that this is a case in which a plaint might have been levied in the County Court, because, it is contended, a debt which is reduced by a set-off to a sum within 20*l.* is within the meaning of the words "balance of account, or otherwise," in the 58th section. Looking at the whole Act, I think those words were meant to apply to cases where the parties had themselves balanced the account, or where there had been payment on account; but, whatever may be the meaning of those words, the present does not appear to me a case in which a plaint could have been entered in the County Court. The policy of the Act was to give jurisdiction in these courts for the decision of small disputes without a jury, otherwise we can hardly see any reason for the limitation of the jurisdiction of these courts. Here a large sum is in dispute. Here was a set-off of 80*l.* leaving a balance of less than 20*l.* This might involve questions of considerable nicety. The case might have turned upon some one item which might be more than 20*l.* or it might depend on items in the set-off to a large amount. In looking for the proper mode of construing the Act, we must, therefore, consider the inconveniences to which any particular construction might lead, and give the Legislature credit for having anticipated that inconvenience, and legislated with regard to it. What was the plaintiff's demand? It exceeded 20*l.*; therefore, if the plaintiff had sued in the County Court, and established his case, that Court must have adjudicated upon a sum exceeding 20*l.*; then it would have had to turn to the defendant's case to see how that account was to be rendered, and there again it would have to decide on a demand above 20*l.*; after which it would strike a balance between the accounts, and award its judgment thereupon. It would be, in fact, trying two cases, each of which was above 20*l.* and therefore beyond its jurisdiction.

Since the trial of this case, it has been decided by the Court of C. P. that where the plaintiff's debt is reduced below 20*l.* by set-off, the court at the trial will grant a certificate to empower the plaintiff to recover costs. (*Osmond* v. *Bone*, 1 Cox & Mac. 427.)

An action was brought in the County Court for the balance due upon some bills of exchange, the full amount of which would exceed 20*l.* At the

trial, the defendant contended that the judge had no jurisdiction, inasmuch as the plaintiff had no right, under the circumstances, to treat his claim as a balance; the judge, however, thought that he had. Upon a rule for a prohibition, it was held that as the question of jurisdiction involved the whole merits of the case, it being, in fact, whether there was a balance or not; and as the judge clearly had power to enter into the facts which raised that question, and as the affidavits were conflicting, the Court of Queen's Bench would not interfere with the judgment of the judge of the County Court. The Court of Queen's Bench also expressed its determination that it will not review the decision of a judge of the County Court, even upon a question of jurisdiction, where it is possible that the judge may have come to a right conclusion. (*Joseph* v. *Henry*, 1 Cox & Mac. 366.)

The plaintiff sued out two plaints in a County Court. The particulars of the first exceeded 20*l.* for work, and labour, and goods, sold and delivered, and purported to give credit for a set-off, shewing a balance under 20*l.* The particulars of the second plaint were items for money lent, and interest, not exceeding in the whole 20*l.* Some of the items in the two plaints were contemporaneous, but there were no items in any other way connected. Both plaints were heard, and the plaintiff recovered certain amounts in respect thereof. The affidavits in support of a motion for writs of prohibition, on the grounds that the first plaint had been reduced below 20*l.* by a set-off, and that the two plaints constituted but one entire cause of action, shewed that these objections were raised at the hearing, and that there had never been any account stated in which it had been agreed that the set-off should be allowed; but did not shew that the plaintiff, at the hearing of the first plaint, proved more than 20*l.* to be due, or that there had not been at the hearing an arrangement between the parties to allow the set-off. It was held that the affidavits were defective upon these grounds; that the judge might inquire if the defendant had consented to the reduction of the claim, and that such consent need not appear on the particulars of demand. It was held, also, that the particulars of the two plaints did not form one cause of action, within 9 & 10 Vict. c. 95, s. 63, and that this was not a case of splitting demands. (*Kimpton* v. *Willey*, 1 Cox & Mac. 350.)

The audit clerk of a railway company, under an agreement for 140*l.* a year, determinable by three months' notice, or payment of three months' salary, was improperly dismissed without notice; and being sued by the company for moneys in his hands belonging to them, claimed to set off the three months' salary, to be paid under the agreement, for an improper dismissal without notice. It was held that he was entitled to set it off. (*The East Anglian Railway Company* v. *Lythgoe*, 1 Cox & Mac. 380.)

Where the plaintiff's account exceeded the limits of the County Court jurisdiction, and he sought to bring it within by showing an agreement that cross accounts were to be set off between him and the defendant's testator (the defendant being sued as executor), and the Judge of the County Court proceeded on that view of the case, and found for the plaintiff, but there was no evidence of any binding agreement to that effect, the Court of C. P. granted a prohibition to restrain all further proceedings in the County Court. (*Wilson* v. *Franklin*, Executor, 1 Cox & Mac. 497.)

We shall next proceed to review the cases which have been recently determined on the subject of "splitting demands."

TO THE EDITOR OF THE LAW TIMES.

SIR,—Your zeal in the cause of law reform will not, I am persuaded, restrain you from the insertion of a reasonable complaint. By the County Court Extension Act the barrister and attorney are so far placed on equal terms, that the former can claim neither pre-audience nor exclusive audience, but not a word is said about precedency in other respects. Since the Act has come into operation, a Bar has, in several places, been in regular attendance at the County Courts, but these courts are so constructed that there is seldom to be found any seats reserved for counsel, and very often no seats at all, the whole being frequently, and the most eligible being always, appropriated by the attorneys.

Of course I desire no introduction of personal precedency according to the heraldic tables, for this would simply involve the gross absurdity in many instances of placing the barrister above the judge, many members of the Bar being baronets, knights, or the sons of peers, and as such taking precedence in private life before any of the County Court judges, both personally and officially. But there is in all professions and in all official departments some principle of precedency established for the due maintaining of decency and order. Thus I need hardly tell you that if a minister of state wishes to see another officer inferior in the service he "sends for" him. The premier would "send for" the colonial secretary, and the colonial secretary would "send for" the commander-in-chief. In general, seniority is the title to precedency, as among the Bar; and I believe that there is not a court in the kingdom, except the County Courts, in which seats are not reserved exclusively for the Bar, as an arrangement tending both to decorum and convenience, there being no doubt that the barrister is entitled to precedency of the officers of the court.

This is not a mere matter of professional vanity, or I, at all events, should not complain of the omission.

By the late Act, the Attorney can appear in no case in which he is not "acting generally in the action;" which has been rightly construed to mean acting on a retainer directly from the client himself. In such cases the Attorney is already familiar with the facts before he comes into Court; but the counsel frequently never hears of the matter till his brief is delivered to him in Court, perhaps only a few minutes before the cause is called on. Last week, four briefs, in as many causes, were delivered to me at the sitting of the Court; one of these briefs extended to twenty-six sheets. Even the ablest counsel requires that his personal convenience should be reasonably consulted, when he is thus called upon, at ten minutes' notice, to construct a case entirely new to him. I trust, therefore, that our judges will at once direct that in all cases sufficient accommodation shall be reserved for the Bar, giving them in this respect the precedency to which they still continue to be undoubtedly entitled.

Having regard to the importance which these Courts are daily acquiring, the places in which they are held ought to be specially constructed for them. A few days since, I was in Court, with three other barristers; we not only could find no seats for a considerable time, but we were obliged to apologise to the judge for appearing unrobed, because, though our wigs and gowns were on the table, no apartment could be found in which to robe ourselves.

While addressing you on such a topic, I may observe that the prohibition of the Extension Act is not carried out as it should be. I have never yet heard of a single instance in which a counsel has violated the etiquette of his profession in accepting instructions immediately from the client; but I have been three times present when attorneys have received papers and fees from other attorneys in open Court; on one of these occasions only did I see a fee pass; but in all the instructions were openly given; and in the personal remarks into which one of the attorneys was unluckily betrayed, he publicly charged his opponent,—and very truly, too,—with being the advocate for another attorney, in violation of the Act: he was reprimanded by the Court for his intemperate remarks, but no investigation was made into the charge. I think our judges should order a universal practice of interrogating both the attorney and the client, in limine, as to the party whom the former had retained; if the practice were thus compulsory and invariable it would not be invidious in any given case.

One word more. In several Courts the attorneys have assumed the gown and bands. If they think it decorous and respectful to appear in their professional costume, it is right to do so. I believe it is always the rule with the proctors in our Ecclesiastical Courts; but then they should adopt their proper robe, as officers of the Court. The official dress of the attorney or solicitor is a close, stuff gown, with short sleeves of a peculiar form. I rather think that the old name of this sleeve is "manchet." It is as absurd in the attorney to put on the counsel's gown, or any partial imitation of it, as it would be for an undergraduate to appear in hall or chapel in the gown of a master of arts, or for a serjeant-major to substitute epaulets for the cheveron. The bands are no part of the attorney's professional dress. But if the robes are assumed for the purpose of misleading the gaping suitors by whom the courts are filled, as to the position of the attorney, then it becomes nearly allied to the offence of obtaining money under false pretences, and is unquestionably a fraud upon the Bar.

"Live and let live" is a homely proverb, and a very just one; it is very difficult for either branch of the Profession to gain a decent livelihood by it in these times, but let us, at least, have a fair chance.

A BARRISTER.

ASSISTANT CLERKS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I am glad, amongst others, that your attention has at length been drawn to the heavy grievance which, from the establishment of the County Courts, has been sustained by the *Assistant Clerks*, who nearly do all the *work*, and in some instances have very serious responsibilities. In short, *I contend that they are the prime movers and workers of the whole system, and are wretchedly paid.* Unless some change for their advantage takes place, depend upon it that many of them will be compelled to resign. Now that the jurisdiction of the Courts has been extended, and is sure to be still more so, Assistant Clerks *must be Attorneys*, and of ability and experience too.

I would suggest, therefore, that the learned judges who are to frame a scale of costs in other respects, should be empowered to regulate the salaries of Assistant Clerks. One hardship to an Assistant Clerk is, that his partner (if he has one) is totally excluded from all practice in the courts.

I am, Sir, yours, &c.

ANOTHER ASSISTANT CLERK.

27th Sept. 1852.

THE BAR AND THE ATTORNEYS.—On Saturday last Mr. Tyrell, the judge of the Exeter County Court, announced his determination with respect to an application made by Mr. Ring, on behalf of the Bar, for exclusive audience in cases of insolvency. He stated that he should confine himself to the point of the law—whether he ought or could grant to the Bar the exclusive audience which had been asked for. It had been urged very strongly that this Court sat, in cases of insolvency, not as a County Court, but as an offshoot from the Court for the Relief of Insolvent Debtors; and that although as the County Court, it was bound by certain rules, it was not bound by the same rules when it was dealing with insolvent cases, because it dealt with such cases only by virtue of a delegated authority. Now it was quite true that when an insolvent prisoner applied for his discharge, he was obliged to present his petition, in the first instance, to the Insolvent Debtors' Court in London; and that the petition, after being duly lodged in that court, came down to the County Court for the purpose of being heard and disposed of. But it did not come down by virtue of any delegated jurisdiction. The commissioners above could not delegate their jurisdiction, for they did not possess it. They had no more to do with the case, in point of exercising any discretion over it, than any stranger. It must be sent by the Act of Parliament to the County Court sitting in the place where the party had resided for the last six months. If, within that time, he had resided in two different places, then indeed the commissioners could exercise a discretion, but only to the extent of determining to which of the two places it should go. They did not delegate any authority of their own. He then looked carefully through the statutes, and considered that the jurisdiction in insolvency was given to this Court as a County Court, and not an offshoot from the Court for the Relief of Insolvent Debtors. But, even assuming that it were otherwise, in that case the practice of the Court would come under the operation of a rule which had been framed under the provisions of an Act of Parliament, and had thus become part and parcel of the law of the land. By that rule (the 91st) it was declared that "the provisions of the statute, 9 & 10 Vict. c. 95, s. 91, as to the persons who shall be allowed to appear for any party, in any proceeding in the County Courts, shall apply to all proceedings in insolvency, or for protection." Therefore, in whatever character he was sitting—whether as a County Court, or as an offshoot from the Insolvent Debtors' Court—if that rule was still in operation he was bound to follow it, and to reject the present application. If, however, that rule had been repealed by a statute subsequently passed, then he was bound by the provisions of that subsequent statute, which empowered him to hear, if he pleased, a barrister retained by or on behalf of any party, but which gave no right whatever, of exclusive, or even of pre-audience. He was quite clear, therefore, that whatever view he took of his own position, in reference to those cases, the application made by Mr. Ring was one which he had no power to grant.—*Devonshire Chronicle.*

UNAUTHORISED LEGAL FORMS.—At the Redditch County Court, on Saturday last, before Mr. Benjamin Parham, Judge, a defendant in one of the causes heard produced a printed notice which had been sent to him by the plaintiff respecting the debt claimed. This document, which was surmounted by the royal arms, purported to be "the only legal notice under the County Courts Act," an extract from which was quoted in proof of its validity. Mr. J. Powell, solicitor, of this town, who was engaged in the case, called the attention of his Honour to this form, and also to the words of the County Courts Act, the 25th section of which provided that every person who should serve any forged process, or deliver to any person any paper, falsely purporting to be any summons or other process of the Court, or who should act, or profess to act, under a false colour or pretence of such process, should be guilty of felony. His Honour, therefore, intimated to the plaintiff in the case that he had assuredly committed

an offence in using such a paper as that before him, but as he had probably erred in ignorance, he would accept his promise not to offend in a similar way in future. The judge also sent for Mr. Lewis, the printer of the notice in question, and, having made him aware of the provisions of the Act, cautioned him against issuing such publications, to which Mr. Lewis expressed his readiness to attend.—*Birmingham Journal.*

THE LAWYER.

LETTERS FOR PAYMENT OF DEBT.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I am inclined to doubt your law in the LAW TIMES of 25th instant, p. 4, "if the debt is paid without more, you can only ask the costs of the letter; you cannot compel them, if refused."

See 1 Jurist, 740; *Morrison* v. *Simmons*, 1 Burn & Ad. 559; 1 Dowl. Prac. Cas. 525.

I apprehend that if a client chooses to authorise his attorney to insist upon payment for one letter before action, a tender of the debt without the charge for letter would be held insufficient.

It is quite true that there is not a mutuality between the attorney and the debtor so as to warrant the attorney compelling payment for a letter; but I submit that a creditor is entitled to have his debt paid so far free of cost. That he has incurred it, and unless the amount is tendered with the debt he may go on, get a verdict or judgment on the plea of tender (which, in such a case, would not be made out), and have the cost of letter allowed on taxation.

I do not say that I would advise such a course, but I think it might be safely presumed.

Thus—The debt being.....	£30	0	0
Cost of letter incurred under sanction of the cases cited		3	6
Has really become a debt due to plaintiff	£30	3	6

How can a tender of the 30*l.* answer that?

I am, Sir, yours, &c.

A. T. STEAVENSON.

Darlington, 27th September, 1852.

MASTERS IN CHANCERY.—As already stated, on the first day of Michaelmas Term, two of the Masters in Chancery (James W. Farrer and W. Brougham, esqrs.) will be released from their duties, and the Lord Chancellor is empowered to release the remaining Masters. There is a clause in the same Act (15 & 16 Vict. c. 80), which is not generally known, by virtue of which parties may be required to wind up proceedings before the Masters. It states that, in order as expeditiously as may be to wind up all the causes, matters, and things, which may from time to time be depending before or have been referred to the Masters, it shall be lawful for every Master at any time to summon, as he shall deem fit, all or any of the parties to any cause, &c. so depending, or their solicitors, and thereupon to proceed and give such directions and make such order as he may think necessary for the purpose of settling and winding up the same; but any such order shall be subject to be discharged or varied by the Court, upon application made for that purpose, and the Master shall be at liberty to proceed, for the purposes aforesaid, in the absence of any of the parties or solicitors neglecting or refusing to attend the summons.

THE MERCANTILE LAWYER.

THE case of *M'Calmont* v. *Rankin*, 20 Law T. Rep. 1, should be read by all who are concerned with mercantile law, if only as being one of the ablest judgments of the most learned Lawyer of our time. A. a firm in Liverpool, by letter agreed with the English agent of B. a colonial firm, to accept the agency of that firm, and to make advances, in consideration of all consignments being made to them. The A. firm accordingly made advances, and were advised by the B. firm of its intention to consign a ship and its cargo to them, to the credit of the consignors, and they forwarded a power of attorney to the A. firm to sell the ship on its arrival. Thereupon, relying on the promised consignment, A. firm made a further advance to the English agents of B. The B. firm, however, got into difficulties, and before the ship sailed, assigned it, with the cargo and freight, to another firm, who duly registered it in their own names, and they afterwards assigned it to a third firm, who duly registered it in the name of one of its partners. The master appointed by A. was changed by his assignee, and the new master was retained by the third firm, by whom the ship and cargo were consigned to their own agents at Liverpool, with a power of attorney to sell the ship, and the usual invoices, bills of lading, &c. addressed to their agents. On the arrival of the ship in England, it was claimed by the A. firm. Were they entitled to it by virtue of the promise and the power of attorney, or had it passed legally to the then holders. Lord ST. LEONARD'S held that the A. firm had no claim to it. For the reasons why, the reader is referred to the judgment, which, like all those which we have preserved of the present Lord Chancellor, is given *verbatim*. It is our purpose thus to place in the hands of the Profession a complete collection of the judgments of Lord ST. LEONARD'S. They will be equally valuable for present reading and for future reference, and being *verbatim* reports, they may be always relied upon for citation *as authorities*.

CORRESPONDENCE.

ASSURANCE OFFICES.

TO THE EDITOR OF THE LAW TIMES.

SIR,—The attention of the public has been for some time past very much drawn to the position of Life Assurance Companies, and now we are enlightened on the subject by pamphlets from the actuaries of two Scotch offices (Mr. Thomson and Christie). The object of these gentlemen appears to be simply to throw dirt on all new offices, and to extol and recommend the *old ones*.

For this purpose a certain number of new offices, good and bad, are mixed up together in a table, the object of which is to shew what every person of common sense knew before the two above-mentioned gentlemen wrote on the subject, viz, that the expenses of the first five years of an Insurance company amount to a great deal of money, and sometimes exceed the portion of capital paid up.

If these gentlemen would favour us with their views, and form data as to the old companies, the world in general would be much more obliged to them, for it has at present nothing to go by, as their accounts are not forthcoming.

The remedy for the present state of things is obvious. Let all Insurance Companies be put on the same footing; let all their accounts be filed at proper periods, under the pain of a large penalty in the event of default; and let there be a government inspector, having the power to compel all insolvent companies to close their establishments.

It is owing to the competition of new companies that those leviathan establishments, the Sun, Globe, Pelican, &c. now give the assured a portion of their profits.

When we know that one *old company* allowed one of their junior clerks to embezzle upwards of 60,000*l.* and that another gave 16,000*l.* to their actuary, in order to get rid of him, there would appear to be as good reasons for looking after the old companies as the new ones.

It always has a suspicious appearance when old companies change their names. Why did the Freemasons transform itself into the Albert, the Dissenters into the General, and the Licensed Victuallers into the Monarch?

I am, Sir, yours, &c.

ANTI-HUMBUG.

P.S. What Scotch Insurance Office was it that lost 20,000*l.* or thereabout, by its connection with a Joint-Stock Bank in the North, at Newcastle, I believe? Of course neither Mr. Christie nor Mr. Thomson were in the mess, though they know all about it. It was an *old* office.

TO THE EDITOR OF THE LAW TIMES.

SIR,—The outrageous fees charged for power to swear affidavits in Chancery in the country deter many solicitors, on their admission, from becoming masters extraordinary.

In these days of diminished incomes to the Profession, and particularly now that a stir is being made on the subject of masters extraordinary, is it not a fitting opportunity for requiring that the *profitable* privilege of swearing affidavits should now be granted at something less than the "current price?" I am, Sir, yours, &c.

Sept. 29, 1852. KENT.

NOTICES OF NEW LAW BOOKS.

The Practical Statutes of the Session of 1852. By WM. PATERSON, Esq. Barrister-at-Law. London: Crockford.

THE huge tome that every succeeding year adds to the statutes of the realm has been long a standing jest with the public and a nuisance to the Lawyers. Fourteen or fifteen hundred folio pages closely printed are a formidable arrival at the office, whether contemplated with a view to reading or reference. But the truth is that a considerable portion of this pile of print consists of new laws, with which the English Lawyer has no concern. About one-third of the whole is usually devoted to Ireland, Scotland, and the colonies, and the constantly-repeated Mutiny Acts, and some Supply Acts make up another third; so that, upon the average, about one-third only of the annual volume of statutes is of any interest or value to the practitioner. Yet was he obliged to buy the whole, and what was still worse, to carry this ponderous load in his bag whenever he wanted a reference in a court or elsewhere. If, as often happened, he had occasion to refer to several volumes, a waggon would be necessary to convey the burden.

It was the experience of this great inconvenience that suggested the publication of a series of the *Practical Statutes* of each session; that is to say, all the statutes that the English Lawyer can ever require to use, omitting the Irish, Scotch, Colonial, and Supply statutes. By this arrangement the bulk has been so reduced that all the real legislation of the session affecting the Lawyer is contained in a small volume that can be carried in the pocket. Instead of a huge quarto, a duodecimo admits of easy conveyance to court or elsewhere of any number of volumes to which the practitioner may have occasion to refer. To make the work still more useful, the editor adds explanatory notes and introductions to each statute, and a much more copious index is provided than that found in the bulky editions of the statutes at large. Every statute is printed verbatim.

Of this series three volumes have now appeared, and they have been received with growing favour by the Profession, as their practical utility and convenience have been tried and proved. The new volume for the last Session is remarkable for being the largest in size, and in its contents the most important of them. The Session in which nothing was expected to be done, has really done more than any within our memory. This volume comprises, among others which in any ordinary year would have been deemed great measures, the Common Law Procedure Act, the Equity Reform Acts, the Copyhold Enfranchisement Act, the Passengers Act, the Patent Law Amendment Act, the County Courts Improvement Act, and the Trustees Act. These have been copiously annotated by the Editor, and he has introduced the new rules in his notes to the Chancery Reform Act. The convenience and advantage of this compact edition of the Practical Statutes will be apparent from this, that the entire cost of the volume containing all the above, and about thirty others, is less than that of one of the editions of the Common Law Procedure Act alone!

This series will be made still more valuable by the design now in progress of publishing, in like shape, the Practical Statutes of previous years, omitting from them all the repealed statutes and parts of statutes, and adding, in notes, all the decisions of the Courts upon their construction. This will, in fact, supply *the whole law* in its best and most compact form. Thus, the volume for 1849, now in the press, contains the New Bankruptcy Act and the Second Winding-up Act. On both of these there have been a vast number of decisions by the Courts. All of these will be collected in notes, so that the Lawyer will be enabled to refer from the words of the statute to the notes at the foot of the page, and see in a moment what construction the Courts have put upon the section he is reading. The value of this will be at once recognised by every Practitioner. This gives him *the whole law* as it has been framed by the Legislature and expounded by the Judges, and that is what he wants, but what he has not hitherto possessed.

The Patent Law Amendment Act, and Patent Law generally as affected by that Statute. By PETER BURKE, Esq. Barrister-at-Law. London: Benning.

THE Act of last session certainly effected considerable improvements in the Law of Patents; but we cannot help sharing to some extent the doubts of those who question the policy of a patent law under any form. Inventions, so called, are rarely such in reality. Ninety-nine patents in a hundred are for improvements on some former invention; and the practical effect is to prohibit other persons from improving. However, the prejudice runs the other way, and so long as patent is permitted, the law that regulates it should be simple, efficient, and inexpensive. Notoriously it has not been so hitherto, and it remains to be seen whether the Act of last session will make it so. Mr. BURKE'S edition of it is got up with his usual care. He describes

briefly the law as it now *is*, dividing his subject into—1. The patent, and the form of its duration. 2. The subject of the patent. 3. The patentee. 4. Matters relating to the patent. 5. Legal proceedings relative to patents. 6. Analysis of the new Act. We can recommend it as a compact and useful edition of the statute.

The Code of Practice of the High Court of Chancery, &c. By THOMAS KENNEDY, Solicitor. Vol. II. London: Butterworth.

THIS volume has issued from the press most unseasonably. It consists for the most part of a collection of the orders from 4th March, 1846, all or most of which will be wholly invalidated by the new practice. Appended to these are the new Chancery Reform Acts; but they also are useless without the orders which are not yet issued. We cannot conceive the purpose of this work at this time. The first volume was a good collection of the then practice of Chancery; but the greater portion of this one is obsolete before it appears. Even in its best form, it is not a treatise on practice, but merely a gathering together chronologically of orders and statutes. Why did not Mr. Kennedy wait for the new orders, and then publish a treatise on the new practice? *That* would have been useful: this is useless, or worse—it will perplex.

Chancery Cases and Dicta. By C. PURTON COOPER, Esq. Q.C. Nos. 1 to 4. Butterworths. An interesting collection of dicta of great Equity Judges, collected from the reports, each one of which states some principle of law or rule of practice, to which Mr. COOPER has sometimes appended illustrative remarks of his own. These extracts vary in length from three lines to a page. We presume that it is a gathering from his common-place book—a sort of "elegant extracts" or "beauties" of the reports—some are from manuscript notes. When completed, it will be one of the curiosities of legal literature. It shews the editor to be a diligent reader.

Mr. KAIN has published a *fourth* edition of his popular *System of Solicitor's Book-keeping*, its general acceptance proving that experience confirms its utility.——Dr. LEECH has issued a second edition of his *Suggestions on the Law of Lunacy and Lunatic Asylums*; and Mr. WARD, of Maidenhead, has produced a second edition, with improvements, of his *Treatise on Investments*, of which we had occasion to report so favourably on its first appearance, when we prophesied for it the success it has since found.

LEGAL INTELLIGENCE.

FEES OF PARLIAMENTARY COUNSEL. — The public in general are aware that an Act of Parliament was passed during the late session for the removal of Smithfield Cattle Market, but few persons would imagine the amount of the legal expenses incurred in obtaining that Bill. Among the items in the civil contingencies which were voted in June last, there appears the following costs and expenses on account of the Smithfield market:—Removal Bill, 3,612*l.* 7*s.* 9*d.* Mr. Hume, a few days afterwards moved for a return of the "particulars" of this charge, and, in consequence, a copy of the attorney's bill "of costs, charges, and expenses for soliciting the Smithfield Market Removal Bill," has been presented for the edification of the public. It appears from this document that three counsel were engaged to conduct the Bill through its several stages, viz.:—Mr. Serjeant Wrangham, Mr. Edwin James, and Mr. T. F. Ellis, each of whom in the first instance received a retaining fee of 6*l.* 5s. 6d. Next comes fee to Mr. Serjeant Wrangham, with papers, 83*l.* 3s. 6d.; ditto, Mr. E. James, 44*l.* 12s.; ditto, Mr. Ellis, 44*l.* 12s. Next follows Mr. Serjeant Wrangham, for eight consultations, six guineas each; ditto, Mr. James; ditto, Mr. Ellis. Mr. Serjeant Wrangham, eight attendances before committees of the House of Commons, ten guineas each; ditto, ditto, to Messrs. James and Ellis. When the Bill got into the Lords these learned gentlemen each received a fresh retainer with a fee of six guineas each. Then comes Mr. Serjeant Wrangham, with papers, 88*l.* 14s.; Mr. E. James, 66*l.* 13s.; Mr. Ellis, 44*l.* 12s. Then there are eight more consultations, with a fee of six guineas to each counsel, and seven attendances before a committee of the House of Lords, for which the learned gentlemen are paid a further fee of ten guineas each, making altogether 1,273*l.* to be divided among the above three gentlemen. The attorney's share of the spoil was in proportion; the attendances charged are innumerable, and the charge varied according to the rank of the party attending. The attorney's bill, exclusive of fees paid to counsel, amounted to 1,819*l.* of which 25*l.* was disallowed on taxation. Among the charges under the head of fees paid to officers of parliament, appears:—House of Lords, fees, 33*l.* 4s. which was disallowed, and a note appended, stating that "no such fee was paid or payable." Whatever might be the necessity for the removal of Smithfield-market, most people will think that it might have been effected at far less expense.

AMENDMENTS IN THE COMMON LAW COURTS.—A benefit is conferred by the Common Law Procedure Act by the 222nd section, by which the Courts and Judges thereof may order amendments of all defects and errors in any stage of the proceedings in civil causes, with or without costs, at their discretion.

BANKRUPTCY AND INSOLVENCY.—It is provided by the 142nd section of the Common Law Procedure Act, that in future the bankruptcy or insolvency of either the plaintiff or defendant shall not abate an action in the Common Law Courts.

ENTERING APPEARANCES.—By the new Common Law Act, entering "appearances," according to the statutes of 12 Geo. 1, c. 29, and 2 Wm. 4, c. 39, is abolished.

NEW WRITS.—The new writs to be used under the Common Law Procedure Act (15 & 16 Vict. c. 76), which will take effect on the 24th of October next, have been issued. They are very simple in form and language, and in accordance with the schedule annexed to the statute.

WRITS OF SUBPŒNA AND SUMMONS.—Among the proceedings about to be abolished in the Court of Chancery are the writs of subpœna and summons upon a claim.

CONCISENESS.—It is directed by the new Chancery Act that bills of complaints are to be "concise" after the commencement of the Act, and to be divided into numbered paragraphs, but not to contain interrogatories.

FEES.—There is a provision by which the Lord Chancellor is empowered by any order or orders to be made by him to vary, reduce, or abololish all or any of the fees payable in relation to proceedings in the Court of Chancery, and to substitute one or more fees in lieu thereof, and to direct that all or any of such fees from a day to be named in such order or orders, and thenceforth, be collected by means of stamps, to be provided and used in the manner prescribed by the Act.

METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.—On Saturday last a meeting was held at the Lion Hotel, Shrewsbury, for the purpose of extending the operations of this association. Mr. Wm. Shaen, M.A. the secretary of the association, attended. We observed in the room the following solicitors connected with the vicinity:—Messrs. Jackson, Craig, Palin, Brougliall, E. Hughes, Thos. Griffiths (of Bishop's Castle), Gordon, and Newill. Mr. Shaen addressed the meeting, explaining the advantage of obtaining a widely special organisation of the Profession so as to obtain more speedily those various measures of legal reform which were of so much importance and so much desired by the Profession, instancingespecially the repeal of the certificate duty, and the modification of the agency clause in the County Courts, by which an attorney, as the law stands, must either attend in person or else instruct a barrister. Mr. Shaen was listened to with great attention, and several solicitors came forward and enrolled themselves as members of the Metropolitan and Provincial Law Association.

Mr. Hugh Cavendish Coleman, of Lincoln's-inn-fields, has been remanded by the Lord Mayor, on a charge of having "unlawfully, falsely, wilfully, and solemnly declared in writing, before William W. Fenn, notary public, that he had never, sold, mortgaged, or otherwise incumbered a certain property referred to in the said declaration, or his separate interest therein, the same being a material particular in the said declaration." The property in question was an income arising from houses and other sources, valued at 450*l.* yearly, to which Mr. Coleman will be entitled at his mother's death. It is alleged that he *had* incumbered the property before he made the declaration; on which false declaration he has raised 400*l.* and 300*l.* respectively. The case has not been fully gone into yet; but sufficient was stated to prevent the Lord Mayor's admitting the accused to bail.

THE GAZETTES.

Bankrupts.

Gazette, Oct. 1.

SHARLAND, THOMAS WARD, tea broker, Liverpool, Oct. 13 and Nov. 9, at eleven, Liverpool. Com. Perry. Off. as. Morgan. Sol. Holden, York-buildings, 13, Sweeting-st. Liverpool. Petition, Sept. 23.

BRADSHAW, EDWARD THOMAS, dealer in bricks and timber, Manchester, Oct. 13 and Nov. 18, at twelve, Manchester. Off. as. Fraser. Sols. Sale, Worthington, and Shipman, Manchester. Petition, Sept. 23.

PITT, EDWARD, ship owner, builder, and licensed victualler, East Donyland, Essex, Oct. 4, at eleven, Nov. 15, at two, Basinghall-st. Com. Goulburn. Off. as. Nicholson. Sol. Abell, Romney-terrace, Horseferry-road, Westminster, and Colchester. Petition, Sept. 27.

PEARMAN, WILLIAM, draper, 179, Shoreditch, Oct. 12, at one, Nov. 12, at twelve, Basinghall-st. Com. Fonblanque. Off. as. Stansfeld. Sols. Sole, Turner, and Turner, 68, Aldermanbury. Petition, Sept. 27.

Insolvent Debtors.

Bagley, J. victualler, 7*d.* Apply to *J. Harward*, Stourbridge.—*Bishop, J.* farmer, 2*s.* 6*d.* Apply at the County Court, Ledbury.—*Hall, J.* victualler and postmaster, 11*d.* Apply to *J. Hayward*, Stourbridge.—*Lee*, Rev. C. clerk, further, 1*s.* 4*d.* Apply to *W. D. G. Gaches*, Cathedral Gateway, Peterborough.—*Palmer, E.* cabinet maker, first, 2*s.* 5½*d.* Apply to *P. Pearce*, of East Stonehouse.—*Phelps, W. E.* late surveyor of inland revenue, 3*s.* Apply at the County Court, Salisbury.—*Smallcombe, J.* farmer, 1*s.* 3½*d.* Apply at the County Court, Ledbury.

Assignments for the Benefit of Creditors.

Gazette, Sept. 21.

Astley, A. china, glass, and earthenware dealer, Victoria-st. Manchester, Aug. 24. Trust. J. Lishfield, accountant, Cheetham. Sol. J. Law, Manchester.—*Oxley*, J. grocer, Seymour-place, Camden-town, Aug. 31. Trusts. J. Bishop, wholesale grocer, Warnett's-yard, Mincing-lane, and J. Brown, wholesale tea dealer, Gracechurch-st. Sols. Tucker and Sons, Sun-chambers, Threadneedle-st.—*Stafford*, H. tobacconist, Liverpool, Aug. 23. Trusts. H. W. Banner, accountant, Liverpool. Sol. T. Bity, Liverpool.—*Tanner*, J. tailor and draper, Bristol, Sept. 3. Trusts. J. V. Broughton, woollen warehouseman, Oxford-st. and C. Godwin, woollen draper, Bristol. Sols. J. Livett, Bristol; and C. P. Allen, Carlisle-st. Soho.

Gazette, Sept. 24.

Lightoller, E. engineer, millwright, and general iron-founder, Manchester, Sept. 14. Sol. H. Trappes, Manchester.—*Marshall*, W. grocer, Plymouth, Aug. 28. Trusts. S. Stanbury, grocer, and G. K. Fream, merchant, both of Plymouth. Sol. A. Rooker, Plymouth.—*Saul*, G. passenger agent and coal proprietor, Liverpool, Sept. 23. Trust. E. Roberts, accountant, Liverpool. Sol. Evans and Son, Liverpool.—*Symonds*, R. jun. cabinetmaker, Saint Austoll, Cornwall, Sept. 18. Trust. T. R. Oliver, cabinetmaker, Falmouth. Sol. J. Roberts, Truro.

Partnerships Dissolved.

Gazette, Sept. 21.

Barlow, T. Findlater, W. and *Keetley*, W. coach-builders, Birmingham, as regards Barlow, Sept. 15. Debts paid by Findlater and Keetley.—*Cockshaw*, W. and *Squires*, W. printers and engravers, Leicester, Aug. 13.—*Dear*, J. C. and *Warrener*, J. wholesale and retail toy and fancy warehousemen, Bishopsgate-street-without, and South-eastern Arcade, Southwark, Sept. 17. Debts paid by Warrener.—*Hoare*, C. and *Beck*, C. wholesale tea and coffee dealers, Lime-st. Sept. 18. Debts paid by Hoare.—*Lloyd*, J., S. and E. jun. sadlers, harness makers, sack, rick cloth, and waterproof cloth manufacturers and rope and twine spinners, Leatherhead, Great Bookham, and elsewhere, Sept. 16.—*Monkhouse*, J., J. C. and J. E. spinners and carpet manufacturers, Barnard Castle, and at Bowes, July 21.—*Payton*, F. and *Gillinder*, W. brick and tile makers, Ashton, Aug. 19. Debts paid by Payton.—*Priest*, J. M. and *Cooper*, C. linen drapers, Bedford, Aug. 1.—*Roberts*, J. and *Orford*, C. W. miners and coal owners, Cooper's Level Colliery, Forest of Dean, and Gloucester, Aug. 5.—*Soutter*, S. and C. M. ship owners, sail makers, ship chandlers, and wharfingers, Bell-wharf, Lower Shadwell, Sept. 13. Debts paid by C. M. Soutter.—*Stephenson*, S. and T. tanners, Ulverston, July 2.—*Wheeley*, J. *Pearson*, R. and *W. H.* and *Warren*, J. rope makers, Thorne Quay, Yorkshire, Sept. 8.—*Warren*, H. *Bonomi*, J. and *Fahey*, J. proprietors and exhibitors of the picture of the Nile, originally exhibited in the Egyptian Hall, and recently at Bury, and of the picture of the Holy Land, now exhibiting at the said Egyptian Hall, as regards Bonomi, Sept. 18. Debts paid by Warren and Fahey.—*Young*, T. B. and T. B. jun. ship brokers, commission agents, ship chandlers, and sail makers, Sunderland, May 18, 1851.

Gazette, Sept. 24.

Armstrong, T. B. and *Lewis*, W. Schmoongers, Mount-st. Grosvenor-square, Sept. 22. Debts paid by Armstrong.—*Biddles*, T. H. and *Peace*, J. lace manufacturers, Nottingham, Sept. 20.—*Brackenbury*, R. W. and *Blenkarn*, J. surveyors, Newark-upon-Trent, Sept. 18.—*Butler*, C. and *Williams*, J. W. surgeons and apothecaries, Brentwood, Aug. 9. Debts paid by Butler.—*Chevalley*, C. and T. linen-drapers, Chelmsford, Sept. 15.—*Dickins*, S. and *Johnson*, E. grocers and tea dealers, Wigan, Sept. 21. Debts paid by Dickins.—*Dunn*, R. and *Hinchcliffe*, J. machinists, Coventry, Dec. 20.—*Field*, C. and *Sons*, wax chandlers, wax bleachers, sealing-wax manufacturers, wafer makers, and soap manufacturers, Upper Marsh, Lambeth, June 18.—*Grindrod*, E. and *Hankins*, T. painters and plasterers, Rochdale, Sept. 20.—*Hamlet*, T. and S. A. licensed victuallers, St. John-square, Clerkenwell, Sept. 21. Debts paid by T. Hewitt.—*Hopkins*, D. sen. J., D. jun. and E. iron-founders and chain manufacturers, Wednesbury, Aug. 26. Debts paid by J. and D. Hopkins.—*Horne*, H. *Haworth*, T. *Horne*, R. sen. *Horne*, R. *Pickup*, E. and *Horne*, H. jun. calico power loom weavers and manufacturers, Holcome Brook, Tottington, Lower End, Bury, as regards Haworth, Aug. 30.—*Lawton*, J. and C. cotton doublers and manufacturers, Macclesfield, Sept. 20. Debts paid by C. Lawton.—*Lomax*, W. and J. tallow makers and grease refiners, Liverpool, Sept. 16. Debts paid by Leach.—*Manning*, W. and *Hayman*, E. M. oil and drug merchants, Bristol, June 30.—*M'Ewen*, G. and *Broadfoot*, J. omnibus proprietors, Manchester, Sept. 13.—*Povey*, W. and T. gas engineers and silversmiths, Derby-in-Sept. 20.—*Robinson*, J. and *Cowell*, Council, *Chaon*, J. and *Lear*, E. confectioners, Exeter, Sept. 23.—*Smith*, A. and *Rogerson*, J. small ware manufacturers, Burton-upon-Trent, Sept. 21.—*Stephenson*, W. and *Keighley*, J. leather-dressers, Bradford, Sept. 20. Debts paid by Stephenson.—*Thomas*, G. and *Green*, G. P. agents, Clement's-st. Mill-st. Cheapside, Sept. 18.—*Thomas*, J. and *Bates*, A. commission agents, Manchester, Sept. 20. Debts paid by Thomas.—*Welch*, J. and *Thompson*, J. iron masters, Deepfields, Coseley, Sedgley, Sept. 10. Debts paid by Thompson.

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To Readers and Correspondents.

A correspondent inquires whether railways do not come within the Observance of Sunday Act (3 Ch. 1, c. 2)? *We think not. Certainly it would be impossible to enforce it. The Act itself has virtually fallen into disuse.*

"F. E." (Derby).—*It was an oversight, in the absence of the Editor.*

"Y. E." (Torquay).—*We know of no book that treats the subject in the practical manner desired by our correspondent, and with the impending changes, it would not pay to publish one.*

"S. B."—*The question has been already answered.*

"X. W."—*We fear that our correspondent has no remedy. The sending was a voluntary act on his part, and the receiver is not bound to take care of it.*

SCALE OF CHARGES FOR ADVERTISEMENTS.

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THE LAW TIMES.

SATURDAY, OCTOBER 9, 1852.

HINTS TO BUSY PRACTITIONERS.

[Under this title we propose from time to time to remind the practitioner of useful facts which, amid the claims of business and the flood of changes in the law, he may possibly have overlooked. As we also may overlook many, we shall be obliged by "hints" from any of our readers.]

ABSCONDING DEBTORS.

Just now "the diggins" offer an irresistible temptation to people in debt to run away from creditors at home and seek fortune abroad. We beg to remind our readers that there is a very summary method of preventing the escape of such light-heeled debtors, which was provided by a recent statute called "The Absconding Debtors Arrest Act."

If any client applies to you to know what he can do to prevent the flight of a customer who has not paid his bill, you may tell him that there is an easy remedy. He has but to make an affidavit of the debt, and apply to a County Court Judge or a Commissioner of Bankruptcy, who is empowered to issue a warrant for the apprehension of the absconding debtor, and thereupon he will be taken into custody, and to obtain his release must either pay the debt or give sufficient bail for its payment, or for a bona fide purpose to contest it, and to pay if defeated.

All the practice under this useful Act, with the forms of the necessary affidavits, &c. will be found in a little volume published by Mr. Knox (a), and to that the reader is referred for the details. Our object here is only to remind the Profession, at this moment, when it is so much wanted, that such a ready process exists. At all the ports of emigration we understand that it is daily enforced, and that by means of it an immense amount of debts has been recovered.

(a) The Absconding Debtors Arrest Act. By J. Malcolm Knox, Esq. Barrister-at-law. Crockford. Price 1s.

DEFENDANTS ABROAD.

The Common Law Procedure Act has wrought a great improvement by enabling proceedings to be taken against defendants resident abroad. Hitherto they have escaped, because process could not be served upon them. After the 24th of this month, they will cease to enjoy that impunity. The clause is as follows:—

"In case any defendant, being a British subject, is residing out of the jurisdiction of the said Superior Courts, in any place except Scotland or Ireland, it shall be lawful for the plaintiff to issue a writ of summons in the form contained in the schedule (A), which writ shall bear the indorsement contained in the said form, purporting that such writ is for service out of the jurisdiction of the said Superior Courts, and the time for appearance by the defendant to such writ shall be regulated by the distance from England of the place where the defendant is residing; and it shall be lawful for the Court or judge upon being satisfied by affidavit that there is a cause of action, &c. &c. and that the *writ was personally served* upon the defendant, or that reasonable efforts were made to effect personal service upon the defendant, and that it came to his knowledge, and either that the defendant wilfully neglects to appear to such writ, or that he is living out of the jurisdiction of the said Courts, in order to defeat and delay his creditors, to direct from time to time that the plaintiff shall be at liberty to proceed in the action in such manner and subject to such conditions as to such Court or judge shall seem fit."

This does not permit the plaintiff to take the person of the defendant, but it will enable him to proceed to judgment and execution, and take all the property which the defendant may have in England.

Now it is notorious that thousands of persons are living abroad, drawing incomes from property in England, and setting their creditors at defiance, protected in their dishonesty by the absurdity of the old law which limited process to our own shores.

That obstacle to justice is now happily swept away, and the practitioner should remember that he can proceed against a defendant abroad as effectually as against a defendant at home.

RESULTS OF THE RECENT REFORMS.

There is one contingency in favour of the Common Law Bar, to which we made no reference last week, but which certainly offers some prospect of a little business as a partial compensation for that which they have lost. Evidence is to be taken in the Equity Courts vivâ voce. Now the examination of witnesses is an art only acquired by much experience, and in that the Equity Bar is entirely wanting. They have not learned it by personal practice, and they have not even sat in courts where it is conducted, so as to catch from others something of the peculiar tact that it demands. It is, therefore, probable that sagacious Solicitors will take skilful and practised men from the Common Law Bar to examine witnesses for them in the Equity Courts. Such a man would have an infinite advantage over an unpractised opponent of the Equity Bar, who has not learned the art of handling a witness so as to elicit what he wants, and exclude what is undesirable. Henceforth a suit in equity, like an action at law, will mainly depend upon the evidence of the witnesses, and it will be of primary importance that the examination should be conducted by the ablest men, and in such a matter experience is ability, and experience can only be procured at the Common Law Bar, where the business of Counsel is, and his daily duty is to deal with witnesses and evidence, unless a wondrous skill is attained, which would certainly become the more apparent if pitted against an unpractised adversary, even though he were the most subtle lawyer in the Courts of Equity.

Should this course be adopted by the Solicitors, the Common Law Bar will share something of the advantages that the great Reforms in Equity Procedure will bring to the Profession in those more fortunate courts.

THE ATTACK ON THE ATTORNEYS.

The war against the Attorneys so unwisely begun, is as unwisely continued. The spirit of hostility is spreading and taking a bolder tone. An extraordinary instance of it has just been brought under our notice.

Readers will doubtless remember a remarkable prospectus of a projected Law Society at Birmingham, stated to be under the auspices of two Barristers, who proposed to give cheap law to the subscribers without the assistance of an Attorney.

At first we were inclined to think it a joke. We gave place to the document without a commentary, expecting to be enabled to publish an instant and indignant repudiation of it by the two gentlemen to whose names it gave so strange a notoriety. But they were silent, and we were reluctantly compelled to believe that it was no jest, but a painful reality.

We have since learned that the subject came under the consideration of the Bar mess of the Midland Circuit, and that one of the gentlemen, Mr. Grace, solemnly repudiated all knowledge of the document, and declared that his name had been placed there without his concurrence, upon which assurance he was acquitted by his peers. But Mr. Kennedy, the other name in the prospectus, answered not.

It is to be regretted that Mr. Grace did not instantly do here what he did with his Circuit, and thus at once relieve himself from the odium of being an assenting party to such a use being made of his name. He *ought* to have done so, for the document had been circulated largely in Birmingham, and he was bound, in justice to himself, to take the earliest opportunity publicly to declare it a forgery, and to do this where it would be seen by those whom it mainly concerned—the Profession of which he is a member, and which was itself compromised by the proceeding to which he was alleged to be a party. However, he has satisfied his Circuit that he was altogether ignorant of the society and innocent of any connection with it or its prospectus, and to that fact we are very glad to give publicity, although we should have much preferred to have done so some weeks ago when the document was first reprinted here.

As to Mr. Kennedy, there is unhappily no mistake. He not only admits the fact, he boasts of it. It seems that the society is a genuine one—that it has been got up by him; that his purpose in doing so is to supply its members with his own law, at a cheap rate, and, if he can, to annihilate the Attorneys. He makes no secret of it. The proofs are before us and the world. He has called a public meeting of the society; he has addressed to them a long speech in support of the position which he has taken up; that speech is printed in a pamphlet, and widely circulated, and a copy of it is now before us, challenging criticism.

He opens with an avowal of his object in the formation of the Cheap Law Society, of which he is to be the cheap adviser. He professes patriotic motives, of course, although the practical effect is to make business for himself by offering to do it cheaper than other Lawyers. He says,—

I seek to do for law what Cobden has done for corn—to make it cheap and reasonable. By law I do not mean litigation; the less of that the better. I mean legal advice, instruction, assistance. The County Courts have brought the administration of justice to the poor man's door; but you want more than that. You want to have within your reach a class of honourable advocates and faithful interpreters

of the law. In plain English, you want a Bar; but a Bar accessible and useful to the people.

According to Mr. KENNEDY, the Attorneys are worse than useless:—

It is better that the client should have direct access to the Barrister for advice. It is better you should go to the fountain-head than be obliged to drink from the muddy stream.

In support of his argument he chooses to assume that an Attorney can know nothing of law or practice—a proof how little he knows the Attorneys:—

Just so, in the brief prepared by the Attorney to obtain Counsel's opinion, many little circumstances may be omitted upon which the question only turns. The Attorney has not thought of asking the necessary questions of his client. The Counsel, who is more far-seeing, would have asked those questions. Hence it is that the opinions of the most able Barristers are so often expressed with doubt, caution, and reserve, because they have not sifted the facts themselves, and they know how a slight variation of facts changes the complexion of a case; and many a cause is lost, as I have found in my own experience, for want of an early and direct communication with Counsel.

Some Counsel may be "more far-seeing" than *some* Attorneys; but we venture to assert that there would be more "far-seeing" men among any ten of the Attorneys in a provincial town than among the same number of those juniors who are likely to compose the Local Bars under the new order of things. But Mr. KENNEDY is not content with charging the Attorneys with being less "far-seeing" than local Barristers; he proceeds to offer them this insult:—

If the attorney *were only the barrister's clerk*, as *under a good system he should be*, there would be no harm in his introducing the case *to his master*: but a person who requires an additional fee, and has power to intercept the case without letting it reach the barrister, answers very little useful purpose that I can see.

Mr. KENNEDY seems to form a fair estimate of his own worth, for he deems his advice not worth a guinea, or at least he shews so great an anxiety to lower his price that it may be presumed he finds some difficulty in obtaining a guinea for it. He is all for free trade and competition in law:—

There is an idea that it is degrading to a barrister to take less than a guinea fee. False pride again! And (what is more to the purpose) sheer nonsense! and the sooner people get such rubbish out of their heads, the better! The price of every commodity adjusts itself. Leave counsel's fees to find their natural level, and find it they will. To fix anything of the kind at an artificial standard, is contrary to every maxim of political economy and common sense. A rule that counsel should never receive less than a guinea, is about as wise as a rule that no man shall sell a pound of sugar for less than eighteen pence.

He then makes a mighty discovery. The guinea fee was not an invention of the Barrister, but a clever contrivance of the Attorney, to conceal his own charges:—

The only persons who benefit by this assumed standard are the attorneys. The man who looks charily at a guinea before he parts with it is less alarmed at the prospect of paying six-and-eightpence, and knocks at the attorney's door with a happy assurance, which is not abated until he makes certain discoveries: viz. that three sums of six-and-eightpence make a pound; and that a bill of costs for instructions, attendances, letters, perusals, &c. make a sum-total exceeding the outlay which he originally intended.

Perhaps there is more truth in a portion of the following remarks than the speaker was conscious of:—

Guinea-fee rules indeed! What are we barristers that we should arrogate to ourselves, or that others should arrogate for us, a fixed minimum remuneration? Our opinion may be worth fifty guineas, or not more than five shillings, according to circumstances. When Milton sold his "Paradise Lost" for fifteen pounds, why did not the indignant world remonstrate, and cry out—"Here is a poem worth all the mines of Peru given away for a paltry sum to a bookseller!" What is a Counsel's opinion that we should make so much fuss about it? We barristers are gentlemen and scholars—as a class, we are above the attorneys; we have better education, higher thoughts, greater capabilities—would that we had more opportunities for their development!—but we must not think too much of ourselves for all that. The world was not made to coin artificial guineas for us.

Indeed Mr. KENNEDY *does* appear to know himself. He avows the cause of his detestation of guinea-fees—they bring nothing to him. Half-a-guinea or five-shilling fees might yield him something, but with guinea-fees he has no chance of employment—to use his own words, "each (ought to) get what his labour is worth." We are not jesting. It is his own confession:—

One thing is certain. Guinea-rules will never bring real guineas into *my* pocket. And on the other hand, half guinea-rules will not compel me to accept half a guinea, if my services are worth more. While the sign-painter is getting his five shillings, Landseer is making his five hundred pounds. Each gets what is labour is worth.

At this point we part with Mr. KENNEDY'S pamphlet for a few days. But we shall return to it, for there is much curious matter yet to be gleaned from it.

Besides, Mr. KENNEDY only *says* what many *feel*, and *does* what many are desirous of doing.

COUNTY COURTS.

IT will be seen that Mr. TYRELL, the very able Judge of the Exeter Court, has decided, after time taken to consider, that Counsel are not entitled to exclusive audience in Insolvency, thus differing from most of his colleagues, who considered themselves bound by the decisions of the Insolvent Court, or rather that they were called upon to adopt the rules of practice recognised in the Court above. But Mr. TYRELL bases his judgment upon a different view of the relationship of the Insolvent Court and the County Courts sitting in insolvency. He holds that the County Courts are not merely an extension of the Insolvent Court with its judges acting under a delegated jurisdiction, but he is of opinion that the County Courts are vested by the statute with an original jurisdiction in insolvency. If so, it was clear that the provisions of the County Courts Acts would regulate the Court in its insolvency jurisdiction, and by those provisions Counsel were expressly forbidden to have exclusive audience. Again, the 91st rule of the County Courts, framed under the County Courts Act, directed that the regulations as to parties appearing should apply to insolvency. The rule is, however, virtually repealed by the subsequent statutes regulating advocacy; but then the repealing statute itself declared that Counsel should not have exclusive audience. There can be no doubt that Mr. TYRELL is right.

The use of sham County Court notices is a favourable dodge with sham Lawyers, Accountants, and Debt Collectors. One of these cases was brought under the notice of the Redditch Court last week, and the parties were threatened with punishment under the provisions of sec. 25. It would be well if our readers would remember that such a power exists and wield it against every culprit. They would thus soon rout out the vermin who infest the County Courts.

THE NEW COMMON LAW PRACTICE.

WE believe that Mr. KERR'S New Practice will be published on Saturday next.

It will be followed by a volume which will be no less useful—a complete collection of all the forms that will be required at Common Law under the altered practice, including every form of writ, of pleading, affidavits, &c. &c. giving in a small compass that which has hitherto occupied a huge tome in CHITTY'S Practice. This will be prepared by Mr. FISHER, Barrister-at-Law and Special Pleader.

Together these works will form a complete Common Law Practice *as it is to be*.

NEW CHANCERY PRACTICE.(a)

HAVING already examined the Master in Chancery Abolition Act, and the Improvement of the Jurisdiction of Equity Act, we now come to "The Act for the Relief of the Suitors of the High Court of Chancery," 15 & 16 Vict. c. 87, which received the royal assent on the 1st July, 1852, a measure of great practical importance—not only on account of the reforms which it effects itself, but also on account of others of still greater magnitude, of which it is in all probability the forerunner.

The principal objects of the Act are stated in the preamble, which recites, that whereas several of the officers of the Court of Chancery have from time to time received, and do now receive, for their own use, various fees and emoluments for business done and transacted by them in or by virtue of their respective offices; and that it is expedient that such officers should not henceforth retain such fees and emoluments for their own use, but that they should receive adequate salaries for the performance of their respective duties; and that it is expedient that for the relief of the suitors of the said court further provision should be made with respect to the fees now payable by them, and that increased facilities should be afforded for the despatch of the business of the Court, and that certain offices connected with the Court should be abolished.

It enacts that, after the 28th October, 1852, no officer of the Court of Chancery, or of any of the Judges thereof, is to be entitled to receive and retain for his own use, *any fee or reward whatsoever*, and all of them now entitled to receive and retain any fees or other payments for their own use, which by virtue of the Act they will cease so to receive, and whose salaries are not fixed by the Act, are, while they continue to hold their respective offices, to receive in lieu of all fees or other payments whatsoever now received by or paid or payable to them, for their own use, such *salary* as, having regard to the emoluments heretofore received by them, and to the nature and tenure of such offices, the Commissioners of her Majesty's Treasury shall think just, and upon the present holders of such offices respectively ceasing to hold the same, the Commissioners of her Majesty's Treasury are to fix the salaries to be thereafter received in respect thereof with reference to the nature and duties of such offices respectively. (Sec. 1.)

All officers, however, of the Court of Chancery, and of the Judges thereof, heretofore entitled to receive any fees or emoluments for their own use, and their successors in their respective offices and their several and respective clerks or agents, are to continue to receive and take the same until the Lord Chancellor shall by order otherwise direct, and all *such fees and emoluments are to be accounted for and paid by them monthly into the Suitors' Fee Fund Account*: the amount to be verified by the affidavit. (Sec. 2.)

And after the 28th October, 1852, if any officer or Judge shall, for anything done or pretended to be done relating to his office, wilfully take or allow any person to take for him, or on account of any person by him named, any fee, gift, gratuity, or emolument, or anything of value, other than his salary and what is allowed or directed to be taken by him under the Act, or any order to be made under the Act, the person so offending, when duly convicted, is to forfeit and pay the sum of 500*l.* and is to be removed from any office in the court, and is to be rendered incapable of holding any office therein, or otherwise serving her Majesty, her heirs, or successors (sec. 3), and may be prosecuted either by information, by the Attorney-General, by criminal information, or by indictment. (Sec. 4.)

As before remarked, these are most important provisions. When the officers of the court are paid by *salaries* instead of fees they have no interest either in multiplying the number of steps to be taken in a suit, or in prolonging its duration, not for the purpose of the benefit of the suitor, but for the purpose of increasing their own emoluments. Neither, again, have such officers any longer an inducement for doing what for many a long year they most effectually did, and what the officers of the Ecclesiastical Courts are now contriving to do, viz. to throw every obstacle in their power in the way of those whose object it has been to relieve the suitor from ruinous delays and expenses, and the Court, from the opprobrium which, notwithstanding the enlightened principles of its jurisprudence, it has, by its confused and barbarous mode of procedure, but too richly deserved. Formerly (not to mention those in higher places), the Masters

(a) Continued from p. 15, ante.

and their clerks were paid by fees. Hence the origin of the procedure in the Masters' offices, which was, to use the words of the Chancery Commissioners, "obviously calculated to cause unnecessary delay and expense;" and, they add, "the system had its origin at the time when Masters and their clerks were paid by fees. Every warrant, every copy, every report, indeed every proceeding carried its fee, small, perhaps in individual amount, but the multiplication of which *pressed heavily on the suitor and yielded large emoluments to the officers.*" (Ch. Comm. Rep. 30.)

Next comes a provision by which it is to be hoped that one source of very great expense in Chancery proceedings will eventually be much diminished. By the 5th section, after 28th October, 1852, the several allowances for copying provided for and directed to be paid to the clerk of reports, the clerks of entries, the assistant clerk of affidavits, the clerks of the examiners, and the copying or writing clerks of the Masters, by any Act or Acts of Parliament, is to cease; and power is given to the Lord Chancellor, by order to regulate the making and delivering *copies of the pleadings and other proceedings* and documents, and the manner in which such copies are to be paid for, and the amount of charge for the same, and by whom the amount to be so charged is to be received. (Sec. 5.)

A very important power is next conferred upon the Chancellor, by order or orders *to vary, reduce, or abolish all or any of the fees* payable in relation to proceedings in the Court of Chancery, and to substitute one or more fee or fees in lieu thereof, and to direct that all or any of such fees shall *be collected by means of stamps.* (Sec. 6.) And, after the day named in such order or orders, unless and until he shall otherwise direct, *none of the fees mentioned therein are to be received in money, but by a stamp*, denoting the amount of the fee which otherwise would be payable; and where any fee shall be payable in respect of any document, such stamp, at the expense of the party liable to pay the fee, and in such manner and under such regulations as shall by any order or orders be directed, is to be stamped or affixed on the vellum, parchment, or paper on which the proceeding in respect whereof such fee is payable is written, printed, and ingrossed, or which may be otherwise used in reference to such proceeding. (Sec. 7.)

The Commissioners of Inland Revenue are from time to time, upon the receipt of any order of the Lord Chancellor, to give the necessary directions for carrying the same into effect, and to provide everything for that purpose, and are to do, or cause to be done, everything that is necessary for the receipt and collection of the money to be paid for such stamps; and the said commissioners are to cause separate and distinct accounts to be kept of all sums of money received or collected by them under the provisions of any such order or orders, and of all costs, charges, and expenses incurred by them, or by their direction, in carrying the same into effect; and power is given to the said commissioners to pay and to deduct and retain out of such moneys all such costs, charges, and expenses, and also to deduct all sums of money repaid on allowances for spoiled stamps; and, after such deduction, they are from time to time, and in such manner as the Lord Chancellor shall by any order direct, pay the moneys so to be received and collected into the Bank of England, to the credit of the Accountant-General, to be placed to the account there, intituled "The Suitors' Fee Fund Account." (Sec. 8.)

Power is then given to the Lord Chancellor to direct any of the officers of the Court of Chancery, whose duties may be diminished in consequence of the substitution of stamps for money payments, or otherwise, under the Act, to act under the directions of the Commissioners of Inland Revenue in the sale and distribution of stamps; but if it appear to the Lord Chancellor, that it is not convenient that they should act as aforesaid in the sale and distribution of stamps, the Commissioners of Inland Revenue may appoint persons for such sale and distribution, and may allow them such discount or poundage as they may think fit. (Sec. 9.)

Power is given to the Commissioners of Inland Revenue to make regulations for the allowance of such stamps *as may have been spoiled or rendered useless, or unfit for the purpose intended, or for which the owner may have no immediate use, or which, through mistake or inadvertence may have been improperly or unnecessarily used*, and such allowance is to be made either by giving other stamps in lieu of the stamps so allowed, or by repaying the amount or value to the owner or holder thereof, after deducting the discount or poundage (if any) allowed on the sale of stamps of the like kind. (Sec. 10.)

The provisions contained in the several Acts for the time being in force relating to stamps under the care or management of the Commissioners of Inland Revenue, are, so far as the same are applicable and consistent with the provisions of the Act, in all cases not thereby expressly provided for, to be of full force and effect with respect to the stamps to be provided under or by virtue of the Act, and to the vellum, parchment, or paper on or to which the same stamps are to be impressed or affixed, and be applied and put in execution for collecting and securing the sums of money denoted thereby, and for preventing, detecting, and punishing all frauds, forgeries, and other offences relating thereto, as fully and effectually to all intents and purposes as if such provisions had been therein repeated and specially enacted with reference to the said last-mentioned stamps and sums of money respectively. (Sec. 11.)

No document which by any order made as aforesaid shall be required to have a stamp impressed thereon or affixed thereto, is to be received or filed, or be used in relation to any proceeding in the Court of Chancery, or be of any validity for any purpose whatsoever, unless or until the same shall have a stamp impressed thereon or affixed thereto, in the manner directed by such order: but it is *provided* that if at any time it shall appear that any such document which ought to have had a stamp impressed thereon or affixed thereto, has, through *mistake* or *inadvertence*, been received or filed or used without having such stamp impressed thereon or affixed thereto, the Lord Chancellor may order that such stamp shall be impressed thereon or affixed thereto, and thereupon every proceeding in reference thereto shall be as valid and effectual as if such stamp had been impressed thereon or affixed thereto in the first instance. (Sec. 12.) Officers guilty of fraud or wilful neglect in relation to stamps are liable to be dismissed by the Lord Chancellor. (Sec. 13.)

It is to be hoped that both with regard to the allowance for copying pleadings, and with regard to fees, which will now be paid into "The Suitors' Fee Fund," the LORD CHANCELLOR will exercise the powers entrusted to him, by diminishing as much as possible these great burthens upon the suitor. An illustration of the sums swallowed up by the fee fund is given in the very able evidence of Mr. LAKE before the Chancery Commissioners (Appendix, A, 175-181), where a bill of costs in a hostile administration suit is analysed,—a fair specimen of the result, in the shape of costs, of such a suit under the old system. The total of the bill of the plaintiff, as carried in for taxation between party and party, *up to the order for sale*, was 2,864*l.* Of that 307*l.* were for stationer's charges (an item which will be greatly diminished under the new mode of procedure); 518*l.* *payments into the fee-fund*, or near one-fifth of the whole; 645*l.* for fees to Counsel; and 1,362*l.* to the Solicitor. These items show, notwithstanding much has been done, that much remains yet to be done, to diminish the extravagant sums paid into the fee-fund.

It is, doubtless, a great improvement to collect the fees by stamps in preference to their being received by various officers in cash; the amount of what is received will now be accurately known, and the mode of collection is both more convenient and economical.

A question, however, of great importance with reference to this subject still remains to be decided, viz. whether it is right, or how far it is right, that the suitors of the Court should, in fact, be taxed, in order to pay for the administration of justice? This Act seems to go in the direction towards what is the correct principle on which such fees should alone be levied, viz. all the expenses of maintaining the Court and its officers should be paid by the country at large, but those expenses of a suit which are incurred in the *management* of property in the hands of the Court should, in the same manner as if it were in the hands of private trustees, be borne by the property itself, or those interested in it.

PAYMENT INTO COURT.

Does the payment of money into court in the County Court admit the cause of action, so as to preclude the defendants from adducing evidence which would be an answer to the plaintiff's entire claim for damage? It has been lately held that it does; but though at first sight this may seem the correct view, on a review of the cases and of the origin of the practice, the propriety of this holding may well be questioned. The case was as follows:—In the Leicester Court, in September last, an action was brought by a drover against the Midland Counties Railway Company, for injury done to sheep through their non-delivery at Leicester in due course, both for deterioration in value and for loss of market. The damage was laid at 7*l.* 10*s.* and the company paid 5*l.* into court. At the trial, upon proof by the plaintiff for the full amount claimed, the defendants met the amount of damage by counter evidence, and finally proposed to put in evidence the ticket signed by the plaintiff at the time which, according to a class of cases of which the *Great Northern Railway*, appellant, v. *Morville*, respondent (21 L.J. 119, Q.B.) is the last, formed the contract between the parties, and by its terms covered all claims of the kind sought to be established; but the learned judge (JOHN HILDYARD, Esq.) held, that the ticket was not admissible in evidence, and directed the jury, that as the payment into court admitted *the* causes of action, the only question for them was the amount of damages; and a verdict was subsequently given for the plaintiff for the whole amount.

Now, with all deference to the learned judge, it may well be doubted whether this direction would not be held wrong in the Superior Courts; and in order to determine whether this doubt be well founded, let us examine into the origin of the practice, and, after referring to the most recent decisions, see if there exists any difference in principle between the practice of those Courts and that of the County Court in this respect.

Payment of money into court was first introduced in the Superior Courts in the reign of CHARLES II. when KELYNGE was Chief Justice, to obviate the difficulties arising on the proof of the plea of tender, and as a consequence, "in an action for general damages upon a contract, or for a tort or trespass, as tender could not be pleaded, so the defendant was not allowed to bring money into court." (Tidd's Practice, 8th edit. vol. 2, p. 670.)

But this practice was extended to all personal actions, with some few exceptions, by stat. 3 & 4 Wm. 4, c. 42, s. 21, and the rules of Court consequent thereon.

Under the old practice before this statute, it was doubted, says TIDD (p. 675), whether plaintiff could be nonsuited after bringing money into court; but there seems to be little reason for such doubt. When money is brought into court, unless the defendant will accept it with costs in discharge of suit, it is considered as paid before action brought, and struck out of the declaration, and the action proceeds for the residue of the demand, in like manner as if it had originally been commenced for that only.

In one of the most recent cases of this kind (*Story* v. *Finnis and Others*, 6 Ex. 123), which was an action on the case for pound-breach and rescue, the defendants pleaded payment into court of a certain sum, alleging that the plaintiff had no damages ultrà;—replication, damages ultrà; and it was held that the plea did not admit that the pound was the plaintiff's, or that the defendants had been guilty of rescue; and in discharging the rule for a new trial on the ground of misdirection, POLLOCK, C.B. said,—"It has long been held that the payment of money into court on a general indebitatus count, admits no more than that *a* cause of action exists, with damage to the extent of the amount paid in; and we think that the same principle applies to the case of wrong." And the authority of this case was fully recognised in a still later case in the Common Pleas (*Schreger* v. *Carden*, 21 Law T. Rep. 135, C. P.), which was an action against the sheriff for damage done to a cup, taken under a distress by his officer; and the plea of payment of money into court was held not to dispense with the necessity of proof of taking the particular cup, and the plaintiff was nonsuited on a motion to set this nonsuit aside. JERVIS, C. J. drew a distinction between admitting *a* cause and *the* cause of action, and the rule was refused.

On the authority of these cases, it would seem that the payment of money into court in cases of tort in the Superior Courts, puts the parties in precisely the same position as in actions of assumpsit, where the declaration contains only the common counts; and then, upon the authority of the passage before cited from Tidd, p. 675, the action proceeds for the residue of the demand (that is, in this class of actions, for damages ultrà), in like manner as if it had originally commenced for that only.

It should be mentioned, that this payment of money into court is an anomalous proceeding in

pleading, since it is a departure from the rule that all pleadings must be either a traverse, or in confession or avoidance of some substantive allegation in the declaration; and it should be borne in mind, that when the money is once paid in, it is gone for ever from the defendant, and must in all events be paid to the plaintiff; and it would seem to be exactly as though the defendant gave as a gift so much to the plaintiff to put an end to further dispute, and said, "I only do this for the sake of peace; if you will go on, you must; but if you do, you must prove your case in all respects as though no such payment had been made, and I shall avail myself of every ground of defence that I might have had to your whole claim." It is true, that there does not seem to be any precise authority for this last position; but it is submitted with some confidence, that it is not the less laid upon principle, from analogy to the cases referred to; for if the payment into court does not dispense with full proof of the plaintiff's demand, how can it reasonably deprive the defendant of any just ground of defence? The County Courts are, it is submitted, in precisely the same position as the Superior Courts as to this practice, and should be bound by their authority. By the 9 & 10 Vict. c. 95, s. 82, it is enacted, that it should be lawful for the defendants in *any* action brought under this Act within such time as shall be directed by the rules made for regulating the practice of the Court, to pay into court such sum of money as he shall consider a full satisfaction for the demand of the plaintiff, together with costs, &c. This enactment extends to all actions, whether on contract or tort; and as no special rules are made in respect to the practice, it would seem that the practice of the Superior Courts should be followed, as far as practicable, in this respect.

Attention has now been called to the cases and several enactments on this subject; and with great deference it is again submitted, that the payment of money into court in this case ought not to deprive the defendants of any right they might have had to object to the plaintiff's cause of action; but the action should have been tried as res integra between the parties. It cannot, we think, be denied, that this is an important point, because, if the learned Judge is right, the attention of parties litigant should be called to the state of the law, that they may not be taken by surprise, as in all probability the solicitor of the defendants was on this occasion.

W. A. M.

THE ATTORNEY; (a)
HIS EDUCATION, PRACTICE, AND DUTIES.

CHAPTER XXVI.

BRINGING AN ACTION.

Your client has called, perhaps, to instruct you to bring an action for some wrong done to him, or to recover some right to which he believes himself entitled. He has a grievance, or imagines that he has one, and he desires your assistance to procure for him redress or revenge. Now commences the most difficult and trying portion of your duty.

Your first care will be to listen with patient attention to his story: to express no opinion upon it until it is concluded, but only to procure such explanations of obscure passages as may be necessary for your thorough comprehension of it. In the first instance, it will be better not to take any note in writing, but merely to receive his version of it, as it will certainly be given to you, coloured by the hopes, fears, or passions of the narrator, and for all of which you must make ample allowance when you come to advise him upon the course most proper to be pursued under the circumstances detailed. You may be sure that you have heard only a part of the whole; that one side only has been exhibited to you; that whatever is favourable to your client's claim has been exaggerated, whatever is opposed to it has been ignored. It is very rarely indeed that the Lawyer learns the very truth from those who come to consult him. Not merely are men prone to deceive themselves in whatever concerns their interests or their passions, but they are too much given to purposely deceiving their legal advisers, as if they thought that, were the truth known, the Attorney's zeal would be abated, or as if they hoped that he would reproduce to the Court the case as it had been given to him by themselves. Although it is usually of the utmost importance that the truth, and the whole truth, of a case should be laid before the legal adviser, how rarely is anything in the shape of an admission or a confession to be obtained from the client; with what persistency will he adhere to his false account of it, even when assured that the result depends upon his concealing or misrepresenting nothing. One of the earliest lessons learned by the young practitioner is the little reliance that can be placed upon the statements of his clients in any matter that much affects their interests or their passions.

Bearing this in mind, you will hear patiently *all* he has to say, neither flattering his feelings by any expression of approval, nor ruffling them by dissent. You will very quietly, by a few judicious questions, elicit such other facts as he may have kept out of sight. When you have obtained as much information as you are likely to procure, do not pronounce an opinion at once, unless the case is an extremely clear one, but tell him that, if he will call again *on the following day*, you will carefully consider it in the meanwhile and then advise him upon it.

We recommend you thus to defer your opinion for two reasons. In the first place, it is due to yourself that you should not hastily advise on a matter which might require some research and must deserve deliberate consideration. Secondly, it gives to your client also time to cool and to reflect with something like calmness; it compels him to "*sleep upon it*," and we all know the proverbial value of *that* preliminary to action. He will probably come to you on the following morning much more placably inclined than when he quitted you, and more willing to receive your opinion with respect, even if it should be adverse to his wishes.

In the meanwhile a serious, a difficult, and a most delicate duty is imposed upon you. It is unfortunately the fact that a client does not like to be advised contrary to his own desires. If you tell him that your conscientious opinion is adverse to his claim, instead of giving you the credit that is your due for having advised him contrary to your own interest, he is too apt to accuse you of cowardice, or incapacity, or indifference, and not improbably he will quit you for another of less scrupulous honesty, who will flatter his passions with promises of success, and conceal from him the dangers of defeat, and the costs even of a victory. Nevertheless, painful though the choice may be to you just struggling into practice, and to whom a client and an action are of incalculable worth, your duty is perfectly plain, and you must adhere to it with stern resolve not to be tempted from its straight path. You are bound to advise your client for *his own* substantial benefit. You have no right to consult his desires in opposition to his true interests. Whatever the consequences, you are bound to tell him the very truth, and advise him according to your honest judgment of what will be best *for him*, even as if you were advising in your own matter. If, after having so acted, he should leave you for another, the reflection of *duty done* must be your consolation, and trust then in the truth of the motto, that honesty is the best policy in the long run, however for a time it may appear to be the less profitable path.

For considering the case with a view to advising upon it, you should take a note of it, as soon as possible after your client has left you, and then review it with two objects kept steadily before your mind. First, you must endeavour to gather from the statement, as made by your client, and afterwards extended and corrected by your inquiries, and calling in the aid of your common sense and knowledge of the world to try his assertions by the rules of *probability*, what are the *true* circumstances of the case. Of course you cannot hope, on such ex parte statements, to arrive at the *actual* truth; but you may so far exclude what is obviously misstated as to obtain a general knowledge of the grounds of the dispute and the probable position of the various parties. Above all, be extremely careful to take *both sides* into your consideration, for, in all disputes, there *are* two sides—and consider what your answer to it would be if you were advising the defendant instead of the plaintiff, and what sort of a defence you would then set up. Thus you will learn what answer is likely to be made to your action, if you commence it.

Having in this manner ascertained, as correctly as you can, the facts on which you are advising, you must next see what is the *law* applicable to them, so as to be sure that you have law as well as facts upon your side. In this be careful not to trust to your memory. Go to your *books*. Even if the subject be one with which you believe yourself to be perfectly familiar, refer to your text-book and to your reports, to be sure that the law is as you suppose, and that no shades of difference have been introduced by any recent cases. Nothing is so unsafe and treacherous as *memory of law*. Principles, indeed, are remembered easily enough; but it rarely happens that the facts of any case are so entirely within the four corners of a principle that it is not necessary to see whether some of them do not come within the exceptions, or so vary the case under consideration, as to take it out of the rule. Always, then, refresh your memory by reference to the best book in your library that treats of the subject; and if any parts of *Wise and Evans's Law Digest* (which gives all the cases, wherever reported, that appear during the half-year, arranged alphabetically, and, therefore, is an indispensable manual for practitioners) have appeared since the publication of the text-book, turn to the title of the subject in each part of the *Digest*, and see what cases have been decided upon it, and if any of them affect that on which you are advising.

Set down your opinion in writing, not for the use of your client, but for your own convenience afterwards, adding a list of the cases with their references which you have found to bear upon it.

Your client will come at the appointed hour, to receive your opinion. Delay may have made him more placable, but you are not likely to find him quite open to reason. You will yet require some tact in dealing with him.

If your opinion is favourable to his complaint; if you have come to the conclusion that really he has been wronged; that he has a good case; that *the right* and *the law* are both upon his side, and that his claim is capable of *proof*, you have an easy task; you will fall in with his mood; you will flatter his wishes, and he will hold your wisdom in the highest esteem.

But if you have arrived at a contrary opinion; if your conclusion is that he has no *case*: that the facts are not with him; that the law is against him; that he has *not* been wronged; that he has omitted to look at both sides; that satisfactory evidence cannot be obtained; that there is but small chance of ultimate success,—you have a more difficult, but not a more doubtful, duty. You must tell him honestly and plainly that such is your opinion.

But you are not bound to do this abruptly. Your duty is to consult his interest, and you would not do *that* by so offending him that he should leave your office and go to another Attorney, less scrupulously honest than yourself, by whom his passions will be fanned until he plunges himself into a lawsuit from which he only escapes with ruin. It is your business to save him from himself, if you can. You may, therefore, open your communication

(a) By the Editor of the Law Times.

with wholesome hints as to the costliness of a lawsuit—its uncertainties even when the case is most clear, and its anxieties always. A plain, businesslike statement of the probable *costs* will often cool down the most angry litigant in a manner wonderful to behold. You may say that "you will be very happy to conduct it; you will do for him all that can be done; you will retain the best counsel; there shall be no delay; the costs will be about so much if he succeeds, so much more if he fails, but this, of course, is a matter entirely for his own consideration. You have only to advise him on the legal part of the business, but you thought it right that he should know what the probable expenses would be before proceedings were commenced." If such remarks as these are put with caution, they will rarely fail of the desired effect with all clients, save those who do not intend to pay you if they lose. Having thus cooled the ardour of the would-be litigant, you may proceed to lay before him the doubts and difficulties of the case, unfolding your own opinion of it, with explanations of the reasons upon which it was founded, and closing with a candid statement of your advice that he should abandon, or compromise, or arbitrate, or make any settlement rather than hazard a lawsuit, but at the same time expressing your willingness to proceed if, after your frank explanation of the hazard and the cost, he should still persist in his resolve to make the attack.

THE LEGISLATOR.

NEW STATUTES.

15 Victoria, A.D. 1852.

[In this record of Legislation only the Statutes of practical utility are given at length. Of the others an abstract or the titles only are presented.]

Cap. LXXIV.

An Act to Defray the Charges of the Pay, Clothing, and contingent and other Expenses of the Disembodied Militia in Great Britain and Ireland; to grant Allowances in certain cases to Subaltern Officers, Adjutants, Paymasters, Quarter-masters, Surgeons, Assistant-surgeons, Surgeons' Mates, and Sergeant-majors of the Militia; and to authorise the Employment of Non-commissioned Officers. (June 30, 1852.)

Cap. LXXV.

An Act to Suspend the Making of Lists and the Ballot, and Enrolments for the Militia of the United Kingdom. (June 30, 1852.)

Cap. LXXVI.

This is the Common Law Procedure Act, and has been already given in full at pp. 130, 143, 152.

Cap. LXXVII.

An Act to abolish the Office of Lord Chancellor's Secretary of Bankrupts, and to regulate the Office of Chief Registrar of the Court of Bankruptcy. (June 30, 1852.)

Whereas it is expedient that the office of the Lord Chancellor's secretary of bankrupts should be abolished, and that certain regulations should be made with respect to the office of the Chief Registrar of the Court of Bankruptcy: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same:

1. *Office of secretary of bankrupts abolished.*—From and after the commencement of this Act the office of the Lord Chancellor's secretary of bankrupts shall be abolished.

2. *Appointment of the chief registrar of the Court of Bankruptcy.*—From and after the commencement of this Act John Campbell, esquire, one of the registrars of the Court of Bankruptcy, shall be the chief registrar of the said court, and he and his successors in office shall perform all the duties that have hitherto been performed by the Lord Chancellor's secretary in bankruptcy.

3. *Vacancies in office of chief registrar to be filled up from the registrars.*—On the resignation, removal, or death of the chief registrar of the Court of Bankruptcy for the time being, the vacancy thereby occasioned shall be filled up by such one of the registrars of the said Court for the time being as the Lord Chancellor shall in that behalf direct.

4. *Declaration of insolvency to be filed in office of chief registrar.*—From and after the commencement of this Act all declarations of insolvency and minutes of resolutions required to be filed in the office of the Lord Chancellor's secretary of bankrupts by any Acts or Act of Parliament now in force, shall be filed in the office of the Lord Chancellor's secretary of bankrupts under the provisions of such Acts or Act.

5. *Certificates of unclaimed dividends to be filed in office of chief registrar.*—The certificates by the one hundred and ninety-second section of "The Bankrupt Law Consolidation Act, 1849," directed to be filed in the office of the Lord Chancellor's secretary of bankrupts, shall, from and after the commencement of this Act, be filed in the office of the chief registrar of the Court of Bankruptcy.

6. *Certified copy of declaration of insolvency to be evidence.*—A copy of a declaration of insolvency or of such minute of resolution filed in the office of such chief registrar under this Act, purporting to be certified by such chief registrar or any of his clerks as a true copy, shall be received as evidence of such declaration or minute of resolution respectively having been filed.

7. *Retiring allowance to Mr. Robert Brown.*—And whereas Robert Brown, one of the clerks in the office of such chief registrar, is now of the age of seventy-nine years, and has been in such office since the establishment of a Court of Bankruptcy in the year one thousand eight hundred and thirty-one, and in consequence of his age he is now desirous of retiring from his office: be it therefore enacted, that from and after the commencement of this Act the said Robert Brown shall cease to hold his said office, and there shall thenceforth be paid to him during his life the annual sum of two hundred pounds, which annual sum shall be charged upon the moneys and securities standing to the credit of the account intituled "The Chief Registrar's Account," and shall be payable and paid at such times as the Lord Chancellor shall by any order or orders from time to time direct, together with a proportionate part thereof for the time which shall have elapsed from the last payment thereof to the day of the death of the said Robert Brown.

8. *Appointment of chief clerk in the office of the chief registrar.*—From and after the commencement of this Act, Edward William Smith, heretofore the chief clerk in the office of the Lord Chancellor's secretary of bankrupts, shall be the chief clerk in the office of the chief registrar of the Court of Bankruptcy, and shall continue to receive his present salary of five hundred pounds per annum so long as he shall hold such office of chief clerk; and on his resignation, removal, or death, and on the resignation, removal, or death of any of his successors, it shall be lawful for the Lord Chancellor to appoint a fit and proper person to supply such vacancy; and every such future chief clerk shall receive the net yearly salary of three hundred pounds, which shall be charged upon the moneys and securities standing to the credit of the account intituled "The Chief Registrar's Account," and shall be payable and paid at such times and in like manner as the salaries of the registrars of the Court of Bankruptcy are now paid.

9. *All acts done since death of late chief registrar made valid.*—All acts, matters, and things which, since the death of the late chief registrar of the Court of Bankruptcy, have been done and performed in the office of the chief registrar of the said court, or which, though actually done and performed by some other officer or person, ought to have been done and performed by the chief registrar, shall be as valid and effectual as if there had been a chief registrar of the said court, and as if such acts, matters, and things had been done and performed by him or under his authority.

10. *Present registrar to continue.*—The registrar now in attendance upon the Lords Justices of the Court of Appeal sitting in bankruptcy shall continue to attend their lordships on the hearing of such appeals; and all appeals to the said Lords Justices, and all affidavits and documents to be used on the hearing of any such appeal, shall be entered in the office of such registrar.

11. *Office of clerk of inrolments abolished, and duties transferred to office of chief registrar.*—From and after the commencement of this Act, the office of clerk of inrolments in the Court of Bankruptcy shall be abolished; and the duties of the said office, and the clerk at present employed therein, and all records, proceedings, books, papers, and documents in the office of the said clerk of inrolments shall be transferred to the office of the chief registrar in Basinghall-street, such records, proceedings, books, papers, and documents to be there kept as Records of the Court, all persons being at liberty to search for any of the matters so kept of record.

12. *Compensation to clerk of inrolments.*—The present clerk of inrolments in the Court of Bankruptcy shall be entitled to make a claim for compensation to the Commissioners of her Majesty's Treasury within six months after the passing of this Act; and it shall be lawful for the said commissioners, in such manner as they shall think fit, to inquire what was the nature of the said office, and what was the tenure thereof, and what were the lawful salary and emoluments in respect of which such compensation should be allowed; and the said commissioners shall award such compensation, if any, as they shall think just, and such compensation shall be charged upon the moneys and securities standing to the credit of the account entitled "The Chief Registrar's Account," and shall be payable and paid at such times as the Lord Chancellor shall by any order or orders from time to time direct.

13. *Interpretation of terms.*—In the construction of this Act the expression "Lord Chancellor" shall mean and include the Lord High Chancellor of Great Britain, and the Lord Keeper or Lords Commissioners of the Great Seal of the United Kingdom for the time being.

14. *Commencement of Act.*—This Act shall commence from and after the first day of June one thousand eight hundred and fifty-two.

Cap. LXXVIII.

An Act to enable the Commissioners of her Majesty's Works and Public Buildings to complete Improvements in Pimlico and in the Neighbourhood of Buckingham Palace. (June 30, 1852.)

Cap. LXXIX.

An Act to amend and further extend the Acts for the Inclosure, Exchange, and Improvement of Land. (June 30, 1852.)

We give only a summary of this statute.

1. No lands to be inclosed without the previous authority of Parliament.
2. Outfall drains.—Drains, &c. may be made in lands out of the parish in which the lands to be inclosed are situate.
3. Remedy in case of nonpayment of expenses.
4. Sale of land directed to be inclosed.—Meeting to consent to sale.
5. Meeting of persons interested to determine appropriation of surplus.
6. Resolutions at such meeting to be confirmed by commissioners.
7. Second meeting may be held.
8. Appropriation of surplus if resolutions disallowed.
9. Award to be made.
10. Award not to be impeached.
11. Sales how to be made.
12. Application of purchase money.
13. Obtaining possession of encroachments.—Expenses.
14. Village greens and allotments for exercise and recreation shall not be fenced in certain cases.
15. Report to be sent to the commissioners within one month from allotments being staked out. Possession not to be given without an order of the commissioners.
16. As to the allotment of fruit trees.
17. Deposit of orders of exchange and partition in certain cases.
18. Commencement of rentcharge out of labouring poor allotments.
19. Rentcharge may be sold towards expenses.
20. 8 & 9 Vict. c. 118, s. 54, need not be specially referred to in claims.
21. Allotments set out under Local Acts may be exchanged.
22. Application of compensation for common rights paid under the Lands Clauses Consolidation Act, 1845.
23. In cases of boundary appeal, commissioners may order production of maps, &c.—Costs of appeal.
24. Extending provisions of firstly-recited Act as to bond in cases of boundary appeal.
25. Power to recover costs in cases of feigned issue.
26. Costs incurred by commissioners to be deemed part of inclosure expenses in certain cases.
27. Fee to clerk of the peace upon the deposit of copy of inclosure award.
28. The word "parish" to include district having separate surveyor of highways.
29. Confirmed awards and orders may be corrected.
30. Copy of map may be annexed to the award.
31. Land held under separate titles, &c. by the same person may be partitioned.
32. Power to effect partitions and exchanges where parties interested in land, subject matter of partition, and also in the entirety of any land.
33. Penalty where stock found on regulated pastures.
34. Short title.
35. This Act to be deemed part of recited Acts.

Cap. LXXX.

An Act to abolish the Office of Master in Ordinary of the High Court of Chancery, and to make Provision for the more speedy and efficient Despatch of Business in the said Court. (June 30, 1852).

We give this statute entire.

Whereas proceedings before the Masters in Ordinary of the High Court of Chancery are attended

with great delay and expense, and it is expedient that the business now disposed of in the office of such Masters should be transacted by and under the more immediate direction and control of the judges of the said Court: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in the present Parliament assembled, and by the authority of the same, as follows:

1. *Office of Masters in Ordinary in Chancery abolished.*—The office of Master in Ordinary of the High Court of Chancery shall be and the same is hereby abolished, but reserving and subject to the execution by the present Masters in Ordinary of the said Court, as such, of the duties hereinafter provided for; and until they are released under this Act they shall, for the performance of such duties, continue to have all the powers conferred upon them by any Act of Parliament or otherwise vested in them.

2. *Vacancies in office of Masters not to be filled up.*—No vacancy which has already occurred or may hereafter occur in the office of Master in Ordinary of the said Court shall be filled up, nor shall any future Accountant-General be made or become one of the Masters in Ordinary.

3. *Two of the Masters in Ordinary released from their duties on first day of Michaelmas Term,* 1852, *&c.—Proviso as to certain matters depending before the said Masters.*—On the first day of Michaelmas Term, one thousand eight hundred and fifty-two, James William Farrer, esq. and William Brougham, esquire, two of the Masters in Ordinary of the said court, shall be released from their duties as such Masters; and as often thereafter as, in the judgment of the Lord Chancellor, from the state of business in the said court, any other Master or Masters can be spared, it shall be lawful for the Lord Chancellor to release any such Master or Masters at such time or times as to him shall seem meet: provided always, that nothing in this Act contained shall extend to release, or to authorise the Lord Chancellor to release, any of the Masters from attendance upon the House of Lords without the order of the House: provided also, that if, from the nature of any particular matter or matters depending before either of the said Masters hereinbefore respectively named, it shall in the opinion of the Lord Chancellor be desirable that such matter or matters should be worked out by or before the same Master before whom the same shall be depending, it shall be lawful for the Lord Chancellor to direct such Master to continue the prosecution of such matter or matters, and such Master shall prosecute the same accordingly, in the same manner and with the same powers in every respect as if he had not been released from his duties under this Act.

4. *Option to Masters to retire according to seniority, &c.—Power to Lord Chancellor to release remaining Masters.*—Every Master to be released by the Lord Chancellor shall have the option to retire tendered to him according to his seniority in office; and if any such Master shall, for one calendar month after such option tendered to him, neglect or decline to avail himself thereof, then the Lord Chancellor may tender the like option to the next in succession in seniority in office, and so toties quoties; but when the Lord Chancellor shall be of opinion that the services of none of the Masters are any longer necessary for the due execution of the business of the said court, it shall be lawful for him to release every remaining Master.

5. *Masters' salaries and compensation allowance continued by way of retiring pensions, &c.*—Each one of the Masters to be so released on the first day of Michaelmas Term, one thousand eight hundred and fifty-two, shall nevertheless continue entitled to receive during his life, by way of retiring pension, the full amount of his salary as such Master, including the amount of the compensation allowance payable to him as such Master; and every Master who may be so released subsequently to the same first day of Michaelmas Term, one thousand eight hundred and fifty-two, shall also continue entitled to receive by way of retiring pension the full amount of his salary as such Master.

6. *Retiring pensions, &c. to be paid in the same manner as present salaries.*—The salaries or retiring pensions and compensation allowances payable to the Masters so to be released shall continue or be payable out of the same funds, on the days, and in the same manner in all respects, as their present salaries and compensation allowances respectively.

7. *Power to Masters to summon parties, &c. and to settle and wind up proceedings before them.*—In order as expeditiously as may be to wind up all the causes, matters, and things which may from time to time be depending before or have been referred to the Masters in ordinary of the said Court, it shall be lawful for every Master, at any time after the passing of this Act, to summon as he shall deem fit all or any of the parties to any cause, matter, or thing so depending, or their solicitors, and thereupon to proceed with such cause, matter, or thing, and give such directions and make such order as he may think necessary for the purpose of settling and winding up the same; but any such order shall be subject to be discharged or varied by the Court upon application made for that purpose; and the Master shall be at liberty to proceed for the purposes aforesaid in the absence of any of the parties or solicitors neglecting or refusing to attend the summons.

8. *Power to Court, upon Master's report or certificate, to make order for prosecution or final disposal of any suit, &c. and for payment of costs, &c.*—In case the Master shall be unable, by reason of the conduct of parties, or otherwise, to finally dispose of any cause, matter, or thing, he shall be at liberty to dispose of any part thereof within his power, and to report or certify on the whole of the case; and upon such report or certificate the Court shall make such order as it shall think proper on all or any of the parties, for the further prosecution of the suit or matter, or for the final disposal thereof, and for the payment of the costs thereof, including any of the costs which may have been incurred by reason of the conduct of the parties.

9. *On neglect of parties to bring Master's report before the Court, solicitor to Suitors' Fee-fund to do so, and his costs provided for.*—In the event of the parties in any cause, matter, or thing, or their solicitors, refusing or neglecting, within a time to be fixed by the Master, to bring the Master's report or certificate before the Court, the same may, by direction of the Master, be brought before the Court by the solicitor for the time being to the Suitors' Fund: and the Court is hereby empowered to order payment of the costs and expenses of the solicitor to the Suitors' Fund out of such of the funds in the cause, matter, or thing, or by such parties, as to the Court shall seem just; and in case payment thereof cannot be obtained by any of the means aforesaid, the same, by the direction of the Court, may be paid out of the Suitors' Fund.

10. *No fresh references to Masters, except in cases already before them, and in matters under Winding-up Acts,* 1848 *and* 1849*—Until all the Masters are released from their duties, those remaining shall prosecute all the business depending—Power now vested in Masters reserved to them for such purposes.*—From and after the first day of Michaelmas Term, one thousand eight hundred and fifty-two, no reference shall be made to any of the Masters in Ordinary of the said court, except in cases in which, from some previous reference made in the cause or matter, or in some other cause or matter connected therewith, the Court may think it expedient to make such reference, and except in matters arising under the Joint Stock Companies Winding-up Acts 1848 and 1849: provided always, that until all the Masters in Ordinary of the said Court shall have been removed by resignation, death, or otherwise, or have been released from their duties under this Act, such of the Masters in Ordinary of the said Court as shall for the time being remain in office, and shall not be released from their duties under this Act, shall prosecute all the business which, on the first day of Michaelmas Term, one thousand eight hundred and fifty-two, shall be depending before the Masters, and also all the references which before the said first day of Michaelmas Term, one thousand eight hundred and fifty-two, shall have been made under decrees or orders of the Court, or which on or after the same first day of Michaelmas Term shall be made in relation to such excepted matters as aforesaid; and the same, if necessary, shall be distributed amongst such remaining Masters in such manner as the Lord Chancellor shall direct; and the powers and authorities now vested in them are hereby reserved to them for the purpose of executing and performing all the duties, matters, and things which may be still referred to them, or which they may be lawfully called upon to perform.

11. *Power to Master of the Rolls and Vice-Chancellors to sit at chambers for the despatch of business, &c.*—From and after the first day of Michaelmas Term, one thousand eight hundred and fifty-two, it shall be lawful for the Master of the Rolls and the Vice-Chancellors for the time being, and they are hereby required to sit at chambers for the despatch of such part of the business of the said court as can, without detriment to the public advantage arising from the discussion of questions in open court, be heard in chambers, according to the directions hereinafter in that behalf specified or referred to; and the times at and during which they respectively shall so sit shall be from time to time fixed by them respectively.

12. *Power to Lord Chancellor to provide chambers for the Masters of the Rolls and Vice-Chancellors.*—The chamber business of the Master of the Rolls and of every Vice-Chancellor shall be carried on in conjunction with his court business; but as no rooms are attached to the courts of the Vice-Chancellors in which such chamber business can be transacted, it shall be lawful for the Lord Chancellor to cause chambers to be provided for every of them respectively for that purpose until courts with proper rooms attached can be provided for them.

13. *Judges to have same power and jurisdiction as in open court.*—The Master of the Rolls and every of the Vice-Chancellors respectively when sitting in chambers shall have the same power and jurisdiction in respect of the business to be brought before them, as if they were respectively sitting in open court.

14. *Orders made in chambers to be ordinarily drawn up by judges' clerks, but judges may direct them to be drawn up by registrars of the court, and may require their attendance at chambers for the purpose.*—The orders made by the Master of the Rolls and Vice-Chancellors respectively when sitting in chambers shall ordinarily be drawn up there by their respective clerks, to be appointed as hereinafter mentioned, but with power to each of such judges to direct any of such orders to be drawn up by the registrar of the said court in like manner as orders made by a judge of the said court in open court are drawn up, for which purpose the registrars of the said court shall, when required, attend the Master of the Rolls and the Vice-Chancellors respectively when sitting at chambers in such order and manner as shall be found most convenient for furthering the business of the said court, and as the Lord Chancellor, with the concurrence of the Master of the Rolls and Vice-Chancellors, or any two of them, shall from time to time by any general order direct.

15. *Orders made at chambers to have same force as orders of court, &c.*—All orders of the Master of the Rolls or of any Vice-Chancellor, made by him at chambers, shall have the force and effect of orders of the Court of Chancery, and such orders may be signed and enrolled in like manner.

16. *Power to judges to appoint two chief clerks to each court to assist in the business of the court.*—It shall be lawful for the Master of the Rolls, and every of the Vice-Chancellors for the time being respectively, with the approbation of the Lord Chancellor, to appoint two chief clerks, each to be respectively attached to each such judge and his successors in office, for the purpose of assisting in the general business of each court, and the causes and matters belonging thereto, and on any vacancy in such office of chief clerk to supply such vacancy.

17. *Chief clerk to judges to have been chief clerks to Masters in Ordinary, or solicitors or attorneys of ten years' practice—Certain chief clerks to be chief clerks of three of the equity judges.*—No person shall be appointed chief clerk to the Master of the Rolls or any Vice-Chancellor unless he shall have been chief clerk to one of the Masters in Ordinary of the said court, or have been admitted on the roll of solicitors or attorneys in one of the courts at Westminster Hall, and practised as such solicitor or attorney for the period of ten years at least immediately preceding his appointment: provided always, that George Whiting and Henry Leman, the present chief clerks of the said Masters hereby released as aforesaid, and Charles Pugh, chief clerk in the office of the Master now vacant, shall on the said first day of Michaelmas Term, one thousand eight hundred and fifty-two, become and they are hereby appointed chief clerks of three of the said equity judges, and their respective successors in office.

18. *Power to judges to appoint junior clerks.*—It shall be lawful for the judge of each court to appoint a junior clerk to each chief clerk of his court, and on any vacancy in such office to supply such vacancy.

19. *Power to Lord Chancellor to remove any officer appointed under this Act engaging in other employment or accepting any fee or emolument whatever other than his salary.*—If any person who shall accept any office under this Act shall engage in any other employment whatever whilst he holds such office, or shall receive any sum of money or benefit other than his salary and what may be allowed or directed to be taken by him under any Act of Parliament or order of the said Court or of the Lord Chancellor, for any act done or pretended to be done, or any attendance given or pretended to be given, either with or without the consent or direction or pretended consent or direction of the judge, in relation to or arising out of any proceeding in his office, or in any office of or connected with the Court of Chancery, or if such person, being or having been a solicitor or attorney, shall directly or indirectly receive or secure to himself any continuing benefit from any business or firm in which he may have been engaged previously to his appointment to such office, the person so offending may be removed from his office by order of the Lord Chancellor, and shall be rendered incapable of afterwards holding any office, situation, or employment in the said court.

20. *Solicitors, &c. appointed to any office under this Act to be struck off the Rolls.*—Every solicitor or attorney who shall be appointed to and shall accept any office under this Act shall cease to be an attorney or solicitor, and shall forthwith procure himself to be struck off the roll of solicitors of the High Court of Chancery, and off the roll of any of her Majesty's Courts of Record at Westminster on which his name may be.

21. *Chief clerks to hold office during good beha-*

viour.—Every such chief clerk shall hold his office during his good behaviour, and so long as he shall personally give his attendance upon his duties, and shall conduct himself honestly and faithfully in the execution of the duties of his office, but subject to the power hereinafter contained to remove any chief clerk for any cause which the Lord Chancellor and judges removing may think sufficient.

22. *And clerks during pleasure.*—Every such junior clerk shall hold his office at the pleasure of the judge to whose court he shall be attached.

23. *Chief and junior clerks to be under control and direction of judges.*—Such chief clerks and junior clerks shall be respectively under the control of the judge to whose Court they shall respectively be attached, and shall attend at such places, during such times, and for such hours in each day, and perform such duties, as such judge shall from time to time direct.

24. *Chief and junior clerks subject to same penalties, &c. as imposed, &c. under Act 3 & 4 Wm. 4, c. 94, as respects officers of the Court of Chancery.*—Every chief clerk and every junior clerk to be appointed under this Act shall be subject and liable to such and the same prohibitions, prosecutions, penalties, and punishments, as are by an Act passed in the session holden in the third and fourth years of the reign of King William the Fourth, chapter ninety-four, imposed and directed with respect to persons holding any office, situation, or employment in the said Court of Chancery, or under any of the judges or officers thereof, in the same manner as if the enactments therein contained relating to such officers of the said Court respectively were here repeated.

25. *Power to Lord Chancellor, with concurrence of judges, to remove chief clerks.*—It shall be lawful for the Lord Chancellor, with the concurrence of the Master of the Rolls and Vice-Chancellors for the time being, or any two of them, by any order to remove any chief clerk to be appointed under this Act from his office, without stating any cause for such removal.

26. *Business to be disposed of in chambers by the judges.*—The business to be disposed of by the Master of the Rolls and Vice-Chancellors respectively while sitting at chambers shall consist of such of the following matters as the judge shall from time to time think may be more conveniently disposed of in chambers than in open Court; videlicet, applications for time to plead, answer, or demur; for leave to amend bills or claims; for enlarging publication; and also applications for the production of documents; applications relating to the conduct of suits or matters; applications as to the guardianship and maintenance of infants; matters connected with the management of property; and such other matters as each such judge may from time to time see fit, or as may from time to time be directed by any general order of the Lord Chancellor.

27. *Judges may adjourn from open court to chambers, and vice versâ, the consideration of any matter.*—It shall be lawful for the Master of the Rolls and every of the Vice-Chancellors respectively when sitting in open court to adjourn for consideration in chambers any matter which, in the opinion of such judge, may be more conveniently disposed of in chambers, or, when sitting in chambers, to direct any matter to be heard in open court which he may think ought to be so heard.

28. *Mode of proceeding before judges at chambers to be by summons as at common law.*—The mode of proceeding before the Master of the Rolls and Vice-Chancellors respectively at chambers shall be by summons, and as near as may be according to the form now adopted by the judges of the Superior Courts of common law when sitting at chambers.

29. *Power to the judges to direct what matters, &c. shall be heard and investigated by themselves, and what by their chief clerks—Right to suitor to bring any point before the judge.*—From and after the first day of Michaelmas Term, one thousand eight hundred and fifty-two, the Master of the Rolls and the Vice-Chancellors respectively shall have the sole power (subject to any rules which may be made by the Lord Chancellor with the advice and assistance of them or any two of them) to order what matters and things shall be investigated by and before their respective chief clerks, either with or without their direction, during their progress, and what matters and things shall be heard and investigated by themselves; and particularly, if the judge shall so direct, his chief clerks respectively shall take accounts, and make such inquiries as have usually been prosecuted before the chief clerks of the present Masters; and the judge shall give such aid and directions in every or any such account or inquiry as he may think proper, but subject nevertheless to the right hereinafter provided for the suitor to bring [any particular] point before the judge himself.

30. *Power to chief clerks to issue advertisements and summonses, to administer oaths, &c. as the judge shall direct.*—Each chief clerk shall, for the purpose of any proceedings directed by the Master of the Rolls or any Vice-Chancellor to be taken before him, have full power to issue advertisements, to summon parties and witnesses, to administer oaths, to take affidavits and acknowledgments, other than acknowledgments by married women, to receive affirmations, and, when so directed by the judge to whose court he is attached, to examine parties and witnesses, either upon interrogatories or vivâ voce, as such judge shall direct.

31. *Parties, &c. not attending liable to process of contempt and to penalties for false swearing, &c.*—Parties and witnesses so summoned shall be bound to attend in pursuance of any such summons, and shall be liable to process of contempt, in like manner as parties or witnesses are now liable thereto in case of disobedience to any order of the said Court, or in case of default in attendance, in pursuance of any order of the said Court, or of any writ of subpœna ad testificandum; and all persons swearing or affirming before any such chief clerk shall be liable to all such penalties, punishments, and consequences for any wilful and corrupt false swearing or affirming contained therein as if the matters sworn or affirmed had been sworn and affirmed before any person now by law authorised to administer oaths, to take affidavits, and to receive affirmations.

32. *Result of proceedings before chief clerk to be embodied in form of short certificate, &c.*—The directions to be given by the Master of the Rolls or any Vice-Chancellor for or touching any proceedings before his chief clerk, shall require no particular form, but the result of such proceedings shall be stated in the shape of a short certificate to the judge, and shall not be embodied in a formal report, unless in any case the judge shall see fit so to direct; and when the judge shall approve of such certificate or report he shall sign the same in testimony of his adopting the same.

33. *No exceptions to lie to certificate, &c.—Parties at liberty to take opinion of judge upon any particular point.*—No exceptions shall lie to any certificate or report of the chief clerk, although signed and adopted by the judge; but any party shall, either during the proceedings before such chief clerk, or within such time after such proceedings shall have been concluded, and before the certificate or report shall have been signed and adopted, as the Lord Chancellor shall by any general order direct, be at liberty to take the opinion of the judge upon any particular point or matter arising in the course of the proceedings, or upon the result of the whole proceeding when it is brought by the chief clerk to a conclusion.

34. *Certificate, &c. signed and adopted by judge, binding on all parties, unless discharged or varied.*—When any certificate or report of the chief clerk shall have been signed and adopted by the judge the same shall be filed in like manner as reports are now filed, and shall thenceforth be binding on all the parties to the proceeding, unless discharged or varied, either at chambers or in open court, according to the nature of the case, upon application by summons or motion within such time as shall be prescribed in that behalf by any General Order of the Lord Chancellor; and nothing herein contained shall prejudice or affect the power of the Court at any time to open any such certificate or report upon the same or the like grounds as any report of a Master of the said Court which has been absolutely confirmed may now be opened.

35. *Sections 13, 14, and 15 of 3 & 4 Wm. 4. c. 94, repealed.*—From and after the first day of Michaelmas Term, one thousand eight hundred and fifty-two, the thirteenth, fourteenth, and fifteenth sections of the Act passed in the session of Parliament holden in the third and fourth years of the reign of his Majesty King William the Fourth, chapter ninety-four, shall be repealed.

36. *All powers possessed by Masters to be exercised by judges.*—From and after the first day of Michaelmas Term one thousand eight hundred and fifty-two all or any of the powers, authorities, and jurisdiction given to the Masters in Ordinary of the said Court by any Act or Acts then in force may be exercised by the Master of the Rolls and Vice-Chancellors respectively.

37. *Power to judges to exercise the powers given by sections 7, 8, and 9 of this Act, and to dispose of any cause, &c. in open Court.*—From and after the first day of Michaelmas Term, one thousand eigh hundred and fifty-two, the powers given to the Masters in Ordinary of the said Court, and to the Court, by sections seven, eight, and nine of this Act, may be exercised by the Master of the Rolls and Vice-Chancellors respectively with respect to causes, matters, and things which may be depending before them respectively in chambers; and if and when any such judge shall be of opinion that any cause, matter, or thing so depending ought to be finally disposed of, unless the parties or some of them can show good cause to the contrary, he shall direct the same to stand in his paper in open Court, giving such notice thereof, if any, as he shall deem right, and proceed to dispose thereof accordingly.

38. *Power to Lord Chancellor, with advice, &c. of judges, to make rules and orders for regulating the mode of procedure at chambers, payment of fees, &c.*—It shall be lawful for the Lord Chancellor, with the advice and consent of the Master of the Rolls and Vice-Chancellors, or any two of them, and they are hereby required, forthwith to make and issue general rules and orders for regulating the times and form and mode of procedure before the Master of the Rolls and Vice-Chancellors respectively, sitting at chambers, and their respective chief clerks, and generally the practice of the said Court in respect of the matters to which this Act relates, and for regulating the fees and allowances to solicitors of the said Court in respect to such matters, and also for regulating the fees to be payable by suitors of the said court to the officers thereof in respect of the business to be conducted before the Master of the Rolls and Vice-Chancellors respectively sitting at chambers, and their respective chief clerks; and such rules and regulations may from time to time be rescinded, altered, varied, or added to by the like authority; and all such rules and regulations as aforesaid shall take effect as general orders of the said Court: provided always, that no greater amount of fees shall be payable by the suitors of the said Court to the officers thereof, in respect of the business to be conducted before the Master of the Rolls and the Vice-Chancellors respectively sitting at chambers, and their respective chief clerks, than is now levied in respect of similar or analogous business in the Masters' offices.

39. *Business in Masters' offices to be conducted in the same manner as similar business is conducted by judges, &c.*—From and after the first day of Michaelmas Term, one thousand eight hundred and fifty-two, the course of practice and proceeding in the offices of the Masters in Ordinary of the said court, so far as the same may be inconsistent with the rules and regulations to be so as aforesaid made by the Lord Chancellor with such advice and consent as aforesaid, shall be abolished; and the Masters in Ordinary of the said court shall, with reference to the proceedings before them, adopt all such rules and regulations, and shall conduct the business of their respective offices, as nearly as may be, in the manner in which similar business shall be conducted by the Master of the Rolls and Vice-Chancellors respectively, save only that the Master, instead of communicating directly with the judge, is to report shortly the result of his inquiries to the Court.

40. *Power to judges at chambers to take opinion of conveyancing counsel in certain matters—Parties may object to such opinion, which may be disposed of in chambers or open court.*—From and after the first day of Michaelmas Term, one thousand eight hundred and fifty-two, it shall be lawful for the Court, or for any judge thereof, when sitting at chambers, to receive and act upon the opinion of conveyancing counsel in actual practice, to be nominated as hereinafter mentioned, in all cases in which, according to the present practice of the Court and of the Master's office, it has been usual for the Master to require or receive the opinion of conveyancing counsel for his aid and assistance in the investigation of the title to an estate, with a view to an investment of money in the purchase or on mortgage thereof, or with a view to a sale thereof, or in the settlement of a draft of a conveyance, mortgage, settlement, or other instrument, or otherwise, and in such other cases as the Lord Chancellor shall by any general order direct; but it shall be competent for any party to object to any opinion of any such counsel when he shall deem it open to objection, and thereupon the point in dispute shall be disposed of by the Court, or by the judge sitting in chambers, according to the nature of the case.

41. *Power to Lord Chancellor to nominate not less than six conveyancing counsel of ten years' practice, &c.*—It shall be lawful for the Lord Chancellor to nominate any number of conveyancing counsel in actual practice, not less than six, who shall have practised as such for ten years at least, to be the conveyancing counsel upon whose opinion the Court, or any judge thereof, may act in any of the cases last before mentioned, and to supply vacancies in such list from time to time, and to distribute the business among such counsel in such order and manner as to the Lord Chancellor shall seem fit.

42. *Power to obtain the assistance of accountants, merchants, &c.*—It shall be lawful for the said court, or any judge thereof, in such way as they may think fit, to obtain the assistance of accountants, merchants, engineers, actuaries, or other scientific persons, the better to enable such court or judge to determine any matter at issue in any cause or proceeding, and to act upon the certificate of such persons.

43. *Taxing Master to regulate fees to conveyancing counsel, &c. subject to appeal.*—The allowances in respect of fees to such conveyancing counsel, accountants, merchants, engineers, actuaries, and other scientific persons shall be regulated by the Taxing Master of the said court, subject to an appeal to the judge to whose court the cause or matter shall be attached, whose decision shall be final.

44. *Salary of 1,200l. to be paid to each chief*

clerk, and 250l. to each junior clerk, with power to the Lord Chancellor from time to time to increase same to 1,500l. and 300l. respectively.—There shall be paid to every chief clerk of the Master of the Rolls and Vice-Chancellors respectively the net yearly salary of one thousand two hundred pounds, and to every junior clerk to be appointed under this Act the net yearly salary of two hundred and fifty pounds; and it shall be lawful for the Lord Chancellor from time to time by any order to direct that the salary of any such chief clerk as aforesaid may be increased from time to time until the same shall amount to the net yearly sum of one thousand five hundred pounds, and to direct that the salary of such junior clerk may be increased to the net yearly sum of three hundred pounds: Provided always, that no such increase shall be made to any such chief clerk until he shall have been in office for three years, nor to such junior clerk until he shall have been in office five years, nor in either case without a certificate from the judge to whose court such chief clerk or junior clerk shall be attached, that he has conducted himself in such office to the entire satisfaction of such judge: Provided also, that the salary to such chief clerk shall not be increased at any one period by any greater amount than the sum of one hundred pounds.

45. *Pensions to chief and junior clerks in cases of permanent infirmity.*—It shall be lawful for the Lord Chancellor, with the consent of the Commissioners of her Majesty's Treasury, by any order made on a petition presented to him for that purpose, to order (if he shall think fit) to be paid to any person executing the office of chief clerk or junior clerk to the Master of the Rolls or any of the Vice-Chancellors, who shall be afflicted with some permanent infirmity disabling him from the due execution of his office, and shall be desirous of resigning the same, an annuity not exceeding two third parts of the yearly salary which such person shall be entitled to at the time of presenting such petition, to be paid and payable at the same times and out of the same funds as compensations under this Act are directed to be paid.

46. *On retirement of Masters, their chief clerks to be entitled to retiring pensions of same amount as salary.*—It shall be lawful for every person who on the first day of Hilary Term, one thousand eight hundred and fifty-two, held the office of chief clerk to any of the Masters in Ordinary of the said Court of Chancery, and who is not hereby appointed a chief clerk to the Master of the Rolls or to one of the Vice-Chancellors under the authority of this Act, upon the Master to whom he shall be such chief clerk being released from the duties as such Master under the Authority of this Act, or upon the death or resignation of any such Master previously to his being so released, to continue to be entitled to receive during his life, by way of retiring pension, the full amount of his salary as such chief clerk, such salary to be paid and payable out of such funds and in such manner as hereinafter in that behalf directed.

47. *Compensation to junior clerks on retirement of Masters.*—It shall be lawful for any person who on the said first day of Hilary Term, one thousand eight hundred and fifty-two, held the office of junior clerk to any Master in Ordinary of the said Court of Chancery hereby released, or who shall be released by the Lord Chancellor under the authority of this Act, to make a claim for compensation to the Commissioners of her Majesty's Treasury for the time being, at any time after the Master in whose office he shall have been employed shall have been released; and such commissioners are hereby required, within the space of six calendar months after every such claim shall be made, by examination upon oath or otherwise, which oath they and every of them are and is hereby authorised to administer, to inquire whether any, and, if any, what compensation ought to be made to such person claiming such compensation; and in all cases in which it shall appear to the said commissioners that compensation ought to be granted, it shall be lawful for the said commissioners, by warrant under their hands, to order and direct that such annual compensation shall be made to the persons claiming such compensations as aforesaid, or any of them, as to the said commissioners in their discretion shall seem just and reasonable; and all such compensations shall be paid and payable out of such funds and in such manner as hereafter in that behalf directed: provided always, that an account of all such compensation shall, within fourteen days next after the same shall be so granted, be laid on the table of the House of Commons, if Parliament shall be then assembled, or if Parliament shall not be then assembled, then within fourteen days after the meeting of the Parliament then next following.

48. *Salaries, &c. to be paid quarterly out of the Suitors' Fee Fund account.*—Except as herein otherwise provided, all salaries under this Act shall grow due from day to day, but shall be payable, under an order of the Lord Chancellor, on the third day of February, the third day of May, the third day of August, and the third day of November in every year, or on such other days as the Lord Chancellor shall from time to time by any order direct, and shall be paid to the parties entitled thereto, or their respective executors or administrators, out of the fund standing in the name of the Accountant-General of the Court of Chancery, to the account intituled "The Suitors' Fee Fund Account," but subject and without prejudice to the payment of all salaries and other sums of money by any former Act or Acts now in force directed or authorised to be paid thereout.

49. *Payment of compensations to be made quarterly out of Parliamentary securities.*—Except as herein otherwise provided, all compensations under this Act shall grow due from day to day, but shall be payable on the third day of February, the third day of May, the third day of August, and the third day of November in every year, or on such other days as the Lord Chancellor shall from time to time by any order direct, and shall be paid to the parties entitled thereto, or their respective executors or administrators, out of the interest and dividends of the Government or Parliamentary securities now or hereafter to be placed in the name of the Accountant-General of the Court of Chancery to the two accounts intituled, "Account of Moneys placed out for the Benefit and better Security of the Suitors of the High Court of Chancery," and "Account of Securities purchased with surplus Interest arising from Securities carried to an Account of Moneys placed out for the Benefit and better Security of the Suitors of the High Court of Chancery," or either of them, by the Governor and Company of the Bank of England, by virtue of any order or orders of the Lord Chancellor to be made from time to time for that purpose, without any draft from the Accountant-General, but subject and without prejudice to the payment of all salaries and other sums of money by any former Act or Acts now in force directed or authorised to be paid thereout.

50. *On appointment of Masters or clerks to office or employment under the Crown, the retiring pension or compensation under this Act to be regulated by the salary, &c. of such office or employment.*—If at any time hereafter any of the Masters in Ordinary of the said Court, or any of their chief or junior clerks, shall be appointed to and shall accept any office or employment connected with any Court of Law or Equity, or under the Crown, or in any public department under the Crown, and if the salary attached to such office or employment, or any retiring pension or allowance in respect thereof, shall equal or exceed in amount the retiring pension or compensation payable to such Master or such clerk under this Act, such last-mentioned retiring pension or compensation shall, during the continuance of such Master or such clerk in such office or employment, or so long as he shall be in the receipt of any retiring pension or allowance in respect thereof, equal to or greater than his retiring pension or compensation under this Act, cease to be payable to such Master or such clerk, as the case may be; and if the salary attached to such office, or the retiring pension or allowance in respect thereof, shall be less than the amount of such Master's retiring pension or such clerk's compensation under this Act, such retiring pension or compensation under this Act shall be reduced by the amount of such salary or of such retiring pension or allowance, as the case may be.

51. *Appropriation of the Masters' offices in Southampton-buildings.*—Such of the Masters' offices in Southampton-buildings, Chancery-lane, as shall not be assigned by the Lord Chancellor as chambers for the Master of the Rolls and Vice-Chancellors respectively, or shall not be required for the Masters, shall be appropriated to any other purposes connected with the Court of Chancery as the Lord Chancellor may from time to time direct, or the same may be let as chambers, and the rent thereof paid to the suitors' fund; and when all the Masters have resigned, died, or have been released under this Act, the offices may be sold by order of the Lord Chancellor, and the proceeds of such sale paid to the suitors' fund, in such manner and to such particular account as the Lord Chancellor shall by any order direct; and it shall be lawful for the Lord Chancellor by any order to direct that the premises so to be sold, and the fee simple and inheritance thereof, shall vest in the purchaser or purchasers of the same, his or their heirs and assigns, or as he or they shall direct; and such order shall have the effect of vesting the same accordingly, without any conveyance or other assurance from her Majesty, in whom the same are now vested by virtue of an Act passed in the thirty-second year of the reign of King George the Third, chapter forty-two.

52. *Power to her Majesty to appoint a Vice-Chancellor as successor to Sir G. J. Turner.*—And whereas by an Act passed in the fifth year of the reign of her present Majesty, session one, chapter five, her Majesty was by section nineteen empowered to appoint, by letters patent under the great seal, two fit persons to be additional judges assistant to the Lord Chancellor in the discharge of the judicial functions of his office, each of such additional judges to be called Vice-Chancellors; and by section twenty-one it was provided, that nothing therein contained should authorise the appointment of a successor to the Vice-Chancellor secondly appointed under the authority of the said Act: and whereas by an Act passed in the session holden in the fourteenth and fifteenth years of the reign of her present Majesty, chapter four, her Majesty was by section one empowered to appoint, by letters patent under the great seal, a fit person to be an additional judge assistant to the Lord Chancellor, in discharge of the judicial functions of his office, in the place of the Right Honourable Sir James Wigram, knight, who was the Vice-Chancellor secondly appointed under the authority of the said Act of the fifth year of her Majesty, and who had resigned the office of Vice-Chancellor to which he had been so appointed: and whereas the Right Honourable Sir George James Turner, knight, is the Vice-Chancellor appointed under the said last-mentioned Act: and whereas by section nine of the same Act, it was provided, that nothing therein contained should authorise the appointment of a successor to the Vice-Chancellor appointed under the authority thereof; and whereas by virtue of this Act additional duties will devolve upon the judges of the said Court, and it is expedient that any vacancy which may occur in the said office of Vice-Chancellor should be supplied: be it therefore enacted, that it shall be lawful for her Majesty, from time to time, when and as any vacancy shall occur in the office of Vice-Chancellor now held by the said Sir George James Turner, by the death, resignation, or removal from office of the said Sir George James Turner, or his successor for the time being, it shall be lawful for her Majesty, by letters patent under the great seal of the United Kingdom, to appoint a fit person, being or having been a barrister of fifteen years' standing at the least, to supply such vacancy.

53. *Such Vice-Chancellor to have same power, &c. as Sir G. J. Turner has.*—The Vice-Chancellor to be appointed under this Act shall have all the same powers and privileges, and the same rank, and shall be subject to the same provisions, duties, and observances, as the said Sir George James Turner shall, at or immediately before his death, resignation, or removal from office, have or be subject to under the said Act of the fourteenth and fifteenth years of her present Majesty, chapter four, and this Act, or any other Act or Acts then in force, excepting that, as between himself and the other Vice-Chancellors or Vice-Chancellor for the time being, he shall have rank and precedence next after the Vice-Chancellors or Vice-Chancellor, if any, who may be senior to him in appointment to office.

54. *Officers and attendants to the Vice-Chancellor.*—Such Vice-Chancellor shall have a secretary, usher, and trainbearer, to be from time to time appointed and removed by him at his pleasure; and the secretaries, registrars, and other officers appointed to attend the Lord Chancellor shall attend such Vice-Chancellor when sitting for the Lord Chancellor, and also when sitting in his separate court or in chambers, as circumstances shall require, and as the Lord Chancellor shall order and direct.

55. *Salaries of Vice-Chancellor and his officers to be as at present.*—The salary of such Vice-Chancellor, and the salaries of his secretary, usher, and trainbearer, shall be of the same amounts, and paid out of the same funds, and in like manner, as the salaries of the said Sir George James Turner, his secretary, usher, and trainbearer, respectively, shall be payable at or immediately before his death, resignation, or removal from office.

56. *Her Majesty may grant retiring pension to Vice-Chancellor so appointed.*—It shall be lawful for her Majesty by letters patent under the Great Seal of the United Kingdom, to grant to any person executing the office of Vice-Chancellor in pursuance of this Act, on his resignation of or his ceasing to execute his office, an annuity of the same amount, after the same period of service, under the same circumstances, subject to the same conditions, and payable out of the same fund, as the annuity authorised to be granted to each of the Vice-Chancellors appointed under the said Act of the fifth year of her present Majesty, chapter five.

57. *Lord Chancellor may appoint court-keeper.*—It shall be lawful for the Lord Chancellor to appoint one or more person or persons, removable at pleasure, for the purpose of keeping order in the court of the Vice-Chancellor to be appointed under this Act; and the salary of the person or persons appointed or to be appointed, under this Act or under any Act or Acts now in force, to keep order in the court of the Vice-Chancellor to be appointed under the authority of this Act, shall be of such amount, not exceeding the yearly sum of eighty pounds, as the Lord Chancellor may think reasonable; and such salary shall be paid to each such person so to be appointed, out of the same funds, and at the same time, and in like manner as the salaries of like persons have heretofore been paid.

58. *Rights and establishments of the present Masters to continue until released in pursuance of this Act.*—Nothing herein contained shall in anywise prejudice or affect the title of the present

Masters in ordinary of the said court to the salaries payable to them as such Masters, unless and until they shall be respectively released under this Act, or the power of the Lord Chancellor to order a retiring allowance to any of them or any of their clerks who may be or become afflicted with some permanent infirmity disabling him from the due execution of his office, and who shall be desirous of resigning the same; and every of the present Masters in ordinary of the said court, until released under this Act, shall have the same establishment of clerks, whose salaries and compensations shall be payable out of the same funds as the salaries and compensations of their clerks are now payable; and all the expenses attending the establishment of the Master's offices shall be paid in like manner as such expenses are now paid.

59. *Nothing to affect the rights, &c. of Accountant-General as a Master in Ordinary.*—Nothing herein contained shall prejudice or affect the rights, duties, or privileges of the Accountant-General of the said Court of Chancery as a Master in Ordinary of the said court, or any salary or other payment payable to the said Accountant-General as such Master in Ordinary, or his right or title to any retiring allowance under any Act or Acts of Parliament now in force; nor shall the said Accountant-General be called upon or required to do or perform any duties or services as such Master in Ordinary, other than such as are now usually performed by him.

60. *The retiring Lord Chancellor may deliver written judgments within six weeks after his resignation.*—Whereas it has frequently happened that after cases have been fully heard by the Lord Chancellor in the Court of Chancery and are standing for judgment, the Lord Chancellor has delivered up the Great Seal without being able, by reason of other urgent public business, to deliver judgment therein, and much inconvenience and expense to the parties has been thereby occasioned:

For remedy thereof be it enacted, that in every such case it shall be lawful for the person who has so delivered up the Great Seal, within six weeks after he shall have delivered up the same, to give in to the registrar of the said court a written judgment therein, signed by him; and a decree or order, as the case may require, shall be drawn up in pursuance of such judgment; and every such decree or order shall have the same force and effect as if the judgment in pursuance whereof it is drawn up had been given in open court the day before he shall have so delivered up the Great Seal.

61. *Construction of terms.*—In the construction of this Act, the expression "her Majesty" shall mean the sovereign for the time being; and the expression "Lord Chancellor" shall mean also and include the Lord Chancellor, Lord Keeper, and Lords Commissioners for the custody of the Great Seal of the United Kingdom for the time being.

THE MAGISTRATE,
AND PAROCHIAL AND MUNICIPAL LAWYER.

Summary.

Some statutes of interest in this branch of the law were pubished last week.

Cap. 59 continues the *Poor Law Board.*

Cap. 61, to amend the laws relating to *summary proceedings* for penalties and forfeitures under *Excise Acts*, enacts that informations for penalties or forfeitures under the excise laws within the limits of the chief office may be heard either by the Board of Inland Revenue or by Justices of the Peace; that the Board might hear informations either at the chief office, or elsewhere within its limits; and that officers of the Inland Revenue, or persons employed by the Board or Solicitor, may conduct proceedings before justices.

Cap. 65 continues and amends the Friendly Societies Act, making provision for the payment of the salaries and expenses of the registrars, and requiring the trustees of friendly societies to furnish accounts to the Commissioners of the National Debt.

Cap. 79 confirms a series of provisional orders of the Board of Health, which had been adopted in eight new towns.

Either betting-offices are nowadays made scapegoats by the thievishly disposed, or they really cause an infinite deal of dishonesty. Any one brought before a magistrate for robbing his master immediately sees that betting at those offices had led him to the crime. Within a week, two solicitors' clerks have offered this same excuse for their wrong-doing. The betting of Mr. Forster, M.P. has also been convicted, at the Old Bailey, of stealing his master's plate; and in this case there was no doubt he had embezzled transactions at betting offices.

Betting Lists.—A sporting paper states that the Home Secretary, last week, gave his approval to the draft of a Bill, aiming at the suppression of betting-houses. It is remarked that the measure, as approved, is calculated to give an impetus to betting, and to create a new class of offices for its conduct on a larger scale.

Billeting of Soldiers.—Important Decision.—A case was tried at a Justice of Peace Court, held in Crieff, on the 9th ult. regarding the billeting of soldiers. The person upon whom a soldier was billeted, instead of accommodating the soldier in his own house, offered to provide him with quarters elsewhere, but the soldier refused to avail himself of it, and brought an action for billet money. The justices were unable to come to a decision, and they agreed to refer the case to the Secretary-at-War. He was accordingly communicated with, on the subject, and the question may now be considered settled whether or not a householder is bound to provide accommodation for soldiers in his own house. The following is the letter from the War-office:—"War-office, Sept. 21, 1852.—Sir,—In reply to your letter of the 10th inst. I am directed to acquaint you that the householder upon whom the soldier was billeted was not bound to receive the soldier into his own house; and that having offered to provide quarters for him elsewhere, the householder has satisfied the obligation imposed upon him by law.—I am, &c. (Signed) B. Hawes."

Friendly Societies.—In the report of the committee of the House of Commons on the operation of the laws relating to friendly societies (just issued), reference is made to investments by friendly societies into the National Debt Office. Sir Alexander Spearman, the controller, stated in his evidence, that his office has at present no means of checking or verifying any sums transmitted by any society to him for investment beyond a simple declaration tendered at the same time with the money; that the interest payable is higher than that which the Government receives; that the societies might draw out the money, and the difference between the price when sold and when invested would be so much loss to the country,—besides, the funds might go down; that sums have seldom been drawn out when once invested with the National Debt Commissioners, and it is open to surmise that the claims which ought to be met from moneys so invested have been liquidated from other means, and so the capital which bears a very high rate of interest has remained untouched, to the prejudice of the public revenue. Sir A. Spearman agrees with Mr. Tidd Pratt, the Registrar, in his suggestion that a board should be formed for the management of friendly societies. There are various recommendations with regard to the new Bill to be brought before Parliament on the subject of friendly societies.

Quakers and the Militia.—By the 33rd section of the New Militia Act, so much of the former Militia Act as empowers the deputy-lieutenants to commit a Quaker to the common gaol, if no goods or chattels belonging to such Quaker could be found sufficient to levy a distress to defray the expense of providing and hiring a substitute, is repealed.

JOINT-STOCK COMPANIES' LAW JOURNAL.

Where a railway company agrees upon taking land which constitutes a portion of certain premises, and stipulates so to construct the railway that when finished it should not alter the present level, nor the surface, area, or present level of that which it does not occupy, the previous use of the land being for a ropery, it is bound to the literal fulfilment of the agreement, and it is not sufficient that the land is still good for its uses as a ropery. The Lord Chancellor (Truro) said, "he thought the surface ought to be restored so as to make it available for all the purposes to which the adjoining surface was available; nor could he justly adopt the construction contended for by the defendants, that because the agreement contained a stipulation for the restoration of the level for the purposes of the ropery, such agreement implied that the restoration should take place for that purpose exclusively." He added, that "in the case of a mining lease, where there were covenants on the lessee's part to restore the surface to its original condition, the obvious meaning was, that the ground should be restored for all the practical purposes and uses to which it had been applicable formerly. (*Harby v. The East and West India Docks Junction Railway Company*, 20 Law T. Rep. 4.)

A winding-up case (*Re The Royal Bank of Australia*, 20 Law T. Rep. 11) which came before the Lord Chancellor, is also noticed here, because it contains some law that affects all companies. The directors had done something not authorised by their deed, and the question was, whether the Court would permit them to avail themselves of any advantage that might accrue from it, but to repudiate it if it should serve their purpose. Lord St. Leonards expressed himself very strongly on this subject:—"I never will maintain in any Court of Justice that directors having power by deed to manage the affairs of the company, and to exclude the shareholders from becoming acquainted with the nature of their dealings, who, behind the backs of the general body of shareholders, entitle themselves to a great proportion of the capital of the company, can be at liberty, if the company should flourish, to insist upon it as a real transaction, and if it should turn out not as they had hoped, to throw it up as a transaction not authorised by their deed. I should hold *them* bound by the transaction, although they might not be entitled to enforce it against the shareholders." In the same case, his Lordship also held, that when directors had made to executors representations as to the amount of a deceased director's liabilities to the company, and upon the faith of that representation the executors had distributed the assets, the company were bound by the representation so made by the directors.

WINDING UP.

The Law of Winding up must be now pretty well settled, and official managers can have little difficulty in determining whom they are to include in their lists of contributories. But still questions are sometimes raised which might surely be decided without the cost of going to the Court. Such an one was *Roberts's* case, 20 Law T. Rep. 9. A provisional committeeman applied for 100 shares. The managing committee had resolved to give to each only twenty-five shares. He paid 10*l.* in full for the shares so allotted. He was properly held not to be a contributory. He paid for peace, not as a shareholder. In this case, also, a question arose as to the costs incurred by the official manager, he being the appellant. It was sought to make him *personally* responsible. But Vice-Chancellor Kindersley, while admitting that there are cases in which the Court would do so, said that this was not one of them. "Unless where their own counsel were of a strong opinion that there is a good case, or unless the Master had suggested, or unless a number of contributories had agreed to join in the application, I should certainly make the official manager pay the costs."

But *Re The Royal Bank of Australia*, 20 Law T. Rep. 11, was a more difficult and doubtful case, which came before the Lord Chancellor. A director of a banking company took 100 shares, besides those required to qualify himself as director, for which he had already signed the deed. He gave a promissory note for 1,000*l.* in respect of these 100 shares, payable at four years. The shares were not allotted according to the provisions of the deed, nor did he execute the deed in respect of them; but he received the dividends on them, the payments of which were regularly entered in the company's books. The note was not paid when due. He was held to be a contributory in respect of these shares.

In the same company, R. a director, took 500 shares, and gave a note for 5,000*l.* He died, and before proving his will his executors were informed by the other directors that their testator had only twenty shares on which the whole capital had been paid. *He had received no dividends.* On the faith of this statement of the directors, the executors distributed his assets. He was held *not* to be a contributory.

REAL PROPERTY LAWYER AND CONVEYANCER.

Lord Truro well laid it down in *Smith v. Pincombe*, 20 Law T. Rep. 10, that he could not hold a family compromise to be binding

" unless there be an honest disclosure by each party to the other of all such material facts known to them relative to the rights and title of either as were calculated to influence the judgment in the adoption of the compromise, and that any advantage taken by either of the parties of the known ignorance of the other would render the same void in equity, and liable to be set aside." This should be noted in the very words in any book of Equity Law used by the reader, for it is a well-expressed deduction from a review of many cases.

In *Wilson* v. *Eden*, 20 Law T. Rep. 13, the MASTER of the ROLLS has held that a devise of all testator's messuages and lands at a particular place, and all other his real estates in certain places and elsewhere in Great Britain, would, under the Wills Act, *pass the leaseholds*.

A question in the *Law of Landlord and Tenant* was decided in *M'Donnell* v. *Pope*, 20 Law T. Rep. 13. A. let premises to B. alone, but certain acts as to payment of rent, &c. were done by B. and C. B. died and C. continued to pay rent, and A. sued the executors of B. for rent due. Was there a joint tenancy? It was held that although the joint acts of B. and C. raised an implication of a joint letting, yet the landlord having himself denied this, B.'s estate continued to be alone liable for the rent, notwithstanding that A. had received rent from C.

SALE OF INCUMBERED ESTATES.—The two remaining lots of the Kerry estates of Messrs. John and Morgan O'Connell were sold in Tralee, subject to the final approval of the Commissioners of Incumbered Estates. The purchase-money for both lots amounted to 4,520*l*. The new proprietors of this remnant of the property are Dr. Barry and Colonel Thomas Bourke.

Queries.

BUILDING SOCIETIES.

I SHOULD be glad to learn the opinion of the Profession on the following point:—

A building society whose rules are properly drawn and duly registered, take securities in the names of its trustees. A *new* set of trustees are appointed, and the society's mortgaged securities are transferred to them. Does the deed of transfer require to be stamped? FRANCIS MEWBURN.

COUNTY COURTS.

ATTORNEYS IN THE COUNTY COURTS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I have perused in your paper of the 2nd inst. the letter of "A Barrister," which, containing some observations in respect to the attorneys in the County Courts, and their costume, has suggested to me a few remarks upon the subject, which I beg the favour of your inserting. In doing this, I feel assured I am only giving utterance to the sentiments of a very large number of my professional brethren, the country attorneys. Now that attorneys are legally recognised as advocates in the County Courts, and declared entitled to equal audience with members of the bar, it is surely desirable and proper, both for the respectability and dignity of the Court as for their own self-respect, that they should appear in a professional costume, which they may be called upon to assume, and not be ashamed to wear. At present, however, the gown alone, which it is supposed an attorney is entitled to wear, gives him the appearance of a verger in a church, or an usher in one of the courts at Westminster, and there is no gentleman but feels himself ashamed to be seen in such a garb, and, rather than assume it, he appears in court without his robe. Some, too, rather than appear wanting in respect to the Court, always wear the gown, but adopt the band to overcome their scruples of appearing like the usher. Thus it is that in the County Courts throughout England some advocates are in gowns, some in gowns and bands, and the greater number without any gown at all, and there are scarcely two courts in any of the circuits where there is any uniformity. This state of things should surely be put an end to. If it is proper that advocates should appear in professional costume, let a proper costume be authorised for those who are attorneys, and let it be one that a gentleman need feel no repugnance in assuming. The present gown would probably do very well if with the gown bands similar to those of the Bar were authorised to be worn, and, I think, with this arrangement the attorneys would be satisfied. The Bar would still be distinguished by the difference in the gown and by the wig. Now that the County Courts dispose of so large a portion of the legal business of the country, it is surely high time that there should be a settlement of this question, and that there should be an uniformity in the appearance of these courts, and of the costume of the advocates who practise in them.

I am, Sir, yours, &c.

AN ATTORNEY PRACTISING IN THE COUNTY COURTS.

COUNTY COURT COSTS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Observing in your paper of the 18th Sept. an invitation for remarks and suggestions on the framing of a scale of costs in the County Courts, I am induced to mention the practice in one of our County Courts of Yorkshire. The judge in every undefended cause refuses to allow any costs to the plaintiff's attorney unless the plaintiff can shew that he had reason to believe the defendant intended to dispute the claim; so that although the attorney may have taken the trouble to get up half-a-dozen cases with his usual care, and although all the defendants may be at such a distance that neither the attorney nor his client knows anything of their intentions, the attorney must either go without his fees or the client must pay them out of his own pocket, if the defendants are honest enough to admit the claims on the causes being called on for hearing.

This is not the practice in any other Court that I am aware of; it seems to me a manifest injustice to the client, and contrary to the intention of the Legislature in providing for the allowance of costs to the attorneys practising in these courts.

I am, Sir, yours, &c.

Oct. 2, 1852. AN ATTORNEY.

THE LAWYER.

IT will be seen by a statute that was given last week *in extenso*, that great changes have been made in that which was one of the grievances of the Profession and of suitors—the fees and salaries of the officers of the law courts. It was a grievance to the Profession, because the fees so paid increased the Attorney's bill, without any profit to the Attorney, to whose account the client placed the total sum of charges, without considering how much of the whole was paid out of pocket, and it was a grievance to the suitor, on whom this tax upon justice ultimately fell. The Act of last session (15 & 16 Vict. c. 73) has materially abated this wrong. It abolishes the office of Marshal in the Common Law Courts in London, and requires their duties to be performed by the Associates, who are in future to be appointed by the Chiefs of the various courts. The Associates are to appoint clerks, not exceeding two, to assist them, if need be; and offices are to be provided for them.

On the circuits the Marshal is continued, but he is to be paid by salary instead of fees. The Chiefs are to appoint three clerks, and the puisne Judges two each, one of whom is to be Crier; and they are to perform all the duties hitherto performed by the Judges' clerks. The present officers are to be reappointed and hold office during good behaviour. Tables of fees to be taken by them are to be prepared by the Treasury, with approbation of the Judges. Officers and clerks are not to act as Barristers, Attorneys, or agents; and their salaries are to be fixed by the Treasury, with a retiring allowance. Ushers and subordinate officers are to render an account to the Treasury of their fees, and they are to be appointed by the Chiefs, and to be paid by salary out of the Consolidated Fund, the amount being fixed by the Treasury. Compensation is made for abolished offices; all appointments are to be made without pecuniary consideration, and any officer accepting a gratuity is to be peremptorily dismissed. No compensation, however, is to be allowed for the loss of the right of appointment to any office.

The fee of 6s. 8d. to the Marshal on circuit for entering the cause is abolished, as are "all other payments upon circuits to or to the use of the judges," as also are the fees to the Marshal's men and the Judge's bailiff, and to any servant attending circuit.

Accounts are to be laid before Parliament; the duties of officers are to be performed in person; no deputies will be allowed in future, except from some temporary cause.

In *Ashley* v. *Allden*, 20 Law T. Rep. 14, Vice-Chancellor TURNER held, that where there were two suits on behalf of an infant, the clerk to the plaintiff's solicitor in the first suit is not necessarily an improper next friend to the infant in a second suit.

Queries.

WILL the Editor of the LAW TIMES inform a subscriber what is the etiquette of the Profession as to a stranger coming into a town to practise,—whether the stranger should call on the old offices, or the older practitioners call upon him?

[We believe the usual course to be, for the stranger to call upon the eldest practitioners; but perhaps some experienced reader will more correctly inform our correspondent as to this.—ED. LAW T.]

RE-OPENING OF THE ACCOUNTANT-GENERAL'S OFFICE IN BANKRUPTCY.—On Saturday notice was given that the office of the Accountant-General in Bankruptcy, which has been closed by order of the Lord Chancellor since the 12th of August last, will be re-opened to-day, when dividend warrants will be paid.

EVIDENCE IN THE COURT OF CHANCERY.—The new rules and orders in Chancery will regulate the admission of evidence, both oral and documentary, in proceedings under the new Acts, which Acts will effect some considerable alterations with respect to evidence in the court. The evidence on both sides, whether taken orally or upon affidavit, is to be closed within nine weeks after issue joined. The Court has power to enlarge the time, but after the period fixed no further evidence is to be given without the special leave of the Court. Any witness who has made an affidavit is to be subject to oral cross-examination within one month after the expiration of the nine weeks stated, by or before an examiner, in the same manner as if the evidence given by him in his affidavit had been given by him orally. Any party in any cause or matter may, by subpœna, require the attendance of any witness to be examined before an examiner, and may use his evidence upon any claim, motion, petition, or other proceeding, before the Court, in like manner as such witness would be bound to attend and be examined with a view to the hearing of a cause. Under the new law something like expedition will be attained in obtaining evidence.

THE NEW CHANCERY ORDERS.—In the new Chancery Rules, in lieu of the present fees allowed to solicitors for instructions for bills (which from the commencement of next Term are to be printed), the following charges are to be allowed:—For instructions for bill, 1*l.* 14s.; for making a copy of a bill or claim for the printer, per folio, 5d.; for correcting the proof-sheet, per folio, 2d. (the printer's bill to be paid and allowed); for amending each copy of a bill or claim to serve, where there is no reprint, 13s. 4d.; instructions for brief (in several matters) to be charged only once in the progress of a cause, 1*l.* 1s.; for amending each brief of a bill or claim, where there is no reprint, 13s. 4d.; for perusing and considering the bill on behalf of each defendant, or set of defendants appearing by the same solicitor, 1*l.* 1s.

CHEAPNESS IN THE COURT OF CHANCERY.—Hitherto large sums have been charged for engrossing and copying bills filed in Chancery, in lieu of which printed bills are to be delivered; and by one of the new rules a considerable reduction is effected. It is ordered that "the payment to be made by the defendant to the plaintiff for printed copies of the bill or claim shall be at the rate of one halfpenny per folio."

DOCUMENTS IN THE COURT OF CHANCERY.—In the new Chancery Act (cap. 86) there are two provisions respecting the production of documents in the possession of plaintiffs and defendants. It is declared to be lawful for the Court, upon the application of a plaintiff or defendant in any suit, whether commenced by a bill or claim, to make an order for the production, by the plaintiff or defendant, upon oath, of such of the documents in his possession or power relating to the matters in question in the suit as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.

DELAYS IN THE COURT OF CHANCERY.—The new act "To Amend the Practice and Course of Proceeding in the High Court of Chancery," will remove several causes of delay which have hitherto obstructed suits in equity, especially with regard to having all parties before the Court, and also as to bills of revivor and supplemental bills on the death, marriage, &c. of any of the parties. By the 51st section of the 15 & 16 Vict. c. 86, the Court may decide between some of the parties without making others interested parties to the suit. In case of abatement (by another provision), by marriage, or otherwise, the Court may make an order which shall have the same effect as a bill of revivor or supplemental bill. The order so made is to have the effect of making the persons named parties to the suit without the delay of a supplemental bill. There is another clause to prevent supplemental bills. New facts, after the commencement of a suit, need not

be stated in a supplemental bill, but may be introduced as amendments.

THE MERCANTILE LAWYER.

A POINT of considerable interest in the *Law of Banking* is reported from Scotland. A. a merchant in Glasgow, obtained from a banker there a letter of credit upon a bank in England in favour of B. and C. merchants in Liverpool. A forged draft was presented at the English bank, who thereupon paid away the contents of the letter of credit. A. B. and C. brought an action against the Glasgow Bank for the amount. It was held by the Court of Session that such an action would not lie. There was no *neglect of duty* on the part of the bank. It had done all required of it, and which it undertook to do, namely, to send the letter of credit to the bank in England. (*Orr v. The Union Bank of Scotland*, 20 Law T. Rep. 16.)

Some interesting *Bankruptcy cases* in our last number deserve attention. The Court of Appeal has intimated an opinion in *Ex parte Whitaker*, 20 Law T. Rep. 12, that the Court has *not* jurisdiction to direct the commissioner to review his judgment upon the question whether a certificate ought to be granted or refused. In *Ex parte Sherlock*, 20 Law T. Rep. 12, the commissioner was held to be empowered, under the 198th section of the Bankruptcy Act, to appoint a sitting for the consideration of a bankrupt's certificate, and that to give jurisdiction it is *not* necessary that an application for that purpose should be made by the bankrupt himself.

Mr. Commissioner HILL has held, in Bristol, that where the ground of opposition goes to the refusal of the certificate altogether, the depositions of witnesses examined in support of an alleged fraudulent removal of property, and which were taken in the bankrupt's absence, cannot be read or referred to. But the Court adjourned for the production and examination of the witnesses *de novo*. (*Re Phillips*, 20 Law T. Rep. 15.)

In the same case it was held that the clerk of the Attorney charged with having prepared for the bankrupt a deed giving a fraudulent preference was privileged, and that although the privilege was that of the bankrupt, it was not divested by the bankruptcy.

In *Re Lawrence*, 20 Law T. Rep. 16, where the bankrupt had absconded, the Court made an order to intercept and deliver to the official assignee post letters addressed to the bankrupt at his place of business.

THE NEW PASSENGERS ACT.—The Commissioners of Customs having approved of four forms of bonds to be entered into under the provisions of the Passengers Act, 15 & 16 Vict. c. 44, which came into operation on the 1st inst. orders have been issued for them to be printed and supplied to the proper officers in London and at the outports, with directions to take care that in attesting the execution of a bond each witness be required to subscribe his name and address in full in conformity with the marginal note to the form of a bond given in schedule B of the Act mentioned; and that in the case of a foreign passenger ship going to a British possession, the certificate required by the 60th section of the said Act and printed at the foot of the bond be dated. The principal officers of Customs at the several ports in the kingdom are to make application for the supply of the number of forms of bonds required for their respective ports.

PROCEEDINGS OF LAW SOCIETIES.

SOCIETY FOR PROMOTING THE AMENDMENT OF THE LAW.

(*Continued from p.* 11.)

The subject of the relations between the Bar, the attorney, and the client was brought before the society in a report which was much considered, and as to which the following resolutions were eventually adopted:—

That any practice which has a tendency to prevent the public from obtaining the assistance of counsel except through the compulsory intervention of an attorney should be discontinued.

That so much of the 61st section of the Act 9 & 10 Vict. c. 95, as prevents a barrister from advocating the causes of suitors in the County Courts unless instructed by an attorney should be repealed.

The latter resolution has now been adopted by both Houses of Parliament, which by a Bill of this session for extending the jurisdiction of the County Courts has repealed this clause of the former Act. It will be for the Bar to consider whether it will act on the first of the above resolutions, which it has the power to do, if it should see fit, and should the occasion require it.

The other principal measures of law amendment which, either in the form of Bills or in that of reports, have been before Parliament and the country since the last annual meeting of our society, have been the report of the Commissioners of the House of Commons on the laws of partnership, and the Bills for extending the jurisdiction of the County Courts, for amending the patent laws, and for diminishing the expenses of proceedings under commissions de lunatico inquirendo. In the consideration of these several measures this society has taken an active part, and we may reasonably expect from past experience that its labours will have a beneficial effect in determining the course of legislation.

Local administration of justice is now established, and has been found of infinite practical benefit, and your council hope to see it gradually extended as well to suits of an equitable nature as to those of a legal character, and that in local courts, at least, both jurisdictions will be amalgamated.

We would also call your attention to an effort that is in progress for extending the jurisdiction of the County Courts in Scotland, the precursors of our own County Courts, and for improving the procedure of Sheriffs' Superior Courts by introducing viva voce evidence, and making other reforms.(a)

We entirely concur in the propriety of these changes, and we call on the law reformers of England to aid their fellow-labourers in Scotland in effecting them. It is only just to say, that among the whole body of judges of different degrees in the United Kingdom, we know of none more zealously or usefully employed, or more deserving of general respect, than the resident sheriffs of Scotland. It must be gratifying to the Society to reflect, that while their president was mainly instrumental in introducing the now popular County Courts in England, another of their members (Lord Murray), now one of the Lords of Session, brought forward the Bill for establishing these courts under the name of Small Debt Courts in Scotland.

The proposed reforms of these courts would also be steps towards assimilating the law of the two countries—an object your council have much at heart, and on which they have already bestowed much attention.

Since our last general meeting, the important Act for admitting the evidence of parties in suits in the Superior Courts, which originated in a report of this society, has come into operation. At first, as might have been expected, the alteration was followed by some cases of perjury; but we doubt whether, in a single instance, the fraud was successful; and we are happy to say that testimony has been borne in favour of this Act by many of the judges of the Superior Courts, some of them in their places in Parliament, in addition to the evidence recently given at the request of this society by the judges of the County Courts.

The chief subjects in which our society has taken part, in which no movement has been made during the last year, are the laws of debtor and creditor, of divorce, and those relating to deceased persons' estates. But although there may be some matters in which little progress is making, the general cause of the amendment of the law was never in so promising a state before. Happily law reform is beyond the reach of party politics, and we therefore can count within our ranks distinguished men belonging to all the present divisions of the State, whose opinions on many other subjects are at variance. At the beginning of the session the speech from the Throne, expressing, of course, the views of the party then in power, recommended the amendment of the law; and scarcely was another party installed in office than it announced law reform as one of the principal features of its policy.

Under such favourable circumstances every measure of law amendment on which there is a general agreement of opinion should be pressed forward for immediate enactment.

To turn to full account the present opportunity the powers of law reformers must be gathered and concentrated. The organisation of the Law Amendment Society affords the means of examining and bringing forward any measure of legal improvement, and the names of its members, not to speak of its past acts, present, we trust, a sufficient guarantee for the work being done efficiently. Such being the case it seems quite unnecessary and a loss of strength to have separate societies for isolated objects.

Since the last general meeting forty-four new members have been admitted, making the present number 340, and the balance of income and expenditure, instead of being against the Society, as it was last year, is now in its favour. Still the exertions of the Society are crippled for want of larger funds and its potency diminished by the want of a greater body of associates.

With a larger income two important objects at least might be attained—the formation of a good library of reference and news-room, with some of the social advantages of a modern club, and the engagement of a paid assistant secretary, to be in daily attendance at the rooms, and qualified to give aid to members of Parliament and others who might want information on questions of contemplated legal changes.

A freer use of the power of printing would also be of much service, and would much facilitate the proceedings of our committees.

To supply these and other deficiencies, we call on our fellow-members each to exert himself in his own sphere to make known the objects of the society, and to obtain for it recruits who sympathise in those objects, and who by their personal efforts and pecuniary contributions, or, yet better, by both combined, will aid in their attainment. Especially would we call on the lay members of our society to endeavour to increase the number of those who do not belong to the profession.

The combination in due proportion of the two elements of professional and non-professional members is most desirable, and would, we are convinced, produce a result far better than can be attained by either class attempting to act alone.

To the honour of the legal profession, its members have come forward in the cause of law reform in a body, powerful alike by number and by position; but while we count many honoured names among our lay members, the whole number of such members is but small.

As a means of extending a knowledge of our society's proceedings, we recommend that the annual reports of the council should be widely circulated, and we advise that the council should be empowered to adopt such arrangements as they may deem expedient for establishing a connection between the society and such town-councils, chambers of commerce, justices at quarter sessions, and other bodies unconnected with party politics as may be desirous of entering into relationship with it.

The interest in the objects of our society, which our treasurer found to exist in different parts of Scotland, which he visited last autumn, is evidence of a wide-spread feeling of sympathy and concurrence of opinion, which under good arrangement may serve to create for us powerful auxiliaries. Such a connection as we have referred to would, we believe, be mutually advantageous; and among other benefits to our society—benefits which would ultimately be partaken in by those who conferred them—would be increased means of collecting information on the actual working of our laws, and practical suggestions for itheirmprovement.

Your council have shewn that this society has assisted in the settlement of several questions of the most difficult and complicated nature—the Court of Chancery, the Masters' office, the procedure of the Superior and County Courts, the enfranchisement of copyholds, and the transfer of land. It will be the duty of this society to watch over all these alterations and the new state of things introduced by them, and thus to obtain the speedy, cheap, and satisfactory administration of justice for all classes of the community.

But the society has also a still higher duty, which is, if possible, to obviate the necessity of law-suits, or, at all events, to diminish their number. Under any circumstances, a law-suit must often be productive of much expense, anxiety, and distress. Prevention is better than cure, and if the law were presented to the public in a more intelligible and accessible form, many law-suits which are now rendered necessary from the present ill-declared state of the law would be prevented.

It is needless to remind the society that the rules relating to the law in this country are scattered through 1,000 volumes, and that it is thus difficult for the practitioner, and often impossible for the unprofessional man, to ascertain the exact state of the law.

The council, therefore, urge on the society that it cannot better employ its influence and exertions than in attempting some remedy for this state of things.

This is to be found in a comprehensive digest, consolidation, and codification of the whole of the statute and common law. A part of this, the criminal law, has already been effected, and only wants the final stroke to complete it. But the whole of the other branches of the statute law, and the whole of the other branches of the common law, in accordance with the recommendations of the learned Criminal Law Commissioners, should be subjected to this process; and if there be any part of it which more calls for it than another, it is perhaps the commercial law, as to which some steps have already been taken, and as to which a great interest has been expressed as well in Scotland and Ireland as in England by many important commercial bodies and meetings.

Here, then, is a worthy object, to obtain which all our exertions are required and should be devoted. Nor do the council believe that, considering the other subjects already successfully dealt with by the

(a) See Scotch County Courts. Tatin and Ritchie, Edinburgh.

society during the course of its nine years' ministration, if the same zeal, boldness, and judgment be employed as on former occasions, its exertions will be in vain.

NOTICES OF NEW LAW BOOKS.

The Solicitor's Book of Practical Forms.
By H. Moore, Esq. Butterworth.

A useful collection of forms commonly required in the office of a solicitor, as indentures of apprenticeship, conditions of sale, contracts, statutory declarations, powers of attorney, and such like. Mr. Moore has added to these an abridgement of the Stamp Acts, instructions for the preparation of legacy and residuary accounts, and applications for increase and return of probate duties, with tables shewing the rates of duty. From this account of its contents it will be seen that it offers a great deal of really useful information in a small space. Mr. Moore states that they are all taken from draughts in actual employment in an office.

The publishers complain that we omitted to state of *Mr. Kennedy's Chancery Practice*, noticed in our last, that it *does* contain the new orders, as well as the new statutes. We fear that our real objection must have been misunderstood. We intended to express surprise that a Chancery Practice should have been published just at this moment, a considerable portion of which consists of the old orders that will be virtually rendered obsolete by the new procedure, and that the author did not wait until the new orders *now in preparation* are issued, without which the new Acts and the Orders already issued are worthless to the practitioner, because incomplete. A Chancery Practice that contains the obsolete law and does not contain all the law by which procedure will be governed in future certainly appears to us to be of little worth. From respect for our good friends, the publishers, whose judgment rarely fails them in their choice of books, we have reviewed our opinion, but we can find no reason to change it.

LEGAL INTELLIGENCE.

Proclamation of Banns.—A curious case was recently litigated before Mr. Sheriff Barclay, and was taken by appeal before Mr. Sheriff Craufurd, by whom the substitute's decision was reversed. It was a competition between the Session-clerks of Moneydie and Monzie as to which of them were entitled to the proclamation fees of a certain couple. David Patton, at the time of his proclamation, resided in a part of the parish of Monzie, which, some 150 years ago, was disjoined from the parish of Monzie, and united, quoad sacra, to the parish of Methven. On this point the dispute hinged;—to which of the Session-clerks did the proclamation fees belong—to him of the quoad sacra, or of the quoad civilia, portion of the parish of Monzie? Sheriff Barclay decided in favour of the quoad civilia: but, on appeal, Sheriff Craufurd, but with hesitation, decided otherwise. Both the learned gentlemen gave copious and ingenious reasons for their respective judgments.—*Glasgow Constitutional.*

JOURNAL OF PROPERTY.

Value of Land in Derbyshire.—The sale of the remaining portion of the estates which belonged to the late Samuel Shore, esq. deceased, situate in the parish of Norton and in the townships of Coal Aston and Totley, in the county of Derby, took place at Mr. Nicholson's mart, in Sheffield. The sale attracted a very highly respectable company, and the competition for the whole of the lots was very animated. We subjoin the particulars:—Lot 1, a farm, consisting of dwelling-house, buildings, and about 156a. 3r. 2p. of land, near Norton, in the occupation of Mr. Joseph Bingham, was sold to Mr. Henry Watson, solicitor, for 6,550*l*. Lot 2, the adjoining closes of land, containing 31a. 1r. occupied by Mr. Mason and others, sold to the same gentleman for 1,040*l*. Lot 3, six other closes of land, in the township of Coal Aston, containing 19a. 1r. 18p. to Mr. Watson for 705*l*. Lot 4, two closes of rather improved land, near Troway, in the occupation of Charles Jones, consisting of 10a. 3r. 24p. was sold to Mr. James Rhodes, of Coal Aston, for 365*l*. Lot 5, a close of land, called "The Bank," sold to Mr. Rhodes for 170*l*. containing 4a. 0r. 20p. Lot 6, consisting of 16a. 2r. 20p. of land, and part of a farm, sold to Mr. W. Smith, of Sheffield, for 1,080*l*. Lot 7, the same gentleman was the purchaser of this lot at 1,190*l*.—18a. 0r. 12p. of land. Lot 8, a close of land, called "The Birches," near Coal Aston, 7a. 1r. 11p. was sold to Mr. James Rhodes for 245*l*. Lot 9, "The Two Birches," comprising about 9a. 1r. 1p. was sold to Mr. Marshall, of Fullwood Hall, for 410*l*. Lot 10, the mines of coal and other minerals under a portion of land of Coal Aston—were passed by, only one bidder for it. Lot 11, in the township of Totley, consisting of two small cottages and 12a. 2r. 21p. of land, in the occupation of J. Mitchel, was sold to Mr. Henry Waterfall, solicitor, for 490*l*. Lot 12, a small close of land, containing 1a. 3r. 10p. was sold to Mr. Thomas Gatley, for 48*l*. Lot 13, five fields, containing 13a. 2r. 9p. also at Totley, was sold to D'Ewes Coke, esq. for 390*l*. Lot 14, the rent charge of 21s. 15r. 11p. arising out of various lands in about fourteen different holdings, in the township of Totley, was sold to Mr. Waterfall for 450*l*. Lot 15 comprised 101a. 2r. 16p. of moor land, near Ringinglow, in the township of Upper Hallam; this lot, for which there was a very spirited bidding, was eventually knocked down to Mr. Saunderson, of Sheffield, at 1,560*l*. When it was offered by auction last year we heard the reserve bidding was only 1,300*l*. The total of the sale amounted to 14,703*l*.—*Derbyshire Courier.*

THE GAZETTES.

Bankrupts.

Gazette, Sept. 28.

Collett, James Robert, milliner, Princes-st. Hanover-square, Oct. 6, at eleven, Nov. 6, at one, Basinghall-st. Off. as. Pennell. Sols. Rutter and Trotter, Ely-place, Holborn. Petition, Sept. 23.

Harker, William Milner, currier, Little Moorfields, City, Oct. 8, at eleven, Nov. 8, at twelve, Basinghall-st. Off. as. Johnson. Sol. Roberts, Barge-yard-chambers. Petition, Sept. 24.

Russell, Thomas, and Musgrove, John, sack manufacturers, Norwich, Oct. 7, at twelve, Nov. 8, at eleven, Basinghall-st. Off. as. Johnson. Sols. Sole and Co. Aldermanbury; and Miller and Son, Norwich. Petition, Sept. 22.

Winter, Joseph, clothier, Holborn-hill Oct. 2, at twelve Nov. 6, at half-past twelve, Basinghall-st. Off. as Pennell. Sol. Huson, Ironmonger-lane. Petition, Sept. 17.

Gazette, Oct. 5.

August, John and William, builders, Norwich, Oct. 15, at twelve, Nov. 12, at two, Basinghall-st. Off. as. Cannan. Sols. Sole, Turner, and Turner, Aldermanbury; and Miller and Son, Norwich.

Boon, John Brindley, woollen draper, Burslem, Staffordshire, Oct. 19 and Nov. 9, at half-past eleven, Birmingham. Off. as. Christie. Sols. Lee, Burslem; and Motteram and Co. Birmingham.

Guest, John, victualler, Burslem, Staffordshire, Oct. 16 and Nov. 8, at half-past ten, Birmingham. Off. as. Bittleston. Sols. Motteram and Co. Birmingham.

Marlow, James, iron founder, Walsall, Staffordshire, Oct. 19 and Nov. 9, at half-past eleven, Birmingham. Off. as. Christie. Sols. Messrs. Wright, Birmingham.

Morewood, Joseph, merchant, Fludyer-st. Westminster, Oct. 14, at one, Nov. 18, at eleven, Basinghall-st. Off. as. Bell. Sol. Courtenay, Lincoln's-inn-fields.

Rowell, George, jun. painter, Carlisle, Oct. 19, at eleven, Nov. 16, at twelve, Newcastle-upon-Tyne. Off. as. Wakley. Sols. Griffith and Crighton, Newcastle-upon-Tyne.

Gazette, Oct. 8.

Astley, Alfred, glass, china and earthenware dealer, Manchester, Oct. 19 and Nov. 9, at twelve, Manchester. Off. as. Pott. Sols. Makinson, Market-st. Manchester; and Twigg, Burslem. Petition, Sept. 18.

Harrison, John German, dealer in locks and fire-proof boxes and safes, Lord-st. Liverpool, Oct 21 and Nov. 11, at eleven, Liverpool. Com. Stevenson. Off. as. Bird. Sols. Norton, New-st. Bishopsgate, and Lloyd, Liverpool. Petition, Oct. 5.

Lewin, Francis, engineer and agricultural implement manufacturer, Ragland, Monmouthshire, Oct. 27 and Nov. 17, at eleven, Bristol. Com. Stephen. Off. as. Miller. Sol. Bevan, Small-st. Bristol. Petition, Sept. 29.

Morewood, John Joseph (and not *Joseph* Morewood, as before advertised), merchant, 17, Fludyer-st. Westminster, and 1, Barford-terrace, Liverpool-road, Islington, Oct. 14, at one, Nov. 11, at eleven, Basinghall-st. Com. Evans. Off. as. Bell. Sol. Courtney, 21, Lincoln's-inn-fields. Petition, Sept. 22.

Rhodes, John, jun. tailor and draper, Oldham, Oct. 22 and Nov. 18, at one, Manchester. Off. as. Lee. Sols. Sale, Worthington, and Shipman, Manchester. Petition, Oct. 2.

Ros, Theodore, upholsterer and furniture dealer, 11, Suffolk-place, Lower-road, Islington, Oct. 23 and Nov. 19, at eleven, Basinghall-st. Com. Goulburn. Off. as. Pennell. Sol. T. Angell, 41, Watling-st. London. Petition, Sept. 27

Shelton, Robert, saddler, Watling-st. Wellington, Shropshire, Oct. 23 and Nov. 15, at half-past ten, Birmingham. Com. Balguy. Off. as. Bittleston Sols. Phillips, Shiffnal; Motteram, Knight, and Emmet, Bennett's-hill, Birmingham. Petition, Oct. 2.

Steel, William, inn keeper and beer retailer, Hockley-hill, Birmingham, Oct. 19 and Nov. 16, at half-past eleven, Birmingham. Com. Daniell. Off. as. Whitmore. Sols. Thorn, Wolverhampton; Motteram, Knight, and Emmet, Bennett's-hill, Birmingham. Petition, Sept. 17.

Wintanley, Edward, and Henry George, chemists and druggists, Poultry, City, Oct. 23, at half-past eleven, Nov. 27, at eleven, Basinghall-st. Com. Goulburn. Off. as. Nicholson. Sols. Lawrance, Plews, and Bower, 14, Old Jewry-chambers, Old Jewry. Petition, Oct. 8.

BANKRUPTCY ANNULLED.

Gazette, Sept. 28.

Jackson, T. innkeeper, Tredegar, Monmouthshire, Sept. 17.

Dividends.

BANKRUPT ESTATES.

Official Assignees are given, to whom apply for the Dividends.

Ellison, J. ironmonger, first, 1s. 2d. Morgan, Liverpool.—*Foulkes*, W. J. chemist and druggist, first, 1s. 0½d. Morgan, Liverpool.—*Lloyd*, E. M. banker, second, 0½d. Morgan, Liverpool.

INSOLVENTS' ESTATES.

Cryer, J. woollen manufacturer, 2s. 3d. Apply at the County Court, Rochdale.—*Emanuel*, L. first and final, 5½d. Apply to C. H. Phillips, official assignee, Kingston-upon-Hull.—*Green*, J. first and final, 1½d. Apply to C. H. Phillips, official assignee, Kingston-upon-Hull.—*Lewis*, D. draper, grocer, and general dealer, first, 2s. Apply to W. Lloyd, official assignee, Narberth.

Assignments for the Benefit of Creditors.

Gazette, Sept. 28.

Clarke, W. linendraper, Ipswich, Suffolk, Sept. 11. Trusts. S. Morley, Wood-st. and T. Devas, Lawrence-lane, Warehousemen. Sols. Sole, Turner, and Turner, Aldermanbury.—*Douglas*, J. tailor, Spurriergate, York, Sept. 17. Trust. G. P. Bainbridge, woollen draper, York. Sol. J. Holtby, York.—*Shaw*, E. linendraper, Kingston-upon-Hull, Sept. 17. Trust. T. Gregson, gent. Kingston-upon-Hull, J. Barnicot, Friday-st. and J. Howell, St. Paul's-churchyard, warehousemen. Sols. R. Wells, Kingston-upon-Hull, and J. Heather, Paternoster-row.—*Wray*, J. shopkeeper, Hartlepool, Durham, Sept. 20. Trust. J. A. Wallace, commission agent, Bishopwearmouth, and J. Davison, gentleman, West Hartlepool. Sol. J. Hines, Hartlepool.

Gazette, Oct. 1.

Murrell, W. draper, King's-road, Chelsea, Sept. 17. Trust. J. Howell, St. Paul's-churchyard, and W. Hitchcock, Wood-st. warehousemen. Sol. T. Parker, St. Paul's-churchyard.—*Taylor*, H. W. licensed victualler and publican, Liverpool, Sept. 6. Trust. J. Tyrer, porter merchant, Hanover-st Liverpool. Sol. T. Woodburn, Liverpool.—*Vaughan*, D. W. hosier, Oxford-st. Sept. 8. Trust. T. W. Elstob, wholesale hosier, Wood-st. and R. Hellaby, warehouseman, Gutter-lane. Sols. Davidson and Bradbury, Basinghall-st.

Partnerships Dissolved.

Gazette, Sept. 28.

Arckoll, W. and T. farmers and graziers, Westham, Sept. 20.—*Bell*, R. and *Campbell*, G. W. merchants and commission merchants, Liverpool, Aug. 21.—*Edwards*, T. and *Scott*, G. tailors, Conduit-st. Bond-st. Aug 21.—*Henderson*, W. and *Davies*, W. L. iron and tin-plate manuf. Seaton Iron Works, near Workington, Sept 23. Debts paid by Henderson.—*Hill*, M. and *Horsfall*, W. calenderers, finishers, makers-up, packers, and dyers, Manchester and Pendleton, June 30. Debts paid by Horsfall.—*Hughes*, J. and *James*, J. jun. Uskside Iron Works, St. Woollos, Sept. 25.—*James*, E. and *Legg*, T. trimming manufacturers, Radford, Sept. 10.—*Kay*, J. and C. and *Blackwell*, J. salt manufacturers, salt and coal merchants, Wharton and Beckton, and at other places, Sept. 25. Debts paid by J. Kay.—*Kenyon*, H. and *Brierciffe*, T. button manufacturers, Liverpool, July 3, 1851.—*Lawton*, J. *Dixon*, J. and *Carr*, G. plumbers, glaziers, and painters, Tunstall, Sept. 23.—*Land*, W. and *Price*, W. T. drapers and tailors, Bourton-on-the-Water, July 5. Debts paid by Lund.—*Oliver*, E. and R. grocers, tea dealers, druggists, and printers, Beaminster, Sept. 16. Debts paid by R. Oliver.—*Price*, C. J. and J. grocers and tea dealers, Holywell, Sept. 18. Debts paid by J. Price.—*Whitaker*, J. and *Sagar*, T. machine makers, Burnley, Sept. 23. Debts paid by Sagar.—*Wright*, H. *Taylor*, H. *Wright*, E. L. and *Mercer*, J. colliers and coal merchants, Wigan, as regards E. L. Wright, Sept 21.

Gazette, Oct. 1.

Barlow, T. *Brown*, P. and *Broadley*, J. K. dyers and machine makers, Pilkington, Sept. 29. Debts paid by Barlow and Broadley.—*Bayley*, W. and *Crowe*, C. ship builders, Ipswich, Sept. 24.—*Briscoe*, W. W. and R. H. Wolverhampton, and *Steward*, W. Buenos Ayres, merchants, June 30. Debts paid by Steward.—*Bulcraig*, G. and *Low*, P. S. insurance brokers, Leadenhall-st. Sept. 29.—*Burt*, T. and *Filmer*, J. H. coal merchants, Leith and Glasgow Wharf, Oct. 1.—*Carr*, G. and *Kitchingman*, W. steel manufacturers, Sheffield, Sept. 24. Debts paid by Mr. G. Schofield, accountant, Sheffield.—*Goodman*, E. and *Williams*, J. joiners and builders, Salford, July 5. Debts paid by Goodman.—*Greenhill*, G. *Bird*, F. and *Gabriel*, F. H. F Bury-st. St. James's, and Melbourne, as regards Greenhill, Sept. 30.—*Gunnis*, F. and *Crighton*, H. warehousemen, Milk-st. Oct. 1. Debts paid by Crighton.—*Hooper*, W., H., and W. W. builders and surveyors, Exeter, Sept. 29.—*Hutchings*, T. *Brown*, W. and *Wright*, W. St. Mildred's-court, contractors, and Anston, near Sheffield, quarrymen, Sept. 29. Debts paid by Hutchings.—*Johnson*, E., T., and W. watch tool manufacturers, Rainhill, Sept. 27. Debts paid by T. and W. Johnson.—*Parsons*, A. and *Watts*, W. attorneys, Nottingham, Sept. 11.—*Perrott*, S. jun. and *Astley*, J. corn and commission merchants, Liverpool, Sept. 29.—*Rayner*, H. *Conolly*, M. J. and *Mawdsley*, E. drysalters and warehouse keepers, Liverpool, Sept. 30.—*Sandbach*, H. and D. tanners and leather factors, Manchester, Aug. 17. Debts paid by W. Middleton.—*Sandbach*, H. *Mawdsdale*, R. and *Sandbach*, D. (dec.), hide and skin brokers, Manchester, June 24.—*Smith*, F. and *Emerton*, J. decorators, Dover-place, New Kent-road, Sept. 30.—*Smith*, S. *Tobitt*, T. B. and *Smith*, A. ship and insurance agents, Great Tower-st. as regards S. Smith, Sept. 9. Debts paid by A. Smith and Tobitt.—*Twist*, J. and *Kelly*, J. millwrights and engineers, Liverpool, Sept. 28.—*Walmsley*, T. and J. corn dealers and grocers, Ashton-under-Lyne, Sept. 25.—*Wheelton*, J. and *Buckland*, G. A. packers and finishers, Bath-st. Newgate-st. Sept. 30.—*Yeo*, W., H. H. and S. sailcloth and rope manufacturers, and timber merchants, Plymouth, Sept. 14.—*Young*, E. and R. C. joiners, builders, and cabinet makers, Gateshead, Sept. 27.

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To Readers and Correspondents

"W. C."—*If he does not practise he need not take out his certificate.*

"J. P. F."—*The best book to begin with is "Stephen's Blackstone," but it is not to be got at a cheap rate.*

"E. C."—*The Westminster Appeal Cases were stopped because they did not pay the cost of printing. Perhaps we may recommence them in some more economical form. But all have appeared in the Law Times and in the Magistrate.*

"A. B."—*There is no such work as a Collection of the Orders in Council, and we fear it would not pay for publication. It should be issued efficiently.*

"R. H. D."—*We do not know, and have not time to search. Why not write to the registrar?*

SCALE OF CHARGES FOR ADVERTISEMENTS.

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Advertisements from the Country should be accompanied with an order upon the Agent in Town, or a Post-office order (payable at 180, Strand) for the amount.

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THE LAW TIMES.

SATURDAY, OCTOBER 16, 1852.

TO READERS.

THE indexes to the nineteenth volume of the LAW TIMES will be published, as usual, on Saturday next. It is impossible to prepare so voluminous a document more speedily.

We purpose to present, in a series of articles, a sketch of an Action at Law, and of a Suit in Equity, as they will be under the altered procedures.

The reporters in all the courts will pay particular attention to all points of practice that may be decided, so that the Profession may be fully informed, at the earliest moment, of the constructions which the Judges put upon the new statutes and rules, and a weekly commentary will explain to them the effect of those decisions upon their practice. The most distant reader of the LAW TIMES will thus be as fully acquainted with the working of the new law as if he had been present in the courts; nay, more so, for he could be in one court only—here he will find the collected and digested decisions of *all* the Courts.

The new forms required in the new practice are in the press. Of these the most important will be the writs of summons, with the *special* indorsements. To permit of particulars of various lengths being thus appended to the writ, paper copies of writ of summons will be printed, with ruled spaces below, varying in length from half a page of foolscap to four pages, and with pounds, shillings, and pence lines. The uses of this will be obvious.

The like copies of writ of summons will be printed, with special indorsements for bills of exchange and promissory notes.

THE EXODUS.

THE Exodus of Ireland to America, and of England to Australia, is rivalled by the Exodus of the Bar from the Temple. You cannot pass through that region at any hour but you will meet laden porters going out of it, or see suspicious vehicles at doors receiving piles of dusty lumber and mountains of mouldy books. The Bar is migrating—some to dig gold or keep a store in the land of wealth; others to follow some more hopeful calling at home; but the majority to the provinces, anticipating the localisation of law and better chances for themselves in the local courts. Soon the Bar that hitherto has been centralised in London will be scattered over the whole face of the country. At any other season than this, when so many questions of practical law are claiming attention, it would have been a curious and interesting subject for speculation what will be the consequence of this great change to the Bar itself, to the Profession generally, and to the public. For our own part, we believe that it will be equally injurious to all. The Bar never can be again what it has been, and we have little doubt that in no long time its entire functions will be changed, and it will take a different status. But while lamenting such a catastrophe, we must admit that it was inevitable. It has been the result of other great social changes. Society has advanced farther than the Lawyers, and is now running over them. The functions of an Attorney are a necessity that rather increases than diminishes; but those of the Barrister, except as an Advocate, are *not* necessary, and therefore society is striving to do without him.

If this is the true theory of the decline of the Bar, we fear that it will not be stayed by a flight to the provinces; we suspect that its decay will thus be hastened rather, for reasons which we have not space to set forth now, but which we purpose to explain when there is a little more leisure in the legal world.

HINTS TO BUSY PRACTITIONERS.

[Under this title we propose from time to time to remind the practitioner of useful facts which, amid the claims of business and the flood of changes in the law, he may possibly have overlooked. As we also may overlook many, we shall be obliged by "hints" from any of our readers.]

SPECIAL INDORSEMENTS ON WRITS.

REMEMBER that after the 24th of October you will be enabled to obtain judgment for debt upon *the writ alone*, without any further process.

For this purpose the writ must be *specially indorsed*—that is to say, it must contain the particulars of the debt stated as fully as they used to be when particulars were given with the declaration. The safer and the fairest course will be to indorse upon the writ the account in full, with all the items set forth; unless, indeed, it runs to a very inconvenient length, in which case it might be abbreviated. If a writ be so specially indorsed, and appearance be not entered in due time, judgment may be signed for the amount claimed by the particulars, and execution may be issued thereon.

It would be impossible to devise a speedier or cheaper process for the *recovery of debts*. The remedy thus offered by the Superior Courts will be vastly better than that given by the County Courts, and of course every debt that can be sued for in the former will henceforth be taken there.

FORECLOSURE.

IT may not have occurred to our readers that, under the new Equity Procedure, foreclosure will be the cheapest remedy for a mortgagee. It may be obtained by *claim* (without a bill) in a very short time, and at a very small cost, and power is given to the Courts to order a sale. Henceforth it will be quite unnecessary to incumber mortgage-deeds with long powers of sale. In small mortgages, where cost is a consideration, the powers of sale may be now omitted, thus abbreviating a mortgage deed by nearly a skin.

NEW CHANCERY PRACTICE.(a)

AMONGST other useful reforms introduced by the Suitors in Chancery Relief Act, power is given to the Lord Chancellor, entrusted by the sign manual with the custody of the persons and estates of persons found idiot, lunatic, or of unsound mind, by any order or orders, to *abolish all or any of the fees payable in relation to proceedings in lunacy*, and to direct that such of the *fees as shall not be abolished, if any*, shall be collected *by means of stamps* in the manner thereinbefore provided, with respect to fees payable in relation to proceedings in the Court of Chancery, and also to direct that in lieu of all or any of such fees, a *per centage or ad valorem payment shall be paid on the clear annual incomes of persons* found idiot, lunatic, or of unsound mind, and on the *amount of the taxed costs* incurred in proceedings in lunacy, or *on such annual incomes only*, or on the *amount* of such *taxed costs only*, the *amount of such* annual incomes as aforesaid, and the amount of the per centage or *ad valorem* payment to be paid thereon, and on such taxed costs to be from time to time ascertained and fixed in such manner, by such means, and under such regulations as the Lord Chancellor, entrusted as aforesaid, shall by any order or orders direct, and the amount of such per centage or *ad valorem* payment is to be paid into the "The Suitors' Fee Fund Account," at such times and by such persons as the Lord Chancellor, intrusted as aforesaid, shall by any order or orders direct; but the amount to be raised by such per centage or *ad valorem* payment is *not to exceed the amount which may from time to time be required to provide for the payment of the salaries, expenses, and sums of money payable* under 5 & 6 Vict. c. 84, or any other Acts or Act of Parliament in force with respect to lunatics; and a statement of the amount of such per centage or *ad valorem* payment is from time to time, within fourteen days after the same shall have been settled, to be laid on the table of the House of Commons, if Parliament shall be then assembled, or if Parliament shall not be then assembled, then within fourteen days after the meeting of Parliament then next following. (Sec. 14.)

By the next section all the jurisdiction, and all the powers and authorities of a judicial nature, given by 1 Wm. 4, c. 65, by "The Trustee Act, 1850," and by any other Acts or Act of Parliament now in force, to the Lord Chancellor, intrusted by virtue of the sign manual with the care, &c. of the persons and estates of persons found idiot, lunatic, or of unsound mind, is to belong to and may be exercised by *all or any of the persons or person for the time being intrusted* as aforesaid. (Sec. 15.) This section will confer jurisdiction upon the Lords Justices, which they previously did not possess.

The next section carries out what in our last number we submitted to be the correct principle upon which the expenses of the administration of justice should be paid, viz. by the country at large and not by the suitor, and it will enable a very considerable reduction to be made in their fees, which now add so considerably to the expenses of a Chancery suit by throwing those of the *Judges' salaries* as are not already paid from that source upon the *consolidated fund*.

This section begins by reciting, that under certain Acts the salaries of the Master of the Rolls, and of the Vice-Chancellors, appointed under 53 Geo. 3, c. 24, were payable out of the consolidated fund; but the salary of the Lord Chancellor (except as speaker of the House of Lords), and the salaries of the Lords Justices of the Court of Appeal in Chancery, and of the other Vice-Chancellors, were payable out of the interest and dividends arising from the Government or Parliamentary securities placed in the name of the Accountant-General of the Court of Chancery, which had been purchased from time to time with moneys taken out of the common and general cash belonging to the suitors of the Court of Chancery, lying dead and unemployed in the Bank of England; and reciting that it was *expedient that the salaries of all the Judges of the Court of Chancery should be paid out of the consolidated fund, instead of out of the interest of the securities purchased with the cash of the suitors as aforesaid*: it enacts, that after the 10th October, 1852, there shall be *paid and charged upon the consolidated fund* the annual salaries thereinafter-mentioned; that is to say, to the Lord Chancellor such yearly sum as, with the salary payable to him as Speaker of the

(a) Continued from p. 27, *ante*.

House of Lords, will make up the net yearly sum of ten thousand pounds; to each of the Lords Justices of the Court of Appeal in Chancery, six thousand pounds; to the Vice-Chancellor for the time being under the Act passed in the fifth year of the reign of her present Majesty, session one, chapter five, five thousand pounds; and to the Vice-Chancellor appointed under 14 & 15 Vict. c. 4, five thousand pounds. All which salaries are to be in lieu of all salaries theretofore payable to such Judges respectively, out of any fund whatsoever. (Sec. 16.)

The six following sections are of considerable importance: they provide for the payment of the Accountant-General by a *salary*, instead of the present very objectionable mode of his receiving a share of the *brokerage*; they also enable the Treasury to regulate the payments to be made to the *broker*, who is at present paid by a commission on the *full amount* of purchases and sales directed to be made on any particular day by the Accountant-General, although if the amount of the purchases and sales were set off one against the other, the stock in the Accountant-General's name would be increased or diminished by a very small amount; a state of things which probably would not have been allowed to exist so long, unless, contrary to every principle of equity, an officer standing in a fiduciary relation to the suitors of the Court, had been allowed to make a profit out of the trust committed to his care, and had thus a direct interest in not doing anything to effect a reduction in exorbitant charges on account of brokerage which pressed so heavily on those whose interests he ought to have protected.

By the 17th section so much of the 5 Vict. c. 5, as enacts that the Accountant-General is, on or before the 1st of September in every year, to pay into the Bank to an account entitled "An Account of Interest arising from Securities carried to an Account of Money placed out for the Benefit and better Security of the Suitors of the High Court of Chancery," the sum of 150*l.* is repealed. (Sec. 17.)

And after the 28th of October, 1852, *the brokerage* which may from time to time be received by the present Accountant-General is to be paid by him into the Bank of England, to be there placed to his credit, as such Accountant-General, to the account entitled "The Suitors' Fee-fund Account," at such times and under such regulations as the Lord Chancellor shall from time to time by any order direct (sec. 18); and there is to be paid to the present Accountant-General, in lieu of the brokerage, and in addition to his salary and allowance for books, &c. the net yearly salary of two thousand seven hundred pounds (sec. 19); but nothing is to affect the rights, privileges, or duties to which the present Accountant-General is entitled, or which he is liable to perform as one of the Masters in Ordinary. (Sec. 20.)

Power is given to the Commissioners of her Majesty's Treasury to make such regulations with respect to *the broker* to be employed in transacting the business relating to the funds of the Court of Chancery, and the *amount of commission* to be received by such broker, *or the payment* of such broker *by salary or otherwise*, as they shall from time to time think fit. (Sec. 21.)

After the resignation or death of the present Accountant-General, the salary provided for the Accountant-General of the said Court by 12 Geo. 2, c. 24, and 9 Geo. 3, c. 19, is to cease, and there is to be paid to the Accountant-General for the time being the net yearly salary of three thousand pounds. (Sec. 22.)

Another burthen upon suitors was that of the fees of certain useless offices. Many of them are abolished by the Act. After the 28th October, 1852, the following officers are to be removed, and their respective offices to cease; that is to say, the keeper or clerk of her Majesty's hanaper, deputy clerk of the hanaper, the secretary of decrees and injunction, one of the two gentlemen of the chamber attending the Great Seal, the chaff wax, the deputy chaff wax, the sealer, and the deputy sealer; and the duties theretofore performed by the secretary of decrees and injunctions are thenceforth to be performed by the clerks of the records and writs, and the respective duties of the offices of the keeper or clerk of her Majesty's hanaper and of chaff wax and sealer are thenceforth to be performed by the clerk of the Crown in Chancery, and the purse-bearer to the Lord Chancellor respectively, as directed by 3 & 4 Wm. 4, c. 84, upon such offices becoming vacant by the death, resignation, or removal of the then respective holders thereof, and such purse-bearer is to be thenceforth entitled to such yearly sums for the expenses of the offices of chaff wax and sealer as are by the said last-mentioned Act directed to be paid to him. (Sec. 23.)

After the 28th October, 1852, there is to be paid to the *officers of the Lord Chancellor*, next hereinafter named, in *lieu of all fees* heretofore received by them respectively for their own use, the following *yearly salaries*; that is to say, to the principal secretary of the Lord Chancellor, 1,200*l.* to the gentleman of the chamber, 500*l.*; to the purse-bearer 500*l.* and to the trainbearer 200*l.*; and power is given to the Lord Chancellor to appoint a clerk to be employed in the office of such principal secretary, at a salary not exceeding 200*l.* as the Lord Chancellor shall from time to time direct. (Sec. 24.)

After the 10th October, 1852, the persons or person holding the offices of *Secretary of Presentations* and *Secretary of Commissions of the Peace*, are to account for all the fees and emoluments payable to and received by them or him, by virtue of such offices, and are to pay the same into the receipt of her Majesty's exchequer, and when so paid, they are to be carried to the consolidated fund. (Sec. 25.)

And after the 10th October, 1852, there is to be paid to the persons or person for the time being holding such last-mentioned offices the yearly sum of 800*l.* to be divided between such persons, in case such offices should be held by different persons, in such proportions as the Lord Chancellor shall direct, and such yearly sum is to be paid out of the consolidated fund. (Sec. 26.)

After the 28th October, 1852, the offices of the patentee of the subpœna office, the deputy of the patentee of the subpœna office, the clerk of affidavits, the assistant clerk of affidavits, the second assistant clerk of affidavits, the clerk of reports, the doorkeeper of the Court of Chancery, and the crier of the Court of Chancery, and the office of usher of the Court of Chancery, now held by Thomas Francis Le Dieu, are to be abolished. (Sec. 27.)

After the 28th October, 1852, the execution of the duties of the subpœna office are to be transferred to the clerks of records and writs, and such duties are to be performed by them in such manner as they are directed to perform the same by 8 & 9 Vict. c. 105, after the death, resignation, or removal from his office of the present patentee of the subpœna office. (Sec. 28.)

After the 28th October, 1852, the duties of the affidavit office are to be performed by the clerks of records and writs, but affidavits or affirmations may be sworn, affirmed, or attested upon honour, and declarations made before the clerk of enrolment for the time being, as occasion may require, for the better despatch of business; and the duties of the clerk of reports are to be performed by such person or persons as the Lord Chancellor shall appoint for that purpose, and such person or persons shall be entitled under the Act to such salary or salaries as the Commissioners of her Majesty's Treasury shall by any order direct, provided that the whole amount of such salaries shall not in any one year exceed the sum of 400*l.* (Sec. 29.)

NEW COMMON LAW PRACTICE.

Mr. Kerr's *New Practice of the Common Law*, under the Common Law Procedure Act, will be ready on Wednesday next. Its price will be 12s. It will be sent by the post, free, to persons ordering it, in the course in which their orders are received. It contains a copious Introduction and Appendix of Forms, &c.

Mr. Tudor's *New Chancery Practice* only waits the forthcoming orders.

In answer to the inquiries of correspondents, we have to reply, that Mr. Crockford is printing, for the use of practitioners, the form of warrant required under "The Debtors Arrest Act." It is on foolscap, and can be supplied in small quantities.

NEW BANKRUPTCY ORDERS.

At last the new Bankruptcy Orders are on the eve of being issued. Indefatigable Lord St. Leonard's has settled them, with the aid of Mr. Commissioner Fonblanque, and they will probably take effect from the beginning of Term. They are very voluminous; indeed, in *extenso* they would fill three whole numbers of the Law Times.

They will be published, as announced long since, in an appendix volume to Wise's edition of the Act, with Notes and an Index. But to make this more complete and valuable, the Act itself, *with notes of all the cases* that have been decided on its construction, will form part of the volume. As this portion of the work is ready, its appearance will not be long delayed.

AN ADVERTISEMENT.

The following advertisement appears in the *Times* of Saturday last:—

"LAW.—County Court Extension.—Sheriffs' Small Debts' Court, Guildhall.—Mr. G. MANLEY WETHERFIELD, Solicitor, begs to intimate that he continues to ATTEND this COURT as Advocate for suitors, and on the usual agency terms for the Profession. Charges limited to the scale allowed by the Court, and in some cases lower.—Offices, 18A, Basinghall-street, City."

Apart from its unprofessional character, it is an open avowal of a desire to violate the law that expressly prohibits an Attorney from acting as an Advocate in the County Courts instructed by another Attorney. After this announcement, an inquiry should be made into all cases in which Mr. Wetherfield appears, whether he is principal or agent.

Imagine an Attorney offering to do business at charges "lower than the scale allowed in the County Courts!"

THE LEGISLATOR.

NEW STATUTES.

15 Victoria, A.D. 1852.

[In this record of Legislation only the Statutes of practical utility are given at length. Of the others an abstract or the titles only are presented.]

Cap. LXXXI.

An Act to Consolidate and amend the Statutes relating to the Assessment and Collection of County Rates in England and Wales.

(June 30, 1852.)

We give a summary only of this statute.

1. Repeal of 12 Geo. 2, c. 29; 13 Geo. 2, c. 18; 37 Geo. 3, c. 65; 55 Geo. 3, c. 51; 56 Geo. 3, c. 49; 57 Geo. 3, c. 94; 1 & 2 Geo. 4, c. 85; 1 Wm. 4, c. xlviii; 4 & 5 Wm. 4, c. 48; 8 & 9 Vict. c. 111; 12 & 13 Vict. c. 65.

2. Justices at sessions to appoint committees for preparing a basis or standard for assessing county rates.

3. Meetings of committee.

4. Committee may appoint a clerk.

5. Committees may require returns of the annual value of the property in any parish liable to be assessed, with the date of the last valuation—Such returns to be laid before a vestry meeting previous to their being presented to the committee.

6. Meaning of "full and fair annual value."

7. Committees empowered to inspect rates, assessments, valuations, &c.—55 Geo. 3, c. 51.

8. Penalty on overseers or others refusing to attend or produce documents.

9. Committees may cause new valuations to be made.

10. If parish officers, &c. neglect to make returns, or make false returns, expenses of valuations to be paid by parishes.

11. Costs of valuations directed by committee.

12. Allowances and compensation to persons employed in the execution of this Act.

13. When committee have prepared a basis for a county rate differing in value from the preceding, they shall cause it to be printed, and distributed to the acting justices and overseers of the poor—Overseers to submit the proposed basis to a vestry meeting.

14. Notice of the time within which objections may be made to the proposed basis to be sent to the overseers.

15. Notice to be given when basis will be taken into consideration by Court of General or Quarter Sessions.

16. Basis to be deemed valid after confirmation by Court of General or Quarter Sessions.

17. Appeal against basis.—Notice of appeal.

18. Hearing and determining appeals.

19. Sessions to determine costs of appeal and of valuation ordered by Sessions.

20. Committee may revise basis or rate from time to time.

21. Justices in General or Quarter Sessions to

make a fair and equal county rate, whenever circumstances appear to require it.

22. Parishes aggrieved may appeal.

23. Rate to be raised, notwithstanding appeals, until determination of justices.—57 Geo. 3, c. 94, s. 2.—In case justices order rate to be set aside, decreased, or lowered.—Money paid subsequent to the time of appeal to be returned out of the general county rate.

24. Expenses of appeals or proceedings at law shall be paid in such proportions as the justices or courts of law shall award.

25. Costs may be awarded upon notices of appeal not prosecuted.

26. Justices of the peace shall send precepts directly to guardians of unions for the payment of county rates:—Guardians to pay such rates.—County treasurer to receive the same.

27. If the guardians fail to pay such rates, the justices may issue warrants to the overseers of parishes, &c. to pay the same.

28. If the overseers, &c. fail to pay, the justices may levy the rate by distress and sale.

29. Parishes not in arrear with contributions to be reimbursed by those which are in arrear.

30. Justices may issue precepts to the overseers of parishes, &c. not comprised in unions, or only partly within the jurisdiction of the justices.

31. Powers of Act to extend to places where there are no separate churchwardens, &c. or where no separate or distinct poor-rate is made for any place extending into two or more counties, &c.—Justices not to act beyond their jurisdiction.

32. The overseers of parishes situated partly within boroughs and partly without to collect the county-rates leviable on the part of the parish not comprised within the borough.

33. Appeal against the rate, and audit of the accounts.

34. Mode of procuring the funds when the precept is sent to the guardians of the union comprising the divided place.

35. Where the amount required for the county or other rate is small, the making of the rate for reimbursement may be postponed.

36. Mode of collection where the office of high constable has not become vacant.

37. High constable to give security.

38. Mode of enforcing repayment by borough treasurers of money expended by counties out of the county-rates as provided by 5 & 6 Wm. 4, c. 76, ss. 114 & 117.

39. Delivery of precepts, &c. by post, and evidence thereof.

40. Justices in general or Quarter Sessions to appoint justices to fix and determine boundaries between counties, ridings, divisions, or parts of counties, and other places of distinct and separate jurisdiction.

41. Appointment of new justices.

42. In case of difference between justices, a referee to be appointed to meet them, and determine boundary.

43. Act not to determine any question of boundary, except for the purpose of rating.

44. Limitation of actions.

45. Penalty on persons obstructing overseers, &c.

46. Penalties and forfeitures, costs and charges, may be levied by distress and sale of offender's goods. Committal. Application of penalties.

47. Counties where rates have been regulated by particular Acts authorised to make use of the provisions of this Act.

48. All business relating to the assessment and application of county rate shall be transacted in open court.

49. Notice thereof to be given.

50. Treasurers of counties or of divisions of counties to publish once in every year an abstract account of their receipts and expenditures.

51. The Act extended to all places having separate commission of the peace, and to all rates of the nature of county rates.

52. Construction of the words "parish," "union," "guardians."

Cap. LXXXII.

An Act to apply a Sum of the Consolidated Fund and certain other Sums to the Service of the Year 1852, and to appropriate the Supplies granted in this Session of Parliament.

(July 1, 1852.)

Cap. LXXXIII.

An Act for amending the Law for granting Patents for Inventions. (July 1, 1852.)

We give this statute entire.

Whereas it is expedient to amend the law concerning letters patent for inventions: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. *Certain persons constituted Commissioners of Patents for Inventions, three of whom may act, the Chancellor or Master of the Rolls being one.*—The Lord Chancellor, the Master of the Rolls, her Majesty's Attorney-General for England, her Majesty's Solicitor-General for England; the Lord Advocate, her Majesty's Solicitor-General for Scotland, her Majesty's Attorney-General for Ireland, and her Majesty's Solicitor-General for Ireland, for the time being respectively, together with such other person or persons as may be from time to time appointed by her Majesty, as hereinafter mentioned, shall be Commissioners of Patents for Inventions; and it shall be lawful for her Majesty, from time to time, by warrant under her royal sign manual, to appoint such other person or persons as she may think fit to be a commissioner or commissioners as aforesaid; and every person so appointed shall continue such commissioner during her Majesty's pleasure; and all the powers hereby vested in the commissioners may be exercised by any three or more of them, the Lord Chancellor or Master of the Rolls being one.

2. *Seal of the commissioners.*—It shall be lawful for the commissioners to cause a seal to be made for the purposes of this Act, and from time to time to vary such seal, and to cause to be sealed therewith all the warrants for letters patent under this Act, and all instruments and copies proceeding from the office of the commissioners, and all courts, judges, and other persons whomsoever shall take notice of such seal, and receive impressions thereof in evidence, in like manner as impressions of the great seal are received in evidence, and shall also take notice of and receive in evidence, without further proof or production of the originals, all copies or extracts, certified under the seal of the said office, of or from documents deposited in such office.

3. *Power to commissioners to make rules and regulations, which shall be laid before Parliament—Commissioners to report annually to Parliament.*—It shall be lawful for the commissioners from time to time to make such rules and regulations (not inconsistent with the provisions of this Act) respecting the business of their office, and all matters and things which under the provisions herein contained are to be under their control and direction, as may appear to them necessary and expedient for the purposes of this Act; and all such rules shall be laid before both Houses of Parliament within fourteen days after the making thereof, if Parliament be sitting, and if Parliament be not sitting, then within fourteen days after the next meeting of Parliament; and the commissioners shall cause a report to be laid annually before Parliament of all the proceedings under and in pursuance of this Act.

4. *Treasury to provide offices.*—It shall be lawful for the commissioners of her Majesty's Treasury to provide and appoint from time to time proper places or buildings for an office or offices for the purposes of this Act.

5. *Commissioners, with consent of the Treasury, to appoint clerks, &c.*—It shall be lawful for the commissioners, with the consent of the commissioners of the Treasury, from time to time to appoint for the purposes of this Act, such clerks and officers as the commissioners may think proper; and it shall be lawful for the commissioners from time to time to remove any of the clerks and officers so appointed.

6. *Petition and declaration to be accompanied with a provisional specification.*—Every petition for the grant of letters patent for an invention, and the declaration required to accompany such petition, shall be left at the office of the commissioners, and there shall be left therewith a statement in writing, herein-after called the provisional specification, signed by or on behalf of the applicant for letters patent, describing the nature of the said invention; and the day of the delivery of every such petition, declaration, and provisional specification shall be recorded at the said office, and endorsed on such petition, declaration, and provisional specification, and a certificate thereof given to such applicant or his agent; and all such petitions, declarations, and provisional specifications shall be preserved in such manner as the commissioners may direct, and a registry thereof and of all proceedings thereon kept at the office of the commissioners.

7. *Every application to be referred to one of the law officers.*—Every application for letters patent made under this Act shall be referred by the commissioners, according to such regulations as they may think fit to make, to one of the law officers.

8. *The provisional specification to be referred to the law officer, who, if satisfied, may give a certificate of his allowance, which shall be filed.*—The provisional specification shall be referred to the law officer, who shall be at liberty to call to his aid such scientific or other person as he may think fit, and to cause to be paid to such person by the applicant such remuneration as the law officer shall appoint; and if such law officer be satisfied that the provisional specification describes the nature of the invention, he shall allow the same, and give a certificate of his allowance, and such certificate shall be filed in the office of the commissioners, and thereupon the invention therein referred to may, during the term of six months from the date of the application for letters patent for the said invention, be used and published without prejudice to any letters patent to be granted for the same, and such protection from the consequences of use and publication is herein-after referred to as provisional protection: provided always, that in case the title of the invention or the provisional specification be too large or insufficient, it shall be lawful for the law officer to whom the same is referred to allow or require the same to be amended.

9. *Inventor may deposit, in lieu of a provisional specification, a complete specification, such deposit to confer for a limited time the like rights as letters patent.*—The applicant for letters patent for an invention, instead of leaving with the petition and declaration a provisional specification as aforesaid, may, if he think fit, file with the said petition and declaration an instrument in writing under his hand and seal (herein-after called a complete specification), particularly describing and ascertaining the nature of the said invention, and in what manner the same is to be performed, which complete specification shall be mentioned in such declaration, and the day of the delivery of every such petition, declaration, and complete specification shall be recorded at the office of the commissioners, and endorsed on such petition, declaration, and specification, and a certificate thereof given to such applicant or his agent, and thereupon, subject and without prejudice to the provisions herein-after contained, the invention shall be protected under this Act for the term of six months from the date of the application, and the applicant shall have during such term of six months the like powers, rights, and privileges as might have been conferred upon him by letters patent for such invention, issued under this Act, and duly sealed as of the day of the date of such application; and during the continuance of such powers, rights, and privileges under this provision, such invention may be used and published without prejudice to any letters patent to be granted for the same; and where letters patent are granted in respect of such invention, then in lieu of a condition for making void such letters patent in case such invention be not described and ascertained by a subsequent specification, such letters patent shall be conditioned to become void if such complete specification, filed as aforesaid, does not particularly describe and ascertain the nature of the said invention, and in what manner the same is to be performed; and a copy of every such complete specification shall be open to the inspection of the public, as herein-after provided, from the time of depositing the same, subject to such regulation as the commissioners may make.

10. *Letters patent granted to the first inventor not to be invalidated by protection obtained in fraud of the first inventor.* In case of any application for letters patent for any invention, and the obtaining upon such application of provisional protection for such invention, or of protection for the same, by reason of the deposit of a complete specification as aforesaid in fraud of the true and first inventor, any letters patent granted to the true and first inventor of such invention shall not be invalidated by reason of such application, or of such provisional or other protection as aforesaid, or of any use or publication of the invention subsequent to such application, and before the expiration of the term of such provisional or other protection.

11. *Commissioners to cause protections to be advertised.*—Where any invention is provisionally protected under this Act, or protected by reason of the deposit of such complete specification as aforesaid, the commissioners shall cause such provisional protection or such other protection as aforesaid to be advertised in such manner as they may see fit.

12. *Application for letters patent to be advertised, and also oppositions to the same.*—The applicant for letters patent, so soon as he may think fit after the invention shall have been provisionally protected under this Act, or where a complete specification has been deposited with his petition and declaration, then so soon as he may think fit after such deposit, may give notice at the office of the commissioners of his intention of proceeding with his application for letters patent for the said invention, and thereupon the said commissioners shall cause his said application to be advertised in such manner as they may see fit; and any persons having an interest in opposing the grant of letters patent for the said invention shall be at liberty to leave particulars in writing of their objections to the said application at such place and within such time and subject to such regulations as the commissioners may direct.

13. *Specification and objections to be referred to law officer.*—So soon as the time for the delivery of such objection shall have expired, the provisional specification or complete specification (as the case may be) and particulars of objection (if any) shall be referred to the law officer to whom the application has been referred.

14. *Power to law officer to order by or to whom*

costs shall be paid.—It shall be lawful for the law officer to whom any application for such letters patent is referred, if he see fit, by certificate under his hand, to order by or to whom the costs of any hearing or inquiry upon any objection, or otherwise in relation to the grant of such letters patent, or in relation to the provisional (or other) protection acquired by the applicant under this Act, shall be paid, and in what manner and by whom such costs are to be ascertained; and if any costs so ordered to be paid be not paid within four days after the amount thereof shall be so ascertained, it shall be lawful for such law officer to make an order for the payment of the same, and every such order may be made a rule of one of her Majesty's Superior Courts at Westminster or Dublin, and may be recorded in the books of Council and Session in Scotland to the effect that execution may pass thereupon in common form.

15. *Power to law officer to cause a warrant to be made for sealing of letters patent. Chancellor to have same powers in respect to warrant, &c. as he now has. Writ of scire facias.*—It shall be lawful for such law officer, after such hearing, if any, as he may think fit, to cause a warrant to be made for the sealing of letters patent for the said invention, and such warrant shall be sealed with the seal of the commissioners, and shall set forth the tenor and effect of the letters patent thereby authorised to be granted, and such law officer shall direct the insertion in such letters patent of all such restrictions, conditions, and provisoes as he may deem usual and expedient in such grants, or necessary in pursuance of the provisions of this Act; and the said warrant shall be the warrant for the making and sealing of letters patent under this Act according to the tenor of the said warrant: provided always, that the Lord Chancellor shall and may have and exercise such powers, authority, and discretion in respect to the said warrant, and the letters patent therein directed to be made under this Act, as he now has and might now exercise with respect to the warrant for the issue under the Great Seal of letters patent for any invention, and with respect to the making and issuing of such letters patent; and the writ of scire facias shall lie for the repeal of any letters patent issued under this Act, in the like cases as the same would lie for the repeal of letters patent which may now be issued under the Great Seal.

16. *Nothing to affect the prerogative of the Crown in granting or withholding grant of letters patent.*—Provided also, that nothing herein contained shall extend to abridge or affect the prerogative of the Crown in relation to the granting or withholding the grant of any letters patent; and it shall be lawful for her Majesty, by warrant under her royal sign manual, to direct such law officer to withhold such warrant as aforesaid, or that any letters patent for the issuing whereof he may have issued a warrant as aforesaid shall not issue, or to direct the insertion in any letters patent to be issued in manner herein provided of any restrictions, conditions, or provisoes which her Majesty may think fit in addition to or in substitution for any restrictions, conditions, or provisoes which would otherwise be inserted therein under this Act; and it shall also be lawful for her Majesty by like warrant, to direct any complete specification which may have been filed under the provision hereinbefore contained, and in respect of the invention described in which no letters patent may have been granted, to be cancelled, and thereupon the protection obtained by the filing of such complete specification shall cease.

17. *Letters patent to be made subject to avoidance on non-fulfilment of certain conditions.*—All letters patent for inventions granted under the provisions herein-before contained shall be made subject to the condition that the same shall be void, and that the powers and privileges thereby granted shall cease and determine at the expiration of three years and seven years respectively from the date thereof, unless there be paid, before the expiration of the said three and seven years respectively, the sum or sums of money and stamp duties in the schedule to this Act annexed; and the payment of the said sums of money and stamp duties respectively shall be endorsed on the warrant for the said letters patent; and such officer of the commissioners as may be appointed for this purpose shall issue under the seal of the commissioners a certificate of such payment, and shall endorse a receipt for the same on any letters patent issued under the authority of the said warrant; and such certificate, duly stamped, shall be evidence of the payment of the several sums respectively.

18. *Letters patent issued under the Great Seal to be valid for the whole of the United Kingdom, the Channel Islands, and the Isle of Man—Nothing to give effect to any letters patent granted in any colony.*—The commissioners, so soon after the sealing of the said warrant as required by the applicant for the letters patent, shall cause to be prepared letters patent for the invention, according to the tenor of the said warrant, and it shall be lawful for the Lord Chancellor to cause such letters patent to be sealed with the Great Seal of the United Kingdom, and such letters patent so sealed shall extend to the whole of the United Kingdom of Great Britain and Ireland, the Channel Islands, and the Isle of Man; and in case such warrant so direct, such letters patent shall be made applicable to her Majesty's colonies and plantations abroad, or such of them as may be mentioned in such warrant; and such letters patent shall be valid and effectual as to the whole of such United Kingdom, and the said islands and isle, and the said colonies or plantations, or such of them as aforesaid, and shall confer the like powers, rights, and privileges as might, in case this Act had not been passed, have been conferred by several letters patent of the like purport and effect passed under the Great Seal of the United Kingdom, under the seal appointed to be used instead of the Great Seal of Scotland, and under the Great Seal of Ireland respectively, and made applicable to England, the dominion of Wales, the town of Berwick-upon-Tweed, the Channel Islands, and Isle of Man, and the said colonies and plantations, or such of them as aforesaid, to Scotland, and to Ireland respectively, save as herein otherwise provided: provided always, that nothing in this Act contained shall be deemed or taken to give any effect or operation to any letters patent to be granted under the authority of this Act in any colony in which such or the like letters patent would be invalid by the law in force in the same colony for the time being: provided always, that a transcript of such letters shall, so soon after the sealing of the same and in such manner as the commissioners shall direct, be transmitted to the director of Chancery in Scotland, and be recorded in the records of Chancery in Scotland, upon payment of such fees as the commissioners shall appoint, in the same manner and to the same effect in all respects as letters patent passing under the seal appointed by the treaty of union to be used in place of the Great Seal of Scotland have heretofore been recorded, and extracts from the said records shall be furnished to all parties requiring the same, on payment of such fees as the commissioners shall direct, and shall be received in evidence in all courts in Scotland to the like effect as the letters patent themselves.

19. *No letters patent to be issued after three months from date of warrant.*—Provided always, that no letters patent, save as hereinafter mentioned in the case of letters patent destroyed or lost, shall issue on any warrant granted as aforesaid, unless application be made to seal such letters patent within three months after the date of the said warrant.

20. *No letters patent (except in lieu of those lost, &c.) to be issued after expiration of protection given by this Act.*—Provided also, that no letters patent (save letters patent issued in lieu of others destroyed or lost) shall be issued or be of any force or effect unless the same be granted during the continuance of the provisional protection under this Act, or, where a complete specification has been deposited under this Act, then unless such letters patent be granted during the continuance of the protection conferred under this Act by reason of such deposit, save that where the application to seal such letters patent has been made during the continuance of such provisional or other protection as aforesaid, and the sealing of such letters patent has been delayed by reason of a caveat or an application to the Lord Chancellor against or in relation to the sealing of such letters patent, then such letters patent may be sealed at such time as the Lord Chancellor shall direct.

21. *Letters patent may be granted to personal representatives of the applicant during the term of protection, or within three months after applicant's decease.*—Provided also, that where the applicant for such letters patent dies during the continuance of the provisional protection, or the protection by reason of the deposit of a complete specification (as the case may be), such letters patent may be granted to the executors or administrators of such applicant during the continuance of such provisional or other protection, or at any time within three months after the death of such applicant, notwithstanding the expiration of the term of such provisional or other protection, and the letters patent so granted shall be of the like force and effect as if they had been granted to such applicant during the continuance of such provisional or other protection.

22. *If letters patent be destroyed or lost, other letters patent may be issued.*—Provided also, that in case such letters patent shall be destroyed or lost, other letters patent of the like tenor and effect, and sealed and dated as of the same day, may, subject to such regulations as the commissioners may direct, be issued under the authority of the warrant in pursuance of which the original letters patent were issued.

23. *Letters patent may be dated as of the day of the application.*—It shall be lawful (the Act of the eighteenth year of King Henry the Sixth, chapter one, or any other Act, to the contrary notwithstanding), to cause any letters patent to be issued in pursuance of this Act to be sealed and bear date as of the day of the application for the same, and in case of such letters patent for any invention provisionally registered under the "Protection of Inventions Act, 1851," as of the day of such provisional registration, or, where the law officer to whom the application was referred, or the Lord Chancellor, thinks fit and directs, any such letters patent as aforesaid may be sealed and bear date as of the day of the sealing of such letters patent, or of any other day between the day of such application or provisional registration and the day of such sealing.

24. *Letters patent where antedated to be of the same validity as if sealed on the day of the date.*—Any letters patent issued under this Act sealed and bearing date as of any day prior to the day of the actual sealing thereof, shall be of the same force and validity as if they had been sealed on the day as of which the same are expressed to be sealed and bear date: provided always, that save where such letters patent are granted for any invention, in respect whereof a complete specification has been deposited upon the application for the same under this Act, no proceeding at law or in equity shall be had upon such letters patent in respect of any infringement committed before the same were actually granted.

25. *Letters patent obtained in United Kingdom for patented foreign inventions not to continue in force after the expiration of the foreign patent.*—Where, upon any application made after the passing of this Act, letters patent are granted in the United Kingdom for or in respect of any invention first invented in any foreign country, or by the subject of any foreign power or state, and a patent or like privilege for the monopoly or exclusive use or exercise of such invention in any foreign country is there obtained before the grant of such letters patent in the United Kingdom, all rights and privileges under such letters patent shall (notwithstanding any term in such letters patent limited) cease and be void immediately upon the expiration or other determination of the term during which the patent or like privilege obtained in such foreign country shall continue in force, or where more than one such patent or like privilege is obtained abroad, immediately upon the expiration or determination of the term which shall first expire or be determined of such several patents or like privileges: provided always, that no letters patent for or in respect of any invention for which any such patent or like privilege as aforesaid shall have been obtained in any foreign country, and which shall be granted in the said United Kingdom after the expiration of the term for which such patent or privilege was granted or was in force, shall be of any validity.

26. *Letters patent not to prevent the use of inventions in foreign ships resorting to British ports; except ships of foreign states in whose ports British ships are prevented from using foreign inventions.*—No letters patent for any invention (granted after the passing of this Act) shall extend to prevent the use of such invention in any foreign ship or vessel, or for the navigation of any foreign ship or vessel, which may be in any port of her Majesty's dominions, or in any of the waters within the jurisdiction of any of her Majesty's Courts, where such invention is not used for the manufacture of any goods or commodities to be vended within or exported from her Majesty's dominions: provided always, that this enactment shall not extend to the ships or vessels of any foreign state of which the laws authorise subjects of such foreign state, having patents or like privileges for the exclusive use or exercise of inventions within its territories, to prevent or interfere with the use of such inventions in British ships or vessels, or in or about the navigation of British ships or vessels, while in the ports of such foreign state, or in the waters within the jurisdiction of its Courts, where such inventions are not so used for the manufacture of goods or commodities to be vended within or exported from the territories of such foreign state.

27. *Specifications to be filed instead of being enrolled.*—All letters patent to be granted under this Act (save only letters patent granted after the filing of a complete specification) shall require the specification thereunder to be filed in the High Court of Chancery, instead of requiring the same to be enrolled, and no enrolment shall be requisite.

28. *Specifications, &c. to be filed in such office as Lord Chancellor shall direct.—As to filing extra copies of drawings.* — Every specification to be filed in pursuance of the condition of any letters patent shall be filed in such office of the Court of Chancery as the Lord Chancellor shall from time to time appoint, and every provisional specification and complete specification left or filed at the office of the commissioners, on the application for any letters patent, shall forthwith after the grant of the letters patent, or if no letters patent be granted then immediately on the expiration of six months from the time of such application, be transferred to and kept in the said office appointed for filing specifications in Chancery; and in case reference is made to drawings in any specification depo-

sited or filed under this Act, an extra copy of such drawings shall be left with such specification.

29. *Copies of specifications to be open to inspection at office of commissioners, and at Edinburgh and Dublin.*—The commissioners shall cause true copies of all specifications (other than provisional specifications), disclaimers, and memoranda of alterations filed under or in pursuance of this Act, and of all provisional specification after the term of the provisional protection of the invention has expired, to be open to the inspection of the public at the office of the commissioners, and at an office in Edinburgh and Dublin respectively, at all reasonable times, subject to such regulations as the commissioners may direct; and the commissioners shall cause a transcript of the said letters patent to be transmitted for enrolment in the Court of Chancery, Dublin, and shall cause the same to be enrolled therein, and the transcript or exemplification thenceforward shall have the like effect to all intents and purposes as if the original letters patent had been enrolled in the Court of Chancery in Dublin, and all parties shall have all their remedies by scire facias or otherwise, as if the letters patent had been granted to extend to Ireland only.

30. *Specifications and other documents to be printed and published—As to presenting copies of publications to public libraries, &c.*—The commissioners shall cause to be printed, published, and sold, at such prices and in such manner as they may think fit, all specifications, disclaimers, and memoranda of alterations deposited or filed under this Act, and such specifications (not being provisional specifications), disclaimers, and memoranda respectively shall be so printed and published as soon as conveniently may be after the filing thereof respectively, and all such provisional specifications shall be so printed and published as soon as conveniently may be after the expiration of the provisional protection obtained in respect thereof; and it shall be lawful for the commissioners to present copies of all such publications to such public libraries and museums as they may think fit, and to allow the person depositing or filing any such specification, disclaimer, or memorandum of alteration to have such number, not exceeding twenty-five, of the copies thereof so printed and published, without any payment for the same, as they may think fit.

31. *Enrolments, &c. may be removed to the Office for Specifications.*—It shall be lawful for the Lord Chancellor and the Master of the Rolls to direct the enrolment of specifications, disclaimers, and memoranda of alterations heretofore or hereafter enrolled or deposited at the Rolls Chapel Office, or at the Petty Bag Office, or at the Enrolment Office of the Court of Chancery, or in the custody of the Master of the Rolls as Keeper of the Public Records, to be transferred to and kept in the office appointed for filing specifications in Chancery under this Act.

32. *Commissioners to cause indexes to be made to old specifications, &c.; such specifications, &c. may be printed and published.*—The commissioners shall cause indexes to all specifications, disclaimers, and memoranda of alterations heretofore or to be hereafter enrolled or deposited as last aforesaid to be prepared in such form as they may think fit, and such indexes shall be open to the inspection of the public at such place or places as the commissioners shall appoint, and subject to the regulations to be made by the commissioners, and the commissioners may cause all or any of such indexes, specifications, disclaimers, and memoranda of alterations to be printed, published, and sold in such a manner and at such prices as the commissioners may think fit.

33. *Copies of specifications, &c. as printed by Queen's printers to be evidence.*—Copies, printed by the printers to the Queen's Majesty, of specifications, disclaimers, and memoranda of alterations shall be admissible in evidence, and deemed and to be primâ facie evidence of the existence and contents of the documents to which they purport to relate in all courts and in all proceedings relating to letters patent.

34. *Register of patents to be kept.*—There shall be kept at the office appointed for filing specification in Chancery under this Act a book or books, to be called "The Register of Patents," wherein shall be entered and recorded in chronological order all letters patent granted under this Act, the deposit or filing of specifications, disclaimers, a memoranda of alterations filed in respect of such letters patent, all amendments in such letters patent and specifications, all confirmations and extensions of such letters patent, the expiry, vacating, or cancelling such letters patent, with the dates thereof respectively, and all other matters and things affecting the validity of such letters patent as the commissioners may direct, and such register, or a copy thereof, shall be open at all convenient times to the inspection of the public, subject to such regulations as the commissioners may make.

35. *A register of proprietors to be kept at the office for filing specifications.*—There shall be kept at the office appointed for filing specifications in Chancery under this Act a book or books, entitled "The Register of Proprietors," wherein shall be entered, in such manner as the commissioners shall direct, the assignment of any letters patent, or of any share or interest therein, any license under letters patent, and the district to which such license relates, with the name or names of any person having any share or interest in such letters patent or licence, the date of his or their acquiring such letters patent, share, and interest, and any other matter or thing relating to or affecting the proprietorship in such letters patent or license; and a copy of any entry in such book, certified under such seal as may have been appointed or as may be directed by the Lord Chancellor to be used in the said office, shall be given to any person requiring the same, on payment of the fees hereinafter provided; and such copies so certified shall be received in evidence in all courts and in all proceedings, and shall be primâ facie proof of the assignment of such letters patent, or share or interest therein, or of the licence or proprietorship, as therein expressed: provided always, that until such entry shall have been made the grantee or grantees of the letters patent shall be deemed and taken to be the sole and exclusive proprietor or proprietors of such letters patent, and of all the licences and privileges thereby given and granted; that certified duplicates of all entries made in the said register of proprietors shall forthwith be transmitted to the office of the commissioners in Edinburgh and Dublin, where the same shall also be open to the inspection of the public; and any writ of scire facias to repeal such letters patent may be issued to the sheriff of the county or counties in which the grantee or grantees resided at the time when the said letters patent were granted; and in case such grantee or grantees do not reside in the United Kingdom, it shall be sufficient to file such writ in the Petty-bag Office, and serve notice thereof in writing at the last known residence or place of business of such grantee or grantees; and such register or a copy shall be open to the inspection of the public at the office of the commissioners, subject to such regulations as the commissioners may make: provided always, that in any proceeding in Scotland to repeal any letters patent service of all writs and summonses shall be made according to the existing forms and practice; provided also, that the grantee or grantees of letters patent to be hereafter granted may assign the letters patent for England, Scotland, or Ireland respectively as effectually as if the letters patent had been originally granted to extend to England or Scotland, or Ireland only, and the assignee or assignees shall have the same rights of action and remedies, and shall be subject to the like actions and suits as he or they should and would have had and been subject to upon the assignment of letters patent granted to England, Ireland, or Scotland before the passing of this Act.

36. *Power for more than twelve persons to have a legal interest in letters patent.*—Notwithstanding any proviso that may exist in former letters patent, it shall be lawful for a larger number than twelve persons hereafter to have a legal and beneficial interest in such letters patent.

37. *Falsification or forgery of entries a misdemeanor.*—If any person shall wilfully make or cause to be made any false entry in the said register of proprietors, or shall wilfully make or forge, or cause to be made or forged, any writing falsely purporting to be a copy of any entry in the said book, or shall produce or tender, or cause to be produced or tendered, in evidence any such writing, knowing the same to be false or forged, he shall be guilty of a misdemeanor, and shall be punished by fine and imprisonment accordingly.

38. *Entries may be expunged.*—If any person shall deem himself aggrieved by any entry made under colour of this Act in the said register of proprietors, it shall be lawful for such person to apply, by motion, to the Master of the Rolls, or to any of the Courts of Common Law at Westminster in Term time, or by summons to a judge of any of the said courts in vacation, for an order that such entry may be expunged, vacated, or varied; and upon any such application the Master of the Rolls, or such Court or judge respectively, may make such order for expunging, vacating, or varying such entry, and as to the costs of such application, as to the said Master of the Rolls or to such Court or judge may seem fit; and the officer having the care and custody of such register, on the production to him of any such order for expunging, vacating, or varying any such entry, shall expunge, vacate, or vary the same, according to the requisitions of such order.

39. *Provisions of 5 & 6 Wm. 4, c. 83, and of 7 & 8 Vict. c. 69, as to disclaimers and memoranda of alterations to apply to patents under this Act—Applications for disclaimers and caveats to be at office of commissioners.*—All the provisions of the Acts of the session holden in the fifth and sixth years of King William the Fourth, chapter eighty-three, and of the session holden in the seventh and eighth years of her Majesty, chapter sixty-nine, respectively, relating to disclaimers and memoranda of alterations in letters patent and specifications, except as hereinafter provided, shall be applicable and apply to any letters patent granted, and to any specification filed under the provisions of this Act: provided always, that all applications for leave to enter a disclaimer or memorandum of alteration shall be made, and all caveats relating thereto shall be lodged at the office of the commissioners, and shall be referred to the respective law officers in the said first-recited Act mentioned: provided also, that every such disclaimer or memorandum of alteration shall be filed in the office appointed for filing specifications in Chancery under this Act, with the specification to which the same relates, in lieu of being entered or filed and enrolled as required by the said first-recited Act, or by the Act of the session holden in the twelfth and thirteenth years of her Majesty, chapter one hundred and nine, and the said Acts shall be construed accordingly: provided also, that such filing of any disclaimer or memorandum of alteration, in pursuance of the leave of the law officer in the first-recited Act mentioned, certified as therein mentioned, shall, except in cases of fraud, be conclusive as to the right of the party to enter such disclaimer or memorandum of alteration under the said Acts and this Act; and no objection shall be allowed to be made in any proceeding upon or touching such letters patent, specification, disclaimer, or memorandum of alteration, on the ground that the party entering such disclaimer or memorandum of alteration had not sufficient authority in that behalf: provided also, that no action shall be brought upon any letters patent in which or on the specification of which any disclaimer or memorandum of alteration shall have been filed in respect of any infringement committed prior to the filing of such disclaimer or memorandum of alteration, unless the law officer shall certify in his fiat that any such action may be brought, notwithstanding the entry or filing of such disclaimer or memorandum of alteration.

40. *Provisions of 5 & 6 Wm. 4, c. 83, 2 & 3 Vict. c. 67, and 7 & 8 Vict. c. 69, as to confirmation and prolongation, to apply to patents under this Act.*—All the provisions of the said Act of the fifth and sixth years of King William the Fourth, for the confirmation of any letters patent, and the grant of new letters patent, and all the provisions of the said Act, and the Acts of the session holden in the second and third years of her Majesty, chapter sixty-seven, and of the session holden in the seventh and eighth years of her Majesty, chapter sixty-nine, respectively, relating to the prolongation of the term of letters patent, and to the grant of new letters patent for a further term, shall extend and apply to any letters patent granted under the provisions of this Act, and it shall be lawful for her Majesty to grant any new letters patent, as in the said Acts mentioned; and in the granting of any such new letters patent her Majesty's Order in Council shall be a sufficient warrant and authority for the sealing of any new letters patent, and for the insertion in such new letters patent of any restrictions, conditions, and provisions in the said order mentioned; and the Lord Chancellor, on the receipt of the said Order in Council, shall cause letters patent, according to the tenor and effect of such order, to be made and sealed in the manner herein directed for letters patent issued under the warrant of the law officer: provided always that such new letters patent shall extend to and be available in and for such places as the original letters patent extended to and were available in: provided also, that such new letters patent shall be sealed and bear date as of the day after the expiration of the term of the original letters patent which may first expire.

41. *In actions for infringement of letters patent, particulars to be delivered, and no evidence allowed not mentioned therein.*—In any action in any of her Majesty's Superior Courts of Record at Westminster or in Dublin for the infringement of letters patent the plaintiff shall deliver with his declaration particulars of the breaches complained of in the said action, and the defendant, on pleading thereto, shall deliver with his pleas, and the prosecutor in any proceedings by scire facias to repeal letters patent shall deliver with his declaration, particulars of any objections on which he means to rely at the trial in support of the pleas in the said action or of the suggestions of the said declaration in the proceedings by scire facias respectively; and at the trial of such action or proceeding by scire facias no evidence shall be allowed to be given in support of any alleged infringement or of any objection impeaching the validity of such letters patent which shall not be contained in the particulars delivered as aforesaid: provided always, that the place or places at or in which and in what manner the invention is alleged to have been used or published prior to the date of the letters patent shall be stated in such particulars: provided also, that it shall and may be lawful for any judge at chambers to allow such plaintiff or defendant or prosecutor respectively to amend the particulars delivered as aforesaid, upon such terms as to such judge shall seem fit: provided also, that at the trial of any proceeding by scire facias to repeal letters patent the defendant shall be entitled to begin and to give evidence in support of such

letters patent, and in case evidence shall be adduced on the part of the prosecutor impeaching the validity of such letters patent, the defendant shall be entitled to the reply.

42. *Courts of Common Law may grant injunction in case of infringement.*—In any action in any of her Majesty's Superior Courts of Record at Westminster and in Dublin for the infringement of letters patent, it shall be lawful for the Court in which such action is pending, if the Court be then sitting, or if the Court be not sitting then for a judge of such Court, on the application of the plaintiff or defendant respectively, to make such order for an injunction, inspection, or account, and to give such direction respecting such action, injunction, inspection, and account, and the proceedings therein respectively, as to such Court or judge may seem fit.

43. *Particulars to be regarded in taxation of costs.*—In taxing the costs in any action in any of her Majesty's Superior Courts at Westminster or in Dublin, commenced after the passing of this Act for infringing letters patent regard shall be had to the particulars delivered in such action, and the plaintiff and defendant respectively shall not be allowed any costs in respect of any particular unless certified by the judge before whom the trial was had to have been proved by such plaintiff or defendant respectively, without regard to the general costs of the cause; and it shall be lawful for the judge before whom any such action shall be tried to certify on the record that the validity of the letters patent in the declaration mentioned came in question; and the record, with such certificate, being given in evidence in any suit or action for infringing the said letters patent, or in any proceeding by scire facias to repeal the letters patent, shall entitle the plaintiff in any such such suit or action, or the defendant in such proceeding by scire facias on obtaining a decree, decretal order, or final judgment, to his full costs, charges, and expenses, taxed as between attorney and client, unless, the judge making such decree or order, or the judge trying such action or proceeding, shall certify that the plaintiff or defendant respectively ought not to have such full costs: provided always, that nothing herein contained shall affect the jurisdiction and forms of process of the Courts in Scotland in any action for the infringement of letters patent or in any action or proceeding respecting letters patent hitherto competent to the said courts: provided also, that when any proceedings shall require to be taken in Scotland to repeal any letters patent, such proceedings shall be taken in the form of an action of reduction at the instance of her Majesty's Advocate, or at the instance of any other party having interest with concurrence of her Majesty's Advocate, which concurrence her Majesty's Advocate is authorised and empowered to give upon just cause shewn only.

44. *Payments and stamp duties on letters patent to be as in schedule.*—There shall be paid in respect of letters patent applied for or issued as herein mentioned, the filing of specifications and disclaimers, certificates, entries, and searches, and other matters and things mentioned in the schedule to this Act, such fees as are mentioned in the said schedule; and there shall be paid unto and for the use of her Majesty, her heirs and successors, for or in respect of the warrants and certificates mentioned in the said schedule, or the vellum, parchment, or paper on which the same respectively or written, the stamp duties mentioned in the said schedule; and no other stamp duties shall be levied, or fees, except as hereinafter mentioned, taken in respect to such letters patent and specifications, and the matters and things in such schedule mentioned.

45. *Duties to be under management of Commissioners of Inland Revenue.*—The stamp duties hereby granted shall be under the care and management of the Commissioners of Inland Revenue; and the several rules, regulations, provisions, penalties, clauses, and matters contained in any Act now or hereafter to be in force with reference to stamp duties shall be applicable thereto.

46. *All moneys received to be paid to the Consolidated Fund.*—The fees to be paid as aforesaid shall from time to time be paid into the receipt of the Exchequer, and be carried to and made part of the Consolidated Fund of the United Kingdom.

47. *Not to prevent payment of fees to law officers in cases of opposition, &c.*—Provided always, that nothing herein contained shall prevent the payment as heretofore to the law officers in cases of opposition to the granting of letters patent, and in cases of disclaimers and memoranda of alterations, of such fees as may be appointed by the Lord Chancellor and Master of the Rolls as the fee, to be paid on the hearing of such oppositions, and in the case of disclaimers and memoranda of alterations respectively, or of such reasonable sums for office or other copies of documents in the office of the commissioners, as the commissioners may from time to time appoint to be paid for such copies, and the Lord Chancellor and Master of the Rolls, and the commissioners, are hereby respectively authorised and empowered to appoint the fees to be so paid in respect of such oppositions, disclaimers, and memoranda of alterations respectively, and for such office or other copies.

48. *Fees and salaries of officers.*—It shall be lawful for the commissioners of her Majesty's treasury from time to time to allow such fees to the law officers and their clerks (for duties under this Act in respect of which fees may not be payable to them under the provisions lastly hereinbefore contained) as the Lord Chancellor and Master of the Rolls may from time to time appoint, and to allow such salaries and payments to any clerks and officers to be appointed under this Act, and such additional salaries and payments to any other clerks and officers in respect of any additional duties imposed on them by this Act, as the said Commissioners of the Treasury may think fit.

49. *Sums for defraying salaries and expenses under this Act to be paid out of moneys to be provided by Parliament.*—It shall be lawful for the Commissioners of her Majesty's Treasury to allow from time to time the necessary sums for providing offices under this Act, and for the fees, salaries, and payments allowed by them as aforesaid, and for defraying the current and incidental expenses of such office or offices; and the sums to be so allowed shall be paid out of such moneys as may be provided by Parliament for that purpose.

50. *Power to Treasury to grant compensation to persons affected by this Act.*—And whereas divers persons by virtue of their offices or appointments are entitled to fees or charges payable in respect of letters patent as heretofore granted within the United Kingdom of Great Britain and Ireland, or have and derive in respect of such letters patent, or the procedure for the granting thereof, fees or other emoluments or advantages:

It shall be lawful for the said Commissioners of the Treasury to grant to any such persons who may sustain any loss of fees, emoluments, or advantages by reason of the passing of this Act, such compensation as, having regard to the tenure and nature of their respective offices and appointments, such commissioners deem just and proper to be awarded; and all such compensations shall be paid out of such moneys as may be provided by Parliament for that purpose: provided always, that in case any person to whom any yearly sum by way of compensation shall be awarded and paid shall, after the passing of this Act, be appointed to any office or place of emolument under the provisions of this Act, or in the public service, then and in every such case the amount of such yearly sum shall in every year be diminished by so much as the emoluments of such person for such year from such office or place shall amount to, and provision in that behalf shall be made in the award to him of such yearly sum.

51. *Account of salaries, fees, and compensation allowances to be laid before Parliament.*—An account of all salaries, fees, allowances, sums, and compensations to be appointed, allowed, or granted under this Act shall, within fourteen days next after the same shall be so appointed, allowed, or granted respectively, be laid before both Houses of Parliament, if Parliament be then sitting, or if Parliament be not then sitting, then within fourteen days after the next meeting of Parliament.

52. *Not to extend to patents applied for before commencement of Act.*—Letters patent may be granted in respect of applications made before the commencement of this Act, in like manner and subject to the same provisions as if this Act had not been passed.

53. *As to letters patent granted before commencement of this Act for England, Scotland, or Ireland.*—Where letters patent for England or Scotland or Ireland have been granted before the commencement of this Act, or are in respect of any application made before the commencement of this Act hereafter granted for any invention, letters patent for England or Scotland or Ireland may be granted for such invention in like manner as if this Act had not been passed: provided always, that in lieu of all the fees or payments and stamp-duties now payable in respect of such letters patent, or in or about obtaining a grant thereof, there shall be paid in respect of such letters patent for England or Scotland or Ireland on the sealing of such respective letters patent a sum equal to one-third part of the fees and stamp-duties which would be payable according to the schedule to this Act in respect of letters patent issued for the United Kingdom under this Act, on or previously to the sealing of such letters patent; and at or before the expiration of the third year and the seventh year respectively of the term granted by such letters patent for England or Scotland or Ireland, sums equal to one-third part of the fees and stamp-duties payable at the expiration of the third year and the seventh year respectively of the term granted by letters patent issued for the United Kingdom under this Act; and the condition of such letters patent for England or Scotland or Ireland shall be varied accordingly; and such fees shall be paid to such persons as the commissioners of her Majesty's Treasury shall appoint, and shall be carried to and form part of the said Consolidated Fund.

54. *Forms in schedule may be used.*—The several forms in the schedule to this Act may be used for and in respect of the several matters therein mentioned, and the commissioners may, where they think fit, vary such forms as occasion may require, and cause to be printed and circulated such other forms as they may think fit to be used for the purposes of this Act.

55. *Interpretation of terms.*—In the construction of this Act the following expressions shall have the meanings hereby assigned to them, unless such meanings be repugnant to or inconsistent with the context (that is to say);

The expression "Lord Chancellor" shall mean the Lord Chancellor, or Lord Keeper of the Great Seal, or Lords Commissioners of the Great Seal:

The expression "The Commissioners" shall mean the commissioners for the time being acting in execution of this Act:

The expression "Law Officer" shall mean her Majesty's Attorney-General or Solicitor-General for the time being for England, or the Lord Advocate, or her Majesty's Solicitor-General for the time being for Scotland, or her Majesty's Attorney-General or Solicitor-General for the time being for Ireland:

The expression "Invention" shall mean any manner of new manufacture the subject of letters patent and grant of privilege within the meaning of the Act of the twenty-first year of the reign of King James the First, chapter three:

The Expressions "Petition," "Declaration," "Provisional specification," "Warrant," and "Letters patent" respectively, shall mean instruments in the form and to the effect in the schedule hereto annexed, subject to such alterations as may from time to time be made therein under the powers and provisions of this Act.

56. *Short Title.*—In citing this Act in other Acts of Parliament, instruments, and proceedings, it shall be sufficient to use the expression "The Patent Law Amendment Act, 1852."

57. *Commencement of Act.*—This Act shall commence and take effect from the first day of October, One thousand eight hundred and fifty-two.

The SCHEDULE to which this Act refers.

Fees to be paid.

	£.	s.	d.
On leaving petition for grant of letters patent	5	0	0
On notice of intention to proceed with the application	5	0	0
On sealing of letters patent	5	0	0
On filing specification	5	0	0
At or before the expiration of the third year	40	0	0
At or before the expiration of the seventh year	80	0	0
On leaving notice of objections	2	0	0
Every search and inspection	0	1	0
Entry of assignment or licence	0	5	0
Certificate of assignment or licence	0	5	0
Filing application for disclaimer	5	0	0
Caveat against disclaimer	2	0	0

Stamp Duties to be paid.

On warrant of law officer for letters patent	5	0	0
On certificate of payment of the fee payable at or before the expiration of the third year	10	0	0
On certificate of payment of the fee payable at or before the expiration of the seventh year	20	0	0

FORMS.

No. *Petition.*

To the Queen's most excellent Majesty.

The humble petition of [*here insert name and address of petitioner*] for, *&c.*

Sheweth,—That your petitioner is in possession of an invention for [*the title of the invention,*] which invention he believes will be of great public utility; that he is the true and first inventor thereof; and that the same is not in use by any other person or persons, to the best of his knowledge and belief.

Your petitioner therefore humbly prays, that your Majesty will be pleased to grant unto him, his executors, administrators, and assigns, your Royal letters patent for the United Kingdom of Great Britain and Ireland, the Channel Islands, and Isle of Man [*colonies to be mentioned, if any*] for the term of fourteen years, pursuant to the statutes in that case made and provided.

And your petitioner will ever pray, &c.

No. *Declaration.*

I, of in the county of do solemnly and sincerely declare, that I am in possession of an invention for, *&c.* [*the title as in petition,*] which invention I believe will be of great public utility; that I am the true and first inventor thereof; and that the same is not in use by any other person or persons, to the best of my knowledge and belief; [*where a complete specification is to be filed with the petition and declaration, insert these words:*—"and that the instrument in writing under my hand and seal, hereunto annexed, particularly

describes and ascertains the nature of the said invention and the manner in which the same is to be performed;"] and I make this declaration conscientiously believing the same to be true, and by virtue of the provisions of an Act made and passed in the session of Parliament held in the fifth and sixth years of the reign of his late Majesty King William the Fourth, intituled, "An Act to repeal an Act of the present Session of Parliament, intituled, 'An Act for the more effectual Abolition of Oaths and Affirmations taken and made in various Departments of the State, and to substitute Declarations in lieu thereof, and for the more entire Suppression of voluntary and extra-judicial Oaths and Affidavits,' and to make other Provisions for the Abolition of unnecessary Oaths." *A. B.*

Declared at this day of
A.D. before me,

A Master in Chancery,
or
Justice of the Peace.

No. *Provisional Specification.*

I do hereby declare the nature of the said invention for [*insert title as in petition*], to be as follows:—[*here insert description.*]

Dated this day of A.D.

[*To be signed by applicant or his agent.*]

Reference. [*To be endorsed on the petition.*]

Her Majesty is pleased to refer this petition to consider what may be properly done therein.

Clerk of the Commissioners.

Warrant.

In humble obedience to her Majesty's command referring to me the petition of of to consider what may be properly done therein, I do hereby certify as follows:—That the said petition sets forth that the petitioner [*allegations of the petition*]. And the petitioner most humbly prays, [*prayer of the petition*]. That in support of the allegations contained in the said petition the declaration of the petitioner has been laid before me, whereby he solemnly declares that [*allegations of the declaration*].

That there has also been laid before me [a provisional specification signed , and also a certificate ,] *or* [a complete specification, and a certificate of the filing thereof,] whereby it appears that the said invention was provisionally protected [*or* protected] from the day of A.D. in pursuance of the statute:

That it appears that the said application was duly advertised:

Upon consideration of all the matters aforesaid, and as it is entirely at the hazard of the said petitioner whether the said invention is new or will have the desired success, and as it may be reasonable for her Majesty to encourage all arts and inventions which may be for the public good, I am of opinion, that her Majesty may grant her royal letters patent unto the petitioner, his executors, administrators, and assigns, for his said invention within the United Kingdom of Great Britain and Ireland, the Channel Islands, and the Isle of Man [*colonies to be mentioned, if any*], for the term of fourteen years, according to the statute in that case made and provided, if her Majesty shall be graciously pleased so to do, to the tenor and effect following: [*See next form.*]

Given under my hand, this day of A.D.

Seal of the
Commissioners.

Letters Patent.

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith; to all to whom these presents shall come, greeting:

Whereas hath by his petition humbly represented unto us that he is in possession of an invention for which the petitioner conceives will be of great public utility; that he is the true and first inventor thereof; and that the same is not in use by any other person or persons, to the best of his knowledge and belief: the petitioner therefore most humbled prayed that we would be graciously pleased to grant unto him, his executors, administrators, and assigns, our royal letters patent for the sole use, benefit, and advantage of his said invention within our United Kingdom of Great Britain and Ireland, the Channel Islands, and Isle of Man [*colonies to be mentioned, if any*], for the term of fourteen years, pursuant to the statutes in that case made and provided:

[And whereas the said hath particularly described and ascertained the nature of the said invention, and in what manner the same is to be performed, by an instrument in writing under his hand and seal, and has caused the same to be duly filed in ;]

And we, being willing to give encouragement to all arts and inventions which may be for the public good, are graciously pleased to condescend to the petitioner's request: know, ye, therefore, that we, of our especial grace, certain knowledge, and more motion, have given and granted, and by these presents, for us, our heirs and successors, do give and grant unto the said , his executors, administrators, and assigns, our especial licence, full power, sole privilege, and authority that he the said , his executors, administrators, and assigns, and every of them, by himself and themselves, or by his and their deputy ordeputies, servants or agents, or such others as he the said , his executors, administrators, or assigns, shall at any time agree with, and no others, from time to time and at all times hereafter during the term of years herein expressed, shall and lawfully may make, use, exercise, and vend his said invention within our United Kingdom of Great Britain and Ireland, the Channel Islands, and Isle of Man, in such manner as to him the said , his executors, administrators, and assigns, or any of them, shall in his or their discretion seem meet; and that he the said , his executors, administrators, and assigns, shall and lawfully may have and enjoy the whole profit, benefit, commodity and advantage from time to time coming, growing, accruing, and arising by reason of the said invention, for and during the term of years herein mentioned; to have, hold, exercise, and enjoy the said licenses, powers, privileges, and advantages hereinbefore granted or mentioned to be granted unto the said , his executors, administrators, and assigns, for and during and unto the full end and term of fourteen years from the day of , A.D. next and immediately ensuing, according to the statute in such case made and provided; and to the end that he, the said , his executors, administrators, and assigns, and every of them, may have and enjoy the full benefit and the sole use and exercise of the said invention, according to our gracious intention hereinbefore declared, we do by these presents, for us, our heirs and successors, require and strictly command all and every person and persons, bodies politic and corporate, and all other our subjects whatsoever, of what estate, quality, degree, name, or condition soever they be, within our United Kingdom of Great Britain and Ireland, the Channel Islands, and Isle of Man [*colonies to be mentioned, if any*], that neither they nor any of them, at any time during the continuance of the said term of fourteen years hereby granted, either directly or indirectly to make, use, or put in practice the said invention, or any part of the same, so attained unto by the said as aforesaid, nor in anywise counterfeit, imitate, or resemble the same, nor shall make or cause to be made any addition thereunto or subtraction from the same, whereby to pretend himself or themselves the inventor or inventors, devisor, or devisors thereof, without the consent, licence, or agreement of the said , his executors, administrators, or assigns, in writing under his or their hands and seals first had and obtained in that behalf, upon such pains and penalties as can or may be justly inflicted on such offenders for their contempt of this our royal command, and further to be answerable to the said , his executors, administrators, and assigns, according to law, for his and their damages thereby occasioned: and moreover we do by these presents, for us, our heirs and successors, will and command all and singular the justices of the peace, mayors, sheriffs, bailiffs, constables, headboroughs, and all other officers and ministers whatsoever of us, our heirs and successors, for the time being, that they or any of them do not nor shall at any time during the said term hereby granted in anywise molest, trouble, or hinder the said , his executors, administrators, or assigns, or any of them, or his or their deputies, servants, or agents, in or about the due and lawful use or exercise of the aforesaid invention, or anything relating thereto: provided always, and these our letters patent are and shall be upon this condition, that if at any time during the said term hereby granted it shall be made appear to us, our heirs or successors, or any six or more of our or their Privy Council, that this our grant is contrary to law, or prejudicial or inconvenient to our subjects in general, or that the said invention is not a new invention as to the public use and exercise thereof, or that the said is not the true and first inventor thereof within this realm as aforesaid, these our letters patent shall forthwith cease, determine, and be utterly void to all intents and purposes, anything hereinbefore contained to the contrary thereof in anywise notwithstanding: provided also, that these our letters patent, or anything herein contained, shall not extend or be construed to extend to give privilege unto the said , his executors, administrators, or assigns, or any of them, to use or imitate any invention or work whatsoever which hath heretofore been found out or invented by any other of our subjects whatsoever, and publicly used or exercised, unto whom like letters patent or privileges have been already granted for the sole use, exercise, and benefit thereof, it being our will and pleasure that the said , his executors, administrators, and assigns, and all and every other person and persons to whom like letters patent or privileges have been already granted as aforesaid, shall distinctly use and practise their several inventions by them invented and found out, according to the true, intent and meaning of the same respective letters patent and of these presents: provided likewise nevertheless, and these our letters patent are upon this express condition, [that if the said shall not particularly describe and ascertain the nature of his said inventions and in what manner the same is to be performed, by an instrument in writing under his hand and seal, and cause the same to be filed in within calendar months next and immediately after the date of these our letters patent;] [and also if the said instrument in writing filed as aforesaid does not particularly describe and ascertain the nature of the said invention, and what manner the same is to be performed;] and also if the said his executors, administrators, or assigns, shall not pay or cause to be paid at the office of our Commissioners of Patents for Inventions the sums following, that is to say, the sum of pounds on or before the day of A.D. , and the stamp duty payable in respect of the certificate of such payment, and the sum of pounds on or before the day of A.D. and the stamp duty payable in respect of the certificate of such payment; and also if the said his executors, administrators, or assigns, shall not supply or cause to be supplied for our service all such articles of the said invention as he or they shall be required to supply by the officers or commissioners administering the department of our service for the use of which the same shall be required, in such manner, at such times, and at and upon such reasonable prices and terms as shall be settled for that purpose by the said officers or commissioners requiring the same; that then and in any of the said cases these our letters patent, and all liberties and advantages whatsoever hereby granted, shall utterly cease, determine, and become void, anything hereinbefore contained to the contrary thereof in anywise notwithstanding: provided that nothing herein contained shall prevent the granting of licenses in such manner and for such considerations as they may by law be granted; and lastly, we do by these presents, for us, our heirs and successors, grant unto the said , his executors, administrators, and assigns, that these our letters patent, or the filing thereof, shall be in and by all things good, firm, valid, sufficient, and effectual in the law according to the true intent and meaning thereof, and shall be taken, construed, and adjudged in the most favourable and beneficial sense for the best advantage of the said , his executors, administrators, and assigns, as well in all our Courts of Record as elsewhere, and by all and singular the officers and ministers whatsoever of us, our heirs and successors, in our United Kingdom of Great Britain and Ireland, the Channel Islands, and Isle of Man [*colonies to be mentioned, if any*] and amongst all and every the subjects of us, our heirs and successors, whatsoever and wheresoever, notwithstanding the not full and certain describing the nature or quality of the said invention, or of the materials thereunto conducing and belonging. In witness whereof we have caused these our letters to be made patent, this day of , A.D. , and to be sealed and bear date as of the said day of , A.D. , in the year of our reign.

Specification.

To all to whom these presents shall come;

I, of send greeting:

Whereas her most excellent Majesty Queen Victoria, by her letters patent bearing date the day of A.D. , in the year of her reign, did for herself, her heirs and successors, give and grant unto me, the said her special licence that I, the said , my executors, administrators, and assigns, or such others as I, the said , my executors, administrators, and assigns, should at any time agree with, and no others, from time to time and at all times thereafter during the term therein expressed, should and lawfully might make, use, exercise, and vend, within the United Kingdom of Great Britain and Ireland, the Channel Islands, and Isle of Man [*colonies to be mentioned, if any*], an invention for [*insert title as in letters patent*] upon the condition (amongst others) that I, the said , by an instrument in writing under my hand and seal, should particularly describe and ascertain the nature of the said invention, and in what manner the same was to be performed, and cause the same to be filed in within calendar months next and immediately after the date of the said letters patent: now know ye, that I, the said , do hereby declare the nature of my said invention, and in what manner the same is to be performed, to be particularly described and ascertained in and by the following statement; (that is to say), [*describe the invention*].

In witness whereof I, the said A.B. have hereto-fore set my hand and seal, this day of
A.D. A. B.

THE MAGISTRATE,
AND PAROCHIAL AND MUNICIPAL LAWYER.

Answers to Queries.

DRUNKENNESS, 21 JAC. 1, c. 7.

In answer to a query by "H. P." concerning the legality of certain costs being imposed on a conviction for drunkenness, your correspondent "C. H." at p. 55 of 17 Law T. refers to 18 Geo. 3, c. 19, as the existing and ruling law, but I presume he is unaware of that Act having been repealed by 11 & 12 Vict. c. 13, s. 36, which, he says, is "hardly applicable" to the case. Now, if this is the fact, there is no remedy for costs; therefore, the opinions of the Profession should be sought on the point.

My own conclusion is the same as that of "C. H." but is drawn from rather contradictory reasons.

Sec. 22, c. 43, 11 & 12 Vict. directs that in cases where justices are authorised to issue warrants of distress to levy penalties, &c. and where no further remedy is provided, justices may commit; and sec. 18 directs that the costs shall be recoverable in the same manner as any penalty adjudged to be paid by the conviction. If imprisonment in the stocks under 21 Jac. 1, c. 7, is a *further* remedy to obtain payment of costs, the 11 & 12 Vict. is certainly inapplicable, because that Act only provides for the recovery of costs in cases where no remedy is provided beyond distress.

I submit, however, that imprisonment in the stocks is not a further remedy, but is alternative. Therefore, if a justice convict a party, and adjudge the penalty to be recovered by distress, and no distress be found, the further remedy is by 11 & 12 Vict. c. 43, s. 22. Imprisonment in the stocks is the remedy where "the offender be not able to pay," and he is imprisoned immediately; so I submit that it is not a further remedy, and that in default of distress where the week's time is given for payment, the justice may proceed to commitment for the penalty under the recent Act, and to commitment for costs under its 18th sec. G. C. Rice.

Over, Oct. 14, 1852.

THE MILITIA.

GOVERNMENT PROSECUTION.

The attention of her Majesty's Government has been drawn to the fact, that for some time past numerous handbills have been circulated, especially in the rural towns and districts, of an "anti-militia" character, and tending to prevent the carrying out of the law in respect to voluntary enlistment. Some of the placards were said to emanate from the Peace Society, and were headed "Flogging in the Militia." The Government have taken the opinion of the law officers of the Crown on the subject, and have determined to make the offence a matter for government prosecution. The following letter to Colonel Berne, of the 34th Light Infantry, has led to prosecutions in Suffolk:—

"Whitehall, 7th October, 1852.

"Sir,—I am directed by Mr. Secretary Walpole to inform you that he has under his consideration the two placards intended to dissuade men from volunteering for the militia, which accompanied your letter of the 4th ultimo, and he is advised that they are libellous and that consequently their publication is an indictable offence. If magistrates should think it their duty to hold a person accused of such publication to bail to answer the charge at the assizes, Mr. Walpole will instruct the solicitor to the Treasury to conduct the prosecution.

"I have the honour to be, Sir,
"Your obedient servant,
"D. W. Jolliffe."

Prosecutions have already been taken in Bucks, Herts, and Suffolk, and parties held to bail.

The Militia Pay Act.—It is provided by the Militia Pay Act, which is to continue in force until the 1st of September next, that the officers and non-commissioned officers, drummers, and private men of the regular militia shall, for the period or periods during which they shall be called out for the purpose of exercise or training, be entitled to the same pay and allowances as the officers, non-commissioned officers, drummers, and private men of the militia when embodied.

Billeting the Militia.—There is a provision in the New Militia Act to the effect that the militia may be billeted in beerhouses in which soldiers may be billeted.

The Law relating to Friendly Societies.—A Parliamentary blue-book has just been printed, containing the report and evidence given before a select committee of the House of Commons appointed to inquire into the operation of the law relating to friendly societies. It appears that eighty-three assurance societies had complained of certain friendly societies being in reality trading life assurance companies. Mr. Tidd Pratt, the registrar, stated in his evidence that he is the sole depository of all the various mass of miscellaneous matter which in the last twenty years had been poured in from about 10,000 societies, and he suggested that a board should be formed for the purpose of superintending the management of friendly societies, and of affording advice and information when required. The committee directs the attention of the House to the evidence of Sir Alexander Spearman, the Controller of the National Debt Office, shewing that on the investments made with the office the interest payable is higher than that which the Government receives. The capital belonging to friendly societies invested with the Commissioners of the National Debt is 2,393,000*l.* at an interest part of 4*l.* 11s. 3d. and part of 3*l.* 16s. whereas the average rate of interest realised during the last twelve years has been only 3*l.* 4s. 9d. and that the total loss, if the whole were sold and paid off at the present price of stocks, would be 127,000*l.*

New Convict Settlement.—Her Majesty's Government have resolved to make Freemantle, in Western Australia, a convict settlement, and the first batch, consisting of 250, will be despatched early in the ensuing month of October. They will consist chiefly of persons who have served three years' probation in the Dartmoor and Pentonville convict prisons, and whose conduct there has entitled them to favourable consideration. Each convict will, on landing, receive a ticket of leave, strictly confining him to the colony of Western Australia. A company of enrolled Chelsea pensioners go out as a convict guard; their wives and children go with them, and they will be located in the country as military colonists.

County Rates.—By a provision in the new County Rates Act it is enacted that all business relating to the assessment and applications of county rates must be transacted publicly and in open court, and no order is to be binding unless made publicly and in open court.

Poor-Law Commissioners.—The Treasury has just sanctioned the appointment of seven permanent Poor-law inspectors, at a salary of 500*l.* a-year, with allowances. It is understood that these appointments are to be made from the eleven Poor-law inspectors who were employed in the service temporarily, and whose warrants will expire on the 31st instant. Mr. Senior is now chairman of the Poor-law Board, but his late appointment has not been filled up, in order that room may be made for several minor situations.—*Observer.*

JOINT-STOCK COMPANIES' LAW JOURNAL.

WINDING UP.

It had been long a moot point with those engaged in winding up, whether a call could be made merely to pay costs, where there were no liabilities and no debts proved. The Lord Chancellor has decided this in the *affirmative*, in *Ex parte Reece*, 20 Law T. Rep. 17. There the company had been dissolved, and 15s. per share returned. But some persons, probably with an eye to costs, not content with this, placed it under the Winding-up Act. No debts were proved, but that which was the evident purpose of the proceeding was obtained—costs were incurred to a considerable amount. The Master made an equal call upon all the contributories to meet them. He was held to have rightly done so, and that those who had received the 15s. back were equally liable with the rest. But it was also said, that they were not liable to refund the money so received, because it was paid to them in consideration of the cancellation of their shares. His Lordship repeated in this judgment his remark, that the House of Lords was not bound to follow its own erroneous decisions in a case compounded of law and fact. He added, in his own expressive manner, that which we have so often urged here—and which we made the foundation of the argument upon which we maintained those views of the law of winding up that have now been ultimately affirmed by the highest tribunals—but for which we so long contended, almost alone, against all the other writers on the subject, and against the opinion of the whole Bar. Lord St. Leonards said, "As to the Winding-up Acts, they do not alter legal or equitable liabilities. They do not impose liabilities, legal or equitable, which did not exist before." We recommend the careful perusal of this able judgment to every reader who has taken any interest in this branch of the law.

REAL PROPERTY LAWYER AND CONVEYANCER.

The liability of trustees is a subject that might well engage the attention of the Law Reformers. As it is, no prudent man would accept the office of trustee; and in practice great difficulty is experienced in procuring friends who will undertake duties that are both burdensome and unpaid. The remedy is obvious. Let *the law* give to all acting trustees a small commission upon the property that passes through their hands, as a remuneration for their labour and risk. This would be but just and reasonable, and it would remove the difficulty that now makes the acceptance of a trusteeship a favour that one man has scarcely a right to ask of another. Of late the Courts appear to have been leaning strongly against trustees, as our readers who have followed these weekly summaries of the decided law, must have observed. Lord St. Leonard's, however, does not appear to be inclined further to extend their liabilities, for in *Adey* v. *Arnold*, 20 Law T. Rep. 17, he held, upon appeal, that a liability arising out of a breach of trust was a simple contract debt and not a specialty.

An interesting case of a disputed claim to the benefit of a fire assurance policy, is that of *Garden* v. *Ingram*, 20 Law T. Rep. 17. A lessee under covenant insured leaseholds against fire in the joint names of himself and the lessor. He then mortgaged the premises by demise, and the mortgagee sold them under a power of sale. They were subsequently damaged by fire, and the lessee refused to join the lessors in a receipt to the insurance office to enable the mortgagee to recover the money due on the policy, claiming a lien on the policy for the money he had expended in rebuilding. The mortgagee and his purchaser then filed a claim, and it was held that the lessee had no lien on the policy as mortgagor, and that he was bound to sign the receipt. The Lord Chancellor observed that "it had been decided that if a tenant for life insures, the remainder-man is entitled to the benefit of the policy. The policy in this case was intended as an indemnity to the lessor, and was effected in the joint names of the lessor and lessee, because the former had an interest in it; any advantage under it would accrue to his benefit as landlord."

Of the many reported cases on the construction of wills, but few can be made intelligible in a summary. *Plowden* v. *Hyde*, 20 Law T. Rep. 18, is, however, of some importance, for it was a decision of the Court of Appeal upon a point that might occur in other wills. A. contracted for the purchase of an estate, and then made his will, devising it on certain trusts. *Subsequently* he took a conveyance of the estate to the usual uses to bar dower. Was the devise revoked? It was held to be so. It should be observed, that this was under the operation of *the old* law. The new Wills Act has altered the law in this respect, so that the case now under notice is an authority only as respects wills made before the new Act.

In the same case there was another point as to the effect of a mortgage in revoking a devise. After the estate had been conveyed to A. he mortgaged it, and the proviso for redemption was that it should be reconveyed to him. After the mortgage he made his will, devising the estate. Subsequently he paid off the mortgage, and took a reconveyance of the estate. Was the devise revoked by the reconveyance? It was held *not* to be so. The judgments of the Lords Justices in this case will reward perusal.

In *Coulthurst* v. *Carter*, 20 Law T. Rep. 20, which was also on the *construction of a will*, the Master of the Rolls determined a point of law which has been concisely stated by the learned reporter in his head-note,—that the children of a deceased parent, who formed one of a class, cannot take by substitution when their parent could not have taken according to the terms of the will.

In *Gray* v. *Gray*, 20 Law T. Rep. 23, the question was, what constitutes a binding trust; and the rule was thus laid down by Vice-Chancellor Kindersley:—"The rule with regard to the question whether a binding trust is constituted is this—if the founder of the trust has not only distinctly expressed the purpose of his act, but had done all that is necessary to complete the design expressed, the Court holds the trust completely imposed. But, however clear the intention, still, if nothing is done by the party, whether from incapacity or indisposition to do it, the Court will say it cannot decree the performance of the intended trust."

Answers to Queries.

BENEFIT SOCIETIES.

I beg to refer T. M. to the exemption from stamp duties in the Act of 6 & 7 Wm. 4, c. 32, s. 9, and 10 Geo. 4, c. 56, s. 37. If the proceedings are in

strict conformity with the statutes in all respects, my impression is, that your transfer to new trustees does not require a stamp. Transfers of shares are therein particularly mentioned as not being subject or liable to, or charged with, any duty or duties whatsoever. J. G.

Compulsory Enfranchisement of Copyholds.—The new Copyhold Act does not provide for the compulsory enfranchisement of copyholds until after the 1st of July next. At any time after the next admittance to lands on or after the 1st of July, 1853, either party, the lord or tenant, may desire the lands to be enfranchised in the manner provided by the Act.

Incumbered Estates Commission.—An extensive sale, by order of the commissioners, took place in Belfast on Friday and Saturday, of ground-rents arising from several plots of ground, dwelling-houses, and premises, held in fee simple, in Belfast, in the matter of the estate of Mr. Alan Gardner Brown and Mr. Charles Grainger, owners and petitioners. The entire property produces a clear annual income of about 1,840*l.* 17s. The property was put up in 94 lots, a few of which were sold by private contract. The amount realised by the sale was—by private sale, 2,350*l.*; by auction, 30,450*l.*; gross amount, 32,800*l.* for an annual income of 1,940*l.* 17s.

COUNTY COURTS.

Summary.

We are not informed whether the committee of the Judges have yet made any progress in the framing of the Table of Costs in the County Courts. They have received a vast number of communications upon the subject, the examination of which will of necessity occupy some considerable time. Possibly they may find that in the multitude of counsellors there is *not* wisdom.

One *Insolvency* case was reported last week from Dublin. In *Re Turner*, 20 Law T. Rep. 24, it was held that where an insolvent was guilty of great extravagance, and had contracted debts without reasonable expectation of paying them, the *indorsees* of his bills might oppose, even though they had no personal dealings with him. In the same case a friendly bill of sale, designed to protect property from creditors, was deemed to be a making away with it.

LATE CASES ON THE LAW AND PRACTICE OF THE COUNTY COURTS.(*a*)

VI. CASES ON THE QUESTION OF SPLITTING DEMANDS.

There is nothing more important in the law and practice of the County Courts than the establishment of a correct and definite principle as to what plaints may and what plaints may not be entertained in these courts. The words of the statute are, indeed, sufficiently clear to exclude certain specified causes of action from being tried there; but much doubt has existed as to whether others come within their jurisdiction owing to the particular nature of these actions, and to which we lately adverted when considering the decisions upon the question of jurisdiction. The criterion of value has been adopted as the main one in determining the cases to be entertained by the Superior Courts and the County Courts respectively. But even this has not been found sufficiently definite in all cases to settle the point, inasmuch as it has been attempted, by dividing demands of a large amount and triable only in the Superior Courts, into several smaller separate demands, to bring them within the jurisdiction of the County Courts. That such a course is contrary both to the principle and the spirit and intention of the County Courts Act, needs not here be pointed out. It is calculated, moreover, to bring within the operation of these courts a class of transactions over which it was never intended that they should have a jurisdiction; and by a fictitious division into several of one cause of action, matters are rendered subject to the County Courts over which the Legislature intended that the Superior Courts, and they alone, should continue to exercise a control.

We propose here to take a brief review of the leading and recent decisions on this subject which have been pronounced by the Superior Courts, in which the principle we here maintain has been distinctly and fully recognised, and which is thus set forth in 19 Hen. 6, c. 54:—"If there be one entire contract above 40*s.* and a man sues for it in a court baron, severing it into divers small sums under 40*s.* a prohibition shall be granted, because this is done to defraud the court of the king."

The first case to which we shall draw the reader's attention, is one which was decided long before the establishment of the present County Courts, but in which the principle of splitting one demand into several, came distinctly under the notice of the Court. It is that of *Rex* v. *The Sheriff of Herefordshire*, in a cause of *Derby* v. *Clarke*, 1 B. & Ald. 672. A. became indebted to B. in a sum not exceeding 40*s.* for the carriage of a parcel of goods; and in a month afterwards incurred another debt to B. not exceeding 40*s.* for the carriage of a second parcel. A. brought two actions in the County Court for the respective debts. It was held that the causes of action were distinct, and that A. was entitled to sue separately for each demand; and the Court of K. B. refused a prohibition. Lord Tenterden, C.J. observed that, in this case, the two items were perfectly distinct debts, the one having no connection with the other.

In *Neale* v. *Ellis*, 1 Dowl. & L. 163, which arose under the Brighton Court of Requests Act, 3 Vict. c. 10, s. 24, Coleridge, J. held, that a plaintiff who had demands for the price of a horse, for goods sold and delivered, and for rent, was entitled, after having sued for and recovered 15*l.* in respect of the horse by plaint in the County Court, to maintain his action in the Superior Court for the residue of his claim. In this case there are numerous contracts, each implied from a different state of facts, which therefore must, for the purposes of this argument, be treated as express contracts, made at different times, and under different circumstances. It is unnecessary here to point out how different this is from the case of one contract, though containing several distinct but continuous items, being divided into several demands, for the purpose of bringing them each within the jurisdiction of a County Court.

The 63rd section of the County Courts Act, 9 & 10 Vict. c. 95, enacts that "it shall not be lawful for any plaintiff to divide any cause of action for the purpose of bringing two or more suits in any of the said courts; but any plaintiff, having cause of action for more than 20*l.* for which a plaint might be entered under this Act, if not more than 20*l.* may abandon the excess," &c.

The case which follows was determined in Easter Term, 1848, subsequent to the passing of the County Courts Act. In this case, it was held that the term "cause of action," does not mean a cause of action in one single entire contract, but should be interpreted "cause of one action." In an action on a tradesman's bill, although each item of goods supplied, or work done, constitutes a separate contract, so that after the stipulated price becomes due, the tradesman could sue for one item; yet the understanding is that it shall be united with other items to form one entire demand. It was held, therefore, that the 63rd section applies to the case of a tradesman's bill in which one item is connected with another in this sense, that the dealing is not intended to terminate with one contract, but to be continuous, so that one item, if not paid, shall be united with another, and form one entire demand. (*Grimsby* v. *Ackroyd*, 1 Cox and Mac. 79.) It seems, therefore, that the term "cause of action," will not extend to cover all contracts executed, however dissimilar in character, which, according to modern practice, could be included in one indebitatus count. But it appears doubtful whether the Superior Courts could interfere by prohibition where the total sum due, being under 20*l.* was wholly within the jurisdiction of the County Court, although several plaints have been brought upon the several items. Pollock, C.B. observed in this case, while delivering the judgment of the Court, that the present case did not depend upon any authority derived from reported cases, but upon the construction of the Act 9 & 10 Vict. c. 95. By the 58th section, the County Court has jurisdiction in all pleas of personal actions, where the debt or damage claimed is not more than 20*l.* whether on a balance of account or otherwise. That clause had probably been introduced in consequence of the provision in some of the Courts of Requests Acts, that the Act should not extend to any debt for the balance of an account originally exceeding a given sum, as in *Porter* v. *Philpot*, 14 East, 345. Be that as it may, it cannot be doubted that the law was made to give jurisdiction where the debt claimed consisted of various items, together originally not exceeding 20*l.* at the time of the suit, or which had been reduced to that amount by payment or set off of other sums. They had next to consider the effect of the 63rd section, and the whole question is as to the meaning of the term "cause of action" in that section. It is provided that it shall not be lawful to divide any cause of action for the purpose of bringing two or more suits in any of the said courts; but any plaintiff having "cause of action" for more than 20*l.* for which a plaint might be entered under this Act, if not for more than 20*l.* may abandon the excess, and therefore the plaintiff shall, on proving his case, recover to an amount not exceeding 20*l.* and the judgment of the Court upon such plaint shall be in full discharge of all demands in respect of such cause of action, and entry of the judgment shall be made accordingly. What, then, is the construction of the words "cause of action?" The term "debt," or "damage," here is not used as it is in the passage already cited from 4 Inst. 266, but the more extensive term adopted is "cause of action." This term, "cause of action," did not necessarily mean a "cause of action," or one single contract, for there may be one cause of action on several debts contracted at different times, and in by far the greater number of cases in count in indebitatus assumpsit, or debt, is founded on many distinct contracts, as was pointed out in the case of *Hesketh* v. *Fawcett*, 11 M. & W. 360, and one count might be considered as one cause of action. To provide that one cause of action, or one entire contract, should not be divided, would be unnecessary and surplusage; and although the argument that a clause in an Act of Parliament, if understood in one sense would be inoperative, and in another sense would be operative, is not by any means conclusive, because it could not but be admitted that clauses are often introduced into an Act of Parliament ex abundanti cautelâ, yet it is of some weight, and the probability was, that the Legislature, in enacting that a "cause of action" should not be divisible, meant a "cause of action" which, but for that enactment, would be divisible. And when it is considered to what abuses the narrower construction of this term might lead (which is strongly exemplified in the present case, in which 208 actions have been commenced, and 3,000 might have been brought), we think we may safely conclude that the term "cause of action" ought to be interpreted "cause of one action," and not be limited to an action on "one separate contract." But, on the other hand, if the term is to comprise all sums that might be included in one count, as debt for work and labour, for goods sold, and for occupation, which, though totally unconnected with each other, might be included in one indebitatus count, they would be precluded from being divided under this particular clause, and if indivisible, and the creditor brought an action for only one part, he would virtually abandon all claim to the remainder by the operation of the latter part of the 63rd section. A great inconvenience would follow if the term "cause of action" were interpreted to mean "cause of action," on one separate contract; and also if the construction were to be, that it was intended to cover all contracts executed, however dissimilar in character, that could be included in one indebitatus count, which, according to the modern practice, may comprise any number of separate unconnected contracts, whenever made, each having ended in a debt before the commencement of the suit. As some extension must be given to the former construction, some restriction must be put on the latter; and we think we ought to hold that the 63rd clause does apply to the former cases. Whether it applied to all debts which could be comprised in one description, in one count, as for goods sold or not, the Court need not in the present instance determine; but, at all events, to the case of tradesmen's bills, in which one item is connected with another in this sense, that the dealing is not intended to terminate with one contract, but to be continuous, so that one item, if not paid, shall be united with another, and form one entire demand. If that demand exceeds 20*l.* it would, of course, cease to be within the jurisdiction of the County Court; and therefore we are of opinion, on the facts disclosed in the affidavits before us, that all the debts claimed fall within that description—the total greatly exceeding 20*l.*—and that they ought not to have been separated into different suits. Whether if the total had only amounted to 20*l.* and the items then were separated and sued for by separate plaints—the total being within the jurisdiction of the County Courts, which could then have given adequate relief—the suits could have been prohibited, was a question which need not, in

(*a*) By George Harris, Esq. Barrister-at-Law.

the present instance, be discussed. But when the total exceeds that amount, and justice cannot be done in the County Court, we are of opinion that the County Court has no jurisdiction.

Where a plaintiff had split his demand, and obtained judgment in two actions for the same "cause of action," under the above decision in *Grimsby* v. *Ackroyd*, and it appeared from the particulars of the demand annexed that two plaints had been entered on the same day, by the same plaintiff, against the same defendant, for goods sold and delivered, it was held that this was a sufficient defect apparent upon the face of the proceedings to enable this Court to issue a prohibition against proceeding in the second action. (*Acworth and Another* v. *Dowsett*, 1 Cox & Mac. 118.)

In the following case a plaintiff had brought two actions in the County Court against the same defendant—one of tort, for an assault; and the other on contract for the amount of a surgeon's bill incurred by reason of the assault. It was held that these were distinct causes of action, and might be separately sued for in the County Court. (*Hartley* v. *Ayurst*, 1 Cox & Mac. 109.)

The plaintiff brought two actions in the County Court against the defendant, one for 19*l.* 8s. 1d. rent in arrear, the other for 9*l.* 14s. 2d. for double value for holding over after notice to quit, under stat. 4 Geo. 2, c. 68, s. 1. It was held, that these were distinct "causes of action," within the meaning of that term in the County Courts Act, and that they might be made the subjects of separate plaints. (*Wickham* v. *Lee*, 1 Cox & Mac. 119.)

The defendant, being indebted to the plaintiffs in a sum exceeding 20*l.* they entered a plaint in the County Court for and recovered 19*l.* 9s. 6d. The plaintiffs afterwards sued for the balance in the Superior Courts, the declaration containing counts for money lent, goods sold, and account stated. The defendant pleaded to the whole declaration the former County Court judgment, and that the plaintiffs had cause of action for the 19*l.* 9s. 6d. and all money in the declaration for which a plaint could, if the whole had been under 20*l.* have been entered at the time of so entering it for the 19*l.* 9s. 6d. It was held that it should have averred the causes of action in the County Court to be the same as those for which the action was brought in the Superior Court; and that "cause of action" in the 63rd section of the 9 & 10 Vict. c. 95, does not include all that may be inserted in an indebitatus count. (*Gregory and Another* v. *Chidley*, 1 Cox & Mac. 145.)

In the following case the plaintiff, who was a tailor residing at Pentonville, within the jurisdiction of the Clerkenwell County Court, sued the defendant for the amount of a bill sent in, containing several items for clothes supplied, repaired, and altered. The defendant resided at Hammersmith, within the jurisdiction of the Brompton County Court, and carried on his business at the Burlington-arcade; and with regard to one, the order was given, the work done, and the goods delivered at the plaintiff's residence. It was held, on motion to enter a suggestion to deprive the plaintiff of costs, that the whole bill formed one cause of action; that the cause of action did not wholly occur within the jurisdiction of the County Court, either of Brompton or Middlesex, being put within that of Clerkenwell; but that, as one item arose within the jurisdiction of a County Court, the cause of action was to be considered as arising in some material point within the jurisdiction of a County Court, under the 128th section of the 9 & 10 Vict. c. 95; and that the action ought not to have been brought in the Superior Court. (*Wood* v. *Perry*, 18 L.J. 161, Ex.)

The plaintiff sued out two plaints in a County Court. The particulars of the first exceeded 20*l.* for work and labour and goods sold and obtained, and purported to give credit for a set-off, shewing a balance under 20*l.* The particulars of the second plaint were items for moneys lent, and interest, not exceeding in the whole 20*l.* Some of the items in the two plaints were contemporaneous but there were no items in any other way connected. Both plaints were heard, and the plaintiff recovered certain amounts in respect thereof. The affidavits in support of a motion for writs of prohibition, on the grounds that the first plaint had been reduced below 20*l.* by a set-off, and that the two plaints constituted but one entire cause of action, shewed that these objections were raised at the hearing, and that there had never been any account stated in which it had been agreed that the set-off should be allowed; but did not shew that the plaintiff, at the hearing of the first plaint, proved more than 20*l.* to be due, or that there had not been at the hearing an arrangement between the parties to allow the set-off. It was held, that the particulars of the two plaints did not form one cause of action, within the 9 & 10 Vict. c. 95, s. 63, and that this was not a case of splitting demands. (*Kimpton* v. *Willey*, 1 Cox & Mac. 351.)

Where some items of an account are for goods sold, and others for money lent, the plaintiff may bring two separate plaints in the County Court; the items being of a different character, and not constituting one "cause of action," within the meaning of the 9 & 10 Vict. c. 95, s. 63. (*Bromskill* v. *Powell*, 19 L. J. 362, Ex.) And it is not a dividing of the cause of action, within sec. 63, to levy one plaint for rent of premises, and another, under stat. 4 Geo. 2, c. 28, s. 1, to recover double value for holding the same premises after expiration of a notice to quit. An action for double value lies in the Courts established under 9 & 10 Vict. c. 95. (*Wickham* v. *Lee*, 12 Q. B. 521; 18 L. J. 21, Q. B.)

In each of these cases, though differing one from another, both with regard to the nature of the transaction which formed the subject of them, and the decision which was pronounced, the principle which we have above maintained was established. In *Neale* v. *Ellis* the items were held to be distinct and independent, and as such contrasted with the case of "one contract, though containing several distinct but continuous items, being divided into several demands." In *Grimsby* v. *Ackroyd* it was distinctly laid down that "in the case of tradesmen's bills, in which one item is connected with another in this sense, that the dealing is not to terminate with one contract, but to be continuous, so that one item if not paid, shall be united with another, and form one entire demand, such demand, if it exceeds 20*l.* ceases to be within the jurisdiction of the County Court." And in *Wood* v. *Perry* it was also decided, with regard to the tradesman's bill in question, which contained numerous items, that "the whole bill formed one cause of action." These cases, therefore, taken together at once set at rest this important point, and fully illustrate the principle on which the determination is made.

We shall next proceed to consider cases on the question of suing for excess, which are regulated by the latter part of the 63rd section of the County Courts Act; the former portion of which relates to the subject of this article.

TO THE EDITOR OF THE LAW TIMES.

SIR,—As you are desirous of being furnished with some information with regard to the scale of charges which should be adopted in the County Courts, the two following cases, amongst many others which I have tried before Mr. Parry, may, perhaps, be good examples of the imperfect remuneration allowed to attorneys:—

COX *v.* WOODHAMS.

This was an action to recover damages for the negligence of the defendant in driving his gig against that of the plaintiff, and breaking his arm.

In this case my brief consisted of nine sheets closely written. It took me nearly two days to prepare it, as I had to see no less than ten witnesses, and it occupied my clerk a day to copy. I had a notice to produce to serve five miles off, to attend twice at the County Court, which is eight miles distant, and to pay my expenses of horse hire, &c. which amounted to 1*l.* The plaintiff got a verdict; and although the judge directed the clerk to allow full costs, my fee was of necessity taxed at 15s.

FOOTIT *v.* WITHERS.

This was a running down case. My brief consisted of four sheets. I had to attend a County Court twelve miles distant. One day was devoted to seeing the witnesses and preparing the brief. It took my clerk half a day to copy the case. The trial lasted several hours, and I was allowed 15s. as my fee.——

One word on the subject of employing counsel. It may be said in these cases, why did you not conduct them yourself, and thus save the trouble of preparing a brief? My answer is, first, that I have generally observed that the business of every County Court where attorneys only act as advocates is conducted with great looseness, a great deal of acrimony between the advocates, and still worse behaviour between the suitors; secondly, that the Bar have greater opportunities for acquiring legal knowledge than attorneys; are more in the habit of conducting cases; are independent of local influence; and from their independence form a wholesome check both upon the judge and the suitors.

In a conversation which I had with one of the best County Court judges before whom I have ever practised, and whom I believe to be one of the most honourable of men, he stated to me that he believed a well-ordered Bar was essential to the due administration of justice in County Courts, and that without it they would degenerate into mere bear-gardens. I attended a County Court once, where the attendance of a Bar is discouraged, and where the judge actually decided that although the defendant had pleaded a set-off he could not give evidence of it with a view to reduce the plaintiff's claim, but that it must form the subject of a fresh action; and on another occasion the same judge gravely stated that it was contrary to practice for the defendant's advocate to address the jury in a case in which he had submitted there was no evidence to go to the jury, and the judge had overruled the objection. Surely this shews the necessity of a Bar.

The following scale of fees in the above cases would, in my opinion, have been a fair remuneration to the practitioner, and would have worked no injustice to the suitors:—

COX *v.* WOODHAMS.

Drawing Brief, nine sheets	£1	16	0
Copy	0	18	0
Attending Court each day, 1*l.* 1s. (2 days)	2	2	0
Mileage, 1s. (16 miles)	0	16	0
	£5	12	0

FOOTIT *v.* WITHERS.

Brief, four sheets	£0	16	0
Copy	0	8	0
Attending Court	1	1	0
Mileage	0	12	0
	£2	17	0

You are at liberty to make any use of the foregoing letter, either by publishing it in the LAW TIMES, or by laying it before the judges appointed to revise the scale of fees in the County Courts. I am convinced that, if they would hear the evidence of some of the country practitioners, such information might be given as would enable them to prepare a scale of fees with which both the public and the Profession ought to be satisfied.

I am, Sir, yours, &c.

RALPH SPICER.

Great Marlow, October 9, 1852.

PAYMENT INTO COURT.

TO THE EDITOR OF THE LAW TIMES.

SIR,—In the case against the Midland Railway Company, tried in the County Court at Leicester, in September last, and which is commented upon in an interesting article contained in your publication of the 9th inst. the payment into court was made only in respect and because of an unguarded offer of compromise, to the amount paid in, made before action brought by an agent of the defendant's to the plaintiff, and wholly irrespective of the obligation arising out of the contract between the plaintiff and the company.

I am, Sir, yours, &c.

A LISTENER IN COURT.

Leicester, October 81, 1852.

NEW JUDGE OF THE MARYLEBONE COUNTY COURT.—Mr. Andrew Amos, who has for some years past presided as judge of the County Court for Marylebone, Brompton, and Brentford, having resigned that appointment, the Lord Chancellor has appointed Mr. John Leycester Adolphus, of the Northern Circuit, Solicitor-General of the county palatine of Durham, and the well-known reporter of the Court of Q. B. to be the new judge. His Honour sat on Thursday for the first time at the Marylebone County Court.

THE LAWYER.

Summary.

THE same question that has been mooted in the County Courts has arisen in the Court of Bankruptcy. In both, a Solicitor is expressly permitted to appear as an Advocate, and in both a doubt has been expressed whether this extended to the privilege of holding a brief for another Solicitor. Lord CAMPBELL first laid it down in the Q. B. that this could not be done legally, for a Solicitor was responsible for the conduct of a case, and he could not delegate that responsibility to another. The statute has since prohibited it in the County Courts, and now Mr. Commissioner FONBLANQUE has decided that it cannot be done in the Bankruptcy Courts, assigning the same reasons as Lord CAMPBELL. "The Court," he said, "could not recognise the professional interference of any legal practitioner, not being a member of the Bar, except he were the Solicitor retained by the party himself.

The Courts at Westminster had long recognised the salutary rule that the Attorney or Solicitor directly retained in a case is to be deemed the responsible agent of the party until formally removed. . . . . Parties or their Solicitors were always at liberty to obtain the assistance of counsel in the conduct of proceedings in the Bankruptcy Courts, but it was in every way inconvenient for the duties of the Solicitor to be shifted from one practitioner to another in the mode at present attempted. If a Solicitor, who was properly retained by a bankrupt, chose himself to conduct the case on his own responsibility, without the assistance of Counsel, it was legally competent for him to do so; but he had no power, at a particular stage of the proceedings, to hand over at his pleasure the conduct of the case to another Solicitor. It had been settled by the highest authorities that such a course was illegal." (*Re Bull*, 20 Law T. Rep. 24.)

The two Chancery Reform Acts were given in extenso in our last. They have been already minutely described in a series of leading articles.

Queries.

The Courts at Durham are now assimilated in practice to the Superior Courts, by the 220th section of the Common Law Amendment Act, by which it is enacted that all its enactments "*with respect to writs for the commencement of personal actions*," shall apply to the Courts at Durham; refer to s. 2, and it appears that this enactment extended to Durham is, "that all personal actions brought in her Majesty's Superior Courts of Common Law, shall be commenced by *writ of summons*," in the form, &c. Semble, is not then the old jurisdiction in the County Palatine of Durham, of commencing actions by the ancient writ of *pone per vadios*, abolished from *October 24th* instant?

The Affidavit Office of the Court of Chancery.—From the 28th instant the duties of the Affidavit-office of the Court of Chancery are to be performed by the clerks of records and writs, and affidavits and affirmations may be sworn, affirmed, or attested upon honour, and declarations made before the clerk of enrolments for the time being, as occasion may require, for the better despatch of business; and the duties of clerk of reports are to be performed by such person or persons as the Lord Chancellor may appoint for that purpose. The salary or salaries for such duties must not exceed 400*l.* a year.

Chancery Stamps.—As already stated, documents stamped are to be used in the Court of Chancery instead of money payments. Further, it is declared by the same Act (15 & 16 Vict. c. 87), that it shall be lawful for the Lord Chancellor to direct any of the officers of the Court of Chancery whose duties may be diminished in consequence of the substitution of stamps for money payments or otherwise to act under the directions of the Commissioners of Inland Revenue, in the sale and distribution of all or any of the stamps to be used. Should it be inconvenient for any officer of the court to act, then the Commissioners of Inland Revenue may appoint a person or persons to sell the same, and to allow a discount or poundage. Any officer or other person guilty of fraud or wilful neglect in relation to stamps, whereby fees are lost or evaded, is to be liable to dismissal.

Stamps in the Court of Chancery.—The Lord Chancellor is empowered by 15 & 16 Vict. c. 87, to order fees to be received, not in money, but by means of stamps. The commissioners of the Inland Revenue are to provide stamps, and after order made, no document is to be received or used in the Court of Chancery unless stamped.

Chancery Proceedings.—Before the name of any person (it is enacted by one of the New Chancery Acts) shall be used in any suit to be instituted in the Court as next friend of any infant, married woman, or other party, or as a relator in any information, such person shall sign a written authority to the solicitor for that purpose, and such authority shall be filed with the bill, information, or claim.

THE MERCANTILE LAWYER.

One case only, and that in *Bankruptcy*, is to be found in last week's reports, belonging to this department. In *Re Bull*, 20 Law T. Rep. 24, Mr. Commissioner Fonblanque held it to be "not only the right, but the duty, of the assignees to bring under the notice of the Court every circumstance which could influence the Court in the grant of the bankrupt's certificate. The assignees represented the whole body of creditors, and every particular creditor whose claim was not disputed; and in justice to the creditors whom they represented, they had no alternative but to oppose the granting of a certificate of conformity, if the bankrupt had committed any of the offences specified in the Act of Parliament. And, *whether opposed or not*, the bankrupt could not obtain his certificate if the offence charged were proved." This is an important decision.

Seamen's Advance Notes.—A case has been heard in the City Sheriff's Court, on that fertile source of dispute and litigation, the advance-note system, the discontinuance of which we have been so long recommending. It is certain that while it remains a part of our maritime code, so long will it be a source of annoyance to shipowners and their agents; and we are only surprised that any person can be found to advance money on such a questionable security. The whole amount at issue in the case in question was 2*l.* 10s. yet we find legal gentlemen (as we suppose) employed for plaintiff and defendants; the judgment was for the plaintiff, which probably cost him as much as the sum he gave for the advance note, if not more. It follows, therefore, that, where the purchase of these notes is a matter of such hazardous speculation, they must be bought at a very considerable discount against the sailor. The disputed point, too, was rather a curious one; namely, whether the Downs, Gravesend, or London was to be considered the port of departure of a vessel sailing from London. It certainly required some ingenuity to discover so nice a question for legal inquiry. However, the judge very properly decided that London is London, and not either Deal or Gravesend.—*Shipping Gazette.*

State of the Debtor's Prison, Newgate.—Appended to the numerical report made by Mr. Burdon, a governor of the debtors' prison in Whitecross-street, were the following observations:—"I beg most respectfully to report to your hon. Court that the total number of commitments for the year ending Michaelmas-day last was 1,654, being an increase of twenty-seven as compared with the year preceding. The commitments under the County Courts Acts were 673, against 720 for the year 1851. It is probable, however, there will be an increase for the current year, as the Act for the Recovery of Small Debts in the City, which came into operation on the 29th ult. now extends to debtors' demands of 50*l.*; and the 39th section of the Act, besides giving increased facilities to creditors, also simplifies the execution of the process of the Court against debtors. The daily average number of prisoners receiving the diet provided and paid for by the City was seventy-four. The prison has been whitewashed and thoroughly cleansed throughout during the past quarter, and the prisoners have been generally healthy, and free from any epidemic complaint."

LEGAL INTELLIGENCE.

Accident to the Lord Chancellor.—A correspondent mentions that the Lord Chancellor met with an accident on the 13th inst. in the vicinity of his residence, Boyle Farm, Surrey, which, although not attended with any serious injury to the noble and learned lord, was likely to have proved of a very different character. His lordship was taking his accustomed airing on horseback, attended by his groom, when it commenced raining, and on putting up an umbrella, the horse began to rear, and his lordship was thrown to the ground. Beyond receiving some rather severe bruises, the noble lord was not otherwise hurt. He returned to his residence at Boyle Farm, and has since recovered from the shock his system received from the fall.—*Observer.*

The Meeting of Parliament.—The general impression in official quarters is that Parliament will meet about the 5th or 6th of November, but that the Queen's speech will not be delivered until the 11th of that month.—*Evening paper.*

Committal of a Sham Lawyer at Leeds.—A person, named James Shillito, who was educated for the legal profession, but who has not for many years taken out his certificate, was brought before the Leeds justices on Monday, charged with obtaining money by false pretences. From the evidence brought against him, it appears that some few months ago a working man, named William Dacre, of Thorp Arch, had an action for debt brought against him, which he was anxious to defend, and the prisoner was recommended to him as a likely man to undertake the defence. Dacre and the prisoner accordingly met at a public-house in Leeds, where the matter was talked over, and Shillito, who represented himself as a solicitor, agreed to undertake the defence, promising to put in an appearance, which he said would cost 3*l.* 10s. Dacre gave him 2*l.* all the money he then had with him, and promised to send him the remainder on the following market-day to the Spotted Cow Inn, where Shillito was to meet either him or his messenger. Dacre's father was sent with the money, but Shillito could not then be found, and a short time afterwards the plaintiff in the action put in an execution and levied upon Dacre's goods for 8*l.* 15s. In consequence of this, Dacre waited upon Shillito, to ask why he had not put in an appearance, when the latter said he had intended to do it, but could not, and made other excuses, but promised to repay the 2*l.* Mr. Ferns, the solicitor who conducted the prosecution, said that he had caused the roll of attorneys to be searched, but the prisoner's name could not be found upon it. This, then, was the false pretence relied on, that the prisoner, under pretence of being a practising attorney, had obtained this 2*l.* from Dacre, for which he had done nothing whatever. The prisoner, on being called upon for his defence, said he had not acted with any fraudulent intention, but would reserve stating anything further in defence until another time. He was then committed for trial at the Quarter Sessions for the borough, but the justices offered to liberate him on bail, himself in the sum of 20*l.* and two sureties in the sum of 10*l.* each.

The Great Scotch Will Cause.—The Jury Court at Glasgow was occupied for several days up to Friday last in the trial of the important will cause of *Gilmour* v. *Gilmour*, before Lord Robertson and a special jury, in which property of the value of 300,000*l.* depended on the result. The wills in dispute (and which were in the Scotch form of deeds of disposition) were those of the late Mr. Adam Gilmour, a merchant, of Glasgow, who was the architect of his own fortunes, and by his exertions and integrity had amassed an enormous fortune in business there, from which he retired shortly before his death, taking a very large capital. By a testamentary disposition made in 1833, he bequeathed the bulk of his fortune to his nephew and heir-at-law, Mr. Adam Gilmour, jun. merchant, the pursuer (or plaintiff) in this suit. In the year 1848, shortly before his death, the testator executed another deed, making the former deed null, and settling his property on another nephew, Mr. Adam Gilmour, of Portnor, the defendant in this suit. The validity of that disposition was now questioned, and the jury were now called upon to decide—first, whether the testator was in a weak state of mind and easily imposed upon when he executed it; secondly, if that deed of 1848 was obtained by fraud, &c. Twenty-two witnesses were examined, and on Friday the pursuer declined to proceed further with the contest, declaring that he had been actuated by a desire to ascertain the facts, and his honourable feeling dictated the course now of consenting to a verdict for the defendant. The counsel for the defendant bore testimony to the high character and principle which had dictated that step, and Lord Robertson also testified to the high feelings of justice which had dictated such a surrender of the contest, remarking that there were higher considerations in this life than the mere attainment of money. The jury consequently gave a verdict for the defendant.

The Debtors' Prison at Berlin.—A complete change has been effected in the debtors' prison at Berlin. Instead of living as they pleased—some of them in costly style—the debtors are now obliged to content themselves with such a quantity of meat and drink as can be procured for the sum which their creditors allow them daily, and these articles, which are supplied by the administration, are of the simplest kind. The debtors are, moreover, only to be allowed to receive very short visits from their relatives and friends. Although these measures have only just come into force, they have already had a very good effect. Similar reforms are to be carried out in all the provincial prisons for debt.—*Galignani.*

Charge of Conspiracy against a Solicitor.—The magistrates of Chesterfield, Derbyshire, were on Tuesday engaged in investigating a twofold charge, brought by a man named Henry Rotherham, against a plumber named George Haslam, and Mr. John Cutts, solicitor. The charge against Haslam was for perjury; and the information upon which the proceedings were instituted alleged that he had been suborned by Mr. Cutts to commit that offence. After a patient inquiry into the circumstances, the bench dismissed the case, being unable to credit the most material portions of Rotherham's testimony. Both parties intimated their intention to carry the question before the Superior Courts.

PARLIAMENTARY PAPERS.

The New House-duty.—A return to Parliament has just been issued, shewing the number of houses valued at 20*l.* and upwards, the number of those which pay house-tax at sixpence and ninepence in the pound, with other information on the same sub-

ject. In England and Wales there are 179,234 houses charged at sixpence; and in Scotland, 6,377. The amount of duty in England and Wales is 200,182*l.* 19s. 2d.; and in Scotland, 5,288*l.* 11s. 9d.; making 205,471*l.* 10s. 11d. at sixpence; while at ninepence in the pound there are 252,213 houses in England and Wales producing 463,204*l.* 4s. 8d.; and in Scotland, 24,095 houses at 38,340*l.* 17s. 1d.; making the ninepence duty 501,545*l.* 1s. 9d. The total amount of duty is stated at 707,016*l.* 12s. 8d. The return, which was obtained by Mr. Goulburn, contains the number of houses in some of the principal towns rated at 10*l.* and other sums.

JOURNAL OF PROPERTY.

MONEY MARKET.

English Funds.	Sat.	Mon.	Tues.	Wed.	Thurs.	Fri.
Bank Stock	..	†	224½	225	224	224½
3 ℘ Cent. Reduced Annuities	..	99½	99½	99½	99½	99½
3 ℘ Cent. Consols Annuities	100⅜	100⅜	100⅜	100⅜	100⅜	100⅜
Consols for Account	100⅜	100⅜	100⅜	100⅜	100⅜	100⅜
New 3½ ℘ Cent. Annuities	..	..	..	..	..	..
New 3½ ℘ Cent. Annuities	..	§	§	103½	103⅜	103⅜
Long Annu. (exp. Jan. 5, 1860)	..	6⅜	..	6⅜	6⅜	6⅜
Do. 30 yrs. (exp. Oct. 10, 1859)	..	6⅜	..	..	6⅜	6⅜
Do. 30 yrs. (exp. Jan. 5, 1860)	..	..	..	6⅜	..	..
India Stock	..	274	..	276	276	275
India Bonds (1,000*l.*)	..	80	..	87	88	88*
Do. do. (under 1,000*l.*)	83	81	..	..	..	88*
South Sea Stock	..	..	..	..	..	..
Do. do. New Annuities	..	..	..	99½	..	99⅜
Exchequer Bills, 1,000*l.* June	71*	71*	70*	76*	74*	77*
Do. do. 500*l.* June	71*	..	..	74*	74*	..
Do. do. Small, June	71*	73*	..	74*	74*	..

* Premium. † 223⅞ Ex. div. ‡ Ex. div. § 103⅛ Ex. div

Public Sales.

Sale of Gosforth Estates.—The extensive freehold estates and collieries of the Rev. R. H. Brandling, situated at Gosforth, Longbenton, and Cox-lodge, and containing upwards of 4,500 acres, were brought to the hammer on Wednesday and Thursday week. The collieries, we understand, were not sold. The estates were all disposed of, and realised an aggregate exceeding 155,000*l.* The following abstract shews the result of the sale:—

Lots.		Acres.	Purchaser.	Price
				£.
1	Gosforth House and estate	780	Thos. Smith, esq.	27,100
2	Low Gosforth and estate	287	J. Laycock, esq.	20,100
3	Seaton Burn and estate	123	R. Robson, esq.	15,000
4	Six Mile Bridge Farm	207		
5	Low Weetslade	11	T. Smith, esq.	880
6	High Weetslade	88	Ditto	17,500
7	Wide-open Farm and Quarry	371	Ditto	12,000
8	East Brunton Farm	141	Ditto	16,000
9	Cottages and Close, at Three Mile Bridge	8	Mr. Dove	1,070
10	Cottages and Close, North Gosforth	6	Henry Hall, esq.	1,020
11	Coxlodge North Farm	119	R. Robson, esq.	9,800
12	Cottages and Close	6		
13	Close	5		
14	Ditto	7¼		
17	Freehold Houses and Close	..	Messrs. Dickenson and Armstrong	370
18	Cottages at Coxlodge	3	J. Clayton, esq.	380
23	Three Mile Bridge Farm	117	J. Laycock, esq.	8,500
24	House, South Gosforth	..	Mr. Robinson	900
25	Dean Houses, &c.	14	J. T. Hoyle, esq.	1,000
26	The Bay Horse, &c.	2	P. Smith, esq.	1,180
27	Church Farm	281	W. Dunn, esq.	19,300
28	Cottages, Dean Houses	..	J. T. Hoyle, esq.	930
29	Cottages and Closes	34	W. Dunn, esq.	2,720
35	Houses, and Benton Lane	2	Ed. Smith, esq.	460
36	Cottages, Long Benton	..	Mr. Geo. Bold	200
37	Houses, Long Benton	..	W. R. Swan, esq.	1,100
38	Ditto ditto	..		

The timber was not included in the purchases, but will be taken at a valuation.

By Mr. Moore, at the Mart, Oct. 14.—In one lot, a well-frequented roadside freehold free public-house, with numerous outbuildings, and 8 acres of meadow land, known as the White Bear, situate at Stanford Rivers, near Ongar, Essex, and giving a vote for the county; let at 50*l.* per annum—1,550*l.*

A leasehold dwelling-house, with carpenters' two-floor workshop, eligibly situate, No. 56, Eagle-street, Red Lion-square, Holborn; let on lease for 20 years at 36*l.* 19s. per annum; term 57 years; ground-rent, 5*l.*—305*l.*

In seven lots, a valuable leasehold estate, by order of the executors of Mr. Marshall, deceased, consisting of thirteen houses in Church-row, Duke, Martha, Chapel, William, and York-streets, Commercial-road East; let at 234*l.* per annum; held for long terms at moderate ground-rents—1,180*l.*

A freehold ten-roomed residence, with garden and back entrance, situate *No.* 79, Fore-street, Limehouse; annual value, 35*l.* tenant paying taxes—425*l.*

In one lot, two brick-built three-roomed houses, situate Nos. 29 and 30, Henry-street, St. George's, East; let at 20*l.* 6s. per annum; term, 42 years; ground-rent, 5*l.*—100*l.*

On the Mercers' Estate, a corner dwelling-house and shop, in the beer trade, situate No. 44, Clark-street, Stepney, let on lease for 28 years, at 24*l.* per annum, tenant paying all outgoings; term, 58 years; ground-rent, 4*l.*—285*l.*

A freehold residence, containing nine rooms, with stable, garden, and back entrance, situate No. 6, Globe-road, Mile-end; annual value 30*l.* tenant paying taxes; fixtures at a valuation—520*l.*

The valuable lease of extensive business premises, together with the goodwill of the trade of a sail-maker and ship chandler, situate No. 13, Fore-street, Limehouse—150*l.*

In one lot, four leasehold houses in Grove and Richard streets, Poplar Market; let at 62*l.* 8s.; term, 80 years; ground-rent, 10*l.*—300*l.*

In one lot, four six-roomed leasehold houses, eligibly situate Nos. 32, 34, 36, and 38, Upper Victoria-road, Holloway; let at 22*l.* per annum each; term, 80 years; ground-rent, 5*l.* each house.—380*l.*

In one lot, a leasehold estate of seven newly-built six-roomed houses, desirably situate Nos. 1 to 7, Railway-terrace, Angel-lane, Stratford; let at 100*l.* per annum; term, 61 years; ground-rent, 2*l.* 5s. each.—615*l.*

In one lot, a leasehold estate consisting of nine houses (one a shop), recently erected, and situate Nos. 2 to 10, Roscoe-street, Hallsville, on the Barking-road, Essex; let at 155*l.* per annum; term, 99 years; ground-rent, 2*l.* 2s. 6d. each house.—860*l.*

In one lot, five copyhold houses, situate in Burdett's-place, Robin Hood-lane, Poplar; let at 65*l.* per annum; held for ever of the manor of Stebonheath—330*l.*

In two lots, three freehold houses, Nos. 1 to 3, Gloucester-street, Devon's-lane, Bromley, let at 39*l.*; and two leasehold houses, Nos. 14 and 15, Grundy street, Poplar, let at 40*l.*; term, ninety years; ground rent 5*l.*—760*l.*

In one lot, two carcasses of five-roomed houses, well-built and roofed in, desirably situate Nos. 26 and 27, Randall-street, East India-road, will let for, when completed, 21*l.* per annum, each; term, eighty years; ground-rent, 6*l.*—120*l.*

THE GAZETTES.

Bankrupts.

Gazette, Oct 12.

Bythcombe, John, wine merchant, Falmouth, Oct. 26, at one, Nov. 23, at eleven, Exeter. Off. as. Hirtzel. Sols. Taylor and Collisson, Great James-st. Bedford-row; and Laidman, Exeter. Petition, Oct. 5.

Cowie, Henry, shipowner, Liverpool, Oct. 22, and Nov. 12, at eleven, Liverpool. Off. as. Bird. Sol. Pemberton. Petition, Oct. 9.

Gardner, George, ironmonger, Woolwich and Plumstead, Oct. 26 and Nov. 23, at one, Basinghall-st. Off. as. Edwards. Sols. Messrs. Linklater, Sise-lane, Bucklersbury. Petition, Oct. 8.

Isaacs, Isaac, dealer in watches, Plymouth, Oct. 21, at one, Nov. 18, at eleven, Plymouth. Off as. Hernaman. Sols. Poord, Old Broad-street; and Terrell, Exeter. Petition, Oct. 5.

Langford, Samuel, ironmonger, Hyde, Cheshire, Oct. 22 and Nov. 12, at twelve, Manchester. Off. as. Lee. Sols. Hodgson, Birmingham; and Neild, Manchester. Petition, Sept. 30.

Tarbutt, Richard, builder, Woolwich and Plumstead, Oct. 26, at one, and Nov. 27, at twelve, Basinghall-st. Off as. Pennell. Sols. Hodson and Sparrow, Bucklersbury. Petition, Oct 11.

Wellington, William, and Butterfield, Robert, lacemen, Brighton, Oct. 21, at one, and Nov. 25, at eleven, Basinghall-st. Off. as. Bell. Sols. Reid, Longford, and Marsden, Friday-st. Cheapside. Petition, Oct. 1.

Gazette, Oct 15.

Canning, Charles Henry, draper, Birmingham, Oct. 30, and Nov. 30, at half past ten, Birmingham. Com. Duniell. Off. as. Christie. Sols. Sole, Turner, and Turner, Aldermanbury; and Hodgson, Cherry-st. Birmingham. Petition, Oct. 12.

Daines, Samuel, hosier and glover, 9a, New Bond-st. Oct. 28, at one, Nov. 18, at twelve, Basinghall-st. Com. Evans. Off. as. Bell. Sols. Lepard, Bannatyne, and Gammon, 9, Cloak-lane. Petition, Oct. 6.

Dawson, Alfred, engineer, Charles-st. Mile-end. Newtown, Oct. 21, at two, Nov. 18, at one, Basinghall st. Com. Evans. Off. as. Johnson. Sol. Ellis, Cowper's-court, Cornhill. Petition, Oct. 12.

Holcroft, John, iron merchant, Thames Tunnel Iron-wharf, and Rotherhithe, Oct 20, at two, Nov. 25, at twelve, Basinghall-st. Com. Evans. Off. as. Johnson. Sols. Hoppe and Boyle, Sun-court, Cornhill. Petition, Oct. 4.

Pickett, Augustus, brickmaker, Sydney-terrace, Brighton, and Burgess hill, Keymer, Oct. 28, at two, Nov. 29, at eleven, Basinghall-st. Com. Evans. Off. as. Johnson. Sol. Sowton, 6, Great James-st. Bedford-row. Petition, Oct. 15.

Smith, William, grocer, Bolton-le-Moors, Lancashire, Oct. 28 and Nov. 18, at twelve, Manchester. Off. as. Lee. Sol. Sutton, Princes-st. Manchester. Petition, Oct. 5.

BANKRUPTCIES ANNULLED.

Gazette, Oct. 12.

Morton, G. coal merchant, Crown Wharf, Great Scotland-yard; *Hick*, J. corn-merchant, Wakefield.

Dividends.

BANKRUPT ESTATES.

Official Assignees are given, to whom apply for the Dividends.

Bates, Sheard, and *Sheard*, engineers and millwrights, first, 10s. Hope, Leeds.—*Chadwick*, G. grocer, first, 4s. Hope, Leeds.—*Frankish*, W. linendraper, first and final, 9s. 7½d. Carrick, Hull.—*Grinsell*, J. grocer and tea dealer, first, 3s. Christie, Birmingham.—*M'Kerrow*, A. draper, first, 2s. Carrick, Hull.—*Poope*, C. wine merchant, second, 0½d. Turner, Liverpool.

Assignments for the Benefit of Creditors.

Gazette, Oct. 5.

Gould, J. painter, Leamington Priors, Warwickshire Sept. 3. Trust. G. Russell, innkeeper, Leamington Priors. Sol. J. Haywood, Birmingham.—*Hills*, W. farmer, Broken Brea, Easby, Yorkshire, Sept. 11. Trust. H. J. Turner, land agent, Richmond. Sol. J. Hunter, Richmond.—*Hirst*, G. manufacturer, Horn Cote, Kirkburton, Yorkshire, Sept. 22. Trusts. J. H. Farrar, manufacturer, Holmfirth; R. Stavenhagen and D. Buscovits, wool merchants, Huddersfield. Sols. Jacomb and Son, Huddersfield.—*M'Lintock*, J. linen manufacturer, Barnsley, Yorkshire, Sept. 22. Trusts. B. Canter, linen manufacturer, R. Craik, linen manufacturer, W. Jackson, yarn agent, and J. Gelder, linen manufacturer, all of Barnsley. Sol. W. H. Peacock, Barnsley.

Gazette, Oct. 8.

Banton, W. merchant, Huddersfield, Yorkshire, Sept. 25. Trusts. J. Firth, woollen manufacturer, Crosland Moor, Almondbury; and J. Gledhill, merchant, Huddersfield. Sols. Clough and Bantoft, Huddersfield.—*Plint*, H. tobacconist, Leeds, Sept. 30. Trust. W. Waite, furrier, Leeds. Sols. Barr and Nelson, Leeds.

Partnerships Dissolved.

Gazette, Oct. 5.

Bromley, C. and *Wearing*, R. chemists and druggists, Liverpool, Sept. 30. Debts paid by Bromley. Clare, J. and W. common brewers, Wisbech, Sept. 22. Debts paid by J. Clare.—*Clegg*, J. and *Whitaker*, F. B., W., and R. Shaw Mills, Crompton, Sept. 16.—*Crowther*, G. and W. manufacturing chemists, Woodhouse, Leeds, and G. General, Birstal, Sept. 24.—*Ellis*, J. and R. malt-sters and corn and flour dealers, Leicester, Oct. 5.—*Emerer*, W. J. and *Steedman*, J. pianoforte manufacturers, Werrington-st. Oakley-sq. also Percy-st. Tottenham-court-road, and Richmond-mews, Dean-st. Soho, Oct. 4.—*Foster*, Sir W. bart. *Unthank*, C. W. *Burroughes*, R. E. and *Robberds*, J. M. attorneys and solicitors, Norwich, as regards Unthank, Oct. 1. Debts paid by remaining partners.—*Gresham*, John and James, and *Shaw*, J. clothiers, hatters, silversmiths, and general salesman, Kingston-upon-Hull, Sept 30. Debts paid by J. and J. Gresham.—*Hume*, A. L. and J. milliners and dressmakers, Sunderland, Sept. 30. Debts paid by A. Hume.—*Light's Patent Life Boat, Buoy, Belt, and General Marine Buoyancy Company*, Wapping, Sept. 21.—*M'Alpin*, H. and D. *Stead*, J. and *M'Alpin*, N. S. calico printers, Cummersdale, as regards D. M'Alpin, April 10, 1851.—*M'Intosh*, J. *Harrison*, W. and *Clough*, J. stay manufacturers, and manufacturers of baby linen, Barnsley, Sept. 25.—*Meakin*, A. U. B. and *Marsh*, W. tin manufacturers, Lemon Tree yard, Bedfordbury, Sept. 17.—*Miller*, J. and *Freedman*, W. pawnbrokers and clothiers, Nottingham, Oct. 2.—*Mills*, J. and T. coal miners, woollen manufs and dyers, Wood, in Saddleworth, and Croat Knowl, in Crompton, Sept. 29.—*Millwood*, W. and *Coles*, W. F. lime and sand merchants, and dealers in building materials, Creek Wharf, Hammersmith, and Warwick-road, Kensington Basin, Oct. 4. Debts paid by Coles.—*Mold*, W. and *Symons*, C. house agents and valuers, Kingsland-road, Shoreditch, July 31.—*Moore*, W. P. and W. Cotton's Wharf, Southwark, and Crispin-st. Spitalfields, Oct. 2.—*Nicholson*, A. and *Webster*, S. cloth dressers, Leeds, Sept. 25.—*Reynolds*, M. A. and *Burley*, F. milliners and dressmakers, Leamington Priors, Oct. 2.—*Sneed*, H. and *Drew*, H. drapers and haberdashers, Penton-st. Pentonville, Oct. 1. Debts paid by Drew.—*Watson*, F. and J. plumbers and glaziers, Rotherham, Aug. 21. Debts paid by F. Watson.—*White*, W. *Pocsford*, J. and *Carver*, P. W. millers, Shadwell and Upper Thames-st. June 30, as regards Carver. Debts paid by remaining partners.—*Willmer*, J. C. and *Reynolds*, C. brick and tile manufacturers, and coal merchants, Bradwell Quarry, near Wolverton, Sept. 29.

Gazette, Oct. 8.

Aylott, W. and *Jones*, J. M. booksellers and publishers, Paternoster-row, Sept. 30. Debts paid by Aylott.—*Barton*, W. and *Windus*, W. coal proprietors, and coal dealers, Shevington, Liverpool, and Westhoughton, Oct. 5.—*Bewley*, A. and *Hudson*, G. wholesale tea and coffee dealers, Liverpool, Sept. 30. Debts paid by Bewley.—*Bland*, M. H. and *Middleton*, J. merchants, Gibraltar, Sept. 30.—*Bullen*, M. and *M'Tier*, B. innkeepers, Yeovil, Oct. 4. Debts paid by Bullen.—*Callie*, A. and *Bicknell*, T. B. commission merchants, Manchester, Sept. 1.—*Cavell*, J. and *Kay*, J. calico manufacturers, Prestwich, near Manchester, Oct. 5. Debts paid by Kay.—*Darby*, W. H. and *Sim*, W. F. merchants, Liverpool, Oct. 6.—*Green*, W. and *Ord*, J. general drapers, Kendal, Oct. 4. Debts paid by Ord.—*Harris*, J. and J. W. surgeons and apothecaries, Exeter, Oct. 1. Debts paid by W. D. Moore, High-st. Exeter.—*Harrison*, R. and *Beddington*, J. hop merchants, Manchester, Sept. 18.—*Higham*, H. and *Nightingale*, J. bobbin turners, Stockport, Oct. 7. Debts paid by Higham.—*Hoskins*, T. and *Hales*, R. butchers, Bath, Sept. 29. Debts paid by Hoskins.—*James*, J. *Dain*, B. and *Arthur*, R. linen and woollen drapers, Birmingham, Sept. 29.—*Johnston*, R. and *Hunter*, R. joiners and builders, Manchester, Oct. 5. Debts paid by Hunter.—*Lucas*, M. and *Sedgwick*, C. livery stable-keepers, Berkeley-mews, Portman-square, Sept. 6. Debts paid by Lucas.—*McAndrew*, W. P. and R., *Pilcher*, J. W. *Cunningham*, R. N. and *McAndrew*, J. C. fruit merchants, Liverpool, as regards J. C. McAndrew, Sept. 30.—*Peel*, H. and *Puckle*, A. accountants, Birmingham, Oct. 4.—*Pickford*, W. and *Simon*, P. provision merchants, Newport, Sept. 25.—*Ponler*, Jno., Janet, and H. S. timber merchants, St. George's-place, as regards Janet Ponler, Sept. 20.—*Price*, E. and *Kean*, C. T. eating-house keepers and beer-sellers, York-road, King's-cross, Aug. 21. Debts paid by Kean.—*Richards*, H. S. and *Sunderland*, J. woollen drapers, Birmingham, Oct. 2.—*Smith*, C. and *Nevens*, C. shipwrights, Liverpool, Sept. 28.—*Smith*, G. and *McLachlan*, J. hosiers and shirt manufacturers, Liverpool, Sept. 1.—*Smith*, G. and *Forrester*, R. hosiers, Liverpool, Sept. 1.—*Smith*, J. and A. nurserymen, Darley-in-the-Dale, Aug 26. Debts paid by A. Smith.—*Thornley*, J. and *Hilton*, J. manufacturing chemists, Bolton-le-Moors, Oct. 3.—*Towle*, J. and *Barton*, T. paper makers, Hampton Gay Mills, Oxfordshire, Sept. 26. Debts paid by Towle.

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To Readers and Correspondents.

"A. [illegible]" *is mistaken. The cost of a mortgage was* [illegible] *caused to amount sometimes to 25 per cent.; but that was not said to be the usual cost. The other part of his letter is answered elsewhere.*

"A Reader."—*We fear that it would be held to be an objection.*

"M. H. R."—*Thanks. His remarks will be considered.*

We shall be glad to receive from Mr. Hughes the form promised by a correspondent a few weeks since. We forget our correspondent's name and address, or should communicate with him by letter.

Communications received, but unavoidably postponed: "R. W. B." "Investigator," "E. J. R." *and* "G. Y."

SCALE OF CHARGES FOR ADVERTISEMENTS.

Under Fifty Words £0 5 0
For every additional Ten Words .. 0 0 6

Advertisements from the Country should be accompanied with an order upon the Agent in Town, or a Post-office order (payable at 190, Strand) for the amount.

Advertisements ordered for the first page are charged one-half more. If not so ordered, they will take the chance of position.

We cannot undertake to return rejected communications.
Whatever is intended for insertion must be authenticated by the name and address of the writer; not necessarily for publication, but as a guarantee of his good faith.
No notice can be taken of anonymous communications.

THE LAW TIMES.

SATURDAY, OCTOBER 23, 1852.

COMMON LAWYERS IN EQUITY.

Some of our friends belonging to the Equity Bar doubt whether there will be any such necessity as we have suggested for bringing practised men from the Common Law Bar to the vivâ voce examination of witnesses in Equity, under the new procedure. They argue vehemently that if the Equity men should, from inexperience, be somewhat deficient in skill at first, they will soon learn their business, and that it will not be worth while to introduce strangers for so short a time.

But in this they err. It will *not* be a short time. The art of skilfully examining witnesses is not learned in a month, or in a year, or in five years; it is the result of experience continued day by day for many years, and which cannot be acquired by occasional practice. The knowledge, that has almost become an instinct, what questions to put to a witness, and what to *withhold*, how certain characters are to be managed, and certain others drawn out or curbed, is slowly and laboriously acquired. Imagine an Equity Counsel who has not examined half-a-dozen witnesses in his life, and probably has never even seen fifty examinations, pitted against one of our Nisi Prius Advocates in an Equity Court, with a batch of difficult witnesses—what chance would *he* have in the unequal conflict? Think how he would stumble at every step, and how the quick eye of his opponent would instantly detect the slip, and draw the rein until he is brought to a stand-still, and cannot advance in any direction. How the astute Common Lawyer would play with his adversary's witnesses and make free with his own, and mould the evidence of both to the requirements of his case! And how the Solicitor would be vexed! And how the client would storm!

If, at the Common Law Bar, where it is the business of every man to make the examination of witnesses his study, only a few excel, and the most successful require the daily experience of practice to be continued for years, it is manifestly *impossible* that a Bar wholly unaccustomed should suddenly appear trained and competent to the work. It may be said that where all are equally unskilful, there is an even chance for clients, and that the defects on one side will be balanced by the shortcomings of the other. This would be true, and to some extent consolatory, if the Equity Bar were absolutely closed against all but Equity men, and no Common Lawyer could intrude himself among them. But there is no such barrier. A Solicitor, desirous of winning, will not be likely to consult the conveniences of the Equity Bar. He will not hesitate to send in a Common Lawyer if he thinks that his work will thus be better done, and his cause more surely gained. If there is but one such intruder, the competition is established. He will have so great and manifest an advantage over the others in the management of the witnesses, that the opposing parties also must, in self-defence, call in a Common Lawyer, and if once that Bar obtains a footing in the Equity Court, it will not be readily expelled.

One other speculation offers itself as within the range of possibility. A portion of the Equity Bar may devote itself to the examination of witnesses as a distinct branch of business, which, in fact, it is. This would, perhaps, be the most convenient course for all parties, for there are manifest inconveniences in going to another Court for Counsel, whose services cannot be *secured* without considerable cost. Should such an arrangement be made, the men who ought to constitute this body of Equity practitioners, should come from the Common Law Bar, and formally take their places as among the *regular* practitioners in Equity. For such a Bar there is a decided opening, and even if there should be an endeavour, at first, to do without them, they may be sure that in no long time the Solicitors will recognise the advantage of having witnesses examined by Counsel, skilful in the art, and then it will be the custom to employ one set of men to do the law work of the Courts, and another to conduct the examinations of witnesses.

Such appears to us to be one among the many probable changes in the Profession that "looms in the future."

COST OF CONVEYANCING.

A correspondent says that our "Hint" for the omission of the Powers of Sale from small mortgages is quite unnecessary, for that in the country, a mortgage, with all these provisions, is usually brought within a single skin, and rarely costs more than 5*l*. We know not what is the experience of our correspondent, or the custom of the country in which he has the fortune or misfortune to be domiciled, but certainly such is not the scale of conveyancing costs in London, or in that part of the country with which we were familiar. We *have* seen a mortgage with powers of sale comprised in one skin; we *have* drawn such; but to the alarm of the elder practitioners, who could not accept as *safe* any other formula than that to which they had been accustomed. We know that one of the most frequent troubles of a country attorney is to *manage* a small mortgage, so as to bring it within a single skin, and many are the blottings and interlinings of a draft to reduce it to the thirty folios. We have hinted a mode of effecting the object without all this trouble. Omit the Powers of Sale, and trust to foreclosure by claim for your remedy.

We fear that if some improvements are not made by us Lawyers voluntarily in the practice of conveyancing, we shall have changes forced upon us that will be much more destructive, as we have already experienced with the County Courts, and the other reforms which we declined to undertake and mould, and which were therefore so constructed by our enemies as to work against us. It cannot be disguised that some improvements in conveyancing are required.

We have before indicated how they may be effected.

By a scale of fees regulated by the amount of the transaction, and a single charge for the whole, instead of a detailed bill of costs.

An abbreviation of Conveyances by such means as our "Hint" suggested, or by a single clause in an Act of Parliament, which should enact that in mortgages the Powers of Sale should follow the mortgage as of course, unless it was expressly provided to the contrary. We believe that it is so with Irish mortgages. Why should not so rational an arrangement be adopted here? Other similar improvements might readily be found.

We *know* that a great onslaught upon Conveyancing is preparing by the Lawyer-hating Law Reformers, and, therefore, we are thus earnest in entreating the Profession to strike the destructive weapon out of the hands of their enemies by moderate improvements of their own making.

THE NEW CHANCERY PRACTICE.

Mr. Tudor's new Practice is passing rapidly through the press, and will be published in a few days, unless the New Rules in preparation should be positively announced for early promulgation, in which case it will be delayed for them. If issued without them, they will be supplied in an Appendix.

NEW PRACTICE OF THE COMMON LAW.

Mr. Kerr's promised *Practice* under the New Act is published at last. We trust that the work will be found by the Profession to be worthy of the time and toil that have been bestowed upon it (and which have caused its late appearance), and to be thoroughly *practical*, as is the *design* of the Law Times Editions of the Important Statutes.

The chapter giving a complete sketch of an Action at Law as it now is, after the manner of Smith's, will be a novel and useful feature of this volume.

THE ATTORNEY; (*a*)

HIS EDUCATION, PRACTICE, AND DUTIES.

ARTICLE XXVII.

BRINGING AN ACTION (*continued*).

If, having heard your opinion, your client should resolve to proceed, you should take from him *a warrant to sue*, some blank forms to which should always lie upon your table, ready for use.

But, before you issue the writ, you should make an endeavour to procure an amicable settlement of the dispute, and this, whether your client does or does not desire it. Such a course is due to your own professional reputation, that you may not be charged with what is termed "*sharp practice.*" Address to the defendant a polite letter, stating the nature of your client's claim, and threatening proceedings if it be not recognised, if due compensation be not made for any damage done, or a prompt concession of any right withheld. Allow a reasonable time for a reply, because a man cannot be expected to yield to a sudden claim without some inquiry and reflection. If no notice be taken of your application at

(*a*) By the Editor of the Law Times.

the expiration of the appointed time, you may proceed at once; but if the defendant answers, and negotiates for a settlement, you must allow a further reasonable term for that purpose, however eager for hostilities your client may be. If, however, your claim is still disputed, or you have good cause to believe that delay is sought with a design to defeat you, no blame can attach to you for commencing proceedings as soon as the time allowed for an amicable settlement has expired.

But although it is prudent and proper to try every fair means for the adjustment of a difference *before* proceedings are commenced, when once begun they cannot be pursued too vigorously. Nothing is gained by delay; but much is hazarded. A wise man will not fight if he can honourably avoid it, but being forced into the field, he will put forth all his power.

Your next duty will be to determine how to proceed, whether your remedy is in equity or at law, or in both, or in the Superior Court or in the County Court. This is an important consideration, both for your client and for yourself, and as there is usually a choice of remedies it will depend upon *you* whether that is preferred which is *intrinsically* the best,—that is to say, the most sure, the most speedy, and the cheapest.

And here again another temptation will beset you. The remedies that offer themselves may differ materially in the amount of profit which they are likely to yield to yourself. A suit in equity, even with the reformed procedure, is vastly more profitable than an action at law, and an action in the Superior Court than a plaint in the County Court. But you have no right to permit this consequence to enter at all into your consideration.

You have one plain duty to perform in this, as on all other occasions, and that is, to consider only what is for the *interest of your client*. To ascertain this, you must not take into your calculations one only of the elements of justice, good law, speedy judgment, or cheapness of procedure, for neither of these alone should influence your decision. You must consider *all* of them in reference to the nature of your case. In some, as where the value of the subject of litigation is small, speed and cheapness are more to be desired even than sound law. In others, as where rights are in dispute, or the purpose is to determine doubts upon the law, and not merely to try a question of fact, or where the sum in dispute is large, the importance of obtaining the assistance of the ablest Counsel, and the decision of the most learned Judges, will be properly preferred to a tribunal that would be more rapid and less costly. The County Courts have not hitherto offered anything like a reasonable remuneration for professional services; but this objection to them will be speedily removed by the operation of a clause in the recent statute, which it was our good fortune to cause to be introduced and carried, by which a scale of fees for Attorneys in the County Courts is to be framed by the Judges. When this is done, there will be no excuse whatever for taking a case into the Superior Court which might be more speedily and cheaply tried in the County Court.

It is not our business in this treatise to describe to you what is the law with respect to the proper remedy for wrongs done or rights withheld. This learning you must acquire in your office, refreshing your memory by reference to the books, when the particular case arises for its application.

For the present, we will suppose that you have resolved to bring an action in one of the Superior Courts of Common Law; that you have given the defendant due notice of your purpose, and that either he has made no answer to your application, or refused redress; and that you have obtained your writ from your agent.

If the defendant is not likely to attempt to evade service, or to take any unfair advantage of your courtesy, instead of sending a process-server to serve it, you should write to the defendant to inform him that the writ is issued, that you are desirous of avoiding the annoyance to him of a personal service, and asking the name of his Attorney, who might accept service for him; and then, if referred to his Attorney, you will send the copy of the writ as directed, requesting an acknowledgment of the service. If, however, you cannot trust the defendant with this knowledge, or he makes no reply to your letter, you must cause him to be served in the regular manner.

But even in that do not forget the rules of *politeness*. Let your messenger be a sharp, shrewd, and intelligent man, but enjoin him to avoid all appearance of rudeness or insult, too often employed by the class of Jacks-in-office who are usually employed as process-servers. There is a civil mode of performing even a disagreeable duty, which is appreciated by those who are the objects of it, and who will give *you* credit for it, as, on the contrary, they will set to *your* account any insolence of your menial. Besides, it is *right*, as well as polite, and *therefore*, also, should be observed.

If the defendant resides at such a distance that the writ of service by your own messenger would be greater than the employment of an agent, you should send the writ for service to some respectable Attorney in the immediate neighbourhood of the defendant. Having received from him the affidavit of service, with the account of his fees, make it a strict rule forthwith, *by return of post*, to transmit to him, by post-office order, the amount of those fees, and thus avoid the complaints that, with too much truth, are made by many members of the Profession of the difficulty which they find in obtaining payment of such fees from some of their professional brethren, who will not pay them even after they have been received by themselves as part of their costs. Such a proceeding is something more than unjust, it is dishonest, for their agency fees are too trifling to be recovered by an action, and, therefore, are debts of honour. Treat them as such, and pay them as soon as they are incurred.

Even while the pleadings are in progress, begin to collect the evidence. There are many reasons why this most important part of *your* duty should not be delayed. It often happens that the statements of your client, upon the faith of which the action has been brought, cannot be sustained by the evidence: he has mistaken or exaggerated it, or it rests upon something that is not legal testimony, as hearsay, and such like, and then it is desirable that you should be enabled to stay proceedings at the earliest moment, so as to save your client from useless costs. Inasmuch as it is impossible to anticipate the time that will be required for the gathering of the evidence, you cannot too soon begin to do so. Witnesses may die, or remove, or documents may be withdrawn or concealed. Be assured that there is nothing like promptitude to command success in the practice of the law as in the other affairs of life. Ever bear in mind this admirable maxim of one of the wise men of the past, "Commit the beginnings of actions to Argus with his hundred eyes, and the endings of them to Briareus with his hundred arms." In other words, think well before you resolve to act, but, having resolved, act with all your might.

Under the new procedure you will be enabled, in the majority of cases, to prepare your own pleadings. But if there is the *slightest* doubt or difficulty in any case, it will be the safer course to send it to a Pleader.

The principal duty of the Attorney is to *collect the evidence* that will be required to support his case. It is impossible to lay down any rules for this, as the practice must vary in almost every instance, according to the circumstances; but a few hints may be serviceable.

You will, in the first instance, apply to your client. Having before you the notes of his instructions, you proceed to inquire from him by whom the acts as stated will be proved, and as he is now admissible as a witness, you will commence with him for your collection of the evidence. But you must not permit him to tell his own story, as on the former occasion, for your object now is not to obtain from him the general history of the case, as he has learned it from others, but only the facts of it that are known to himself, and which he is able to prove upon oath. *You* must now be the questioner, charging him to confine his answers to your queries; put them slowly, and take down his replies verbatim, on draft paper, for subsequent revision before they are transferred to the brief.

You must still remember what is his position. He has the deepest interest in the issue, and he is liable to be grossly misled by his own passions. The more wrathful he is, the more cautious you must be in taking his evidence, or he will deceive you as he has deceived himself. Treat him, therefore, almost as if he were an adverse witness, and cross-examine him. With all your skill and caution, you will find it extremely difficult to sever *the facts* he is able *to prove* from the mass of hearsay, surmise, suspicion, and conjecture that form the larger portion of the materials upon which is founded his confident belief in the justice of his own cause. If documents are referred to, request their production to you, to assure yourself that they are as represented. Accept no statement from the witness of anything he does not *personally know*, and is prepared to prove upon oath. Set down all his answers in his own words, and having thus obtained the evidence from him, read it over to him very slowly, sentence by sentence, asking him to correct you if any thing is there misstated, or omitted, or requires explanation; and when it has been moulded according to his final instructions, ask him to sign it as an acknowledgment of its verity, and then indorse it and place it on the file with the other papers relating to the cause.

But you must not content yourself with this evidence alone, however conclusive it may appear. Although the law no longer excludes the testimony of the parties, Judges and juries very properly receive it with some suspicion, and require that it shall be corroborated by other witnesses, if it be possible to do so. You will make it your particular care to procure from him this information, and especially as to the existence of documentary proofs. It is of very frequent occurrence in trials, that the evidence of a witness as to the terms of an agreement or otherwise is shut out by eliciting from him the fact that it had been put into writing. Hence the importance in all cases of ascertaining from the witnesses, when *you* examine them previously to the trial, whether there was any writing, and if there was such, you must use every exertion to procure it. This research it is that often demands so much time and labour, and makes it so desirable that you should begin to collect your evidence as soon as the action has commenced.

And as you do in taking the evidence of your client, so do with all the witnesses in succession. Endeavour to discover from each one if he has any bias of interest or feeling that might induce him to colour his narrative, or if he is really disinterested, and deal with him accordingly: in the one case subjecting him to that which almost amounts to a cross-examination: in the other, taking his story from his lips almost as he imparts it, with only such inquiries as are necessary to its completeness.

THE NEW BANKRUPTCY ORDERS.

It should, perhaps, be stated that the volume of the New Rules which is to be published, according to promise, as an Appendix to *Wise's Bankruptcy Act*, will not be edited by

Mr. Wise, but by another gentleman, who has taken great pains in the collection of the cases decided upon the construction of the Act.

HINTS TO BUSY PRACTITIONERS.

[Under this title we propose from time to time to remind the practitioner of useful facts which, amid the claims of business and the flood of changes in the law, he may possibly have overlooked. As we also may overlook many, we shall be obliged by "hints" from any of our readers.]

JUDGMENT—WRIT OF INQUIRY.

JUDGMENT *final* can be obtained at once in all cases where the plaintiff seeks to recover a debt or liquidated demand in money, and in consequence *writs of inquiry* are almost completely abolished. All forms of action being disused, and the above simple method of obtaining final judgments substituted, the former great source of these writs, viz. ordinary actions on promises, which might have been brought equally well in debt, is lost; and, in fact, the recent Act goes further: as, by the 94th section, it enacts that, whenever the damages can be reduced to a matter of *calculation* they are to be assessed by the Master, and thus writs of inquiry can only now be used when the damages claimed are in their very nature uncertain and arbitrary, and (a point which should not be overlooked) in actions commenced against British subjects residing out of the jurisdiction, in case of non-appearance, the plaintiff must nevertheless prove the debt or damages claimed, either before a jury *upon a writ of inquiry*, or, &c.

H. P.

NEW CHANCERY PRACTICE.(a)

HERETOFORE, the orders made by the Lord Chancellor or persons entrusted with the care of the persons and estates of persons found lunatic, &c. were not entered into a book, as orders in Chancery are. This led to much inconvenience, as persons interested in proceedings in lunacy, as well as those interested in Chancery proceedings, are often in need of authenticated copies of such proceedings. The 30th and two following sections provide a remedy, which will be found of much use.

By the 30th section, every order made in matters *in lunacy* by the Lord Chancellor, or the person or persons entrusted as aforesaid, when drawn up by the Secretary of Lunatics, and signed by the Lord Chancellor, or the persons or person entrusted as aforesaid, are to *be entered by such secretary, who is to be thenceforth called the Registrar in Lunacy, in a proper book to be provided by him for that purpose, and he is to furnish to every person requiring the same, office copies of such orders, or of such part thereof as may be required*, which copies are to be signed by such Registrar in Lunacy, and he is to provide a seal for his office, and is to cause to be sealed or stamped therewith all such office copies; and every such office copy, purporting to be so signed, and sealed or stamped with such seal, is at all times, and on behalf of all persons, and whether for the purposes of this Act or otherwise, to *be admitted as evidence* of the order of which it purports to be a copy, without any further proof thereof. (Sec. 30.)

Where any such order in lunacy relates to the payment, transfer, or carrying over of any cash, stocks, funds, annuities, securities, or other effects, to or into the name of the Accountant-General, to *the credit* of the matter of any person or persons being idiot, lunatic, or of unsound mind; or to the payment, transfer, or carrying over, or other disposal by the said Accountant-General, of any cash, stocks, funds, annuities, securities, or other effects, which *may be standing in his name* to the credit of the matter of any person or persons being idiot, lunatic, or of unsound mind, the Accountant-General, and all other persons, including the Governor and Company of the Bank of England, and all other companies and societies, are to act upon such order, signed by the Lord Chancellor, or the persons or person entrusted as aforesaid, after the same shall have been so entered as aforesaid, *in the same manner as if such order had been also drawn up by the Registrar of the Court of Chancery, and passed and entered according* to the mode heretofore in force; and the Registrar in Lunacy is to certify under his hand to the Accountant-General, what stocks or funds he is, by virtue of any such order, to transfer, and to whom; in the same manner as the Registrars of the Court of Chancery have been heretofore accustomed to do. (Sec. 31.) A considerable saving will be effected by having, under this section, only one order drawn up and entered, instead of having an additional one drawn up and entered by the Registrar of the Court of Chancery, under the general order of the 10th February, 1834.

It is not to be necessary hereafter to file any certificate or report of the Masters in Lunacy in the report office of the Court of Chancery, but the Accountant-General and all other persons, including as aforesaid, are to act upon all *certificates and reports of the Masters in Lunacy, filed in the office of the Registrar in Lunacy*, in the same manner as if such certificates and reports respectively had been also filed in the report office of the Court of Chancery, according to the mode heretofore enforced. (Sec. 32.)

If any person forge the signature of the Registrar in Lunacy, or forge or counterfeit the seal of his office, or knowingly concur in using any such forged or counterfeit signature or seal, or tender in evidence any document with a false or counterfeit signature of such Registrar, or with a false or counterfeit seal, knowing the same signature or seal to be false or counterfeit, every such person shall be guilty of *felony*, and shall be liable to the same punishment as any offender under 8 & 9 Vict. c. 113. (Sec. 33.)

The present practice of countersigning the cheques of the Accountant-General occasions much inconvenience, which will be much diminished by the two following sections.

The 34th section, after reciting that all notes and cheques for the payment of money, drawn by the Accountant-General upon the Bank of England, have been heretofore countersigned by the Registrars of the said Court, in pursuance of the provisions of 12 Geo. 1, c. 32; and that all copies and extracts taken from the Registrar's books, deposited in the office of the Master of Reports and Entries, have been heretofore signed by the said Registrars; and that the performance of such duties by the said Registrars is attended with inconvenience, and interrupts them in the execution of their other duties, and it is expedient that the Master of Reports and Entries should be empowered to sign such documents as well as the said Registrars; it is therefore enacted that the *duties relating to the countersigning the notes or cheques drawn by the Accountant-General upon the Bank of England, and to the signing the copies and extracts made in or issuing from the office of the Master of Reports and Entries*, heretofore performed by the Registrars of the said Court, so far as it shall be found necessary or expedient to continue such duties, are to be performed by the *Master of Reports and Entries*, or the *Registrars* of the said Court, in such manner and under such rules and regulations as the Lord Chancellor shall from time to time by any order direct. (Sec. 34.)

The Master of Reports and Entries shall also perform all such other duties as the Lord Chancellor shall from time to time by any order direct. (Sec. 35.)

By an order made by the Lord Chancellor on the 27th July last, it is ordered that the copies or extracts made in or issuing from the office of the Master of Reports and Entries, and certificates of no cause shewn, are to be signed by him alone, save that when he is prevented from signing the same by absence, or some unavoidable or reasonable ground, the same is to be signed by the Registrar, who is employed in countersigning, as next thereinafter mentioned. That until further order, the duty of countersigning the notes or cheques drawn by the Accountant-General of the Court upon the Bank of England, is to be discharged, as nearly as conveniently may be, during three days in each week, by the Master of Reports and Entries, and during the other three days in each week, by some one of the Registrars, in such order and rotation as shall be agreed upon by and between the Registrars and the Master of Reports and Entries, or the majority of them: and it is provided that such notes or cheques are to be equally valid and available, to all intents and purposes, whether signed by the Master of Reports or by any one of the Registrars.

By the next section, which abolishes the office of Clerks of Accounts, some time will be saved, which was formerly very unnecessarily lost, by the suitors, in getting their cheques entered, as the countersigning of the cheques of the Accountant-General by the Registrar or the Master of Reports and Entries, is a sufficient precaution of itself against the funds of the suitors being improperly transferred. This section, after reciting that, under an order of the said Court recited in the said last-mentioned Act, and thereby confirmed, an account of all moneys, securities, and effects belonging to the suitors of the court, was directed to be kept at the Report Office, and that, since the passing of such Act, three accounts of such moneys, securities, and effects have been respectively kept, that is to say, one at the Report Office by the Clerks of Accounts, another in the office of the Accountant-General, and a third at the Bank of England; and that it is considered *that the account so kept at the Report Office was no longer necessary, and may be discontinued* it is therefore enacted, that after the 1st October, 1852, *the account so kept at the Report Office as aforesaid is to be discontinued, and the offices of Clerks of Accounts is to be abolished*, and so much of the said last-mentioned order as requires that when any money belonging to the suitors of the said court should be directed to be paid by order of the said Court, the note drawn for such money upon cheque-paper as thereby directed should be carried to the Report Office, and an entry made thereof there, and intratur written thereon, shall be repealed, and after 1st October, 1852, every note or cheque for the payment of money under any order of the said Court, signed by the Accountant-General, and countersigned by the Master of Reports and Entries or one of the Registrars of the court, as thereinbefore required, is to be sufficient authority to the Bank of England to pay the money mentioned in such note or cheque to the person named therein, or to such person as he or she by endorsement shall order to receive the same. (Sec. 36.)

Power is then given to the Lord Chancellor from time to time to make and issue general orders (sec. 37), and from time to time to annul, alter, or vary the same. (Sec. 38.)

Power is also given to the Lord Chancellor to authorise and direct the first, second, and third clerks in each division of the office of the said Accountant-General, after the 28th of October, 1852, to continue to perform the duties hitherto performed by such clerks, in addition to the duties prescribed by Act of Parliament as heretofore, in exclusion of any other person, and to direct them to be paid such yearly salaries as the Lord Chancellor, with the consent of the Commissioners of the Treasury, shall think just; and the Lord Chancellor may fix the fees to be paid for such acts as aforesaid, which shall be accounted for in like manner as the other fees now received in the office of the Accountant-General. (Sec. 39.)

The salaries of every clerk of the Taxing Masters, after the 3rd November, 1852, is to be 350*l.* per annum. (Sec. 40.)

The deposit now payable on setting down appeals and exceptions for hearing, are to be paid to the senior Registrar of the court, who is once in every three months to pay all sums so received to the credit of the Accountant-General (the amount to be verified by affidavit), to be placed to an account to be intituled "The Appeal Deposit Account," and the moneys which shall from time to time be standing to such account, are to be paid and applied as the Court of Chancery shall from time to time in that behalf order or direct. (Sec. 41.)

According to the present practice, the Chief Registrar receives money payable as deposits on appeals, and pays it over to the solicitor of the party to whom such deposit is ordered to be paid; but he is not in the mean time under any obligation to invest it for the purpose of security, to any account in the Bank of England. This practice, although it does not appear that the confidence of the Court has ever been abused, is wrong in point of principle,—it might lead, or have a tendency to lead, to abuses, and has therefore been very rightly abolished.

(a) Continued from p. 36, *ante*.

ADVERTISING ATTORNEYS.

DURING the pressure of the business of Term the following was laid aside, and has just come to hand. We give it a place now, for it is valuable evidence of the justice of remarks that have been often made in these columns, where Mr. MARSHALL has figured more than once. The case occurred in the Court of Bankruptcy:—

Re HUCKS.

The bankrupt, a cooper, of Rotherhithe, applied for his certificate. His debts and liabilities were 1,295*l.*; estimated assets, 251*l.*; profits, 1,854*l.*; expenses, 2,712*l.*

Linklater supported.

Dupree opposed, for a creditor, Mr. J. Holme, timber-merchant, of Liverpool, on the ground of reckless trading, bad book-keeping, and a vexatious defence to an action. In this case, the profits were

exceeded by the item of wages alone. The bankrupt had been sued by Mr. Holme on a bill; he had pleaded to the action, putting the plaintiff to the proof of everything, including his handwriting; when the trial came on, no defence was made; but the costs were run up from 11*l.* 10s. to 29*l.* 6s. 8d. This, it was contended, disentitled the bankrupt to protection under the penal clauses of the new Act.

The bankrupt, in examination, stated that he had been induced by an advertisement in one of the daily papers, addressed, "To the embarrassed," to apply to a Mr. Marshall.

Linklater urged that the bankrupt had been misled by ill advice.

His HONOUR said this bankrupt had kept his accounts in the most imperfect manner, and had knowingly carried on a losing trade, as was shewn by the amount of wages paid. On these grounds the certificate must be suspended. There was a more material charge. The Court could never allow a debtor to impose terms on his creditor by threatening to put him to expense by legal proceedings. This man had as much excuse as could be alleged; *he had fallen into the hands of an advertising attorney, and men who did that generally came to the Court of Bankruptcy, and were not at all released from their difficulties.* The certificate (of the third class) would be granted at the end of six months; protection to be withheld for two months.

On the application of Mr. Dupree, a certificate to arrest the bankrupt was granted to his client.

A LAWYER'S BILL.

WE have received from San Francisco the following curious specimen of a Lawyer's Bill in the gold regions:—

1850.

T. W. and Co. Dr. to S. A. S.
Attorney and Counsellor-at-Law.

For services in suits instituted against ——, $150 each	$300·00
For services in case of —— & ——	200·00
For writing articles of copartnership ..	25·00
For writing assignment.....	25·00
For professional consultation and counsel	50·00
San Francisco, Feb. 18, 1850.	$600·00

Total, six hundred dollars!

NEW COMMON LAW FORMS.

THE following forms are now ready, and may be had in any quantities:—

Præcipe for Writ of Summons.
Præcipe for Renewal of Writ.
Writ of Summons (paper).
Ditto, with special indorsement, ruled with £ s. d. lines for particulars of demand, so as to obtain immediate judgment—1st, half a page; 2nd, one page; 3rd, a full sheet.
Affidavit of Service of Writ.
Appearance Pieces (parchment).
Writ of Ejectment.
Warrant of Arrest under the Absconding Debtors Arrest Act.

THE LEGISLATOR.

Imperial Parliament.

HOUSE OF LORDS.

PROROGATION TO THE 4TH OF NOVEMBER.

Parliament was on Thursday further prorogued until the 4th of November, in pursuance of the official notice published in the *Gazette* last week.

THE BOARD OF WOODS.—A parliamentary paper was yesterday published containing a statement of the alterations which have recently been made under an Act of Parliament in respect to the Board of Woods and Public Buildings.

THE MAGISTRATE,

AND PAROCHIAL AND MUNICIPAL LAWYER.

Summary

WE have not deemed it expedient to print *in extenso* the statute of last session relating to the Assessment and Collection of the County Rates (15 & 16 Vict. c. 81). It is not likely to be referred to by any but those who are engaged in county business, and the abstract of it will sufficiently inform other Solicitors of the substance of the new law—if, indeed, it deserves the name, for, in fact, it is little more than a consolidation of the existing law. The practical statutes required by every member of the Profession were so numerous and so long, and yet so necessary to be given in full, that we were obliged to abstract those of less general importance, in order to complete the series before the business of Term, and the product of another session, could come to crowd our columns. We have now almost brought up the arrears, and shall be enabled to begin the legal year with the pages requisite for keeping pace with the current law, which will be more interesting than ever.

Queries.

IN many Acts of Parliament provision is made for a certain number of days' notice being given of meetings, &c. before they are held.

Illustrations of what I mean will be found in 8 Vict. c. 16, s. 71; 8 & 9 Vict. c. 118, ss. 33, 46, 48, 55, &c.; and many other similar statutes.

Will some of your readers have the kindness to state whether it is their practice, in giving such notices, to continue the advertisements throughout the whole number of days, or whether they consider that once advertising is sufficient?

A SUBSCRIBER.

JOINT-STOCK COMPANIES' LAW JOURNAL.

WHERE the lands of a see were leased, and a railway company bought the reversion of the bishop, and the leases were renewable on the dropping in of lives and some at stated intervals, it was held that the bishop for the time being was not entitled to the dividends of the compensation money, but that they must accumulate, the bishop to have liberty to apply to have his deficiency paid out of the fund as the leases became renewable. (*Ex parte the Bishop of Winchester*, 20 Law T. Rep. 28.)

IMPORTANT RAILWAY DECISION.—In the Sheriff's Small Debt Court, Glasgow, on Thursday last, a decision of great importance to railway travellers and the public generally was pronounced by Mr. Sheriff Bell. It was in a case at the instance of Mr. Robert Dunlop, writer, Glasgow, against the Edinburgh and Glasgow Railway Company for damages sustained through detention from business on the morning of Saturday, the 25th of September ult.; Mr. Dunlop, who resides in the parish of Campsie, having been, along with the other passengers, detained at the Milton station of the Campsie branch of the railway on that morning for about an hour and a-half, the train from Campsie which should have reached the Milton station at five minutes after nine o'clock a.m. not having arrived till about half-past ten o'clock. The railway company were defended by Mr. Bannatyne, on the plea, 1st, that the delay in question had arisen from an accident for which the company were not responsible—viz. the breaking down at Lennox-town of the engine used upon the branch: and, 2ndly, that the company's time-bills expressly stipulate that the company do not guarantee the hours of arrival and departure of the trains being kept under all circumstances, and do not hold themselves responsible for delays. After evidence had been laid, and parties were fully heard, the sheriff, in a very luminous manner, summed up, stating that the first plea urged in defence could not be sustained, the delay having been occasioned by the breaking down of the only engine used on the branch, and which the defendants' engine-driver admitted had recently undergone repair, having, in fact, only left the workshop the day before, and the repairs, as testified by the break-down the following morning, and also by the engine-driver himself, must have been imperfectly made by the servants of the company, for whom they were undoubtedly responsible; and as to the second plea, that it was quite true the stipulation urged was expressed in the time-bills, but no such stipulation could shelter the company in all circumstances from their responsibility as private carriers, and it certainly could not be given effect to in the present case, where the cause of the delay, and of their contract with the public not being implemented, was the deficiency of their own engine: the sheriff, therefore, decreed against the railway company for the damages claimed, and whole expenses.—*Glasgow Herald*, Oct. 15.

REAL PROPERTY LAWYER AND CONVEYANCER.

THREE persons became entitled in unequal shares to real estate, subject to a mortgage. The mortgagee requiring payment, a transfer was made, which recited that payment having been demanded of A. B. and C. (the persons entitled to the equity of redemption) according to their respective proportions thereof, and that they had applied to the transferee to advance, &c.; and there was a fresh proviso for redemption on payment by A. B. and C. of the money, in proportion to their shares in the estate; and they covenanted for payment, and a bond was given by the three for the amount of mortgage-money. C. died, and the question arose, what part of her estate was the primary fund for the discharge of her portion of the debt? "It was settled law," said the Court, "that the mere transfers of a mortgage by one mortgagee to another, although accompanied by a covenant of the owners of the estate, making their personal estate liable to the transferee, would not, of itself, make their personal estate the primary fund for payment of the mortgage debts." And there were no circumstances in this case to take it out of that rule. (*Hedges* v. *Hedges*, 20 Law T. Rep. 29.)

In *Turner* v. *Turner*, 20 Law T. Rep. 30, leasehold ground-rents and shares in an insurance company were held *not* to pass under the words, "real estate, money, and securities for money."

It was laid down in *Bell* v. *Morrall*, 20 Law T. Rep. 30, that in order to give a claim for interest on balances in the hands of executors, there must be a clear case of retention of balances to a considerable and substantial amount.

In *Ex parte Pugh*, 20 Law T. Rep. 31, where a husband had become bankrupt, two-thirds of a sum which had been paid into Court under the Trustees Relief Act, and to which he was entitled in right of his wife, was ordered to be settled on the wife and children.

COUNTY COURTS.

Summary.

AN *Insolvency* case was reported last week from the Q. B. In *Kernot* v. *Pittis*, 20 Law T. Rep. 32, it was held that an insolvent, discharged after the vesting order by default of the execution creditor, and with the consent, also, of the detaining creditors, cannot sue a party acting as the servant of the provisional assignee for the recovery of property passing under the vesting order, before an order is made by the Court for the re-delivery of the property to the insolvent, as directed by 1 & 2 Vict. c. 110, s. 44.

ATTORNEYS IN THE COUNTY COURTS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Below you have a report of the observations which were made in a case wherein I was advocate for the plaintiff—"being an attorney acting *generally* in the action for him, and *not* being an attorney retained as an advocate by any other attorney." I say acting *generally* in the action, because no other attorney had acted for the plaintiff, in issuing the summons, or preparing the brief; and the *next* step in the action was to serve any notices which might be required, and to advocate the case. Neither the parties who surreptitiously altered this clause in the last stage of the Bill, after it had passed the Commons, nor the Legislature, appear to me to know anything about the course of proceeding in the County Courts; hence, they have made use of language which they do not understand, and which is not applicable to those Courts. In nine cases out of ten, in the Liverpool County Court, an attorney is not employed to sue out the summons. *That* is a proceeding done by the plaintiff himself, which is by merely delivering to the clerk the necessary number of copies of his claim, and the summons is issued by him accordingly. From this stage, until a few days before the day of hearing, the plaintiff is perfectly passive. He then collects his evidence (it may be without consulting an attorney), and the cause comes on for trial. It will be seen, therefore, that up to this time there has not been any *attorney acting generally in the action*; and it appears to me clear, that under these circumstances, the plaintiff is at liberty to employ any attorney he pleases to advocate his case. To come to an opposite conclusion, the attorney advocate would be excluded *altogether*, because he had not been *acting generally in* the action. I will now suppose that an attorney is employed to make out the claim, to issue the summons, and to pay the costs of it. Both attorney and client are then passive until a few days before the hearing, and the client then requests his attorney to prepare for trial and advocate the case. This the attorney declines to do, and refers

his client to a gentleman who attends the Court daily during its sittings. This gentleman is then set in motion by the plaintiff, and draws up and serves a notice to produce documents in evidence, prepares his brief, and takes a written retainer from his client. Now, it will be seen that he has been acting *more* generally in the action than the one who has issued the summons only. Can it, therefore, be contended that he shall not advocate the case? Is *he* "an attorney retained as an advocate by such first-mentioned attorney?" Certainly not. The advocate is retained *by the party*, and he may have as many attorneys as he pleases. In these Courts there is no record whereon the attorney's name appears as in the Superior Courts, and consequently there can be no occasion to apply for leave to change the attorney. The plaintiff, in fact, sues in person, and whoever appears for him at the trial, his name, as attorney or agent, is entered in the Court book. It is clear to me, that if no attorney has been employed until the instructions for advocating the cause are given by the party, no objection can be sustained against the attorney advocate. To contend the contrary would operate as an entire exclusion of the attorney advocate, and entail upon the party the cost of counsel and clerk; counsel, too, who in general are deficient in the tact requisite for conducting a cause in these courts. The attorneys are more handy at their work, and, in my judgment, at least equally efficient. In conclusion, I may state, that the clause in question goes to abridge the right of the attorney, and the language of the Legislature must therefore be construed strictly against the enactment, and liberally, in favour of the attorney.

I am, Sir, yours, &c.

JNO. C. GROCOTT.

Liverpool, October 12, 1852.

LIVERPOOL COUNTY COURT.

GREENOUGH *v.* BELL.

Professional practice—Advocacy by an attorney—Employment of two attorneys by the client—Construction of the advocates' clause in the new Act.

In this case Mr. *Grocott* rose and stated that he appeared for the plaintiff, whereupon Mr. *Weir Anderson*, the defendant's attorney, said—I object to Mr. Grocott appearing in this case, as not being the attorney employed; another gentleman has been retained.—Mr. *Grocott:* I am instructed by Mr. Greenough, and not by any other attorney, directly or indirectly. The brief is written out by the plaintiff himself.—Mr. *Anderson:* The facts are, that the other attorney has got up this case and has prepared the necessary documents, and has sent the brief, through the plaintiff, to Mr. Grocott. I think if an attorney takes out the summons and prepares the papers, that that attorney is alone entitled to appear in court, or a barrister.—The JUDGE: It is a very important point for the profession. I will read you the actual words of the Act; they are peculiar.—After repealing the last enactment, it says—"And it shall be lawful for the party to the suit or other proceeding, or for an attorney of one of her Majesty's Superior Courts of Record, being an attorney acting generally in the action for such party—[I had not before observed that the word "generally" was introduced into this]—but not an attorney retained as an advocate by such first-mentioned attorney, or for a barrister retained by or on behalf of the party, on either side, but without any right of exclusive or pre-audience, or by leave of the judge, for any other person allowed by the judge to appear instead of the party, to address the Court." Now, as I understand, Mr. Grocott, you are acting at present for this gentleman, and not retained by any other attorney? Mr. *Grocott:* Certainly not.—The JUDGE! But are you an attorney acting generally in the matter? When did the papers come into your hands? Mr. *Grocott:* This morning, from Mr. Greenough,—Mr. *Anderson:* And the papers have been prepared at another attorney's office.—Mr. *Grocott:* A man may have half a dozen attorneys if he chooses.—Mr. *Anderson:* It would take away the effect of the Act altogether if one attorney is to prepare the papers and another attorney is to attend here as an advocate.—The JUDGE: Was this matter in your hands before this morning?—Mr. *Grocott:* Never, sir.—The JUDGE: Of course you will understand that I am not putting these questions to you with the view of obtaining any information which you yourself are not desirous of affording.—Mr. *Grocott:* I am happy to afford any information which may be necessary. I have before conducted cases in this court for Mr. Greenough as an advocate, and I presume he was satisfied with my services on those occasions, and he has retained me again. The JUDGE: When the matter was first introduced into court, was any other attorney employed by the plaintiff?—Mr. *Grocott:* Not to my knowledge.—The JUDGE: I think we had better have the statement of Mr. Greenough himself about it. Will you tell us, Mr. Greenough, what you did yourself in this matter? I will take care that you are not prejudiced in any case, because if Mr. Grocott cannot attend for you, you shall have full opportunity so to prepare the matter as not to be deprived of the assistance of a professional gentleman. What I want to know is, whether any attorney besides the gentleman who is now acting for you has acted in any part of this action? Mr. Greenough replied to the effect that no other attorney had acted in any part of the action, excepting in drawing an instrument for the payment of the money. On Wednesday last the defendant said he would pay the debt provided he had time. He was told that time would be given him, and then instructions were given to Mr. Smith, solicitor, to draw up a paper to that effect. He (Mr. Greenough) had not seen Mr. Smith upon the subject of this action.—The JUDGE: You have not consulted any attorney as regards this action?—Mr. Greenough: None whatever.—The JUDGE.—Or laid any papers before any attorney?—Mr. Greenough: None whatever.—Mr. *Anderson* said his object was to prevent Mr. Smith being called as a witness against his client, because Mr. Smith called upon the defendant and made an arrangement with him to settle the case. That was on Thursday last.—His HONOUR thought that the meaning of this Act of Parliament was, that a person might have one attorney for the management of his business and the collection of his debts from the opposite party, but that he should only have one attorney in the action from the beginning of the action to the end. He thought it competent for a client to go to an attorney and put matters into his hands to arrange, and then, if it became necessary to enter an action in that court, he might have an attorney to conduct the action from beginning to end. He thought that was the meaning of the Act of Parliament, and that it was the construction which the members of the Profession themselves would be inclined to put upon it. The defendant had stated that he had not employed an attorney except to draw up a consent paper.—Mr. *Bremner* said they were all amici curiæ upon the subject. Supposing the attorney for the plaintiff entered a plaint, and supposing that on the day of the trial the attorney was called out of town, would it not be competent for the attorney to say, "I cannot attend to-day," and would it not be competent for the client to take his papers to Mr. Grocott, or any other attorney?—His HONOUR would state his impression. If, in consequence of the absence of the first gentleman employed at a time when his client's interest required his presence, the papers and all other matters relating to the action were transferred to another attorney, he was then really the attorney acting in the action. He could not think that a gentleman might not change his attorney in an action; but he did not think that a gentleman had a right to go to an attorney up to the time when the action was nearly coming on, and then put the matter in the hands of another attorney, and go to that attorney afterwards as if he had been formerly employed. If he (the judge) were to be taken as announcing generally that a man could never change his attorney at all, it would come to this, that when an attorney died a man could never have a second attorney in an action; but, as at present advised, he should hold that if a client went to an attorney and consulted him with respect to an action, and he acted in any way for him in that action, he could not come there and employ another gentleman and adopt him as his attorney for that action specially in that court, because he should think that would be evading the Act of Parliament.—Mr. *Rymer:* Your Honour knows that in the Superior Court no attorney can appear unless there is an order to change. Now, as the judges are about to form new rules, that, I believe, would be a most convenient one, and avoid any difficulty whatever.—The JUDGE: It is a question very well worth attention, and I hope we may have an opportunity of considering it, at all events. This is a perfectly new rule. It is a very important one, I think, to the Profession, and, if properly acted upon, I think it will work beneficially to the Profession. It is intended to prevent the giving to one gentleman the conduct of a case up to the time of its coming into court, and then putting it into the hands of another professional gentleman to act for that first gentleman.—Mr. *Rymer:* There will be a table of costs prepared shortly, which will be payable to some one, and then this question will arise.—The JUDGE: I shall hold that there must be a bonâ fide transference of the business from one attorney to another, and a perfect transference of the whole of the business of the action completed from one gentleman to another, in order to entitle the second gentleman to conduct a cause in this court. I believe that is the intention of the Legislature. I say nothing of the wisdom of the provision. I believe it was intended that the same gentleman should conduct the case throughout.—Mr. *Grocott:* I am sorry I cannot subscribe to that.—Mr. *Bremner* remarked that it would lead to the necessity of an attorney being admitted as a witness for his client, for circumstances would some time arise in which the evidence of an attorney was essential to his client's interest.—The JUDGE: It has many difficulties in it, Mr. Bremner; but I did not make the law.—Mr. *Forshaw:* That is a difficulty which may be got over. We all know that there will be a fixed bar in this court, and it will be in the power of any attorney so situated to employ counsel.—The JUDGE: What I hold, as at present advised, is, that the attorney who appears should be the attorney acting bonâ fide generally throughout the action. This is a matter of much importance to all the gentlemen concerned, and I may say for the conduct of the court; because it is exceedingly desirable for the interest of the public, as well as the Profession, that there should be frequently attending this court professional gentlemen of great respectability. Nothing shall be left undone on my part to hold out inducements to gentlemen to appear here whose respectability is undoubted, and to whom persons can confide their cases with the greatest confidence; but I feel so strongly the necessity of having some opinion in confirmation of my own view of the law tha, I will communicate with my brothers in the same position on the subject.

UNPUNCTUALITY OF TRAINS.—A new and important decision in connection with present complaints as to the unpunctuality of railway trains has just been decided by the Judge of the Yorkshire County Court. The plaintiff was Mr. Raikes, the banker, and the defendants the York and North Midland Railway. It appears that one of the company's trains, being heavy, arrived at the Milford junction half an hour after the Great Northern fast train for London had started. The case having been gone into, the jury returned a verdict in favour of the plaintiff.—Damages, 5*l.*

THE LAWYER.

Summary.

A POINT of Equity Practice appears in the case of *Bennett* v. *Smith*, 20 Law T. Rep. 28. It seems that the Court will not limit its jurisdiction by the amount of the claim, and in this instance it held that a claim for 50*l.* was not too small for its cognisance. This is important, now that equity will give a better remedy than the Common Law Courts.

Queries.

EJECTMENT.—THE COMMON LAW PROCEDURE ACT.

BY referring to the 177th section of the Common Law Amendment Act, it appears that in all cases of *ejectment*, in case of non-appearance, the plaintiff can obtain *judgment by default* at the end of sixteen days from the service of the writ, and thereby recover possession of the land, or even in a shorter period by defendant signing a cognovit or confession of the plaintiff's right, immediately after the issuing of the writ, under the 203rd section. A creditor who obtains a *judgment by default* from a debtor in respect of a debt is not affected by the Bankruptcy Acts, or the subsequent bankruptcy of the defendant; by analogy, therefore, why should not any trader suffer judgment by default of his lands, accompanied, of course, at once, by lawful adverse possession, and then become bankrupt or insolvent? This could not be called a *voluntary* assignment or conveyance of his estate, although certainly in prejudice to his creditors, and although a matter of remark upon his certificate, could the assignees recover back? or supposing the trader suffered a confession, this would not be such a confession *of a debt* as would be set aside under the bankruptcy statutes; and, above all, the plaintiff would be in possession. H. P.

THE MERCANTILE LAWYER.

A CASE of great importance on the construction of the Factors' Acts has been decided by the LORD CHANCELLOR. The facts are as follow:—A. consigned goods to B. for sale, and drew bills upon him for 2,466*l.* their value. B. transmitted the goods to C. his agent in London, for sale, and drew upon him for 2,000*l.* on account of them. C. having notice that they were only consigned to B. for sale, accepted the bill. They were valued at 2,050*l.* Part were sold, and produced 320*l.* When the bill for 2,000*l.* became due, C. retained the 320*l.* and accepted, by way of renewal, a bill for 1,680*l.* the balance. B. became insolvent, and the bills drawn upon him by A. were not paid. C. then sold the rest of the goods by private contract for 1,300*l.* to recoup himself the amount of the bill drawn upon him by B. A. then filed a bill against B. and C. for an account, alleging collusion, and praying that C. might be decreed to pay him the

amount produced by the sale of the goods. The first question was, whether a factor has a right to pledge goods entrusted to him for sale? At common law he could not do so under any circumstances. But a series of statutes has legalised such a transaction, and in this case the point was, whether they extended to the facts as above stated. We have not space here to describe Lord ST. LEONARD'S admirable review of the statutes, and their construction, which every student of mercantile law should gather from a careful perusal of the judgment itself. Suffice it, that his Lordship held that B. and C. were justified in so dealing with the goods. His Lordship thus put his construction of the statutes, 6 Geo. 4, c. 94, and 5 & 6 Vict. c. 39:—"There is this difference between the two Acts; the one says, you are safe in buying of a known agent in the ordinary course of business, if you are not aware that he is the agent; but the other merely recites that the pledge is in the ordinary course of business. It no longer makes it a condition that the pledge should be, but assumes that it is, in the ordinary course of business, and for the purpose of giving title to the pledge, it constitutes the agent owner. The Act says, that in dealing with any agent for pledge of property, you may safely consider him as owner, if you are acting bonâ fide, though you know he is the agent, and you are not bound to ask for his authority. It is the usual course of business to take for granted that he has authority, and that if he does not know you have *not* authority, you are perfectly safe." (*Navulshaw* v. *Brownrigg*, 20 Law T. Rep. 25.)

Two cases from the Court of Appeal in Bankruptcy were reported last week. In *Ex parte Bower*, 20 Law T. Rep. 27, the word "goods," in particulars of demand served with a summons under the Bankruptcy Act, was held to be reasonable information to the debtor so as to prevent the adjudication from being annulled on the ground of uncertainty in the particulars of demand. It was, said the Court, a question to be determined upon the circumstances of each case. And even if they contained one claim that was not sustainable, the particulars were not thereby vitiated.

In *Ex parte Heslop*, 20 Law T. Rep. 28, it appeared that A. having a bill of sale to secure a debt due to him as mortgagee, allowed the goods to remain in the order and disposition of the mortgagor who committed an act of bankruptcy, but before the petition for adjudication was filed, A. took possession. The messenger took the goods from A. and sold them. A. brought an action of trover and recovered, on the ground that the assignees could not sell without an express order of the commissioner. Thereupon the assignees applied to the commissioner, who made an order confirming the sale retrospectively, and reciting that the goods were in the order and disposition of the bankrupt with the consent of the owner. The mortgagee now appealed against the order. But it was held to be valid. It was also ruled that the time of the *signing* of an order, and not the time of pronouncing it, is its proper date from which the period limited for appeal begins to run.

ABSENCE OF AN OFFICAL ASSIGNEE.—We understand that Dr. Shelton Mackenzie is absent from his post of official assignee in Mr. Commissioner Skirrow's court at Manchester, and has been so for some time. Pecuniary difficulties are the cause of his absence. The vacation ended on Thursday, the 23rd ult. and on the following Tuesday the commissioner received a communication from Dr. Mackenzie, dated Paris, in which he announced his reasons for absenting himself; and Mr. Commissioner Skirrow has laid the circumstances before the Lord Chancellor, and is awaiting his decision in the matter. Considerable interest attaches to that decision, for it is generally felt that the business in the court is not more than will properly remunerate one official assignee, and that to divide it between two is to render the office not worth the acceptance of a qualified and respectable man.

COURT PAPERS.

CHANCERY SITTINGS,

Appointed after Michaelmas Term, 1852.
The Courts will sit at Lincoln's-inn at Ten each day.

Lord Chancellor's Court.

AT WESTMINSTER.

Tuesday.....Nov. 2—Appeal Motions
Wednesday ..... 3—Petition day
Thursday 4
Friday 5
Saturday 6
Monday..... 8 } Appeals

Tuesday..... 9
Wednesday 10
Thursday .....11—Appeal Motions
Friday .....12—Petition day
Saturday 13
Monday.....15
Tuesday.....16
Wednesday 17
Thursday .....18—Appeal Motions
Friday .....19—Petition day
Saturday 20
Monday.....22
Tuesday.....23
Wednesday 22
Thursday .....25—Appeal Motions.

The days his Lordship attends the House of Lords excepted.

Lords Justices.

AT WESTMINSTER.

Tuesday.....Nov. 2—Appeal Motions
Wednesday 3
Thursday 4
Friday ..... 5—Petition day. Petitions in Lunacy, Bankruptcy, and Appeal Petitions
Saturday 6
Monday..... 8
Tuesday..... 9
Wednesday .....10—Petition day. Petitions in Lunacy, Bankruptcy, and Appeal Petitions
Thursday .....11—Appeal Motions
Friday 12
Saturday 13
Monday.....15
Tuesday.....16
Wednesday .....17—Petition day. Petitions in Lunacy, Bankruptcy, and Appeal Petitions
Thursday .....18—Appeal Motions
Friday 19
Saturday 20
Monday.....22
Tuesday.....23
Wednesday .....24—Petition day. Petitions in Lunacy, Bankruptcy, and Appeal Petitions
Thursday .....25—Appeal Motions.

Rolls Court.

Tuesday.....Nov. 2—Motions
Wednesday ..... 3—Petitions in General Paper
Thursday 4
Friday 5
Saturday 6
Monday..... 8
Tuesday 9
Wednesday .....10 — Pleas, Demurrers, Causes, Claims, Further Directions, and Exceptions
Thursday .....11—Motions
Friday 12
Saturday 13
Monday.....15
Tuesday.....16
Wednesday .....17 — Pleas, Demurrers, Causes, Claims, Further Directions, and Exceptions
Thursday .....18—Motions
Friday 19
Saturday 20
Monday.....22
Tuesday.....23 — Pleas, Demurrers, Causes, Claims, Further Directions, and Exceptions
Wednesday .....24—Petitions in General Paper
Thursday .....25—Motions.

Short causes, short claims, consent causes, unopposed petitions, and claims, every Saturday at the sitting of the Court.

NOTICE.—Consent Petitions must be presented, and copies left with the secretary, on or before the Thursday preceding the Saturday on which it is intended they should be heard.

Vice-Chancellor Sir G. Turner's Court.

AT WESTMINSTER.

Tuesday.....Nov. 2—Motions and Claims
Wednesday ..... 3—Petition day. Cause Petitions (unopposed first), and Causes
Thursday ..... 4—Pleas, Demurrers, Exceptions, Causes, Claims, and Further Directions
Friday ..... 5—Short Causes, Short Claims, & Claims
Saturday 6
Monday..... 8
Tuesday 9
Wednesday .....10 — Pleas, Demurrers, Exceptions, Causes, Claims, and Further Directions
Friday .....12—Unopposed Petitions, Short Causes, Short Claims, and Claims
Saturday 13
Monday.....15
Tuesday.....16
Wednesday .....17 — Pleas, Demurrers, Exceptions, Claims, Causes, and Further Directions
Thursday .....18—Motions
Thursday .....18—Motions
Friday .....19—Unopposed Petitions, Short Causes, Short Claims, and Claims.
Saturday 20
Monday.....22
Tuesday.....23 — Pleas, Demurrers, Exceptions, Causes, Claims, and Further Directions
Wednesday .....24—Cause Petitions (unopposed first)
Thursday .....25—Motions.

Vice-Chancellor Sir R. Kindersley's Court.

AT WESTMINSTER.

Tuesday.....Nov. 2—Motions
Wednesday ..... 3—Petition day. Cause Petitions (unopposed first)
Thursday 4
Friday ..... 5 — Pleas, Demurrers, Exceptions, Claims, Causes, and Further Directions
Saturday ..... 6—Short Causes, Short Claims, & Causes
Monday..... 8
Tuesday..... 9
Wednesday .....10 — Pleas, Demurrers, Exceptions, Causes, Claims, and Further Directions
Thursday .....11—Motions
Friday .....12—Petition day. Cause Petitions (unopposed first)
Saturday .....13—Short Causes, Short Claims, & Causes
Monday.....15
Tuesday.....16
Wednesday .....17 — Pleas, Demurrers, Exceptions, Causes, Claims, and Further Directions
Thursday .....18—Motions
Friday .....19—Petition day. Cause Petitions (unopposed first)
Saturday .....20—Short Causes, Short Claims, & Causes
Monday.....22
Tuesday.....23
Wednesday .....24 — Pleas, Demurrers, Exceptions, Causes, Claims, and Further Directions
Thursday .....25—Motions.

Vice-Chancellor Stuart's Court.

AT WESTMINSTER.

Tuesday.....Nov. 2—Motions
Wednesday ..... 3—Short Causes, Short Claims, Claims, Pleas, Demurrers, and Exceptions
Thursday 4
Friday ..... 5 — Pleas, Demurrers, Exceptions, Causes, and Further Directions
Saturday ..... 6—Cause Petitions, unopposed first
Monday..... 8
Tuesday..... 9 — Pleas, Demurrers, Exceptions, Causes, and Further Directions
Wednesday .....10—Short Causes, Short Claims, Claims, and Causes
Thursday .....11—Motions
Friday .....12—Pleas, Demurrers, Exceptions, Causes, and Further Directions
Saturday .....13—Cause Petitions (unopposed first)
Monday.....15
Tuesday.....16 — Pleas, Demurrers, Exceptions, Causes, and Further Directions
Wednesday .....17—Short Causes, Short Claims, Claims, and Causes
Thursday .....18—Motions
Friday .....19—Pleas, Demurrers, Exceptions, Causes, and Further Directions
Saturday .....20—Cause Petitions (unopposed first)
Monday.....22
Tuesday.....23 — Pleas, Demurrers, Exceptions, Causes, and Further Directions
Wednesday .....24—Short Causes, Short Claims, Claims, and Causes
Thursday .....25—Motions.

Arches Court.

First Session, Tuesday, Nov. 2
Second Session, Wednesday, Nov. 10
Third Session, Thursday, Nov. 18
Fourth Session, Friday, Nov. 26
Bye Day, Saturday, Dec. 4.

Admiralty Court.

First Session, Thursday, Nov. 4
Second Session, Thursday, Nov. 11
Third Session, Friday, Nov. 19
Fourth Session, Saturday, Nov. 27
Bye Day, Tuesday, Dec. 7
Default Day, Friday, Dec. 31.

Prerogative Court.

First Session, Friday, Nov. 5
Second Session, Saturday, Nov. 13
Third Session, Monday, Nov. 22
Fourth Session, Tuesday, Nov. 30
Bye Day, Wednesday, Dec. 8
Caveat Day, Thursday, Dec. 30.

Appeals Court.

First Session, Saturday, Nov. 6
Second Session, Tuesday, Nov. 16
Third Session, Tuesday, Nov. 22
Fourth Session, Thursday, Dec. 2
Bye Day, Thursday, Dec. 9.

Consistory Court.

First Session, Tuesday, Nov. 9
Second Session, Wednesday, Nov. 17
Third Session, Thursday, Nov. 25
Fourth Session, Friday, Dec. 3
Bye day, Friday, Dec. 10
Extra Court Day, Friday, Dec. 31.

COMMON LAW CAUSE LIST.

Court of Queen's Bench.

CROWN PAPERS.
Michaelmas Term, 1852.

Northampton—Reg. v. G. W. Morrison and Another
Derbyshire, Lincolnshire, Nottinghamshire—Reg. (on prosecution of proprietors of the Grantham Canal Navigation) v. The Ambergate, Nottingham, and Boston and Southern Junction Railway Company
Yorkshire—Reg. (on prosecution of Sir W. Worsley, bart.) v. The Commissioners of the Rye and Derwent Drainage.

ENLARGED RULES.
First day.

Middlesex—Reg. (in the matter of John Smith, gent. one, &c.) v. The Churchwardens and Inhabitants of Islington
Fourth day.
Wiltshire—Hodge v. Commerell
Somersetshire—Reg. v. The Gt. Western Railway Company

Fifth day.
Pembrokeshire—Reg. *v.* The South Wales Railway Company
Last day but one of Term.
Cheshire—Reg. *v.* The Sheriff of Cheshire.

Exchequer of Pleas.

SPECIAL PAPER.

Monday, Nov. 8th, 1852.—*For Argument.*

Caddy *v.* Raskruge. Demurrer
Ripley *v.* Earl Talbot. Ditto
Jackson *v.* Burnham and Wife. Ditto
The Dublin and Wicklow Railway Company *v.* Black. Do.
Taylor *v.* Loft and Others.—Special Case, by rule of Court.

SITTINGS PAPER.

	Bane.	*Nisi Prius.*
Tuesday Nov. 2	Motions and Peremptory Paper	.....
Wednesday... 3	Errors, Peremptory Paper, and Motions	Midd. 1st sitting.
Thursday 4	Ditto	.....
Friday 5	Ditto	.....
Saturday 6	Ditto	.....
Monday 8	Special Paper	.....
Tuesday 9	Lord Mayor sworn...	.....
Wednesday... 10	Special Paper	.....
Thursday 11	Ditto	London 1st sitting
Friday 12	Sheriffs nominated...	Midd. 2nd sitting
Saturday 13	Crown Cases	.....
Monday 15	Special Paper	.....
Tuesday 16	Ditto	.....
Wednesday... 17	Ditto	.....
Thursday 18	Ditto	London 2nd sitting
Friday 19	Ditto	Midd. 3rd sitting
Saturday 20	Ditto	.....
Monday 22	Ditto	.....
Tuesday 23	Ditto	.....
Wednesday... 24	Ditto	.....
Thursday 25	Ditto	.....

PEREMPTORY PAPER.

To be called on the first day of the Term, after the motions, and to be proceeded with the next day, if necessary, before the motions.

June 9, 1852.—Martin *v.* Breary—Mr. Bramwell. To set aside verdict for plaintiff, and for a new trial—Mr. James.

June 8, 1852.—Powell *v.* Spitzer and Another—Mr. Lush. To set aside order and subsequent proceedings, with costs—Mr. Willes.

June 8, 1852.—Davis *v.* Walton and Another—Mr. Lush. For costs pursuant to the statute 13 & 14 Vict. c. 61, s. 13—Mr. Hawkins.

NEW TRIAL PAPER.

For Judgment, moved Easter Term, 1852.

Chester—Mr. Justice Williams. Pearson (clerk) *v.* Beck. Mr. Evans.

For Argument, moved Easter Term, 1851.

Kingston—Lord Campbell. Griffin and Another *v.* Humphery. Mr. Chambers.

Moved Hilary Term, 1852.

London—Lord Chief Baron. Vincent *v.* The Shropshire Union Railway and Canal Company. Attorney-General.

Moved Easter Term, 1852.

Chelmsford—Mr. Justice Coleridge. Gant *v.* Pattrick. Mr. Serjt. Channell.
" Mr. Justice Coleridge. Gant *v.* Groom. Mr. Serjt. Shee.

Cardigan—Mr. Baron Martin. Evans *v.* Attwood and Others. Mr. Crowder.

Carmarthen—Mr. Baron Martin. McKinnon and Another *v.* Penson. Mr. Knowles.

Moved Trinity Term, 1852.

London—Mr. Baron Parke. Poulter *v.* Cooper. Mr. James.

ATTORNEYS TO BE ADMITTED.

Michaelmas Term, 1852.

QUEEN'S BENCH.

Adye, Arthur, jun. 21, Great James Street; Bradford, Wilts, articled to W. Stone, Bradford, Wilts
Arnison, William Burra, 22, Great Percy Street, Pentonville; and Penrith—L. Harrison, Penrith
Ash, John George Hele, Adelaide Road, Hampstead; Elizabeth Street, Eaton Square—W. Gorham, Tunbridge; F. J. Ridsdale, Gray's Inn
Aston, David, 15, Burton Crescent; Longton—G. L. Robinson, Longton
Atkins, John, jun. 9, York Terrace, Peckham—J. Atkins, sen. White Hart Court, Lombard Street
Attfield, Edward Beaufoy, 16, Featherstone Buildings—C. Prothero, Newport
Babington, John, 37, Store Street, Bedford Square; Alfred Place—R. Babington, Horncastle; J. Scott, Lincoln's Inn Fields
Ball, Charles, 17, Everett Street, Russell Square; Chester—J. Walker, Chester
Barker, Charles Munro, 24, Great Percy Street; Claremont Square; Canonbury Villas; Sunderland—J. J. Wright, Sunderland
Barlow, Charles, Manchester—J. Barlow, Manchester
Barnes, Arthur, Lichfield—E. Bond, Lichfield
Barr, Frederick Horatio, 32, Swinton Street, Gray's Inn Road—F. Talbot, Bedford Row
Batty, Isaac, Hexham—C. Head, Hexham
Baxter, Dudley, 9, Devonshire Street, Queen Square; Windsor Terrace; Atherstone—S. S. Baxter, Atherstone
Bayley, Charles Henry, 30, Clarence Street, Islington—E. Caddick, West Bromwich
Bayley, Edward D'Oyly, 14, Pakenham Street, Gray's Inn Road; Stockton-on-Tees—W. Bayley; H. Barnes; J. Dodds, Stockton-on-Tees
Beaumont, Henry, 68, Trinity Square, Southwark—W. N. Ottaway, Staplehurst
Bell, John Lindsay, 36, University Street, Bedford Square; Bourn, Lincolnshire—W. D. Bell, Bourn
Beloe, William Aleiphron, 5, Elizabeth Street, Han's Place—W. B. Young, Hastings; J. Gregson, Angel Court
Berridge, Robert Bristow, 18, Ampton Street, Gray's Inn Road; Leicester—S. Berridge, Leicester
Bickersteth, John Pares, Willesden; Liverpool; Sefton—R. Radcliffe; A. T. Squarey, Liverpool
Blagg, Michael Ward, 9, Hunter Street, Brunswick Square; Cheadle—J. M. Blagg, Cheadle
Blick, John, 3, Bury Place, Bloomsbury; Hill Court, Doddershill, Worcestershire—S. Toombs, jun. Droitwich
Borini, John, Usk; Belgium—M. Davis, Usk
Borradaile, Charles, Upper Tooting—H. Denton, Lincoln's Inn
Brundrit, Robert Wright, 9, Gray's Inn Square; Runcorn, Manchester—J. Stevenson, Manchester
Bunny, Edward William, Hen's Place; Crosby Square; Spleen Hill, near Newbury; Newbury—T. Bunny, Newbury
Burton, Edmund Charles, 6, St. James Place; Daventry—E. S. Burton, Daventry
Butler, Josiah, Hunsworth, Yorkshire—J. Thompson, Bradford, Yorkshire
Butlin, Thomas, 24, Great Smith Street, Westminster; Great College Street; Cowley Street—G. Eddowes, Nottingham
Calthrop, Thomas Dounie, 4, Upper Park Place, Blackheath Park; Spencer Place, Blackheath—J. S. Rymer, Whitehall Place
Cant, Thomas Gibson, 6, Soley Terrace, Pentonville; Penrith—J. Jameson, Penrith
Capes, Henry Hawksley, Boroughbridge—W. Hirst, Boroughbridge
Carnell, George Frederick, 5, Newman's Row, Lincoln's Inn Fields; Bedford Square; Sevenoaks—T. Carnell, Sevenoaks
Cartwright, J. U. Hawksley, Bawtry—F. H. Cartwright, Bawtry; T. C. Leitch, North Shields; W. Thorpe, Thorne
Cavell, Edward, 15, Mecklenburg Square—Smith and Son, Southampton Street, Bloomsbury
Chamberlain, Charles Henry, Great Yarmouth—S. Palmer; H. Palmer, Great Yarmouth
Child, Mark, Durham—W. Brignal, Durham
Christmas, John Sanders, Cambridge; Oakley Square—E. Foster, jun. Cambridge
Clare, William, 50, Upper Albany Street; Liverpool—G. J. Duncan, Liverpool
Clark, Henry, 88, Guildford Street, Russell Square; Trowbridge—J. Bush, Bradford, Wilts
Clarke, Frederick, Russell Square; Charlewood Place; Upper Montague Street; Upper Gower Street—C. Few, jun. Henrietta Street, Covent Garden
Clarke, George, 4, Devonshire Street; Queen Square; Ormond Street; Worcester—T. Hyde, Worcester
Cobby, Cecil, 10, Warwick Court, Holborn; Brighton—C. Cobby, Brighton
Cockerill, Thomas Marshall, 10, Symond's Inn; Arthur Street; Featherstone Buildings; Newport—H. Heane, Newport; W. Dean, Essex Street
Cook, Charles Henry, 9, Gray's Inn Square; Essex Court, Temple—C. Cook, New Inn
Cotton, Stapleton, 82, Judd Street, Brunswick Square; New Milman Street—W. J. Graue, Bedford Row
Cowley, George Littlewood, Basford; Nottingham—G. M. Cowley, Nottingham
Crauswick, Matthew, Leeds—J. Shackelton, Leeds
Creswick, Natld. jun. 24, Liverpool Street; Furnival's Inn; Sheffield—H. Pashley, Sheffield
Curtis, Thomas John, 35, Holdfor! Square, Pentonville—C. A. Curtis, Abingdon
Danbeny, Robert, 15, Green Terrace, Clerkenwell; New Ormond Street; Bristol—J. R. Hoyte, Bristol
Davies, Edmund, jun. 3, St. Alban's Street, Hammersmith; Wells—E. Davies, Wells
Draper, Edward, 45, Vincent Square—H. D. Draper, Vincent Square, Westminster
Drew, Charles Thomas, Balham Hill, Surrey—S. Williams, Bedford Row
Dutton, James Roger, 13, North Crescent, Bedford Square; Birkenhead—J. S. Leigh, Luton Hor; W. Eaton, Liverpool
Eastham, John, Mitton, near Clitheroe—R. Trappes, Clitheroe
Edwards, Francis John, 23, Bernard Street, Russell Square—T. W. Davies, Leominster
Edwin, William, Bayldon House, Walworth Common—M. Cooper; G. Ade, High Street, Southwark
Ellis, George, Leeds—G. Naylor, Leeds
Ellis, William Moreton, 9, Lower Calthorpe Street; Walsall—H. Barnett, Walsall
Fitch, George William, 36, Lansdowne Terrace, Westminster Road, Cambridge—C. Francis, Cambridge
Foster, Francis Gostling, Highgate; 51, Berners Street—Sir W. Foster, Norwich
Fox, John, jun. Sidmouth Street; Ashborne; South Crescent; Guildford Street; Manchester—J. Saunders, Manchester; J. Fox, Ashborne
Franklin, James, Halifax—M. Stocks, Halifax
Freud, Edwin, 6, Store Street, Bedford Square; Canterbury—T. N. Wightwick, Canterbury
Frere, Horace, 5, Cunningham-place, St. John's Wood; Great Yarmouth—C. J. Palmer, Great Yarmouth
Fryer, William, 1, Dorset Cottages; Richmond Terrace, Sandbach; Chatteris—W. Latham, Sandbach
Fuller, Robert Good, 1, Waverley Place, Wellington Road; Stowmarket—J. Gudgeon, Stowmarket
Gee, William, Bishop's Stortford—W. Gee; M. H. Walker, Bishop's Stortford
Gibson, Henry, Chipping Ongar—W. Gibson, Chipping Ongar
Green, William Bowles, 3, North Place, Gray's Inn Road; Boston—W. P. Bowles, Boston
Gundy, Charles, 21, New Ormond Street—J. W. Cowley, Buckingham; R. G. Chipperfield, Canterbury; L. Hicks, Gray's Inn Square
Gutteridge, Weichsel Frederick, 4, Regent Place, Brunswick Square—H. Vallance, Essex Street
Gwyn, John Thomas, Hall Street; River Street; Pilbroath; Carmarthen—J. B. Jeffries, Carmarthen
Hall, William Champain, 8, Norland Terrace, Notting Hill—B. V. Hutchinson, Lincoln's Inn Fields
Hampton, Francis, Pinstow; Rusholme, near Manchester—J. Hampson, Manchester
Hearn, Henry, 15, Compton Street East, Brunswick Square; Buckingham—Hearn and Nelson, Buckingham
Hemp, James, Grosvenor Villas; Loughborough; Park Road, Brixton—J. Clark, Sessions House, Old Bailey
Hockley, Edward, Royal Avenue Terrace, King's Road—F. Herbert, Royal Avenue Terrace, King's Road, Chelsea
Holmes, George Penford, 15, Great James Street, Bedford Row—E. C. Holmes, Bedford Row
Howell, Nathaniel, 8, Fisher Street, Kennington; Portsea—A. Low, Portsea
Huggins, William, 12, Wharton Street, Pentonville; Falcon Square; Exeter—F. Avery, Exeter; W. H. Murch, Mansion House Place
Huxley, Frederick, 26, Camden Street North, Camden Town; Liverpool—J. B. Lloyd, Liverpool
Hyde, James Trevelyan, 1, Highgate Rise, Kentish Town—C. Hyde, Ely Place
James, Thomas, 15, Manor Place; Huntingdon—W. Fowler, Huntingdon
Jennings, Edward Billett, 28, Grove Place, Brompton; Leeds—T. T. Dibb, Leeds
Jones, William, Wrexham—E. Wyatt, Wrexham
Kelsall, Frederick Henry, 14, Upper Porchester Street, Paddington—J. Robinson, Liverpool
Kent, Benjamin, Newcastle—N. Kent, Newcastle-upon-Tyne
Kent, Edmund, jun. 6, Albion Terrace, Sydenham Park—E. Kent, sen. Fakenham
Kent, Thomas Russell, 1, Bath Place, Kensington—B. Blundell, Mitre Court, Temple; P. Nelson, Essex Street, Strand
Kingsford, Montague, 11, New Ormond Street; Gower Street; Canterbury—H. Kingsford, Canterbury
Landor, Robert, 10, Lower Calthorpe Street, Gray's-inn Road—W. Landor, Rugeley
Laxton, Thomas, jun. 68, Virginia Terrace; East Road, City Road; Stamford—J. Atter, Stamford, Lincolnshire
Lett, Edward, 1, Stockwell Crescent, Stockwell—R. G. Burfoot, King's Bench Walk; E. Thompson, Salter's Hall
Letts, John, jun. 8, Bartlett's Buildings, Holborn—J. Letts, Bartlett's Buildings
Lucas, Thomas Edward, 9, Taunton Place, Regent's Park—J. Ingram, Lincoln's Inn Fields
M'Gee, Francis William, 21, New Millman Street; Everton, near Liverpool—W. Foster, Liverpool
Maclure, Bowman, Harley Street, Cavendish Square; Clifford's Inn—T. A. Jones, Clifford's Inn
Mander, Charles John, 38, Ladbrook Square; Little Ealing—J. J. Millard, Cordwainers' Hall, City
Marshall, John Stewart, 12, Ampthill Square; Wigan—R. Leigh, Wigan
Matthews, James B. D. G. Twickenham—D. Cornthwaite, Old Jewry Chambers
Mawson, William Willmott, Manchester—T. Taylor, Manchester
Meredith, Edward William, 15, Charles Street, Paddington—C. Meredith, Lincoln's Inn
Metcalf, Robert, Little Shelford, Cambridgeshire—O. Hyde, Cambridge
Meyler, Thomas, Ashmeade House, Gloucester; Amwell Street; Lloyd Square R. Wilton, Gloucester
Miller, Mark Ben, 18, Chalcot Villas, Haverstock Hill—M. B. Miller, Clifford's Inn
Minor, William, Store Street, Bedford Square; Cumberland-place, Camberwell—J. Lane, Chancery Lane
Morres, Thomas Furly, Compton Street East; Wells Street; Sidmouth Street—J. R. Wheeler, Wokingham; J. S. Gregory, Bedford Row
Mossman, George R. jun. Bradford, Yorkshire—G. R. Mossman, Bradford
Neale, Charles Lanchester, 2, Millbrook Place, Harrington Square; Rutland Street—W. Clarke; R. E. Clarke, Thetford
Neesom, John, 3, Claremont Place, Dalston; Doncaster—F. Fisher; F. W. Fisher, Doncaster
Newman, Charles, 127, Albany Street; Hemingfield—J. Birks, Hemingfield
Newman, Mitchell William, 42, Downshire Hill, Hampstead; Cheltenham—R. J. Ticehurst, Cheltenham; J. Croft, Basinghall Street
Norris, Robert, jun. 7, Denmark Street, Islington; Liverpool—R. Norris, sen. Liverpool
Overton, Edward Francis, 15, Green Terrace, Clerkenwell—G. Overton, Merthyr Tydvil
Owen, Meilir, Bangor—W. Owen, Bangor
Owston, Hiram Abiff, 15, Compton Street East; Leicester—G. Toller, Leicester
Parker, Arnold, 79, Lower Calthorpe Street, Middlesex; Endcliffe, near Sheffield—T. J. Parker, Sheffield
Parker, Henry Watson, 84, Westbourne Park Villas; Arlington Street; Oakley Square—R. Few, Henrietta Street, Covent Garden
Parker, James, 16, Cowley Street, Westminster; King's Bench Walk—R. Cheere, King's Bench Walk
Palmer, Gillies Charles, Grantham, Lincolnshire—W. Ostler, Grantham
Phillips, Thomas, General Post Office; 35, Cambridge Terrace, Clapham Road—M. B. Peacock, General Post Office; Highgate
Phillips, William Henry, 30, Frederick Street, Gray's Inn Road; Wolverhampton—T. M. Phillips, Wolverhampton
Ponsonby, John, Oldham—J. H. Hulme, Manchester
Poole, Fenwick Thomas, 12, Kennington Green, Lambeth; Frome—T. E. Poole, Frome
Rammell, Harby, 1, Hereford Square, Old Brompton—J. S. Burn, Copthall Court
Rankin, William, 2, Sussex Place, Islington—E. G. Craig, Braintree, Essex
Reynolds, Reginald, 2, King Street, Portman Square; Clifton; Bristol—T. Edwards; C. E. Ward, Bristol
Robinson, William Arthur, Bridge Street, Southwark—G. Holmer, Bridge Street
Rodd, Richard Robinson, 2, Great Percy Street, Islington—R. Rodd, East Stonehouse, Devonshire
Rowley, James Campbell, 108, Guildford Street; Manchester—A. B. Rowley, Manchester
Rutter, George, Manchester—E. C. Milne; W. Rutter, Manchester
Sankey, Herbert Tritton, 16, Great Ormond Street; Canterbury—R. Sankey, Canterbury; W. P. Beesham, Hawkhurst

Salmon, Thomas William, 19, Everett Street, Russell Square; Caistor—W. Worship, Great Yarmouth
Scott, George William, 2, Great Dean's Yard, Westminster—J. Scott, Lincoln's Inn Fields
Shepherd, Edwin Perkins, 51, Trinity Square, Southwark; Featherstone Building; Halstead, Essex—C. Willis, Cranbrook, Kent
Sheppard, Augustus Frederick, Bellifield House, Fulham—W. Parsons, Charing-cross; J. King, North Buildings, Finsbury Circus
Sheppard, Thomas Pollett, 3, Ranelagh Grove, Pimlico; Yatton—A. J. Knapp, Bristol
Shore, Joseph Royle, 7, Alfred Place, Bedford Square; Birmingham—W. Palmer, Birmingham
Smith, Edward Hart, 5, Lindsey Place, Chelsea; Belgrave Street; Spencer Street; Exeter—E. W. Paul, Exeter; J. A. Buckley, Gray's Inn Square
Smith, William, Green Terrace, Clerkenwell; New Ormond Street; and Weston-super-Mare—H. Davis, Weston-super-Mare
Snowball, George, Sunderland—G. W. Wright, Sunderland
Stacey, William, 14, Soley Street, Pentonville—W. H. Trinder, John Street
Stevens, George Chubb, Chardstock, near Chard, Somerset; Guernsey—E. H. Roberts; J. Terrell; Exeter; A. Guppy, Honiton
Stevenson, James Richard, 8, Ampton Street, Gray's Inn Road; King's-road; Birkenhead—C. Falon, Liverpool
Stockwood, John, Cowbridge—W. Edmondes, Cowbridge
Stubbs, Edward Phillips, 55, Grove Place, Brompton; Maidstone—F. Sendamore, Maidstone
Stuckey, Joseph Fry, 21, St. James's Street; Bridport—J. Templer, Bridport
Talbot, Frederic, Kidderminster—W. Talbot, Kidderminster
Teebay, Richard, Everton, near Liverpool—J. Yates, Liverpool
Thomas, William Thomas, 42, Hall Street, City Road; Carmarthen—Lewis Morris, Carmarthen
Thornsley, James Jonathan, 12, Canterbury Place, Walworth; Macclesfield—S. Wormald and T. Higginbotham, Macclesfield; S. Shuttleworth, South Square
Tindall, William Frederick, 7, Buckingham Row East, New Kent Road; 48, High Street, Southwark—M. Cooper; G. Ade; High Street, Southwark
Turner, George, 2, Great Percy Street; Claremont Square—W. A. Deane, Great Torrington; F. J. Cotton, King's Arms Yard
Turner, Hubert Francis, 12, The Terrace, Kilburn, Middlesex—W. Turner, Brighton; G. M. Gray, Staple-inn
Tweed, Thomas, 4, Alfred Place, Bedford Square—T. Tweed, Lincoln; G. T. Tweed, Lincoln's Inn Fields
Vassall, Robert Lowe Grant, 21, Frederick Street, Gray's Inn Road; Bristol—A. Cox, Bristol; J. S. Toor, Bedford Row
Venn, Francis, 1, St. James's Road, Liverpool—W. Shuttleworth, Liverpool
Vivian, Charles Augustus, Pencalenick, near Truro, Cornwall; Craven Street, Strand—J. Vivian, Pencalenick, Cornwall
Wade, John Henry, 7, King's Bench Walk, Temple—J. Rawson, Bradford, Yorkshire
Walker, Joseph, Kingston-upon-Hull; Liverpool—C. Preston, Kingston-on-Hull; T. Harvey, Liverpool
Waller, Robert, 30, Westbourne Terrace; Wolverhampton—J. B. Deakin and W. Dent, Wolverhampton
Warner, George Daniel, 9, Kensington Square—E. B. Church, Southampton Buildings
Warwick, James Bailey, 17, Upper North Place, Gray's Inn Road; New Sleaford—M. P. Moore, New Sleaford, Lincolnshire
Waugh, George, jun. Worthing, Sussex—G. Waugh, sen. Great James Street; R. Edmunds, Worthing
Wheldon, Robert, jun. 5, Barton Street, Westminster; North Shields—J. Wright; J. L. Barker; South Shields
Whitefield, John Charles, 34, Penton Place, Pentonville; Bristol—W. Gresham, Castle Street, Holborn; W. B. Cooper, Hatton Garden; G. W. Whitaker, Heathcote Street; W. Bartholomew, Gray's Inn; W. Beavan, Bristol
Wilkinson, Matthew, 16, Alfred Street, Bedford Square; Peterborough—N. Wilkinson, Peterborough
Wilson, Langford, 17, Hill Street, Knightsbridge; Leicester—J. K. Lawton; W. Gregory; Leicester
Wilton, Robert Ployden, 2, Henrietta Street, Brunswick Square—E. Wilton, Gloucester; P. S. Humberston, Chester
Wilton, Thomas, Bride's Row, Bilston, County Stafford—J. Willim, Bilston
Withers, James Tuck, Bristol—H. W. Ravenscroft, Gray's Inn Square; W. Craven, Bristol
Yeatman, John Pym, 14, Berner's Street; 48, Hunter Street; 30, Ely Place; Hampstead—J. B. Millington, Boston
Yewdall, George, Leeds—J. Lofthouse; R. Barr; Leeds
Added to the List pursuant to Judge's Orders.
Beardsall, Thomas, Manchester—H. Barnett, Walsall
Bowman, Joseph, jun. 19, Mecklenburgh Square—R. Armitstead, Whitehaven; C. H. Bower, and T. H. Bower, 46, Chancery Lane
Lee, Thomas Edward, Barnet; Montague Place—H. W. Vallance, Tokenhouse Yard
Parmeter, Robert, Stafford Row, Pimlico; Chichester; Reepham—R. F. Dalrymple, Parliament Street; E. W. Johnson, Chichester
Steward, Fred. Fisher, 3, Cambridge Terrace; Barnsbury Park; Great Ormond Street; Whitehaven—H. Perry, Whitehaven; W. Perry, ditto; G. Helder, Great James Street
Stopher, William, 3, Albert Villas, Commercial Road, Peckham—J. J. Peddell, 14, Cheapside
Wheldon, Thomas Richard, Howard Street, North Shields—R. Wheldon, North Shields

LEGAL INTELLIGENCE.

CHANCERY REFORMS.—Four Acts were passed in the last session of Parliament in relation to the Court of Chancery, three of which are styled "the New Chancery Acts," founded on the report of the Chancery Commissioners, and will come into force in a few days; they will, if carried out, effect great alterations in the practice of the court. The first of the four Acts is to amend the Trustee Act, passed in 1850, by virtue of which trustees can be removed and appointed in an expeditious manner and at little expense. On the 30th of June the Masters in Chancery Abolition Act received the Royal assent. This Act will take effect on Tuesday week, the first day of Michaelmas Term. The second of the three new Chancery Acts is to amend the practice and course of proceedings in the court. It was passed on the 1st of July, and is to "commence and take effect from and after the 1st of November." The last of the three Acts is for the relief of the Suitors in the Court of Chancery. It will, as regards the principal provisions, take effect "from and after the 28th of October," and, as to the payment of certain salaries, from the 10th of October. It was likewise passed on the 1st of July. There are 183 clauses in the three Acts, and it is anticipated that if they are liberally construed, much of the odium attached to the Court will be removed.

COURT OF SESSION.—RETIREMENT OF LORD MEDWYN.—The rumoured resignation of Lord Medwyn is now confirmed. Lord Medwyn was called to the Bar in 1799, and raised to the Bench in 1825, and after such long service, and at the advanced age of seventy-six, his lordship's withdrawal from the laborious duties of the court cannot excite surprise. Lord Medwyn will carry with him into his retirement the respect and esteem of all who have known him during any period of his useful and honoured career. It is generally understood that the vacant judgeship will be conferred on Mr. John Marshall, Dean of Faculty; an appointment which will be considered as fit and acceptable by both sides of the Bar. The name of Mr. Hercules Robertson, sheriff of Renfrewshire, is mentioned in connection with the vacancy thereby created in the office of Dean of Faculty.—*Scotsman.*

THE GAZETTES.

Bankrupts.

Gazette, Oct. 10.

AUSTIN, WILLIAM, ironfounder, Grove, Great Guildford-st. Southwark, and New-st. Southwark-bridge-road, Nov. 2, at two, Dec. 2, at twelve, Basinghall-st. Off. as. Bell. Sol. Roston, Southampton-st. Strand. Petition, Oct. 15.

BELL, THOMAS, and CHAMP, AMBROSE, provision dealers, Liverpool, Oct. 29 and Nov. 19, at eleven, Liverpool. Off. as. Bird. Sol. Dewhurst, Liverpool. Petition, Oct. 16.

BRIMACOMBE, JOHN, wine merchant, Falmouth, Cornwall, Oct. 26, at one, Nov. 23, at eleven, Exeter. Off. as. Hirtzell. Sols. Taylor and Collisson, Great James-st. Bedford-row; and Laidman, Exeter. Petition, Oct. 5.

LEE, CAROLINE, baker, Park-st. Oxford-st. Oct. 25, at two, Dec. 4, at eleven, Basinghall-st. Off. as. Nicholson. Sol. Scarman, Coleman-st. Petition, Oct. 15.

LOWCOCK, WILLIAM, butcher, Bootle, Lancashire, Oct. 29 and Nov. 19, at eleven, Liverpool. Off. as. Turner. Sol. Greatley, Liverpool. Petition, Oct. 14.

M'BURNIE, ROBERT, grocer, Wetherby, Yorkshire, Nov. 5 and 26, at eleven, Leeds. Off. as. Freeman. Sols. Hill and Matthews, St. Mary Axe; and Barr and Nelson, Leeds. Petition, Oct. 13.

SMITH, GEORGE, tailor, Liverpool, Nov. 1 and 23, at eleven, Liverpool. Off. as. Cazenove. Sols. Duncan and Co. Liverpool. Petition, Oct. 5.

STOCKS, AMOS LUMB, draper, Huddersfield, Yorkshire, Nov. 4 and 26, at eleven, Leeds. Off. as. Freeman. Sols. Sale and Co. Manchester; and J. and J. H. Richardson and Gaunt, Leeds. Petition, Oct. 12.

TUBBS, RICHARD THOMAS, haberdasher, Holywell-st. Shoreditch, Nov. 2, at one, Dec. 2, at eleven, Basinghall-st. Off. as. Bell. Sol. Archer, Bloomsbury-st. Petition, Oct. 18.

WALL, ABIATHAR BROWN, apothecary, Bishop's-road, Bayswater, Oct. 23, at two, Dec. 4, at twelve, Basinghall-st. Off. as. Pennell. Sol. Orchard, Staple-inn, Holborn. Petition, Oct. 18.

Gazette, Oct. 22.

CROOK, THOMAS, manufacturer, Preston, Lancashire, Nov. 1 and 25, at eleven, Manchester. Off as. Lee. Sols. Withington, Petty, and Barton, Brown-st. Manchester; and Faulkner, King-st. Manchester. Petition, Oct. 7.

MEDLEY, THOMAS, horse hair manufacturer and dealer in leather, Bermondsey-st. Bermondsey, and Tower-st. Bristol, Nov. 2, at half-past eleven, Dec. 2, at one, Basinghall-st. Com. EVANS. Off. as. Bell. Sol. Jones, Quality-court, Chancery-lane. Petition, Oct. 11.

OLIVER, JAMES, linen draper, Byrom-st. Liverpool, Nov. 5 and 26, at eleven, Liverpool. Com. Stevenson. Off. as. Turner. Sols. Sale, Worthington, and Shipman, Fountain-st. Manchester. Petition, Oct. 19.

YOUNG, THOMAS, grocer Hartlepool, Durham, Nov. 1, at eleven, Dec. 9, at one, Newcastle-upon-Tyne. Com. Ellison. Off. as. Baker. Sols. Wheldon, North Shields; and Crosby and Compton, Church-court, Old Jewry. Petition, Oct. 13.

Dividends.

BANKRUPT ESTATES.

Official Assignees are given, to whom apply for the Dividends.

Butterfield, M. and T. A. linen drapers, third, 4½d. Groom, London.—*Clarke* and *Clarke*, carpet and rug manufacturers, fifth, 1-9th of 1d. Christie, Birmingham.—*Clark*, J. dealer in flour, first, 10½d. Stansfeld, London.—*Fraser*, A. B. merchant, first, 12s. 6d. Stansfeld, London.—*Fuller*, J. stonemason, &c. first, 6s. 2d. Stansfeld, London.—*Hatfield*, T. and R. plumbers and glaziers, first joint, 3s. 2d. and sep. d. T. Hatfield, 1s. 5d. Groom, London.—*Jay*, S. T. miller, first, 2s. 11d. Stansfeld, London.—*Roden*, J. draper, second, 3d. Stansfeld, London.—*Simmonds*, J. builder, first, 3s. 3d. Stansfeld, London.—*Tinsley*, E. Cooper, first, 2s. 5d. Christie, Birmingham.—*Williams*, T. draper, second, 1s. 2d. Stansfeld, London.

Assignments for the Benefit of Creditors.

Gazette, Oct. 12.

Castle, C. victualler, Bath, Oct. 1. Trusts. A. Smallbone, brewer, and C. Tutton, auctioneer, both of Bath. Sol. R. H. Hellings, Bath.—*Sansome*, I. ribbon manufacturer, Coventry, Sept. 24. Trusts. J. Gulson, silk merchant, and G. Eld, dyer, both of Coventry. Sols. Dewes and Son, Coventry.—*Venables*, R. and *Plowman*, S. linendrapers, both of Norwich and Yarmouth, Sept. 17. Trusts. J. Bradbury, Aldermanbury, and S. Morley, Wood-st. warehousemen. Sols. Davidson and Bradbury, Weavers'-hall, Basinghall-st.

Gazette, Oct. 14.

Appleton, R. corn merchant and miller, Yarm, Yorkshire, Sept. 27. Trusts. T. Wren, sen. Stockton-upon-Tees, and W. Charlton, Newcastle, corn merchants. Sol. G. Williams, Yarm.—*Ashwood*, S. innkeeper, Uppingham, Rutlandshire, Oct. 12. Trusts. W. Compton, wine and spirit merchant; T. Reeve, attorney's clerk, and J. Wadd, maltster, Uppingham. Sol. W. Shield, Uppingham.—*Bateman*, B. grocer and tea dealer, Norwich, Sept. 24. Trusts. A. Holborn, Mincing-lane, and W. Spairn, Fenchurch-st. wholesale tea dealers, and I. Wiseman, wine merchant, Norwich. Sols. Wright and Bonner, London-st. Fenchurch-st.—*Braithwaite*, S. watch maker, Wakefield, Yorkshire, Sept. 15. Trusts. G. Carter, Birmingham, and J. Binks, Wakefield. Sols. W. S. Banks, Wakefield, and W. Francis, Birmingham.—*Cross*, C. W. surgeon and apothecary, Aston-road, Aston, Oct. 7. Trusts. F. Howell, wharfinger, Aston-road, and M. Bailey, spinster, Stowe-hill, Lichfield. Sol. C. Greensill, Birmingham.

Dannan, R. J. grocer, then or late of Staverton-row, Walworth-road, Sept. 22. Trust. G. Matson, wholesale tea dealer, Martin's-lane, Cannon-st. Sols. Wright and Bonner, London-st. Fenchurch-st.—*Price*, J. draper, Newport, Monmouthshire, Sept. 17. Trusts. F. Dennant, Aldermanbury, and R. Johnson, Watling-st. warehousemen. Sols. Sole, Turner, and Turner, Aldermanbury.—*Tigar*, C. widow, colour and whiting manufacturer (under the firm of Pennock, Tigar, and Co.), Grovehill, near Beverley, Yorkshire. Trusts. C. S. Machell, banker, Beverley, and J. Bowes and G. Buckton, jun. merchants, Kingston-upon-Hull. Sols. Thorney and Son, and Robinson and Atkinson, Hull.

Partnerships Dissolved.

Gazette, Oct. 12.

Beale, M. and *Crossley*, J. chemists and druggists, Bishopsgate-st. Within, Oct. 6.—*Bowes*, J. W. and *Vasey*, A. and S. bonded store dealers, Wapping, as regards Bowes, Sept. 20. Debts paid by remaining partners.—*Buncombe*, R. *Goodchild*, J. D. and *Buncombe*, O. millers, Reading, May 26.—*Clarke*, J. and *Bird*, W. H. shipwrights and boat builders, Liverpool, Oct. 8.—*Collier*, W. and *Fuller*, T. machinists, tool makers, and wool combers, Salford and Bradford, Oct. 1.—*Grout*, J. *Brown*, J. and *Tidswell*, R. crape manuf. Foster-lane, Ponder's End, Norwich, Yarmouth, and elsewhere, as regards Grout, July 3.—*Halliday*, E. *Wilkinson*, J. *Knowles*, T. and *Winder*, R. tanners and curriers, Bolton, and Whittle Hills, near Chorley, as regards Halliday, Oct. 9. Debts paid by remaining partners.—*Law*, G. and *Earl*, F. commission agents, Manchester, Oct. 7.—*Lowe*, S. and *Adams*, T. silk manufacturers, Derby, Sept. 18. Debts paid by Lowe.—*Marshall*, T. J. and *Corsell*, J. engineers, Bishopsgate-st. Without, Oct. 11. Debts paid by Marshall.—*Mills*, C. and *Webster*, W. engravers and lithographers, Leeds, Oct. 9. Debts paid by Webster.—*Moore*, W. H. and *Norman*, G. engineers, millwrights, machinists, and smiths, Langdale-st. Cannon-st.-road, and Richard-st. St. George's East, Oct. 8.—*Moyle*, R. and *Fute*, J. surgeons and apothecaries, Penzance, Oct. 9. Debts paid by Moyle.—*Reynolds*, E. and *Andrews*, H. livery-stable keepers, Birmingham, Sept. 29.—*Stilwell*, M. and *Holdsworth*, W. wire workers and ironmongers, Kingston-upon-Hull, Oct. 9. Debts paid by Holdsworth.—*Walker*, J. and *Dunlop*, J. brewers, corn and coal merchants, and millers, New Malton, Sept. 1.

Gazette, Oct. 15.

Anderton, J. G. and B. coffee roasters, Liverpool, Oct. 13. Debts paid by B. Anderton.—*Bury*, F. and *Arthur*, E. P. ship bread bakers, Liverpool, Oct. 13.—*Caldwell*, W. G. and *Pickin*, J. nurserymen and seedsmen, Knutsford, Sept. 29.—*Carter*, J. and *Bird*, M. linendrapers, Knightsbridge and Edgeware-road, Sept. 6.—*Cropper*, J. and *Eyre*, C. grocers and millers, Sheffield, July 10, 1851.—*Crowther*, J. and *Todd*, H. plumbers and glaziers, Bradford, Oct. 11. Debts paid by Todd.—*Mercer*, R. and *Summers*, J. linen drapers, Great Russell-st. Covent-garden, Oct. 12. Debts paid by Farrar.—*Felix*, J. and *Laparcille*, L. C. manufacturers and importers of fancy goods, Noble-st. Falcon-sq. Oct. 13.—*Fitton*, J. *Brownhill*, J. *Fitton*, B., J. and G. cloth manufacturers, Shelley, as regards J. Fitton, Oct. 2.—*Gregory*, J. and *Tod*, A. potatoe salesman, Duke-st. London-bridge, Topping's-wharf, and Chamberlain's-wharf, Sept. 29. Debts paid by Tod.—*Griffiths*, H. and R. tailors and clothiers, Digbeth, Birmingham, June 24. Debts by H. Griffiths.—*Hirst*, R. and *Maxey*, R. gas fitters and brass finishers, Gloucester-terrace, New-road, Sept. 11.—*Kingdon*, T. and *Davies*, G. S. attorneys, solicitors, and conveyancers, Wimborne Minster, Oct. 1.—*Lyon* W. and *Poulter*, H. house decorators, Bradley-terrace, Wandsworth-road, Oct. 14.—*Mann*, W. H. Woodton, and *Cricklemore*, W. Seething, auctioneers and valuers, Oct. 22. Debts paid by Cricklemore.—*Maples*, T. and *Jackson*, W. brassers and coppersmiths, Cross-st. Newington, Nov. 11. Debts paid by Jackson.—*Odams*, J. and *Stickford*, W. merchants and general commission agents, Leadenhall-st. Sept. 30.—*Proctor*, R. and W. corn dealers and mealmen, Tewkesbury and Nafford, Oct. 11.—*Sharp*, F. and E. fringe and lace manufacturers, Wood-st. and Little Love-lane, Sept. 29.—*Thomas*, D. and *Norris*, H. builders, Cardiff, Oct. 13.—*Wallis*, S. R. and *Spence*, J. E. ladies' boarding school, Ladbrooke-square, Notting-hill, Kensington, Sept. 29. Debts paid by Miss Spence.—*Walker*, J. and *Sayer*, G. J. builders, Union-square, Horsemonger-lane, Sept. 29. Debts paid by G. J. Soper.

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To Readers and Correspondents.

"T. S."—*Thanks for the hint as to arrangement, but the present one has been adopted after great consideration.*

"M. H. B."—*His remarks will have the attention they deserve.*

"B. S." (Doncaster).—*It was tried at the end of the tenth volume, but was so ill supported that it was impossible to carry it out.*

"Constant Reader" (Sherborne).—*We are not acquainted with any book that supplies the information.*

"C. W." (Kendal).—*His note is forwarded to our correspondent.*

"A Conveyancer of Twenty Years' Practice."—*The hint was not ours. It was suggested and advised by a conveyancer of eminence, and has been acted upon by his clients.*

"An Articled Clerk's" *question is not of one of professional practice, but of law.*

"J. P." (York).—*The circular transmitted of the York Traders' Association is not amenable to complaint in a professional journal, for traders have a right to collect their debts in any manner they please. It is only when Attorneys get up such Associations for the purpose of bringing business to themselves by underselling their professional brethren that they are open to censure.*

"W. P. P."—*We do not give advice gratis.*

"A. J. C."—*Such conduct is perfectly unjustifiable.*

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We cannot undertake to return rejected communications.
Whatever is intended for insertion must be authenticated by the name and address of the writer; not necessarily for publication, but as a guarantee of his good faith.
No notice can be taken of anonymous communications.

THE LAW TIMES.

SATURDAY, OCTOBER 30, 1852.

THE NEW LEGAL YEAR.

Term begins on Tuesday, and with it all the interest that will result from the first trial of the new Procedures, both in Law and Equity. The Common Law Courts commence the Legal Year with the smallest list of arrears ever known. Altogether there are but forty-seven, distributed thus:—In the Q.B. 24; in the C.P. 6; in the Ex. 17. Of those in the Q.B. 16 are special cases and demurrers, 4 are new trials, and 4 appeals from the County Courts. In the C.P. there is 1 demurrer, 2 are enlarged rules, and 3 are new trials; and in the Ex. the special paper has 5, the peremptory paper 3, and the new trial paper 29, including one that stands for judgment.

Of course, the beginning of the term will produce some motions for new trials growing out of the last Assizes, but beyond these there is no prospect of business to occupy half the Term.

We shall, of course, give the earliest reports of the decisions on points in the new practice as they arise in all the courts.

VOL. XX. No. 566.

THE FIRST WEEK OF THE NEW PROCEDURE.

The Common Law Procedure Act came into operation on the 24th.

The 24th was a *Sunday!*

Monday, therefore, was its real birthday,—and that night's post carried to all parts of the country divers processes altered according to the new forms.

The Profession had scarcely realised the changes until they were thus made manifest to the eye. Great was the curiosity with which, on Tuesday morning, the strange arrivals were inspected by master and clerk in the various offices in the provinces.

Writs of summons had not a perceptibly altered aspect. Only where there was a special indorsement, for the purpose of obtaining speedy judgment upon the writ, without the preliminary process of declaration, was there any strangeness of feature to attract the eye.

But *declarations!* There *was* a change indeed. The greater portion of them were found to consist of a memorandum of three or four lines,—being considerably shorter than the writ! We were shewn some, by which hundreds of pounds were sought to be recovered, that did not exceed five lines.

They were probably drawn by a clerk. Manifestly, there will be no need now to employ Counsel or Pleader to draw declarations, save in very rare cases. Every Attorney will draw his own.

Another notable feature in the new procedure was its effect upon actions in progress. At first, there was some doubt whether the provisions of the statute were applicable to actions already commenced. But the authorities were not long in coming unanimously to a conclusion in the affirmative, and, consequently, in such cases the Attorneys have received declarations in the new form upon writs in the old form, and new pleas to the old declarations. Still some curious questions remain to be decided.

For instance, have the Courts power to amend the pleadings, so as to deprive parties of advantages they may have *already* taken by demurrer or otherwise? A special demurrer has been filed. Is it abolished by the new Act, so far, at least, that no use can be made of it? Can the Court hear it? If so, is judgment to be given upon the demurrer according to the old practice, or according to the new practice,—is the Court to decide according to the very right and justice of the case?

Many doubts of this nature may be suggested, and which can only be solved by the Courts as they arise.

A ridiculous report was spread last week, that the operation of the Act was to be suspended by an Order in Council, because it was supposed to be incapable of being worked without some new rules, which the Judges have not yet framed. We need not say that there was no foundation for such a report. The Act will require some exposition, but it is by no means impracticable, and the Judges will probably consider it most prudent to wait for a term or two, and see how it works, before they attempt to regulate its machinery by rules, under the ample powers vested in them for that purpose.

THE COMMON LAW PROCEDURE ACT AND THE DENIZENS OF WESTMINSTER HALL.

(*From a Contributor.*)

We have received communications from numerous valued correspondents in reference to this statute, the strictures we have felt it our duty from time to time to make upon it, and the opinions we have expressed as to its probable effects as regards the interests of the suitor, the Attorney, and the Bar.

Many of our friends have been unwearied in pointing out omissions and errors, incongruities, contradictions, absurdities even, in this now notorious statute. But to these well-founded complaints we have been unwilling to give space in our pages for three reasons; first, because by the stat. 13 & 14 Vict. c. 16, the judges may clear away all the rubbish of technicality and special pleading which the Common Law Procedure Act has not removed, and introduce into the Superior Courts a remedy pure, sure, simple, and efficacious as that of the County Court; secondly, because by the "Turkish cadi" powers of amendment conferred on the judges by the 222nd section of the new statute, all crotchet and nicety in pleading, all stringency in practice, may in a short time, if the judge so resolve, be made a matter of history; and thirdly, because, looking upon the Common Law Procedure Act as a "sham," as a mere tub thrown to the whale (*i. e.* to that portion of the public who demand law reform), we are content to leave its own imperfections to work out the repeal (or perhaps, unhappily, amendment (!) of the statute.

A procedure, worthy of the name should have been such that every Lawyer might have bought a copy of the statute alone, and therewith rested compulsorily contented. It ought to have been such that he that ran might have read. It should have been plain even to the capacity of an alderman or a beadle. What is the fact? Six editions of the statute, with commentaries, more or less voluminous, are before the public, and nearly as many more are advertised for publication when they are ready. No practising Lawyer can venture to take the simplest step in our courts without some guide to the still subsisting mysteries of an action in his hand; the consequences to his client might otherwise be somewhat disagreeable.

The Common Law Procedure Act is thought by the public to be a great reform. Looking to the "Elementary View of an Action at Law," as described in Mr. Kerr's introduction to his Treatise on the Statute, we are amazed at recognising all the ancient combinations and complexities (which we had thought abolished), in full working order and efficiency. Our readers may wonder at this. Let them satisfy themselves by an inspection of the statute itself. In our humble opinion, had the Queen offered a prize for the best essay, pointing out the necessity of a total change in the procedure of the Common Law Courts, for a clean sweep, in short, of special pleading, and all the preposterous crotchets accumulated in Dowling and Meeson, and Welsby, the prize should most assuredly have been gained by the framers of this statute.

What, then, are to be its effects? We do not pretend to the gift of prophecy, but we cannot conceal from our readers the views we have so often expressed, that the last chance of the Courts of Westminster regaining anything like their ancient splendour is for ever *gone*. A thorough reform might have done something to restore the cause lists. It is too late now, and we look forward to nothing but the extension of the jurisdiction of the County Courts, and the adoption of the further improvements we have often suggested in their procedure, so as to make their process in execution more speedy and effectual. This done, the Courts at Westminster may adjourn sine die.

The suitors will not be sufferers, for there will be none. Old fogies who will stick to the old fogiedom of pigtails and powder, and top-boots, will not adhere to old fogiedom in law. That is too expensive. An indulgence in "old fogiedom" to gratify temper or prejudice, is all very well. It is never done in matters of £ s. d.

The ranks of the Bar may now be advantageously reduced to one-sixth of the present number; and when this has come to pass, and it seems to us inevitable, the Bar itself will, perhaps, rank higher in every respect than it now does. We have heard two movements, which clearly demonstrate the truth of our views. The Special Pleaders, in solemn conclave assembled, have, we are informed, resolved to mark their new pleadings with a fee of 3s. 6d. (!) At first, this proposal threatened an *émeute* amongst that learned, grave, and decorous, though somewhat abnormal, genus of the variegated races which inhabit the Temple. But the fee-book of Mr. Baron Wood was pleaded as a justification of the innovation, and, on a replication of *nul tiel record*, the plea was found to be true: the learned Baron had taken 3s. 6d. fees.

The movement and resolution of the Pleaders is perfectly justifiable. They mark their fees, and are bound by no rule as to amount; but what shall we say to a portion of the elderly Junior Bar, who are agitating to cut down the guinea to 10s. 6d., in the vain hope that this will restore business. We lift our humble voice against this unworthy attempt to lower the Bar; to reduce the honorarium to a matter of contract; to make the Barrister an under-

seller, and why not, in due course, an advertiser of cheap rates. We call upon the Seniors, and there are some on whom we implicitly depend, to resist this attempt to sink the Junior Bar. Let the Juniors be poor, if such must be their fate; let them struggle on, by literary and other congenial occupations; let them be Grub-street hacks; but let them not break through the great line of demarcation between the duties of Advocate and of Attorney which constitutes the only safeguard of the independence of the Advocate. We wish to denounce in the strongest terms this attempt to destroy the position of the Barrister. We know the secret of the agitation, and it is our duty to both branches of an honourable Profession, which is at present subjected to many temptations calculated to dishonour it, if they be not strenuously resisted, to oppose it in the strongest terms.

But these events shew what is the real position of affairs in Westminster. The only remedy we can suggest is, for five-sixths of the legal body to emigrate at once, either to the populous towns of England, there to form local Bars, or to the "diggings," or to the Bars of the rising empires in the East, South, and West.

NEW CHANCERY ORDERS.

The truth of the announcement which we made some time since, that more orders in Chancery for carrying into operation the new Procedure Act were under consideration, and would be promulgated before Term began, has been proved by the result, although it was confidently denied by some who had too hastily published books on the new practice, which now are rendered almost worthless for want of this necessary accompaniment. They are given in full in their proper place.

We trust that those who had complained of the delay in the publication of Mr. TUDOR'S edition of the new statutes, will now recognise the propriety of the resolution that was come to not to print it until the new orders were issued, so that the *entire* of the new law and practice might be placed in the hands of the practitioner. The result has fully justified the course that was taken; and if the subscribers have been compelled to wait, they have waited to good purpose.

It is now being printed as fast as possible, and we hope it will be out by next Saturday.

THE NEW ORDERS IN BANKRUPTCY.

LONG looked for, the new orders have come at last. Laborious and yet rapid of thought and action, Lord ST. LEONARDS has done in six months what his predecessors, who had not half so much to think about, could not do in twice that period.

But we are not so much surprised that two Chancellors should have shrunk from the task, when we survey its bulk. Here it lies before us, occupying no less than thirty-three brief-sheets, closely printed. In number the "Rules and Orders" amount to *one hundred and sixty-three*, besides the forms. We are sorely perplexed how to deal with them. To give them here, *in extenso*, would occupy a whole double number at the least, excluding all other matter. *That* is out of the question. But is it worth while to give them *in portions*, extending over several weeks? We doubt it, especially at this moment, when the new practice in the Courts both of Law and Equity, and the early meeting of Parliament, will claim every column to keep our readers fully acquainted with the decisions of the Courts, their bearing upon the new practice, and the progress of legislation, which we understand is to be full of law reforms.

Unless, therefore, it be particularly desired by a great number of our readers, we propose not to fill so many pages with a mere reprint of these new orders, but to give in lieu of them some papers descriptive of their effect upon the Practice in Bankruptcy.

Already, as we had promised before, they are being printed as an Appendix to Mr. WISE'S edition of the Bankruptcy Act, and to make this edition of them the more useful, the Act itself will be given in full, with notes of all the cases that have been decided upon its construction, so that the whole law and practice as it now stands will be thus placed in the hands of the practitioner. This volume will, we believe, be ready in about ten days, and will be sent to purchasers, by post, in the order in which their names are forwarded. It will be entitled "*The New Bankruptcy Law, containing the New Rules and Orders, and the Bankruptcy Consolidation Act, with Notes of all the Cases decided on its Construction*," by C. J. HERTSLET, Esq. Barrister-at-Law,—and it will also form an "*Appendix to Wise's Bankruptcy Consolidation Act*."

THE ECCLESIASTICAL COURTS.

IT is rumoured, that the Government has prepared a measure for the entire reform, if not for the abolition, of these anomalous tribunals, at least so far as respects all of their jurisdiction that is not strictly ecclesiastical. Should this prove to be true, the Profession and the public will have cause for congratulation, for this reform has been long demanded, has been often attempted, and has always failed, because interest has leagued with party for its defeat. If emanating from a Conservative Government it cannot fail to succeed, for one side of the House will support it for party's sake, and the other from principle, so that between them the public will obtain the justice so long denied.

HINTS TO BUSY PRACTITIONERS.

[Under this title we propose from time to time to remind the practitioner of useful facts which, amid the claims of business and the flood of changes in the law, he may possibly have overlooked. As we also may overlook many, we shall be obliged by "hints" from any of our readers.]

COUNTY PALATINE.

COURTS in the counties being assimilated to the Superior Courts, the writ of *mittimus* with the record, and *mandate* subsequently, are abolished; and all writs will now be addressed to the *sheriff*, and not to the *chancellor*, thus saving that latter gentleman's useless fees.

MR. KENNEDY'S MANIFESTO.

WE now perform our promise to present some further extracts from this extraordinary document, issued by the foremost of that segment of the Bar which has unwisely undertaken to do battle against the Attorneys—forgetting that two can play at the game, and that, if they endeavour to dispense with Attorneys, the Attorneys may retort by dispensing with them, and in *such* a warfare it would not be difficult to prophesy where the victory will be.

Thus magniloquently does Mr. KENNEDY assert *his* independence:—

> And now let me ask you, the people—will you allow it to be said, that a member of my profession is degraded by holding communication with you? I will tell you my opinion frankly. I would rather draw a poor man's will for five shillings, than cringe to an attorney for a hundred guineas. I would rather be dependent for my bread on the people at large, than upon a small fraction of the people. Dependence of the last kind is servitude.

There is positive insolence in the argument by which he strives to justify his course:—

> What can be more absurd than to make the attorney patron of the counsel—*the inferior of the superior*—reversing the natural order of things? Nor has such patronage in any way tended to improve the character of counsel. The tendency is to assimilate it to that of their employers. Few men of a high order of intellect can succeed. Relatives of attorneys are pushed into business. The attorney-race is propagated. Lofty aspirations are checked. A low average of acquirement is considered the best recommendation for a young barrister. He becomes a trader with Sharp and Co. The effects of this may not be visible to the casual observer, but they are not the less certain.

But Mr. KENNEDY'S "lofty aspirations" have issued in the forming of a cheap law society, for whom he is "to do" law at the rate of two guineas per head per annum! Lofty, is it not?

Then this man of "lofty aspirations" proposes his remedy.

Let the young, those who are pure of attorneyism, men of liberal education, ardent minds, and noble impulses, make a simultaneous irruption into the provinces—enter upon their high duties—emancipate themselves from a thraldom which drags down everything great and noble to the level of a wretched mediocrity.

What, by forming similar societies in every town?

But now comes the master grievance—the key to all this attorney-hating patriotism. "My friends," he exclaims, in a paroxysm of indignant fury, "bad as all this is, we have in the last few years witnessed something infinitely worse, the tendency of which is to corrupt all law and destroy all justice. I mean *attorney-advocacy*."

And then the picture he draws of the consequences, "Gentlemen, scholars, and men of honour excluded from our provincial courts." And by whom? Hear him—

> "In lieu of them there has sprung up a tribe of a different character: the tribe of rascal pettifoggers: creatures that formerly crept not into the light of day, but now swarm like locusts over the country. The courts where such persons practise, having no respect for the advocate, lapse into a sort of easy indolence, which is fatal to the administration of justice. Some of these have been turned into beargardens, some into dens of thieves, where the suitors are betrayed, truth and honour derided, estates given up to wholesale pillage. See who has for many years had the largest practice in our Court of Bankruptcy! A man who, after robbing his clients and others to a hideous and frightful extent, has, by the merest chance, fallen into his own snare and been removed. Another—worse than he—a fugitive on compulsion from a town where he practised before, who was charged with theft at the Old Bailey, was tried at Wawick for obtaining goods under false pretences, and escaped only by getting a material witness out of the way—this plague-spotted monster unblushingly enters the courts of Birmingham, shakes hands with attorneys, and is tolerated.
>
> As to other lawyers whom I see associating with such men, employing them, and what is more, even plotting and combining with them, I am justified in saying they are not much entitled to our respect.

The true reason why "gentlemen and scholars" are not employed in the County Courts, is simply because they are not wanted for the sort of cases that most commonly are heard there. A scholar is not required to conduct a claim of 5*l.* on the bill of a small tradesman. Clients can employ scholars if they please, but they are conscious of the incongruity, and they prefer the services of a more congenial advocate. That is the true cause of the little patronage which the Bar finds in the County Courts, and however unpleasant may be the fact, it is useless to disguise it. The law gives to suitors the power to employ a Barrister if they desire to do so, and if they will not do so, it can only be because they do not deem his services necessary in such cases, or not worth their cost. This accounts for the failures of the Bar at Birmingham, thus *naïvely* recorded by Mr. KENNEDY:—

> I find, upon inquiry, that in the last ten years there have been ten barristers come to settle in Birmingham, of whom only one has succeeded—that was Sergeant Allen; and I am informed that his success was owing chiefly to a powerful body, the Licensed Victuallers' Association, who made him their standing counsel. When I arrived here, I found Mr. Claydon had taken up his residence in the town, a gentleman of some standing, and the author of a good legal work. He remained here about fifteen months, and scarcely got a brief. I came myself at the invitation of some leading gentlemen connected with the Queen's College, where a Professorship of Law had just been established, and it was thought that legal students might be found in the town and neighbourhood to whom College lectures would be serviceable. I devoted a considerable portion of time to the preparation of lectures, designed to take in the whole compass of English law. My inaugural address gave universal satisfaction. It was printed at public request. But it produced little fruits—nine pupils at two guineas a piece made the year's profits of the Professorship. I do

not complain; it might have been foreseen that lectures would never answer, unless the attendance were compulsory. The want which they undertook to supply was not felt by the parties concerned. The philosophy of six-and-eightpence is remarkably simple. It requires no large amount of liberal study.

Well, but professors of law don't get fat upon air, more than other people. We found at the end of a twelvemonth what Mr. Claydon had predicted—that nothing was to be done through attorneys; and had I not got business for myself, I might have lived upon potato-parings. There are, indeed, some solicitors inclined to employ counsel, and to these who have manifested such disposition I am grateful for the partial support which they have afforded; but their power is small. The tide has set in so strongly for attorney-advocacy, that nothing but a thorough change of system can stop it. In short, it has come to this—if the distinction between barristers and attorneys is to be maintained, attorney-advocacy must be entirely put a stop to. If this cannot be done, nothing will purify the law from pollution, nothing will satisfy the wants of the country, but barristers coming into the provinces, and opening their chambers to the people. And this last is the only true plan.

So that, divested of his eloquent verbiage, Mr. KENNEDY'S argument is in substance, "I and all the Bar who have tried to practise in Birmingham have failed, because the suitors there, having the power to employ us if they please, decline to do so, but prefer the advocacy of an Attorney, either because it is cheaper or better for their purpose, no matter which. *Therefore*, they must be prevented from doing so by forbidding an Attorney to be heard in any case, and thus suitors must be compelled, however unwilling, to employ us." Without pausing to contest the propriety of the argument on a point which has been irrevocably determined by the Legislature, let us glance at Mr. KENNEDY'S picture of the results.

It is vain to suppose that the mere permission for barristers to practise in the County Courts without an attorney will be sufficient to introduce them to business; or that the clause in the statute which forbids one attorney to retain another will put a stop to the mischief. Nothing is easier than to evade that clause. It was evaded and laughed at the very first week after it came into operation. But if barristers got all the briefs in the County Court, which the non-advocate solicitors have to give, they would not be many. The great majority of cases come to the advocate-attorneys directly, and they, as is well known, combine in every possible way to secure a monopoly to themselves.

Admitting, then, that a repeal is hopeless of the law that permits a suitor to employ, if he pleases, an Attorney to appear for him in the County Court, Mr. KENNEDY proposes as his remedy the desperate expedient *of free trade in law!* Hear him on this.

Let us have fair competition. We will appeal to the people. We will meet your wants and necessities, my fellow-townsmen.

That is the free-trade principle. The people of England have declared they will have it for corn. Lord Campbell declares in its favour for books. We will extend it to law. The attorneys have combined to close against us the Courts of Bankruptcy and County Courts. They will neither employ us themselves nor let us be employed by others, if they can help it. Give them the benefit of free trade; but let us have it also. The reciprocity must not be (as the Irishman said) all on one side.

Here we pause again. If other more urgent topics do not claim our columns, perhaps we may return once more to the manifesto of Mr. CHARLES RANN KENNEDY.

NEW CHANCERY PRACTICE.(a)

To proceed with our summary and remarks upon that part of the New Chancery Practice which is introduced by 15 & 16 Vict. c. 87 (The Suitors in Chancery Relief Act). The 42nd section, after reciting that by 8 & 9 Vict. c. 15, a duty is imposed upon every license to be taken out by auctioneers, and that every person who acts in such capacity at any sale where any person becomes a purchaser by competition and being the highest bidder shall, except as thereinafter mentioned, be deemed to carry on the trade of an auctioneer, and be required to take out such license; and that every person who carries on that trade without taking out such license shall, except as thereinafter mentioned, forfeit 100*l.*; and to obviate certain doubts as to liabilities attaching to a Master in Ordinary of the Court, or chief clerk of any such Master, it enacts that they and every other person appointed in that behalf by any such Master, may sell any goods or chattels, lands, tenements, or hereditaments, or any interests therein, under any decree or order of the Court, by auction, or by any other mode of sale by competition, *without any license as an auctioneer*, and without being liable to the duty imposed by the said last-mentioned Act, or any other Act or Acts now in force. (Sec. 42.)

And the Masters and their chief clerks are to be discharged and freed from all liabilities on account of any sale by or by way of auction or competition heretofore made or conducted. (Sec. 43.)

These sections do not provide against the doubt which may arise, as to the liability which may attach, either to the Judges or their chief clerks as to any sales conducted by or before them, and it does not appear to have been borne in mind by the Legislature that, except for the performance of certain temporary duties, the office of Master in Chancery, and with it that of their chief clerks, was about to be abolished.

Power is then given to the keeper or clerk of her Majesty's hanaper, deputy clerk of the hanaper, the patentee of the subpœna office, and for every officer of the Court of Chancery, and for every officer or persons employed in the offices of the Masters in Lunacy or the Registrar in Lunacy, whose salary or emoluments shall be taken away or diminished by the operation of this Act, or by the rules and orders to be made thereunder, to make a claim for compensation to the Commissioners of her Majesty's Treasury, to whom full power is given by warrant to direct annual compensation to be made to such persons, and to be payable out of such funds and in such manner as is thereinafter in that behalf directed; and there is a proviso that an account of all such compensations is, within fourteen days next after the same shall be so granted, to be laid upon the table of the House of Commons if Parliament shall be then assembled, or if Parliament shall not be then assembled, then within fourteen days after the meeting of Parliament then next following. (Sec. 44.)

Every person now holding any freehold office or offices for life, or during good behaviour, abolished by the Act, in respect of which any *fixed salary* is payable, is to receive the same for life, as if the Act had not been passed, if *Fees of office* are payable in respect of such office, he is to receive, after the passing of the Act, during life, an annuity equal to the average annual amount of such fees of office during the three years next preceding the passing of the Act; and the amount of such annuity is to be determined by the Lords Commissioners of the Treasury in the same manner, and to be paid out of such funds and in such manner as by the Act is directed with respect to compensations provided for officers whose salary or emoluments shall be taken away or diminished by the Act, or by the rules and orders to be thereunder made. (Sec. 45.)

After the passing of the Act, the Lord Chancellor may, by order on petition, order to be paid to any person now or hereafter holding any office or appointment in the court, (except any Clerk of Enrolments, Clerk of Records and Writs, or Taxing-Master, to whom, subsequently to the passing of 5 & 6 Vict. c. 103, the Lord Chancellor shall have ordered a retiring allowance to be paid), and to any officer or person employed in the offices of the Masters in Lunacy, or the Registrar in Lunacy, who shall be *afflicted with some permanent infirmity disabling him* from the due execution of his office, or shall have continued in any office or offices for *twenty years*, and shall be desirous of resigning the same, a superannuation allowance under the Act, as the Commissioners of the Treasury shall think proper to direct according to the principles laid down by 4 & 5 Wm. 4, c. 20; and there is a proviso that the Lord Chancellor in every such order is to state the cause for making the same, and is to cause a copy thereof to be laid on the table of the House of Commons within fourteen days next after the making of the same if Parliament shall be then assembled, and if Parliament shall not be then sitting, then within fourteen days next after the assembling thereof. (Sec. 46.)

Power is given to the Lord Chancellor, after the passing of the Act by order, *to remove* any officer of the court, or any officer or person employed in the offices of the Masters in Lunacy, or the Registrar in Lunacy, who shall be *afflicted with any infirmity which shall disable him* from the due execution of his office, and who shall refuse to resign or become incapable of resigning the same, and upon such removal to order to be paid to him an annuity or retiring allowance not exceeding two-third parts of his yearly salary. (Sec. 47.)

Except as in the Act otherwise provided all salaries under this Act shall grow due from day to day, but shall be payable quarterly out of the fund standing in the name of the Accountant-General to the account intituled "The Suitors' Fee Fund Account." (Sec. 48.)

The compensation to be made under this Act to the keeper or clerk of her Majesty's hanaper, deputy clerk of the hanaper chaff-wax, deputy chaff-wax, sealer, and deputy sealer, is to be payable out the of *Consolidated Fund*, quarterly, free from all taxes and deductions; first payment to be computed from the 28th October, 1852. (Sec. 49.)

Except as in the Act otherwise provided, all compensations and superannuation or retiring allowances thereunder, are due from day to day, but to be payable quarterly out of the interests and dividends of the Government or Parliamentary securities, now or hereafter to be placed in the name of the Accountant-General to the two accounts, intituled, "Account of Moneys placed out for the Benefit and better Security of the Suitors of the High Court of Chancery," and "Account of Securities purchased with Surplus Interest arising from Securities carried to an Account of Moneys placed out for the Benefit and better Security of the Suitors of the High Court of Chancery," or either of them, by the Governor and Company of the Bank of England by virtue of any order or orders of the Lord Chancellor for that purpose, without any draft from the Accountant-General. (Sec. 50.)

All salaries payable, under any Act or Acts now in force, out of the fund standing in the name of the Accountant-General of the Court of Chancery to the account intituled "The Suitors' Fee-Fund Account," by equal quarterly payments, are, after the passing of this Act, to be paid on the 3rd February, the 3rd May, the 3rd August, and the 3rd November in every year. (Sec. 51.)

Power is given to the Lord Chancellor to order payment, and out of such of the funds thereby charged as he shall think fit, of all such sums proper to be paid for providing suitable courts, rooms, and buildings in which the business of the Court of Chancery may from time to time be carried on, and for keeping order in the several courts, and for the care and cleaning of all such courts, rooms, and buildings, and for the rent, taxes, rates, insurance from fire, and other outgoings charged upon or payable for or in respect thereof, and for the enlargement, alteration or improvement, repairs, furnishing, and fitting-up of the same, and for the books and stationery which may be required for the business of the court and the offices thereof, and for the making, writing, printing, counting, and examining official documents and records of the said court and office, and other copies of such documents and records, &c. &c.; and for all other necessary expenses relating thereto, and for the expenses of the purse-bearer and the running porter to the great seal, and the messenger to the Lord Chancellor during his absence from town, and for the petty expenses now borne by the porters' fund; and power is given to the Master of the Rolls to appoint a clerk or clerks to be employed in the office of the secretary at the Rolls to receive by way of salary an annual sum or sums not in the whole in any one year exceeding the sum of 300*l.* (Sec. 52.)

After reciting that many of the fees payable to the Suitors' Fee-Fund have been lately abolished, and several of them have been reduced and under the provisions of the Act, there will be a further reduction of the fees payable to the said fund, and that in order to effect such reduction and at the same time to keep up the said fund to an amount sufficient to satisfy the charges thereon, as well under this Act as under any former Act, it is enacted, that so much of any Act or Acts now in force as directs that the surplus interest, and annual produce which hath arisen and shall arise from the moneys placed out on the several accounts intituled "Account of Moneys placed out for the Benefit and better Security of the Suitors of the High Court of Chancery," and "Account of Securities purchased with Surplus Interest arising from Securities carried to an Account of Moneys placed out for the Benefit and better Security of the Suitors of the High Court of Chancery," beyond what shall be sufficient to answer the purposes of the

(a) Continued from p. 51, *ante*.

several Acts relating to such securities, and also the interest produced from the securities purchased with such surplus interest and annual produce, is from time to time to be placed out in the purchase of Government or Parliamentary securities in the name of the Accountant-General, and placed to the credit of the said account, intituled, "Account of Securities purchased with Surplus Interest arising from Securities carried to an Account of Moneys placed out for the Benefit and better Security of the Suitors of the High Court of Chancery" shall be repealed, and the surplus interest and annual produce hereafter to arise from the moneys placed out on the two several last-mentioned accounts beyond what shall be sufficient to answer the purposes of this Act, and the several other Acts relating to such securities is to be carried over by the said Accountant-General, and be placed to the said account, intituled, "The Suitors' Fee-Fund Account," and shall thereupon become part of the fund standing to such account. (Sec. 43.)

If at the end of any year there shall be a surplus standing to the credit of the said account, intituled "The Suitors' Fee-fund Account," after payment of the several salaries and sums of money charged thereon by this Act or any former Act, power is given to the Lord Chancellor by any order to direct that such surplus, or such part thereof as to the Lord Chancellor shall seem fit, shall be invested in the purchase of Parliamentary or Government securities in the name of the said Accountant-General, to be placed to the account intituled "Account of Moneys placed out to provide for the Officers of the High Court of Chancery," and the Lord Chancellor may in like manner direct the investment of the dividends or interest to accrue from time to time on the securities now, or at any time hereafter, under this Act, or any former Act, to be placed to the said last-mentioned account, or so much of such dividends and interest as he shall think fit, in the purchase of Parliamentary or Government securities in the name of the said Accountant-General, to be by him placed to the credit of the said last-mentioned account, and as often as there shall be a deficiency in the said account, intituled "The Suitors' Fee-fund Account," at any of the times appointed for payment of any of the salaries or sums of money charged thereon, the Lord Chancellor may direct the said Accountant-General to make good such deficiency by carrying over and placing to the said account, intituled "The Suitors' Fee-fund Account," such sum as the Lord Chancellor may consider sufficient for that purpose, out of the interest and dividends to arise from the Government or Parliamentary securities standing to the said account, intituled "Account of Moneys placed out to provide for the Officers of the High Court of Chancery," or by a sale of so much of the said securities as may be necessary for that purpose. (Sec. 54.)

Three other Acts passed during last session, may be now briefly noticed. First, An Act for the Amendment of the Law respecting the Property of Lunatics (15 & 16 Vict. c. 47), by which, amongst other things, power is given to the persons intrusted with the care of lunatics to sell or mortgage the *reversionary* interest of a lunatic in land or stock (secs. 1 and 2); to appoint a receiver of the dividends of stock in a lunatic's name, (sec. 5), and to order receiver to make repairs, leases, &c. Secondly, an Act to extend the provisions of "The Trustee Act, 1850." (15 & 16 Vict. c. 55). And, thirdly, "An Act to abolish the Office of Lord Chancellor's Secretary of Bankrupts, and to regulate the office of Chief Registrar of the Court of Bankruptcy." (15 & 16 Vict. c. 77).

The Acts of last session in reforming the practice and procedure of the Court of Chancery, the whole of which we have now examined, may be considered as by far the boldest, and, it is believed, will eventually prove the most successful attempt to grapple with abuses almost universally acknowledged, but hitherto only partially remedied. Other improvements will, doubtless, follow, the object of which will be that justice may be administered between man and man, with still less delay and less expense.

One thing, however, is clear, the time will shortly arrive when the practice of the Court, now to be learned only from a crude and ill-digested mass of Acts of Parliament, orders, and text-books, must be reduced to an intelligible, well-arranged, and complete Code of procedure, which would serve a suitor or his advisers as a guide for every step which he takes, from the beginning to the end of his controversy.

Until such a Code is produced, however many Acts may be passed or orders issued with the intention of ameliorating the practice of the Court, Chancery reform, although advancing, will nevertheless be incomplete.

THE LEGISLATOR.

NEW STATUTES.

15 Victoria, A.D. 1852.

[In this record of Legislation only the Statutes of practical utility are given at length. Of the others an abstract or the titles only are presented.]

Cap. LXXXIV.

An Act to make better Provision respecting the Supply of Water to the Metropolis.

(July 1, 1852.)

Cap. LXXXV.

An Act to amend the Laws concerning the Burial of the Dead of the Metropolis.

(July 1, 1852.)

Cap. LXXXVI.

An Act to amend the Practice and Course of Proceeding in the High Court of Chancery.

(July 1, 1852.)

We give this statute entire.

Whereas it is expedient to amend the practice and course of proceeding in the High Court of Chancery: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. *Practice of engrossing bills on parchment discontinued, and a printed bill to be filed instead.*—From and after the time herein-after appointed for the commencement of this Act, the practice of engrossing on parchment bills of complaint or claims to be filed in the said court, and of filing such engrossment, shall be discontinued; and the clerks of records and writs of the said court shall receive and file a printed bill of complaint or claim, in lieu of an engrossment thereof, in like manner as they now receive and file such engrossment,

2. *Writs of subpœna and summons to be abolished.*—The writ of subpœna to appear to and answer a bill of complaint in the said court, and the writ of summons upon a claim, shall respectively be abolished.

3. *Defendants to be served with a printed bill in lieu of the writs of subpœna and summons.*—In lieu of serving the defendant to a bill of complaint in the said court with a writ of subpœna to appear to and answer the same, and in lieu of serving the defendant to a claim in the said court with a writ of summons upon such claim, in the mode and according to the practice now adopted in the said court with reference to such writs respectively, the defendant shall be served with a printed bill of complaint or claim, with an indorsement thereon, in the form or to the effect set out in the schedule to this Act, with such variations as circumstances may require, such printed bill of complaint or claim so to be served being previously stamped with a proper stamp by one of the clerks of records and writs, indicating the filing of such bill of complaint or claim, and the date of the filing thereof.

4. *The filing and service of a printed bill or claim to have the same effect as the filing and issuing of writs of subpœna and summons.*—The filing of a printed bill of complaint or claim in the said court shall have the same effect as the filing of a bill of complaint or claim in the same court, and the issuing of a subpœna or writ of summons thereon respectively, now have, and the service upon the defendant of a printed bill of complaint or of a claim so filed, with such indorsement thereon, so stamped as aforesaid, shall have the same effect as the service on him of a writ of subpœna or writ of summons respectively now has, and shall entitle the plaintiff in such suit to such remedies for default of appearance and otherwise as he is now entitled to in case of due and proper service of a subpœna to appear to and answer a bill of complaint or of a writ of summons upon a claim.

5. *As to service of printed bill.*—The service upon any defendant of a printed copy of a bill of complaint or of a claim in the said court shall be effected in the same manner as service of a writ of subpœna to appear to and answer a bill of complaint is now effected, save only that it shall not be necessary to produce the original bill or claim, which will be on the files of the Court; provided that the court shall be at liberty to direct substituted service of such printed bill or claim, in such manner and in such cases as it shall think fit.

6. *Written copies of bills may be served in certain cases, upon plaintiff undertaking to file a printed copy in fourteen days.*—Notwithstanding the provisions hereinbefore contained, the clerks of records and writs of the said court may receive and file a written copy of any bill of complaint praying a writ of injunction or a writ of ne exeat regno, or filed for the purpose either solely or among other things of making an infant a ward of the said Court, upon the personal undertaking of the plaintiff or his solicitor to file a printed copy of such bill within fourteen days, and every bill of complaint so filed shall be deemed and taken to have been filed at the time of filing the written copy thereof; and a written copy of any such bill of complaint, stamped as aforesaid, and with such endorsement thereon as aforesaid, may be served on any defendant thereto, and such service shall have the same effect as the service of a printed copy.

7. *Plaintiff to deliver printed copies of bill or claim at rate prescribed by Lord Chancellor.*—The plaintiff in any suit to be commenced in the said court after the time hereinafter appointed for the commencement of this Act shall be bound to deliver to the defendant or his solicitor, upon application for the same, such a number of printed copies of his bill of complaint or claim as he shall have occasion for, upon being paid for the same at such rate as shall be prescribed by any general order of the Lord Chancellor in that behalf.

8. *Provisions as to filing, &c. prints of original bill extended to amendments.—In certain cases a printed bill may be wholly or partially amended.*—Upon the amendment of any bill of complaint or claim to be filed in the said court after the time hereinafter appointed for the commencement of this Act, the provisions hereinbefore contained with respect to filing and serving and delivering printed copies thereof, shall, so far as may be, extend and be applicable to the bill or claim as amended: provided that where according to the present practice of the said Court, an amendment of a bill or claim may be made without a new engrossment thereof, or under such other circumstances as shall be prescribed by any general order of the Lord Chancellor in that behalf, a bill or claim may be wholly or partially amended by written alterations in the printed bill of complaint or claim so to be filed as aforesaid.

9. *Power to Lord Chancellor to revive the present practice as to filing of bills, &c.*—It shall be lawful for the Lord Chancellor from time to time to make any order or orders directing that the provisions hereinbefore contained as to printing or otherwise shall be discontinued or suspended until further order, and to direct that all or any of the present practice as to the filing of bills and claims, and the issuing and service of subpœnas and writs of summons, may be revived and come into operation as if this Act had not passed.

10. *Bills of complaint to contain concise narratives of material facts, &c. divided into numbered paragraphs, but not to contain interrogatories.*—Every bill of complaint to be filed in the said Court after the time hereinafter appointed for the commencement of this Act shall contain as concisely as may be a narrative of the material facts, matters, and circumstances on which the plaintiff relies, such narrative being divided into paragraphs numbered consecutively, and each paragraph containing, as nearly as may be, a separate and distinct statement or allegation, and shall pray specifically for the relief which the plaintiff may conceive himself entitled to, and also for general relief; but such bill of complaint shall not contain any interrogatories for the examination of the defendant.

11. *Person whose name is used as next friend of any infant, &c. in any suit, &c. to sign a written authority.*—Before the name of any person shall be used in any suit to be instituted in the said court as next friend of any infant, married woman, or other party, or as relator in any information, such person shall sign a written authority to the solicitor for that purpose, and such authority shall be filed with the bill, information, or claim.

12. *Interrogatories to be filed in record office by plaintiff within time prescribed.*—Within a time to be limited by a general order of the Lord Chancellor in that behalf, the plaintiff in any suit in the said court commenced by bill may, if he requires an answer from any defendant thereto, file in the record office of the said court interrogatories for the examination of the defendant or defendants, or such of them from whom he shall require an answer, and deliver to the defendant or defendants so required to answer, or to his or their solicitor, a copy of such interrogatories, or of such of them as shall be applicable to the particular defendant or defendants; and no defendant shall be called upon or required to put in any answer to a bill unless interrogatories shall have been so filed, and a copy thereof delivered to him or his solicitor within the time so to be limited, or within such further time as the Court shall think fit to direct.

13. *Defendants may answer without leave within the time now allowed, though not required so to do by plaintiff; but after that time defendant must have leave.*—Whether the plaintiff in any suit in the said court commenced by bill does or does not require any answer from the defendant or any one or more of the defendants to the bill, such defendant or defendants may, without any leave of the Court, put in a plea, answer, or demurrer to the

plaintiff's bill within the time now allowed to the defendant for demurring alone to a bill, or within such other time as shall be fixed by any general order of the Lord Chancellor in that behalf; but after that time a defendant or defendants not required to answer the plaintiff's bill shall not be at liberty to put in a plea, answer, or demurrer to the bill, without leave of the Court; provided that the power of the Court to grant further time for pleading, answering, or demurring to any bill, upon the application of any defendant or defendants thereto, whether required to answer the bill or not, shall remain in full force, and shall not be in anywise prejudiced or affected; provided also, that if the Court shall grant any further time to any defendant for pleading, answering, or demurring to the bill, the plaintiff's right to move for a decree under the provisions hereinafter contained shall in the meantime be suspended.

14. *Defendant's answer may contain not only answer to interrogatories, but statements material to his case.*—The answer of the defendant to any bill of complaint in the said court may contain, not only the answer of the defendant to the interrogatories so filed as aforesaid, but such statements material to the case as the defendant may think it necessary or advisable to set forth therein, and such answer shall also be divided into paragraphs numbered consecutively, each paragraph containing as nearly as may be a separate and distinct statement or allegation.

15. *Plaintiff may, on expiry of the time for answering, but before replication, move for a decree or decretal order—Affidavits may be filed.*—The plaintiff in any suit commenced by bill shall be at liberty, at any time after the time allowed to the defendant for answering the same shall have expired (but before replication), to move the Court, upon such notice as shall in that behalf be prescribed by any general order of the Lord Chancellor, for such decree or decretal order as he may think himself entitled to; and the plaintiff and defendant respectively shall be at liberty to file affidavits in support of and in opposition to the motion so to be made, and to use the same on the hearing of such motion; and if such motion shall be made after an answer filed in the cause, the answer shall, for the purposes of the motion, be treated as an affidavit.

16. *Court may refuse or grant such motion, or make order for further prosecution, &c.*—Upon any such motion for a decree or decretal order, it shall be discretionary with the Court to grant or refuse the motion, or to make an order giving such directions for or with respect to the further prosecution of the suit as the circumstances of the case may require, and to make such order as to costs as it may think right.

17. *Practice of excepting to bills, answers, &c. for impertinence abolished—Proviso as to costs.*—The practice of excepting to bills, answers, and other proceedings in the said court, for impertinence, shall be and the same is hereby abolished: provided always, that it shall be lawful for the Court to direct the costs occasioned by any impertinent matter introduced into any proceeding in the said court to be paid by the party introducing the same, upon application being made to the Court for that purpose.

18. *Court or judge may order defendant to produce documents, &c. on oath.*—It shall be lawful for the Court, upon the application of the plaintiff in any suit in the said Court, whether commenced by bill or by claim, and as to a suit commenced by bill, whether the defendant may or may not have been required to answer the bill, or may or may not have been interrogated as to the possession of documents, to make an order for the production by any defendant, upon oath, of such of the documents in his possession or power relating to matters in question in the suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.

19. *In certain cases defendant, after answer, may file interrogatories for examination of plaintiff.—Defendant may exhibit a cross bill instead of filing interrogatories.*—It shall be lawful for any defendant in any suit, whether commenced by bill or by claim, but in suits commenced by bill which the defendant is required to answer, not until after he shall have put in a sufficient answer to the bill, and without filing any cross bill of discovery, to file in the Record-office of the said court interrogatories for the examination of the plaintiff, to which shall be prefixed a concise statement of the subjects on which a discovery is sought, and to deliver a copy of such interrogatories to the plaintiff or his solicitor; and such plaintiff shall be bound to answer such interrogatories, in like manner as if the same had been contained in a bill of discovery filed by the defendant against him on the day when such interrogatories shall have been filed and as if the defendant to such bill of discovery had on the same day duly appeared; and the practice of the Court, with reference to exceptions to answers for insufficiency, or otherwise, shall extend and be applicable to answers put in to such interrogatories; provided that in determining the materiality or relevancy of any such answer, or of any exception thereto, the Court is to have regard, in suits commenced by bill, to the statements contained in the original bill, and in the answer which may have been put in thereto by the defendant exhibiting such interrogatories for the examination of the plaintiff, and in suits commenced by claim, to the statements therein, and in any affidavits which may have been filed either in support thereof or in opposition thereto: provided also, that a defendant, if he shall think fit so to do, may exhibit a cross bill of discovery against the plaintiff, instead of filing interrogatories for his examination.

20. *Upon application of defendant after answer, plaintiff may be required to produce documents on oath.*—It shall be lawful for the Court, upon the application of any defendant in any suit, whether commenced by bill or by claim, but as to suits commenced by bill where the defendant is required to answer the plaintiff's bill, not until after he has put in a full and sufficient answer to the bill, unless the Court shall make any order to the contrary, to make an order for the production by the plaintiff in such suit, on oath, of such of the documents in his possession or power relating to the matters in question in the suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.

21. *Practice of issuing commissions to take answers, &c. within the jurisdiction of the court abolished.*—The practice of the said court, of issuing commissions to take pleas, answers, disclaimers, and examinations in causes and matters pending in the said court shall, with respect to pleas, answers, disclaimers, and examinations taken within the jurisdiction of the court, be and the same is hereby abolished; and any such plea, answer, disclaimer, or examination may be filed without any further or other formality than is required in the swearing and filing of an affidavit.

22. *Pleas, declarations, &c. in Chancery, how to be sworn and taken in Scotland, Ireland, the Channel Islands, &c.*—All pleas, answers, disclaimers, examinations, affidavits, declarations, affirmations, and attestations of honour in causes or matters depending in the High Court of Chancery, and also acknowledgments required for the purpose of enrolling any deed in the said court, shall and may be sworn and taken in Scotland or Ireland, or the Channel Islands, or in any colony, island, plantation, or place under the dominion of her Majesty in foreign parts, before any judge, court, notary public, or person lawfully authorised to administer oaths in such country, colony, island, plantation, or place respectively, or before any of her Majesty's consuls or vice-consuls in any foreign parts out of her Majesty's dominions; and the judges and other officers of the said Court of Chancery shall take judicial notice of the seal or signature, as the case may be, of any such court, judge, notary public, person, consul, or vice-consul attached, appended, or subscribed to any such pleas, answers, disclaimers, examinations, affidavits, affirmations, attestations of honour, declarations, acknowledgments, or other documents to be used in the said court.

23. *Penalty for falsely swearing, &c.*—All persons swearing, declaring, affirming, or attesting before any person authorised by this Act to administer oaths and take declarations, affirmations, or attestations of honour shall be liable to all such penalties, punishments, and consequences for any wilful and corrupt false swearing, declaring, affirming, or attesting contained therein as if the matter sworn, declared, affirmed, or attested had been sworn, declared, affirmed, or attested before any Court or persons now by law authorised to administer oaths, and take declarations, affirmations, or attestations upon honour.

24. *Penalty for forging signature or seal of judge, &c. empowered to administer oaths under this Act.*—If any person shall forge the signature or the official seal of any such judge, notary public, or other person lawfully authorised to administer oaths under this Act, or shall tender in evidence any plea, answer, disclaimer, examination, affidavit, or other judicial or official document with a false or counterfeit signature or seal of any such judge, court, notary public, or other person authorised as aforesaid attached or appended thereto, knowing the same signature or seal to be false or counterfeit, every such person shall be guilty of felony, and shall be liable to the same punishment as any offender under an Act passed in the eighth and ninth years of the reign of her present Majesty, intituled "An Act to facilitate the Admission in Evidence of certain official and other Documents."

25. *Answers, &c. to be filed without oath of messenger.*—Pleas, answers, disclaimers, or examinations, whether taken by commission out of the jurisdiction of the said Court or otherwise, may be filed without the oath of a messenger, and any alterations made therein previously to the taking thereof shall be authenticated according to the practice now in use with respect to affidavits.

26. *Issue may be joined by filing replication as at present.*—In suits in the said court commenced by bill, where notice of motion for a decree or decretal order shall not have been given, or, having been given, where a decree or decretal order shall not have been made thereon, issue shall be joined by filing a replication in the form or to the effect of the replication now in use in the said court; and where a defendant shall not have been required to answer and shall not have answered the plaintiff's bill, he shall be considered to have traversed the case made by the bill.

27. *Defendant not having been required to answer, and not answering, may move for dismissal of bill for want of prosecution.*—Where a defendant to a suit in the said court commenced by bill shall not have been required to answer the bill, and shall not have answered the same, such defendant shall be at liberty to move to dismiss the bill for want of prosecution, at such times, and under such circumstances, and subject to such restrictions as shall be in that behalf prescribed by any general order of the Lord Chancellor.

28. *Practice of Court as to mode of examining witnesses, abolished.—Court may order particular witnesses to be examined upon interrogatories as now practised.*—The mode of examining witnesses in causes in the said court, and all the practice of the said Court in relation thereto, so far as such practice shall be inconsistent with the mode hereinafter prescribed of examining such witnesses, and the practice in relation thereto, shall, from and after the time appointed for the commencement of this Act, be abolished: Provided always, that the Court may, if it shall think fit, order any particular witness or witnesses within the jurisdiction of the said Court, or any witness or witnesses out of the jurisdiction of the said Court, to be examined upon interrogatories in the mode now practised in the said court, and that with respect to such witness or witnesses the practice of the said Court in relation to the examination of witnesses shall continue in full force, save only so far as the same may be varied by any general order of the Lord Chancellor in that behalf, or by any order of the Court with reference to any particular case.

29. *Plaintiff, where suits by bill at issue, may give notice to defendant to adduce evidence orally or by affidavit.*—When any suit commenced by bill shall be at issue, the plaintiff shall, within such time thereafter as shall be prescribed in that behalf by any general order of the Lord Chancellor, give notice to the defendant that he desires that the evidence to be adduced in the cause shall be taken orally or upon affidavit, as the case may be; and if the plaintiff shall desire the evidence to be adduced upon affidavit, and the defendant, or some or one of the defendants, if more than one, shall not, within such time as shall be prescribed in that behalf by any general order of the Lord Chancellor, give notice to the plaintiff or his solicitor that he or they desire the evidence to be oral, the plaintiff and defendants respectively shall be at liberty to verify their respective cases by affidavit.

30. *Evidence may be taken orally if required, but the Court may in certain cases make an order, &c.*—When any of the parties to any suit commenced by bill desires that the evidence should be adduced orally, and gives notice thereof to the opposite party, as hereinbefore provided, the same shall be taken orally, in the manner hereinafter provided; provided, that if the evidence be required to be oral merely by a party without a sufficient interest in the matters in question, the Court may, upon application in a summary way, make such order as shall be just.

31. *Witnesses to be examined by one of the examiners of the Court in the presence of the parties.*—All witnesses to be examined orally under the provisions of this Act shall be so examined by or before one of the examiners of the court, or by or before an examiner to be specially appointed by the Court, the examiner being furnished by the plaintiff with a copy of the bill, and of the answer, if any, in the cause; and such examination shall take place in the presence of the parties, their counsel, solicitors, or agents, and the witnesses so examined orally shall be subject to cross-examination and re-examination; and such examination, cross-examination, and re-examination shall be conducted as nearly as may be in the mode now in use in Courts of Common Law with respect to a witness about to go abroad, and not expected to be present at the trial of a cause.

32. *Depositions to be taken down in writing and read over to witness, who shall sign the same in presence of the parties, but if he refuse to sign, examiner may, and state any special matter he may think fit.*—The depositions taken upon any such oral examination as aforesaid shall be taken down in writing by the examiner, not ordinarily by question and answer, but in the form of a narrative, and when completed shall be read over to the witness, and signed by him in the presence of the parties, or such of them as may think fit to attend: provided always, that in case the witness shall refuse to sign the said depositions, then the examiner shall sign the same, and such examiner may, upon all examinations, state any special matter to the Court as he shall think fit: provided also, that it shall be in the discretion of the examiner to

put down any particular question or answer, if there should appear any special reason for doing so; and any question or questions which may be objected to shall be noticed or referred to by the examiner in or upon the depositions, and he shall state his opinion thereon to the counsel, solicitors, or parties, and shall refer to such statement on the face of the depositions, but he shall not have power to decide upon the materiality or relevancy of any question or questions; and the Court shall have power to deal with the costs of immaterial or irrelevant depositions as may be just.

33. *If parties refuse to be sworn or to answer any lawful questions, the same course to be pursued as is now adopted—Proviso as to witness demurring to questions.*—If any person produced before any such examiner as a witness shall refuse to be sworn, or to answer any lawful question put to him by the examiner, or by either of the parties, or by his or their counsel, solicitor, or agent, the same course shall be adopted with respect to such witness as is now pursued in the case of a witness produced for examination before an examiner of the said court, upon written interrogatories, and refusing to be sworn, or to answer some lawful question: provided always, that if any witness shall demur or object to any question or questions which may be put to him, the question or questions so put, and the demurrer or objection of the witness thereto, shall be taken down by the examiner, and transmitted by him to the Record Office of the said court, to be there filed; and the validity of such demurrer or objection shall be decided by the Court; and the costs of and occasioned by such demurrer or objection shall be in the discretion of the Court.

34. *Original depositions to be transmitted to the Record Office, and filed.*—When the examination of witnesses before any examiner shall have been concluded, the original depositions, authenticated by the signature of such examiner, shall be transmitted by him to the Record Office of the said court, to be there filed, and any party to the suit may have a copy thereof or of any part or portion thereof, upon payment for the same in such manner as shall be provided by any general order of the Lord Chancellor in that behalf.

35. *Commission for examination of witnesses dispensed with, and examiner empowered to administer oaths.*—It shall not be necessary to sue out any commission for the examination of any witnesses within the jurisdiction of the said Court; and any examiner appointed by any order of the Court shall have the like power of administering oaths as commissioners now have under commissions issued by the Court for the examination of witnesses.

36. *Affidavits as to particular facts, &c. may be used.*—Notwithstanding that the plaintiff or the defendant in any suit in the said court may have elected that the evidence in the cause should be taken orally, affidavits by particular witnesses, or affidavits as to particular facts or circumstances, may, by consent, or by leave of the Court obtained upon notice, be used on the hearing of any cause; and such consent, with the approbation of the Court, may be given by or on the part of married women or infants or other persons under disability.

37. *Affidavits to be divided into paragraphs numbered.*—Every affidavit to be used in the said Court shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and, as nearly as may be, shall be confined to a distinct portion of the subject.

38. *Evidence oral or by affidavit, on both sides, to be closed within time prescribed by general order—Witnesses by affidavit to be subject to oral cross-examination, and afterwards to re-examination—Witnesses bound to attend—As to expenses attending cross-examinations, &c.*—The evidence on both sides in any suit in the said court, whether taken orally or upon affidavit, shall be closed within such time or respective times after issue joined as shall in that behalf be prescribed by any general order of the Lord Chancellor, but with power to the Court to enlarge the same as it may see fit; and after the time fixed for closing the evidence no further evidence, whether oral or by affidavit, shall be receivable, without special leave of the Court previously obtained for that purpose: provided always, that any witness who has made an affidavit filed by any party to a cause shall be subject to oral cross-examination within such time after the time fixed for closing the evidence as shall be prescribed in that behalf by any order of the Lord Chancellor, by or before an examiner, in the same manner as if the evidence given by him in his affidavit had been given by him orally before the examiner, and after such cross-examination may be re-examined orally by or on the part of the party by whom such affidavit was filed; and such witness shall be bound to attend before such examiner to be so cross-examined and re-examined, upon receiving due and proper notice, and payment of his reasonable expenses, in like manner as if he had been duly served with a writ of subpœna ad testificandum before such examiner; and the expenses attending such cross-examination and re-examination shall be paid by the parties respectively, in like manner as if the witness so to be cross-examined were the witness of the party cross-examining, and shall be deemed costs in the cause of such parties respectively, unless the Court shall think fit otherwise to direct.

39. *Court may require the production and oral examination before itself of any witness, &c. and determine payment of the costs.*—Upon the hearing of any cause depending in the said court, whether commenced by bill or by claim, the Court, if it shall see fit so to do, may require the production and oral examination before itself of any witness or party in the cause, and may direct the costs of and attending the production and examination of such witness or party, to be paid by such of the parties to the suit or in such manner as it may think fit.

40. *Any party in a cause may by subpœna require attendance of any witness before an examiner.*—Any party in any cause or matter depending in the said court may, by a writ of subpœna ad testificandum or duces tecum, require the attendance of any witness before an examiner of the said court, or before an examiner specially appointed for the purpose, and examine such witness orally, for the purpose of using his evidence upon any claim, motion, petition, or other proceeding before the Court, in like manner as such witness would be bound to attend and be examined with a view to the hearing of a cause; and any party having made an affidavit to be used or which shall be used on any claim, motion, petition, or other proceeding before the Court shall be bound on being served with such writ to attend before an examiner, for the purpose of being cross-examined: provided always, that the Court shall always have a discretionary power of acting upon such evidence as may be before it at the time, and of making such interim orders, or otherwise, as may appear necessary to meet the justice of the case.

41. *Evidence subsequent to hearing to be taken the same as prior to hearing.*—In cases where it shall be necessary for any party to any cause depending in the said court to go into evidence subsequently to the hearing of such cause, such evidence shal be taken as nearly as may be in the manner hereinbefore provided with reference to the taking of evidence with a view to such hearing.

42. *Defendant not to take objection for want of parties in any case to which rules herein set forth shall extend.*—It shall not be competent to any defendant in any suit in the said court to take any objection for want of parties to such suit, in any case to which the rules next hereinafter set forth extend: and such rules shall be deemed and taken as part of the law and practice of the said court, and any law or practice of the said court inconsistent therewith shall be and is hereby abrogated and annulled.

Rule 1. Any residuary legatee or next of kin may, without serving the remaining residuary legatees or next of kin, have a decree for the administration of the personal estate of a deceased person.

Rule 2. Any legatee interested in a legacy charged upon real estate, and any person interested in the proceeds of real estate directed to be sold, may, without serving any other legatee or person interested in the proceeds of the estate, have a decree for the administration of the estate of a deceased person.

Rule 3. Any residuary devisee or heir may, without serving any co-residuary devisee or co-heir, have the like decree.

Rule 4. Any one of several cestuis que trust under any deed or instrument may, without serving any other of such cestuis que trust, have a decree for the execution of the trusts of the deed or instrument.

Rule 5. In all cases of suits for the protection of property pending litigation, and in all cases in the nature of waste, one person may sue on behalf of himself and of all persons having the same interest.

Rule 6. Any executor, administrator, or trustee may obtain a decree against any one legatee, next of kin, or cestuique trust for the administration of the estate, or the execution of the trusts.

Rule 7. In all the above cases the Court, if it shall see fit, may require any other person or persons to be made a party or parties to the suit, and may, if it shall see fit, give the conduct of the suit to such person as it may deem proper, and may make such order in any particular case as it may deem just for placing the defendant on the record on the same footing in regard to costs as other parties having a common interest with him in the matters in question.

Rule 8. In all the above cases the persons who, according to the present practice of the Court, would be necessary parties to the suit, shall be served with notice of the decree, and after such notice they shall be bound by the proceedings in the same manner as if they had been originally made parties to the suit, and they may by an order of course have liberty to attend the proceedings under the decree; and any party so served may, within such time as shall in that behalf be prescribed by the general order of the Lord Chancellor, apply to the Court to add to the decree.

Rule 9. In all suits concerning real or personal estate which is vested in trustees under a will, settlement, or otherwise, such trustees shall represent the persons beneficially interested under the trust, in the same manner and to the same extent as the executors or administrators in suits concerning personal estate represent the persons beneficially interested in such personal estate; and in such cases it shall not be necessary to make the persons beneficially interested under the trusts parties to the suit; but the Court may, upon consideration of the matter, on the hearing, if it shall so think fit, order such persons, or any of them, to be made parties.

43. *Practice of setting down a cause on objection for want of parties abolished.*—The practice of the said Court of setting down a cause merely on an objection for want of parties to the suit shall be abolished.

44. *Court may proceed in any suit, &c. without representative of deceased person, or may appoint one.*—If in any suit or other proceeding before the Court it shall appear to the Court that any deceased person who was interested in the matters in question has no legal personal representative, it shall be lawful for the Court either to proceed in the absence of any person representing the estate of such deceased person, or to appoint some person to represent such estate for all the purposes of the suit or other proceeding, on such notice to such person or persons, if any, as the Court shall think fit, either specially or generally by public advertisements; and the order so made by the said Court, and any orders consequent thereon, shall bind the estate of such deceased person in the same manner in every respect as if there had been a duly constituted legal personal representative of such deceased person, and such legal personal representative had been a party to the suit or proceeding, and had duly appeared and submitted his rights and interests to the protection of the Court.

45. *Creditor, &c. may summon executor, &c. to show cause why an order for administration of personal estate should not be granted—Power to judge to order administration of such estate.*—It shall be lawful for any person claiming to be a creditor, or a specific pecuniary or residuary legatee, or the next of kin, or some or one of the next of kin, of a deceased person, to apply for and obtain as of course, without bill or claim filed, or any other preliminary proceedings, a summons from the Master of the Rolls or any of the Vice-Chancellors requiring the executor or administrator, as the case may be, of such deceased person, to attend before him at chambers, for the purpose of showing cause why an order for the administration of the personal estate of the deceased should not be granted; and upon proof by affidavit of the due service of such summons, or on the appearance in person or by his solicitor or counsel of such executor or administrator, and upon proof by affidavit of such other matters, if any, as such judge shall require, it shall be lawful for such judge, if in his discretion he shall think fit so to do, to make the usual order for the administration of the estate of the deceased, with such variations, if any, as the circumstances of the case may require; and the order so made shall have the force and effect of a decree to the like effect made on the hearing of a cause or claim between the same parties; provided that such judge shall have full discretionary power to grant or refuse such order, or to give any special directions touching the carriage or execution of such order, and in the case of applications for any such order by two or more different persons or classes of persons, to grant the same to such one or more of the claimants or of the classes of claimants as he may think fit; and if the judge shall think proper, the carriage of the order may subsequently be given to such party interested, and upon such terms as the judge may direct.

46. *Copy of summons to be filed in Record Office of Court.*—A duplicate copy of such summons shall, previously to the service thereof, be filed in the Record Office of the said Court; and no service thereof upon any executor or administrator shall be of any validity unless the copy so served shall be stamped with a stamp of such office indicating the filing thereof; and the filing of such summons shall have the same effect with respect to lis pendens as the filing of a bill or claim.

47. *Creditor, &c. may obtain an order.*—It shall be lawful for any person claiming to be a creditor of any deceased person, or interested under his will, to apply for and obtain in a summary way, in the manner hereinbefore provided with respect to the personal estate of the deceased person, an order for the administration of the real estate of a deceased person where the whole of such real estate is by devise vested in trustees who are by the will empowered to

sell such real estate, and authorised to give receipts for the rents and profits thereof, and for the produce of the sale of such real estate; and all the provisions hereinbefore contained with respect to the application for such order in relation to the personal estate of a deceased person, and consequent thereon, shall extend and be applicable to an application for such order as last hereinbefore mentioned with respect to real estate.

48. *Court may direct sale of mortgaged property instead of a foreclosure on such terms as it may think fit.*—It shall be lawful for the Court in any suit for the foreclosure of the equity of redemption in any mortgaged property, upon the request of the mortgagee, or of any subsequent incumbrancer, or of the mortgagor, or any person claiming under them respectively, to direct a sale of such property, instead of a foreclosure of such equity of redemption, on such terms as the Court may think fit to direct, and if the Court shall so think fit, without previously determining the priorities of incumbrances, or giving the usual or any time to redeem; provided that if such request shall be made by any such subsequent incumbrancer, or by the mortgagor, or by any person claiming under them respectively, the Court shall not direct any such sale, without the consent of the mortgagee or the persons claiming under him, unless the party making such request shall deposit in court a reasonable sum of money, to be fixed by the Court, for the purpose of securing the performance of such terms as the Court may think fit to impose on the party making such request.

49. *Suit not to be dismissed for misjoinder of plaintiffs, but Court may modify its decree according to special circumstances.*—No suit in the said court shall be dismissed by reason only of the misjoinder of persons as plaintiffs therein; but wherever it shall appear to the Court that, notwithstanding the conflict of interest in the co-plaintiffs, or the want of interest in some of the plaintiffs, or the existence of some ground of defence affecting some or one of the plaintiffs, the plaintiffs, or some or one of them, are or is entitled to relief, the Court shall have power to grant such relief, and to modify its decree, according to the special circumstances of the case, and for that purpose to direct such amendments, if any, as may be necessary, and at the hearing, before such amendments are made, to treat any one or more of the plaintiffs as if he or they was or were a defendant or defendants in the suit, and the remaining or other plaintiff or plaintiffs was or were the only plaintiff or plaintiffs on the record; and where there is a misjoinder of plaintiffs, and the plaintiff having an interest shall have died leaving a plaintiff on the record without an interest, the Court may, at the hearing of the cause, order the cause to stand revived as may appear just, and proceed to a decision of the cause, if it shall see fit, and to give such directions as to costs or otherwise as may appear just and expedient.

50. *No suit to be objected to because only declaratory order sought.*—No suit in the said court shall be open to objection on the ground that a merely declaratory decree or order is sought thereby, and it shall be lawful for the Court to make binding declarations of right without granting consequential relief.

51. *Court may decide between some of the parties without making others interested parties to the suit —Proviso.*—It shall be lawful for the Court to adjudicate on questions arising between parties notwithstanding that they may be some only of the parties interested in the property respecting which the question may have arisen, or that the property in question is comprised with other property in the same settlement, will, or other instrument, without making the other parties interested in the property respecting which the question may have arisen, or interested under the same settlement, will, or other instrument, parties to the suit, and without requiring the whole trusts and purposes of the settlement, will, or other instrument to be executed under the direction of the Court, and without taking the accounts of the trustees or other accounting parties, or ascertaining the particulars or amount of the property touching which the question or questions may have arisen: Provided always, that if the Court shall be of opinion that the application is fraudulent or collusive, or for some other reason ought not to be entertained, it shall have power to refuse to make the order prayed.

52. *In case of abatement, &c. of suit, an order may be made, which shall have same effect as a bill of revivor.*—Upon any suit in the said court becoming abated by death, marriage, or otherwise, or defective by reason of some change or transmission of interest or liability, it shall not be necessary to exhibit any bill of revivor or supplemental bill in order to obtain the usual order to revive such suit, or the usual or necessary decree or order to carry on the proceedings; but in order to the effect of the usual order to revive or of the usual supplemental decree, may be obtained as of course upon an allegation of the abatement of such suit, or of the same having become defective, and of the change or transmission of interest or liability; and an order so obtained, when served upon the party or parties who according to the present practice of the said Court would be defendant or defendants to the bill of revivor or supplemental bill, shall from the time of such service be binding on such party or parties in the same manner in every respect as if such order had been regularly obtained according to the existing practice of the said court; and such party or parties shall thenceforth become a party or parties to the suit, and shall be bound to enter an appearance thereto in the office of the clerks of records and writs, within such time and in like manner as if he or they had been duly served with process to appear to a bill of revivor or supplemental bill filed against him; provided that it shall be open to the party or parties so served, within such time after service as shall be in that behalf prescribed by any general order of the Lord Chancellor, to apply to the Court by motion or petition to discharge such order on any ground which would have been open to him on a bill of revivor or supplemental bill, stating the previous proceedings in the suit and the alleged change or transmission of interest or liability, and praying the usual relief consequent thereon: provided also, that if any party so served shall be under any disability other than coverture, such order shall be of no force or effect as against such party until a guardian or guardians ad litem shall have been duly appointed for such party, and such time shall have elapsed thereafter as shall be prescribed by any general order of the Lord Chancellor in that behalf.

53. *New facts, &c. after commencement of suit, to be introduced as amendments to bill, &c.*—It shall not be necessary to exhibit any supplemental bill in the said court for the purpose only of stating or putting in issue facts or circumstances which may have occurred after the institution of any suit; but such facts or circumstances may be introduced by way of amendment into the original bill of complaint in the suit if the cause is otherwise in such a state as to allow of an amendment being made in the bill, and if not, the plaintiff shall be at liberty to state such facts or circumstances on the record, in such manner, and subject to such rules and regulations with respect to the proof thereof, and the affording the defendant leave and opportunity of answering and meeting the same as shall in that behalf be prescribed by any general order of the Lord Chancellor.

54. *Where account required to be taken, Court may give special directions as to the mode of taking same.*—It shall be lawful for the Court, in any case where any account is required to be taken, to give such special directions, if any, as it may think fit with respect to the mode in which the account should be taken or vouched, and such special directions may be given, either by the decree or order directing such account, or by any subsequent order or orders, upon its appearing to the Court that the circumstances of the case are such as to require such special directions; and particularly it shall be lawful for the Court, in cases where it shall think fit so to do, to direct that in taking the account the books of account in which the accounts required to be taken have been kept, or any of them, shall be taken as primâ facie evidence of the truth of the matters therein contained, with liberty to the parties interested to take such objections thereto as they may be advised.

55. *Court may order real estate to be sold, if required.*—If after a suit shall have been instituted in the said court in relation to any real estate it shall appear to the Court that it will be necessary or expedient that the said real estate or any part thereof should be sold for the purposes of such suit, it shall be lawful for the said Court to direct the same to be sold at any time after the institution thereof, and such sale shall be as valid to all intents and purposes as if directed to be made by a decree or decretal order on the hearing of such cause; and any party to the suit in possession of such estate, or in receipt of the rents and profits thereof, shall be compelled to deliver up such possession or receipt to the purchaser or such other person as the Court shall direct.

56. *Before sale of estate abstract of title to be laid before some conveyancing counsel.—Time for delivery of abstract to be specified in conditions of sale.*—Before any estate or interest shall be put up for sale under a decree or order of the Court of for sale under a decree or order of the Court of Chancery, an abstract of the title thereto shall, with the approbation of the Court, be laid before some conveyancing counsel to be approved by the Court, for the opinion of such counsel thereon, to the intent that the said Court may be the better enabled to give such directions as may be necessary respecting the conditions of sale of such estate or interest, and other matters connected with the sale thereof; and when an estate or interest shall be so put up for sale, a time for the delivery of the abstract of title thereto to the purchaser or his solicitor shall be specified in the said conditions of sale.

57. *Where real or personal property is the subject of proceedings, Court may allow to parties part or the whole of the annual income.*—Where any real or personal property shall form the subject of any proceedings in the Court of Chancery, and the Court shall be satisfied that the same will be more than sufficient to answer all the claims thereon which ought to be provided for in such suit, it shall be lawful for the said Court at any time after the commencement of such proceedings to allow to the parties interested therein, or any one or more of them, the whole or part of the annual income of such real property, or a part of such personal property, or a part or the whole of the income thereof, up to such time as the said Court shall direct, and for that purpose to make such orders as may appear to the said Court necessary or expedient.

58. *Practice as to injunctions to stay proceedings at law to be assimilated to practice as to special injunctions.*—The practice of the Court of Chancery with respect to injunctions for the stay of proceedings at law shall, so far as the nature of the case will admit, be assimilated to the practice of such Court with respect to special injunctions generally, and such injunctions may be granted upon interlocutory applications supported by affidavit, in like manner as other special injunctions are granted by the said Court.

59. *Answer of defendant on motion for injunction or receiver, &c. to be regarded as an affidavit.*—Upon application by motion or petition to the Court in any suit depending therein for an injunction or a receiver, or to dissolve an injunction, or discharge an order appointing a receiver, the answer of the defendant shall, for the purpose of evidence on such motion or petition, be regarded merely as an affidavit of the defendant, and affidavits may be received and read in opposition thereto.

60. *In case directions as to practice, &c. not followed, Court may make order and award costs.*—In case any of the directions herein contained with respect to the practice and course of proceeding in the said Court of Chancery shall by mistake of parties fail to be followed in any suit or proceeding in the said Court, it shall be lawful for the said Court, if it shall think fit, upon payment of such costs as such Court shall direct, to make such order giving effect to, and rectifying such proceedings as may be justified by the merits of the case.

61. *Court of Chancery not to direct cases to be stated for opinions of Court of Common Law, but to decide the same.*—It shall not be lawful for the said Court of Chancery, in any cause or matter, to direct a case to be stated for the opinion of any Court of Common Law, but the said Court of Chancery shall have full power to determine any questions of law, which in the judgment of the said Court of Chancery shall be necessary to be decided previously to the decision of the equitable question at issue between the parties.

62. *Court may determine legal title of party seeking relief without requiring parties to proceed to law.*—In cases where, according to the present practice of the Court of Chancery, such Court declines to grant equitable relief until the legal title or right of the party or parties seeking such relief shall have been established in a proceeding at law, the said Court may itself determine such title or right without requiring the parties to proceed at law to establish the same.

63. *Lord Chancellor and Judges to make general rules and orders for carrying purposes of this Act into effect.*—The Lord Chancellor, with the advice and assistance of the Master of the Rolls, the Lords Justices of the Court of Appeal in Chancery, and the Vice Chancelors, or any three of them, may and they are hereby required from time to time to make general rules and orders for carrying the purposes of this Act into effect, and for regulating the times and form and mode of procedure, and generally the practice of the said Court, in respect of the matters to which this Act relates, and for regulating the fees and allowances to all officers of the said Court, and solicitors thereof, in respect to such matters, and, so far as may be found expedient for altering the course of proceeding herein-before prescribed in respect to the matters to which this Act relates, or any of them; and such rules and orders may from time to time be rescinded or altered by the like authority; and all such rules and orders shall take effect as general orders of the said Court.

64. *Such general rules and orders to be laid before Parliament.*—All general rules and orders of the Lord Chancellor, with such advice and assistance as aforesaid, shall immediately after the making and issuing thereof be laid before both Houses of Parliament, if Parliament be then sitting, or if Parliament be not then sitting, within five days after the next meeting thereof: provided always, that if either of the Houses of Parliament shall, by any resolution passed within thirty-six days after such rules or orders have been laid before such Houses of Parliament, resolve that the whole or any part of such rules or orders ought not to continue in force, such rules or orders ought not to continue in force, in such case the whole, or such part thereof as shall be so included in such resolution, shall, from and after such resolution, cease to be binding.

65. *Power to Lord Chancellor to increase salaries of examiners—If examiner decline to continue, Lord Chancellor may order a certain annuity to be paid*

to him.—And whereas the present examiners of the court have been heretofore appointed for the purpose only of taking the depositions of witnesses in private, and upon written interrogatories prepared by counsel: and whereas the public examination of witnesses orally, under the provisions of this Act, will materially alter the nature of the duties and increase the responsibility of the said examiners: be it therefore enacted, that it shall be lawful for the Lord Chancellor and he is hereby empowered to order and direct a sum to be paid to each of the said examiners, out of the fund intituled "The Suitors' Fee Fund," from and after the first of November, one thousand eight hundred and fifty-two, such a sum as shall together with the sums now payable make up the annual sum of one thousand five hundred pounds: provided always, that if either of the present examiners should feel himself unable or should decline to continue his services in the same office upon the conditions provided under this Act, it shall be lawful for the Lord Chancellor to order to be paid to such examiner retiring an annuity of an amount not exceeding three-fourths of the salary which he has hitherto received.

66. *Construction of terms.*—In the construction of this Act, the words "bill of complaint" shall mean also and include information; the word "affidavit" shall mean also and include affirmation; the expression "Lord Chancellor" shall mean and include the Lord Chancellor, Lord Keeper, and Lords Commissioners of the Great Seal of the United Kingdom for the time being; and the expression "general order of the Lord Chancellor" shall mean general order of the Lord Chancellor with such advice and assistance as aforesaid.

67. *Commencement of Act.*—This Act shall commence and take effect from and after the first day of November, one thousand eight hundred and fifty-two; provided that it shall be lawful for the Lord Chancellor, with such advice and assistance as aforesaid, to make and issue any such general rules or orders as aforesaid at any time after the passing of this Act, so as the same be not made to take effect before the time appointed for the commencement of this Act.

SCHEDULE.

Form of Indorsement on Bill of Complaint.

VICTORIA R.—To the within-named defendant *C. D.*, greeting.

We command you ["and every of you," *where there is more than one defendant*], That within eight days after service hereof on you, exclusive of the day of such service, you cause an appearance to be entered for you in our High Court of Chancery to the within bill of complaint of the within-named *A. B.*, and that you observe what our said Court shall direct. Witness ourself at Westminster, the day of in the year of our reign.

Note.—If you fail to comply with the above directions you will be liable to be arrested and imprisoned.

Appearances are to be entered at the Record and Writ Clerk's Office, Chancery-lane, London.

Form of Indorsement on Claim.

VICTORIA R.—To the within-named defendant *C. D.*, greeting.

We command you ["and every of you," *where there is more than one defendant*], that within eight days after service hereof on you, exclusive of the day of such service, you cause an appearance to be entered for you in our High Court of Chancery to the within claim of the within-named *A. B.*; and further, that on the fourteenth day after the service hereof, or on the seal or motion day then next following, you do personally or by counsel appear in the court of our Lord Chancellor before the Vice-Chancellor [*naming him*] [*or*, in the court of our Master of the Rolls], at ten of the clock in the forenoon, and then and there shew cause if you can why the said *A. B.* should not have such relief against you as is within claimed, or why such order as shall be just with reference to the claim should not be made. Witness ourself at Westminster the day of in the year of our reign.

Note.—Appearances are to be entered at the Record and Writ Clerk's Office, Chancery-lane, London; and if you neglect to enter your appearance, and either personally or by your counsel to appear in the High Court of Chancery at the place and on the day and hour above mentioned, you will be subject to such order as the Court may think fit to make against you in your absence for payment or satisfaction of the said claim, or as the nature and circumstances of the case may require.

THE MAGISTRATE,
AND PAROCHIAL AND MUNICIPAL LAWYER.

Summary.

ALTHOUGH the *Health of Towns Act* has been so long in operation, and is extensively adopted in all parts of the country, the Courts have been but rarely called upon to put a construction upon its provisions. Nevertheless, as we know, some practical difficulties have arisen in its application that would have led to litigation in former times, but which are now compromised by the parties concerned rather than have recourse to the Courts. A case reported from the Oxford Circuit (*Edwards* v. *Lowndes*, 20 Law T. Rep. 43) is remarkable for raising several questions upon the statute. It was an an action by an organist against the Board of Health of Burslem, to recover his salary, under the following circumstances. By a local Market Act, moneys received under it were to be applied, *inter alia*, to payment of the salary of an organist of a church. By a confirmed order, this Act was repealed, and the property held under it transferred to the local Board of Health, and it directed that all the debts, &c. of the one should be paid by the other. The Board had not appropriated any of the funds to payment of the organist, and upon the reading of the local Act, the Judge (CRESSWELL) was of opinion that the action would not lie. The 139th section of the Health of Towns Act provides for a month's notice of action against the local Board, or any of its officers, "for anything done or intended to be done under the provisions of this Act;" but this was held not to be applicable under the above circumstances.

Queries.

SMALL TENEMENTS RATING-ACT.

By the 6th section of 13 & 14 Vict. c. 99, it is enacted, "That every such owner so rated as aforesaid (vide the prior sections) shall have the same right of appeal (subject to the same conditions) against rates, and the same right to vote in vestry, *as if he were an occupier* duly rated in respect of the same tenement." Will any of your experienced legal correspondents inform me whether, according to the proper construction of this section, a landlord, supposing him to be the owner of—say—six cottages, let to six different tenants (each of whom before the passing of this Act paid the rates in respect of the cottage he occupies, and each cottage being assessed at or under 6*l.*) can give *six votes* for such six cottages (*i. e.* a vote for each cottage), or can he give but *one* vote for the whole six? And is his voting in vestry *under this section* exclusively restricted to matters relating to the relief of the poor? (vide the construction of the word vestry in section 9.) LEX.

Oct. 26, 1852.

Answers to Queries.

NOTICES OF MEETING.

IN answer to "A Subscriber," wishing to know the practice as to giving notice by advertisement of meetings, &c. under Act of Parliament, I beg to say, that it is my opinion that the Act in every such case, when requiring a certain number of days' advertisement, does not require a repetition of the advertisement daily or weekly (unless specially enacted), but means that the advertisement shall be published the stated time before the meeting, &c. as the case may be.

My practice, when advertising turnpike meetings under 3 Geo. 4, c. 126, ss. 55, 69, is to insert the notice of meeting in the newspaper *once* only, the requisite time beforehand. W.

A JUVENILE FORGER.—John Hildeth, an intelligent-looking lad, about fourteen years of age, was committed for trial at the Liverpool police-court on Wednesday, on a charge of forgery. In the afternoon of Tuesday, the prisoner, who held the situation of errand-boy in the office of Mr. Charles Kreitmair, called at the Royal Bank, where his employer had business transactions, and presented a cheque for 5*l.* 2s. which was paid him. Suspecting that something was wrong, one of the bank clerks sent notice of the fact to Mr. Kreitmair, who found that the boy had forged his signature very cleverly. He said nothing to the prisoner about the forgery, but sent him with a note to the Royal Bank, where he was given into custody. The prisoner made no defence.

PROVINCIAL CEMETERIES.—The following letter has been received from the General Board of Health by the mayor of Newport, from which it appears that some measures are in contemplation with respect to public cemeteries in the forthcoming session:—

"*Sir*,—I am directed by the General Board of Health to acknowledge the receipt of your letter of the 11th inst., pressing upon the board the importance of providing in the ensuing session a legislative remedy for the evils arising from the inability of local boards of health to close noxious burial places, and to establish new public cemeteries; and in reply, I am to inform you that the board are authorised to state that her Majesty's Government entertain a hope of being able to introduce into Parliament during the approaching session a measure to facilitate the creation of provincial cemeteries.

"I am, &c. C. MACAULAY,
"The General Board of Health, Secretary.
"Whitehall, Oct. 20."

THE REVISING BARRISTERS.—For the last three years, as appears by a return to the House of Commons, the expense incurred on account of the barristers appointed to revise the lists of voters was 17,850*l.* a-year.

REAL PROPERTY LAWYER AND CONVEYANCER.

THE rule is that an assignee of a lease cannot, by assigning over, get rid of his liabilities for breaches of covenant committed during the period of his own occupation. Where A. by will gave B. leaseholds absolutely, subject to the rent and covenants contained in the lease, and gave her residuary estate to C. subject to payment of her debts, &c. and the lease contained covenants for repair, and at A.'s death there had been dilapidations, but it did not appear whether they had taken place during her tenancy or during the previous one after which she had taken it under a will, B. was held so to take the leaseholds *cum onere*, and that C.'s executors were not liable to repair under the covenant. (*Hickling* v. *Boyer*, 20 Law T. Rep. 33.)

It will be observed, and should be noted in the practitioner's text-book, that Lord ST. LEONARDS has decided in *The Dean and Chapter of Ely* v. *Bliss*, 20 Law T. Rep. 35, that the right to tithes as against an ecclesiastical corporation aggregate is not barred under 3 & 4 Wm. 4, c. 27, by non-payment for twenty years. The whole of this judgment should be read with attention as a masterly specimen of the manner of construing doubtful statutes. His Lordship expressed strong disapproval of the modern introduction of "the interpretation clause," which he considers produces more doubts and difficulties than it clears.

A husband cannot effectually charge the reversionary interest of his wife in a leasehold, limited to her only if she survives. In *Duberly* v. *Day*, 20 Law T. Rep. 38, a renewable leasehold of the wife was settled in trust for her separate use during their joint lives, if the wife survived, subject to a trust to raise portions for her only; if the husband survived, to him for life, with remainder to the issue. They joined in charging the whole property. The wife survived, and the charge was held to be invalid as against her.

A point in the Law of *Vendors and Purchasers* was decided in *Kinder* v. *Streeter*, 20 Law T. Rep. 40, namely, that where a suit is rendered necessary by the death of the vendor, who had sold, but delayed the conveyance at the request of the purchaser, the *costs* of such suit must be borne by the *purchaser*.

Some *Wills* Cases are worth noting. In *Waite* v. *Combes*, 20 Law T. Rep. 40, the word "moneys" was held to pass stock in the public funds. In *Blunn* v. *Bell*, 20 Law T. Rep. 40, the tenant for life of the residue of an estate was held to be entitled to enjoy the leasehold property in specie, but not any other personal estate of the testator.

A case of some interest in the Law of *Executors* is reported from Vice-Chancellor KINDERSLEY. It was there laid down that an executor may deal with the assets of his testator to raise money for the purposes of the estate. "But," said the VICE-CHANCELLOR, "this principle does not apply when, having obtained money without security, he afterwards gives security on the testator's property for the antecedent loans." As a general rule, also, the lender of money to an executor is not required to see to its application; but if he first advances money on the mere personal security of the executor, and afterwards takes a security on the property, the onus of proof is upon the lender to shew that the money was really applied to the purposes of the estate. Nor will the Court assume that it was properly applied, but will direct an inquiry if it was so in fact. (*Miles* v. *Durnford*, 20 Law T. Rep. 41.)

MORTGAGES.

TO THE EDITOR OF THE LAW TIMES.

Sir,—I have been in practice fourteen years, during which I have drawn mortgages continually so as to include in about twenty-four folios a power of sale and covenant to insure; if necessary, an assignment of a policy, with power of attorney, can easily be comprised in thirty folios. I have sold under the power of sale in such a mortgage, and found no difficulty.

If it were necessary to omit any provision from a mortgage, the covenant to insure, or any other of the covenants, except that for payment, had better be omitted, than the power of sale, which is most wanted in small mortgages, the premiums comprised in which, being also small, will not bear the expense of a foreclosure.

If attorneys will only do what is necessary, and charge for that, the complaints about their bills in conveyancing matters will be very much reduced; but if they will draw abstracts where none are wanted, or load their drafts with useless verbiage, they cannot wonder if the public think, that there must be something wrong in the total, though they do not understand the details of their costs.

The best remedy for the great expense of conveyancing will be, I think, first, that lawyers should not think of their bills, whilst they are transacting their client's business: secondly, that there should be a cheap and easy mode of taxing bills; and, thirdly, that attorneys should encourage their clients to tax them. At any rate, I think that these should be tried before an important part of an instrument is omitted to make it cheap; this proposal makes one think of the saying "cheap and nasty."

I am, Sir, yours, &c.

Oct. 25, 1852. A Country Practitioner.

CONVEYANCING CHARGES.

TO THE EDITOR OF THE LAW TIMES.

Sir,—It gives me great pleasure to see this subject once more discussed in your paper. The time has come when the question of professional remuneration must be placed on a better basis, and there cannot be any system of remuneration more satisfactory, both to the attorney and his client, than a commission on the amount of the consideration money mentioned in the deed, in all cases where the consideration is more than nominal. Have you any friend who will undertake to introduce a measure of this nature into Parliament? It is not likely to encounter any opposition; and, if it be passed into a law, you will earn for yourself the gratitude of the whole Profession.

I am, Sir, yours, &c.

25th Oct. 1852. An Original Subscriber.

FORECLOSURE.

TO THE EDITOR OF THE LAW TIMES.

Sir,—I should say your contributor, or the writer of the article "Foreclosure," in the last number of the Law Times, cannot have a practical knowledge of mortgage transactions and deeds. I am at a loss to conceive how the remedy by "claim" and "foreclosure" should be speedier and cheaper than the ordinary one by power of sale entered in the mortgage-deed; and also how it should be less expensive, for at the outside the additional expense caused by the introduction of a power of sale is not more than the cost of one skin, and if the progressive duty be only 5s. the expense would not be more than 25s. to 30s. and you cannot shew that the proceeding by "claim" and "foreclosure" under the New Procedure Act would be attended with as little expense.

And besides, who shall say what the expenses may be under the new practice, either at law or in equity, till the system has worked a little? See what correspondence, what trouble and attendance must attend the obtaining of a decree of foreclosure and order of sale. There is a great attempt to parade the new Chancery procedure and Chancery reform as something beneficial, but the public and Profession in the country first wish to see how it works.

I am, Sir, yours, &c. E. J. R.

Manchester, Oct. 20, 1852.

FORECLOSURE.

TO THE EDITOR OF THE LAW TIMES.

Sir,—I fully concur in your suggestion that powers of sale may now be omitted from mortgage deeds; in fact, this had occurred to me before I saw your observations, and I think such deed might be further improved, and a mortgagor's expenses very much reduced by returning to the former custom of making mortgages for a long term of years, instead of in fee, for, by so doing, the mortgagor would not have to obtain a reconveyance from the mortgagee, or the person in whom the legal estate was vested, upon his paying off the mortgage-money; this is always attended with considerable trouble and expense, and often with uncertainty; for in the case of a mortgage in fee, who dies intestate, without any direct lineal heirs, it is frequently doubtful whether the person in whom the legal estate is considered to be vested is that person or not, in consequence of the mortgagor not being able to obtain legal proof of his being so. In a case which recently came under my notice, where the mortgagor had mortgaged a small estate for a small amount in fee, and the mortgagee had died intestate, without any direct heirs, it cost the mortgagor nearly 10*l.* to obtain proof that the person who claimed to be the mortgagee's heir-at-law was so; and, after all, the proof that he did obtain was not legal evidence of the fact, though, under the circumstances, it was the best he could obtain.

I am, Sir, yours, &c.

Attleborough, Oct. 20, 1852. G. Y.

Query.

COUNTERPART LEASES.

Can any of your readers inform me whether it is *absolutely necessary* to have the denoting-stamp impressed upon counterpart leases where the duty is above 5s? For instance, the other day I had a counterpart of a lease engrossed. The duty on the lease was 10s. To save the trouble and expense of sending to London to have the denoting-stamp impressed, I had it engrossed on 10s. ad val. and 10s. follower. Are the stamps sufficient without the denoting mark?

Lex.

Answers to Queries.

STAMPS.

In reply to the point mooted by "W. T." in your publication of the 25th September last, I think that as the share of A. is certainly conveyed, though not like the shares of B. and C. for a valuable consideration, an ordinary 35s. deed stamp should be impressed on the instrument in addition to the ad valorem duty on the purchase-money of B. and C.'s shares. The rule in practice is, that no ad valorem duty is payable in respect of a sum not paid to or for the benefit of the person who conveys or directs the conveyance of the estate. (*Manifold* v. *Diamond*, 4 B. & C. 243; *Massey* v. *Nanney*, 3 Bing. N.C. 478; *Re Kerrey Glazier*, 3 Ir. Cir. Rep. 396; *Blandy* v. *Herbert*, 9 B. & C. 396; and *Wigmore* v. *Joyce*, 13 Ir. L. R. 164.) As the share, therefore, of A. may be treated as a conveyance of it coming under this rule, I think the instrument in question ought to be stamped in the way above stated.

C. Wilkinson.

Kendal, Oct. 26, 1852.

BUILDING SOCIETIES.

I think that, in regard to the point mooted by Mr. Mewburn on "Building Societies," the deed of transfer would require to be stamped, unless the securities in the first instance were taken in the names of the trustees of the society, and the survivors and survivor of them, and other the trustees to be appointed, when the incapacity to act, &c. if the then present trustees required such. As respects the law of vesting of securities in trustees of Building Societies, I would refer your correspondent to the case of *Morrison* v. *Gover*, 19 Law J. 20, Ex.

COUNTY COURTS.

Two *insolvency* cases were last week reported from Dublin. In *Re Lazenbys*, 20 Law T. Rep. 42, where an insolvent had made an untrue statement in his schedule, and taken false credits in his balance sheet, he was not allowed to swear to his schedule, and his petition was dismissed, although the opposing creditor failed to prove such concealment aliunde, and although such false statements and credits were held not to be any evidence of concealment of property. In *Re Maxwell*, 20 Law T. Rep. 42, it was held that the rule in bankruptcy, which allows a mortgagee to sell the mortgaged premises for his debt, and prove for the deficiency, *does not apply in insolvency*. This is very important, and should be carefully noted by the practitioner.

An extremely interesting discussion on the practice under the Advocates' clause in the County Courts Improvement Act, was last week reported from Liverpool. It illustrates the difficulties which we had anticipated as certain to arise when it came into practical operation. The question turned upon the words "being an Attorney acting generally in the action for such party, but not an Attorney retained as an Advocate by such last-mentioned Attorney." In this case, it appeared that the Attorney had been instructed by the party who had previously employed no other Attorney in the action, and therefore there was no doubt as to *his* right to appear. But it raised a discussion, and called forth an expression of opinion from the Judge, which is of great interest. He stated his impression to be, that the Attorney who appears should be the Attorney acting bonâ fide generally throughout the action, and that it was not competent to a party to go to one Attorney up to a certain point, and then to go to another Attorney merely to take the case into Court. This would not be "acting generally" in the action. It would be an evasion of the Act of Parliament. It is evident from this report, that the real difficulty arises from there being no means of ascertaining who is the Attorney originally employed. It would be removed by adopting the practice of the Superior Courts, and requiring that, in all cases where a plaint is entered, the name of the Attorney (if any) should be entered with the other particulars, and Attorneys should be allowed a fee for entering a plaint. If this were done, the great majority of plaints would be entered by Attorneys, and in other cases the party has the right to employ whom he pleases at any period of the suit, and the Attorney so employed is *entitled* to appear. A rule to this effect might be framed by the Judges. The Liverpool Judge suggested that the Attorney should not be changed without an application to the Court; but this would involve needless delay and cost. Altogether, it is a difficult question, and at present we can discover no perfectly practical method of removing it, for it arises from this, that in nineteen cases out of twenty in the County Courts, an Attorney is not employed until the last moment, because no fee is allowed to him for entering the plaint, nor for doing anything in the case before it comes into court. Let the committee that is now engaged in framing the scale of costs cure *this* defect, by giving reasonable costs to the Attorney for his trouble in conducting a suit, and requiring that his name should be entered with the plaint, and the difficulties now raised will be almost wholly removed.

ROCHESTER COUNTY COURT.

Whatever might have been the causes which led to the postponement of the judgment in the case of *Dorrett* v. *Patten*, on Wednesday sen'night, it is quite certain they were speedily removed, for on Tuesday last, Mr. Patten was dismissed from his office as Clerk of the Court, by an order of the Judge, confirmed by that of the Lord Chancellor. We do not profess to understand the niceties and punctilios of professional etiquette, but as the charge was a public one, the investigation public, and above all as the public interests were deeply concerned in the results, we cannot help thinking the judgment and the dismissal, to give them proper effect, should have been equally public. We are farthest from having any personal feelings whatever against Mr. Patten, and had he adopted the suggestion to "withdraw," which we understand was conveyed to him from a very high authority, it is possible we should have recorded the fact without comment; but Mr. Patten has thought proper to reject the advice of his friends, and has, apparently, set at defiance public opinion, with one of the clearest cases against him that was probably ever investigated in a court of justice. Mr. Patten clung to his office with a pertinacity that required the strongest measures to remove him from his hold. Had there been one redeeming clause in the case, one solitary symptom of not-guiltiness, we should have applauded the firmness of a man who, with a perfect consciousness of innocence, would assume a gallant bearing, and present a manly front to maligners and traducers. Such a procedure on the part of an innocent man would have been most becoming, but with his knowledge of the facts, could he for one moment think to hoodwink the public, or even his friends, by an outward manifestation, or even a declaration that he was not guilty. The extraordinary and sudden disappearance of the rough cashbooks, spoke trumpet-like for the guilt of the accused party, and that fact of itself was considered to be most damnatory evidence, even by Mr. Patten's personal friends. It may seem harsh to insinuate suspicion upon this part of the case—but let any one read the evidence and say if they can credit that the loss of those books was purely accidental? As Mr. Lewis most justly remarked, the very *gist* of the case depended upon their production; they would have clearly proved the complaint made, or they would have triumphantly rebutted the serious and *quasi* criminal charges brought against the defendant. To what motive, then, can this mysterious disappearance be attributed? Can there be two opinions upon the subject? If the entries in those books could have established Mr. Patten's innocence, would they not have been forthcoming? We confess again, that in every point of view, we think it would be desirable to have had the judgment pronounced in open court, that the public might have had the opportunity of hearing his Honour's opinion, not only upon the several points of the case, but upon the whole

question itself. The principal line of defence appeared to resolve itself into two points, one was that *all* the charges were not proved, and the other that the several errors, to speak mildly, in the fees, were made by Mr. Patten's clerks. With respect to the first, it may be readily accounted for by the absence of a solicitor who did not appear upon his subpœna, and also the non-production of the rough cash-books. And, with regard to the second, Mr. Patten must have been too well versed in law not to know that qui facit per alium facit per se. We have not forgotten, certainly, that another ground of justification was, the difficulty of understanding the alterations in the table of fees; but, giving that its full weight, the "damned spot" was too deeply engrained to be eradicated. Whether other, and what consequences may follow his dismissal we will not inquire upon the present occasion, but we shall most assuredly remember the neglectful and slovenly manner in which the accounts had been audited. All their erasures and all their omissions are still before us, mentally, in all their worse than slovenliness and inaccuracies, and we shall certainly revert to them at some future opportunity. In the meantime, how are the heavy costs incurred by the high bailiff in his compulsory prosecution of these proceedings to be defrayed? Had the judgment been pronounced on Wednesday, they would have been applied for in the usual way, and no doubt granted as a matter of course; but now, in what manner or from whom will they be recovered? Perhaps the next proceedings will enlighten us upon the subject, and until then we are content to remain silent upon the subject, unless circumstances should arise that will compel us to draw the public attention to the whole of these most extraordinary proceedings from the commencement of them to the present time; for we consider that they are not yet come to a conclusion. —*Rochester Journal.*

PROPOSED SCALE OF COSTS.

The following has been submitted to us by a firm of Attorneys of great experience in the country, as a fair scale to be adopted in the County Courts. We submit it for the approval of the Profession and the committee:—

On behalf of Plaintiff.

	Debt, 20*l.* or under.	Above 20*l.*
Letter before action	£0 2 0	£0 3 6
Instructions to sue	0 1 8	0 3 4
If defendant living out of district,—		
Instructions for application	0 1 8	0 3 4
Drawing and engrossing affidavit of defendant and other circumstances necessary to establish grounds for same and oath	0 5 0	0 7 6
Attending court to make application	0 5 0	0 6 8
Drawing præcipe for summons and particulars to annex, if under three folios	0 2 0	0 3 0
If above three, then per folio	0 0 3	0 0 4
Fair copies to file (according to number of defendants), each per folio	0 0 2	0 0 3
Attending to file same and bespeak summons	0 1 8	0 3 4
Examining witnesses and getting up case, one with another	1 1 0	2 2 0
Drawing a fair copy brief for counsel (when such employed), per sheet, attending him therewith and thereon	0 3 4	0 6 8
Præcipe for subpœna for witnesses	0 0 6	0 1 0
Attending to bespeak same	0 1 8	0 3 4
Notice to produce copy of service	0 2 6	0 5 0
Bill of costs and copy for taxation	0 2 0	0 4 0
Attending to ascertain if money paid but found not, and taking instructions for execution	0 1 8	0 3 4
Attending to issue same	0 1 8	0 3 4
Return of "nulla bona" being made, instructions for summons on judgment	0 1 8	0 3 4
Drawing præcipe for, and attending bespeaking same	0 3 4	0 6 8
New Trial.		
Instructions for application for new trial	0 3 4	0 6 8
Drawing notice to adverse party, copy, and service	0 3 0	0 5 0
Drawing and engrossing affidavit in support, at per folio, 1s.		
Attending court making application	0 10 0	0 15 0
On Interpleader Summonses.		
Drawing notice of claim for service on bailiff, and attending serving same	0 5 0	0 6 8
Drawing full particulars of claim to file, and attending filing same	0 10 6	0 15 0
Examining witnesses and getting up case	1 1 0	2 2 0
On behalf of Defendant.		
Instructions to defend	0 1 8	0 3 4
Drawing notice of special defence and fair copy	0 2 0	0 3 0
Attending filing same	0 1 8	0 3 4
Examining witnesses and getting up defence	1 1 0	2 2 0
Notice to produce copy and service	0 2 6	0 5 0
Præcipe for subpœna for witnesses	0 0 6	0 1 0
Attending issuing same	0 1 8	0 3 4
Usual charges for Brief, &c. as against Plaintiff.		
Judgment being given (or nonsuit) for defendant, drawing bill of costs and copy for taxation	0 2 0	0 4 0
Attending to issue execution for same	0 1 8	0 3 4

ASSISTANT CLERKS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Within the last few weeks you have given insertion to several letters from assistant clerks of County Courts, complaining of inadequate remuneration: pray give me a corner to shew your readers how the system acts as regards executions.

The town I act in is the second in the county, and I have just made up my books for the half-year ending 30th September, 1852. I find the following result:—Executions issued, twenty-nine; amount sought to be levied, 149*l.* 0s. 1d.; Court fees, 1*l.* 2s. 10d. divisible as follows:—

	£. s. d.
High bailiff, 1-20	0 1 2
Judge, $\frac{1}{2}$ × 19-20	0 10 10
Chief clerk, $\frac{1}{2}$ 19-20	0 5 5
Assistant clerk, the like	0 5 5
	£1 2 10

The assistant clerk, who has to make all searches, to prepare the warrants, and to keep the execution books, being entitled to the sum of 5s. 5d. for his six months' work. Comment is unnecessary, except to observe that no number of processes issued could compensate the assistant clerk at the present rate of allowances, consequently this grievance applies to all County Courts.

I am, Sir, yours, &c.
ANOTHER ASSISTANT CLERK.

October 25, 1852.

THE LAWYER.

COMFORT IN STORE.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Next Monday may justly be termed the "opening day" of the legal profession (after a very dreary long vacation), with a new babe to be nursed and nurtured, styled the "Common Law Procedure Act." Several legal authors have emptied the brains, and poured over works of the bygone, studded with their own suggestions as to the working thereof, and are apt to come to the conclusion that the infant that was rapidly growing to manhood (the County Court), will be so stunted in his growth, and thereby become, as it were, deformed, that instead of being the "pet" as hitherto, will be quite forsaken, for it is evident that the proceedings, under the new Act of Parliament will, for a debt above 5*l.* be much more expeditious and less expensive, added to which, it will confer more benefit upon the attorneys generally than the County Courts, as at present constituted, for it will grant them some more remuneration for their trouble, and will cause such complaints as appeared in your last week's number, to cease, of bad pay for fair work.

I am, Sir, yours, &c.
October 19, 1852. LUDIV.

Queries.

ATTORNEYS IN AUSTRALIA.

WILL any of your readers kindly inform me whether or not it is needful, in order to practise as an attorney and solicitor, or as a conveyancer only, in the Australian colonies, that the practitioner should have duly served under articles and been admitted in this country; and if not, whether a person would be eligible to start in such a profession without any local examination, or otherwise, and be received by his professional brethren accordingly. Also, whether any, and what (if any), local impost is levied upon him there, similar to the certificate duty here?

A CONVEYANCER'S CLERK.

Bristol, 25th October, 1852.

SIGNED BILLS OF COSTS.

CAN any of your subscribers inform me what is the practice as regards serving signed bills of costs upon the executors of a deceased client to whom the account had been delivered previously to his death?

Note 1, p. 206, "Pulling on the Law of Attorneys and Solicitors," states that "it does not appear clear whether a delivery to one (provisional committee-man) will suffice to charge any of the others." —Nothing, however, is said about executors.

Where there are several executors, it takes up much valuable time to make a copy of a long bill of costs for each.

It appears to me that much trouble and time would be saved if all attorneys were to sign all their accounts or bills previously to delivery.

A PRACTITIONER.

LAW OF EVIDENCE AMENDMENT ACT.

WOULD a copy of a will, certified by the Registrar or Deputy Registrar of the Ecclesiastical Court where such will is deposited, be admitted in evidence in a disputed title to land, without the necessity for the production of the original will? INQUIRER.

WILL any of your correspondents kindly inform me the name, &c. of any gentleman who can translate the "*Anglicanum Monasticum*," of which there are but three copies, I believe, extant?

Peterborough, Oct. 19, 1852. T. S.

ATTORNEYS TO BE ADMITTED.—As many as 183 persons have given notice of their intention to apply to be admitted attorneys of the Court of Queen's Bench, in the ensuing Michaelmas Term, commencing on Tuesday next.

THE EXPENSE OF PUBLIC JUSTICE.—It is shewn, by a Parliamentary paper issued within the last few days, that, in the year ended the 5th of January last, the expense to the country for public justice was 2,335,956*l.*; of which 716,469*l.* was on account of courts of justice, 849,037*l.* for police and criminal prosecutions, and 779,450*l.* for correction.

THE MERCANTILE LAWYER.

Summary.

THE last number was rich in *Bankruptcy* Cases. *Ex parte Orford*, 20 Law T. Rep. 36, arose upon the construction of the Friendly Societies Act. The rules of such a society provided for the appointment of a treasurer, in whose hands the money was to be placed. The moneys were paid to a banker, who was not appointed treasurer. The 167th section of the Bankrupt Act requires moneys held by officers of Friendly Societies becoming bankrupt to be paid in full. In this case it was held that the bankers were not "employed" within the meaning of the Act, and, therefore, that payment in full could not be required.

In *Ex parte Bean*, 20 Law T. Rep. 36, it was held that a creditor may present a petition to annul an adjudication to the commissioner, and the appeal from that decision will be in due time if presented within twenty-one days from the time it was delivered, although much more time may have elapsed since the adjudication. Also, that it was not a sufficient ground for refusing to annul an adjudication, supported by legal requisites, that the order to annul will leave unimpeached an assignment of all the bankrupt's effects to the creditor applying for the order.

We have taken from the Scotch Reports, in consequence of its intrinsic interest, and the difference with the English Courts upon the point, a case that decides that a master will be held liable in damages for injuries done in the course of his employment to a workman in his service by a fellow-workman, also in his service. (*Dixon* v. *Ranken*, 20 Law T. Rep. 44.)

MANCHESTER BANKRUPTCY COURT.

WE regret to learn that Dr. Mackenzie, one of the official assignees in Mr. Commissioner Skirrow's court, has found himself unable to resume his official duties since the vacation, which came to a close three weeks ago, and that he finds it prudent to take up his residence for the present in Paris or Boulogne, in consequence of pecuniary difficulties, to meet which his means are inadequate.—On Thursday Mr. *Sutton*, solicitor, made an application in respect to the bankruptcy of Thomas Luke, of New Accrington, grocer, a fiat which is in Dr. Mackenzie's hands. Mr. Commissioner SKIRROW remarked: But the official assignee is not here, and I cannot go on with it in his absence. The official assignee is one of the officers of the court, whose duty it is to test all the accounts, and I cannot go on without him, to know whether the accounts are correct or not. I am sure the trade assignees will do their duty; but it is my duty, if necessary, to apply to the official assignee. — Mr. *Sutton* made a remark which seemed to intimate that Mr. Lee, the other official assignee, had rendered some valuable assistance to the assignees.—The COMMISSIONER: But has he authority to act for Dr. Mackenzie?—Mr. *Lee:* I shall be happy to do anything to facilitate the business of the court.—Mr. *Sutton* thought the presence of the official assignee was not important at the moment. The assignees had thought it desirable to employ an accountant in consequence of the state of the books.—The COMMISSIONER: Is not that a reason why I should require the assistance of the official assignee more on that account?—Mr. *Sutton:* The accountant is here.—The COMMISSIONER: The accountant is acting for the bankrupt, not for the assignees, for I made no order.—Mr. *Sutton* explained that his application had reference to certain property which the bankrupt and one of his relations had dealt with.—The COMMISSIONER: But how is it possible for me to go on without the official assignee?—Mr. *Sutton:* The official assignee has not attended personally; Mr. Bradley has attended to what is necessary.—The COMMISSIONER: Why has the official assignee not attended? If an officer of the Court is appointed, it

is his duty to attend to the business of the Court.—Mr. *Sutton* said the accountant was necessary to perfect the books.—The COMMISSIONER: Then I must go into the account myself.—Mr. *Sutton* said he desired to ask the Commissioner to adjourn the case *sine die*.—The COMMISSIONER said he was most awkwardly placed without the assistance of the official assignee. The Court had entire control over all its officers, and he could deal with them exactly to the best of his judgment, and if they were dissatisfied with what he did, they had a right to appeal. He wished that to be distinctly understood; and that being so, the official assignee not being present, he might do that, unless the matter was explained, that might very much interfere with his appearing again; but as he had never complained of any of his officers unless they had imprudently complained of him, and he had felt bound, therefore, to state the circumstances; but he had thought it more prudent to wait sixteen days, after which he was compelled to represent the matter elsewhere, and he was now waiting the decision of the highest authority on the subject.—This ended the conversation on the subject. —*Manchester Courier.*

DISMISSAL OF DR. SHELTON MACKENZIE, THE OFFICIAL ASSIGNEE.

As we expected, Dr. Mackenzie has been dismissed from his post of official assignee in Mr. Commissioner Skirrow's court, the learned Commissioner having received the Lord Chancellor's order to that effect on Monday morning, we believe. This having become known, a good deal of anxiety has been manifested by the solicitors practising in the court, and having fiats in the hands of Dr. Mackenzie, to know what will be done in reference to them, the general wish appearing to be that they should pass without more delay into the hands of Mr. Lee, the other official assignee, and be carried on by him until wound up. The intentions of the commissioner, in reference to the matter, were tested by one or two solicitors on Tuesday morning.

Mr. *Worthington*, of the firm of Sale, Worthington, and Shipman, applied to Mr. Commissioner Skirrow, in the case of Samuel Padgett. He stated that he found from an account that there was upwards of 600*l.* in the hands of the accountant in bankruptcy, constituting the bulk of the estate, and leaving little to be got in except book debts. The creditors' assignee, Mr. Gray, therefore thought that his Honour should appoint an early audit-day.—The COMMISSIONER: It will be impossible for me to appoint an audit without the official assignee, who, as you are no doubt aware, is not here; and I will not transfer a single proceeding without the order of the Lord Chancellor. It is very true I have the power, but I shall not exercise it, excepting by instruction from the Lord Chancellor; I must know what he may desire. Dr. Mackenzie has ceased to be official assignee of this Court—he is no longer so. I say no more than that. Of course I could not act without the Lord Chancellor's instructions. But it shews exactly that my Lord Chancellor is anxious and ready to carry out the bankruptcy law in all its integrity.—Mr. *Worthington*: If I remember aright, is there not a clause in the Bankruptcy Consolidation Act, directing your Honour to act, in case an official dies or is removed?—The COMMISSIONER: There may be, but I shall not act on it, if I can help it, without direction from the Lord Chancellor. I will immediately write to the Lord Chancellor, and request the Lord Chancellor's assistance in the matter.—Mr. *T. B. Bunting* said he was going to apply in another and similar case.—The COMMISSIONER said he would look at the Act; but if he had the power, he would not exercise it, under the circumstances.—Mr. *Worthington*: It is the 42nd clause, your Honour,—"That on the death or removal of any official assignee who shall have been appointed to act in any bankruptcy, the Court shall have power to appoint another official assignee to act in such bankruptcy." The COMMISSIONER: I admit that, but I will not exercise the power without I have the advantage of knowing what my Lord Chancellor's views are on the subject; and by so doing I do not think I shall be injuring the interests of the creditors.—Mr. *Bunting*: I desire to point out to your Honour the propriety of ascertaining the Lord Chancellor's decision as soon as possible.—The COMMISSIONER said, Without suspecting any one, it is desirable, for the credit of all parties, to see that the accounts are correct, because, however vigilant the Commissioner may be, the official assignee may have recovered sums of money unknown to the trade assignees, not amounting to the sum of 500*l.* and not carry them to the credit of the estates; it has not occurred in this court, that I know of, but it has in other courts—and how are you to find that out? Very easily, you will say, because that will appear as a debt in the balance-sheet; but that does not always follow, because many have been the cases in which sums have been recovered to bankrupt estates, which have not appeared at all in the balance-sheet; and, therefore, there must be inquiry made as far as it can. With regard to the bygone estates, I have adopted a practice for which I am indebted to Mr. Commissioner Fane. By the rules, the official assignee is bound to send two days before the audit a duplicate account of his receipts and payments, so as to afford the trade assignees an opportunity of investigating them before the audit; but I carry out that order further, and require the gentlemen to sign the paper as an evidence that they have seen and looked it over. You may say that has taken from the Court considerable responsibility; and so it has; but it has given the trade assignees a full opportunity of looking into the accounts.

COURT PAPERS.

NEW ORDERS IN CHANCERY.

The subjoined regulations in respect to the abolition of the office of the Master in Ordinary, and the method of conducting proceedings before the judge in chambers, were issued on Monday:—

ORDER OF COURT,
Saturday, the 16th day of October, 1852.

The Right Honourable Edward Burtonshaw, Lord St. Leonards, Lord High Chancellor of Great Britain, by and with the advice and assistance of the Right Honourable Sir John Romilly, Master of the Rolls, the Right Honourable the Vice-Chancellor Sir George James Turner, and the Honourable the Vice-Chancellor Sir Richard Torin Kindersley, doth hereby, in pursuance of an Act of Parliament passed in the fifteenth and sixteenth years of her present Majesty, intituled "An Act to abolish the office of Master in Ordinary of the High Court of Chancery, and to make provision for the more speedy and efficient despatch of business in the said Court," and in pursuance and execution of all other powers enabling him in that behalf, order and direct—

That all and every the orders, rules, and directions hereinafter set forth, shall henceforth be, and for all purposes be deemed and taken to be, general orders and rules of the High Court of Chancery, viz.:—

SUMMONS.

1. The summons for the purpose of proceedings before the Master of the Rolls and Vice-Chancellors respectively at chambers, whether originating in chambers or not, may be in a form similar to the form set forth in schedule (A) to these orders, with such variations as the circumstances of the case may require.

2. The summons to be issued under section 30 of the Act of 15 & 16 Vict. c. 80, may be in a form similar to the form set forth in schedule (B) to these orders, with such variations as the circumstances of the case may require.

3. A seal is forthwith to be provided for the chambers of the Master of the Rolls and each of the Vice-Chancellors, and summonses are to be prepared by the parties, and sealed by one of the clerks, at the chambers of the judge from whose chambers they are issued, and a copy of such summons is to be left at the judge's chambers by the party obtaining such summons.

4. In cases of applications under 15 & 16 Vict. c. 86, s. 45, applications for guardianship and maintenance of infants, originating in chambers, and of all other applications originating in chambers, a duplicate of the summons is to be filed in the Record and Writ-office, and in cases where service is required, the copies served are to be stamped in the manner provided by section 46 of the Act of 15 & 16 Vict. c. 86.

5. In cases where proceedings originate in chambers, the original summons is to be served seven clear days before the return thereof. All other summonses, not being summonses referred to in order 2, are to be served two clear days before the return thereof.

6. In cases where proceedings originate in chambers, and where from any cause the summons may not have been served upon any party seven clear days before the return thereof, an endorsement may be made upon the summons, and upon a copy thereof stamped for service, appointing a new time for the parties not before served to attend at the chambers of the judge, and such endorsements are to be sealed at the judge's chambers, and the service of the copy so endorsed and sealed, is to have the same force and effect as the service of an original summons; and where any party has been served before such endorsement, the hearing thereof may upon the return of the summons be adjourned to the new time so appointed.

APPEARANCES.

7. In all cases where proceedings originate in chambers, the parties served are before they are heard in chambers to enter appearances in the Record and Writ-office, and give notice thereof.

ORDERS AND DIRECTIONS, APPLICABLE TO ALL CASES, WHETHER ORIGINATING IN CHAMBERS OR NOT.

8. In all cases in which by any order any accounts are directed to be taken, or inquiries to be made, each direction shall be numbered, so that as far as may be each distinct account and inquiry may be designated by a number, and such order may be in the form set forth in schedule (C) to these orders, with such variations as the circumstances of the case may require.

9. Where an order is made directing an account of debts, claims, or liabilities, or an inquiry for next of kin or other unascertained persons, unless otherwise ordered, all persons who do not come in and prove their claims within the time which may be fixed for that purpose by advertisement, are to be excluded from the benefit of the order.

10. Where an order is made directing an account of the debts of a deceased person, unless otherwise ordered, interest is to be computed on such debts as to such of them as carry interest after the rate they respectively carry, and as to all others after the rate of four per cent. per annum, from the date of the order.

11. Where an order is made directing an account of legacies, unless otherwise ordered, interest is to be computed on such legacies after the rate of four per cent. per annum, from the end of one year after the deceased's death, unless any other time of payment or rate of interest is directed by the will, and in that case according to the will.

12. Where an order is made directing any property to be sold, unless otherwise ordered, the same is to be sold with the approbation of the judge to whose court the cause or matter is attached, to the best purchaser that can be got for the same, to be allowed by such judge, and all proper parties are to join therein as such judge shall direct.

13. Where an order is made directing a receiver to be appointed, unless otherwise ordered, the person to be appointed is first to give security, to be allowed by the judge to whose court the cause is attached, and taken before an officer or agent of the court in the country, if there shall be occasion, duly to account for what he shall receive on account of the rents and profits, for the receipt of which he is to be appointed, at such periods as such judge shall appoint, and to account for and pay the same as the Court shall direct; or, as the case may be, to be answerable for what he shall receive in respect of the personal estate, for the getting in and collection of which he is to be appointed, and to account for and pay the same as the Court shall direct; and the person so to be appointed is to be allowed a proper salary for his care and pains in receiving such rents and profits, or, as the case may be, to have an allowance made to him in respect of his collecting such personal estate.

14. The general orders of the Court with respect to receivers shall, *mutatis mutandis*, apply to receivers appointed under orders made after these rules and regulations come into operation.

15. Recognizances which have been heretofore given to the Master of the Rolls and the Senior Master in Ordinary, are hereafter to be given to the Master of the Rolls and the Senior Vice-Chancellor for the time being.

PROCEEDINGS IN CHAMBERS.

16. In all cases where matters, in respect of which summonses have been issued, are not disposed of upon the return of the summons, the parties are to attend from time to time without further summons, at such time or times as may be appointed for the consideration or further consideration of the matter.

17. In all cases of proceedings in chambers under any order, the solicitor prosecuting the same shall leave a copy of such order at the judge's chambers, and shall certify the same to be a true copy of the order as passed and entered.

18. Upon a copy of the order being left, a summons is to be issued to proceed with the accounts or inquiries directed, and upon the return of such summons, the judge is to be satisfied by proper evidence that all necessary parties have been served with notice of the order, and thereupon directions are to be given as to the manner in which each of the accounts and inquiries is to be prosecuted, the evidence to be adduced in support thereof, the parties who are to attend on the several accounts and inquiries, and the time within which each proceeding is to be taken; and a day or days may be appointed for the further attendance of the parties, and all such directions may afterwards be varied or added to as may be found necessary.

19. If upon the hearing of the summons, it shall appear to the judge that by reason of absence, or for any other sufficient cause, the service of notice of the order upon any party cannot be made, or ought to be dispensed with, the judge may, if he shall think fit, wholly dispense with such service, or may, at his discretion, order any substituted service, or notice by advertisement or otherwise, in lieu of such service.

20. If, in the prosecution of the order, it shall appear to the judge that it would be expedient that further accounts should be taken or further inquiries made, he may order the same to be taken or made accordingly, or, if desired by any party, may direct the same to be considered in open court.

21. At the time any summons or appointment is obtained, an entry thereof is to be made in a book, called "The Summons and Appointment Book," stating the date on which the summons is issued or appointment made, the name of the cause or matter, and by what party, and, shortly, for what purpose such summons or appointment is obtained, and at what time returnable.

22. Lists of matters appointed for each day are to be made out and affixed outside the doors of the chambers of the respective judges, and, subject to any special direction, such matters are to be heard in the order in which they appear in such list.

23. The course of proceeding in chambers is ordinarily to be the same as the course of proceeding in court upon motions. No states of facts, charges, or discharges are to be brought in. But when directed, copies, abstracts, or extracts of or from accounts, deeds, or other documents, and pedigrees and concise statements, are to be supplied for the use of the judge and his chief clerk, and, where so directed, copies are to be handed over to the other parties. But no copies to be made of deeds or documents where the originals can be brought in, without special direction.

24. The party intending to use any affidavit on any proceeding in chambers is to give notice to the other parties concerned of his intention in that behalf.

25. The practice of the court with respect to evidence before the hearing, when applied to evidence to be taken before an examiner in any case subsequently to the hearing, is to be subject to any special directions which may be given in any particular case.

26. Where a chief clerk is directed by the judge to examine any witness, the practice and mode of proceeding is to be the same as in the case of the examination of witnesses before the examiner, subject to any special directions which may be given in any particular case.

27. The original examinations and depositions of parties and witnesses taken by or before the chief clerk, authenticated by his signature, are to be transmitted by him to the Record and Writ Office, to be there filed, and any party to the suit or proceeding may have a copy thereof, or of any part or portion thereof, upon payment of the proper fee.

28. All orders made in chambers, and drawn up by the chief clerks or registrars, are to be entered in the same manner and in the same office as orders made in open court are entered.

29. Where any account is directed to be taken, the accounting party is, unless the judge shall otherwise direct, to make out his account and verify the same by affidavit. The items on each side of the account are to be numbered consecutively, and the account is to be referred to by the affidavit as an exhibit, and to be left at the judge's chambers.

30. Any party seeking to charge any accounting party beyond what he has by his account admitted to have received, is to give notice thereof to the accounting party, stating, as far as he is able, the amount sought to be charged, and the particulars thereof, in a short and succinct manner.

31. Upon the receiver's account being left in the judge's chambers to be passed, a summons to proceed thereon is to be taken out; and the account, when passed, is to be entered by the solicitor of the receiver in books, in the same manner as heretofore; but the affidavit verifying the account so passed is to refer to it as an exhibit, and not to be annexed to it.

32. When a receivership has been completed, the book containing the accounts is to be deposited in the Record and Writ Office.

33. Where advertisements are required for any purpose, a peremptory and only one is to be issued, unless for any special reason it may be thought necessary to issue a second advertisement or further advertisements; and any advertisement may be repeated as many times and in such papers as may be directed.

34. The advertisements are to be prepared by the solicitor, and submitted to the chief clerk for approval, and, when approved, are to be signed by him, and such signature is to be sufficient authority to the printer of the *Gazette* to insert same.

35. Advertisements for creditors or other claimants are to fix a time for the creditors or claimants to come in and prove their claims, and to appoint a day for the hearing and adjudicating thereon, and may be in a form similar to the form set forth in Schedule D to these orders, with such variations as the circumstances of the case may require.

36. Claimants coming in pursuant to advertisement are to enter their claims at the chambers of the judge in the "summons and appointment book," for the day appointed for hearing by the advertisement, and are to give notice thereof, and of the affidavits filed, to the solicitors in the cause, within the time specified in the advertisement for bringing in claims.

37. The claimants filing affidavits are not to be required to take office copies; but the party prosecuting the cause or matter is to take office copies, and produce the same at the hearing, unless otherwise ordered in chambers.

38. If, on the day appointed for hearing the claims there are any not then disposed of, an adjournment day for hearing such claims is to be fixed; and where further evidence is to be adduced, a time may be named within which the evidence on both sides is to be closed, and directions may be given as to the mode in which such evidence is to be adduced.

39. Any claimant who has not before entered his claim may be heard on such adjournment day, provided he enters his claim and files his affidavit four clear days prior to such day, and no certificate of debts or claims shall in the meantime have been made.

40. Creditors claiming debts not exceeding 5*l.* need not attend on the day of hearing, unless required to do so by notice from some party.

41. After the time fixed by the advertisement, no claims are to be received except as before provided, in case of an adjournment, unless the judge at chambers shall think fit to give special leave, upon application made by summons, and then upon such terms and conditions as to costs and otherwise as the judge shall think fit.

42. A list of all claims allowed shall, when required by the judge, be made out and left in the judge's chambers by the party prosecuting the order.

43. In cases where the Court directs any computation of interest, or the apportionment of any fund, which is to be acted upon by the accountant-general or other person without any further order from the Court, the order to be made by the Court may direct such computation or apportionment to be made by one of the chief clerks attached to the court of such judge, and may direct the certificate thereof, signed by such chief clerk, to be acted upon accordingly, without the same being signed and adopted by the judge.

44. Where an account has been directed, the certificate or report is to state the result of such account, and not to set the same out by way of schedule, but is to refer to the account verified by the affidavit filed, and to specify by the numbers attached to the items in the account, which if any of such items have been disallowed or varied, and to state what additions, if any, have been made by way of surcharge. In any case in which the account verified by the affidavit has been so altered that it is necessary to have a fair transcript of the account as altered, such transcript may be required to be made by the solicitor prosecuting the order, and is then to be referred to by the certificate or report. The accounts and the transcripts, if any, referred to by certificates or reports, are to be filed therewith, but no copies thereof are to be required to be taken by any party.

45. The certificates or reports to be made by the chief clerk to the judge are not, except the special circumstances of the case shall render it necessary, to set out the order or any documents or evidence or reasons, but are to refer to the order, documents, and evidence, or particular paragraphs thereof, so that it may appear upon what the result stated in any such certificate or report is founded.

46. The certificate of the chief clerk to the judge may be in a form similar to the form set forth in schedule (E) to these orders, with such variations as the circumstances of the case may require, and, when prepared and settled, it is to be transcribed by the solicitor prosecuting the proceedings in such form and within such time as the chief clerk shall require, and is then to be signed by the chief clerk at an adjournment to be made for that purpose. But where, from the nature of the case, the certificate can be drawn and copied in chambers whilst the parties are present before the chief clerk, the same shall be then completed and signed by him without any adjournment.

47. The time within which any party is to be at liberty to take the opinion of the judge upon any proceeding which shall have been concluded, but as to which the certificate or report of a chief clerk shall not have been signed and adopted by the judge, is to be four clear days after the certificate or report shall have been signed by the chief clerk.

48. Any party desiring to take the opinion of the judge, as mentioned in the last preceding rule, is within four clear days after the certificate or report shall have been signed by the chief clerk, to obtain a summons for such purpose.

49. At the expiration of four clear days after the certificate or report shall have been signed by the chief clerk, if no party has in the mean time obtained a summons to take the opinion of the judge thereon, the chief clerk is to submit the certificate or report to the judge for his approval, and the judge may thereupon, if he approve the same, sign such certificate or report in testimony of his adoption thereof as follows: —"Approved this day of "

50. The certificate or report, when signed by the judge, with the accounts, if any, to be filed therewith, is to be transmitted by the chief clerk to the Report-office, to be there filed.

51. The time within which an application may be made by summons or motion to discharge or vary any certificate or report which has been signed and adopted by the judge sitting in chambers, is to be eight clear days after the filing of such certificate or report.

52. Certificates of the chief clerk made as mentioned in rule 53, and not required to be signed and adopted by the judge, are to be transmitted and filed in the same manner as those signed and adopted by the judge.

53. The Orders 47, 48, 49, and 51, are not to apply to certificates on passing receivers' accounts. Such certificates may be approved and signed by the judge without delay, and upon being so signed are to be filed and forthwith acted upon.

54. A register is to be kept of all proceedings in the judge's chambers, with proper dates, so that all the proceedings in each cause or matter may appear consecutively and in chronological order, with a short statement of the questions or points decided or ruled at any hearing.

55. Parties attending any proceeding in chambers, without having obtained the previous leave of the judge to attend the same, are not to be allowed any costs of such attendance, unless by special order of the Court.

56. The costs of counsel attending the judge in chambers are not in any case to be allowed, unless the judge certifies it to be a proper case for counsel to attend.

DEPOSIT OF DEEDS.

57. Where any deeds or other documents are ordered to be left or deposited, the same are to be left or deposited in the Record and Writ Office, and are to be subject to such directions as may be given for the production thereof.

POWER OF JUDGE.

58. Powers and authorities given to the Masters in Ordinary of the Court of Chancery by any general order or orders of the Court, may be exercised by the judge sitting in chambers.

59. The power of the Court and of the judge sitting in chambers to enlarge or abridge the time for doing any act or taking any proceeding, and to give any special direction as to the course of proceeding in any cause or matter, is unaffected by these orders.

COMMENCEMENT OF ORDERS.

60. These orders shall take effect and come into operation from and after the 1st day of Michaelmas Term, 1852.

INTERPRETATION.

61. In these orders the following words have the several meanings hereby assigned to them, over and above their several ordinary meanings, unless there be something in the subjects or context repugnant to such construction, viz.:—

1. Words importing the singular number include the plural number, and words importing the plural number include the singular number.

2. Words importing the masculine gender include females.

3. The word "party" includes a body politic or corporate.

4. The word "affidavit" includes affirmation.

5. The word "order" includes decree and decretal order.

6. The word "receiver" includes consignee and manager.

ST. LEONARDS, C.
JOHN ROMILLY, M.R.
G. J. TURNER, V.C.
RICHD. T. KINDERSLEY, V.C.

SCHEDULE (A).

FORM OF SUMMONS.

In Chancery,
In the matter of John Thomas, an Infant,
or Joseph Wilson
against
William Jackson.

Let all parties concerned attend at my chambers [in the Rolls-yard, Chancery-lane, Middlesex], *or* at No. —, —— square, Lincoln's-inn, Middlesex], on the day of at of the clock in the noon, on the hearing of an application on the part of [*here state on whose behalf the application is made, and the precise object of the application*].

Dated this day of 1852.

JOHN ROMILLY, Master of the Rolls, *or*
GEORGE JAMES TURNER, Vice-Chancellor, *or*,
RICHARD T. KINDERSLEY, Vice-Chancellor, *or*,
JOHN STUART, Vice-Chancellor.

This summons was taken out by A. and B. of Lincoln's-inn, in the county of Middlesex, solicitors for

To

The following note to be added to the original summons where proceedings originate in chambers; and when the time is altered by endorsement, the endorsement to be referred to as below.

Note.—If you do not attend, either in person or by your solicitor, at the time and place above mentioned [*or, at the place above mentioned, at the time mentioned in the endorsement hereon*], such order

will be made, and proceedings taken, as the judge may think just and expedient.

N.B.—The sum of summons to be obtained under section 45 of the Act 15 & 16 Vict. c. 86, is prescribed by rule xlii. of the Orders of 7 Aug. 1852.

SCHEDULE (B).

FORM OF SUMMONS BY CHIEF CLERK.

In Chancery.

In the matter of the estate of John Thomas, late of in the county of deceased.

or Joseph Wilson
against
William Jackson.

The defendant, William Jackson [*or*, A. B. of, &c.] is hereby summoned to attend at the chambers of the Master of the Rolls [*or*, Vice-Chancellor], in the Rolls-yard, Chancery-lane [*or*, No. ——, ——— square, Lincoln's-inn, Middlesex], on the day of at of the clock in the noon, to be examined [*or*, to be examined as a witness on the part of the for the purpose of the proceedings directed by the Master of the Rolls [*or*, the said Vice-Chancellor] to be taken before me.

Dated this day of 1852.

A. B.
Chief Clerk.

This summons was taken out by A. and B. of Lincoln's-inn, in the county of Middlesex, solicitors for

SCHEDULE (C).

FORM OF ORDER.

This Court doth order, that the following accounts and inquiries to be taken and made; that is to say,

1. An account of the personal estate not specifically bequeathed, of A. B. deceased, the testator in the pleadings named, come to the hands of, &c.

2. An account of the said testator's debts.

3. An account of the said testator's funeral expenses.

4. An account of the said testator's legacies.

5. An inquiry what parts (if any) of the said testator's personal estate are outstanding or undisposed of.

And it is ordered that the said testator's personal estate not specifically bequeathed, be applied in payment of his debts and funeral expenses in a course of administration, and then in payment of his legacies.

And it is ordered that the following further accounts and inquiries be taken and made; that is to say,—

6. An inquiry what real estate the said testator was seised of or entitled to at the date of his will, and at the time of his death.

7. An inquiry what incumbrances affect the said testator's real estate.

8. An account of the rents and profits of the said testator's real estate received by, &c.

9. And it is ordered that the said testator's real estate be sold.

And it is ordered that the further consideration of this cause be adjourned, and any of the parties are to be at liberty to apply as they may be advised.

SCHEDULE (D).

FORM OF ADVERTISEMENT.

Pursuant to a decree or order of the High Court of Chancery, made in a cause
against
the creditors of [*or persons claiming debts, or liabilities affecting the estate of*, or *the persons claiming to be next of kin to*, or *the heir of*, as the case may be], late of in the county of who died in or about the month of are by their solicitors, on or before the day of to come in and prove their debts or claims at the chambers of the Master of the Rolls, in the Rolls-yard, Chancery-lane [*or*, of the Vice-Chancellor No. square, Lincoln's-inn], Middlesex, or in default thereof they will be peremptorily excluded from the benefit of the said decree [*or* order].

Monday, the day of , at o'clock in the noon, at the said chambers, is appointed for hearing and adjudicating upon the claims.

Dated this day of , 1852.

A. B., Chief Clerk.

SCHEDULE (E).

FORM OF CERTIFICATE OF CHIEF CLERK.

In the matter of , [*or*, Between]. [*State title.*] In pursuance of the directions given to me by the Master of the Rolls [*or*, the Vice-Chancellor], I hereby certify that the result of the accounts and inquiries which have been taken and made, in pursuance of the order in this cause, dated the day of is as follows:—

1. The defendants , the executors of , the testator, have received personal estate to the amount of £ , and they have paid, or are entitled to be allowed on account thereof, sums to the amount of £ leaving a balance due from [*or* to them of £ on that account.

The particulars of the above receipts and payments appear in the account marked , verified by the affidavit of , filed on the day of , and which account is to be filed with the certificate, except that in addition to the sums appearing on such account to have been received, the said defendants are charged with the following sums [*state the same here*, or *in a schedule*], and except that I have disallowed the items of disbursement in the said account numbered and [*Or, in cases where a transcript has been made.*]

The defendants, , have brought in an account verified by the affidavit of , filed on the day of , and which account is marked , and is to be filed with this certificate. The account has been altered, and the account marked , and which is also to be filed with this certificate, is a transcript of the account as altered and passed.

2. The debts of the testator which have been allowed are set forth in the schedule hereto, and with the interest thereon and costs mentioned in the schedule, are due to the persons therein named, and amount altogether to £ .

3. The funeral expenses of the testator amount to the sum of £ , which I have allowed the said executors in the said account of personal estate.

4. The legacies given by the testator are set forth in the schedule hereto, and with the interest therein mentioned remain due to the persons therein named, and amount altogether to £ .

5. The outstanding personal estate of the testator consists of the particulars set forth in the schedule hereto.

6. The real estate to which the testator was entitled consists of the particulars set forth in the schedule hereto.

7. The incumbrances affecting the said testator's real estate are specified in the schedule hereto.

8. The defendants have received rents and profits of the testator's real estate, &c. [*in a form similar to that provided with respect to the personal estate*].

9. The real estates of the testator directed to be sold have been sold, and the purchase-money, amounting altogether to £ , have been paid into court.

N.B.—The above numbers are to correspond with the numbers in the decree.

After each statement the evidence produced is to be stated as follows:—

The evidence produced on this account [*or* inquiry] consists of the probate of the testator's will, the affidavit of A. B. filed , and paragraph No. of the affidavit of C. D. filed .

ST. LEONARD'S, C.
JOHN ROMILLY, M.R.
J. G. TURNER, V.C.
RICHD. T. KINDERSLEY, V.C.

Orders regulating the fees and allowances to solicitors, in respect of the matters to which these orders relate, and regulating the fees to be payable by suitors of the court to the officers thereof, in respect of the business to be conducted before the Master of the Rolls, and the Vice-Chancellors, at chambers, and their respective chief clerks, will be issued before the first day of Michaelmas Term.

HOUSE OF LORDS.—NOTICE.—After the meeting of Parliament, the Lord Chancellor will sit in the House of Lords, on appeals, on Mondays, Tuesdays, Thursdays, and Fridays.

COMMON LAW CAUSE LIST.

Court of Queen's Bench.

SPECIAL CASES AND DEMURRERS.
Michaelmas Term, 1852.

Bryan, clerk, *v.* Clay, exor. &c. Demurrer
Kipling *v.* Ingram. Special case
Walker *v.* Underhill. Demurrer
Harwar and Others *v.* Hornidge. Ditto
Sibby and Another *v.* Larpent and Another. Ditto
Hennicker *v.* Hennicker. Ditto
Castelli *v.* Boddington the younger. Ditto
Kernott *v.* Pittis. Ditto
Kernot *v.* Catlin. Ditto
Bolckow and Another *v.* The Herne Bay Pier Company. Demurrer
The Mayor, &c. of Berwick-on-Tweed *v.* Oswald. Ditto
Same *v.* Renton. Ditto
Same *v.* Dobie and Another, exors. &c. Ditto
Tallis *v.* Tallis. Ditto
Lowndes *v.* Earl of Stamford and Warrington. Ditto
Evans *v.* Pattison. Ditto

NEW TRIAL PAPER.

Standing for the Judgment of the Court.

Middlesex.—Mr. Justice Coleridge. Lord Canning *v.* Roper.

Trinity Term.

London.—Lord Campbell. Cobbett (a pauper) *v.* Hudson.
Middlesex.—Lord Campbell. Nind *v.* Digby.
Tried during Term.
Middlesex.—Mr. Justice Wightman. Cook *v.* Gilland.

APPEAL FROM COUNTY COURTS.

Great Northern Railway Company *v.* Rudgard. From the County Court of Lincolnshire, at Lincoln.
Pauling *v.* Pontifex and others. From the County Court of Middlesex, Bow district.
Wildes *v.* Morris. From the County Court of Kent, at Maidstone.
Fearnley *v.* Great Northern Railway Company. From the County Court of Yorkshire, at Doncaster.

Court of Common Bench.

DEMURRER PAPER.
Monday Nov. 8.

The British Empire Mutual Life Assurance Company *v.* Browne.

REMANET PAPER.

Enlarged Rules.

Enlarged generally.—*Re* Sharp, Clark, and others *v.* of Horbury. In prohibition.
Dalby *v.* The India and London Life Assurance Company.

New Trial of Michaelmas Term, 1848.

Surrey—Hamilton *v.* Cochrane. Standing over for arrangement.

New Trial of Trinity Term last.

Middlesex—Leroux *v.* Brown.
" Same *v.* same.

PROCEEDINGS OF LAW SOCIETIES.

MEETING OF SOLICITORS AT DERBY.

ON Wednesday se'nnight, a large and influential meeting of solicitors was held in the Town Hall, in Derby, at which several members of the Metropolitan and Provincial law Society, from London, Manchester, Liverpool, Carlisle, Hull, Leeds, Birmingham, Lichfield, Derby, and other places attended. The object for holding an aggregate meeting of the profession was, as stated in the society's circular, "for the purpose of taking into consideration the present position and prospects, and devising the best means of obtaining increased support for, and thus giving increased efficiency to, the Association." The following gentlemen were present:—

Derby: Mr. W. E. Mousley, Mr. Barber, Mr. J. Moss, Mr. Mozley, Mr. Kahrs, Mr. Gadsby, Mr. C. B. Portmore, Mr. J. Huish, and Mr. F. Baker. London: Mr. W. H. Palmer, Mr. C. J. Palmer, Mr. E. S. Bailey, Mr. E. W. Field, Mr. J. Beaumont, and Mr. W. Shaen. Manchester: Mr. J. Street (a deputation from the Manchester Law Association), and Mr. W. H. Partington (Hon. Sec. of the Metropolitan and Provincial Law Society for the Northern District). Newcastle: Mr. Glyn (Vice-President of the Newcastle and Gateshead Law Society), and Mr. Wm. Chater (Under-Sheriff of Newcastle). Carlisle: Mr. Hanson. Liverpool: Mr. Avison. Lincoln: Mr. Carlyon and Mr. Broomhead. Nottingham: Mr. Richard Enfield. Castle Donington: Mr. John Towle. Lichfield: Mr. Birch and Mr. Dyott, jun. Burton-on-Trent: Mr. Bass, Mr. Drewry, and Mr. Brooks. Ashby-de-la-Zouch: Mr. Brown. Deputation from the Leeds Law Society: Mr. Barr, Mr. Bulmer, Mr. Eddison, Mr. Shaw, and Mr. Sangster (Hon. Sec.) Birstal, near Leeds: Mr. Firth. Leeds: Mr. Webster. Birmingham: Mr. Ryland. Deputation from the Hull Law Society: Mr. Thompson, Mr. Moss, and Mr. Shackles. Belper: Mr. Ingle and Mr. Wm. Ingle. Maidstone: Mr. Case (a deputation from the Kent Law Society). Stoke: Mr. Keary. Chesterfield: Mr. Busby. The President in the chair.

THE CHAIRMAN, in opening the business of the meeting, expressed the gratification he experienced on seeing so influential an assemblage of gentlemen from all parts of the kingdom,—a fact which rendered the meeting one of considerable importance. The circular which had been addressed to the Profession generally would explain the object of the meeting; it was, in short, to obtain a more complete unity in the Profession by calling upon them to join the Metropolitan and Provincial Law Society, which includes in its membership gentlemen from all parts of the kingdom. Without going over the list of all the association has accomplished since its formation, he might state generally that constant attention had been paid by the committee to every Bill introduced into Parliament, and to every proposal for an alteration of the laws; and no less than 267 petitions were obtained by the committee upon the certificate duty alone. (Hear.) On all other matters interesting to the Profession, this association was one through whom their interests, and the interests of the public at large, can be provided for. The attorneys and solicitors were a large body, comprising about 10,000 individuals, and, if united, they might be very powerful; but, unfortunately, it had always been said that no body in the country is so disunited as the solicitors. It was high time they united for their own protection as well as the protection of the public—because in protecting themselves they protected the public from falling into the hands of an unadmitted and low class of persons, who would be a curse to

society. (Hear.) Perhaps it would be said that the association was designed to protect their own interests and nothing more. But it was not so; on the contrary, he felt assured that their objects only required to be better understood to be thoroughly appreciated by the public, and he trusted that every gentleman present had come prepared to give to them their earnest co-operation and support. (Loud applause.)

Mr. W. Eaton Mousley said, it would be right to observe that there were two law societies existing—one the Incorporated Law Society, of which he (Mr. Mousley) had long been a humble member, and whose rules and regulations were prescribed by its charter, and to which the judges of the land had paid much respect, and from which much benefit to the profession and to the public had been derived; the other was the Metropolitan Provincial Law Association, the extension of which he apprehended was the immediate object of the meeting that day; and stated that he believed it would be the means of bringing the profession more in unison together, and of correcting abuses, so far as regards unnecessary and expensive forms in legal proceedings, and be the means of protecting the more humble practitioners. (Applause.) There had been an assumption of power by the junior members of the bar which they had no right to assume, and although it had been said by some of them that a practising attorney and solicitor fell short of the information possessed by the barrister, he (Mr. M.) begged to dissent from that opinion. It ought to be recollected that some of the most learned and influential judges who had ever sat upon the bench were men who had been brought up as attorneys and solicitors. The instances were numerous, but he would only advert to modern times. Lord Kenyon, Lord Macclesfield, Lord Giffard, Lord Chancellor Truro, Lord Chief Justice Tindal, and others; and he would ask whether the working up of principles as regarded both law and equity from day to day at an attorney's table was not much more beneficial in point of legal education than an individual eating a number of dinners, as his qualification, at one of the inns of court. In his opinion, notwithstanding the large sweeping reforms both in law and equity, there were still other reforms which required to be carried out. Those reforms were the payment of fees to persons who held useless places, and which taxed the suitor unfairly, and could not be of the least possible benefit to any other portion of the community. He moved "That with a view to promote the welfare of the legal profession, and to assist its members to discharge their duties to their clients and to the public, it is highly expedient that the practising attorneys and solicitors of England and Wales should be united in an association."

Mr. Glynn, of Newcastle, seconded the resolution, which was carried unanimously.

Mr. Beaumont, of London, moved the second resolution. He entirely agreed with the gentleman who had spoken as to the importance of occasionally holding meetings like the present. At first sight it might seem a useless and absurd proceeding, but it was a fact that they as a Profession had not been so united as they ought to be, and this weakness in their position had consequently oftentimes invited aggression. (Hear.) Considering their numbers, and the improved standard of education now existing, there were not many bodies in the country who could exert so much influence as attorneys and solicitors if they were but united. (Hear.) But let it be understood that they were not now assembled to maintain abuses merely because they ministered to their interests. (Hear.) The "good old times" when, as Lord Eldon remarked, a bankrupt's estate used to be divided between attorney and commissioner and assignee,—those times and their evil fruit were happily gone, and he for one rejoiced that such was the case. (Applause.) Their object was to assist all well-considered plans for improving the law, especially such as related to the practice of the Courts, and to maintain a high standard of education, and a correct and honourable feeling among themselves. (Applause.) To effect this, union was necessary, and union on such a basis would make them strong. It was indispensable that they should use their own strength in their own cause, since they could not reckon upon external aid. Will the heads of our Profession—will the Bar—do battle for us? They will not, it appears, disdain to enter our ranks. Government solicitorships, town-clerkships, manorial stewardships, these attorneys' offices it is not, it seems, inconsistent with the etiquette of the Bar to fill. But I am afraid it must be recognised that the Bar do not hold the Solicitors in very especial regard. I hold in my hand a pamphlet written by a gentleman of honourable name, one Mr. Charles Rann Kennedy, a barrister, in which he is so good as to communicate to us *his* notion of the proper relative position of the Barristers and the Attorneys. The Attorney should, according to this gentleman, be the servant of the Barrister! I am persuaded that if we would impress our views upon the Legislature or the Ministry, it is not to be done by approaching the Bar with timid and mincing phraseology, but it is to be accomplished only by trusting to ourselves; by shewing that we have the power to maintain our own cause, and that we intend to use it. It must not be forgotten, however, that position is power. Adam Smith said the army and navy were in some degree compensated for their small pay by their position; but if Parliament reduced Attorneys to the starvation point, and let in a class of men who would be a pest and a scourge to the community, their position would be destroyed, and the interest of the public would suffer. (Hear.) It was, then, a right and a duty which they owed to themselves to make every legitimate use of the influence they at present retained, and insist on being treated as gentlemen. (Hear.) The resolution was as follows:—"That the objects of such an association should be to assist all well-considered plans for improving the law, especially as relating to the practice of the Courts, and to maintain an honourable position and character for the Profession."

Mr. Rylands, of Birmingham, seconded the resolution.

Mr. Shaw, of Leeds, moved the third resolution, as follows:—"That the Metropolitan and Provincial Law Association having been founded in 1847, and conducted from that time upon the principles expressed in the foregoing resolution, deserves the cordial support of every member of the Profession; and this meeting accordingly pledges itself actively to endeavour to increase its power and usefulness by procuring a large accession to its number of members." He said, after what had been already said, it was unnecessary to add anything in proof of the usefulness of this institution. It only required that attorneys should use rightly those elements of strength which they possessed, in order to effect all that was proper or desirable; unfortunately, however, from apathy or disunion, or both, they had become one of the weakest bodies in the country. It was time that most of the large towns had their own local associations; but for want of union with others, their efforts, however useful in their own immediate neighbourhood, were powerless for good, as regarded the general interests of the Profession. (Hear.) It was for the purpose of cementing an union of the Profession, that the Metropolitan and Provincial Association was instituted; and every reader of their reports must know that by the unostentatious labours of the central committee—labours that he hoped would be better known and appreciated hereafter—the society had already contributed greatly to the protection and honour of the Profession, and the public advantage. (Applause.) He did not, in saying this, mean to underrate the great value of the "Incorporated Law Society," of which he was a member, and which had for several years been acting with a degree of energy as well as judgment that amply entitled it to the respect and confidence of the Profession. (Hear.) But though equally open to all, it must practically, from the nature of its constitution, consist chiefly of metropolitan, with comparatively few provincial solicitors, while the Metropolitan and Provincial Society was designed and calculated for the purpose of uniting the professional men of London with their brethren in the provinces. Both institutions had always co-operated with perfect cordiality, and many gentlemen present, as well as himself, were supporters of both; but he recommended the one whose claims they were now met to support, as that through which the Profession at large would best be united. (Hear.) He admitted,—and why should there be any reluctance to avow it?—that a due and adequate remuneration for those important services which the Profession rendered (a condition absolutely necessary, in order to retain in the body men of character and respectability), was one object, and a perfectly fair one, which they had associated to secure. So far from that being a disadvantage to the public, he maintained that, within proper limits, it was an advantage; for undoubtedly the public were interested in maintaining the position of a body of men in whom, from the nature of things, they had to repose great confidence. But it was, in his opinion, an object of far greater importance to effect that which was another and by far their principal aim; viz. to vindicate the honour and character of the Profession (Hear); and he hoped they would all unite in resisting to the uttermost every attempt to degrade it. (Hear.) It was with that view more particularly that the association was formed. In its first prospectus that subject was put prominently forward; and unless their attention was perseveringly and resolutely directed to the maintenance of their own character and honour as a profession, the time would assuredly arrive when they would sink into the position described in the pamphlet to which reference had been made. (Hear.) Now, in what way could they best accomplish this object? One means would be, more frequent communications between the committee and members, by a more frequent issue of the circulars. Another and still more important point was, that in this country almost everything was done by public opinion, and he could not entertain a doubt that the absurd but systematically instilled prejudices that prevailed with reference to their Profession, were another great cause why they did not at present possess the fair influence which not only their own interests, but the public good required. (Hear.) More frequent communication with the public, through the medium of the press, was therefore necessary to give effect to their efforts. (Hear.) It was not, however, by an occasional article on a particular question, but by continuous persevering efforts from quarter to quarter, from month to month, and from week to week, that useful impressions on public opinion were made, and he hoped they would for this purpose avail themselves much more frequently than they had hitherto done of the channels that were open to them. (Hear.) He referred to channels already open, because he believed that publications already established, and now perfectly accessible, might be made to answer every purpose they wished for. (Hear.) But this object also required expense, and therefore, in order to accomplish it, an extension of members was required. That effected, the committee would be enabled to act in every way upon a much larger scale. He would only add, that on all these grounds, while acknowledging and rejoicing at the great good the society had done, he was sure it would be able to effect a great deal more by extended numbers, funds, and efforts. (Applause.)

Mr. Field, of London, said that his object, principally, was to shew their successes and their failures; what they had tried, what had not succeeded, and why they had failed. A chief cause of failure would be found to be a want of active local co-operation on the part of the provincial members of the Profession. A previous speaker from Birmingham had said that the London committee ought to give some definite work to the country members. He (Mr. Field) would rather say that the country members must, of themselves, begin to work, and that they should make the London committee assist them. The matters that had engaged the attention of the society, and to which he alluded, were matters in which the public had a vastly greater interest than the Profession. He had always, in connection with the association, acted with the most perfect conviction that the true interests of the Solicitor were identical with those of the client; and he must add, that every member of the association with whom he had had to act had been actuated by the same feeling. (Applause.) It was true that at present, by the operation of Acts of Parliament, the pay of the Solicitor was made to depend upon various formal steps being taken in the course of a cause, in which the public had no interest, and which had no real bearing on its result. But to the abolition of all such regulations some of the main efforts of the association had been directed, regardless of their immediate effect upon the remuneration of the Profession. (Applause.) And by no body had all needless forms been ever denounced in more uncompromising terms than by this association. (Hear.) Its whole history was the history of one continued attack upon them. Counsel were of great value in their province; but there should be no law to compel their employment, and the suitor ought to go to them only when they are wanted. (Hear.) Unfortunately, the laws under which alone the Solicitor could receive his remuneration held out to him the strongest inducement to wink at these abuses, and to employ the Bar copiously and needlessly. In many cases where a man did a thing himself for 6s. 8d. and at great personal exertion and responsibility, he would by law be paid many guineas, and be saved almost all personal trouble and responsibility if he employed counsel. For the honour of this association they had always resisted the continuance of this temptation, and protested against all useless forms, and had desired to have their mode of remuneration put upon some sounder basis. In all the recent equity changes, all of which were unfortunately drawn up too much under a bar bias, this vicious principle was continued. It was a great question how far it was right to keep in the law any legislative tariff of prices at all. In every other branch of occupation, it is open to the employer and employed to arrange their own terms. In the law, this was still prohibited. Formerly everything was regulated by legislative tariff—the price of bread in the market and the rate of wages, as well as law charges. If it was right to abolish the tariff in all other cases, how far is it wise to continue it in the law? If you enact a tariff, the attorney must bring himself into the category of the tariff, whether it is for the interest of his client or not. This was a position which this association had always desired to avoid, as adverse to the interests of the public and dishonourable to the Profession. (Applause.) In none of the late changes, however, had the old vicious principle been abandoned. What had been the effect of this protective and regulative system of legislation on the solicitors' branch of the Profession? For the last ten years the number of men seeking admission into our branch of the Profession, that is to say, the articled clerks, had been annually decreasing. If in an open profession like the law, and in one which addresses itself to the first wants

of civilised society, the body does not increase in proportion to the increase of the wealth and population of the country, there must be something radically wrong. Now it was a curious fact that from 1833 to 1839, the average annual number of articled clerks had been 528; in the next five years the average annual number had been only 478; and in the next two years, 1845 and 1846, it had been 483. (Hear.) If you enact by an arbitrary law that there shall be two branches of the Profession, and if part of every business must be done by the one and part by the other, each branch will be endeavouring to get as large a share as possible, and you would often be employing two men where one would be quite enough. The experience of America shewed that where there is no legislative separation of the Profession, a separation naturally takes place so far as the interest of the client requires it. Those who have a gift for advocacy confine themselves to advocacy, and are employed as advocates when the interests of the client require it, but not otherwise. Mr. D. D. Field, the author of the recent American Codes for the Consolidation of Law and Equity, had stated at a meeting of the Law Amendment Society last spring, that our system of arbitrary separation was, in his opinion, a very false one, and that while the text-books upon the Law of Nations and the conflict of laws used throughout Europe, and also many of our English text-books, had been written by Americans, they would not have been qualified to write those books but for their early experience in what we should call the attorney's branch of the profession. At any rate we cannot produce works written here by members of our bar of equal talent and value to those alluded to. Neither does the legal profession in America suffer for want of the protection and legislative regulation we bestow upon it here; for in no country are so many of the highest offices in the state filled by lawyers. The question of the respective rights of the two branches of the profession was much discussed in Parliament last session, and it was no use disguising the fact from ourselves that it must be settled, and settled on the sole basis of the public interest, which was all that the solicitors desired. With all its folly and insolence, unworthy of the name of Rann Kennedy, there was this basis of truth in the pamphlet from which Mr. Beaumont had quoted, that the attempt artificially to keep employed two distinct branches of the legal profession was in many cases detrimental to the public. If the public interest required the abolition of the solicitors' branch of the profession, be it so. But, then, give solicitors an opportunity of being called to the bar at once, or at least one equal to that enjoyed by the rest of the community. (Applause.) Until recently the bar (who were the sole regulators of admission to their own ranks) gave the solicitors such an equal opportunity, but now they required from the solicitors — the only body fitted by their previous education for the occupation—five years, while they admitted any one else in the world — a ticket porter, for instance — in three. (Laughter.) This subject must soon become one of prominent public importance. He could not avoid it here, especially after the reference to Mr. Kennedy's pamphlet. He (Mr. Field) had only yesterday an insolvent estate of about 150*l.* which could still be dealt with by bill alone, because there was a little real estate not devised to be sold. We tried to extend these clauses, and again, against our pecuniary interests, looking at them from a narrow point of view, but we failed, owing to a want of Parliamentary support. (Hear.) Take as a last instance of our efforts for important reform and their failure—the subject of the taxation of the suitors of the court for its maintenance. It is unjust to tax them at all; but how much more unjust is it to make the poor man who goes there for a legacy of 100*l.* pay as much as one who goes there for one of 10,000*l.* It would be just as reasonable at a turnpike-gate to make a poor man's donkey-cart pay the same toll as the peer's carriage and four. (Hear.) We obtained two reports from a select committee of the House of Commons in favour of a rateable taxation, and the Suitors' Relief Bill was originally prepared so, but the present Government struck out that provision; and, righteous as the case was, and strong as was the party that had originally drawn the Bill, the Association could not procure a debate upon the question. Why? For want of more efficient local support. Orders of course still most improperly retained, would afford another instance of a clear case in favour of the public defeated from the same cause. One word more as to the future doings of the Association. It must, of course, continue to try to rectify the various legislative miscarriages he had alluded to. It must also continue to agitate for additional judges in the Court of Chancery, and so for a fair trial of the new plan of working the court by judges instead of masters. And beyond the Chancery Court, though intimately connected with it, there was an important subject included in the prospectus, and often alluded to in the annual reports, which, though not yet dealt with by the Association, must shortly engage the public attention. He meant that monstrous fungus the Ecclesiastical Courts—that is to say, those courts when dealing with civil matters, and when civil rights are mixed up with ecclesiastical affairs, and transacted by a separate and expensive order of practitioners kept up exclusively for the purpose. It was clear that if the public interest was to be consulted, this anomalous state of things must be put an end to, and that the association must forthwith address itself to the work. The speaker concluded by seconding the resolution.

Mr. Moss, of Hull, suggested, as one mode of raising the funds of the Association, that the local societies should make a grant, and on his return home he would certainly make a proposition to that effect to the members of his own.

The Chairman said the suggestion that a donation should be thus made was a good one. It was originally recommended that the local societies should subscribe, but as those societies did not exist in every town, it was thought better to trust to individual exertion and co-operation; and this plan the committee adhered to. Donations, in addition to that exertion, would undoubtedly do great good.

After a vote of thanks to the Chairman, the meeting adjourned to the Royal Hotel, to dinner, at six o'clock.

About forty gentlemen sat down to dinner at six o'clock, provided by Mr. Huggins, at the Royal Hotel, and which gave universal satisfaction.

LEGAL INTELLIGENCE.

Fees in Chancery and Common Law.—Under the New Chancery and Common Law Acts, about to come into force, considerable alterations will be made in the mode of collection, and amount of fees to be charged in law and equity proceedings. At the Judges' Chambers and other law offices, it is expected that a great reduction will take place. By the 10th section of the Act 15 & 16 Vict. c. 73, it is stated that it is expedient that a new table or tables of fees proper to be taken in the Superior Courts and their several offices, and at the Judges' Chambers, and by the clerks of assize acting as associates on the circuit, should be prepared "with reference to the various changes and alterations which have been or may be made in the process, practice, and proceedings in these courts, and to the diminution of expense where practicable to the suitor." The Commissioners of the Treasury are required by the Act to prepare or cause to be prepared tables of fees, specifying what fees are proper to be demanded in the several offices, and what fees should be abolished, and such tables are to be laid before the judges, who are required to revise and settle the tables of fees, and from time to time to add to or reduce, alter, or amend the same as they may deem necessary and proper. The Commissioners of the Treasury are to cause the tables of fees to be published in the *London Gazette*, "and from and after such publication no other fees than those sanctioned and allowed as aforesaid shall on any pretence whatever be demanded, or taken by any officer or clerk of the said courts in respect of any duty or service to which such table or tables of fees may relate, provided that until the publication under the authority aforesaid, the fees now lawfully taken by the said officers and clerks shall and may continue to be taken."

Cheapness in the Court of Chancery.—Hitherto large sums have been charged for engrossing and copying bills filed in Chancery, in lieu of which printed bills are to be delivered; and by one of the new rules a considerable reduction is effected. It is ordered that "the payment to be made by the defendant to the plaintiff for printed copies of the bill or claim shall be at the rate of one halfpenny per folio.

Extensive Frauds in Law Offices.—The Lord Chancellor has directed an inquiry into a series of frauds of an extensive nature upon the "fee fund" of the suitors of the Court of Chancery, which are alleged to have been perpetrated.

The Common Law Procedure Act.—By some oversight peculiar to modern legislation, this Act is made to come into operation on a Sunday—namely, the 24th inst. A question has been raised upon the statute of Charles, whether it is not altogether a nullity—and the absence of any rules for the working of the statute, up to the present moment, affording insufficient time for a proper knowledge of the machinery by which it is to be worked out, favours the rumour that its operation will be suspended by order in council.

The Will of the late Mr. Neild.—The will of this gentleman, which has excited so much interest and curiosity, is now in Doctors' Commons. It is written by the deceased himself, in a clear bold round hand, and only occupies the front of a sheet of foolscap. The will begins by saying that he, James Camden Neild, of Lincoln's-inn and Chelsea, in the county of Middlesex, wished his body to be interred in Battersea Church, and in a vault as near as may be to his beloved father, James Neild. He bequeathed to his executors 100*l.* each, and directed them to pay all his just debts (which were very trifling), and thereafter he gave and bequeathed all "real and personal property to which I may be entitled at law or in equity unto her Most Gracious Majesty Queen Victoria, for her own private use and advantage, and her heirs, executors, and assignees." And he expresses a hope that her Majesty will be pleased to accept of the same. He appoints as his executors the hon. the keeper for the time being of her Majesty's privy purse, the Very Rev. Henry Tatton, Archdeacon of Bedford, and James Stevens, esq. of the county of Kent. The will is attested by Charles Shadwell, of Gray's-inn, and George Tatton, his clerk. The will was proved on the 21st inst. by the Hon. Charles Bowman Phipps, keeper of her Majesty's privy purse, the Archdeacon of Bedford, and Mr. Stevens, the executors appointed under it, and the estate sworn to as under 250,000*l.*—*Globe.*

Marriage of a Deceased Wife's Sister.—Amongst the various expedients to which parties desirous of contracting this sort of alliance are having recourse, the one most in favour is that of tying the nuptial bonds in Denmark, where the facilities are greatest. A trifling impediment, however, stands in the way of candidates for hymeneal honours. They must be provided with certificates of having been vaccinated, or the ceremony cannot be performed; such is the Danish law. Now, to the majority of middle-aged gentlemen and ladies, whose babyhood was spent in good old times, before vaccination came into fashion, the obtaining of this certificate is impossible, except they, in anticipation of the difficulty that will hereafter await them, cause the operation to be renewed. Some of the knowing ones, duly admonished of the necessity, make the necessary provision; but a far greater number on their arrival in Denmark learn for the first time the conditions on which alone they can be united and submit to the operation on the spot, thus furnishing an interesting case of ardent lovers bleeding for each other's sake.

The One Thousand Pounds Fraud at Hull.—At the Hull Quarter Sessions, last week, William Cooper Robinson, of Hull, solicitor, was tried and convicted of having endeavoured to obtain money by false pretences from Messrs. Charles Wells, of Hull, in August last. The case occupied some hours, and the evidence shewed that the prisoner applied to the prosecutors for a loan of 200*l.* on the title-deeds of a client named Pritchett, and the prosecutors being willing to make the advance on the I O U of the client, the prisoner went away, and shortly returned with an I O U for 1,000*l.* purporting to be signed by the client and himself, on which he asked for a loan of 500*l.* This aroused suspicion, and on application to the client, who lived in the town, the fraud was discovered, and the prisoner given into custody. The jury inquired if they could return a verdict of insanity, and being informed by the Recorder that his counsel had not put in any plea of insanity, the jury returned a verdict of guilty. The Recorder, in a feeling address to the prisoner on the disgrace he had brought on himself, sentenced him to eighteen months' imprisonment. The prisoner then requested permission to speak, and said, "I had no intention whatever to rob Mr. Pritchett or Mr. Wells. I fully intended and should have taken the whole to Mr. Pritchett. There would have been no fraud upon him, and Mr. Wells would have been no loser. I have that satisfaction and pleasing reflection."

The Lawyers in Ireland.—The *Wexford Independent* publishes the following singular and amusing letter from Mr. French, the father of the Bar in that county:—

"New Ross, Oct. 25, 1852.

"My dear Sir,—The civil business of our sessions, which commenced last Wednesday, terminated on Friday, and there being only 200 civil bills, with fourteen attorneys!! in attendance, the enclosed notice was circulated amongst the Bar, and my friend Mr. Howlett and myself have no objection to your making known the melancholy facts.

"Yours, &c.

"To John Green, esq." "A. F. French."

"To the Legal Profession.—Mr. Martin A. Howlett, of New Ross, solicitor, begs leave to inform his legal brethren that he has set apart a portion of his present farm, at Arnestown, for the purpose of imparting to them instruction in spade husbandry, and the use of the pickaxe, previous to their exodus to the diggings. A competent person will attend. The lectures will commence on the 2nd of November next, being the 1st day of Michaelmas Term, as the attendance of the Profession will not be required in Dublin.

The English, Irish, and Scottish Bars.—The English Bar embraces nearly 2,000 members, the Irish about 600, and the Scottish about 400. In each of the three countries one of the sons of every family of consequence among the gentry usually becomes a member of the Bar, and not a few of the younger scions of noble families also attach themselves to the same profession. There are about 600 actual practitioners out of the 2,000 members at the English Bar, including the Equity and Common Law departments; about 200 at the Irish Bar, out of the

600 members; and about 120 at the Scotch Bar, out of the 400 members; the proportion of men at each who settle down to positive practice being nearly the same in the several countries as compared with the whole actual number called.

Irish Law Reforms.—It is semi-officially stated, that the law officers have not been idle during the long vacation, but have prepared several comprehensive measures of legal reform. Among those measures will be one for the consolidation and reform of the law of landlord and tenant in all its branches, and the settlement of the landed interest in Ireland upon a more safe and satisfactory basis as to the respective rights, privileges, and duties of both classes. Another of the promised panaceas is a measure for the reform of common law procedure and pleading of the Superior Courts, in order to simplify and improve its forms, and render its administration more speedy, certain, and economical. All parties will heartily wish Mr. Napier a "safe deliverance."

Liability of Solicitors to give Evidence.—In a case in the Court of Bankruptcy, on Monday, Mr. Parsons, in opening a new petition, sought to establish an act of bankruptcy by examining Mr. Watts, the trader's own solicitor.—Mr. Watts said he did not refuse to be examined, but he objected on principle, as it would be a breach of professional confidence.—His Honour said an attorney ought not to disclose communications made to him professionally by his client.—Mr. Parsons believed that some of the commissioners had ruled that an attorney, under certain circumstances, might be examined. In this case Mr. Watts could give important evidence; and he was not the debtor's attorney.—His Honour (to Mr. Watts): Were you the debtor's attorney?—Mr. Watts: On the 28th of last month he consulted me about his affairs. I repeat, I have no objection to be examined, except as a matter of principle.—His Honour: It is your duty to take the objection; and I do not think you ought to be called on to give evidence.

The *Visitor* having heard the appeal of the Rev. Robert Whish, against the order of the Dean and Chapter of Rochester, for his removal from the head mastership of their school, made on the 19th day of October, 1849, declares that the appellant shall, on the 1st of January now next ensuing, be reinstated in his said office of head schoolmaster, with a caution not to repeat the offence contained in his pamphlet, and for which "he might be lawfully and justly punished under the Cathedral Statutes."

"Much Regretted." — Mr. Robert Jack Watts, an attorney, of 11, Furnival's-inn, Charles Perry, and Samuel D. N. Grissell, who were described as the sons of respectable parents, were finally committed for trial on Tuesday, at Lambeth, on a charge of obtaining money by means of false and fraudulent cheques. Amongst the papers found on Watts, was the following extraordinary document, in his own handwriting:—"Deaths.—On the 9th instant, accidentally drowned whilst fishing in the Thames below Henley, Robert Jack Watts, Esq. late of St. John's Wood and Furnival's-inn, and of Cranbrook, Kent, aged 24, much regretted."

Irish Law Reforms.—It is semi-officially stated that the law officers have not been idle during the long vacation, as some persons might imagine; on the contrary, several comprehensive measures of legal reform have been matured, and will be ready to be submitted to Parliament on its re-assembling. Among those measures will be one for the consolidation and reform of the law of landlord and tenant in all its branches, and the settlement of the landed interest in Ireland upon a more safe and satisfactory basis as to the respective rights, privileges, and duties of both classes. Another of the promised panaceas is a measure for the reform of common law procedure and pleading of the Superior Courts, in order to simplify and improve its forms, and render its administration more speedy, certain, and economical. All parties will heartily wish Mr. Napier a "safe deliverance."

Joint-Stock Enterprise.—The total capital required by the various Joint-Stock Companies, including gold, railway, banking, and mining undertakings, projected during the present year, is estimated to amount to 30,000,000*l.* independent of the usual supplies in the shape of calls and loans for established companies.

JOURNAL OF PROPERTY.

Messrs. Farebrother, Clark, and Lye's Sale at Garraway's, on Wednesday, Oct. 21.—The valuable freehold manor of Shenley Bury, with quit rents, fines, heriots, &c. and Shenley Bury Manor Farm, with brick-built residence, and 527 acres of arable, meadow, and wood land, situate in the parish of Shenley, in the county of Hertford, sold for 15,100*l.* Valuable freehold, copyhold, and church-hold estates, situate at Edmonton, in the county of Middlesex, viz. Firs Farm, held under the dean and chapter of St. Paul, with brick-built residence, and eighty-nine acres of arable and pasture land, let at 260*l.* per annum; also, several detached enclosures of freehold and copyhold land, and two cottages standing thereon, containing in the whole 23a. 1r. 15p. and let at rents amounting to 60*l.* per annum; this property was offered in six lots, the whole of which were sold, and realised the sum of 5,915*l.* A freehold estate at Goudhurst, in the county of Kent, consisting of a detached residence and 103 acres of land; also, two turnpike bonds of 300*l.* each, on the Goudhurst and Horsemondon trusts; the foregoing property was offered in seven lots, and sold for 4,970*l.* A freehold estate, situate near to the town of Bedford, called Brookend Farm, with convenient farm-house and agricultural buildings, and 222 acres of meadow, pasture, and arable land, sold for 4,220*l.* A small freehold farm, situate in the parish of Wadhurst, Sussex, consisting of a farmhouse and cottage, and about twenty-two acres of productive land, and let at 30*l.* per annum, sold for 1,000*l.* Total, 31,205*l.*

MONEY MARKET.

English Funds.	Sat.	Mon.	Tues.	Wed.	Thurs.	Fri.
Bank Stock	..	223	223½	..	224	224½
3 ℘ Cent. Reduced Annuities	99⅜	99⅜	99⅜	99⅜	99⅜	99⅜
3 ℘ Cent. Consols Annuities	100⅛	100⅛	100⅛	100⅛	100⅛	100⅛
Consols for Account	100⅛	..	100⅛	100⅛	100⅛	100⅛
New 5 ℘ Cent. Annuities	..	..	..	..	..	125
New 3½ ℘ Cent. Annuities	103½	103⅝	103⅝	103⅝	103⅝	103⅝
Long Annu. (exp. Jan. 5, 1860)	..	6⅝	6⅝	6⅝	6⅝	6⅝
Do. 30 yrs. (exp. Oct. 10, 1859)	..	6½	6½	6½	6½	..
Do. 30 yrs. (exp. Jan. 5, 1860)	..	..	..	6⅝	..	6⅝
India Stock	..	..	276	275½	273	275
India Bonds (1,000*l.*)	85	..	..	..	87	87
Do. do. (under 1,000*l.*)	85	85	85	85	87	87
South Sea Stock	..	..	..	111⅛	..	..
Do. do. New Annuities	..	..	..	..	..	..
Exchequer Bills, 1,000*l.* June	78*	76*	78*	74*	74*	78*
Do. do. 500*l.* June	..	78*	..	75*	..	..
Do. do. Small, June	..	78*	75*	75*	..	74*

* Premium.

THE GAZETTES.

Bankrupts.

Gazette, Oct. 26.

Ashton, Charles John, merchant, Fenchurch-st. City. Nov. 5 and Dec. 3, at eleven, Basinghall-st. Off. as. Cannan. Sol. Chidley, Gresham-st. Petition, Sept. 1.

Briggs William, hotel keeper, Filey, Yorkshire, Nov. 5 and Dec. 3, at eleven, Leeds. Off. as. Young. Sols. Caries and Cudworth, Leeds. Petition, Oct. 21.

Clarke, Charles, nurseryman, Fulham, Nov. 4, at half-past twelve, and Dec. 9, at twelve, Basinghall-st. Off. as. Bell. Sol. Chidley, Gresham-st. Petition, Oct. 23.

Greenfield, Christopher, chemist, Brighton, Nov. 4 and Dec. 9, at one, Basinghall-st. Off. as. Johnson. Sols. Messrs. Linklater, Sise-lane. Petition, Oct. 18.

King, John, mealman, Ryeford, Gloucestershire, Nov. 9 and Dec. 7, at eleven, Bristol. Off. as. Hutton. Sols. Winterbotham, Stroud; and Abbot and Lucas, Bristol. Petition, Oct. 19.

Nicklin, John Banks, ironmonger, Wolverhampton, Nov. 10 and Dec. 1, at half-past eleven, Birmingham. Off. as. Bittleston. Sol. Hodgson, Birmingham. Petition, Oct. 19.

Oldfield, Jesse, licensed victualler, Bolt-court, Fleet-st. Nov. 3, at half-past one, and Dec. 11, at half-past eleven, Basinghall-st. Off. as. Pennell. Sols. Phillips and Voss, Sise-lane. Petition, Oct. 15.

Perrin, William James, merchant, Liverpool, Nov. 9 and 30, at eleven, Liverpool. Off. as. Morgan. Sols. Rogerson and Radcliffe, Liverpool. Petition, Oct 15.

Stafford, William Henry, painter, Sheffield, Nov. 6 and Dec. 11, at twelve, Leeds. Off. as. Freeman. Sol. Fernell, Sheffield. Petition, Oct. 20.

Gazette, Oct. 29.

Hindle, Edmund, manufacturer, Bradford, Nov. 15, at eleven, and Dec. 6, at twelve, Leeds. Com. Ayrton. Off. as. Hope. Sols. Stocks, Halifax; Courtenay and Compton, Leeds. Petition, Oct. 26.

Jones, Stopford Thomas, coal agent and merchant, Old Jamaica Wharf, Upper Ground-street, Lambeth, Nov. 10 and Dec. 10, at twelve, Basinghall-st. Com. Pemberton. Off. as. Stansfeld. Sol. Scarman, Coleman-st. Petition, Oct. 27.

Keely, James, and Williams, Edwin, tailors, Strand and Fleet-st. Nov. 3, at two, Dec. 11, at twelve, Basinghall-st. Com. Goulburn. Off. as. Nicholson. Sols. Glynes, Crescent, Minories. Petition, Oct. 27.

Nannon, Joseph, jun. ship broker and merchant, Seaham Harbour, Durham, Nov. 11, at eleven, and Dec. 9, at twelve, Newcastle-upon-Tyne. Com. Ellison. Off. as. Wakley. Sols. Bell, Broderick, and Bell, Bow-church-yard; and Thomas and Chater, Newcastle-upon-Tyne. Petition, Oct. 27.

Newbold, Alfred and Edward, alias Edwin, drapers, Birmingham, Nov 10 and Dec. 1, at half-past eleven, Birmingham. Com. Daniell. Off. as. Bittleston. Sols. Sole, Turner, and Turner, Aldermanbury; and Hodgson, Cherry-st. Birmingham. Petition, Oct. 21.

Nicholls, Edward, licensed victualler and builder, Oldswinford, Worcestershire, Nov. 8 and Dec. 6, at ten, Birmingham. Com. Balguy. Off. as. Christie. Sols. Motteram, Knight, and Emmet, Bennett's-hill, Birmingham. Petition, Oct. 22.

Spencer, John, and Pullan, Joseph, top makers, Bradford, Yorkshire, Nov. 12 and Dec. 3, at eleven, Leeds. Com. West. Off. as. Young. Sols. Terry and Watson, Bradford; and Bond and Barwick, Leeds. Petition, Oct. 15.

Woodward, Thomas, butcher, Liverpool, Nov. 10 and 30, at eleven, Liverpool. Com. Perry. Off. as. Casenove. Sol. Hove, Liverpool. Petition, Oct. 20.

Bankruptcies Annulled.

Gazette, Oct. 26.

Chancellor, W. innkeeper, Bath, Nov. 13.

Gazette, Oct. 29.

Jackman, H. builder, Addesley-st. Birmingham, Oct. 26.—*Prosser*, W. draper, Shoreditch, Oct. 20.

Dividends.

BANKRUPT ESTATES.

Official Assignees are given, to whom apply for the Dividends.

Cook, H. J. linen draper, final, 1½d. Graham, London.—*Davison*, W. spirit merchant, first, 1s. 9d. Wakley, Newcastle.—*Gull* and *Wilson*, russia brokers, first, 1s. 9d.; and sep. of Gull, 1s. 3d. Graham, London.—*Hadaway*, E. M. grocer, first, 3s. 6d. Wakley, Newcastle.—*Heard*, T. brewer and maltster, first, 6d. Graham, London.—*Seymour*, R. linen draper, 3rd and final, 0¼d. Baker, Newcastle.—*Pearce* and *Thackray*, timber merchants, first, 2s. 8d.; and first and final sep. of Thackray, 20s. Wakley, Newcastle.

INSOLVENTS' ESTATES.

Nash, J. labourer, 2s. 6d. Apply to G. Andrews, official assignee, Weymouth.—*Willey*, E. farmer, 9d. 3-16ths. Apply to R. H. Aberdein, County Court, Honiton.

Assignments for the Benefit of Creditors.

Gazette, Oct. 19.

Allwork, H. draper, Horsham, Sussex, Oct. 6. Trusts. J. Howell, St. Paul's Church-yard, and A. Hunter, Watling-st. warehousemen. Sol. T. Parker, St. Paul's Church-yard.—*Carlile*, S. sailmaker, Plymouth, Sept. 23. Trusts. F. Johns and J. Ellis, both of Plymouth. Sol. J. Kelly, Plymouth.—*Fry*, W. builder, Bitterne, South Stoneham, Southampton, Oct. 13. Trusts. G. Hunt, esq. Southampton, and J. Newton, builder, Bitterne. Sols. Patterson and Bradby, Southampton.—*Hogarth*, G. brewer and publican, Winchester, Oct. 6. Trusts. C. Wright, grocer, and J. Wyeth, baker, both of Winchester. Sol. C. Woodridge, Winchester.—*Sargent*, J. S. jun. brewer, Devonport, Oct. 7. Trust. T. Pitts, maltster, Plymouth. Sol. J. Kelly, Plymouth.—*Tonge*, J. manure dealer, Manchester, Oct. 13. Trusts. J. Lofthouse, accountant, Broughton. Sol. B. Whitworth, Chorlton-upon-Medlock.

Gazette, Oct. 22.

Donald, Rev. A. clerk, Seisnett Parsonage, Yorkshire, Sept. 21. Trusts. T. Styring, spirit merchant, Huddersfield, and W. Carter, shopkeeper, Seisnett. Sol. M. Kidd, Holmfirth, Huddersfield.—*Higgins*, J. S. wholesale perfumer, Lawrence-lane, Cheapside, London, Oct. 8. Trust. S. Childs, esq. the Forbury, Reading. Sol. J. Fallows, Piccadilly.—*Ranson*, J. late farmer, now out of business, Melbourn, Cambridgeshire, Oct. 16. Trusts. W. T. Nash, auctioneer, Royston, and T. Savell, builder, Barley. Sol. H. Wortham, Royston.—*Ridings*, J. bricklayer, Newtonheath, near Manchester, Oct. 9. Trusts. J. Lindley, J. Bateman, and E. Dixon, timber merchants, Newton-heath. Sols. De Lara and Fogg, Manchester.—*Trelogyes*, W. baker and general shopkeeper, Walton, and Street, Somerset, Oct. 14. Trust. J. B. Plowman, grocer, Wells. Sols. Hobbs and Son, Wells.

Partnerships Dissolved.

Gazette, Oct. 19.

Adams, J. and *Morgan*, J. wholesale feather bed, mattress, and paillasse manufacturers, Sun Saw-mills, Canal-road, Kingsland-road, Oct. 16.—*Baxter*, T. *Bates*, G. *Hickling*, W. and *Baines*, G. manufacturers of fancy hosiery, Leicester, Oct. 8.—*Birkby*, H. and *Hemingway*, W. manufacturers of flax, card-cloth, needle, and diamond pointed woollen feeders, Robert-town, Birstal, Oct. 9. Debts paid by Birkby.—*Bryan*, J. P. and J. G. coal merchants, Hungerford-market Wharf, Strand, June 1.—*Budges*, R. and *Miles*, J. ironfounders, Llanhilleth, Oct. 13.—*Cook*, E. and *Newton*, J. head knitters and reed makers, Manchester, Oct. 7. Debts paid by Newton.—*Cross*, S. and *Wood*, E. merchants, South Benfleet, Maldon, and Heybridge, Oct. 7.—*Gardner*, F. J. and *Gladwin*, W. silk dyers, Barton-upon-Irwell, Oct. 18. Debts paid by Gardner.—*Lees*, T. *Hanson*, T. and *Oldham*, T. cotton spinners, Oldham, as regards Oldham, July 1.—*Loveley*, W. and *Hoare*, E. bobbin makers, Manchester, Oct. 1.—*Glasier*, S. *Bingley*, T. G. and *Glasier*, A. (dec.) Manchester, as regards A. Glasier, Oct. 14. Debts paid by remaining partners.—*Reynolds*, W., W. jun. and G. stock and share brokers, Liverpool, as regards W. Reynolds, Oct. 9.—*Robinson*, F. and *Dunning*, J. grocers, drapers, and tallow chandlers, Great Driffield, Oct. 15. Debts paid by Robinson.—*Stretton*, G. E. M. and *Daines*, J. B. lime burners, stone quarrymen, and manure and indurated stone manufacturers, Burwell, near Newmarket, Oct. 16. Debts paid by Daines.—*Walker*, W. and T. drapers, Newcastle, Oct. 16. Debts paid by W Walker.—*Wills*, W. and *Manley*, H. surgeons and apothecaries, Totnes and Ipplepen, July 15.

Gazette, Oct. 22.

Bast, W. B. and *Fawcett*, W. carpet and rug manufacturers, Kidderminster, and Skinner-st. Snow-hill, Oct. 18.—*Blackledge*, R. and J. flour dealers, Liverpool, Oct. 21.—*Bruce*, J. V. A. and *Greenish*, G. potato factors and fruit agents, Manchester and Liverpool, Oct. 18. Debts paid by Bruce.—*Crawshaw*, T. B. and *Watt*, R. millwrights and engineers, Salford, Oct. 14. Debts paid by Crawshaw.—*Fowler*, W. *Ludwig*, F. and *Knuth*, H. C. manufacturers of leather goods for fancy stationers, Allen-st. Goswell-st. Oct. 18.—*Fuller*, T. and C. farmers and graziers, Old Deer Park, Richmond, Oct. 10. Debts paid by T. Fuller.—*Gledhill*, R. and *Armitage*, A. colliery owners, Adwalton, Oct. 13.—*Harvey*, R. and *Randall*, J. ironmongers, grocers, and provision dealers, Madeley, June 9. Debts paid by Harvey.—*Haslam*, J., J. B., and J. cotton manufacturers, Preston, Oct. 18.—*Martin*, R. and *Bowmer*, W. tailors and hatters, Oak-place, Bridge-road, Battersea, Oct. 20.—*Parr*, W. *Steel*, J. and J. crate makers, Burslem, Oct. 20. Debts paid by Jesse Steele.—*Rowsley*, M. and *Mowatt*, J. milliners, Halifax, Oct. 20.—*Rose*, P. and W. F. sail makers and ship chandlers, Liverpool, Oct. 21.—*Sutherberry*, W. L. and *Hickson*, W. July 26.—*Taylor*, J. and *Burgess*, J. C. calico manufacturers, Heaton Norris, Oct. 19. Debts paid by Taylor.—*Taylor*, E. and *Manton*, T. C. tea dealers and grocers, Canterbury, Aug. 31.

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To Readers and Correspondents.

"STUDIOSUS."—*His letter has been forwarded to a correspondent.*

"D. H." (Driffield).—*At this time, with the business of term crowding upon us, it is impossible to find room for his letter; but its hints will be used on occasion offers.*

"H. C."—*No. It is still continued.*

"A SOLICITOR'S" (York) *letter on assignees is anonymous, and, according to our rule, is thrown aside.*

"ONE OF THE PERPLEXED."—*In the present unsettled state of the law it is impossible to write "Treatises on Practice," for before they are half printed alterations will be made that would render them worthless.*

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THE LAW TIMES.

SATURDAY, NOVEMBER 6, 1852.

TO READERS.

VERY few points have yet arisen in the Courts upon the new practice. All of them will be found among the reports, and they will continue to be regularly reported. Particular attention will be given to them in a commentary next week.

The first of a series of articles familiarly explaining the proceedings in an action at law under the new practice will appear in our next.

LORD DENMAN'S LETTER—THE BAR AND THE ATTORNEYS.

LORD DENMAN has addressed the following letter to the Editor of the *Law Review*:—

TO THE EDITOR OF THE LAW REVIEW.

SIR,—Mr. COX has conferred an honour upon me by the dedication of his important work,(*a*) which I should have been eager to acknowledge had I not been informed that he is absent on a long continental tour. But he therein has also called upon me for an expression of my sentiments respecting some recent changes, anticipating a course which I am by no means satisfied that it would be right or expedient for me to take. For this reason I trouble you with a few observations, flowing from the anxious wish I have always felt to assist in the improvement of the law, and along with it the interest and honour of the Legal Profession.

At page 7 I find this sentence:—

"My Lord,—I much fear that the glory of the Bar of England has departed—that its sun is set—and that it is doomed to destruction, or to a change of character and position that will be more lamentable than destruction.

"The recent revolution in the manner of administering justice, by substituting local tribunals for the great central fountains of law in Westminster-hall, combined with the simplifications of procedure that annihilate all those minor fees by which the juniors of the Bar have been supported hitherto through the inevitable period of probation, will so reduce the amount of employment for Barristers, that their numbers—already too great—will be more than ever disproportioned to the business; and hundreds, nay thousands, must go out of the Profession, or be starved out, before demand and supply can be equalised, and there will be a prospect of even a moderate provision for a few."

Again, at p. 10, 11:—

"Many entertain sanguine expectations that the reforms now in progress in the Courts of Law will restore much of the lost business, and even increase it. I cannot share this hope.

"The attractions of the County Courts to suitors who have disputes to try are such as no reform in the Superior Courts could rival. The rapidity with which trials can be heard, the convenience of a hearing on the very day appointed, without the cost and trouble of conveyance of witnesses to a distant place; the satisfaction of knowing that, when a case is tried, it is settled, and cannot be disturbed again and again,—sources of vexation to suitors in the Superior Courts which more trouble them even than the bill of costs, that tells them that justice can be too dearly purchased—these are tangible benefits which suitors will not readily resign. Improve the Common Law Courts as we may, they will never compete successfully with the County Courts in these particulars, and therefore I entertain but faint hopes of any large revival of business in them; and certainly I despair of such as will compensate for the fees of the Bar that are swept away by the recent statute, and by which the juniors subsisted, or were much assisted to subsist, while acquiring the experience necessary for leadership. If juniors cannot now live by the Bar, whence are to come our future leaders—whence our judges?"

The inference is drawn in page 11:—

"I trust, therefore, that if it should come to a question whether the rule as to taking briefs in the County Courts should be rescinded, your lordship's influential voice will be lifted up against it."

No juster or livelier description of the benefits that were reasonably expected, and have actually been proved to arise, from the establishment of County Courts has ever been given. It will, indeed, be unfortunate if their utility should be found incompatible with the honour and interests of the English Bar. I do not share these fears, nor believe that the glory of that illustrious body depended on such causes, or that the same qualities which have raised its character hitherto will at any time fail to command equal estimation with that which it now deservedly enjoys.

It must, however, I think, be confessed that a considerable change is sure to be effected, and that those who have been most laudably anxious to establish County Courts have been somewhat careless in considering their probable collateral effects. The present loss of emolument may certainly bear hard upon individuals; yet, when we consider the items of which it was composed, one cannot but feel some regret that this loss should have been made the subject of complaint. Nothing could be more invidious than for an old Barrister to revive the defunct catalogue of side-bar rules, of motions of course, and motions to oppose and justify bail, and motions for leave to plead several matters, and rules to shew cause why interest should not be computed on notes and bills, followed by motions that the Court would be pleased to make the said rules absolute.

Such was the description of business done contained in the bill of costs delivered to the client for his information. In fact, there was nothing to tell, except that the attorney had advanced the money to the barrister, and must be repaid by his client. For the most part no service whatever had been rendered.(*b*) The guineas and half-guineas were simply law taxes. Fees of court were another set of law taxes, for which some nominal service was done; but the question wherefore these were levied must have been answered by stating that their purpose was to enable the attorney, at the suitor's expense, to put a little money into the pocket of a barrister, his kinsman or his friend; and he had no small proportion of these profits. He made a charge for drawing the brief of instruction to do nothing, and another for waiting on his counsel with the aforesaid brief.

The relief administered to the suitor by repealing the tax is one great and direct advantage to the public; the simplification of procedure by which the repeal is effected may be described in the same language; but I doubt whether the indirect advantage is not far more valuable than either.

The "minor fees" were twofold, some paid by plaintiffs suing to enforce just claims, recoverable at law, but often not recovered in fact, from the debtors; many more paid by those debtors as the price of the "law's delay," which in general quickened and completed the ruin which it had been purchased to avert. If from these not very creditable sources a revenue was collected in the hands of attorneys for the benefit of poor barristers, I cannot help thinking the cessation of such patronage a great gain to the Bar. But I believe they were much oftener applied to the comforts or luxuries of private connections and friends among the barristers, with little care for the future prosperity of the Profession.

But there is a pressing difficulty of a practical nature arising from the constitution of County Courts. What course is the Bar to take? To insist on the intervention of an Attorney in every case, or to be free to accept a brief and instructions directly from the client? To adhere to the etiquette which has prevailed in the Superior Courts, and is tolerably well understood, or adopt some new one, whose working, whose effects, and, above all, whose consequences, are wholly matter of speculation?

To reduce the number of cases in which the question may arise does nothing towards its solution. But, if it be true that three-fourths of all the causes tried in County Courts are, on both sides, conducted by the parties, without assistance either from counsel or solicitor, here is matter for serious reflection. The disputes which grow out of ordinary transactions seldom involve legal doubts, or require the exertion of professional skill; and the diffusion of improved education has taught men in general a freer use of their own powers of narration and argument. What is called a legal understanding is rarely required, except for the discussion of the rules, unavoidably arbitrary, which regulate the descent and transmission of real property, and of those more recondite secrets in the art or mystery of special pleading, which the good sense of the late House of Commons virtually extinguished by putting an end to special demurrers.

Lord Mansfield advised the student of English law, with the intention of practising at the Bar, to begin with "Tully's Offices"—the title then given to Cicero's three books, "De Officiis." A clear understanding of the duties of men in society was considered by him as the true basis of legal science. I may cite one of the ablest lawyers of this century, who to strong natural sense united the largest experience, for a similar opinion,—my honoured master, the late Mr. Tidd. I well remember the advice he gave to a pupil, who was about to commence practice: "When you are called upon for your opinion, make yourself perfect master of the facts, and then consider what is right. You may be pretty sure that is the law, without looking much into cases."

When once the facts are well ascertained, few persons differ in opinion as to the result of a civil action. But this ascertainment of facts is no easy matter, and here the assistance of the Advocate may become all-important. Here is the point at which the question must be asked and answered,—"In what manner, and upon what condition, is the Advocate's assistance to be afforded?"

Occasionally, at least, eminent and experienced counsel must be called upon to act in County Courts. A rule prevailing in the Profession that Barristers should accept briefs in the Superior Courts from no hands but those of an Attorney was incorporated by Act of Parliament into the practice of the County Courts; but in the late session, when their jurisdiction was extended, a repeal of this provision was attempted in the House of Lords, but failed; a clause having that object was added by the Commons, who probably detected something absurd in the enforcement of professional etiquette by Queen, Lords, and Commons; and, besides, might doubt the propriety of maintaining an etiquette which would have necessitated a double outlay by the suitor, and so have run the risk of denying justice to the injured.

If the etiquette cannot be made matter of law, can it be expected to establish itself in this new state of things by virtue of an agreement, either express or implied, among the members of the bar? I do not hesitate to declare my opinion, founded on ex-

(*a*) "The Advocate, his Training, Practice, Rights, and Duties." By Edward W. Cox, Esq. Barrister-at-Law. Vol. I.

(*b*) "The opposition to persons tendered as bail was, however, no sinecure. Counsel were employed to protect plaintiffs against being defrauded of a security to which the law entitled them, by what were called 'Sham Bail.' Such persons frequented the courts and the judges' chambers, and were hired for that office. Counsel examined them severely as to their means of paying all their just debts, as well as those sought to be recovered in the several actions in which they became bail, but were bound by their answers. They generally passed, even when every hearer was convinced of their insolvency. The scene was a lively one, and formerly was acted before the whole court; afterwards a single judge presided, and the three others had a holyday on the great bail day. There was then a separate court established for this drama, during the performance of which before one of the learned judges the other three went through the ordinary routine of duty. This change could not be effected without an Act of Parliament. Finally, came the abolition of arrest on mesne process in 1838, and the total extinction of this branch of business. A respectable elderly practitioner, dying soon after, is said to have met his death from a suppression of bail."

perience as well as reflection, that it cannot, and, therefore, feel it to be unnecessary to enter on that difficult inquiry, "What practice ought to be agreed on?"

I am sorry to find my answer so unsatisfactory to Mr. Cox's appeal. It is not for want of careful consideration. But the affairs of the world do not stand still while they are under discussion. Pending the controversy respecting the best possible practice, some practice has been actually adopted. What it is, or whether it has been uniform, I have no means of knowing; but I believe we may safely lay this down as a truth:—That all interference of authority with the freedom of actions not in themselves wrong is to be avoided as an evil, and one that most commonly aggravates whatever evil it was designed to correct. The *forum domesticum*, to which the Profession paid allegiance, as a band of brothers, can hardly maintain its authority over a family so widely diffused, so indefinitely multiplied. Without rules the honourable man will act correctly, and none will restrain those of opposite character.

"But I will not yet despair of the fortunes of Westminster-hall, which rose with intellectual energy and moral worth, and will not fall by the failure of some accidental but problematical advantages. The numerous seats of judicature in the County Courts are added to the existing rewards of industry and learning, likely, we may hope, to be rendered more attractive by occasional promotions from them to the higher judicial rank. The numerous legal establishments in the colonies greatly multiply the prospects of a respectable position and comfortable competency. The aspirant must still support himself during the tedious but inevitable time of waiting for business by some expenditure of capital, if he possess it, by the aid of friends, or by some of the numerous employments that are constantly demanding and remunerating intellectual labour. A greater number of treatises on jurisprudence, with more philosophic views than have been usual among us, may be expected, and we may confidently predict that regular attendance at those practical lectures which the Superior Courts at Westminster are constantly reading will be one of the highest recommendations to this and various other offices. All these causes will conspire to preserve that supremacy of character which has induced the Legislature to lodge the supremacy of power with the old-established tribunals of the realm.

Yours respectfully,

Sept. 20, 1852. DENMAN.

An authority so justly respected, on such a subject, will probably be deemed conclusive by all that section of the Junior Bar which has been for a long time burning to enter the lists against the Attorneys, believing, we think erroneously, that the blindness or the partiality of the Attorneys now stands between them and business, and in the hope, we suspect a vain one, that if this barrier were removed, and clients permitted to communicate with them in person, they would be preferred to the Attorneys.

Sanctioned by such an authority, which we admit to be a sufficient justification for them upon any question of professional etiquette that might be raised, we shall doubtless see trial made of the experiment, and a Bar in all the County Courts striving to subsist by half-guinea fees and dispensing with the Attorneys.

We confess the grief and alarm with which we have read Lord DENMAN'S approval of this projected revolution in the practice of the Profession; the more so as, we believe, he stands almost, if not quite, alone among the Judges in that opinion; because it will be enough to point to his venerated name when a justification is sought for *the consequences* involved in the change, as well as for the change itself which he has thus publicly approved; because it is an irrevocable step and the door once opened cannot again be closed, the landmarks once trodden over and erased cannot be restored.

For better, for worse, we fear the deed is done now; that remonstrance will come too late. Nevertheless, in justification of that call upon Lord DENMAN which evoked so unexpected a response, as a last and earnest protest against what we believe to be a fatal step, we will briefly repeat the reasons why we have been and are still so hostile to the practice of the Bar receiving clients without the intervention of an Attorney.

We admit their *right* to do so. We accept Lord DENMAN'S authority that it would not be a breach of professional etiquette. We assert only that *in practice* it will prove to be the destruction of the Bar.

Its inevitable effect will be to convert the Barrister into an Attorney, by mingling functions that, according to the present rule of practice, are perfectly defined and distinct.

If the Barrister is to take instructions from the suitor, he must see him: he cannot receive instructions without making *some notes*: if there are witnesses, he must see them also, for he cannot trust to the client's narrative of what they will prove. Nor can he trust to his own memory for their statements; he must take notes, and those notes will be his brief. In fact, he must perform the function of the Attorney in preparing his own brief.

This is the certain consequence to which all who so practise must submit. But can it be supposed that it will stop there—that the line that separates the functions of Advocate and Attorney being passed so far, there will be no further trespass? Remember, that by this step the Bar, which has hitherto been *allied* with the Attorneys, will be thrown into open and direct opposition to them; they will be *rivals* and *competitors* for business; where the competition is active, as it will be in the provincial towns, there is danger of a strife to catch clients, and in that strife what further mischiefs will not be done? The Bar in the provinces, thus exposed to the temptations of a direct conflict with rivals who have better opportunities than they to win the favour of the client, will be deserted by the best men, who will not engage in such a struggle; and if any wigs remain, they will be worn by men who are less scrupulous, and who will fight their opponents with their own weapons. If any proof were wanting, we have it in the case of Mr. KENNEDY, at Birmingham, who has already tried the experiment, who is in rivalry with the Attorneys there, and to outwit them, has established a cheap law society, to supply the subscribers with law at so much per annum. If that has been already done in Birmingham, by a man of Mr. KENNEDY'S undoubted ability, and of some standing and repute, what may not be anticipated when the provinces are flooded with juniors, who have not even the restraints which he had, and who will be exposed to the same rivalry and the same temptations?

Any hope that such a practice might be limited to the County Courts appears to us to be perfectly fallacious. If the Barrister is permitted to advise a client, or to take instructions without an Attorney, how will it be possible to assign any limits at which that advice shall stop? If, for instance, a client seeks advice on a claim he has for 50*l.*; he calls upon the Barrister and pays his fee. The case may be taken either into the Superior Court or into the County Court. In the one case, the Barrister is to be estopped from advising further; in the other, he may advise through the whole process, draw his own brief, and take the case into court without an Attorney. But *will* he be estopped in the former case? Will so impalpable a line be strictly drawn? At what precise point in the case are *his* functions to be suspended and those of the regular Attorney to be called in? If that moment be found, is *he* to recommend the Attorney, or, which is more pertinent, is he *not* to do so?

We might multiply instances without end to prove the impossibility of preserving any distinction between the functions of Advocate and Attorney, if the existing clearly defined and indisputable barrier be broken down. Indeed, a case does not suggest itself in which difficulties do not arise.

If such should be the consequences, the effect upon the position of the Bar cannot but be extremely injurious, socially and professionally. It will lose caste. The Barrister will cease to be the Advocate, "pure and simple;" he will be *a sort* of Attorney, without being *quite* an Attorney, and he will lose the respectability that attaches to either profession.

Nor do we believe that he will gain in actual business that which the sanguine promoters of the change are anticipating. The Bar cannot compete successfully with the Attorneys in their own province. The Attorney has opportunities for obtaining clients and securing them which the Barrister could not enjoy; and when they are rivals, those advantages will certainly be employed. Nor will the public be found so ready as is supposed to quit the Attorney, whom they must consult in many of their affairs, for the Barrister whom they could only want occasionally. And in very truth, for the vast majority of cases that come before the County Courts, a shrewd Attorney, accustomed to the business of life and conversant with accounts, *is* more competent than a young Barrister fresh from college and the Temple, however accomplished as a scholar, or primed with lectures on international law, or well read in the text-books, which cannot be brought to bear upon a cross-account between two tradesmen, or a dispute about the performance of a contract. Suitors feel this, and that is the true reason why, in the County Courts, having the power to employ Counsel, they are content to leave cases to their Attorneys.

Nor will this be prevented by the migration of the Bar now in progress, nor by half-guinea fees, nor by dispensing with the Attorneys. The ablest men, of course, will not go to the provinces, or be content with a County Court practice. And although suitors and Attorneys might be well satisfied to have the aid of the *best* men of the Bar, and the ablest Attorney would, doubtless, admit his inferiority as an Advocate to the ablest Barrister, who has made advocacy the business of his life, it is quite another matter with the men who must form the Bars of the County Courts; who must either be beginners, and, therefore, without experience; or, if "old stagers," must want the ability to go to something better.—The clever and experienced Attorney knows himself to be more apt than such—his clients know it, too—and they will give him the preference.

Therefore it is, we believe, that little is to be gained by the Bar in any departure from its practice in relation to the Attorneys, while it hazards its entire position and endangers its very existence.

Then comes the question, what is the Bar to do? It must do something, or die.

To this there is but one reply—it must submit to circumstances. The Bar is enormously overstocked: it must adapt its numbers to its needs. All the business that supported juniors, and a host of pleaders and *learned* lawyers, has been swept away. Soon no other than Advocates—Nisi Prius men—will survive in the Common Law Courts. They are necessarily few; but those few will be well rewarded. All the business beyond that of pure advocacy will be done by the Attorneys. That is the position to which we are coming and must come. It is, we believe, vain to hope that it can be prevented by sending down all the surplus host of Westminster Hall to the County Courts to do battle for business *against* the Attorneys, by help of relaxed rules and half-guinea fees. This desperate expedient will lower the status of the whole Bar, without providing the subsistence that is thus sought by those whom the changes in the law, in the constitution of the Profession, and in society, have, in fact, converted into supernumeraries.

THE MEETING OF THE SOLICITORS AT DERBY.

THE great meeting of Solicitors at Derby, reported last week, affords gratifying proof that the Profession in the provinces is awakening to a sense of the necessity for association and co-operation, if they would successfuly wield the great influence they individually possess for

the promotion of their common welfare, in resistance to attacks made and meditated, and in the advancement of their professional and social status. Many years ago we ventured to prefer the claims of the Attorneys in the country to a very much higher position in the esteem of their metropolitan brethren than they had previously enjoyed; we reminded themselves, as well as our neighbours in London, of the large amount of intelligence, of independence, of wealth, of influence, possessed by the country solicitors, and we took the liberty of calling upon them to use these advantages for the general good of the Profession, and we told them that the only means of doing so was—association.

These exhortations were not in vain. An association was formed. We thought then, and we are still of opinion, that it would have been more prudent to have formed an association of the provincial Attorneys only, because the London Attorneys were already associated in the Law Institution, which amply protects *their* interests, and sufficiently and ably represents *them*; because the interests of the two classes are not always identical, and when they differed, an overwhelming advantage would be enjoyed by the metropolitans, in the entire command of the one society, and that sway in the counsels of the other which proximity would necessarily give them. It appeared to us that the desired object—the protection of the interests of *all*—would be best secured by *two* societies acting independently, but in friendly spirit, each representing and regarding a distinct interest, than by two societies, one of which was all on one side, and the other largely swayed by the same element that wholly governed that one.

This opinion as to what would be the true interest of the Provincial Attorneys, was not, however, shared by the promoters of the Association, and they resolved that the Society should be both Metropolitan and Provincial. At all events, the primary object, association of some kind, was gained, and it would have been folly to dispute as to the precise manner of doing it. *The Metropolitan and Provincial Law Association* was the result, and it has continued its useful labours from that time to the present, deserving and receiving the confidence of the Profession, upon whose interests it keeps a watchful eye.

The changes made and threatened in the Practice of the Law, and the rumours of contemplated invasions by one branch of the Profession upon the other, having made a union of its members more than ever needful, the Association resolved to renew its claims to support, and accordingly the meeting was summoned which was so fully reported last week.

The tone of that meeting was such as might have been anticipated from recent events. If some of the speakers were not so measured in their language as the reader might desire, their excuse is that they had received much provocation. For a long time past, there has been manifested in many quarters a desire, by a portion of the junior Bar, to invade the province of the Attorneys by advising or accepting briefs from clients in person, without the intervention of an Attorney. To prepare the way for this, a series of attacks were made in some of the newspapers against the Attorneys as a class; they were systematically abused by a portion of the daily press; a magazine, notorious only for its blackguardisms and personalities, devoted an article, under the the title of "Attorneydom," to their vilification. The Junior Bar commenced a publication purposely to support their scheme. Now it has passed from words to deeds. That which has been advocated is to be done. It is authoritatively announced by that same Junior Bar, through their organ, that they propose to put their projects into practice.

It is not, therefore, until it is needful, that the Attorneys have united for self-defence. The relationship that has hitherto existed between the two branches of the Profession is about to be abruptly dissolved; a totally new practice is to be introduced; they who have acted together are henceforth to be rivals; they are to compete for clients out of Court, and strive with one another in Court.

Circumstances may have made this revolution in the practice of the Profession a necessity for the Bar—*that* is a question which we cannot now pause to discuss: enough that, whether right or wrong, desirable or undesirable, it is *a fact*. Being thus invaded, the Attorneys are but following the natural instinct of self-preservation in uniting to resist the invasion; and they only shew themselves human in speaking severely of the invaders. Hence the tone of the meeting; hence, too, the importance at this moment of a more cordial union than has hitherto existed between the Attorneys in the provinces, who are only weak and open to attack, because the great influence which each enjoys as an individual has not been concentrated upon one focus, and directed to a common object by means of that modern lever of society —association.

For our own part, our course was taken long ago, and in the impending conflict we shall steadily adhere to it. We shall continue to oppose the invasion of one branch of the Profession by the other; we shall protest to the last against the severance of those ties of friendly relationship, advantageous to both, which have hitherto maintained the status alike of the Attorneys and of the Bar, and we shall do so because we believe the proposed changes cannot be accomplished without much present injury to the Attorneys and the not distant destruction of the Bar.

COMMERCIAL LAW.

We are glad to hear that the important subject of the Assimilation of the Commercial Laws of England, Ireland, and Scotland, is to be brought forward at a conference, which will be attended by deputations from various Chambers of Commerce, and other public bodies, and is to be held at the rooms of the Law Amendment Society, on the 16th of November. Our readers will also feel great satisfaction in learning that deputations have already promised to attend from the Incorporated Law Society, the Metropolitan and Provincial Law Association, and the Manchester Law Society. We shall notice the subject at length next week.

SKETCH OF THE SCOTCH LAW COURTS.

ARTICLE NINE.

CRIMINAL PROCEDURE—A PUBLIC PROSECUTOR.

The result of the labours of the Commissioners appointed to digest the Criminal Law, and of the subsequent Commissioners appointed to revise and amend it, have now been buried in a three years' repose, and the vis inertiæ of succeeding Governments bids fair to put the seal of oblivion on the whole matter. Sanguine law reformers may wax indignant at this consummation, and continue to sneer at the disgraceful mass of patchwork which must in the meantime be called the mildest and most humane code of criminal law in existence, and Lord Brougham, indignant at the folly of wasting 60,000*l.* of the public money so fruitlessly, may offer from his own pocket to repay our penurious Chancellor of the Exchequer what little additional expenditure is required to complete the undertaking. There is, however, no immediate prospect of stirring up the sluggish torpor of official life, unless a better spirit may have now come over the dreams of our Lord Chancellors. It rather seems to be our fate to see the proposed complement of amendments extorted bit by bit and session by session in true English fashion; and we have lately had one or two of these instalments. Another may safely be expected in the course of the approaching session—the abolition of Grand Juries in certain cases at least within the metropolitan district; an experiment which must lead to further changes. The long-expected boon of a public prosecutor, which must also sooner or later be conceded, is probably a few years farther off. In the mean time we may consider with some advantage the criminal procedure of Scotland, which abounds in points of curious interest to the English Lawyer.

Whatever may be thought of the merits of the Scotch procedure in civil matters, as contrasted with our own, especially since its latest amendments, there can scarcely be two opinions as to our inferiority in many respects in the department of criminal procedure. When the Criminal Law Commissioners were engaged in 1844, in digesting that portion of our law, they took the opportunity of extensively sifting the leading opinions then prevalent in the Profession as to certain moot points. Amongst others were the questions,—Who ought to be intrusted with the duty of prosecution; whether a Grand Jury is in all cases, except in criminal informations and Coroners' Inquisitions, an indispensable access to justice; whether the verdict of the jury should in all cases be unanimous; whether there should not be a third verdict of "not proved?" On these and many other points, the law of Scotland throws light. There has been a Public Prosecutor there for nearly 300 years. There is no such thing as binding over private parties and their witnesses. No Grand Jury is needed to molest the city shopkeepers. Juries can acquit or convict by a majority, and they can find a verdict of "Not proved." The prisoner's counsel has always the last word, and every pauper prisoner has counsel and attorney assigned him as a matter of course. Other miscellaneous points will also bear mentioning. The chief, however, is, that relating to a Public Prosecutor.

We need not waste words in attempting to establish the superiority of the institution of a public prosecutor over the present practice prevailing here, of leaving so important a social duty in the hands of private individuals. Most of those who have considered the subject have condemned that practice as vicious, though the Criminal Law Commissioners admitted great caution would be necessary in effecting a change. The few adherents of our present system seem to cling to old traditions, chiefly because they labour under erroneous impressions as to what is implied in the change proposed, especially as that change is exemplified in Scotland. We shall accordingly proceed at once to describe the working of the whole machinery as it exists in that country.

The Supreme Criminal Court in Scotland is called the High Court of Justiciary, the Judges of which belong also to the Court of Session—the highest civil court. The Justiciary Court goes circuit twice a year, and in populous districts thrice. The chief public prosecutor for all Scotland is the Lord Advocate, who has a gradation of subordinates extending to each county. The Solicitor-General is second in rank, and acts in the necessary absence of his chief. The Lord Advocate, however, does not go circuit. He appoints four Depute-Advocates, who are always barristers of several years' standing, and they have each a salary of 500*l.* a-year. One Advocate-Depute goes each circuit for the purpose of conducting all the criminal prosecutions of the country, Scotland, for that purpose, being divided into three circuits. The Justiciary Court thus disposes of all the higher offences, as the Common Law Judges do in this country. The local Criminal Court, which corresponds to our Quarter Sessions, is that of the Sheriff or County Court Judge, whose extensive jurisdiction in civil matters we described in previous articles. It will be recollected that the sheriff is a barrister of several years' standing, and is the chief local judge in each county. His criminal jurisdiction coincides very nearly in point of extent with that exercised in our Quarter Sessions. Each sheriff appoints one or more attorneys to act as procurator fiscal in a certain district, and this functionary is the Crown Solicitor, or public official informer in all criminal offences within his district. He is not paid like the higher officers by a salary, but according to the work done, his bill of costs being sent in and taxed by the Exchequer-office in Scotland.

Whenever the procurator-fiscal of the district receives intelligence that a criminal offence has been committed, it is his duty forthwith to investigate it. If it is a minor offence falling within the Sheriff's or Quarter Sessions jurisdiction, or a petty offence, which is punishable in a summary way, he takes the exclusive management of it, and carries on all the proceedings from first to last in the local court. In all the heavier offences, however, such as would

rank as felonies or select misdemeanours here (for our anomalous classification of offences into felonies and misdemeanours is not recognised in Scotland), the procurator fiscal reports the case to head quarters. Where he does not do this, he carries on the proceedings at the risk of an action for malicious prosecution where there is no probable cause. In order, therefore, to see fully the modus procedendi we shall suppose a serious crime to have been committed in the country.

The individual who is wronged, or any other person cognizant of the circumstances, goes at once to the procurator fiscal of the district, who acts forthwith on the intelligence by proceeding to the magistrate, and as the Sheriff is always an ex officio magistrate, it is generally the Sheriff he resorts to. The fiscal states verbally what he has heard, and from whom, and also signs a written information stating the charge, which information, however, is not made on oath in any case, the signature being sufficient. He then asks the magistrate for a warrant to arrest the accused. This is granted at once on the grounds stated verbally, all that the magistrate's duty require him to look to is, that the procurator fiscal has signed the information, the latter being responsible if the proceeding is groundless. The warrant is executed as it would be in this country, there being similar exceptional cases, where a private individual or constable may arrest without a warrant. The party, on being arrested, must be brought before the Sheriff without any unnecessary delay, when he is informed of the accusation, and if he is in a fit state to understand it, he is cautioned, that anything he may say may be used against him. If the prisoner thereupon make a statement, it is taken down in writing and signed by him or the magistrate and by witnesses present, and may be used at the trial. The prisoner is then by magistrate's warrant committed, as a matter of course *for further examination*, without hearing any evidence, and he is not entitled to bail till the depositions are finished, though sometimes he is allowed that favour; but on the other hand, the accused cannot be kept in prison beyond a few days on this warrant, and it has been decided that it is illegal to confine him seventeen days in these circumstances. It never happens, as it often does here, that a prisoner may be kept waiting six weeks, being remanded every five or six days to admit of the evidence being concluded. This is done in Scotland promptly and from day to day, and seldom occupies a week. We have supposed the accused to be apprehended immediately, but it is not necessary for the sheriff and procurator fiscal to wait for that event; they may and always do proceed to take the depositions at once. We have called them depositions, but in reality they are not depositions in our sense of the term. They are technically styled *precognitions*, and are mere declarations or statements of the witnesses as to what each knows of the matter, and they are not made on oath. But though not made on oath they are made in a solemn manner in presence of the magistrate, the procurator fiscal examining each witness and the evidence being taken down in writing. The whole inquiry is quite secret and ex parte: the accused and his friends are neither entitled to be present, and to cross-examine, nor are they entitled afterwards to have a copy; but, on the other hand, these declarations cannot be given in evidence at the trial. Each witness, on such occasions, is examined separately, and does not hear what is said by another. The examinations or precognitions being concluded in a few days, the magistrate then has the same discretion as a magistrate has here, after taking the depositions, viz. to discharge the prisoner, or commit for trial. If he commits for trial, he signs a warrant to that effect, and thereby detains the prisoner. The prisoner may then petition the magistrate to be admitted to bail, and the latter must decide in twenty-four hours at the peril of an action for false imprisonment, whether it is a bailable offence or not. This distinction depends on a statute of 1701, which divides offences into those not capital, where bail must be accepted, and those capital, where it must be refused, and the statute also specifies the amount of bail which is proper to be taken. Thus, 600*l.* for a landed proprietor, 300*l.* for a gentleman or householder, and 60*l.* for a private person: but in practice the magistrate accepts less amounts than these.

The moment the accused is committed for trial, a copy of the examinations or precognitions is forwarded to the Lord Advocate, who immediately either reads them himself or hands them over to the advocate depute, within whose circuit the offence was committed. One or other of these officials peruses the examinations with his practised eye, and at once makes up his mind as to whether there is a *primâ facie* case or not. If he thinks there is no case, he sends an order for the immediate discharge of the prisoner; if otherwise, for his detention. In either case the decision is arrived at in two or three days. If the examinations disclose a trifling or absurd case, the Advocate-depute reprimands the procurator fiscal where the latter is blameable; if the evidence is not quite full enough, he orders an additional examination. Thus a great number of prisoners against whom a practised lawyer can see no *primâ facie* case, are released at once after a short confinement. But though the Crown officer orders the accused to be discharged, the private relator or individual wronged may nevertheless then take the prosecution into his own hands, in which case he obtains the concurrence of the Lord Advocate, who cannot refuse to add his name. The private party, however, proceeds at his own expense and his own risk: if he fails, he may be liable to an action for malicious prosecution; if he succeeds, the professional character of the Crown officer who declined to prosecute suffers in consequence. Further, if the Crown officer thinks the charge is not without foundation, but that the result will be, that only a moderate punishment, such as a fine, will be inflicted, he remits the case to be proceeded with in the local or Sheriff's Court, where the procurator fiscal is the public prosecutor. But if otherwise, the case is reserved to be dealt with by the High Court of Justiciary, either in Edinburgh or on circuit.

The same Crown counsel who has previously read the examinations or precognitions, and advised the detention of the prisoner, forthwith proceeds to prepare the indictment, and he must also appear at the trial to conduct the prosecution. He has no pecuniary interest in the proceedings, for he is paid by salary. We shall then at this stage suppose that the indictment is prepared, and shall in the mean time glance at the facilities enjoyed by the prisoner for getting up his defence. In the first place he has the power of forcing on his trial to a greater degree than is practicable here; the Scotch Habeas Corpus Act being more favourable to him in this particular. By no possible combination of circumstances can he be detained in prison awaiting his trial beyond one hundred and forty days; if he is not tried within that period, he is ipso facto entitled to be unconditionally discharged, and he cannot be tried thereafter on a fresh indictment. But even this is only the extreme period, which can be shortened in the following way. Where he wishes to lose no time, he can immediately after being committed serve a notice on the procurator fiscal and Lord Advocate, calling upon them to bring him to trial within the statutory period, which is specified in the Habeas Corpus Act. This statute is peremptory in requiring that the indictment should be prepared, and a copy served on the prisoner within sixty days after the notice, and the trial itself must take place within forty days immediately following the service of the indictment—in all one hundred days from giving notice to the prosecutor. If either of these two events do not occur within their successive periods respectively, the prisoner must be discharged forthwith, and no fresh warrant can be issued by any magistrate to re-arrest him. The High Court of Justiciary, however, may in such a case issue a warrant to arrest, in which event he must be tried within forty days thereafter; otherwise he is again entitled to be discharged, and that for ever. If the prisoner has not availed himself of the above provisions of the Habeas Corpus Act, the Court will on application by the Crown prosecutor, postpone the trial, on cause shown, as for instance on the absence of a material witness, and the prisoner may have the same favour: in either case he is recommitted for trial. It thus must often happen, since there are only two circuits in the year, and yet the prisoner can force on his trial in three months, that these periods do not tally. When such is the case, the prisoner must be brought up, and the witnesses also, from whatever part of the country the offence was committed in, to the Justiciary Court in Edinburgh, which sits weekly, and there the trial takes place. The expenses of this step, as well as all the expenses attending the prosecution by Crown counsel in the High Court, are paid out of the public funds, under the head of "Expenses of Prosecutions," for which an annual vote of Parliament is made. The expenses of the trials for lighter offences, which take place in the local or Sheriff Courts, fall on the county rates, and are levied in the name of "rogue money."

The advantage of thus quickening his trial is not the only one the prisoner in Scotland possesses. For there are old statutes, which have been for centuries in force, which require that, fifteen days before trial, the accused must be personally served with a copy of the indictment, a notice of the day on which the trial is to take place, a list of all the witnesses (with their designations and residences) who are to be brought against him; and lastly, a list of the names of the panel of forty-five jurors, out of whom the jury which is to try him must be selected. Great accuracy must be observed in the copies thus served, as the misdescription or misnomer of a single witness will disqualify that witness from being admissible at the trial; and before the prisoner can be arraigned, the prosecutor must prove by written evidence that these documents were duly served. Every prisoner accused of the meanest offence is thus entitled to a privilege which we reserve to certain cases of high treason only.

The above is an outline of the procedure in all cases up to the day of trial. What then and thereafter takes place, together with statistics applicable to the subject, we reserve for our next article.

THE MAGISTRATE,

AND PAROCHIAL AND MUNICIPAL LAWYER.

CRIMINAL STATISTICS OF 1851.

The criminal tables for the past year, which have just been published, afford pleasing evidence that the decrease of crime, as compared with the amount ten years ago, continues to be maintained. For, although the slight increase of 4·2 per cent. marks the returns of 1851 as compared with those of 1850, the increase of population may be most fairly adduced as a satisfactory cause for this increase. The commitments during the last ten years stand thus:—1842, 31,309; 1843, 29,591; 1844, 26,542; 1845, 24,303; 1846, 25,107; 1847, 28,833; 1848, 30,349; 1849, 27,816; 1850, 26,813; 1851, 27,960. Total, 278,623.

The increase of 4·2 per cent. during the past year has not been confined to any particular localities. It extends generally over England and Wales, including all the chief agricultural and the largest manufacturing and commercial counties. In 1841 the commitments were in the proportion of one in every 573 of the population, while, according to the last census returns, the proportion in 1851 is reduced to one in 641. Between these two periods the population increased 12·6 per cent. while the commitments remained as nearly as possible stationary, their increase amounting only to a fraction per cent. But the relative progress of population and crime has been very different in different parts of England. In the large manufacturing districts, where the working classes during the past year have been steadily employed, the proportion of commitments to the population has signally decreased. Thus, in Yorkshire and Lancashire, the population during the last ten years has increased 18·2 per cent. while the commitments have simultaneously decreased 4·3 per cent. In Cheshire, Derbyshire, Nottinghamshire, and Leicestershire, where, mixed with a considerable agricultural population, the chief silk, lace, and other textile fabrics are produced, the proportion of the commitments decreased from 1 in 579 to 1 in 633, the population having increased 7 per cent. while the commitments decreased 2 per cent. In Staffordshire, Warwickshire, and Worcestershire, the seat of the chief manufactures in hardware, pottery, and glass, the commitments decreased from 1 in 435 of the population to 1 in 552, the population having increased 20·4 per cent. and the commitments decreased 5 per cent.

In the more purely agricultural counties the progress is lower, and the results less favourable. In the eastern district, comprising Essex, Norfolk, Suffolk, and Lincoln, the proportion of the commitments to the population has increased from 1 in 589 to 1 in 604; the increase of the population being 6·8 per cent. and of the commitments 18·4 per cent. Of the seven chief midland agricultural counties, Cambridge, Northampton, Bedford, Hertford, Oxford, Bucks, and Berks, the proportion of commitments has decreased from 1 in 572 to 1 in 620; the increase of the population being 10·3 per cent. and of the commitments 1·8 per cent. only. In the counties in the south and south-west, Hants, Wilts, Dorset, and Somerset, the result proves more favourable than in any of the other agricultural districts. The proportion of the commitments to the population has decreased from 1 in 508 to 1 in 551; the population having increased 12·5 per cent. and the commitments decreased 12·1 per cent.

On a comparison of the offences upon which the increase of the commitments last year has arisen, it appears that the increase has extended to each of the classes of crime, with the exception of the sixth

class, comprising miscellaneous offences. In the first class, offences against the person, the commitments for murder, attempts to murder, wounding, &c. remain stationary; unnatural offences, however, shew an increase, as do those under the head of lesser offences of assault. In the second class, offences against property committed with violence, the commitments have been without change, except the marked increase of robbery, the tendency of the whole class, on a more extended comparison, being to an increase. In the third class, offences against property committed without violence, which contains the great bulk of the commitments, there is an increase of three per cent. arising chiefly in the commitments for larceny from the person and for frauds. The fourth class, malicious offences against property, although comprising a very small comparative proportion of the commitments, yet exhibits a marked increase, particularly under the heads of incendiarism and obstructing railway carriages. In the fifth class, forging, and offences against the currency, there is a considerable increase, particularly under the head of uttering counterfeit coin, which offence has increased 36 per cent. on a comparison of the totals of the last two five years.

The foregoing analysis refers to the total number of commitments during the past year; the following table shews the result of the judicial proceedings. We place the return of 1850 in juxtaposition for more ready comparison:—

	1850.		1851.
Not prosecuted and admitted evidence...	141	...	181
No bills found against	1,458	...	1,484
Not guilty on trial	4,639	...	4,744
Acquitted and discharged	6,238	...	6,359
Acquitted on the ground of insanity	26	...	13
Found insane	12	...	9
Sentenced to death	49	...	70
" transportation.....	2,578	...	2,838
" imprisonment	17,602	...	18,418
" whipping, fine, &c.....	307	...	218
Pardoned without sentence	1	...	7
Total number convicted.....	20,537	...	21,579

The effect of the Act of Parliament passed in 1849 to repeal the punishment of transportation on a first conviction for simple larceny, is more fully exemplified by the returns of last year. The capital sentences in 1851 are above the yearly average since 1841, when the last alteration of the law abolishing capital punishments took place. This increase arises chiefly on the offences of burglary and robbery, attended with personal violence or injuries. Of the 70 persons capitally convicted last year the sentence was recorded against 53, sentence of death upon 17; and of these 17, 10 were executed, 2 of them being females. The proportion of crime among females has shewn a slight tendency to increase on the last three years. The proportions are as follow:—1848, 23·4 females to 100 males; 1849, 24·1; 1850, 24·4; and 1851, 24·8. In the offences against the person the proportion of females last year was 13·4 to 100 males. In murder the large and increasing proportion of females, arising from the many cases of poisoning, has been much remarked. The number last year was, 41 females to 33 males.

It would be extremely interesting to compare the amount of crime with the extent of education in each county, and to be enabled to mark the extinction of the former by the growth of the latter. A remarkable instance has lately shewn that crime is rife where education is neglected. In the borough of Stockport, possessing a population of 85,000, which has just made itself conspicuous for its atrocities, the reports of the school inspector state that only 300 children were at school in the whole borough.

We do not mean to say that education would blot out crime, but there can be no doubt of its beneficial nature; and we have hope that our Legislature is beginning to discover that education is less expensive and more honourable to a nation, than huge machinery in the shape of prisons, transport ships, and penal colonies, for the punishment of crime.

CRIME IN SOMERSETSHIRE.—Mr. W. Miles, M.P. in his charge to the grand jury at the Somersetshire Michaelmas sessions, held at the Castle of Taunton, observed that he had to lament the number of prisoners that appeared in the present calendar, for when he looked to the calendar of the same period last year, he found there were nearly twenty more persons charged with offences now than there were this time last year, and he, having looked at reports from various counties, must say it did seem singular to him that in a district like this, where labour had latterly been most abundant, an excess of crime should arise which should increase the number of persons to be tried at the present quarter sessions to such an extent. At the same time, on looking over the offences, by far the greater proportion of them appeared to him to be of the most trivial nature. Literally, there were only two offences which might be called at all of a grave character—one, an assault with intent to rob; and the other, breaking and entering a dwelling-house. He had to congratulate the county on one thing—it appeared that the majority of the prisoners whose names were placed on the calendar had generally received a much better education than he had observed in any previous calendar.

HIRING CABS AT RAILWAYS.—Mr. A'Beckett has given judgment against the authority claimed by the railway managements. The magistrate remarked: "If a cabman could not be punished for refusing to take a fare at a terminus, neither could he be punished for abusive language, extortion, or other misconduct at a railway station. The railway officials have no right to assume an authority over hackney carriages, or to lay down regulations inconsistent with the law; and those drivers who act under this improperly assumed authority must take the consequences of the illegality of their actions. There has been put into my hands, by the solicitor of the defendant, a printed copy of rules and regulations for the government of owners and drivers of cabs standing for hire at the station of the London, Brighton, and South-Coast Railway. These regulations confirm what I have said as to the illegal assumption of authority by the railway companies over hackney carriages. Among other things I find that the public are recommended to pay certain rates for luggage in addition to the ordinary fares, and the public are told that otherwise the charge is discretionary with the cab driver. Now this is an error which the public mind cannot be too speedily disabused of, as the cab drivers can make no charge at all, and the only discretion they have in the matter is that they may refuse to overload their cabs with an unreasonable amount of luggage. They are bound to carry any reasonable amount without any charge; and it is time that the railway companies should understand that they are not authorised in fixing cab fares, and that they are very improperly misleading the public by issuing such regulations as those just placed before me."

MUNICIPAL BOROUGHS.—From a Parliamentary paper it appears that the receipts by municipal boroughs in England and Wales in the year ended the 31st of August, 1851, amounted to (with the balances in hand) 1,254,483*l.* 1s. 1½d. and the expenditure (with balances due to treasurers) to 903,721*l.* 4s. 11½d.

We regret to learn the death of Capt. Thomas Wentworth Buller, one of the commissioners of the copyhold, tithe, and enclosure commission, who expired at Wimpole, his seat in Devonshire, on Saturday last, after a short illness from an internal disorder. The vacant appointment is vested in the First Lord of the Treasury.—*Standard.*

JOINT-STOCK COMPANIES' LAW JOURNAL.

Two railways (A. and B.) were established by Act of Parliament, each of which incorporated the Railways Clauses Consolidation Act. They agreed that until an Act could be obtained A. should work the traffic of B. and pay tolls, after the expenses of B. were paid, equal to 4*l.* per cent. on the paid-up capital, and after the Act had to guarantee 4*l.* per cent. to the shareholders of B. and that A. should pay all the expenses of obtaining the Act. But the shareholders of A. objected and applied for an injunction to restrain the carrying out of the agreement and the application of their funds to the expenses of obtaining the Act. It was contended that the payments by A. were "*tolls*" within the meaning of the 87th section of the Consolidation Act. But the Court held otherwise, and granted the injunction. (*Simpson* v. *Denison*, 20 Law T. Rep. 46.)

Queries.

DATE OF LIFE POLICY.

A. B. on the 20th March, 1852 (through J. N. a country agent to the C. Insurance Office), proposed an insurance of his life in that office.

A policy, dated the 25th March, in which *payment* of the premium is acknowledged in the usual form, was sent by the office to their agent, and by him forwarded to said A. B.

A. B. was in good health at the date of the policy, but, about the middle of the next month, insanity commenced, and on the 29th May he died.

At the time the policy was sent to him, it did not suit him to pay the premium; but after his illness commenced, namely, on the 3rd May, a friend paid it for him to the *agent*, who receipted the following bill, which he had delivered, viz.:—

"A. B.

"Dr. to J. N. (the agent's own name).

"1852. April.	Paid your life assurance..	£15	15 0
	Policy stamp	1	0 0
		£16	15 0

The Insurance Office refuses to pay the amount insured, contending that the policy must not be considered, in equity, as taking effect until the 3rd May, when the premium was paid, and at which time deceased's life was uninsurable; and that a perpetual injunction would lie against any proceedings at law on the policy.

On the other hand it is contended, that, from the circumstance of the policy having been sent to deceased, credit was given him for the premium; and the form of the agent's account shews that he had made himself debtor to the office in April.

With regard to deeds of conveyance, &c. the fact of non-payment of the consideration-money establishes a lien, but does not avoid the deed. Would not the same law apply to a policy of assurance? and would not the Insurance Office be bound by the acts of its agent?

I should be obliged to any of your readers who would kindly express their opinions, and point out any authorities bearing on the subject.

The information is sought on behalf of a poor widow, whose all is the expectancy under this policy.

A SUBSCRIBER.

[We give place to this case, because it illustrates some of the doings of some of the offices, and may tend to make the Profession more cautious in effecting assurances. But the question itself is properly within our limit of exclusion, for it is really one of *law*, and not of professional practice.—Ed. LAW T.]

WINDING UP.

THE DIRECT BIRMINGHAM, OXFORD, &c.—On Saturday and Monday, meetings in this matter were held before Master Brougham, for the purpose of considering the proposition of Mr. Hutton, the official manager, that a call should be declared upon the members of the provisional committee, who have been fixed as contributories; the amount to be at the rate of 500*l.* in respect to the losses and expenses of the company, and 250*l.* for costs of winding up, thus making the total amount of the call upon each member of the provisional committee 750*l.* Mr. Roxburgh, who appeared for the official manager, observed that a call had been already made upon the managing committee, and the debts of the company paid; consequently the 500*l.* each was now called for as the rateable proportion of each provisional committeeman to such expenses. If they were liable to a call for expenses, they were therefore liable to pay thire share of the expenses of winding up. Counsel on behalf of the provisional committeemen contended that by the recent decisions no call could be made upon his clients, who could not be made liable at Common Law. A long legal argument ensued, but ultimately, after consideration, the Master refused to make the call.

GAS-METER COMPANY.—Thursday a meeting of contributories and others interested in the winding-up of this company was held before Master Senior, to consider the proposal of Mr. Goodchap, the official manager, to make a call of 7*l.* per share on 408 shares, and which he estimated would produce 1,000*l.* in order to pay the costs and expenses. A contributory objected to so large a call for costs, the more so as the company was not liable for a single debt. The official manager said that it was the very parties who had presented the petition for winding up, and had urged him to litigate matters, that were now raising objections on the score of costs. A director observed that his colleagues and himself had presented the petition for dissolution upon the assurance of a solicitor that 100*l.* would cover the whole affair. The Master said he would make the call, but give directions that it should not be enforced until the 1st of December.

REAL PROPERTY LAWYER AND CONVEYANCER.

AN impression has certainly prevailed that under no circumstances could a devise to children generally operate so as to permit illegitimate children to participate in the gift with legitimate children. But it appears from the case of *Owen* v. *Bryant*, 20 Law T. Rep. 45, that this is a mistake. Lord CRANWORTH said, "I think there is no invariable rule of that sort, but that in each case the question is one that depends upon the circumstances appearing upon the will, and that if, from the whole context of the will, it appears that illegitimate children are to be included with legitimate children in the benefit intended, il-

legitimate children may take." And this is a succinct statement of the law which the reader should note in his text-book, as it is of considerable importance. It is unnecessary to repeat the particular facts of the case in which this rule was applied, and the illegitimate children admitted to a participation in the devise.

From the Prerogative Court a very interesting case is reported, in which it was decided that where a wife died intestate whilst her husband was undergoing a sentence of transportation, her property accrued to the Crown and not to her next of kin. (*Coombs* v. *The Queen's Proctor*, 20 Law T. Rep. 48.)

Query.

POWER OF ATTORNEY.

CAN any of your readers kindly answer the following:—

A. by power of attorney appoints B. his attorney to take admittance to copyholds and then to surrender to C. C. by the same power appoints B. his attorney to take admittance for him of the same copyholds. Does the power require only one 30s. stamp? and if so, why? I am aware it may be said that a power of attorney to take admittance is not necessary, but the steward insists on the power, and the only question is as to the stamp.

Nov. 2, 1852. G. W. G.

Answers to Queries.

COUNTERPART LEASES.

THE inquiry in your last number by "Lex," seems too simple to need an answer; of course, if he wish to avail himself of the boon granted by the Legislature of paying 5s. for a counterpart lease stamp, instead of an ad valorem stamp, and that counterpart to be available in evidence, he must have the denoting stamp. As to the trouble or expense in obtaining the denoting stamp, that is quite another thing, and, probably, most attorneys do as he did, and avoid the trouble, expense, and delay, by using the ad valorem stamp instead of the 5s. stamp, where so small a sum as 5s. (the ad valorem being only 10s. in his case) is involved. But I may mention that here the trouble, expense, and delay is very little, as, on leaving the lease and counterpart (duly executed) at our Stamp Office, we generally have them returned with counterpart denoted in about a week, and without any expense. I am, Sir, yours, &c.

Liverpool, Nov. 2, 1852. A PRACTITIONER.

P.S.—I was a little amused to notice that "Lex" used a 10s. ad valorem stamp and a 10s. *follower*, as I had just read in the same page that mortgages should be comprised on *one* skin; but be that as it may, it is a *long* lease that requires a follower, and very little care, I think, would save that expense.

IN reply to "Lex," I take it to be *absolutely necessary* that the denoting stamp should be impressed on the counterpart he refers to. In the case he puts, however, the difficulty would be obviated by having *both parts* of the lease executed by *both lessor and lessee*, as each would then be *a lease*.

But it is quite clear to my mind that the *counterpart* (as such) of every lease, the proper stamp for which is 5s. or upwards, requires the denoting mark to render it admissible in evidence. L. C.

Nov. 2, 1852.

NEW WILLS ACT.

I CANNOT say I think the reply of "J. W. S." contained in your paper of the 2nd inst. to the doubts which appear to have arisen in the mind of "J. M. T" on the above Act, at all satisfactory; inasmuch as "J. W. S." supposes that the construction put upon the word "Will," in the 15 & 16 Vict. c. 24, s. 3, by reference to the 1 Vict. c. 26, s. 1, is intended to apply to the whole of the section in the last-named Act. But that such was not the intention of the Legislature is, I think, clear from the wording of the 3rd section of 15 & 16 Vict. c. 24, which commences thus, "*The* word 'Will' shall," &c. Now, if it were not intended to confine that section to the interpretation of *the* word "Will," why not have said, "the words will, number, and gender shall be interpreted in like manner as in 1 Vict. c. 26, s. 1." I, therefore, think this last-mentioned Act does not remove the difficulty complained of by "J. M. T." Neither, as it happens, need its clauses be at all strained for the purpose; since a later Act of Parliament clearly supplied any supposed deficiency in the 15 & 16 Vict. c. 24. The Act I refer to is the 13 & 14 Vict. c. 21, entitled "An Act for shortening the Language used in Acts of Parliament," the 4th section of which inserts the number and gender clause in all future Acts.

29th October, 1852. R. G.

STAMPS.

I CANNOT agree with Mr. Wilkinson as to the necessity of a 35s. stamp in respect of A.'s share, alluded to in "W. T.'s" letter, published on the 25th September last, for, on referring to the last Stamp Act, tit. "Conveyance," I find the *ad val.* duty, and *no other* duty, attaches "upon the sale of any lands or of any *right, title, or interest*, out of any lands, and such duty is charged upon the purchase or consideration money *"therein or thereupon expressed."*

Now, surely *A.'s* share *is a right, title, or interest* out of the land conveyed, and no further duty than upon the *purchase-money* therein expressed is payable.

Nov. 2, 1852. L. C.

COUNTY COURTS.

LATE CASES ON THE LAW AND PRACTICE OF THE COUNTY COURTS.(a)

VII. CASES ON THE QUESTION OF SUING FOR EXCESS.

THE power of a plaintiff in any action in a County Court to bring the subject of his suit within the jurisdiction of the Court, by suing for so much of it only as would be recoverable in a County Court, and abandoning the remainder of the debt, is conferred by the 63rd section of the 9 & 10 Vict. c. 95, which enacts, that any plaintiff having cause of action for more than 20*l.* (since extended to 50*l.*), for which a plaint might be entered under this Act, if not for more than 20*l.* may abandon the excess, and thereupon the plaintiff shall, on proving his case, recover to an amount not exceeding 20*l.*; and the judgment of the Court upon such plaint shall be in full discharge of all demands in respect of such cause of action, and entry of the judgment shall be made accordingly.

In the following case the plaintiff claimed from the defendant a sum of 22*7l.*; against this he gave him credit, by set-off, for 116*l.* 16*s.* 9*d.* and a payment of 70*l.* of the remainder, he abandoned 20*l.* 3*s.* 3*d.* so as to reduce his demand to 20*l.* and thus to bring it within the jurisdiction of the County Court, and sued there for that sum. It was held, on a motion for prohibition, that the case came within the principle in *Woodhams* v. *Newman*, 1 Cox & Mac. 231, adverted to in our article on the question of set-off; and that the County Court had no jurisdiction. (*Beswick* v. *Capper*, 1 Cox & Mac. 243.)

A plaint was entered in a County Court to recover 20*l.* penalty for practising as an apothecary. The particulars stated the cause of action thus:—"Action to recover 20*l.* for that on and on divers other days and times the defendant did act and practise as an apothecary, &c. at A. in the county of C., A. in the county of N., B. in the county of C., and B. in the county of M., by then and there attending on E., F., G. and H. whereby he has forfeited 20*l.*" &c. It was held that such particulars did not disclose a cause of action exceeding 20*l.* and that, therefore, the County Court had jurisdiction. (*The Apothecaries Company* v. *Burt*, 1 Cox & Mac. 281.) POLLOCK, C.B. in delivering his judgment in this case, observed that the plaintiff's claim was limited to 20*l.* and no more could be recovered under that plaint. The particulars of the claim are certainly ambiguous, and might give rise to a question on which it will be unnecessary to pronounce a decision, viz. whether the illegal acts done by the defendant at different days and places may be made the subject of one or more penalties. The present claim is limited to 20*l.*; more cannot be recovered; and the County Court has jurisdiction to that amount, whether the claim be originally within that sum, or the plaintiff be willing to reduce his demand to that amount, and abandon the surplus. ALDERSON, B. observed, I do not see that the plaintiffs have a cause of action above 20*l.* consequently there can be no abandonment of excess. The particulars may be ambiguous, and open to special demurrer, but that is for the judge of the County Court, who would do well at the trial to make them elect on which of the four cases they mean to go, and use the others as evidence.

In the case of *Vines* v. *Arnold*, 1 Cox & Mac. 320, it was held that where a plaintiff had a cause of action exceeding 20*l.* but nevertheless sued in a County Court for part only of his demand, and recovered such part, and it did not appear at the trial in the County Court that the claim was part of a debt exceeding 20*l.* or that the plaintiff had done anything to shew that he abandoned the excess beyond 20*l.* such plaintiff might still sue in the Superior Court for the excess, if above 20*l.* MAULE, J. in delivering the judgment of the Court, said that there must be something done by the plaintiff to shew that he abandons the excess beyond 20*l.*; and that without this is done, he ought to be non-suited in the County Court. It is a good defence in the County Court that the plaintiff has paid a debt which the defendant has shewn to be parcel of a larger debt, exceeding 20*l.*; and the defendant is thereupon entitled to the judgment of the Court, unless the plaintiff abandons the excess. But the plaintiff ought to have the option of saying that he abandons the excess, or to be nonsuited, that he may sue for the whole in the Superior Court.

This case is one of considerable importance to those who practice in the County Courts, and both the principle of the law and the practice to be pursued are so clearly laid down in Mr. Justice MAULE'S judgment, that it is unnecessary to dwell upon them here. We may remark, however, that this case is distinguishable from that of *Grimbly* v. *Aykroyd*, 1 Ex. 479, which was alluded to in the argument, inasmuch as that applies to the case of different items in a tradesman's bill being divided into different causes of action, and all being sued for in the County Court. In the above case, the whole debt is sued for in the County Court, and after recovery here of the amount within the jurisdiction of that Court, the excess is sued for in one of the Superior Courts.

The above case is also distinguishable from that of *Parker* v. *Elsby*, 1 East, 352, where it was held that debts recoverable in a Court of Requests, were expressly prohibited from being sued for in the Superior Courts, by the Act of Parliament for creating the former. The County Courts Act, on the other hand, contains no such prohibitory clause. In *Burroughs* v. *Hodgson*, 9 Ad. & E. 499, 1 Per. & D. 329, it was decided, that where a Court of Requests had exclusive jurisdiction of debt to a certain amount, the plea must state in terms that the defendant was not indebted beyond that amount. It was not sufficient to allege that he was not indebted beyond a smaller sum which was specified. The County Courts, however, possess no exclusive jurisdiction of the nature here alluded to.

The question in what manner the abandonment of the excess should be made in the County Court, still remains to be decided; and it is doubtful whether this should be made to appear on the record, or whether it may be done *viva voce* during the progress of the trial. Talfourd, J. indeed, observed in *Vines* v. *Arnold*, while delivering his opinion,—"I think the Legislature intended that there should be some act of abandonment in Court, because a provision is made for an entry of the abandonment."

(a) By GEORGE HARRIS, Esq. Barrister-at-Law.

INTERPRETERS' FEES IN THE COUNTY COURTS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Having had some experience in the practice of these Courts in the principality of Wales, I feel a necessity, and venture to call your attention as a matter deserving the consideration of the committee on the scale of fees, to the allowance to interpreters, if it can legitimately be brought within the scope of their authority.

Scarcely a sitting passes in Welsh districts without an interpreter being required in several causes, and fees claimed and paid; while there is no provision for such fees being allowed in the taxation of costs against the losing party. The party requiring an interpreter (perhaps through the mere fact of an Englishman being employed for an advocate by his adversary), is invariably obliged to pay him out of his own pocket, though he win his cause; and such fees amount from *one* to *five shillings*, according to the importance of the case.

Very frequently, where an attorney is employed, he is obliged to advance at once, in order to be able to proceed; while in the case of a poor suitor, unable to retain an attorney, and unexpectedly called upon while unprepared for the interpreter's fee, he finds himself in an awkward position.

A very respected judge of one of the Welsh districts, entertains the very rational view,—"That every witness *ought to be allowed to give his evidence in the language in which he thinks.*" I fully concur in that view,—not merely out of regard to the feelings of my fellow countrymen—the Welsh, but principally as it tends very materially to the due administration of justice. Even in cases where a Welsh witness is capable generally of expressing himself in English, he is very liable, unconsciously, to mis-state facts, or state them in a manner capable of being misrepresented; and his very embarrassments are susceptible of being misconstrued, and his veracity in consequence impeached, to the suitor's prejudice.

I cannot but feel that my countrymen have not been fairly dealt with in this matter. The proceedings ought to be conducted in their native language, or such a functionary as an *interpreter* ought to be attached to each court (as so much care has been taken to have *everything* done by *officers*), or rather an interpreter's *fee* ought to be fixed and allowable on taxation of costs against the losing party, as at Nisi Prius.

In the scale of fees submitted for approval in your last number, several frequent and necessary steps in County Court suits are altogether omitted, for which the profession ought to charge, and the losing party to pay; such as *notices to admit*, now rendered necessary as a preliminary to being allowed for proof of documents; *notices to inspect* by defendants;

and *attendances* to give inspection in either of these cases; proceedings connected with *confession of debt*, and *judgments by consent*; proceedings on *judgments more than a year old*, and in the nature of a *scire facias*, and also *mileage* for services when not directed to be effected by an officer of the Court.

It is really unaccountable why the attorneys and the suitors generally so tamely submit to the services of process and subpœnas being performed by the officers, while the uniform mileage allowed would not only be remunerative but profitable; taking especially into consideration how more efficiently it would be done by the attorneys than it can reasonably be expected it should by the officer.

I am, Sir, yours, &c.
A. J. E.

ADVOCACY OF ATTORNEYS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—When so much discussion is going on relative to advocacy in the County Courts, I wonder that no mention is made of a class of cases which would be most affected by the adoption of a stringent rule prohibiting one attorney from appearing as an advocate in a case which had been managed by another attorney, viz. when the plaintiff and defendant reside in different districts, and the plaintiff is obliged to sue in the district where the defendant resides. Now, if one attorney must conduct the case throughout, the plaintiff must either employ an attorney who resides near and practises in the court where the action is brought, or he must take his own attorney along with him; and where the case presented any difficulties, and could not be properly prepared without an interview between plaintiff and his attorney, he would either have to go to the attorney (if he employed one where the case was to be heard), or the attorney must come to him, or if he employed an attorney in his own district there would be the attorney's special journey to attend the hearing, either of which courses would entail considerable expense, and could not be avoided, especially if the case was tried in a court where no counsel were in attendance.—I am, Sir, yours, &c.

AN ATTORNEY'S CLERK.

ADVOCATES IN THE COUNTY COURTS.—In the course of Tuesday's proceedings in the County Court, Mr. Hime mentioned to his Honour that there was a case in which the defendant lived at Rochdale, and the defendant wished to leave Liverpool that afternoon. His attorney, Mr. Martin, engaged at the sessions, and had desired him (Mr. Hime) to appear for him.—The Judge: Oh, yes; and I may now state that I have had an opportunity of consulting other gentlemen on the subject of professional practice, which was mentioned some time since. I find they concur with me in my construction of the Act of Parliament, and they hold that the meaning of the provision is, that where a professional gentleman is engaged, he must conduct the cause throughout from the time the case is placed in his hands,—not that business may not be transferred from one professional man to another, but he must conduct the case throughout. The whole business may be transferred from one professional man to another. Some of the clauses of the Act of Parliament bear quite as hardly upon the judge as they do upon the Profession; but having looked again at the Act of Parliament, and having consulted with other gentlemen, I am of opinion that the intention is, that when a case is placed in the hands of a professional man, it must be entrusted to him throughout, —not placed in his hands for the purpose of conducting it in court and afterwards go back into the hands of another gentleman. He must be prepared to conduct the action generally throughout.—Mr. Hime said he thought it right to mention the circumstance to his Honour.—His Honour intimated that he should always be ready to accommodate professional gentlemen, so far as he could.—*Liverpool Mercury.*

NEW COUNTY COURT JUDGE.—We have much pleasure in announcing that the Lord Chancellor has appointed Mr. Pitt Taylor, of the Home Circuit, to be the judge of the Lambeth County Court of Surrey, and of the Greenwich County Court of Kent, in the room of the late Mr. Chilton, Q.C. We gladly welcome this judicious and well-merited appointment, which will be accepted as an earnest of his lordship's disposition to promote those principles with which Mr. Taylor's name is identified. That gentleman is well known by his able, enlightened, and persevering advocacy of law reform—a cause in which few men have laboured with equal zeal and efficiency. His work on the Law of Evidence has long been recognised in the Profession as a high authority on the subject of which it treats; and he has most powerfully contributed, both to the accomplishment of those amendments in the law which have been actually effected during the last few years, and to the work of preparing the public mind for the larger and more comprehensive legal reforms which yet remain to be achieved. His services in this field were, it may be remembered, emphatically recognised, not long since, by Lord Brougham and Lord Denman, in a published correspondence which passed between them on the subject of law reform—both of those noble lords acknowledging, in the strongest terms, the valuable aid which they had received from Mr. Taylor in the preparation of important legislative measures. In selecting him for the important judicial posts above mentioned, the Lord Chancellor has honourably marked his appreciation of distinguished professional attainments; and we can scarcely be mistaken in regarding this exercise of patronage as a distinct indication of his lordship's desire to further the cause which Mr. Taylor has so energetically and successfully promoted.—*Morning Chronicle.*

THE LAWYER.

COSTS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—The 25th ult. passed over, and the Profession were quite in darkness as to what costs should be indorsed on their writs. In several instances within my own knowledge the issuing was delayed, so as to be on the safe side, and not liable to the penalty of the 6th being taken off. I do not think there could be any possible excuse for the authorities entrusted with the preparation of the scale of fees, it not being a weighty matter. The egg has at length been broken, and the result is as follows:—

	Above 20*l.*	Under 20*l.*
Costs to judgment by default, in town	£3 8 0	£2 14 0
Ditto, country	£4 0 0	£3 2 0

Now, upon this shewing, the costs of the attorney are reduced more than half in all the four instances: surely the office fees ought to be reduced similarly; but the fee on issuing writ remains at the usual fee of 5s. The day of judgment not having yet arrived, it would no doubt be very beneficial to the Profession if a reduction was made in the fees for that important proceeding, under the circumstances of the case.

As you are always willing to assist with your advice and remonstrance the Profession,

I am, yours, &c LUDIV.

Queries.

ARTICLED CLERKS.

A. is under articles to an Attorney, which will expire in December next, but he will not attain twenty-one years of age until August next. Since he was articled his circumstances have become very much limited by the death of his father, and he is anxious to get examined as soon as possible after his articles expire, and then take a clerkship.

I shall feel obliged by any of your readers referring me to an authority bearing upon the point, as to whether he can be examined (not admitted) before attaining twenty-one. J. W.

Answers to Queries.

SIGNED BILLS OF COSTS.

THE usual practice in such a case as is stated by "A Practitioner," in your last paper, is, I believe, to deliver *only one* signed bill of costs, let there be ever so many executors. It has been ruled in several cases that the only object of requiring a signed bill to be delivered a month before an action is commenced, is to enable the person charged with the payment of such bill the opportunity of having it taxed. I feel quite satisfied that a bill of costs made out "The executors of the late ——, to A. B." and stating the work done for the deceased, &c. duly signed and delivered by A. B. to one of the executors, or to the attorney acting for them, one month before action brought, would be held a sufficient compliance with the statute.

Chichester, Nov. 2, 1852. W. H. F.

LAW OF EVIDENCE AMENDMENT ACT.

AN examined copy of, or extract from, a will proved to be so, or purporting to be signed and certified as such by the officer to whose custody the original is entrusted, would clearly be admissible in evidence under the 14th section of the above Act.

Chichester, Nov. 2, 1852. W. H. F.

"T. S." will probably find M. W. Howe, of 81, Lombard-street, London, able to translate the "Anglicanum Monasticum." He is a person who may be safely trusted with any documents, &c. requiring translation.

Kendal, Nov. 3, 1852. CHAS. WILKINSON.

NEW SEALS IN THE COURT OF CHANCERY.—The Master of the Rolls and the Vice-Chancellors are, by virtue of the new Acts, to dispose of business at chambers, under summonses issued in the same manner as at the judges' chambers, and by the new rules seals are provided by which the summonses are to be stamped. Further, it is ordered that a list of the matters to be heard is to be made out and exhibited. A copy of each summons is to be left at the judges' chambers by the party obtaining the same.

THE MERCANTILE LAWYER.

Summary.

THE following was held in *Hankin* v. *Bennett*, 20 Law T. Rep. 47, *not* to be a debt payable on a contingency, within the 66th section of the 6 Geo. 4, c. 16, and therefore barred by the bankrupt's certificate. A. gave a bond conditioned that if he should pay B. such costs as B. should in due course of law be liable to pay in case a verdict should pass for the defendant in another action, the bond should be void. The action in question was tried at the Spring Assizes, 1848; in Easter Term a rule for a new trial was obtained; the fiat issued on Nov. 14; the rule for a new trial was discharged in Hilary Term, 1849; A. obtained his certificate on May 29; and on Aug. 22 costs were taxed and judgment signed against B.

RULES AND REGULATIONS UNDER THE NEW PATENT-LAW.—A second set of rules and regulations has just been issued by the new patent commissioners, in substitution of some others that have been cancelled or annulled, appointing the office of the director of Chancery in Scotland, and the Inrolment Office of the Court of Chancery in Dublin, to be the offices of the commissioners for the recording of transcripts of letters patent. No warrant under the new regulations is to be granted for the sealing of any letters patent that contain two or more distinct substantive inventions. The provisional specification is to state distinctly the whole nature of any invention, so that the law officers may be apprised of the improvement. Where letters patent are proposed to be extended to the colonies, the particular colony is to be specified. Every application to the Lord Chancellor against, or in relation to, any letters patent, is to be, by notice, left at the commissioners' office, containing particulars of the objections. The rules are signed—St. Leonards, C.; John Romilly, M. R.; Frederick Thesiger, A. G.; and Fitzroy Kelly, S.G.

COURT PAPERS.

FURTHER ORDERS IN CHANCERY.

THE subjoined Orders, dated respectively the 23rd and 25th Oct. were issued on Saturday, and form the Supplement to the "New Orders in Chancery," published in our last:—

ORDER OF COURT.

Saturday, the 23rd day of October, 1852.

The Right Hon. Edward Burtenshaw, Lord St. Leonard's, Lord High Chancellor of Great Britain, by and with the advice and assistance of the Right Hon. Sir John Romilly, Master of the Rolls; the Right Hon. the Vice-Chancellor Sir George James Turner; and the Hon. the Vice-Chancellor Sir Richard Torin Kindersley, doth hereby, in pursuance of an Act of Parliament passed in the 15th and 16th years of her present Majesty, intituled "An Act to abolish the office of Master in Ordinary of the High Court of Chancery, and to make provision for the more speedy and efficient despatch of business in the said Court," and in pursuance and execution of all other powers enabling him in that behalf, order and direct as follows, viz.:—

1. The chief clerks of the Master of the Rolls and Vice-Chancellors respectively, are directed to take following fees:—

	£.	s.	d.
1. For every original summons for the purpose of proceedings originating in chambers	0	5	0
2. For every duplicate thereof	0	5	0
3. For every other summons	0	3	0
4. For every advertisement	1	0	0
5. For every certificate or report	1	0	0
6. For every certificate upon the passing of a receiver or consignee's account, a further fee in respect of each 100*l.* received of	0	10	0
7. For every order drawn up by the chief clerk made upon applications for time to plead, answer or demur, for leave to amend bills or claims, or for enlarging publication or the period for closing evidence, or for the production of documents, or applications relating to the conduct of suits or matters	0	5	0
8. For every other order drawn up by the chief clerk	1	0	0

11. The registrars are directed to take the following fees:—

For orders made by a judge in chambers, drawn up by the registrar, the like fees as before directed to be taken by the chief clerk for orders drawn up by him.

III. The record and writ clerks are directed to take the following fees:—

For office copies of original depositions and examinations, per folio	£0	0	4
For entering appearances to a judge's summons, same charge as for appearing to a bill.			
For stamping every copy of a bill or claim for service	0	5	0
For stamping every copy of a judge's summons for service	0	5	0
For examining every copy or part of a copy of a set of interrogatories, and marking same as an office copy	0	5	0

IV. All fees received by the officers of the court, under the preceding orders, are to be accounted for and paid by them respectively, once in every month, into the Bank of England, in the name of the Accountant-General, to be placed to the account there intituled "The Suitors' Fee Fund Account;" the amount so received and paid by such officers respectively to be verified by the affidavit of the accounting party.

V. Solicitors are entitled to charge and be allowed the following fees:—

For instructions to commence proceedings originating in chambers, or to defend the same	£0	13	4
For preparing an original summons for the purpose of proceedings originating in chambers, and the duplicate thereof	0	13	4
For attending at chambers to get such summons and duplicate examined and sealed	0	6	8
For attending at the Record and Writ Office to file duplicate and examine copies, and get same stamped	0	6	8
For endorsing a summons and the copies under Order VI. of 16th October, 1852, and attending to get same sealed	0	6	8
For entering the appearance for one or more defendants, if not exceeding three	0	6	8
If exceeding three, for every additional number, not exceeding three an additional sum of	0	6	8
In cases of proceedings originating in chambers the same term fee as in a suit.			
For preparing every other summons and attending to get same filled up and sealed at chambers	0	6	8
For each copy of a summons to serve or leave at chambers	0	2	0
For attending on a summons or other appointment, each day, a fee of 6s. 8d., 13s. 4d., or 1*l.* 1s., according to circumstances; but the fee is to be 6s. 8d., unless a larger fee is allowed by the judge or his chief clerk.			
Where from the length of the attendance, or from the difficulty of the case, the judge shall think the highest of the above fees an insufficient remuneration for the services performed, or where the preparation of the case to lay it before the judge shall have required skill and labour, for which no fee has been allowed, the judge may allow such further fee, not exceeding one guinea, as in his discretion he may think fit.			
For preparing every advertisement	0	6	8
For attending to get same approved and signed	0	6	8
For attending for every order drawn up by the chief clerk, and at the registrar's office to get same entered	0	6	8
For attending to enter claim under Order XXXVI. of 16th October, 1852, and to file affidavit	0	6	8
For perusing the affidavits of claimants coming in under Order XXXVI. of 16th October, 1852, and attending in chambers at the time appointed by the advertisement, where the number of claims does not exceed five	1	1	0
Where the number exceeds five, for every additional number, not exceeding five, an additional sum of	1	1	0
For attending to bespeak and procure office copy of certificate or report	0	6	8

For all other business performed such fees as by the practice of the Court they are entitled to for similar business.

(Signed) St. Leonards, C.
John Romilly, M.R.
G. J. Turner, V.C.
Richard T. Kindersley, V.C.

ORDER OF COURT.

Monday, the 25th day of October, 1852.

The Right Honourable Edward Burtenshaw, Lord St. Leonards, Lord High Chancellor of Great Britain, doth hereby, in pursuance of an Act of Parliament passed in the 15th and 16th years of the reign of her present Majesty, intituled "An Act for the Relief of the Suitors of the High Court of Chancery," and in pursuance and execution of all other powers enabling him in that behalf, order and direct that all and every the orders, rules, and directions hereinafter set forth shall henceforth be, and for all purposes be deemed and taken to be, "General Orders and Rules of the High Court of Chancery," viz.:—

I. In lieu of copies of pleadings and other proceedings in the Court of Chancery, and of the documents relating thereto, being made and delivered by officers of the Court, at the office in which they are filed or left, copies of such pleadings, proceedings, and documents (save as hereinafter excepted), are to be made, delivered, charged, and paid for according to the following regulations:—

1. The following copies are exempted from this order, that is to say—Office copies of proceedings filed in the Report-office; office copies of answers, pleas, and demurrers; office copies of depositions of witnesses, and examination of parties to be made for and taken by the party on whose behalf such depositions and examinations have been taken; office copies of affidavits to be made for and taken by the party filing the same: and office copies of affidavit to be taken under Orders XXXVII. of 16th October, 1852.

2. The party or his solicitor requiring any copy, save as hereinbefore excepted, is to make a written application to be delivered to the party by whom the copy is to be furnished, or his solicitor, with an undertaking to pay the proper charges.

3. Upon such requisition being made with such undertaking as aforesaid, copies of such pleadings, proceedings, or documents, are to be made by the party or his solicitor filing or leaving the same, or who under the first rule may have taken office copies thereof.

4. The copies are to be ready to be delivered at the expiration of forty-eight hours after the delivery of such request and undertaking, or within such other time as the Court may in any case direct, and are to be delivered accordingly upon demand and payment of the proper charges.

5. The charges for all such copies are to be at the rate of 4d. per folio.

6. Copies of bills of costs are to be made side for side, so as to correspond with the bills of costs left in the office.

7. The folios of all copies are to be numbered consecutively in the margin thereof, and the name and address of the party or solicitor, by whom the same is made, is to be endorsed thereon in like manner as upon the proceedings in the Court; and such party or solicitor is to be answerable for the same being true copies of the original, or of an office copy of the original pleadings, proceeding, or document of which it purports to be a copy, as the case may be.

8. In cases of ex parte applications for injunctions, or writs of ne exeat regno, the party making such application is to deliver copies of the affidavits upon which it is granted, upon payment of the proper charges immediately upon the receipt of such written request and undertaking as aforesaid, or within such time as may be specified in such request, or may have been directed by the Court.

9. Any party or solicitor who has taken any office copy mentioned in rule 2, is to produce the same in court, or at the judge's chambers, when required for the purpose of the proceedings to which the same relate.

II. That all office copies, and copies to be furnished by parties or their solicitors, shall be written on paper of a convenient size, with a sufficient margin, and in a neat and legible manner, similar to that which is usually adopted by law stationers; and in the case of copies to be furnished by parties or their solicitors, unless so written, the parties or solicitors furnishing them shall not be entitled to be paid for the same.

III. That in case any solicitor who shall be required to furnish any such copy as aforesaid shall either refuse, or for two clear days from the time when the application for such copy shall have been made shall neglect to furnish the same, the person by whom such application shall be made shall be at liberty to procure a copy from the office in which the original shall have been filed, in the same way as if no such application had been made to the solicitor, and in such case no costs shall be due or payable to the solicitor so making default in respect of the copy or copies so applied for.

IV. That in case any solicitor by whom any such copy ought to be furnished shall neglect to do so for such two clear days as aforesaid, or for one clear day, an addition of two clear days or one clear day, as the case may be, shall be made to the period within which any proceeding which may have to be taken after obtaining such copy ought to be so taken, so that the person requiring such copy may be as little prejudiced as possible by such neglect as aforesaid.

V. That the Taxing-Master shall not allow any costs in respect of any copy so taken as aforesaid, unless the same shall appear to him to have been requisite, and to have been made with due care both as regards the contents and the writing thereof.

VI. That from and after the 1st day of November next, all the fees now payable in relation to such proceedings in the said Court as are mentioned in the first part of the first schedule hereinafter contained shall be abolished; and the fees specified in the second part of such schedule shall be payable, and the same (save as provided by the seventh of these orders) shall be collected, not in money, but by means of stamps denoting the amount of such fees, stamped or affixed, at the expense of the parties liable to pay the fees, on or to the vellum, parchment, or paper on which the proceedings in respect whereof such fees are payable are written, or printed, or which may be otherwise used in reference to such proceeding.

And where any of the fees specified in the second part of the said first schedule shall be payable in respect of any matter or thing to be done by any officer, or in any office of the court, and it shall not have been customary to use any written or printed document or paper in reference to such matter or thing, whereon the stamp could be affixed, the party or his solicitor requiring such matter or thing to be so done, shall make application for the same, by a short note or memorandum in writing, and a stamp denoting the amount of the fee so payable shall be stamped on or affixed to such note or memorandum.

VII. That in all cases where the costs are directed to be paid out of a fund in court, the fees of taxation shall not be payable by means of stamps, but shall be carried over by the Accountant-General to the credit of the Suitors' Fee Fund; and, to that intent, the Taxing-Master shall in such cases certify the amount of such fees.

VIII. That from and after the 28th of October, 1852, the brokerage which shall or may from time time be received by the Accountant-General of the Court of Chancery shall be paid by him on the first day of every month, or as soon after as conveniently may be, into the Bank of England, to be there placed to his credit as such Accountant-General, to the account intituled "The Suitors' Fee Fund Account."

IX. That, subject to the superintendence and direction of the Accountant-General of the Court of Chancery, with the approbation of the Lord Chancellor, the first, second, and third clerks in each division of the Accountant-General's office, shall from and after the said 28th day of October, 1852, and until other order or provision shall be made in that behalf, continue to perform the acts or duties before performed by such clerks, and which are mentioned in the said second schedule, in addition to the duties prescribed by Act of Parliament as heretofore; and such fees as are specified in the second schedule shall be paid for such acts as aforesaid, to be accounted for in like manner as the other fees now received in the office of the said Accountant-General, and to be collected by means of stamps in like manner as provided by Order VI.; and from and after the said 28th day of October, 1852, no other person shall perform such acts or duties.

And in order to enable the Lord Chancellor, with the consent of the Commissioners of her Majesty's Treasury, from time to time to fix the amount of the yearly salaries to be paid to such clerks, the Accountant-General shall every six months make a return to the Lord Chancellor of the amount received during the preceding six months in respect of such fees.

The first schedule to which the foregoing orders refer.

PART I.—FEES NOW PAYABLE WHICH ARE TO BE ABOLISHED.

MASTERS' OFFICE.

For drawing every report, exclusive of schedules of accounts of parties accounting before the Masters, and exclusive of the fee on signing, per folio	£0	1	0
For drawing schedules of accounts of parties accounting before the Master, per folio	0	0	6
For taking the acknowledgment of any deed	0	6	0
For searching for papers in a cause or matter not in immediate progress before the Master	0	0	8
For entering accounts of receivers, consignees, and committees, per folio, in each book	0	0	4
For entering accounts of parties accounting before the Master in a book, if required, per folio	0	0	4
For every exhibit	0	2	6
When a Master shall be required to attend a party to administer an oath, there shall be paid a further fee of 10s. over and besides the coach-hire, or reasonable travelling expenses of the Master	0	10	0
And for copies of every document or writing made in the Master's office, and also for the transcript of every report, pursuant to the Act of Parliament 3 & 4 Wm. 4, c. 94, and the General Orders of 26th October, 1842, per folio	0	0	4

REGISTRARS' OFFICE.

1. For every decree or order on the original hearing of the cause, and on further directions £3 10 0
2. For every office copy thereof 2 0 0
3. For every order on petition or motion of course, not exceeding one side..... 0 3 0
4. For every additional side of such order 0 1 0
5. For every order on other petitions, where the reference is directed, but the decision of the master is not to be final, and also where the petition is dismissed 0 10 0
6. For every office copy thereof 0 10 0
7. For every order for a special injunction, or for the appointment of a receiver.... 2 10 0
8. For every office copy 1 0 0
9. For every order for payment of money out of court, and for no other purpose, where the sum or sums thereby specifically directed to be paid shall not exceed in the whole 100*l.*..... ..... 0 10 0
10. For every office copy thereof 0 5 0
11. For every order of transfer out of court, or sale of any sum or sums of Government stock or South Sea Annuities (excepting Long Annuities and annuities for terms of years), and for no other purpose, where the sum or sums thereby specifically directed to be transferred or sold shall not exceed in the whole 100*l.* stock or annuities..... 0 10 0
12. For office copy thereof..... 0 5 0
13. For every order for payment out of court of any annuity or annuities not exceeding in the whole 5*l.* per annum, or of any interest or dividends upon stock or annuities not exceeding in the whole 5*l.* per annum, and for no other purpose 0 10 0
14. For every office copy thereof..... 0 5 0
14a. For every office copy of every other order for payment or transfer out of court 1 0 0
15. For every other order on special motions 1 0 0
16. For every office copy thereof..... 0 10 0
17. For every order on arguing exceptions 2 0 0
18. For every office copy thereof..... 1 0 0
19. For every order on arguing pleas and demurrers 1 0 0
20. For every office copy thereof..... 0 10 0
21. For every order on petition of appeal or rehearing 2 0 0
22. For every office copy thereof..... 1 0 0
23. For every order on petitions not herein otherwise specified 2 0 0
24. For every office copy thereof..... 1 0 0
25. For every order in any matter of lunacy 0 10 0
26. For every office copy thereof..... 0 5 0
27. For every order in any matter of bankruptcy..... 0 10 0
28. For every office copy thereof..... 0 5 0
29. For every copy of a petition of appeal on the rehearing, per side 0 0 6
30. For every order on the hearing of a claim on further directions..... 2 0 0
31. For every office copy thereof..... 0 10 0
32. For every order on arguing exceptions (on claim)..... 1 0 0
33. For every office copy thereof..... 0 5 0
34. For every order (on a claim) for transfer out of court or sale of any Government stock, &c. exceeding 100*l.* stock or annuities; and for every order for payment out of court of any annuity or annuities, or of any interest or dividends upon stock or annuities, exceeding in the whole 5*l.* per annum..... 1 10 0
35. For every copy thereof..... 0 10 0
36. For every order for payment of money out of court where the sum or sums thereby directed to be paid shall exceed 100*l.* and shall not exceed in the whole 500*l.*; and for transfer out of court or sale of any sum or sums of Government Stock or South Sea Annuities (excepting Long Annuities or annuities for terms of years), when the sum or sums thereby directed to be transferred or sold shall exceed 100*l.* and shall not exceed in the whole 500*l.* and for payment out of court of any annuity or annuities exceeding 5*l.* and not exceeding in the whole 25*l.* per annum, or of any interest or dividends upon stock or annuities exceeding 5*l.* and not exceeding in the whole 25*l.* per annum, and for no other purpose .. 1 0 0
37. For every office copy thereof 0 10 0
38. For every other order for payment or transfer out of court 2 0 0

REPORT OFFICE.

Searches, 6*d.* per year 0 0 6
Examination of office copies for evidence per folio of ninety words..... 0 0 1½

ENTERING SEALS.

For every order or decree left for entry containing 160 words on a side 0 0 6
For every certificate on Master's report .. £0 1 0
Entering every attachment..... 0 0 2

AFFIDAVIT OFFICE.

For filing every affidavit, with or without schedules, or other papers thereto annexed 0 0 4
For the registrar's or his deputy's hand to every copy of an affidavit, with or without schedules or other papers thereto annexed..... 0 1 0
For every search for an affidavit for each term, 6*d.* with the liberty of reading it over, if found 0 0 6
For searching for, and taking an original affidavit off the file in order to attend the Lord Chancellor or Master of the Rolls therewith, or to be made use of in any court 0 6 8
For attending therewith at the Lord Chancellor's, or at any of the courts of Westminster, or in London, each time..... 0 6 8
For examining the copy of every affidavit with the original, in order to make use of such copy as evidence in any other court than the Court of Chancery 0 1 0
Taking affidavits for distringas 0 1 0
For carrying an original affidavit by the registrar or his deputy to any assizes, for each day, including horse hire and expenses..... 1 1 0
For trouble, attendance, and taking security to return an original affidavit to the office, when by an order of the Court such original affidavit is directed to be delivered to an associate or clerk of assize, to be made use of at the assizes 0 6 8
For every exhibit..... 0 2 6

EXAMINERS.

Every witness sworn, including oath 0 2 6
Ditto sworn, and not examined, including oath..... 0 5 0
Every witness examined on close holidays 1 7 8
Examining copy depositions, with record to prove on trial at law, if more than forty sheets, for each sheet..... 0 0 2

RECORD AND WRIT CLERKS.

Sealing special injunction 1 10 0
Resealing any writ, or any alteration thereof 0 3 0
Every exemplification, per skin, exclusive of parchment and duty 1 14 0
Amending every office copy, if more than ten folios, for every folio over 0 0 4
Search for records when in record-room, or for any person not being a party in the cause, for each year after the first year..... 0 1 0
Every exhibit to an affidavit, &c..... 0 2 6

TAXING MASTERS.

For copies of bills of costs and other documents, per folio 0 0 4
For drawing every report, per folio 0 1 0
Per centage on amount of every bill of costs as taxed 2 10 0
For every exhibit..... 0 2 6

DOORKEEPER OF THE COURT OF CHANCERY.

For every cause heard on each side 0 13 0
In every further directions, ditto 0 13 0
In every exceptions, each set..... 0 13 0
Every appeal or rehearing, one side..... 0 13 0
Every plea or demurrer, one side..... 0 13 0
Every guardian assigned..... 0 13 0
Out of 1*l.* paid on setting down every petition..... 0 3 0
Every lunatic petition..... 0 3 0
Every witness examined *vivâ voce* 0 1 6
Every prisoner by habeas corpus 0 2 6
Setting down causes to be heard 1 0 0
Setting down cause at Rolls 1 0 0
Term fee from Attorney-General..... 1 10 0
Term fee from Solicitor-General 1 0 0
Upon swearing into offices before the Lord Chancellor..... 2 12 6
From each Queen's Counsel per Term .. 1 12 0

ROLLS COURT.—SECRETARIES.

For drawing and copying every order of course..... 0 5 6
For entering every order of course 0 0 6
For entering every order for setting down further directions, exceptions, pleas, and demurrers 0 0 6
For filing every petition for an order of course..... 0 1 0
For answering and setting down every petition for hearing 0 6 6
For setting down every cause for hearing.. 1 0 0
For setting down every cause on further directions 0 12 6
For setting down every set of exceptions.. 0 10 0
Ditto demurrer .. 0 10 0
Ditto plea 0 10 0
Ditto rehearing .. 1 0 0
For advancing every cause..... 0 10 0
For entering every caveat against the enrolment of a decree or order..... 0 5 0
For every docket of decree or order signed by the Master of the Rolls..... 0 2 6
For every office copy of an order £0 0 6
For every fiat of enrolment 0 5 6
On hearing out of term of every cause, further directions, pleas, demurrers, and where decree is made, each party..... 0 13 0
On hearing of every petition in which an order is made, the petitioner pays..... 0 7 0
From each party on the hearing of a cause in Term time..... 0 2 6
From each party on the hearing of a cause in Michaelmas and Hilary Terms only.. 0 1 0
For papers left at the secretary's office for the Master of the Rolls on further directions, exceptions, &c..... 0 5 0
For every recognizance vacated..... 0 6 0
On the appointment of every guardian in court for infants out of Term..... 0 7 0
For silk gowns.—A fee payable by each of her Majesty's Counsel attending at the Rolls Court, for each Term 0 12 6

IN THE OFFICE OF THE ACCOUNTANT-GENERAL.

Certificate of payment in under order.... 0 2 0
Ditto under Act of Parliament 0 4 0
Certificate of transfers into court under order 0 2 0
Certificate of transfers under Act..... 0 4 0
Certificate of investment of principal money 0 3 6
Ditto of interest money 0 2 0
Certificate of sale of stock 0 2 6
Certificate of transfer of stock out of court 0 1 6
Carried over 0 2 6
Deposit of Exchequer Bills 0 5 0
Delivery out of ditto 0 5 0
Investment of principal money in Exchequer Bills 0 5 6
Investment of interest money in ditto.... 0 4 0
Sale of Exchequer Bills 0 5 0
Exchange of Exchequer Bills 0 5 0

CHANCERY SUBPŒNA OFFICE.

For every subpœna 0 5 6
For sealing every distringas 0 5 6
For filing affidavit..... 0 1 0

IN THE OFFICE OF SECRETARY OF DECREES AND INJUNCTIONS.

Enrolling Lord Chancellor's and Vice-Chancellor's decree..... 0 10 6
The like, Master of the Rolls..... 0 10 6
Petition to enrol, nunc pro tunc 0 1 0
Answering same 0 10 0
If private seal enrolling decree, extra 0 3 9
Searching if decree enrolled or caveats entered 0 1 0

PART II.—FEES TO BE COLLECTED BY MEANS OF STAMPS.

IN THE JUDGES' CHAMBERS.

For every original summons for the purpose of proceedings originating in chambers.. 0 5 0
For every duplicate thereof..... 0 5 0
For every other summons 0 3 0
For every order drawn up by the chief clerk, made upon applications for time to plead, answer, or demur, for leave to amend bills or claims, or for enlarging publication, or the period for closing evidence, or for production of documents, or applications relating to the conduct of suits or matters..... 0 5 0
For every other order drawn up by the chief clerk 1 0 0
For every advertisement..... 1 0 0
For every certificate or report 1 0 0
For every certificate upon the passing of a receiver's and consignee's account, a further fee in respect of each 100*l.* received of..... 0 10 0

IN THE MASTERS' OFFICES.

For every warrant or summons..... 0 3 0
For every certificate or report 1 0 0
For taking the acknowledgment of every married woman..... 1 6 8
For attending any court per day by the clerk 0 14 0
For every oath 0 1 6
For every certificate upon the passing of a receiver and consignee's account, a further fee in respect of each 100*l.* received of..... 0 10 0

IN THE REGISTRARS' OFFICE.

For every decree or decretal order on the hearing of a cause, or on further directions; and on the hearing of a special case, including the court fee and the charge for entry 4 0 0
For every order for transfer or payment out of court of an amount not exceeding 200*l.* stock or cash, or interest on stock not exceeding 10*l.* per annum, and for every order on petition where the petition is dismissed 0 10 0
For every order for transfer or payment out of court of an amount exceeding 200*l.* but not exceeding 500*l.* stock or cash, or interest on stock exceeding 10*l.*

per annum, and not exceeding 25*l.* per annum, and for every order on special motion not herein otherwise specified ..	£1	0	0
For every order on the hearing of claims, pleas, demurrers, exceptions, or on petitions not herein otherwise specified, or on petitions of appeal, rehearing for injunctions, receivers, and for writs of ne exeat regno	2	0	0
For every office copy of a petition of appeal or rehearing	1	0	0
For every order on petition or motion of course, including the entry thereof	0	5	0
For every office copy of a decree or order.	1	0	0
IN THE REPORT OFFICE.			
Upon every application for a search.....	0	0	6
For all office copies, at per folio.....	0	0	4
AFFIDAVITS.			
For filing every affidavit, with or without schedules or other papers thereto annexed, including exhibits, if any	0	2	6
For the copy of every affidavit, for each folio.....	0	0	4
Upon every application to inspect an affidavit	0	0	6
Upon every application for the officer to attend with an affidavit or affidavits at the Lord Chancellor's, or at any of the Courts at Westminster or in London, each day.....	0	10	0
Upon every application for the officer to carry an original affidavit to any assizes, for each day, besides reasonable expenses of officer	1	0	0
For every deponent, affirmant, or declarant to an affidavit, affirmation, or declaration, sworn, affirmed, or declared in London, or within ten miles of Lincoln's-inn Hall.....	0	1	6
Upon any application for the officer to attend an invalid, including the attendance.....	0	10	0
IN THE EXAMINERS' OFFICE.			
For filing interrogatories	0	7	0
For all office copies, per folio	0	0	4
For every witness sworn and examined, including oath, for each hour.....	0	5	0
For every witness sworn and examined abroad (besides coach hire and reasonable expenses)	1	7	0
If more than five miles from the examiners' office, for the first day.....	2	15	0
For every other day.....	2	2	0
For attending the Lord Chancellor or the Master of the Rolls with record, per day	0	10	0
For attending any Master at his office....	0	10	0
For attending with record in any other court or place in London or Westminster, per day	1	0	0
If in the country, per day, besides reasonable expenses.....	2	0	0
Upon every application to inspect depositions, including the inspection	0	3	0
Upon every application to examine copies of depositions, with record to prove on trial at law.....	0	5	0
Upon every application to search book for causes, including search	0	1	0
Upon every application to search book for depositions, including search	0	1	0
N.B.—These fees will shortly cease to be payable when the new system comes into operation.			
IN THE RECORD AND WRIT CLERKS' OFFICE.			
For all office copies, per folio.....	0	0	4
Filing every bill or information.....	1	0	0
For filing every claim	0	5	0
For filing every special case	1	0	0
Upon entering every appearance, if not more than three defendants	0	7	0
If more than three and not exceeding six defendants.....	0	14	0
And the same proportion for every number of defendants.			
For sealing an attachment or distringas, for not appearing or answering.....	0	8	0
For every certificate.....	0	4	0
For every copy of a bill or claim to be served.....	0	5	0
For every writ of summons, distringas, or subpœna	0	5	0
For filing and entering duplicate of every judge's summons	0	5	0
For stamping every copy thereof.....	0	5	0
For sealing every other writ	1	0	0
For every oath, affirmation, declaration, or attestation upon honour.....	0	1	6
For examining every copy, or part of a copy of a set of interrogatories, and marking same as an office copy.....	0	5	0
Upon every application for a search for a record, and for searching	0	2	0
Upon every application to inspect a record, and for inspecting the same	0	5	0
Upon every application to inspect exhibits, if occupied not more than an hour	0	5	0
If more than one hour, per diem.....	0	10	0
Upon every application for the officer's attendance in courts of law, per diem, and for his attendance, besides reasonable expenses of the officer.....	£1	0	0
Upon every application for the officer's attendance in a Court of Equity, per diem	0	10	0
For examining and signing enrolments of decrees and orders	3	0	0
For filing caveat against claim to revive, or against decree or order or enrolment	0	5	0
For filing supplemental statement or statement for revivor	0	10	0
For office copies of depositions taken before examiner, at per folio.....	0	0	4
IN THE TAXING-MASTER'S OFFICE.			
For every warrant or summons, but not more than one order or summons is to be issued on one bill or set of bills, unless the taxing master shall think it necessary to issue a new warrant or summons	0	3	0
On signing every report and certificate ..	1	0	0
Upon the master's certificate of every bill of costs, as taxed, where the amount shall not exceed 20*l.*	0	10	0
Upon every additional 20*l.* or fractional part thereof, a further fee of.....	0	10	0
For every oath, affirmation, or attestation upon honour.....	0	1	6
IN THE LORD CHANCELLOR'S PRINCIPAL SECRETARY'S OFFICE.			
On all attendable petitions, appeals, rehearings, and letters missive	1	0	0
On all non-attendable petitions	0	10	0
On a matter of course order, on a petition of right	0	10	0
On an order for a commission on a petition of right	1	0	0
IN THE OFFICE OF THE SECRETARY AT THE ROLLS.			
On every petition set down for hearing, to include the fee on hearing.....	1	0	0
On the petition for every order of course	0	7	0
On the admission of every solicitor.....	1	17	6

The second schedule to which the foregoing order refers:—

IN THE OFFICE OF THE ACCOUNTANT-GENERAL.			
1. For preparing English power of Attorney with affidavit, exclusive of stamp duty	0	3	0
2. For preparing foreign power of attorney without affidavit	0	3	0
3. For special power of attorney	0	5	0
4. For copies of accounts, debtor and creditor's side, per folio, as to be explained by general order	0	0	6
5. Upon every application for a search....	0	5	0

(Signed) ST. LEONARDS, C.

Lord Chancellor's Court.

LIST OF APPEALS FOR HEARING IN MICHAELMAS TERM.

(Before the LORD CHANCELLOR.)

Kekewick *v.* Marker, appeal on claim.
Hickling *v.* Boyer, appeal motion.
Cherrington *v.* Hickling, appeal motion.
Hawkes *v.* Eastern Counties Railway, appeal.
Same *v.* Same, further directions.
Harrison *v.* Round, appeal.

(Before the LORDS JUSTICES.)

Martin *v.* Pycroft, appeal, part heard.
Bodenham *v.* Hoskins, appeal, part heard.
Same *v.* Hamp, appeal, part heard.
Ward *v.* Hornfray, appeal.
Spackman *v.* Same, appeal.
Maxwell *v.* Maxwell, appeal.

Rolls Court.

LIST OF CAUSES, &c. FOR HEARING IN MICHAELMAS TERM.

Judgment Reserved.

Brown *v.* Gordon	Anderson *v.* Kemshead
Crank *v.* Hooper	Bridge *v.* Bridge
Plenty *v.* West (1)	Brassey *v.* Chalmers.

Causes, &c.

Bull *v.* Brooke	Duncan *v.* Ross (2), ex.
Burgess *v.* Sturgis, last claim day in Term	Gaubert *v.* Watson
Stansfield *v.* Hobson, claim	Lewellin *v.* Pace (2)
Shrewsbury and Birmingham *v.* North-western Railway Company	Clarke *v.* May
Jodrell *v.* Tanner	Hiams *v.* Holtone
Hitchcock *v.* Beauclerk, claim	Beale *v.* Symonds (5), ex.
Attorney-General *v.* Eveline Almshouse	Pegg *v.* Wisden
Attorney-General *v.* Napier	Sellick *v.* Badman
Hayley *v.* Maddocks, claim	Fortnam *v.* Holtam
Attorney-General *v.* Mayor of Rochester	Loader *v.* Loader
Broomhead *v.* Vause	Frail *v.* Ellis
Foligne *v.* Martin	Oxenham *v.* Ellis
Morrell *v.* Wootten (2)	Bell *v.* Carter (2)
Harrington *v.* Moffat, special case	Tippens *v.* Coates (2), f. d. c.
Knight *v.* Knight, claim	Jodrell *v.* Beckwith
Inglis *v.* Campbell	Lake *v.* Brutton
Perkins *v.* Ede (3), ex.	Walker *v.* Mower (2)
	Lady Sparrow *v.* Hilton, ex.
	Lashwood *v.* Loader
	Eaton *v.* Hazell
	Briant *v.* Mann
	Cremer *v.* Costerton
	Congreve *v.* Palmer
	Le Blanc *v.* Oliver (8)
	Gray *v.* Austin
	Jones *v.* Abbott, claim
	Watts *v.* Williams
	Foakes *v.* Bordendave
	Baxter *v.* Wales
	Norris *v.* Stuart
	Midland Railway Company *v.* Brown
	Ford *v.* Batley
	Rochdale Canal Company *v.* King
	James *v.* James
	Hurst *v.* Hurst (6)
	Bateman *v.* Margerison (3), ex.
	Attorney-General *v.* Hall
	Meadows *v.* Meadows
	Bourne *v.* Kenyon
	Baker *v.* Read (2)
	Williams *v.* Salter
	Williams *v.* Mostyn, claim
	Philpots *v.* Kerr
	Osborn *v.* Millard
	Cust *v.* Southee
	Chichester *v.* Thistlewayte, claim
	Chamberlain *v.* Chamberlain, special case
	Strickland *v.* Wood
	Bird *v.* Pilkington, claim
	Banks *v.* Banks, short cause
	Bailey *v.* Dowding
	Cockell *v.* Bacon (a)
	Stephenson *v.* Jones
	Brown *v.* Lee, f. d. c.
	Gooding *v.* Collard, claim
	Cooke *v.* Pearce
	Joyce *v.* Joyce, claim
	Moffatt *v.* Wylie
	Minton *v.* Wilmot, f. d. c.
	Overbury *v.* Teale, claim
	Kenrick *v.* Shaw, claim
	York and North-Midland Railway *v.* Hudson (2)
	Ford *v.* Harvey (6)
	Furnivall *v.* Bleadon, short claim
	Cable *v.* Cable, f. d. c.
	Gaunt *v.* Flint, short claim
	Hewson *v.* Ackrill, f. d. c.
	Haire *v.* Lovett (5)
	Young *v.* Bliss, claim
	Powell *v.* Bawstead, claim
	Kingsford *v.* Poole, claim
	Hensman *v.* Weir, ex.
	Temple *v.* Temple.

CENTRAL CRIMINAL COURT.

A special session of the above Court was held on Tuesday in accordance with the provisions of the Central Criminal Court Act, for the purpose of fixing the days for holding the sessions for the ensuing year.

Mr. Clerk, the clerk of the court, said that the judges had appointed the sessions for the remainder of the present and the ensuing year to be holden on the following days:—

1852.	1853.
Monday..... Nov. 22	Monday..... May 9
Monday..... Dec. 13	Monday..... June 13
1853.	Monday..... July 4
Monday..... Jan. 3	Monday..... Aug. 15
Monday..... Jan. 31	Monday..... Sept. 19
Monday..... Feb. 28	Monday..... Oct. 24
Monday ..... April 4	

ATTORNEYS TO BE ADMITTED.

MICHAELMAS TERM.

The following was accidentally omitted:—

Goodman, Wm. Benjamin, King's Lynn, articled to Charles Rollings, Birmingham (since deceased).

PROCLAMATIONS OF OUTLAWRY.—On Thursday, at the Sheriffs' Court a County Court was held, when proclamations of outlawry were made in the following cases:—George Spiller, at the suit of Henry Curlewis; Frederick Angerstein, at the suit of Elizabeth Barker; Edward T. Dax, at the suit of David Carr; Eldred Addison, at the suit of Alfred Robinson; Algernon Massingberd, at the suit of George Bryer; B. B. C. Gilliess, at the suit of J. Bullock; H. Griffin, at the suit of B. Williams; John Harman, at the suit of James Walker; and H. Bradley, at the suit of John F. Fesenmayer.

CORRESPONDENCE.

ASSURANCE OFFICES.

TO THE EDITOR OF THE LAW TIMES.

SIR,—The *old* and respectable assurance office referred to in my letter is the *Amicable* Society, incorporated in 1706, and which pays *no commissions to solicitors* on the introduction of policies, and professes to divide the *entire profits* of the office amongst the assured.

A policy was effected by my client on the 9th of October, 1832, for ten shares, viz. 2,000*l.* at an annual premium of 161*l.* In the prospectus of the society, previously obtained, and which is now before me, I find the following paragraph:—

"Of the claims upon the society which became payable in respect of insurances on the lives of persons who died in the last year, fifty-three shares, having made *fifteen* yearly payments, or more, receive *additions* amounting to 140 per cent. Six shares having made eleven, three shares having made ten, and three shares eight, yearly payments, 100 *per cent.* and thirty-three shares having made seven, or a smaller number of yearly payments, receive *eighty per cent. in addition to the sums originally insured.*"

The sums paid by my client on the policy were as follow:—

	£.
Entrance money, Oct. 1832, at 10s. per cent.	10
Fifteen annual premiums of 161*l.*	2,415
Total paid	£2,425
In July 1847, the policy became a claim for	2,000
The bonus received (11*l.* 7s. per cent.)....	227
Total received....	£2,227

Instead therefore of my client receiving a bonus

of *one hundred and forty per cent.* (or 2,800*l.*) in addition to the sum assured, as he was led to expect by the society's prospectus, he received a bonus of *eleven and three-eighths per cent.* (or 227*l.*) only.

But the society must have been making some interest on the premiums, &c.; this, at the low rate of *three* per cent. compound interest, would be as under:—

	£	s.	d.
On the entrance money.....	5	9	2
On the premiums	730	6	2
Total.....	£735	15	4

It appears from this that the total amount received upon the policy becoming a claim, including the bonus, was *one hundred and ninety-eight pounds less* than the entrance money and premiums paid by my client, without taking into account compound interest, which the society must have made by the use of the money paid during the fifteen years of the policy's existence.

The foregoing facts I beg to submit to the consideration of those professional men who still continue to patronise *old* offices in the hope that they will *contrast* the tables *and advantages* of both old and young *respectable* offices before they advise their clients to effect assurances in offices with *their millions* only to recommend them.

I am, Sir, yours, &c.

London, Oct. 19, 1852. INVESTIGATOR.

THE IRISH BAR.

TO THE EDITOR OF THE LAW TIMES.

SIR,—A paragraph headed variously "Decline of the Irish Bar," "The Irish Bar," &c. having been copied from the *Wexford Independent* into the *Times* by its Irish correspondent, has made its way into the LAW TIMES; it refers to a letter to the Editor of the *Wexford Independent* from Mr. A. F. French, who is stated to be father of the Bar in that county, stating the decline of civil business at New Ross Quarter Sessions, there being only 200 civil bills amongst fourteen attorneys, and incloses a humorous notice suggesting the "Diggins" to his professional brethren, I should wish, with your permission to state, which I am able to do from having the advantage of being acquainted with Mr. A. F. French, that though a gentleman of great professional experience and skill, and possessed of a large stock of genial wit, and many agreeable social qualities, he is not father of "the Bar in that county;" he is a practising attorney—there is no such thing as a County Bar, and Barristers seldom, at any period, have attended the Sessions of the county of Wexford except previously engaged in particular cases, the business not affording a sufficient inducement. Though the Bar in Ireland have suffered a great diminution in their professional incomes, I doubt much that on the whole they have lost more than the English by the recent changes in various departments of the law.

I am, Sir, yours, &c.

Dublin, Nov. 3, 1852. AN IRISH BARRISTER.

NOTICES OF NEW LAW BOOKS.

The Common Law Procedure Act, with numerous Notes and an Introductory Essay illustrative of the Tendency of the new measure to restore the ancient System of Pleading. By R. MORRIS, Esq. and W. F. FINLASON, Esq. Barrister-at-Law. London: Stevens and Norton.

The Common Law Procedure Act, with Introduction and explanatory Notes, and Index, &c. &c. By EDWARD WISE, Esq. Barristers-at-Law. London: Sweet.

The Common Law Procedure Act, with practical Notes, illustrated by Precedents of Pleadings and Forms of Affidavits, Notices, &c. and an Introduction containing an elementary View of the Proceedings in personal Actions and in Ejectment. By ROBERT MALCOLM KERR, Esq. Barrister-at-Law. London: Crockford.

WHEN noticing, some time since, a batch of books that had been published, besides others that were promised, on the practice of the County Courts, it was remarked that there is among legal authors an unwise tendency to write books on subjects already written upon, instead of seeking new themes, and that the failures of so many adventures in the literature of the law were mainly due to this error of judgment. To read the announcements, it would appear as if the usual reason for publishing a law-book is, that it is *not* wanted, the Profession being already amply supplied with treatises on the same theme. It seems to be sufficient to rouse the *scribblomania*, that some other persons have already written successfully on the subject selected, as if that were not the very reason why the new aspirant should not succeed.

This objection, however, does not apply to the case of a *new* topic. If a new law-book is required on a new subject, any number of competitors may enter the field at the same moment, because none can tell who may be preferred, and each has an equal chance with either of his rivals. It may be regretted that so much time and type and paper should be wasted in producing six or eight books on any single subject, where two or three would amply supply the demand, thus making that a loss to all which would have been a reward to a few; but in the absence of any such pre-arrangement among the purveyors of legal literature, it is perfectly fair, and not imprudent, for as many to bring forward their claims to patronage as can find publishers willing to hazard the cost of printing, or who are of ability to pay the printer from their own resources.

The great alterations that have been effected in the procedure of the Common Law Courts, have naturally given birth to a number of new books, designed to convey to the Profession the altered law and practice, so far as the ingenuity of the various commentators can anticipate difficulties, or solve doubts. Whether the supply is greater than the demand, is a question that time only can solve, and it is one rather for the producers than for the consumers. Enough for the practitioner to know that there is already a large choice for him, as the volumes upon our table testify. Our present purpose is to introduce them to his notice.

But we shall not do so *critically*. We prefer to pass no *opinion* upon either of them. We desire to deal with them all with the most perfect fairness; and we could only do so by that which is, perhaps, the most satisfactory course for the reader, as well as the most agreeable to ourselves; namely, to describe the characteristic features of each one, leaving it to the reader to form his own judgment, from the description thus given, which of them is likely to suit his particular requirements, and; therefore, to deserve his patronage; and that there may be no suspicion of preference, we will take them in the order in which they have made their appearance.

The first that reached us is edited by Mr. MORRIS and Mr. FINLASON, both of them gentlemen known in legal literature. The volume commences with an elaborate introduction, giving a very full and learned history of the practice of pleading from the earliest times to its present period of decay, the editors contending that the simplified forms of pleading introduced by the new Act are in truth only a restoration of the ancient system. We would, however, suggest that, in a second edition, this introduction should be made somewhat more practical, by adding a sketch of the law *as it is*, which is much more interesting and useful to practitioners than the most learned history of the law as it *was*. This introduction is followed by the Act, which occupies the text, the commentary upon it being given in elaborate and learned foot-notes, partly critical, partly explanatory, partly suggestive,—citing a great number of cases; but no forms are given there, an omission which should also be supplied in the next edition. The index is extremely copious.

Mr. WISE's edition of the Act was the next in order of publication, and in its plan it is very much like its contemporaries, only that the notes, instead of being placed at the foot of the page, follow the sections in a different type, an arrangement that is certainly a great improvement in a law-book, where the eye should not be called upon to wander up and down the page to find the information it seeks; for thus confusion is created and time is lost, and especially, when the practitioner is in a hurry, is it difficult for him, after having referred to a foot-note, to return again in a moment to the place in the text at which his eye had left it. In this manner, Mr. WISE has annotated each section, pointing out its operation upon the previously existing law, and with great research collecting the cases that illustrate his propositions. He also has prefaced the Act itself with an introduction, considerably shorter than that of the volume last noticed, but in which he does not deem it necessary to go into the history of pleading, rather limiting himself to a clear and well-written sketch of the changes effected by the new law. He has not preserved the order of the sections in the statute, but has re-arranged them according to their subjects. His index also is copious and convenient.

Mr. KERR's volume was the latest that appeared, perhaps because it contains rather more of original matter than either of its predecessors. Its distinguishing features are threefold. It gives a useful sketch of an action at law as *it now is*, after the manner of the work of the late Mr. SMITH. It devotes a chapter to the new practice of "Inspection of Documents" under the new Evidence Act, citing all the cases that have been decided upon it, and it introduces all *the forms* that are likely to be required by the practitioner under the new practice, as those of the various affidavits, writs, declarations, pleas, &c. &c.; the greater portion of them being prepared specially for this volume; and these are not gathered together as an appendix, but placed in their proper order, following the sections of the Procedure Act to which they relate; so that the text of the law and the whole of the practice under it can be seen at a glance. Like Mr. WISE, Mr. KERR has placed his notes in the text, following each section in a distinctive type. His introduction, also, is not historical or speculative, but simply a succinct sketch of the practice as altered. Besides the numerous precedents contained in the notes, an appendix is given of forms less frequently required, for reference when occasion arises. The index appears to be as copious as that of the others; but we would recommend Mr. KERR to introduce *two* improvements into a future edition; namely, to print his *Precedents of Forms* in *italic*, so that they may the more readily catch the eye; and, for the same reason, to set each reference in the index in a single line, instead of running them on.

Having thus given a fair description of each of the editions of the Common Law Procedure Act that asks the patronage of the Profession, we leave it to the reader to form his own judgment which of them appears the best adapted to his requirements. All are learned, laborious, and creditable to their authors, and *all* will be found *good*. It is only a choice of merits.

The new number of the *Law Magazine* is very various and interesting. It opens with a paper on "Charitable Bequests," learnedly reviewing all the cases that bear upon the point raised in *Tyye* v. *The Corporation of Gloucester*. The law of rating of Literary Institutions is treated of at considerable length. Then there is an instructive essay on "The Peculiarities of Maritime Liens." "The Position of the Advocate," is the title of a paper reviewing at some length Mr. Cox's "Advocate." An extremely practical and useful essay on "The Law of Tolls and Exemptions to Dissenters," exhausts a subject often in request, but nowhere to be found lucidly handled. The article on "Marine Assurances," should be read by all who desire to master that difficult branch of the law. "The Common Law Procedure Act," is examined, and there is a short but valuable paper on "Mortgages by Executors."

Mr. Kennedy's Code of Chancery Practice.

THE notice of this volume having been written by a Common Law Practitioner, and his judgment being questioned, we deemed it to be due to the author to ask the opinion of an Equity Lawyer as to the merits of the book. As a matter of justice to Mr. KENNEDY we give his reply:—

You have rightly stated that it is not a practice: it is only a collection of the orders and statutes, arranged chronologically, with notes. It is, therefore, incorrectly called a "Code of Chancery Practice." But the notes are good and practical; and the old orders, although materially modified by the recent statutes and orders, are not, as you appear to suppose, altogether useless. If the title of the work did not promise something more than its contents yield,—if, in short, it had professed to be nothing more than an annotated collection of Chancery orders and statutes, it would deserve considerable approbation, for, *as such*, it is a book to be much commended.

LEGAL INTELLIGENCE.

ADMISSION OF SOLICITORS TO THE MAYOR'S COURT.

ON Tuesday the TOWN CLERK read the following resolution to the Court:—"Secondaries and City Courts Committee.—Resolved that the Court of Aldermen be requested to consider the propriety of admitting solicitors practising in the courts of law and equity at Westminster, to practise also in the Mayor's Court, and in the event of the Court of Aldermen appointing a committee to consider the question, that a deputation be appointed to confer with them thereon."

Alderman WIRE said the greatest advantage would arise to the citizens of London from opening the doors of the Mayor's Court to the solicitors of

the Superior Courts of law and equity. He described the ineffectual exertions made some years ago upon the petition from Mr. Ashurst, to throw open the doors of the court, and stated that at that time Mr. Law, the Recorder, was strongly opposed to the proposition, and that the question had been in abeyance ever since. The necessity for extinguishing so absurd a monopoly became more palpable every day, and the present Recorder, who had looked with great attention and judgment into the question, was, he believed, decidedly of opinion that a vast deal of good would result from the adoption of the popular view of the subject.

Alderman SIDNEY intimated that the Court ought not, without a regular investigation, proceed to the demolition even of an ancient monopoly. He thought the whole subject of the Corporation Courts (the Mayor's Court, the Sheriffs' Court, and the Hustings Court), all of which might be converted to great use and advantage, should be taken into consideration by a committee.

The RECORDER said it was of immense importance to use despatch with respect to the throwing open the Mayor's Court. The question had been hung up for two years, and principally in consequence of the difficulty in making arrangements with those few persons who had purchased the privilege to practise. He would advise that immediate steps should be taken to accomplish the object. Eventually the Mayor's Court could, if despatch were used, be turned to great public good.

The motion was then referred to a committee, and a deputation was appointed to confer upon it with the Common Council deputation, so that the monopoly of the City courts is nearly at an end.

JOURNAL OF PROPERTY.

MONEY MARKET.

English Funds.	Sat.	Mon.	Tues.	Wed.	Thurs.	Fri.
Bank Stock	223½	Holiday at the Stock Exchange.	224	224½	229½	224½
3 ℘ Cent. Reduced Annuities	99½		99½	99½	99½	99½
3 ℘ Cent. Consols Annuities	100⅝		100⅝	100⅝	100⅝	100⅝
Consols for Account	100⅝		100⅝	100⅝	100⅝	100⅝
New 5 ℘ Cent. Annuities	..		..	..	..	..
New 3½ ℘ Cent. Annuities	103½		103⅛	103½	103⅛	103½
Long Annu. (exp. Jan. 5, 1860)	..		6⅛	..	6⅛	6⅛
Do. 30 yrs. (exp. Oct. 10, 1859)	6½		..	6½	..	..
Do. 30 yrs. (exp. Jan. 5, 1860)	..		..	6⅛	..	6⅛
India Stock	275		..	..	274	275*
India Bonds (1,000l.)	..		87	87	85	84
Do. do. (under 1,000l.)	84		..	..	85	..
South Sea Stock	..		112	111⅞	..	98⅛
Do. do. New Annuities	..		..	..	100	99⅝
Exchequer Bills, 1,000l. June	76*		77*	75*	75*	77*
Do. do. 500l. June	..		78*	..	..	74*
Do. do. Small, June	..		78*	..	78*	74*

* Premium.

THE GAZETTES.

Bankrupts.

Gazette, Nov. 2.

ATHERE, ROBERT, miller, Gaywood, Norfolk, Nov. 10, at half-past twelve, Dec. 18, at twelve, Basinghall-st. Off. as. Nicholson. Sols. Trinder and Eyre, John-st. Bedford-row; Aldham and Son, King's Lynn. Petition, Oct. 16.

BEDFORD, JOHN, cloth merchant, Wakefield, Nov. 12 and Dec. 10, at eleven, Leeds. Off. as. Freeman. Sols. Barratt and Brown, both of Wakefield; Cariss and Cudworth, Leeds. Petition, Oct. 15.

BICKFORD, JAMES, silversmith, Brighton, Nov. 10, at one, Dec. 18, at twelve, Basinghall-st. Off. as. Pennell. Sols. Taylor and Collison, Great James-st. Bedford-row. Petition, Oct. 22.

CROSS, CHARLES WHITE, surgeon, Birmingham, Nov. 17 and Dec. 7, at half-past eleven, Birmingham. Off. as. Bittleston. Sol. Harding, Birmingham. Petition, Oct. 29.

FFFFE, EDWARD, JUN. merchant, Calcutta, Nov. 10, at twelve, Dec. 17, at eleven, Basinghall-st. Off. as. Cannan. Sols. Baker, Rack, and Jennings, Lime-st. Petition, Oct. 22.

LOADER, FREDERICK, tailor, Birkhampstead, Nov. 11, at twelve, Dec. 9, at two, Basinghall-st. Off. as. Johnson. Sol. Overbury, Frederick's-place, Old Jewry. Petition, Oct. 29.

M'LINTOCK, JOSEPH, linen manufacturer, Barnsley, Nov. 12 and Dec. 10, at eleven, Leeds. Off. as. Young. Sols. Peacock, Barnsley; and Bond and Barwick, Leeds. Petition, Oct. 28.

MENON, JOHN GRANT, stationer, Birmingham, Nov. 13 and Dec. 4, at ten, Birmingham. Off. as. Whitmore. Sols. Tyndall and Son, Birmingham. Petition, Oct. 30.

MITCHELL, ALEXANDER, draper, Cardiff, Nov. 15 and Dec. 13, at eleven, Bristol. Off. as. Acraman. Sols. Cattlin, Ely-place; and Prideaux and Son, Bristol. Petition, Oct. 23.

NEWBOLD, ALFRED and EDWARD, alias Edwin Newbold, drapers, Birmingham, Nov. 10 and Dec. 1, at half-past eleven, Birmingham. Off. as. Whitmore (and not Bittleston, as before advertised). Sols. Sole, Turner, and Turner, Aldermanbury; Hodgson, Birmingham. Petition, Oct. 21.

OLLIVIER, CHARLES, music seller, New Bond-st. Nov. 10 and Dec. 17, at one, Basinghall-st. Off. as. Whitmore. Sol. Randall, Wellbeck-st. Cavendish-square. Petition, Nov. 1.

RICHARDS, ROGER, chymist, Wrexham, Denbighshire, Nov. 10 and Dec. 6, at eleven, Liverpool. Off. as. Morgan. Sols. Evans and Son, Liverpool. Petition, Oct. 29.

WARREN, RICHARD, coachmaker, Nelson-place, Kennington-st. City-road, Nov. 11, at two, Dec. 16, at one, Basinghall-st. Off. as. Johnson. Sol. Hopgood, King William-st. Strand. Petition, Oct. 23.

WAKE, BETHEL, straw bonnet manufacturer, Tottenham-court-road, Nov. 11, at one, Dec. 16, at twelve, Basinghall-st. Off. as. Bell. Sols. Hoppe and Boyle, Suncourt, Cornhill. Petition, Oct. 28.

Gazette, Nov. 5.

ARMSTRONG, JOHN BELL, tailor and draper, Manchester, Nov. 19 and Dec. 10, at twelve, Manchester. Off. as. Lee. Sols. Cooper and Son, Pall-mall, Manchester. Petition, Oct. 29.

CONE, NATHANIEL, auctioneer, Colchester, Nov. 11, at eleven, Dec. 16, at two, Basinghall-st. Com. Evans. Off. as. Bell. Sol. Abell, Colchester, and Romney-terrace, Horseferry-road, Westminster. Petition, Nov. 2.

DODGSON, cotton spinner, Wigan, Lancashire, Nov. 18 and Dec. 9, at twelve, Manchester. Off. as. Lee. Sol. Janion, Manchester. Petition, Oct. 26.

FORSHAW, THOMAS, master marine and commission agent, Birkenhead, Nov 10 and Dec. 7, at eleven, Liverpool. Com. Perry. Off. as. Morgan. Sol. Owen, Castle-st. Liverpool. Petition, Nov. 3.

GREEN, WILLIAM, builder, Harrow-road, Nov. 12, at half-past twelve, Dec. 17, at half-past one, Basinghall-st. Com. Fane. Off. as. Whitmore. Sols. Messrs. Bicknell, 79, Connaught-terrace, Edgeware-road. Petition, Nov. 5.

HANNAM, WILLIAM THOMAS, wine and spirit merchant, Marine Parade and New Steine, Brighton, Nov. 10, at twelve, Dec. 18, at half-past twelve, Basinghall-st. Com. Goulburn. Off. as. Nicholson. Sols. Dimmock and Barbey, Suffolk-lane, City; and Messrs. Linklater, Size-lane, City. Petition, Oct. 30.

LONGSON, WILLIAM, joiner and builder, Heaton Norris, Lancashire, Nov. 19 and Dec. 10, at twelve, Manchester. Off. as. Lee. Sols. Price and Stuart, King-st. Wolverhampton. Petition, Nov. 1.

NOBLE, WILLIAM, wholesale stay manufacturer, Charles-st. St. George's East, Nov. 17, at two, Dec. 18, at eleven, Basinghall-st. Com. Goulburn. Off. as. Pennell. Sols. Sole, Turner, and Turner, Aldermanbury; and Wilson, Manchester. Petition, Oct. 30.

PRENTICE, GEORGE, licensed victualler, Ship, Artillery-lane, Bishopsgate-st. Nov. 17 and Dec. 17, at one, Basinghall st. Com. Fonblanque. Off. as. Graham. Sols. Martineau and Reid, Raymond-buildings, Gray's-inn. Petition, Nov. 3.

ROBERTSON, JOHN, publican, North Pole, St. Mary-st. Woolwich, Nov. 17 and Dec. 17, at twelve, Basinghall-st. Com. Fonblanque. Off. as. Stansfeld. Sols. Emmet and Knight, Bloomsbury-square. Petition, Nov. 3.

WOOD, WILLIAM, jun. builder, Heneage-st. Aston, Birmingham, Nov. 24 and Dec. 15, at eleven, Birmingham. Com Daniell. Off. as. Bittleston. Sol. Hodgson, Cherry-st. Birmingham. Petition, Nov. 4.

Dividends.

BANKRUPT ESTATES.

Official Assignees are given, to whom apply for the Dividends.

Allanson, J. second, 6s. 8d. Young, Leeds.—*Benjamin*, J. D. dealer in cigars, first, 1s. 9d. Whitmore, London.—*Bridge*, W. H. jun. butcher, first, 7d. Whitmore, London.—*Chapman*, M. painter, &c. further, 1s. Hornaman, Exeter.—*Chartershaugh Coal Company*, second and final (in addition to 2s previously declared), 7½d. Baker, Newcastle.—*Cooper*, J. D. and C. S. cotton spinners, second sep. of J. D. Cooper, 4s. 5½d. Whitmore, London.—*Crowther*, B. maltster, first, 3s. 3½d. Young, Leeds.—*Evans*, H. carpenter, &c. first, 2s. 1½d. Hirtzel, Exeter.—*Fearn*, W. R. draper, first, 5s. 11½d. Christie, Birmingham.—*Franklin*, J. innkeeper, &c. first, 1s. Whitmore, London.—*Hayman*, H. apothecary, first, 5½d. Hirtzel, Exeter.—*Hichens*, T. timber merchant, first, 5s. Hirtzel, Exeter.—*Isherwood*, S. W. woollen draper, second and final, 4½d. Carrick, Hull.—*Johnson* and *Cole*, merchants, second, 1d.; first sep. of Cole, 5d. Pennell, London.—*Lake*, W. printer, second, 4s. Pennell, London.—*Lamdin*, C. upholsterer, first, 1s. 7d. Pennell, London.—*Lewis*, W. grocer, 1s. 9d. Hirtzel, Exeter.—*Lomer*, D. C. H. merchant, 6½d. Whitmore, London.—*Moon*, G. corn miller, second, 1s. 1½d. Freeman, Leeds.—*Mumford*, M. miller, first, 1s. 3½d. Hornaman, Exeter.—*Murray*, J. warehouseman, second, 3d. 7-32nds. Pennell, London.—*Norris*, J. grocer, first, 1s. 6½d. Whitmore, London.—*Pine*, W. H. maltster, 1½d. Hirtzel, Exeter.—*Richardson*, W. H. tube manufacturer, first, 9½d. Christie, Birmingham.—*Ridge*, *Ridge*, and *Newland*, bankers, 1½d. Whitmore, London.—*Ridgway*, J. merchant, first, 3d. Bird, Liverpool.—*Smith*, G. flax spinner, first, 4s. 8½d. Young, Leeds.—*Sutton*, F. furnishing ironmonger, first, 5s. Carrick, Hull.—*Uren*, W. E. builder, first, 4s. Hornaman, Exeter.—*Verbake*, H. C. lime merchant, second, 10½d. Pennell, London.—*White* and *Bawler*, scaleboard cutters, first, 5s. 5½d. Whitmore, London.—*Wilson*, C. E. and H. grocers, &c. first, 1s. 0½d. Bird, Liverpool.—*Winder* and *Fisher*, merchants, second, 1s. 3½d. Bird, Liverpool.

INSOLVENTS' ESTATES.

Hawker, J. butcher, 1s. 5d. and 9-10ths of 1d. Apply at the County Court, Honiton.

Assignments for the Benefit of Creditors.

Gazette, Oct. 26.

Black, J. grocer and tea dealer, Chelmsford, Essex, Sept. 27. Trust. A. Stephens, tea dealer, Mark-lane. Sols. Kiss and Son, Fen-court, Fenchurch-st.—*Boyton*, J. T. draper, [illegible]. Oct. 21. Trusts. [illegible]. P. Atkins, [illegible]. R. G. Pincent, Devonport, drapers. Sols. Rooker and Lavers, Plymouth.—*Jackson*, J. jun. carpenter, Rugeley, Staffordshire, Oct. 16. Trusts. V. Bradley, builder, and T. Windram, auctioneer and appraiser, Rugeley. Sols. Stone and Paget, Leicester.—*Noone*, G. A. and *Bowden*, J. drapers, Gray's-place, Mile-end-road, Oct. 6. Trusts. R. W. Castle, wine-houseman, Love-lane, and D. Smith, gent. Wood-st. Sols. Surr and Gribble, Lombard-st.—*Price*, T. button and trimming dealer, Bristol, Oct. 14. Trust. J. Ayer, jun. gent. Bristol.—*Selmes*, J. tailor and draper, Gravesend, Oct. 21. Trusts. R. Hills, banker, Gravesend, and G. Strachan, woollen warehouseman, Milk-st. Sol. R. Paul, Size-lane.

Gazette, Oct. 29.

Burridge, W. coal merchant, Millbank-st. Westminster, Oct. 21. Trusts. C. Rowland, coal merchant, Fore-st. Lambeth, and T. Henderson, corn factor, Hungerford-market. Sols. J. Heather, Paternoster-row, and J. Pike, Old Burlington-st.—*Farrow*, R. grocer and draper, Cromer, Norfolk, Oct. 12. Trusts. R. Bennett, C. J. Bream, J. H. Selby, and J. Kitton, grocers and tea dealers, Norwich. Sol. J. Winter, Norwich.—*Galloway*, J. T. omnibus proprietor, Liverpool, Oct. 6. Trusts. J. Knight, corndealer, J. Wade, coach builder, and H. Middlehurst, veterinary surgeon, Liverpool. Sols. Robinson and Duke, Liverpool.—*Hindley*, H. rug manufacturer, Murray-st. Hoxton, Oct. 12. Trusts. D. Law, Friday-st. and J. Wilson, Scott's-yard, Bush-lane, Cannon-st. warehousemen. Sol. M. Overbury, Frederick's-place, Old Jewry.—*Hughes*, E. druggist, Llanelly, Carmarthen, Oct. 7. Trust. R. Palmer, draper, Llanelly. Sol. B. Jones, Llanelly.—*Lloyd*, G. factor, Birmingham, Oct. 5. Trusts. B. Gill, manufacturer, Hill-top, West Bromwich, and J. Percivall, accountant, Edgbaston, Birmingham. Sol. H. Southall, Birmingham.—*Mavius*, C. professor of music, Leicester, Oct. 25. Trusts. G. R. Metzler, pianoforte maker, Great Marlborough-st. and J. Underwood, manufacturer of hosiery, Leicester. Sol. J. B. Haxby, Leicester.—*Poulton*, J. D. farmer, Capel, Surrey, and Luton, Bedford, Oct. 4. Trusts. F. Goodyear, warehouseman, Old Change, and J. Waller, plait merchant, Luton. Sol. E. C. Seaman, Pancras-lane.—*Smith*, J. B. solicitor and scrivener, Hanley, Stoke-upon-Trent, Staffordshire, Oct. 4. Trusts. J. Trubshaw, innkeeper, and G. Whittingham, upholsterer, Hanley. Sol. E. Challinor, Hanley.—*Stacey*, J. Clare-court, Drury-lane. Trust. J. Greatbach, commission agent, Thavies-inn. Sols. Willoughby and Cox, Clifford's-inn.

Partnerships Dissolved.

Gazette, Oct. 26.

Brayshaw, D. and *Kitchen*, W. commission buyers, makers-up, and packers of stuff goods, Bradford, Aug. 31.—*Burnett*, G. and *Hills*, W. H. booksellers, stationers, printers, and bookbinders, Bishopswearmouth, Oct. 22.—*Butler*, H. and J. painters, Leeds, Oct. 21. Debts paid by Butler.—*Chatman*, R. F. and T. grocers, Nottingham, Sept. 30. Debts paid by R. F. Chatwin.—*Franks*, H. and *Fry*, H. drapers, silk mercers, haberdashers, lacemen and hosiers, Oakley-terrace, Kent-road, Camberwell, Sept. 28. Debts paid by Wilson.—*Gardner*, T. P. *Fazackerley*, R. F. and *Spiking*, R. S. stationers, booklinders, and machine rulers, Leeds, Oct. 22. Debts paid by Spiking.—*Gaultier*, G. W. and *Morris*, J. A. schoolmasters, Sydenham, Sept. 27.—*Hallam*, R. and C. cutlery manufacturers, Sheffield, Oct. 20. Debts paid by C. Hallam.—*Laurenson*, J. and *Bridge*, R. saddlers, Bolton-le-Moors, Oct. 22. Debts paid by Bridge.—*Little*, C. and *Crabtree*, W. ironfounders, Bradford, June 27.—*Metcalfe*, G. jun. and J. fellmongers, woolstaplers, tanners, &c. Kendal, Oct. 23.—*Philpott*, R. P. *Whitehouse*, E. O. W. and *Scott*, S. K. surgeons and apothecaries, Brighton, Oct. 19. Debts paid by Scott.—*Prince*, A. and *Booth*, W. coal masters, Tunstall, Woolstanton, Oct. 22.—*Robinson*, F. and *Dunning*, J. grocers, drapers, and tallow chandlers, Great Driffield, Oct. 15. Debts paid by Robinson (and not Reynolds, as before advertised).—*Smith*, J. and *Williams*, J. carpenters and builders, Hatton-wall, Hatton-garden, Oct. 22.—*Smith*, J. and *Nuttall*, R., James, and John, flannel manufacturers, Rochdale, June 30. Debts paid by Smith.—*Taylor*, G. W. and *Pepper*, J. waterproof clothing manufacturers, East-st. Globe-road, Mile-end, Oct. 23.—*Ward*, T. and *Appleby*, W. S. engravers to calico printers, Manchester, Oct. 23. Debts paid by Ward.—*Wilson*, H. and *Jennings*, T. brewers, Leeds, Oct. 22. Debts paid by Wilson.

Gazette, Oct. 29.

Akhurst, C. W. and *Grenville*, G. butchers, George-st. Portman-square, Nov. 1.—*Coates*, T. and C. ironmongers and general shipsmiths, &c. Bridlington Quay, East Riding, Oct. 26. Debts paid by T. Coates.—*Harris*, J. *Bass*, I. G. and *Wilson*, R. Flimby Colliery, Maryport, as regards Harris, June 15.—*Hogan*, J. and *Gillman*, W. merchants, Liverpool, Manchester, Chili, and Peru, Oct. 26. Debts paid by Hogan.—*Lake*, G. jun. and *Stewart*, R. hosiers and outfitters, Manchester, Oct. 26. Debts paid by Lake.—*Lott*, J. *Pole* E. and *Jewell*, J. patent harness and bridle manufacturers, Whitechapel, Sept. 30. Debts paid by Lott.—*Lucas*, A. M. and *Clifton*, W. house and estate agents, architects, and surveyors, City-road, April 2.—*Perkins*, J. and *Slater*, J. stone merchants, Leeds, Aug. 7.—*Pickles*, J. and S. H. wholesale ironmongers and cut nail manufacturers, Leeds, Oct. 22. Debts paid by S. H. Pickles.—*Poole*, W. and *Mobey*, J. waste dealers, Macclesfield, Oct. 25. Debts paid by Poole.—*Rimmer*, T. and C. needle manufacturers, Alcester, Oct. 31, 1847. Debts paid by T. Rimmer.—*Rust*, R. A. and *Stakl*, C. C. music and pianoforte sellers, Regent-st. Portland-place, Oct. 26.—*Shaw*, R. and *Dobson*, J. L. carpet manufacturers, Kidderminster, Oct. 25.—*Shaw*, R. and *Porter*, T. pawnbrokers, Liverpool, Oct. 19.—*Stringer*, J. and *Mann*, W. merchants and shipowners, Liverpool, and salt proprietors, Norwich, March 28, 1851.—*Twiss*, T. B. and *Cumming*, J. cotton manufacturers, Portwood, near Stockport, Oct. 26. Debts paid by Cumming.—*Whiffen*, J. and *Son*, saddlers and harness makers, Greenwich, Oct. 26. Debts paid by E. Whiffen.—*Wilkinson*, G. and H. dyers, Bromley, Oct. 20.—*Wright*, J. T. and *Law*, W. bricklayers, Leeds, Oct. 22.

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NEW LAWS OF THE LAST SESSION.

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To Readers and Correspondents.

"VER SAP." (Wolverhampton).—*If a vacant corner can be found amid the many other more urgent topics, it shall appear.*

"C. R. G."—*Such low scurrility is beneath notice. We are content to leave the Profession to judge, from acts done, whether we have served it or not, and we are content with their support and approval, let the spite of jealousy vent itself in any form of Billingsgate it pleases. We shall not be deterred by such assaults from continuing to fight the battle of the Profession, and to promote its substantial interests. But such recognitions as our correspondent has forwarded are very gratifying.*

"H. E. C."—"*Hughes's Practice of Sales of Real Property*," "*Part's Vendors*," "*Hughes's Practice of Mortgages.*"

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THE LAW TIMES.

SATURDAY, NOVEMBER 13, 1852.

NEW RULES IN THE COMMON LAW COURTS.

Upon authority, we have to inform the Profession that there is no truth in the paragraph which appeared in the newspapers, to the effect that the Judges were preparing a number of new Rules under the Procedure Act.

There is no intention to make new rules at present, nor until the Act has been tried for some time in practice, so that its requirements may be ascertained—certainly nothing more than perhaps two or three short rules to regulate any difficulty in practice, otherwise insurmountable, which may be found to arise from time to time.

VOL. IX. No. 502.

THE "JUNIOR BAR" v. THE ATTORNEYS.

We can assure our readers that "the movement" of the Junior Bar,—or rather, we should say, of a segment of it,—has *not* the approval of the Judges, of the leaders, of the seniors, nor of all the juniors. They protest equally against the half-guinea scheme and the project for the invasion of the Attorneys. They are desirous to continue the same friendly relationship which has hitherto existed between the two branches of the Profession: if it should appear that the public do not want them, they will retire altogether; but they will not consent to transform the Bar into a shape different from that which it has hitherto assumed, nor to become a sort of demi-Attorney demi-Advocate, as is found in some other countries, and notably in America; and such a transmutation must be the inevitable consequence of the new practice which has been proclaimed by a portion of the "Junior Bar."

A remarkable instance has just occurred of the danger to which Counsel would be exposed were they to adopt the practice of advising clients without the intervention of an Attorney. Last week, the notorious Mr. DUNN, the persecutor of Miss BURDETT COUTTS, was brought before one of the police magistrates, on a charge of having obtained money under false pretences from a person whom he had in fact advised professionally. It appeared that he had been consulted by a woman who supposed herself to have a claim to certain property. He had advised her in the matter, and it being necessary to make certain inquiries into facts, he had undertaken to do this—(illustrating the argument we used last week, that if once the client and the Counsel communicate personally, it will be impossible to prevent the latter from departing from his proper functions, and doing the work of an Attorney). For this Mr. DUNN made a charge of 7*l.* which she paid. But, upon investigation, he found that her claim could not be substantiated; whereupon, in great wrath, she charged him with cheating her of her 7*l.* by false pretences, and Mr. DUNN was actually brought before the magistrate upon this charge. He was, of course, immediately acquitted of the imputation, for in fact there was not the shadow of a complaint against him; he had done the work, for which he had been paid only a fair charge.

But this case is very valuable just now, as exhibiting in the most striking form the consequences that will result from "the movement" of the Junior Bar. Mr. DUNN has acted upon the advice given by their organ. He has received his client without the intervention of an Attorney; he not only advised, but he acted; he appears not merely to have received fees, but to have made a charge of 7*l.*—a sum which, it will be observed, could represent no number of recognised fees. These latter departures from the rule of the Profession were the necessary consequences of the *first* step,—the advising of the client personally. The same results would follow in nine cases out of ten, so far as respects acts done, as well as advice given, and charges made instead of fees offered.

At present the followers of the new practice are few. But there is danger in example. The severance of the Bar into two classes will be in itself a consequence to be deprecated. It will destroy the fraternity of feeling and the unanimity of action which have hitherto distinguished the Profession. We do not believe that the endeavour will be successful. But whether it succeeds or fails, we are anxious that it should be rightly understood by the Attorneys that the attack now made upon them is neither approved nor sanctioned by the vast majority of the leaders or seniors of the Profession, who have no desire to make any change in *their* relationship with the Attorneys, which has hitherto worked advantageously for both, and there is no reason why the same arrangements should not continue to be equally beneficial for the future.

GUINEAS OR HALF-GUINEAS.

It is lamentable to see the Bar severed into two sets—the guinea and the half-guinea men. The immediate consequences will be more inconvenient than "the juniors" may have anticipated.

Of course, the seniors and a section of the juniors will adhere to the established guinea. Thus there will be two branches of Barristers in the courts—the whole-price men and the half-price men.

An Attorney has a brief to deliver. To whom will he give it? That is the practical question. Should he prefer SMITH, who values himself at a guinea; or JONES, who deems half-a-guinea as much as *his* services are worth? Should the brief be presented to the former, the latter gains nothing by the reduction of his prices. If the brief is bestowed upon the latter, the former feels that he has been undersold, that JONES has stolen a march upon him, and there is war between them. The *peace* of the Bar is gone for ever.

Then at every counsel table, where the two prices are grouped, the question must be asked continually, "*What* is he, a guinea or a half-guinea man?" Should half-guineas find any favour with Solicitors or suitors, they must first inquire to which category the various wigs belong, before they can offer employment to any. But such a movement necessitates another—it must be announced somehow. It is of little use for an enterprising junior to resolve in his own mind that he will accept half-guinea fees, if those who employ Counsel are not made acquainted with his patriotism. There must be some means of proclaiming the fact out of court, and some sign by which it may be signified in court. Perhaps a separate Bar list would serve for the former; one tail instead of two to the wig for the latter. At all events, it will be due to the whole-price Bar, that they should not be mistaken for the half-price men, and *they* will insist upon some public sign of distinction, if the others do not. It will be due to both, as well as to those who require to know the difference between them, that they may have the benefit who desire it.

Then this distinction severs the Bar into two branches. There will be two classes of practitioners there. Is that likely to conduce to the advantage of either?

But we do not believe that the half-guinea movement will obtain the object desired by its promoters. It will *not* bring them the business they anticipate. They will still be undersold by the Attorneys who practise at the County Courts, who will not suffer themselves to be beaten out of the field in a competition of prices. "If the junior Bar," writes one of these, "offer to take half-a-guinea, I will take nine and sixpence. I am subject to no rule for charges, and whatever they accept I will do for less." That is precisely the sort of warfare to which the Bar has now subjected itself. But besides the impossibility of successful competition in price, there are other obstacles to the success of the movement. The junior Bar dispensing with Attorneys must procure their own clients. In this they will be beaten by their rivals, who have better opportunities and are better able to use them. Suitors, too, are not unlikely even at the same price to prefer an astute and experienced Attorney to the young Barrister fresh from his books, new to the business of life, and unpractised in the ways of men. Suitors are not so willing, as some suppose, that the juniors should acquire the wisdom of experience at their expense.

This is the truth, and it is better for all that the truth should be known. There is no

chance of half-guineas tempting either Attorneys or suitors to retain the services of *actual juniors*, who must needs want experience; and men who have had the experience of practice will not accept half-a-guinea. Why should they? An Attorney of any capacity as an advocate will not accept less than a guinea, and he usually commands two.

Nor will the additional temptation of advice without an Attorney much mend the matter. It may bring a few stray clients in the course of a year, but nothing that will compensate for the certain mischiefs it must produce, and which we have already set before our readers.

THE NEW COMMON LAW PROCEDURE ACT.

The most important questions that have as yet arisen are precisely those which we had in a former commentary suggested as difficulties not to be readily solved. How far is the Act retrospective—or rather, how does it affect actions in progress? In ejectment it has been held not to be applicable to pending actions so far as to alter the process. But it will be seen by the reports of to-day, that a much more difficult question has arisen in the case of a demurrer, which had been regularly filed before the Act. By the statute, special demurrers are abolished, and judgment is to be given on all demurrers according to the very right of the cases. In the case in question there was a demurrer to an informal pleading—was the party who had taken advantage of this in the regular way to be deprived of it by what would be to him an ex post facto law? The statute makes no provision for such a possible injustice, and according to its plain construction it operates immediately, and affects the suit from the date of its coming into operation. The Judges felt the hardship of the case upon the party, but they could not see their way out of the statute. Ultimately, the case was decided upon another point, but the Court intimated that it would consult the other Judges upon the question that had been raised, so that they might adopt an uniform practice.

THE LAW REFORMS OF THE SESSION.

The Queen's speech promises a continuance of Law Reform, but names one only, to wit, that of the Ecclesiastical Courts, which we have already announced as being in preparation.

What are the other projected Reforms has not transpired. We are acquainted with some of them, but only confidentially, and therefore we cannot state them yet, but we believe that they will be of great practical advantage to the public, without being so injurious to the Profession as some recent experiments in that direction.

MERCANTILE LAW REFORM.

The gathering on Monday next of Merchants and Lawyers from all parts of the United Kingdom, to confer upon the best means for promoting the assimilation of the Mercantile Laws of England, Scotland, and Ireland, promises to be most influential and important. The call of the Society for the Amendment of the Law, under whose auspices the movement has been made, has been extensively responded to, and deputations are promised from the merchants of Edinburgh, Glasgow, Aberdeen, Dublin, Belfast, Cork, Liverpool, Manchester, Birmingham, Leeds, Hull, Bradford, and some twelve or fourteen more of our principal towns. The Lawyers will be well represented by the Incorporated Law Society, the Metropolitan and Provincial Law Society, and the great Law Societies of Manchester and Liverpool, who will send deputations.

We are assured that the object of this conference is purely as avowed—to promote the assimilation and codification of the Mercantile Law of the three countries, which now in many particulars differs so widely, that a merchant or Lawyer in the one is ignorant of the law that prevails in the other, and that which is right in one place becomes wrong when a few miles of railway are passed. The inconveniences thence resulting are too obvious to need elaborate description.

Nor is codification less required. It will be a difficult and delicate task undoubtedly, but it must be done sooner or later, and the best time to do it will be, when a common code is introduced throughout the United Kingdom.

We trust, however, that the proceedings of the Conference will be strictly limited to this; that there is no covert purpose to introduce the scheme for establishing tribunals of commerce, and so superseding the Lawyers. If such a wild project should be proposed, it should be negatived at once; if any leanings that way are seen, let the Lawyers forthwith protest, and if the most satisfactory pledges are not given, let them withdraw. We are *assured*, by those who have most interested themselves in the Conference, that there is no danger of this,—that no such design lurks among the promoters, and that, if proposed, they would scout it. But we know also that it is a favourite scheme with many; that it is approved by some of those who will take part in the proceedings, and, therefore, we exhort the Lawyers who may be present to be upon their guard, and not to commit themselves to anything more than simple assimilation and codification of a branch of law that varies in various parts of what is really the same country. The project of lay tribunals is as objectionable as the other is desirable, and we hope that, in their approbation of the latter, none will be considered to give even a shew of support to the former. Let it be met with unqualified opposition at first, and it will not reappear to disturb the harmony of future proceedings for a great purpose, in which all agree.

LAW LECTURES.

We direct the attention of our readers to the Prospectus of the Lectures to be delivered at the Inns of Court during the present educational term, and which will be found to contain suggestions for a course of reading that may be worth preserving for future reference.

HINTS TO BUSY PRACTITIONERS.

[Under this title we propose from time to time to remind the practitioner of useful facts which, amid the claims of business and the flood of changes in the law, he may possibly have overlooked. As we also may overlook many, we shall be obliged by "hints" from any of our readers.]

EJECTMENT.

It was decided on Nov. 2, in the case of *Doe dem. Smith* v. *Roe*, 20 Law T. Rep. 53, that the Common Law Amendment Act does not affect existing actions of *ejectment*, and that the old forms can be used. The myths of Roe and Doe are therefore *not* "dead and buried," as the *Times* said; or, at all events, they have come to vigorous life again, but which, however, cannot last much over the present Term and ensuing Assizes, as by that time nearly all such actions will be cleared away, and those classic names will sink into oblivion, with their comrades "Special Demurrers" and "Unnecessary Averments."

APPEARANCE SEC STAT.

In all actions where writs were issued before the Amendment Act, and no declaration filed or appearance entered, before the plaintiff can file a declaration he must enter an appearance *sec stat.* the abolition of this process not applying to existing actions. See exceptions in section 26.

SHAM LAWYERS.

We have received the following:—

TO THE EDITOR OF THE LAW TIMES.

Sir,—On the other half I send you copy of a lithographed circular received by a client. If space will permit, you will perhaps be good enough to insert it in your next. Mr. Midgley is an accountant and agent. I am, Sir, yours, &c.

An Attorney.

"11, Lime-street, Liverpool.

"Sir,—I am instructed by Mr. to apply for payment of the sum of *l.* due and owing from you to him. Unless that amount be paid at my office, or an arrangement entered into for the payment of the above sum before next, I shall immediately cause a County Court summons to be issued against you for the recovery of the same.

"I am, your obedient servant,

"William Midgley."

THE LEGISLATOR.

The Queen's speech has the following reference to Law Reforms for the Session. It will be seen that our announcement of a projected Ecclesiastical Courts Reform Bill was correct.

"The system of secondary punishments has usefully occupied the labours of successive Parliaments, and I shall rejoice if you shall find it possible to devise means by which, without giving encouragement to crime, transportation to Van Diemen's Land may at no distant period be altogether discontinued. The subject of legal reform continues to engage my anxious attention. The Acts passed in the last session of Parliament have been followed up by the orders necessary for putting them in operation; inquiries are in progress, by my direction, with a view of bringing into harmony the testamentary jurisdiction of my several courts; and Bills will be submitted to you for effecting further improvements in the administration of the law."

Imperial Parliament.

HOUSE OF LORDS.

LAW REFORM.

Friday, Nov. 12.—Lord Lyndhurst called the attention of their lordships to the returns in lunacy which had been moved for by him last session, in connection with which he wished to ask his noble and learned friend on the woolsack whether it was his intention to introduce any measure this session for the reduction of the expenses of proceedings in lunacy? If such were his noble friend's intention, he should leave the matter in his hands with the greatest satisfaction. He also wished to know whether it was intended to carry out the recommendation of the Common Law Commission?—The Lord Chancellor was understood to answer both questions in the affirmative. It was also his intention to introduce other measures of Law Reform, the details of which he should take the earliest opportunity of laying before the House.—Lord Brougham expressed his satisfaction at the announcement which had just been made.

NEW STATUTES.

15 Victoria, A.D. 1852.

[In this record of Legislation only the Statutes of practical utility are given at length. Of the others an abstract or the titles only are presented.]

Cap. LXXXVII.

An Act for the Relief of the Suitors of the High Court of Chancery. (July 1, 1852.)

We give this statute entire.

Whereas several of the officers of the Court of Chancery have from time to time received and do now receive for their own use various fees and emoluments for business done and transacted by them in or by virtue of their respective offices: and whereas it is expedient that such officers should not henceforth retain such fees and emoluments for their own use, but that they should receive adequate salaries for the performance of their respective duties: and whereas it is expedient that for the relief of the suitors of the said Court further provision should be made with respect to the fees now payable by them, and that increased facilities should be afforded for the despatch of the business of the said Court, and that certain offices connected with the said Court should be abolished: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. *No officer hereafter to receive fees for his own use; but all officers to be paid by salary.*—From and after the twenty-eighth day of October, one thousand eight hundred and fifty-two, no officer of

the Court of Chancery, or of any of the judges thereof, shall be entitled to receive and retain for his own use any fee or reward whatsoever, and all officers of the Court of Chancery and of the judges thereof now entitled to receive and retain any fees or other payments for their own use, which by virtue of this Act they will cease so to receive after the twenty-eighth day of October, one thousand eight hundred and fifty-two, and whose salaries are not fixed by this Act, shall, while they continue to hold their respective offices, receive in lieu of all fees or other payments whatsoever now received by or paid or payable to them for their own use such salary as, having regard to the emoluments heretofore received by them, and the nature and tenure of such offices, the Commissioners of her Majesty's Treasury shall think just, and upon the present holders of such offices respectively ceasing to hold the same, the Commissioners of her Majesty's Treasury shall fix the salaries to be thereafter received in respect thereof, with reference to the nature and duties of such offices respectively.

2. *Officers to continue to receive fees until Lord Chancellor shall otherwise direct, and pay them into the Suitors' Fee Fund.*—It shall be lawful for all officers of the Court of Chancery and of the judges thereof, heretofore entitled to receive any fees or emoluments for their own use, and for their successors in their respective offices, and their several and respective clerks or agents, to continue to receive and take all and every the fees and emoluments which have been accustomed to be paid to them, until the Lord Chancellor shall, by any order or orders, otherwise direct, and all such fees and emoluments as shall accrue and be received by such officers respectively, from and after the twenty-eighth day of October, one thousand eight hundred and fifty-two, shall be accounted for and paid by them respectively once in every month into the Bank of England, in the name of the Accountant-General of the Court of Chancery, to be placed to the account there, intituled, "The Suitors' Fee Fund Account," the amount so received and paid by such officers respectively to be verified by the affidavit of the accounting party.

3. *Officers not to take gratuities.*—From and after the twenty-eighth day of October, one thousand eight hundred and fifty-two, if any officer of the Court of Chancery or of any of the judges thereof shall, for anything done or pretended to be done relating to his office, situation, or employment, or under colour of doing anything relating to his office, situation, or employment, wilfully take, demand, receive, or accept, or appoint or allow any person whatsoever to take for him or on his account, or for or on account of any person by him named, any fee, gift, gratuity, or emolument, or anything of value, other than his salary and what is allowed or directed to be taken by him under this Act or any order to be made under this Act, the person so offending, when duly convicted, shall forfeit and pay a sum of five hundred pounds, and shall be removed from any office, situation, or employment he may hold in the said court, and shall be rendered and he is hereby rendered incapable for ever thereafter of holding any office, situation, or employment in the said court, or otherwise serving her Majesty, her heirs or successors.

4. *How offenders to be prosecuted.*—Any such offender may be prosecuted either by information at the suit of her Majesty's Attorney-General, or by criminal information before her Majesty's Court of Queen's Bench, or by indictment.

5. *Allowances for copying to cease, and power to Lord Chancellor to make regulations as to copies.*—From and after the twenty-eighth day of October, one thousand eight hundred and fifty-two, the several allowances for copying provided for and directed to be paid to the clerk of reports, the clerks of entries, the assistant clerk of affidavits, the clerks of the examiners, and the copying or writing clerks of the Masters in Ordinary of the said court, by any Act or Acts of Parliament now in force, shall cease; and it shall be lawful for the Lord Chancellor, by any order or orders to be from time to time made by him, to make such regulations as to the making and delivering copies of the pleadings and other proceeding in the said court, and of the documents relating thereto, and the manner in which such copies should be paid for, and the amount of charge for the same, and by whom the amount to be so charged should be received, as may from time to time seem expedient.

6. *Power to Lord Chancellor, by order, to vary, reduce, and abolish fees, and to provide for their collection by stamps.*—It shall be lawful for the Lord Chancellor, by any order or orders to be from time to time made by him, to vary, reduce, or abolish all or any of the fees payable in relation to proceedings in the Court of Chancery, and to substitute one or more fee or fees in lieu thereof, and to direct that all or any of such fees shall, from a day to be named in such order or orders and thenceforth, be collected by means of stamps to be provided and used in manner hereinafter mentioned.

7. *After such order, fees not to be received in money, but by means of stamps.*—From and after the day named in such order or orders, unless and until the Lord Chancellor shall otherwise direct, none of the fees mentioned in such orders respectively shall be received in money, but by a stamp denoting the amount of the fee which otherwise would be payable; and where any fee shall be payable in respect of any document such stamp shall, at the expense of the party liable to pay the fee, and in such manner and under such regulations as shall by any order or orders be directed, be stamped or affixed on the vellum, parchment, or paper on which the proceeding in respect whereof such fee is payable is written, printed, or ingrossed, or which may be otherwise used in reference to such proceeding.

8. *Commissioners of Inland Revenue to give the necessary directions as to the stamps, to keep separate accounts, and pay moneys into the Suitors' Fee Fund.*—The Commissioners of Inland Revenue shall from time to time, upon the receipt of any order of the Lord Chancellor in that behalf, give the necessary directions for carrying the same into effect, and shall provide every thing that is requisite for that purpose, and shall do or cause to be done every thing that is necessary for the receipt and collection of the money to be paid for such stamps; and the said commissioners shall cause separate and distinct accounts to be kept of all sums of money received or collected by them under the provisions of any such order or orders, and of all costs, charges, and expenses incurred by them or by their direction in carrying the same into effect, and it shall be lawful for the said commissioners to pay and to deduct and retain out of such moneys all such costs, charges, and expenses, and also to deduct all sums of money repaid on allowances for spoiled stamps, as hereinafter provided for; and after such deduction they shall from time to time, and in such manner as the Lord Chancellor shall by any order direct, pay the moneys so to be received and collected into the Bank of England to the credit of the Accountant-General of the Court of Chancery, to be placed to the account there, intituled "The Suitors' Fee Fund Account."

9. *Provision for sale of stamps.*—It shall be lawful for the Lord Chancellor to direct any of the officers of the Court of Chancery whose duties may be diminished in consequence of the substitution of stamps for money payments, or otherwise, under this Act, to act under the directions of the Commissioners of Inland Revenue in the sale and distribution of all or any of the stamps to be used under this Act: provided always, that in case it appear to the Lord Chancellor, having reference to the duties to be performed by such officers or any of them, that it is not convenient that they should act as aforesaid in the sale and distribution of stamps, it shall be lawful for the Commissioners of Inland Revenue to appoint persons for such sale and distribution, and to allow to such persons so appointed by them such discount or poundage as they may think fit.

10. *Commissioners of Inland Revenue may make regulations as to allowance for spoiled stamps.*—It shall be lawful for the Commissioners of Inland Revenue from time to time to make such regulations as they shall think fit for the allowance of such stamps, issued under the provisions of this Act, as may have been spoiled or rendered useless or unfit for the purpose intended, or for which the owner may have no immediate use, or which through mistake or inadvertence may have been improperly or unnecessarily used, and such allowance shall be made either by giving other stamps in lieu of the stamps so allowed, or by repaying the amount or value to the owner or holder thereof, after deducting the discount or poundage (if any) allowed on the sale of the stamps of the like kind.

11. *Provisions of former Acts relating to stamps to be applicable to stamps under this Act.*—The provisions contained in the several Acts for the time being in force relating to stamps under the care or management of the Commissioners of Inland Revenue shall (so far as the same are applicable and consistent with the provisions of this Act), in all cases not hereby expressly provided for, be of full force and effect with respect to the stamps to be provided under or by virtue of this Act, and to the vellum, parchment, or paper on or to which the same stamps shall be impressed or affixed, and be applied and put in execution for collecting and securing the sums of money denoted thereby, and for preventing, detecting, and punishing all frauds, forgeries, and other offences relating thereto, as fully and effectually to all intents and purposes as if such provisions had been herein repeated and specially enacted with reference to the said last-mentioned stamps and sums of money respectively.

12. *No document to be received or used unless stamped.*—No document which by any order or orders to be respectively made as aforesaid shall be required to have a stamp impressed thereon or affixed thereto, shall be received or filed, or be used in relation to any proceeding in the Court of Chancery, or be of any validity for any purpose whatsoever, unless or until the same shall have a stamp impressed thereon or affixed thereto, in the manner directed by such order: provided always, that if at any time it shall appear that any such document which ought to have had a stamp impressed thereon or affixed thereto has, through mistake or inadvertence, been received or filed or used without having such stamp impressed thereon or affixed thereto, it shall be lawful for the Lord Chancellor, if he think fit, to order that such stamp shall be impressed thereon or affixed thereto, and thereupon, when a stamp shall have been impressed on such document or affixed thereto, in compliance with any such order, such document, and every proceeding in reference thereto, shall be as valid and effectual as if such stamp had been impressed thereon or affixed thereto in the first instance.

13. *Officers guilty of fraud or wilful neglect in relation to stamps liable to be dismissed.*—If any officer of the Court of Chancery, or other person, shall do or commit or connive at any fraudulent act or practice in relation to any stamp to be used under the provisions of this Act, or to any fee or sum of money to be collected, or which ought to be collected by means of any such stamp, or if any such officer or person shall be guilty of any wilful act, neglect, or omission in relation to any such stamp or fee as aforesaid, whereby any fee or sum of money which ought to be collected for the benefit of the said fee fund shall be lost to the said fee fund, or the payment thereof evaded, every such officer or person so offending shall be dismissed from his office or employment, if the Lord Chancellor shall think fit so to order.

14. *Power to abolish fees in lunacy and to substitute a per-centage in lieu thereof.*—It shall be lawful for the Lord Chancellor, intrusted by virtue of the Queen's sign manual with the care and commitment of the custody of the persons and estates of persons found idiot, lunatic, or of unsound mind, by any order or orders, to be from time to time made by the Lord Chancellor, intrusted as aforesaid, to abolish all or any of the fees payable in relation to proceedings in lunacy, and to direct that such of the fees as shall not be abolished, if any, shall be collected by means of stamps in the manner hereinbefore provided with respect to fees payable in relation to proceedings in the Court of Chancery, and also to direct that in lieu of all or any of such fees a per-centage or ad valorem payment shall be paid on the clear annual incomes of the persons found idiot, lunatic, or of unsound mind, and on the amount of the taxed costs incurred in proceedings in lunacy, or on such annual incomes only, or on the amount of such taxed costs only, the amount of such annual incomes as aforesaid, and the amount of the per-centage or ad valorem payment to be paid thereon and on such taxed costs to be from time to time ascertained and fixed in such manner, by such means, and under such regulations as the Lord Chancellor, intrusted as aforesaid, shall by any order or orders direct, and the amount of such per-centage or ad valorem payment to be paid into the Bank of England in the name of the Accountant-General of the Court of Chancery, to be placed to the account there, intituled "The Suitors' Fee Fund Account," at such times and by such persons as the Lord Chancellor, intrusted as aforesaid, shall by order or orders direct: provided always, that the amount to be raised by such per-centage or ad valorem payment shall not exceed the amount which may from time to time be required to provide for the payment of the salaries, expenses, and sums of money payable under the Act of the session holden in the fifth and sixth years of the reign of her present Majesty, chapter eighty-four, or any other Acts or Act of Parliament for the time being in force with respect to lunatics; and that a statement of the amount of such per-centage or ad valorem payment shall from time to time, within fourteen days next after the same shall have been settled, be laid on the table of the House of Commons, if Parliament shall be then assembled, or if Parliament shall not be then assembled, then within fourteen days after the meeting of Parliament then next following.

15. *Certain statutory jurisdiction given to Lord Chancellor, intrusted with care of lunatics, to be exercised by the persons for the time being so intrusted.*—All the jurisdiction, and all the powers and authorities of a judicial nature, given by the Act of the session holden in the first year of the reign of King William the Fourth, chapter sixty-five, by "The Trustee Act, 1850," and by any other Acts or Act of Parliament now in force, to the Lord Chancellor, intrusted by virtue of the Queen's sign manual with the care and commitment of the custody of the persons and estates of persons found idiot, lunatic, or of unsound mind, shall belong to and may be exercised by all or any of the persons or person for the time being intrusted as aforesaid.

16. *Salaries of Lord Chancellor and judges of the Court of Chancery to be paid out of Consolidated Fund.*—And whereas under certain Acts of Parliament now in force the salaries of the Master of the Rolls, and of the Vice-Chancellor appointed under the Act of the session holden in the fifty-third year of the reign of King George the Third, chapter twenty-four, are payable out of and charged upon the Consolidated Fund of the United Kingdom, but

the salary of the Lord Chancellor (except that portion thereof payable to him as Speaker of the House of Lords), and the salaries of the Lords Justices of the Court of Appeal in Chancery, and of the other Vice-Chancellors, are payable out of the interest and dividends arising from the Government or parliamentary securities placed in the name of the Accountant-General of the Court of Chancery which have been purchased from time to time with moneys taken out of the common and general cash belonging to the suitors of the Court of Chancery, and lying dead and unemployed in the Bank of England: and whereas it is expedient that the salaries of all the judges of the Court of Chancery should be paid out of the Consolidated Fund of the United Kingdom, instead of out of the interest of the securities purchased with the cash of the suitors as aforesaid: be it therefore enacted, that from and after the tenth day of October, one thousand eight hundred and fifty-two, there shall be issued and paid and payable out of and charged and chargeable upon the Consolidated Fund of the United Kingdom, after paying or reserving sufficient to pay all such sums of money as by any Acts of Parliament now in force have been directed to be paid thereout, but with precedence to all other payments which shall hereafter be charged thereupon, the annual salaries hereinafter mentioned; that is to say, to the Lord Chancellor such yearly sum as, with the salary or sum payable to him as Speaker of the House of Lords, to be certified as directed by the Act of the session holden in the fourteenth and fifteenth years of the reign of her present Majesty, chapter eighty-three, shall be sufficient to make up the net yearly sum of ten thousand pounds; to each of the Lords Justices of the Court of Appeal in Chancery, six thousand pounds; to the Vice-Chancellor for the time being appointed under the Act passed in the fifth year of the reign of her present Majesty, session one, chapter five, five thousand pounds; and to the Vice-Chancellor appointed under the Act of the session holden in the fourteenth and fifteenth years of the reign of her present Majesty, chapter four, five thousand pounds; all which salaries shall be in lieu of all salaries heretofore payable to such judges respectively, out of any fund whatsoever, under any Acts or Act of Parliament now in force, and shall be payable and paid quarterly, free and clear from all taxes and deductions whatsoever, on the four usual days of payment in the year; that is to say, the fifth day of January, the fifth day of April, the fifth day of July, and the tenth day of October in every year, by equal portions, the first payment to be made on the fifth day of January, one thousand eight hundred and fifty-three, and a proportionate part of such salaries respectively to be paid for the quarter current at the death or resignation of any of the persons in the receipt of such salaries.

17. *Repeal of sect.* 61 *of* 5 *Vict. c.* 5.—So much of the Act of the first session holden in the fifth year of the reign of her present Majesty, chapter five, as enacts, that the Accountant-General of the High Court of Chancery shall, on or before the first day of September in every year, pay into the Bank, to an account, intituled "An Account of interest arising from securities carried to an account of money placed out for the benefit and better security of the suitors of the High Court of Chancery," the sum of one hundred and fifty pounds, shall be repealed.

18. *Brokerage heretofore received by Accountant-General to be paid by him into Suitors' Fee Fund.*—From and after the twenty-eighth day of October, one thousand eight hundred and fifty-two, the brokerage which shall or may from time to time be received by the present Accountant-General of the Court of Chancery shall be paid by him into the Bank of England, to be there placed to his credit as such Accountant-General to the account, intituled "The Suitors' Fee Fund Account," at such times and under such regulations as the Lord Chancellor shall from time to time by any order direct.

19. *Salary to be paid to present Accountant-General in lieu of brokerage.*—From and after the twenty-eighth day of October, one thousand eight hundred and fifty-two, there shall be paid to the present Accountant-General of the Court of Chancery, in lieu of the brokerage heretofore received by him for his own benefit, and in addition to the salary and allowance for books and stationary now received by him as accountant-general, the net yearly salary of two thousand seven hundred pounds.

20. *Nothing in Act to affect the rights as a Master in Ordinary.*—Nothing herein contained shall affect the rights, privileges, or duties to which the present Accountant-General is entitled or which he is liable to perform as one of the Masters in ordinary of the Court of Chancery.

21. *Power to treasury to make regulations as to brokerage.*—It shall be lawful for the commissioners of her Majesty's Treasury to make such regulations with respect to the broker to be employed in transacting the business relating to the funds of the Court of Chancery, and the amount of commission to be received by such broker, or the payment of such broker by salary or otherwise as they shall from time to time think fit.

22. *Salary of all future Accountants - General to be 3,000l. per annum.* — From and after the resignation or death of the present Accountant-General the salary provided for the Accountant-General of the said Court by the Act of the Session holden in the twelfth year of the reign of King George the Second, chapter twenty-four, and the Act of the session holden in the ninth year of the reign of King George the Third, chapter nineteen, shall cease, and there shall be paid to the Accountant-General of the said Court for the time being the net yearly salary of three thousand pounds.

23. *Certain officers of Lord Chancellor removed, and their offices abolished.*—From and after the twenty-eighth day of October, one thousand eight hundred and fifty-two, the following officers shall be removed, and their respective offices shall cease and determine; that is to say, the keeper or clerk of her Majesty's hanaper, deputy clerk of the hanaper, the secretary of decrees and injunctions, one of the two gentlemen of the chamber attending the Great Seal, the chaff-wax, the deputy chaff-wax, the sealer, and the deputy sealer, and the duties theretofore performed by the secretary of degrees and injunctions shall thenceforth be performed by the clerks of records and writs, and the respective duties of the officers of the keeper or clerk of her Majesty's hanaper and of chaff wax and sealer shall thenceforth be performed by the clerk of the Crown in Chancery and the purse-bearer to the Lord Chancellor respectively, as directed by the Act of the session holden in the third and fourth years of the reign of King William the Fourth, chapter eighty-four, upon such offices becoming vacant by the death, resignation, or removal of the then respective holders thereof, and such purse-bearer shall be thenceforth entitled to such yearly sums for the expenses of the offices of chaff wax and sealer as are by the said last-mentioned Act directed to be paid to him.

24. *Certain officers of the Lord Chancellor to be paid by salary in lieu of fees.*—From and after the twenty-eighth day of October, one thousand eight hundred and fifty-two, there shall be paid to the officers of the Lord Chancellor next hereinafter named, in lieu of all fees heretofore received by them respectively for their own use, the following yearly salaries; that is to say, to the principal secretary of the Lord Chancellor one thousand two hundred pounds, to the gentleman of the chamber attending the Great Seal five hundred pounds, to the purse-bearer to the Lord Chancellor five hundred pounds, and to the train-bearer to the Lord Chancellor two hundred pounds; and it shall be lawful for the Lord Chancellor to appoint a clerk to be employed in the office of such principal secretary, which clerk shall receive by way of salary such annual sum, not exceeding two hundred pounds, as the Lord Chancellor shall from time to time direct.

25. *The secretary of presentations and the secretary of commissions of the peace to account for and pay fees into Consolidated Fund.*—From and after the tenth day of October, one thousand eight hundred and fifty-two, the persons or person holding the offices of secretary of presentations and secretary of commissions of the peace shall account for all the fees and emoluments payable to and received by them or him by virtue of such offices, and shall pay such fees and emoluments once in every six months into the receipt of her Majesty's Exchequer, and the same, when so paid, shall be carried to and made part of the Consolidated Fund of the United Kingdom, the amount so received and paid to be verified by the affidavit of the accounting party.

26. *The persons or person holding such last-mentioned offices to receive the yearly sum of 800l.*—From and after the tenth day of October, one thousand eight hundred and fifty-two, there shall be paid to the persons or person for the time being holding such last-mentioned offices the yearly sum of eight hundred pounds, to be divided between such persons, in case such offices should be held by different persons, in such proportions as the Lord Chancellor shall direct, and such yearly sum shall be issued and paid and payable out of and be charged and chargeable upon the Consolidated Fund of the United Kingdom (after paying or reserving sufficient to pay all such sums of money as by any Acts of Parliament now in force have been directed to be paid thereout, but with precedence to all other payments which shall hereafter be charged thereupon), and shall be payable and paid quarterly, free and clear from all taxes and deductions whatsoever, on the four usual days of payment in the year; that is to say, the fifth day of January, the fifth day of April, the fifth day July, and the tenth day of October in every year, by equal portions, the first payment to be made on the fifth day of January, one thousand eight hundred and fifty-three, and a proportionate part thereof to be paid for the quarter current at the death or resignation of the persons or person in the receipt of such yearly sum.

27. *Certain offices abolished.*—From and after the twenty-eighth day of October, one thousand eight hundred and fifty-two, the offices of the patentee of the Subpœna Office, the deputy of the patentee of the Subpœna Office, the clerk of affidavits, the assistant clerk of affidavits, the second assistant clerk of affidavits, the clerk of reports, the doorkeeper of the Court of Chancery, and the crier of the Court of Chancery, and the office of usher of the Court of Chancery, now held by Thomas Francis Le Dieu, shall be abolished.

28. *Duties of Subpœna Office transferred to clerk of records and writs.*—From and after the twenty-eighth day of October, one thousand eight hundred and fifty-two, the execution of the duties of the Subpœna Office shall be transferred to the clerks of records and writs, and such duties shall be performed by them in such manner as they are directed to perform the same by the Act of the session holden in the eighth and ninth years of the reign of her present Majesty, chapter one hundred and five, after the death, resignation, or removal from his office of the present patentee of the Subpœna Office.

29. *Duties of Affidavit Office to be performed by clerks of records and writs.*—From and after the twenty-eighth day of October, one thousand eight hundred and fifty-two, the duties of the Affidavit Office of the Court of Chancery shall be performed by the clerks of records and writs, but affidavits or affirmations may be sworn, affirmed, or attested upon honour and declarations made before the clerk of enrolments for the time being, as occasion may require, for the better despatch of business; and the duties of the clerk of reports shall be performed by such person or persons as the Lord Chancellor shall appoint for that purpose, and such person or persons shall be entitled under this Act to such salary or salaries as the Commissioners of her Majesty's Treasury shall by any order direct, provided that the whole amount of such salaries shall not in any one year exceed the sum of four hundred pounds.

30. *Orders in lunacy, when drawn up and signed, to be entered by the registrar in lunacy, and office copies of such orders to be furnished and signed by him, and the Accountant-General to act upon such orders.*—Every order made in matters in lunacy by the Lord Chancellor, or the person or persons intrusted as aforesaid, when drawn up by the secretary of lunatics, and signed by the Lord Chancellor, or the persons or person intrusted as aforesaid, shall be entered by such secretary, who shall be henceforth called the registrar in lunacy, in a proper book to be provided by him for that purpose; and he shall furnish to every person requiring the same office copies of such orders, or of such part thereof as may be required, which copies shall be signed by such registrar in lunacy, and he shall provide a seal for his office, and shall cause to be sealed or stamped therewith all such office copies as aforesaid; and every such office copy, purporting to be so signed, and sealed or stamped with such seal, shall at all times, and on behalf of all persons, and whether for the purposes of this Act or otherwise, be admitted as evidence of the order of which it purports to be a copy, without any further proof thereof.

31. *Orders in lunacy in certain cases to be acted upon in the same manner as if drawn up by the registrar of the Court of Chancery.*—Where any such order in lunacy relates to the payment, transfer, or carrying over of any cash, stock, funds, annuities, securities, or other effects, to or into the name of the Accountant-General of the Court of Chancery, to the credit of the matter of any person or persons being idiot, lunatic, or of unsound mind, or to the payment, transfer, or carrying over, or other disposal by the said Accountant-General of any cash, stocks, funds, annuities, securities, or other effects which may be standing in his name to the credit of the matter of any person or persons being idiot, lunatic, or of unsound mind, the said Accountant-General, and all other persons, including the Governor and Company of the Bank of England, and all other companies and societies, shall act upon such order, signed by the Lord Chancellor, or the person or persons intrusted as aforesaid, after the same shall have been so entered as aforesaid, in the same manner as if such order had been also drawn up by the Registrar of the Court of Chancery, and passed and entered according to the mode heretofore in force; and the Registrar in Lunacy shall certify under his hand to the said Accountant-General what stocks or funds he is by virtue of any such order to transfer, and to whom, in the same manner as the Registrars of the Court of Chancery have been heretofore accustomed to do.

32. *Certificates and reports of Masters in Lunacy to be only filed in the office of Registrar in Lunacy.*—It shall not be necessary hereafter to file any certificate or report of the Masters in Lunacy in the Report Office of the Court of Chancery, but the said Accountant-General, and all other persons included as aforesaid, shall act upon all certificates and reports of the Masters in Lunacy, filed in the office of the Registrar in Lunacy, in the same manner as if such certificates and reports respectively had been also

filed in the Report Office of the Court of Chancery according to the mode heretofore in force.

33. *Forging the signature of Registrar of Lunacy, or of his seal, to be felony.*—If any person shall forge the signature of the Registrar of Lunacy, or shall forge or counterfeit the seal of his office, or knowingly concur in using any such forged or counterfeit signature or seal, or shall tender in evidence any document with a false or counterfeit signature of such registrar, or with a false or counterfeit seal, knowing the same signature or seal to be false or counterfeit, every such person shall be guilty of felony, and shall be liable to the same punishment as any offender under an Act of the session holden in the eighth and ninth years of the reign of her present Majesty, chapter one hundred and thirteen.

34. *Master of reports and entries to countersign cheques, &c.*—And whereas all notes and cheques for the payment of money drawn by the Accountant-General of the Court of Chancery upon the Bank of England have been heretofore countersigned by the registrars of the said court, in pursuance of the provisions of the Act of the session holden in the twelfth year of the reign of King George the First, chapter thirty-two: and whereas all copies and extracts taken from the registrar's books deposited in the office of the Master of the reports and entries have been heretofore signed by the said registrars: and whereas the performance of such duties by the said registrars is attended with inconvenience, and interrupts them in the execution of their other duties; and it is expedient that the Master of reports and entries should be empowered to sign such documents as well as the said registrars: be it therefore enacted, That the duties relating to the countersigning the notes or cheques drawn by the Accountant-General of the said court upon the Bank of England, and to the signing the copies and extracts made in or issuing from the office of the Master of reports and entries, heretofore performed by the registrars of the said Court, so far as it shall be found necessary or expedient to continue such duties, shall be performed by the Master of reports and entries, or the registrars of the said Court, in such manner and under such rules and regulations as the Lord Chancellor shall from time to time by any order direct.

35. *To perform other duties as Lord Chancellor may direct.*—The Master of reports and entries shall also perform all such other duties as the Lord Chancellor shall from time to time by any order direct.

36. *Account of moneys of the suitors of the court kept at the Report Office to be discontinued, and offices of clerks of accounts abolished.*—And whereas under an order of the said Court, recited in the said last-mentioned Act, and thereby confirmed, an account of all moneys, securities, and effects belonging to the suitors of the said court, was directed to be kept at the Report Office; and whereas, since the passing of such Act, three accounts of such moneys, securities, and effects have been respectively kept, that is to say, one at the Report Office by the clerks of accounts, another in the office of the Accountant-General of the said court, and a third at the Bank of England: and whereas it is considered that the account so kept at the Report Office is no longer necessary, and may be discontinued: be it therefore enacted, that from and after the first day of October, one thousand eight hundred and fifty-two, the account so kept at the Report Office as aforesaid shall be discontinued, and the offices of clerks of accounts shall be abolished, and so much of the said last-mentioned order as requires, that when any money belonging to the suitors of the said court should be directed to be paid, by order of the said Court, the note drawn for such money upon cheque-paper, as thereby directed, should be carried to the Report Office, and an entry made thereof there, and intratur written thereon, shall be repealed; and from and after the first day of October, one thousand eight hundred and fifty-two, every note or cheque for the payment of money, under any order of the said Court, signed by the Accountant-General of the said court, and countersigned by the Master of reports and entries, or one of the registrars of the said court, as hereinbefore required, shall be sufficient authority to the Bank of England to pay the money mentioned in such note or cheque to the person named therein, or to such person as he or she, by indorsement, shall order to receive the same.

37. *Lord Chancellor to make general orders for carrying Act into effect.*—It shall be lawful for the Lord Chancellor from time to time to make and issue such general orders as he shall think fit, as well in relation to any matter connected with the offices by this Act abolished, and not hereby otherwise provided for, as for carrying the provisions of this Act into execution, and also all such other rules and orders as he shall think fit for altering and regulating the business of the several officer of the said court.

38. *Orders under this Act may be varied.*—Any order or orders for the time being made under this Act may from time to time be annulled, altered, or varied by the like authority by which any such order or orders shall have been made, and new orders may from time to time be made for any of the purposes of this Act by the authority by which orders are hereby authorised to be made.

39. *Duties and salaries of clerks in Accountant-General's office.*—It shall be lawful for the Lord Chancellor, if he shall see fit, to authorize and direct the first, second, and third clerks in each division of the office of the said Accountant-General, from and after the twenty-eighth day of October, one thousand eight hundred and fifty-two, to continue to perform the acts or duties hitherto performed by such clerks, in addition to the duties prescribed by Act of Parliament, as heretofore, in exclusion of any other person, and to direct them to be paid such yearly salaries as the Lord Chancellor, with the consent of the Commissioners of her Majesty's Treasury, shall think just; and it shall be lawful for the Lord Chancellor to fix the fees to be paid for such acts as aforesaid, which shall be accounted for in like manner as the other fees now received in the office of the said Accountant-General.

40. *Amount of salaries to clerks of Taxing Masters.*—Instead of the salaries directed to be paid by the Act of the session, holden in the fifth and sixth years of the reign of her present Majesty, chapter one hundred and three, to the clerks of the Taxing Masters of the Court of Chancery, every such clerk shall, from and after the third day of November, one thousand eight hundred and fifty-two, be entitled to a salary of three hundred and fifty pounds per annum.

41. *Deposits on appeals to be paid into bank, and placed to "The Appeal Deposit Account."*—The deposit now payable on setting down appeals and exceptions for hearing shall continue to be payable, and such deposits shall be paid to and received by the senior registrar of the Court of Chancery for the time being, who shall once in every three months pay all sums so received by him into the Bank of England, to the credit of the Accountant-General of the said court (the amount so received and paid by such registrar to be verified by affidavit), and the several sums when so paid in shall be from time to time placed to an account, to be intituled "The Appeal Deposit Account," and the moneys which shall from time to time be standing to such account shall be paid and applied as the Court of Chancery shall from time to time in that behalf order or direct.

42. *Persons may sell by auction, under an order of the Court of Chancery, without being liable to duty imposed by* 8 & 9 *Vict. c.* 15.—And whereas by the Act of the session holden in the eighth and ninth years of the reign of her present Majesty, chapter fifteen, a certain duty of excise is imposed upon every license to be taken out by every person exercising or carrying on the trade or business of an auctioneer in any part of the United Kingdom; and it is thereby enacted, that every person who exercises or carries on the business of an auctioneer, or who acts in such capacity at any sale or roup, and every person who sells or offers for sale any goods or chattels, lands, tenements, or hereditaments, or any interest therein, at any sale or roup where any person or persons become the purchaser of the same by competition, and being the highest bidder, or by any other mode of sale by competition, shall, except as hereinafter mentioned, be deemed to carry on the trade or business of an auctioneer, and shall be required to take out such license as thereby directed; and that every person who carries on the trade or business of an auctioneer as aforesaid without taking out such license shall, except as thereinafter mentioned, forfeit one hundred pounds: and whereas doubts have arisen whether any sale or sales by way of auction can now be made under any order or decree of the Court of Chancery before any officer of the said court, or the persons by such officer in that behalf appointed, without rendering such officer or other person liable to take out such license as by the said last-mentioned Act is directed to be taken out by all persons acting as auctioneers; and it is expedient that such doubts should be removed: be it therefore enacted, that it shall be lawful for any Master in Ordinary of the Court of Chancery, and for the chief clerk of any such Master, and for every other person appointed in that behalf by any such Master, to sell any goods or chattels, lands, tenements, or hereditaments, or any interests therein, under any decree or order of the said Court, by auction or by any other mode of sale by competition, without any license as an auctioneer, and without being liable to the duty imposed by the said last-mentioned Act, or any other Act or Acts now in force.

43. *Indemnity in respect of former sales.*—The Masters in Ordinary of the Court of Chancery and their chief clerks shall be discharged and freed from all suits, prosecutions, liabilities, pains, and penalties to which they or any or either of them are or is or might be liable for or on account of any sale by or by way of auction or competition heretofore made or conducted by or before them or any or either of them.

44. *Officers whose emoluments are diminished in consequence of this Act may make claim for compensation to Commissioners of Treasury.*—It shall be lawful for the keeper or clerk of her Majesty's hanaper, deputy clerk of the hanaper, the patentee of the Subpœna Office, and for every officer of the Court of Chancery, and for every officer or person employed in the offices of the Masters in lunacy, or the registrar in lunacy, whose salary or emoluments shall be taken away or diminished by the operation of this Act, or by the rules and orders to be made thereunder, to make a claim for compensation to the Commissioners of her Majesty's Treasury for the time being, and such commissioners are hereby required, within the space of six calendar months after any such claim shall have been made, by examination upon oath or otherwise (which oath they and each of them are and is hereby authorised to administer), to inquire whether any, and, if any, what compensation ought to be made to such clerk of the hanaper, deputy clerk of the hanaper, patentee of the Subpœna Office, and to any officer or person claiming such compensation, the said commissioners having regard to the conditions on which the appointment of any such officer or person was made, or to any notice which at the time of such appointment may have been given to such officer or person that this office was to be holden subject to any provision by Parliament for the abolition or regulation thereof, but with full power for the said commissioners to investigate and determine whether, from the nature of the office or mode of accession thereunto, any such conditions or notice could have been properly made or given, and also having regard to the holding of any office, place, or situation in the said court by such officer or person; and in all cases in which it shall appear to the said commissioners that compensation ought to be granted, it shall be lawful for the said commissioners, by warrant under their hands, to order and direct that such annual compensation shall be made to the persons so claiming such compensation as aforesaid, or any of them, as to the said commissioners, in their discretion, shall seem just and reasonable; and all such compensations shall be paid and payable out of such funds and in such manner as is hereinafter in that behalf directed: Provided always, that an account of all such compensations shall, within fourteen days next after the same shall be so granted, be laid upon the table of the House of Commons, if Parliament shall be then assembled, or, if Parliament shall not be then assembled, then within fourteen days after the meeting of the Parliament then next following.

45. *Payments to be made to persons whose offices are abolished.*—Every person now holding any freehold office, or office for life, or during good behaviour, which is abolished by this Act, and in respect of which any annual or other fixed salary is by virtue of any Act of Parliament or otherwise by law payable, shall be entitled to receive such salary during the residue of the term of his natural life, in the same manner and out of the same fund as if this Act had not been passed; and every person now holding any freehold office, or office for life, or during good behaviour, which is abolished by this Act, and in respect of which any fees of office are by law or custom payable, shall be entitled to receive from and after the passing of this Act, during his natural life, an annuity equal to the average annual amount of such fees of office during the three years next preceding the passing of this Act; and the amount of such annuity shall be determined by the Lords Commissioners of her Majesty's Treasury, in the same manner, and shall be paid out of such funds and in such manner, as is by this Act directed with respect to the compensations hereby provided to be given to officers whose salary or emoluments shall be taken away or diminished by the operation of this Act, or by the rules and orders to be thereunder made.

46. *Lord Chancellor may order pensions for retiring officers*—5 & 6 *Vict. c.* 103—4 & 5 *Wm.* 4, *c.* 24.—From and after the passing of this Act it shall be lawful for the Lord Chancellor, by any order made on a petition presented to him for that purpose, to order (if he shall think fit) to be paid to any person now or hereafter holding any office or appointment in the Court of Chancery, other than and except any clerk of enrolments, clerk of records and writs, or Taxing Master, to whom, subsequently to the passing of this Act, the Lord Chancellor, under the Act passed in the session of Parliament holden in the fifth and sixth years of her Majesty's reign, intituled "An Act for abolishing certain Offices of the High Court of Chancery," shall have ordered a retiring allowance to be paid, and to any officer or person employed in the offices of the Masters in Lunacy, or the Registrar in Lunacy, who shall be afflicted with some permanent infirmity disabling him from the due execution of his office, or shall have continued in any office or offices for twenty years, and shall be desirous of resigning the same, a superannuation allowance under this Act, and thereupon such officer or person shall be entitled to receive such superannuation allowance as the Commissioners of her Majesty's Treasury shall think proper to direct; and in ascertaining and awarding the amount of such superannuation allowance, the said

Commissioners shall take into consideration the whole period during which any such officer or person shall have been permanently employed in any office or situation in the said courts or offices, and shall proceed according to the principles laid down by an Act passed in the session holden in the fourth and fifth years of King William the Fourth, chapter twenty-four, "To alter, amend, and consolidate the Laws for regulating the Pensions, Compensations, and Allowances to be made to Persons in respect of their having held Civil Offices in her Majesty's Service:" provided always, that the Lord Chancellor shall in every such order state the cause for making the same, and shall cause a copy of such order to be laid on the table of the House of Commons within fourteen days next after the making of the same if Parliament shall be then assembled, and if Parliament shall not be then sitting, then within fourteen days next after the assembling thereof.

47. *Lord Chancellor may remove and give pensions to disabled officers.*—From and after the passing of this Act, it shall be lawful for the Lord Chancellor, by order, to remove any officer of the Court of Chancery, or any officer or person employed in the offices of the Masters in Lunacy, or the Registrar in Lunacy, who shall be afflicted with any infirmity which shall disable him from the due execution of his office, and who shall refuse to resign, or become incapable of resigning the same, and upon such removal to order to be paid to any such officer or person so removed, an annuity or retiring allowance, not exceeding two-third parts of the yearly sum or salary to which he shall be entitled at the time of his removal, such annuity or retiring allowance to be paid out of the funds, and in the manner in which retiring allowances under this Act are hereinafter directed to be paid.

48. *Salaries to grow due from day to day, but to be payable quarterly out of Suitors' Fee Fund.*—Except as herein otherwise provided, all salaries under this Act shall grow due from day to day, but shall be payable under an order of the Lord Chancellor on the third day of February, the third day of May, the third day of August, and the third day of November in every year, or on such other days as the Lord Chancellor shall from time to time by any order direct, and shall be paid to the parties entitled thereto, or their respective executors or administrators, out of the fund standing in the name of the Accountant-General of the Court of Chancery, to the account, intituled "The Suitors' Fee Fund Account," but subject and without prejudice to the payment of all salaries and other sums of money by any former Act or Acts now in force directed or authorised to be paid thereout.

49. *Compensation to chaff wax, &c. to be paid out of Consolidated Fund.*—The compensation to be made under this Act to the persons holding the offices of the keeper or clerk of her Majesty's hanaper, deputy clerk of the hanaper, chaff wax, deputy chaff wax, sealer, and deputy sealer, shall be issued and payable out of and charged and chargeable upon the Consolidated Fund of the United Kingdom, after paying or reserving sufficient to pay all such sums of money as by any Acts of Parliament now in force have been directed to be paid thereout, but with precedence to all other payments which shall hereafter be charged thereupon, and such compensations shall be paid quarterly, free and clear from all taxes and deductions whatsoever, on the four usual quarterly days of payment in the year; that is to say, the fifth day of January, the fifth day of April, the fifth day of July, and the tenth day of October in every year by equal portions, the first payment to be computed from the twenty-eighth day of October, one thousand eight hundred and fifty-two, to be made on such of the same days of payment as shall happen next after the Commissioners of her Majesty's Treasury shall have issued their warrant for any such compensation, and a proportionate part thereof to be paid for the quarter current at the death of any of the persons in the receipt of such compensation.

50. *All other compensations and superannuation or retiring allowances to grow due from day to day, but to be payable quarterly out of Suitors' Fund.*—Except as herein otherwise provided, all compensations and superannuation or retiring allowances under this Act shall grow due from day to day, but shall be payable on the third day of February, the third day of May, the third day of August, and the third day of November in every year, or on such other days as the Lord Chancellor shall from time to time by any order direct, and shall be paid to the parties entitled thereto, or their respective executors or administrators, out of the interest and dividends of the government or Parliamentary securities now or hereafter to be placed in the name of the Accountant-General of the Court of Chancery to the two accounts, intituled "Account of moneys placed out for the benefit and better security of the suitors of the High Court of Chancery," and "Account of securities purchased with surplus interest arising from securities carried to an account of moneys placed out for the benefit and better security of the suitors of the High Court of Chancery," or either of them, by the Governor and Company of the Bank of England, by virtue of any order or orders of the Lord Chancellor, to be made from time to time for that purpose, without any draft from the Accountant-General, but subject and without prejudice to the payment of all salaries and other sums of money by any former Act or Acts now in force directed or authorised to be paid thereout.

51. *Alteration of quarterly days of payment of certain salaries out of Suitors' Fee Fund.*—All salaries payable under any Act or Acts now in force out of the fund standing in the name of the Accountant-General of the Court of Chancery to the account, intituled "The Suitors' Fee Fund Account," by equal quarterly payments, on the twenty-fifth day of February, the twenty-fifth day of May, the twenty-fifth day of August, and the twenty-fifth day of November in every year, shall from and after the passing of this Act be respectively payable and paid by equal quarterly payments, on the third day of February, the third day of May, the third day of August, and the third day of November in every year, and a proportionate part of the first of such last-mentioned quarterly payments, to be computed from the last day of payment of such salaries, shall be made on the first of such quarterly days of payment hereby appointed which shall happen next after the passing of this Act, and upon the resignation, death, or removal from office of any person entitled to receive any such salary, such person, or his executors or administrators, as the case may be, shall be paid such proportionate part of the salary aforesaid as shall have accrued since the last quarterly payment thereof to the time of such resignation, death, or removal from office.

52. *Provisions for expenses of the officers of the Court.*—It shall be lawful for the Lord Chancellor, by any order or orders to be from time to time made for that purpose, to order payment, at such times, and in such manner, and out of such of the funds hereby charged as he shall think fit, of all such sums as shall appear to him to be reasonable and proper to be paid for providing suitable courts, rooms, and buildings in which the business of the Court of Chancery may from time to time be carried on, and for keeping order in the several courts, and for the care and cleaning of all such courts, rooms, and buildings, and for the rent, taxes, rates, insurance from fire, and other outgoings charged upon or payable for or in respect thereof, and for the enlargement, alteration, or improvement, repairs, furnishing, and fitting up of the same, and for the books and stationery which may be required for the business of the said court and the offices thereof, and for the making, writing, printing, counting, and examining official documents and records of the said court, and office and other copies of such documents and records, and for coals and candles, and other necessary articles for the said courts and offices, and for all other necessary expenses relating thereto, and for the expenses of the pursebearer and the running porter to the great seal, and the messenger to the Lord Chancellor during his absence from town, and for the petty expenses now borne by the porters' fund; and it shall be lawful for the Master of the Rolls to appoint a clerk or clerks to be employed in the office of the secretary at the Rolls, which clerk or clerks shall receive by way of salary such annual sum or sums as the Master of the Rolls shall from time to time fix and determine; provided always, that such annual sum or sums shall not in the whole in any one year exceed the sum of three hundred pounds.

53. *Surplus of Suitors' Fund to be from time to time carried over to and to become part of Suitors' Fee Fund.*—And whereas many of the fees payable to the Suitors' Fee Fund have been lately abolished, and several of them have been reduced, and under the provisions of this Act there will be a further reduction of the fees payable to the said fund: and whereas, in order to effect such reduction, and at the same time to keep up the said fund to an amount sufficient to satisfy the charges thereon, as well under this Act as under any former Act, it is expedient to make such addition to the said fund as hereinafter provided: Be it therefore enacted, that so much of any Act or Acts now in force as directs that the surplus interest and annual produce which hath arisen and shall arise from the moneys placed out on the several accounts, intituled "Account of Moneys placed out for the Benefit and better Security of the Suitors of the High Court of Chancery," and "Account of Securities purchased with surplus Interest arising from Securities carried to an account of Moneys placed out for the Benefit and better Security of the Suitors of the High Court of Chancery," beyond what shall be sufficient to answer the purposes of the several Acts relating to such securities, and also the interest produced from the securities purchased with such surplus interest and annual produce, shall from time to time be placed out in the purchase of Government or Parliamentary securities in the name of the Accountant-General of the said court, and placed to the credit of the said account, intituled "Account of Securities purchased with surplus Interest arising from Securities carried to an Account of Moneys placed out for the Benefit and better Security of the Suitors of the High Court of Chancery," shall be repealed, and the surplus interest and annual produce hereafter to arise from the moneys placed out on the two several last-mentioned accounts, beyond what shall be sufficient to answer the purposes of this Act, and the several other Acts relating to such securities, shall be carried over by the said Accountant-General and be placed to the said account, intituled "The Suitors' Fee Fund Account," and shall thereupon become part of the fund standing to such account.

54. *Provision in case of surplus or deficiency of Suitors' Fee Fund.*—If at the end of any year there shall be a surplus standing to the credit of the said account, intituled "The Suitors' Fee Fund Account," after payment of the several salaries and sums of money charged thereon by this Act or any former Act, it shall be lawful for the Lord Chancellor by any order to direct that such surplus, or such part thereof as to the Lord Chancellor shall seem fit, shall be invested in the purchase of Parliamentary or Government securities in the name of the said Accountant-General, to be placed to the account, intituled "Account of Moneys placed out to provide for the Officers of the High Court of Chancery," and it shall be lawful for the Lord Chancellor in like manner to direct the investment of the dividends or interest to accrue from time to time on the securities now or at any time hereafter under this Act or any former Act to be placed to the said last-mentioned account, or so much of such dividends and interest as he shall think fit, in the purchase of Parliamentary or Government securities in the names of the said Accountant-General, to be by him placed to the credit of the said last-mentioned account, and as often as there shall be a deficiency in the said account, intituled "The Suitors' Fee Fund Account," at any of the times appointed for payment of any of the salaries or sums of money charged thereon, it shall be lawful for the Lord Chancellor to direct the said Accountant-General to make good such deficiency by carrying over and placing to the said account, intituled "The Suitors' Fee Fund Account," such sum as the Lord Chancellor may consider sufficient for that purpose, out of the interest and dividends to arise from the Government or Parliamentary securities standing to the said account, intitled "Account of Moneys placed out to provide for the Officers of the High Court of Chancery," or by a sale of so much of the said securities as may be necessary for that purpose.

55. *Interpretation of term "Lord Chancellor."*—In the construction of this Act, unless such meaning be repugnant to or inconsistent with the context, the expression "Lord Chancellor" shall mean and include the Lord High Chancellor of Great Britain, and the Lord Keeper or Lords Commissioners of the Great Seal of the United Kingdom for the time being.

CAP. LXXXVIII.

An Act to remove doubts as to the Constitution of the Bishopric of Christchurch, in New Zealand, and to enable her Majesty to constitute such Bishopric, and to subdivide the Diocese of New Zealand. July 1, 1852.

THE MAGISTRATE,

AND PAROCHIAL AND MUNICIPAL LAWYER.

Summary.

THE Q. B. has refused to bail persons charged with wilful murder, in a case of death by duelling. The Court drew a distinction between the *Six Mile Bridge* case, in Ireland,—where soldiers had been committed on a coroner's inquisition, and came to the Court protesting their innocence, and the Court, looking at the evidence, believed them to be innocent,—and this case, in which the parties confessed to having done an act which in law was murder, and for which they could only ask a mitigation of punishment. (*Reg.* v. *Barronet*, 20 Law T. Rep. 50.)

REAL PROPERTY LAWYER AND CONVEYANCER.

Jones v. *Price*, 20 Law T. Rep. 49, is a case of unusual interest and importance, as a complete review of the law relating to the purchase of reversionary interests, and the principles upon which a Court of Equity will proceed in an application to set aside such a purchase, on the ground of inadequate value. The interest of the case is increased by the circumstance that the purchaser was the vendor's solicitor, so that it involved the further question, in what

manner the Court would deal with a purchase by a solicitor from his client.

It was held by Lord ST. LEONARDS, first, that mere inadequacy of price would not be sufficient to set aside the purchase of a reversionary interest, unless there was also clear fraud. Secondly, that the value was to be ascertained, "not by the estimate of actuaries, but by what the property would really fetch in the market."

As to a purchase by a solicitor from his client, his Lordship said, "He did not intend to break in upon the rule that a solicitor might purchase from his client, if the client had the advice of another solicitor; but if a solicitor did enter into a contract with a person who is or was his client, he must at least be prepared to shew how the contract was entered into, who made the first offer, and what were the circumstances. If this transaction had been a *bonâ fide* transaction, he would have supported it."

INCUMBERED ESTATES COURT.—The following is a summary of the business done from the commencement:—2,389 petitions had been lodged, being an average of 70 for each month. The produce of the sales amounted to 7,215,000*l.* of which 935,318*l.* were the produce of private sales. The sales distributed among the different provinces amounted, in Leinster, to 1,969,000*l.*; Munster, 2,493,000*l.*; Ulster, 1,261,000*l.*; Connaught, 1,491,000*l.* in round numbers. The gross annual rental of the lots sold was 520,000*l.* the number of acres 1,293,573, of which 403,000 were bought by 114 English and Scotch purchasers, being the contents of 95 different estates, sold in separate lots. The purchase-money of these lots amounted to 1,100,000*l.* Of the 114 purchasers set down as English and Scotch, eight were Scotch, the remainder being English, with the exception of one American. A very interesting table is that which shows the amount of purchase-money invested by each of the 2,455 purchasers. Of purchasers under 1,000*l.* there were 1,040, of whom 21 were English or Scotch; from 1,000*l.* to 2,000*l.* 447 purchasers, of whom 18 were English or Scotch; from 2,000*l.* to 5,000*l.* 549 purchasers, of whom 26 were English or Scotch; from 5,000*l.* to 10,000*l.* 314 purchasers, of whom 21 were English or Scotch; from 10,000*l.* to 20,000*l.* 83 purchasers, of whom 13 were English or Scotch; at 20,000*l.* and upwards, 22 purchasers, of whom 12 were English or Scotch; shewing an increase in the proportion of English and Scotch purchasers as the amount of purchase-money increased. The occupation of the English and Scotch purchasers is distributed thus—20 farmers, 6 land and insurance companies, 36 manufacturers and merchants, and 52 of the gentry class, including eight titled persons.

Queries.

CONVEYANCE—SITE FOR PARSONAGE-HOUSE.

A. is desirous to give to and invest in the *vicar* a piece of land as a site for a parsonage-house.

1. Can this be done under the 43 Geo. 3, c 108; or must it be under the Church Building Acts, or some or one of them?

2. It is presumed that if it is under any of the Church Building Acts the land must be conveyed to the Ecclesiastical Commissioners and not to the vicar.

3. If it can be taken under the 43 Geo. 3, c. 108, must the conveyance be in duplicate, and with whom should the duplicate be lodged, and will any stamp be necessary on either of the deeds?

4. Does the last-mentioned Act authorise a corporation, such as the vicar of a parish, to *purchase* a piece of land for the above purpose? AMICUS.

Answers to Queries.

STAMPS.

I HAVE read the reply of Mr. Wilkinson in No. 500, and of "L. C." in No. 501, to "W. T.'s" query in No. 495. I agree with the former in the conclusion at which he has arrived, but not in his premises; and differ entirely from "L. C.'s" opinion. It seems to me that the deed operates as a settlement in respect of A.'s wife's share, and as such, is chargeable with the ordinary deed stamp, in addition to the *ad val.* duty on B. and C.'s shares. The following extract from the old Stamp Act (Rouse's ed. p. 53) seems to me conclusive on the point:—"Deeds containing matters not incidental, and where any deed or instrument operating as a conveyance on the sale of any property shall operate also as a conveyance of any other than the property sold by way of settlement, or for any other purpose, or shall also contain any other matter or thing besides what shall be incident to the sale and conveyance of the property sold, or relate to the title thereto, every such deed or instrument shall be charged, in addition to the duty to which it shall be liable as a conveyance on the sale of property, and to any progressive duty to which it may also be liable, with such further stamp duty as any separate deed containing the other matter would have been chargeable with, exclusive of the progressive duty. J. G. T.

COUNTY COURTS.

THE death of Mr. CHILTON has enabled the LORD CHANCELLOR to perform a graceful act of recognition of personal and professional merit, in the appointment of Mr. PITT TAYLOR to the vacant Judgeship of the Lambeth and Greenwich Courts. Mr. TAYLOR is known to the Profession as the author of the best work on the Law of Evidence; as an energetic and able Law Reformer, an accomplished lawyer, and that which is still more necessary than either qualification for a County Court Judge, as a man of uncommonly sound common sense, versed in affairs, and having quick and keen perception. Such appointments are equally creditable to the Chancellor who makes, and the Barrister who receives, them. This is the way to make the County Courts both efficient and popular.

Already in the term a point has arisen on the Jurisdiction of the County Courts over a claim of right. The owner of a wharf brought an action against the owner of an adjoining wharf for obstructing his premises by permitting barges, &c. to overlap them. Defendant pleaded a custom of the river Thames to do this while unloading. This custom the plaintiff denied, and there was a new assignment that the obstruction was for an unreasonable time. Upon this a question arose, whether the case was within the jurisdiction of the County Court as being a claim of a right; but inasmuch as it was not a claim to an incorporeal hereditament or a franchise, the Court held that it was within the jurisdiction of the County Court. (*Davis* v. *Walton*, 20 Law T. Rep. 53.)

DELAYS ARE DANGEROUS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—You are aware, as the organ of the Legal Profession, that in 1842 an Act of Parliament passed to enable traders owing debts not exceeding 300*l.* (or non-traders to any extent) to apply by petition to the Court of Bankruptcy for protection from arrest, and if their conduct had been without reproach, to eventually obtain a final protection from all process. Under this Act of Parliament, so administered, an immediate protection and an interim order was forthwith granted, i. e. on filing the petition and schedule.

In 1847 this great boon to the unfortunate was transferred, to be dealt with by the Court for Relief of Insolvent Debtors, where the same practice was carried out of obtaining the interim order and protection forthwith, upon an affidavit being made that the petitioner was in fear of arrest, or that his effects were liable to be taken in execution to benefit one creditor solely, and thereby prevent an equal division amongst the creditors generally (and in all cases this protection could be had on the day following the filing of the petition, &c.). A year or two after 1847 another Act of Parliament passed, which (inter alia) transferred, in all cases beyond twenty miles from the court-house in Portugal-street, the powers of that Court to the judges of the various County Courts, as heretofore established. Now the object of my complaint is, that the judges of the various County Courts do not grant this immediate protection to the petitioner, but he is delayed from obtaining his necessary protection (and which is the sum and substance of the Act of Parliament) until the court-day arrives (perhaps once a month). Thus the unfortunate petitioner is still at the mercy of his creditor, and in many instances has to be under the necessity of what is a generally-used term, "keep out of the way." Until the hoped-for day arrives, this is very inconvenient, to say the least of it, and it ought to be otherwise arranged. I have made inquiry of several of the Legal Profession attending to this department of the law, and find this delay to be the general practice (although I must except out of this rule the humane judge of the Margate and Ramsgate Courts, who invests his clerk with the power of granting immediate protection by affixing his signature to blank forms, as is the practice in the Superior Courts of Common Law, all the learned judges signing, as is well known, the various orders in blank, to be filled up as occasion may require; and in many instances their orders are only stamped with a fac simile of the judge's handwriting, or written by the clerks to the various judges. What I humbly suggest ought to be done is, that all the judges of the County Courts ought to follow the example of their brother at Margate Court, and not leave the petitioner at the mercy of the creditor for so long a period, for where the Legislature provides means to spare imprisonment, all who have a share in the administration of the law; ought to assist, and not block up the stream of humanity; for no doubt the law will, in a very few years, only cast into prison the fraudulent and dishonest, and not those whose "only crime is to be unfortunate."

I am, Sir, yours, &c. LUVID.

COUNTY COURTS CLERKS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Amidst the numerous complaints daily brought before the public by both classes of the Profession, of their interests being affected by the law reforms of the last session, I am surprised that the older grievances which the clerks of the County Courts labour under should be overlooked. I allude to the miserable allowances which the clerks of single and small courts (issuing about a thousand summonses per annum) obtain for their services. We have been long waiting in the expectation that the Treasury would, ere this, have abolished the payment by fees, and have substituted salaries in lieu; but although we have now a Home Secretary and a Chancellor of the Exchequer whose views extend beyond the petty savings of their predecessors, our position is not likely to be improved so long as we remain quiescent; and the anxiety evinced by the late meeting of the solicitors at Derby to raise the status of the Profession, is poorly responded to, so long as we submit to be paid by fees, the total of which would not, in many instances, pay the salary of a clerk in an ordinary counting-house. The public will indeed think most meanly of us when told that for the daily performance of a portion of the duties of the office, we submit to receive a fee amounting to the nineteen-fortieth part of a penny.

Are we always to remain thus dormant? I shall be very glad to lend my assistance towards promoting a better state of things. Would not a general meeting at Birmingham, Derby, or Normanton be our first step? Unfortunately there are clashing interests amongst us. The clerks of the large courts, whose fees exceed the highest amount contemplated to be paid by a fixed salary, are naturally desirous to let the present system continue. Another class, who hold the clerkship of several courts, and employ deputies on the best terms they can, are equally opposed to any change, in the fear that if a fixed salary were attached to each court, the amount of pluralities held by one clerk would be too intolerable for the country to submit to. The Associated Society of County Court Clerks is composed principally of these two classes, and hence the stagnant state in which the courts are kept. The business of them might be increased with great advantage to the public, if a real effort were made to extend their utility.

I am, Sir, yours, &c.

THE CLERK OF A SINGLE COURT.

Nov. 9, 1852.

BUSINESS IN THE COUNTY COURTS.—On Thursday the annual return (obtained by the late Mr. Grainger) of the business in the County Courts during the year 1851 was printed. The number of plaints entered was 441,584, and the amount for which they were entered was 1,624,916*l.* Judgment was obtained for 815,514*l.* and the costs were 191,075*l.* There were 100,194*l.* paid into court without proceeding to judgment. The total fees were 272,500*l.* The amount received to the credit of suitors was 618,468*l.* and the amount paid out 615,181*l.* The number of plaints entered in 1851 was 44,791 above the numbers entered in 1850; the amount sued for was 359,801*l.* above that sued for in 1850, and the average amount for which each plaint was entered was increased from 3*l.* to 3*l.* 13s. 6d.; the number above 20*l.* was 13,446, and the number of such tried 8,236, being 61 per cent. of the plaints entered; from these trials 38 appeals only were made, in 11 of which the decision of the County Court was confirmed, and in 8 reversed, while 15 appeals were not proceeded with. The number of causes tried by jury has not increased with the largeness of the demands, only 35 per 1,000 of the causes having been so tried in 1851, while in 1850 they were in the proportion of 37 per 1,000.

THE BROTHER OF THE CHANCELLOR OF THE EXCHEQUER, Mr. James Disraeli, has been appointed to the Treasurership of the County Courts of Nottinghamshire, Derbyshire, and Lincolnshire, circuits 17, 18, and 19. The salary is stated to be 400*l.* a year, with 150*l.* a year for a clerk.

THE LAWYER.

Summary.

EQUITY PRACTICE.—The first week of term produced few points upon the new Procedure—indeed, up to the date of our last publication three cases only had come under the consideration of the Courts. *Fiott* v. *Mullins*, 20 Law T. Rep. 50, was in this wise. Notice of a motion had been given before the 2nd November (when the Act came into operation) for that day. Was such notice good, having reference to a law not yet in force? It was held to be so.

In the same case, under sec. 20 of 15 & 16 Vict. c. 86, a defendant gave notice for production by plaintiff of *all documents* in his possession or power relating to the matters in question in the

suit. He did not specify, and there was no evidence to shew what documents were in plaintiff's possession. Vice-Chancellor STUART refused the motion with costs. "It was perfectly clear," he said, "that this Act of Parliament could not, by any reasonable construction of the words of it, be held to sanction an application of this kind. This was a motion for the production of all documents in the possession or power of the plaintiff. [*The Court could never act upon an application of that kind without some clear and distinct evidence, and some clear and distinct statements of what the documents were.*"

In *Jones* v. *Wood*, 20 Law T. Rep. 50, it was decided that suits which have become abated before the passing of the recent statutes may be revived by an order of course under the 52nd section, and not, as heretofore, by bill of revivor.

Under the 44th section of c. 86, which empowers suits to be proceeded with in certain cases without bringing the personal representatives before the Court, it has been decided that where a decree had been made on a claim for administration by a residuary legatee against executors, who were also two of the residuary legatees, and one of the executors had died intestate, and no administration had been taken out of his estate, and he had not proved, nor possessed any of the assets, the suit might proceed without bringing his personal representative before the Court, and the Master might proceed under the decree in his absence. (*Rogers* v. *Jones*, 20 Law T. Rep. 50.)

COMMON LAW.—From these courts we have only to note one case upon the new procedure. In *Doe dem. Smith* v. *Roe*, 20 Law T. Rep. 53, the question was raised as to the operation of the statute upon a pending action of ejectment. A declaration in ejectment had been served before the 24th October. Could the lessor of the plaintiff proceed to judgment under the old practice, or according to the provisions of the new statute? The Court held without hesitation that he was entitled to move for judgment according to the practice *before* the new Act.

In the *Law of Attorneys* there is to be noted the case of *Parker* v. *The Great Western Railway Company*, 20 Law T. Rep. 52. This was the notorious case in which the enormous charge was made for notices of action, and disallowed on taxation. It appears that at the taxation the plaintiff made no objection to certain items, expecting that the bill would be paid by the other side. But it turned out that he was compelled to pay a portion of his own costs, and now he came to the Court to object to the allowance of certain charges. But the Court properly held that he was bound by his own acquiescence in them at the taxation.

It will be observed that in the Exeter Bankruptcy Court the Commissioner has refused exclusive audience to the Bar, and has permitted an Attorney to conduct a case as agent for another Attorney, thus differing in this last point from the judgment of Mr. Commissioner FONBLANQUE, reported a short time since. (*Anon.* 20 Law T. Rep. 55.)

LAW LECTURES.

Prospectus of the Lectures to be delivered during the ensuing Educational Term, by the several Readers appointed by the Inns of Court.

CONSTITUTIONAL LAW AND LEGAL HISTORY.

THE Public Lectures to be delivered by the Reader on Constitutional Law and Legal History, during Michaelmas Term, 1852, will include the following subjects:—

FIRST LECTURE.

The Genius of the English Constitution, Civil and Ecclesiastical, contrasted with that of France, during the Reign and at the Accession of Elizabeth.

SECOND AND THIRD LECTURES.

The Progress and Establishment of the Constitution during the Reigns of James the First and Charles the First, until the breaking out of the Civil Wars.

FOURTH AND FIFTH LECTURES.

Proceedings in Parliament and the Courts of Justice from the Restoration to the Revolution.

SIXTH LECTURE.

The Revolution of 1688.

In his Private Lectures the Reader proposes to tread the same ground, but to follow more in detail the history of the period from the accession of Elizabeth to the Revolution of 1688. He proposes, also, to illustrate the character of our institutions during that interval by a reference to those of France, to explain the causes which led to different results in the two countries.

The text-books for the Private Lectures will be:—Lord Clarendon's History; Lord Clarendon's Life; May's History of the Parliament; Hallam's Constitutional History; 1st and 4th volumes of Blackstone; State Trials from 1500 to 1688; Brodie's Constitutional History, vol. 1.; Millar's Constitutional History; Sullivan's Lectures; Montesquieu's Esprit des Lois, liv. 11, c. 6; Burnet's History of the Church; Hale's History of the Common Law; Ralph's History; Rapin.

The course of private tuition the Reader proposes to adopt is, to take the first volume of Hallam's Constitutional History, and Rapin's History of England from Elizabeth to William III. to read it with his students, and question them upon it. He will also expect the students to read the other books he has mentioned, as the groundwork of his class; and to be able to answer generally any question as to the outline of the facts and arguments which they contain, bearing upon the period he has fixed upon, before the termination of the course.

The Reader on Constitutional Law and Legal History will deliver his public Lectures at Lincoln's-inn-hall, on Wednesday in each week during the Educational Term, commencing at two o'clock. The Reader will receive his Private Classes on Tuesday and Saturday in each week, from two o'clock until four p.m. in the Benchers' Reading Room, at Lincoln's-inn.

JURISPRUDENCE AND THE CIVIL LAW.

The Council regret, that in consequence of severe illness, the Reader on Jurisprudence and the Civil Law is at present unable to enter upon his duties; but Mr. Phillimore will receive the Private Classes on Jurisprudence and the Civil Law at the Benchers' Reading Room, in Lincoln's-inn, at twelve o'clock, on Monday and Thursday in each week of the Educational Term.

EQUITY.

The Reader on Equity proposes to give, during the Educational Term, commencing on the 1st of November, 1852, Six Public Lectures on the History of the Court of Chancery; its Mode of Procedure, and the General Principles on which Justice is there administered.

LECTURE I.—The ancient office of Cancellarius; of Chancellor of England after the Norman Conquest. The Aula Regis. The Exchequer. Chancellor of the Exchequer. General View of the System on which Justice was administered. Share of the Chancellors and Influence of the Civil Law in the formation of this System. Its Advantages. The Power of the Council. How delegated to the Chancellor. The Subjects on which his Authority was usually exercised. Its great Extent and Importance. Alterations in the Constitution and Practice of the Court.

LECTURE II.—The Custody of the Great Seal. Its connection with the office of Chancellor. The Privy Seal and Court of Requests. The Court of Star Chamber. Common Law Jurisdiction of the Chancellor: his Jurisdiction over Charities and in Lunacy. Appellate Jurisdiction of the House of Lords.

LECTURE III.—Procedure of the Court of Chancery, sitting as a Court of Equity. How related to that under the Civil Law. Bill of Complaint. Modes of compelling Appearance. Demurrer. Plea. Answer. Replication. Evidence. Decree.

LECTURE IV.—On the Nature of the Relief granted by the Court of Chancery. Specific Performance. Discovery. Injunction. Mode of enforcing Decrees of the Court.

LECTURE V.—Principles on which the Equitable Jurisdiction of the Court of Chancery was established. Reference to the Rules of Conscience. Influence of the Study of Casuistry. The Jurisdiction of the Court gradually assumes a complete and settled form.

LECTURE VI.—General Division of the Cases in which Relief is afforded by Courts of Equity. Where Relief cannot be obtained at Law. Where less perfect Relief can be obtained at Law than in Equity. Where the Remedy at Law is inconsistent with Equity. Where a Court of Law requires the Assistance of a Court of Equity.

In addition to the Public Lectures, it is proposed that two classes shall be formed for the study of the Principles and Practice adopted by Courts of Equity; each class to meet for one hour three times a week. The Junior Class will read the 4th chapter of the 3rd Book of "Blackstone's Commentaries," and Gilbert's "Forum Romanum." The Senior Class will read "Mitford's Treatise on Pleading in Chancery," and the "Selection of Leading Cases in Chancery," by White and Tudor. Each Student will be expected, in the interval between the meetings of the class, to peruse portions of these and other works bearing on the same subject, pointed out by the Reader, and to be prepared, at the ensuing meeting of the class, to answer and discuss questions arising out of the subjects of their reading.

The Reader on Equity will deliver his Public Lectures at Lincoln's Inn Hall, on Thursday in each week during the Educational Term, commencing at Two o'clock, p.m. The Reader will receive his private classes on Monday and Friday evenings, at Seven o'clock; and on Tuesdays, Thursdays, and Saturdays, at Half-past Nine o'clock, a.m. in the Benchers' Reading Room, at Lincoln's Inn Hall.

LAW OF REAL PROPERTY, &c.

Prospectus of a Course of Six Public Lectures, to be delivered by the Reader, on the Law of Real Property, &c. in the Hall of Gray's Inn, during the First Educational Term, commencing the 1st of November, 1852.

I. Introduction. An Historical Review of the Modifications which the Municipal Law of this Country has at different times received, with reference to the Power of Alienating Real and Personal Property.

II. An Inquiry into the Restrictions which have been imposed upon the Power of Alienation.

1. From motives of Public Policy:—
   - *a.* By the Statutes of Mortmain, viz.:—9 Hen. iii. c. 36; 7 Edw. i. st. 2; 13 Edw. i. c. 32, 33; 18 Edw. i. c. 1; 15 Ric. ii. c. 5; 7 & 8 Will. iii. c. 37.
   - *b.* By the Statute of 9 Geo. ii. c. 36. Under this head the whole Law of Charitable Uses will be entered into. [23 Hen. viii. c. 10; 1 Edw. vi. c. 14; 43 Eliz. c. 4.]
   - *c.* By the Rule against Perpetuities.
   - *d.* By the Thellusson Act; 39 & 40 Geo. iii. c. 98.
2. From a desire to protect the rights and interests of third parties, as Creditors and Purchasers. [13 Eliz. c. 5; 27 Eliz. c. 4.]

An Outline of a Course of Lectures, to be delivered by the Reader, on the Law of Real Property, &c. to the Private Classes.

The object of the Private Classes being, *first*, to afford to the students a course of elementary instruction on the principles that govern the law of property; and, *secondly*, to familiarize the minds of those who are more advanced with the ready application of those principles to practical purposes, by analysing the structure of deeds and wills, in connection with the leading decisions of the Courts; the following outline is drawn up for the purpose of exhibiting, in a concise form, the order in which the subject of property will be treated, and also of mentioning those works which will be either read or referred to in Lecture:—

I. The leading Distinctions between Real and Personal Property, arising out of the Influence of Feudal Institutions, will be pointed out. As preparatory to the discussion of this subject, the perusal of the following parts of works is recommended:—Hallam, Mid. Ages, ch. 2, p. 142; 1 Steph. Com. 160; Butler's Note to Co. Litt. 191, a; secs. i. ii.

II. The Learning appertaining to Estates of a Freehold Tenure will be considered, with reference to their Quantity and Quality—their Rights and Incidents. Butler's Note to Co. Lit. 191, a; sec. v.; 1 Steph. Com. 216; Preston on Estates; Littleton on Tenures; Williams on Real Property.

III. The Division of Estates into Legal and Equitable, and the Effect of Uses and Trusts upon the Conveyance and Settlement of Land previous and subsequent to the Statute of Uses. The following authorities will be read in Lecture:—Introduction to Sugden on Powers; 1 Hayes's Convey.; Butler's Notes to Co. Lit. 271, b; 290, b; Fearne on Contingent Remainders. Attention is also directed to the Second and Five following Chapters of the First volume of Spence's Equitable Jurisdiction; 1 Steph. Com. 328; Sanders on Uses; Bacon's Reading on Uses; and Lewin on Trusts.

IV. The Nature of Powers; (1) as Common Law Authorities; (2) as deriving their Effect from the Statute of Uses; and (3) as Equitable Powers. Butler's Note to Co. Lit. 271, b. iii. (4); Sugden on Powers.

The discussion of the doctrines of Real Property Law, in accordance with the above arrangement, will be accompanied by examples of their practical application to the Art of Conveyancing, in the case of Sale, Mortgage, and Settlement; an analysis of the various deeds by which land is transferred will be entered into; the language and operation of each of their component parts will be explained; and the late alterations introduced by the Legislature, with reference to this part of the subject, will be examined.—Sugden, Vend. and Pur.; Jarman's Notes to Byth. Conv.; Davidson's Notes to Martin's Conv.

V.—The different modes of Alienation by Act inter vivos having been lectured on, the Power of Testamentary Disposition will form the next subject of inquiry.

Under this division, the difference that exists between a gift by will of Real, and a gift by the same instrument of Personal Property, will be explained; the leading principles by which the Courts are guided in construing Wills, will be investigated; and the effect of the late Legislative measures (1 Vict. c. 26, and 15 & 16 Vict. c. 24), in improving and settling the practice and construction of Wills, will be considered.—Roper on Legacies; Jarman on Wills; Williams on Executors; Fearne on Executory Devises.

The Reader on the Law of Real Property will

deliver his Public Lectures at Gray's-inn Hall, on Friday in each week, during the Educational Term, commencing at two o'clock, P.M. The Reader will receive his Private Classes in the North Library at Gray's-inn Hall, on Monday in each week, from two to four, P.M.; on Wednesday and Friday mornings, at half-past nine; and on Thursday evenings at seven o'clock, P.M.

The Council having unexpectedly received, on the 29th instant, information that Mr. Willes had, on that day, resigned the office of Reader on Common Law, are unable, for the present, to announce any lectures in that department.

The Readers on Constitutional Law and Legal History, on Equity, and on the Law of Real Property, will receive and communicate with the gentlemen desirous of attending their respective classes, at the conclusion of the First Public Lectures.

(Signed) RICHARD BETHELL, Chairman.

Council Chamber, Lincoln's-inn, Oct. 30, 1852.

SHERIFFS' SMALL DEBTS COURT.

TO THE EDITOR OF THE LAW TIMES.

SIR,—My attention has been recently directed to some observations in your paper of the 16th ult. commenting on my advertisement relative to business before this Court, which you object to on two grounds,—unprofessional character and illegality. The first is mere matter of opinion, you are therefore at liberty to so designate it if you please; but the second alleged reason being without foundation in fact, as you will see by referring to the Act under which the City County Court now holds jurisdiction, the 16 & 17 Vict, c. 77 (local), I must request you to insert this letter in your next publication, as I cannot permit remarks so likely to be injurious to pass unnoticed; and I regret, that before making them in so discourteous a manner, a little inquiry into their truth at least was not made.

I may as well add, which indeed is manifest from the advertisement, that the allusion to "costs allowed by the Court" was not the 10s. and 15s. scale, which you appear to have supposed.

I am, Sir, yours, &c.

G. MANLEY WETHERFIELD.

18, Basinghall-street, Nov. 10, 1852.

Answers to Queries.

ARTICLED CLERKS.

I BEG to refer your correspondent, "J. W." to the cases of *Ex parte Craig*, 6 Dowl. 256; *Ex parte Jebbs*, 9 Dowl. 151; and *Ex parte Bousfield*, ib. 616; by the former of which cases it was decided that a clerk must be of age at the time of the *examination*; and in the two latter the Court allowed the clerk to be examined, though under age, on a special statement of circumstances. It would seem, therefore, that without the order of the Court obtained, A. if under age, cannot be examined. C. H.

THE MERCANTILE LAWYER.

Summary.

IN *Maritime Law* there is a case reported from the Admiralty Court. Part of the crew of a British vessel seized her, murdered the master and boatswain, and carried her into port, where the British consul took possession of her, and of his own authority gave a bottomry bond on her. It was held to be a valid bond. (*The Cynthia*, 20 Law T. Rep. 54.)

In *Bankruptcy*, where a joint commission had issued against partners, one of whom had been previously an uncertificated bankrupt, the Commissioner refused to adjudicate on the application of a creditor under the first bankruptcy, but left the creditor to petition the Lord Chancellor to supersede one of the bankruptcies. (*Re Barrington*, 20 Law T. Rep. 55.)

It will be seen that the rules under the Patent Law Amendment Act have been issued at last. They will be found below.

RULES UNDER THE PATENT LAW AMENDMENT ACT, 1852.

FIRST SET OF RULES AND REGULATIONS UNDER THE ACT OF 15 & 16 VICT. C. 83, FOR THE PASSING OF LETTERS PATENT FOR INVENTIONS.

By the Right Honourable Edward Burtenshaw Lord St. Leonards, Lord High Chancellor of Great Britain; the Right Hon. Sir John Romilly, Master of the Rolls; Sir Frederic Thesiger, her Majesty's Attorney-General; and Sir Fitzroy Kelly, her Majesty's Solicitor-General; being four of the Commissioners of Patents for Inventions under the said Act.

Whereas a commodious office is forthwith intended to be provided by the Crown as the Great Seal Patent-office; and the commissioners of her Majesty's Treasury have, under the powers of the said Act, appointed such office as the office also for the purposes of the said Act:

All petitions for the grant of letters patent, and all declarations and provisional specifications, shall be left at the said commissioners' office, and shall be respectively written upon sheets of paper of twelve inches in length by eight inches and a half in breadth, leaving a margin of one inch and a half on each side of each page, in order that they may be bound in the books to be kept in the said office.

The drawings accompanying provisional specifications shall be made upon a sheet or sheets of parchment, paper, or cloth, each of the size of twelve inches in length, by eight inches and a half in breadth, or of the size of twelve inches in breadth, by seventeen inches in length, leaving a margin of one inch on every side of each sheet.

Every provisional protection of an invention allowed by the law officer shall be forthwith advertised in the *London Gazette*, and the advertisement shall set forth the name and address of the petitioner, the title of his invention, and the date of the application.

Every invention protected by reason of the deposit of a complete specification shall be forthwith advertised in the *London Gazette*, and the advertisement shall set forth the name and address of the petitioner, the title of the invention, the date of the application, and that a complete specification has been deposited.

Where a petitioner applying for letters patent after provisional protection, or after deposit of a complete specification, shall give notice in writing at the office of the commissioners of his intention to proceed with his application for letters-patent, the same shall forthwith be advertised in the *London Gazette*, and the advertisement shall set forth the name and address of the petitioner and the title of his invention; and that any persons having an interest in opposing such application are to be at liberty to leave particulars in writing of their objections to the said application at the office of the commissioners within twenty-one days after the date of the *Gazette* in which such notice is issued.

The Lord Chancellor having appointed the Great Seal Patent-office to be the office of the Court of Chancery, for the filing of specifications, the said Great Seal Patent office and the office of the commissioners shall be combined; and the clerk of the patents for the time being shall be the clerk of the commissioners for the purposes of the Act.

The office shall be open to the public every day, Christmas-day and Good Friday excepted, from ten to four o'clock.

The charge for office or other copies of documents in the office of the commissioners shall be at the rate of twopence for every ninety words.

(Signed) ST. LEONARDS, C
JOHN ROMILLY, M.R.
FRED. THESIGER, A.G.
Dated Oct. 1, 1852. FITZROY KELLY, S.G.

By the Right Hon. Edward Burtenshaw Lord St. Leonards, Lord High Chancellor of Great Britain, and the Right Hon. Sir John Romilly, Master of the Rolls.

Ordered—That there shall be paid to the law officers and to their clerks the following fees:—

By the person opposing a grant of letters patent.

To the law officer	£2	12	6
To his clerk	0	12	6
To his clerk for summons	0	5	0

By the petitioner on the hearing of the case of opposition.

To the law officer	£2	12	6
To his clerk	0	12	6
To his clerk for summons	0	5	0

By the petitioner for the hearing, previous to the fiat of the law officer allowing a disclaimer or memorandum of alteration in letters patent and specification.

To the law officer	£2	12	6
To his clerk	0	12	6

By the person opposing the allowance of such disclaimer or memorandum of alteration, on the hearing of the case of opposition.

To the law officer	£2	12	6
To his clerk	0	12	6

By the petitioner for the fiat of the law officer allowing a disclaimer or memorandum of alteration in letters patent and specification.

To the law officer	£3	3	0
To his clerk	0	12	6

(Signed) ST. LEONARDS, C.
Dated Oct. 1, 1852. JOHN ROMILLY, M. R.

Ordered by the Right Hon. Edward Burtenshaw Lord St. Leonards, Lord High Chancellor of Great Britain.

All specifications in pursuance of the conditions of letters patent, and all complete specifications accompanying petitions and declarations before grant of letters patent, shall be filed in the Great Seal Patent-office.

All specifications in pursuance of the conditions of letters patent, and all complete specifications accompanying petitions for the grant of letters patent, shall be respectively written bookwise upon a sheet or sheets of parchment, each of the size of twenty-one inches and a half in length by fourteen inches and three-fourths of an inch in breadth; the same may be written upon both sides of the sheet, but a margin must be left of one inch and a half on every side of each sheet.

The drawings accompanying such specifications shall be made upon a sheet or sheets of parchment, each of the size of twenty-one inches and a half in length by fourteen inches and three-fourths of an inch in breadth, or upon a sheet or sheets of parchment each of the size of twenty-one inches and a half in breadth by twenty-nine inches and a half in length, leaving a margin of one inch and a half on every side of each sheet.

The charge for office or other copies of documents in the Great Seal Patent-office shall be at the rate of twopence for every ninety words.

(Signed) ST. LEONARDS, C.
Dated Oct. 1, 1852.

Note.—It is recommended to applicants and patentees to make their elevation drawings according to the scale of one inch to a foot.

SECOND SET OF RULES AND REGULATIONS UNDER THE ACT 15 & 16 VICT. C. 83, FOR THE PASSING OF LETTERS PATENT FOR INVENTIONS.

By the Right Honourable Edward Burtenshaw Lord St. Leonards, Lord High Chancellor of Great Britain; the Right Honourable Sir John Romilly, Master of the Rolls; Sir Frederic Thesiger, her Majesty's Attorney-General; and Sir Fitzroy Kelly, her Majesty's Solicitor-General, being four of the Commissioners of Patents for Inventions under the said Act.

The office of the director of Chancery in Scotland, being the office appointed by the Act for the recording of transcripts of letters patent, shall be the office of the commissioners in Edinburgh for the filing of copies of specifications, disclaimers, memoranda of alterations, provisional specifications, and certified duplicates of the register of proprietors.

All such transcripts, copies, and certified duplicates shall be bound in books, and properly indexed; and shall be open to the inspection of the public at the said office, every day from ten to three o'clock.

The charge for office copies of such transcripts, copies, and certified duplicates, recorded and filed in the said office, shall be at the rate of twopence for every ninety words.

The Enrolment-office of the Court of Chancery in Dublin, being the office appointed by the Act for the enrolment of transcripts of letters patent, shall be the office of the Commissioners in Dublin for the filing of copies of specification, disclaimers, memoranda of alterations, provisional specifications, and certified duplicates of the register of proprietors.

All such transcripts, copies, and certified duplicates shall be bound in books, and properly indexed, and shall be open to inspection of the public at the said Enrolment-office every day, Christmas-day and Good Friday excepted, from ten to three o'clock.

The charge for office copies of such transcripts, copies, and certified duplicates, enrolled and filed as aforesaid, shall be at the rate of twopence for every ninety words.

No warrant is to be granted for the sealing of any letters patent which contains two or more distinct substantive inventions.

A provision is to be inserted in all letters patent in respect whereof a provisional and not a complete specification shall be left on the application for the same, requiring the specification to be filed within six months from the date of the application.

No amendment or alteration, at the instance of the applicant, will be allowed in a provisional specification after the same has been recorded, except for the correction of clerical errors or of omissions made per incuriam.

The provisional specification must state distinctly and intelligibly the whole nature of the invention, so that the law officer may be apprised of the improvement, and of the means by which it is to be carried into effect.

The fee to be paid for every duplicate of such letters patent as may have been destroyed or lost shall be one pound.

Where the applicant desires his letters patent to extend to any of the colonies, he must specify in his petition for the same the particular colony or colonies to which he desires it to extend; and when the applicant shall give notice of his intention to proceed with his application for letters patent, the law officer to whom such application is referred shall hear him or his agent upon such extension; and the said law officer shall make his report to the Lord Chancellor thereon. And no warrant for letters patent containing such extension shall be made unless the Lord Chancellor shall allow the same.

(Signed) ST. LEONARDS, C.
JOHN ROMILLY, M.R.
FRED. THESIGER, A.G.
FITZROY KELLY, S.G.

Ordered by the Right Hon. Edward Burtenshaw Lord St. Leonards, Lord High Chancellor of Great Britain.

Every application to the Lord Chancellor against or in relation to the sealing of letters patent shall be by notice, and such notice shall be left at the Commissioners' office, and shall contain particulars in writing of the objections to the sealing of such letters patent. (Signed)

ST. LEONARDS, C.

Dated the 15th of October, 1852.

By the Right Hon. Edward Burtenshaw Lord St. Leonards, Lord High Chancellor of Great Britain; the Right Hon. Sir John Romilly, Master of the Rolls; Sir Frederic Thesiger, her Majesty's Attorney-General; and Sir Fitzroy Kelly, her Majesty's Solicitor-General; being four of the Commissioners of Patents for Inventions under the said Act.

Whereas by order of the commissioners, dated the 15th of October last, the applicant desiring his letters patent to extend to any of the colonies is directed to specify in his petition for the same the particular colony or colonies to which he desires it to extend:

And whereas many petitions left at the office of the commissioners, before and after the date of the said order, pray for the extension of the letters patent to all her Majesty's colonies and plantations abroad:

It is ordered, That in every such case the applicant or his agent shall leave at the offices of the commissioners a notice in writing, either specifying the particular colony or colonies to which he desires his letters patent to extend, or withdrawing altogether his application to extend his letters patent to the colonies; and no reference of such petition shall be made to the law officer for his warrant for the sealing of letters patent until such notice shall have been left at the said office.

(Signed) St. LEONARDS, C.
JOHN ROMILLY, M.R.
FRED. THESIGER, A.G.
FITZROY KELLY, S.G.

Dated November 8, 1852.

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

The Queen has been pleased to grant the place of one of the Lords of Session in Scotland to John Marshall, esq. to be Dean of the Faculty of Advocates in Scotland, in the room of John A. Forbes, esq. resigned.

COMMISSIONS SIGNED BY LORDS LIEUTENANT.

MONTGOMERY.—Charles Thomas Thruston, esq. to be Deputy-Lieutenant.

BERKSHIRE.—The Hon. Brownlow Charles Bertie, to be Deputy-Lieutenant.

[The following article is substituted for the one which appeared in the *Gazette* of Tuesday, Nov. 2.]

LICHFIELD.—Major Butler Morgan, esq. to be Deputy-Lieutenant.

HERTFORD.—Humphrey Harper Burchell, esq.; Frederick Cass, esq.; Charles John Dimsdale, esq.; James Bentley, esq. to be Deputy-Lieutenants.

HERTFORDSHIRE.—John Villiers Stuart Townsend, esq. to be Deputy-Lieutenant.

EAST RIDING OF YORKSHIRE.—Sir Tatton Sykes, bart.; Charles Albert Darley, esq.; Philip Saltmarshe, esq.; Thomas Prickett, esq.; Tatton Sykes, esq.; Joseph Walker Pease, esq.; David Burton, jun. esq.; and William George Smijth, esq. to be Deputy-Lieutenants.

CARNARVONSHIRE.—The Rev. Richard Ridgeway Parry Mealy, clerk, to be Deputy-Lieutenant.

STAFFORDSHIRE.—The Right Hon. Orlando George Charles Bridgeman, commonly called Viscount Newport, to be Deputy-Lieutenant.

COURT PAPERS.

EXECUTION IN CAUSES TRIED IN TERM.

COMMON PLEAS, MONDAY.

Mr. Justice CRESSWELL said that, as the Common Law Procedure Act had abolished the distringas juratores, but contained no provision with regard to issuing execution in causes tried in Term, it would be necessary, until the general rules were made known, to make a special order for judgment in each case, and that the period, following the old practice, would be four days.

Mr. JOYCE informed the Court that the same course had been taken in the Court of Exchequer.

EXCHEQUER CHAMBER.—The Court for hearing arguments in Error from the Q. B. will sit on Tuesday, the 9th inst. and on such other subsequent days as the Court may appoint, instead of on the 26th and 27th inst. the days originally fixed.

DIARY OF SALES BY AUCTION, DURING THE NEXT WEEK,

ADVERTISED IN THE "LAW TIMES."

DAY.	PLACE.	AUCTIONEER.	WHEN ADVERTISED.	PROPERTY.
Thursday, Nov. 18.	Garraway's.	Ellis and Son.	Oct. 30.	Leasehold Property, at Stoke Newington.
Ibid.	Ibid.	Ditto.	Ibid.	Leasehold Residences, Kensington-park.
Saturday, Nov. 20.	Lion Hotel, Cambridge.	Wentworth & Son.	Nov. 6.	Manor of Rampton Lyles.

PROCEEDINGS OF LAW SOCIETIES.

SOCIETY FOR PROMOTING THE AMENDMENT OF THE LAW.

THE TRANSFER OF LAND, &c.

THE first general meeting of this society for the session 1852-53, was held at the Society's Rooms, Regent-street—Lord BROUGHAM in the chair.

In pursuance of a resolution passed at a previous meeting—"A return of all reports and papers made and presented to the society since its establishment in 1844, and the results which have attended them," was brought up and read by Mr. Stewart.

It stated in substance—"That the return which was intended to shew what had been accomplished by the society was divisible into five heads. 1st, The reports relating to real property; 2ndly, to common law; 3rdly, to equity; 4thly, to criminal law; and lastly, to miscellaneous subjects."

Under the head of real property, it was stated that most of the reforms proposed by the society had either been effected or considered and recommended by royal commissioners. For instance, the vesting of trust property in trustees without conveyance had been effected by the 14 & 15 Vict. c. 60; the shortening of deeds had been dealt with by the 8 & 9 Vict. cc. 119 and 124; the rendering the assignment of outstanding terms unnecessary had been legalised by 8 & 9 Vict. c. 112. With regard to uses, trusts, and the law of mortgages, which had been the subjects of reports of this society, nothing had been done. With regard to a general registry of deeds, as proposed by the society, the question had been discussed by the registration commissioners, who had recommended a plan on which a bill had been founded, and which passed through the House of Lords in 1851, but had not passed through the House of Commons. The proposal of the society for the adoption of some such machinery as was in use in the transfer of the public funds to the transfer of real property had been considered by the registration commissioners, but not adopted by them; while another plan of the society for the insurance of titles had also been under the consideration of the same commissioners, but had not received their sanction. The proposition for a general map of England and Wales had been recommended by the commissioners, and the principle had been adopted in the Registration Act for Ireland. On the subject of tenant right, which was included in the reports of the society, nothing had yet been done. As regarded the enfranchisement of copyholds, the principle of compulsory enfranchisement had been recognised and carried into effect in a Bill passed last session. Under the head of common law, the recommendation of the society as to the reception of official documents in evidence had been embodied in a recent enactment, and the principle of bringing actions against public officers had also been adopted by legislation. In 1848, the society recommended the establishment of Small Debt Courts, which had been fully carried out in the organisation of the County Courts, while another principle which had been dealt with in their reports, namely, the admission of the evidence of parties in suits, had become the practice both in the County and Superior Courts. An alteration in the law of partnership, and especially as regarded a limited liability, had been considered by the society, a committee of the House of Commons had been appointed, and taken evidence on that question; but no legislation had been the result. On the 8th July, 1850, the society strongly advocated the necessity of the extension of the jurisdiction of the County Courts, and that improvement had since come into operation. Several suggestions of the society with regard to the practice of the Common Law Courts had been adopted in the Act of last session, entitled the Common Law Procedure Act. Three reports of the society had been prepared, relating to the fusion of the jurisdiction of the Common Law and Equity Courts, and this principle had been partially adopted in the recent changes which had been made in the Court of Chancery, while it had been entirely adopted in India and New Zealand. With regard to equity, in December 1851 this society had carried resolutions declaring the propriety of abolishing the Masters' offices, and enabling the judges of the Equity Courts to carry out their own judgments by the adoption of a system of sitting in chambers; and both those objects had now been effected.

In relation to the criminal law, there had been three reports of the society, one recommending the adoption of Captain Maconochie's plan for the management of criminals, which had been tried at Birmingham under that gentleman's superintendence, as governor of the goal in that town; and another suggestion of the society, as to the summary conviction of persons guilty of certain larcenies, had been put into operation, while several of their suggestions with regard to prison discipline had also been put in force.

The following resolutions were agreed to:—

"That the present state of the law relating to the transfer of land is highly unsatisfactory.

"That a cheaper, simpler, more expeditious, and more accurate system is exceedingly desirable.

"That to effect this object, the transfer of land should, as far as possible, be assimilated to the transfer of stock.

"That in particular, purchasers and mortgagees should be relieved from the necessity of inquiring into equitable interests in land.

"That the power to shorten the present practice as to titles to land should be conferred on a competent tribunal.

"That it is absolutely necessary to control, tax, and moderate more effectually than at present the expenses connected with the transfer of land."

The meeting then adjourned.

REPORT OF THE COMMITTEE OF THE LIVERPOOL LAW SOCIETY.

FOR THE YEAR ENDING 1ST NOVEMBER, 1852.

THE committee have again this year the satisfaction of referring to a large addition to the members of the society, eleven gentlemen having been admitted, while two only, namely, Mr. Mallaby and Mr. Myers, have retired.

The new members are Mr. Henry Fisher, Mr. Thomas Etty, Mr. William Tyndall, Mr. David Evans, Mr. Hugh Almond, Mr. James Blenkinsopp, Mr. John Neal, Mr. Timpron Martin, Mr. Edward Searle, Mr. R. A. Parker, and Mr. Lawrence Peel.

The committee think they may now safely refer with satisfaction to the new rule regulating the admission of members, as since the date of the commencement of its operation in September, 1851, the members of the Society have been increased by no less than twenty-three.

The past year has been one of almost unparalleled importance in matters relating to reforms and sweeping changes in the law and practice of the Courts. "The Masters in Chancery Abolition Act," "The Improvement of the Jurisdiction of Equity Act," "The Suitors in Chancery Relief Act," "The Enfranchisement of Copyholds Act," "The Wills Amendment Act, 1852," "The Act for extending the Trustee Act, 1850," "The Act to facilitate Proceedings in the County Court," "The Common Law Procedure Act," and "The Act for Payment of Officers at Nisi Prius by Salaries in Lieu of Fees," are all measures which will require the anxious and careful study of the profession, and it is hoped and trusted that their effect will be to abolish many of the justly complained of abuses in practice, and thus tend to the mutual advantage of the professional practitioner and the client.

All these varied Acts claimed and received the unremitting attention of the committee while passing through their various stages in both Houses of Parliament, and by the appointment of active subcommittees to watch and report upon each particular bill, and take such steps by petition, and otherwise, as was thought expedient, they have reason to believe that their exertions have not been thrown away; but have tended, in several instances, to amend objectionable provisions, and add to the usefulness of the Acts as passed.

The committee think it right to call the attention of the society to a bill introduced during the last session into the House of Lords by Lord Brougham, which had for its object the transfer of the jurisdiction of the Courts of Bankruptcy to the County Courts. This change it is considered would be highly injudicious, as in almost all instances, independently of the judges of the County Courts having already sufficient employment in their Courts as now constituted, the judges are not familiar with the practice in bankruptcy, and the machinery of the Courts is not adapted to the working and healthy management of important bankruptcy matters. The committee thus advert to this bill, as, though with-

drawn in the last session, it is by no means an unlikely thing that it may be reintroduced in the next.

In consequence of the receipt of a circular letter from the Secretary of the Treasury, announcing the appointment by the Lord Chancellor of five County Court judges to frame a scale of costs and charges to be paid to attorneys in the County Courts, and requesting that this society would communicate to him any suggestions they might wish to make upon such scale, the committee, after mature deliberation and discussion, prepared such a scale as they thought should be allowed, both as between attorney and client, and as between party and party. A copy of this scale was forwarded to the Secretary of the Treasury, and also to several law societies in the kingdom. Subsequently, however, the judges having intimated their willingness to receive a deputation from the various provincial law societies, and to confer with them on the subject, the committee appointed one of their body (Mr. Payne) to represent the Liverpool Law Society in such conference in London. Deputations also attended from the law societies of Manchester, Newcastle-on-Tyne, York, Sheffield, and Bristol. The members of the different societies held two long preliminary meetings (aided by Mr. Shaen, of the Metropolitan and Provincial Law Association) previous to their waiting upon the judges, and unanimously agreed upon a scale of costs, in lieu of the various scales which had been transmitted to the Secretary of the Treasury by each individual law society. On the 20th October, the appointed interview with the judges took place, and from the report of such interview made by Mr. Payne, the committee think the result highly satisfactory; the whole of the proposed scale of costs and charges having been read over by the judges, was fully discussed, and reasons were given for the amount of costs proposed, and the judges appeared much pleased with the meeting, and the information they elicited by inquiries from the deputations on various points connected with the practice of the County Courts.

The subject of the repeal of the certificate duty has not this year been lost sight of. A petition very numerously signed was presented to the House of Commons by Sir T. B. Birch, and a deputation from this society waited upon the new members for the borough to lay before them the claims of the Profession to be relieved from this unjust tax, and the committee believe that the arguments used on that occasion will not be without good effect.

The Metropolitan and Provincial Law Association having announced a special meeting of that association and of the Profession generally, to be held at Derby on the 13th October, "to take into consideration the present and future prospects of the Profession, with reference especially to recent and contemplated changes in the law, and the steps which ought to be taken in the ensuing session of Parliament," the committee considered that the vast importance of the subject made it imperative upon the society to be represented at such meeting, and accordingly Mr. Avison, one of their body, proceeded to Derby. The meeting was attended by the chairman and several members of the committee of the Metropolitan and Provincial Law Association, and by deputations from various Provincial Law Societies, and it was unanimously resolved, that "in order to maintain the true position of the Profession, both as respects the public and the members of the Bar, it was desirable that the practising attorneys and solicitors of England and Wales should be united in association."

The committee beg to impress upon their professional brethren the urgent necessity of uniting those elements of strength, which in union they would undoubtedly possess, in protecting their own rights from encroachments, as they are convinced by so doing that they are not only thereby protecting themselves, but their clients and the public, who undoubtedly are very materially interested in any Acts which will insure the honesty and respectability of men, in whom they have at some period or other to place implicit confidence. For several years past the profession of attorneys and solicitors, as a body, has become, either from apathy or want of unanimity, or both, one of the weakest bodies in the country. The time has now arrived when this state of things should no longer continue, and the Metropolitan and Provincial Law Association having been formed, the committee beg to urge most strenuously and firmly, that it is the duty of every professional man who has the interest of his profession at heart, to join in supporting an Association whose sole object is "to assist all well considered plans for improving the law, especially as relating to the practice of the Courts, and to maintain an honourable position and character for the profession."

The accounts of the treasurer show a balance of 46*l.* 7*s* 4*d*. to the credit of the society.

The members of the committee who go out of office by rotation are Mr. Payne, Mr. Avison, Mr. Falcon, Mr. Fisher, and Mr Wright.

CORRESPONDENCE.

BARRISTER-ATTORNEYS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—We have heard very much, and for a long while, of the *Attorney-Advocate*, but it has been entirely overlooked that all this noise and fuss has been generated by the ill-digested, rampant, and encroaching ideas of a section of Barristers, who would, without examination, without certificate, be *Attorneys* likewise. The "Junior Bar," they are called; and these juveniles will, if they do not take better care, rush madly on to the gulf of nothingness in less time than it takes to prepare for a motion of course. These are, in truth, the peace-breakers of the Profession, whose ineffable vanity attracts equal surprise and pity.

But do these legal fledgelings really suppose the Attorneys, as a body, are going to permit this trespass and poaching to go further? No; depend upon it, no. There *is* a limit even to child's play. Guy Faux would not do all the year round. In a word, Sir, what the Attorneys will require is that *every court* in the country be thrown open; a fair field and no favour will be insisted on, and the public will on all sides gladly sanction the demand. Where will the Junior Barrister be then?

I am a member of two law societies, one in London, one in the country; and I shall take the earliest opportunity of moving in each, and to influence out of them where I can, that the courts above be no longer Barrister-bound.

When this comes to pass—and it already "looms in the future"—then, and probably not till then, will the "Junior Bar" perceive the beginning of the end.—I am, Sir, yours, &c.

Dartford, Nov. 8, 1852. C. R. GIBSON.

ASSURANCE.

TO THE EDITOR OF THE LAW TIMES.

SIR,—"Subscriber," who wrote in your last number, ought to publish the name of the assurance company resisting payment of the claim, as stated. It can hardly be supposed any company having the slightest regard for its reputation would have taken such an objection.

It is, I believe, the invariable custom on the part of assurance companies to hold the agent responsible for the premium if he delivers the policy without receiving such premium; therefore, if the agent gives credit, it is a personal arrangement between himself and the assured, with which the company has nothing whatever to do, and the agent of the "C." Company evidently thus treats the affair in question.

The law and equity of the case appear so plain and indisputable, and the ground of objection taken by the "C." Company so utterly dishonourable and untenable, that a search for cases on the point would probably be fruitless.

The natural inquiry is, "Has the "C." Company got funds enough to pay the claim?"

I am, Sir, yours, &c.

AN ATTORNEY AND INSURANCE AGENT.

NECROLOGY

OF LEGISLATORS, MAGISTRATES, AND LAWYERS.

MR. SERJEANT HALCOMBE.

WE have to record the death of this gentleman, which took place at New Radnor, on the 3rd inst. in the 63rd year of his age, after a painful illness of some years' duration. Serjeant Halcombe was formerly a member of the Western Circuit, and during the early part of his career, was considered one of the most rising juniors, the late Sir William Follett, with whom he retained a strict friendship through life, being one of his principal competitors. Indeed, this distinguished advocate, and also Mr. Justice Patteson, and Mr. Justice Coleridge, were all associated together with Mr. Serjeant Halcombe as pupils in the same chambers during the period of their studentship, and confident expectations were at that time entertained of the future eminence of each.

During the year 1833, Mr. Halcombe was returned M.P. for Dover, which place he had before contested several times unsuccessfully. To his ambition to enter Parliament too early, his failure at the Bar has been mainly ascribed. Mr. Serjeant Halcombe's name will be found frequently in the debates which occurred during the period that he sat in Parliament, and it will appear that he took a part in several of the leading discussions, and was a warm supporter of the Conservative party. As chairman of the committee he drew up a valuable report on the Fisheries Bills. On the dissolution of Parliament, and the accession of Sir Robert Peel's ministry in 1835, Mr. Halcombe unsuccessfully contested the borough of Warwick. In 1839 he received the honour of the coif, but since that period his name has not occupied any prominent position in the law reports. In private life, he was remarkable for kindliness of disposition, urbanity of manners, and his conversational powers rendered him a most agreeable companion, possessed as he was of a store of information, and a highly cultivated taste. He has left a widow and four sons.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

DUNDAS.—On the 6th inst. at Oran, Yorkshire, the lady of the Hon. J. C. Dundas, of a daughter.

GAEL.—On the 8th inst. at 5, Bedford-row, the wife of Samuel H. Gael, esq. barrister, of a son.

ROXBURGH.—On the 8th inst. at 21, Gloucester-road, Regent's-park, the wife of Francis Roxburgh, esq. of Lincoln's-Inn, barrister-at-law, of a daughter.

TROLLOPE.—On the 7th inst. at Casewick, Lincolnshire, Lady Trollope, of a son.

USHER.—On the 5th inst. at Southampton, the wife of John Usher, esq. solicitor, of a daughter.

WRIGHT.—On the 6th inst. at 18, Upper Gower-street, the wife of Thomas Cooke Wright, esq. of Lincoln's-inn, of a son.

MARRIAGES.

ERSKINE, James Augustus, esq. Assistant Commissary-General, second surviving son of the late Hon. Henry David Erskine, of Mar, to Elizabeth Bogue, daughter of George Brodie, esq. advocate, Historiographer Royal for Scotland, at the Whim-house, Peebleshire, on the 4th inst.

NEWMAN, Robert William, esq. of Lincoln's-inn, barrister-at-law, to Paulina Sophia, only daughter of the late Rev. Robert Watts, rector of St. Benet's, Gracechurch, at St. Peter's-upon-Cornhill, on the 6th inst.

DEATHS.

BARKER, John, esq. late high sheriff, deputy-lieutenant, and magistrate for the county of Stafford, at Clevelandhouse, Wolverhampton, on the 5th inst. aged 56.

CAULFEILD, General, M.P. for Abingdon, seventh son of the Venerable John Caulfeild, archdeacon of Kilmore, on the 4th inst. aged 67.

EMERY, George, esq. of Banwell, in the county of Somerset, a deputy-lieutenant for that county, and a captain in the Dorset Regiment of Militia, on the 8th inst. in London.

HALL, Harriet, widow of the late John Charles Hall, esq. of Bloomsbury-place and Lincoln's-inn-fields, and eldest daughter of Joseph Gardiner, esq. of Highgate, on the 8th inst. at Brighton.

NOTICES OF NEW LAW BOOKS.

The recent Stat. 15 & 16 *Vict. c.* 86, *and the General Orders of 7th August*; 1852, *with a copious Index, and with some Practical Suggestions as to the manner of conducting suits, and the future course of Procedure.* By F. S. WILLIAMS, Esq. of the Chancery Bar. London: Sweet.

MR. WILLIAMS modestly states in his preface, that these notes on the Chancery Reform Act were intended only for the junior members of the Profession; but the more experienced practitioner will be instructed by its perusal, for the editor is a practical man, and his notes are suggested by experience, and are not the mere speculations of a verbal critic. He excuses himself for any errors or shortcomings that may be discovered in them, by the fact that "the idea of inditing them only suggested itself after the dews and fogs of October had set in, and a very few days before they were in the press;" and he adds, that "there is nothing in them but what would readily occur to the mind of any practitioner of the least experience." In this Mr. Williams underrates his own labours. His notes would not have occurred to a common-place mind. Only such learning and business-like capacity as his would have suggested them, and they are not the less valuable because they were the production of a moment, the first impressions of a rapid reading of the statute, and the orders founded upon it.

LAW PAMPHLETS.

Lord DENMAN has published twenty-seven pages of "*Reasons for Legalising Marriage with a Deceased Wife's Sister.*" (Hatchard.) They appear to us to be conclusive upon the question. His Lordship traces the history of this extraordinary law from its first anomalous condition, half repudiating, half recognising such a marriage, to the backward step taken by Lord Lyndhurst, in rendering positively illegal and void a union which was clearly a matter for individual judgment, and not at all within the proper province of public law. There was nothing *malum in se* in the marriage of a deceased wife's sister, and it is contrary to all acknowledged rules of jurisprudence, and a violation of the liberty of the individual, to make it a *malum prohibitum*. Lord Denman analyses the arguments against the repeal of the law that were put forward in the last debate in the House of Lords, and shews satisfactorily how contradictory and unsound they are. Especially does he direct his criticism to the argument derived from Scripture, and he proves that

there is no authority in the Bible against such a marriage, while many texts would appear not merely to authorise but to encourage it. Lord Denman then asks, "If there is no such prohibition in Scripture, how can we defend an Act of Parliament that creates it?"

That, indeed, is the practical question. *Why* should the law attempt to regulate that which is properly a matter for individual judgment? If it prohibits one class of marriages, from apprehension of some possible (not proved) mischiefs, why should it not interfere to prevent others that do daily produce undeniable evils? For instance, why not prohibit the marriage of a man with his servant, or his governess, for the same reasons as it now prohibits the marriage of a wife's sister? No facts have ever been produced to prove that evils have resulted from this so frequent union; but many instances might be shewn of evils from a union with other classes of females who form part of the domestic establishment; why not extend the law to these also? There are, we believe, upwards of four or five thousand marriages with a deceased wife's sister now existing in this country among all classes. If it be so baneful, why is not some evidence produced? Among the Jews, immediately directed by the Divinity, it was not only practised, but held in honour. If wrong, would not the Deity have prohibited it to them, as his chosen people? It is permitted among the continental nations, and they have seen no cause to complain of it. Nay, more, it existed for years among ourselves, unrebuked by opinion, and no evil was ever discovered to have resulted from it.

But evils, great and manifest, *do* result from the prohibition. In spite of it, this union is practised, the voice of nature being, as it always is, and will be, stronger than law. Among the poor it produces unions unblessed by the sanction of religion: the rich evade it by going to some other country, where no such violation of the liberty of the individual has been introduced even by the caprices of despotism. It has bastardized, and is bastardizing, thousands of innocent children; it is teaching a disregard of the marriage tie, and so making the immorality it affects to prevent. If any have yet a doubt as to the propriety of repealing this modern law, let them read the unanswerable arguments of Lord Denman in the little pamphlet before us.

Mr. W. Campbell Sleigh, Barrister-at-Law, has published a pamphlet entitled *The Grand Jury System subversive of the Moral Interests of Society*. This is giving to it a worse name, perhaps, than it deserves; but certainly it is a very useless institution, and in a state, as in the affairs of an individual, whatever is useless is injurious, and should be removed. We have continually directed the attention of our readers to this subject. In Mr. Sleigh's pamphlet they will find all the arguments collected, and put forth with great power.

JOURNAL OF PROPERTY.

MONEY MARKET.

English Funds.	Sat.	Mon.	Tues.	Wed.	Thurs.	Fri.
Bank Stock	224	223½	223	223	223½	223½
3 ℘ Cent. Reduced Annuities	99½	99½	99½	99½	99½	99½
3 ℘ Cent. Consols Annuities	100½	100½	100½	100½	100½	100½
Consols for Account	..	100½	100½	100½	100½	100½
New 5 ℘ Cent. Annuities	..	..	..	..	..	..
New 3½ ℘ Cent. Annuities	103½	103½	103½	103	103½	103
Long Annu. (exp. Jan. 5, 1860)	..	..	..	6½	6½	6½
Do. 30 yrs. (exp. Oct. 10, 1859)	..	..	6½	..	..	6½
Do. 30 yrs. (exp. Jan. 5, 1860)	..	6½	..	6½	..	6½
India Stock	..	276	275	275½	..	274
India Bonds (1,000*l.*)	84*	84	86	83	83	..
Do. do. (under 1,000*l.*)	..	84	87	..	87	..
South Sea Stock	..	..	112	..	..	..
Do. do. New Annuities	..	..	..	..	..	..
Exchequer Bills, 1,000*l.* June	73*	76*	76*	72*	75*	75*
Do. do. 500*l.* June	..	73*	76*	73*	..	75*
Do. do. Small, June	..	73*	76*	..	..	75*

* Premium.

LEGAL INTELLIGENCE.

A New Movement at the Bar.—A body of gentlemen at the Bar have determined to commence, on Monday next, a regular attendance at the Westminster County Court, and for the convenience of robing, holding consultations, and having a library on the spot, have secured a set of chambers in St. Martin's-court, in the immediate proximity of the court-house. They intend to hold themselves at liberty upon proper occasions to exercise their common-law right of direct communication with the client. It is their intention in cases under 20*l.* where no great difficulty is likely to arise, or much time to be consumed, to act in common with the special pleaders at the Bar, and to mark half-a-guinea on their briefs, if they get any.—*Sun.*

THE GAZETTES.

Bankrupts.

Tuesday, Nov. 0.

Blythe, John Bennington, builder, Minerva-place, New-cross, Surrey, Nov. 17, at half-past one, Dec. 18, at two, Basinghall-st. Off. as. Nicholson. Sol. Wright, Chancery-lane. Petition, Nov. 6.

Everett, Henry, builder, Colchester, Essex, Nov. 19 and Dec. 18, at half-past twelve, Basinghall-st. Off. as. Whitmore. Sol. Abell, Romsey-terrace, Westminster. Petition, Nov. 8.

Fuller, Thomas, victualler, Braintree, Essex, Nov. 23 and Dec. 20, at twelve, Basinghall-st. Off. as. Bell. Sols. Aldridge and Bromley, Gray's-inn. Petition, Nov. 5.

Jacobs, Matthias Hytch, glass dealer, Great Union-st. Borough-road, Nov. 23, at one, Dec. 16, at twelve, Basinghall-st. Off. as. Edwards. Sol. Empson, Moorgate-st. Petition, Nov. 2.

Labron, John, cloth merchant, Leeds, Nov. 25 and Dec. 23, at eleven, Leeds. Off. as. Young. Sols. Atkinson and Co. Leeds. Petition, Nov. 5.

Gazette, Nov. 12.

Arnold, Charles, dealer in provisions, 66, Watling-st. Cheapside, and 19, Gracechurch-st. Nov. 19, at one, Dec. 21, at twelve, Basinghall-st. Com. Fonblanque. Off. as. Stansfeld. Sols. Stevens and Satchell, Queen-st. Cheapside. Petition, Nov. 10.

Dobson, John, mathematical drawing instrument maker and optician, 268, High Holborn, Nov. 24, at two, and Dec. 21, at eleven, Basinghall-st. Com. Holroyd. Off. as. Edwards. Sols. Grover and Coare, 4, King's Bench-walk, Temple. Petition, Nov. 11.

Fielden, George, woolstapler, Dobeross, Saddleworth, Yorkshire, Nov. 26 and Dec. 17, at twelve, Manchester. Off. as. Lee. Sols. Abbott and Atkinson, 35, Lincoln's-inn-fields; Redfern, Oldham; Atkinson, Saunders, and Atkinson, Manchester. Petition, Nov. 10.

Groome, Michael, and Sanders, Daniel Coombe, tailors, 371, Oxford-st. Nov. 24, at half-past one, and Dec. 21, at twelve, Basinghall-st. Com. Holroyd. Off. as. Groom. Sol. Harris, 31 A, Moorgate-st. Petition, Nov. 11.

James, George Edwin, draper, High-st. Brierly-hill, Kingswinford, Staffordshire, Nov. 24 and Dec. 21, at eleven, Birmingham. Com. Daniell. Off. as. Battleston. Petition, Nov. 9.

M'Kay, William, draper, Upper Kennington-lane, Lambeth, Nov. 19 and Dec. 18, at one, Basinghall-st. Com. Fane. Off. as. Cannan. Sols. Jay, Bucklersbury; and Jay and Pilgrim, Norwich. Petition, Nov. 9.

Page, George, coach proprietor, James-st. Bethnal-green, Nov. 23, at eleven, Dec. 20, at one, Basinghall-st. Com. Evans. Off. as. Johnson. Sol. Jones, Quality-court, Chancery-lane. Petition, Nov. 11.

Patterson, John, market gardener, Atherstone, Warwickshire, Nov. 29 and Dec. 20, at ten, Birmingham. Com. Balguy. Off. as. Christie. Sols. Baxter, Atherstone; Motteram, Knight, and Emmett, Bennett's-hill, Birmingham. Petition, Nov. 3.

Siddall, George, spindle manufacturer, Chesterfield, Derbyshire, Nov. 27 and Dec. 18, at twelve, Sheffield. Com. West. Off. as. Freeman. Sols. Parker and Smith, Sheffield. Petition, Nov. 8.

Weissmann, Charles, and Meyers, Henry John Michael, commission merchants and foreign agents, 3, Philpot-lane, Fenchurch-st. Nov. 19, at twelve, Dec. 21, at one, Basinghall-st. Com. Fonblanque. Off. as. Graham. Sol. Murrough, New-inn, Strand. Petition, Nov. 8.

Whittaker, Richard, outfitter, Union-road, Landport, Hampshire, Nov. 23, at two, Dec. 16, at eleven, Basinghall-st. Com. Holroyd. Off. as. Foster. Sol. Thompson, Sise-lane, Bucklersbury. Petition, Nov. 8.

Wilson, Joseph, and Woodyin, Charles Penny, iron and brass founders, Kingston-foundry, Kingston-upon-Hull, and Great Grimsby, Lincolnshire, Dec. 1 and 22, at twelve, Kingston-upon-Hull. Com. Ayrton. Off. as. Carrick. Sols. Carriss and Cudworth, Leeds. Petition, Nov. 2.

BANKRUPTCY ANNULLED.

Gazette, Nov. 12.

Morewood, J. merchant, Fludyer-st. Westminster, and Barford-terrace, Liverpool-road, Islington, Nov. 9.

Dividends.

BANKRUPT ESTATES.

Official Assignees are given, to whom apply for the Dividends.

Anthony, S. W. ship owner and dealer in railway shares, first, 2s. 4d. Morgan, Liverpool.—*Barton, Irlam*, and *Higginson*, merchants, fifth, 1s. Turner, Liverpool.—*Baldero, Lushington*, and *Co.* bankers, seventh, 0¾d. Stansfeld, London.—*Brotherston*, J. and *Co.* merchants, second, 1s. 10d. Turner, Liverpool.—*Burgess*, W. hatter, first, 8d. Christie, Birmingham.—*Clegg* and *Whitby*, merchants, fourth, 1½d. Bird, Liverpool.—*Deane*, J. chemist, druggist, and apothecary, first, 1s. 8d. Morgan, Liverpool.—*Fry, Fry*, and *Chapman*, bankers, ninth, 1d. Groom, London.—*Greenham*, R. merchant, third, 6d. Turner, Liverpool.—*Halcro*, R. provision merchant, first, 2s. 10d. Baker, Newcastle.—*Hirst*, G. E. cloth merchant, first, 2s. Freeman, Leeds.—*Jones*, H. grocer, first, 15s. Turner, Liverpool.—*Langdale* and *Langdale*, corn dealers and flour merchants, final, 0d. 1-8th (in addition to 1s. 3d. previously declared). Wakley, Newcastle.—*Sherlock*, S. wine merchant, &c. first, 6d. Bird, Liverpool.—*Thomas*, D. H. draper, first, 4s. 11d. Morgan, Liverpool.—*Todd*, W. and J. provision merchants, first, 6¼d. Morgan, Liverpool.

INSOLVENTS' ESTATES.

Harrison, T. bricklayer, 1s. 4¼d. Apply at the County Court, Chelmsford.—*Mesure*, J. H. L. jeweller and watch maker, 3¼d. Apply at the County Court, Chelmsford.—*Oliver*, J. beer-shop keeper and grocer, 5¼d. Apply at the County Court, Chelmsford.

Assignments for the Benefit of Creditors.

Gazette, Nov. 2.

Atwell, B. innholder and builder, Westbury, Wiltshire, Oct. 29. Trusts. J. Hopkins, corn factor, Trowbridge; and T. M. Smith, butcher, Westbury. Sol. H. Pullen, Warminster.—*Parkes*, B. spade manufacturer, Hyde Works, near Kinver, Staffordshire (under the firm of J. and T. Parkes), Oct. 22. Trusts. J. F. Lee, iron master, Kinver; and W. Hargreave, banker's clerk, Stourbridge. Sol. B. Pargeter, Stourbridge.—*Wilson*, T. and J. ironmongers, tinmen, brasiers, and copartners, Newark-upon-Trent. Trusts. J. Keep and C. Daniel, factors, Birmingham; G. Parker, copper merchant, Kingston-upon-Hull; and W. Hall, coach builder, Newark-upon-Trent. Sols. W. Newton, jun. Newark-upon-Trent; and W. H. Rocco, Birmingham.

Gazette, Nov. 5.

Brooks, J. farmer and corn buyer, Metham, Yorkshire, Oct. 29. Trusts. W. Brooks, Gowdall, J. Jacques, Blacktoft, and R. Mitchell, Yokefleet, farmers. Sol. J. Wilson, Goole.—*Harris*, B. clothier, High-st. Chatham, Oct. 28. Trusts. A. McGaw and H. Clark, clothiers, Bow-lane, Cheapside. Sols. J. and S. Solomon, Fenchurch-st.—*Lloyd*, W. upholsterer and cabinet maker, Chester, Nov. 2. Trust. J. Caldecott, accountant, and C. Parry, baker, Chester. Sol. T. V. Royle.—*Rudgard*, E. W. R. brewer, Lincoln, Oct. 16. Trust. The Hon. A. L. Melville, Branston Hall, and W. Rudgard, merchant, Lincoln. Sol. R. Carline, Lincoln.—*Taylor*, W. jun. tailor and draper, Runcorn, Cheshire, Oct. 30. Sol. J. Nicholson, Warrington.

Partnerships Dissolved.

Gazette, Nov. 2.

Ainsworth, T. and W. cotton spinners, manufacturers, and merchants, Prestou and Manchester, June 30. Debts paid by W. Ainsworth.—*Ainsworth*, T. jun. and W. cotton spinners, Backbarrow and Manchester, Aug. 20.—*Allan*, J. and *M'Dougall*, J. schoolmasters, Shaw Hall, Flixton, Oct. 28.—*Cooper*, C. and *Burns*, A. lard refiners, Liverpool, Oct. 23.—*Emsley*, S. and J. *Harrison*, J. *Kitchenman*, W. and *Doran*, E. worsted spinners by commission, Pit-lane Mill, Bradford, as regards J. and S. Emsley, Oct. 27. Debts paid by remaining partners.—*Fleming*, J. and *Elliot*, G. house painters, Manchester, Oct. 28. Debts paid by Elliot.—*Kelk*, W. and *Pearson*, J. fancy purse, brace, and glove manufacturers, Nottingham, Oct. 27.—*Lamplough*, W. and *Morris*, T. ship and insurance brokers and commission agents, Old Broad-st. Nov. 1. Debts paid by Lamplough.—*Moore*, F. and *Dalton*, W. dealers in gravel and sand, July 27. Debts due received by Moore, and claims discharged by Fielding.—*Moorhouse*, J. and E. manufacturers, New Mill, near Holmfirth, Jan. 1.—*Proctor*, R. and *Briggs*, A. curriers and leather dealers, Clitheroe, Oct. 30.—*Sumler*, J. and *Palmer*, J. linen drapers, High-st. Shadwell, Oct. 28. Debts paid by Palmer.—*Shaw*, S. and *Sewell*, G. mercers, haberdashers, drapers, tailors, and undertakers, Swindon, Oct. 28. Debts paid by Shaw.—*Smith*, J. J. and *Aylan*, T. coal fitters, Stockton-upon-Tees and Middlesborough, Oct. 29. Debts paid by Aylan.—*Ware*, J. and J. coach builders, Glasshouse-yard, Aldersgate-st. Nov. 2. Debts paid by John Ware.—*Watson*, R. and *Holland*, T. B. surgeons, Salford, Oct. 22. Debts paid by Watson.—*Wilkinson*, G. and H. dyers, Burnley, Oct. 20. Debts paid by G. Wilkinson.—*Wilkinson*, F. *Whitaker*, C. sen. and C. jun. iron masters, Kingston-upon-Hull, as regards C. Whitaker, jun. Oct. 20.—*Williams*, F. and *Corfield*, C. L. short-hand writers, Chancery-lane, Sept. 30. Debts paid by Williams.—*Withers*, W. and R. hatters, hosiers, glovers, undertakers, and outfitters, Bath, Nov. 1.—*Wofe*, W. and *Alston*, E. painters and paper hangers, Burnley, Aug. 2. Debts paid by Wofe.

AMERICAN CLOCK WAREHOUSE, 545 and 546, NEW OXFORD-STREET, where will be found the largest assortment of these superior Time pieces. American Clocks, ever imported into this country, made by the oldest and most celebrated Manufacturers in the United States. All our clocks are warranted to keep correct time. The prices are—for Thirty-hour Clocks, 14s., 18s., and 25s.; for Eight-day Clocks, 30s. and 35s.

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PATENT REVERSIBLE OVERCOATS, &c. which obtained the Great Exhibition Prize Medal.—W. BERIDGE, 93, NEW BOND-STREET, and 69, CORNHILL (only).—NOVELTY, UTILITY, ECONOMY, all unite in commending this invention to general adoption. The Patent Cloth, having two perfect and totally dissimilar faces, can be worn either side outwards, thus each garment being equivalent to two at the cost of one. For Overcoats of every kind, the new Angle-cos, and all other CAPES, PALLETOTS, and MORNING COATS, this discovery is especially appropriate, also for LADIES' CLOAKS, MANTLES, &c. A variety of the materials and garments kept for selection; also one of the largest stocks in London of superior OVERCOATS of every description, CAPES, SHOOTING-JACKETS, BOYS' OVERCOATS, &c. all guaranteed to resist any amount of rain.

"TRIED IN THE BALANCE AND FOUND WANTING."

THE Analytical Sanitary Commissioners having analysed the Cocoa of every dealer in London of any importance, whether manufactured in London or not, have declared that only four samples were genuine, ours being the best, being free from husk and all refuse. They likewise express regret that in the few samples they found to be genuine, the husk or shell of the nut, which they state to be, as food comparatively worthless, should so generally be worked up with the nut.—*Vide The Lancet* of May 31, 1851.

The husk, &c. form about one-sixth of the whole nut, so that, by excluding them, as we do, we necessarily enhance the cost of the article. We request the favour of cocoa-drinkers to make trial of our PURE GRANULATED COCOA, in packets at 1s. per pound. Their confidence will not be misplaced. It is now drunk at the tables of the first families in all parts of the kingdom.

HANDFORD AND DAVIES, 61, HIGH HOLBORN.

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Law Times Office, Nov. 19.

MR. KERR'S COMMON LAW PROCEDURE ACT is already out of print, and the orders received cannot be executed until the publication of the Second Edition on Dec. 1. It is deferred to that day that it may contain all the decisions of the present Term upon the new practice, with other improvements.

THE LAW TIMES ALMANAC for 1853 will be ready on the first week in December. It will contain the Time Tables of all the Courts, corrected to the new practice, in addition to the usual contents required for reference in offices.

To Readers and Correspondents.

"R. E."—*The question is one of law, not of professional practice.*

"C. W."—*The letter on "Date of Life Policy" is unavoidably deferred for want of room.*

"T. G. G."—*The objection is not tenable. The forms are applicable to all the Courts.*

"A Subscriber's" *letter on the Bar and Attorneys next week.*

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THE LAW TIMES.

SATURDAY, NOVEMBER 20, 1852.

COMMON LAW PROCEDURE ACT.

Law Times Office, Friday night.

We have received reports of two decisions of the Court of Ex. to-day, but too late for insertion this week after the holiday of Thursday. In *Goodliffe* v. *Neaves*, where the plaintiff had entered an appearance *sec stat.* before the Procedure Act came into operation, and afterwards filed a declaration endorsed with a notice to plead within eight days, and in default signed judgment, the Court set aside the judgment and all subsequent proceedings for irregularity. It was held to be a good appearance under the old law, and that the 28th section of the new Act applied only to future cases where there is no appearance, and that the 62nd section applies to cases where the notice mentioned in the 28th section has been given. Parke, B. said, "I think you will find that this Act does not provide for appearance according to the old law, and therefore it seems to me you should have proceeded without reference to this Act."

Taylor v. *Rogers* was a motion for leave to proceed under sec. 17, as if service of writ had been effected. The Court held it to be sufficient to shew by the affidavit that the writ had come to the knowledge of the defendant.

Both of these reports will appear next week.

THE LAW REFORMS TO BE PROPOSED BY THE GOVERNMENT.

The Lord Chancellor stated in the House of Lords, on Tuesday, the Law Reforms which the Government propose to introduce during the present session, and he took the occasion to describe, with his usual clearness, the effect of the recent improvements in the Procedure in Equity, the details of which had been almost wholly left by the Legislature to be regulated by the Rules and Orders. To the preparation of these he had devoted the greater portion of the Vacation, and the results are already seen in a Code of Chancery Practice which needs but a little further improvement to make the Courts of Equity the speediest and cheapest tribunals in the country, instead of being the slowest and most costly, as formerly they were.

We should like to have presented this speech entire to our readers, but its great length forbids; we can, therefore, do no more than state the substance of the propositions for Law Reform which are to be submitted to Parliament, and to make them more intelligible we will describe them in separate paragraphs.

REFORM OF THE EQUITY COURTS.

The Accountant-General's office is to be revised, so that it may be open in the vacation, (thus removing a serious inconvenience often and loudly complained of), and regulating the buying and selling of stock for the Suitors' Fund, so that considerable profits, which now are not made at all, or go into other pockets, or into the general fund, shall be preserved to the individual suitors, to an amount estimated at 12,000*l.* a year:—

I believe the effect will be that the accounts will be simplified, vast expense saved, and the suitors will be benefited. I must mention to your Lordships that one difficulty thrown in the way of this arrangement was, that you would not ascertain what is the price to be paid or accepted by the different persons when there is no longer a real sale or purchase, but only one existing on paper. Fortunately, my Lords, we are enabled to meet the difficulty in a most satisfactory manner. The Bank of England takes the fluctuations every day of the price of each fund up to one o'clock in the day, and then it strikes the average. I propose, therefore, to take that average at one o'clock every day as the price which every man who sells is to receive, and the price every man who buys is to offer. That will make it very fair as respects all parties, and it will have this further benefit:—Very often sums are ordered to be transferred at the price of a given day. The broker not only charges a commission on the sale, but also a per centage. The same one o'clock prices will be adapted to those transactions, and so the suitor will be saved a very considerable sum.

Instead of the Suitors' Fund receiving the benefit of the interest on suitors' money,—

What I propose to do is this,—that for the future any unemployed cash shall be laid out by the Court when it is not required to be invested, and the Court shall have the benefit of that investment for two years, treating the Court as a banker for that purpose; and if at the end of two years there shall be any requisition to lay out the money, the party entitled shall have the benefit and risk of past investments as from that day. I believe that that will meet the justice of the case without any inconvenience.

MASTERS EXTRAORDINARY IN CHANCERY.

It is proposed to make a considerable alteration in this office, abolishing both the title and the fees.

I have taken some trouble to look into this subject. A great many of the parties who are so called assume this title for the purpose of giving to themselves the appearance of being trusted by the Court of Chancery. It costs 8*l.* or 9*l.* and the appointment is gazetted. I propose to take away from them their high-sounding title, and to give them the plainer name of country agents to administer oaths in Chancery, and that they shall not be gazetted. I propose to sweep away all fees. The fees now paid on their appointment are exorbitant, and I propose that they should pay one fee of 1*l.* once for all. That would be a great benefit to the solicitors.

COUNTY COURTS.

His Lordship announced that it was not the intention of the Government to propose any further changes in the County Courts at present. "I think," he said, "so many changes have already been made in them by the Legislature, that we ought now for a time to leave them alone."

LAW OF LUNACY.

Great improvements are promised in this. Defects in the working of the Commission are to be amended. The repeated references from the Chancellor to the Master, and back again, are to be avoided. A jury is not to be required in all cases, but only where some doubt as to the fact of lunacy really exists. The public are to be protected from the danger to be apprehended from persons clearly insane being left at large till proper steps can be taken to confine them.

A large expense is now incurred by inquiry when the party first became of unsound mind. This originated in a desire to protect the rights of the Crown; but the Crown now has no beneficial interest in the estates of lunatics. The result of the inquiry is nine times out of ten of no value at all, and in no case is it of any value beyond its being *prima facie* evidence. It very often happens that after all these inquiries have been made, and every protection has been thrown around the lunatic, you have not left him enough of his property to provide for his bare maintenance. I propose, under the power given by an Act of last session, to substitute a per-centage on the incomes of lunatics for the fees now paid; and, my Lords, I think I may say that the application of that principle may be safely intrusted to my hands, because I have always been of opinion that it is most unjust to make a rich man who is afflicted with lunacy liable to pay the expenses of a poor man who is similarly afflicted. I also propose to avoid unnecessary attendances by the next of kin. The next of kin have a sort of inchoate right to look after the property of a lunatic, because if he die without leaving a will they may be entitled to inherit. I do not mean, therefore, that the attendance of the next of kin should be altogether prevented, but in proper cases a certain number should be entitled to appear.

Other matters in lunacy which must now be brought before the Chancellor by petition, are to be disposed of in a more summary manner in chambers, with no other cost than that of the order itself.

LAW OF BANKRUPTCY.

On this subject his Lordship observed—

The Act of 1849 established an entire code of bankruptcy. It required orders for the purpose of putting that Act into full operation, which orders have only recently been issued. Great difficulty was experienced in obtaining the concurrence of eight Commissioners, which the Act required. I, however, set about the matter with some earnestness, and 163 orders have been issued, which complete the system that the Act of 1849 introduced.

The Commissioners in the country are to be gradually reduced, and to provide a sufficient remuneration for the official assignees no vacancies will be supplied until those who remain can procure a sufficient income from the office. The falling off of business in the Courts of Bankruptcy has been attributed to the great powers given to the Commissioners for granting or withholding certificates, and the inquiries requisite to be made by them for that purpose. The Lord Chancellor proposes to remedy this:—

It is stated in the next section that the certificate shall be in the form given in the schedule, and from that schedule all the difficulty has arisen. The Commissioner is to certify that the bankruptcy has arisen from unavoidable losses and misfortunes, and thereupon to award a first-class certificate; or that it has arisen not wholly from unavoidable losses and misfortunes, in which case he is to award a certificate of the second class; or that the bankruptcy has not arisen from unavoidable losses and misfortunes, in which case he is to award a certificate of the third class. The consequence of this is, that the Commissioners have the power to examine into all the acts of the bankrupt, including his personal conduct, and to scrutinise it in a way which has led to very great objection on the part of many persons to enter the court. I propose to repeal so much of the Act as gives the Commissioners power to inquire into any ingredient of the bankruptcy, except whether it has arisen from unavoidable misfortune. The second reason alleged for the falling off of business in the Court of Bankruptcy is that the per-centage is unduly high where the property exceeds 1,000*l.* This objection I propose to obviate.

His Lordship proposes to extend to the Commissioners in Bankruptcy an equity jurisdiction in aid of the Court of Chancery. He also intimated his intention to apply to the Bankruptcy Courts the same rule as

cacy which the Legislature has applied to the County Courts, viz. to permit a Solicitor to appear to conduct the case of his own client, but not to do so as an Advocate instructed by another Solicitor.

Another point to which I would refer before passing from the subject of bankruptcy is this:—Solicitors are now permitted to appear as Advocates before the Commissioners of Bankruptcy. I propose to put the same restriction as is now put upon Attorneys under the County Courts Act. That is, my Lords, I object to what are called Attorney-Advocates. I do not object to a man's Solicitor arguing his case for him, but I do object to an Attorney being turned into a Barrister and acting as an Advocate.

DIGEST OF THE CRIMINAL LAW.

The Government will proceed with this measure, adopting the report of the Commissioners, but doing so in parcels, making each distinct class of crime the subject of a distinct statute, and then, when all is done, to repeal and re-enact them in one statute, and thus to afford an opportunity for the investigation and improvement of the whole in its passage through the Legislature:—

I have therefore the satisfaction of informing my noble and learned friend, that the first part of such a digest has been actually prepared in the form of a Bill relating to offences against the person. There is great inconvenience, my Lords, in a long Act of Parliament. The plan, therefore, which the Government propose to adopt is this:—They propose to deal with the different heads of the subject in separate Bills. This will give an opportunity of introducing those amendments which will, doubtless, be found necessary from time to time, before the whole have been gone through, and then at the end the course will be to repeal the Bills which have been so enacted, and to re-enact them, numbering them consecutively, so that they may be found with convenience in the same volume of the statutes.

Such are the improvements in the law proposed by the Government. To some of them we shall have objections to offer on the part of the Profession, when the details of the various measures are before us; but for the general extent, variety, and value of the reforms here indicated, the LORD CHANCELLOR is entitled to, and will receive, the cordial thanks both of the Profession and of the public.

THE MOVEMENT OF THE JUNIOR BAR.

WE stated last week that "the movement" of the Junior Bar has not the approval of any of the present Judges. The LORD CHANCELLOR has taken the earliest opportunity to put forth *his* opinion of it, and we are pleased to find that so experienced a Lawyer, who knows the Profession so well, and who utters the wisdom of *experience*, has confirmed by his authority every argument which we have here urged against the scheme for dispensing with the Attorneys. In his masterly speech on Tuesday in the House of Lords on the Law Reforms to be proposed by the Government, the LORD CHANCELLOR alluded to the recent movement of the Junior Bar, expressing his own disapproval of it and his regret that it should have received any countenance from so high an authority as that which has lately given to it the public sanction of his honoured name. His Lordship said—

I desire to see the Profession stand upon its proper basis. I wish the Barrister not to trench upon the province of the Attorney, nor the Attorney upon the province of the Advocate. Depend upon it, my Lords, if the system which has so long prevailed be broken in upon, great evils will ensue. Whether in any respect it will tend to elevate the character of the Bar remains to be determined; but, at any rate, there must be equality. It so happened last year that, in the difference of opinion which prevailed among my noble and learned friends, it virtually fell to my lot to remove the prohibition which formerly existed against Counsel acting as Attorneys; but, while I did so, I took care expressly to state that I gave that vote upon the distinct statement that Attorneys had threatened the Bar that if they took business in County Courts they should not have business elsewhere. I meant to leave it, therefore, to the honour of the Bar to act as they have always acted, not intending to open the door at all, unless there be an absolute necessity for it, to the practice of Barristers acting without the intervention of Solicitors—a practice, in my eyes, highly objectionable, and one which I should be the last person to countenance. Any such serious change in the long-established usage of the Bar ought at any rate to be made with the concurrence of a large majority, but I entirely object to any small number, or even to any considerable number, taking upon themselves to act contrary to the general rule of the Profession, which has been established for so long a period. My Lords, the Bar at the present moment is in a state of transition, and I would recommend everybody having any voice or any influence in this matter to consider where—if you lower the station or position of the Bar—you are to look for learned persons to fill your benches and carry on the administration of justice. You cannot expect that a man will dedicate a long life to the labours of the Bar without some hope and some proximate hope of reward.

LAW OF EVIDENCE.

LORD BROUGHAM has laid on the table of the House of Lords a Bill for removing the few remaining defects in the Law of Evidence, and which embodies all the amendments that from time to time we have ventured to suggest in these columns as calculated to meet the requirements of justice. The wife of a party is to be competent in all but criminal cases and adultery. Witnesses are to be deprived of the protection they are now so unwisely permitted to claim against answering questions that might subject them to prosecution, placing all evidence given in a Court of Justice in the position of a privileged communication, of which no advantage can be taken beyond the particular case in which it is given.

MERCANTILE LAW REFORM.

THE conference with the Law Amendment Society was all that could be desired. Deputations from the Merchants and Lawyers of the United Kingdom, came to the unanimous resolution that there ought to be one uniform system of Mercantile Law in England, Scotland, and Ireland, and that this law should be reduced to a code, instead of being left, as now, to be gathered by litigation out of the statutes and the reports, at enormous cost.

No countenance was given to the wild project for superseding the regular tribunals of the country by self-constituted judges, unlearned in the law, and wanting the judicial aptitude which only experience can give.

The great importance and interest of the Reports compel us to defer the report of the proceedings of the Conference until next week. But the subject will *keep*.

WE have seen many strange Conditions of Sale, but never one so strange as this, which appears on the Particulars of an estate at Pinner, for sale by FAREBROTHER and Co. and in which we find the name of the solicitor who furnishes particulars, and who is, we may presume, the vendor's solicitor, and author of the conditions, to be "E. C. WHITEHURST, Esq. 29, Coleman-street, City."

Lastly.—The title to the premises has been recently investigated on behalf of the vendors, and the purchasers, or any of them, shall be at liberty, on accepting the title, to receive from the vendors' solicitor an abstract of the vendors' title to the lot or lots sold to him or them, and a conveyance thereof engrossed and executed by the vendors, and duly stamped with the proper stamps, and registered according to the provisions of the Middlesex Registry Act, at the several sums following, namely:—

Each purchaser of one lot	£5	5	0
Ditto of two lots	8	8	0
Ditto of three lots	10	10	0

The purchaser or purchasers to signify their acceptance of the option hereby given to the vendors' solicitor, at the time of their signing their contracts or within four days afterwards.

Nor is this the worst of it. The memorandum of the contract printed at foot of the conditions contains the following unique provision. After reciting that he had become the purchaser, &c. it proceeds thus:—

And hereby accepts the title to the said lot, and requests the solicitor for the vendors to prepare for him a conveyance of the said lot, upon the terms and conditions mentioned in the last of the foregoing Conditions of Sale.

We are aware that it is said, and even supposed by many, that the seller of property and his attorney have a right to frame their own conditions of sale, and may impose upon the purchaser any terms they please which may be deemed advantageous to either of them. But certainly, if in strict law such a right exists, the wholesome practice of the Profession forbids. The Courts are properly averse to the same solicitor acting both for vendor and purchaser, for reasons well known to our readers; and if by any accident this condition and contract were to come under the notice of the Judges, a severe rebuke would doubtless mark their sense of its impropriety.

Nor is the attempt to secure the profits of the business of both parties the only objectionable feature of this document. It fixes the price at an arbitrary sum, and *that* is contrary to professional practice. It does more: it imposes upon the purchaser costs which, according to the universal custom, are those of the vendor,—*he* is to pay for the abstract of title. Lastly, and worst of all, the purchaser is made to sign a contract by which *he expressly agrees to accept the title* before examination, and whether it be good or bad!

We have directed attention to this case, because it is an extreme instance of a great and growing evil. Conditions of sale are becoming every year, not merely more stringent for the protection of the vendors, for to that there can be no objection, but positively unfair and unjust towards the purchaser, who does not always take the precaution to be advised upon them before he goes into the sale-room, and thus is entrapped into contracts which, if he had understood their meaning, he would not have undertaken. We believe that most of the provincial Law Societies have made it a rule of practice among themselves that the vendor's solicitor should not prepare the conveyance nor act for the purchaser and such a condition as we have here noticed would not have been permitted. But in London there exists no such wholesome check, and therefore it is the more important that the attention of the Profession should be directed to instances, when they do occur, of the introduction of improper conditions of sale; and we think most of our readers will agree with us that this is one peculiarly calling for a protest.

HINTS TO BUSY PRACTITIONERS.

[Under this title we propose from time to time to remind the practitioner of useful facts which, amid the claims of business and the flood of changes in the law, he may possibly have overlooked. As we also may overlook many, we shall be obliged by "hints" from any of our readers.]

SIGNING JUDGMENT.

BEFORE signing judgment on a verdict obtained in the Q. B. during this term, it appears to be necessary to enter a four-days' rule for judgment, *nisi causa*, according to the old practice. The reason of this is explained in an article in the present number, on *Signing Judgment in the Queen's Bench*.

AN ACTION AT LAW UNDER THE NEW PRACTICE.

FIRST ARTICLE.

IT is intended in the following articles to sketch, as briefly as is consistent with clearness of detail, the proceedings in personal actions in the Superior Courts, as altered by the "Common Law Procedure Act." The action of ejectment may perhaps form the subject of separate consideration afterwards. The endeavour will be to state the proceedings in as simple and untechnical language as possible, so that the almost beginner in the profession may understand them, though at the same time it is hoped they will not be useless to the practised professional reader. It is thought

that, in the elementary sketch proposed, legal technicality may be avoided without materially increasing its length.

I. THE WRIT OF SUMMONS.

The first step in an action is the issuing a writ of summons. Whatever correspondence or demand or notice may have taken place previously, this writ is the commencement of the action. In some cases a formal notice of action is requisite, in order that the defendant may have an opportunity to make amends. This is the case in actions against justices of the peace for anything done in the execution of their duty (24 Geo. 2, c. 44, s. 1), and against persons engaged in various branches of the public service, as in the army, navy, customs, excise, &c. for anything done in the execution of their offices. This subject does not require further remark than that by 5 & 6 Vict. c. 27, in all cases where notice of action is required, such notice shall be given one calendar month at least before action is commenced, and such notice shall be sufficient. Two other special proceedings may be mentioned. Previous to an action against a constable for anything done in obedience to a warrant of a justice, 24 Geo. 2, c. 44, s. 6, requires that a demand in writing of a perusal and copy of the warrant shall be made; and if this is granted within six days, the justice must be joined as a defendant with the constable; and if not so granted, the plaintiff may sue the constable alone. Before an action by an attorney for payment of a bill of costs, including any charge for business done in a Court of Law or Equity, the 6 & 7 Vict. c. 13, s. 37, requires the plaintiff to deliver to the party chargeable therewith a signed bill of costs a month before commencement of action.

To return, then, to the commencement of the action, namely, the writ of summons: the purpose of the writ is to let the defendant know that the plaintiff makes in legal form a demand on him for satisfaction for a wrong done to the plaintiff, and to require him to adopt the forms appointed by law to contest the claim if he does not admit it. In ancient times it was requisite that the defendant should personally appear in court to answer the plaintiff's demand, and this is now to a great degree the theoretical basis of the proceedings. The means employed to compel this appearance used commonly to be called the process, by which name the writ of summons is still often called.

This writ is prepared by the plaintiff, or his attorney, and taken to an officer of the court out of which it is intended to be issued, and by him sealed, and the plaintiff or attorney leaves with this officer a memorandum, called a præcipe, in somewhat the following form:—

In the Queen's Bench.

Writ of summons for A. B. against C. D. of in the county of [where the writ is specially endorsed add *specially endorsed with the particulars of claim*].

[The plaintiff's or his attorney's name and address and the date should be underwritten.]

The body of the writ is as follows:—

Victoria, by the grace of God, &c.

To C. D. of in the county of

We command you that within eight days after the service of writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in our Court of Queen's Bench in an action at the suit of A. B.; and take notice that in default of your so doing the said A. B. may proceed therein to judgment and execution. Witness, John Lord Campbell, at Westminster, the day of in the year of our Lord one thousand eight hundred and

N.B. This writ is to be served within six calendar months from the date thereof, or, if renewed, from the date of such renewal, including the day of such date, and not afterwards.

It may properly enough be said that, since the Common Law Procedure Act, there are *four* forms of writ of summons:—

1. For service within the jurisdiction of the Superior Courts without special endorsement.

2. For service on a British subject residing out of the jurisdiction.

3. Directed to a foreigner residing out of the jurisdiction.

4. For service within the jurisdiction with special endorsement.

The above form is the body and subscribed memorandum of the writs Nos. 1 and 4, the sole difference being that on the latter there is an additional endorsement, called the "special endorsement" (to be referred to presently). And the body and memorandum of No. 2 is also the same, except that in it the defendant is allowed a greater number of days to enter an appearance, and that after, "in default of your so doing, the said A. B. may," the words *by leave of the Court or a Judge*, are inserted before "proceed therein to judgment and execution." No. 3 differs from No. 2 in three particulars; instead of "after the service of this writ on you," the phrase *after notice of this writ is served on you*, is used in No. 3, and so the subscribed memorandum, instead of "This writ," begins *Notice of this writ*, and the words "or if renewed, from the date of such renewal," are omitted in No. 3.

The form of writ applicable to each case should of course be adopted, though a mistake in this respect may be amended upon application to a Judge. The form, No. 1, is applicable in all personal actions against defendants within the jurisdiction of the Court, in which the special endorsement mentioned above either cannot or is not intended to be made. The contents of the writ deserve some little consideration, and the remarks made will equally apply to the other three forms.

The writ is a command in the name of the Sovereign, whose title is contracted in the form given in the statute: the full title would be this:—"Victoria, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith;" and this full title should be used if there is any variation from the statutory form. (*Hall* v. *Redington*, 5 M. & W. 605.) It is clear that the writ ought to contain the names of all the plaintiffs (if more than one sue), and it is provided that it shall contain the names of all the defendants, and not contain the name or names of any defendant or defendants in more actions than one. (Sec. 4.)(a) Consequently, the plaintiff cannot proceed against more defendants than are named in the writ, nor proceed separately against defendant who have been included in one writ. In the writ the place and county of the residence or supposed residence of the party defendant, or wherein the defendant shall be, or shall be supposed to be, must be mentioned (sec. 2), and the defendant should be sued in that name which he then uses, and by which he is commonly known. (*Williams* v. *Bryant*, 5 M. & W. 447, 554.) The words "Witness, John Lord Campbell," are called the teste of the writ, and every writ of summons must bear date on the day on which the same is issued, and must be tested in the name of the Lord Chief Justice or Lord Chief Baron of the court from which the same is issued, or in case of a vacancy of such office, then in the name of a senior puisne judge of the said court. (Sec. 5.)

The form of writ No. 2 is applicable where the defendant is a British subject, but not residing within the jurisdiction of the Superior Courts, nor in Scotland or Ireland, and in this case the plaintiff must take care to allow the defendant a reasonable number of days with reference to the distance he is at from England, within which he may appear in obedience to the writ. The jurisdiction of the Superior Courts extends over the whole of England and Wales, excepting the counties palatine of Lancaster and Durham. Nearly all the provisions of the Common Law Procedure Act, however, apply to the Superior Courts of these counties (sec. 229), and therefore the proceedings in personal actions in those courts must be so far similar to those in the courts at Westminster. It will not be necessary to refer in more detail to the proceedings in the courts of the counties palatine.

The form No. 3 is to be used where the defendant is a person residing out of the jurisdiction of the Superior Courts, and is not a British subject; and in this writ also, the defendant must be allowed a reasonable number of days, considering his distance from England, for appearance.

The form No. 4 is applicable to cases where the defendant resides within the jurisdiction of the Court, and the claim is for a debt or liquidated demand in money (with or without interest), arising upon a contract, express or implied. (Sec. 25.)

On the backs of writs Nos. 1 and 4 there must be this memorandum (varied according to the circumstances):—

This writ was issued by E. F. of , attorney for the said plaintiff: or, *this writ was issued in person by A. B. who resides at* [mention the city, town, or parish, and also the name of the hamlet, street, and number of the house of the plaintiff's residence, if any such]. Which must also be endorsed on No. 2, with this alteration, that between "this writ" and "was issued" the following is to be interposed:—*is for service out of the jurisdiction of the Court, and.* The endorsement on No. 3 ought probably to be that endorsed on No. 1, with this addition: *and a notice thereof is to be served out of the jurisdiction of the Court.* This memorandum is necessary, because every writ of summons must be endorsed with the name and place of abode of the attorney actually suing it out, and if he is not an attorney of the court in which it is sued out, then also with the name and place of abode of the attorney of such court in whose name such writ is taken out; and when the attorney actually suing it out does so as agent for an attorney in the country, then also with the name and place of abode of such attorney in the country; and in case no attorney is employed, then it must be endorsed with the above-mentioned particulars of the plaintiff's residence. (Sec. 6.)

In every case where the writ is for the payment of a debt, there must also be an endorsement in the following form, or to the like effect:—

The plaintiff claims £ for debt [*£ for interest*] *and £ for costs, and if the amount thereof be paid to the plaintiff or to his attorney, within four days from the service hereof, further proceedings will be stayed.* (Sec. 8.)

If the action is one in which the special endorsement (peculiar to No. 4) may be made, such special endorsement should follow the endorsement just mentioned. Several forms of special endorsement are given by the Common Law Procedure Act, Schedule A, No. 4, but it is unnecessary to insert them here, except perhaps, as an example, that in an action on a bill of exchange, which is—

The following are the particulars of plaintiff's claim:—85l. on a bill of exchange for 100l. dated the 2nd February, 1849, *accepted* or *drawn*, or *endorsed by the defendant.*

This particular of claim is followed by a notice to the defendant, that if he does not appear according to the exigency of the writ, the plaintiff will be at liberty to sign final judgment, and issue execution at the expiration of eight days from the last day for appearance.

The four original writs of summons at present in use have now been considered, and though some complication appears to arise in an elementary sketch like this, from the mention of four different writs, there are not four different procedures subsequently to trace: one procedure is in the main common to the four writs, but in addition to this there is a summary proceeding applicable to the case of the defendant's non-appearance to a writ specially endorsed.

C. T.

(a) When the Common Law Procedure Act is cited, it will be by the number of the section merely, as in this case.

SIGNING JUDGMENT IN THE QUEEN'S BENCH.

We feel it necessary at once to call the attention of our readers to a result of the Common Law Procedure Act, which will probably perplex those attorneys especially who have obtained verdicts in causes tried in the Q. B. during this term. It seems pretty clear, that until the Judges make a rule of Court upon the subject, it will be necessary to revert to the old practice as to signing judgment, and this was in the Q. B. to enter a four-days' rule for judgment *nisi causa*, and to wait the four days of term accordingly, before signing final judgment.

This is one of those instances that sometimes happens of unforeseen results arising from the abolition of old and useless forms. The practice of the Q. B. was formerly settled to be, that such a rule was necessary (Tidd. Prac. 581, ninth edition); but by rule of all the Courts, H.T. 2 Wm. 4, s. 67, judgment may be signed after a verdict or nonsuit, "on the day after the appearance-day of the return of the distringas, or *habeas corpora*, without any rule for judgment." The application of this rule to signing judgment in the Q. B. depends on the return of the distringas, and then comes the recent provision (15 & 16 Vict. c. 76, s. 104), that the distringas shall no longer be used.

If any doubts should be suggested as to the rule of Court applying only where there is in law a return of the distringas, they seem to be answered by the case of *The Governors of the Poor of Exeter* v. *Sivell*, 7 Dowl. 624, in which COLERIDGE, J. held that a judgment signed in vacation, pursuant to a certificate for speedy execution under 1 Wm. 4, c. 7, s. 2, was irregular, because a rule had not

been entered. To obviate this particular evil a rule of all the Courts was made (T. T. 4 Vict. 1 Q. B. 699), that where judgment is signed by virtue of a judge's certificate, "such judgment may be signed without any rule for judgment." If, therefore, the construction of the rule of Hilary Term, 2 Wm. 4, then acted on, is still adhered to, it follows that judgments signed in the Q. B. on verdicts obtained during this Term should be preceded by rules. In the other courts, however, this step is not necessary. "No such rule was necessary in the C. P. or Ex. but without such a rule the plaintiff was bound, in effect, to wait a similar time in both courts,"—per COLERIDGE, J. This being the old practice, it will revive, it would seem, in these courts, and merely waiting four days after verdict will be sufficient.

A difficulty will perhaps be found to arise in cases tried out of Term, in which, under sec. 120 of the Common Law Procedure Act, execution may be issued in fourteen days after verdict. There is no express provision as to signing judgment, and possibly the absence of this will give rise to some doubt as to the time for doing so.

The practice will probably be settled and made uniform in the three courts by a Rule of Court, but we would just remark, that if fourteen days is a proper time between verdict and execution when the cause is tried in Vacation, we do not see any very good reason for the time being reduced to four days when the cause is tried in Term.

The time within which the motion for new trial had to be made depended formerly on that for signing judgment, but the connection is not necessary, though, when the cause is tried during Term, it is certainly convenient. This will probably also be settled by a Rule of Court.

THE LEGISLATOR.

Imperial Parliament.

HOUSE OF LORDS.

LAW REFORM.

TUESDAY, Nov. 16.—The LORD CHANCELLOR proceeded to state what steps had been taken since their lordships last met, in order to carry into execution the Bills passed last session, in regard to the Court of Chancery, and other matters connected with that court; and the measures which the Government proposed on the subject of law reform generally. The Bills already passed were three in number, as regarded the Court of Chancery. The first was for abolishing the office of Master in Chancery, and introducing a new system, called a chamber system, with regard to those matters which up to that time had been prosecuted by the Masters in their own chambers. The next Bill was for "the improvement of the jurisdiction of equity," and the third Bill was, "The Suitors in Equity Relief Act," which certainly had afforded great relief in the reduction of salaries, and the abolition of what appeared to be useless and unnecessary offices. They were now in full operation, and he believed that they would have the effect of making the delays of Chancery no longer proverbial. Without any undue haste—which of all things was to be deprecated—he believed that questions of property could now be decided more rapidly in the Court of Chancery than in any other court in the country. It had often happened, that sixteen or seventeen years after a decree of the Court of Chancery, persons came and appealed to their Lordships' House. This evil had been remedied, and five years was now the longest limit allowed. As for the Bill for the relief of suitors, its effect would be to save the suitor a vast expense, and leave him as well secured as at present. His lordship then proceeded to describe the nature of the two funds out of which the costs of the administration of justice were paid, and the means proposed still further to reduce those costs. Another small Bill was connected with the subject of the Masters Extraordinary in Chancery. He proposed to have a registry for transacting their business, and to sweep away the fees now charged by these gentlemen. With regard to lunatics, at present one kind of court had jurisdiction in one place, and another in another, and the utmost confusion prevailed. He proposed an extended investigation into the working of these courts, and the establishment of one simple rule for the courts of the whole country. Besides the other authorities over lunatics, the Act called Lord Shaftesbury's Act had appointed eleven Commissioners, whose duty it was to look after the management of the asylums from time to time. In the course of time the existing Acts had been found to require several amendments, which were now in progress; and he had reason to believe that every object which had hitherto impeded the well-working of the commission would be removed. Another small Bill which he should introduce was connected with the patent law, substituting stamps in lieu of fees. He had also great satisfaction in stating that it was the intention of Government to proceed with a digest of the criminal law.—Lord BROUGHAM thanked his noble and learned friend for the statement he had made, though he felt considerable doubt as to the merits of several Bills, and intended to reserve his opinion until he was better able to judge of them. He particularly wished to see more effectual measures taken by criminal legislation for the prevention of bribery and corruption at elections, without having recourse to the ballot or to a large increase of the constituent body.

Their lordships then adjourned.

HOUSE OF COMMONS.

SUPPRESSION OF BETTING-HOUSES.

FRIDAY, Nov. 12.—Mr. WALPOLE (in answer to Mr. Fitzroy) stated that he had it in contemplation to introduce a measure for the suppression of betting-houses, the particulars of which he would take an early opportunity of announcing.

CODIFICATION OF LAWS.

Mr. EWART gave notice that on a future day he would ask whether the Government intended to take any steps for the codification of laws, and also whether any preparation had been made for subjecting candidates for diplomatic and consular situations to an examination as to fitness?—Mr. WALPOLE stated that the Government was preparing a measure for the codification of laws.

ECCLESIASTICAL COURTS.

Mr. COLLIER gave notice that on the 25th instant he would move for leave to bring in a Bill to transfer the duties of the Ecclesiastical Courts, as regarded the administration of wills, to the Superior Courts of Common Law and the County Courts.

ELECTION PETITIONS.

Petitions complaining of undue election returns were presented by Sir B. HALL, from Bridgenorth, and by Mr. GLADSTONE, from Tavistock.

ELECTION LAW.

Lord R. GROSVENOR gave notice that on Tuesday he would move for leave to bring in a Bill to limit the duration of the poll for counties to one day.—Sir W. CLAY gave notice that on an early day he would move for leave to bring in a Bill authorising parliamentary electors to vote for members of Parliament by means of voting-papers left at their houses, as was the case at present with respect to elections for poor-law guardians.

CRIMINAL AND DESTITUTE CHILDREN.

TUESDAY, Nov. 16.—On the motion of Mr. BAINES, the following members were nominated for the select committee on criminal and destitute children:—Mr. Baines, Marquis of Blandford, Viscount Barrington, Sir William Jolliffe, Mr. Sidney Herbert, Mr. Tufnell, Mr. Fitzroy, Mr. Miles, Mr. Robert Palmer, Mr. Adderley, Mr. Monckton Milnes, Mr. Tatton Egerton, Mr. Cornwall Legh, Mr. Headlam, and Mr. Monsell.

LAW REFORMS IN IRELAND.

FRIDAY, Nov. 19.—The SOLICITOR-GENERAL moved for leave to bring in a Bill to amend the procedure in the Superior Courts of Common Law in Ireland, stating that it was his object to make these courts resemble as nearly as possible the English County Courts. This was a bold and comprehensive plan, and would enable these Courts to give justice, cheaply and promptly.

THE MAGISTRATE,

AND PAROCHIAL AND MUNICIPAL LAWYER.

Summary.

THE courts present an unusual dearth of cases relating to magistrates and parish law. There are but three or four cases in the Crown Paper. Although an Assizes, two Quarter Sessions, and two sessions of the Central Criminal Court have occurred since the Court of Criminal Appeal held its last sittings, they have produced only *two* appeals. Among the many reports of last week, only two belong to this branch of the law, formerly so fertile. *Reg.* v. *The Mayor, &c. of Harwich*, 20 Law T. Rep. 72, was a question of *municipal law*. A notice of objection to a name in the burgess list ran thus:—"I hereby give you notice that I object to your name being retained on the burgess list of the borough of Harwich." It was held to be bad, because it did not describe the person as he was described on the list. "There might be two persons of the same name," said CROMPTON, J. "and it is right that it should be pointed out in the notice itself who is really meant by it."

The other case belongs to the *Criminal Law*. A count in an indictment for a nuisance charged that defendant had a mare "infected with a contagious, infectious, and dangerous disease called the glanders," and that he, "well knowing the premises," while the mare was so infected, brought it into a public way, where divers liege subjects were, "to the great danger of infecting, &c. the liege subjects, &c." It was objected that this was insufficient, because it was not alleged that defendant knew the glanders to be a disease which was communicable to human beings. But the Court held the indictment to be *good*. (*Reg.* v. *Henson*, 20 Law T. Rep. 63.)

DEVON QUARTER SESSIONS.

THE BAR AND THE CHAIRMAN.

On Thursday, John Broad was indicted for stealing a quantity of faggots of wood, the property of William Orchard. There being no counsel for the prosecution, the Chairman (Sir *J.* Duckworth) examined the witnesses from the depositions. The prisoner was defended by *Ring*.

The prosecutor having proved that the faggots of wood found in the prisoner's possession resembled those he had previously lost, and another witness having stated that he had seen a person, whom he believed to be the prisoner, go to the prosecutor's stack of faggots and take some of the wood belonging to him,

Ring rose to address the jury on the prisoner's behalf. He began by observing, that besides the difficulties he had to encounter arising from the case itself, he had also the disadvantage of a reply from the Chairman, not as judge, but as prosecuting counsel, in answer to the defence; that he trusted the learned Chairman knew him too well to suppose for a moment that he meant any personal disrespect, but that it was impossible for the Chairman, impartial and conscientious as he was, so to divest himself of human weakness, as not in some measure to identify himself with the case which he was seeking to prove from the witnesses he had examined. The difficulties which he, Mr. Ring, had to encounter, were great in every view of the case. Suppose a leading question put by the Chairman, how embarrassing must it be for counsel to object.

The CHAIRMAN (interrupting Mr. Ring) protested he was not aware that he had framed a single question to any one witness otherwise than in a proper legal form, and said he thought he might appeal to the gentlemen of the Bar themselves if he had done so.

Coleridge here rose, and said that an appeal to the Bar having been made, he might say he fully concurred in the sentiment expressed by his learned friend, Mr. Ring, and that, further, here was an instance of the evil felt by the Bar when a Chairman conducted prosecutions, viz.: that when a prisoner's counsel objected to a question put by the Chairman, the appeal was to that very Chairman himself.

Lopes, *Cox*, and other counsel also rose and begged to express their full concurrence in the sentiments expressed by Mr. Ring and Mr. Coleridge, and dwelt on other obvious inconveniences that were continually arising from this course being adopted.

The CHAIRMAN again pressed Mr. Ring to point out a leading question put by him in course of the case.

Ring said, that since he was pressed he would remind the Chairman that he asked a witness at the beginning of the case, "Were you at the place in question at half-past six," thus fixing the hour. It should have been put thus:—"At what hour were you there?" It was done unintentionally, he was certain—that he should at once have objected, had it come from one of his brethren at the Bar, and required that it should have been put to the witnesses in a somewhat different form, but that, coming from the Chairman, he felt he could not do so with freedom; but he begged the Chairman to understand, that his observations were more upon the general question than on the conduct of this particular case. He could not understand the reason why this course was adopted, but that *if a desire to economise the public funds were the motive*, he, for one, and he thought his brethren would concur with him, would, under the circumstances, conduct a prosecution gratuitously, *rather than see justice defeated*. Thus the Chairman would be relieved, and left unembarrassed by inconsistent and incompatible duties. That he was not saying one word more than the law fully warranted him, Mr. Ring begged to call the attention of the Court to the expression of Mr. Justice Coleridge in 1st Cox's Criminal Cases, p. 48, that "A Judge ought never to be put to prosecute." He also cited the case of *Reg.* v. *Hazell*, in 1st Cox's Criminal Cases, p. 318, in which Mr. Justice Cresswell said, "A Judge ought not to be put to prosecute. It is most unseemly for a Judge to be called upon to act as prosecutor, instead of holding the scales between the parties." And in concluding his address, Mr. Ring referred to the words of Mr. Justice Maule, in *Reg.* v. *Page*, 2nd Cox's Criminal Cases, p. 221, than which, he

submitted, nothing could be clearer or more emphatic in the condemnation of this system now adopted. They were the followers." The duties of law is, that the Judge is counsel for the prisoner; but here it is sought not only to upset and reverse that doctrine, and to make me counsel for the prosecutor, but to throw the whole burthen of the prosecution upon me, and leave me to make out the best case I can against the prisoner by a careful and diligent perusal of the depositions. But I will not do it. I will be counsel for the prisoner, and let the depositions be handed to some counsel to conduct the prosecution." Mr. Ring then analysed the facts of the case, and submitted, where the identity of the accused was left in some doubt, as he contended it was here, that the jury should give the prisoner the benefit of such doubts, and acquit him of the charge.

The CHAIRMAN summed up the case briefly, and the jury having considered some little time, returned a verdict of Guilty; and the prisoner, a former conviction having been proved against him, was sentenced to seven years' transportation.

Thus ended a scene which created no little excitement in the court. Why is not the same system adopted in our County Sessions that is found to work so admirably at the less important sessions for Plymouth and Devonport, viz.: that the Court, in all cases where counsel are not retained previously by the prosecutor himself, directs that the attending counsel be instructed (according to seniority) to conduct the prosecution. By this course all collisions, which must be regretted as most painful and unseemly, would be avoided, and justice rightly and impartially administered.

TRANSMISSION OF LUNATICS BY RAIL.—The parochial authorities of Marylebone, deeming it quicker and cheaper to send pauper lunatics per rail to the Colney Hatch and Hanwell Asylums, made inquiries if such an arrangement could be effected. Mr. Messer, the relieving officer, found that the railway companies would not knowingly permit lunatics to travel along their lines.

JOINT-STOCK COMPANIES' LAW JOURNAL.

Summary.

IT seems that, under the New Equity Procedure, upon petition for investment of purchase-money paid by a railway company, the Court will order a reference to the conveyancing counsel to report upon the title, and then, if reported satisfactory, the order will be made without a fresh petition, on production of an affidavit of the eligibility of the investment. (*Re Caddick*, 20 Law T. Rep. 59.)

A case of unusual interest in this branch of the law was that of *The British, &c. Life Assurance Company* v. *Browne*, 20 Law T. Rep. 67. The company advanced 200*l.* to A. and he and B. covenanted with the company by a deed inter partes to pay an annuity to the company, and by the same deed they assigned certain lands to trustees as security. The deed was executed by A. and B. but not by the company. The Joint-Stock Companies' Acts requires that every contract shall be signed by two directors at least, and verified by the common seal of the company. The question now was, whether this deed could be enforced by the company. The C. P. held that it might be so, for the contract was unilateral, and the deed equivalent to a deed poll. JERVIS, C.J. said:—"This is not a deed on behalf of the company within the meaning of the Act. A sum of money is advanced, and the defendant and another person covenant to pay an annuity. . . The section applies where something is to be done by the company, and then the execution by the company is necessary, with all the formalities. If not so executed, the other party could enforce it against the company, but the company could not against the other party. This contract is entirely unilateral, and need not be executed by the Company."

In *The Dublin and Wicklow Railway Company* v. *Black*, 20 Law T. Rep. 70, it was held, that a plea of infancy to an action for calls on shares should aver that the infant disaffirmed and repudiated the contract within a reasonable time.

PETITIONS, ORDERS, MEETINGS, APPOINTMENTS, CALLS, &c.

[Announced, issued, and made, during the past week.]

Wesleyan Newspaper Association.—To make a call of 3*l.* per share on Nov. 29.—Tinney.

REAL PROPERTY LAWYER AND CONVEYANCER.

THE LORD CHANCELLOR has held, in *Chappell* v. *Rees*, 20 Law T. Rep. 67, that the allowance of interest upon a legacy charged upon real estate, and due upwards of six years, is to be calculated from the filing of the bill, and not from the date of the decree, although the bill is not filed by a legatee; in *Re Wheeler*, 20 Law T. Rep. 57, that the costs of proceedings for obtaining from the committee of a lunatic a reconveyance of premises mortgaged to the lunatic, are to be paid out of the lunatic's estate, where he is beneficially interested in the mortgage, and the petition is by the committee; but otherwise where the mortgagor presents the petition, unless the committee declines to present a petition.

A suit was instituted against an executor for administration of the estate, he having retained balances in his hands. He became bankrupt. A decree was made, and inquiries were directed as to the moneys due from him. On an application to the Court it was held, that he was to be charged interest on the balances, but was entitled to costs, which were to be allowed to him out of the estate. But these costs were not to be set off against what should be found due from him in respect of interest on the balances. (*Cotton* v. *Clarke*, 20 Law T. Rep. 59.)

We are glad to see the Courts gradually relaxing the absurd, irrational, and unjust stringency of the earlier cases, that required the formal and literal execution of powers, instead of being content with a substantial performance of them. We do not believe that a century ago the following would have been pronounced sufficient: truth and justice would have been sacrificed to a form. Where a married woman had power of appointment over four different species of property, and by her will, which she expressed to be made "by virtue of the power and authority reserved to me in and by the settlement," &c. appointed *all the four* different species of property, Vice-Chancellor KINDERSLEY held it to be a sufficient exercise of the power. He said, "I take it to be clear that the question whether a will, assuming it to be, as in this case, duly executed, with the formalities required by the law, operates as an execution of a power, is, like every other question on the construction of a will, purely a question of intention; and the Courts have determined, and necessarily determined, that there are two modes in which that intention may be manifested; the one is by the will referring to the power itself, and expressing its intention to execute that power, although not referring to the special property comprised in the power; and the other is by dealing with the special property comprised in the power, without referring to the power itself, and that is commonly enunciated by the proposition that to make a will an execution of a power, it must refer to the power or the property comprised in the power." (*Harrey* v. *Stracey*, 20 Law T. Rep. 61).

Certain surviving trustees had conveyed the trust property to themselves and others, so that the legal estate was vested in seventeen trustees instead of sixteen, the number specified by the deed creating the trusts, but it was held that the seventeen were, nevertheless, entitled to recover in an action of ejectment on a joint demise, for, as the Court significantly observed, "If the legal estate is not in them, *where is it?*" (*Doe* v. *Staples*, 20 Law T. Rep. 61.)

It will be seen by the report of *Anning* v. *Lavers*, 20 Law T. Rep. 61, that upon a foreclosure by claim, the Court, under the new procedure, pronounced an immediate decree, and made an order for the sale of the mortgaged property. This is the best answer to the objections that were made to a suggestion that appeared in these pages for dispensing with the powers of sale in small mortgages, and relying, in case of need, upon a sale under a foreclosure.

Queries.

ENFRANCHISEMENT OF COPYHOLDS.

CAN any of your experienced readers inform me the terms upon which the enfranchisement of copyholds is usually effected in cases where there is a small fixed money payment (averaging about 6*s.* per acre), annually made to the lord of the manor in respect of the property, and also upon every change, whether by reason of death, or alienation, the lord receives what is styled a relief, consisting of one year's, and a fine of two years' value of the money payment? A STEWARD.

COUNTY COURTS.

Summary.

IT has been held in *Stewart* v. *Jones*, 20 Law T. Rep. 64, that the County Court has jurisdiction to entertain a plaint for the recovery of a paving-rate, although by 1 Vict. c. 33, a right is given to remove it in one of the Superior Courts of Record at Westminster.

In *Ex parte Wilton*, 20 Law T. Rep. 72, the Court refused an application for a rule for a criminal information against a County Court Judge, it not being suggested that he had acted from any corrupt or improper motive.

In *Insolvency* there is one point to be noted. The schedule described a creditor as "Mr. Williams, timber merchant, New-road, London." His residence was in the City-road, which is a mile and a half from the New-road. In an action for the debt, and a plea of insolvency, it was held that the sufficiency of this description was not a question of law for the Court, but of fact for the jury, and the mode by which they should try it was this,—whether the plaintiff was so described in the schedule that a letter so directed to him by the assignee would find him. (*Williams* v. *Parfitt*, 20 Law T. Rep. 72.)

COSTS IN THE COUNTY COURTS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Pray when is the scale of costs to be settled for the County Courts?

From the unaccountable delay, it would seem as if these costs were to be burked instead of promulgated.

These courts require much reformation. The court fees are far too high, and the system of ordering the debts to be paid by instalments is absurd, and in many cases a denial of justice; for the dishonest debtor quite laughs at such orders, and in nine cases out of ten never obeys them, while the poor creditor is obliged to pay the court fees down instanter.

Why cannot it be left to the creditor and debtor to settle the terms of payment, as in the Superior Courts, and take out execution as occasion requires?

To render these Courts of any essential good for recovering debts from fraudulent debtors, the creditor should have the control, and the summons after judgment should be abolished.

I am, Sir, yours, &c.

Carlisle, 15th November, 1852. ONE, &c.

THE LAWYER.

Summary.

EQUITY PRACTICE.—If questions on the New Procedure were few at first, they have been rapidly increasing ever since, and our last bore abundant testimony to the difficulties that have already arisen, and must yet arise, as it comes to be applied practically. A brief summary of the points decided will be interesting and perhaps useful to our readers.

In *Martin* v. *Hadlow*, 20 Law T. Rep. 59, it was held, that although the 52nd section of c. 86 only contained the words "bill of revivor or supplemental bill," it extended also to suits by claim, and therefore, where such a suit had abated by the death of a defendant who was an executor, the Court cannot under that section make an order for its revival against the executor of such defendent. In *Yate* v. *Leithead*, 20 Law T. Rep. 59, where the suit had abated by the death of one of the plaintiffs and an executor and an administrator de bonis non of the original testator claimed to revive, it was held that an order under the 52nd section was not sufficient, but that the supplemental claim should be filed. "Such a case was not affected by the Act at all." In the same case it was held that the rule as to the *printing* of bills and claims is *imperative*.

In *Re Catling*, 20 Law T. Rep. 59, where an account had been ordered to be taken by the Master in an administration suit, the Court, under the 45th sect. of c. 86, permitted the order to be altered by directing an account to be taken, instead of directing a reference to the Master to take an account.

In the matter of the *Production of Documents*, which we noticed last week, Vice-Chancellor TURNER said that the judges had considered the question, and were of opinion that under the new Act "all those applications should originate at chambers. The effect of which will be, that if there is no dispute as to the production, all the expense of motions in court for production of documents will

be saved. If, on the other hand, there appears to be any difficulty as to the production, the judges will adjourn the motion into court in order that it may be argued." (*Thompson* v. *Toulon*, 20 Law T. Rep. 60.)

In *Davenport* v. *Davenport*, 20 Law T. Rep. 60, the Vice-Chancellor said that the judges had agreed that applications on the part of *purchasers for payment into court of money accepting the title* might be made in chambers.

In *Wilding* v. *Richards*, 20 Law T. Rep. 60, Vice-Chancellor STUART said that the judges had agreed that a mere order to revive, and the usual supplemental decree, were of course.

Where issue had been joined before the new stat. interrogatories filed, and an appointment made with the examiner, but no witness examined, the Court directed *the evidence* to be taken *viva voce*, and the costs already incurred to be costs in the cause. (*Cable* v. *Cooper*, 20 Law T. Rep. 60.)

It will be observed that in *Anning* v. *Lavers*, 20 Law T. Rep. 61, the Court directed an *immediate sale of mortgaged property under a claim of foreclosure.*

The 52nd section is held to be applicable to the case of an abatement which occurred before the Act came into operation; and where the application for the order to revive is by a creditor not a party to the suit, notice is to be given to the parties entitled to revive. (*Lowes* v. *Lowes*, 20 Law T. Rep. 61.)

Considerable doubt was entertained as to the precise duties of the Judges in hearing evidence in a suit. This is partially solved by the case of *Mildmay* v. *Methuen*, 20 Law T. Rep. 63, where Vice-Chancellor KINDERSLEY stated, in relation to the 42nd section, which empowers the Judges to obtain the assistance of scientific persons, "and to act on the certificate of such persons," upon the question whether this conferred the power on the Judge himself to act, or authorised him to delegate that power to the Master, calling in such scientific persons, that the Judges were of opinion "that it was never intended by the Legislature that the Court should delegate any such power to the Master; and that the purpose of the Act was to enable the Judges, in doing that which they were now to do instead of the Master, to decide questions which otherwisewould have been referred to the Master, and they should have the power to call in the assistance of scientific persons, if necessary. * * *Mere details would be worked out by the Chief Clerk under his Honour's direction; and if there should be any question of a grave nature, it would be right to have that question discussed in open court.*"

Some other practice cases of interest are reported which do not relate to the new procedure.

In *Turner* v. *Crosthwaite*, 20 Law T. Rep. 58, the LORD CHANCELLOR agreed to hear an appeal from the decision of the Lords Justices in Bankruptcy, "if the Lords Justices will certify to me that they think the case a fit one to be heard before the full Court."

In *Newton* v. *Thompson*, 20 Law T. Rep. 60, the service of an order nisi to confirm the Master's report was held to be sufficiently served on the defendant's solicitor, although the premises were unoccupied, it being shewn that the place was the address given by him in entering appearance, that he had absconded, and that his client was out of the jurisdiction.

When an equity of redemption had been assigned to trustees for the benefit of certain scheduled creditors, and the mortgagee had instituted a claim for foreclosure, the scheduled creditors were held to be necessary parties. (*Thomas* v. *Dunning*, 20 Law T. Rep. 60.)

In an *Anonymous Case*, 20 Law T. Rep. 60, where a plaintiff was suing in equity for several matters, one of which is also a cause of a suit at law, and on which he had commenced an action, he was required to elect whether to proceed at law or in equity.

And under the *Trustee Act*, a petition by a tenant for life for an order vesting the property in a trustee appointed in the place of a trustee resident out of the jurisdiction was required to be served on the remainder-man.

COMMON LAW.—The points arising on the Procedure Act are still very few, and of no great importance. The whole of last week produced only six.

Gapp v. *Robinson*, 20 Law T. Rep. 67, was a question as to the effect of the new statute upon the practice in renewing a writ of summons which had been issued on the 8th of June, and having expired on the 7th of October, was sought to be revived under ss. 10 and 12 of the new Act, for the purpose of keeping alive the original writ. The case was held to be within the exception in sec. 10, and the Court directed an alias writ to be issued under the old practice, and then that the plaintiff should, upon its expiration, renew under sec. 12 of the Procedure Act.

In *James* v. *Isaac*, 20 Law T. Rep. 68, it was queried (but not decided), whether special demurrers, pending at the time of the new Act coming into operation, are abolished, and whether it is retrospective as to writs of error under sec. 146.

Judgment as in case of a nonsuit cannot now be moved for, the 100th section of the Procedure Act having repealed the previous statute, except as to proceedings that have been actually begun under it, in reference to such judgment, previously to the 24th of October. (*Morgan* v. *Jones*, 20 Law T. Rep. 70.) And it was also refused in an action of ejectment, the 101st section of the Procedure Act having so far repealed the 14 Geo. 2, c. 14. (*Doe dem. Leigh* v. *Holt*, 20 Law T. Rep. 70.)

Where an appearance had been entered *sec. stat.* before the 24th of October, and on the 27th a declaration was filed, with notice to plead within eight days, and then plaintiff signed judgment and issued execution without giving notice to the defendant, the Court granted a rule to shew cause why the proceedings should not be set aside. PLATT, B. seemed to consider that there was nothing in the procedure Acts that relieved the plaintiff from the necessity of serving defendant with notice of declaration filed. But the point is to be argued in the full court. (*Goodliffe* v. *Neeves*, 20 Law T. Rep. 70.)

It was laid down by the Court of Ex. in *Lumley* v. *Gye*, 20 Law T. Rep. 71, that in the affidavit for leave to plead and demur together, under sec. 80 of the Procedure Act, the defendant or his attorney should verify all matters within his or their knowledge, and ALDERSON, B. stated it to be his opinion that "When a third person is involved, you ought to apply to that person for an affidavit in support of your application, or show some reason for not doing so.

Some decisions on other points of practice not relating to the new procedure require to be noticed.

The power of the judge to amend the record at the trial was questioned in *Doe* v. *Beck*, 20 Law T. Rep. 67, which was an action of ejectment. The demise by the lessors of the plaintiff shewed the legal estate to be in both husband and wife; but the evidence at the trial shewed the legal estate to be in the husband alone. An application was made to the judge to amend, but he refused, and the Court held that he had rightly done so, such an amendment not being within the authority given by the statute. (3 & 4 Wm. 4, c. 42, s. 23.)

In the *law of evidence* there are some decisions of interest. In *Nicholls* v. *Brooks*, 20 Law T. Rep, 63, the Q.B. held that where husband and wife were both parties on the record, the wife was admissible as a witness. There could have been no doubt, for however absurd is this admission of her where she has the greater interest, and rejection of her where she is less interested, still the statute is express in its terms.

An extremely nice point was raised in *Roberts* v. *Corbett*, 20 Law T. Rep. 66. A commissioner under an Act of Parliament had made an award determining the boundaries of certain mines; a plan was annexed shewing "the old works;" but it did not state the whole, part being underground. A dispute arose as to what constituted "the old works." One of the commissioners was called to prove that he did not know of certain "old works," to which it was contended the words applied. It was held that his evidence was admissible, to prove "a matter of fact, namely, the state of his knowledge." He could not be asked what he meant by the award, but he might be asked if he knew of any other old workings, and the jury were entitled to draw the necessary inference from his answer.

It was laid down in *Liddel* v. *The Newport, &c. Railway Company*, 20 Law T. Rep. 66, that a conversation between one of the parties to the action and a third person, in relation to an agreement by the other party, "would not be admissible until proof is given of preceding authority or subsequent recognition." Where A, a landowner, objected to a railway passing through his lands, and B. promised that it should be done by means of a tunnel, and a parliamentary notice was given to A. stating that it would pass by means of a tunnel, and asking his consent, but he took no notice of it, the Bill passed, and the company began to construct the railway without a tunnel, for which he brought an action, it was held, that *before* he could give in evidence the conversation between himself and B. he must prove B.'s agency; and that the notice did not shew a ratification, and that the conversation could not be put in evidence to shew that the notice ratified it.

COURT FEES.

TO THE EDITOR OF THE LAW TIMES.

SIR,—By the Nisi Prius Officers' Act of last session the office of marshal is abolished, and many credulous persons believed that the heavy fees paid to him on the trial of causes would be also abolished. I have tried two undefended causes this week, and paid for court fees in the Q.B. 3*l.* 15*s.* 6*d.*; and in the Ex. 4*l.* 1*s.* Surely it is high time that these exorbitant exactions should be reduced.

The attorneys' fees are cut down to a minimum point, but nothing is done to reduce their heavy payments.

By the 10th section of the Act, "a new table of fees" is to be prepared. Can you inform the Profession the cause of the delay?

I am, Sir, yours, &c.

London, Nov. 19, 1852. M. S. C.

CHANCERY FEES.

TO THE EDITOR OF THE LAW TIMES.

SIR,—No one but those who experience it can conceive the great inconvenience and delay caused to solicitors by the new system of paying fees in Chancery by stamps impressed on the various documents. Surely this might be remedied by allowing Chancery stamps to be bought and affixed like postage stamps, being of course, by the officers of the court, when presented, rendered incapable of being used again.

Such an arrangement would injure no one, and would be the greatest boon to the Profession, already harassed as it is to find the right path through the new practice. G. H.

SHAM LAWYERS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—The enclosed, which I cut from the *Times*, of Saturday, appears to me to be a fit subject for notice in the LAW TIMES.

I am, Sir, yours, &c.

Nov. 15, 1852. R. D. L.

PROTECTION TO THE EMBARRASSED.—There are thousands of persons who have long struggled against the force of misfortune, but few are aware that, under very recent Acts, all small traders owing less than 300*l.* clergymen, farmers, private and professional gentlemen, and all others owing to any amount (the latter without any publicity), can be entirely raised from their difficulties at small expense, and without imprisonment or bankruptcy. All such, Mr. WESTON (*late Secretary to the Chancery Reform Association*) begs will apply to him, by letter or personally, at 9, Bell-yard, Doctors'-commons.

THE MERCANTILE LAWYER.

IT has been held, in *Bibby* v. *Larpent*, 20 Law T. Rep. 64, that a deed of arrangement between a debtor and his creditors, stipulating that he shall still carry on the business under the control of inspectors, and in which he covenanted to use his endeavours to get in the debts and to conduct the affairs to a conclusion for the benefit of his creditors, and also, at the request of a majority of the inspectors, to get in his private property, excepting his household goods, plate, and the like, for the benefit of his creditors, was not a valid deed of arrangement with creditors under sec. 124 of the Bankruptcy Act, because it did not give up the whole property, but reserved the plate, &c.

A policy of insurance on goods on a voyage from Havannah to the Baltic, contained a stipulation that there should be a return of part of the premium if the voyage terminated in the United Kingdom. To a declaration on this policy the defendant pleaded the bankruptcy of the plaintiff. The plaintiff replied, that before the bankruptcy he had sold the goods insured to A. and had transferred to him the policy. Rejoinder, that before the bankruptcy the risk ended in the United Kingdom, whereby plaintiff became entitled to a return of part of the premium, which had not been made, and was still an outstanding claim on the policy. This was held to be no answer to the plea, because whatever claim the plaintiff had for a return of premium was not a set-off, but the subject of a separate action, and the right to which had passed to the assignees under the bankruptcy. (*Castelli* v. *Boddington*, 20 Law T. Rep. 64.)

A case of considerable importance is reported from the C.B. 20 Law T. Rep. 68. A. made a parol agreement with B. in France, to collect cigars for him, and consign them to him in England. A's

salary of 100*l.* a year. B. brought an action here against A. for not taking B. into his service as he had agreed. Will such an action lie? The Court held that it would not, for although such a contract was good according to the *lex loci*, it could not be enforced here, because it was not in accordance with the 4th sect. of the Statute of Frauds. "In literal terms," said MAULE, J. "this section does not say that no contract shall have any force, but that no action shall be brought. That applies to English Courts, and therefore its terms apply to something to take place in England, and prohibits it, unless the requisites of the statute are complied with."

THE ECCLESIASTICAL LAWYER.

THE cases in this branch of the law are so few that we have rarely occasion to introduce the department to which they belong. But there is one of some interest among the reports of last week. *Bryan* v. *Clay*, 20 Law T. Rep. 64, was an action for dilapidations against the executor of a deceased rector by his successor. Outstanding debts and *plene administravit præter* were pleaded. The question upon this was, whether debts should be preferred to dilapidations. It was held by the Q. B. that although by the custom of England such an action will lie, yet it is an incident of the custom that, in the order of payment, debts, whether simple contract or specialty, *should be preferred*, and consequently it was a good plea that the assets are sufficient only for payment of the debts.

We believe that in our leading article of Saturday, on the proceedings of Convocation on the previous day, we were in error in stating that Dr. Addams's opinion had been taken on the point whether the Act of Submission of the Clergy went further than the restraint upon making or debating canons. We were correct, however, in remarking that the most eminent advice, including the Attorney-General's, was entirely in favour of the power of Convocation to transact any business without royal license, short of making canons. We ought to have added, that opinions had been received from the highest civilians, and other legal authorities (including the Attorney-General's), to the effect that the power of the Archbishop in proroguing Convocation must be limited by the assent of the majority of the members of the Upper House. In other words, it has been advised that the consensus fratrum is necessary to prorogation. The importance of these legal opinions, at the present juncture, it is impossible to overrate.—*Morning Chronicle.*

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

Her Majesty having been pleased to appoint the Most. Hon. John, Marquis of Winchester, to be Lord-Lieutenant of the county of Southampton, and of the town of Southampton and county of the same, and also to appoint the Right Hon. William, Lord Bateman, to be Lord-Lieutenant and Custos-Rotulorum of the county of Hereford, their lordships respectively took the oaths appointed to be taken thereupon, instead of the oaths of allegiance and supremacy.

The Lord Chancellor has been pleased to appoint Arthur Burridge, esq. of Bridport, deputy-coroner for the county of Dorset, on the nomination of Samuel Skinner Cory, esq. one of her Majesty's coroners for the said county.

The Right Hon. Sir John Jervis has appointed Thomas Smith James, of Birmingham, in the county of Warwick, gent. to be one of the perpetual commissioners for taking the acknowledgments of deeds to be executed by married women, in and for the county of Warwick, also in and for the counties of Stafford and Worcester.

FACULTY OF ADVOCATES (SCOTLAND). — The Faculty of Advocates met on Saturday for the election of a dean, in the place of Mr. John Marshall, now a judge of the Court of Session, with the title of Lord Curriehill. On the motion of Mr. Penney, seconded by Mr. Moncrieff, M.P. the unanimous choice of the faculty fell upon Mr. John Inglis, the Lord-Advocate for Scotland. His lordship, in accepting the office of dean, addressed the faculty in an appropriate and very eloquent speech.

NEW QUEEN'S COUNSEL, IRELAND.—It is reported that eight gentlemen are about to be called, during the present Term, to the Inner Bar. Their names are—Mr. Hans Hamilton, the newly appointed assistant-barrister for Galway; Mr. Edmond Hayes, LL.D. law-adviser to the Castle; and Messrs. W. H. Brereton, John Herbert Otway, James Robinson, Hamilton Smythe, Patrick J. Blake, and Robert Longfield. Of these one gentleman (Mr. Blake) is a Roman Catholic.

INNER TEMPLE, Nov. 17.—The following members of this society have been called to the Bar, and were sworn in this evening in the hall:—Charles Platt, B.A.; Charles Joseph Trupp, M.A.; Julius Talbot Airey, esq.; Thomas Howard Fellows, esq.; John Copley Wray, M.A.; Francis James Roughton, esq.; William Eccles, B.A.; William Samuel Jones, esq.; James Oliver, esq.; George Alfred Lawrence, B.A.; Robert Heyrick Palmer, B.A.; John William Wray, esq.; Simeon Jacobs, esq.; Francis Newman Rogers, B.A.; George John Cayley, esq.; Downes Wigiesworth, B.A.; the Hon. Robert Bourke; Donat John Haste O'Brien, B.A.; John Paxton Norman, M.A.; Charles Frederick Lucas, esq.; Charles Neve Creswell, B.A.; Edward Bousfield Dawson, LL.B.; Charles Jeremiah Mayhew, esq.; Richard Formby, B.A.; Edward Hacking, esq.; Henry Francis Shebbeare, B.A.; William Henry Humphery, B.A.; Ewark Gibbon Salisbury, esq.; Thomas C. Mosson Meekins, B.A.; James John Hooper, esq.; and Thomas Freeman Morse.

MIDDLE TEMPLE, Nov. 17.—The following members of this society have been called to the Bar, and were sworn in this evening in the hall:—Messrs. George Thornton Hamilton, Francis Talfourd, Charles Robert Hickes, Morrton Revell Phillips, Frederick Watson Lloyd, John Whitcombe, William Philip Dymond, Thomas Dunnett, Henry Gawler, Joseph Graham, William Robert Wilkinson, and William Pearce.

LINCOLN'S-INN, Nov. 17.—The following members of this society have been called to the Bar, and were sworn in this evening in the hall:—Messrs. Richard Darrell Darrell, B.A. Walter Bagehot, William Knox Wigram, M.A. Frederick Boyd Marson, Codrington Thomas Parr, Edmund James, Arthur Benson Dickson, Samuel Greame Fenton, M.A. Joseph Adderly Chichele Helm, Richard Elwyn, M.A. Thomas Spicer Galland, M.A. William Pulley, John Coryton, B.A. and John Rowe Kelly Ralph, M.A.

GRAY'S-INN, Nov. 17.—At a Pension of the Honourable Society of Gray's-inn, holden this day, Edward Bullen, esq. of Trinity College, Dublin, M.A. was called to the degree of barrister-at-law.

COURT PAPERS.

House of Lords.

LIST OF APPEALS APPOINTED FOR HEARING IN SESSION 1853-53.

Andrewes v. Walton
Campbell or M'Laren (pauper) v. Fisher (part heard)
Earl of Stirling v. Officers of State of Scotland (part heard)
Bridge v. Fordyce
Broadley v. Stickley
Pollee and Govan Railway Company v. Newton
Rangor v. Great Western Railway Company
Edinburgh and Glasgow Railway Company v. the Provost of Linlithgow
Madocks v. Roberts
Christie v. Allan
Foler v. Graham
O'Connell v. Mansfield
Mayor, &c. of London v. Combe
Grantham Canal Navigation Company v. Hall
Maunsell et Ux. v. White
Gregory v. Duke of Brunswick
Herring and Another v. Cloberry
Dunn v. Lord Blantyre
Robertson (or Rennie) v. Mitchell
Emmens v. Elderton
Comerford v. Corley and Another
Bathie v. Flowerdew
Mansen v. Sir W. Baillie
Gosling v. Veley
Midland Great Western Railway of Ireland v. Leech
Same v. Edmond
Same v. Johnson
Reg. v. Gregory
Gibson the younger v. Small
Macdonald (or Morton) v. Lockhart, bart.
Gells v. Dickinson
Livingston (pauper) v. Presbytery of Hamilton
Gregory v. The Queen
Ferrie v. Ferrie (2 appeals)
Miller v. Small
Russell (or Dickson) v. Dickson
Cathcart, bart. v. Gammell
North British Bank v. Collins
Gammell v. the Commissioners of Woods and the Lord-Advocate of Scotland
Cullen v. Black
Anderson (pauper) v. Anderson
Eden, bart. v. Wilson
Grey v. Friar
Scottish Maripo Insurance Company of Glasgow v. Turner
Doe dem. Padwick v. Witcombe
Adamson v. Barbour
Parliamentary Trustees of the River Clyde, &c. v. Duncan
Wishart v. Wylie
Wishart v. Wylie (second appeal)
The Royal Bank of Scotland v. Gardyne
Gilmour v. Mare
Owen v. Homan
The Queen on the prosecution of Charles Edwards v. The South-Eastern Railway Company
Flowerdew v. M'Lachlan
Thorburn v. Barry
Campbell v. Lang
Ewing v. Wilson
Carter v. Dimmock
Sadlier v. Briggs
Enthoven v. Doyle
Inglis v. Inglis
Anderson v. Fitzgerald
Aberdeen Railway Company v. Blakie, Brothers
Collins v. Young
Jeffreys v. Boosey
Edinburgh and Glasgow Railway Company v. Sterling and Dunfermline Railway Company
Urquhart v. Urquhart
East, bart. v. Twyford
Egerton v. Earl Brownlow
Edinburgh Water Company and Another v. Hay
Willott v. Staniland and Anor.
Sheddon v. Patrick
Scott v. Scott
Hall Terrell v. Hutton

Court of Chancery.

ORDER OF COURT.

WEDNESDAY, NOVEMBER 10. — The Lord Chancellor directs that all office copies, and other copies of proceedings and documents, shall be counted after the rate of ninety words to the folio, and where the same or any portion thereof shall be written with columns containing figures, in every such case each figure or combination of figures representing a distinct denomination shall be counted as one word; therefore, 4,151*l.* 19*s.* 9*d.* would count as three words.

Rolls Court.

ADMISSION OF SOLICITORS.

THE Master of the Rolls has appointed Tuesday, the 23rd of November, at the Rolls Court, Chancery-lane, at four in the afternoon, for swearing solicitors.

CORRESPONDENCE.

MASTERS EXTRAORDINARY.

TO THE EDITOR OF THE LAW TIMES.

SIR,—A few months since a paragraph appeared in the LAW TIMES, by which Masters Extraordinary in Chancery were requested to transmit to the Lord Chancellor's secretary their names and addresses, together with the date of their several appointments.

I now observe that the Lord Chancellor (in his speech in the House of Lords) proposes to abolish the title of "Master Extraordinary," hitherto conferred by his Lordship for the time being, and formally gazetted, and in lieu thereof to appoint country agents to take affidavits, &c. upon payment of 20*s.* only, for such prerogative.

I am not aware what was the object of the return requested through your columns, but it seems only just that (whilst *compensation* is awarded to various officers of the court), some *reimbursement*, at least, should be made to those solicitors who, like myself, have paid nearly 10*l.* for their appointment within *the last twelve months.*

I am, Sir, yours, &c. J. G. B.

Cambridge, Nov. 17, 1852.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

RENOW.—On the 11th inst. at 111, Eaton-square, the Lady Georgiana Gurdon Rebow, of a daughter.

SIMONDS.—On the 15th inst. at Winchester, the wife of Robert W. Simonds, esq. solicitor, of a son.

SMALLPIECE.—On the 15th inst. at Rydinghurst, near Guildford, the wife of W. Haydon Smallpiece, esq. of a daughter.

MARRIAGES.

COUSTIN, Otto, esq. of Manheim, to Maria Ann, eldest daughter of the late Lieutenant-General Sir Edward Barnes, G.C.B. M.P. of Beech-hill-park, Barnet, at Lyncombe and Widcombe Church, Bath, on the 11th inst.

FENWICK, John Clervaulx, esq. of Newcastle-upon-Tyne, to Ellen, youngest daughter of William Benning, esq. of Fleet-street, and niece of the late T. C. Granger, esq. Q.C. M.P. for the city of Durham, and Recorder of Hull, on the 17th inst. at St. John's, Notting-hill, London, by the Rev. Edward Auriol, M.A. Rector of St. Dunstan-in-the-West.

THARP, Joseph Sidney, esq. of Chippenham-park, Cambridgeshire, to Laura, fourth daughter of the late, and sister of the present, Right Hon. Sir John Trollope, bart. M.P. of Casewick, Lincolnshire, at St. Mary's Church, Marylebone, on the 11th inst.

DEATHS.

ADDISON, Major-General Thomas Fenn, of Chilton-lodge, near Sudbury, Suffolk, J.P. for the counties of Essex and Suffolk, on the 11th inst. suddenly, in London, aged 79.

BAKER, Alfred Ernest, son of Mr. Thomas Baker, of Lime-street and the Paragon, solicitor, on the 15th inst. at the Paragon, New Kent-road.

COLLINS, Ellen, wife of John Stratford Collins, esq. jun. barrister-at-law, and only surviving daughter of John Lloyd, esq. of Lloydsborough, county of Tipperary, on the 10th inst. at Dublin.

HASSELL, Edward, esq. member of the Society of British Artists, on the 3rd inst. at Lancaster.

NEAL, Rosa Cooper, only daughter of the late Mr. T. I. C. Neal, and niece of Mr. W. S. Sutton, solicitor, of Birmingham, on the 8th inst. aged 20.

NOTICES OF NEW LAW BOOKS.

The Lawyer's Companion for 1853. London: Stevens and Norton.

THIS work has been much improved in the hands of its new proprietors. The paper is of better quality, it is better printed, and more care is bestowed upon its details. It contains a Law List, in addition to the ordinary contents of a Solicitor's Diary, and the same variety of information on matters required for office reference as is found in all the almanacs, as stamp and tax tables, &c. Thus it is complete for its purpose, and it is published in various sizes to suit the requirements of different offices. Practically, it is a substitute for the Law List, to which it must be a formidable rival.

DIARY OF SALES BY AUCTION, DURING THE NEXT WEEK,

ADVERTISED IN THE "LAW TIMES."

DAY.	PLACE.	AUCTIONEER.	WHEN ADVERTISED.	PROPERTY.
Wednesday, Nov. 28	Mart.	Smith and Son.	Nov. 6.	Important Estate of Gnaton.
Ibid.	Mornington-rd.	Deeks.	Nov. 20.	Leasehold Residence, 8, Mornington-road.
Ibid.	Mart.	Davis and Vigers.	Ibid.	Seven Freehold Messuages, Peckham.
Ibid.	Ibid.	Ditto.	Ibid.	Family Residence and Large Workshops.
Ibid.	Ibid.	Ditto.	Ibid.	Freehold Property in the heart of London.

LEGAL INTELLIGENCE.

THE NEW JUDGE OF THE COURT OF SESSION.—The Inner House of the Court of Session (Scotland) commenced its sittings on Friday week, after the long vacation. At the opening of the Court the whole of the judges, with the exception of Lord Rutherford, who was absent from indisposition, assembled in the First Division, for the purpose of going through the preliminary forms for the installation of John Marshall, esq. as a judge, in the place of Lord Mackenzie, resigned. Mr. Marshall presented his commission, which was read, and he was appointed to sit as Lord Probationer with Lord Anderson. He sat accordingly, and having heard a case, reported it and his opinion thereon to the Court, and thereafter sat for the hearing of another case, which he reported on Saturday, and thus completed his trials in the Outer House. After hearing a case in the First Division, he will be duly inducted into office, and take his seat on the bench as Lord Marshal.—*North British Mail.*

MONEY MARKET.

ENGLISH FUNDS.	Sat.	Mon.	Tues.	Wed.	Thurs.	Fri.
Bank Stock	..	..	221¼	221¼	Stock Exchange closed.	222½
3 ℔ Cent. Reduced Annuities	99⅝	99⅞	99⅝	99⅝		100
3 ℔ Cent. Consols Annuities	100⅛	100⅛	100⅛	100¼		100⅞
Consols for Account	100⅛	100⅛	100⅛	100⅜		100⅝
New 5 ℔ Cent. Annuities	..	..	..	..		..
New 3½ ℔ Cent. Annuities	102⅜	102⅜	102⅜	103		..
Long Annu. (exp. [illegible], 1860)	..	..	6⅛	6⅛		..
Do. 30 yrs. (exp. [illegible]10, 1859)	..	..	6¼	..		..
Do. 30 yrs. (exp. Jan. 5, 1860)	..	..	..	..		..
India Stock	275½	..	..	..		277
India Bonds (1,000*l.*)	33	35	34	31		..
Do. do. (under 1,000*l.*)	..	..	34	31		..
South Sea Stock	111	..	..	..		..
Do. do. New Annuities	..	..	..	..		..
Exchequer Bills, 1,000*l.* June	73*	73*	73*	73*		70
Do. do. 500*l.* June	73*	73*	73*	..		..
Do. do. Small, June	73*	73*	73*	73*		..

* Premium.

THE GAZETTES.

Bankrupts.

Gazette, Nov. 16.

ARUNDEL, BENJAMIN, builder, Westbury, Wiltshire, Nov. 20, at half-past twelve, Dec. 17, at twelve, Basinghall-st. Off. as. Nicholson. Sols. Sewell, Fox, and Sewell, 51, Old Broad-st. City; and Payne and Bartrum, Bath. Petition, Nov. 6.

BARLEYMAN, WILLIAM, carpenter, Feering, Essex, Nov. 26, at two, and Dec. 26, at one, Basinghall-st. Off. as. Graham. Sols. Vallance, Esser-st. Strand; Blood, Witham, Essex. Petition, Nov. 12.

BARTON, JAMES, brewer, Sutton Vallence, Kent, Nov. 26 and Dec. 21, at twelve, Basinghall-st. Off. as. Whitmore. Sols. Church and Langdale, 38, Southampton-buildings, Chancery-lane; and Hart and Kipping, Maidstone. Petition, Nov. 12.

BECKETT, JOHN, coal merchant, Reading, Berkshire, Nov. 30, at two, and Dec. 21, at one, Basinghall-st. Off. as. Groom. Sols. Hill and Heald, 28, Throgmorton-st.; Slocombe, Reading. Petition, Nov. 5.

FAWKNER, WILLIAM, licensed victualler, Kidderminster, Worcestershire, Nov. 27 and Dec. 18, at ten, Birmingham. Off. as. Whitmore. Sols. Sanders and Son, Kidderminster; and Motteram, Knight, and Emmett, Birmingham. Petition, Nov. 11.

HILL, JOHN, builder, Prospect-place, Holloway-road, Nov. 26, at half-past two, and Dec. 21, at two, Basinghall-st. Off. as. Groom. Sol. Taylor, 15, South-st. Finsbury-square. Petition, Nov. 10.

HOLLAND, WILLIAM HENRY, and BRADBURN, RICHARD, commission agents, Manchester, Nov. 29 and Dec. 22, at twelve, Manchester. Off. as. Fraser. Sols. Heath, Manchester; and Jaques, Edwards, Jaques, and Lawton, Ely-place. Petition, Nov. 8.

JAMES, GEORGE EDWIN, draper, Brierly-hill, Staffordshire, Nov. 24 and Dec. 21, at eleven, Birmingham. Off. as. Bittleston. Sol. Baker, Birmingham. Petition, Nov. 9.

MERCHANT, JOSHUA, merchant, Fenchurch-st. Nov. 26, at half-past one, and Jan. 8, at twelve, Basinghall-st. Off. as. Pennell. Sols. Laurence and Plews, 14, Old Jewry-chambers. Petition, Nov. 10.

WARREN, JOSEPH, stationer, Ramsgate, Nov. 23, at half-past twelve, Dec. 23, at twelve, Basinghall-st. Off. as. Bell. Sol. A. Goddard, King-st. Cheapside. Petition, Nov. 9.

Dividends.

BANKRUPT ESTATES.

Official Assignees are given, to whom apply for the Dividends.

Carne and Tolo, merchants, third, 3d. Bird, Liverpool.—*Carter*, J. victualler, first, 2s. 11d. Miller, Bristol.—*Fisher*, B. currier, first, 6s. Miller, Bristol.—*Fowke*, R. chemist, final, 0¾d. Whitmore, Birmingham.—*Harris*, A. wool broker, first, 5s. 4d. Miller, Bristol.—*Nicholson*, J. ironmonger, first, 2s. 4d. Baker, Newcastle.—*Rymer*, J. paper manufacturer, first and final, 1s. 10d. Wakley, Newcastle.—*Welsh*, R. woollen cloth merchant, second, 1s. 1½d. Freeman, Leeds.

INSOLVENTS' ESTATES.

Apply at the Provisional Assignee's Office, Portugal-street, Lincoln's-inn-fields, London, between the hours of eleven and three.

Bushby, W. esquire, 1¾d.—*Cooper*, F. F. author and reporter, 1s. 0¼d.—*Doherty*, H. cornet on half-pay, 20s.—*Foster*, J. H. agent for the sale of linens, &c. 1s. 1¾d.—*Tillett*, G. toyman, &c. 2s. 1¾d.—*Williamson*, E. R. traveller, 6s. 4¾d.

Assignments for the Benefit of Creditors.

Gazette, Nov. 9.

Alcott, J. upholsterer and paper hanger, Rugby, Oct. 30. Trusts. W. Mason, broker, and T. Bradshaw, coal dealer, both of Rugby. Sols. Harris and Son, Rugby.—*Ashley*, T. builder, Lyonshall, Hereford, Nov. 5. Trust. J. Taylor, farmer, Horsewayhead, Stanton-upon-Arrow. Sol. R. Bodenham, Kington.—*Smith*, J. farmer and shopkeeper, Mile-end, Colchester, Oct. 19. Trusts. T. Daniel, brewer, West Bergholt, and T. Gall, shopkeeper, Colchester. Sol. H. S. Goody, Colchester.—*Warren*, J. musical instrument maker and dealer in fancy goods, Ramsgate, Nov. 3. Trusts. F. Futvoye, jeweller and importer, Beak-st. Golden-square, and G. R. Metsler, pianoforte maker, Great Marlborough-st. Sols. Futvoye, Sawtell, and Lightfoot, John-st. Bedford-row.

Gazette, Nov. 12.

Gerring, J. baker and grocer, Ufflington, Berks, Nov. 8. Trusts. O. Gerring, grocer, Faringdon, and R. Crook, miller, Woolstone. Sol. G. F. Crowdy, Faringdon.—*Leach*, H. victualler, Wincanton, Somerset, Nov. 8. Trust. C. M Vining, baker, Wincanton. Sol. J. W. Jillard, Wincanton.—*Mockett*, W. grocer and general dealer, Reigate, Surrey, Nov. 3. Trusts. M. Bowyer, miller, Betchworth, and T. Wood, grocer, Dorking. Sol. C. J. Smith, Reigate.—*Reynolds*, G. tailor, Old Cavendish-st. Oxford-st. Nov. 2. Trust. J. Hardy, woollen warehouseman, New Bond-st. Sol. J. W. Jillard, Wincanton.—*Spicer*, J. F. G. paper maker, Glory Mills, Wooburn, Buckingham, Nov. 2. Trusts. W. McMurray, rag merchant, Queen-st. Cheapside; Turner, R. silk mercer, Ludgate-hill; and G. Tidcombe, engineer, Watford. Sol. C. Rivington, Fenchurch-buildings.—*Turner*, J. jeweller, Strand, Middlesex, Nov. 8. Trusts. W. King, wholesale jeweller, Bridgewater-square, and C. Hawkesworth, silversmith, Sheffield. Sol. A. J. Baylis, Redcross-st.

Partnerships Dissolved.

Gazette, Nov. 5.

Alexander, A. and N. H. wholesale jewellers, Hatton-garden and George-st. Minories, Oct. 20.—*Axson*, J. and *Davies*, G. joiners and packing-case makers, Manchester, Nov. 1. *Debts* paid by Axson.—*Bamber*, J. and *Cornett*, G. ginger beer manufacturers, &c. Liverpool, Nov. 3. Debts paid by Cornett.—*Barnes*, J. gentleman, Church, near Accrington, *Greenwood*, J. and *Barnes*, J. jun. turkey red dyers, Irwell Springs, near Bacup, and *Barnes*, E. surgeon, Leyland, Oct. 28. Debts paid by J. Barnes.—*Barrow*, R. B. and *Townsend*, J. P. attorneys and solicitors, Southwell, Nov 1.—*Blakeley*, R., G. J., and R. merchants, as regards B. Blakeley, Dewsbury, Dec. 31.—*Blanco*, A. R. and *Lindsay*, J. agents and merchants, Manchester, Nov. 3. Debts paid by Blanco.—*Bull*, E. and *Wilson*, W. E. merchants and factors, Birmingham, Oct. 30.—*Buttrum*, F. and F. millers and corn merchants, Ipswich, June 16.—*Coffey*, J. A. and *Smith*, J. coppersmiths, &c. Providence-row, Finsbury, Nov. 2. Debts paid by Coffey.—*Day*, E. and *Heuseman*, H. grocers, Edgware-road, Oct. 30.—*De Ville*, E. and *Bacon*, F. gas fitters, Elizabeth-st. Pimlico, Oct. 21.—*Hammond*, G. deceased, and S. flax and tow spinners, Leeds, June 17.—*Leonard*, R. *Jordan*, H. B. and *Leonard*, W. soda manufacturers, Bristol, Sept. 30. Debts paid by Jordan and W. Leonard.—*O'Flaherty*, T. A. and *Griffith*, S. C. surgeons, Baker-st. Portman-sq. and James-st. Oxford-st. Nov. 4.—*Pashley*, J. and *Wood*, W. shipwrights, Hull, Nov. 3. Debts paid by Pashley.—*Rapsey*, C. and *Row*, M. M. milliners and dressmakers, Bristol, Nov. 4. Debts paid by Row.—*Rawlinson*, W. and *Haworth*, T. manufacturers of cotton cloth, Rakehead, near Burnley, Nov. 2.—*Thompson*, F. and *Midgley*, J. H. merchants and commission agents, Liverpool, Nov. 1.—*Travis*, J. and E. cotton spinners, Lusley-brook, within Royton, Oct. 7. Debts paid by E. Travis.—*Walcot*, T. and *Carr*, W. solicitors and attorneys, Swithin's-lane, June 30. Debts paid by Walcot.—*Walker*, G. J. and H. G. coach makers, White Lion-st. Spitalfields, Nov. 1. Debts paid by G. J. Walker.—*Wells*, J. and *Cameron*, W. blacksmiths and shipwrights, Liverpool. Nov. 1.

Gazette, Nov. 9.

Botham, W. and G. gardeners, seedsmen, and florists, Bilton-with-Harrogate, as regards W. Botham, Oct. 27. Debts paid by G. Botham.—*Burdis*, G. jun. and E. F. coal merchants, Belmont-wharf, Limehouse, Nov. 4. Debts paid by — Burdis.—*Carley*, A. and J. farmers and graziers, Benefield-lodge, near Oundle, Oct. 11.—*Cheatham*, J. and *Dixon*, J. tanners, Wolsingham, Oct. 26. Debts paid by Cheatham.—*Eyre*, S. R. and *Hanson*, J. architects and surveyors, Liverpool, Nov. 2. Debts paid by Eyre.—*Gosker*, T. jun. and C. butchers and meat salesmen, Ipswich, Brentford-in-Bow, and Newgate-market, Nov. 6.—*Gold*, C. jun. and *Tuck*, J. jun. wholesale and retail cheesemongers and provision merchants, Spur-st. Leicester-square, Nov. 8.—*Hill*, A. Kitchen, A. and *Moore*, J. joiners and builders, Bowling, near Bradford, Nov. 3. Debts paid by Kitchen and Moore.—*Morris*, L. and *Delessinne*, C. chemical grease manufacturers, Bradford, Oct. 20.—*Hyams*, J. B. and *Mitchell*, T. E. surgeons and apothecaries, Liverpool, Nov. 6. Debts paid by Mitchell.—*Kidd*, A. and *Thomson*, A. iron founders and machine makers, Kendal, Nov. 6. Debts paid by Thomson.—*Meakin*, J. and *Wyllie*, S. E. common brewers, Burton-upon-Trent, Nov. 4.—*Morley*, J. P. and W. P. silk throwsters, Derby, Nov. 4.—*Shaw*, H. and G. and *Thompson*, J. cotton spinners and doublers, Haslehurst, near Ashton-under-Lyne, Nov. 4.—*Skillman*, B. and *Palmer*, H. mining agents, Scott's-yard, Bush-lane, Cannon-st. Nov. 3.—*Standen*, W. sen. and *Selmes*, J. and J. jun. farmers and graziers, Peasmarsh and Beckley, Oct. 11. Debts paid by J. Selmes, sen.—*Thomson*, J. and *Hood*, J. corn merchants and commission agents, Berwick-upon-Tweed, Nov. 4. Debts paid by Hood.—*Todd*, J. *Coston*, E. and *Thomas*, H. merchants, Manchester, as regards Thomas, Nov. 4. Debts paid by remaining partners.

Gazette, Nov. 12.

Ashby, J. and *Payne*, T. cheesemongers and provisionmen, King's-road, Chelsea, Nov. 6. Debts paid by Ashby.—*Bailey*, W. and H. smiths and bell-hangers, Porter-st. Soho, Nov. 1. Debts paid by H. Bailey.—*Butterworth*, J. and *Ogden*, J. warp sizers, Pilkington, Oct. 6. Debts paid by Butterworth.—*Case*, J. and S. (dec.) grocers and tallow chandlers, York, Sept. 6, 1850.—*Entwistle*, W. and C. and *Slater*, N. drill and gingham manufacturers, Salford, as regards C. Entwistle, July 30. Debts paid by W. Entwistle and Slater.—*Gayford*, G. and H. C. and *Wigg*, W. farmers, Croxton, Oct. 25. Debts paid by G. Gayford.—*Harpin*, J. and W. brokers, Liverpool, Nov. 1.—*Hopkins*, F. and *Lay*, H. stationers, &c. Bishopsgate-st.-within, Nov. 9.—*Hutton*, E. and *Banner*, F. G. Watling-st. Nov. 12. Debts paid by Banner.—*Kidson*, J. sen. and J. jun. tailors and drapers, Manchester, July 1. Debts paid by Kidson, jun.—*Meredith*, C. *Hine*, J. L. and *Marsh*, E. law stationers, Manchester, Nov. 4. Debts paid by Meredith.—*McMurrie*, R. J. and *Shannon*, J. jun. linen drapers, Liverpool, Oct. 18, Debts paid by McMurdie.—*Morgan*, W. and *Washbrook*, J. P. shipping agents and general merchants, Bristol, Oct. 9.—*Peachey*, C. West Firle, and *Peachey*, C. West Tarring, farmers, July 24. Debts paid by Peachey, West Tarring.—*Pearce*, J. and T. grocers and ironmongers, Ross, June 24. Debts paid by J. Pearce.—*Pist*, R. and D. farmers, Great Wenham, Oct. 11, 1845.—*Webster*, J. and M. woollen yarn manufacturers, Horbury, Nov. 1.—*Woolland*, R. and *Hooppell*, N. auctioneers and appraisers, Plymouth, Nov. 3. Debts paid by Woolland.

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To Readers and Correspondents.

"T. O.'s" *letter on the County Courts case is manifestly inadmissible. It would be a dangerous precedent to publish anything relating to a judgment pending.*

"Scrutator."—*The objection to the memorandum on the writ is scarcely worth notice. It involves no practical difficulties.*

"Verb. Sap."—*Not having room for it here, we have given his letter to the Editor of "The Magistrate," where it will appear, and to which it is more appropriate.*

"Omega."—*Certainly she cannot.*

"A Master Extraordinary" (Bradford) *will see that the subject of his letter has already attracted attention; it is, therefore unnecessary to repeat the protest against the contemplated injustice. The same observation applies to the communications of "One of the Condemned," "K. D. G." "A Master Extraordinary" (Stockton), "An Old Admirer," and others.*

"Luard," *is unavoidably postponed, on account of the length of his letter. We must again urge brevity upon our correspondents.*

"G. L." (Tewkesbury).—*Thanks for the suggestion. Probably we shall make use of it.*

"A Subscriber."—*The constable is not liable for expenses of witnesses bound over by the justices.*

"G. A."—*Mr. Marshall has often figured in these columns, but he is proof against it.*

"T. J."—*A. commits an indictable offence.*

"C. B" *could not do better than read up with great care the New Common Law and Chancery Procedure Acts.*

"T. N." (Wigan).—*Such conduct is thoroughly unjustifiable, and the best mode of treating it is with contempt. Always be above a personal slight.*

"A Clerk." (Gray's-inn).—*Sue under the Procedure Act.*

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NEW TABLES of FEES.—MR. CROCKFORD announces that the NEW TABLES of FEES will be introduced into the SECOND EDITION of KERR'S COMMON LAW PROCEDURE ACT, now in the press, and which will also contain all the Cases decided upon the New Practice during Michaelmas Term, with additional and corrected Forms, Notes, and Index. The *First Edition* is out of print. Such was the demand for it, that it was exhausted in a fortnight.

Orders for the Second Edition should be forwarded immediately, to secure early copies.

On Saturday next,

THE LAW TIMES ALMANAC for 1853 will be ready on the first week in December. It will contain the Time Tables of all the Courts, corrected to the new practice, in addition to the usual contents required for reference in offices.

THE LAW TIMES.

SATURDAY, NOVEMBER 27, 1852.

NEW TABLE OF FEES IN THE COMMON LAW COURTS.

The New Table of Fees is issued, and will be found in its proper place among the Court Papers in another page. It makes many and great reductions, for which the Profession and the Public will be equally grateful. The practical effect of the enormous fees of Court has been to inflict a double injury upon the Attorneys. Not only have they diminished law by deterring clients from resorting to it for redress where there was any doubt as to the capacity of defendant to pay the debt and costs, but they brought much positive discredit upon the Profession, who were compelled to bear the brunt of the displeasure produced by heavy bills of costs, of which, in fact, a considerable portion consisted of moneys paid out of pocket in Court fees. But of this clients could or would understand nought. They glanced at the sum total of their bills, set down to the account of the Lawyer the entire of the charge, and then went about abusing the Attorney for a bill of which a considerable portion was really inflicted upon them by the Court, and not by the Lawyer. Nor was this all the inconvenience and annoyance produced to the Profession by the large fees of Court. The Attorney is obliged to pay them, in the first instance, out of his own pocket, whatever the issue of the cause or the credit of his client. Now every Attorney knows, to his grievous discomfort, how often clients prove to be insolvent when the bill is sent in; how large an item must be deducted from his annual accounts for bad debts. The Court fees he was compelled to pay at every stage of the proceedings constituted a considerable part of those bad debts, and immensely aggravated his actual losses. To the country Attorney they were a grievance in another shape—they swelled his agent's bills; while to the agent they were vexatious, by requiring him to make large advances long before he could hope for repayment.

Therefore, to the Profession, the liberal reduction made in the Court fees by the Judges, with the sanction of the Treasury, must be esteemed a great and welcome boon, and it will doubtless help to swell the stream of business which has been so sensibly rising under the beneficial operation of the Common Law Procedure Act.

But there is one portion of the New Scale of Fees against which we must protest emphatically—the charge of *sixpence* for office copies. That is altogether exorbitant. The charge of a law stationer would be twopence. Why should suitors be compelled to pay more? In Chancery, the charge for office copies has been reduced to *fourpence*, and the Lord Chancellor promises a further reduction. Why should the Common Law Courts put on a higher price for the same work? We trust that this was an accidental oversight of the Judges by whom the scale was prepared, and that the earliest opportunity will be taken to remedy the defect.

LAW LOOKING UP.

As we had ventured to anticipate, the effect of the facilities afforded by the new procedure for the recovery of debts and *undisputed* demands, has been to produce a marked increase in the number of writs issued.

In the year 1851, there issued between the 24th October and the 20th November, from—

The Queen's Bench	2,163
The Common Pleas	1,481
The Exchequer	2,828
Total	6,472

In the present year, since the Procedure Act has been in operation, the numbers issued during the same period have been,—

The Queen's Bench	2,415
The Common Pleas	1,829
The Exchequer	3,293
Total	7,537

Shewing a total result as follows:—

In 1851	6,472
In 1852	7,537
Increase in 1852	1,065

This result proves, also, an assertion we have often made, but which some of our readers have questioned, that rational law *reform* (as distinguished from the free trade in law advocated by a few disappointed "seniors," and some enthusiastic "juniors"), will be a positive benefit to the Attorneys, however injurious it may be to the interests of the Bar.

For there is this distinction to be observed in the bearing of law reforms upon the welfare of the two branches of the Profession. Let law be simplified ever so much, the public who require law *must* employ an Attorney to do it for them; and the effect of cheapening law is only to induce a great many more people to avail themselves of it, *and consequently to employ an Attorney*, than otherwise would do so. But it is not thus with the Bar. The simplifying of the law makes the employment of a Barrister less necessary, for it enables the Attorney to do for himself the work for which, when the law was more complex, he was obliged to go to Counsel. Unless the effect of the increased number of writs is to produce more *trials*, the Bar loses the greater portion of the business that formerly employed it in the processes preliminary to trial. And even if *trials* should increase, the briefs thus added will not be distributed among the whole Bar, but will necessarily be limited to the few who have obtained a reputation as Advocates; so that no compensation can possibly come to the juniors for the large amount of emolument of which they have been deprived by the simplifying and cheapening of process.

We believe that so it will be found with all other law reforms that may be introduced. They will improve the fortunes of the Attorneys, and reduce those of the Bar; and whatever regret may be felt for the depression of the latter, we cannot discover any means by which it may be avoided. It is part of the great change that is taking place in society, and they whose misfortune it is to suffer by it have no choice but to submit, with what resignation they can muster, to an inevitable destiny. Happily, Australia is open to receive our excessive numbers, and "the diggins" offer far more certain and more dazzling fortunes than the lottery of Westminster Hall.

MASTERS EXTRAORDINARY.

The Lord Chancellor has announced his intention to abolish this somewhat needless office; but not a word was said of the compensation to which the present holders are entitled for being deprived, without any fault of their own, of that for which they have paid a large fee.

But, perhaps, we should not call it *compensation*, lest our meaning be misunderstood. On the part of the Profession, we do not ask for any payment for loss of profits. We ask only for a return of the fees paid for the giving of that of which they are now to be deprived.

Lord St. Leonards is strictly, nay, sternly, *just*, and we have no doubt that he will accompany a change, in itself to be commended, with provisions which shall prevent it from operating unfairly upon those who have purchased, at a cost of 12*l.* or so, a post of honour and profit, on the understanding that it was to be theirs for life.

We are sure that his Lordship, on reading this respectful statement of the claim, will take good care that justice shall be done.

We can assure the numerous correspondents who have loaded our table with letters on this subject, that it shall have our most vigilant attention. If, when the measure is produced, it omits to provide that full relief to which they are entitled, we will take care that their claims shall be urged in the most effective, if not in the most noisy, form. The same influences that have done them good service so often before, will do it again, and they may rest in the assurance that, if any

active measures on their part should be necessary, we will take care to give them timely warning when to bestir themselves. But we do not believe that any movement will be required but that the LORD CHANCELLOR'S measure will itself protect their interests.

LAW REFORM IN IRELAND.

THE SOLICITOR-GENERAL for Ireland has startled the Lawyers in both countries by a Bill for the reform of the practice of the common-law courts, so far in advance of our own Procedure Act as to put the Commission to the blush for its short-comings. This Bill boldly abolishes the system of pleading which our Act has only a little amended. It adopts the practice of the County Courts, which experience has proved to be perfectly efficient for the ends of justice, of a statement of the cause of action in the plaint and summons, without more, and special defences, in the language of common sense, and it adds the further improvement of requiring all statements in the nature of pleadings to be upon oath, thus, at one sweep, abolishing sham, false, and frivolous pleas, and making the preliminary to a trial as truthful as the trial itself. These are the boldest innovations; but there are many minor ones that might have been worthily introduced in England.

THE BAR AND THE ATTORNEYS.

WHY should it be required of the Attorney that he should abandon his practice, and live as best he can, for three years before he can be called to the Bar, and so licensed to practise as an Advocate?

No other reason can be assigned for this than that which was probably its true origin, a desire to prevent, or at least to throw impediments in the way of, Attorneys desirous of going to the Bar from following their inclination. That it does so operate in fact we know from personal experience. It was only at a great sacrifice of present advantage, and amid difficulties that they only can understand who have proved them, that we were enabled to pursue the bent of a natural taste, and to overleap the artificial impediment thus placed in the way of aspirants in the other branch of the Profession. To how many is that a hopeless obstacle?

And yet there is no argument by which the existing rule can be justified. From the very course of his education, his previous studies and practice, tested by a severe examination into his proficiency as a condition of his calling, an Attorney is the most competent of all conceivable candidates for admission to the Bar. Necessarily he must be vastly more apt for the business of the Profession than a youth fresh from college, or a raw pupil from the chambers of a pleader or conveyancer. The Attorney is already accomplished in the greater portion of the knowledge and experience required for an Advocate. Wherefore, then, should he be required to cease from practising his profession, to abandon the very means by which he is qualifying himself to practise in his new pursuit, for three whole years before he can be admitted to the other branch of it?

It is quite time that this barrier should be thrown down. An Attorney should find a *more ready* admission to the Bar than another, as being better qualified, instead of being subjected to disadvantages, and his knowledge of the law and practice looked upon as a *dis*qualification. Why should not an Attorney be allowed to continue his practice up to the moment of his call? Or why should not an Attorney be admissible to the Bar at any time, merely by proving himself to be qualified, by an examination to which all candidates for the Bar ought to be, and we trust will soon be, subjected? This is the measure of justice which we claim for the Attorneys. Not, indeed, that many would be found to avail themselves of the privilege; for, as things are, and are likely to be, the Bar will offer but small inducement to any man of ability to quit the more profitable branch of the Profession for that in which the prospects of success are infinitely more distant; and if it comes, the work is greater and the gain less. There is no fear of the already over-peopled Bar being deluged with recruits from the ranks of the Attorneys, even if the passage from one to the other were nothing more than the putting on of the wig; for the Attorneys know that their present and future are vastly better than those of the Bar. But the barrier that has been erected against them is a reproach to the entire body; it says, in effect, that an Attorney must be purged by a three years' probation of something objectionable, which is assumed to attach to him by reason of his having been an Attorney. This species of professional quarantine is an imputation upon the social or moral characters of those upon whom it is imposed, and therefore its removal is one of those minor reforms which ought to be demanded by one branch of the Profession and gracefully conceded by the other. We believe that both would profit by the change.

PRACTICAL WORKING OF THE PROCEDURE ACT.

THE Common Law Procedure Act has had a Term's trial, and upon the whole it has been found to work better than was anticipated. That the reform effected by it falls far short of the requirements, will be admitted by all; and indeed the measure which the Government has proposed for Ireland not only eclipses our own, but shews the precise extent of its short-comings: we know now what we ought to have had, and have not, and what more we have a right to demand. But, so far as it has gone, the reform of the Common Law Courts has equalled the expectations of its framers. That so few doubts should have arisen upon the construction of so long a statute is in itself evidence that it was carefully prepared. We understand that in the Judges' chambers there has been a considerable increase of work; but all the points raised have been readily disposed of; and it is at least an indication that they were not very complicated or doubtful, that there has not been, we believe, a single appeal from any decision of a Judge in chambers. We hear, too, that there has been a large increase in the number of writs issued, principally with special indorsements; proving that the Profession are already availing themselves of the great facilities thus afforded for the recovery of undisputed demands, and for which the Superior Courts now offer immense advantages over the County Courts, both as respects cheapness, speed, and efficiency of process. The only thing required to *perfect* this portion of the machinery of the Common Law Courts is to give to them a concurrent jurisdiction with the County Courts in all claims of 10*l.* and upwards, so as to enable suitors to avail themselves, if they please, of the greater advantages now offered to them in the Superior Courts for the recovery of debts and undisputed demands. It is extremely unjust and inconvenient that a suitor should be compelled to go to the more costly and less efficacious County Court, when he could obtain justice so much more speedily and cheaply in the Superior Courts. It was right, when the latter were so cumbrous and costly, that a plaintiff should not be permitted to impose upon the defendant the expenses of a dear tribunal when he could obtain the same end in a cheap one. But that reason no longer exists; nay, the case is reversed, and, as *it is*, the plaintiff is compelled to go to the more expensive and dilatory court, instead of to the cheapest and speediest. We would recommend this to Lord CAMPBELL, who might worthily introduce a bill giving concurrent jurisdiction to the Superior Courts in all demands at or above 10*l.* It would be a becoming addition to the Act of last session, which he was so instrumental in passing.

It will be seen by the LORD CHANCELLOR'S speech on the Law Reform to be proposed by the Government, that no further alterations or extensions of the New Procedure Act are contemplated, at least for the present.

HINTS TO BUSY PRACTITIONERS.

[Under this title we propose from time to time to remind the practitioner of useful facts which, amid the claims of business and the flood of changes in the law, he may possibly have overlooked. As we also may overlook many, we shall be obliged by "hints" from any of our readers.]

AFFIDAVIT OF SERVICE OF THE WRIT OF SUMMONS.

THE affidavit of the service of a writ of summons must in all cases (according to the case of *Wakeley* v. *Teesdale*) shew that the writ has been endorsed in accordance with the provisions of the statute. It ought to be in the following form:—

In the Queen's Bench,

Between { *[John Nokes], plaintiff,* and *[Thomas Styles], defendant.*

[John Jones], of in the county of [gentleman], maketh oath and saith, that he this deponent did on [Monday] the [first] day of [November], in the year of our Lord one thousand eight hundred and fifty [two], personally serve [Mr. Thomas Styles] the above-named defendant with a true copy of a Writ of Summons, which appeared to this deponent to have been regularly issued out of and under the seal of this honourable Court, at the suit of the above-named plaintiff against the above-named defendant, and dated the [twenty-fifth] day of [October] in the year of our Lord one thousand eight hundred and fifty [two], to which said writ and copy a memorandum was subscribed, and on which said writ and copy endorsements were made according to the Common Law Procedure Act, 1852, a true copy of which writ, and of the memorandum thereto and several endorsements thereon, is hereunto annexed, marked [A]. And this deponent further saith, that he did afterwards on [Wednesday] the [third] day of [said month of November] endorse on the said writ the day of the month and week of such service, according to the Common Law Procedure Act, 1852.

Sworn, &c.

Note.—This form of affidavit should be inserted on p. 13 of KERR'S *Common Law Procedure Act*, some of the copies of that work not having the reprinted sheet.

AN ACTION AT LAW UNDER THE NEW PRACTICE.

ARTICLE II.

THE most simple course after issuing the writ of summons, is to serve the defendant or defendants therewith; but there are several other circumstances which may arise previously, and in these articles the order in which proceedings actually arise will, as far as it is at all convenient, be preserved.

CONCURRENT WRITS.

When it is desired to effect service of the writ speedily, and there are several defendants living in different places, or it is not known in which of several places the defendant will be found, it is very convenient to issue *concurrent writs*. The plaintiff is allowed this facility, for he may at any time, during six months from the issuing of the original writ of summons, issue one or more concurrent writ or writs, each concurrent writ to bear teste of the same day as the original writ, and to be marked with a seal bearing the word "concurrent," and the date of issuing the concurrent writ, and such seal is to be impressed upon the writ by the proper officer of the court out of which the original writ issued. (Sec. 9.) If the doubt be whether the defendant is within the jurisdiction or not, concurrent writs of the same form would be of no use; to meet this case, a writ for service within the jurisdiction may be issued, and marked as a concurrent writ, with one for service out of the jurisdiction; and a writ for service out of the jurisdiction may be issued, and marked as a concurrent writ, with one for service within the jurisdiction. (Sec. 22.) But such concurrent writ, or writs, are only in force for the period during which the original writ in such action is in force; *i.e.* six months from its date. (Sec. 9.)

The concurrent writ or writs may be issued by the plaintiff or his attorney, and it seems that, whether issued at the same time as the original writ or not, another præcipe should not be delivered, but the officer should be requested to make a note of the issuing of the concurrent writ or writs on the præcipe for the original writ (*Crow* v. *Crow*, 1 D. & L. 709). It would seem, too, that if a concurrent writ or writs be not issued within "six months from the issuing of the original writ," no authority is given for issuing a concurrent writ.

RENEWAL.

No original writ of summons is in force for more than *six* months from the date thereof, including the day of such date (sec. 11), and therefore service should if possible be effected in that period. In some cases this cannot be done, and great inconvenience and hardship to plaintiffs would arise if in this event it were necessary to issue an entirely new writ, and thereby commence a new action. For, by many statutes, usually called "Statutes of Limitation," certain periods are limited within which actions in respect of the wrongs mentioned in the statutes must be brought. The purpose of these provisions is most desirable, indeed some such limitations are necessary in the modern complication of rights and liabilities: they are intended to prevent injustice and litigation by making indisputable the right of a person to advantages which he has enjoyed for a long time. It is not necessary at this point to enter into detail as to these limitations: their effect in taking away the plaintiff's remedy after he had issued an original writ of summons, was formerly prevented by issuing an *alias*, and, if necessary, a *pluries* writ. The original writ could only issue into one county, but the alias or either of the pluries writs might issue into a different county, and the plaintiff might continue issuing the latter until the defendant had been served.

At the present time, instead of continuing the original writ of summons by these means, if any defendant therein named has not been served therewith, the original or concurrent writ of summons *may be renewed* at any time before its expiration for *six* months from the date of such renewal, and so from time to time during the currency of the renewed writ, by being marked with a seal bearing the date of the day, month, and year of such renewal, such seal being impressed upon the writ by the proper officer of the court out of which such writ issued, upon delivery to him by the plaintiff or his attorney of a præcipe, in such form as was formerly required to be delivered upon the obtaining of an alias writ; and a writ of summons so renewed remains in force and is available to prevent the operation of any statute whereby the time for the commencement of the action is limited, and for all other purposes, from the date of the issuing of the original writ of summons. (sec. 11.) The form of the præcipe will be the same as that for an original writ of summons (ante, p. 99), except that the word *Renewed* should precede "writ of summons."

Three questions involving some doubt may be briefly mentioned here; first, if the original writ be renewed, is a concurrent writ previously issued thereby renewed also? secondly, if a concurrent writ be renewed and not the original, does the renewed concurrent writ thereby become an original? or, thirdly, is the original in the last case thereby renewed also? Probably the first question is to be answered in the negative; the other two are rather more difficult, but the negative seems to be the better reply to them also. In short, probably the true construction is, that the writ produced to the officer and impressed with the seal by him is alone renewed, whether it be original or concurrent: if this is so, it is necessary in all cases of renewal to produce the original writ, and when it is desired to renew the concurrent writ or writs also, they also must be sealed.

AMENDMENT.

If, by mistake or inadvertence, either of the forms of writ of summons, Nos. 1, 2, or 3, be substituted for any other of them, such mistake or inadvertence is not an objection to the writ, or any other proceeding in such action, but the writ may, upon an ex parte application to a judge, whether before or after any application to set aside such writ or any proceeding thereon, and whether the same or notice thereof has been served or not, be amended by such judge without costs. (Sec. 21.) The subject of amendment is introduced here, as the writ of summons may in some respects be amended before service, and this section expressly includes an application to amend before service of the writ.

It sometimes happens that a writ of summons is issued in time to save the Statute of Limitations, but subsequently, when it would be too late to save the statute by issuing a new writ, an error is discovered in that which has been issued. To prevent the plaintiff's thus losing his remedy is one of the main purposes for which amendments are sought. Another is to save the expense and time of again going through such steps in the action as have been taken where the proceedings subsequent to the writ are regular.

The above provision is confined to the substitution of one form of writ for another; but its language is not such as to make it clear what proceedings in the action the Courts are to amend; and as the copy of the writ is not mentioned, perhaps the Courts will refuse, as they have hitherto done, to amend that. If so, a fresh service will be necessary. (*Eccles* v. *Cole*, 8 M. & W. 537.)

Another kind of amendment may, however, be made, for if the plaintiff or his attorney omit to insert in or indorse on any writ or copy thereof any of the matters required by the Common Law Procedure Act to be inserted therein or indorsed thereon, such writ or copy is not on that account to be held void, but it may be set aside as irregular or amended, upon application to the Court out of which the same issued, or to a Judge; and such amendment may be made upon any application to set aside the writ, upon such terms as to the Court or Judge may seem fit. (Sec. 20.) This provision expressly includes the copy of the writ, but it is confined to cases of *omission*. It has been doubted whether this section includes an application by the plaintiff before service of the writ, on the ground that the last clause limits the power of amendment to applications by the defendant to set aside the writ, but probably the clause has not this effect.

Previous to these enactments, the Superior Courts exercised a power of amendment of the writ in certain cases; but the power had frequently been questioned, and the practice of the three Courts on this subject has not been uniform. The numerous cases on the subject are collected in a long note to *Wood* v. *Hume*, 4 D. & L. 136. Now, however, the power of amendment is given in general terms, and probably the difficulties above mentioned as arising under ss. 20 and 21, will be removed by this provision: — It shall be lawful for the Superior Courts of Common Law, and every Judge thereof, and any Judge sitting at Nisi Prius, at all times to amend all defects and errors in any proceeding in civil causes, whether there is anything in writing to amend by or not, and whether the defect or error be that of the party applying to amend or not; and all such amendments may be made with or without costs, and upon such terms as to the Court or Judge may seem fit; and all such amendments as may be necessary for the purpose of determining, in the existing suit, the real question in controversy between the parties, shall be so made. (Sec. 222.) How wide or how narrow a construction will be put on this section it is impossible to say; its terms are so general, as to support whatever system of amendment the Courts think fit to adopt, and are quite large enough to include any amendment of the writ and copy before or after service.

Although the writ appear quite regular to the plaintiff or his attorney, he may still be unable to serve it personally on the defendant, who sometimes keeps out of the way to evade service. In such a case the remedy used to be slow and expensive; an application to the Court for a writ of distringas, and, when granted, proceeding thereupon. This will be briefly noticed, before stating the new substitute, in the next article. G. T.

NOTE.—A sentence in the first article (p. 99, col. 2), as to the jurisdiction of the Superior Courts, is not quite sufficiently accurate standing alone, and considering the position in which it occurs. It would be better thus:—The jurisdiction of the Superior Courts is frequently said to extend over the whole of England and Wales, except the Counties Palatine of Lancaster and Durham, and this, speaking briefly, is the best general statement that can be given; but from the nature of personal actions, and from the evident intention of the Act, there is little doubt that the whole of England and Wales is within the jurisdiction in the meaning of this section.

ADVERTISING ATTORNEYS.

THE following ingenious advertisement appears in the *Times* of Monday last. Can any reader discover the name of the person whose modesty permits him only to announce the initials "G. M.?" We should like to give him the benefit of publicity:—

LAW IMPROVEMENT. — The recent alterations enable the advertiser, a solicitor of experience, to undertake the recovery of tradesmen's accounts, &c. on terms much more economical than the County Courts, and without risk or trouble. Moneys received paid over immediately.—Address, G. M. 42, Duncan-terrace, City-road. N.B. Articled clerk wanted.

THE LEGISLATOR.

Imperial Parliament.

HOUSE OF COMMONS.

COUNTY COURTS.

FRIDAY, Dec. 26.—In reply to a question, Mr. WALPOLE stated that Government had it in contemplation to extend the jurisdiction of the courts for the recovery of small debts.

CONTROVERTED ELECTIONS.—At the commencement of the last Parliament there were thirty-seven returns petitioned against, and more than one-half of the petitions then were presented on the last day allowed by law. This evening (Thursday) is the latest period in this Parliament at which, by the standing orders, such petitions can be received, and yet, exclusive of the number which probably will then make their appearance, thirty-nine have already been presented. These affect no fewer than fifty-three seats, without reckoning the case of Knaresborough. Of these thirty-four are held by Liberals, and nineteen by Conservatives. There is not a single complaint against the returns for the English counties, all the petitions relating to boroughs and cities; and only two as regards the Irish, namely, Clare County and Waterford County. Of the thirty-nine petitions, twenty-seven are English, one Scotch, and eleven Irish. The allegations of the petitions are chiefly bribery, treating, and intimidation; but in the case of the Hon. R. E. Boyle (Frome), it is alleged that as holding the office of secretary of "the Most Illustrious Order of St. Patrick" he is disqualified. The hon. gentleman, notwithstanding, sat in the last Parliament.

THE MAGISTRATE,

AND PAROCHIAL AND MUNICIPAL LAWYER.

Summary.

ANOTHER *Rating Case* was reported last week. A railway company had built bridges over their line on land conveyed to them in fee, but with a reservation of the use of the bridges. The road over the bridges was paved by the Paving Commissioners. There were walls on each side. Stat. 57 Geo. 3, c. 29, s. 3, enabled the commissioners to rate all "dead walls and void spaces of ground," and also all "public buildings." It was held by all the Court, that the walls of the bridge were rateable as "dead walls;" and by JERVIS, C.J. that they were rateable also as "void spaces;" and by MAULE, J. as "public buildings," within the meaning of the above statute. (*Arnett* v. *The London and North-Western Railway Company*, 20 Law T. Rep. 80.)

Three Registration Appeals were reported last week. The question raised by *Hamilton* v. *Bass* was, whether the cost of collecting rent, and of repairs, must be deducted from the gross sum, in order to ascertain the clear yearly value. According to this case, A. and twenty-nine others were owners in fee of premises which let for 63*l.* per annum; the average cost of repairs was 4*l.* per annum; 26*s.* were paid annually to a person for collecting the rents. The Court held that repairs were, but the costs of collection were not, to be deducted, the latter being a voluntary charge. It was observed by the Court, in the course of the argument, that the question of value in the county franchise differed from that in the borough franchise in this, that in the former the question was the value to the owner; in the latter, the value to the tenant.

In the case of *Collins* v. *Thomas*, 20 Law T. Rep. 80, the reporter has fallen into a strange error. He states the decision to be the very reverse of what it was. But a more full and correct report appears to-day. It should have

been stated thus:—A house and garden in a borough were held under the same landlord by one demise, but the garden was separated from the house by a public road. The question was as to the meaning of the words "occupied therewith," in sec. 27 of the Reform Act. It was contended by Mr. KERR, for the appellant, that "therewith" meant *locality*, and not *time*; that it contemplated contiguous land, and not land situate at any other part of the borough; that if it did not mean this, the word "therewith" was mere surplusage, for the section would have effected the same objects without it. But the Court was of a contrary opinion, and held it to be a *sufficient qualification*, and *not* a bad one, as was wrongly stated in the report of last week.

Lambert v. *The Overseers of St. Thomas, New Sarum*, 20 Law T. Rep. 80, was a question as to the validity of a notice of objection. The reader is aware that a notice is not to be avoided if so written that it might be commonly understood. In this case it was in the following form:—"Take notice, I object to your name being retained on the list of voters for the parish of St. Thomas, New Sarum, in the *southern division* of the county of Wilts." It was sent to a person who claimed to vote for the *northern* division. Nevertheless, it was held, that, though not strictly in form, it was capable of being commonly understood, and therefore sufficient.

COUNTY TREASURERS.—A Parliamentary return, procured by Mr. Frewen, contains an abstract of the accounts of the several country treasurers in England and Wales for the year ending Michaelmas 1851. The total assessment for the county rate in the year was 59,994,986*l.* 6s. 5d. The receipts, with the balance in hand, amounted to 1,489,437*l.* 11s. 6d. The disbursements were 1,355,615*l.* 12s. 11½d. The prosecution of prisoners in the year came to 190,358*l.* 0s. 5½d. The maintenance of pauper lunatics amounted to 16,990*l.* 8s. 4½d. and the coroners cost in the year 54,451*l.* 2s. 8d.

RURAL POLICE.—From a return just published, it appears that 2,611 constables of all classes were employed in 1851, under the Act 2 & 3 Vict. c. 93, at a cost of 181,139*l.* For Wales there are 156 constables, at an expense of 8,794*l.*; making a total of 2,767 men, and a cost of 190,033*l.* Twenty-five counties have not adopted the Act, and are not, consequently, within the scope of this return.

TURNPIKE TRUSTS.—A Parliamentary paper was published on Tuesday, containing a return of the statistics of turnpike trusts in England and Wales up to the end of 1850. The total receipts in the year were 1,159,849*l.* and the expenditure 1,156,539*l.* with a bonded debt of 6,236,496*l.* and an unpaid interest of 1,574,560*l.* The corresponding items in the year 1849 were—receipts, 1,177,981*l.*; expenditure, 1,188,993*l.*; bonded debt, 6,382,647*l.*; unpaid interest, 1,587,010*l.*; and in 1837—receipts, 1,699,428*l.*; expenditure, 1,712,237*l.*; bonded debt, 7,011,989*l.*; and unpaid interest, 1,019,568*l.*

CAB REGULATIONS.—Mr. A'Beckett, the Southwark Magistrate, gave an important decision on Monday, on the railway-cab question. Hall, a driver, was summoned for plying for hire in an unlicensed place—to wit, within the terminus of the Brighton Railway at London Bridge. There was no denial that the place had not been appointed a standing by the Commissioners of Police. There were several interesting points in Mr. A'Beckett's statement. He remarked at the outset, that the railway company had taken advantage of the delay he had granted to obtain the opinions of the Solicitor-General and Mr. Bovill, which were adverse to the judgment he was about to give; but, of course, a Magistrate must decide for himself, and could not be led by such "opinions." In the present case, he pointed out how he thought the learned gentlemen had made a great mistake in the application of a particular decision respecting hackney-carriages. Mr. A'Beckett pronounced that Hall, acting under the company's sanction, had clearly violated the law. It was urged that railway companies made these illegal regulations to promote the convenience of the public; but he held it was not at all desirable that a certain number of privileged vehicles should thus be withdrawn from the control of the police commissioners, as the railway companies were under no responsibility to the public with respect to these cabs. Some of the regulations were misleading the public; railway numbers were placed on cabs different from the legal numbers, and this had frequently led to the summoning of innocent drivers, while the guilty escaped; the aggrieved passengers having mistaken the railway for the police number. Mr. A'Beckett had communicated with Sir Richard Mayne, who expressed his willingness to appoint a stand within the terminus, and even to adopt any regulations suggested by the company that appeared useful: but instead of taking advantage of this opportunity, the company had used the time in the endeavour to find means of evading the law. He inflicted on Hall the nominal fine of one shilling.

JOINT-STOCK COMPANIES' LAW JOURNAL.

Summary.

WHERE a company, by a private Act, were empowered to borrow moneyupon bond, and it was provided that all the creditors by that security should be equally entitled to a claim or lien on the rates, tolls, &c. of the pier (for the construction of which the company was formed), in proportion to the sums secured, and without any preference by reason of priority of date or on any other account, it was held that nevertheless the right to sue upon the bond was not taken away. (*Bolckow* v. *The Herne Bay Pier Company*, 20 Law T. Rep. 79.)

We are glad to see that the Court has granted a new trial in *The Guardians of Romford Union* v. *The British Guarantee Society*, 20 Law T. Rep. 82, in which it had been held, by the learned judge who tried it, that although the condition of the policy was that the declarations were true, and by those declarations a certain mode of keeping accounts between the master and servant was stated as that which was observed, and afterwards that rule of accounting was discontinued, whereby the servant was enabled to perpetrate greater frauds, for which the master claimed of the society under his policy, that this statement was not a condition of the contract, and therefore that the society was liable. Without expressing an opinion upon the question of law, the Court thought that there should be a new trial, the better to ascertain the facts, and then probably the very important point raised will be formally heard and determined by the full Court. In the meanwhile, Guarantee Societies would do well to alter the form of their policies, and introduce an express condition that the manner of keeping the accounts stated in the declaration shall continue to be observed, or the policy to become void. Without this, there will be no end to frauds, for, having the guarantee, masters will become indifferent to the accounts, and thus tempt servants to dishonesty.

WINDING UP.

Two winding-up cases were reported last week. In *Ex parte Winthrop*, 20 Law T. Rep. 78, A. a director, by an arrangement with the directors, on August 15, 1845, paid 3,000*l.* in to the company's account, the same being stated to be advanced in equal proportions by A., B. and seven other directors. On August 25, it was resolved that each party making such advance should be allowed sixty shares as a security for the same, with liberty to retain such shares in satisfaction thereof, or to return them and claim the repayment of such advances out of the funds of the company. B. and the seven others gave a joint and several bond to A. for the amount and interest. The sum was not paid to A. when due, and another security was given, by way of a policy of assurance for 500*l.* on the life of one C., and a warrant of attorney by B. and the others to secure payment of the premiums. Default was made in payment of the premiums. An execution on the warrant of attorney was issued against B. and another only. B. paid the money and was placed upon the list of contributories in respect of the sixty shares. He now claimed to be a creditor in respect of the sum so paid by him; but it was held that he had retained the shares in satisfaction of the debt, and therefore was not entitled now to come in and prove it against the estate. *Ex parte Fenn*, 20 Law T. Rep. 78, was the case of a mining company on the cost-book principle. By one of the rules, a shareholder might determine his liability by giving notice to the purser of his desire to retire, and depositing with him the transfer of his shares and signing a relinquishment of his claims on the company in respect of the shares. A., having shares, signed a document, furnished to him at the company's office, relinquishing his shares. It was held that he was *not* a contributory in respect of those shares. *Ex parte Wood*, 20 Law T. Rep. 79, was an application to strike a name out of the list of contributories, on the ground that he had been induced to sign the subscribers' agreement under a misrepresentation of the facts, and that he had never paid anything on account of the shares. But he was properly held to be a contributory, and the motion was refused.

WINDING-UP OF RAILWAY AND JOINT-STOCK COMPANIES.—Of the 150 Railway and Joint-stock Companies referred to be wound up by the Masters in Chancery, since 1848, about ten only have been so wound up, and that chiefly by compromise. The remainder are slowly progressing.

AMICABLE LIFE ASSURANCE SOCIETY.

TO THE EDITOR OF THE LAW TIMES.

SIR,—My attention having been recently directed by a member of this society to a letter in your paper of Saturday, the 6th inst. signed "Investigator," which contains some very erroneous statements, I have to request the favour of your inserting this letter in reply thereto, in your next number.

Your correspondent, in the first paragraph of his communication, remarks that the Amicable Society "pays no commission to solicitors on the introduction of policies." This is not the case. The Amicable adopted the practice of paying commission in the year 1845, and has continued it ever since. In the same paragraph, he further remarks, that the society "professes to divide the entire profits of the office amongst the assured." In this he is correct. The entire profits are not only "professed" to be, but are actually divided amongst the members.

Your correspondent then refers to a policy effected by a client of his on the 9th October, 1832, for ten shares (2,000*l.*), at an annual premium of 161*l.* and complains that at his client's decease the total amount paid to his representatives was 2,227*l.* being an increase to the sum originally assured of only 227*l.* *instead of* 2,800*l.* (or *one hundred and forty per cent.*), "as he was led to expect by the society's prospectus." In answer to this assertion, I have simply to state that copies of the pamphlets and prospectuses issued to the public by the Amicable Society, in the course of the last twenty-one years, are now in my possession; and that not one of them contains any paragraph corresponding with, or similar to, that which "Investigator" has quoted in his letter; nor any statement which could lead to the expectation of such large additions to policies as are declared in that paragraph to have been made.

It is true, that the sums payable on claims *prior to the society's last charter being obtained*, were, in some years, the business of which was more than ordinarily profitable, much greater than they have been during a more recent period; and this was the case about the time when your correspondent's client is stated to have effected his assurance. But I have now before me the particulars of sums paid on claims in every year, from 1808 to 1852, and I find that the largest addition ever made to each share of 200*l.* in the course of the last forty-four years, was 160*l.* in 1820; and that the next largest addition ever made during the same period, was 137*l.* 4s. in 1832. In the year 1831, the addition per share of 200*l.* was 123*l.* 10s.; and in 1830, 80*l.* 14s. But looking back to 1819, I find that there was nothing paid in that year beyond the 200*l.* on each share. From this statement it will be evident that the payments on claims were continually liable to fluctuation, which was caused by the principle upon which the society at that time divided its annual surplus, viz. to give to every policy, on its becoming a claim, its proportion of the *profits of each year*, according to the number of shares upon which the claim arose; and, year after year, the dividend, whether it rose or fell, was advertised in the prospectus of the society. The Amicable never had recourse to puffing advertisements, in order to attract public attention, but simply published a plain statement of facts. The method, however, of dividing profits to which I have referred, was at length felt to be injurious, owing to the influx of new members, many of whom were advanced in years, and who were induced, by the large sums then paid on claims, to enrol themselves in the society; and it was consequently found necessary to apply to the Crown for a new charter, which was obtained in the year 1836, whereby it was directed that the profit or loss of the society for each year should be calculated upon an average of the results of the preceding seven years. The alteration thus produced in the mode of dividing profits, necessarily had the effect of diminishing the additions to policies for several years, but, on the other hand, the prosperity and security of the society have been more firmly established, and it is gratifying to know that the surplus annually divisible among the members is steadily and progressively increasing. It should be observed that by the charter plan of the society no distinction is ever made on account of the time an assurance in this office has been in force. If a person who effected a policy for ten shares in the year in which the claim alluded to by "Investigator" was paid, had died before the expiry of that

year, his representatives would have been entitled to the same amount as was paid upon the policy on which fifteen years' premiums had been received by the office. The requirement of entrance-money has been entirely discontinued since the year 1837.

I will now make one or two very brief remarks upon the two concluding paragraphs in "Investigator's" letter. He states that at the death of his client in 1847, his representatives received a sum considerably less than the entrance-money and premiums must have amounted to with compound interest. It cannot, I think, be doubted that your correspondent must be very little acquainted with the principles and practice of life assurance, if he looks upon this as an extraordinary case, or one of hardship to the assured. Upon the same principle, the society would have had great cause for complaint, had his client died within the first year of his assurance, instead of having lived fifteen years. If some lives did not exceed the average expectation, how, I would ask, could any office bear the losses which arise from premature deaths?

Lastly, your correspondent expresses a hope that "professional men will contrast the tables and advantages of both old and young respectable offices, before they advise their clients to effect assurances in offices with their millions only to recommend them." It is neither my intention nor my inclination to discuss the relative merits of other institutions, whether old or young. Enough has been already written and published upon that subject within the last few months. The Amicable Society has no desire to enter into competition with professedly cheap offices, offering advantages which can never be realised; or with those who pay large commissions for the introduction of new business, thereby diminishing the profits of the assured. An institution which has stood the test of nearly 150 years, and whose annual accounts, after the payment of all its claims (which amount to between 70,000*l.* and 80,000*l.* per annum), and providing for every possible contingency, continue to shew an increased and increasing balance of assets, notwithstanding the competition for business among nearly 200 other insurance companies, must surely be sufficient to satisfy the mind of any person who desires to *secure* a provision for his family, after his decease, by means of life assurance.

I am, Sir, yours, &c.

HENRY THOS. THOMSON,
Registrar of the Amicable Society.

50, Fleet-street, Nov. 24, 1852.

COUNTY COURTS.

It appears from the case of *Re White*, 20 Law T. Rep. 83, that Mr. Commissioner LAW has discharged a debtor who had been committed for twenty-one days by the Judge of a County Court, for nonpayment of a debt, from which the defendant had been discharged by the Insolvent Court in January last. We are informed that this important question, now so frequently arising between the two jurisdictions, is about to be determined by an action to try the validity of such committals by the County Court.

MORE WORK FOR THE COUNTY COURTS.—Two Bills have just been printed by order of the House of Lords, brought forward by Lord Brougham, to give more business to the County Courts. The object is to facilitate proceedings in Chancery and to lessen the expense of such proceedings. One is called "County Courts Equitable Jurisdiction," and the other "County Courts Further Extension." Both Bills are waiting discussion in the House of Lords; they are, if passed, to take effect from the 11th of July next.

THE LAWYER.

Summary.

EQUITY PRACTICE.—On the practice to be observed for *Production of Documents* under the new procedure, the MASTER of the ROLLS stated, in *Cowley* v. *Watts*, 20 Law T. Rep. 75, that "hereafter all applications must be made in chambers in the first instance. The party requiring production would issue a summons, and the party required to produce would then put in a list of documents on affidavit. Forms for the summons and affidavit had been prepared. If any dispute should arise, the parties would then, and then only, come into court." And in *Mackintosh* v. *The Great Western Railway Company*, 20 Law T. Rep. 77, upon the motion of the defendants, the Court ordered the production by the plaintiff, on oath, of certain documents and classes of documents specified in the notice of motion relating to the matters in question in the suit. Vice-Chancellor STUART said, "What the Act of Parliament authorised him to make would be an order for the production on oath by the plaintiff; that was, the plaintiff must, under the order, state more particularly on oath the nature of those documents which were in his possession. . . . All that he could do was to order him to produce them on oath, and to give him a reasonable time for that production. The time asked by the notice of motion was twenty-eight days, *which he thought was too short.*"

Under sec. 6 of c. 86, and the 17th of the New Orders, where a bill written had been filed, praying an injunction, and the defendant had appeared, the Court directed interrogatories to be received and filed, although the printed bill had not been filed; "but of course the regulations of the statute in that respect *will be* strictly complied with." (*Lambert* v. *Lomas*, 20 Law T. Rep. 76.)

There are *two* cases as to the *Practice of taking Evidence*. In *Wilkinson* v. *Stringer*, 20 Law T. Rep. 76, Vice-Chancellor TURNER refused to examine witnesses *viva voce* where the case, as shewn by the pleadings, was not such an one that it would have directed an issue before the new practice. "The true view," he said, "to be taken of this provision of the Act of Parliament is to consider whether, if this case had been brought forward by bill, and the defendant had answered, and the parties had gone into evidence, the case was one on which the Court would have directed an issue on the question of fact raised by the pleadings. He would not examine witnesses *viva voce* on the mere speculation as to what evidence may come out on such examination."

In *Mackintosh* v. *The Great Western Railway Company*, 20 Law T. Rep. 77, Vice-Chancellor STUART granted an application for the *viva voce* examination of witnesses upon the part of the defendants, although issue had been joined on the 18th of May, and a witness had already been examined *de bene esse*.

COMMON LAW.—*New Procedure.*—The Court of EX. has decided, in *Pinhorn* v. *Souster*, 20 Law T. Rep. 81, that the clauses relating to special demurrers are prospective only, and do not apply to such as were pending before the Act came into operation, which will be heard as before. "These sections," said PARKE, B. "must be read as if the word 'future' had been introduced before the word 'pleading,' and the cases now pending must be decided according to the law as it was at the time of the proceeding, and before the passing of this Act."

In *Glen* v. *Lewis*, 20 Law T. Rep. 81, it was held, that where a rule to plead several matters is required, it should be obtained and served before the time to plead has expired, otherwise judgment may be signed.

A case of considerable interest in the *Law of Attorneys* is that of *Re Craven*, 20 Law T. Rep. 83. On the taxation of a bill of costs between attorney and client, the Master disallowed a certain sum, on the ground of negligence. But the Court held that this was a question for a jury and not for the Master, and ordered a review of the taxation.

THE BAR AND THE ATTORNEY.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Lord Denman's letter seems to be received as a judgment—a case decided—that it is no longer a breach of professional etiquette in a barrister to see and advise clients (which mean the public), without the intervention of an attorney, heretofore the understood legitimate client of counsel. It is deeply to be regretted, and reciprocated alike by the respectable counsel and attorney, that his lordship should have countenanced such a proceeding.

The high-minded barrister, who has been taught to consider his profession an honorary one, opening to him the highest judicial position in the country, cannot but feel that his profession will be degraded by the proposed change; that now all rules and regulations by which respectability of practice was secured may be abrogated, and he may be called upon to sit by the side of an advertising barrister of cheap advice. The inferior grade of barristers will no doubt receive his lordship's letter as a boon, and turn it to purposes I am satisfied his lordship never even dreamt of. The intervention of the attorney has until now maintained the distinctive greatness of the English Bar, and now that barrier is to be broken. There are barristers who will not care to mix with the lower orders of society, so that they profit by it. Fancy the barrister bargaining with a poor wretch for the amount of fee to be paid, which must be in advance. No trust, for the barrister cannot recover; what a picture this will furnish! Already has one of these learned gentlemen adopted the free-trade cry (if not its principle), and established a cheap law society. Will the public benefit by it? No; what security has the public against the effect of bad advice? None. The public should know this; when it suits the purpose of the barrister, having given bad advice, he can call for protection, shielding himself as a member of an honorary profession. Really this is a state of things which should be settled, and without delay; the respectability of both branches of the Profession demands it. Individual disappointment in either branch cannot justify such a change. There has been nothing in the reforms of the law to warrant it. If the Bar complain of the attorney being an advocate, who is to blame for it? An attorney was in the old County and Local Courts an advocate. In the Lancaster Sheriffs' Court (and others also), held at Preston and Manchester, attorneys attended regularly, and received briefs from attorneys. At this period the Bar did not think it worth their while to attend these Courts, except on special retainer, which, as a rule, the public could not afford to give,—surely, then, the Bar, who have thus raised up attorney-advocates (not prohibited by law), cannot now complain of their following the occupation the Bar and the public obliged them to take up. The local Courts are open to the Bar,—let counsel attend, and rely upon the attorney (without seeking more), and I am of opinion, if the barrister so acting possesses ability, he need not fear having the support of the other branch of the Profession, and a general preference. But seek to interfere with the province of the attorney by asking for direct intercourse with the public, and immediately a collision of interests will take place, the result of which will not benefit the Bar. If the recent changes have injured the Bar in a pecuniary point of view (which, by the bye, till now was never thought to be a matter for consideration with counsel, and in my own experience as an attorney, I have found fees a delicate subject to speak upon), the changes for many years past have in a great degree affected the attorney, who has submitted thereto year after year without murmur and complaint; then, because the Legislature has deemed it desirable to reform the law in the recovery of debts, by which the attorney also materially suffers, this does not justify the Bar in leaving its vocation, and infringing upon the rights and privileges of the attorney, by seeking direct intercourse with the public, and advising on all subjects.

It will not be tolerated: the respectable portion of the Bar will be with the attorneys, who have justice on their side, and undoubted influence when united, which will induce legislative support and protection. As an attorney, and through your valuable medium, I solicit the attention of my professional brethren; and to those who are not members of the Law Association, I respectfully urge upon them to join, and by our united voice let us settle the question at issue, whether a number of barristers, irresponsible to the public, and without proof of ability (the only recommendation being the payment of a small fee, and the eating of a limited number of dinners during Term, entitling them to the wig and gown), shall usurp the rights and privileges of the attorney, who has to pay on his articles 120*l.* as premium, to serve five years diligently, and afterwards to pay further fees on admission, first undergoing an examination as to fitness (indeed, sacrificing a small fortune), and who also must pay a yearly tax, and is besides held responsible to his clients.

A SUBSCRIBER.

COUNSEL.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Allow me to call your attention to what I consider a very improper practice of some counsel and pleaders. A case to advise on an action, with instructions to draw declaration or plea, if counsel or pleader considers it advisable to do so, is laid before him. He advises that plaintiff, or defendant, as the case may be, has no ground of action or valid defence, yet for all that draws declarations or pleas, which either the attorney himself has to pay, or his client. Surely this is not correct; if he advises against proceedings he ought not to draw the declaration or plea. I have had several such cases, and I can assure you they have placed me in an awkward position with my clients, who evidently thought it was done to *make business*—and I was obliged to pay the fees myself.

I am, Sir, yours, &c.

A LONDON PRACTITIONER.

London, Nov. 25, 1852.

MASTERS EXTRAORDINARY.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I fully concur in the observations of "J. G. B." on this subject, in his letter to you of the 17th inst.

Common honesty would but return the fees paid by those Masters Extraordinary who have been appointed within the last four or five years. I have paid nearly 10*l.* within the last two years for my ap-

pointment, and the allowing agents to stand for 20s. in the shoes of those who have paid ten times that amount, is an act of gross injustice to all, but more especially to those who cannot, within the last four or five years, have reaped much benefit from their appointment. I am, Sir, yours, &c.

Dartmouth, Nov. 23, 1852. WM. SMITH.

THE JUNIOR BAR AND THE ATTORNEYS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—If a barrister advises with a client, gets up his case, examines and subpœnas his witnesses, and then advocates the cause, and receives pay for his services, I should not like to be in his shoes if he were indicted for practising as an attorney without qualification, I am Sir, yours, &c.

A HINT IN TIME.

Worcester, Nov. 20, 1852.

THE MERCANTILE LAWYER.

THERE is no date to the acceptance of a bill of exchange; but sometimes it may be important to prove the date of acceptance, as in *Roberts* v. *Bethell*, 20 Law T. Rep. 80, which was an action against the acceptor of a bill of four months, to which the defendant pleaded "infancy at the time of the acceptance," and it was proved that defendant came of age on the last day of grace but one. It was contended that the jury must presume the date of the acceptance from the date of its becoming due, and so the Court held. MAULE, J. said: "The acceptance is ordinarily not dated, and therefore there is nothing to prove the date of it. It is not, by any means, universal usage, that bills should be accepted on the day of their date; but it is usual to accept at some early opportunity after the drawing; therefore, where two persons, living in the same town, draw and accept a bill, the presumption is that the bill was accepted one or two days after the drawing, therefore the acceptance is evidence that the bill was accepted a few days after the drawing, regard being had to the distance at which the persons reside from each other. Therefore, on the same principle as that by which the day of the date is to be taken as the day of the issue of a bill, you may *presume the acceptance to have been made at some early opportunity after the drawing*. . . . This rule of evidence, though not founded in terms of express decisions, is on the principle on which the decisions have been come to, that the date of a document is evidence of the time of its execution." This is very important, and should be noted in *Byles on Bills*, or whatever is the text-book on this branch of the law used by the reader.

THE ECCLESIASTICAL LAWYER.

A PERSON against whom a decree had been made in the Ecclesiastical Court, which he had disobeyed, applied to the Court of Ex. for a prohibition to the Ecclesiastical Court, on the ground that he had received no previous notice of the decree, nor had an opportunity of shewing cause against its being made. But it was held, that as the Ecclesiastical Court had jurisdiction, his proper remedy would be to apply to that Court in reference to any supposed irregularity, or to appeal.

LEGAL INTELLIGENCE.

Lord Brougham arrived at the Hôtel Meurice on Saturday, from London, and will leave at the end of the week for Cannes.—*Galignani.*

Mr. F. Winn Knight, M.P. for Worcestershire (W.), has been appointed to the office of Parliamentary Secretary to the Poor-Law Board, in the room of Sir James Emmerson Tennent.—*Globe.*

The lucrative office of Crown Solicitor for the counties of Roscommon, Leitrim, and Sligo has just fallen vacant by the death of Mr. Peter M'Keogh, which took place in the county of Roscommon.

THE SIX-MILE-BRIDGE AFFAIR.—The judges of the Court of Q. B. Ireland, unanimously rejected the motion of the Attorney-General to quash the coroner's inquisition at Six-mile-bridge.

DIARY OF SALES BY AUCTION, DURING THE NEXT WEEK,

ADVERTISED IN THE "LAW TIMES."

DAY.	PLACE.	AUCTIONEER.	WHEN ADVERTISED.	PROPERTY.
Wednesday, Dec. 1	Mart.	Chinnock and Galsworthy.	Nov. 6.	Absolute Reversion to 3,000*l.* receivable on the Decease of a Lady aged 76.
Thursday, Dec. 2	Ibid.	Marsh.	Nov. 13 & 20.	Manor of Gooderstone with Oxburgh, Norfolk.
Ibid.	Ibid.	Ditto.	Ibid.	Valuable Manor of Battleswick.
Ibid.	Ibid.	Ditto.	Ibid.	Freehold Manor of Wicken.

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

COMMISSIONS SIGNED BY LORDS LIEUTENANT.

LANCASTER.—Thomas Basley, esq.; Richard Smethurst, esq.; and Richard Bryan Smith, esq. to be deputy-lieutenants.

DURHAM.—Lord Harry George Vane, and James Farrer, esq. to be deputy-lieutenants.

SUFFOLK.—John Chevalier Cobbold, esq. to be deputy-lieutenant.

WORCESTER.—John Williams Martin, esq.; Slade Baker, esq.; William Orme Forster, esq.; Robert Mynors, esq.; Francis Woodward, esq.; and William Blow Collis, esq. to be Deputy-Lieutenants.

STAFFORD.—The Hon. Dudley Ryder, commonly called Viscount Sandon, to be Deputy-Lieutenant.

CUMBERLAND.—George Saul, esq.; Rowland Pennington, esq.; and Sir Henry Ralph Vane, bart. to be Deputy-Lieutenants.

THE CHANCERY COMMISSION.—The Queen has been pleased to appoint the Right Hon. Sir John Romilly, Knt., Master of the Rolls, the Right Hon. Sir George James Turner, Knt., a Vice-Chancellor, Sir Richard Torin Kindersley, Knt., a Vice-Chancellor, the Right Hon. Sir John Dodson, Knt., Dean of the Arches Court, the Right Hon. Stephen Lushington, Judge of the High Court of Admiralty, Sir Charles Crompton, Knt., one of the Justices of the Court of Queen's Bench, the Right Hon. Sir James Robert George Graham, Bart. the Right Hon. Joseph Warner Henley, Sir John Dorney Harding, Knt., Advocate-General, Sir William Page Wood, Knt., Richard Bethell, Esq., one of Her Majesty's Counsel, John Rolt, Esq., one of Her Majesty's Counsel, and William Milbourne James, Esq., Barrister-at-law, to be her Majesty's Commissioners for continuing the Chancery Inquiry, and for inquiring into the law and jurisdiction of the Ecclesiastical and other Courts in relation to matters testamentary.

COURT PAPERS.

REGULATIONS AT THE CHANCERY REGISTRAR'S OFFICE.

NEW ORDERS.

1. The amount of the stamp to be marked on the minutes.

2. The writer will supply the stamp when the order is copied, and will return the papers to the seat, but retain the order.

3. When the solicitor applies for the order, his papers will be delivered to him and he will be told that he will receive the order from the writer on paying for the stamp.

ORDERS OF COURSE.—PRINTED FORMS.

4. Where printed forms are used, the registrar's clerk will tell the solicitor what form is required, and the solicitor will obtain the stamped form from the writer and leave it with his papers.

OFFICE COPIES.

5. The stamps will be paid for to the writer on bespeaking.

ORDERS DATED PRIOR TO MICHAELMAS TERM, 1852.

The writer will get stamps affixed on orders requiring the same, which shall have been marked with the proper amount of stamp by the registrar; thus (stamp 2*l.*), and left with the writer with the money.

ORDER OF THE LORD CHANCELLOR.—An order published yesterday directs that copies of proceedings in lunacy, shall be counted at the rate of ninety words a folio, and combinations of figures in columns representing distinct denominations as one word.

FEES IN THE SUPERIOR COURTS OF COMMON LAW.

[FROM A SUPPLEMENT TO THE LONDON GAZETTE OF TUESDAY.]

IN pursuance of an Act passed in the session of Parliament held in the fifteenth and sixteenth years of the reign of her Majesty, c. 73, entitled, "An Act to make Provision for a permanent Establishment of Officers to perform the Duties of Nisi Prius in the Superior Courts of Common Law, and for the Payment of such Officers, and of the Judges' Clerks by Salaries, and to Abolish certain Offices in those Courts," we, the undersigned, being two of the Commissioners of her Majesty's Treasury, have caused the under-mentioned Tables of Fees to be prepared, specifying the fees proper to be demanded and taken in the offices undermentioned, and at the Judges' Chambers, in the Superior Courts of Common Law; and that all other fees in such offices and chambers should be abolished, namely:—

OFFICES OF THE MASTERS OF THE THREE SUPERIOR COURTS.

Every writ (except writ of trial or subpœna)	£0	5	0
Every concurrent, alias, pluries, or renewed writ	0	2	6
Every writ of trial	0	2	0
Every writ of subpœna before a judge or master	0	2	0
——— before the sheriff	0	1	0
Every appearance entered	0	2	0
——— each defendant after the first	0	1	0
Filing every affidavit, writ, or other proceeding	0	2	0
Amending every writ, or other proceeding	0	2	0
Every ordinary rule	0	1	0
Every special rule, not exceeding 6 folios	0	4	0
——— exceeding 6 folios, per folio	0	0	6
Note.—Plans, section, &c. accompanying rules to be paid for by the party taking the rule, according to the actual cost.			
Every judgment by default	0	5	0
Every final judgment, otherwise than judgment by default	0	10	0
Taxing every bill of costs, not exceeding 3 folios	0	2	0
——— exceeding 3 folios when taxed, as between party and party, per folio	0	0	6
——— exceeding 3 folios, when taxed as between attorney and client, or where the attorney taxes his own bill, per folio	0	1	0
Every reference, inquiry, examination, or other special matter, referred to the Master, for every meeting, not exceeding one hour	0	10	0
——— for every additional hour, or less	0	10	0
Upon payment of money into court, viz.:— For every sum under 50*l.*	0	5	0
50*l.* and under 100*l.*	0	10	0
100*l.* and above that sum	1	0	0
Every certificate	0	1	0
Office copies of præcipe, or other proceedings, per folio	0	0	6
Every search, if not more than two terms	0	0	6
——— exceeding two, and not more than four terms	0	1	0
——— exceeding four terms, or a general search	0	2	6
Every affidavit, affirmation, &c. taken before the Master	0	1	0
Filing every recognizance or security in ejectment or error	0	2	6
Every allowance and justification of bail	0	3	0
For taking special bail as a commissioner	0	2	0
Filing affidavit, and enrolling articles previous to the admission of an attorney	0	5	0
Every re-admission of an attorney	0	5	0
All other fees than those before mentioned are hereby abolished, and are not to be taken by any person in the Masters' offices, under any pretence whatever.			

OFFICES OF THE ASSOCIATES TO THE THREE CHIEF JUDGES.

Every record of Nisi Prius, delivered to the associate, to be entered for trial	1	5	0
Every trial of a cause from plaintiff	1	0	0
——— from defendant	0	15	0
——— if the trial continues more than one day, then for every other day, from plaintiff and defendant, each	0	10	0
Returning the postea	0	5	0
Every cause made remanet, at the instance of the parties, to be paid by plaintiff or defendant, as the case may be	0	10	0
Every cause withdrawn, to be paid by the party at whose instance it is withdrawn	0	5	0
Re-entering every record of Nisi Prius made remanet, &c.	0	2	0
Every reference, from plaintiff and defendant, each	0	5	0
Every amendment of any proceeding whatever	0	2	0
Every order or certificate	0	5	0
Every special case or special verdict, in addition to the charge for engrossing and copying, at the rate of 4d. per folio, from plaintiff and defendant, each	0	10	0
Attending any court or otherwise, with any record, or other proceeding, under writ of subpœna, or special order of Court ..... per day	1	0	0
All other fees than those before mentioned are abolished, and are not to be taken by any person in the Associates' office under any pretence whatever.			

CHAMBERS OF THE CHIEF AND PUISNE JUDGES.

Every summons to try an issue before the sheriff	0	1	0
Every other summons whatever, whether in Term or vacation	0	2	0
Every order to try an issue before the sheriff	0	1	0
Every other order whatever of an ordinary nature	0	2	0
Every order of a special nature, such as: reference to arbitration, or attendance of witnesses at arbitration; service of process on persons residing abroad; reference to Master to fix			

sum for final judgment; revival of judgment, and the like	0 5 0
Every fiat, warrant, certificate, caveat, special case, special verdict, or the like	0 5 0
Every affidavit, affirmation, &c. whether in Term or vacation, each deponent	0 1 0
Every affidavit kept for the purpose of being conveyed to the proper office to be filed	0 1 0
Every proceeding filed	0 2 0
Every admission of an attorney	1 0 0
Every approbation of commissioners for taking affidavits or special bail	0 2 6
Every commission for taking affidavits or special bail, exclusive of stamp duty, engrossing, and sealing	1 0 0
Every other commission for any purpose whatever, exclusive of stamp duty, engrossing, and sealing	0 10 0
Every acknowledgment by married women	0 10 0
Office copies of judge's notes, or of any other proceeding whatever, per folio	0 0 6
Every recognisance or bond of any description whatever	0 10 0
Every allowance of writ of error	0 10 0
Bail on cepi corpus, habeas corpus, or error or ejectment	0 2 0
Delivering bail piece off the file, or justification of bail	0 2 0
Every committal	0 5 0
Every exhibit signed by judge	0 1 0
Producing judge's note	0 5 0
Bill of exceptions signed by judge	0 5 0
Order in legacy-duty cases	0 5 0
Crown revenue cases, from defendant	0 5 0
Attendance in any court, or otherwise, under subpœna or special order of Court, to give evidence, or produce documents, per day	1 0 0
Attendance as a commissioner to take affidavit, &c. or at a judge's house, or elsewhere, at the request of parties	0 10 0
Appointment of commissioners under glebe exchange	1 0 0
Allowance of by-laws or table of fees	1 0 0
Report on private bill	5 0 0
Attendance by counsel, each side	0 5 0

Note.—All plans, sections, &c. accompanying any order or office copy to be paid for by the party, according to the actual cost.

In cases where the party has been allowed to sue in formâ pauperis, the fees are not to be demanded or taken, nor in cases where such fees would be payable by any revenue or other Government department.

All other fees than those before mentioned are hereby abolished, and are not to be taken by any person at the judge's chambers, under any pretence whatever.

Given under our hands at the Treasury Chambers, Whitehall, this 20th day of November, 1852.

Chandos, Thos. Bateson, two of the Commissioners of her Majesty's Treasury.

We, the undersigned judges of the Superior Courts of Common Law, do settle, allow, and sanction the before-mentioned table of fees prepared by the Commissioners of her Majesty's Treasury, and we do hereby establish the same, under the provisions of the aforesaid Act.

Dated the 22nd day of November, 1852.

Campbell, Lord Chief Justice of the Court of Q.B.

John Jervis, Lord Chief Justice of the Court of C.P.

Fred. Pollock, Lord Chief Baron of the Court of Ex.

W. H. Maule, E. V. Williams, T. N. Talfourd, Judges of the Court of C. P.

The before-mentioned tables of fees having been sanctioned and allowed by the Lord Chief Justices, the Lord Chief Baron, and other judges, as required by the said Act, we do hereby order that the said tables of fees be inserted and published in the *London Gazette*.

Treasury Chambers, Whitehall, the twenty-second day of November, 1852.

Chandos, Thos. Bateson, two of the Commissioners of her Majesty's Treasury.

Exchequer of Pleas.

Sittings at Nisi Prius, in Middlesex and London, before the Right Hon. Sir Frederick Pollock, after Michaelmas Term, 1852.

IN MIDDLESEX.

Friday.....Nov. 26—Common Juries
Saturday 27
Monday.....29 } Customs and Common Juries
Tuesday.....30
Wednesday Dec. 1—Inland Revenue and Common Juries
Thursday 2
Friday 3
Saturday 4
Monday.....6 } Special Juries, and Common Juries if necessary
Tuesday.....7
Wednesday 8
Thursday 9

IN LONDON.

Friday.....Dec. 10—Adjournment day. Common Juries
Saturday 11
Monday.....13
Tuesday.....14 } Common Juries
Wednesday 15
Thursday 16
Friday 17
Saturday 18
Monday.....20 } Special Juries, and Common Juries if necessary.
Tuesday.....21
Wednesday 22
Thursday 23

The Court will sit at Ten o'clock.

SOLICITORS ELECTED AS MAYORS.

Oxford.—Mr. John Crews Dudley.
Cambridge.—Mr. Henry Hemington Harris.
Plymouth.—Mr. Herbert Mends Gibson.
Leeds.—Mr. John Hope Shaw.
Portsmouth.—Mr. George Cornelius Stigant.

CORRESPONDENCE.

CERTIFICATE DUTY.

TO THE EDITOR OF THE LAW TIMES.

Sir,—You have advocated for some time a repeal of the certificate duty. Whenever it is abolished, there should at the same time be given some protection to members of the Profession against "Sham Lawyers." The only protection now is by the Inland Revenue Commissioners suing for the penalties given by the 44 Geo. 3, c. 98, s. 14 (a Revenue Act), which they are not very ready or willing to do. The section is as follows:—"Be it enacted, that every person who shall, for or in expectation of any fee, gain, or reward, directly or indirectly, draw or prepare any conveyance of or deed relating to any real or personal estate, or any proceeding in law or equity, other than and except serjeants-at-law, barristers, solicitors, attorneys, notaries, proctors, agents, or procurators, having obtained regular certificates, and special pleaders, draughtsmen in equity and conveyance, being members of one of the four inns of court, and having taken out the certificates mentioned in the said schedule to this Act annexed, at the head office in London of the commissioners for managing duties, &c. and other than and except persons solely employed to engross any deed, instrument, or other proceeding not drawn or prepared by themselves, and for their own account respectively, and other than and except public officers drawing or preparing official instruments applicable to their respective offices, and in the course of their duty, shall forfeit and pay for every such offence the sum of 50*l.*: Provided always, that nothing herein contained shall extend or be construed to extend to prevent any person or persons drawing or preparing any will or other testamentary paper, or any agreement not under seal, or any letter of attorney."

If the Inland Revenue Commissioners would only sue for the penalties, this section is enough to prevent such practitioners as Mr. Warren mentioned in the last volume of the Law Times, p. 167. But if the certificate duty is repealed, power should be given to any solicitor to sue for the penalties.

I am, Sir, yours, &c.
Heckmondwike, near Leeds, W. B. I.
22nd Nov. 1852.

CONDITIONS OF SALE.

TO THE EDITOR OF THE LAW TIMES.

Sir,—I have observed, in your publication of the 20th instant, a very just reflection upon an instance of the latitude, in sales of property, capriciously, or partially, practised by our profession. Whether such irregularities proceed from an anxious solicitude to please a tedious class of clients, or from the less ingenuous motive of selfishness, both alike reprehensible, it is time that some restriction should be imposed upon these arbitrary terms of disposal. It is, indeed, enough, in respect of delicate difficulty, that the sale and transfer of property, by reason of the inherent legal requirements to a good title, is already the subject of voluminous and complicated antecedents, without the additional features of metaphysical phenomena, or arithmetical problems, being allowed to characterise these necessary transactions. Truly, and proudly, it may be the privilege of an Englishman to do what he likes with his own; but a fastidious angularity of mind, and mercenary exaction of treaty, although within the pale of the law, are together repugnant, not only to individuals, but to the principles of social right and national good. I must not, however, indulge, in a letter to you, in a politico-legal dissertation: suffice it, therefore, that I may find in your columns the means of invoking an attention, from my compeers and superiors, to the accepted phrase of "Conditions of Sale," and which attention, let us hope, may insure a beneficial and co-ordinate result with all other questions of law reform. Some definite legislative measure, declarative of the exact obligations upon a vendor, compiled from the present varied decisions, giving a succinct prefatory condition of sale, and dispensing with the really inventive and verbose documents now in use, would meet the approbation of all laymen, if not lawyers, and greatly facilitate that traffic in land, the inseparably concomitant elements of a speculative and commercial age. If my suggestions elicit your aid in behalf of this subject, or touch the chord of sympathy in the like cause in abler and higher minds, my object will be gained; in such hope, with much respect for your publication,

I am, Sir, yours, &c.
Lancashire, Nov. 23, 1852. J. F. S.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

Francis.—On the 17th inst. at Cambridge, Mrs. Clement Francis, of a daughter, who survived her birth only a few hours.

Peach.—On the 18th inst. at Berkhampstead, Herts, the wife of Benjamin Peach, esq. solicitor, of a daughter.

White.—On the 22nd inst. at Lansdowne-road, Nottinghill, the wife of Frederick T. White, of Lincoln's-Inn, esq. of a son.

MARRIAGES.

Horne, Randolph Henry, esq. of Staines, to Catherine Louisa, eldest daughter of the late William Wyon, esq. R.A. of her Majesty's Mint, at Christ Church, Marylebone, on the 16th inst.

Jefferson, William Thrush, esq. of Northallerton, to Margaret, only daughter of Robert Ingleby, esq. of Austwick, at Clapham, Yorkshire, on the 23rd inst.

Washington, Adam, esq. barrister-at-law, of Darley-dale, near Matlock, to Frances Richardson, only daughter of the late Roger Cox, esq. of Spondon-hall, at Spondon, Derbyshire, on the 23rd inst.

DEATHS.

De Rhe Philipe, Rosa Christiana, fourth daughter of Mr. G. P. de Rhe Philipe, of Gray's-inn-square, solicitor, on Tuesday, the 16th inst. aged 19.

Shrewsbury, the Right Hon. John Earl of, on the 9th inst. at Naples.

Smith, Ann, the wife of C. H. Smith, of Duke-street, Manchester-square, solicitor, on the 9th inst. aged 62.

Topping, Emma, third daughter of the late James Topping, esq. M.P. Whatcroft-hall, Cheshire, King's Counsel, on the 18th inst. at Wrexham.

De Winton, Caius, esq. a magistrate and deputy-lieutenant for the counties of Glamorgan and Somerset, on the 19th inst. at his house on the Royal York-crescent, Clifton, aged 73.

NOTICES OF NEW LAW BOOKS.

A Treatise on the Law and Practice of copyhold Enfranchisement. By George W. Cooke, of the Middle Temple, Barrister-at-Law. London: Stevens and Norton.

Mr. Cooke is already known to the Profession as the author of several useful books on subjects connected with landed property and agriculture; he therefore has appropriately undertaken a Treatise on the Enfranchisement of Copyholds, which after the 1st of July next will be compulsory in the next admission, at the option either of the lord or tenant. Mr. Cooke has handled his subject judiciously. In some introductory chapters, he familiarly describes the origin and legal incidents of manors, the incidents of copyhold tenure, customary freeholds, the rights of the lord and the office and emoluments of the steward. Then he describes the manner in which enfranchisement is to be effected, and the evidence which it will be necessary to adduce before the assistant commissioners, arbitrators, and valuers for that purpose. Then follow the three Copyhold Enfranchisement Acts, with notes. The index is copious. Great learning and knowledge of the subject are displayed in every part of the work, and there is a practical air about it that recommends it to us, who are wont to look at law books with an eye to their practical use, and which makes it, in our estimation, very superior to any work on the subject that has yet appeared.

The Statutes for the Improvement of the Jurisdiction of Equity, for the Abolition of the Office of Master, and for the Relief of Suitors in Chancery; also the Trustees Extension Act, and other Acts, and all the New Orders, with Notes and copious Index. By Owen Davies Tudor, Esq. Barrister-at-Law. London: Crockford.

This being one of the series of the *Law Times Editions of important Statutes*, we observe our usual practice in such a case, and limit our notice of it to a description of its contents, without passing any opinion upon its merits, leaving the reader to form his own judgment, from that description, if the book appears likely to be useful to him in his practice.

It contains the whole of the New Chancery Practice, as settled by the statutes and the Orders, with the other Chancery statutes of the last session, as the Trustee Act, &c. It has this peculiarity in its arrangement, that the Orders are interspersed among the statutes to which they relate, but printed in a distinct type, so that the practitioner sees at one glance the language of the Act and the particular Orders by which it is carried into operation. This is, we believe, an unique feature of Mr. Tudor's edition, and probably a very useful one, for it is difficult for a stranger to hunt about among the Orders to find what are those that belong to or explain the various sections of the statute; and yet, without the Orders, the Act itself is unintelligible. Mr. Tudor has introduced, also, a large body of notes, that shew the alterations that have been

made in the practice by the text of the statute or Orders to which they are subjoined. The new tables of fees are set out at the end, and an index, which is unusually copious, occupies no less than forty pages of close print, completing the volume.

THE POOR-LAW BOARD'S PROHIBITORY ORDER.—A deputation, emanating from a meeting held in Manchester on the 25th of October, had an interview by appointment with Sir John Trollope at the Poor-law office, on Wednesday, for the purpose of requesting the total and immediate revocation of the Prohibitory Order issued by the Poor-law Board, on the 25th of August last, on the ground "That it can only be carried out through the sacrifice of all discretion and humanity by boards of guardians, and the surrender of all right of control or opinion by the ratepayers." The deputation was introduced by Mr. Heywood, M.P. and represented unions containing upwards of 2,000,000 of population. After hearing the deputation, Sir John Trollope called attention to the fact that there are upwards of 600 unions in England and Wales under their superintendence, and that this order is already in operation in 500 of them, and that, therefore, this order was not anything new, and that in these 500 unions the order was found to work beneficially both to the ratepayer and rate receiver; that one great object of the order was to teach the poor habits of self-dependence, and that they might learn to join benefit clubs, and lay up small sums of money in savings' banks, in order to provide against temporary depression and other unforeseen casualties. That article 1 the Poor-law Board would be not unwilling to relax in cases of hardship; and as to article 5 he referred to the abuses existing prior to the Poor-law Amendment Act, of giving relief in aid of wages, that it was a subject that had frequently been discussed in Parliament, and that it was very hard to make a man, a very little better off than the person relieved, pay towards the support of the latter. In answer to observations as to article 6 being impracticable, he said the Poor-law Board did not intend the setting up of pauper labour against independent labour, or that the former should in any way be brought into competition with the latter; and that their opinion was that it would be more satisfactory to the poor man, as well as to the ratepayer, that the former should be employed, and not eat the bread of idleness; and that the most suitable employment would be the sweeping of streets, and the preparing of materials for the repair of roads. Sir John also further explained that article 10 was intended to bring the Poor-law Board and boards of guardians into more harmonious working, and to provide for particular hardships that might arise under the other articles. In answer to a question from Mr. Cobbett, M.P. Sir John Trollope assured the deputation that boards of guardians should be held harmless to the present time, and that instructions should be given to the auditors accordingly.

MONEY MARKET.

English Funds.	Sat.	Mon.	Tues.	Wed.	Thurs.	Fri.
Bank Stock	223	223½	223	223	223	223
3 ℔ Cent. Reduced Annuities	100½	100½	100½	100⅝	100⅝	100½
3 ℔ Cent. Consols Annuities	100½	100½	101½	100½	101½	100½
Consols for Account	100½	100½	101½	100½	101½	100½
New 5 ℔ Cent. Annuities	..	..	..	..	..	..
New 3½ ℔ Cent. Annuities	103½	103½	103½	103½	103½	103½
Long Annu. (exp. Jan. 5, 1860)	6½	6½	6½	..	6½	6½
Do. 30 yrs. (exp. Oct. 10, 1859)	..	..	..	..	6½	..
Do. 30 yrs. (exp. Jan. 5, 1860)	..	..	..	..	..	..
India Stock	275½	..	275	277	275	..
India Bonds (1,000l.)	..	80	..	..	83	..
Do. do. (under 1,000l.)	..	80	83	..	83	83
South Sea Stock	..	..	..	..	..	..
Do. do. New Annuities	..	..	..	..	100½	100½
Exchequer Bills, 1,000l. June	72*	69*	69*	71*	70*	72*
Do. do. 500l. June	72*	69*	..	71*	70*	..
Do. do. Small, June	..	69*	..	71*	70*	..

* Premium.

THE GAZETTES.

Bankrupts.

Gazette, Nov. 19.

DAVY, JOHN HENRY, coach wheelwright, Parker-st. Drury-lane, Nov. 26, at half-past two, Jan. 7, at eleven, Basinghall-st. Com. Fane. Off. as. Cannan. Sol. Shillibeer, Great James-st. Bedford-row. Petition, Nov. 17.

FELL, JAMES, builder, New-st. New-road, Hammersmith, and Pereira-place, Shepherd's-bush, Nov. 26 and Jan. 7, at two, Basinghall-st. Com. Fane. Off. as. Whitmore. Sol. Bickley, Devereux-chambers, Devereux-court, Temple. Petition, Nov. 11.

GODDEN, CHARLES, furniture broker, Cropley-st. New North-road, Hoxton, Dec. 1, at eleven, Jan. 6, at two, Basinghall-st. Com. Goulburn. Off. as. Pennell. Sol. Hatton, Strand. Petition, Nov. 8.

HALL, JOHN, corn factor, Newcastle-upon-Tyne, Dec. 3, at eleven, Jan. 7, at twelve, Newcastle-upon-Tyne. Com. Ellison. Off. as. Baker. Sols. Hodge, Newcastle-upon-Tyne; Sadlows, Torr, and Janeway, Bedford-row. Petition, Nov. 13.

PAGE, ROBERT, Jun. iron founder and iron master, Liverpool, and Belfast, Ireland, Nov. 30, and Dec. 21, at eleven, Liverpool. Com. Perry. Off. as. Casenove. Sol. Pemberton, Cable-st. Liverpool. Petition, Nov. 16.

PRICE, FREDERICK, button and trimming dealer, Bristol, Nov. 30 and Dec. 28, at eleven, Bristol. Com. Hill. Off. as. Miller. Sols. Seaman, Panoras-lane, Cheapside; and Brittan and Sons, Albion-chambers, Bristol. Petition, Nov. 8.

PRITCHARD, ROBERT, ale and porter dealer and news agent, Carnarvon, Nov. 26 and Dec. 23, at twelve, Liverpool. Com. Stevenson. Off. as. Bird. Sol. Greene, Lord-st. Liverpool. Petition, Nov. 17.

ROBERTS, WILLIAM, joiner and builder, Bethesda, near Bangor, Nov. 26 and Dec. 23, at twelve, Liverpool. Com. Stevenson. Off. as. Turner. Sol. Williams, Crescent-chambers, Lord-st. Liverpool. Petition, Nov. 17.

WINZAR, JOHN, apothecary, Salisbury, Nov. 29, at two, Dec. 30, at twelve, Basinghall-st. Com. Evans. Off. as. Johnson. Sols. Taylor and Collison, Great James-st. Bedford-row. Petition, Nov. 17.

Gazette, Nov. 23.

BARTEN, JAMES, brewer, Sutton Valence, Kent, Nov. 26 and Dec. 21, at twelve, Basinghall-st. Off. as. Whitmore. Sols. Church and Langdale, Southampton-buildings, Chancery-lane; and Hart and Kipping, Maidstone. Petition, Nov. 12.

BELLETTI, AUGUSTINE, mahogany merchant, West-India Dock-road, Limehouse, Dec. 2, at half-past one, and Jan. 6, at twelve, Basinghall-st. Off. as. Johnson. Sol. Turnley, Cornhill. Petition, Nov. 15.

MILNES, JOHN, woolstapler, Rochdale, Lancashire, Dec. 7 and 28, at twelve, Manchester. Off. as. Pott. Sols. Atkinson and Co. Manchester. Petition, Nov. 19.

Gazette, Nov. 26.

CROSSLEY, THOMAS, silk and ribbon warehouseman and commission agent, Noble-st. City, Dec. 1, at half-past eleven, Jan. 8, at half past two, Basinghall-st. Com. Goulburn. Off. as. Pennell. Sols. Sole, Turner, and Turner, 68, Aldermanbury. Petition, Nov. 23.

EVANS, JOSEPH ICE, clothier, Harrow-road, Paddington, Dec. 9, at half-past twelve, Jan. 13, at twelve, Basinghall-st. Com. Evans. Off. as. Johnson. Sol. Steinberg, Bread-st. Cheapside. Petition, Nov. 24.

FISHER, HENRY, and SELWOOD, EDWARD WILLIAM, wholesale milliners and lacemen, 114, Aldersgate-st. Dec. 7 and Jan. 11, at one, Basinghall-st. Com. Holroyd. Off. as. Edwards. Sols. Ashurst and Son, 6, Old Jewry. Petition, Nov. 15.

GAZLEY, JAMES, carpenter and builder, King's Lynn, Norfolk, Dec. 3, at twelve, Jan. 7, at one, Basinghall-st. Com. Fonblanque. Off. as. Stansfeld. Sols. Trinder and Eyre, 1, John-st. Bedford-row. Petition, Nov. 23.

KENNALL, HENRY, stone mason and builder, Hastings, Nov. 1, at half-past twelve, Jan. 14, at eleven, Basinghall-st. Com. Goulburn, Off. as. Nicholson. Sols. Gregson and Son, 8, Angell-court; and Messrs. Scrivers and Young, Hastings. Petition, Nov. 23.

NORTHWOOD WILLIAM, upholsterer and cabinet-maker, 6, Wigmore-st. Cavendish-square, Dec. 1, at twelve, Jan. 15, at half-past twelve, Basinghall-st. Com. Goulburn. Off. as. Pennell. Sols. Newbon and Evans, 1, Wardrobe-place, Doctors' Commons. Petition, Nov. 25.

TAYLOR, JOHN, grocer and draper, Hoxne, Suffolk, Dec. 7, at half-past twelve, Jan. 6, at one, Basinghall-st. Com. Evans. Off. as. Bell. Sols. Newbon and Hutton, Nobles-st. Cheapside. Petition, Nov. 24.

WINGATLEY, JAMES THOMAS, lighterman, 11, Cranmer-place, Waterloo-bridge-road, Dec. 8, at two, Jan. 7, at twelve, Basinghall-st. Com. Fonblanque. Off. as. Stansfeld. Sols. Lawrance, Plews, and Boyer, 14, Old Jewry-chambers, City. Petition, Oct. 22.

Dividends.

BANKRUPT ESTATES.

Official Assignees are given, to whom apply for the Dividends.

Bailes, A. victualler, first, 1s. 10½d. Freeman, Sheffield. —*Barnes*, T. B. surgeon, first, 5s. 6d. Edwards, London. —*Barnjum*, T. wine merchant, second, 2s. 6d. Edwards, London. — *Boden*, J. A. razor manufacturer, second, 11s. 7¾d.; new proofs, 14s. 11¾d. Freeman, Sheffield.—*Child* and *Barker*, contractors, first joint, 1s. 6d; first sep. of Child, 1s.; first sep. of Barker, 3s. Young, Leeds.—*Clark*, A. plumber, second, 3s.; new proofs, 4s. 8d. Edwards, London.—*Dilger*, T. general dealer, first, 1s. 7d. Young, Leeds. — *Higginson*, J. merchant, second, 6d. Turner, Liverpool.—*Holmes* and *Marshall*, timber merchants, second, 6d. (in addition to 3s. 4d. previously declared). Baker, Newcastle. — *Ibbetson*, J. bookseller, first, 4s. Young, Leeds.—*McCree* and *McCree*, grocers, first, 8s. 3d.; first and final sep. of T. McCree, 20s.; first sep. of A. McCree, 10s. Wakley, Newcastle.—*Morgan*, E. victualler, first, 1s. 6d. Edwards, London.—*Nash* and *Neale*, bankers, fifth, 1s. Pennell, London.—*Passman*, J. currier, second, 5d. Baker, Newcastle.—*Pearman*, T. builder, first, 10s. Stansfeld, London.—*Wilton*, J. linen draper, first, 6s. 8d. Freeman, Sheffield.

INSOLVENTS' ESTATES.

Apply at the Provisional Assignee's Office, Portugal-street, Lincoln's-inn-fields, London, between the hours of eleven and three.

Berry, D. lessee of the Victoria Theatre, 1s. 0½d.—*Bradshaw*, I. quarryman and stone dealer, 6d.—*Carter*, J. coal merchant, 1s. 3d.—*Josel*, M. upholsterer, 3s. 2d.—*Lampard*, I. victualler, 1s. 9½d.—*Mardlin*, J. linendraper and general shopkeeper, 10½d.—*Warne*, J. cheesemonger, 11½d. *Coleman*, S. general shopkeeper, first and final, 3s. 3d. Apply to A. Edwards, official assignee, Pontypool.—*Hewitt*, R. 3s. 3½d. Apply at the County Court, Wellingborough. — *Isaacs*, J. waterproof clothing maker, 6½d. Apply to P. Pearce, official assignee, East Stonehouse.

Assignments for the Benefit of Creditors.

Gazette, Nov. 16.

Penton, C. mealman and baker, Basingstoke, Southampton, Nov. 8. Trusts. C. Penton, mealman, Bransbury; J. W. Cooper, gentleman, Duncan-st. Islington; and J. Butler, yeoman, Sherfield-upon-Loddon. Sol. J. S. Shebbeare, Basingstoke.—*Skeet*, H. farmer, Boxwell, Nutfield, Nov. 13. Trusts. T. Brown, farmer, Denver; J. Gamble, farmer, Shouldham Thorpe. Sols. T. L. and W. Reed, Downham Market.

Gazette, Nov. 19.

Mosley, J. builder, Sidney-st. Mile-end, Nov. 8. Trust. W. Sykes, timber merchant, Osborne-st. Whitechapel. Sols. W. J. Norton and Son, New-st. Bishopsgate.

Partnerships Dissolved.

Gazette, Nov. 16.

Andrews, T. and *Holmes*, J. grocers and Italian warehousemen, Charles-st. Grosvenor-square, Nov. 13. Debts paid by Holmes.—*Broadie*, J. and J. silk manufacturers, Manchester, Nov. 12.—*Clark*, T. and *Mellon*, A. dealers in pictures & china, Regent-st. Westminster, Nov. 11.—*Dunne*, H. C. and *Foster*, W. H. packers and makers up, Manchester, Nov. 9. Debts paid by Dunne.—*Elkin*, S. and *Newbon*, T. and W. manufacturers of leather, Stoke-upon-Trent, Nov. 10. Debts paid by T. and W. Newbon.—*Fisher*, W. and E. clothworkers, Kingsgate-st. Holborn, Nov. 12. Debts paid by W. Fisher.—*Gibson*, M. and *Richardson*, J. agricultural implement makers, Newcastle-upon-Tyne, Nov. 11. Debts paid by Richardson.—*Gough*, F. P. and *Sumner*, G. paper dealers, Birmingham, June 2. —*Hickman*, S., W., J., H., and T. ironfounders, Bilston, as regards S. and T. Hickman, Nov. 5. Debts paid by the remaining partners.—*Hurst*, H. *Sidebotham*, N. and *Hurst*, T. engineers and machinists, Quick Edge, Saddleworth, Oct. 27. Debts paid by Hurst, Sidebotham, and Co.—*Hobson*, H. Houndsditch, and *Robson*, J. Sheffield, hardwaremen, Nov. 12.—*Illingwood*, W. and *Holroyd*, joiners and builders, Manningham, near Bradford, Nov. 11.—*M'Lean*, R. and *Oldham*, B. wool brokers, Basinghall-st. Nov. 11. Debts paid by Oldham.—*Mitton*, E. M. *Povey*, W. and *Bryan*, T. engineers, Birmingham, Nov. 9. Debts paid by Mitton and Povey.—*Nottle*, J. T. and *Watson*, W. ship and insurance brokers and general commission agents, Sunderland, Nov. 10.—*Turabull*, W. and *Lund*, W. linen yarn merchants, Manchester, Nov. 1.—*Walker*, C. J. and S. M. coach makers, White Lion-st. Norton Folgate, Nov. 15. Debts paid by G. J. Walker.—*Watkinson*, H. and *Collinson*, J. woolstaplers and worsted spinners, Bradford, Aug. 7. Debts paid by Watkinson.—*Wheeler*, E. and *Cope*, F. A. manufacturers and merchants, Oldham and Manchester, Nov. 11. Debts paid by Wheeler.

Gazette, Nov. 19.

Agar, W. and *Raymond*, W. F. coal and and general merchants, Kingston-upon-Hull, Nov. 17. Debts paid by Agar.—*Battersby*, R. and *White*, F. coopers, Liverpool, Nov. 16.—*Bell*, T. and *Holland*, J. C. stationers and paper stainers, Nottingham, Nov. 13.—*Brotherton*, R. and *Rigg*, R. railway contractors, Whitehaven, Nov. 15.—*Brown*, C., C., A., and M. farmers, coopers, wood turners, and timber merchants, Barlborough, Nov. 10. Debts paid by C. and M. Brown.—*Colbourn*, J. and *Crowcutt*, S. iron masters, Broadwaters Furnaces, Wednesbury, Nov. 15. Debts paid by Crowcutt.—*Crocker*, J. *Black*, C. C. and *Crocker*, W. W. irish linen factors, Grenham-st. Nov. 17.—*Cussons*, T. and *Ruding*, R. manufacturers of bookbinders' cloth, dyers, and marblers, Bunhill-row, Aug. 31. Debts paid by Ruding.—*Folkin*, R. and *Innes*, C. calico printers, Old Change and Springwater, Nov. 10. Debts paid by Folkin.—*Hazledine*, A. and *Ward*, B. brewers, Manchester, Nov. 16. Debts paid by B. Ward.—*McGlew*, R. and *Oldham*, B. wool brokers, Basinghall-st. Nov. 11. Debts paid by Oldham.—*Mitchell*, W. and *Hartley*, H. jun. iron founders, Primet-bridge, Colne, Nov. 15. Debts paid by Hartley.—*Wall*, T. T. and *Bishop*, J. wine-merchants, Great Prescott-st. Goodman's-fields, Nov. 15.

CLERICAL, MEDICAL, and GENERAL LIFE ASSURANCE SOCIETY.

ADVANTAGES OFFERED.

EXTENSION OF LIMITS OF RESIDENCE.—The assured may reside in most parts of the world, without extra charge, and in all parts by payment of a small extra premium.

MUTUAL SYSTEM WITHOUT THE RISK OF PARTNERSHIP.

The small share of Profit divisible in future among the Shareholders being now provided for, without intrenching on the amount made by the regular business, the Assured will hereafter derive all the benefits obtainable from a Mutual Office, with at the same time, complete freedom from liability, secured by means of an ample Proprietary Capital—thus combining in the same office all the advantages of both systems.

The Assurance Fund already invested amounts to £850,000 and the Income exceeds £136,000 per annum.

CREDIT SYSTEM.—On Policies for the whole of Life, one half of the Annual Premiums for the first five years may remain on credit, and may either continue as a debt on the Policy, or may be paid off at any time

LOANS.—Loans are advanced on Policies which have been in existence five years and upwards, to the extent of nine-tenths of their value.

BONUSES.—Five Bonuses have been declared; at the last in January 1855, the sum of 131,125l. was added to the Policies, producing a Bonus varying with the different ages from 24½ to 55 per cent. on the Premiums paid during the five years.

PARTICIPATION IN PROFITS.—Policies participate in the Profits in proportion to the number and amount of the Premiums paid between every division, so that if only one year's Premium be received prior to the books being closed for any division, the Policy on which it was paid will obtain its due share. The books close for the next division on 30th June, 1860, therefore those who effect Policies before the 30th June next, will be entitled to one year's additional share of Profits over later assurers.

APPLICATION OF BONUSES.—The next and future Bonuses may be either received in cash, or applied at the option of the assured in any other way.

NON-PARTICIPATING.—Assurances may be effected for a fixed Sum at considerably reduced rates, and the Premiums for Term Policies are lower than at most other Safe Offices.

PROMPT SETTLEMENT OF CLAIMS.—Claims paid *thirty* days after proof of death, and all Policies are *indisputable* except in cases of fraud.

INVALID LIVES may be assured at rates proportioned to the increased risk.

POLICIES are granted on the lives of persons in any station, and of every age, and for any sum on one life, from 50l. to 10,000l.

PREMIUMS may be paid yearly, half-yearly, or quarterly; but if a payment be omitted from any cause, the Policy can be revived within *fourteen* months.

The Accounts and Balance Sheets are at all times open to the inspection of the Assured, or of persons desirous to assure.

A copy of the last Report, with a Prospectus and Forms of Proposal, can be obtained of any of the Society's Agents, or will be forwarded free by addressing a line to

GEORGE R. PINCKARD, Resident Secretary.

99, Great Russell-street, Bloomsbury, London.

The usual Commission allowed to Solicitors and Agents.

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To Readers and Correspondents.

"C. G."—*We should be very glad to get rid of them, but we have three thousand readers, and of these not one-sixth possess the "Practical Silkworm."*

"A. B." *suggests, that by way of compensation to Masters Extraordinary, they should be appointed Commissioners for taking Acknowledgments of Married Women. But how with those who are already Commissioners?*

"Omega."—*There is no really good book embracing the whole subject. Read books on the various branches of it, as Settlement, Highways, &c.*

"G."—*The same answer from others has been already returned.*

"M. H. B." (Halifax) *will see by the report that he is right in his understanding of the Lord Chancellor's purpose. It is only a change of name.*

"J. K. W." (Hull) *will appear when we can find a vacant place for so long, although interesting, a communication.*

"Studious"—*His master has a right to employ him as he pleases, but he ought not to put him to do the work of a copying clerk after the first year of his articles. In the beginning he should do so. We very much approve of learners in all professions and trades beginning with the lowest work in it, and going through the whole business with their own hands. It is only thus that it can be thoroughly learned.*

We have received several letters complaining of the new Tables of Fees in the Common Law Courts. Will any reader favour us with a comparative table of the old and new fees, so that the actual charges may be seen side by side? Undoubtedly, all court fees ought to be abolished but is not this new one a step towards that end.

"Inquirer"—*The Lord Chancellor not only accepted the* Law Times *report in argument, but himself cited it by name in his great judgment delivered this week in* M'Gregor v The Dover and Deal Railway Company

SCALE OF CHARGES FOR ADVERTISEMENTS.

Under Fifty Words £0 5 0
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Advertisements from the Country should be accompanied with an order upon the Agent in Town, or a Post-office order (payable at 180, Strand) for the amount.

Advertisements ordered for the first page are charged one-half more. If not so ordered, they will take the chance of position.

On Monday,

THE LAW TIMES SHEET ALMANAC for 1853, comprising New Time Tables in Chancery, Common Law, Bankruptcy, and the County Courts, in addition to all the usual information required for ready reference in offices. Price 1s; stamped to pass free by the post, 1s3d. Copies sent by return of post to persons enclosing 13 postage stamps to the office.

THE LAWYERS' POCKET-BOOK for 1853 is in the Press.

THE SECOND EDITION of KERR'S COMMON LAW PROCEDURE ACT, with all the decided Cases, the new Table of Fees, and many other improvements, will be ready on Saturday next.

Just published,

THE NEW BANKRUPTCY LAW, comprising the BANKRUPTCY CONSOLIDATION ACT, with NOTES of all the CASES decided on its construction; the NEW RULES and ORDERS; with Notes and Forms, and a copious Index. By C. J. B. Hazeldine, Esq Barrister-at-Law, Author of "The Law of Master and Servant." Price 8s. 6d. cloth; 10s. half-bound; 11s bound.

TUDOR'S NEW CHANCERY PRACTICE, comprising all the New Statutes, Rules, and Orders, Tables of Fees, with Notes and abundant Index, the orders being placed with the sections of the statute to which they relate. By Owen Tudor, Esq. Barrister-at-Law, Author of "Leading Cases in Equity." Price 8s. 6d. cloth; 10s. half-bound; 11s bound.

NEW TABLES of FEES in the COURTS of COMMON LAW.—Mr. Crossford announces that the NEW RULES of Practice have been introduced into the SECOND EDITION of KERR'S COMMON LAW PROCEDURE ACT, which will be published on Wednesday next. This Edition contains all the Cases decided upon the New Practice, Table of Terms, with additional Forms, Notes, and Index. The Nisi Prius Officers' Act has been inserted in the Appendix. The New Tables of Fees, which will be issued for 8, Chancery Lane, Fleet Street.

Law Times Office, 29, Essex Street, Strand.

VOL. XIX. No. 548.

We cannot undertake to return rejected communications. Whatever is intended for insertion must be authenticated by the name and address of the writer; not necessarily for publication, but as a guarantee of his good faith. No notice can be taken of anonymous communications.

THE LAW TIMES.

SATURDAY, DECEMBER 4, 1852.

LAW TIMES OFFICE,
Friday night, 12 o'clock.

We are indebted to an express edition of the *Sun*, for the long-looked for financial statement of the Government. The Chancellor of the Exchequer proposes to reduce:—

The Malt Tax to one-half.
The Tea Duty from 2s. 2½d. to 1s. on the lb.
Hop Duty to be abolished.
The Property Tax to be reduced to 5½d. in the pound on Schedules B. D. E: to commence at 50*l.* per annum on property, and at 100*l.* per annum, on industrial incomes, and to be extended to Ireland:

The deficiencies in the revenue, thus occasioned, to be supplied by raising the House Tax to 1s. in the pound on shops, and 1s. 6d. on private dwellings; extending its operation to every house of 10*l.*

There is to be no change in the Poor-rate or County-rates.

COSTS UNDER THE COMMON LAW PROCEDURE ACT.

A correspondent has anticipated in part the request preferred in another article for copies of taxed and other Bills of Costs under the New Procedure.

He has sent us particulars of the fees allowed by the Masters, "from which," he says, "it will be seen that, excepting the loss of the Term fee, there is a very slight deduction from the old scale, the abolition of the declaration, rule to plead, and notice of declaration accounting for the difference.

Scale of Costs allowed on Taxation, for signing Judgment upon a Writ specially endorsed.

	Above 20*l.* £. s. d.	Under 20*l.* £. s. d.
Letter	0 3 6	0 2 0
Instructions to sue	0 6 8	0 3 4
Writ and endorsement	0 12 6	0 10 0
Particulars of claim	0 5 0	0 2 6
Copy and service of writ	0 5 0	0 5 0
Affidavit	0 6 0	0 5 0
Searching for appearance	0 3 4	0 3 4
Copy writ to file	0 1 0	0 1 0
Drawing judgment	0 3 4	0 3 4
Entering ditto	0 4 0	0 3 0
Attending to file copy writ and affidavit, and to sign judgment	0 3 4	0 3 4
Paid filing writ and affidavit	0 4 0	0 4 0
Paid signing judgment	0 5 0	0 5 0
Letters, &c.	0 5 0	0 3 0
	£3 7 8	£2 13 10
In agency, or where writ served by a correspondent, add	0 12 0	0 8 0
	£3 19 8	£3 1 10
Town cases	3 8 0	2 11 0
Country ditto, including mileage and agency	4 0 0	3 2 0

HINTS TO BUSY PRACTITIONERS.

[Under this title we propose from time to time to remind the practitioner of useful facts which, amid the claims of business and the flood of changes in the law, he may possibly have overlooked. As we also may overlook many, we shall be obliged by "hints" from any of our readers.]

WRITS SPECIALLY INDORSED.

It seems that, however long may be the requisite indorsement of particulars on these writs, the Masters allow no additional costs on taxation. But we are informed that some of the Attorneys in the country, to whom writs have been sent for service, have charged 10s. for making copies of such writs, instead of the usual charge of 5s. on the ground that they have so much more to copy in the special indorsement. Now, inasmuch as this charge is not allowed on taxation, it ought not to be made by the agent; and if it is persisted in, the consequence will be that those who have occasion to transmit writs into the country for service will send the copies with them, and thus deprive the Agent altogether of the fee for copying.

It is certainly a great injustice that no extra costs should be allowed for a special indorsement, and not even the cost of the parchment, which is often required to be of considerable size. We presume it was through some oversight that the statute used the word "indorsed," but certainly sufficient security would have been provided by the *annexation* of particulars, instead of an indorsement of them, while it would have saved much cost and inconvenience. Could not this be amended by a short clause in Lord Brougham's Bill?

MASTERS EXTRAORDINARY.

So it was, after all, a false alarm. The Lord Chancellor was misunderstood by the reporters, and no wonder, for in the House of Lords the best speakers are heard with difficulty, so badly is it built. From the explanation given by his Lordship on Monday, it appears that no other change is intended than that of the name. Certainly the title proposed to be substituted is not very euphonious, although it expresses its meaning; but wherefore should it not be simply "Commissioners for taking affidavits," &c.?

Our agitated readers may now recover their calmness: they are not going to be hurt.

ATTORNEYS' BILLS OF COSTS.

It is manifest, from the many letters of inquiry brought to us by every post from all parts of the country, that the Profession is in a state of bewilderment upon the recent changes, and more especially perplexed how to make out their bills; what charges they may, and what they ought, to make. This difficulty has been growing for some time, but it has now attained its height.

It has occurred to us whether the Law Times might not usefully come to the help of the Profession in this strait, as thus:—The old scales of costs are practically worthless. In almost every department of the law a new one is wanted. Portions of the costs can only be settled by taxation, but others are almost conventional, being determined by the custom and common consent, as it were, of the Profession.

Now if our readers will give us the necessary assistance (for the plan will depend wholly upon their furnishing the information), we propose, by means of the Law Times, to frame a complete Table of Costs for the general use and guidance of the Profession.

Published in these columns, as we receive them, they will be open to objections from any quarter, and these being considered, they may be amended, and adopted, and finally issued in a little volume for practical use.

The first department in which it is required is that of the Common Law, then Equity, then Conveyancing, &c.

To frame a complete table of Common Law Costs, as adapted to the new Procedure, it is necessary that our readers should send us copies of any bills of costs, both of plaintiff and defendant, which may have been taxed, as between party and party, and as between attorney and client.

If they will do this, they will oblige us, and serve many of their brethren who are now sorely perplexed how to make out a bill.

COSTS IN EQUITY.

We learn from divers letters from Solicitors, especially in the country, that there is a great want of some information as to the costs of the new Procedure in Chancery, and especially of proceedings *by claim* for foreclosure or other objects. They need this knowledge to direct their judgments in resolving whether they ought to proceed with divers cases that come before them, and in which they should be mainly guided by the amount of costs they would be likely to involve.

We are sure that it will be esteemed a favour by their brother practitioners, and we should feel it to be an obligation conferred upon ourselves, if any of our readers who have had bills of costs taxed and settled under the new procedure, or even bills made out and not taxed, would forward to us a copy for publication here, and thus assist those who are seeking the information they have gained by experience. It will not be necessary to give any names or descriptions that appear in the bills of costs, so that there would be no violation of confidence. The bills of costs in County Court appeals, which we obtained in like manner through favour of our readers, and published some time since, have proved very serviceable to many, and those we now ask for would be still more so.

LAW OF EVIDENCE AND PROCEDURE.

The newspaper report of Lord BROUGHAM's speech upon the introduction of his Bill for the Amendment of the Law of Evidence conveyed but a very imperfect conception of the extent of the measure thus prefaced. The Bill itself is now before us, and when we have given a short abstract of its provisions, our readers will agree with us that more valuable improvements in the practice of the law have never been proposed to the Legislature, and we trust they will meet with the hearty concurrence of both Houses of Parliament, and that soon after the recess it may be our pleasant task to congratulate the Profession on their becoming *the law*, and that Lord BROUGHAM will thus add another to the many laurels he has won in the field of Law Reform.

It first proposes to remove the few remaining defects in the Law of Evidence, defects which we have had repeated occasion to bring under the notice of our readers, and for which we then proposed certain remedies, most of which are adopted in the present Bill.

1st. It makes husbands and wives "competent and compellable" to give evidence in all cases, except "in any criminal proceeding, or in any proceeding instituted in consequence of adultery." But it sets a limit to this evidence at the point where it becomes objectionable, as being a violation of the confidence that ought to exist between husband and wife, and which the law is bound so far to respect as to hold communications between them to be privileged, as are those between attorney and client, and accordingly the Bill provides that neither shall be compelled "*to disclose any communication*" made to the other during marriage—that is to say, evidence of acts done, and of communications with, third parties, will be admissible, but not communications *inter se*.

2nd. Great practical difficulties often arise from the rule, that you may not discredit your own witness, even although he is obviously hostile, and is perverting the truth purposely for your injury. The bill proposes to cure this defect, by providing that in such case the party calling the witness "may cross-examine and put leading questions to him, if he appears to the Court to be adverse to the party; and the party may likewise, at the discretion of the Court, contradict his own witness by other evidence; and may also, at the like discretion, prove that he has made at other times statements inconsistent with his present testimony; but before the last-mentioned proof can be given, the statements must be related to the witness, with the circumstances of times, places, and persons present; and he must be asked whether he has made such statement or statements to that effect; and if he has, he must be allowed to explain them."

At present, if a witness is cross-examined on a matter affecting his credit, the party is bound by his answer, and cannot put in evidence to contradict him. The purpose of this rule was to prevent trumpery inquiries; but practically it has produced some injustice, which this bill proposes to remove by providing that a witness so cross-examined "may be contradicted by other evidence, though the subject-matter of such examination and contradiction may be collateral to the matter in question." But a power is given to the Court to stop such cross-examination and contradiction "if it considers the inquiry irrelevant."

Again, a witness may be cross-examined as to his having made, on other occasions, statements inconsistent with his present testimony, or calculated to affect his credit, without the party cross-examining being compelled to declare whether the statements were so made verbally, or were reduced to writing; but if it should appear that they were in writing, then it must be produced.

3rd. But the most practically useful provision, and the greatest improvement in the law of evidence, is that contained in the 14th section. At present, as the reader is aware, a witness is not compellable to answer any question, the answer to which might, even by the remotest probability, tend to criminate him. The consequence of this is continually to exclude the truth where it is most necessary to justice. Lord BROUGHAM's Bill proposes to remove this great obstacle to the administration of justice, by enacting "that no witness shall be protected from answering any question" on any ground; but protects him against any evil consequences of telling the truth, by providing that "no answer to any such question shall be admissible in evidence in any proceeding against him (except perjury assigned upon such answer), or shall subject him to any punishment, or shall justify his detention by the Court, except on the ground of perjury, prevarication, or contempt;" but the Court is empowered to stop any such questions or answers, if it should consider the inquiry irrelevant.

4th. Every practitioner is aware of the present difficulties and impediments that lie in the way of proof of handwriting. The Bill proposes to remove these by enacting that the handwriting of any person may be proved or disproved by any witness, who, by having seen him write, or by having seen writings purporting to be his, upon which the witness has acted or been charged, has acquired a sufficient knowledge of his handwriting to enable him to express a belief upon the subject. It may also be proved or disproved by comparing the document with any writings either proved to be his, or admitted or treated as such, by the party against whom the evidence is offered, and such writings may be used for the purposes of comparison, although they may not be admissible as evidence in the cause, and the comparison may be either by witnesses acquainted with the handwriting, or by witnesses skilled in deciphering handwriting, or by the jury, or, if there be no jury, by the Court. Any person whose handwriting is disputed may be required to write in court. Handwritings more than thirty years old may be proved by comparison with writings that have come from the proper custody, and purporting to be genuine, and to have been generally respected and acted upon as such by persons who have had an interest in knowing the fact. And in all cases of comparison of handwriting, the Court and the jury "may respectively exercise their judgment on the resemblance or difference of the writings produced, with respect to the general character of the handwriting, the form of the letters, the orthography of the words, and the style of the composition, and also on the fact of one or more of the documents being written in a feigned hand." But where writings are used to disprove handwriting by comparison, they must have been written *ante litem motam*.

5th. A single witness is to be sufficient in law to prove any fact in any cause or proceeding, except in orders of affiliation.

Should not *Treason* also be excepted from this sweeping enactment?

6th. A summary proceeding is provided for the *discovery of documents*, so as to avoid the costly and troublesome process of a bill of discovery. It is proposed that, upon affidavit, a summons may be taken out calling upon the other party to say whether he has any, and if any what, documents in his possession or power relating to the matters in dispute, and why any such documents should not be produced for inspection by, or if necessary to be stamped by, the party taking out the summons; and at any time before trial either party, on affidavit that he cannot proceed to trial safely without the information required, may take out a summons calling upon his opponent to show cause why he should not, prior to the trial, become examined on oath as to the matters in dispute, by the party taking out the summons, in the presence of some examiner specially appointed by the Judge, and such examination is to be conducted in the same manner as with a witness about to go abroad, and not expected to be present at the trial.

7th. No document more than ten years old is to be rejected on the ground of absence of, or defect in, stamp. In other words, there is to be a statute of limitations to stamp objections, so often the means of defeating justice, and inflicting grievous wrong on innocent persons.

Such are the provisions of this admirable measure which relate to the improvement of the Law of Evidence. There are many more, affecting other improvements in procedure and practice, to which we will direct the reader's attention next week, this article having already exceeded our limits.

AN ACTION AT LAW UNDER THE NEW PRACTICE.

ARTICLE III.

PROCEEDING WITHOUT PERSONAL SERVICE.

1. DEFENDANT WITHIN THE JURISDICTION.

The next proceeding to be mentioned is one of the leading alterations which the new procedure has made, namely, the mode of proceeding where personal service of the writ cannot be effected, but the defendant is believed to be within the jurisdiction of the Superior Courts, and the writ has come to his knowledge, or he wilfully evades service of it.

In such a case formerly, the next step was an application for a writ of distringas. This application was made to the Court out of which the writ of summons issued, or some judge of that Court, and was founded on affidavit. If the application were granted, the writ of distringas issued in accordance to a precipe; it was usually directed to the sheriff of the county in which the defendant was supposed to be, and its purpose was simply to compel the defendant to appear to the writ of summons. The officer to whom the writ was directed, made distress on the defendant's goods to the amount of 40s. if any were found, and served him with the writ if he could be found; and if he could not be found, then the writ was left for him. If a distress were made, or if the writ were served on defendant personally, the plaintiff might cause an appearance to be entered for him; but if no distress could be made, and personal service of the distringas could not be made, the officer to whom it was directed made a return to the Court to that effect, and then, by application to the Court on affidavit, the plaintiff obtained leave to enter an appearance for the defendant.

This complicated machinery was abolished by sec. 24 of the Common Law Procedure Act, and, in place of it, it is provided that it shall be lawful for the plaintiff to apply from time to time on affidavit to the Court out of which the writ of summons issued, or to a Judge; and in case it shall appear to such Court or Judge that reasonable efforts have been made to effect personal service, and either that the writ has come to the knowledge of the defendant, or that he wilfully evades service of the same, and has not appeared thereto, it shall be lawful for such Court or Judge to order that the plaintiff be at liberty to proceed as if personal service had been effected, subject to such conditions as to the Court or Judge may seem fit. (Sec. 17.)

The application for this order, whether made in Term or vacation, may be to a single Judge at chambers. (*Smeaton* v. *Collier*, 1 Ex. 457.) The affidavit necessary to support the application will be very similar to that formerly required in order to obtain a writ of distringas; and as it is very long, and must greatly vary according to the circumstances of each case, a form will not be given. The main requirements of the affidavit to obtain a distringas were as follow: it should shew that the writ of summons and indorsements were regular by annexing copies or setting them out (*Wakely* v. *Teesdale*, 2 L. M. & P. 56); the defendant's correct name, and his business or occupation; that three calls had been made at the defendant's dwelling-house or place of residence; that at each of these the purpose of the call was explained, and what was actually said in doing so; that on each of the two first calls a day and hour were appointed when the next call would be made; that on the last call a copy of the writ was left; that it was believed (and the grounds for the belief, if they were not already shown by what took place on the calls) that the defendant was keeping out of the way to

evade personal service, and that he had not appeared to the writ. Positive affidavits will be sufficient for the purpose of an application to proceed without personal service; but where to proceed will now also be obtainable on showing reasonable efforts to serve the defendant personally, and that the writ has come to his knowledge. In this latter case, the Courts will probably be less strict as to the calls having been made, and as to the circumstances attending them, or the circumstances attending other attempts at personal service.

On such an order being made, the plaintiff is precisely in the same position as if he had effected personal service, the effect of which will be afterwards considered, and the order will usually be absolute in the first instance, and will not require service. (*Barringer* v. *Handley*, 16 Jur. 1023; S.C. 20 Law T. Rep. 81; *Taylor* v. *Rogers*, 20 Law T. Rep. 201.)

II. DEFENDANT OUT OF THE JURISDICTION.

It has been generally supposed that the above (17th) section is confined to cases where the defendant resides within the jurisdiction. This is not expressly enacted; and probably it will be questioned when a case occurs in which the defendant resides abroad, and reasonable efforts have been made to serve him personally, but it cannot be shewn that the writ has come to his knowledge; or where a defendant residing abroad has appeared to the writ, and it cannot be shewn that he is living abroad in order to defeat and delay his creditors. This last-mentioned state of circumstances may well arise where the defendant is a foreigner living in his own country.

There is a provision, however, applied expressly to cases where the defendant resides out of the jurisdiction, for in such cases the Court or Judge, upon being satisfied by affidavit that there is a cause of action which arose within the jurisdiction, or in respect of the breach of a contract made within the jurisdiction, and that the writ has been personally served upon the defendant, or that reasonable efforts have been made to effect personal service thereof upon the defendant, and that it has come to his knowledge, and either that the defendant wilfully neglects to appear to such writ, or that he is living out of the jurisdiction, in order to defeat and delay his creditors, may direct from time to time that the plaintiff shall be at liberty to proceed in the action in such manner, and subject to such conditions as to such Court or Judge may seem fit, having regard to the time allowed for the defendant to appear being reasonable, and to the other circumstances of the case. (Secs. 18 & 19.) In proceeding under these sections, it is necessary in all cases, whether the defendant has been served personally or not, that the affidavit should satisfy the Court or Judge that there is a cause of action which arose within the jurisdiction or in respect of the breach of a contract made within the jurisdiction, and either that the defendant wilfully neglects to appear, or that he is living out of the jurisdiction, in order to defeat and delay his creditors. Where the defendant has not been served personally, it is also necessary to satisfy the Court or Judge that reasonable efforts have been made to effect personal service, and that the writ has come to the defendant's knowledge. The belief that these, or such as are requisite in the case, are facts, and the grounds of such belief should be shewn by the affidavit: probably the efforts to effect personal service should be similar to those mentioned above as required where the defendant is within the jurisdiction.

It would be extremely inconvenient were it required that this affidavit should be made in England; but the Courts have always received affidavits sworn before a foreign Judge or other public officer authorised by the laws of the country where they were made, to take affidavits. It is necessary, however, to authenticate the signature of the officer taking the affidavit, and his authority to administer the oath and take the affidavit. This can be done either by an affidavit made in this country, or by the certificate of a notary public (*Re parte Worsley*, 2 H. Bl. 275), or of a British Consul-General or Consul (6 Geo. 4, c. 87, s. 20). It seems that before the Common Law Procedure Act a British Consul had only the authority of a notary public, and could not, therefore, take an affidavit in a cause. (*Le Veux* v. *Berkeley*, 5 Q.B. 836.) But by this Act, any affidavit for the purpose of enabling the Court or a Judge to direct proceedings to be taken against a defendant residing out of the jurisdiction, may be sworn before any Consul-General, Consul, Vice-Consul, or Consular Agent, for the time being appointed by her Majesty in any foreign port or place; and every affidavit so sworn by virtue of this Act may be used, and shall be admitted in evidence, saving all just exceptions, provided it purport to be signed by such Consul-General, Consul, Vice-Consul, or consular agent, upon proof of the official character and signature of the person appearing to have signed the same. (Sec. 25.)

The jurat at the foot of such an affidavit may be as follows:—

Sworn by virtue of "the Common Law Procedure Act, 1852," at a port (or *place*) *in the kingdom* (or as the case may be) *of this day of one thousand eight hundred and fifty before me the consul-general* (or as the case may be), *aforesaid, appointed by her Majesty the Queen of the United Kingdom of Great Britain and Ireland.*

The proof of the official character and signature of the person taking the affidavit will generally be easily obtainable from a clerk in the Foreign Office, whose affidavit may be as follows:—

In the Queen's Bench.

Between A. B. plaintiff, and C. D. defendant.

J. K. of a clerk in the office of her Majesty's Secretary of State for Foreign Affairs, maketh oath and saith that before whom the affidavit of hereunto annexed, purports to have been sworn herein on the day of one thousand eight hundred and fifty was on that day the consul-general (or as the case may be) *at a foreign port* (or *place*), *being in the kingdom* (or as the case may be) *of appointed by her Majesty. And this deponent further saith that he is well acquainted with the handwriting of the said and that the name of subscribed to the said affidavit of is of the proper handwriting of the said as this deponent verily believes.*

Sworn (as usual).

If the affidavit is made in a foreign language, it must be translated, and there must be an affidavit verifying the translation. (*Re Rady*, 6 Dowl. 615).

The order for the plaintiff to proceed will, no doubt (as in the case of a defendant within the jurisdiction), be absolute in the first instance, and not require service.

This mode of proceeding is another of the most striking alterations made by the recent Act, and is a substitute for a very ancient and complicated course of proceeding, which resulted in the outlawry of the defendant's person, and the plaintiff's obtaining payment of his claim from the defendant's property. The prosecuting to outlawry was used against defendants who at that time could not be served with the writ of summons because they were residing out of the jurisdiction of the Courts, or were supposed to be so, and the first step in it was the obtaining a writ of distringas. This writ was similar in all respects to the distringas to compel appearance above mentioned, except that the notice at the foot of it stated that proceedings would be taken to outlaw the defendant; and this writ (like that for compelling appearance) is abolished by sec. 24 of the Common Law Procedure Act. In order to proceed to outlawry, it was necessary that the sheriff should return this writ, and then a writ issued directed to the same sheriff, called an exigi facias, in consequence of which the defendant was required, i. e. called on to appear in the action, at five successive County Courts, and this writ had to be continued by another writ, called an allocatur exigent. With these writs a writ of proclamation issued to the sheriff, directing him to make three proclamations at different places to the defendant to surrender, and if the defendant did not give himself up before the return of these writs he was outlawed, and a writ of capias utlagatum issued. The outlaw was thereupon subject to the severest personal disabilities, the detail of which is now quite unnecessary; and by virtue of the writ last mentioned, his property might be seized by the sheriff into the hands of the Queen, upon which an inquisition on account of it was returned into the Court of Exchequer, for the seizure had made it a matter of revenue. Out of the Exchequer, writs might issue to sell the goods, to collect the debts, and to receive the profits of the lands of the defendant, and the proceeds of these might be obtained by the plaintiff. So extravagantly complicated and unsuitable a proceeding to enable a creditor to obtain payment of his debt from his absent debtor's property, was a disgrace to our law. The history of it, and the tedious and dilatory detail involved, it is not necessary to enter upon here, but a brief sketch of the proceeding seemed appropriate.

In place of it, a plaintiff is now enabled to proceed against a defendant abroad, and who neglects to appear in our courts in substance as he would were the defendant in this country; but in order, that the defendant may have sufficient knowledge of the proceedings, and opportunity to meet the claim, the plaintiff must first take steps to obtain liberty from the Court or Judge so to proceed. The end really sought in such cases is the obtaining a judgment against the defendant, and usually the obtaining payment from the debtor's property in this country. The judgment of outlawry was not a judgment as to the matter of the action, but in a collateral proceeding, the payment was obtained, where there was above 50*l.* worth of property, by an intricate process, commencing with a petition to the Lords of the Treasury; while the judgment the plaintiff now obtains is a legal judgment in favour of his claim, and he will obtain payment by the ordinary and direct process as his right. A more effectual result will therefore now be arrived at by a much shorter and straighter path. G. T.

SHAM LAWYERS.

THE following has been sent to us:—

All Saints'-court, All Saints'-lane,
Bristol, 23rd November, 1852.

MADAM,—Mr. Charles Russell, of Downend, has placed some of his outstanding accounts in my hands for collection, with instructions to put those persons to expenses who do not pay on my applying to them once only, and among them I have one against you, amounting to fourteen shillings and tenpence only; I therefore give you notice, that if you do not immediately pay me the 14*s.* 10*d.* expenses will be added to the debt.

It will be useless your calling on Mr. Russell, as he cannot interfere, he having altogether placed the affair in my hands.

You may find me at my residence, No. 4, Stapleton-place, Stapleton-road, near the Three Black Birds, up to half-past nine o'clock of a morning, or after five of an evening; or at my office as above, about half-past eleven o'clock of a morning.

Requesting your immediate attention, *or you will have to abide by the consequences.*

Yours obediently,
FRAS. MUSGROVE.

To Mrs. Davis, Downend.

THE LEGISLATOR.

Imperial Parliament.

HOUSE OF LORDS.

OATHS IN CHANCERY, &c. BILL.

TUESDAY, Nov. 30.—The LORD CHANCELLOR moved the second reading of this bill, the object of which, he said, was simply to give a definite name to the present Masters extraordinary in Chancery, and to enable solicitors within ten miles of London to act in the same way as Masters extraordinary formerly did. He wished to correct a mistake which prevailed with respect to the bill. It was thought by some that the object of the bill was to deprive the present Masters extraordinary in Chancery of the benefits they at present had. There was no such intention felt in framing the bill, nor did the bill seek to accomplish it. It simply gave them a name more consonant with their vocation.—The Bill was then read a second time, and ordered to be committed.

HOUSE OF COMMONS.

TRIAL BY JURY.

MONDAY, Nov. 29.—Mr. PHILLIMORE asked the Attorney-General whether it was the intention of her Majesty's Ministers to bring forward any measure to render the unanimity of jurors unnecessary?—The ATTORNEY-GENERAL said, at present it certainly was not the intention of the Government to do so.—Mr. PHILLIMORE then gave notice that after the Christmas recess he would submit a proposition to make the verdict of three-fourths of a jury equal in effect to the present unanimous verdict.

TRUCK SYSTEM.

WEDNESDAY, Dec. 1.—Mr. C. FOSTER asked whether, in consequence of Mr. Tremenheere's report, it was the intention of Government to introduce any measure relative to the truck system during the present session.—Mr. WALPOLE said that Government intended to introduce an Act altering the truck system immediately after the recess.

POOR LAWS.

On the motion of Sir GEORGE PECHELL, copies were ordered of the order issued by the Poor Law Board, dated the 25th day of August, 1852, for regulating the administration of out-door relief, addressed to 110 unions: of all applications, whether by memorial, petition, resolution, or letter, addressed by such Board of Guardians, or any of them, to the Poor Law Board, respecting the said [illegible]

THE LAWYER.

Summary.

EQUITY PRACTICE.—Some more points of practice under the new procedure require to be noted. In the matter of the new *stamps* on Chancery proceedings, where a bill had been filed in writing with a 1*l.* stamp, and then a printed copy was tendered to the officer unstamped, it was held by Vice-Chancellor TURNER that only one stamp was necessary, and that the printed copy should be received and filed. (*Lambert* v. *Lomas*, 20 Law T. Rep. 87.) In *Langdall* v. *Gill*, 20 Law T. Rep. 88, it was held by Vice-Chancellor STUART not to be necessary to obtain leave of the Court previous to filing a statement of new facts in the Record and Writ Clerk's Office, under the 44th order of Aug. 7. In *Exparte Cramer*, 20 Law T. Rep. 87, the executors of a will not proved were ordered by the Court to represent the personal estate of the testator for the purpose of the proceeding then before it, under the provisions of sec. 44 of c. 86. In *Clarke* v. *Clarke*, 20 Law T. Rep. 88, the Vice-Chancellor was of opinion, that "under the new practice an infant must be served with notice of the decree in the same way as any other party; and should any difficulty thereafter arise, any question on the propriety of the service might then be decided."

In the practice relating to *Foreclosure*, two more cases are reported. In *Smith* v. *Boucher*, 20 Law T. Rep. 88, the Court refused to add to an order of course, to render a foreclosure absolute, a declaration that the mortgagor was a trustee within the Trustee Act; and in *Stains* v. *Rudlin*, 20 Law T. Rep. 88, it was ordered that, for the purpose of a sale under a decree of foreclosure, "an account should be taken before the judge's clerk of the principal and costs due on the mortgage, and to tax the costs of all parties except the mortgagor; and should the principal, interest, and costs not be paid by the mortgagor within one month after the date of the clerk's certificate of the amount, the estate to be sold, and the proceeds paid into court, with the usual and necessary directions."

In *Blackborough* v. *Ravenhill*, 20 Law T. Rep. 88, it was held that application for the appointment of a receiver should be by summons at chambers.

COMMON LAW.—Term has ended, and for the first time within our editorial memory, there are to be no sittings after, the business being almost "worked up." The last week has produced a very small crop of "points" on the new procedure. Where a writ of summons had been issued, and appearance entered, sec. stat. before the new Act came into operation, and a declaration filed in the notice endorsed to plead in eight days, but no notices of which was given to the defendant, and the plaintiff signed judgment for want of a plea, and issued execution, the Court of Q. B. set it aside as irregular, holding that defendant was entitled to notice of declaration. Lord Campbell observed "that section 62 only dispenses with a rule to plead, or demand of plea, but leaves everything else the same as it was before. (*Piggott* v. *Jackson*, 20 Law T. Rep. 95.) The Court of Exch. did the same in *Goodliffe* v. *Neaves*, Law T. Rep. 101, Alderson, B. putting it thus, with his usual terseness: "It is clear that either the defendant has appeared or he has not; well, then, he has not appeared himself, but by Act of Parliament the plaintiff has placed him in the same position as if he had. Then what is there in that new Act to say he shall be treated as if he had not appeared? The plaintiff's course, therefore, is clearly irregular. Whether he ought to have proceeded according to the old or the new law I give no opinion; he clearly ought to have brought himself within one or the other."

A rule was granted in *Cornish* v. *Hawkins*, 20 Law T. Rep. 95, to raise the question whether, under sec. 222, the Court is empowered to amend a mistake in the endorsement upon a copy of a writ that had been served.

It will be observed, in *Taylor* v. *Rogers*, 20 Law T. Rep. 101, that the Court granted leave to proceed as if service of writ had been effected (under sec. 17, substituting this for the old process of distringas) on an affidavit which stated the various calls made, and that the answers were that defendant was out of town and his return uncertain; that, on Oct. 21 copy-writ of summons was left at his dwelling-house, and that on the 25th another copy was left with the servant; that on Nov. 23rd the person who left the copies called and asked the servant if she had given the defendant the copy, and she replied that she had; and that subsequently he applied at the house, and saw the servant again, who said that her master had left home on the Wednesday previous. In *Lumley* v. *Gye*, 20 Law T. Rep. 103, leave was given to demur and plead several matters under sec. 80.

It was held in *Ash* v. *Dawnay*, 20 Law T. Rep. 103, that a sheriff taking possession under a writ of fi. fa. and remaining in possession an unreasonable time, is liable to an action for trespass.

MASTERS EXTRAORDINARY.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Referring to the alterations said to be in contemplation, permit me to suggest that all Solicitors should ex officio be allowed to administer oaths to the same extent as Masters Extraordinary. I cannot see why there should be any appointment for the purpose, or why the number should be limited. There ought to be no invidious distinction, for it is simply a matter of convenience, and not of trust or honour; though, if only a limited number be authorised, they will most certainly parade it as the latter.

As a parallel proposition, I would suggest that all attorneys should ex officio be allowed to administer oaths to the same extent as commissioners for taking affidavits.

I am, Sir, yours, &c.

Nov. 29, 1852. A SOLICITOR.

THE PROFESSION.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I am glad to see that you advocate the propriety of an immediate call to the Bar, on the part of attorneys desirous of the change. I believe that there is a general feeling in favour of this alternative. All law students should be required to pass such an examination in some branch of the law as would entitle them to select either branch of the Profession; and the members of either branch, in these times of free trade, should be allowed to change again with rapidly-changing circumstances, if desirous of doing so, upon due application to some functionary. There could be nothing degrading in this to either branch, whilst there probably would be a great convenience and benefit. Whereas, according to the present system, if an individual take a mistaken position, or be thrown into a false one by new legislation, he may be excluded from bettering himself altogether.

This liberty is also quite consistent with preserving each branch of the Profession distinct, as well as each department. Things would then find their own level, and no one would have right to complain.

I am, Sir, yours, &c.

J. L. FORSTER.

Newcastle-upon-Tyne, Nov. 29, 1852.

THE NEW SCALE OF FEES.

TO THE EDITOR OF THE LAW TIMES.

SIR,—In the last number of the LAW TIMES you say the "Profession" are pleased at the reduction of the fees. Let us see how far your assertion is correct. Under the late process it cost—

Writ	£0	5	0
Service	0	5	0
Affidavit	0	1	0
Appearance	0	2	0
Rule to plead	0	1	0
Judgment	0	8	0
Taxing	0	2	0
	£1	4	0

On a judgment by default for which the costs were taxed at about 8*l.* Now we pay—

Writ	£0	5	0
Service	0	5	0
Searching appearance	0	0	6
Swearing affidavit	0	1	0
Filing affidavit copy, writ, and judgment	0	10	0
	£1	1	6

And for which we get 3*l.* 8*s.*

I am, Sir, yours, &c.

ONE WHO IS NOT PLEASED AT THE SCALE.

Query.

LAW OF EVIDENCE AMENDMENT ACT.

In your paper, of Oct. 30 and Nov. 6, there are remarks under this title, signed respectively "Inquirer" and "W. H. F." I should be glad to be able to take the same view as "W. H. F." and act upon it in a matter now in hand; but it appears to me that the 14th section of the Act is confined to copies of documents *of such a public nature as to be admissible in evidence on mere production from proper custody*. As a will of land does not fall within this description, I cannot agree with "W. H. F." unless he can give some reason for his opinion, which I should be glad to see.

A. B.

OATHS IN CHANCERY.—By the Lord Chancellor's Bill passing through the House of Lords (just printed), the persons now styled "Masters Extraordinary in Chancery" are to be designated "Country Agents to administer Oaths in Chancery;" and "London Agents," within ten miles of Lincoln's-inn Hall, are to administer oaths for proceedings in London; and they are entitled to 1*s.* 6*d.* for every oath administered by them. A Chancery stamp of 1*l.* is to be the charge of appointment for a London or country agent.

THE MERCANTILE LAWYER.

Two cases in the *Law of Master and Servant* are to be noted. In *Harris* v. *Thompson*, 20 Law T. Rep. 99, it appeared that a director of a company had learned, in his capacity as director of another company, that the plaintiff had been dismissed from the office of secretary on the ground of gross misconduct. He stated this at the board, and in answer to a question from the chairman, said, that the misconduct was, obtaining money by false pretences, and giving an I O U for a petty cash debt. For this plaintiff brought an action against him; but it was held to be a privileged communication. "The circumstance," said JERVIS, C.J. "of a man being dismissed for misconduct, justifies a director in acting as, defendant did. In answer to a question, he tells what the charges were. Whether he meant that they were true or not, it is not necessary to inquire; for whether he meant this or not, it would be a privileged communication. Even if he had said, 'and I believe them to be true,' it would still be privileged. The question was, whether there was any evidence of express malice." In *Todd* v. *Kellage*, 20 Law T. Rep. 101, it was decided that governesses are not within the rule applicable to domestic servants, of a month's notice or wages; we presume, therefore, that a general hiring of a governess is a hiring for a year, with all its consequences as to notice. This should make persons who hire governesses or tutors very cautious to make with them such written terms as to notice as shall permit the contract to be put an end to at any time after a short notice, otherwise they will be bound for a year.

Young v. *Waud*, 20 Law T. Rep. 101, was a question as to whether a mortgage of his trading effects, under these circumstances, was an act of bankruptcy. A. sold goods and took bills for them. Being unable to cash them, he gave a mortgage upon his machinery to cover the amount. It was held not to be evidence of an act of bankruptcy.

PROMOTIONS, APPOINTMENTS, ETC.

The Queen has been graciously pleased to give orders for the appointment of Sir Robert Horsford, Knight, Chief Justice for the islands of Antigua and Montserrat, to be an ordinary member of the Civil Division of the third class or Companions of the Most Honourable Order of the Bath.

The Queen has also been pleased to direct letters patent to be passed under the Great Seal granting the dignity of a Knight of the United Kingdom of Great Britain and Ireland unto William à Becket, esq. Chief Justice of the colony of Victoria. From the *London Gazette* of Nov. 19.

The Queen has been pleased to appoint William M. Edye, esq. to be resident magistrate of Fort Peddie, in the settlement of the Cape of Good Hope,

The Right Hon. Sir John Jervis has appointed Robert Shindler, of Chatham, in the county of Kent, gent. to be one of the Perpetual Commissioners for taking the acknowledgments of deeds to be executed by married women, in and for the county of Kent.

The Right Hon. Sir John Jervis, has appointed Brutton John Ford, of the city of Exeter, gent. to be one of the Perpetual Commissioners for taking the acknowledgments of deeds to be executed by married women, in and for the city and county of the city of Exeter, also in and for the county of Devon.

The Lord Chancellor has appointed John Stansfield, of Todmorden, in the county palatine of Lancaster, gent. and Robert Shindler, of Brompton, Kent, gent. to be Masters Extraordinary in the High Court of Chancery.

COMMISSION SIGNED BY THE LORD-LIEUTENANT OF THE NORTH RIDING OF YORKSHIRE.—Arthur Stephens, esq. to be Deputy-Lieutenant.

ATTORNEYS APPOINTED TO BE MAYORS.

The following are to be added to the list.

Lancaster.—Mr. John Hall.

Preston.—Mr. Peter Catterall.

Salisbury.—Mr. C. E. P. Kelsey, re-elected.

DIARY OF SALES BY AUCTION, DURING THE NEXT WEEK,

ADVERTISED IN THE "LAW TIMES."

DAY.	PLACE.	AUCTIONEER.	WHEN ADVERTISED.	PROPERTY.
Thursday, Dec. 9	Mart.	Marsh.	Dec. 4.	Well secured mortgage-debt of 3,000*l.*

COURT PAPERS.

CHANCERY SITTINGS,

Appointed after Michaelmas Term, 1852.

AT LINCOLN'S INN.

Lord Chancellor's Court.

Wednesday Dec. 1—1st Seal. Appeal Motions & Appeals
Thursday ..... 2—Appeals
Saturday ..... 4 } Petitions in Lunacy, Appeal Petitions, and Appeals
Wednesday ..... 8—2nd Seal. Appeal Motions & Appeals
Thursday ..... 9—Appeals
Saturday ..... 11 } Petitions in Lunacy, Appeal Petitions, and Appeals
Wednesday ..... 15—3rd Seal. Appeal Motions & Appeals
Thursday ..... 16—Appeals
Saturday ..... 18 } Petitions in Lunacy, Appeal Petitions, and Appeals
Tuesday ..... 21—4th Seal.
Wednesday ..... 22—Appeal Motions and Appeals
Thursday ..... 23 } Petitions in Lunacy, Appeal Petitions, and Appeals

The days his Lordship attends the House of Lords excepted.

Lords Justices.

AT LINCOLN'S-INN.

Wednesday Dec. 1—1st Seal. Appeal Motions
Thursday ..... 2—Petitions in Lunacy and Appeals
Friday ..... 3—Appeal Petitions and Bankrupt do.
Saturday ..... 4 } Appeals
Monday ..... 6 } Appeals
Tuesday ..... 7 } Appeals
Wednesday ..... 8—2nd Seal. Appeal Motions
Thursday ..... 9—Petitions in Lunacy and Appeals
Friday ..... 10—Appeal Petitions and Bankrupt do.
Saturday ..... 11 } Appeals
Monday ..... 13 } Appeals
Tuesday ..... 14 } Appeals
Wednesday ..... 15—3rd Seal. Appeal Motions
Thursday ..... 16—Petitions in Lunacy and Appeals
Friday ..... 17—Appeal Petitions and Bankrupt do.
Saturday ..... 18 } Appeals
Monday ..... 20 } Appeals
Tuesday ..... 21 } 4th Seal. Petitions in Lunacy, and Appeal Motions
Wednesday ..... 22—Appeal Petitions and Bankrupt do.

The days, if any, on which the Lords Justices shall be engaged at the Judicial Committee of the Privy Council are excepted.

Rolls Court.

AT THE ROLLS.

Wednesday Dec. 1—Motions
Thursday ..... 2 }
Friday ..... 3 }
Saturday ..... 4 } Pleas, Demurrers, Causes, Claims, Further Directions, and Exceptions
Monday ..... 6 }
Tuesday ..... 7 }
Wednesday ..... 8—Motions
Thursday ..... 9 }
Friday ..... 10 }
Saturday ..... 11 } Pleas, Demurrers, Causes, Claims, Further Directions, and Exceptions
Monday ..... 13 }
Tuesday ..... 14 }
Wednesday ..... 15—Motions
Thursday ..... 16 }
Friday ..... 17 }
Saturday ..... 18 } Pleas, Demurrers, Causes, Claims, Further Directions, and Exceptions
Monday ..... 20 }
Tuesday ..... 21—Motions
Wednesday ..... 22—Petitions in General Paper

Short causes, short claims, consent causes, unopposed petitions, and claims, every Saturday at the sitting of the Court.

NOTICE.—Consent Petitions must be presented, and copies left with the secretary, on or before the Thursday preceding the Saturday on which it is intended they should

Vice-Chancellor Sir G. Turner's Court.

AT LINCOLN'S-INN.

Wednesday Dec. 1—1st Seal. Motions
Thursday ..... 2 } Pleas, Demurrers, Exceptions, Causes, Claims, and Further Directions
Friday ..... 3 } Petition day. Cause Petitions (unopposed first), Short Causes, Short Claims, and Claims.
Saturday ..... 4 }
Monday ..... 6 } Pleas, Demurrers, Exceptions, Causes, Claims, and Further Directions
Tuesday ..... 7 }
Wednesday ..... 8—2nd Seal. Motions
Thursday ..... 9 } Pleas, Demurrers, Exceptions, Claims, Causes, and Further Directions
Friday ..... 10 } Unopposed Petitions, Short Causes, Short Claims, Claims, and Causes
Saturday ..... 11 }
Monday ..... 13 } Pleas, Demurrers, Exceptions, Causes, Claims, and Further Directions
Tuesday ..... 14 }
Wednesday ..... 15—3rd Seal. Motions
Thursday ..... 16 } Pleas, Demurrers, Exceptions, Claims, Causes, and Further Directions
Friday ..... 17 } Unopposed Petitions, Short Causes, Short Claims, Claims and Causes
Saturday ..... 18 }
Monday ..... 20 } Pleas, Demurrers, Exceptions, Causes, Claims, and Further Directions
Tuesday ..... 21—4th Seal. Motions
Wednesday ..... 22 } Petition day. Cause Petitions (unopposed first)
Thursday ..... 23—Short Causes, Short Claims, & Causes.

Vice-Chancellor Stuart's Court.

AT LINCOLN'S-INN.

Wednesday Dec. 1—1st Seal. Motions
Thursday ..... 2 } Short Causes, Short Claims, Claims, and Causes
Friday ..... 3 } Pleas, Demurrers, Exceptions, Causes, and Further Directions
Saturday ..... 4—Cause Petitions (unopposed first)
Monday ..... 6 }
Tuesday ..... 7 } Pleas, Demurrers, Exceptions, Causes, and Further Directions
Wednesday ..... 8—2nd Seal. Motions
Thursday ..... 9 } Short Causes, Short Claims, Claims, and Causes
Friday ..... 10 } Pleas, Demurrers, Exceptions, Causes, and Further Directions
Saturday ..... 11—Cause Petitions (unopposed first)
Monday ..... 13 }
Tuesday ..... 14 } Pleas, Demurrers, Exceptions, Causes, and Further Directions
Wednesday ..... 15—3rd Seal. Motions
Thursday ..... 16 } Short Causes, Short Claims, Claims, and Causes
Friday ..... 17 } Pleas, Demurrers, Exceptions, Causes, and Further Directions
Saturday ..... 18—Cause Petitions (unopposed first)
Monday ..... 20 } Pleas, Demurrers, Exceptions, Causes, and Further Directions
Tuesday ..... 21—4th Seal. Motions
Wednesday ..... 22 } Petition day, Cause Petitions (unopposed first)
Thursday ..... 23 } Short Causes, Short Claims, Claims, and Causes

Vice-Chancellor Sir R. Kindersley's Court.

AT LINCOLN'S-INN.

Wednesday Dec. 1—1st Seal. Motions and Causes
Thursday ..... 2 } Pleas, Demurrers, Exceptions, Causes, Claims, and Further Directions
Friday ..... 3 } Petition day. Cause Petitions (unopposed first)
Saturday ..... 4—Short Causes, Short Claims, & Causes
Monday ..... 6 }
Tuesday ..... 7 } Pleas, Demurrers, Exceptions, Causes, Claims, and Further Directions
Wednesday ..... 8—2nd Seal. Motions
Thursday ..... 9 } Pleas, Demurrers, Exceptions, Claims, Causes, and Further Directions
Friday ..... 10 } Petition day. Cause Petitions (unopposed first)
Saturday ..... 11—Short Causes, Short Claims, & Causes
Monday ..... 13 }
Tuesday ..... 14 } Pleas, Demurrers, Exceptions, Causes, Claims, and Further Directions
Wednesday ..... 15—3rd Seal. Motions
Thursday ..... 16 } Pleas, Demurrers, Exceptions, Causes, and Further Directions
Friday ..... 17 } Petition day. Cause Petitions (unopposed first)
Saturday ..... 18—Short Causes, Short Claims, & Causes
Monday ..... 20 } Pleas, Demurrers, Exceptions, Causes, Claims, and Further Directions
Tuesday ..... 21—4th Seal. Motions
Wednesday ..... 22 } Petition day. Cause Petitions (unopposed first)
Thursday ..... 23—Short Causes, Short Claims, & Causes

N.B. Unopposed petitions, not exceeding ten, at the sitting of the Court, every day except Seal-day.

QUESTIONS AT THE EXAMINATION,

Michaelmas Term, 1852.

I. PRELIMINARY.

1. WHERE, and with whom, did you serve your clerkship?

2. State the particular branch or branches of the law to which you have principally applied yourself during your clerkship.

3. Mention some of the principal law-books which you have read and studied.

4. Have you attended any, and what, law lectures?

II. COMMON AND STATUTE LAW, AND PRACTICE OF THE COURTS.

5. At Common Law, when a deed is made *inter partes*, can a person beneficially interested in the covenant, but who is not a party to the deed, maintain an action on the deed?

6. When a contract is not under seal, may the person, for whose benefit the contract is made, sue thereon, or must the action be brought in the name of the agent who made the contract?

7. What are the principal facts necessary to be proved by affidavit in order to obtain a judge's order to hold a defendant to bail under stat. 1 & 2 Vict. c. 110?

8. Point out any defects or irregularities in the proceedings which would entitle a defendant to apply to set them aside.

9. Is the writ of *capias* the commencement of the action, or the writ of summons?

10. Explain the meaning of the maxim of "*Actio personalis moritur cum persona*," and give an instance of its application.

11. Has any, and what, alteration been made in that rule of law, by the statute 9 & 10 Vict. c. 93?

12. May an answer in Chancery be used in evidence at Nisi Prius against the party making it?

13. In what cases have the Superior Courts concurrent jurisdiction with the County Courts in actions on contract and in tort?

14. Do the provisions in the County Court Acts restraining the plaintiff's right to costs apply to cases of judgment by default, and when orders to stay are granted?

15. When a verdict has been obtained in the Superior Courts for less than 20*l.* on contract, and the Judge does not certify for costs, what steps can the plaintiff take to obtain his costs, and what would be sufficient grounds to support his application?

16. What is the necessary evidence to support an action on an attorney's bill when the pleas are "Never indebted" and "No signed bill delivered?"

17. When an attesting witness to the execution of a deed is dead, what proof is required of the execution of the deed?

18. What are sufficient grounds to sustain a motion in arrest of judgment?

19. Also to sustain a motion for judgment *non obstante veredicto?*

III. CONVEYANCING.

20. Give an instance of a chattel real and of a chattel personal.

21. By what words is an estate in fee simple created by a deed? And by what words is an estate tail created by a deed?

22. What is dower? what is freebench? and what is a jointure?

23. What is meant by "Title by purchase?" and what by "Title by descent?"

24. What changes in the Law of Dower have been made by the stat. 3 & 4 Wm. 4, c. 105, and do such alterations apply to freebench?

25. In what case does a judgment against a tenant in tail bind his issue and the remainderman?

26. If an estate be in a register county, is a purchaser in any and what case entitled to require that a will should be registered?

27. Should a second mortgagee take any and what precaution to preserve his priority over a third mortgagee, and should he take any and what precaution so as to have priority over a second charge to the first mortgagee?

28. Where a tenancy by lease is for a term certain, is any and what notice to quit required?

29. In what cases will a general devise of all the testator's real and personal estates pass those vested in him in trust, or by way of mortgage?

30. Is the devisee of an estate contracted to be purchased by, but not conveyed to the testator, entitled to have a conveyance from the vendor; and by whom, and from what fund is the purchase-money to be paid?

31. What are the rights of a husband with respect to his wife's reversionary property?

32. Is there any mode by which a testator, seised of copyhold estates, and intending that they should be sold after his decease, can avoid the necessity of the admittance of the trustees of his will, and the payment of a fine by them before a suit can be effected; and if so, how?

33. If the purchaser of one lot of an estate give a deed of covenant for production of the title to the purchaser of another lot, and afterwards sell and convey the property he bought and part with the deeds, will the covenant run with the land, and will his personal liability under the deed of covenant be discharged, or how is the discharge of it to be provided for, and the production of the deeds secured to the covenantee?

34. If two persons purchase lands and take a conveyance to them and their heirs, but do not advance the money in equal proportions, and this appears by the deed itself, are they joint-tenants? and what will be the effect of the death of one of them?

IV. EQUITY, AND PRACTICE OF THE COURTS.

35. State some of the grounds of suits in Equity, in which the Court of Chancery has exclusive jurisdiction.

36. What are the powers of Courts of Equity regarding subjects of expected injury?

37. In what cases does a Court of Equity interfere either in aid of or to control an action at law?

38. In what circumstances will equity supply defects in deeds which have been sealed and delivered?

39. Will a Court of Equity give relief in any and what circumstances where a lease has become forfeited by breach of covenant?

40. What course can a trustee take who [illegible]

of avoiding future responsibility? and what are the practical proceedings necessary?

41. Explain the rule as to marshalling assets.

42. When must the statements in a bill be verified by affidavit?

43. What documents and papers may a defendant be compelled to produce, and are there any and what exceptions?

44. What are the rules to be observed in applying for an injunction?

45. What is the mode of proceeding to prevent the transfer of stock by a party having a reversionary interest therein?

46. What is required in order to take the evidence of a witness *de bene esse*?

47. When is security for costs required from the plaintiff?

48. What process must be served personally on the party, and when will it be sufficient to serve the solicitor?

49. What are the several modes of defence to a bill in Equity?

V. BANKRUPTCY, AND PRACTICE OF THE COURTS.

50. State in general terms the object of the Bankruptcy Laws: by what statutes they were first introduced, and the principal alterations and improvements made in them.

51. Who are the persons subject to the jurisdiction of the Bankrupt Laws?

52. What Court or Courts have jurisdiction in bankruptcy? And has any, and what, important alteration been made therein; and when, and in what manner?

53. What are the steps necessary to be taken to make a person subject to those laws bankrupt, and before whom?

54. Within what time, whether in town or country, must the petition in bankruptcy be opened, and what are the consequences of its not being opened in due time?

55. What remedies has an individual improperly declared bankrupt, and against whom?

56. Will the death of the bankrupt abate the adjudication at any, and what stage of the proceedings?

57. What is the lowest amount of debt which must be owing to a single creditor to enable him to obtain an adjudication? The same question in the case of two creditors not partners? And where there are more creditors join for a similar purpose?

58. What is essential to constitute a trading within the meaning of the statute?

59. Will buying only, or selling only, constitute a sufficient and valid trading?

60. State what acts of a trader are deemed acts of bankruptcy, and with what intention must such acts be done?

61. If a debtor, liable to the Bankrupt Laws, has not committed an act of bankruptcy, how can he be proceeded against in order to make him bankrupt?

62. What are the respective rights of joint and separate creditors as to the proof of debts under an adjudication against partners in trade?

63. In case a creditor possesses collateral security for his debt, must he take any and what proceedings before he will be allowed to prove his debt?

64. Are the assignees entitled to property which accrues to the bankrupt after the adjudication? and if so, is there any and what limitation?

VI. CRIMINAL LAW, AND PROCEEDINGS BEFORE MAGISTRATES.

65. What is the difference between larceny and embezzlement?

66. Define the offence of obtaining money or goods by false pretences, and state in what particu differs from larceny.

67. Are there any and what cases in which a prosecutor can claim costs of a defendant?

68. State generally in what cases a *certiorari* may be moved for.

69. State the mode of application and what is required of a party applying for the writ of *certiorari*, either prosecutor or defendant.

70. State in what cases leave to exhibit articles of the peace is applied for.

71. State the mode of application, the material allegations necessary, and what will be required of the party against whom the application is made, if the application be granted.

72. Can the party against whom the articles are granted controvert the statement? if he is bound to submit, what is the remedy if the statement is untrue?

73. State the nature of the proceedings for leave to file a criminal information for libel, the time within which the application must be made, and the material allegations of the prosecutor's affidavit.

74. What is the mode of proceeding to obtain a writ of *habeas corpus*, where a person is alleged to be unlawfully detained, or where a magistrate has refused to admit to bail?

75. When and how can a public footpath be stopped or diverted?

76. In what cases is a prosecutor entitled to costs, and by whom payable, and how ascertained?

77. How far are magistrates responsible for acts done in the discharge of their duty as magistrates, the mode of proceeding, and are they entitled to notice, and if so, the object of the notice?

78. What has been substituted by the Legislature for voluntary affidavits, and what is essential to the validity of such substitute?

79. Is a witness in criminal proceedings entitled before leaving home to demand payment of his travelling expenses, and for loss of time?

CORRESPONDENCE.

REG. v. NEWMAN.

TO THE EDITOR OF THE LAW TIMES.

SIR,—You may not be aware that two certificates were granted in this case by the notary to the inquisition, one dated the 22nd of September, the other, 18th of November, widely differing from each other in the form of attestation. The latter was the one actually tendered and received in evidence, yet the former has by some mistake found its way into the reports, and is reproduced in the LAW TIMES of this day. The certificate of the 18th of November having been especially obtained to replace the other, the attestation to which was considered defective, you may deem it of sufficient importance to call attention to the real document, which is correctly given in in the fourth page of the enclosed pamphlet.

I am, Sir, yours, &c.

ALEX. RIDGWAY.

28, Royal Exchange, 27th November, 1852.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

FOLKESTONE.—On the 29th ult. the Viscountess Folkestone, of a son.

HOFFMAN.—On the 2nd inst. the wife of Mr. Hoffman, of Doctors'-commons, solicitor, of a son.

JOLLIFFE.—On the 27th ult. at 53, Woburn-place, the wife of W. P. Jolliffe, esq. barrister-at-law, of a son.

LAST.—On the 24th ult. at Hadleigh, Suffolk, Mrs. Frederick Last, of a daughter.

NEISON.—On the 26th ult. at Hendon, the wife of F. G. P. Neison, esq. of a son.

SMITH.—On the 25th ult. at Edith Villas, North-end, Fulham, the wife of Frederick James Smith, esq. barrister-at-law, of a daughter.

THOMPSON.—On the 30th ult. at the residence of her sister, Stowey Mead, Somersetshire, the wife of Springall Thompson, esq. barrister-at-law, of a daughter.

MARRIAGES.

BLAQUIERE, the Lord de, to Eleanor Amelia, eldest daughter of Sir William G. H. Jolliffe, bart. M.P. on the 25th ult. at St. James's Church.

CLARKE, Robert Nalder, esq. J.P. of Leviderderg, Port Phillip, B.A. of Downing College, Cambridge, to Catharine Jane, youngest daughter of the late Dr. Hudspath, of Bowsden, on the 27th of May, at St. James's church, Jericho, Van Diemen's Land.

DEATHS.

BOOR, Louisa, widow of the late James Boor, esq. solicitor, Warminster, Wilts, on the 22nd ult. at Tin-Tan House, Reading, aged 36.

GUEST, Sir Josiah John, bart. M.P. for Merthyr Tydvil, at Dowlais-house, Glamorganshire, on the 26th ult. aged 67.

LOVELACE, Augusta Ada, wife of William Earl of Lovelace, and only daughter of George Gordon Noel Lord Byron, on the 27th ult. at No. 5, Great Cumberland-place, aged 37.

JONES William, esq. a magistrate and alderman of the borough of Portsmouth, on the 28th ult. at his residence, Queen-street, Portsea, aged 66.

THE GAZETTES.

Bankrupts.

Gazette, Nov. 30.

CANEY, MICHAEL, juvenile outfitter, Baker-st. Portman-square, Dec. 10, at twelve, and Jan. 13, at one, Basinghall-st. Off. as. Bell. Sol. Low, Wimpole-st. Petition, Nov. 24.

COOKE, WILLIAM, miller, Albert-terrace, Bow, Dec. 10, at one, Jan. 18, at twelve, Basinghall-st. Off. as. Stansfeld. Sol. Ellis, Cowper-court, Cornhill. Petition, Nov. 27.

HASTINGS, HENRY, tea dealer, Cheltenham, Dec. 13 and Jan. 10, at eleven, Bristol. Off. as. Hutton. Sol. Sabine, Bristol. Petition, Nov. 26.

JONES, RICHARD, hatter, Coventry, Dec. 13, and Jan. 13, at eleven, Birmingham. Off. as. Christie. Sol. Hodgson, Birmingham. Petition, Nov. 29.

LESTER, GEORGE, builder, High-street, Poplar, Dec. 10, at one, and Jan. 11, at twelve, Basinghall-street. Off. as. Edwards. Sol. Steinberg, Bread-st. Cheapside. Petition, Nov. 27.

ROBINSON, WILLIAM, linendraper, Maidstone, Dec. 10, at twelve, and Jan. 18, at one, Basinghall-st. Off. as. Stansfeld. Sols. Nicholls and Doyle, Verulam-buildings, Gray's-inn; Morgan, Maidstone. Petition, Nov. 30.

VENNALL, HENRY, stone mason, Hastings, Dec. 1, at half-past one, and Jan. 14, at eleven, Basinghall-st. Off. as. Nicholson. Sols. Gregson and Son, Angel-court; Scrivens and Young, Hastings. Petition, Nov. 23.

WARREN, JOHN, dentist, George-st. Hanover-square, Dec. 10 and Jan. 14, at one, Basinghall-st. Off. as. Whitmore. Sol. Murrough, New-inn, Strand. Petition, Nov. 26.

WILLS, THOMAS PRATT, brewer, Portsea, Dec. 14, at one, Jan. 18, at twelve, Basinghall-st. Off. as. Groom. Sols. Pownall and Cross, Staple-inn, Holborn; and Hallyer, Portsea. Petition, Nov. 24.

Gazette, Dec. 3.

CAPPER, HENRY, licensed victualler, Tivoli Tavern, Windmill-street, Gravesend, Dec. 9 and Jan. 22, at half-past twelve, Basinghall-st. Com. Goulburn. Off. as. Nicholson. Sols. Wilkinson, Gurney, and Stevens, 3, Nicholas-lane. Petition, Nov. 3.

COP, DANIEL, grocer, Ardwick, Manchester, Dec. 17 and Jan. 7, at twelve, Manchester. Off. as. Lee. Sols. Higson and Robinson, Manchester. Petition, Nov. 24.

COLLS, RICHARD, builder and undertaker, 2, Norfolk-place, East-st. Chatham, Kent, Dec. 10, at half-past twelve, Jan. 13, at two, Basinghall-st. Com. Evans. Off. as. Johnson. Sols. Sole, Turner, and Turner, Aldermanbury. Petition, Dec. 1.

COREY, THOMAS, builder, 21, Lower Eaton-st. Pimlico, Dec. 14 and Jan. 18, at one, Basinghall-st. Com. Fonblanque. Off. as. Graham. Sol. W. Rixon, 11, King William-st. City. Petition, Dec. 1.

COWAN, PATRICK, brass founder and gas fitter, 48, Skinner-st. Snow-hill, Dec. 14, at two, Jan. 18, at eleven, Basinghall-st. Com. Holroyd. Off. as. Edwards. Sol. J. Appleton, 3, Philpot-lane. Petition, Nov. 23.

JONES, RICHARD, hatter, Coventry (and not Coventry, as before advertised), Shropshire, Dec. 16 and Jan. 13, at eleven, Birmingham. Com. Daniell. Off. as. Christie. Sol. Hodgson, Cherry-st. Birmingham. Petition, Nov. 29.

NOBLE, RICHARD EATON, plumber, painter, and glazier, 5, Down-street, Piccadilly, Dec. 14, at one, Jan. 21, at twelve, Basinghall-st. Com. Fonblanque. Off. as. Stansfeld. Sol. J. Collins, 5, Crescent-place, New Bridge-st. Blackfriars. Petition, Dec. 1.

PICKFORD, CHARLOTTE JULIA, upholsteress, and fringe and tassel manufacturer, Cheltenham, Dec. 14 and Jan. 11, at eleven, Bristol. Com. Hill. Off. as. Acraman. Sol. W. Bevan, Small-st. Bristol. Petition, Nov. 26.

SPICER, JOHN EDWARD, paper manufacturer, Chilworth, Guildford, Surrey, Dec. 15, at eleven, Jan. 22, at twelve, Basinghall-st. Com. Goulburn. Off. as. Nicholson. Sol. J. Irvimey, 30, Southampton-buildings, Chancery-lane. Petition, Nov. 23.

WHEELER, THOMAS, jun. cattle dealer, Cirencester, Dec. 14 and Jan. 11, at twelve, Bristol. Com. Hill. Off. as. Hutton. Sol. Bevan, Small-st. Bristol. Petition, Nov. 30.

Dividends.

BANKRUPT ESTATES.

Official Assignees are given, to whom apply for the Dividends.

Assheton, T. N. merchant, second, 3d. Bird, Liverpool. —*Dickenson*, E. W. merchant, third, 8d. Bird, Liverpool. *Gouldesbrough*, J. manufacturer, further, 1d. Lee, Manchester.—*Guthrie* and *Cook*, merchants, third, 3-8ths of 1d. Bird, Liverpool.—*Kyrke*, J. lime burner, second, 9½d.; first on new proofs, 3s. Morgan, Liverpool.—*Mackellar* and *Hampson*, shawl warehousemen, first, 2s. 6d. Groom, London.—*Tomkinson*, J. stonemason and builder, third, 9¾d.; first and second on new proofs, 2s. 4d. and 1s. 3¾d. Morgan, Liverpool.—*Tucker*, T. and J. ship builders, first, 1s. 3d. Morgan, Liverpool.—*Walsh*, G. pawnbroker, first, 12s. 5½d. Pott, Manchester.

INSOLVENTS' ESTATES.

Lewis, E. hammered iron manufacturer, 4s. 5½d. Apply to J. Harward, Stourbridge.—*Lewis*, T. anvil, butt, and general-use iron manufacturer and dealer, 1s. 10½d. Apply to J. Hayward, Stourbridge.

Assignments for the Benefit of Creditors.

Gazette, Nov. 23.

Bailey, C. W. draper, Lewisham, Kent, Nov. 5. Trusts. J. Bradbury, Aldermanbury, and R. David, Gresham-st. warehousemen. Sols. Davidson and Bradbury, Weavers'-hall.—*Lang*, J. baker, South Petherton, Somersetshire, Oct. 29. Trust. W. Hopkins, miller, Gawbridge Mills, Kingsbury Episcopi. Sol. I. B. Hayward, South Petherton.—*Mason*, J. farmer, Marston, Yorkshire, Oct. 28. Trusts. R. Richardson, Nether Poppleton, and J. Dawson, Marston, farmers. Sol. T. L. Bickers, Tadcaster.—*Whitley*, R. hatter, Nottingham, Nov. 19. Trust. C. Gillham, hat manufacturer, Liverpool. Sol. W. Ellison, jun. Leicester. —*Wright*, J. P. linendraper, Stafford, Nov. 13. Trusts. W. M'Intosh, merchant, and W. Bramall, commercial traveller, both of Manchester. Sols. Sale, Worthington, and Shipman, Manchester.

Gazette, Nov. 26.

Ballantyne, J. hosier and glover, Bedford-st. Bedford-row. Trustee. J. King, glover, Little Love-lane, Wood-st. Sol. J. Chapple, Gresham-st.—*Page*, E. ironmonger, Swindon, Wiltshire, Nov. 13. Trusts. H. Symonds, factor, Birmingham, and Peter Hardy, ironfounder, Worcester, Sols. Crowdys and Townsend, Swindon.—*Rooke*, S. (late a farmer at Barrowash, Derbyshire), yeoman, Leicester, Nov. 8. Trusts. G. Baldwin, tailor and draper, and B. Wilker, lace manufacturer, both of Nottingham. Sols. W. and R. Enfield, Nottingham.—*Wigan*, R. draper, Worcester, Oct. 28. Trusts. J. Howell, St. Paul's-church-yard, and C. Candy, Watling-st. warehousemen. Sol. T. Parker, St. Paul's-church-yard.

Partnerships Dissolved.

Gazette, Nov. 23.

Cory, S. S. and *Gue*, T. M. surgeons and apothecaries, Allington and Bridport, Sept. 29.—*Cowen*, M. and *Walker*, G. moulders, Nov. 13. Debts paid by Cowen.—*Flint*, J. and *Humphrey*, P. farmers, Charlwood, Nov. 15. Debts paid by Flint.—*Forler*, A. and *Rudolff*, W. frost cutters, Curtain-road, Shoreditch, Nov. 22.—*Hall*, G. and J. produce brokers and insurance agents, Nov. 15.—*Healey*, J. and H. Islington-green, Nov. 15.—*Kenworthy*, J. H. and *Lewis*, E. lithographers, engineers, and painters, Coleman-st. Sept. 30. Debts paid by Kenworthy.—*Oliver*, W. H. and *Emerson*, E. printing, bookselling, and stationery trade, Lowestoft, Nov. 23.—*Powell*, T. *Pilar*, E. *Powell*, W. and W. jun. glass bottle manufacturers, St. Philip and Jacob, Bristol, as regards T. Powell, April 30. Debts paid by remaining partners.—*Rosenberg*, J. and F. *Rosenberg*, L. wholesale and retail cigar and tobacco manufacturers and dealers, Manchester, Nov. 15.

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NEW TABLES of FEES in the COURTS of COMMON LAW.—MR. CROCKFORD announces that the NEW TABLES of FEES have been introduced into the SECOND EDITION of KERR'S COMMON LAW PROCEDURE ACT, which will be published on Wednesday next. This Edition also contains all the Cases decided upon the New Practice during Michaelmas Term, with additional Forms, Notes, and Index. The Nisi Prius Officers' Act has been inserted in the Appendix. The *First Edition* is out of print. Such was the demand for it, that it was exhausted in a fortnight.

Law Times Office, 29, Essex-street.

To Readers and Correspondents.

"Apollo."—*Yes; both would be fatal objections.*

"Lycurgus" *need not fear the consequence of any interval not unreasonably long.*

"J. C." (Manchester) *will be considered.*

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THE LAW TIMES.

SATURDAY, DECEMBER 11, 1852.

THE ATTORNEYS' TAX.

It should be understood that, if adopted as it was proposed on Friday last, which is not at all likely, the Budget is only an *outline* of the Government scheme of finance; it was not designed to cover the various questions relating to the minor taxes, which are left for consideration at the usual period for making up the accounts of the financial year, when the surplus, if there should be one, comes in due course to be dealt with. That portion of the Budget already before the public is directed, not to the reduction, but to the re-distribution, of taxation; according to the estimate of the Chancellor of the Exchequer, it leaves the revenue as he found it, and, should the ordinary sources shew a surplus in April, he will be enabled to apply it to the repeal of the lesser burdens that bear upon the people or impede commerce.

Hence no disappointment nor surprise need be felt at the omission of any reference to the Attorneys' Tax in the financial statement of last week. It was not the place for it; it will come to be *considered* with the other taxes in April next, when the state of the year's revenue is ascertained. Whether there is an inclination to give it a prominent place among the claimants for relief we are unable to say, but we think there *is*, and if there should be a considerable surplus in April, it will probably be one of the taxes selected for repeal by Mr. Disraeli, should he be then in office, of which, however, there is at present very considerable doubt.

THE NEW SCALE OF FEES IN THE COMMON LAW COURTS.

The new Table of Fees, which appeared so fair at the first glance, proves in practice to be something worse than a pretence of relief to the suitor,—it inflicts upon him a positive increase of charges.

True it is, that upon the whole scale there is a considerable reduction of the total sum of charges; and it was this which we and others, who glanced at the total without investigating the items, supposed to be such a boon to the suitor. Doubtless it was this that induced Lord Campbell to pass upon it a public eulogium. Neither the Lord Chief Justice, nor the other Judges by whom the new Table of Fees was approved, could have been aware of the delusion that was being practised upon them, upon the Profession, and upon the public, by the parties, whoever they were, to whom had been entrusted the duty of preparing that scale of fees and submitting it for their sanction.

By what contrivance, the reader will ask, is it, that a Scale of Fees, which in its total shews a reduction, in practice proves to be an increase?

Thus it is. The principal reductions are made in those fees which attached to *the trial* of a cause—and particularly in the trial of undefended actions—a boon, no doubt, or rather the abatement of a great injustice,—but how purchased?

At the cost of the proceedings in the *beginning* of an action. Instead of a diminution of fees up to judgment and execution in an undefended action, there is a positive *addition!* Now, inasmuch as to one action that goes to trial there are a hundred that stop at the earlier stages, the fees abandoned in the former are compensated fivefold by the additional fees imposed on the latter.

And this is the boasted reform in Court Fees! Surely the attention of Lord Campbell needs but to be directed to this to secure his instant interposition to remedy a wrong in which the Judges have, doubtless, been as much deceived as the Profession.

The following letter compares the old with the new scale, and will put their Lordships in possession of the facts:—

TO THE EDITOR OF THE LAW TIMES.

Sir,—I think you were much too hasty in so highly praising the new scale of fees, which, instead of giving satisfaction, gives great *dissatisfaction*, both to the Profession and to suitors. I give you both the old and the new scale of fees payable on actions *that are not tried* (which are by far the most numerous), and leave you to make your own comments on the new scale. I can only say that, on the whole, the fees now payable in actions that are not tried, as well as in those that are tried, amount in the aggregate to double the amount of those payable under the old scale, and yet this is the alteration that Lord Campbell hoped would be of such *great benefit* (?) *to suitors!* Whilst the remuneration of attorneys is reduced to bricklayers' wages, the fees of Court are increased to *double* their former amount!! A few fees which but seldom become payable have been abolished, whilst those that *frequently* become payable have been increased, and not only that, but *many new fees have been created.*

	Old Scale. s. d.	New Scale. £ s. d.
Writ of summons	5 0	0 5 0
Searching for appearance, or declaration—two terms	0 0	0 0 6
Exceeding two, and not exceeding four terms	0 0	0 1 0
Exceeding four terms	0 0	0 2 6
Filing affidavit of service	0 0	0 2 0
Filing copy writ	0 0	0 2 0
Every appearance for one defendant	2 0	0 2 0
Each defendant after the first	0 0	0 1 0
Filing declaration	0 0	0 2 0
Rule to plead	1 0	0 0 0
Every judge's summons in Term	1 0	0 2 0
In vacation	2 0	0 2 0
Every special rule, not exceeding six folios	4 0	0 1 0
Exceeding six folios, per folio	0 0	0 0 6
Payment into court—		
Every sum under 50*l.*	0 0	0 5 0
50*l.* and under 100*l.*	0 0	0 10 0
100*l.* and above	0 0	1 0 0
Every judgment by default	8 0	0 5 0
Every judgment by consent or otherwise than by default	8 0	0 10 0
Taxing costs not exceeding three folios	1 0	0 2 0
Exceeding three folios when taxed between party and party, per folio	0 1	0 0 6
Do. when taxed between attorney and client	0 4	0 1 0
Every writ of execution	1 0	0 5 0
Totals	£1 13 8	£4 5 0

I am, Sir, yours, &c.

Wm. Berry.

Southampton-buildings, Dec. 6, 1852.

HINTS TO BUSY PRACTITIONERS.

[Under this title we propose from time to time to remind the practitioner of useful facts which, amid the claims of business and the flood of changes in the law, he may possibly have overlooked. As we also may overlook many, we shall be obliged by "hints" from any of our readers.]

WRITS SPECIALLY INDORSED.

It has been already intimated to our readers that the Masters will not allow in taxation any extra costs for special indorsements, however long, although such indorsements require, in some cases, a large sheet of parchment and a great deal of writing, besides the additional charge of the agent for copy and service. Hence the question has arisen as to the sort of particulars that should be indorsed: should the whole account be set out, or will such a brief summary suffice as is usually delivered with declarations, and upon which the defendant may demand fuller particulars if he requires them? The spirit and intent of the statute was certainly that full particulars should be given, and so in justice they should be, for it is upon them that the judgment rests. But practically, by requiring *indorsement* instead of *annexation* of particulars, the Legislature has made full particulars almost impossible; and if they are abbreviated at all, there is no reason why they should not be reduced to the dimensions of the particulars, as they would be served with the declaration, leaving it to the defendant to go to the Court for fuller details, if he desires them. But then this involves delay, which it is the very purpose of this provision of the Procedure Act to avoid.

Amid these conflicting difficulties, perhaps the better course for the practitioner will be to indorse full particulars, where they are not longer than can be compressed into a parchment of the size of a page of foolscap; but if they should exceed this, to give only the abridged

particulars, as he would have given them with a declaration, and take the chance of the defendant delaying his judgment by going to the Court for fuller particulars.

We have framed a clause for the removal of this unforesecn difficulty, of which we will endeavour to procure the insertion in Lord BROUGHAM'S Evidence and Procedure Bill, now before the Lords.

WHAT THE COMMON LAW COMMISSIONERS ARE DOING.

WHEN Mr. WHITESIDE produced his admirable scheme for the Reform of the Common Law Courts in Ireland, the producers and the patrons of the comparatively petty improvements that have been effected in England must have experienced something like a sense of shame at their own short-comings. Sir FREDERICK THESIGER came to their rescue in his gentlemanly way, excusing them on account of the haste with which the Bill was necessarily carried through Parliament at the close of an abbreviated session. But the plea is not a valid one. If the Bill was hurriedly passed, it was deliberately framed. The Commissioners were engaged for many months in its preparation, and it is notorious that the completed law is much in advance of the propositions of those whose business it was to construct this scheme of reform, the measure, in spite of haste, having been considerably improved in its progress, by the emendations of Sir F. THESIGER himself, of Mr. CROWDER, of Lord CAMPBELL, and of other law reformers.

When the report of the Commissioners appeared, we took the liberty of expressing pretty strongly the disappointment it had produced among the Profession, and having, with the help of suggestions from our many practical readers, submitted, in a series of letters to the LORD CHIEF JUSTICE, a succinct statement of the reforms that were required in the Common Law Courts to adapt them to the needs of the times, we were enabled to compare the propositions of the Commissioners with the actual requirements of experience, and thus to shew how far the Commissioners were in the rear both of the Profession and of the public. The remarks we felt it to be our duty to make upon this matter produced some soreness at the time, and in some quarters were deemed to reflect rather too harshly upon the Commissioners.

The result, however, has fully justified every observation we then made. The Procedure Act, as framed by the Commission and improved by the Legislature, became law. It was scarcely in operation a month, before the Government practically pronounced its insufficiency, by introducing a measure for the reform of the Common Law Procedure in Ireland, which goes vastly beyond the law so lately passed for England, and adopts almost every improvement, for the omission of which we were supposed to have too severely blamed the Commissioners. In Mr. WHITESIDE'S Bill we find our best vindication.

The comments of the press, however, and the universally expressed opinion of the Profession upon the lameness and inefficiency of their reforms, appears to have roused the Commissioners to consciousness of the unpleasant position in which they are placed by the production of the Irish Law Reform Bill. In the debate upon the second reading of that measure, for which Mr. WHITESIDE was properly eulogised from both sides of the House, Sir A. COCKBURN, who is one of the Common Law Commissioners, and from whom we had anticipated something very much better than our Procedure Act, took occasion to say a good word on behalf of his brethren, by stating some further improvements which it is their intention to propose. He threw the blame of the greatest defect in the scheme—its retention of forms of action—upon a high judicial authority, who opposed the change. He alluded probably to Lord TRURO, who was so unfortunate a hindrance to all the Law Reforms of the Whigs. Sir A. COCKBURN intimated that the Commission would propose to give to the Common Law Courts the powers now exercised only by the tedious process of a bill of discovery, "bringing up the parties, and giving the Judge the power of immediately striking out the pleadings." All technical forms of action are to be abolished; causes are to be tried without a jury, if both parties desire it. Many other improvements of the same kind are under consideration. That portion of the debate which related to the reform of our own law is so interesting to all our readers, that we extract it here:—

Sir A. COCKBURN was very glad the Solicitor-General for Ireland had brought in this measure, and should regret much if the Bill should not be read a second time. He quite concurred in what had been just stated by the hon. and learned member for Kidderminster (Mr. Lowe)—namely, that the Bill now before the House was a great advance upon the English Common Law Procedure Bill of last session, and thought he could point out the reason for this. The Common Law Commission recommended the abolition of the forms of action; but this important amendment was abandoned, because certain judicial authorities were alarmed at the recommendation of the commission going to such great length. We sometimes threw over the mast in order to save the ship, and, on that principle, it was found necessary to give up the proposed alteration. He very much regretted this, and now that the Government were prepared to go so far in the reform of the Irish law, he trusted they would apply the same principle to the English common law. He admitted that this Bill was an advance in other respects upon the Bill adopted in accordance with the report of the commission of which he had the honour of being a member. They had thought it necessary to deal with the incidents of an action in its various stages; but the commission were not prepared to stop there, and their recommendations would form the subject of a report, which would shortly be laid before the House, and in which would be considered several most important matters, which formed no part of the Bill of the hon. and learned gentleman. They should propose that courts of laws should give the effect of a bill of discovery by the examination of parties to a suit; and that the common law courts should have power of discovery without any expense, not according to the form of procedure in the courts of equity, but by a simple process of oral discovery, bringing up the parties and giving the judge the power of immediately striking out the pleadings. So with regard to the power of persons who had only an equitable right maintaining a legal action, and alterations were also proposed in many other important respects. They proposed to introduce various amendments, doing away with technical forms of action which had become obsolete and ought to be abolished. With regard to the jury system, it was worthy of consideration whether the plan adopted in the county courts should not become a guide for the practice of the superior courts—namely, that of allowing parties, by consent, to deal with a question, either with or without a jury, as they liked. (Hear, hear.) If parties consented to try their cause before a judge in whom they both had confidence, they should not be compelled to have recourse to the more expensive and less satisfactory process of a jury. (Hear, hear.) He believed that one of the reasons why County Courts worked so admirably was, that if any new matter turned up in the course of a case, the judge, sitting from day to day in the discharge of his duties, was enabled to say, "Come before me again to-morrow," whereas with a jury the case must be gone through from beginning to end without adjournment, and the only remedy was to obtain, at immense expense, a new trial. (Hear, hear.) A variety of subjects of this kind were under consideration, and would receive the best attention of the commission, whose anxious desire was to make the procedure in the courts of common law as complete and satisfactory as it could be made. Instead of the Legislature interposing to remedy the law, it had done nothing more hitherto than abuse the lawyers. (A laugh.) He hoped, however, that all had now started upon the great work of legal reform. It was satisfactory that every one in Westminster-hall, from one end of it to the other, was anxious to lend his best endeavours to work out these reforms. So far from lawyers having an interest in preventing amendments in the law, he was convinced that their interest was bound up in its improvement, and that the cumbrous and expensive forms of procedure only tended to prevent parties from insisting on their rights, and to diminish the amount of business which would otherwise be transacted. (Hear, hear.)

Mr. CROWDER was happy to give his cordial support to the second reading of this Bill, and congratulated the hon. and learned gentleman the Solicitor-General for Ireland upon the able manner in which he had brought it forward, and especially upon the improvements he had introduced into a similar measure passed last session for the amendment of the Common Law Procedure Act of England. His (Mr. Crowder's) only difficulty was to understand how the law officers of the Crown thought fit to pass the measure of last session without the introduction of those very amendments to which the attention of the House was now being directed, because they had not been discovered since the passing of that Act, for they had been suggested by members of the legal profession, and had even been discussed in that House. He fully concurred at the time in every one of those suggested improvements; but nevertheless no notice was taken of them on the second reading of the English Bill, and when the measure passed through committee, and the consequence was that they had a measure applied to the common law courts of this country which was decidedly inferior to that introduced on the present occasion to regulate the common law procedure in Ireland. With respect to the abolition of the forms of action, he fully approved of that amendment. It was stated that the Common Law Commission in their report recommended the abolition of those forms, but that part of their recommendations was, nevertheless, not carried out, owing, as it appeared, to the expressed opinions of some high judicial personages. He apprehended, however, that it was the duty of that House not to be biased by any notices of that sort, provided they were fully persuaded that such improvements ought to take place. He must complain greatly when he saw that these reforms, so much in advance of those we possessed in this country, were omitted in the Bill passed only three months since. The payment of money into court, for example, was limited to certain causes of action only in the English Bill, while by the present measure it was allowed in all. When this subject was before the House last session he had himself called attention to it; but no notice was taken of his remarks, and the absurdity still remained. He hoped, with the hon. and learned member for Southampton (Sir A. Cockburn), that we should have great improvement in the law as it at present stood.

The ATTORNEY-GENERAL was desirous of receiving in a friendly spirit the observations of the hon. and learned gentleman, and quite agreed with him that his hon. and learned friend the Solicitor-General for Ireland deserved the gratitude of the House, not only for this measure itself, but for the very able and clear manner in which he had introduced it. But the hon. and learned gentleman (Mr. Crowder), in making some very serious reflections upon the law officers of the Crown in England, had forgotten the circumstances under which they had charge of the bill of last session, which was said to be so deficient in its amendment of the common law procedure in England, and the utter impossibility of making those additions which were proposed at the time. The hon. and learned gentleman had forgotten the impatience with which the Opposition side of the House had listened to any attempt to introduce any new measures, attributing to the Ministry that they were endeavouring to prolong the session unnecessarily, and to disappoint the expectations formed of an early dissolution. This Common Law Procedure Bill came down from the Lords at a very late period of the session. His hon. and learned friend suggested various alterations in it, but whether he (the Attorney-General) agreed with them or not was perfectly immaterial; there appeared to be a great chance of losing the bill altogether, and they were therefore obliged to hurry it through. He (the Attorney-General) was thus not a free agent in the matter; he had no liberty of choice. It was important to pass the bill even in an imperfect state, and he had trusted to future occasions to introduce improvements, to which it was impossible to attend at the time they were made. His hon. and learned friend stated that the bill for Ireland was in advance of the one for England. But it must be remembered that in Ireland they had had an opportunity of looking from the limit at which they had arrived in the reform of the English law. Even a dwarf would see better on the shoulders of a giant than he did before. (Laughter.) His hon. and learned friend the Solicitor-General for Ireland had, he confessed, introduced great improvements beyond those they possessed in the English law, but the House must not believe for one moment that he (the Attorney-General) was not quite prepared at the proper time to adopt any improvements that could be made in the Common Law Procedure Act. (Hear, hear.) With regard to the forthcoming report of the commission, it would be necessary to consider very carefully the amendments suggested, and not to rush at once upon all those reforms which were recommended by those ardent reformers who were among its members. The discussion upon which they were at present engaged was a very desultory, although he hoped not an unprofitable one. (Hear.) The suggestions made as

to the working of this bill were not now well timed, because the House was not discussing the details; they were only considering the principle of the measure, and those hon. gentlemen who agreed to the second reading would have ample opportunities in committee of suggesting the valuable improvements which they had heard to-night. (Hear.)

Mr. COLLIER thanked the Solicitor-General for Ireland for introducing this bill, which he regarded as more comprehensive in its character than any bill ever before introduced by a lawyer into that house, and as a great advance and improvement on the bill of last session. The great merit of the bill was, that it abolished the system of pleading, and substituted in its place a simple statement on one side and an answer on the other.

LORD BROUGHAM'S EVIDENCE AND PROCEDURE BILL.

THE great and crowning improvements in the Law of Evidence proposed by this Bill, and which we fully described last week, are almost equalled by improvements in procedure proposed by the other portions of it, which we now proceed to lay before the Profession for their consideration, approval, and amendment, previously to the Bill being taken into its further stages. If any of our readers can see in any portion of these provisions aught that is objectionable, or can devise anything that will more effectually attain the object, they will serve the Profession by forwarding them to us for discussion here, and we have no doubt that they will receive the attention that may be due to them in quarters where there exists the power as well as the will to help them.

The difficulties that now impede the *payment of money into court* are to be entirely removed, and in lieu of the existing enactments and rules, the simple provision is to be substituted, that in all personal actions, the defendant, or one, or any, or all the defendants, may, without an order, "pay into court money by way of compensation or satisfaction, either with *respect to the whole, or to part only, of the plaintiff's claim.*" A short form of plea of payment into court is provided by the Bill; the money is to be paid to the proper officer, who is to give a receipt for it in the margin of the plea, and "it shall be thenceforth the property of the plaintiff, and shall be paid out to the written order of himself or his attorney, on demand, whatever may be the result of the suit." To this plea the plaintiff may reply, either that he accepts the money, in which case his claim in respect of the matter to which the plea is pleaded shall be deemed satisfied, and he may tax costs, and, if not paid within forty-eight hours, sign judgment for them, or he may reply that the money is not enough to satisfy his claim, and if the issue to this replication be found against him, the defendant shall be entitled to judgment and costs. But payment into court, whether generally or partially, or on some special count, shall not be deemed an admission by the defendant that any cause of action existed against him, or that he was legally bound to have paid anything, and this plea of payment may be pleaded either alone or with any other plea.

This will be admitted by all to be a vast improvement.

It is, undoubtedly, a great defect in our jurisprudence, that if two persons have a dispute, for the settlement of which they have appealed to law, they should be compelled to resort to a jury, even although they should prefer to have the opinion of the Judge alone without the jury. This option is given in the County Courts, and with so much satisfaction to suitors that a jury is not demanded in one case in a hundred. No sound reason can be assigned why that which has been proved to be so satisfactory to suitors in the County Courts should not be equally permitted to suitors in the Superior Courts; and accordingly this Bill proposes to adopt the plan of the County Courts, and to require the Judge alone to try issues of fact in all cases, but permitting either party to demand a jury, by inserting in the margin of any pleading filed by him the words "by jury." These words are to be inserted in the margin of the Nisi Prius Record, and then a jury shall be summoned, and the case tried by them as at present.]

Although this is the course of proceeding in the County Courts, we are not sure that it is prudent to propose it in the Superior Courts, where it will have to encounter so many prejudices. The proposition is, that the Judge alone shall try, unless a jury be demanded by either party, the practical effect of which would probably be, that a jury would *not* be demanded in one case in twenty. If the contrary course were taken, and the option to be exercised by the parties was, that they should be permitted by consent to dispense with a jury, the proposal would meet with less hostility than will be encountered by the scheme as contained in the Bill.

We have had repeated occasion to point out the injustice of the law that exempts the Crown from payment of costs. The Bill proposes to redress this wrong, by providing that in all actions, suits, and proceedings, except in a prosecution for treason, felony, or misdemeanor, which is henceforth either instituted or defended in any Court of Justice by or on behalf, or at the instance of the Crown, "the Crown, if it succeeds, shall be entitled to receive costs, and, if it fails, shall be liable to pay costs, in the same manner and to the same extent as an ordinary suitor." The Crown also is to be restricted to the same *right to begin and reply* as other suitors.

Another clause empowers the Queen in Council to authorise the trial of persons in adjoining counties, and the Court of Q. B. is empowered to order Criminal Trials to be had in any county, upon motion by the Attorney-General, after ten days' notice given to the party accused.

An extremely humane—or we should rather call it *just* provision is introduced, which also we have here often advocated, giving to the Court before whom any prisoner has been tried and acquitted of any indictable offence, power to make an order that *his costs* be paid by the county in which he was committed for trial or held to bail. The distinction between local and transitory offences is to be abolished.

Courts of Oyer and Terminer are to be empowered to issue writs of subpœna into any county, and which writs are to be enforced by attachment in the Q. B. But no person is to be punished by such attachment for non-obedience unless it shall be made to appear to the Court "that a reasonable and sufficient sum of money to defray the expenses of coming to, attending at, and returning from the Court out of which such writ issued had been tendered or offered to such person at the time when such writ was served."

These are the provisions by which a real Law Reformer anticipates the slow movements of a commission appointed purposely to construct a reform, verifying the old proverb as to the superior value of one volunteer over ten pressed men.

AN ACTION AT LAW UNDER THE NEW PRACTICE.

ARTICLE IV.

PERSONAL SERVICE.

If an attorney undertake to appear in the action for the defendant, it is not necessary to serve the writ of summons on the defendant; and the Courts enforce the performance of such an undertaking by attachment.

The assumption that this has not been done, and that the defendant can be met with, so as to serve him personally with a copy of the writ, has now to be made. In this case a true copy of the writ, if it be in the form of either No. 1, 2, or 4, including the indorsements thereon, must be served. If the writ be according to the form No. 3, a copy is not to be served, but the contents of a copy are to be put into the form of a notice. This notice is as follows:—

To C. D. late of (Brighton, in the county of Sussex), or *now residing at* (Paris, in France).

Take notice, that A. B. of , in the county of , England, has commenced an action at law against you, C. D. in her Majesty's Court of Queen's Bench, by a writ of that Court, dated the day of , A.D. 185 *; and you are required within days after the receipt of this notice, inclusive of the day of such receipt, to defend the said action by causing an appearance to be entered for you in the said court to the said action; and in default of your so doing, the said A. B. may, by leave of the Court or a Judge, proceed thereon to judgment and execution.*

[Here state the amount claimed, where the writ is for the payment of a debt, as required to be indorsed on the writ in such case (ante, p. 99); but allowing the defendant the time limited for appearance, to pay debt and costs.]

(Signed) *A. B. of* , or
E. F. of , *Attorney for A. B.*

The copy or notice may be served by any person who is able to read printing and writing: it is necessary that he should have this ability, in order that he may be able afterwards to make an affidavit that he served a true copy of the writ or notice. It used to be said that it was necessary the person serving the writ should be able to write; but it has been held that the indorsement of service (to be mentioned presently) may be made by a marksman. (*Baker* v. *Coghlan*, 7 C. B. 131.)

The copy or notice must be served while the original is in force, that is, within six months from the time it was issued, unless it has been renewed, and then within six months from the date of the last renewal. It seems that it may be served at any time of the day or night (*Priddee* v. *Cooper*, 1 Bing. 66), but not on a Sunday, for service on a Sunday is absolutely void, and the defect cannot be waived by the defendant's afterwards proceeding. (*Taylor* v. *Phillips*, 3 East, 155.)

Formerly the writ of summons could only be served in the county in which the defendant was described in the writ as residing, or within 200 yards of the border of it, but now it may be served in any county. (Sec. 14.)

The service of the writ of summons, wherever practicable, must, as heretofore, be personal (sec. 17), and a most important point, therefore, is, that the meaning of personal service be understood. A few years since some little laxity as to the circumstances sufficient to constitute personal service was creeping into practice, which it was thought necessary to check; and PARKE, B. said, in *Goggs* v. *Lord Huntingtower*, 12 M. & W. 503, that the Judges had "come to a determination that in future there shall be no equivalent for personal service." To effect this, the simple course is, to put the copy of the writ into the hands of the defendant; but if this cannot be done, it appears that it is enough to bring the purport of the writ to his personal notice, so as to make him aware of the proceeding, and at the same time to leave the copy either on some part of his person, or in his presence, so that it is his own neglect if he does not take it. There can be little doubt this would still be held sufficient to constitute personal service. (*Thomson* v. *Pheney*, 1 Dowl. 441; *Heath* v. *White*, 2 D. & L. 40.) The service will be equally personal and good although the copy-writ, when delivered to the defendant, be inclosed in paper, or in a letter, if it can be shewn that he took it out. As an inflexible rule, the copy must not be brought away.

The defendant is entitled to see the original writ, if he require it at or within a reasonable time after service, but otherwise it is not necessary to produce it to him.

It need scarcely be said, that if there be more than one defendant, the writ must be served on each one just as carefully as if he were the sole defendant. But it should be added that in an action against husband and wife, service on the husband alone is sufficient.

A writ issued against a corporation aggregate may be served on the mayor, or other head officer, or on the town clerk, clerk, treasurer, or secretary of such corporation, and a writ issued against the inhabitants of a hundred, or other like district, may be served on the high constable thereof, or any one of the high constables thereof; and a writ issued against the inhabitants of any county of any city or town, or the inhabitants of any franchise, liberty, city, town, or place, not being part of a hundred, or other like district, may be served on some peace-officer thereof. (Sec. 16.) But service on a clerk in the office of the secretary of a corporation aggregate, is not service on "the clerk or secretary of such corporation," within this section. (*Walton* v. *Universal Salvage Company*, 16 M. & W. 438.) Provision is made as to service on the printer, publisher, or proprietor of a newspaper, by 6 & 7 Wm. 4, c. 76, s. 9; and as to service on a trading or other company or body, having letters patent, under the 7 Wm. 4, and 1 Vict. c. 73, by s. 26 of that statute; and there is very usually in the statute authorising a public company an enactment as to service on such company.

The return day of a writ is the day on which, in strict form, it should be returned to the Court whence it issued, with some account of its execution or reason for non-execution. The return day of a writ of summons, which has been served, is scarcely ever of any practical importance, but it is generally considered that the day of the service of the writ is nominally the return day. (Arch. Prac. 148.)

The person serving the writ is required by the Common Law Procedure Act within three days at least (query, *at most*?) after such service, to indorse on the writ the day of the month and week of the service thereof, otherwise the plaintiff is not at liberty, in case of non-appearance, to proceed

under that Act. (Sec. 15.) This indorsement may be made by a marksman. (Supra.)

PROCEEDINGS AFTER SERVICE.

By personal service of the writ of summons, or by the proceedings previously mentioned, which are held to be an equivalent for it, the defendant receives such notice of the action as that the law holds him bound to appear and defend it, if he does not admit the plaintiff's claim; and by one of these means his liability to answer or admit the claim is brought, it may be said, within the immediate cognisance of the Court. In considering the subsequent proceedings in an action, it will therefore be necessary to refer to the steps that may be taken by the defendant, as well as those that may be taken by the plaintiff, but it is believed that no confusion will arise from this.

Where the plaintiff claims a sum as a debt, the defendant has four days, if the writ be according to the form No. 1 or 4, within which he may pay the plaintiff's demand, and the costs of the writ; or if it be according to No. 2 or 3, he has for this purpose the whole time within which he is required by the writ to enter an appearance.

If the writ is indorsed with the name of an attorney, the defendant or his attorney may demand in writing of such attorney, whether the writ was issued by him, and if it were, may apply to the Court or a judge for an order directing such attorney to state the plaintiff's abode and occupation; and every attorney whose name is indorsed on any writ issued by authority of the Common Law Procedure Act, must, on such demand declare forthwith whether such writ has been issued by him or with his authority or privity; and if he answer in the affirmative then he must, in case the Court or a Judge so order or direct, declare in writing within the time allowed by such Court or Judge, the profession, occupation, or quality and place of abode of the plaintiff on pain of being guilty of a contempt of the Court from which such writ appears to have been issued; and if such attorney declare that the writ was not issued by him or with his authority or privity, no further proceedings can be taken thereupon without leave of the Court or a Judge. (Sec. 7.)

If there be any irregularity in the writ or the copy or the mode of service, the defendant may take advantage thereof within the time allowed for appearance by applying to the Court or a Judge, that the writ, if the defect be in the writ, or that the service, if the defect be in the copy or mode of service, be set aside, but such applications will probably now be less effective and less frequent than formerly, in consequence of the ample powers of amendment given to the Courts. (See ante, p. 107.)

Or the defendant may appear to the action, but before considering the mode of doing so, another of the changes effected by the recent Act has to be stated

PROCEEDINGS ON NON-APPEARANCE.

Formerly a plaintiff could not proceed in the action until the defendant had appeared to it, which was anciently by personal appearance in court. By 12 Geo. 1, c. 29, the plaintiff was enabled to enter an appearance for the defendant, which power was continued by 2 Wm. 4, c. 39 (the Uniformity of Process Act), but the necessity of the formal appearance of the defendant in all cases still remained The provisions of both the above statutes as to this subject are repealed by sec. 26 of the Common Law Procedure Act, and the plaintiff's entering an appearance for the defendant is therefore now abolished. He is, however, enabled to proceed as effectually without this useless form, and the terms formerly used in the writ of summons are now modified accordingly. In the new form of writ (ante, p. 99) it will be seen that the notice to the defendant is that in default of his appearing in the action the plaintiff "may proceed therein to judgment and execution;" and there is an express provision that all such proceedings as are mentioned in any writ or notice issued under that Act shall and may be had and taken in default of a defendant's appearance. (Sec. 32.)

The new provisions made as to the mode of proceeding on non-appearance will commence the next article. G. T.

THE LEGISLATOR.

ELECTION PETITIONS.

THE following is an alphabetical list of the Election Petitions up to the 2nd instant:—

	Conservatives.	Liberals.
ENGLAND—60.		
Barnstaple	Sir W. A. Fraser	
"	R. Bremridge	
Berwick		M. Forster
"		J. Stapleton
Blackburn		W. Eccles
Bolton		T. Barnes
"		J. Crook
Bradford	H. W. Wickham	R. Milligan
Bridgnorth	H. Whitmore	
"	Sir R. Pigot	
Cambridge	K. Macaulay	
"	J. H. Astell	
Canterbury	H. P. Gipps	
"	H. P. Johnstone	
Carlisle		Sir J. Graham
"		J. Ferguson
Chatham	Sir J. F. Smith	
Cirencester		A. G. Ponsonby
Clitheroe		M. Wilson
Cockermouth	H. Wyndham	H. A. Aglionby
Dartmouth	Sir T. Herbert	
Derby	T. B. Horsfall	M. T. Bass
Finsbury		T. Challis
Frome		R. E. Boyle
Gloucester		W. P. Price
Guildford		R. D. Mangles
"		J. Bell
Harwich	G. Peacocke	
"	D. Waddington	
Hastings	M. Brisco	
"	P. F. Robertson	
Hereford		Sir R. Price
"		H. M. Clifford
Herefordshire	J. K. King	
"	T. W. Booker	
"	C. S. B. Hanbury	
Huddersfield		W. R. C. Stansfield
Hull		J. Clay
"		Viscount Goderich
Kidderminster		R. Lowe
Knaresborough		J. P. B. Westhead
"		J. D. Dent
"		B. T. Woodd
Lancaster		R. B. Armstrong
Leicester		Sir J. Walmsley
"		R. Gardner
Leominster		J. G. Phillimore
Liverpool	Charles Turner	
"	W. F. Mackenzie	
Maidstone	G. Dodd	J. Whatman
Maldon	C. Du Cane	
"	T. J. Miller	
Middlesex		R. Osborne
Norfolk, West	W. Bagge	
"	G. W. P. Bentinck	
Norwich		S. M. Peto
"		E. Warner
Plymouth	C. J. Mare	R. P. Collier
Pontefract	R. M. Milnes	B. Oliveira
Rye	W. A. Mackinnon	
Salisbury		W. J. Chaplin
"		C. B. Wall
Southampton		Sir A. Cockburn
"		B. M'Ghie Wilcox
Stoke-upon-Trent		J. L. Ricardo
"		F. Leveson Gower
Surrey, East		T. Alcock
"		P. Locke King
Taunton	A. Mills	
Tavistock		S. Carter
Totness		T. Mills
Tynemouth	H. Taylor	
Windsor	Lord C. Wellesley	
SCOTLAND—1.		
Wigton Burghs		Sir J. M'Taggart
IRELAND—30.		
Athlone		W. Keogh
Carlow County		J. Ball
Carlow		J. Sadleir
Cashel		Sir T. O'Brien
Clare County		Sir J. Fitzgerald
"		C. O'Brien
Clonmel		C. J. Lawless
Cork		Sergeant Murphy
"		W. T. Fagan
Down County	Lord A. Hill	
"	D. S. Ker	
Dublin County	J. H. Hamilton	
"	T. E. Taylor	
Dublin	E. Grogan	
"	J. Vance	
Dungarvan		J. F. Maguire
Ennis		J. D. Fitzgerald
Kildare County		D. Henchy
King's County		P. O'Brien
"		L. H. Bland
Leitrim County	H. L. Montgomery	John Brady
Limerick	F. W. Russell	
Londonderry Co.	T. Bateson	
"	Capt. Jones	
Louth County		T. Kennedy
Mallow		Sir D. Norreys
Mayo County		G. H. Moore
"		G. O. Higgins
Meath County		F. Lucas
New Ross		C. G. Duffy
Newry		W. Kirk
Sligo County	Sir R. G. Booth	R. Swift
Sligo		C. Towneley
Tipperary County		F. Scully
Waterford County		J. Esmonde
Westmeath Co.		W. H. Magan
"		W. P. Urquhart
Wexford County	J. George	
Youghal	I. Butt.	

OATHS IN CHANCERY BILL.

"AN Act relating to the Appointment of Persons to administer Oaths in Chancery, and to Affidavits made for Purposes connected with Registration:"—

1. The persons now styled "Masters Extraordinary in Chancery" shall cease to be so styled, and they and all persons hereafter appointed to execute like duties by the Lord Chancellor shall be designated "Country Agents to administer Oaths in Chancery," and as such shall possess and exercise all such powers and discharge all such duties as now appertain to the office of Master Extraordinary in Chancery, by virtue of any statute or order of the Court of Chancery or of the Lord Chancellor, or usage in that behalf, or otherwise.

2. It shall be lawful for the Lord Chancellor from time to time to appoint any persons practising as solicitors within ten miles from Lincoln's Inn Hall to administer oaths in Chancery, and to possess all such other powers and discharge all such other duties as aforesaid; and such persons shall be style "London Agents to administer Oaths in Chancery;" and they shall be entitled to charge and take a fee of 1s. 6d. for every oath administered by them, subject to any order of the Lord Chancellor varying or annulling the same.

3. The fiat or document by which any such country agent or London agent as aforesaid shall be appointed shall bear a Chancery stamp of 1*l.* in lieu of the stamp of 5s. now required; but no other charge or fee shall be made or payable in respect of such appointment, or of anything requisite to be done in order to perfect the same; and it shall not be necessary that any such appointment shall be published in the *London Gazette*.

4. Nothing herein contained shall abridge or lessen the power of the Lord Chancellor as it now exists to appoint fit persons to take oaths in Chancery, or to regulate the fees to be taken by them; and where any Act of Parliament refers to the Masters Extraordinary in Chancery, or to their powers or duties, the reference shall be held to apply to and include the officers or agents to whom the aforesaid new styles are hereby given, or their powers or duties, as the case may be.

5. That all affidavits, declarations, and affirmations to be used before any registrar or other officer of any registry office in Great Britain or Ireland, for any purpose connected with registration of deeds or wills, under the authority of Parliament, may be sworn and taken in Scotland or Ireland, or the Channel Islands, or in any colony, island, plantation, or place under the dominion of her Majesty in foreign parts, before any Court, judge, notary public, or person lawfully authorised to administer oaths in such country, colony, island, plantation, or place respectively, or before any of her Majesty's consuls or vice-consuls in any foreign parts out of her Majesty's dominions; and all registrars and other officers of any such registry office shall take judicial notice of the seal or signature, as the case may be, of any such Court, judge, notary public, person, consul, or vice-consul which shall be attached, appended, or subscribed to any such affidavit, declaration, or affirmation, or any other document; and that the enactments contained in the 23rd and 24th sections of the 15 & 16 Vict. c. 86, shall be deemed to be incorporated herein as effectually as if the same enactments were expressly re-enacted in this Act and applied to registry offices.

A REGISTRY OF INSOLVENT DEBTORS.—In one of Lord Brougham's new Bills before the House of Lords, it is proposed that "A record shall be kept, at the Court for the Relief of Insolvent Debtors, of the names and descriptions of all persons petitioning the County Courts as insolvent debtors, and of the date of the filing of every such petition, and every such petition and every schedule thereto shall be filed in duplicate, and the clerks of the County Courts shall forthwith after the filing thereof, transmit such duplicate to the chief clerk of the Court for the Relief of Insolvent Debtors, in Portugal-street, who shall cause the proper entry to be made in a book to be kept there for that purpose, and shall thereafter file such duplicate petition and schedule as of record; all persons being at liberty to search for and to see such entry and duplicate petition and schedule on payment of the usual fee."

THE MAGISTRATE,

AND PAROCHIAL AND MUNICIPAL LAWYER.

Summary.

IT appears from the reply of the HOME SECRETARY to a question put to him in the House of Commons, that there is no present purpose at the Home Office to carry Sir G. GREY'S "Expenses of Prosecutions Act" into operation.

Dominoes is *not* an unlawful game. Where, therefore, a conviction of an innkeeper was for knowingly suffering an unlawful game, to wit,

dominoes, to be played in his house, contrary to the tenor of his license, it was held to be bad, there being no allegation that he suffered "gaming," *i. e.* playing for money. "The defendant," said Lord Campbell, "might suffer people to play at a lawful game in his house, if no money was staked, because that would not amount to "gaming" within the meaning of the Licensing Act. (*Reg.* v. *Ashton*, 20 Law T. Rep. 110.)

There are two cases in the *Practice of the Poor-Law*. Where a ground of appeal was, that no notice of chargeability had been sent, and at the trial of the appeal the respondents admitted this to be true, but contended that in such case there was no grievance against which the appellants had a right to appeal, and the Court had no jurisdiction to hear it, and the Sessions so decided, it was held that they were *wrong*, for that, on the authority of *Reg.* v. *Brixham*, 8 A. & E. 375, omission to send notice of chargeability is a good ground of appeal. *Reg.* v. *The Recorder of Shrewsbury*, 20 Law T. Rep. 115, where an appeal against a poor-rate had been referred to arbitration under sec. 13 of 12 & 13 Vict. c. 45, the arbitrator to have the same discretion as to costs as the Court of Quarter Sessions, and he made his award ordering the appellant to pay the costs of the respondent, it was held to be bad, because he should himself have determined the amount of costs. (*Clerk* v. *The Parish Officers of Binbrook*, 20 Law T. Rep. 115.)

The Court will not interfere with the discretion of justices, where it is clear that a discretion is given to them. But where it was alleged that there was a positive rule as to the time of entering an appeal, and the justices exercised a discretion, and there was some doubt whether such a rule existed or not, the Court granted a mandamus. (*Reg.* v. *The Justices of Derbyshire*, 20 Law T. Rep. 116.)

Two *Criminal* cases are to be noted. In *Reg.* v. *Manning*, 20 Law T. Rep. 116, a servant had removed his master's goods from one part of the premises to another, for the purpose of enabling a third person to offer them for sale to the master as the goods of that third person, in pursuance of previous concert, and both were held to have been rightly convicted of larceny. In *Ex parte Roe*, 20 Law T. Rep. 115, a rule for a criminal information for libel was refused, where it appeared that the applicant had himself resorted to the press upon the same dispute.

Beeson v. *Burton*, 20 Law T. Rep. 111, was a *registration appeal*. It was a question as to a freehold interest, and turned upon the construction of a local Act of Parliament. The point of law decided by it might, perhaps, be thus stated,—that where land is given to A. to hold so long as he pleases, and he is not removeable at the absolute will of the lessor or donor, a freehold interest is created.

HIGHWAYS BILL.

A Bill for regulating the highways will be introduced by Government soon after the recess. The Chancellor of the Exchequer, in his opening speech on the Budget, stated that the Government did not intend to introduce measures for regulating the county-rate or the poor-rate, but with respect to the highway-rate, he stated, "There have been upon the subject of the highway-rate no less than six Acts of Parliament already passed for improving its administration: it is not my intention now to advert to it, but I may be permitted to say, in passing, that my honourable friend, the Under Secretary of State for the Home Department, who has directed a good deal of attention to the matter, is prepared to bring in a seventh Bill, which I hope, after the six experiments I have alluded to, will prove satisfactory to the House, and entitled to the confidence of the country." From the very intimate knowledge which Sir William Jolliffe, the Under Secretary of State, possesses upon all the intricate questions of highway law and turnpike trusts, and from the great attention which he has hitherto paid to such questions, when they have been brought before Parliament, there can be no doubt but that such a practical measure will now, for the seventh time, be submitted to Parliament, as will be generally acceptable to the country. The highways will probably be placed in districts, and be regulated by district boards, as the feeling in favour of such an arrangement seemed to predominate when the former Bills were discussed. If ample powers are given for effective management, combined with economy, and due check upon and control over expenditure, and proper audit of accounts, Sir William Jolliffe will achieve a great triumph in practical legislation; and the Government of which he is a member will confer substantial benefit upon the country.

Cabs at Railway Stations.—On Thursday, Mr. Long, the Marylebone magistrate, gave a decision quite contrary to what Mr. A'Beckett holds to be the correct reading of the law. A driver was summoned for plying for hire within the Euston-square terminus. There was no doubt about the fact of the hiring. Mr. Humphreys argued the case for the railway company at great length. Mr. Long pronounced an elaborate judgment, deciding against the summons. He incidentally expressed an opinion that a change in the present system would be disadvantageous to the public. As to the law, he held that the words in the Act meant plying for hire in public places, and in public places only; and that the Legislature did not intend in any degree that the Act should apply to or interfere with private property, which railway stations are. The summons must be dismissed, as the plying for hire in this case was not plying for hire within the meaning of the Act of Parliament.

JOINT-STOCK COMPANIES' LAW JOURNAL.

Summary.

An injunction has been granted to restrain the directors of a railway company from executing a contract they had entered into for transferring to another company a portion of the line, plant, and property, so far as such contract was consistent with sec. 87 of the Railways Consolidation Act, which empowers contracts with other companies for the joint use of the line and division of the tolls, &c. (*Winch* v. *The Birkenhead, &c. Railway Company*, 20 Law T. Rep. 108.)

Where a company had neglected properly to register a transfer of shares, and then proceeded to declare the shares forfeited, and to sell them, because the vendor had not paid calls made after such transfer, it seems that an action for damages may be sustained against them at the suit of the purchaser. (*Catchpole* v. *The Ambergate, &c. Railway Company*, 20 Law T. Rep. 109.)

WINDING UP.

Where shares in a company had been bequeathed to a legatee, and the executors had been made *contributories*, upon the winding up of the company it was held, in *Ex parte Wood*, 20 Law T. Rep. 108, that the liability of the executors extended only to the death of the testator, the legatee having accepted the shares, with the executor's assent, and this having been done with the approbation of the directors.

REAL PROPERTY LAWYER AND CONVEYANCER.

Summary.

The Court will enforce specific performance of an agreement for the purchase of an estate, although an error of a trifling nature in the character of the property may have appeared in the advertisement for sale; thus, where the advertisement described the estate as containing "coal, which was then in the course of working in the adjoining estate," but the vendor had no right to the coal and minerals under the surface, but the conditions made no mention of coals, and the purchaser took possession, and then claimed compensation, the Lord Chancellor refused it, saying,—"The seller has no right to fix the purchaser with the contract, neither has the purchaser any right to compensation;" but as the purchaser had chosen to take possession, specific performance was decreed. (*Smithson* v. *Powell*, 20 Law T. Rep. 105.)

We have already directed the attention of our readers to the great facilities for foreclosure and sale by claim afforded by the new procedure. In *Cator* v. *Reeves*, 20 Law T. Rep. 105, the following was the substance of the order. "Declare that the mortgaged property ought to be sold, and let the same be sold accordingly. Let the proceeds of the sale be paid into court, distinguishing the proceeds of the freehold and copyhold property from those of the policy. Let accounts be taken of what is due to plaintiff and the other incumbrancers, according to their several and respective priorities. Reserve further directions and costs."

Where a mortgagee of lands entered into possession in 1825, and afterwards made no other acknowledgment than this, that on Feb. 5, 1850, he wrote thus to plaintiff's Solicitor:—"I have received yours of the 2nd inst. I do not see the use of meeting either here or at M. unless some one is ready with the money to pay me off." This was held to be a sufficient acknowledgment to take the case out of the statute. "There is," said the Master of the Rolls, "an acknowledgment of title of the mortgagor, so that the relation of mortgagor and mortgagee exists." (*Stansfield* v. *Hobson*, 20 Law T. Rep. 106.)

Where leaseholds had been bequeathed to A., B. and C. for sale, one-fourth of the produce being by the will given to C. and they were appointed executors, a bill was filed for administration. Afterwards C. mortgaged the leaseholds to D. he (C.) being at the time indebted to the estate. It was held that A. and B. had a lien on the property prior to the mortgagee, who was ordered to deliver up his title deeds. (*Cole* v. *Muddle*, 20 Law T. Rep. 107.)

CONDITIONS OF SALE.

TO THE EDITOR OF THE LAW TIMES.

Sir,—My attention has been directed by another solicitor to—what I certainly should not otherwise have seen—an article in the Law Times of November 20, 1852, commenting in an illiberal and uncandid spirit on certain conditions of sale of an estate at Penner, of which I am correctly assumed to be the author.

If, as I apprehend will be the case, I succeed in proving the remarks in question to be unfounded, it will either convict the writer of unfairness and carelessness, disgraceful in the highest degree to any journalist, or render it not unreasonable to suppose that the article was dictated by a spirit of professional enmity or personal ill-will. As, contrary to the practice of respectable journalists, you have attacked me by name, when, for the purpose of fairly commenting on anything that is or is deemed by the writer to be unprofessional and improper in the conditions in question, the name of the alleged offender was wholly unnecessary, it is not making too great a demand on your justice, your candour, or your courtesy to request a place in your columns for this explanation, which should have been forwarded earlier had not absence from London prevented my seeing the article in question until the present week.

The property in question was a small piece of land containing altogether 2r. 6p. formerly part of Pinner-common, which, in 1817, was enclosed and allotted to the freeholders of the parish. The allotment in question remained in the hands of the persons to whom it was allotted until 1852—the title, therefore, was short and simple, and the purchaser was not required to investigate for himself or to accept without investigation a long or complicated title.

The property, as appeared by the particulars prefixed to the conditions, and which the writer of your article must or *might* have seen was to be offered for sale in the first instance in one lot, and if not sold in one lot was to be then put up in twelve lots, each necessarily of very small size, and it was only to the sale in the greater number of lots that the conditions complained of applied. The object of this was to afford opportunities for persons of small capital, and especially to the working-classes, to purchase ground fit for the erection of houses or cottages, for which there is a demand in the neighbourhood. The prices of these lots were estimated at from 20*l.* to 25*l.* It was not a case, therefore, where a purchaser would be likely or desirous to expend additional capital in paying for the ingenious but expensive labours of conveyancers and attorneys.

Everybody who is aware of the great extent of the operations of the freehold land societies knows also the great eagerness with which small capitalists and working men buy up the lots offered them at a fixed price by such societies, in which cases the purchasers accept the vendor's title without examination, and take a conveyance from them, the [illegible] which is included in the purchase-m[illegible] fact of the purchaser knowing [illegible] of his purchase, and avoiding [illegible] title in a case where it would [illegible] 50 per cent. to the purchase-m[illegible] a great eagerness for such allo[illegible]

I hope the writer of your article also may be aware that political economists and even conveyancers of the higher class have considered that one of the greatest burthens *on* land is the expense of its transfer, and that it is, unless remedied by agreement, an insurmountable impediment to the transfer of small properties and the creation of a class of small proprietors.

Having had experience of the beneficial working of the system pursued by the freehold land societies, and being desirous of realising as much as could be obtained for the vendors of the land in question, I determined to adopt the same in reference to this property if it were sold in lots, and for that purpose framed the conditions in question. I may add that this was done after consultation with the vendors—men, I freely admit, ignorant of the value and importance of conveyancing ingenuity, who were of opinion, from their knowledge of the neighbourhood where the property lies and its inhabitants, that such a course would much increase the competition at the sale.

With regard to the question of costs, I beg to call your readers' attention to the fact (as every professional man can see), that the charges, remember stamp, parchment, and registration were included, were at the lowest possible scale, and were reduced where the same purchaser purchased one or more lots. They were not arbitrarily fixed, but according to a bill prepared for the purpose, at an even sum, less than the items composing the amounts would have come to.

The title-deeds were to remain in the hands of the vendors, for which reason the purchaser was to be entitled to receive an abstract which would be useful to him in case of a resale; here, also, I followed a, to me expedient and valuable, precedent afforded by the National Freehold Land Society.

The writer of your article has omitted the fourth condition, which in justice and candour he should have cited, and which was in these words:—

"The vendors shall, if required, within seven days after the sale, at their own expense, deliver to each purchaser of any lot or lots requiring the same, an abstract of the title to the property comprised in such lot or lots, and shall deduce a good title thereto, subject to the conditions herein contained."

The acceptance of the benefit offered by the condition complained of was entirely optional, and any purchaser (vide the last condition, as stated in your paper) had, four days after the sale, to signify his acceptance thereof. Any person intending to purchase, and in doubt as to accepting the title, could and would have received every explanation and information thereon by applying to me prior to the sale. I suspect the Provincial Law Societies your writer refers to are formed more for the purpose of increasing and preserving the present expensive and cumbrous system of conveyancing, than benefiting the public by removing or lessening impediments to the transfer of land in small lots. Such being my reasons for the course I adopted, I venture, notwithstanding the *authority of the writer of your article* is against me, to question whether if, "by any accident, this condition and contract were to come under the notice of the judges, a severe remark would doubtless mark their sense of its impropriety." I am, Sir, yours, &c.

EDWD. C. WHITEHURST.

29, Coleman-street, City, Dec. 10th, 1852.

AMICABLE LIFE ASSURANCE SOCIETY.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I had hoped that my letter of the 24th ult. contained full and sufficient answers to your correspondent "Investigator's" statements under date of the 6th ult. but from his letter in your last number it does not appear to have been satisfactory to him. "Investigator" commences his letter of the 30th ult. by telling you that *I wish to make you believe* that no such prospectus as that to which he has referred was issued by the Amicable Office, but that *I do not expressly deny it.* It should be observed that "Investigator," in his former letter, distinctly stated that his client's policy was effected on the *9th October*, 1832. In order, therefore, to prevent the possibility of any mistake or omission on my part, I went so far back in my examination of the prospectuses of the society as the year 1831, to which period I confined myself, considering it unnecessary to go further; and I now expressly deny, without hesitation, that any prospectus containing the paragraph quoted by your correspondent has been issued by the Amicable Office during the last twenty-one years. I did not, however, nor will I, assert that no such prospectus was *ever* circulated by the society; for in the year 1820, claims by deaths were paid at the rate of 360*l.* for each share, and by the old constitution of the society, each share was, up to a certain date, guaranteed to produce 150*l.* consequently the difference between that sum and 360*l.* paid in the year 1820, amounted to 210*l.* or an addition of 140 per cent. upon the guaranteed share of 150*l.* but that was the utmost ever paid by the society. I cannot at the present time lay my hand on a copy of the prospectus which was in circulation thirty-two years ago, and the printer, whose name "Investigator" has given, appended to the prospectus from which he quotes, has been dead, I am informed, upwards of twenty years. But "Investigator" remarks,—"The real question is, whether the policy" on the life of his client "was effected on the faith of the statements therein made as to bonuses being true." Now this is a question which it must be unnecessary to say, I am utterly unable to answer. But, let me ask, is it reasonable to suppose that any person would be so negligent of his own interests as to effect an assurance upon his life *in the year* 1832 on the statements contained in a prospectus issued *in the year* 1820, *and applicable to that year only*, instead of obtaining from the office one of their latest papers?

I have already mentioned in my letter of the 24th ult. that the sums payable on claims were advertised every year whether they rose or fell; nothing, therefore, was ever concealed from, or misrepresented to, the public. If "Investigator's" client had been in possession of a prospectus issued in the year 1819, he would have seen that *no more than* 200*l.* was paid on each share in that year.

I have endeavoured fully and fairly to answer every statement made by "Investigator" in his letters, and I hope I have done so satisfactorily to him; but should it be otherwise, although I am at all times happy to give information when applied to, I must decline noticing any further anonymous communications.

I am, Sir, yours, &c.

HENRY THOS. THOMSON, Registrar.

Amicable Society's Office, 50, Fleet-street,

December 8, 1852.

P.S.—As there is an apparent discrepancy in the statements contained in this and my former letter, relative to the amount of each share payable on claims in the year 1820, I consider it proper to explain that the fact of the society's shares being guaranteed each to produce 150*l.* instead of 200*l.* up to the period alluded to, had escaped my attention while writing my letter of the 24th ult.

Queries.

A KNOTTY POINT.

[Although this is, perhaps, in strictness, a point of law, and not of practice, we insert it on account of its singularity.—ED. LAW T.]

I should feel obliged if you or any of your numerous subscribers could enlighten me on the following point:—

A. B. residing at Monmouth, died on Tuesday, the 30th November, 1851, at 10·55 p.m. *local time*, who had a legacy left him by C. D. who lived in London, and died the same day, but at 11·2 p.m. *Greenwich time*. The difference between the time of these two places is sixteen minutes. The dead year having now expired, the executors of A. B. claim the legacy, under the impression that had the time been uniform, A. B. would consequently have survived C. D. by nine minutes, and are therefore entitled to the legacy. Are they so entitled?

Dudley, Dec. 6, 1852. AN OLD SUBSCRIBER.

COUNTY COURTS.

THERE is no more difficult point for the determination of a judge of a County Court than what in particular cases constitutes a question of title so as to oust his jurisdiction. All decisions of the Superior Courts upon this are therefore of great interest, and should be carefully noted. Two such were reported last week. In *Adey* v. *The Deputy Master of the Trinity House*, 20 Law T. Rep. 110, the action was for dues payable to the trustees of a harbour for vessels passing within certain limits by both outward and homeward bound ships. This was held to be a question of title to tolls, and so not within the jurisdiction of the County Courts. In *Chew* v. *Holroyd*, 20 Law T. Rep. 113, it appeared that A. the owner of a cottage, underlet to B. the whole except (as he alleged) two rooms, which he reserved for himself. B. alleged that A. had let him the whole, and with another entered the two rooms and removed A.'s furniture, for which he brought an action in the County Court. It was contended that this was a question of title, but the Judge held otherwise, and gave a verdict to the plaintiff of 25*l.* Now on a motion for a prohibition, the Court of Ex. held that title *was* in dispute, and that the County Court had *not* jurisdiction.

But this objection as to title being in dispute must be taken at the trial or it cannot be made afterwards, for in *Ex parte Sherring*, 20 Law T. Rep. 115, where a prohibition was moved on the ground of title it was refused, because as CROMPTON, J. remarked, "it never could be permitted to a party to make one case before a Judge below, and failing there, to come before this Court with an entirely new state of facts, and so seek to obtain a prohibition."

ADVOCACY IN THE COUNTY COURTS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—A short time since a letter appeared in the LAW TIMES, stating that the judge of the Marylebone County Court had decided that the 10th section of the County Court Amendment Act did not exclude clerks who were attorneys, and had taken out their certificates, from appearing as advocates. Now, as it has been decided in the Durham County Court, and I believe elsewhere, that such clerks are not eligible to appear under that section, it would perhaps be some advantage to the Profession if your correspondent could give a more detailed account of that decision, or of any similar one, as it might have an influence on those judges who have decided to the contrary.

If the decision in the Durham County Court be correct in the letter, it certainly appears to be not in accordance with the spirit of the law, and it will be an obvious hardship on those who have employed at considerable expense managing clerks who are admitted attorneys, but who must nevertheless in every case, however small, and perhaps at great personal inconvenience, appear themselves, or fee counsel at an expense often greater than the amount in dispute, as well as on young men, who for the first few years of their professional lives have entered such situations, and who, though pronounced competent by the proper tribunal, are altogether excluded from one branch of the profession.

With the aid of your valuable paper, we might hope soon to see this evil amended, either by inducing a different interpretation of the section in question, or by means of a clause for that purpose in the next County Courts Amendment Act.

I am, Sir, yours, &c.

York, Dec. 7, 1852. A MANAGING CLERK.

THE LAWYER.

Summary.

EQUITY PRACTICE.—Again there are several points in the *New Procedure* to be noted by the practitioner. The LORD CHANCELLOR, in *The Ipswich Charities*, 20 Law T. Rep. 105, has declared it to be his purpose to "put an end to the practice, which has of late become very general, of allowing parties to file affidavits over an unlimited period of time," producing delay and costs. In *The Duke of Buccleugh* v. *Comber*, 20 Law T. Rep. 105, his Lordship said: "I wish it to be understood that in the cases of persons who are committed for the non-payment of costs, which have been vexatiously incurred, I will give no relief."

The Lords Justices have ordered a sale of mortgaged property on a claim of foreclosure, and the form of the order will be found in *Cator* v. *Reeves*, 20 Law T. Rep. 105. In *Featman* v. *Mousley*, 20 Law T. Rep. 106, a slight alteration of a *printed* bill had been made in writing, the transposition of the order of the Christian names. Their Lordships permitted the bill to be filed, Lord Justice KNIGHT BRUCE observing, "We must not be understood, however, as intending to sanction the filing of a bill of this kind where the alteration is at all extensive or important, or where it is such as to interfere with the legibility of the bill." Where a female ward of the Court, prior to the passing of the new statute, married without leave of the Court, and the suit was revived against the husband, and the wife's share of the property in question was vested in trustees for the benefit of the female plaintiff and her issue, it was held by the Lord Justices that such a change or transmission of the interest of the plaintiff had taken place as justified an order being made, under sec. 52, to the effect of the usual supplemental decree, and that it was not necessary to exhibit any bill of revivor or supplement. (*Atkinson* v. *Parker*, 20 Law T. Rep. 106.)

The MASTER of the ROLLS has held that the proper course is to move to prove the execution of a deed *by affidavit*, and not *viva voce*. (*Ball* v. *Carter*, 20 Law T. Rep. 106.)

COMMON LAW.—It would seem, from a question put by COLERIDGE, J. in *Matheson* v. *Matheson*, 20 Law T. Rep. 109, that an affidavit for a rule to enter a suggestion, under section 129 of the Procedure Act, of the death of a plaintiff, so as to enable the administrator to revive a judgment obtained by him, should state that *defendant is*

alive. It was not so decided, but the doubt was started, and it would be as well to avoid it in any such affidavits.

In *Cobbett* v. *Hudson*, 20 Law T. Rep. 109, it was decided by the Q.B. that a party to an action may state his case to the jury, and afterwards be examined as a witness in support of it. The Court expressed its strong disapprobation of the practice, as being extremely inconvenient; but, there being no positive rule of law to the contrary, a new trial was granted where the Judge had refused permission to the plaintiff to be both advocate and witness.

In the *Law of Awards* it is to be noted that, where an award is sought to be set aside, on the ground that the arbitrator has mistaken the law, the Court will not look at a written statement of his reasons, "unless he delivered them as parcel of the award. If he does so, then the Court will look at the two as one document, and will suppose that he has reserved the matter of law for the consideration of the Court; but if he has absolutely decided the question of law submitted to him, we cannot inquire into the legality of his decision." (*Reg.* v. *The South-Western Railway Company*, 20 (Law T. Rep. 110.)

ADMISSION OF ATTORNEYS TO THE BAR.

TO THE EDITOR OF THE LAW TIMES.

Sir,—I was somewhat surprised to observe, in your last number but one, an article advocating the propriety of allowing attorneys to be called to the Bar immediately after being struck off the rolls for that purpose. Nevertheless, I am not sure that I should have addressed you upon the subject, had it not been for a letter which appears in your last number. This letter, however, confirming my apprehensions that the proposal once being started, would quickly be taken up by others, I feel anxious that something should be said in behalf of the existing practice. And not knowing whether any one else will take up the championship of the present regulations, I come forward, and the rather at this early period, hoping that those who are disposed to support the change may listen with greater impartiality and candour to what may be urged on the other side than they probably would do hereafter, when, having commenced an "agitation" for the change, they would be so wedded thereto, as (which too often happens) to be incapable of appreciating what is advanced in opposition to their own views.

Now, Sir, there seem to me to be many good reasons why an attorney should not be allowed to go at once to the Bar, but I shall content myself with naming two or three which are frequently, and I think justly, considered as having great weight.

First, then, with a view to maintaining the respectability of the Bar, and to keep from it, as much as possible, needy adventurers, who are the most likely to degrade it,—not by their poverty, but by the artifices to which penury may compel them to resort,—it has long been a rule that during his years of probation a student for the Bar shall not engage in any other business or lucrative employment. This rule is not always adhered to so strictly as it might be, but still it is a rule which ought not openly to be broken in upon, as it would be by allowing attorneys to be "called" the moment after they ceased to be attorneys.

Secondly, although an attorney may be very well skilled to conduct his business—especially a country business—he may, nevertheless, be almost entirely ignorant of pleading, as also of the practice in the Courts at Westminster; and, in the case of country attorneys, such is, in fact, the rule rather than the exception. How, then, could one of this class properly fulfil the duties of a barrister without devoting some considerable time to the study of that which is all-important to him quâ barrister, but which, if he has a good town agent, is of very little moment to him quâ attorney? He ought, then, to have time for this study, which the present regulations give him.

Thirdly. There are men who, after soliciting business as attorneys, and having got a good many actions afloat and growing ripe for trial, might in this stage of them migrate, getting the clients to adopt some friend of the incipient counsel to conduct the further proceedings; this friendly "brother chip" engaging with the ci-devant attorney or new-fledged barrister to give him the briefs in all these actions. Thus the new man would go into court the day after he was called with a bagful of briefs, and a friend near him grateful for past favours and willing to reciprocate in future.

Thus would the hybrid barristers completely "take the shine out" of those "thorough-bred" counsel, who, honourably adhering to the etiquette which you, Sir, are so anxious to maintain, have to wait silently and obscurely to the end of their lives, for that unsolicited business which in these days seems to come to those only who "hunt it up" either in one way or another.—I am, Sir, yours, &c.

Dec. 8, 1852. An obscure Barrister.

MASTERS EXTRAORDINARY.

TO THE EDITOR OF THE LAW TIMES.

Sir,—As one of this agitated class, I feel comfort in your assurance that we are not going to be hurt, except in name. But at the top of the third column of p. 118 of your last (No. 505), I find that the future "country agents" are to be appointed on payment of 1*l*. I was appointed in July last, and paid 8*l*. 13s. for the doubtful advantage of a Mastership. Am I not, then, a little hurt if my neighbours get for 1*l*. an appointment which less than five months ago cost me the sum I mention.—I am, Sir, yours, &c.

Liverpool, Dec. 8, 1852. A Solicitor.

MASTERS EXTRAORDINARY — COMMISSIONERS FOR TAKING AFFIDAVITS.

TO THE EDITOR OF THE LAW TIMES.

Sir,—I cannot but be somewhat amused at the cool suggestion made by "A Solicitor," in your last number, that all solicitors should be allowed to administer oaths to the same extent as Masters Extraordinary, and all attorneys to the same extent as commissioners, and that (I apprehend he means) without themselves incurring the expense of obtaining the commissions now required. He is evidently a solicitor who has not expended 10*l*. in obtaining a commission to take affidavits in Chancery, and some 5*l*. or 6*l*. in obtaining commissions to administer oaths in the common law courts. May not your correspondent (with his views) be reasonably asked why all persons should not be allowed to practise as solicitors and attorneys without incurring the expense of stamp duty to the amount of 120*l*. and other expenses amounting to between 30*l*. and 40*l*. in order to procure admission to the different courts. It is a matter of indifference to me by what title I am authorised to take affidavits, nor, indeed, have I much objection to every solicitor being authorised to do so, provided the amount I have expended be returned to me, or, if the expenses be lessened, then the difference between the modern and the ancient expenses, so that there may not be, to use your correspondent's expression, any invidious distinction.

I am, Sir, yours, &c.

A Master Extraordinary and a

Dec. 6, 1852. Commissioner.

Answers to Queries.

LAW OF EVIDENCE AMENDMENT ACT.

Upon reconsidering the 14th section of the above Act, it does appear that a will relating to land does not come within the limit of that section, unless it be thirty years old or upwards; when, according to the cases of *Doe* v. *Lloyd*, Peake, Ev. ap. 91; and *Wynne* v. *Tyrwhitt*, 4 B. & A. 376, it seems it would do so.

I am obliged by A. B.'s notice of the point.

Dec. 6, 1852. W. H. F.

THE MERCANTILE LAWYER.

Two cases in the *Law of Patents* appear among the reports of last week. In *Holmes* v. *The London and North-Western Railway Company*, 20 Law T. Rep. 112, the rule of law was stated by Jervis, C.J. to be that "every patentee in his specification must describe his invention so that an ordinarily skilled workman may read and understand what patent is old and what new. It is also free from doubt that there may be a patent for a combination of old parts with new." Where, therefore, A. took out a patent for a turn-table, and in his specification described its constituent parts and mode of use, but did not state what of it was old and what new, it was held to be bad. *Amies* v. *Kelsey*, 20 Law T. Rep. 115, was a point of *practice* under the new Patent Law Amendment Act. An application was made, under sec. 42, for inspection. It was held, that this may be done at any time after action brought, but that the affidavit must shew *why* such inspection is necessary.

Glover v. *Jones*, 20 Law T. Rep. 113, was a curious question as to the liability of a servant under these circumstances:—A. was driver of a stage-coach, and B. clerk and bookkeeper to C.; B. usually made up A.'s account with him, and paid him his wages, entering them in his books weekly, and he settled with C. (the master) monthly. A. having as he alleged 38*l*. due to him, applied to B. for it, admitting that he had detained a sum which he had received for C. for parcels, &c. B. sent him 20*l*. on account, and promised to pay the balance on his calling to adjust the accounts. A. afterwards wrote to C. for the balance, stating that he should look to C. for payment, and then he brought an action for it against B. Was B. liable? It was held by the Ex. that the action could *not* be sustained.

COURT PAPERS.

APPEALS FROM COURTS OF COLONIES TO THE PRIVY COUNCIL.

By an Order in Council, dated Windsor, Nov. 27th last, it is declared expedient, according to the provisions of the Act passed in the 7th and 8th years of her Majesty's reign for amending an Act passed in the 4th year of his late Majesty William IV. that any person or persons may appeal to her Majesty, her heirs and successors, in her or their Privy Council, from any final judgment, decree, order, or sentence of the Supreme Court of the province of New Brunswick, as a court of civil judicature, or as a court of revenue or of escheat, in such manner, within such time, and under and subject to such rules, &c. as therein mentioned.

THE COURT OF CHANCERY.

PRACTICE IN CHAMBERS.

Under the recent alteration of Chancery Reform the several judges have agreed to and adopted the following resolutions as to chamber practice.

The following are the applications to be made at chambers, viz.:—

1. As to guardianship of infants (except the appointment of guardians *ad litem*).
2. For the appointment of special guardian to concur in a special case.
3. As to maintenance or advancement of infants.
4. Under the Drainage Act.
5. Under the Trustee Act of 1850 and 1852.
6. For administration of estates under the Act of 15 & 16 Vict. c. 86.
7. Under the Legacy Duty Act for payment of money out of court.
8. For time to plead, answer, or demur.
9. For leave to amend bills or claims.
10. For enlarging publication or the time for closing evidence.
11. For the production of documents.
12. Relating to the conduct of suits or matters.
13. As to matters connected with the management of property.
14. For payment into court of purchasers' moneys under sales by order of the Court, and investing the same.

COMMON LAW CAUSE LIST.

Court of Queen's Bench.

London Causes standing for trial in the List for Sittings after Michaelmas Term:—

Remanet.

Corcoran v. Gurney, S.J.	Brown v. Temple, S.J.
Mason v. Prole	Smith v. The London and
Mollett v. Harris and Others, S.J.	North-Western Railway Company, S.J.
Ingram v. Hall, S.J.	Morris and Another v. Venus and Others
Porrier and Anor. v. Morris and Others, S.J.	Papayanni v. Geralopulo, S.J.
Wardell v. Beale, S.J.	Eaton v. Ellison, S.J.
Nutting v. Teighe	Thomas v. Jones.

New Causes.

Reg. v. Meyers and Others	Rayner and Another v. Allhusen, S.J.
The Trinity House v. The General Steam Navigation Company, S.J.	Vom Hof v. Muller
Reg. v. Meyers and Others	Schreiber, a pauper v. Maniere, S.J.
Mowatt v. Lord Londesborough, S.J.	Ansett v. Marshall and Another
Leonino and Others v. Bohlal, S.J.	Page v. Richards
Stainbank and Another v. Davies, S.J.	Ely v. Holt, S.J.
Field v. Turner	Holt v. Ely, S.J.
Pratt v. Sheppard	Brooksby v. Seagrove, the elder
Cochrane, Assignee, &c. v. Madden	Rimmel v. Hesse
Wellerton v. Hayley	Garner v. Holloway
Carnaghan v. Davidson	Bailey v. Lawton
Burmster, P.O.&c. v. Hebler, S.J.	Edwards v. Cross
Dillon and Wife, pauper, v. Brown	Rust v. Nottidge
Tierney, an Infant, &c. v. Acocks	Miller v. Gardner
Baxendale and Ors. v. Smith, S.J.	Curry v. Dally
Martyn and Another v. The West of England Fire and Life Insurance Com. S.J.	Saunders v. Stride
Paterson v. Yates	Reg. v. Gray and Others
Isaacs v. Cook	Willcock v. Calmady
Tahourdin v. Lee	Oliver v. Doubleday
Rock and Others v. Doyle	Fagg v. M'Dowall
Smythe v. Bellringer	Smith v. Lauchlan
	Kernot v. Pittis
	Seckham v. Rawlins
	Rockliffe v. Schafer
	Terrell v. Fidler
	Clerk, Holliday, and Another v. Kemp
	Burr, junior, by next friend, v. King.

ATTORNEYS ADMITTED.

Michaelmas Term, 1852.

Ash, John George Hele—W. Gorham; F. J. Ridsdale
Aveline, Henry Thomas—J. James
Ball, Charles—J. Walker
Barnes, Arthur—E. Bond

Baty, Isaac—C. Head
Bayley, Charles Henry—E. Caddick
Blagg, Michael Ward—J. M. Blagg
Blick, John—S. Tombs, jun.
Borini, John—M. Davis, jun.
Borradaile, Charles—H. Denton
Bowman, Joseph, jun.—R. Armitstead; C. H. Bower; T. H. Bower
Bunny, Edward William, B.A.—J. Bunny
Burton, Edmund Charles, A.M.—E. S. Burton
Butler, Josiah—J. Thompson
Cant, Thomas Gibson—J. Jameson
Carter, William—F. Smith; C. Stenning
Cavell, Edward—Smith and Son
Child, Mark—W. Brignal
Clare, William—G. J. Duncan
Clark, Henry—J. Bush
Clarke, Frederick—C. Few, jun.
Cobby, Cecil—C. Cobby
Cowley, George Littlewood—G. M. Cowley
Cranswick, Matthew—J. Shackleton
Creswick, Nathaniel, jun.—H. Pashley
Cross, John—J. Cross
Davies, Edmund, jun.—E. Davies
Dixon, Albert—W. Dixon
Draper, Edward—H. D. Draper
Dutton, James Roger—J. S. Leigh; W. Easton
Eastham, John—R. Trappes
Edwin, William—M. Cooper; G. Ade
Ellis, George—C. Naylor
Fitch, George William—C. Francis
Foster, Francis Gostling—Sir W. Foster, bart.
Franklin, James—M. Stocks
Freud, Edwin—T. N. Wightwick
Frere, Horace—C. J. Palmer
Fuller, Robert Good—J. Gudgeon
Gee, William—W. Gee; R. Gee
Gibson, Henry—W. Gibson
Goodman, William Benjamin—C. Rollings
Goodwin, Thomas—J. Monckton
Green, William Bowles—W. P. Bowles
Grundy, Charles—J. W. Cowley; R. G. Chipperfield; L. Hicks
Gutteridge, Weichsel Frederic—H. Vallance
Gwyn, John Thomas—J. B. Jeffries
Hall, William Champain—B. V. Hutchinson
Hayman, Philip Charles—H. C. Trenchard; H. S. Westmacott
Hockley, Edward—F. Herbert
Howell, Nathaniel—A. Low
Huggins, William—F. Every; W. H. Murch
Jennings, Edward Billett—T. T. Dibb
Kingsford, Montague—H. Kingsford
Landor, Robert—W. Landor
Laxton, Thomas, jun.—J. After
Lea, Thomas Edward—H. W. Vallance
M'Gee, Francis William—W. Foster
Maclure, Bowman—T. A. Jones
Matthews, James Bogle Denton Graham—D. Cornthwaite
Mawson, William Willmott—T. Taylor
Meredith, Edward William—C. Meredith
Metcalfe, Robert, B.A.—O. Hyde
Meyler, Thomas—R. Wilton
Miller, Mark Benjamin—M. B. Miller
Mossman, George Robert, jun.—G. R. Mossman
Neale, Charles Lanchester—W. Clarke; R. E. Clarke
Norris, Robert, jun.—R. Norris, sen.
Owen, Meiler—W. Owen
Owston, Hiram Abaft—G. Toller
Parker, Arnold—T. J. Parker
Parker, James—R. Cheere
Pownall, Henry Smith—W. Pownall
Purchas, James Bishop—W. P. Hooper
Robinson, William Arthur—G. Holmer
Rowley, J. Campbell—A. B. Rowley
Rutter, George Oswald—O. Milne; W. S. Rutter
Salmon, Thomas William—W. Worship
Sankey, Herbert Tritton—R. Sankey; W. P. Beecham
Scott, George William—J. Scott
Sheppard, Thomas Pollett—A. J. Knapp
Smale, Arthur William—C. Smale
Smith, Edward Hart—E. W. Paul; J. A. Buckley
Stacey, William—W. H. Trinder
Stockwood, John—W. Edmondes
Stone, William Way—J. Rose; R. Rose
Stopher, William—J. J. Peddell
Stuckey, Joseph Fry—J. Templer
Talbot, Frederick—W. Talbot
Teebay, Richard—J. Yates
Thornley, James Jonathan—R. Wormald; S. Higginbotham; S. Shuttleworth
Tindell, William Frederick—M. Cooper; G. Ade
Turner, Hubert Francis—W. Turner; G. M. Gray
Tweed, Frederick William—J. T. Tweed; G. T. Tweed
Vassall, Robert Lowe Grant—A. Cox; J. S. Torr
Venn, Frances—W. Shuttleworth
Vivian, Charles Augustus, B.A.—J. Vivian
Wade, John Henry—J. Rawson
Walker, Joseph—C. Preston; T. Harvey
Waller, Robert—Deakin and Dent
Warner, George Daniel—E. B. Church
Waugh, George, jun.—G. Waugh, sen.; R. Edmunds
Weekes, Charles Henry—G. W. Snell; J. V. Bridgman
Wheldon, Robert, jun.—J. Wright; J. L. Barker
Wheldon, Thomas Robert—R. Wheldon
Wilkinson, Matthew—N. Wilkinson
Wilton, Robert Plydall—R. Wilton; P. S. Humberstone
Yawdall, George—J. Lofthouse; R. Barr; J. E. Upton.
—*Legal Observer.*

PROCLAMATION OF OUTLAWRY.—At the Sheriff's Court, Mr. Hemp, the bailiff, made the usual proclamation of outlawry, and called upon the following persons to surrender:—Charles Frederick Augustus William Guelph and Charles Cassimer Reinhold, at the suit of the Queen; C. Lucas Lancaster Lucas, Rev. J. W. Smyth, C. B. Reynolds, John Even Spalding, J. B. Hartwell, Edward Upton, Henry Dundas Campbell, Henry H. Griffin, P. B. Francois, Charles Gillies, and Edward Upton (at a second suit).

DIARY OF SALES BY AUCTION, DURING THE NEXT WEEK,

ADVERTISED IN THE "LAW TIMES."

DAY.	PLACE.	AUCTIONEER.	WHEN ADVERTISED.	PROPERTY.
Monday, Dec. 13.	Estate Sale-Room, Brighton	Ridley and Son.	Dec. 4.	Genteel houses, on the north entrance of Brighton.
Tuesday, Dec. 14.	Mart.	W. and C. Pugh.	Dec. 11.	Reversion to freehold property.
Ibid.	Ibid.	Ditto.	Ibid.	Reversion to important freehold property.
Wednesday, Dec. 15	Ibid.	Smith.	Ibid.	Whitley Park Estate.
Ibid.	Ibid.	Ditto.	Ibid.	Estate of Harpsden Court, in Oxfordshire.
Thursday, Dec. 16.	Ibid.	Marsh.	Ibid.	Manors near to Bury St. Edmund's, Suffolk.
Ibid.	Ibid.	Ditto.	Ibid.	Manor of Bovill's Hall.
Ibid.	Ibid.	Ditto.	Ibid.	Freehold houses in the City of London.
Ibid.	Garraway's.	Ellis.	Dec. 4.	Freehold and leasehold estates, Wapping, &c

PROCEEDINGS OF LAW SOCIETIES.

MANCHESTER LAW CLERKS' FRIENDLY SOCIETY.

THE members of this society, accompanied by a highly respectable body of friends and patrons, held their third annual dinner on Wednesday week, under the presidency of R. B. Armstrong, esq. Q.C. M.P. Recorder of Manchester. The dinner took place at the Albion Hotel, and was served up in the well-known style of that establishment.

Amongst the gentlemen present were Robert Barnes, esq. Mayor of Manchester; Frank Ashton, esq. Mayor of Salford; Mr. Alderman Walker; Mr. W. T. Jemmett, one of the Commissioners of the Court of Bankruptcy; Mr. Joseph Heron, Town Clerk of Manchester; Mr. Charles Gibson, Town Clerk of Salford; Mr. John Ogden, Clerk of the Peace; Messrs. J. P. Cobbett, John Cross, William Saunders, and Thomas Wheeler, barristers; Messrs. J. F. Beaver, S. P. Hitchcock, B. Whitworth, T. Whitlow, A. S. Austin, Robert Taylor, T. Taylor, J. Bond, B. Gartside, and W. P. Roberts, attorneys; and Mr. E. Blackmore, surgeon.

After dinner, "Non nobis Domine" being sung by a party of vocalists, the Chairman proposed "The health of Her Gracious Majesty the Queen," which, with that of "His Royal Highness Prince Albert, the Prince of Wales, and the rest of the royal family," was cordially drunk.

Song, "Hail, Star of Brunswick."

Mr. John Tasker, the Secretary of the Society, read the report for the past year. The following is an abstract:—

"The committee beg to refer the members to the list of donations to the funds of the society, amounting to the sum of 98*l.* 6s. 6d., and of annual subscriptions amounting to the sum of 45*l.* 3s. as a convincing proof of the continued interest evinced by the Profession in the welfare of the society. Upwards of four years have now elapsed since the formation of this society, during the whole of which period its prospects have continued to improve, and by a sure, though gradual, increase in the number of its members, as well as in the extent of its patronage, its general objects have been greatly promoted. The committee submit to the donors and members the following details, showing the present state of the funds of the society. On reference to the annual statement of the society's accounts, made up to the 1st of July, 1852, it appears the total receipts were 140*l.* 4s. 8d. The payments for stationery, printing, advertising, postage, &c. 5*l.* 3s. 7d. leaving a balance in favour of the society of 135*l.* 1s. 1d. During the past year the society has received from members 39*l.* 5s. 6d.; from donations and annual subscriptions, 61*l.* 3s. 6d.; for rules, entrance-fees, fines, and certificates of free membership, 4*l.* 9s.; and interest from the savings bank, 3*l.* 9s. 9d.; making together, 108*l.* 7s. 9d.; and the total expenditure for the year, 36*l.* 12s. 4d.; leaving a balance in favour of the society of 71*l.* 15s. 5d.; which amount, when added to the balance in hand at the last report, makes 206*l.* 16s. 6d. as the total capital of the society, exclusive of the subscriptions due on the 1st inst. The number of members at the present date is thirty-three, being an increase of fourteen since last report. The committee would here beg to remind the clerks in Manchester and in the country, that those qualified to become members of the society are clerks to attorneys, barristers, special pleaders, conveyancers, and proctors, and of the public law officers in Manchester, or who reside within the limits of the Manchester Law Association, viz. within a circuit of twenty miles from Manchester. By the present state of the society's funds a free member is entitled, in case of sickness, to 7s. per week (and when the annual subscriptions due on the 1st July inst. are paid, he will be entitled to 10s. per week), and his wife, child, relative, or nominee, to 15*l.* at his death; and should such free member survive his wife, then and in such event he would be entitled, according to the state of the society's funds, to a sum equal to one-half the sum payable on the death of a member; and when the society is possessed of 1,000*l.* or upwards, a free member will be entitled, in case of sickness, to 20s. per week; and his wife, child, relative, or nominee, to 25*l.* at his death; and when the society is possessed of 2,000*l.* the wife, child, relative, or nominee of a member will be entitled to 40*l.* at his death; and if the member survive his wife, he will be entitled to a sum equal to one-half, and likewise to an annual allowance, when advanced age, infirmity, or accident, permanently prevents him from following his customary employment. During the past year applications have been made by members of the profession to the committee for clerks, and in every case the committee have had the pleasure of assisting clerks to situations; and upon considering the subject, the committee have thought it desirable for the convenience of the profession, to adopt a registry for supplying clerks, members of the society, with situations, and this, coupled with the co-operation of the profession, will furnish the society with the means of procuring employment for members requiring it, and at the same time will be a source from which the profession may be guaranteed clerks of respectability and good character. In concluding this report, the committee have great pleasure in stating that, since the establishment of the society, not a single claim has been made upon the funds, on account of sickness or death, shewing the comparative good health of its present members, and the probability of its funds continuing greatly to accumulate."

The usual complimentary toasts and speeches followed, and the evening was spent pleasantly. Such a society cannot be too much encouraged, and therefore we have given so much space to its proceedings.

LEGAL INTELLIGENCE.

Winter Assizes.

NORTHERN CIRCUIT.

LIVERPOOL, Dec. 7.—Yesterday Mr. Justice Cresswell and Mr. Justice Crompton arrived in this city, and opened the commission for the Winter Assize, and this morning proceeded to the courts at eleven o'clock. The calendar contains the names of 112 prisoners, of whom 2 are charged with intent to murder, 9 with manslaughter, 8 with rape, 11 with burglary, 47 with assault and robbery, 6 with cutting and wounding, 1 with arson, 3 with bigamy, 2 with perjury, 8 with forgery, 5 with stealing from the dwelling-house, 2 with coining, 1 with embezzlement, the rest with minor offences.

Mr. Justice Cresswell charged the jury in the Crown Court.

Mr. Justice Crompton sat in the Nisi Prius Court.

Public Sales.

By Messrs. CHINNOCK and GALSWORTHY, at the Mart.—A reversion to 2,000*l.* sterling, on the decease of a lady, aged 70—1,250*l.*

Leasehold private residence, with stabling, No. 34, Gower-street; term, 28 years unexpired; annual value, 60*l.*; ground-rent, 9*l.* 18s.—600*l.*

The Putney College estate, comprising 18 acres of freehold land, close to Putney-bridge. Sold privately for 11,000*l.* to the new land society, the "Conservative."

MONEY MARKET.

ENGLISH FUNDS.	Sat.	Mon.	Tues.	Wed.	Thurs.	Fri.
Bank Stock	222	..	223	222	223	222½
3 ℘ Cent. Reduced Annuities	100½	100½	100½	100½	100½	100½
3 ℘ Cent. Consols Annuities	100½	101½	101½	101½	101½	101½
Consols for Account	101½	101½	101½	101½	..	101½
New 5 ℘ Cent. Annuities	..	..	..	..	..	..
New 3½ ℘ Cent. Annuities	103½	103½	103½	103½	104	103½
Long Annu. (exp. Jan. 5, 1860)	..	..	6½	6½	6½	6½
Do. 30 yrs. (exp. Oct. 10, 1859)	..	..	6½	..	..	6½
Do. 30 yrs. (exp. Jan. 5, 1860)	..	..	6½	..	..	..
India Stock	277	..	..	..	..	..
India Bonds (1,000*l.*)	83	80	..	82	80	..
Do. do. (under 1,000*l.*)	83	..	80	80	..	83
South Sea Stock	111½	..	..	..	..	..
Do. do. New Annuities	..	..	..	..	..	..
Exchequer Bills, 1,000*l.* June	69*	69*	..	65*	65*	66*
Do. do. 500*l.* June	..	..	71*	66*	66*	65*
Do. do. Small, June	..	69*	71*	65*	65*	65*

* Premium.

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BIRTHS, MARRIAGES, AND DEATHS

BIRTHS.

JEUDWINE.—On the 4th inst. at Eastbourne-terrace, Hyde-park, the wife of George Jeudwine, esq. Lincoln's-inn, of a son.

LOPES.—On the 4th inst. at 23, Eaton-place, Belgrave-square, the wife of Ralph Ludlow Lopes, esq. barrister-at-law, of a son.

MARRIAGE.

FELLOWS, Herbert William, fourth son of Thomas Fellows, esq. of Money-hill, Rickmansworth, to Marianne, second daughter of William Stephens, esq. of Bedford-row, and of Scot's-bridge, Rickmansworth, on the 2nd inst. at Rickmansworth, Herts.

LEGGETT, Harrison, esq. solicitor, eldest son of Francis Leggett, esq. deputy-sheriff of Bombay, India, to Caroline Eliza, fourth daughter of John and Catherine Smith, late of Yoxford, Suffolk, on the 23rd ult. at Yoxford.

DEATHS.

DUNLOP, George, esq. writer to the signet, on the 6th inst. at Edinburgh.

YOUNG, Elizabeth, relict of the late Mr. Samuel Young, solicitor, on the 5th inst. at Parliament-street, Westminster, aged 81.

NOTICES OF NEW LAW BOOKS.

The Bankruptcy Law Consolidation Act, with Notes of all the Cases decided on its Construction, the New Rules and Orders, with the Forms, Schedules, &c. a very copious Index. By C. J. B. HERTSLET, Esq. Barrister-at-Law, author of "The Law of Master and Servant." London, LAW TIMES Office.

WHEN the LAW TIMES Edition of the *Bankruptcy Consolidation Act* was published, with notes, by Mr. WISE, a promise was given that, as soon as the New Rules and Orders were issued, they should be published as an Appendix. They were then expected to appear very speedily. But two years elapsed and no effort was made for the purpose, and it was not until Lord ST. LEONARDS, with his untiring industry, devoted himself to the subject, that the defect was supplied, and a body of rules issued which exceed in length the Act itself, long as that Act is. In the meanwhile a vast number of decisions have been given by all the Courts upon the construction of the statute, without which before him the practitioner cannot venture to read or refer to it. Hence the necessity for *adding* to the new rules and orders another edition of the Act, with notes of all those numerous decisions upon its construction. The Appendix has thus unavoidably grown to be much larger than the original book; but then it is complete in itself, and, to meet the requirements of the Profession, without increasing the cost of it, the price charged for this edition of the Act, with all the decisions and rules and orders added to it, is not more than was the price of the original edition of the Act alone, so that the possessor of WISE'S, or any other edition of the Bankruptcy Act is not, in fact, put to any additional cost by reason of the statute itself being repeated here; and the convenience of having the whole of the text of the new law of Bankruptcy in one volume is manifest, and we trust that the practitioner will find its worth greatly increased by the copious and careful collection of the decisions made by Mr. HERTSLET, and placed under the sections of the statute to which they relate, so that the words of the law and the interpretations put upon them by the Judges may be seen at one glance.

PAMPHLETS.

MR. G. A. DEAN, Agricultural Architect and Surveyor, has published an Essay on *The Compulsory Enfranchisement and Commutation of Copyhold Property*, in which he puts forth many valuable suggestions for ascertaining the value of existing interests in Copyholds. As the opinion of a thoroughly practical man, this pamphlet will doubtless be esteemed by those whose duty it will be to conduct the coming enfranchisement.—Mr. A. RIDGWAY has published some *Remarks on Notarial Evidence*, suggested by the recent case of *Achilli* v. *Newman*. It was to this pamphlet that he referred in a letter in the last LAW TIMES, where he pointed out an error into which the whole press had fallen with respect to the famous judgment of the Inquisition. He suggests some desirable improvements in the law of evidence as respects the more easy admission of notarial documents.—Some Suggestions on *Nisi Prius Trials at Assizes*, by JNO. GORDON, Esq. Barrister-at-Law, urges the necessity for more frequent assizes, with other reforms very similar to those which were some time since proposed in these pages in the Letters to Lord CAMPBELL; but the question cannot be too often mooted, for it is of vital importance.—From GEORGE ROSS, Esq. Advocate, we have received the first part of a work which promises to be extremely useful and interesting, a collection of the *Leading Cases in the Commercial Law of England and Scotland*, systematically arranged, with notes, this first part being devoted to Bills of Exchange and Promissory Notes. The cases are selected with sound judgment, and the notes display much learning. We trust that Mr. ROSS will be very careful to indicate the differences (whenever they exist) between the law of Scotland and England, that his readers may not mistake the one for the other, a disadvantage to which the student is always liable where a book contains two systems of jurisprudence, and which only the utmost vigilance on the part of the author can avoid. It is even felt where a treatise describes both the law as it *was* and as it *is*—the mind is apt to confuse them much more when the same work blends the differing law of two countries. Would it not be more prudent to keep them quite apart by separately paging them?

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

LETTERS patent have passed the Great Seal of Ireland, appointing Mr. Digby P. Starkey, barrister-at-law, Accountant-General of the Court of Chancery, in Ireland.

Lord Naas has nominated Mr. Richard Wingfield as his private secretary, in the room of Mr. Richard Bourke, appointed a divisional magistrate of police.

THE POOR-LAW BOARD.—Mr. F. Winn Knight, M.P. for Worcestershire (W.), has been appointed to the office of Parliamentary Secretary to the Poor-Law Board, in the room of Sir J. Emerson Tennent.

COMMISSIONS SIGNED BY LORDS LIEUTENANT.

WORCESTER.—Thomas Badger, esq.; Cornelius Cartwright, esq.; John Amery, esq.; and James Ashwin, esq. to be deputy-lieutenants.

STAFFORD.—Sir Francis Edward Scott, bart. to be deputy-lieutenant.

ATTORNEYS ELECTED MAYORS.

WE have yet additions to make to this gratifying list:—

Birmingham—Mr. Henry Hawkes.
Wareham—Mr. Clavell Filliter.

THE GAZETTES.

Bankrupts.

Gazette, Dec. 7.

BACON, WILLIAM, grocer, Brentwood, Essex, Dec. 17, at eleven, Jan. 25, at twelve, Basinghall-st. Off. as. Stansfeld. Sol. Rawlings, Furnival's-inn, and Romford, Essex. Petition, Dec. 6.

BELL, RICHARD, and CAMPBELL, GEORGE, merchants, Liverpool, Dec. 20 and Jan. 11, at eleven, Liverpool. Off. as. Morgan. Sols. Anderson and Collins, Liverpool. Petition, Nov. 25.

GREAR, ROBERT, wax and tallow chandler, Long-acre, Dec. 17 and Jan. 21, at one, Basinghall-st. Off. as. Graham. Sols. Rogerson and Ford, Lincoln's-inn-fields. Petition, Nov. 26.

OATES, JOHN RICHARDSON, tailor, Finch-lane, City, Dec. 15, at half-past eleven, Jan. 22, at half-past one, Basinghall-st. Off. as. Pennell. Sol. Colley, Bucklersbury. Petition, Dec. 3.

SUERIDGE, WILLIAM HATCHETT, horse dealer, Harrow-road, Paddington-green, Dec. 17, at eleven, Jan. 22, at two, Basinghall-st. Off. as. Pennell. Sol. Jones, Quality-court. Petition, Dec. 2.

SUTHERLAND, DAVID, seed merchant, Preston, Lancashire, Dec. 20 and Jan. 12, at twelve, Manchester. Off. as. Fraser. Sols. Wilmot, London; and Andrew, Manchester. Petition, Nov. 23.

Gazette, Dec. 10.

BAIN, ALEXANDER, electric clock maker, Old Bond-st. Dec. 15, at twelve, and Jan. 21, at eleven, Basinghall-st. Com. Nicholson. Sols. Desborough, Young, and Desborough, Sise-lane, Bucklersbury.

BARNSHAW, THOMAS, retailer of beer, Brunswick-st. Poplar, Dec. 20, at half-past one, Jan. 20, at twelve, Basinghall-st. Off. as. Bell. Sols. Piercy and Hawks, Crown-sq. Southwark.

BOWDEN, WILLIAM JOHN, apothecary, Hertford, Dec. 20, at twelve, Jan. 20, at two, Basinghall-st. Off. as. Bell. Sol. Hall, Brunswick-row, Queen's-square, Bloomsbury.

CRIDLAND, JOHN, grocer and china dealer, Sidmouth, Devon, Dec. 21, at eleven, Jan. 13, at one, Exeter. Off. as. Hirtzel. Sols. Coleridge and Son, Exeter.

ENGLISH, EDMUND and EDMUND FRANCIS, auctioneers and upholsterers, Bath, Dec. 24 and Jan 24, at eleven, Bristol. Off. as. Acraman. Sols. Crutwell, Bath; and Bevan, Bristol

GILL, JAMES, hop factor, Southwark, Dec. 16, at two, Jan. 24, at twelve, Basinghall-st. Off. as. Johnson. Sols. Gregson and Son, Throgmorton-st.

GOULDIN, JOHN, potato dealer, Outwell, Dec. 20, at eleven, Jan. 21, at twelve, Basinghall-st. Off. as. Nicholson. Sols. Honsman, London; and Ollard, Upwell.

KERON, JAMES, builder, Altrincham, Dec. 20, at twelve, Manchester. Off. as. Pott. Sols. Nichols and Worthington, Altrincham; and Stirke, Manchester.

MURRAY, ROBERT HAMILTON, baker, Alfred-place, Camden-road, Dec. 23, at eleven, Jan. 21, at one, Basinghall-st. Off. as. Groom. Sols. Hilleary and Co. Fenchurch st.

NESS, JAMES, grocer, Newcastle-upon-Tyne, Dec. 17 and Jan. 28, at eleven, Newcastle-upon-Tyne. Off. as. Wakley. Sol. Watson, Saint Nicholas's-churchyard.

PISTRUCCI, EMILIO, lithographic artist and printer, Salisbury-st. Strand, Dec. 25 and Jan. 25, at twelve, Basinghall-st. Off. as. Foster. Sol. Rushbury, Surrey-st. Strand.

RHODES, CHARLES, milliner, Kensington, Dec. 22, at half-past one, and Jan. 25, at one, Basinghall-st. Off. as. Graham. Sols. Holmes, London; and Clarke, Reading.

STAGG, HENRY, grocer, Croydon, Dec. 21, at one, Jan. 25, at half-past one, Basinghall-st. Off. as. Graham. Sols. Russell and Burgon, London.

SPEED, THOMAS, butcher, Liverpool, Dec. 23 and Jan. 14, at eleven, Liverpool. Off. as. Bird, Liverpool. Sol. Greatley, Liverpool.

THORNTON, WILLIAM, carpenter and builder, Battersea, Dec. 16, at half-past one, Jan. 20, at one, Basinghall-st. Off. as. Johnson. Sol. Jones, Quality-court, Chancery-lane.

WILLIAMS, DAVID, grocer, Dowlais, Glamorgan, Dec. 23 and Jan. 26, at eleven, Bristol. Off. as. Miller. Sols. Bevan, Bristol.

Dibidends.

BANKRUPT ESTATES.

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Assignments for the Benefit of Creditors.

Gazette, Nov. 30.

Blenkarn, A. B. architect and surveyor, Fenchurch-st. and Courlands, Wandsworth-road, Nov. 1. Trust. T. Smith, clothier, Regent-st. Sol. A. T. Hewitt, Nicholas-lane.—*Fisher*, H. tailor, Nottingham, Nov. 3. Trust. W. Marshall, jun. glass and lead merchant, Nottingham. Sol. S. R. P. Shilton, Nottingham.—*Howes*, W. grocer, Norwich, Oct. 30. Trusts. G. S. Marshall, wholesale grocer, Upper Thames-st. and E. Bonnett, grocer, Norwich. Sol. J. Winter, Norwich.

Gazette, Dec. 3.

Leavold, T. linendraper, Ipswich, Nov. 4. Trust. W. White, wholesale warehouseman, Cheapside. Sols. Ashurst and Son, Old Jewry.—*Matthews*, S. draper, Charles-st. Middlesex Hospital, Nov. 27. Trust. T. Coath, warehouseman, Bread-st. Sols. Sole, Turner, and Turner, Aldermanbury.

Partnerships Dissolved.

Gazette, Nov. 26.

Adkins, H. *Pinches*, T. and *Adkins*, J. C. and G. C. soap, alkali, and red lead manufacturers, Smethwick, Nov. 29.—*Chubb*, G. and *Byrt*, H. linendrapers, New Sarum, Nov. 22. Debts paid by Chubb.—*Hartree*, T. and S. publican, Bath, Nov. 19. Debts paid by T. Hartree. — *Hilliar*, F. and *Usborne*, M. corn merchants, Groningen, Nov. 22.—*Kirkley*, J. *Swinburn*, W. A. *Anderson*, W. and *Buckland*, J. N. brewers and maltsters, South Shields, Nov. 11. Debts paid by J. N. Buckland and R. S. Crosthwaite.—*Leuly*, E. and *Fox*, A. S. milliners, Huskergate, Bradford, Nov. 17. —*Martyn*, T. and R. Whitechapel-road and New-road, Nov. 23.—*Milton*, J. and *Bowden*, W. sack manufacturers, Bristol, Nov. 24. Debts paid by Bowden.—*Morel*, J. V. and *De Bammerille*, E. J. manufacturing jewellers, New Burlington-street, Nov. 23.—*Peniston*, J., E. W. and J. clothiers and outfitters, Leeds, as regards E. W. Peniston, Sept. 16. Debts paid by J. and J. Peniston.—*Preston*, J. and *Topping*, L. common brewers, Manchester, Nov. 22. Debts paid by Topping.—*Skipwith*, R. and *Sharp*, C. C. starch manufacturers, Bobbers-mill, near Nottingham, Nov. 19. Debts paid by Skipwith.—*Ward*, B. and *Frood*, W., S. brewers, Manchester, Nov. 23.—*Wayne*, W. *Featherstone*, E. J. *Jenkins*, R. and *Wayne*, A. Carmarthen, as regards Featherstone, Oct. 4.

Lord Brougham, previous to his departure for his chateau in the south of France, on Friday week, was entertained the preceding evening at dinner by Louis Napoleon, at the Royal Palace of St. Cloud. Several of the ministers of state were present to meet the noble and learned baron, who attended the sitting of the Corps Législatif the same day.

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Act for Protection of Destitute Poor evicted from their Dwellings.
Act more Speedy Trial and Punishment of Juvenile Offenders in Ireland.
Act for Promoting Public Health.
Act for further Amendment of Administration of Criminal Law.
Money Order Department of Post Office Act.
Regulation of Petty Bag and Common Law Side of Court of Chancery.
Police Acts Amendment Act.
Removal of Doubts concerning Transportation of Offenders Act.
Preservation of Sheep Act.
Continuation of Prevention of Assault Acts.
Marriage of British Subjects in Foreign Countries Act.
Act to Facilitate Duties of Justices of Peace in Ireland.
Protection of Women from Defilement Act.
Amendment of the Law of Bankruptcy.
Amendment of Act to regulate Petty Bag Side of Court of Chancery.
Party Processions Act.
Act to enable Queen's Counsel and others to Act as Judges of Assize.
Pirates (Head Money) Act.
Extension of Summary Jurisdiction in Larceny Act.
Borough Gaols Act.
Mercantile Marine Act.
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Fine and Stout, Laid or Wove Foolscap, 10s. 6d. 12s. 6d. and 13s.
Thick Superfine ditto, 17s. 6d.—A splendid article.
Ruled Foolscap, for Bills of Costs, &c. 12s. 6d. 16s. 6d. and 18s. 6d.
Large Blue Wove Note, 4s. 4s. 6d. and 5s. 6d.
Ditto, Letter, 7s. 6d. 8s. 6d. and 9s. 6d.
Fine Cream-laid Note, 2s. 6d. 3s. 6d. and 4s. 6d.
Thick Superfine ditto, 6s.—This is made exclusively for P. and C. and stands unequalled for its quality.
Good Cream-laid Letter, 6s. 7s. 8s. 9s. 6d. and 10s. 6d.
Queen's or Albert sized Cream-laid Note, from 1s. 9d.
Good, Cream-laid or Blue Wove Adhesive Envelopes, 4s. 6d. per 1,000.
Best Thick Superfine ditto, stamped from crest, or with initials, 7s. 6d.
Foolscap Official, 2s. per 100, or 16s. 6d. per 1,000.
Cartridge and Linen lined Envelopes for Drafts, Briefs, and Deeds, at greatly reduced prices.
Very best Pink Blotting, 5 quires for 4s. or 13s. 6d. per ream.
Ditto, White, 5 quires for 5s. or 17s. 6d. per ream.
Ditto, Large and Thick Cartridge, 5 quires for 8s. 6d. or 23s. per ream.
Ditto, Ditto, Brown Paper, 5 quires for 6s. 9d. or 25s. 6d. per ream.
"Thick superfine highly finished" Blue Laid Letter, 12s. 6d. and ditto Note, 6s 6d. per ream.
Best Copying Paper, large, for Machine, 7s. 6d.
Very best Red or Black Wax, 3s. 9d. per lb.; second quality ditto, 2s. 6d. and 3s. per lb.
Good Pareel Wax, 1s. per lb.
Best Red Tape, 9d. 1s. and 1s. 4d. per dozen pieces.
P. and C.'s celebrated Correspondence Steel Pens, 1s. 3d. per gross, all selected and warranted.
Copies of Writs 8s. per 100, with attorney's name and address printed on.
All other Law Forms equally cheap.
Ledgers, Day, Cash, Letter, and other Books, in various styles and sizes, very much below the ordinary prices.

PARCHMENT—"FINEST QUALITY."

Indentures, printed and machine ruled, twenty or thirty folios, 13s. 6d per dozen, or 6os. per roll of sixty skins.
Followers, 12s per dozen, or 57s. 6d. per roll.
Bills or Answers, to hold thirty folios, 12s. per dozen, or 57s. 6d. per roll.
Records or Memorials, ruled or plain, from 8s. per dozen.
All other sizes of skins at the same low rate. Quality unequalled.
P. and C.'s Steel Pens are the best, every description of point, fine, medium, and broad, and are now used in almost every solicitor's office, and most of the Government departments, and obtained honourable mention at the Great Exhibition, for combining two important features, superior finish, with low prices of price.
Catalogues or Specimens per post Gratis.
Observe! PARTRIDGE and COZENS, 127 and 128, Chancery-lane, London.

SCOTTISH UNION INSURANCE COMPANY (FIRE and LIFE),

Instituted 1824, and incorporated by Royal Charter,
No. 37, CORNHILL, LONDON; EDINBURGH, and DUBLIN.

The large Paid-up Capital and Accumulations of Premiums, carefully invested, afford the most absolute security to the Assured with this Corporation, which has been Twenty-seven Years Established.

GOVERNOR—His Grace the Duke of HAMILTON and BRANDON.

The Advantages to Insurers with this Office will be found all that can be desired, whether considered in point of—

SECURITY,
MODERATE RATES of PREMIUM,
LIBERAL CONDITIONS, or the
LARGE PERIODICAL ADDITIONS made to the LIFE POLICIES, as appears from the following
TABLES, SHEWING THE ADDITIONS TO POLICIES OF 1,000*l.* which have been Seventeen complete years in existence.

Age when Assured.	Additions.	Total Sum payable in case of Death.
20	£280 1 6	£1,280 1 6
35	294 2 6	1,294 2 6
40	290 6 11	1,290 6 11
45	267 11 10	1,267 11 10
50	261 12 7	1,261 12 7

Averaging upwards of 1½ per cent. per Annum.

EXAMPLES OF BONUS TO POLICIES OF LARGER AMOUNT.

No. of Policy.	Issued in.	Sum Assured.	Additions.	Total.
613	1824	£4,000	£1,080 14 8	£5,080 14 8
1,089	1828	5,000	1,226 8 11	6,226 8 11
1,180	1829	3,000	737 1 11	3,737 1 11
1,268	1826	5,000	1,101 13 4	6,101 13 4
1,580	1827	2,500	508 0 0	3,008 0 0

The next Division of Life Profits will take place in December 1853, being an interval of Five years.

The Bonus may be applied, at the option of the Assured, in any of the following ways:—

I. It may be added to the Sum Assured; or
II. Applied in Reduction of Future Premiums; or
III. Surrendered for a Present Payment in Cash.

Fire Insurances at the reduced rates.

LONDON BOARD OF DIRECTION.
President—Right Hon. the EARL of MANSFIELD.
Vice-President—Right Hon. the EARL of SEAFIELD.

Charles Balfour, esq. — Edw. Budd, esq.
Robert Gillespie, esq. — J. R. Robertson, esq.
J. R. Goodhart, esq. — Hugh F. Sandeman, esq.
H. M. Kemshead, esq. — George Ramsay, esq. Manager
John Kingston, esq. — of the Company.

F. G. Smith, esq. Secretary.

Forms for Proposals and Prospectuses, containing all the necessary particulars, may be had at any of the Company's Offices, and of the Agents throughout the country.

The usual commissions to Solicitors transacting direct with the Office, 37, Cornhill. F. G. SMITH, Secretary.

EQUITY and LAW LIFE ASSURANCE SOCIETY, No. 26, Lincoln's-inn-fields, London.

TRUSTEES.
The Right Hon. Lord Montcastle.
The Right Hon. Lord Cranworth.
The Right Hon. the Lord Chief Baron.
The Hon. Mr. Justice Coleridge.
The Hon. Mr. Justice Erle.
Nassau W. Senior, esq. Master in Chancery.
Charles Purton Cooper, esq. Q.C. LL.D. F.R.S.
George Capron, esq.

Policies in this Office are INDISPUTABLE except in cases of FRAUD. "Free Policies" are issued, at a small increased rate of Premium, which remain in force although the Life assured may go to any part of the World.

Parties assuring within Six Months of their last Birthday are allowed a proportionate diminution in the Premium.

The premiums may be paid up in one sum, or in a limited number of payments, on advantageous terms.

Eighty per cent. of the profits are divided at the end of every Five Years among the Assured. At the first division, to the end of 1849, the addition to the amount assured averaged above Fifty per cent. on the Premiums paid.

The financial year closes on the 31st December; and parties effecting assurances before that date will have the advantage of an extra year's bonus.

CLERICAL, MEDICAL, and GENERAL LIFE ASSURANCE SOCIETY.

ADVANTAGES OFFERED.

EXTENSION OF LIMITS OF RESIDENCE.—The assured may reside in most parts of the world, without extra charge, and in all parts by payment of a small extra premium.

MUTUAL SYSTEM WITHOUT THE RISK OF PARTNERSHIP.

The small share of Profit divisible in future among the Shareholders being now provided for, without intrenching on the amount made by the regular busine-s, the Assured will hereafter derive all the benefits obtainable from a Mutual Office, with at the same time, complete freedom from liability, secured by means of an ample Proprietary Capital—thus combining in the same office all the advantages of both systems.

The Assurance Fund already invested amounts to £850,000 and the Income exceeds £136,000 per annum.

CREDIT SYSTEM.—On Policies for the whole of Life, one half of the Annual Premiums for the first five years may remain on credit, and may either continue as a debt on the Policy, or may be paid off at any time

LOANS.—Loans are advanced on Policies which have been in existence five years and upwards, to the extent of nine-tenths of their value.

BONUSES.—Five Bonuses have been declared; at the last in January 1853, the sum of 121,126*l.* was added to the Policies producing a Bonus varying with the different ages from 24 to 55 per cent. on the Premiums paid during the five years.

PARTICIPATION IN PROFITS.—Policies participate in the Profits in proportion to the number and amount of the Premiums paid between every division, so that if only one year's Premium be received prior to the books being closed for any division, the Policy on which it was paid will obtain its due share. The books close for the next division on 30th June, 1856, therefore those who effect Policies before the 30th June next, will be entitled to one year's additional share of Profits over later assurers.

APPLICATION OF BONUSES.—The next and future Bonuses may be either received in cash, or applied at the option of the assured in any other way.

NON-PARTICIPATING.—Assurances may be effected for a Fixed Sum at considerably reduced rates, and the Premiums for Term Policies are lower than at most other Safe Offices.

PROMPT SETTLEMENT OF CLAIMS.—Claims paid *thirty* days after proof of death, and all Policies are *Indisputable* except in cases of fraud.

INVALID LIVES may be assured at rates proportioned to the increased risk.

POLICIES are granted on the lives of persons in any station, and of every age, and for any sum on one life, from 50*l.* to 10,000*l.*

PREMIUMS may be paid yearly, half-yearly, or quarterly; but if a payment be omitted from any cause, the Policy can be revived within *fourteen* months.

The Accounts and Balance Sheets are at all times open to the inspection of the Assured, or *of persons desirous to assure.*

A copy of the *last Report*, with a Prospectus and Forms of Proposal, can be obtained of any of the Society's Agents, or will be forwarded free by addressing a line to

GEORGE H. PINCKARD, Resident Secretary.
99, Great Russell-street, Bloomsbury, London.
The usual Commission allowed to Solicitors and Agents.

DEFECTIVE AND
UNMARKETABLE TITLES ASSURED.
REDEMPTION OF
MORTGAGES AND LOANS.
LEASEHOLDS MADE EQUAL TO FREEHOLDS
FOR THE PURPOSE OF MORTGAGE OR SALE.
ENFRANCHISEMENT OF COPYHOLDS.
GUARANTEE OF MORTGAGES.

SOLICITORS will find the above FORM of ASSURANCE of great utility to them in facilitating the Transfer of Property.

These extensions to property of the principles of Life Assurance have been already extensively adopted by the Profession.

IN ADDITION to the above, the LAW PROPERTY ASSURANCE SOCIETY effects every kind of Life Assurances and Annuities, and grants ANNUITIES TO PROFESSIONAL MEN in case of permanent disability.

For Particulars and Prospectuses, apply at the Offices of the Society, 30, Essex-street, Strand, London; or by letter to

WILLIAM NEILSON, Secretary and Actuary.

RAILWAY PASSENGERS' ASSURANCE COMPANY. Empowered by special Act of Parliament.

Offices, 3, Old Broad-street, London.

Insurances against railway accidents can now be effected with this Company, not only for single and double journeys, and by the year, as heretofore, but also for terms of years and for life, as follows:—

To insure 1,000*l.* for a term of five years, premium £3 10 0
" ten " 6 0 0

To insure 1,000*l.* for the whole of life, by annual premiums on the following decreasing scale:—

For the first five years, annual premium £1 0 0
" next five " 0 15 0
" next five " 0 10 0
" remainder of life " 0 5 0

To insure 100*l.* for the whole term of life, by single payment, according to age, viz.:—

Above 20, under 30.	Above 30, under 35.	Above 35, under 40.	Above 40, under 45.	Above 45, under 50.	Above 50, under 55.	Above 55, under 60.	Above 60.
£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
1 1 0	1 0 0	1 0 0	1 0 0	1 0 0	1 5 0	1 10 0	1 15 0

The above premiums include the stamp duty, which is payable to government by the Company.

The total amount insured by any of the above modes will be paid in case of death by railway accident while travelling in any class carriage on any railway in the kingdom, and proportionate compensation in the event of personal injury.

WILLIAM J. VIAN, Secretary.

3, Old Broad-street, September 1852.

LONDON and PROVINCIAL LAW ASSURANCE SOCIETY, No. 32, New Bridge-street, Blackfriars, London.

Capital—One Million.

DIRECTORS.
Ashley, the Hon. Anthony John, Lincoln's Inn
Bacon, James, esq. Q.C. Lincoln's Inn
Bell, William, esq. New Churchyard
Bennett, Rowland Nevitt, esq. Lincoln's Inn
Bloxam, Charles John, esq. Lincoln's Inn-fields
Bower, George, esq. Tokenhouse-yard
Butt, George M. esq. M.P. Q.C. Temple
Chalmeley, Stephen, esq. Lincoln's Inn
Clark, John, esq. Sessions House, London
Eyre, Walpole, esq. Bryanstone-square
Fane, William Dashwood, esq. Lincoln's Inn
Fisher, Horatio Nelson, esq. Fenchurch-street
Freeman, Luke, esq. Coleman street
Gaselee, Mr. Serjeant, Serjeants' Inn
Hope, James Robert, esq. Q.C. Temple
Hughes, Henry, esq. Clement's Inn
Jay, Samuel, esq. Lincoln's Inn
Jones, John Oliver, esq. 4, Upper Bedford-place
Lake, Henry, esq. Lincoln's Inn
Law, Henry Shephard, esq. Bush-lane
Lefroy, George Bentinck, esq. Piccadilly
Loftus, Thomas, esq. New Inn
Marten, George, esq. Mincing-lane
Parke, James, esq. Lincoln's-inn-fields
Pickering, Edward Rowland, esq. Lincoln's Inn
Powell, John Allan, esq. Lincoln's Inn
Reeve, Philip, esq. Lincoln's Inn
Steward, Samuel, esq. Lincoln's Inn-fields
Tilleard, John, esq. Old Jewry
Turner, Francis, esq. Lincoln's Inn
Tyrrell, Timothy, esq. Guildhall
Vizard, William, esq. 61, Lincoln's Inn-fields
White, Thomas, esq. Bedford-row
Woodroffe, William, esq. Lincoln's Inn
Wrottesley, the Hon. Walter, Lincoln's Inn.

PHYSICIAN.
H. Pitman, M.D. Montague-place.

SOLICITORS.
H. D. Warter, esq. Carey-street, Lincoln's Inn.
Robert Curling, esq. Frederick's place, Old Jewry.

Bonus.—Policies effected (on the profits scale) prior to the 31st December, 1853, will participate in FOUR-FIFTHS OF THE PROFITS to be declared at the close of the year 1855; and appropriated by addition to the policy, reduction of premium, or payments in cash, as the Assured may desire.

Extensive license to travel.

Appearance before the Board dispensed with.

Proposals for Loans on Life Interests, &c. and for Sale of Reversions, entertained.

Prospectuses, &c. may be had at the Office, or will be forwarded on application to JOHN KNOWLES, Actuary and Secretary.

NATIONAL PROVINCIAL LIFE OFFICE, 34, Moorgate-street, London,

TRUSTEES.
Sir James Duke, Bart. Alderman and M.P. for the City of London.
The Right Hon. Thomas Milner Gibson, M.P. for Manchester.
John Hinde Palmer, esq.
Thomas Winkworth, esq.
Chairman of the Board of Directors—Robert Keating, esq. M.P.

PROGRESS OF THE SOCIETY.

The Directors desire to call attention to the following statement, shewing the rapid increase of business as compared with the last year, which they believe to be the best evidence of the growing appreciation on the part of the public of the advantages of life assurance, and of their confidence in the constitution and management of this Society.

	Amount of Assurances completed.	Annual Income therefrom.
Five months ending November 1852	£68,350 0 0	£2,309 8 7
Five months ending November 1851	24,850 0 0	799 7 9
Excess of the past five months over the corresponding five months of 1851	£43,500 0 0	£1,510 0 10

Prospectuses and every information forwarded free on application.

Active and influential agents wanted.

J. W. SPRAGUE, Manager.
December 1, 1852. EDMUND CLENCH, Secretary.

NORWICH UNION LIFE INSURANCE SOCIETY: established 1808.—A bonus having been declared at a General Meeting of the Members of this Society upon the 30th of June last, copies of the Directors' and Actuary's Reports may be obtained at the Society's Offices, 6, Cresent, New Bridge-street, Blackfriars, London; and Surrey-street, Norwich.

This Society has now been established upwards of forty-four years, upon the principles of mutual assurance, during which period it has paid to claimants on terminated policies upwards of 3,000,000*l.* sterling, in addition to which nearly one million and a quarter sterling has been assigned by way of bonuses; while the accumulated capital, for meeting existing engagements (and which is almost wholly invested on real and Government securities), exceeds 2,100,000*l.*

There is no proprietary to divide with the assured the profits of this institution, which is one of the very few purely mutual insurance offices. In addition, however, to the entire profits of the Society, persons now effecting insurances will be entitled to participate in the benefits to be derived from the reserved fund, now amounting to 215,127*l.* 12s. 7*d.* and which, affording all the protection of a proprietary capital, will at the same time increase instead of diminishing their future bonuses.

The rates of premium are below those of most insurance offices, and under the age of forty-five not less so than ten per cent.—a benefit in itself equivalent to an annual bonus.

One half of the first five annual premiums may remain as a permanent charge upon policies granted for the whole duration of life.

ALBERT LIFE ASSURANCE COMPANY. Established 1838.

Principal Office, 11, Waterloo-place, Pall-mall, London.

Indisputable policies.

Assurances, annuities, and endowments granted, and every other mode of provision for families arranged.

Half the annual premiums for the first five years may remain on credit for any period until death, on payment of interest at five per cent. per annum.

Parties allowed to go to or reside in most parts of the world without extra premium.

Naval and military lives, not in active service, assured at the ordinary rate.

Policies forfeited by non-payment of premium revivable at any time within six months, on satisfactory proof of health and the payment of a trifling fine.

Policies on the life of another secured, notwithstanding the part of the world in which the assured may go.

HENRY WILLIAM SMITH, Actuary and Secretary.

LAW REVERSIONARY INTEREST SOCIETY,

For the Purchase of Reversionary Property and Life Interests, and for the Sale of Life Annuities, Endowments, and Reversionary Payments.

OFFICES:—No. 5, Lincoln's-inn-fields, London.
Capital, 250,000*l.* in 5,000 shares of 50*l.* each. With power to increase it.
Provisionally registered pursuant to Act of Parliament, 7 & 8 Vict. c. 110.

TRUSTEES.
The Right Hon. the Lord Chief Baron.
The Hon. Mr. Justice Coleridge.
Nassau W. Senior, esq. Master in Chancery.
John Ellis Clowes, esq. Temple.

DIRECTORS.
CHAIRMAN—Russell Gurney, esq. Q.C. Temple.
John Ellis Clowes, esq. Temple.
John M. Clabon, esq. 21, Great George street.
Henry Charles Chilton, esq. 7, Chancery-lane.
John Clerk, esq. barrister-at-law, Temple.
Daniel A. Freeman, esq. 24, Old Jewry.
John Gregson, esq. 8, Angel-court.
Richard W. Jennings, esq. Doctors' Commons.
Kenneth Macaulay, esq. Q.C. M.P. Temple.
H. A. Merewether, esq barrister-at-law, Temple.
Henry E. Norton, esq. 3, Park-street, Westminster.
Henshaw S. Russell, esq. 3, Mitre-court-chambers
Nassau W. Senior, esq. Master in Chancery.
Nassau J. Senior, esq. barrister-at-law, Lincoln's inn.
Alfred H. Shadwell, esq. 13, Austin-friars.
C. Banken Vickerman, esq. Gray's-inn.
(With power to add to their number.)

AUDITORS.
John Boodle, esq. Thomas W. Capron, esq.
Alexander Edgell, esq.

ACTUARY—J. J. Sylvester, esq. M.A. F.R.S.
BANKERS—Messrs. Hoare, Fleet-street.
SOLICITORS.
Messrs. Capron, Brabant, Capron, and Dart, Saville-place, New Burlington-street.

This Society is instituted for the Purchase of Reversions, Life Interests, and every other kind of property, whether vested or contingent, depending upon the duration of human life, and for the Grant of Life Annuities, Endowments, and Reversionary Payments.

The shares having been taken to a much larger amount than is necessary to enable the Society to be completly registered, the deed has been prepared, and notice will be given when it is ready for signature.

The Society will commence business on the 11th January, 1853. Applications for the remaining shares to be addressed to the Directors, at the Offices of the Society, 5, Lincoln's-inn-fields.

Dated the 2nd December, 1852.

The attention of CLERGYMEN, BENEVOLENT PERSONS, and EMPLOYERS of every description, is invited to the Prospectus and Tables of the

OAK MUTUAL LIFE ASSURANCE and LOAN COMPANY,

No. 49, Moorgate-street, London. Completely registered pursuant to Act of Parliament, 7 & 8 Vict. cap. 110.

Any number of copies for distribution may be obtained by personal application at the Head Office, or by addressing a letter to

G. MANNERS GOODE, Secretary.

Just published, New Edition, price 1s.; or, by post, for 1s. 6d.

THE SCIENCE of LIFE; or, How to Live, and What to Live For; with ample Rules for Diet, Regimen, and Self-Management: together with Instructions for securing perfect health longevity, and that sterling state of happiness only attainable through the judicious observance of a well-regulated course of life. By a Physician.

Also, by the same Author, price 2s. 6d.; by post, 2s. 8d.

A MEDICAL TREATISE on NERVOUS DEBILITY and CONSTITUTIONAL WEAKNESS, with Practical Observations, illustrated with Anatomical Plates, in Health and Disease. This work, emanating from a qualified member of the medical profession, the result of many years' practical experience, is addressed to the numerous classes of persons who suffer from the various disorders acquired in early life. In its pages will be found the causes which lead to their occurrence, the symptoms which indicate their presence, and the means to be adopted for their removal.

London: JAMES GILBERT, 49, Paternoster-row; HANNAY, 63, Oxford-street; MANN, 39, Cornhill; and all booksellers.

TO BARRISTERS, SOLICITORS, and OTHERS.—FURNISH your OFFICES, Counting-houses and Chambers at PRIEST'S noted Furniture Mart, Nos. 1 and 2, Water-street, corner of Tudor-street, Blackfriars, where may be seen the largest STOCK of New and Second-hand LIBRARY and BOARD ROOM FURNITURE, Office and Counting-house Fittings, Fire proof Safes, Deed-Boxes, Iron Doors, &c., in great variety, embracing every article from the Master in Chancery's splendid Table, to the Desk and Stool of the Copying Clerk. Also an immense stock of well-seasoned Household Furniture.

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Now ready,

THE LAW TIMES SPORT ALMANAC for 1853, comprising New Time Tables in Chancery, Common Law, Bankruptcy, and the County Courts, in addition to all the usual information required for ready reference in offices Price 1s stamped to pass free by the post, 1s3d Copies sent by return of post to persons enclosing 13 postage stamps to the office

THE LAWYERS' POCKET-BOOK for 1853 is in the Press.

THE SECOND EDITION of KERR'S COMMON LAW PROCEDURE ACT, with all the decided Cases the new Table of Fees, and many other improvements, will be ready on Saturday next

Just published,

THE NEW BANKRUPTCY LAW, comprising the BANKRUPTCY CONSOLIDATION ACT, with NOTES of all the CASES decided on the construction of the NEW RULES and ORDERS, with Notes and Forms, and a copious Index By C J B Hawkesley, Esq Barrister at Law Author of "The Law of Master and Servant" Price 7s 6d cloth, 9s half bound, 10s bound

TUDOR'S NEW CHANCERY PRACTICE, comprising all the New Statutes, Rules, and Orders, Tables of Fees, with Notes and abundant Index, the orders being placed with the sections of the statute to which they relate By Owen Tudor, Esq Barrister at Law Author of "Leading Cases in Equity" Price 8s 6d cloth, 10s half bound 11s bound

NEW TABLES of FEES in the COURTS of COMMON LAW —MR CROCKFORD announces that the NEW TABLES of FEES have been introduced into the SECOND EDITION of KERR'S COMMON LAW PROCEDURE ACT, which will be published on Wednesday next This Edition also contains all the Cases decided upon the New Practice during Michaelmas Term, with additional Forms, Notes, and Index The Nisi Prius Officers Act has been inserted in the Appendix The *First Edition* is out of print Such was the demand for it, that it was exhausted in a fortnight

Law Times Office, 29, Essex street

To Readers and Correspondents.

"Reader"—*It is a rule with us never to answer the attacks of contemporaries, which are almost always dictated by spite or jealousy It is a waste of time and trouble We would not depart from the recognised courtesies of journalism so far as to indulge in personalities and abuse we could not stand stand to fight with the same weapons of Billingsgate and therefore, we should not meet them upon equal terms, we decline to enter into any conflict with them*

"A Subscriber"—*The case in Watkins is not reported*

"A Subscriber's" *request has been anticipated the whole of the alterations affecting assurances occasioned by the recent Stamp Act are treated upon in the last part of* Mr. Hughes's Concise Precedents, *which is now going through the press*

We cannot undertake to return rejected communications Whatever is intended for insertion must be authenticated by the name and address of the writer; not necessarily for publication, but as a guarantee of his good faith No notice can be taken of anonymous communications.

THE LAW TIMES.

SATURDAY, DECEMBER 18, 1852

LAW TIMES OFFICE,
Friday Night

THE NEW MINISTRY.

The loss of Lord St. Leonards will be deeply regretted by the whole Profession, irrespective of politics and party. An abler Judge, a more industrious Legislator, a more upright Chancellor, England has never seen and is not like to see.

In the ranks of the Opposition there is one man only who, as an accomplished Lawyer, as

a Whig and Liberal Law Reformer, as a mind well disciplined by years and acuteness, is fitted to succeed the great man by whom the woolsack has been vacated—that man is Mr. Bethell. Indeed, there is scarcely a conflicting claim to produce a moment's hesitation.

Sir A. Cockburn will, of course, resume his place as Attorney-General.

But there is the Peel party to be provided for. Will Mr. Roundell Palmer be selected as *their* Solicitor-General? He has the best title.

RESULTS OF RECENT REFORMS.

The results of the recent Reforms in the Practice of the Law are daily becoming more manifest; and experience has proved that our anticipations of their practical effects upon the Profession were not far wrong.

The first great fact that appears is a considerable increase in the number of *suits*, and a considerable decrease in the number of *trials* This seeming anomaly is readily accounted for.

Three causes are operating to *increase* the number of *suits*.

First. The diminished costs.

Second. The increased facilities for procuring judgment by means of the specially-indorsed writs.

Third. The preference which is now so widely given to the Superior Courts over the County Courts for the recovery of debts and undisputed demands

Two causes are operating to *diminish* the number of *trials*.

First. The almost total abolition of technical objections.

Second The improved law of evidence, which insures the facts of a case being laid before the jury, and thus destroys all hope of a fight without merits.

The practical effect of these three considerations is in almost all cases, to induce a settlement without the cost of a trial. Formerly, the great majority of cases were determined on some other point than their merits. So many were the pitfalls laid for suitors by the perplexities of pleading, and the absurdities of the law of evidence, that it was often worth while to fight even with a bad cause, upon the chance of a victory in some one of the many skirmishes which preceded the trial, or the technical objections that might be raised to evidence at the trial. We remember well the time when the art of an Advocate consisted in dexterously shutting out evidence by objections to its admissibility, and when the issue of a trial almost always turned, not upon the true merits of the case itself, but upon the success with which the actual facts were intercepted before they could reach the jury. Of course this was a great encouragement to litigants to proceed to trial, each hoping to trip up the other by dexterity during some part of the tedious processes, that were capable of almost indefinite extension.

It is not so now. Litigants know that there is no chance of success by stratagem; that if they proceed to trial it must be upon the strength of their facts—and that they must stand or fall by the merits of their case. But if men differ only upon *facts*, they and their Attorneys know that the truth may be almost as well ascertained by a friendly interview between the Attorneys, or by the intervention of an arbitrator, as by incurring the cost of a judge and jury, so there is a compromise or a settlement somehow, and there is an end of the action.

It is a most false imputation upon the Attorneys that they encourage litigation. On the contrary, it is well known to all who have ever been in the secrets of an Attorney's office, or who have had any intercourse with them professionally, that, with the rarest exceptions, they are extremely *averse* to litigation. Ninety-nine Attorneys out of a hundred would not carry any case into court if they could help it: they do not like the responsibility and anxiety, for which the small profits to be gained by it do not remunerate them. If the Attorneys had their own way, and it were not for the obstinacy of their clients, we believe that, instead of a diminution only of trials, there would be a cessation of them altogether. Every case would be settled out of court.

Hence we anticipate a continued increase in the number of writs issued, and a continued decrease in the number of causes to be tried.

And the practical operation of this upon the business is, and will more and more become, that which we ventured to prophesy. The Attorneys will greatly benefit, the Bar will be greatly injured. In *every* case there must be an Attorney: a Barrister will be wanted only in those that go to trial. The increase in the former will more than compensate to the Attorney for any diminution in particular fees; the decrease in the latter will decrease the demand for Barristers.

And not only does the loss of the Bar arise from fewer trials, but simplified procedure has made the help of Counsel unnecessary in the processes that precede trial. In all ordinary cases the Attorney will now prepare his own pleadings. The only occasions on which Counsel will be required will be to advise on evidence, and to conduct the case at the trial. But the number whom this will employ must be few, as the Advocates in every Court are few, and this is the work of the Advocate only.

Therefore we see no reason, in the practical experience of the reformed procedure, so far as the experiment has been tried, to modify the opinion we formerly expressed that the Bar is in a state of decline, and that it will no longer afford a maintenance for a tenth part of its present members. What its future is like to be is a curious and interesting speculation, on which, perhaps, we may adventure shortly.

LEGAL DISTRESS.

Our respected contemporary, the *Legal Observer*, asserts that, notwithstanding the great increase in the number of writs issued, the Attorneys will suffer much from the changes in the law.

Our remarks as to the effect of these changes upon the two branches of the Profession were made with reference chiefly to the Attorneys in the country, and to those in London not connected with agency business. Undoubtedly all the agency offices have suffered most severely, and must yet suffer more from the changes made, and to be made The tendency of every reform is to diminish the work to be done in London, and increase the work to be done in the country. If *law* is simplified, the country Attorney advises without the aid of Counsel. If procedure is simplified, he draws his own pleadings, and conducts his own action. If he goes to the County Court, he pockets all the profit of the business, such as it is. Many country Attorneys now avail themselves of the railways to do their own work in London, and save agency. Others are doing the little they have to do through the post-office. From these and other causes there is an immense and growing decline in agency business. But we suspect that the total sum of business transacted in all the country offices is greater than ever it was, and we are confident that it will increase, for the reasons that we have set forth in another article.

THE ATTORNEYS' TAX.

There is nothing like a little agitation. In taxation it is notorious that those who make the most complaint—in fact, who are most troublesome to the Government- are the first to obtain relief.

Thus it is, even when the grumbling tax-payers have nothing more to groan over than

a burden borne in common with the rest of their countrymen.

But when a tax is undeniably partial and unjust; when it is inflicted upon a small class, and there is not to be found a shadow of an argument to support that infliction, agitation becomes a duty.

Still more, when the finance minister has declared in the House of Commons that the time has come when taxation should cease to have reference to classes, but that all burdens should be equally shared by all, according to their means. He has himself invited the oppressed classes to revolt against the wrong, and challenged them to bring to bear upon him the pressure from without, to compel him to carry out his own principles.

That is precisely the present position of the Attorneys' Tax. Mr. DISRAELI has pronounced against all class taxation. Ours is peculiarly a class tax. He is bound by his own declarations to give us relief. Certainly, we are bound to demand it of him in the loudest and most emphatic tone. He can no longer deny the justice of our claim; he can only plead his own incapacity to yield it, and that is a question of figures.

But, according to all probable prospect there will be no such incapacity as there appeared to be at first. It is tolerably certain (we write on Thursday) that, whatever the division, the Budget, as it is, cannot be carried. The needless sacrifice of two millions and a half to the brewers will be abandoned, and so will the increased house-tax. There will then remain a very considerable surplus which Mr. DISRAELI, or his successor will be enabled to apply to much more extended and beneficial purposes, and to the removal of many unjust and vexatious taxes. With that surplus in his hand, he will be able to repeal the Attorneys' Tax. According to its own declared principle, Parliament is bound to do so, if it has the ability, and the business of the Attorneys will now be to remind it of that duty.

We have reason to believe that the history of the Budget is this:—Mr. DISRAELI was desirous of making a popular one, by repealing a long list of petty but vexatious burdens, instead of dealing with malt and hops, and doubling the House Tax. But he was overborne by his colleagues, who insisted upon the malt duty being conceded to the agricultural interests. Among the rest, Mr. DISRAELI desired to repeal the Attorneys' Tax, but he was outvoted, and the unlucky Budget we have was substituted for his more popular, and, as the event has proved, more judicious one. It will be fortunate for all if the opposition shewn to the present scheme should end, as we suspect it will, in the substitution of Mr. DISRAELI's original scheme.

But, in the present dubious state of parties, the Attorneys must rely upon themselves alone. Let them keep their case steadily before Parliament, and any Government will be compelled to take it into consideration. Lord ROBERT GROSVENOR, we hear, purposes to reintroduce his twice-triumphant Bill before the House rises for the Christmas holidays. The recess must be occupied with an universal movement of the Attorneys, in the shape of petitions from towns and from individuals.

We shall watch with much curiosity the votes of honourable members now they have changed seats in the House. We suspect that many who opposed us before will be found voting for us, and not a few of those who were such good friends when the vote was against a government of their opponents will change their minds when called upon to vote against their own ministry.

We beg to suggest a different form of petition, adapted to present circumstances:—

To the Honourable the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled.

The humble petition of the practising Attorneys of the town of A. in the county of B.

Sheweth,

That your Petitioners are subject to a grievous tax, called the Certificate Duty, which they are required to pay in addition to the taxes which they pay in common with their fellow subjects.

That it has been declared by your Honourable House that class taxation ought to cease with class legislation.

Your Petitioners therefore pray your Honourable House to remove from them this unjust and partial tax.

AN ACTION AT LAW UNDER THE NEW PRACTICE. (a)

ARTICLE V.

PROCEEDINGS ON NON-APPEARANCE.

THE provision in the Common Law Procedure Act, giving to the plaintiff, in general terms, power to proceed in the action on the defendant's non-appearance, has been mentioned; but to enable him to do so, it is necessary that the indorsement of service of the writ (ante, p. 123) should have been made, otherwise he is not at liberty, in case of non-appearance, to proceed under the Act; and every affidavit of service of the writ must mention the day on which such indorsement was made. (Sec. 15.)

In addition to the general provision, however, the modes of proceeding on non-appearance are more specifically described by the recent Act. Before referring to the proceedings which follow when a writ, according to the form No. 1, 2, or 3, has been used, it will be more convenient to consider those which follow when the writ had the special indorsement on it.

1. TO WRIT SPECIALLY INDORSED.

In case of non-appearance by the defendant where the form of writ No. 4 has been used, the plaintiff may, on filing an affidavit of personal service of the writ of summons, or a Judge's order for leave to proceed under the Common Law Procedure Act, and a copy of the writ of summons, at once sign final judgment in the form contained in the schedule of that Act (on which judgment no proceeding in error will lie) for any sum not exceeding the sum indorsed on the writ, together with interest at the rate specified, if any, to the date of the judgment, and a sum for costs (to be fixed by the Masters of the Superior Courts, subject to the approval of the Judges thereof), unless the plaintiff claim more than such fixed sum; in which case the costs are to be taxed in the ordinary way; and the plaintiff may, upon such judgment, issue execution at the expiration of eight days from the last day for appearance, and not before. (Sec. 27.)

The affidavit of personal service may be in this form:—

In the Queen's Bench.

Between A. B. plaintiff, and C. D. defendant.

J. K. of (or *J. K. clerk to E. F. gentleman, attorney for the above-named plaintiff*), *maketh oath and saith that he did, on the day of instant* (or *last*), *personally serve C. D. the above-named defendant, with a writ of summons which appeared to this deponent to have been regularly issued out of and under the seal of this honourable Court, at the suit of the above-named plaintiff, against the above-named defendant, and dated the day of , in the year of our Lord one thousand eight hundred and , by delivering to the said C. D. a true copy of the said writ; to which said writ and the said copy a memorandum was subscribed, and due indorsements were made on each of them pursuant to the Common Law Procedure Act, 1852, and a true copy of which said writ, with the said memorandum and indorsements, is hereunto annexed, marked (A). And this deponent further saith that he did, pursuant to the said Act, on the day of instant* (or *last*), *indorse on the said writ the day of the month and week of the service thereof.*

Sworn, &c.

There is a slight restriction as to the persons before whom this and similar affidavits may be made, for no affidavit of the service of process will be deemed sufficient, if made before the plaintiff's own attorney or his clerk (R. G. H. T. 2 Wm. 4, r. 3), and where an agent in town or attorney in the country is the attorney on the record, an affidavit sworn before the attorney in the country will not be received; and an affidavit sworn before an attorney's clerk will not be received in cases where it would not be receivable if sworn before the attorney himself; but this rule does not extend to affidavits to hold to bail. (Ib. r. 6.)

(a) By George Taylor, esq. Barrister-at-Law.

The order for leave to proceed is that made (under sec. 17, ante, p. 114) in cases where the defendant cannot be served personally with the writ.

It is not necessary, in articles like these, to state the minutiæ of taxing costs and signing judgment; it is sufficient to say that costs are taxed by a Master of the Court (the Masters are, in common parlance, often called Taxing Masters), and that signing final judgment means registering the judgment with the Master, and obtaining his memorandum on a piece of parchment, called the judgment-roll, and on a paper called the judgment-paper. Though from the language of the above section, it may perhaps be contended that final judgment may be signed immediately the time for appearance has expired, still, in cases where it is intended to tax the costs, probably it will be held that the judgment is not completely signed until they have been taxed, and the amount inserted by the Master. (*Pierce* v. *Derry*, 4 Q.B. 635).

The form in which the judgment is be entered is this:—

In the Queen's Bench.

On the day of A.D. 185 . (Day of signing judgment.)

England, } *A. B. in his own person* (or *by his attorney*) *sued out a writ of summons against C.D. indorsed according to the Common Law Procedure Act,* 1852, *as follows:*

(Here copy special indorsement.)

And the said C. D. has not appeared; therefore it is considered that the said A. B. recover against the said C. D. £ together with £ for costs of suit.

But though the judgment may be signed at once on non-appearance, execution cannot be issued until the expiration of eight days from the last day for appearance; this limit seems to be fixed, so that defendants may not be induced to appear, in order to gain the time allowed for pleading when they would not otherwise have appeared. The subject of execution will receive separate consideration afterwards.

Where a writ according to the form No. 4 has been issued against two or more defendants, if one or more of such defendants only appear, and another or others of them do not appear, the plaintiff may sign judgment against such defendant or defendants only as have not appeared, and before declaration against the other defendant or defendants, issue execution thereupon, in which case he is taken to have abandoned his action against the defendant or defendants who have appeared; or the plaintiff may, before issuing such execution, declare against such defendant or defendants as have appeared, stating, by way of suggestion, the judgment obtained against the other defendant or defendants who have not appeared, in which case the judgment so obtained against the defendant or defendants who have not appeared will operate and take effect in like manner as a judgment by default obtained against one or more of the several defendants in an action of debt before the Common Law Procedure Act (sj. 33).

The judgment signed under this section seems to be merely an interlocutory judgment (so called because it is given between certain proceedings in the action, and is not the final determination of the action), as was the judgment by default against one of several defendants in an action of debt before the new procedure. (*Porter* v. *Harris*, 2 Lovinz, 63.) This being so, the plaintiff will be unable to tax his costs and sign final judgment until he obtains judgment against the other defendants, and therefore the judgment on non-appearance will be useless if he failed in obtaining judgment against the other defendants.

The declaration will be more conveniently considered when the pleadings come to be mentioned as a whole.

The judgment and execution on non-appearance to writs specially indorsed is a new provision, and is, as it were, a summary mode of proceeding in addition to the ordinary one, which obtains when either the plaintiff does not issue the writ in the form No. 4, or the defendant appears to the writ, whichever form may have been used.

2. TO WRIT NOT SPECIALLY INDORSED.

To return, then, to the proceedings on writs in the forms Nos. 1, 2, and 3. In case of non-appearance by the defendant to either of these, the plaintiff may, on filing an affidavit of personal service of the writ of summons or a Judge's order for leave to proceed under the Common Law Procedure Act, and a copy of the writ of summons, file a declara-

tion indorsed with a notice to plead in eight days, and may sign judgment by default at the expiration of the time to plead so indorsed; and in the event of no plea being delivered, where the cause of action mentioned in the declaration is for any of the claims for which a writ No. 4 might have been issued, and the amount claimed is indorsed on the writ, the judgment will be final, and execution may issue for an amount not exceeding the amount indorsed on the writ, with interest at the rate specified, if any, and the sum fixed by the Masters for costs as above mentioned, unless the plaintiff claim more, in which case the costs will be taxed in the ordinary way: but in such case the plaintiff will not be entitled to more costs than if he had issued a writ No. 4, and signed judgment upon non-appearance. (Sec. 28.)

It will be observed, that this section relates to two classes of cases; one, those in which the writ No. 4 might have been issued, and in these the judgment is to be final; the other including all cases in which the writ No. 4 could not have been issued.

In all these cases the form of affidavit of personal service above given will require very slight alteration according to the circumstances.

The order for leave to proceed mentioned, seems to be that made where the defendant cannot be served personally (under sec. 17); but in all cases where the defendant is out of the jurisdiction (writs Nos. 2 and 3), a judge's order or rule of Court must be obtained before any proceeding can be taken, directing that the plaintiff shall be at liberty to proceed in the action (secs. 18 and 19, ante, p. 115), and such conditions as may be imposed on the plaintiff by the order or rule must be strictly complied with.

The declaration itself will be considered afterwards. In cases previous to the recent Act, where the defendant had not himself appeared, but the plaintiff, on filing an affidavit of personal service of the writ, had appeared for him, the plaintiff thereupon filed a declaration, and he had to serve a notice of the declaration on the defendant, and with the notice he had generally to deliver particulars of his demand. Probably, however, it is not now necessary to deliver either notice or particulars of demand in case of non-appearance, though the contrary may, perhaps, be argued.

As to the notice to plead, there is a provision that, in cases where the defendant is within the jurisdiction, a notice requiring the defendant to plead thereto in eight days, otherwise judgment may, whether the declaration be delivered or filed, be indorsed upon the declaration or *delivered separately* (sec. 63); nevertheless, it will probably be requisite, in order to sign judgment under sec. 28, that the notice to plead be *indorsed* on the declaration.

Where the form of writ No. 1 has been issued, and No. 4 might have been used, the judgment by default is for an amount not exceeding the amount indorsed on the writ, the interest, and such costs as would have been incurred if the writ No. 4 had been issued. In these cases, and in all actions where the plaintiff seeks to recover a debt or liquidated demand in money, judgment by default is final. (Sec. 93.) But where the form of writ No. 1 has been used to recover, not a debt or liquidated demand in money, but damages, and also where either of the writs Nos. 2 or 3 (defendant being out of the jurisdiction) has been used, an additional proceeding is requisite before final judgment can be signed.

When the defendant has failed to plead to a declaration claiming, not a debt or liquidated demand in money, but damages, it becomes necessary that the amount of damages suffered by the plaintiff should be ascertained by some means, and therefore the judgment given by the Court, and entered on the record in such a case, is, that the plaintiff ought to recover against the defendant his damages; but because it is unknown to the Court what damages he has sustained, the sheriff is commanded that, by the oath of twelve good and lawful men, he diligently inquire what damages the plaintiff has sustained, and that he return the inquisition (as it is called) into Court. This judgment, like the one mentioned above, is an interlocutory judgment. A writ is thereupon directed to the sheriff, called from its purpose a Writ of Inquiry. The plaintiff is required to give a written notice of executing the writ of inquiry to the defendant,—now ten days' notice in all cases (sec. 97),—and the sheriff in obedience to the writ summons the jury. In the execution of it, the sheriff or his deputy sits as judge, and the jury assess the amount of damages, the course of proceeding being very similar to that on a trial at Nisi Prius, which will be afterwards mentioned. This writ of inquiry is simply a proceeding to inform the conscience of the Court, who may, if they please, and the plaintiff consent, themselves assess the damages, and thereupon give final judgment. (*Holdipp* v. *Otway*, 2 Saund. 106, n. 2.) When the sheriff has returned the inquisition to the Court, final judgment is signed for the amount of damages assessed. This judgment is, in supposition of law, the act of the Court, which only sits during Term, and therefore before 1 Wm. 4, c. 7, it could have been obtained then only, and all writs of inquiry must have been returnable during term. But by sec. 1 of that statute, writs of inquiry may be made returnable on any day in term or vacation, and thereupon, at the return thereof, costs may be taxed, final judgment signed, and execution issued forthwith, unless the sheriff or other officer before whom the same may be executed shall certify under his hand upon such writ that judgment ought not to be signed until the defendant shall have had an opportunity to apply to the Court to set aside the execution of such writ, or one of the Judges of the Superior Courts shall think fit to order the judgment to be stayed until a day to be named in such order. However, by sec. 4 of that statute, notwithstanding that the judgment has been signed and execution issued, the Court may afterwards order such judgment to be vacated and execution to be stayed or set aside, and grant a new writ of inquiry as justice may appear to require, and thereupon the party affected by such writ of execution shall be restored to all that he may have lost thereby.

In some cases before the Common Law Procedure Act, in which, though the form of action was for damages, yet it was easy to compute precisely to what sum they amounted, as in actions on bills of exchange, promissory notes, or bankers' cheques, the plaintiff made application to the Court for a rule to compute, as it was called, referring the matter to one of the Masters, for him to assess the damages. A rule nisi was granted in the first instance, which, in default of the defendant's shewing sufficient cause against it, was made absolute, and a copy of each of these had to be served on the defendant. The Master, thereupon, made the computation at a time appointed. Now, however, on judgment by default, no rule to compute is necessary, or can be used (sec. 92); but in actions in which it appears to the Court or a Judge that the amount of damages sought to be recovered by the plaintiff is substantially a matter of calculation, it is not necessary to issue a writ of inquiry; but the Court or a Judge may direct that the amount for which final judgment is to be signed shall be ascertained by one of the Masters of the said Court, and the attendance of witnesses and the production of documents before such Master may be compelled by subpœna in the same manner as before a jury upon a writ of inquiry; and such Master may adjourn the inquiry from time to time as occasion may require; and the Master will indorse upon the rule or order for referring the amount of damages to him, the amount found by him, and will deliver the rule or order with such indorsement to the plaintiff; and such and the like proceedings may thereupon be had as to taxation of costs, signing judgment, and otherwise, as upon the finding of a jury upon a writ of inquiry. (Sec. 94.) Before this provision no evidence viva voce could be received by the Master without special authority in the rule to compute (*Noy* v. *Reynolds*, 2 A. & E. 461); but probably it may now be received by him without special authority.

One or other of the two last-mentioned proceedings must be adopted in all actions commenced by either of the forms of writ, Nos. 2 or 3 (where defendant is out of the jurisdiction), for in such actions the plaintiff is required to prove the amount of the debt or damages claimed by him, either before a jury upon a writ of inquiry, or before one of the Masters in the manner above mentioned, according to the nature of the case, as the Court or a Judge may direct; and the making such proof is a condition precedent to his obtaining judgment. (Sec. 18.)

By one of these modes of proceeding which have now been stated the plaintiff obtains judgment in cases where the defendant has not appeared to the writ of summons, and in all actions where the plaintiff recovers a sum of money, the amount to which he is entitled may be awarded to him by the judgment generally without any distinction being therein made as to whether such sum is recovered by way of a debt or damages. (Sec. 95.)

The subject of execution (as has been mentioned) will be separately considered afterwards.

THE ATTORNEY; (a)
HIS EDUCATION, PRACTICE, AND DUTIES.

ARTICLE XXVIII.

Bringing an Action (*continued*).

Before you begin to draw the brief, satisfy yourself that you have procured all the evidence necessary to support your case. This may be done thus:—

Take a sheet of paper with a very broad margin, and write out a narrative of the case, with the facts you will be required to prove, stated succinctly in separate paragraphs.

Then take the evidence you have collected, witness by witness, and set down in the margin the name of the witness against each of the facts in your narrative to which his evidence relates. When you have thus analysed the evidence you have obtained, you will be enabled to see at a glance what portion of your case is not provided for, and where it is weakest, as well as where it is sufficiently strong; and then you will apply yourself to supply the deficiencies you may have discovered. The papers thus prepared will be of great further utility to you when you come to draw your brief.

In taking down the evidence of the witnesses, you must be very careful not to put thoughts into their minds or words into their mouths. Usually, they will need no prompting; but, on the contrary, you will find them too apt in the supply of defects in their testimony: all will be inclined to imagine much, many to invent much—for this you must make a reasonable allowance in your estimate of their value. If you have reason to suspect gross exaggeration on the part of any witness, it is an excellent plan to take his evidence verbatim, with as little suggestion on your part as possible, and on some *subsequent* day examine him again, with a repetition of his story. If much of it be an invention, he is not likely to repeat it as on the first occasion; he will vary in his account of portions, at least, of that which has been invented, and you will thus be enabled to detect and prepare your Counsel for the weak points of his story, that he may be dealt with accordingly in the witness-box, or commented upon in the speech.

Make a list of the documentary evidence you will require, and, as you obtain it, set down in the margin of the list the manner of the proof of each, to be sure that they are in all respects admissible; as, that they are properly stamped, if they are originals or copies, if duly executed and attested, and so forth.

Note carefully, also, in the margin, so much of your evidence as is in its nature *secondary*, that you may not forget to take such steps as are necessary to render it admissible; as making search for the originals in the proper custody, giving notices to produce, and so forth.

The next step to be taken is to lay the evidence you have collected before Counsel, for his opinion; and it is a duty that should never be omitted in any case that is not perfectly clear and simple. It is extremely difficult for you, who have conducted the business from its commencement, and whose mind is therefore biassed insensibly by all that has come to your knowledge in other forms than such as are admissible in evidence, so to divest yourself of the information you possess, and the bias you have received, as to be enabled to form a sound judgment of the aspect of your cause as it presents itself, stripped of all that is extraneous, and seen only as it can be proved legally, and therefore as it will be seen by the Judge and the jury. A stranger will look at it with other eyes. He will view it only as you are able to exhibit it in the witness-box. He will weigh impartially the value of the evidence you have collected. He will say

(a) By the Editor of the Law Times.

what of it is good, what is worthless, how this portion of it presents itself to his mind, and consequently how it is likely to appear to others. Seeing its strength and its weakness, he will advise you what is imperfect, that you may supply it, and what needs no confirmation, that you may not uselessly multiply witnesses. But to enable him to do this, you must lay before him all the facts you have gathered, and copies of the evidence you have taken, and then leave to him the task of dissection and selection.

Begin with a statement of the case, not very minute, but only such as may be necessary to enable Counsel to understand the pleadings and the evidence. Let it be a neat, succinct narrative of the most prominent facts, put in the order of time, and particularly shewing what is the true subject-matter of the dispute between the parties, and tracing it back to its origin. Do not in this repeat what is said by witness A or B, but give rather the result of their testimony than the evidence itself.

Let a verbatim copy of the pleadings follow the statement of the case, and then a copy of the statements of each of the witnesses, of documents or parts of documents, and of the manner in which you propose to prove them.

Do not insert any commentary upon the witnesses in the body of the case; but if you have remarks to make as to credit, or character, or other circumstances in relation to the witnesses, with which you consider that Counsel ought to be acquainted, state it *in the margin*. If any witness is in any way questionable, you should be extremely careful so to state, for the opinion of Counsel will of course be framed upon the assumption that your witnesses are trustworthy, and your evidence capable of being proved to the letter as you state it, unless you advise him to the contrary; and fatal consequences to your cause may result from your neglect. Be very careful, likewise, to make known to him every flaw or difficulty in your case that is known to or suspected by you. To mislead him is to be yourself misled.

Now comes the question, to whom shall you send it. The practice with some is to submit it to the Pleader by whom the pleadings were drawn; others send it to Counsel having no knowledge of the cause, and who is not likely to be afterwards engaged in it. But there can be no doubt that the most prudent course is to confide it to the Counsel whom you purpose to retain as your junior at the trial. There are many reasons for this preference. Advising upon evidence requires something more than merely legal knowledge; it demands some experience of the practice of evidence, and of the manner in which Courts and Juries are influenced. A Pleader has no knowledge of this important portion of the duty. He will inform you if the evidence you lay before him is sufficient *in law* to maintain the action, but he cannot advise you how it is likely to influence the jury as a question of *fact*. This can only be done by one who *practises* as an Advocate; for it is not knowledge to be found in books, but to be acquired by experience. It is an advantage to you that one of your Counsel at the trial should previously have made himself master of the case; and this he cannot fail to do if he advises you upon the evidence. Knowing where lies its strength and its weakness, he is enabled to direct his Leader at once to the points that most demand his attention.

Perhaps some of our readers, conscious of extensive legal acquirements or of long experience, having therefore great confidence in themselves, may deem it unnecessary to go to Counsel for advice upon evidence, and if they can safely save to their clients the cost of such a process, it will be their duty to do so. But can it be avoided *safely?* for if not safely, then it would not be either wisely or economically avoided. There is one rule for your guidance in this, and only one, and that is to look to your case, and not to yourself; by which we mean that you should be guided entirely by the character of your cause, and not at all by self-reliance. If the case is very simple, and the evidence very clear and conclusive, you may dispense with any preliminary examination of it; but if it be in any respect difficult, complicated, or doubtful, do not trust to your own skill, however great, or your own experience, however extensive, but go to Counsel for assistance, if it be only to relieve yourself from responsibility. But, in truth, you *cannot* trust your own judgment in the matter. You partake of the interest, and consequent bias, of a party, and are unable to weigh impartially the testimony you have yourself collected. You know too much of the case to form an accurate opinion of its merits, and it is for this reason that the Attorney who "gets up" a case never can conduct it so well as another Attorney who knows nothing of it until it is put into his hands, and then sees and hears no more of it than is set down in his instructions. That personal interest which would inconveniently cloud your judgment as an Advocate, will be found no less misleading in any attempt to form a fair estimate of the difficulties and defects of the evidence you have collected.

Carefully avoid too frequent intercourse with your witnesses before the trial. You will hear it often said of certain Attorneys, that they are clever at *managing* a witness; which means, in truth, that they are skilful in moulding the testimony of witnesses to the requirements of their case—inducing them to prove precisely that which they are wanted to prove. This they accomplish by suggestions, which witnesses are often but too ready to seize; as by questions such as these, "Did not such a thing happen?" "Are you sure you did not hear so-and-so said, or something like it?" "Think it over again, and say if this or that did not take place?" But all such incitements to the imagination of a witness to help his memory are really nothing less than subornation of perjury. The witness, indeed, is not asked to tell a lie, but an inducement is offered to him, to which self-importance, or zeal, will often tempt him to yield, to swerve from the straight path of truth, and to disguise and pervert, if not positively to invent a falsehood. Be it your care seduiously to shun all such illicit practices; do not permit your zeal to outrun your discretion; let not your anxiety for victory blind you to the means by which it may be won; suffer not even the entreaties of your client to lead you into any path that will not bear the strictest scrutiny of virtue and honour. Instead of encouraging a willing witness to make a case for you, where you have cause to suspect the existence of such a design, or the slightest doubt arises in your mind whether the story he is telling you is true, interfere at once to assure him that he will not thereby please you or profit himself; that you want the truth, and the truth only, whether it be for or against you.

Nor will this honest and honourable proceeding on your part be unprofitable to your client. A witness who deceives you in your office, when you are quietly taking his story from his own lips, will be very likely to deceive you in court, when subjected to rigid cross-examination. It is one thing to invent a story, and another thing to sustain it under the ordeal of a public investigation. Like all wrongful weapons, it is likely to break in your hands, and to wound you instead of your adversary. If the witness tells you the very truth; even though that be unfavourable to your case, you have the advantage of knowing the worst, and perhaps of being enabled to guard against it; you are in no danger of being taken by surprise at the trial, or having one statement in your brief and another elicited in the witness-box. Tricks of this kind seldom succeed in the long run. If a cause be won by them now and then, many more are lost by reason of them. If they obtain for the practitioner the reputation of being "sharp," they bring also a discreditable fame, which he never loses, and which certainly limits his practice to the least profitable portion of the business of an Attorney. Again, we say, in this as in every other department of your profession, you will find the strictest honesty to be the soundest *policy*—to be as *profitable* as it is right and creditable.

Another hint may be introduced here:—when getting up your case, be not content with considering merely what evidence will be requisite to maintain it; give also careful thought to this question, scarcely less important,—what is likely to be the defence? for it is as necessary to anticipate that as to be well armed for the attack. The best mode of doing this is to ask yourself how you would answer the demand if you were acting for the defendant, and that will help you to the probable character of the defence, if its real nature cannot be ascertained from the pleadings or inquiry. On this point you should closely question your client, to learn from him, if possible, what *is* the defence, which may usually be gathered from a full statement of what has passed between the parties previously to the commencement of the action. It rarely happens that some controversy has not preceded open hostilities, in the course of which the defendant will probably have declared more than once his reasons for not acceding to the demand, and however unwilling your client may be to tell you the case on the other side, you will glean it for yourself from a detail of the whole quarrel; and you should make it a *rule* never to proceed to trial, or even to draw your brief, without obtaining from your client all he knows that might help you to the important information you are seeking.

THE LEGISLATOR.

Imperial Parliament.

HOUSE OF LORDS.

PRIVATE BILLS IN PARLIAMENT.

TUESDAY, Dec. 7.—Ordered, that this House will not receive any petition for a private Bill after Monday, the 21st day of March next, unless such private Bill shall have been approved by the Court of Chancery; and the House will not receive any petition for a private Bill approved by the Court of Chancery after Monday, the 23rd day of May next. Ordered, that this House will not receive any report from the Judges, upon petitions presented to this House for private Bills, after Monday, the 23rd day of May next.

HOUSE OF COMMONS.

HEALTH OF TOWNS.

TUESDAY, Dec. 14.—In answer to Sir J. GRAHAM Lord J. MANNERS said, it was the intention of the Government, after the recess, to introduce a Bill for giving local boards of health the power to erect cemeteries outside the towns, with other enlarged powers for similar purposes.

PARISH CONSTABLES.

Mr. DENDES obtained leave to bring in a Bill to consolidate and amend the laws relating to the appointment of parish constables.—The Bill passed the first reading, and was ordered to be read a second time on the 16th of February.

CHRISTMAS-BOXES TO POSTMEN.

Mr. SCHOLEFIELD inquired whether it was the intention of the Postmaster-General, while permitting the letter-carriers in the metropolis to receive Christmas-boxes, to prohibit the receipt of those gratuities by letter carriers in the provinces; and, if so, whether the latter were to receive compensation for the loss of such gratuities?—Mr. G. A. HAMILTON said it was the intention of the Postmaster-General to probibit the receiving of Christmas gratuities by the letter-carriers in the provinces; and the Postmaster-General did not consider that that entitled them to any claim for compensation.

POOR LAW ORDERS.

WEDNESDAY, Dec. 15.—Mr. CORBETT asked the President of the Poor Law Board whether the orders of the Board, issued on 25th of August last, had been rescinded, and whether any substituted order had been prepared; and if so when it would be issued to the board of guardians.—Sir J. TROLLOPE said that the order had been rescinded and a modified order prepared, which would be printed, he believed, that day, and sent to the boards of guardians as soon as possible.

THE LAW OF SETTLEMENT.

Mr. WISE begged to ask the President of the Poor Law Board, whether there was any intention of altering the law of settlement, or of proposing any change in the mode of charging the rates for the relief of the poor?—Sir J. TROLLOPE said he had considered the subject, but it was one which required so much consideration, and was of so much importance, that it could not be undertaken except with the direct concurrence of the Government. He had placed all the information he possessed before Government, and the subject was now occupying their attention.

JUDGES IN PARLIAMENT.

THURSDAY, Dec. 16.—Lord HOTHAM gave notice that after the recess he should move for leave to bring in a Bill to preclude all judges of the Superior Courts of law and equity, and the Ecclesiastical Courts, from sitting in that house.

ROYAL ASSENT.

The royal assent was given by commission to the following Bills:—The Commons Inclosure; the West India Colonies Loans Act Amendment; and the Bank Notes, Bills. The Lords Commissioners were the Lord Chancellor, the Marquis of Salisbury, and the Earl of Lonsdale.

COMMISSION ON TESTAMENTARY JURISDICTION.

Mr. HATFIELD inquired of the right hon. gentleman the Home Secretary, whether the report of the Commissioners on Testamentary Jurisdiction would be laid on the table before the recess?—Mr. WALPOLE said he hoped it would be produced before the recess.

POOR REMOVAL ACT.

Mr. WISE moved for returns shewing the total number of paupers who have become chargeable on any parishes and unions in England and Wales, under the operation of the Poor Removal Act of 1846, and of the subsequent Acts relating to that enactment, for the last three years; and the amount of money expended for the in-maintenance and out-door relief of such irremovable poor in the said unions and parishes, for the same period.

THE MAGISTRATE,
AND PAROCHIAL AND MUNICIPAL LAWYER.

Summary.

A RATING question, which turned on the construction of local Acts, and therefore of no general interest, is *Kipling* v. *Ingram*, 20 Law T. Rep. 124.

A single case in *Criminal Law* is to be noted. Where a coroner's jury had found a verdict of "Wilful Murder," and there is evidence upon the depositions to support the finding, the Court of Q. B. will not admit the defendants to bail, though the murder appears to have been committed in a duel, and there is not conclusive evidence of guilt. (*Reg.* v. *Barthelemy*, 20 Law T. Rep. 125.)

In *Election Law* there is another decision on the sufficiency of a notice of objection. In the notice the objector described himself as being "on the list of freemen for the city of Carlisle." This, it will be observed, does not follow the form in the schedule to the Act, which gives the words of description thus:—"A. B. upon the list of persons entitled to vote for the city of ——." Another section enacts, "That no notice of objection shall be void in respect of any description, &c. if the matter is so stated as to be commonly understood;" and the question in this case was whether the defect was thus cured. The Judges differed, MAULE, J. holding the notice to be insufficient, but the majority held it to be such as might be commonly understood, and therefore a good notice. (*Feddon* v. *Sawyers*, 20 Law T. Rep. 127.)

A case of very great interest in *Municipal Law* is reported from the Court of Error. A parish had two churchwardens and two overseers. The list of burgesses was made out and signed by the two overseers, and it was not signed by either of the churchwardens. For omitting to do this, an action for the penalty of 50*l.* was brought against the churchwardens, it being contended that they were overseers also within the meaning of the Act, which requires all the overseers to sign the burgess-list. And the Court held that so it was; and that the action would lie. (*Clarke* v. *Gant*, 20 Law T. Rep. 131.)

CRIME IN IRELAND.—A Parliamentary blue-book has been printed, shewing the number of criminal offenders committed for trial or bailed for appearance at the Assizes of each county in Ireland in the year 1851. These returns present a decrease of 6,642 committals, or 21·20 per cent. as compared with the year 1850, the total number of committals in that year being 31,326, while in 1851 the number rose not higher than 24,684. The offences against the person with violence had decreased from 4,930, in 1850, to 2,930, in 1851. The number of offences against property had hardly undergone any change for the better; the figure was 2,224 in 1850, and 2,215 in 1851. A table of the amount of crime committed during the last four years gives the following result:—Murder, 1848, 195 cases; in 1849, 170; in 1850, 113; and in 1851, 118 cases. Attempts at murder, in 1848, 15; in 1849, 5; in 1850, 28; and in 1851, 14 cases. Shooting at or stabbing, in 1848, 110; in 1849, 66; in 1850, 62; and in 1851, 87 cases. Conspiracy for murder in the four years respectively, 49, 26, 12, and 10 cases. Manslaughter 166, 173, 156, and 135 cases. Arson 134, 189, 155, and 160 cases. The other crimes in the list are—attacking houses, killing cattle, perjury, riot, rescue, and assault on peace officers. Riots have declined from 3,222 cases, in 1848, to 1,827 cases in 1851; and rescue from 4,131 cases in 1848, and 3,077 cases in 1850, to 1,915 cases in 1851.

REAL PROPERTY LAWYER AND CONVEYANCER.

A TENANT in tail of two estates redeemed the land-tax on both with the money produced by the sale of part of one. One of the estates went over under a shifting use. It was held that, on redemption, the land-tax merged in the ownership, and that the owner of one estate had no right to an apportionment as against the owner of the other. (*Harrison* v. *Round*, 20 Law T. Rep. 118.)

The great tithes of certain lands were merged therein by a person having no title to the tithes, the merger was confirmed by the commissioners, and the tithes were stated to be so merged, both in the agreement for commutation and in the apportionment. The lands were afterwards contracted to be sold as tithe free. The purchaser objected that the person by whom the tithes were merged had no title to them. But the Court held that a sufficient title was shewn, for "the Tithe Commutation Acts were pre-eminently laws made for those who kept their eyes open, and not for those who went to sleep on their rights." (*Walker* v. *Bentley*, 20 Law T. Rep. 120.)

In *Sanders* v. *Rodway*, 20 Law T. Rep. 122, the Court granted an injunction to restrain a husband from infringing a covenant in a deed of separation from his wife, by which he agreed not to molest her, nor to send letters or messages to her.

Where a trustee had gone out of the jurisdiction, and his address was unknown, the Court held it to be necessary that an application should be made to it to appoint a new trustee, such power of appointment not being given by the will. But it refused to order the transfer to the new trustees of shares in a company purchased with the trust funds, as by so doing it would be sanctioning a breach of trust. (*Re Harrison's Trust*, 20 Law T. Rep. 122.)

A. who died in December, 1826, by will directed a leasehold estate to be sold, and out of the proceeds 50*l.* to be paid to B. Both the executors afterwards died, and in 1852, B. filed a claim for the 50*l.* and interest against the executors of the surviving executor, and the claim was held not to be barred by the Statute of Limitations. (*Low* v. *Nash*, 20 Law T. Rep. 123.)

Hennicker v. *Hennicker*, 20 Law T. Rep. 125, was an interesting question as to the construction of the *Stamp Act*, in relation to a *partition deed*. It was held, that sec. 22, which requires the full purchase-money or consideration to be truly stated in the deed, does not apply to the case of a partition. "It appears to us," said the Court of Q. B. "that the transaction in question cannot be considered a sale, and if not a sale, the provisions of the 22nd section do not apply, and it was not necessary to express the consideration for equality of partition in the deed; and where a money bond was given to secure the payment of the true consideration given for equality of partition, it was held that even if the deed were not properly stamped, and did not express the true consideration, the bond was not therefore void."

Lord Henniker v. *The Attorney-General*, 20 Law T. Rep. 130, was a question as to *liability to legacy duty*. A. by will empowered B. to appoint to his wife an annuity chargeable upon the land of A. if B. should think fit. B. exercised the power, and in the same instrument imposed on his wife the condition of relinquishing dower. The legacy duty was held by the Court of Error to be payable upon the annuity, it being nothing more than an appointment of the annuity or legacy upon a condition.

Where a purchaser under a decree, being also a defendant in the cause, took a reference to the Master on the title, which was reported good, such purchaser was held not to be liable to pay the costs of the reference. (*Holland* v. *King*, 20 Law T. Rep. 123.)

CONVEYANCING.

TO THE EDITOR OF THE LAW TIMES.

SIR,—As the emoluments of solicitors have been greatly reduced of late years by the shortening of deeds, which has been effected by the good sense and honour of the Profession, and not by any compulsory legislative enactment, and as the principle of remuneration for conveyancing business ought not to be dependent on the length of deeds, but on the skill and labour employed, and responsibility incurred in their preparation, I am induced to lay before your readers a proposed scale of fee for preparing conveyances, mortgages, and settlements, to which I invite their attention, and should be glad to receive their opinions and suggestions on it.

It will be observed that in preparing this scale I have, to some extent, been guided by the new rules and orders in bankruptcy, issued in October last under the sanction of the Lord Chancellor, which fixes the allowance to be given to official assignees for collecting and realising the property of bankrupts, and I have adopted that scale with this slight variation, viz. in transactions above 100*l.* and not exceeding 500*l.* I have substituted 2 for 2½ per cent. which will be made up to us by not computing the charges on fractional parts of 50*l.*

I am, Sir, yours, &c. A SOLICITOR.

Proposed scale of charges for conveyances, mortgages, and settlements, including investigation of title, attendances, and correspondence, but excluding inventories, costs of obtaining the opinion of counsel, stamps, and parchment:—

Where the consideration money is under 40*l.*				£2 2 0
Exceeding 40*l.* and not exceeding 100*l.*				5 per cent. on the consideration money.
,,	100*l.*	,,	150*l.*	£3 6 0
,,	150*l.*	,,	200*l.*	7 0 0
,,	200*l.*	,,	250*l.*	8 0 0
,,	250*l.*	,,	300*l.*	9 0 0
,,	300*l.*	,,	350*l.*	10 0 0
,,	350*l.*	,,	400*l.*	11 0 0
,,	400*l.*	,,	450*l.*	12 0 0
,,	450*l.*	,,	500*l.*	13 0 0
,,	500*l.*	,,	600*l.*	14 0 0
,,	600*l.*	,,	700*l.*	15 0 0
,,	700*l.*	,,	800*l.*	16 0 0
,,	800*l.*	,,	900*l.*	17 0 0
,,	900*l.*	,,	1,000*l.*	18 0 0
,,	1,000*l.* then for every 100*l.* beyond 1,000*l.* and any fractional part of 100*l.* an additional 10s.			

MORTGAGES.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Permit me to make one or two observations with reference to the suggestion that powers of sale should in future be omitted from mortgages on the ground that they are unnecessary, since mortgagees can now sell under the direction of the Court of Chancery.

The principal reason assigned for the proposed omission is, that a mortgage is thereby rendered less expensive. Now although it is quite possible to bring a mortgage containing a power of sale within thirty folios, I agree with you that it is unusual. Let us therefore assume that the power in question lengthens the deed fifteen folios, *i. e.* extends it to forty-five folios; now the additional cost which this entails is 2*l.* 5*s.* viz. 30*s.* for drawing and engrossing, and 15*s.* for stamp and parchment; and to save this sum it is recommended to deprive a mortgagee of the only mode of proceeding by which he can realise his security without invoking the aid of the Court of Chancery at a cost of 40*l.* or 50*l.* at the very least!

It appears to me that such a proceeding would be unjust to the *mortgagor*, as rendering his property liable to be consumed unnecessarily by legal expenses; and inexpedient as regards the *mortgagee*, inasmuch as his security may become depreciated in value, and may not realise sufficient to pay the costs of Chancery proceedings, in addition to the principal and interest; and also because a sale under the provisions of a mortgage-deed may be accomplished much more expeditiously than one under the recent Act of Parliament.

My conviction that the practical consequences of the adoption of the proposed suggestion would be very prejudicial to all parties concerned in mortgage transactions (excepting, perhaps, the mortgagee's solicitor) must be my apology for thus trespassing upon your valuable space.

I am, Sir, yours, &c.

JOHN HORGOOD.

14, King William-street, Strand, Dec. 15, 1852.

[NOTE.—We suspect our correspondent overestimates the cost of a foreclosure and sale by claim. We doubt if it would exceed 15*l.* The objection is, that the cost of *every* mortgage is largely increased to provide for that which is not required in one mortgage in twenty.

The question whether it is not better to risk the chance of paying 15*l.* than incur the certainty of 2*l.* 12*s.* But certainly the better course would be to provide by statute that a power of sale should be incident to a mortgage unless expressly forbidden by the deed.—ED. LAW T.]

Answers to Queries.

WHO IS SURVIVOR?

YOUR correspondent, "An Old Subscriber," invites attention to a knotty point, involving a claim to a legacy under very singular circumstances. A. B. residing at Monmouth, died on Tuesday, Nov. 30, 1851, at 10·55, p.m. *local time*, having a legacy left him by C. D. who lived in London, and died on the same day, but at 11·2, p.m. *Greenwich time*, which is 16 minutes faster than Monmouth time. Are the executors of A. B. entitled to the Legacy? I am decidedly of opinion that they are.

Supposing instead of residing at Monmouth, A. B. had lived in London, his death would have occurred at the same moment of time, however differently that moment may have been represented in different parts of the Globe, and would have taken place, nine minutes after that of his neighbour, C. D. Or supposing the death of C. D. had at the instant of its occurring been communicated by electric telegraph to Monmouth, would not the news have found A.B. the legatee, alive to receive it? I am not aware of any case bearing on the point; but the above seems to me the common sense view of the matter.

Bridport, Dec. 13, 1852. A SUBSCRIBER.

COUNTY COURTS.

Summary.

IN the form of a County Court appeal, a curious question was raised in *Pauling* v. *Pontifex*, 20 Law T. Rep. 126. A builder sent in a tender, on application of defendant's surveyor to him, among others; the tenders were opened, and his was the lowest. The Court held, that according to the custom of the trade and the conduct of the parties, the plaintiff's tender, as being the lowest, was accepted, although the surveyor was not expressly instructed to accept the lowest; at least the Court thought that there was evidence of this to go to the jury, and that was all they could try upon appeal. From the evidence, a contract might be implied in law, and the jury had a right to draw such an implication if they thought fit.

A question in the *Law of Insolvency* was decided in *Jackson* v. *Burnham*, 20 Law T. Rep. 129. It was an action of debt, to which defendant pleaded, that before the action the plaintiff had petitioned the Insolvent Court, who had made the usual vesting order of the plaintiff's effects in the provisional assignee, and that the debt had accrued after the order and before the discharge. The plea was held to be bad for not averring that the provisional assignee had interfered to recover the debt. The Court held itself to be bound by a decision on a similar point which had arisen under the Bankruptcy Act. (*Herbert* v. *Sayer*, 20 Law T. Rep. 129.)

THE MERCANTILE LAWYER.

TWO decisions on the *Law of Bankruptcy* have now to be noticed. In *Ex parte Curties*, 20 Law T. Rep. 121, a trader having twice compounded with his creditors, and failed to effect a third composition offered of 11*s.* in the pound, became bankrupt, having assets that would enable him to pay 12*s.* in the pound. It was held on appeal that he was not entitled to a certificate, nor to any protection, because he had attempted to impose upon his creditors by false representations as to the amount of his assets.

Besides a point of pleading, which we need not notice, it was decided in *Wesson* v. *Allcard*, 20 Law T. Rep. 132, that a certificate under the arrangement clauses is no defence against a creditor without notice of the several meetings.

DESIGNS ACT EXTENSION.—The Government Bill has been printed to extend the provisions of the Designs Act, 1850, and to give protection from piracy to persons exhibiting new inventions in the Great Industrial Exhibition of 1853. There are ten clauses in the Bill, which states that the Exhibition is to be held in Dublin next year, and the measure is to be cited as "The Protection of Inventions Act, 1853."

DIARY OF SALES BY AUCTION, DURING THE NEXT WEEK,

ADVERTISED IN THE "LAW TIMES."

DAY.	PLACE.	AUCTIONEER.	WHEN ADVERTISED.	PROPERTY.
Wednesday, Dec. 22	Garraway's.	Ellis and Son.	Dec. 11.	Valuable freehold property in City of London.

THE LAWYER.

Summary.

EQUITY PRACTICE.—We have to direct the reader's attention to a few more decisions on the new practice. In *Egremont* v. *Egremont*, 20 Law T. Rep. 122, the LORDS JUSTICES appointed a guardian ad litem for an infant defendant on a mere affidavit of fitness of the proposed guardian without requiring a commission. In *Jones* v. *Batten*, 20 Law T. Rep. 122, the LORDS JUSTICES confirmed the previous decision of Vice-Chancellor TURNER as to one stamp only being necessary upon a bill that was both written and printed. Vice-Chancellor BRUCE said "that the preliminary written bill and the printed bill formed together only one bill, and not two bills, and the stamp might as well be on the first as on the second, as his Lordship premised that the written copy would be retained on the file, and one stamp ought to suffice." In *Sergison* v. *Beavan*, 20 Law T. Rep. 123, it was held that an affidavit of merits is not now necessary upon an application for leave to serve upon the attorney for the plaintiff-at-law a bill to restrain proceedings in the action. In the practice of the Court as to the hearing of claims, Vice-Chancellor STUART stated in *Rawlins* v. *Daglish*, 20 Law T. Rep. 124, "that he considered that special claims should be distinguished from ordinary claims, and he should, therefore, direct that on a short cause day no claims were to be taken except such as were certified by counsel to be short claims. All other claims would take their place in the general paper, to be heard with other causes." As to the appointment of *a receiver*, he said, in *Grote* v. *Bing*, 20 Law T. Rep. 124, that where such was sought "in place of some person already in possession of the property, the motion should be made in open court. But in cases where a receiver had been already appointed, and a vacancy occurred by death or otherwise, or where, as upon the death of the owner of the property, no person was in possession, the application should be made at chambers."

COMMON LAW.—An important point on the right to *inspect documents*, under the new Evidence Act, was decided in *Doe dem. Child* v. *Roe*, 20 Law T. Rep. 126. It was a case of ejectment brought by the original lessor for a forfeiture by breach of covenant; the lease was in the plaintiff's possession; the defendant, as being the tenant in possession, was held to be entitled to an inspection of the lease. "The action," said WIGHTMAN, J. "is an ejectment by the lessor of the plaintiff upon a breach of covenant. The defendant sought to inspect the document in order to satisfy himself whether there was any defence to the action or not; that is, whether there really was any such clause of forfeiture in the lease as the lessor of the plaintiff relied upon."

Queries.

EVIDENCE.

YOUR correspondent, "A. B." in last week's paper, is clearly right in his construction of the fourteenth section of the above Act. As to wills less than thirty years old, the mere production of them from the proper custody must be supplemented by formal proof of their execution, in order to their being admissible in evidence in actions affecting real estate. It appears to me, therefore, that those cannot possibly be brought within the provisions of the section in question. The point as to wills thirty years old is not quite so clear, as they are admissible without proof of execution; but it is certainly a fair argument against the admissibility of a certified copy, even of the latter, that they do not quite come within the words of the section,—documents "*of such a public nature* as to be admissible," &c.

While, however, I submit the law is as I have stated, I think all reasonable men must agree, that in these days it ought to be otherwise, and my principal object in writing you is to request you to afford your valuable aid in having the necessary alteration introduced in some of the measures now before Parliament. The most appropriate for its insertion would, no doubt, be that of Lord Brougham, affecting the law of evidence and procedure.

At present, in any trivial action either in the Superior Courts or in the County Court, where a will of land is to proved, the party seeking to produce such will in evidence must bring down the official from the Court of Probate with the original will, and must be at the trouble and expense of searching for and summoning the attesting witnesses, or if they are dead, witnesses to prove their death and handwriting. And all this although the validity or execution of the will is not contested by the other side; and the cases in which the will is only formal evidence are by far the most numerous.

I should beg to suggest that in all cases a certified copy of a will, or of a grant of probate, or of letters of administration, shall be sufficient evidence of such will or grant, provided the party adducing the same in evidence shall have given reasonable notice of his intention to adduce them, and no demand shall have been made by the other side that the original should be produced or proved. It should, of course, be added, that if such a demand be made, and the documents proved to the satisfaction of the judge, the cost shall be borne by the party demanding the same.

Manchester, Dec. 9, 1852. J. C.

Answers to Queries.

IN answer to "A. B.'s" query, 20 LAW TIMES, 118, as to the proper place for searching for the record of letters patent of Edward 6,—the Record Office, Chancery-lane. The records at this office commence from the year 1483; the records in the Tower of London commencing from King John to Edward 4 (1461). WM. THOS. WESHALL,

1, Mitre-court-buildings, Temple, Dec. 15, 1852.

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

NORFOLK.—The Right Hon. Horatio Earl of Orford; the Right Hon. Henry Valentine Stafford Lord Stafford; the Hon. Brownlow North Osborne DeGrey; Robert John Harvey Harvey, esq.; Sir Eaton Stanard Travers, Kt. K.H; Henry Ramy Upcher, esq.; Thomas Brightwen, esq.; John Thomas Mott, esq.; Vincent Edward Eyre, clerk; Henry William Bartholomew Edwards, esq.; John Calthrop, esq.; John Windham Dalling, esq.; George Blomefield, esq.; Roger Kerrison, esq.; Ferdinand Ives, esq.; Albemarle, Cator, esq.; James Dott Hulton, esq.; and Anthony Hudson, esq. to be deputy-lieutenants.

CARNARVON.—Sir Thomas Erskine, bart.; and Thomas Edward Mostyn Lloyd Mostyn, esq. to be Deputy-Lieutenants.

MEMBERS RETURNED TO SERVE IN THIS PRESENT PARLIAMENT.

BOROUGH OF OLDHAM.—William Johnson Fox, esq. of No. 3, Sussex-place, Regent's-park, London, in the room of John Duncuft, esq. deceased.

BOROUGH OF BURY ST. EDMUNDS.—James Henry Porteous Oakes, of Newton, in the county of Suffolk, esq. in the room of John Stuart, esq. who has accepted the office of Vice-Chancellor.

CITY OF DURHAM.—The Hon. Adolphus Frederick Charles William Vane, commonly called Lord Adolphus Frederick Charles William Vane, in the room of Thomas Colpitts Granger, esq. deceased.

BOROUGH OF ABINGDON.—The Hon. Montague Bertie, commonly called Lord Norreys, of No. 18, Grosvenor-street, Middlesex, in the room of Lieutenant-General James Caulfeild, deceased.

CITY OF PETERBOROUGH.—George Hammond Whalley, esq. in the room of the Hon. Richard Watson, deceased.

The right Hon. Sir John Jervis has appointed William John Beale, of Birmingham, in the county of Warwick, gent. to be one of the Perpetual Commissioners for taking the acknowledgments of deeds to be executed by married women, in and for the county of Warwick, also in and for the counties of Stafford and Worcester.

COMMISSIONS SIGNED BY THE LORD-LIEUTENANT OF THE COUNTY OF SALOP.—Sir Thomas Fletcher Fenton Boughey, bart.; Charles Powell, esq.; and Richard George Jebb, esq. to be deputy-lieutenants.

Her Majesty has been pleased to appoint Capel Hanbury Williams, esq. and Sir Theophilus St. George, bart. to be assistant-magistrates for the district of Natal, in South Africa.

COURT PAPERS.

COURT OF CHANCERY.

THE following orders of the Lord High Chancellor were issued to the public on Saturday:—

"The Right Hon. Edward Burtenshaw, Lord St. Leonards, Lord High Chancellor of Great Britain, doth hereby, in pursuance of an Act of Parliament passed in the 15th and 16th years of the reign of her present Majesty, intituled 'An Act for the Relief of the Suitors of the High Court of Chancery,' and in pursuance and execution of all other powers enabling him in that behalf, order and direct as follows: that is to say—

"First, That the Commissioners of Inland Re-

venue do prepare stamps impressed upon adhesive paper, of the amounts following:—that is to say, threepence, fourpence, eightpence, one shilling and fourpence, one shilling and sixpence, two shillings and sixpence, and two shillings and eightpence.

"Secondly, That such stamps shall be affixed, by the parties requiring to use the same, on the vellum, parchment, or paper, on which the proceeding in respect whereof such stamps may be required is written, printed, or engrossed, or which may be otherwise used in reference to such proceeding.

"Thirdly, That every officer of the Court of Chancery who shall receive any document to which a stamp shall be so affixed shall, immediately upon the receipt thereof, obliterate or deface such stamp, by impressing thereon a seal to be provided for that purpose, but so as not to prevent the amount of the stamp from being ascertained, and no such document shall be filed or delivered out until the stamp thereon shall be obliterated or defaced as aforesaid.

"ST. LEONARDS, Chancellor."

"The Right Hon. Edward Burtenshaw, Lord St. Leonards, Lord High Chancellor of Great Britain, doth hereby, in pursuance of an Act of Parliament passed in the 15th and 16th years of the reign of her present Majesty, intituled 'An Act for the Relief of the Suitors of the High Court of Chancery,' and in pursuance and execution of all other powers enabling him in that behalf, order and direct as follows:—

"1. When no certificate of the taxation of a bill of costs shall be required, the ad valorem duty directed by the order of the 25th day of October to be levied by stamps on the Master's certificate shall nevertheless be due, and shall be payable on the amount of the bill as taxed, or on the amount of such part thereof as may have been taxed; and the solicitor is in such case to cause the proper stamp (the amount thereof to be fixed by the Master) to be impressed on, or annexed to, the bill of costs.

"2. The fees hereunder specified shall hereafter be collected, not in money, but by means of stamps denoting the amount of such fees, stamped or affixed, at the expense of the parties liable to pay the fees, on or to the vellum, parchment, or paper on which the proceedings in respect whereof such fees are payable are written or printed, or which may be otherwise used in reference to such proceedings.

"First.—In the Registrar's office.

"For orders made by a judge in chambers, drawn up by the registrar, the like fees as by the order of the 23rd of October, 1852, are directed to be taken by the chief clerks to the judges, for orders drawn up by such chief clerks.

"Second.—In the Record and Writ Clerks' office.

	£.	s.	d.
"For amending every record of any bill	0	10	0
"For amending every office copy thereof	0	5	0
"Copies of documents left as exhibits, per folio	0	0	5

"ST. LEONARDS, Chancellor."

ORDER OF COURT.—1. That the Commissioners of Inland Revenue do prepare stamps impressed upon adhesive paper, of the amounts following, that is to say, threepence, fourpence, eightpence, one shilling and fourpence, one shilling and sixpence, two shillings and sixpence, and two shillings and eightpence.

2. That such stamps shall be affixed by the parties requiring to use the same on the vellum, parchment, or paper on which the proceeding in respect of which such stamps may be required is written, printed, or engrossed, or which may be otherwise used in reference to such proceeding.

3. That every officer of the Court of Chancery who shall receive any document to which a stamp shall be so affixed, shall, immediately upon the receipt thereof, obliterate or deface such stamp, by impressing thereon a seal to be provided for such purpose, but so as not to prevent the amount of the stamp from being ascertained; and no such document shall be filed or delivered out until the stamp thereon shall be obliterated or defaced as aforesaid.

(Signed) ST. LEONARDS, C.

TRANSFER OF CAUSES.

Notice dated Dec. 10, 1853.—The following causes except such as the parties may desire to retain in their present lists, on the ground that briefs have been delivered to and consultations held with counsel not practising in the Court of Vice-Chancellor Sir George Turner, will be transferred from the lists of Vice-Chancellor Sir R. T. Kinderdey and Vice-Chancellor Stuart, to the list of Vice-Chancellor Sir George Turner, on the first day of Hilary Term next—that is to say:—

FROM VICE-CHANCELLOR KINDERSLEY'S LIST.

Hurford v. Rees	Taylor v. Taylor
Roberts v. Jones	Charlton v. Allen
Butchart v. Dresser, 2	Boyd v. Roux
Unwin v. Unwin	Blyth v. Carpenter
Hicks v. Sallitt	Scaping v. Cheetham
Torbock v. Hewitson	Holloway v. Collier
Green v. Berron	Langworthy v. Church
Langton v. Langton	Evans v. Heath
Forbes v. Richardson	Johnson v. Marshall
Todd v. Beames, 2	Ashby v. Blenkinsopp.

FROM VICE-CHANCELLOR STUART'S LIST.

Stent v. Wickens	Crabbe v. Moxhay
Osborn v. Gerrard	Batham v. Hopkins
Orlebar v. Nicholay	Vincent v. Pane
Girdlestone v. Creed	Oppenheim v. Henry
Smith v. Newbould, 6	Burrowes v. Drummond
Wilson v. Hope	Powell v. Merritt
Vere v. Wilson	Wildes v. Davies, 7
Dale v. Hamilton	Busk v. Donner
Higgin v. Lane, 2	Peak v. Peak
Cunliffe v. Lawrence	Morier v. Budd.

ELECTION PETITIONS.—The following days have been fixed by the general committee of elections for the appointment of select committees to try the petitions complaining of undue elections and returns:—On Monday, Feb. 14, for Tavistock, Bridgnorth, Lancaster, Canterbury. On Wednesday, Feb. 16, Blackburn, Clitheroe, Chatham. On Monday, Feb. 21, Stoke-upon-Trent, Newry, Southampton, Kidderminster. On Wednesday, Feb. 23, Frome, Cambridge, and Waterford. All parties interested are directed to attend, by themselves, agents, or counsel.

LEGAL INTELLIGENCE.

Winter Assizes.

YORK, Dec. 13.—The commission for holding the winter gaol delivery at York was opened in this city on Saturday. The learned judges appointed were Mr. Justice Williams and Mr. Justice Talfourd. The calendar contains the names of 89 prisoners in custody, and 20 out on bail, and is considered to be very heavy, both from the number and nature of the offences charged. Of these, 4 are charged with murder, 2 with rape, 2 with forgery, 7 with cutting and stabbing, 28 with robbery, 9 with manslaughter, 17 with burglary, 4 with horse-stealing, 8 with bigamy, 1 with arson, 1 with night poaching, 1 with concealment of birth, 5 with perjury, and the rest with minor offences.

NISI PRIUS SITTINGS.—When the first cause was called on, the Attorney-General submitted to the attention of the Lord Chief Justice the great convenience which would result, both to the Bar and the public, if the sittings at Nisi Prius in this court were fixed to take place in future at ten o'clock instead of half-past nine. Lord Campbell said he would consult with the Lord Chief Justice of the Common Pleas upon the subject, and see whether the proposed arrangement could be adopted. He was quite sure that the alteration would be very much for his (Lord Campbell's) own convenience. On looking at the records of the Court he found that in former times the Court sat at seven o'clock, and when he first became a member of the Bar it sat at nine. Now it had got to half-past nine; and as it was proposed in future to sit at ten, it might soon be proposed to sit at midday. The Attorney-General said that the Lord Chief Baron had for many years sat at ten o'clock. Lord Campbell said he was unwilling to adopt any arrangement which would waste a valuable half-hour of the public time. The Attorney-General.—The latter hour would be very convenient to commercial men, as it would enable them to see their letters before coming to the court. Lord Campbell said he would readily accede to the arrangement if he found, on consideration, that it would be for the public good. He had spent a short time in Ireland, and found that in that country the Courts never sat before eleven, nor after three o'clock. The Attorney-General said he thought seven hours' occupation in court was a sufficient stretch for the mind both of Judge and jury. The Solicitor-General said the case was not the same as it was formerly, when the sittings began with a list of almost innumerable remanets. Recent changes had brought the business more within the control of the Court. Lord Campbell said he should be glad if he could accede to the proposal without injury to the public.

OPENING THE MAYOR'S COURT.—On Wednesday, in the Court of Common Council, Mr. James Davis, the Chairman of the Secondaries and City Courts Committee, brought up the report on the subject of throwing open the Mayor's Court to all solicitors practising in the Courts of Law and Equity at Westminster. The report detailed the whole of the proceedings of the committee, including those successful conferences with a deputation of the Court of Alderman on the subject, and their interviews with the attorneys of the Mayor's Court, who claimed compensation for right of alienation and exclusive practice, as well as three consultations with the Recorder, who strongly recommended the admission of all solicitors under certain regulations. It further stated that the Recorder had laid before the committee a series of rules for governing the practice of the Court, with the necessary forms, and also a scale of fees and charges to be taken therein, which were approved of by the committee; and, in accordance with the suggestion of the Recorder, they recommended that an order to afford facilities for the conducting of suits in the Mayor's Court, upon a reformed principle, in January, they should be authorised to provide temporarily a suitable office for the Registrar of the Lord Mayor's Court, in the immediate vicinity of the Guildhall, and an assistant to the deputy-registrar. After some observations from members of the court, in approbation of the liberal and beneficent project of throwing open the Mayor's Court to the Profession generally, by which arrangement any man could send his own attorney to represent him there, the Recorder said that in his opinion the mass of business introduced to the Mayor's Court upon the change recommended would be so great as to pay all the expenses which might be apprehended, and a great deal more. The report was then agreed to, and sent back to be carried into execution.

FEES OF COURTS.—At the close of a case tried on Wednesday, in the City, some difference having arisen as to the amount of the fees payable to the officers of the Court, the Lord Chief Justice inquired into the matter, and then stated publicly he was surprised to find that the summoning officer claimed 2*l.* 8s. for summoning the special jury, and the ushers of the court 1*l.* 4s.; and that in ordinary causes 3s. 6d. was paid for each cause to the hall-keeper, 7s. 6d. for four ushers, 3s. 6d. for a tipstaff, and 4s. 6d. for two summoning officers. His lordship also stated that the whole of the expenses of the Nisi Prius Office were under 2*l.* being less than the sum claimed under the rules of the Corporation of London by their summoning officer. The Treasury had determined that for the future no higher fees should be paid at Westminster than would pay the expenses of the Courts, and the ushers there were paid by salaries, as should be the case also in London. There was formerly a profit of more than 50,000*l.* a-year by these fees, and although in the now scale some of the items were increased, the public should not forget that a great number of fees had been entirely abolished.

IRELAND.—DUBLIN.—The Society of the Attorneys and Solicitors of Ireland held a meeting on Monday last, the 29th ultimo, to take into consideration Mr. Whiteside's Bill for amending the procedure in the Superior Courts of Law in Ireland. The opinions generally expressed here on this measure of law reform are much more favourable than those entertained on the subject of Mr. Napier's Landlord and Tenant Bills, which apparently are doomed to please nobody. The landlord party look with an extreme degree of nervous apprehension on any measures of this kind, framed as they are to interfere with their own prescriptive rights; and to the bulk of the people, who have imbibed the doctrines of the Tenant League, the measures of the Irish Attorney-General will give no sort of satisfaction.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

DEMICHELIS.—On the 8th inst. the wife of Cesare Demichelis, esq. of Turin, and 46, Leicester-square, barrister, of a son.

FITZGERALD. — At Worthing, the lady of Lieutenant-General Sir John Forster Fitzgerald, M.P. of a son.

MOORE.—On the 16th inst. at Leytonstone, the wife of Mr. C. C. Moore, of Mile-end, of a son.

PONSONBY.—On the 12th inst. at Down-Ampney, the Lady Maria Ponsonby, of a daughter.

MARRIAGES.

LAUDALE, Robert, esq. of Pitmedden, Perthshire, S. S. C., Edinburgh, to Mary, daughter of John Laidlay, esq. of Fleetwood-on-Wyre, Lancashire, at Fleetwood, on the 15th inst.

PEACOCK, Mr. William H. of Barnsley, solicitor, second surviving son of the late John Peacock, esq. Norton, county of Durham, to Elisabeth, third daughter of Braithwaite Hodgson, esq. of Green End, near Hawkshead, on the 15th inst. at Hawkshead, Windermere.

WHITEHEAD, John, esq. of the Middle Temple, barrister-at-law, to Jane Philippa Baskerville, youngest daughter of the late Hugh Hovell Farmar, esq. of Dunsinane, county of Wexford, on the 9th inst. at Bathwick Church, Bath.

DEATHS.

BALLANTINE, William, esq. for many years a magistrate of the Thames Police Court, at his residence, Cadogan-place, on the 14th inst. aged 73.

EMPSON, William, esq. Professor of Law, on the 10th inst. at the East-India College, Haileybury, aged 62.

FENWICK, Thomas, esq. of South-hill, Chester-le-street, in the county of Durham, a magistrate and deputy-lieutenant, on the 11th inst. aged 80.

PALMER, Richard, esq. town-clerk of Preston, and for fifty-three years one of the coroners for the county of Lancaster, on the 13th inst. aged 79.

TAYLOR, Mr. Thomas David, solicitor, formerly of Northbuildings, Finsbury-circus, at Rodney-terrace East, Bow-road, on the 11th inst. aged 57.

CHRISTMAS "BLESSINGS."—Among the many announcements and inventions brought under our notice, as applicable to the season and its enjoyments, none contrast so favourably, or so quickly recommend themselves, as those of Mr. Scarlett and Mr. Merry. The one has reduced mock turtle soup

to a portable and solid substance, so that, if required, it may be carried from place to place even in a sheet of brown paper, thus making of the most delicious preface to a dinner the proverbial gentlemanly parcel. And Mr. Merry has invented "a game," which may be used either as *a round*, or *a single partner*, and is called "THE GAME OF THE CHACE." It is calculated to afford a fund of innocent amusement, is neither abstruse nor childish, and is capable of infinite variation. The title, "The Chase," is given, we presume, because the instruments of play are miniature horses, and a Lilliputian race-course, and "the race is to the swift." Mr. Scarlett's portable soup, and Mr. Merry's entirely novel and interesting game, are, we repeat, the most attractive of the new inventions for which Christmas folk will be thankful. Our advertisements will explain further of the merits of both.

MONEY MARKET.

English Funds.	Sat.	Mon.	Tues.	Wed.	Thurs.	Fri.
Bank Stock	223½	223½	223½	223	223	223
3 per Cent. Reduced Annuities	100½	100½	101	100⅝	100⅜	101
3 per Cent. Consols Annuities	†	†	shut	101⅛	shut	shut
Consols for Opening	‡	‡	100½	100	100¼	101¼
New 3 per Cent. Annuities	shut	shut	..	..	..	..
New 3½ per Cent. Annuities	104	104	104½	104	104	104
Long Annn. (exp. Jan. 5, 1860)	..	..	7	7	7	6¾
Do. 30 yrs. (exp. Oct. 10, 1859)	..	..	6¾	..	..	..
Do. 29 yrs. (exp. Jan. 5, 1860)	shut	shut	6¾	shut	..	..
India Stock	shut	shut	..	shut	..	..
India Bonds (1,000*l.*)	82	82	77	78	79	..
Do. do. (under 1,000*l.*)	..	..	75	..	79	79
South Sea Stock	shut	shut	..	..	..	224½
Do. do. New Annuities	shut	shut	..	..	..	..
Exchequer Bills, 1,000*l.* June	65*	65*	62*	62*	63*	60*
Do. do. 500*l.* June	65*	65*	62*	62*	..	60*
Do. do. Small, June	60*	60*	62*	62*	63*	60*

* Premium. † 101⅛ with div for money.
‡ 100⅛ Ex. div.

THE GAZETTES.

Bankrupts.

Gazette, Dec. 14.

ABBEY, JOHN, timber merchant, Shelton, Staffordshire, Jan. 8 and 31, at ten, Birmingham. Off. as. Whitmore. Sols. Llewellyn, Tunstall, and Hodgson, Birmingham. Petition, Dec. 9.

BENNETT, ALFRED, window blind manufacturer, Bridge-house-place, Newington-causeway, Dec. 27, at eleven, Jan. 28, at twelve, Basinghall-st. Off. as. Graham. Sol. Teague, Crown-court, Cheapside. Petition, Dec. 13.

DUDGEON, STEPHEN, builder, Litchurch, Derbyshire, Jan. 7 and 21, at ten, Nottingham. Off. as. Bittleston. Sols. Bowley, Nottingham; and Hodgson, Birmingham. Petition, Dec. 13.

HIRST, GEORGE, manufacturer, Horncoat, Kirkburton, Yorkshire, Jan. 10, at half-past eleven, Jan. 31, at eleven, Leeds. Off. as. Hope. Sols. Turner, Huddersfield; and Bond and Barwick, Leeds. Petition, Dec. 4.

ROBINSON, WILLIAM, upholsterer, Grand Junction-terrace, Edgeware-road, Dec. 28, at one, Jan. 25, at two, Basinghall-st. Off. as. Edwards. Sols. Sole and Co. Aldermanbury. Petition, Dec. 8.

SPRATT, JOHN, coach builder, Sloane-st. and Exeter-st. Chelsea, Dec. 23, at half-past twelve, Jan. 24, at one, Basinghall-st. Off. as. Johnson. Sol. Chidley, Gresham-st. Petition, Nov. 9.

WALTON, WILLIAM, baker, Leamington Priors, Warwickshire, Dec. 30 and Jan. 19, at eleven, Birmingham. Off. as. Bittleston. Sols. Poole and Son, Southam; and Hodgson, Birmingham. Petition, Dec. 1.

Gazette, Dec. 17.

ATKINSON, JOHN, seed crusher, Kingston-upon-Hull, Jan. 12 and Feb. 2, at twelve, Hull. Com. Ayrton. Off. as. Carrick. Sols. Shackles and Son, Kingston-upon-Hull. Petition, Dec. 9.

BOULTER, ROBERT NEWELL, tailor, Mount-row, Westminster-road, Lambeth, Jan. 1, at half-past two, and Jan. 28, at twelve, Basinghall-st. Com. Goulburn. Off. as. Nicholson. Sol. Pain, 5, Gresham-st. London. Petition, Dec. 13.

HARRISON, SAMUEL COLE, linen draper, Sunderland-by-the-Sea, Dec. 24 and Jan. 31, at twelve, Newcastle-upon-Tyne. Com. Ellison. Off. as. Baker. Sols. Parker, St Paul's Churchyard; Rawson and George, Bradford Yorkshire; and J. J. and G. W. Wright, Sunderland Petition, Dec. 4.

JACOB, CHARLES, merchant, Ingram-court, Fenchurch-st. City, Jan. 1 and 29, at one, Basinghall-st. Com. Goulburn. Off. as. Pennell. Sols. Marten, Thomas, and Hollams, Commercial Sale-rooms, Mincing-lane. Petition, Dec. 14.

JAMES, BENJAMIN, builder, Newport, Monmouthshire, Dec. 28 and Jan. 25, at eleven, Bristol. Com. Hill. Off. as. Miller. Sols. Phillpotts, Newport; and Bevan, Bristol. Petition, Dec. 14.

KYD, CHRISTIAN BRUCE, common brewer and maltster, Newcastle-upon-Tyne, Dec. 30, at eleven, and Feb. 11, at twelve, Newcastle-upon-Tyne. Com. Ellison. Off. as. Baker. Sols. Sudlows, Torr, and Janoway, Bedford-row; and G. W. Hodge, Grey-st. Newcastle-upon-Tyne. Petition, Dec. 11.

SALTER, SAMUEL, maltster and mealman, Hunton-bridge, Abbots Langley, Hertfordshire, Jan. 1, at two, and Jan. 28, at eleven, Basinghall-st. Com. Goulburn. Off. as. Pennell. Sols. Sanger, 4, Essex-court, Temple; and Cowley, Watford, Hertfordshire. Petition, Dec. 14.

SHOWELL, WILLIAM, publisher and bookseller, 30, Great Marlborough-st. and 27, St. John's Wood-terrace, St. John's Wood, Dec. 28, at two, and Jan. 28, at twelve, Basinghall-st. Com. Halroyd. Off. as. Groom. Sols. Lawrance, Plews, and Boyer, 14, Old Jewry-chambers, London. Petition, Dec. 7.

TULLY, COLLINGWOOD, ship owner and merchant, Sunderland, Dec. 30, at twelve, and Feb. 11, at one, Newcastle-upon-Tyne. Com. Ellison. Off. as. Wakley. Sols. Crosby and Compton, 3, Church-court, Old Jewry; and J. T. Hoyle, Newcastle-upon-Tyne. Petition, Dec. 4.

VOTE, JAMES KENT, builder, Albion-square, Dalston, Dec. 30, at eleven, Jan. 24, at two, Basinghall-st. Com. Evans. Off as. Johnson. Sol. Taylor, 15, South-st. Finsbury. Petition, Dec. 11.

WELLINGTON WILLIAM, builder, Brindley-st. Harrow-road, Paddington, Dec. 28 and Jan. 28, at eleven, Basinghall-st. Com. Holroyd. Off. as. Edwards. Sol. Wilson, 16, Gresham-st. London. Petition, Dec. 14.

Dividends.

BANKRUPT ESTATES.

Official Assignees are given, to whom apply for the Dividends.

Barr and *Sykes*, yarn spinners, first, 3s. 10d.; and first sep. of Barr, 1s. Young, Leeds.—*Beesham*, W. P. banker, first on new proofs, 2s. 1d. Edwards, London.—*Crosthwaite*, J. merchant, second, 8d.; and on new proofs, 2s. 8d. Turner, Liverpool.—*Davies*, J. grocer and ironmonger, first, 4s. Turner, Liverpool.—*Edwards*, J. sack, twine, and shoe-thread manufacturer, further, 4½d. Hernaman, Exeter.—*Geary*, N. stay maker, first, 1s. 5d. Edwards, London.—*Goldsmith*, W. corn merchant, final, 5s. 10d. Stansfeld, London.—*Hodgson, Lewis*, and *Co.* spirit merchants, first on new proofs, 6s. Young, Leeds.—*Heilbrons* and *Harrison*, drysalters, &c. second, 7s. 9d. Whitmore, London.—*Hornby*, W. joiner and builder, first, 4s. 6d. Turner, Liverpool.—*Hotten*, J. T. watchmaker, &c. first, 4s. 9d. Hernaman, Exeter.—*James*, R. S. ironmonger, first, 2s. Young, Leeds.—*Jones*, E. draper, first, 8d. Turner, Liverpool.—*Kretschmar*, E. manufacturing jeweller, first, 3s. 9d. Groom, London.—*Lee*, W. T. merchant, first on new proofs, 10s.; second, 3s. 3d. Hope, Leeds.—*Matthews*, W. V. druggist and grocer, first and final, 1s. 0½d. Hernaman, Exeter.—*Pryde, Jones*, and *Gibb*, nail makers, &c. first, 1s. 9d. Morgan, Liverpool.—*Reid*, J. ship broker, second, 0½d. Baker, Newcastle.—*Russell*, G. merchant, eighth, 11½d. Christie, Birmingham.—*Rutland*, G. straw bonnet manufacturer, first, 1s. 5½d. Whitmore, London.

INSOLVENTS' ESTATES.

Apply at the Provisional Assignee's Office, Portugal-street, Lincoln's-inn-fields, London, between the hours of eleven and three.

Corrigall, J. master and owner of the barque *Saron*, 20s. —*Gillet*, W. captain of militia, 5s. making 15s. 6½d.—*Howse*, C. superannuated clerk, 3s. 9d. making 6s. 6½d.—*Morgan*, R. H. barman, 20s.—*Penney*, T. foreman in a dockyard, fourth, 3s. 8½d.—*Yarker*, J. retired coast officer, 6s. 2d. making 20s.

Assignments for the Benefit of Creditors.

Gazette, Dec. 7.

Breeze, J. tobacconist, High-st. Windsor, Oct. 27. Trust. J. White, wholesale tobacconist, High-st. Shoreditch. Sols. Tucker and Sons, Sun-chambers, Threadneedle-st.—*Brockelbank*, T. licensed victuller, Greyhound public-house, Milton-st. Fore-st. City, Nov. 10. Trust. T. Clarke, distiller, Albany-st. Regent's-park. Sols. Taylor and Collison, Great James-st. Bedford-row.—*Clarke*, J. draper, Broadway, Westminster, Nov. 27. Trusts. W. Hitchcock, Wood-st. and T. Millgate, Gresham-st. warehousemen. Sols. Sole, Turner, and Turner, Aldermanbury.—*Drake*, J. linendraper, York, Nov. 19. Trusts. H. J. Rayson, painter, York, and J. Milling, warehouseman, Glasgow. Sols. J. and J. P. Wood, York.—*Elsmore*, J. draper, Stoke-upon-Trent, Nov. 4. Trusts. J. Hickson, draper, Newcastle-under-Lyne, and H. Hickson, merchant, Manchester. Sol. R. Slaney, Newcastle-under-Lyne.—*Hayward*, J. Portsmouth-place, Kennington-lane, Kennington, Nov. 27. Trust. T. T. W. Williams, Grafton-place, Euston-square. Sol. E. Adams, George-st. Mansion-house.—*Hughes*, J. draper, Paddington-st. Middlesex, Nov. 27. Trusts. H. Sturt, Wood-st. and W. Lycett, Gutter-lane, warehousemen. Sols. Sole, Turner, and Turner, Aldermanbury.—*Lay*, T. draper and haberdasher, Walworth, Surrey, Nov. 19. Trusts. W. H. Holyland, Watling-st. and W. Nevill, Gresham-st. warehousemen. Sol. A. Jones, Size-lane.—*Musselwhite*, R. linen draper, Dudley, Worcester, Dec. 1. Trusts. S. H. Norris and R. Doncaster, merchants, Manchester. Sols. Sale, Worthington, and Shipman, Manchester.—*Parr*, R. builder, Nottingham, Nov. 11. Trusts. J. Greensmith and J. Lacy, builders, J. Riley, slater, and S. Hall, stone mason, Nottingham. Sol. W. Brown, Nottingham.—*Raper*, J. draper, Liverpool, Nov. 30. Trusts. D. Turner, draper, and E. Roberts, accountant, Liverpool. Sols. Evans and Son, Liverpool.—*Sporle*, W. ironmonger, Royston, Hertford, Nov. 29. Trusts. W. D. Sims, engineer, Ipswich, and W. Abbott, upholsterer, Royston. Sols. W. H. Nash, Royston; S. B. Jackaman, Ipswich.—*Whitehead*, R. sen. farmer, Botesdale, Suffolk, Nov. 29. Trusts. W. Robinson, merchant, and R. Collins, grocer and draper, Botesdale. Sol. W. Gross, Botesdale.

Gazette, Dec. 10.

Benson, B. printer and bookseller, Weymouth, and Melcombe Regis, Dorset, Nov. 16. Trusts. J. Renshaw, merchant, Gracechurch-st. and J. Drew, confectioner, Weymouth and Melcombe Regis. Sols. Henning and Andrews, Weymouth.—*Field*, W. nurseryman, Rotherfield, Sussex, Dec. 2. Trusts. T. Crittall, relieving officer, Rotherfield, and J. Poxon, farmer, Brenchley. Sol. W. C. Cripps, Tonbridge Wells.—*Ford*, J. tailor and draper, Ridgmount, Bedford, Nov. 17. Trusts. G. Mellor, gentleman, and W. Perkins, draper, both of Woburn. Sol. J. Greene, Ampthill.—*Fry*, W. H. victualler, Wilney, Oxford, Nov. 19. Trusts. L. Warrington, grocer, and T. Whitlock, sheriff's officer, both of Wilney. Sols. Rose and Bullen, Bampton.—*James*, H. yeoman, Littleworth, Faringdon, Berks, Dec. 2. Trusts. J. Wells, harness maker, and G. H. Mantell, surgeon, both of Faringdon. Sol. A. H. Mantell, Faringdon.—*Lewis*, L. shopkeeper, Fleur-de-Lis, Bedwelty, Monmouth, Nov. 18. Trusts. G. Wheller, corn merchant, Maindee, and R. Graham, auctioneer and agent, Newport. Sol. G. Blakey, Newport.—*Neal*, N. grocer and draper, Eaton Bray, Bedford, Nov. 24. Trusts. E. Coleman, grocer, Ampthill, and T. Weatherill, draper, Dunstable. Sol. W. Medland, Dunstable.—*Osborne*, M. W. grocer, Coventry, Dec. 2. Trusts. J. Slaney, colonial produce agent, Mincing-lane, and T. Waterston, tailor, Coventry. Sol. J. Royle, Coventry.—*Roberts*, H. farmer, Llanfihangel Esceifog, Anglesea, Dec. 3. Trusts. W. Roberts, farmer, Llediwigan; R. Hughes, merchant, Llangaffo; and J. Owen, Tai Coch, and O. Jones, Taimawr, farmers. Sol. H. B. Roberts, Bangor.—*Seaton*, W. grocer, Oakham, Rutland, Dec. 2. Trusts. J. Bishop, wholesale grocer, Warner's-yard, Mincing-lane, and D. S. Royce, auctioneer, Oakham. Sols. Ades and Adam, Oakham.—*Spratt*, J. coach builder, Sloane-st. and Exeter-st. Sloane-st. Middlesex, Dec. 7. Trusts. R. Collard, coach wheelwright, Kinnerton-st. Belgrave-square; J. W. Gibson, coach ironmonger, Long-acre; and C. Farmer, ironmonger, Clifton-terrace, Brompton. Sol. M. Lewis, Wilmington-square.

Partnerships Dissolved.

Gazette, Nov. 30.

Armitage, A. and J. dyers, Mytholm-bridge, near Huddersfield, Nov. 19. Debts paid by J. Armitage.—*Askham*, W. and W. F. surgeons and apothecaries, Eckington, July 1. Debts paid by W. F. Askham.—*Bibby*, J. Preston, and *Cockshott*, E. Dundalk, corn merchants, Nov. 26.—*Burdes*, E. and W. and *Anderson*, E. lime burners, farmers, ship owners, and merchants, as regards W. Burdes, Carley Lime Works, Sunderland near the Sea, Nov. 25.—*French*, G. and *Pratt*, D. jun. mercers and drapers, Walsall, Nov. 27.—*Gillham*, J. and *Womack*, J. tailors and publishers of fashions, Haymarket, July 29. Debts paid by Womack.—*Gray*, F. and S. M. tinplate workers, japanners, &c. Birmingham and Gough-square, Dec. 31, 1860.—*Hancock*, C. and *Young*, H. W. solicitors and attorneys, Tokenhouse-yard, Nov. 29. Debts paid by Hancock.—*Hargreaves*, L. *Taylor*, T. and *Dobson*, J. stone masons and contractors, Fall Barn and elsewhere, in the Forest of Rossendale, as regards Hargreaves, Nov. 25. Debts paid by Taylor and Dobson.—*Hodgson*, C. and E. coach manufacturers, Durham, Nov. 23. Debts paid by R. Hodgson.—*Kidson*, D. *Dugdale*, J. *Jackson*, J. and *Hodgson*, T. millwrights and machine makers, Green's Mill, near Bacup, Nov. 26. Debts paid by J. Tattersall, auctioneer, Bacup.—*Moon*, J. jun. and *Woolacott*, J. furnishing ironmongers and smiths, Barnstaple, Nov. 17.—*Rutland*, J. jun. and *Ball*, D. jun. wine, beer, and spirit merchants, Cooper's-row, Tower-hill, Jan. 1.—*Scholefield*, R. B. *Holdsworth*, S. *Yeardley*, J. and *Briggs*, E. hatters and silk spinners, and manufacturers, Castleton Mills, near Rochdale, Nov. 6. Debts paid by E. Briggs.—*Stagg*, G. and *Kilvert*, R. house painters, Manchester, Nov. 15. Debts paid by Kilvert.—*Toms*, W. P. and T. O. plumbers and brasiers, Plymouth, Nov. 27.—*Womack*, J. and *Litchfield*, accountants and general agents, Manchester. Debts paid by Litchfield.—*Wood*, H. and *Gresham*, A. tea dealers and grocers, Blackburn, Nov. 19.

Gazette, Dec. 3.

Black, W. Carlisle, and *Pigg*, J. Coathill, Wetherall, dealers in alabaster and manufacturers of plaster of Paris, Dec. 27. Debts paid by W. Jackson, Carlisle.—*Brotherton*, R. and *Rigg*, R. sen. railway contractors, Whitehaven, Nov. 15.—*Budd*, R. and C. straw bonnet manufacturers, Dunstable, Nov. 23. Debts paid by R. Budd.—*Davidson*, J. Y. and *Partridge*, F. coal merchants, Bankside, Nov. 29. Debts paid by Davidson.—*Eastwood*, L. sen. and *Tovo*, E. joiners and packing-case makers, Manchester, Dec. 1.—*George*, W. and *Jarrell*, T. farmers and brickmakers, Oxford, Nov. 27. Debts paid by George.—*Harris*, W. T. *Day*, N. M. *Harris*, F. J. and *Meek*, G. wholesale stationers, Queen-st. Cheapside, as regards F. J. Harris, July 26. Debts paid by remaining partners.—*Healey*, E. and *Lloyd*, T. B. law stationers, Manchester, Dec. 1.—*Heap*, J. and R. *Plowright*, A. and *Bennett*, J. silk printers, Kirkmanshulme, Newton, Nov. 27. Debts paid R. Heap.—*Hine*, B. H. and J. G. and *Mundella*, A. J. hosiers, Nottingham, as regards J. G. Hine, Oct. 29.—*Irwin*, A. W. and *Taylor*, M. attorneys, Verulam-buildings, Gray's-inn, Dec. 1.—*Lawton*, J. and *Brook*, J. fancy cloth manufacturers, Huddersfield, Nov. 23. Debts paid by Lawton.—*Loton*, H. and *Cary*, R. carvers and gilders, Cleveland-street, Fitzroy-square, May 6.—*Lowndes*, H. and *Cross*, T. B. merchants, Liverpool, Nov. 30.—*Morley*, D. and *Booth*, J. smallware manufacturers, Manchester, Aug. 16.—*Penkivil*, R. S. and *Fitch*, F. surgeons, &c. Chaddesley Corbell, Sept. 29. Debts paid by Fitch.—*Pescot*, T. and *Elliott*, W. linen drapers and general dealers, Lindfield, Nov. 24. Debts paid by Elliott.—*Plowright*, A. *Heap*, R. and *Bennett*, J. pattern designers, Manchester, Nov. 27. Debts paid by Plowright.—*Rigby*, J. and *Whittaker*, W. dyers, Gigg, near Bury, Nov. 29. Debts paid by Rigby.—*Rostron*, R. *McKinnell*, J. H. *Dutton*, T. and *Booker*, M. M. Rio de Janeiro and Bahia, as regards McKinnell, June 30.—*Russell*, J. and J. leather sellers, John-st. Parker's-row, Bermondsey, Dec. 3.—*Smith*, J. and W. bakers and flour dealers, Liverpool, Sept. 4.—*Strange*, R. and G. grocers, Walton-st. Chelsea, Nov. 30.—*Swinborne*, T. C. and G. P. and *Wellington*, R. A. refiners of isinglass and gelatine, Scott's-yard, Cannon-st. and Coggeshall, as regards T. C. Swinborne, Aug. 24.—*Taylor*, J. and *Clarke*, C. R. commission agents, Manchester, Nov. 25.—*Upperton*, R. and *Stone*, R. colliers and farmers, Trinsaran, Pembrey, Sept. 17.—*Usmar*, T. and *Hunter*, J. schoolmasters, Epping, Nov. 30.—*Wilkinson*, T. W. and *Binkam*, G. auctioneers and general agents, Gresham-st. Nov. 20. Debts paid by Wilkinson.—*Worley*, W. H. and *Pyall*, H. printers and publishers, Chichester-place, Gray's-inn-road, Nov. 29.

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NEW TABLES of FEES in the COURTS of COMMON LAW.—MR. CROCKFORD announces that the NEW TABLES of FEES have been introduced into the SECOND EDITION of KERR'S COMMON LAW PROCEDURE ACT. This edition also contains all the Cases decided upon the New Practice during Michaelmas Term, with additional Forms, Notes, and Index. The Nisi Prius Officers' Act has been inserted in the Appendix. The *First Edition* is out of print. Such was the demand for it, that it was exhausted in a fortnight.

LAW TIMES Office, 29, Essex-street.

To Readers and Correspondents.

"A SUBSCRIBER."—*Neither of the works named is likely to appear in a new edition for many months,—perhaps years to come.*

"STUDI ET."—*There is no such book as our correspondent requires, but there ought to be. Then there are few competent to write it; of those competent, how few have leisure, still fewer inclination. Blackstone is the nearest approach to it, but not precisely what "Student" wants.*

"AN ARTICLED CLERK" *will see that his requirement has been anticipated by the announcement below.*

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KERR'S COMMON LAW PROCEDURE ACT, 1852. SECOND EDITION.

MR. CROCKFORD, in announcing that this book is now ready, requests us to offer an apology for the short delay which has taken place in its publication; a delay which has resulted entirely from the printer having more to do than he could possibly overtake at this busy printing season.

The forms of proceedings given in the first edition have been subjected to a careful revision by the editor, and a large number of additional forms, which appeared likely to be practically useful, have been introduced.

All the cases which were decided upon the new procedure during last Michaelmas Term, and which have from time to time appeared in these columns, have been inserted under those sections of the Act, the effect of which they illustrate or explain; while to the Appendix have been added an abstract of the Nisi Prius Office's Act, and the new tables of fees framed under sec. 10 of that statute.

VOL. XX. No. 508.

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THE LAW TIMES.

SATURDAY, DECEMBER 25, 1852.

TO READERS.

CHRISTMAS-DAY falling on a Saturday, we publish on Friday. We have taken advantage of this to dispose of a large arrear of matter that had been standing in type for a long time, waiting for a place. We shall now be enabled to begin the new year with almost a cleared stage. Hence the curtailment of leading articles and other original reading.

LORD ST. LEONARDS.

THE late LORD CHANCELLOR had devoted himself, with a zeal as unequalled as his ability, to his duties as a Judge and as a Reformer of the Law. He had not mingled at all in politics,—indeed, we believe he did not make one political speech during the entire period of his office. Great hope, therefore, was entertained that he would accept the office which Lord ABERDEEN is said to have made to him, that he should continue to give to the country the benefit of his great services, in his character as a Lawyer and a Law Reformer, by remaining in the high office in which he has won such golden opinions from all sorts of men. We regret to announce to our readers that Lord ST. LEONARDS felt that he could not, consistently with honour, accept this unprecedented but well-deserved tribute to his worth as a public servant, and that he was bound to retire with the Government by which he was placed at the post where he has done so much substantial service, and shewn such mastery of the *science* as well as of the technicalities of the law of England.

From the whole Profession, irrespective of party, there will, we are sure, be but one expression of profound regret at the retirement of so splendid a Judge and so practical a Reformer of the Law.

We trust, however, that we shall not lose his services altogether in either capacity. He may still give to his country the benefit of his judicial powers in the appeals in the House of Lords, and promote rational Law Reform by submitting his own measures to the Legislature, where they will not be received with the less respect because he no longer sits upon the woolsack.

CRIMINAL APPEAL.

THE newspapers are teeming with comments upon the unsatisfactory nature of the evidence on which Mr. KIRWAN has been convicted of the murder of his wife. Few Lawyers, accustomed to the analysis of evidence, and experienced in the fallibility of witnesses who are most desirous to tell the truth, will review that trial without coming to the conclusion that it is at least so doubtful as not to justify a conviction. Mr. KIRWAN *may* be guilty, but the evidence is quite consistent with innocence, and it is not the custom in this country to hang men because they *may* have committed a crime. This case fails in the first step: there is no proof whatever that Mrs. KIRWAN was murdered—that she did not die from natural causes.

We have received a pamphlet vindicating one Dr. SMYTH, who was some time since convicted of rape under improbable, if not impossible, circumstances, on the testimony of a girl who had slept the previous night in a brothel!

In our own personal experience, we have seen some eight or ten persons convicted of crimes, who were afterwards *proved* to be innocent and pardoned; we have known twice that number of instances of innocent men convicted, but who were unable to *prove* innocence, because of the difficulty of proving a negative.

The Chaplain of the Devon County Gaol informed us that, from his religious intercourse with the prisoners, he had reason to believe that there was rarely a sessions or an assizes at which one or more innocent men were not convicted.

Does not this prove the necessity for an appeal in the form of a new trial?

If 20*l.* be in dispute, a new trial is allowed, because Judges and juries are supposed to be fallible. Are they not equally fallible where life or liberty is at stake?

Or is it that the law esteems property beyond liberty or life?

If there be any reason for permitting a second hearing of a question of money, the same reason must apply with tenfold force for permitting a second hearing of a question on which depends life, liberty, and reputation.

Who will signalize himself by taking up this question, and securing for the lives and liberties of an Englishman the same measure of justice and protection as is accorded to his property?

Of course we do not suggest an indiscriminate right of appeal, but only the same privilege as is now enjoyed in civil cases—that if the party considers he has not had a fair trial, he should be permitted to move the Court for a new trial on satisfying them that justice requires it.

Surely the Judges are as competent to determine whether new trials *ought* to be allowed in criminal cases, as they are now in civil cases; and the only objections the possibility of their being overburdened with business, is now removed. There is no fear of the Courts of Westminster being overwhelmed; they are more likely to die of inanition. It will be a charity to give them something to do.

NEW PRACTICE IN THE COURT OF CHANCERY.

THE mode of procedure in the Courts of Chancery having been very much altered of late years, and especially by the Acts of last session, it is proposed to give, in a series of articles, a concise account of the course of a Chancery suit according to the present practice of the Court, noticing, however, so far as to render intelligible, the late changes, the ancient usages of the Court.

There are different modes in which proceedings may be commenced in Chancery, which we propose to notice seriatim under three heads:—*First*, by bill or information; *secondly*, by claim; and, *thirdly*, by certain more summary proceedings, either by petition or summons.

1ST. AS TO PROCEEDINGS BY BILL OR INFORMATION.

The person applying to the Court of Chancery for relief, who is called the plaintiff, does so by *bill*, addressed to the Holder of the Great Seal, or to the King or Queen in Chancery, in case the person holding the seals is a party or the seal is in the King's hands. But if the suit is instituted on behalf of the Crown, or of those who partake of its prerogative, or whose rights are under its particular protection, as the objects of a public charity, the matter of complaint is offered to the Court by way of *information*, given by the proper officer, viz. the Attorney or Solicitor General. (Mitf. Plead. 7.) The bills to which the remarks immediately following relate, are those usually known as original bills, praying relief, and as the practice in conducting a suit commenced by bill differs very little from that in conducting a suit commenced by information, it may be considered, that what is hereafter said with respect to bills is also applicable

to informations, except where a difference is stated to exist between those two modes of procedure.

FORM OF BILL.

The bill states in the shape of a concise narrative the material facts, matters, and circumstances upon which the plaintiff relies, and it is divided into paragraphs, numbered consecutively, each paragraph containing, as nearly as may be, a separate and distinct statement or allegation; the bill then concludes with a prayer for the specific relief which the plaintiff may consider himself entitled to, and also for general relief. The names of the persons against whom the suit is instituted, who are called defendants, are next written down, and the bill is signed by counsel, by whom it is usually said to be settled, but by whom, in practice, it is in reality drawn, and by whom it must be signed. Lastly, there is a note stating the names and address of the solicitors for the plaintiffs by whom the bill is filed. (See 15 & 16 Vict. c. 86, s. 10; and for a form of a bill, see Schedule B to the orders of the 7th August, 1852.)

Under the old system the body of the bill contained interrogatories founded upon the statements in the bill, for the purpose of obtaining discovery from the defendants. According to the new practice the bill is not to contain any interrogatories, which, however, as we shall hereafter see, may, if necessary, be afterwards filed separately for the same purposes as heretofore.

Previous to the 1st November, 1852, bills were engrossed on parchment, and then filed, but from and after that day every bill (with the exceptions which will be shortly mentioned), is to be *printed*, and a copy thereof is to be filed by the record and writ clerks in the same manner as they formerly used to file an engrossment. (15 & 16 Vict. c. 86, s. 1.)

A slight alteration in *writing* to correct a mistake in a printed bill will not constitute a sufficient ground for the Clerk of Records and Writs refusing to file the same. Thus, in *Yeatman* v. *Moulsey*, where an alteration in a printed bill was made in writing, a person whose name was Constantia Maria having in the printed bill been wrongly described as Maria Constantia, the plaintiff's solicitor altered the bill, in writing, by striking out the printed word "Maria," and inserting the same word in writing after the word "Constantia." The LORDS JUSTICES held that the bill, in its altered state, was to be treated as a printed bill within the meaning of the statute. "We must not, however," observed Lord Justice KNIGHT BRUCE, "be understood as intending to sanction the filing of a bill of this kind where the alteration is at all extensive or important, or where it is such as to interfere with the legibility of the bill." (20 Law T. Rep. 106.)

MODE OF COMPELLING APPEARANCE.

Formerly, when the bill was filed, the first step to compel the appearance and answer of defendants was to serve them with a subpœna; that is to say, with a writ called by that name, because, according to the old form, it commanded a defendant to appear and answer sub pœna centum librorum. (Dan. Ch. Pr. 409.)

The writ of subpœna is, however, now abolished, and the plaintiff, instead of serving the defendant with a subpœna to appear and answer, must now serve him with a *printed* bill of complaint, which must have (15 & 16 Vict. c. 86, ss. 2, 3), with such variations as circumstances may require, the following *indorsement* thereon:—

Victoria R.

To the within-named defendant C. D. greeting.

We command you ["and every of you," *where there is more than one defendant*], that within eight days after service hereof is given, exclusive of the day of such service, you cause an appearance to be entered for you in our High Court of Chancery to the within bill of complaint of the within-named A. B. and that you observe what our said Court shall direct.

Witness ourself at Westminster, the day of , in year of our reign.

NOTE.—If you fail to comply with the above directions you will be liable to be arrested and imprisoned.

Appearances are to be entered at the Record and Writ Clerk's Office, Chancery-lane, London. (See Schedule to 15 & 16 Vict. c. 86.)

The printed bill, previously to its being served, must be *stamped* with a proper stamp by one of the clerks of records and writs, indicating the filing of such bill of complaint, and the date of the filing thereof. (15 & 16 Vict. c. 86, s. 3.)

It may here be remarked that the *filing* of a printed bill of complaint has the same effect as the filing of a bill of complaint *and* issuing of a subpœna had under the old practice; and its *service* upon the defendant properly indorsed and stamped will have the same effect as the service on him of a writ of subpœna formerly had, and will entitle the plaintiff to such remedies for default of appearance, and otherwise as he was formerly entitled to in case of due and proper service of a subpœna. (15 & 16 Vict. c. 86, s. 4.)

A defendant therefore now incurs the following liability for *default of appearance*, which, it will be observed by the indorsement in the bill, must be entered within eight days after service of the bill, exclusive of the day of service.

First, he may proceed against an *unprivileged* person by having an attachment issued against him. (Order XVI. May 1845, art. 3); against *privileged* persons, as peers and members of Parliament, by a sequestration against their property; against corporation first by distringas, then by alias distringas, and pluries distringas on which sums to a small amount are levied, and failing to produce obedience, a sequestration is lastly issued against the property of the corporation.

Secondly, instead of proceeding by way of attachment or sequestration, a plaintiff may enter an appearance for a defendant not appearing within the eight days after service, except when the defendant is an infant or a person of unsound mind. (Order XXIX. May 1845; Dan Ch. Prac. 427); and the Court, on the application of the plaintiff, may order a solicitor to be assigned as guardian of an infant, or a person of weak or unsound mind, not so found by inquisition, on his non-appearance, in order to appear and defend the suit. (Order XXXII. May 1845).

An appearance may be entered for a person having privilege of Parliament on application by the plaintiff producing the return of the process of sequestration issued against him. (Stat. 1 Wm. 4, c. 36, s. 12.)

MODE OF SERVICE OF A PRINTED COPY OF A BILL.

The service upon a defendant of a printed copy of a bill of complaint is to be effected in the same manner as service of a writ of subpœna was formerly effected; that is to say, by delivering it to the person to be served, or by leaving it at his dwelling-house, except that it will not be necessary to produce the original bill, which will be on the files of the Court. (15 & 16 Vict. c. 86, s. 5.)

In addition to the above-mentioned mode of serving a defendant, which is called *ordinary service*, there is an *extraordinary* service, which the Court has power to order; first, under its general jurisdiction, by ordering service within the jurisdiction to be effected upon some person other than the absent defendant, to be treated as valid against him; a subject upon which there are many conflicting decisions (Dan. Ch. Pr. 414): secondly, under its statutory jurisdiction, the Court had powers conferred upon it, of either allowing actual service under certain circumstances to be effected *out of the jurisdiction*; or, of ordering service *within the jurisdiction*, in certain cases upon a person other than the defendant, as a substitute for service upon the defendant himself. (Dan. Ch. Pr. 419.)

Under the New Practice, the Court is to be at liberty to direct substituted service of a printed bill, in such manner and in such cases as it shall think fit. (15 & 16 Vict. c. 86, s. 5.)

This very large discretionary power conferred upon the Court will be very useful, and will put an end to many of the doubts and difficulties which the decisions threw in the way of the Court in ordering substituted service.

The plaintiff is bound to deliver to the defendant or his solicitor, upon application for the same, any number not exceeding ten of the copies of the printed bill, who is to pay for the same after the rate of one halfpenny per folio. (15 and 16 Vict. c. 86, s. 7; and V. and VI. of the Orders of Aug. 7, 1852.)

WRITTEN COPIES OF BILL.

In order to prevent the inconvenience which might result by the delay which it is supposed might be occasioned by printing bills in certain cases where speed is considered requisite, viz. where the bill prays a writ of injunction, or a writ of *ne exeat regno*; or if it is filed for the purpose either solely or amongst other things of making an infant a ward of Court, a *written* bill may be filed. The plaintiff or his solicitor must, however, give an *undertaking* to file a *printed* copy within *fourteen days*, which is to be considered to have been filed at the time of filing the written copy, and if the printed bill be not filed within that period, the Clerk of Records and Writs is to take the written bill or copy of bill off the files of the court, without further order; and the plaintiff in the suit, or his solicitor, who shall have personally undertaken to file such printed copy, is to pay to the defendant all the costs incurred by him in the suit, such costs to be taxed by the taxing Master, without further order, upon the production to him of the certificate of the Clerk of Records and Writs, that a printed copy of the bill has not been filed pursuant to such undertaking, and to be recoverable in like manner as costs ordered to be paid by a party in a suit to another party in a suit are recoverable.

The service of the written copy, properly stamped and indorsed, is to have the same effect as the service of the printed copy.

It has been held that where a *written* bill has been stamped and filed under the 6th section of the Equity Jurisdiction Improvement Act, and a printed copy was afterwards filed, that a second stamp under the 12th section of the Suitors in Chancery Relief Act, and the 6th of the Orders of the 25th of October, 1852, is not necessary, as the two bills in effect only constitute one bill, and the written bill is retained on the file. (*Jones* v. *Batten*, 20 Law T. Rep. 122.)

It must be borne in mind that neither *costs*, as between party and party, or as between solicitor and client, for any written bill or copy, nor brief of bill, will be allowed, *unless the Court in disposing of the costs of the cause direct the allowance thereof.* (See 15 & 16 Vict. c. 86, s. 6, and II., III. and IV. of the Orders of 7th August, 1852.)

HINTS TO BUSY PRACTITIONERS.

[Under this title we propose from time to time to remind the practitioner of useful facts which, amid the claims of business and the flood of changes in the law, he may possibly have overlooked. As we also may overlook many, we shall be obliged by "hints" from any of our readers.]

AMENDMENT OF PROCEEDINGS IN THE SUPERIOR COURTS UNDER THE NEW PRACTICE.

WE deem it advisable to call the attention of our readers to a very important decision of Lord CAMPBELL, in reference to the powers of amending proceedings, given to the Judges by the 222nd section of the Common Law Procedure Act. We take the report from the second edition of KERR'S *Common Law Procedure Act*, just published, p. 212.

The 222nd section, it will be recollected, enacts that "All such amendments as may be necessary for the purpose of determining, in the existing suit, the real question in controversy between the parties, shall be made."

The case we refer to was that of *Mitchell* v. *Crosswaller*, which was tried at the Guildhall, before Lord CAMPBELL, on 11th December current. The action was for injuries sustained by Mrs. Mitchell. The first count was for damages sustained by the wife; and the second count for loss and expenses sustained by the husband. The defendant had pleaded "not guilty" and "not possessed." The facts of the case were these:—Mrs. Mitchell was crossing a street, when a large hooded cart belonging to the defendant came up, knocked her down, and injured one of her ancles and her thigh. The main defence was, that the carman who was driving the cart at the time of the accident had returned to his masters' premises for the evening, and had been going to put away the horse and cart in the stable, when the foreman, who was in bad health, asked to be driven to his home. The carman went to seek his masters' permission, but as they were not to be found, he took the foreman on his own responsibility, and was returning home when the accident occurred. The carman was therefore not employed on his masters' business at the time of the accident; and hence the master was not responsible for the acts of his servant. The Lord Chief Justice did not think that evidence to this effect could be given, either under the plea of "not

guilty" or "not possessed." Leave was then asked to add a plea for the purpose of trying this issue. The plaintiffs had had previous notice that this point of liability was to be raised. The Lord Chief Justice allowed the amendment, and without costs.

It would thus appear that if a defendant, after pleading, should have any doubt whether, under the pleas on the record, evidence of all his defences will be admitted, he should give notice to the plaintiff what his real defence is, and at the trial, if necessary, apply to add a plea, or amend those on the record. If this view be the correct one, the pleading of the Superior Courts will come to be closely analogous to that of the County Courts; for a defendant may always plead the general issue, and then give notice of his grounds of defence, and that he intends at the trial to apply for leave to add such pleas as may be necessary to admit evidence of that defence.

SKETCH OF THE SCOTCH LAW COURTS.

ARTICLE TENTH.

CRIMINAL PROCEDURE—A PUBLIC PROSECUTOR—NO GRAND JURY—VERDICTS OF A MAJORITY—VERDICTS OF "NOT PROVED"—COUNSEL FOR PAUPER PRISONERS—PRISONER HAS THE LAST WORD—STATISTICS.

We have described the proceedings in a criminal prosecution up to the day of trial, and have stated, that, before the prisoner can be called upon to plead, written evidence must be produced by the public prosecutor of the statutory requisites having been complied with, viz. that fifteen days previously a copy of the indictment, of the names and residences of the witnesses, and of the panel of jurors had been served on the prisoner. This service must be personal, if the accused is in prison: if he has been bailed, it must also be personal, if possible, or at the last known residence, and if access is denied at that place of residence, a copy must be affixed on the door. On the other hand we have seen, that the prisoner is not entitled to a copy of the depositions taken before the committing magistrate, or rather of the ex parte proofs: for they are nothing else than examinations not on oath, but taken in writing, and in a solemn way before the magistrate by the Crown solicitor, not materially differing from the kind of examination every attorney subjects his witnesses to, previous to a trial and with a view to fill up the proofs in his brief. The prisoner having also duly received notice of the day appointed for trial, we will now suppose that day to have arrived.

The prisoner must in general appear in person on the day of trial, otherwise he may be outlawed. But he is entitled to appear by counsel for the preliminary purpose of stating any technical objections to the service of the documents before mentioned. On this point the Court is rigorously strict in exacting from the prosecutor the utmost accuracy in the copies given to the prisoner. Of these the chief is the Indictment itself, and as the form of that document may be interesting, we shall give here a skeleton of its material parts. In Larceny it runs thus, where the prisoner has made a statement before the magistrate:—"William Cairns, alias George Douglas, present prisoner in the Tolbooth of Haddington, you are indicted and accused at the instance of John Inglis, esquire, her Majesty's Advocate for her Majesty's interest, That albeit, by the laws of this and every other well-governed realm, Theft is a crime of an heinous nature and severely punishable, yet true it is and of verity, that you, the said William Cairns, alias G. D. are guilty of the said crime, actor, or art and part, in so far as on the, &c. And you, the said W. C. alias G. D. having been apprehended and taken before J. B. esq. sheriff substitute of the shire of Haddington, you did, in his presence, at Haddington, on, &c. emit and subscribe a declaration, which declaration, as also the foresaid stolen articles, or part thereof, being all to be used in evidence against you, the said W. C. at your trial, will for that purpose be in due time lodged in the hands of the High Court of Justiciary, before which you are to be tried, that you may have an opportunity of seeing the same, all which, or part thereof, being found proven by the verdict of an assize, or admitted by the judicial confession of you, the said W. C. alias G. D. before the Lord Justice General, Lord Justice Clerk, and Lords Commissioners of Justiciary, you, the said W. C. alias G. D. ought to be punished with the pains of law, to deter others from committing the like crimes in all time coming. A. B. Advocate Depute."

After any objections competent have been made to the service, and overruled, the prisoner is then asked by the Court if he pleads guilty or not guilty. He need not plead either, but may partly confess and partly deny, in which case a plea of not guilty is entered as to the part which is not distinctly admitted. Other proceedings at this stage are nearly identical with those common in England, as when the prisoner stands mute, or is an idiot, lunatic, deaf and dumb, &c. If the prisoner pleads any special plea, he can only do so where he has given a day's previous notice to the prosecutor, though this rule is seldom enforced. There is, however, a feature of the Scotch criminal procedure which may now be specially mentioned, of which our own is notoriously destitute, except in cases of treason, which is, the assigning by the Court of counsel and attorney to all pauper prisoners. This important safeguard of the innocent and the destitute was provided by the Scottish Legislature so long ago as in 1587. A statute of that day enacts,—"That all and whatsoever lieges of this realm accused of treason or of whatsoever crime (crime in Scotland includes our misdemeanours) shall have their advocates and procurators (attorneys) to use all lawful defences, whom the Judge shall compel to procure for them in case of their refusal, that the suit of the accuser be not taken *pro confesso*, and the party accused prejudiced in any suit, before he be convicted by lawful trial." This statute has been in full force for nearly three centuries. Where the prisoner, therefore, has not previously applied for counsel or attorney, the Court will assign them to him as a matter of course, as soon as he is arraigned, and no counsel can refuse to act. Where at Sessions no counsel attend, an attorney is then assigned as advocate. The Junior Bar of Scotland naturally are preferred to this branch of practice, and it is eagerly welcomed, not for its emoluments, but for what to many is more valuable, an opportunity of exercising their professional skill.

After pleading not guilty by advice of counsel, the prisoner is allowed to demur to the indictment, and the demurrer must then be disposed of; the judgment on a demurrer against defendant not being in any case final, but merely that he plead over. The panel of jurors summoned, and which consists of forty-five persons, is then called over, and fifteen are selected out of that number by ballot. The prisoner, besides challenging the array, has in all cases whatever (be it felony or misdemeanour), a peremptory challenge of five jurors, and any number of challenges for cause assigned. The jury then are sworn, and it must be borne in mind, that in Scotland the jury empanelled to try an indictment invariably amounts to *fifteen* persons.

There are some peculiarities in the procedure regarding witnesses, which may also be noticed. It is an invariable rule, never departed from, that the witnesses are never allowed to be in court after the evidence begins, but, on the contrary, are kept by themselves in a separate chamber, under the custody of the usher. So rigid is this rule, that, if a witness has happened to be in court, while another gave his evidence, that is a circumstance fatal to the former's admissibility. We have already stated that no witness can be produced against a prisoner on his trial, of whose name and occupation and at least residence, the prisoner was not informed by notice fifteen days previously. If a wrong address was given, or one at which the witness could not be found, or in general, whenever the prisoner has been misled by the information, this also is fatal to the witness's admissibility, provided the objection be taken before the jury is sworn. We have also stated, that the written examination of the witnesses taken before the committing magistrate not being on oath or admitting of cross-examination, cannot be given in evidence at the trial. Indeed, a witness at the trial may refuse to be sworn until his written evidence thus taken before the committing magistrate is first cancelled. Another peculiarity is now to be noticed, which may be considered as a set-off in favour of the prisoner against his want of an opportunity to cross-examine the witnesses who appeared before the committing magistrate, which is this, that he is absolutely entitled by his attorney to examine beforehand every witness, whom the public prosecutor is to bring against him at the trial. This he is enabled to do by means of the list of witnesses furnished to him as before described, and he can thus ascertain with great accuracy the nature of the evidence against which he must contend; indeed, if he can shew that his attorney has not been able to obtain access to any witness, this is a good ground for asking a postponement of the trial. Though, however, the prisoner's attorney is thus entitled to see and examine the Crown witnesses who are to appear at the trial, so as to know what they can speak to, the interview is permitted to take place only in presence of the Crown solicitor, or his clerk, or some person authorised by the magistrate. This restriction is imposed with a view to prevent the prisoner or his attorney from tampering with the witnesses. The law of Scotland also declares, that the evidence of a single witness, however clear and conclusive, is not sufficient in any case, whether of felony or misdemeanour, to warrant a conviction, unless at least there is also very strong corroborative testimony; and the rule is carried to a degree of stringency unknown in this country.

When a witness is called upon to give evidence in a criminal trial in Scotland, the manner in which he is sworn is much more impressive than in this country. It is the Judge and not the usher, who administers the solemn formula. No New Testament is tendered, but instead thereof the Judge calls on the witness to hold up his right hand, and repeat after him the following words:—"I swear by Almighty God, and as I shall answer to God at the Great Day of Judgment, that I will tell the truth, the whole truth, and nothing but the truth, in so far as I know, or shall be asked on this occasion."

The order in which counsel address the jury is also somewhat remarkable. When the Criminal Law Commissioners in 1844 elicited so many opinions as to the leading points of our criminal procedure, it will be recollected, that many gentlemen expressed an opinion, that some invariable rule should be adopted of securing to the prisoner's counsel the last word to the jury, much injustice being too often done by the prosecutor's privilege of reply. On this subject, the Scotch procedure can throw important light, for the Scotch act invariably on the contrary practice to ourselves, and altogether it must be admitted that they have adopted the more rational and humane plan. The following is the mode in which they conduct their prosecutions. After the jury is sworn, and the preliminary objections already referred to disposed of, the prosecuting counsel commences, not with an address to the jury, telling them with copious and minute detail of the facts, which "he hopes to be able to prove" by his witnesses, but with calling these witnesses at once. It is very rarely indeed that any preliminary statement whatever is made by either counsel, the general rule being that which has now been stated. The prosecuting counsel, therefore, calls his witnesses one by one, the prisoner's counsel cross-examining, and the other re-examining, if necessary. Junior counsel take the examination in chief, alternately with their leader, if the latter think fit. After the prosecuting counsel has called all his witnesses, the prisoner's counsel immediately calls his own witnesses seriatim, who are dealt with by the other side in the same way. When the witnesses for the defence have been exhausted, then the senior prosecuting counsel begins to address the jury, commenting, with what amplitude he thinks proper, on the evidence produced on both sides. After he has concluded, the prisoner's counsel then rises, and addresses the jury in reply, and this ends the case. If, however, from any peculiarity of the case, further evidence should be called incidentally or otherwise, or any discussion arises on a point of law, the rule is invariable, that the prosecuting counsel speaks first, and the prisoner's counsel replies, speaking last. The Judge then immediately sums up. Though it must be confessed there are obvious advantages to the prisoner in this procedure, it is, nevertheless, found in practice to give rise to this disadvantage, that it too often happens that the Judge displays a tendency to assume the advocate, and reply to the prisoner's counsel. This, however, perhaps, is an evil which exists to some extent even in our own practice, with this additional aggravation, that with us the jury are favoured with two successive replies, to the prisoner's counsel instead of one, which is all that is possible in Scotland.

The next point to be noticed is the constitution and powers of the jury. Since the Scotch jury in criminal cases consists of fifteen persons, it is not so much to be wondered at that a verdict by a majority should be held valid, inasmuch as there must thus be always a concurrence of at least eight voices. A considerable proportion of the consulted

leaders of our profession ten years ago, expressed a desire to see effect given to the decision of some majority even in our own jury of twelve, some consenting to fix the minimum at eight, some at nine, and others at ten out of the twelve. Our partiality for the rule of unanimity may be somewhat inveterate; yet nevertheless, satisfactory as the Scotch may find their juries to work by a majority, we cannot help thinking, that it is impossible to answer the one solid argument in favour of our own practice, that nothing tends more effectually to compel the jury to consider and weigh well the evidence in all its bearings, to correct misapprehensions, and review hasty impressions, aided by minds having equal opportunities of judging, than the knowledge that they must be unanimous in their ultimate finding.

Not only does a Scotch verdict in a criminal case not require to be unanimous, but it does not require to be even one out of the two —"guilty," or "not guilty,"—for it may be something intermediate, viz. "not proved." If a *strict adherence* to truth be a primary requisite of a jury's finding, there can be no doubt that such a verdict as this, which in fact declares, that while there is well-grounded suspicion against the prisoner, yet it is not strong enough in the eye of the law to warrant condemnation, is one which exists in the nature of things. Every person who has witnessed the proceedings in a jury trial sees that such a verdict is an accurate reflex, and aptly represents the result of the whole evidence, and the effect which is left on the spectator's mind. The objection that is most generally urged against such a verdict is, that it invariably leaves a stigma on the character of the prisoner which clings to him for life. The answer to this seems to be, that it is not the jury's fault, but the fault of the unfortunate combination of circumstances with which the prisoner has come to be mixed up. It is at least a remarkable fact, that out of the whole number of acquittals that take place in the Scotch Criminal Courts, no less than *eighty-five per cent.* are cases in which "not proved" is the verdict delivered by the jury.

We have thus seen, that the criminal procedure of Scotland is in almost every feature distinguished by some peculiarity from our own. It may seem somewhat irreconcileable with our English notions of freedom, that the magistrate should have it in his power to commit the accused for trial, without even putting the witnesses to them on oath, or allowing the accused to be present at the examination, or even by his attorney or counsel to cross-examine them; but we have also seen, that there is an ample set-off in other respects in favour of the prisoner. First, the evidence taken before the magistrate is immediately subjected to the scrutiny of a practised counsel, and if a primâ facie case is not made out, the accused is immediately discharged. If he is not, he can force on his trial within a reasonable period, and he has ample time and facility for preparing his defence, inasmuch as he must be informed fifteen days beforehand of all the witnesses who are to be brought against him, and he can actually compel the Crown solicitor to allow his attorney to examine these witnesses, so as to know almost the entire extent and weight of their evidence; in addition to which, if he is unable to pay the fees of counsel, he is entitled to have their services gratuitously.

The number of prisoners who are thus discharged after at most a few days' imprisonment by the order of the Lord Advocate and his deputies the public prosecutors, for want of a primâ facie case being made out against them, is not less than 620 per annum, or 13 per cent. of the whole persons committed for trial.

The criminal statistics of England and Scotland respectively prove to a demonstration the great if not the triumphant superiority of the Scotch criminal procedure as a whole, over our own. There are two very accurate tests by which this superiority may be detected. The one is, that the least possible number of innocent persons who have been apprehended on suspicion should be detained in prison, or even put on their trial at all. The second is, that of those who are justly put on their trial, the least possible number of guilty persons should escape. The accuracy of these tests will appear perhaps sufficiently self-evident, and when one system excels another by a striking superiority in both, it may be inferred with tolerable certainty that the former is founded on more correct principles. The greater number of innocent persons who are speedily discharged, without being detained to undergo the cruel indignity of a trial, the more perfect will be the criminal procedure under which this happens. It is found, therefore, from a collection of the statistics of the two countries, that out of the total number of offenders committed for trial, while only about 7 per cent. (6·8) are not actually put on their trial through want of a prosecutor, and through the grand jury ignoring the bill in this country, nearly three times as many, viz. 18 per cent. are in Scotland discharged at once by order of the Lord Advocate a few days after commitment. In both cases these must be assumed to be persons who ought never to have been apprehended at all, or if there was reasonable ground for apprehending them, who ought at once to have been discharged. Again, it seems equally clear that where persons have been rightly put to their trial that system seems more safe and sure where the fewest persons have been so put to their trial without cause; in other words, where the least number of prisoners are acquitted. It is found accordingly that out of the whole number of persons put on their trial before the petty jury, while only 7 per cent. are acquitted in Scotland (including in that calculation the verdicts of "not proved") no less than 19 per cent. are acquitted in this country. These statistics sufficiently demonstrate the decided superiority of the Scottish system over our own.

Before concluding this notice of so many points of difference in the Scotch criminal procedure which naturally excite an interest, it may not be inappropriate also to mention that all the Quarter Sessions cases are disposed of by a regularly trained Judge, who is a counsel of some standing, viz. the County Court Judge of the district. And what may seem equally novel is, that he tries *two-fifths* of these cases without the aid of a jury at all.

THE LEGISLATOR.

Imperial Parliament.

HOUSE OF COMMONS.

Friday, Dec. 17. — The Attorney-General introduced a Bill for defining the law affecting such publications as *Household Narrative*, and for declaring that such works are not newspapers. The remaining business was then disposed of.

THE MAGISTRATE,

AND PAROCHIAL AND MUNICIPAL LAWYER.

Summary.

In the form of a County Court Appeal, an interesting case has been decided on the duties of a Clerk of the Peace. A. was convicted on two indictments for misdemeanour at Quarter Sessions, and sentenced to a fine of 4*l.* on one, and 2*l.* on the other. The trial had taken place before a second Court, sitting under the authority of the statutes. The fines were immediately paid by A.'s attorney to the person acting there as deputy for the Clerk of the Peace, and he handed them to the undersheriff. No entry was made of their receipt and payment over. The Clerk of the Peace in due time sent the roll, containing a copy of the fines, &c. (as directed by the statute) to the sheriff, with costs, addressed to him, for the purpose of levying the amounts. This roll omitted to state that the fines in question had been paid. The sheriff executed the writs, and took A. into custody, for which he brought the present action against the Clerk of the Peace. Was he liable for the neglect of the person acting as his deputy? The Court of Q. B. held, that the Clerk of the Peace would be liable, *if he received fines* and neglected to enter them, for damages arising from such neglect; but it was left doubtful whether he was liable for the neglect of the person acting as his deputy. Coleridge, J. thus stated his duties:—"Supposing him to have received the fine, and to have omitted to enter it on the roll as paid, and that then the sheriff, not knowing of the payment, levies, although the sheriff himself may not be quite free from negligence, yet I think there would be a breach of duty if the fine were paid to the clerk himself. But in this case the fine was paid to the appointee, and by him handed over to the sheriff; and whether any breach of duty by him constitutes negligence on the part of the Clerk of the Peace, depends upon the relation between the clerk and his appointee, and we have not quite sufficient facts before us to decide this point. (*Wildes* v. *Morris*, 20 Law T. Rep. 140.)

New Enclosure Act.—An Act of Parliament has just been printed to authorise the enclosure of the following places:—Bampton and Shilton, Oxford and Berks; Homanton, Wilts; Hareshaw-common, Northumberland; Beedon-common, Berks; Wigginton, Hertford; Broad-halfpenny-down, Southampton; Snetterton, Norfolk; Morestead-down, Southampton; Watford-field, Hertford; Great Marlow, Bucks; Oschill-common, Dorset; Magor, Monmouth; Undy, Monmouth; Eaton Bray, Bedford; Waltby-common, Westmoreland; Kirkby-Stephen-common, Westmoreland; Llanllugan-manor, Montgomery; Clayton, Sussex; Acklam-wold, York; Haughton, Chester; Ditton-common, Kent; High Oak-common, Hertford; Musley-common, Hertford; Aubourn, Lincoln; Fradswell-heath, Suffolk; and Bensington, Berrick-Salome, and Ewelme, Oxford. These enclosures are to be made forthwith.

County Rates.—Last year, out of the grants made by Parliament in aid of the county rates, 244,271*l.* 12s. was expended in the prosecution of the prisoners; 5,482*l.* 1s. 7d. in the conveyance of prisoners; and 69,024*l.* 8s. 6d. in the maintenance of prisoners from the 1st of April, 1851, to the 31st of March last; making a total of counties and boroughs in England and Wales of 318,778*l.* 2s. 1d. expended in the manner described.

JOINT-STOCK COMPANIES' LAW JOURNAL.

The question so long in suspense, in consequence of the contradictory decisions of different Courts and different Judges, as to the liability of a company to pay compensation to a landowner on the intended line, in consideration of his withdrawing his opposition, even although the Bill did not pass, and the railway was not made, has now been decided by the Lord Chancellor, in *Hawkes* v. *The Eastern Counties Railway Company*, 20 Law T. Rep. 117. His Lordship has taken the same view of it as appeared in the earlier cases, and has held that specific performance of such a contract should be enforced, holding that an undertaking not to oppose the Bill in Parliament is a good consideration to support the agreement. His Lordship's judgment will be read with the greatest interest, as it is one of his masterly reviews of an important practical question. "Although," he said, "the land is not wanted, yet the agreement being not to oppose, and the man being fairly in the situation of landowner, it was considered to be a contract that would probably be enforced." Again, "where, as in this case, it is an absolute and unqualified contract to take the land, I should certainly hold that no subsequent accident, certainly no subsequent conduct on the part of the company, could relieve them from the obligation they were bound by at the time they entered into it." His Lordship closed with a severe rebuke to companies and their legal advisers, who enter into contracts that are illegal, and then if they prove to be onerous to them, plead their illegality, for the purpose of relieving themselves from the charge. Although his Lordship drew a very nice distinction between the facts of this case and those in *Webb* v. *The Direct London and Portsmouth Railway Company*, 19 Law T. Rep. 2, it must be looked upon as really a reversal of that decision.

A railway company had marked a tunnel on their plan, and afterwards deviated at that spot. Upon this the question arose whether they were bound to make a corresponding tunnel on the deviated line. It was held that they had no power to deviate, but Maule, J. was of opinion, that having deviated, there was no duty imposed upon them to make a tunnel. (*Little* v. *The Newport, &c. Railway Company*, 20 Law T. Rep. 128.)

WINDING UP.

We had supposed that the question raised in *Ex parte Pearson's Executors*, 20 Law T. Rep. 123, had been more than once disposed of, and was too clear even for an argument. A provisional committeeman attended meetings. After the abandonment of the scheme, it was resolved, at a meeting of the managing committee, at which he was not present, that each director should be applied to for payment of 160*l.* on payment of which he should be released from further liability. He paid that sum. For this the Master placed his executors on the list of contributories, in direct opposition to all the recent decisions. Of course, Vice-Chancellor Stuart immediately ordered their names to be struck out.

Another decision *against* the liability of allottees. In *Ex parte Beardshaw*, 20 Law T. Rep. 140, the

directors had given a special undertaking to return the deposits if they should not obtain their Act. The Act did not pass, and then a circular was issued to the allottees to attend a meeting, at which A. was present by proxy, and resolutions of confidence in the directors were passed. A. was held not to be a contributory towards the original expenses.

AMICABLE LIFE ASSURANCE SOCIETY.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Since the publication of Mr. H. T. Thomson's last letter, in yours of the 11th inst. I have seen a book which professes to contain the charters and bye-laws of this society, and I shall presently shew, as concisely as I can, the real state of the case between us.

I must, however, be permitted to observe, that the policy effected by my client on the 9th of October, 1832, was on the life of another person, and by the charter of the company no member has a right to vote unless he has an insurance on his *own* life, nor is he entitled to notice of any of the society's proceedings.

I have also to state that the printed prospectus set out in my former letters is like those of the present day—undated. It may have been printed in 1821, as suggested by Mr. Thomson. I propose now to state the facts according to the dates supplied by Mr. Thomson's letter and the office pamphlets.

On the 30th of October, 1807, a new charter was obtained, whereby it was provided that seven-eighths of the annual premiums to be received in every year were to form the amount of dividend or bonus to be payable on the shares, on the deaths of the assured happening within the year. Each share was guaranteed at this time (according to Mr. Thomson's statement) to realise 150*l.* only.

In 1820, the claims realised 150*l.* a share, and 210*l.* bonus, or 140 per cent.

In 1823, a supplemental charter was obtained, whereby the profits were directed to be divided on an average of the five years next preceding the death of the assured.

In 1830, the shares were guaranteed to realise 200*l.* each, and the bonus on each was 80*l.* 14*s.* or 40*l.* per cent.

In 1831, the bonus on each 200*l.* share was 123*l.* 10*s.* or 62*l.* per cent.

In 1832 (April), the bonus on each 200*l.* share was 137*l.* 4*s.* or 68*l.* 15*s.* per cent.

On 9th Oct. 1832, my client effected the policy in question for ten shares (2,000*l.*) on the life of R. B.

On 12th April, 1836 (three and a half years afterwards, and without any notice to my client), the society obtained a supplementary charter, which provided that the claims to arise in the years from 1836 to 1840 should be paid at the rate of 250*l.* a share, thus giving a bonus of 25*l.* per cent. and it was thereby declared that after 1840 the profit and loss on each year should be calculated on an average of the preceding seven years.

In July, 1847, as before stated, the policy in question became a claim, and the whole amount received on it was 2,227*l.* the bonus being 11*l.* 7*s.* per cent. only, whilst the total amount paid for entrance-money and premiums being 2,425*l.* left my client out of pocket 198*l.* without receiving one farthing for the compound interest thereon during fifteen years, which, at the low rate of three per cent. would be 735*l.* 15*s.* 4*d.*

It is not my intention to enter into any controversy with Mr. Thomson on the principles of life assurance. All I propose to do is to state the plain facts, so that the legal profession should know the principle of the Amicable office. There is no other office, old or young, in London that carries out the same principles and practice. The principle of all other offices is this—the longer the policy is in force, the greater the bonus. The principle of the Amicable appears to be precisely the reverse.

If the policy had become a claim in either of the years from 1836 to 1840, the bonus would have been twenty-five per cent. and the total amount receivable, 2,500*l.* If in 1846, the bonus would have been twelve per cent. and the total amount receivable, 2,240*l.*

In 1847, it became a claim, the bonus was 11*l.* 7*s.* per cent. only, and the total amount actually receivable was 2,227*l.*

In 1851, had the policy been still in force, there would have been four additional premiums paid upon it, or, 644*l.* In that year the divisible profit was 9 per cent. and the total amount receivable would have been 2,180*l.* only.

In 1852 (the present year), if still in force, 161*l.* more would have been paid, and the divisible profit being 10 per cent. the total amount receivable would have been 2,269*l.* only, or 27*l.* less than the amount received in 1847.

It therefore clearly appears that, if the death had not taken place until the current year, my client would have paid in hard cash 3,650*l.* and would have received 2,200*l.* only, leaving him a dead loss of 850*l.* independently of twenty years' compound interest on the entrance-money and premiums.

These facts will speak for themselves.

I am, Sir, yours, &c.

London, Dec. 20, 1852. INVESTIGATOR.

PETITIONS, ORDERS, MEETINGS, APPOINTMENTS, CALLS, &c.

[Announced, issued, and made, during the past week.]

Pennant and Orsigwen Consolidated Lead Mining Company.—Call of 1*l.* per share on Dec. 20.—Tinney.

Wesleyan Newspaper Association.—Call of 3*l.* per share on Jan. 15.—Tinney.

Tontine Life Assurance Company.—Call of 7*s.* per share, on Dec. 31.—Horne.

REAL PROPERTY LAWYER AND CONVEYANCER.

ANOTHER interesting judgment of the late LORD CHANCELLOR was reported last week. *Barrington* v. *Liddell*, 20 Law T. Rep. 133, was a question on the construction and application of the famous Thellusson Act. It is not necessary to present a summary of the case, for it depends upon its special facts; but the judgment is, as usual, a masterly review of the whole law, and we take from it an important construction of the statute, which the Real Property Lawyer ought to commit to memory. The statute excepts from its prohibition "any child or children of any person taking an interest under any such conveyance, settlement, or devise." What does that mean? Lord ST. LEONARDS says, "I am compelled to say that the Legislature meant what it has expressed—that nobody's child should be provided for unless you give an interest to the parent. . . . They were forced, under this proviso, to give some definition of the parents of the children, or else, as everybody is of course the child of somebody, you would have had it apply to the whole world. The Legislature said if, upon the face of your will, you make the father an object of your bounty, you may by that same will accumulate a fund within the limit allowed by law for his children; but we will not permit you to provide for anybody. It does not exclude the case of a man having an estate for life in a property given to him by a will, where the portions are directed to be raised out of that estate for his children. But does it apply to that case only? The expression is 'any interest;' there is no limit as to amount; you are yourself to be the judge of the amount and of the extent of your bounty. If there be upon the face of the will an expression, an intention of bounty, and effect given to that intention by an absolute gift to a man, then you may provide for the children of that man portions by way of accumulation: that defines who are to be the children of 'other persons.'" Another case under this statute is reported from Vice-Chancellor STUART. A. gave to trustees 50,000*l.* for maintenance of her lunatic son B. As to the surplus, interest to accumulate, and after the death of B. to dispose of the principal and accumulations for the support of the children of B. during minority, or until their portions should become payable under the will, and on their attaining twenty-one, to call in the 50,000*l.* and accumulations, and divide the same among the children of B. This was held to be valid, as being *within the exception* commented upon in the preceding case. (*Lord Middleton* v. *Losh*, 20 Law T. Rep. 138.)

The other cases reported in this branch of the law, are scarcely capable of being described in a summary, the facts being too complicated.

CONVEYANCING.

TO THE EDITOR OF THE LAW TIMES.

SIR,—The solicitor, whose letter appears in your last number, with a proposed per-centage scale of costs in lieu of the old mode, will, I think, have some difficulty in shewing how he thereby carries out his own principle that "remuneration for conveyancing business ought not to be dependent on the length of deeds, but on the skill and labour employed, and responsibility incurred, in their preparation." How can he regulate the amount of skill and labour by the amount of money to be paid on a sale or mortgage? Are all titles alike? all abstracts the same length, and therefore the skill and labour the same in every case? On the contrary, is not the very reverse the fact? and does it not often occur that there is more skill, labour, and *responsibility* (setting aside the amount of money) incurred in preparing a conveyance or mortgage for 1,000*l.* than for one ten times that amount?

I agree, it is a "consummation most devoutly to be wished," that such a scale as the one proposed should be practicable, and in the case of a mortgagor for a small amount, the costs often press hardly; but in the present state of the law, as regards titles and property, and as regards attorneys (laches, to wit), I maintain that the per-centage scale will not do. I am, Sir, yours, &c.

ANOTHER SOLICITOR.

Manchester, Dec. 22.

LIFE POLICY OF ASSURANCE.

TO THE EDITOR OF THE LAW TIMES.

SIR,—The subjoined case, of which I have a manuscript note, and which is also reported in the authorities, may assist your correspondent "Subscriber."

From this case, and others reported, it may, I think, be said to be settled, that payment of the insurance money cannot be enforced if the life should die after the year, or period of payment has elapsed, *although the days of grace have not expired.* The insurance expires *with the Term*, and does not continue during the days of grace, or enlarged time; and if the agent takes upon himself to give *credit* for the premium, the company is not bound by it. (See *Tarleton* v. *Stainforth*, 5 T. R. 695; *Want* v. *Blunt*, 12 East, 183; Jurist, vol. 10, p. 393, 7 M. & W. 151.

I am, Sir, yours, &c.

Bristol, Dec. 20. J. C. WHITEFIELD.

SITTINGS IN BANCO, BEFORE LORD ABINGER.

November 4, 1840.

ACEY *v.* FIENIE.

Life policy—Credit for premium given by agent.

Sir *F. Pollock* moved for leave to enter a verdict for the plaintiff upon the 1st count, or for a new trial upon the 2nd count, raised by the pleadings.

This was an action on a life policy of assurance, effected by one Charles Simpson for 400*l.* with the British Commercial Company, Hull. It appeared that by the rules of the company, *fifteen days of grace* were allowed to parties whose premiums might not be paid on the proper day.

Besides this, the company makes a practice of debiting their agents with the amount of premiums which they do not report to the head office as unpaid on the fifteenth day.

Under these circumstances, the premium on this particular policy being unpaid without any report, *the agent was debited therewith*; and the assured having died within *a month afterwards*, the company resisted the claim of his representatives, on the ground that the policy had expired. In reply to this, it was argued that the defendants having *debited their agents* with the amount of premium, ought not to avail themselves of the fact that none had, in fact, been paid within the proper time by Mr. Simpson, but that the *subsequent payment* might be taken by the jury to be evidence either of a payment nunc pro tunc, or of a *new contract of assurance* upon the terms of the expired policy. It might be that there was some understanding between the agent and Mr. Simpson, or some pecuniary transactions, in pursuance of which the agent had agreed to allow himself to be debited, as if the premium had been received by him for the company; and that when he did actually receive it, it should be considered as if paid within the time stipulated for or allowed by his employers to the assured. If so, then it was submitted that there might well be said to have been evidence to go to the jury that the agent had entered into a new contract with Mr. Simpson in the terms of the original one.

The COURT, however, thought that the verdict which had passed for the defendant, ought not to be disturbed. The only ground on which the action could succeed was, that the agent at Hull had been the *agent of both parties*, but that was not so, and it was clear that he had no authority whatever to enter into any *new* policy with one who had allowed the original contract *to expire by default* of payment of the premium. Neither could it be said that the *debiting of the agent* of the company with the amount of the premium, because he had not reported it as unpaid, was to be taken to be a payment to them of the premium. That was only a practice adopted by them for the purpose of keeping their agents in order. It was the duty of the agents to *report the cases* where the premiums were not paid within the fifteen days, and to return the receipts; and if he takes upon himself not to do so, but to receive the money after that time, *it is clear that the company cannot be bound by it.* There is therefore no ground whatever for saying that the payment so made to the agent, or the debiting of the agent by the company, is evidence of any new contract. *Rule refused.*

COUNTY COURTS.

Summary.

A COUNTY Court appeal was reported last week, but it related entirely to a question of general law,

and involved nothing on the law or the practice of the County Courts, so that it is noted in the department to which it properly belongs.

But there are several reports in *Insolvency*. In *Re Rothery*, 20 Law T. Rep. 143, the petition was dismissed, because all the places where the petitioner had resided for six months previously to filing the petition were not fully set forth in it; and in *Re Lockwood*, 20 Law T. Rep. 143, it was dismissed for not being duly attested. In *Re Hackney*, 20 Law T. Rep. 143, where a debtor had been arrested at the suit of a creditor, who had gone to America, and the wife of that creditor filed a petition and vesting order, it was set aside. In *Re Miles*, 20 Law T. Rep. 144, the Court recommended an allocation of the pay of a military officer for the benefit of the creditors, although he refused to swear to his schedule, or take his discharge. In *Re Carlton*, 20 Law T. Rep. 144, it was questioned, but not decided, if a pension from the Royal bounty to a literary man came under the allocation clause of the Insolvent Act. But it was held that, if it could be regarded as after-acquired property, the creditors under a previous insolvency would be rateably entitled to it. In *Re Haslett*, 20 Law T. Rep. 144, where a landlord had destrained the goods of an insolvent the day after his arrest, and they were purchased by third parties, and still left in insolvent's possession, it was held that they would not pass to his assignee; and in *Re Edwards*, 20 Law T. Rep. 144, it was decided, that though an insolvent may be out of custody when his case comes on for hearing, the Court may retain his petition, and give liberty to an ad interim assignee to apply for costs of opposition out of any fund in his hand.

LATE CASES ON THE LAW AND PRACTICE OF THE COUNTY COURTS.(a)

VIII.—CASES ON QUESTIONS OF INTERPLEADER.

A BILL of interpleader is where a person who owes a debt or rent to one of the parties in a suit, but, till the determination of it, he knows not to which, desires that they may interplead, that he may be safe in the payment. In this case it is usual to order the money to be paid into court, for the benefit of such of the parties to whom, upon hearing, the Court shall decree it to be due.

By the statute of the 8th of Anne, c. 14, s. 1, it is enacted, that "no goods or chattels whatsoever, lying or being in or upon the messuages, shall be liable to be taken by virtue of any execution on any pretence whatsoever, unless the party at whose suit the said execution issued out shall, before the removal of such goods from off the said premises, pay to the landlord all such sums of money as shall be due for rent for the said premises at the time of taking such goods and chattels, provided the said arrears of rent do not amount to more than one year's rent."

By s. 107 of the 9 & 10 Vict. c. 95 (the County Courts Act), it is enated, that "so much of an Act passed in the eighth year of the reign of Queen Anne, intituled, 'An Act for the better Security of Rents, and to prevent Frauds committed by Tenants,' as relate to the liability of goods taken by virtue of any execution, shall not be deemed to apply to goods taken in execution under the process of any Court holden under this Act; but the landlord of any tenement in which any such goods shall be so taken, shall be entitled (by any writing under his hand, or under the hand of his agent, to be delivered to the bailiff or officer making the levy, which writing shall state the terms of holding, and the rent payable for the same) to claim any rent then due to him, not exceeding the rent of four weeks, where the tenement is let by the week, and not exceeding the rent accruing due on two terms of payment where the tenement is let for any other term less than a year; and not exceeding in any case the rent accruing due in one year: and in case of any such claim being so made, the bailiff or officer making the levy shall distrain as well for the amount of the rent so claimed, and the costs of such additional distress, as for the amount of money and costs for which the warrant of execution issued under this Act, and shall not proceed to sell the same, or any part thereof, within five days next after such distress taken; and if any replevin be made of the goods so taken, such of the goods shall be sold under the execution as shall satisfy the money and costs for which the warrant of execution issued, and the costs of the sale, and the overplus of such sale (if any), and also the residue of the goods, shall be returned, as in other cases of distress for rent and replevin thereof; and for every such additional distress for rent in arrear, the high bailiff of the court shall be entitled to have as the costs of the distress, instead of the fees allowed by this Act for making such distress and keeping possession thereof, the fees allowed by an Act passed in the 57th year of King George the Third, intituled, 'An Act to regulate the Costs of Distresses levied for Payment of Small Rents.'"

By sec. 118 of the same Act, it is enacted, that "if any claim shall be made to or in respect of any goods or chattels taken in execution under the process of any Court holden under this Act, or in respect of the proceeds or value thereof, by any landlord for rent, or by any person not being the party against whom such process has issued, it shall be lawful for the clerk of the Court, upon application of the officer charged with the execution of such process, as well before as after any action brought against such officer, to issue a summons calling before the said Court as well the party issuing such process as the party making such claim, and thereupon any action which shall have been brought in any of her Majesty's Superior Courts of Record, or in any local or inferior court, in respect of such claim, shall be stayed, and the Court in which such action shall have been brought, or any judge thereof, on proof of the issue of such summons, and that the goods and chattels were so taken in execution, may order the party so bringing such action to pay the costs of all proceedings had upon such action after the issue of such summons out of the County Court; and the judge of the County Court shall adjudicate upon such claim, and make such order between the parties in respect thereof, and of the cost of the proceedings, as to him shall seem fit, and such order shall be enforced in like manner as any order made in any suit brought in such court."

And by Rule 39, under sects. 78 and 118 of the above Act of 9 & 10 Vict. c. 95, it is directed, that "when any claim shall be made to or in respect of any goods or chattels taken in execution under the process of any court holden under the authority of the said Act, or in respect of the proceeds or value thereof, by any landlord for rent, or by any person not being the party against whom such process has issued, and summonses have been issued on the application of the officer charged with the execution of such process, such summonses shall be served in such time and manner as hereinbefore directed for a summons to appear to a plaint, and the claimant shall be deemed to be the plaintiff and the execution creditor; the defendant and the claimant shall, five days before the day on which the summonses are returnable, deliver to the said officer, or leave at the office of the clerk of the court, a particular of any goods or chattels alleged to be the property of the claimant, and the grounds of his claim, or, in case of a claim for rent, of the amount thereof, and for what period the same is claimed to be due."

The first of the cases to which we shall advert as bearing on the question for our present consideration, is one which was determined in the Westminster County Court, before Mr. Moylan, to whose very able and learned judgment we must also refer. It is the case of *Barr* v. *Reid*, 1 Cox & Mac. 53. It was here decided that the statute of 8 Anne, c. 14, which gives to landlords priority of claim for rent over an execution creditor, is not repealed by the 107th section of the County Court Act, 9 & 10 Vict. c. 95. His Honour, in delivering his judgment, observed "that the point urged by the High Bailiff of Westminster, by whom the goods and chattels in question had been taken in execution under the ordinary process of the Westminster County Court, was that the statute of the 8th of Anne, c. 14 (which was passed for the express purpose of protecting landlords from pretended or collusive judgments), was in substance repealed by the 107th section of the new Act, and that in the recovery of their respective debts the execution creditor henceforward takes precedence of the landlord. I do not think such a construction of the law can be at all sustained. In order thoroughly to understand the question, it is necessary to refer, first, to the statute of Anne, c. 14, s. 1, and then to the two sections of the new Act, ss. 107 and 118. Now, it appears to me, that the intention of the 107th section, and its plain effect, is to do away with the *old inviolability* of the tenant's goods. The statute of Anne positively directed that the advance of the landlord's rent should be first made before the creditor could proceed even to remove the goods. Upon this point an erroneous practice has questionless prevailed, for the sheriff first to sell, and then, out of the proceeds, to satisfy the landlord: this error was pointed out and reproved by Lord Denman, in the case of *Cocker* v. *Musgrove and Moon*. Be that as it may, the precedence of the landlord has never been disputed. Under the new law this precedence, or superior right of the landlord, is merely modified, and in cases of small tenancy, still further restricted in amount. He must go through certain forms to assert his right. The onus of inquiry is no longer on the high bailiff, as it was formerly on the sheriff; the principle of precedence remains quite untouched. If it were not so, why impose upon the landlord the trouble and expense of serving on the high bailiff any notice of his claim for rent? could it be to secure to him what is already, and must continue to be, his, as long as the rights of property are respected? This would be tantamount to a declaration that the landlord's right to his rent is not to be altogether forfeited; on the contrary, this section is a clear and equitable one, and as plainly expressed as the English language can express it. The 118th section must be taken in connection with the earlier clause. It is in substance a reprint of the 6th section of the 1 & 2 Wm. 4, c. 58 (the Interpleader Act), and its purpose, as was that of its prototype, is merely to protect the high bailiff from an action by the creditor, if he yielded to the landlord's claim, or by the landlord, if he persisted in the execution of the process from the Court. Surely this provision for the adjudication of adverse claims between landlord and judgment creditor would be wholly useless if the construction attempted to be put upon the 107th section could be sustained. On the whole, the question seems to me to be free from all doubt. The landlord in this particular case has complied with the requirements of the Act as to notice, &c.; the rent for one term of the letting is admitted to be due, and the amount not disputed. The high bailiff has already, it appears, effected a sale of the goods, and the judgment of the Court is, that the quarter's rent be satisfied before any portion of the proceeds be available to the judgment creditor."

In the following case, A. had claimed goods seized by a bailiff in execution issued from the County Court at the suit of B. Summonses had been issued to A. and B. The notice under the 39th rule of practice was in the form following:—"I, the undersigned, &c. do hereby give you notice that the several goods and chattels underwritten [specifying them] are, and every one of such goods and chattels were, at the time of the seizing of the same, my own property, and not the property of Ross." It was held,—first, that the judges were empowered to make such a rule of practice as above, under the powers given to them by the 78th section of the County Courts Act; secondly, that the County Court judge had rightly decided that the 39th rule of practice had not been complied with by particulars merely specifying the goods and stating the amount of claim. (*Reg.* v. *Chilton*, 1 Cox & Mac. 293.)

In the next case, summonses had been issued under the 118th section of the 9 & 10 Vict. c. 95, in a case of a disputed claim, and at the hearing it was objected that no sufficient notice had been served by the plaintiff of his grounds of claim under rule 39. The judge held the objection to be fatal, and decided that the goods were those of the defendant in the original suit, and liable to the process of the Court. (*Jessop* v. *Crawley and Others*, 1 Cox & Mac. 296.)

Judgment having been obtained against a defendant in an action in the County Court, execution issued, and certain property was seized thereunder. A claim was then made by A. and B. that such goods were theirs, and the form of their grounds of claim was, "that the said two horses, two collars, and two bridles were assigned to us by an indenture dated the 28th day of May, 1850, and made between," &c. (stating the parties). Upon an objection taken at the trial, that this statement was not a compliance with Rule 39, the judge held the objection to be good, and refused to hear the claim. Upon an application to the Court of Q. B. for a mandamus to the judge to hear the claim, it was held that the statement of the ground of claim was sufficient, and the mandamus was ordered to go. (*Reg.* v. *The Judge of the County Court of Oswestry*, 1 Cox & Mac. 492; *Ex parte Harper and Another*.) COLERIDGE, J. here observed, while delivering the judgment of the Court, "that

(a) By GEORGE HANSON, Esq. Barrister-at-Law.

the question in this case is whether there has been an adjudication upon the merits; or whether the Court abstained on account of the preliminary point. Here I must take it, that the claimant has been refused a hearing, on account of not having given a sufficient notice; but as to that, it really seems to me that the notice was quite sufficient. The notice need not set out a good ground of claim; it will still be a good claim if it describes in what way the party claims. The judge will decide upon the validity of the claim when he has heard the case. This is not the case of *Ex parte Tanner*, 19 L.J. 318, Q.B. Here the claimants shew how they claim. It is said that the claim is not sufficient, as the deed may have been a voluntary one, and void as against creditors. So it may be; still they say this is our claim, and it is for the judge to adjudicate upon it."

Goods having been seized under an execution out of a County Court, a third party claimed them under an assignment, whereupon the bailiff took out an interpleader summons. The claimant in due time delivered a particular of the goods he claimed, stating, without specifying them individually, that he claimed all the goods possessed by the defendant, and stating his title. On the hearing, it was objected that the claim was bad in not specifying the goods, or setting them forth in a schedule; which objection the judge held to be good, and refused to hear the case. Upon a motion for a mandamus to compel him to hear, it was held that the particular was sufficient. (*Heslop* v. *M'George*, 18 Law T. 109.)

As nearly connected with this subject, we shall next proceed to consider the cases recently determined on the question of replevin.

THE LAWYER.

Summary.

EQUITY PRACTICE. — An unusual number of practice cases were reported last week. A brief note of each will suffice.

In the new practice of *Evidence*, it was held in *Booth* v. *Tomlinson*, 20 Law T. Rep. 136, that the Court has no power to order the *viva voce* examination of a defendant in a suit already at issue. But in *Hextall* v. *Cheatle*, 20 Law T. Rep. 139, Vice-Chancellor STUART ordered such an examination of a party to the cause, under a decree made before the passing of the new Act.

In *Re Martin's Estate*, 20 Law T. Rep. 136, the Court refused to make an order as to the particular conveyancing Counsel to whom a title was to be referred, observing, "It might be such of them as had less business than others if despatch were required."

In *Everett* v. *Belding*, 20 Law T. Rep. 136, the owner of an estate, subject to charges, who had been made defendant to a suit in respect of them, was compelled to attorn to a receiver appointed in the cause, and a reference was directed to the Master to fix an occupation-rent.

Vice-Chancellor STUART suggested the propriety of altering the form of the decree in the ordinary administration suit, now that a simple contract creditor was entitled to payment out of the real estate. It was proposed that in such decrees an inquiry should be directed whether there was real estate. (*Gregory* v. *Atkinson*, 20 Law T. Rep. 140.)

In the practice of *Inspection of Documents*, a very important case is reported from Vice-Chancellor KINDERSLEY'S Court. It was held in *Bartley* v. *Bartley*, 20 Law T. Rep. 140, that where a plaintiff had obtained the usual order to inspect documents in the possession of one of the defendants, a co-defendant has no right to attend such inspection if the defendant in possession of the documents objects.

COMMON LAW.—A nice point in the law of *detinue* was raised in *Crossfield* v. *Such*, 20 Law T. Rep. 141, by demurrer to pleas—as to one portion of the goods non detinet, and, as to the residue, that after the commencement of the suit plaintiff returned them to defendant, who accepted them, and, as to the damages claimed for the detention, defendant pleaded payment of 1s. into court. The question thus raised was as to the effect of the delivery up of the goods after suit upon the damages—could plaintiff in such case recover damages for the previous detention? The Court said,—"It seems, therefore, in detinue for goods, if all or any are delivered up after suit, the plaintiff can have no judgment to recover them or their value, but he may have judgment to recover damages for their detention, if the plaintiff has sustained any; otherwise, not; and, for the residue, the plaintiff may have the usual judgment to recover them or their value, and damages for their detention. . . . In all personal actions money may be paid into court by way of compensation or amends; this is a personal action, in which such compensation or amends is sought to be recovered, although the goods or their values are also sought to be recovered. The case is within the spirit of the Act."

WRITS SENT INTO THE COUNTRY FOR SERVICE.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Allow me, as a country attorney, to call your attention and that of the Profession generally, but especially London agents and attorneys, to the continued omission of those who send writs, and other proceedings into the country for service, to *pay punctually their accounts for agency*.

The books of our firm contain many such accounts standing open and unpaid, and I have reason to know that in most of the cases the agency charges have been received and kept by those who ought to have handed them over to the proper quarter.

In one or two instances I have threatened to sue London firms, and I know several who have been compelled by the County Courts to pay their just debts.

In some instances I am willing to allow that the neglect may be an oversight; but, in the great bulk, I fear *the desire* "to owe no man anything" is wanting.

For my part I have almost resolved to send back the writs unless a remittance accompany them; the charge, in all ordinary cases, might be ascertained and sent in postage stamps.

By publishing this in your widely circulated paper you will much oblige a constant subscriber, and, in conclusion, allow me to remind defaulting members of the Profession, that honour without honesty is a bauble not worth possessing.

I am, Sir, yours, &c.

Dec. 20. ONE, &c.

MASTERS EXTRAORDINARY.

TO THE EDITOR OF THE LAW TIMES.

SIR,—As a recompense for us unfortunate gentlemen, which in justice ought to be granted to us, I would suggest that all who apply to the Chief Justice, by memorial in the usual way, should, on his approval, receive the appointment of "Commissioner for taking the Acknowledgments of Deeds by Married Women," and remit a year's (or two years', as the case may be) certificate duty to those who do not apply, and have been admitted attorneys within a certain number of years (say ten); because, as a general rule, it will be presumed that any one who has had the appointment during that time will have gained a sufficient emolument by it to repay him for his first outlay.

I am, Sir, yours, &c.

AN EX MASTER EXTRA. &c.

Dec. 13, 1852.

COMMON LAW REFORM.

TO THE EDITOR OF THE LAW TIMES.

SIR,—When the Common Law Procedure Act came into operation on the 24th of October last, the Profession naturally expected, that as their fees were to be reduced nearly one-half (as they have since been), that the payments out of pocket to the Government officers for issuing writs, signing judgments, and other process, would be reduced accordingly; but, instead of a reduction being made, an increase has been enforced upon almost every proceeding, for example, the payment for signing judgment before the above Act was 8s.; it has since been increased to 10s. but is now fixed at 9s.; writs of fi. fa. and ca. sa. were 1s.—now 5s. each is exacted; for searching for an appearance no charge was made—it is now 6d.; taxing a short bill of cost was about 2s.—it is now 3s. 6d. and 5s.; but, notwithstanding these increased payments, the costs given by the Taxing Masters upon a judgment under 20*l.* are only 54s.; and above 20*l.* only 4*l.* are allowed. With this additional taxation, how is it possible for the Profession to pay fair salaries, office and other expenses, when our fees are cut down below a proper remunerative scale? For, what with such increased demands, together with a duty of 120*l.* upon the articles of clerkship, 30*l.* admission fees, and 12*l.* per annum afterwards to allow us to practise, I think it can be well said our taxes are heavy indeed.

We have long endeavoured to obtain a repeal of the Certificate Duty, and now that its payment must be occupying the attention of every practitioner, I do hope that another bold stroke will be made to abolish this obnoxious burden. A moderate reduction of our costs is not what we object to, but such wholesale taxation as that to which I have just alluded presses most harshly upon the hard-working professional man.

I write this letter at the request of several members of the Profession, and therefore trust you will do me the favour to insert it.

I am, Sir, yours, &c.

Bedford-row. J. B. H.

THE RETIRING LORD CHANCELLOR.—The importance of the following provision in the New Chancery Act (15 & 16 Vict. c. 80), will be felt in the retirement of Lord St. Leonards as Lord Chancellor. Section 60th: "Whereas it has frequently happened that after cases have been fully heard by the Lord Chancellor in the Court of Chancery, and are standing for judgment, the Lord Chancellor has delivered up the great seal without being able, by reason of other urgent public business, to deliver judgment therein, and much inconvenience and expense to the parties has been thereby occasioned. For remedy thereof, be it enacted that in every case it shall be lawful for the person who has so delivered up the great seal, within six weeks after he shall have so delivered up the same, to give to the registrar of the said court a written judgment therein, signed by him; and a decree or order, as the case may require, shall be drawn up in pursuance of such judgment, and every such judgment and every such decree or order shall have the same force and effect as if the judgment in pursuance whereof it is drawn up had been given in open court the day before he shall have so delivered up the great seal."

THE MERCANTILE LAWYER.

ONLY a case in bankruptcy required notice in this department. In *Re Addis and Others*, 20 Law T. Rep. 142, the form of acceptance of a bill of exchange, given by one of several partners for a private debt, but purporting to be the acceptance of the firm, differed from that always used by the firm, and the public was not acquainted with that form. A proof tendered against the joint estate upon an acceptance so differing, was rejected, although there was no question as to the holders having given sufficient value for the bill, upon the principle that there is no implied authority in law, for one partner to accept or give bills in the name of the firm, so as to bind the partnership assets in any other manner than in the usual and proper partnership name, according to the style of the firm known to the world, and with which the public have been acquainted by use and reputation.

PROCEEDINGS OF LAW SOCIETIES.

SOCIETY FOR PROMOTING THE AMENDMENT OF THE LAW.

THE monthly meeting of this society was held at their rooms, 21, Regent-street; VANSITTART NEALE, Esq. in the chair. The minutes of the last meeting having been confirmed, and several new members having been ballotted for and elected,

Mr. BLUNDELL rose to move, "That it is expedient that an appeal should be allowed to suitors in County Courts who may be dissatisfied with, or aggrieved by the decisions of County Court judges in cases of insolvency." He disclaimed any wish to deprecate the County Courts, but he thought that in insolvency cases there should be an appeal to a higher tribunal. Two cases had occurred within his own knowledge, one in which the judge had frankly acknowledged that he was wrong, but said it was not in his power to remedy the wrong. The other was a case of gross partiality.

Mr. CHEER rose to order, and

The CHAIRMAN requested Mr. Blundell to confine himself to abstract principles, and not enter into personalities.

Mr. BLUNDELL then, amid much interruption, and calls to order, proceeded to state the particulars of a case in which he was engaged on behalf of some clients of his. A debtor of his client had been induced to sign a deed of assignment, and he subsequently became insolvent. He (Mr. Blundell) went down to the court in one of the midland counties, and required to see the deed, which he believed to have been fraudulently obtained; but the judge said it was prepared by a friend of his, and he refused to permit it to be produced, and he adjourned the case till October, and told Mr. Blundell that he might find out what day in October the Court would be adjourned to. In October he went down again. Another gentleman was sitting for the regular judge, and

he of course could do nothing. The case was adjourned a third time; and at last the deed was produced, and a number of persons connected with the judge had got up a memorial, and attacked him (Mr. Blundell) in the local papers, and when he replied, they brought an action for libel against him. The upshot of it all was that his clients had no remedy for what they conceived to be a great wrong done to them. With regard to the general question of insolvency, he found that since the insolvency cases had been administered in County Courts, the amounts paid in by the County Court clerks within three years was 1,814*l.* while in the three preceding years the money paid into court by the clerks of the commissioners was 15,900*l.* He believed that if there was a right of appeal, such cases as he had referred to would not be at all likely to happen, as the judges would act under a wholesome fear of correction.

Mr. Serjeant Gazelee asked if there was any appeal from the Commissioner of the Insolvent Court in London?

Mr. Blundell said there was not. He thought it ought to extend to the metropolitan courts as well.

The motion, with a slight alteration affirming the desirability of appeals in insolvency cases generally, was then carried, with two dissentients.

THE LAW OF REAL PROPERTY.

Mr. Peachey then moved—"That it is essential to reduce the law of real property to one defined system, that of free and common socage, by the immediate abolition of all customary and exceptional laws; that it is also desirable to amend the law of forfeiture as between landlord and tenant by an enactment that all forfeitures shall be relievable at law, or in equity, upon such terms as the Court shall think fit." With regard to the first part of the resolution, little required to be said; for they were all agreed that it was desirable to abolish copyholds and customary tenures; until they did which, it was impossible to have a general registration of deeds, or a codification of the laws relating to real property. With regard to the second branch of the subject, all who had anything to do with property in the neighbourhood of London would understand its importance. It was not unfrequently the case that non-insurance for a single day incurred a forfeiture of the property; and persons holding under a sub-lease incurred a forfeiture of their property by other persons who had property under the same lease not fulfilling the covenants. Not long ago the half of Somer's-town was under ejectment under these circumstances; but the present earl stopped the ejectments. To be sure, juries were very much indisposed to give verdicts for landlords in cases of forfeiture; but the very dread of the case being carried so far depreciated property very much, and rendered it less valuable both to landlord and tenant.

Mr. Blundell seconded, and after some discussion the motion was withdrawn, and the matter was referred to the consideration of the Real Property Committee.

ECCLESIASTICAL COURTS.

Mr. Alfred Hill said a report was to have been presented by the committee on the Ecclesiastical Courts. The committee, however, had not agreed to a report, but three draft reports, each making different suggestions, had been prepared by different members, and it was proposed that these should be read and afterwards discussed.

Dr. Waddilove then read a report drawn by him. It referred to the Royal Commission issued in 1830 to inquire into the Ecclesiastical Courts, and the jurisdiction exercised by them, and to their reports, which recommended that these courts should be consolidated; that the jurisdiction of wills should be abolished; that a general register-office should be established for wills of all descriptions; and that Courts of Equity should have jurisdiction to determine all questions of the validity of wills. He (Dr. Waddilove) recommended that there should be one probate court for the whole of England and Wales, sitting in London, which should grant probates in respect both of real and personal property; that the sittings should be held in London or Westminster, and that the jurisdiction of archbishops, bishops, and peculiars should cease. The Court of Probate to be a Court of Record, to have power to enforce its decrees, and to have jurisdiction over the discovery and distribution of assets. Where the property is under 500*l.* the executor or administrator to be sworn before a Master Extraordinary or clergyman.

Mr. Alfred Hill also read the report prepared by him. It recommended the abolition of the Ecclesiastical Courts, and the transference of their jurisdiction, so far as wills and letters of administration are concerned, to the County Courts; that before probate or letters of administration be granted, publicity be given of the intention to apply for them; that wills relating to real property be required to be registered and proved, the same as those relating to personal property; that in cases of intestacy as to real property the Court to have power to grant letters of heirship, corresponding with letters of administration having reference to personalty, the production of which shall be sufficient evidence in courts of law of the right to sue. He also recommended that there should be a general register, and that copies should be kept for inspection in the archives of the respective County Courts.

It was stated that there was a third report, which had been prepared by Mr. Collier, but that gentleman being absent, it was not read.

The two reports were referred to the Ecclesiastical Courts Committee, with a request that they should amalgamate them, and state the points of difference.

The meeting then separated.

CONFERENCE ON THE REFORM OF THE MERCANTILE LAW.

A conference was recently held at the rooms of the Society for promoting the Amendment of the Law, to consider the propriety of assimilating the mercantile laws of England, Ireland, and Scotland. There were deputations from the principal towns and law societies, and the following resolutions were agreed to:—

That the mercantile laws of England, Ireland, and Scotland are scattered and disconnected, and in many instances dissimilar and even antagonistic; a state of things tending greatly to restrict and embarrass commerce, by producing uncertainty, perplexity, and delay.

That it is highly desirable that a well-digested and well-arranged body of mercantile law should be framed and established for the whole of the three kingdoms."

That, dismissing all local and even national prejudices, the assimilation and improvement of the mercantile laws of the three kingdoms, and the improvement and, where requisite, the assimilation of the procedure, should be effected by selecting those principles and rules, wherever they may be found, which shall be deemed the best and most beneficial to the commercial classes and to the community at large; and that to this end it is necessary carefully to examine the mercantile laws, and to have recourse to the experience of other countries.

That it is desirable that this assimilation and improvement should be brought about by a general revision, amendment, and consolidation of the different branches of the mercantile law, taken successively; but that while these larger measures are proceeding much immediate relief might be afforded by a series of single Acts, addressed to the more pressing and grievous evils, which Acts, by proper arrangements, might be made subservient to the ultimate object.

That while this work is going forward it is important that no new measures of mercantile law should be introduced into Parliament but such as may apply generally to the three kingdoms, or serve as steps towards a general assimilation.

That a commission, consisting of members of both Houses of Parliament and members of the Legal and Commercial Professions, appears the most efficient means of obtaining the desired results.

That the president, vice-presidents, and council of the Law Amendment Society, and the following gentlemen, Lord Wharncliffe, Lord Montcagle, Lord Asburton, Viscount Goderich, &c. with power to add to their number, be appointed a committee to represent the views of this conference to her Majesty's Government, and to take such other measures as may from time to time appear necessary for carrying these views into effect.

That this meeting recognises with pleasure and approval the efforts which have been made by other bodies besides the Law Amendment Society for the assimilation and improvement of the mercantile laws of the three kingdoms, but would suggest for the consideration of these bodies, whether their future efforts would not be more efficient if made in connection with those of the above-mentioned committee.

LEGAL INTELLIGENCE.

The Throwing Open of the Mayor's Court. — Mr. J. Davies, the chairman of the Secondaries and City Courts Committee, brought up the report on the subject of throwing open the Mayor's Court to all solicitors practising in the courts of law and equity at Westminster. The report detailed the whole of the proceedings of the committee, including their successful conference with a deputation of the Court of Aldermen on the subject, and their interviews with the attorneys of the Mayor's Court, who claimed compensation for right of alienation and exclusive practice, as well as their consultation with the Recorder, who strongly recommended the admission of all solicitors, under regulations. It further stated that the Recorder had laid before the committee a series of rules for governing the practice of the Court with the necessary forms, and also a scale of fees and charges to be taken therein, which were approved of by the committee; and in accordance with the suggestions of the Recorder they recommended, that in order to afford facilities for the conducting of suits in the Mayor's Court upon the reformed principle, in January, they should be authorised to provide temporarily a suitable office for the Registrar of the Lord Mayor's Court in the immediate vicinity of the Guildhall, and an assistant to the deputy-registrar. After some observations from members of the court in approbation of the liberal and beneficial project of throwing open the Mayor's Court to the profession generally, by which arrangement every man could send his own attorney to represent him there, the Recorder said that, in his opinion, the mass of business introduced to the Mayor's Court upon the change recommended, would be so great as to pay all the expenses which might be apprehended, and a great deal more. The report was then agreed to, and sent back to be carried into execution.

THE GAZETTES.

Bankrupts.

Gazette, Dec. 24.

Artigoure, Jules, merchant, Mark-lane, City, Jan. 7, at eleven, Feb. 5, at twelve, Basinghall-st. Off. as: Pennell. Sol. Brewer, Philpot-lane, City. Petition, Dec. 17.

Bate, William, butcher, Camelford, Cornwall, Dec. 29, at one, Jan. 26, at eleven, Exeter. Off. as. Hirtzell. Sols. King, Camelford, and Stogdon, Exeter. Petition, Dec. 10.

Manley, Thomas, cattle salesman, Exeter, Dec. 29, at one, Jan. 26, at eleven, Exeter. Off. as. Hirtzell. Sol. Turner, Exeter. Petition, Dec. 17.

Pearson, Fletcher, painter, Liverpool, Jan. 5 and 31, at eleven, Liverpool. Off. as. Cazenove. Sol. Payne, Liverpool. Petition, Dec. 17.

Pullman, Frederick William, auctioneer, Leadenhall-st. Dec. 29 and Jan. 31, at twelve, Basinghall-st. Off. as. Stansfeld. Sol. Cole, Leadenhall-st. Petition, Dec. 14.

Partnerships Dissolved.

Gazette, Dec. 7.

Banks, S. *Gregory*, T. and J. coal masters, Westleigh, as regards J. Gregory, Dec. 1. Debts paid by remaining partners.—*Banks*, S. and *Gregory*, T. coal masters, Westleigh, Dec. 2. Debts paid by Banks.—*Bardsley*, J. sen. W. and J. jun. brush manufacturers, Ashton-under-Lyne, Nov. 24. Debts paid by J. Bardsley.—*Choake*, H. *Tiddy*, D. G. and *Fedrick*, C. F. tanners, Modbury, as regards Tiddy, Nov. 30.—*Collinge*, I., I. jun. and R. cotton spinners, Rochdale, Dec. 3. Debts paid by R. Collinge.—*Cross*, W. and F. boot and shoe makers, leather cutters, and curriers, Bungay, Dec. 1. Debts paid by W. Cross.—*Curties*, E. and *Moynihan*, D. wholesale cheesemongers, York-st. Westminster, Dec. 3. Debts paid by Curties.—*Dade*, W. C. London, and *Butterworth*, C. Bradford, stuff merchants, Nov. 8. Debts paid by Dade.—*Gartside*, J. and J. jun. ale and porter brewers, Ashton-under-Lyne, Aug. 6. Debts paid by Gartside.—*Hodgson*, J. and T. and *Astin*, F. bobbin makers, Halifax, Nov. 30. Debts paid by J. Hodgson.—*Jennings*, S. sen. and jun. carvers, gilders, printsellers, and looking glass manufacturers, Goswell-st. and Duke-st. Manchester-sq. Dec. 1. Debts paid by Jennings, sen.—*Kelly*, J. and *Cobden*, A. F. coal merchants, Dec. 6. Debts paid by Kelly.—*Lant*, T. and G. wholesale confectioners, Birmingham, Dec. 1. Debts paid by G. Lant.—*May*, T. and *Bidwell*, J. G. sharebrokers and commission agents, Exeter, Nov. 6. Debts paid by either.—*Pearson*, A. and *Holdsworth*, S. and J. stuff manufacturers, Valley Mill, near Bradford, Dec. 1. Debts paid by S. and J. Holdsworth.—*Reynolds*, J. G. and *Harris*, M. tobacco pipe manufacturers, Bristol, Oct. 22. Debts paid by Harris.—*Simpson*, W. and *Brooks*, F. T. agricultural chemists, Mill-hill Works, Old Ford, near Bow, Dec. 4.—*Smith*, J. *Simpson*, R. and *Clayton*, L. boiler makers, Burnley, as regards Clayton, Dec. 4. Debts paid by remaining partners.—*Soutter*, J. and *Parsons*, S. S. carriers and leather sellers, Richmond-place, East-st. Walworth, Nov. 29. Debts paid by Soutter.—*Stevens*, W. *Hold*, J. *Milldrum*, R. and *Hancock*, M. dealers in tin, ores, arsenic, and other articles, Saint Hilary, Breage, and Crowan, as regards Hancock, Nov. 30. Debts paid by remaining partners.—*Stoneham*, J. T. and *Mortimore*, P. elastic japan waterproof paper manufacturer, Ashton-under-Lyne, Dec. 2. Debts paid by Stoneham.—*Williams*, O. and *Fitzpatrick*, J. manufacturers of flour of brimstone, Liverpool, Nov. 29.

Gazette, Dec. 10.

Blythen, E. and R. farmers and carpenters, Holt, Nov. 30.—*Bown*, P., H., and E. jewellers and fancy dealers, Leamington Priors, Dec. 1. Debts paid by H. Bown.—*Braithwaite*, F. and *Jones*, W. goldsmiths and jewellers, Cockspur-st. Charing-cross, June 1.—*Cotterall*, F. and P. jun. attorneys and solicitors, Preston, Nov. 15.—*Craig*, E. and *Faull*, E. M. B. clothiers and outfitters, Cardiff, Dec. 6. Debts paid by Craig.—*Derbyshire*, M. and T. and *Walkden*, J. brick makers, Radcliffe, Dec. 6. Debts paid by M. Derbyshire and J. Walkden.—*Evans*, J. and *Matthews*, W. W. B. silk mercers and drapers, Birmingham, Dec. 3. Debts paid by Evans.—*Hallam*, Jno. and Jas. worsted spinners, Skipton, Dec. 1. Debts paid by Jno. Hallam.—*May*, J. T. and A. stationaries, North-st. Poplar, Dec. 8. Debts paid by J. T. May.—*Mollady*, J. sen. J. jun. and E. E. hat manufacturers, Warwick and Denton, as regards J. Mollady, sen. Dec. 6. Debts paid by J. Mollady, jun. and E. E. Mollady.—*Newbolt*, J. and *Park*, J. ironfounders, Bury, Dec. 6. Debts paid by Park.—*Newton*, W. and E. J. and *Woodrow*, A. C. land agents, surveyors, and valuers, Norwich, as regards E. J. Newton, Dec. 6.—*Parry*, E. S. and *Surtees*, G. E. booksellers and publishers, Leadenhall-st. Nov. 8.—*Prior*, H. and *Atkinson*, H. Manchester warehousemen, Wood-st. Cheapside, Dec. 7. Debts paid by H. Atkinson.—*Sang*, F. *Gogel*, J. N. and *Meyer*, J. G. London, Dec. 9.—*Shannon*, M. A. and E. milliners and straw bonnet makers, Liverpool, Dec. 1. Debts paid by E. Shannon.—*Turner*, T. and *Phillips*, E. Upper Carlisle-st. Portman-market, Dec. 2. Debts paid by Turner.—*Walkden*, J. and W. and *Derbyshire*, T. brickmakers, Openshaw, Dec. 6. Debts paid by J. and W. Walkden.—*Warr*, C. and J. bricklayers and builders, Felix-place, Liverpool-road, Islington, Sept. 18, 1851.—*Williams*, W. *Jones*, R. and *Williams*, W. M. tobacconists and snuff manufacturers, Chester, Nov. 10. Debts paid by W. and W. M. Williams.

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To Readers and Correspondents.

'AN ATTORNEY'S CLERK."—*The Sale of Arsenic Act is certainly very defective, and practically it appears to be almost entirely neglected.*

'G. D. F."—*We do not know whose pupil Lord Brougham was.*

'GENT. ONE—*This letter will be given to the writer of the article on his return to town. We believe the Masters insist on this form of affidavit.*

'W. B."—*None, we believe.*

'STUDENS."—*We have not space for his clever essay; we are compelled to limit communications to facts and matters of practice, and to avoid merely speculative discourse.*

ERRATUM.—In the letter signed "A solicitor," p. 135, vol. 3, in the 10th line, "fee" should be "fees;" and in the 11th line of the paragraph beginning "proposed scale of charges," "inventories" should have been "journeys."

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THE LAW TIMES.

SATURDAY, JANUARY 1, 1853.

THE NEW LAW APPOINTMENTS.

THE week has been rife with promotions in which our readers have a professional interest.

Lord CRANWORTH is appointed the Lord Chancellor. After Lord ST. LEONARDS there is no man so competent to the office. The noble lord has worked his way *through* the Profession; he practised extensively at the Equity Bar: he has been both a Common Law judge and an Equity judge: hence, with a mind of singular acuteness, he combines a *practical* knowledge of the law such as is probably possessed by no other lawyer of the age, except his marvellous predecessor. Moreover, Lord CRANWORTH is a very model of urbanity in his Court, and is as popular *there* as he is beloved and esteemed in the private relations of his life. The new Government may justly pride itself upon the selection it has made, and which will certainly receive the unanimous approval of the Profession without distinction of party.

Vice-Chancellor TURNER succeeds him in the Court of Appeal as one of the Lords Justices, and is succeeded by Sir W. PAGE WOOD.

Sir A. COCKBURN returns to the office of Attorney-General, and Mr. BETHELL is appointed the new Solicitor-General, an honour well deserved by one who is unquestionably at the head of the Equity Bar, and of good augury for the cause of rational Law Reform of which Mr. BETHELL is known to be a zealous and enlightened advocate.

Mr. BAINES returns to his former position as Chairman of the Poor Law Board, in which he had displayed such proficiency that he was invited by the late Government on its accession to continue at his post, but he preferred to go out with the friends from whom he had received the appointment.

Mr. VILLIERS, as Judge Advocate, is untried, and there are no antecedents upon which anticipation can be founded.

Altogether the new appointments must be extremely satisfactory to the Profession, reviewing them simply upon professional merits and capacities—for here we have nothing to do with political or party considerations.

A COLLEGIATE SCHOOL FOR THE LAWYERS.

WE have received from one of the Judges of the County Courts a brief letter suggesting that we should make an effort to procure the establishment by the Profession of a Collegiate Institution for the education of the children of Lawyers, and he authorizes us to start the proposition with his name for a subscription of one hundred pounds.

We know not if our correspondent intended his letter for publication, or that we should announce his name immediately, and therefore we await his further instructions before we do so. We should also desire to be favoured by him with fuller particulars of his design, of which he gives only the title.

But in the meanwhile we lose not a moment in bringing so admirable a suggestion under the notice of our readers, and bespeaking their interest for it by the announcement of the munificent opening of the subscription list. Of course we are not as yet prepared to go into any details of a scheme of which nothing but the *idea* has been submitted to us; but we can see how excellent a work might be thus formed. Proprietary Schools have been found to prosper wherever they have been tried. A Collegiate Institution such as we propose for the Lawyers would embrace the advantages of the school and the college, and be constructed so as to provide the means for such an education for the children of the Profession as the vastly extended range of human knowledge and the increased requirements of business demand more and more of the rising generation. The object of such an institution will be to provide the *best* education at the *lowest cost*, and to do this by that lever of the modern world—association. Should the *suggestion* be approved we shall put it into a formal shape, and take the requisite means for bringing it into practical operation. We presume that substantially it must be Proprietary; but subscriptions will be required to help it into existence.

Will our correspondent permit us to announce his name, and accompany it with some particulars of his design?

THE LAW OF MARRIAGE.

IT would be an excellent thing for society if every candidate for the office of Legislator were required to undergo a preliminary examination into the Province of Jurisprudence, or, in other words, the proper limits of Law-making. It would save society from innumerable inconveniences and annoyances that result from law-makers meddling with matters which are not within their province, and it would save the law itself from a great deal of disrespect and evasion.

Gradually the world is growing wiser in this particular, and Legislators are discerning the important truth, that society can regulate itself better than they can regulate it, and that they have little more to do in the way of law-making than to provide for the prevention of wrongs by one man to another, and the enforcement of rights; that they have nothing whatever to do with *individual* opinions, morals, or conduct, provided those do not inflict a positive injury upon the persons or properties of others.

If the limits of law-making had been made a branch of study, we should never have seen the statute-book disgraced by laws so far violating liberty as to dictate to individuals whom they shall *not* marry, beyond the limits prescribed by nature, and the violation of which would be noxious to society by producing a degeneracy of race; nor should we be compelled to witness the painful spectacle of a bad law evaded by hundreds of good citizens who can afford the expense of a trip to the Continent, and set at defiance by the poor, who vindicate nature at the expense of their own morality and the legitimacy of their offspring.

One of the surest tests of a law being good or bad is the principle is the obedience it exacts from the community. If any considerable number of intelligent, respectable and virtuous persons so far object to it as to evade or violate it systematically, we may be sure that it belongs to that class of laws which have trespassed beyond the proper province of law.

So it is with Lord LYNDHURST's tyrannical law, prohibiting marriage with a deceased wife's sister. It is systematically violated and evaded. It is reprobated by the ablest of our divines and judges. It has provoked the formation of an association expressly to procure its repeal, or in default of that, to teach how it may be practically set aside. A pile of pamphlets upon our table arrays against it argument, authority, and an army of facts. Strange to say, this law is not defended by reference to a single fact, and scarcely by an argument, but only by *sentiment*. Its supporters choose to assume that certain inconveniences *might* result if such a marriage were permitted. They forget that it has been permitted for centuries, that it *is* permitted in four-fifths of the Christian world, and that the prohibition is of very recent date, so that it would be easy enough to adduce facts, instead of presumptions and conjectures, to prove the mischiefs that actually have resulted from these marriages, if such there be. But they do not this, because they cannot. Having experience to appeal to, they yet resort to surmise. Why? Because experience is against them. This marriage has *not* produced any mischiefs in *fact*.

But we take higher ground. We contend that it is not a matter within the province of legislation. It is a subject for individual taste and feeling. The law has no more right to provide against possible unpleasant feelings in a wife towards a sister than with her jealousies of a governess or a servant maid. To be consistent, it should go further and prohibit a man from marrying any female who has lived in his house during his wife's life, for the argument is quite as strong against them as against the wife's sister. When a law rests on so weak a foundation as a sentiment it is sure to be full of inconsistencies. No law is good that is not based upon a principle, and directed against a proved mischief done to individuals or the State. Our Law of Marriage is not so founded, and therefore it is that we shall have occasion, in another number, to direct the attention of our readers to a legal means of evading its cruel and irrational provisions, which an able Lawyer has published in one of the pamphlets now before us.

THE ATTORNEYS' TAX.

THE Profession should be prepared to go to Parliament on the 10th of February with an avalanche of petitions for justice. We must now have a new Budget; and, if they are sufficiently clamorous, they may hope to find a place in it.

Besides, in all probability there will be another General Election in the spring; Honourable Members will, therefore, be keeping one eye upon their constituents, and hints from their professional friends are likely to be received with more than common respect, especially if conveyed in such terms as shall leave no doubt as to the course *they* will pursue at the next election—acting upon the wholesome rule of serving those who serve us.

Individual Attorneys should petition, and so should the collective Attorneys of every town.

As with the New Year we have received a very large accession to our list of subscribers, our old

readers will excuse the repetition of the form of petition which we suggested a fortnight since, as being specially adapted to present circumstances, in hope to enlist in the service of the common cause this numerous addition to our ranks:

To the Honourable the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled,

The humble petition of the practising Attorneys of the town of A. in the county of B.

Sheweth,

That your Petitioners are subject to a grievous tax, called the Certificate Duty, which they are required to pay in addition to the taxes which they pay in common with their fellow subjects.

That it has been declared by your Honourable House that class taxation ought to cease with class legislation.

Your Petitioners, therefore, pray your Honourable House to remove from them this unjust and partial tax.

NEW PRACTICE IN THE COURT OF CHANCERY.(a)

AMENDMENT OF BILL.

It often becomes necessary to amend the bill, either by stating new facts, correcting any inaccuracies, by striking out and abandoning part of the case, whether the necessity for doing so may have been discovered from the answer of the defendant, from the documents he has produced (which is frequently the case), or otherwise, or for the purpose of making other persons parties, or of striking out unnecessary parties.

The original and amended bill constitute but one record (*Vere* v. *Glynn*, 2 Dick. 441), so that the amended bill must be addressed to the same person; although he may have ceased to hold the great seals: (Dan. Ch. Pr. 377.)

Formerly it was a rule in the practice of the Court that nothing which had occurred *since the institution of the suit* could be introduced into the bill by way of amendment, and a new bill, called a supplemental bill, was necessary in order to bring the new matter before the Court. The reason given by the Court for the adoption of this merely technical rule was, that the introduction of matters of a posterior date would render the record incongruous: (*Archbishop of York* v. *Stapleton*, 2 Atk. 136.) Supplemental bills, however, for the purpose only of stating or putting in issue facts and circumstances which may have occurred after the institution of the suit are now unnecessary, and such facts and circumstances may be introduced by way of amendment into the original bill, if the cause is otherwise in such a state as to allow of an amendment being made in the bill; and if not, a written or printed statement of facts to be annexed to the bill is to be filed, and proceedings taken thereon as if the same were embodied in a supplemental bill: (15 & 16 Vict. c. 86, s. 53. Orders 7th August, 1852, XLIV.) The necessity for filing a statement will be noticed on a subsequent occasion.

Great latitude is allowed in making amendments; a bill has been converted into an information (*President of St. Mary Magdalen* v. *Sibthorpe*, 1 Russ. 154), or by altering a statement so as to agree with the defendant's answer (*Lindsay* v. *Lynch*, 2 S. & L. 9); it *seems* to be doubtful whether a bill of discovery can be converted into a bill for relief (Dan. Ch. Pr. 384), although that has been allowed by the Court to be done by adding a prayer for relief and proper parties (*Lousada* v. *Templer*, 2 Russ. 565); but it seems to be clear that unless by consent (*Garish* v. *Donovan*, 2 Atk. 166; 2 V. & B. 111, n. *a*) a bill for relief cannot be converted into a bill of discovery by striking out the prayer: (*Earl Cholmondeley* v. *Clinton*, 2 V. & B. 113.) Where a plaintiff makes an entirely new case by amendment, he may be ordered to pay the defendant the costs which he would have had to pay had he dismissed the original bill and filed a new one (*Smith* v. *Smith*, Coop. 141; *Maxor* v. *Dry*, 2 S. & S. 113); so, if without making a new case expenses have been unnecessarily occasioned by the introduction of matters afterwards struck out on amendment as unnecessary, the plaintiff will be liable to pay the defendant the costs occasioned thereby: (*Bullock* v. *Perkins*, 1 Dick. 110; *Strickland* v. *Strickland*, 3 Beav. 212; *Monk* v. *The Earl of Tankerville*, 10 Sim. 284.)

No alteration can be made in any pleading or other matter after it has been filed, and by that means become a record of the Court, without the sanction of a previous order: (Dan. Ch. Pr. 387.) And without going into the question upon what occasions and at what stages of a suit an order to amend may be obtained, it may be here mentioned that applications for leave to amend must be made to the Judge at Chambers: (15 & 16 Vict. c. 80, s. 26.)

Under the old practice the bill required re-engrossment when the amendments were so extensive that they could not be conveniently added to the record: (*Vernon* v. *Vawdry*, 2 Atk. 119.) And it was held that two folios of amendment introduced continuously in any one part of the record rendered a new engrossment necessary. And where the amendments were of such a character as to blot and deface the bill, it might be taken off the file: (*Boyd* v. *Mills*, 13 Ves. 87; Smith's Ch. Pr. 403; Ayck. 29.)

According to the new practice, the provisions with respect to the filing, and serving, and delivering of printed copies of a bill are as far as may be to extend and be applicable to the bill as amended.

Where, according to the old practice of the Court, which has been before mentioned, an amendment of a bill might be made without a new engrossment thereof, a bill may be now amended by *written* alterations in the printed bill so filed, and by *additions* on the paper to be interleaved therewith, according to the directions of Order I.

The practice of amending a defendant's copy of a bill, with respect to the amendment of bills filed after the Orders of 7th August, 1852, came into operation, is abolished.

A copy of an amended bill, whether upon an amendment or a reprint, or by such alterations and additions as are before mentioned, is to be served upon the defendant or his solicitor; and such copy may be partly printed and partly written, if the amendment is not made by a reprint; but in every case the copy to be served is to be stamped with the proper stamp by one of the Clerks of Records and Writs, indicating the filing of such amended bill, and the date of the filing thereof.

In all cases where, according to the old practice of the Court, a *subpœna* to appear to and answer an amended bill might be served upon the solicitor of a defendant, service upon the defendant's solicitor of a copy of an amended bill, whether wholly printed or partly printed and partly written, will be good service on the defendant.

Where a defendant has appeared in person to any bill, service at the address for service of such defendant of a copy of an amended bill, whether wholly printed or partly printed and partly written, will be good service on the defendant: (15 & 16 Vict. c. 86, s. 8; Orders of 7th August 1852, VII. VIII. IX. X. XI.)

It may here be mentioned that the new practice will not be applicable to bills filed before the Order of 7th August, 1852, came into operation; and that the old practice is to continue in force, with reference to the amendment of such bills; and that the old practice of the court, with reference to issuing and serving writs of *subpœna* to appear to and answer bills, is also to continue in force with respect to bills filed before those orders came into operation: (Orders 7th August 1852, XII. XIII.)

Although the new mode of printing and serving bills, in the mode which has been before mentioned, seems at present to be quite successful, it appears to have been considered by the Legislature somewhat in the light of an experiment; and power is given to the Lord Chancellor to direct that all or any of the old practice as to the filing of bills and the issuing and service of *subpœnas* may be revived: (15 & 16 Vict. c. 86, s. 9.)

INTERROGATORIES.

Under the practice just abolished, every bill in Chancery contained what was called the *interrogating part*, in which every statement and charge in the bill was converted into a series of questions, framed on the principle that the defendant might possibly be a dishonest defendant, disposed to answer evasively, and therefore suggesting modifications of the statement or charge. For example, if the statement were of a deed bearing a certain date, and made between and executed by certain parties, in certain words, or to a certain effect, the questions would be, whether such a deed of that date, or of some other and what date, was not made between and executed by such parties, or some and which of them, or some other and what parties, in such words, or to such effect, or in some other and what words, or to some other and what effect. In general all the bills were converted into interrogatories of a similar character. Originally these interrogatories were used much more sparingly, and were confined to those matters supposed to be within the knowledge of the defendant, as to which it was considered necessary or desirable to extract admissions from him. But in course of time the practice was altered, and the easier process was adopted of transmuting all the statements, into questions of the nature above described. The number of folios and the expense to all parties concerned were thereby greatly increased: (Ch. Com. Rep. 5.)

As we have before remarked, there is to be in future no *interrogating part* in any bill; but *where the plaintiff requires an answer* from any defendant or defendants to a bill, he may file in the Record Office *interrogatories* for their examination, within eight days after the time limited for their appearance.

If the defendant appear in person, or by his own solicitor, within the time limited for that purpose by the rules of the Court, the plaintiff is, within eight days after the time allowed for such appearance, to deliver to the defendant or defendants so required, or to his or their solicitor or solicitors, a copy of the interrogatories so filed as aforesaid, or of such of them as the particular defendant or defendants shall be required to answer.

The copy so to be delivered is to be examined with the original, and the number of folios counted by the Clerks of Records and Writs, who, on finding that such copy is duly stamped and properly written, are to mark the same as an office copy.

If the defendant do not appear in person, or by his own solicitor, within the time allowed for that purpose by the rules of the Court, and the plaintiff has filed interrogatories for his examination, the plaintiff may deliver a copy of such interrogatories so examined and marked as aforesaid, to the defendant at any time after the time allowed to such defendant to appear, and before his appearance in person or by his own solicitor; or the plaintiff may deliver a copy of such interrogatories, so examined and marked as aforesaid, to the defendant or his solicitor, after the appearance of such defendant in person or by his own solicitor, but within eight days after such appearance.

No defendant shall be called upon or required to put in any answer to a bill unless interrogatories shall have been so filed, and a copy thereof delivered to him or his solicitor within the time above limited, or within such further time as the Court shall think fit to direct: (15 & 16 Vict. c. 86, s. 12; and XVI. XVII. and XVIII. of the Orders of 7th August, 1852. As to form of Interrogatories, see Orders of 7th August, 1852, XV. and schedule C. to Orders.)

In the case of *Bowen* v. *Price* (MS. Dec. 21), the question arose under the 12th section of 15 & 16 Vict. c. 86, where the interrogatories are directed to be delivered to the defendant *or his solicitor*, whether personal service on the solicitor himself was not necessary, or whether service at his office would not be sufficient. Sir R. Kindersley entertained the former opinion; but upon an application to the Lords Justices, they took a contrary view, and remarked upon the great inconvenience which would be occasioned by holding personal service necessary to one side as much as the other. Their Lordships did not, however, decide the point, but after that intimation of their opinion the Vice-Chancellor acted upon it.

AN ACTION AT LAW UNDER THE NEW PRACTICE. (a)

ARTICLE VI.

The course of proceeding when the defendant takes no legal means to dispute the plaintiff's claim has now been gone through.

In this, it has been seen, there are two main branches, one when the writ is specially indorsed (form No. 4) (*b*), in which the judgment is at once final on the non-appearance of the defendant, and which is an entirely new feature in practice; the other, when the writ is not specially indorsed, and in this, after non-appearance, a declaration must be filed, and in default of a plea, the judgment may be signed. This judgment is final in case the plaintiff seeks to recover a debt or liquidated demand in money, otherwise interlocutory only, until the execution of a writ of inquiry, or a reference to the Master. In cases where the writ is not specially indorsed, the judgment is an ordinary judgment by default, but the necessity there was formerly for the defendant's appearance to the action before the plaintiff could be entitled to this judgment no longer exists.

APPEARANCE TO THE ACTION.

It must now, therefore, be supposed that the defendant intends to contest the plaintiff's demand, and in this case, whichever form of writ may have been used, it is necessary that he should, in accordance with the terms of the writ, enter an appearance within eight days, or such greater number of days as may be named therein, from the service of the writ on him, inclusive of the day of service. Where judgment is not at once signed on the expiration of the time for appearance, he may, even after that time, enter an appearance under certain restrictions, for he may appear at any time before judgment; and if he appear after the time specified, either in the writ of summons or in any rule or order, to proceed as if personal service had been effected, he will, after notice of such appearance to the plaintiff or his attorney, as the case may be, be in the same position as to pleadings and other proceedings in the action as if he had appeared in time; but a defendant appearing after the time appointed by the writ is not entitled to any further time for pleading, or any other proceeding, than if he had appeared within such appointed time: (sect. 29.) And beside this general provision, there is appended to the section which provides for signing final judgment on writs specially indorsed (sect. 27, *ante*, p. 132) a proviso that the Court or a Judge may, either before or after final judgment, let in the defendant to defend, upon an application, supported by satisfactory affidavits, accounting for the non-appearance and disclosing a defence upon the merits. It may well be doubted whether the general provision (sect. 29) does not make unnecessary any application or affidavit on appearance before judgment to a writ specially indorsed.

The affidavit in support of an application to be allowed to appear after judgment should explicitly state the facts accounting for the non-appearance, and also some facts showing a defence upon the merits, and should aver that the defendant believes

(a) Continued from p. 140.

(a) By George Tayler, Esq., Barrister-at-Law.

(b) It was intended to have been mentioned as a note to the last article, that the sums at present allowed for costs on writs specially indorsed, fixed by the Masters under section 27, are as follow:—

	Under £20.	Above £20.
Town cases	£2 14 0	..... £3 8 0
Country or agency, including mileage	3 2 0	..... 4 0 0

he has such defence. If this affidavit is made by the defendant, it would be advisable that some other person should corroborate the facts, especially those explaining the non-appearance.

The mode of appearance to each of the four forms of writ of summons must be by delivering a memorandum in writing according to the following form, or to the like effect:—

In the Queen's Bench.

A. B. plaintiff, against C. D. defendant (or *C. D. and another*, or *others, defendants*).

The defendant C. D. appears in person (or *E. F. attorney for C. D. appears for him*, (If the defendant appear in person here give his address.)

Entered the day of , 18 .

Such memorandum must be delivered to the proper officer or person in that behalf, and must be dated on the day of the delivery thereof: (sect. 31.) Every appearance by the defendant in person must give an address, at which address it will be sufficient to leave all pleadings and other proceedings, not requiring personal service; and if such address be not given the appearance will not be received; and if an address so given be illusory or fictitious, the appearance will be irregular and may be set aside by the Court or a Judge, and the plaintiff may be permitted to proceed by sticking up the proceedings in the Master's office without further service: (sect. 30.) If the defendant has been sued by a wrong name, he should appear by his right name, and state in the memorandum of appearance the name by which he was sued. If he appear by the wrong name, the plaintiff may continue the proceedings against him by that name.

If the defendant has appeared after the time allowed for appearance, he should give notice of his appearance to the plaintiff or his attorney (sect. 29, above). The notice may be in these terms:—

In the Queen's Bench.

A. B. plaintiff against C. D. defendant.

Take notice that I have this day entered an appearance for C. D. to the writ of summons in this action (or omitting the words for C. D.) *Dated the day of* , 185 .

E. F. attorney for the said C. D. (or *C. D. defendant in person.*)

To G. H. plaintiff's attorney (or *A. B. the said plaintiff.*

The next step after the defendant's appearance, in the ordinary course of a contested action, is the delivery of the declaration by the plaintiff. Before considering this or the subject of pleading, however, three topics should be referred to.

It may be just mentioned that there are provisions in the Common Law Procedure Act (ss. 42—48) for enabling the parties to an action, at any time after the writ is issued, to agree to the trial of a question or questions of fact without formal pleadings, but stated for trial in the form of an issue given in the Act, and for enabling them to state a question or questions of law in a special case for the opinion of the Court without any pleadings. These proceedings deserve separate consideration after the ordinary proceedings in an action have been gone through.

AMENDMENT OF MISJOINDER AND NONJOINDER BEFORE TRIAL.

A much more extensive system of amendment of misjoinder and nonjoinder of parties than heretofore allowed is now expressly provided for; and the proceedings of this nature, which may be adopted at this stage of the action or before the trial, had better be mentioned here.

The rules as to the misjoinder and nonjoinder of parties to actions, previous to the recent Act, appear somewhat arbitrary and complex; but as they will still exist where the discretion given by the statute is not exercised, and will probably in some degree influence that discretion, it will be as well first to compress them into a brief statement.

In actions on contract, the joining a person as plaintiff who ought not to have been joined was fatal if taken advantage of at the trial, and also when it appeared on the record, if made the ground of demurrer, motion in arrest of judgment, or writ of error. The omission to join a person as plaintiff who ought to have been joined had precisely the same effect: (Lush's Prac. 16—25; Broom's Prac. 207—216.) The joining a person as defendant who ought not to have been joined in an action on contract had the same effect as the misjoinder of a plaintiff. The nonjoinder of a defendant (except in one or two special cases) must have been taken advantage of, if at all, by a plea in abatement stating the name of the person omitted, and that he was alive and resident within the jurisdiction of the Court, and this plea must have been verified by affidavit stating the residence of such person: (Lush's Prac. 71—81; Broom's Prac. 349—364.)

In actions on tort (or *ex delicto* as they are sometimes called), that is, for injuries to person or property, not arising by breach of express or legally-implied contract, the joining a person who ought not to have been joined had the same effect as the misjoinder of a plaintiff in an action on contract. The nonjoinder of a person who should have been joined could only be taken advantage of by a plea in abatement, except, perhaps, where the action was in substance on a contract, though in form on tort: (Lush's Prac. 137—139; Broom's Prac. 548—554.) The improperly joining a person as defendant in an action for such a tort as could not in law be joint was fatal, if objected to by demurrer, or if, after verdict against all the defendants, made the ground of motion in arrest of judgment or writ of error. But the improperly joining a person as defendant where the tort might have been joint (unless the action were in substance on a contract) had no other effect than that such person was entitled to a verdict, and might recover his costs against the plaintiff. The nonjoinder of a defendant in an action on tort was, however, no objection; but where the action, though in form on tort, arose in reality from a contract, the nonjoinder might be taken advantage of by plea in abatement: (Lush's Prac. 178—183; Broom's Prac. 591—596.)

The Common Law Procedure Act provides for amending errors as to misjoinder and nonjoinder in almost all cases. The Court or a Judge may at any time before the trial of any cause order that any person or persons not joined as plaintiff or plaintiffs in such cause shall be so joined; or that any person or persons originally joined as plaintiff or plaintiffs shall be struck out from such cause if it appear to such Court or Judge that injustice will not be done by such amendment, and that the person or persons to be added as aforesaid consent, either in person or by writing under his, her, or their hands, to be so joined, or that the person or persons to be struck out as aforesaid were originally introduced without his, her, or their consent, or that such person or persons consent in manner aforesaid to be so struck out; and such amendment will be made upon such terms as to the amendment of the pleadings, if any, postponement of the trial and otherwise, as the Court or Judge by whom such amendment is made shall think proper; and when any such amendment has been made, the liability of any person or persons who has been added as co-plaintiff or co-plaintiffs will, subject to any terms imposed as aforesaid, be the same as if such person or persons had been originally joined in such cause: (sect. 34.) The power of correcting the nonjoinder of a plaintiff had been exercised by the Court of Exchequer, previous to the Common Law Procedure Act, in several cases, in order to save the Statute of Limitations (*Brown* v. *Fullerton*, 13 M. & W. 556), and the misjoinder of a plaintiff was amended by striking out the name by the Court of Common Pleas in *Holmes* v. *Barney*, 6 Scott, 346.

The defendant may, at or before the time of pleading, give notice in writing that he objects to the action on the ground that some person or persons not joined as plaintiff or plaintiffs ought to have been so joined, specifying therein the name or names of such person or persons (sect. 35); and thereupon, or in case any plea in abatement for nonjoinder of a person or persons as co-plaintiff or co-plaintiffs in cases where such plea in abatement may be pleaded, be pleaded by the defendant, the plaintiff will be at liberty, without any order, to amend the writ and other proceedings before plea, by adding the name or names of the person or persons named in such notice or plea in abatement, and to proceed in the action without any further appearance, on payment of the costs of and occasioned by such amendment only, and in such case the defendant will be at liberty to plead *de novo*: (sect. 36.)

And in the case of the joinder of too many defendants in any action on contract the Court or a Judge may at any time before trial order that the name or names of one or more of such defendants be struck out, if it appear to such Court or Judge that injustice will not be done by such amendment; and the amendment will be made upon such terms as the Court or Judge by whom such amendment is made shall think proper: (sect. 37.) This power the Courts exercised previous to the recent Act: (*Palmer* v. *Beale*, 9 Dowl. 529; *Jackson* v. *Nunn*, 4 Q. B. 209.)

The Courts would not, however, amend the nonjoinder of a defendant by allowing the name to be added, even though it were to save the Statute of Limitations: (*Roberts* v. *Bate*, 6 A. & E. 778; *Goodchild* v. *Leadham*, 1 Ex. 706.) But now in any action on contract, where the nonjoinder of any person or persons as a co-defendant or co-defendants has been pleaded in abatement, the plaintiff is at liberty, without any order, to amend the writ of summons and the declaration, by adding the name or names of the person or persons named in such plea in abatement as joint contractors, and to serve the amended writ upon the person or persons so named in such plea in abatement, and to proceed against the original defendant or defendants and the person or persons so named in such plea in abatement; but the date of such amendment will, as between the person or persons so named in such plea in abatement and the plaintiff, be considered for all purposes as the commencement of the action: (sect. 38.) The consequences of such a plea, as determined by the result of the trial, will be mentioned afterwards.

The general power of amendment given to the Courts by sect. 222 (see *ante*, p. 107) will no doubt have some influence in the decision of most questions arising on this subject.

The third topic referred to above is the joinder of causes of action; but to consider it now would extend this article to too great a length.

HINTS TO LAW REFORMERS.

[Under the above title might be communicated from time to time, for publication in THE LAW TIMES, suggestions for the improvement of the *practice* of the Law. Every practising attorney must be continually observing defects, and if he would thus bring them before the public, a remedy probably would be found for them by some of the many influential Legislators whose attention will thus be directed to them.]

1. Why should an attorney be compelled to deliver particulars of his demand *with* the declaration, or in the County Courts, since before he can recover he must prove that he did deliver such particulars a month before action brought?

2. Why should defendants in trumpery assault cases before Magistrates be treated as criminals, and not be allowed to give evidence like other defendants?

3. Let all causes at Nisi Prius be tried without a jury unless either of the parties desire a jury, in which latter event let due and ample notice be given. T. C.

[NOTE.—Lord BROUGHAM's Bill contains a provision to this effect.—ED. L. T.]

ACCOUNTANTS AND ATTORNEYS.

THE accountants are undoubtedly making a serious inroad on the province of the attorneys, and it is time that something should be done to secure the Profession against an invasion so mischievous to them. An attorney pays heavy duties to the State for the priviledge of learning and practising his Profession. The accountant pays nothing, and of course is thus enabled to undersell the attorney. As long as Attorneys are taxed on the plea of the protection they enjoy, they are entitled to the protection ther are compelled to pay for.

The following is a copy of an Accountant's Bill which has been sent to us. Can it be denied that this is in fact a Lawyer's Bill by persons who are not licensed to be lawyers?

Mr. F. Wale, Mr. J. Wale, and Mr. F. Dalby } Drs. to Parrinton and Ladbury.

1852.		£	s.	d.
April 16.	Writing you in answer to your inquiry respecting the renewal of your composition bills coming due on the 4th of May,			
19.	Writing memorandum, agreeing to renew the composition bills due the 4th of May, for three months. Attending the respective London creditors, obtaining their assents to renew the composition bills.			
22.	Drawing up letter to the country creditors, soliciting the renewal of their bills, and sending same with printed copies to twenty-four creditors. Writing to certain creditors who had refused to allow time.			
30.	Writing full report to you as to the creditors that had assented. Writing to all the creditors, informing them that the arrangement for further time could not be carried out, and requesting them to abstain from all legal proceedings, and to allow a reasonable time to the sureties to obtain the money.			
May 3.	Writing you in answer to your letter, giving names of the creditors who refused to allow time. Correspondence with the country creditors and attendances.			
		£7	7	0

SHAM LAWYER.

THE following has been sent to us:—

I hereby give you notice, that unless the sum of 16*s.* 6*d.* due from you to James Whittaker Evans, be paid into my hands, within fourteen days from the date hereof, proceedings at law will be commenced against you for recovery thereof without further notice.

Dated this 15th day of December, 1852.

Yours, &c,

THOMAS SUGDEN.

To Mr. W. Merry. Strangeways, Manchester.

You can remit a post-office order, making it payable to James Whittaker Evans.

THE LEGISLATOR.

Imperial Parliament.

HOUSE OF COMMONS.

FRIDAY, Dec. 31.—Mr. BUTT gave notice that after the recess he should move for leave to bring in a bill for regulating the mode of granting new trials in criminal cases.—Mr. KEATING gave notice that after the recess he should ask whether it was the intention of the Government to introduce any measures obtaining uniformity in Acts of Parliament for the arrangement and consolidation of the existing statute law.

The House then adjourned until Thursday, the 10th of February next.

THE MAGISTRATE,
AND MUNICIPAL AND PAROCHIAL LAWYER.

Summary.

It is not necessary to repeat here the particulars of the case of *Edwards* v. *Lowndes*, 20 Law T. Rep. 154, which we noted so fully when it was reported from Nisi Prius: suffice it to say, that the full court has held that, under the circumstances, an action for the organist's salary would not lie against the Clerk to the Board of Health, no appropriation having been made by the Board of funds for such judgment.

It will be seen that we have obtained a report of the decision of the Examiner of Recognizances on Election Petitions, of which so much complaint has been made in the newspapers. Our readers will now be enabled to judge for themselves if he has rightly construed the Election Petitions Act. At all events, if they have occasion to present an Election Petition in future, they should take care to keep within this decision. We have made arrangements to procure reports of the most important points of Election Law that may be decided on the pending petitions.

The Case of Mr. Kirwan.—We are informed that a reprieve has been received by the keeper of the gaol in which Mr. Kirwan is confined, and that the capital sentence will not be carried into effect.

The Common Lodging-houses.—There has been printed, by order of the House of Lords, in a parliamentary paper, a report made by Captain Hay, one of the police commissioners, to the late Home Secretary, on the operation of the Common Lodging-house Act. The report contains a good deal of information for amending and improving the Act now in force. There are at present under police inspection upwards of 3,300 persons keeping common lodging-houses, accommodating nearly 50,000 nightly lodgers. The lodging-houses registered are so widely spread in the metropolitan police district, that the area perambulated weekly by the inspecting police serjeants in visiting them exceeds 810 miles. From September 1851 to November last, the number of keepers served with notices to register was 3,326, of which only 974 were approved and registered. 55,575 visits were made to the houses where notices had been served. About 45,861 persons occupied the houses. There had been 67 cases of fever and sickness dealt with by the police. Already the Act has had a beneficial effect on the poor creatures frequenting the places, and also as a sanitary precaution. Much is still required to be done, and it is anticipated that if the suggestions of the police commissioner now made are adopted, the places will be greatly improved, and, in case of fever, contagion prevented.

JOINT-STOCK COMPANIES' LAW JOURNAL.

Summary.

The Courts steadily set their faces against all attempts by companies to evade their engagements, or to take advantage of their own wrong. Where a company had taken land for extraordinary purposes, and had not adhered strictly to the requirements of the Act of Parliament as to the mode of ascertaining the value, they were not allowed to make the defect thus self-produced an excuse to withdraw from making that title complete. "They have the power, but they declined to exercise it; they say, because they have not exercised it, that a good title never can be made; because this purchase-money has not been ascertained in a way that will make the purchase binding on the remainderman, they have an insecure title. To whom is the fault to be attributed? To themselves. This Court will not allow men to evade their contracts by refusing to do that which they have contracted to do, and to perform that which they are bound to do:" (*Hawkes* v. *The Eastern Counties Railway Company*, 20 Law T. Rep. 148.)

WINDING-UP.

PETITIONS, ORDERS, MEETINGS, APPOINTMENTS, CALLS, &c.

[Announced, issued, and made, during the last week.]

Rugby, Warwick, and Worcester Railway Company.—Call of 4*s.* per share on classes 4 and 6 on 22nd January. A peremptory order.—Humphry.

British and Foreign Gas Light and Meter Company.—Call of 7*l.* per share on three contributories, not mentioned in the previous call.—Senior.

REAL PROPERTY LAWYER AND CONVEYANCER.

Summary.

It will suffice merely to invite the attention of the reader to the report of the decision of the House of Lords, in the famous case of *Geils* v. *Geils*, 20 Law T. Rep. 114, upon the effect of a decree for a divorce *a mensâ et thoro* in England upon a proceeding for a divorce in Scotland, and in which it was held that such a divorce obtained in England was no bar to a proceeding for a divorce *a vinculo matrimonio* in Scotland. Again, the masterly judgment of Lord St. Leonards will be a study for the law student.

Where A. being entitled, as residuary legatee, to one-fifteenth of a sum in stock, and the proceeds of real estate, assigned all his interest in the stock to B., covenanting that it was free from incumbrances, and a portion of the stock was sold to pay the testator's debts; it was held that B. was *not* entitled to have one-fifteenth part of the amount of debts paid out of the proceeds of the real estate in exoneration of the aforesaid share of stock. (*Lovegrove* v. *Cooper*, 20 Law. T. Rep. 152.)

Under the *Trustee Act* it has been held, in *Langhorne* v. *Langhorne*, 20 Law T. Rep. 153, that a vesting order of real estate should be made only where there would be some inconvenience in obtaining a conveyance of the property. Upon the same useful Act there is another decision to be noted. The trusts of a power of sale in a mortgage were, that the surplus should be for the mortgagor, his executors, administrators, and assigns. The mortgagor died; the mortgagee sold and paid the surplus into court under the Trustees Relief Act. A., a creditor of the mortgagor, recovered judgment against the administratrix, and obtained a charging order and petitioned the court for payment of his claim out of the surplus. But the fund was held to be *real* assets and not available for satisfaction of such judgment. (*Re Clarke's Trust*, 20 Law T. Rep. 153.)

There are three decisions on the *Construction of Wills*, of which it is necessary to note one only. In *Hewitson* v. *Todhunter*, 20 Law T. Rep. 153, A. by will gave 5,000*l.* to B. and declared that, in case B. should die in his lifetime, the legacy should not lapse, but should go to or devolve upon his personal representatives. B. died in testator's lifetime, having by will given all his property to his widow, and appointed her and C. his executors. The widow survived the testator and then died, and it was held that the legacy belonged to the widow, who was the executrix, and the only person beneficially interested under B.'s will.

A. on his marriage covenanted to pay the trustees of his marriage settlement 3,000*l.* out of the first capital moneys, or real or personal estate or capitalised income, of or to which he should be or become possessed or in anywise entitled, within six calendar months after he should become so possessed or entitled. He was then possessed of personal estate, consisting of his stock-in-trade, goods, and capital money used by him in his business, and leaseholds, of value greatly exceeding 3,000*l.*, and he continued so possessed for six months after his marriage. Afterwards he became bankrupt, and the trustees sought to prove against his estate for the 3,000*l.*, and it was held by the Court of Appeal that they were entitled to do so. "I am of opinion," said Lord Justice K. Bruce, "that there was a breach of contract six calendar months after the marriage took place before the bankruptcy. It was clear there was property of the bankrupt to the amount of 3,000*l.* and upwards, beyond all debts, six calendar months after the marriage; and on the best construction I can put on this covenant, it appears to me that, at the end of six calendar months, there was a breach of the covenant entitling the trustees to recover the 3,000*l.*:" (*Ex parte Evans*, 20 Law T. Rep. 149.)

LIFE ASSURANCE.

TO THE EDITOR OF THE LAW TIMES.

Sir,—It appears to me that the case cited by your Bristol correspondent does not bear any analogy to the point in question, and consequently does not warrant the conclusion at which he has arrived. In the case referred to, *the 15 days had been allowed to expire*, before the premium was paid—the agent *subsequently* carried it to account, as if paid within the time allowed (*i. e.* the 15 days), but which the court very properly held he had no authority to do. Had the premium been duly paid within the 15 days, it seems clear, from the terms of the decision, that the policy would have been held to be valid.

A case actually came under my own notice some years since, in which the Provident office allowed the premium to be paid on the 15th day of grace, although the party assured had died some days previously, and the amount of the policy was afterwards duly paid. This, I know, is the established practice of all respectable offices, and is according to the clear and literal interpretation of the terms of the notice, viz., that "the premium will become due on the —— inst., and must be paid within 15 days after, *otherwise* the policy will cease to be in force." If this does not mean that the policy will remain in force during the 15 days, irrespectively of the life or death of the party assured, it means nothing, and is merely a trap to deprive the assured of the benefit of their policies; and I cannot believe that any respectable office would *dare* to risk its reputation by disputing a policy under the circumstances in question.

I am, Sir, yours, &c.,
P. D.

Bedford Row, Dec. 29, 1852.

Queries on Points of Practice.

CERTIFICATE OF ACKNOWLEDGMENT.

The solicitor of a vendor contends that a purchaser cannot call upon him to file the certificate of an acknowledgment of a married woman, although he admits that the vendor is bound to prepare at his own expense the certificate and usual affidavit.

In the absence of any stipulation to the contrary, is not the *vendor bound also to file* in the proper office the certificate of acknowledgment at his own expense?

Dec. 27, 1852. A Purchaser's Solicitor.

Commissioners in Lunacy.—The following report to the Lord Chancellor has been made (under the 8 & 9 Vict. c. 100, s. 88), of the number of visits made, the number of patients seen, and the number of miles travelled by the several commissioners in lunacy, during the six months ending on the 4th August, 1852:—

Commissioners.	Visits made.	Patients seen.	Miles travelled.
Dr. T. Turner.....	128	6,227	3,978
Dr. J. R. Hume.....	152	5,511	5,694
S. Gaskell, Esq.	137	7,708	4,676
B. W. Procter, Esq.	100	5,515	3,809
J. W. Mylne, Esq.	158	7,808	5,819
W. G. Campbell, Esq.	131	7,673	4,829

COUNTY COURTS.

Summary.

Two *Insolvency* cases alone invite the practitioner's attention in this branch of the law. In *Re Holmes*, 20 Law T. Rep. 156, it was held that debts in the protection schedule must be inserted in the schedules under 1 & 2 Vict. c. 110, and that the latter proceeding may be continued and supersede the protection petition; and in *Re Elmore*, 20 Law T. Rep. 156, Mr. Commissioner Phillips observed, that after a discharge pursuant to a rule of Court under 1 & 2 Vict. c. 110, nonpayment of the instalments ordered to be paid should, *on the first default*, be visited by an application to the Court for committal, the Commissioner truly observing,—"If they had been strict they would have got the money; but from 10*l.* they let it run on to 60*l.*"

RECENT IMPORTANT INSOLVENCY DECISIONS. (*a*)

There are some recent decisions in insolvency matters by the Courts at Westminster to which, as they will effect the administration of the law in the county courts, in the country especially, it is necessary to direct the attention of the judges and practitioners. The cases are *Grange* v. *Trickett*, 18 Law T. Rep. 93; 21 L. J. 26; 16 Jur. 287; *Kernot* v. *Pittis*, 20 Law T. Rep. 32; and *Jackson* v. *Burnham et Uxor administratrix*, &c. 20 Law T. Rep. 129.

The decision of the Court of Common Pleas in *Abbey* v. *Dale*, 20 L. J. 233; 15 Jur 1012, was reviewed fully in an article in the *County Courts Chronicle* (4 C. C. C. 325). In that case it may be remembered it was held that the jurisdiction of the County Court in debt is not ousted by a final order in insolvency—the final order not satisfying the judgment within the meaning of the term "unsatisfied judgment" in the 9 & 10 Vict. c. 95, s. 98. Those words, it was shown, were susceptible of one meaning when taken in connection with the whole spirit and intention of the law as gathered from the County Courts and Insolvency codes considered together, and of another meaning when considered in their isolated and dis-associated position as connected with nothing else than the clause in which they are found. The Court of C. P. chose the latter construction, and the effect of this is that the debtor may be opposed twice over or oftener for a long list of the same offences committed in contracting debts, and imprisoned as often as the judge pleases until the debt or debts are paid, which an insolvent is utterly unable to do. An insolvent is also, curiously enough, protected by his final order from all debts in respect of which no judgments have been obtained, and in respect of debts upon which judgments have been obtained in the Superior Courts, but not from judgment debts in the County Courts: an anomaly which to say the least of it, can be founded on no principle, and never could have been intended by the legislature, because any one standing up in the House of Commons to advocate the introduction into the Act of such an absurd and unmeaning distinction would be instantly couted. It is true the judges of the C. P., when giving their decision, say it ought not be acted upon (see Macrae's Insolvency Practice, 526) except under *very special* circumstances, but a county court judge has been heard notwithstanding; to express his deep commiseration for an absolute pauper, who had not a farthing to pay a judgment debt, and yet feel bound at the same time to commit him for non-payment. How many more of such cases there are throughout the country it is impossible to say; but it shows the danger of the Superior Courts indirectly countenancing such perversions of law, justice, and common sense.

(*a*) By David Cato Macrae, Esq. Barrister-at-Law.

The next decision is that of *Grange* v. *Trickett*, in which an isolated and unmeaning proviso—a proviso to nothing—has been singled out by the Q.B. and the most important consequences attached to it; consequences which in the very next insolvency case that came before the court (*Kernot* v. *Pittis*) whether they did or did not attach, could not be enforced without the aid of the Insolvent Court, whose jurisdiction by the decision in *Grange* v. *Trickett* was declared to be entirely ousted. It is but fair to these learned judges to admit that they went no further than to declare that *it seemed* the construction they put was right; but it was a decision to that effect notwithstanding, and one that must be attended by such important consequences, that the Insolvent Court, in the very first case in which it was brought under judicial notice in that Court, took the opportunity fully and entirely to repudiate the doctrine which it established, namely, that the effect of a discharge by the detaining creditor before adjudication is to annul the vesting order. A review of this decision of the Insolvent Court in *Re Henry Collins Mander*, and of *Grange* v. *Trickett*, will appear in the January number of the *County Courts Chronicle*.

Lastly, there is a decision of the Court of Ex. (*Jackson* v. *Burnham*, 20 Law T. Rep. 129,) fully as unsound in law, and absurd in its results, as those just noted. In that case a debt had accrued to an insolvent between the vesting order and the discharge. The question was, first, did it pass under the assignment, and, secondly, could the insolvent sue for its recovery? It was agreed that the debt passed, but it was held notwithstanding that the insolvent could sue for it. That is in substance and effect holding that the insolvent had assigned the debt, but that he had not done so. How the learned judges can reconcile this proposition, that A. B. has assigned a debt to C. D. for the benefit of E. F. and T. L., and yet that notwithstanding A. B. can still sue for the debt as if it belonged to him, it is difficult to comprehend; but they do it in this way. They say that because the assignee C. D. has neglected his duty to E. F. and T. L. *ergo* the title to sue for the debt reverts to A. B. The real question in the case was whether the insolvent could sue for what he had assigned to his creditors by a deed under the seal of a court of record. That question has been decided in the negative long ago by all the courts from the House of Lords downwards. Now how did the very clever pleader and counsel succeed in obtaining this decision from the Court of Exchequer? In the first place, from the words "work and labour—Uxor administratrix, &c." which occur in the report, it may be gathered that it was a hard case. It is possible the feelings of the learned judges led them to compassionate perhaps a poor widow. But the case in the House of Lords, in which it was held that an insolvent so situated could enter upon no kind of litigation, was so hard upon him, that the noble and learned lords who decided it attempted to cure it by Act of Parliament, and actually prepared a bill for that purpose and passed it through the House of Lords, and withheld their decision till it should become law; but this *ex post facto* legislation to meet the hardships of a particular case was objected to, and, the attempt to cure the alleged evil by legislation failing, their lordships gave judgment that an insolvent so situated could enter upon no kind of litigation whatever, and that, however hard his case was from the obstinacy and misconduct of his assignees, they could not even hear what he had to say, as he was no way interested in property that passed under the assignment: (*Rockfont* v. *Battersby*, House of Lords, 2 Cl. and Fin. N. S. 388, 1849.) This being the state of the law, how did it happen that the Court of Ex. decided that after an insolvent has assigned a debt the title to it still remains in him? It appears that an adroit use was made of a decision of the Exchequer Chamber (in *Herbert* v. *Sayer*, 5 Q.B. Rep. 965, 2 Dowl. and L. 49,) which decided that an uncertificated bankrupt has a good right to property against all the world except his assignees. That decision was founded upon wise and just principles; but it had no application to the point under discussion. There is a boundary line between property passing at the bankruptcy and property passing at the insolvency which must ever be kept in mind, otherwise the greatest confusion, disorder, and absurdities, will be introduced into the administration of these branches of law. The principles laid down in *Herbert* v. *Sayer* apply solely to property acquired after a bankruptcy. The Chief Justice Tindal commences his elaborate judgment by affirming that a bankrupt twice certificated, who had not paid 15*s.* in the pound, was in the same situation with respect to property as an uncertificated bankrupt was with respect to property after the assignment. The title to *future*-acquired property is the subject under discussion, and the point decided had reference solely to that description of property at the date of the discharge. It had no reference whatever to property passing under the assignment, and was in no way applicable to the point which arose in *Jackson* v. *Burham*, which related solely to property passing under the assignment. An insolvent is never in the situation of an uncertificated bankrupt (*i. e.* of the uncertificated bankrupt described in *Herbert* v. *Sayer*). His estate is always either entirely divested from him subject to certain exceptions specified in the Act, or entirely vested in him subject to certain liabilities also mentioned in the Act. When the point arose, the insolvent was in exactly the same situation with regard to the debt in dispute as a man who had sold an estate; and would the Court hold in reference to the sale that, unless the purchaser forthwith took possession of the property, the vendor might act as if it were his own? The question was as to the construction to be put upon the assignment; for the words of the section to be construed are the same as those used in the old assignment formerly executed by the insolvent, and the words of the section (87) have been decided in *Woodland* v. *Fuller*, 3 Per. & D. 570, to have the same operation as the assignment for which it was substituted. But instead of adhering to this sound and strictly legal decision, the Lord Chief Baron overturns it and the statute together. His lordship does not at all disguise his knowledge that he is nullifying the statute, but he boldly justifies the act; and here are his reasons: "We have given as the foundation of our judgments the authority of a decision by a superior court, but we would add that the doctrine is by no means new, that the express words of a statute may be controlled, and confined to meet the mischief contemplated by the Act." The mischief contemplated by the Act! What that means it is difficult to comprehend. The object of the assignment is to deprive an insolvent of all title to property in favor of his creditors. The mischief intended to be met and guarded against is the insolvent retaining property at the moment of his discharge. The object of limiting the words of the Act here is not to prevent but aid the mischief contemplated to be guarded against by the Act. Then as to the principle involved in this, namely, the right to promulgate what is commonly known as "judge-made law",—one cannot but regret to see a proposition alleging that Courts of Law have a right to limit or extend Acts of Parliament thus undisguisedly put forward. And then it is implied that *Herbert* v. *Sayer* favours the doctrine. Against that it is necessary at once to enter a protest. The judges there had to deal with an absurd and impracticable enactment, to the effect that an uncertificated bankrupt should be incapable of acquiring property. Why, who does not see in one moment that if he could not acquire property it was perfectly certain that his assignees could acquire none, as they could have only the same rights as the bankrupt himself and could only stand in his shoes. The Chief Justice Tindal himself puts it upon this ground when he says "All future property and contracts vest in the assignees by virtue of the Act 6 G. 4, c. 16. But there must be property in the bankrupt, or contracts with him, before such property or contracts can vest in the assignees" (2 D. & L. 49.) This property and this title remain in him, until either himself or his assignees do some act to disaffirm his title, and in the event of his assignees not interfering his title is good against all the world. That was not new law, but very old law, as the Chief Justice demonstrates. But an insolvent is never so situated. He does a solemn act disaffirming his own title. He gives up all property, both before and at the date of his discharge, as the condition of that discharge. At the adjudication he takes a solemn oath that he has disclosed every species of property, and that it is set forth in his schedule for the benefit of his creditors. If he knowingly omits any description of property he commits deliberate perjury, and may be prosecuted and transported; and as to the justice of this proceeding, if an insolvent were allowed to retain a legacy, or a debt, or an estate, or any description of property coming to him, between his petition and adjudication, the court might possibly be called upon to discharge a rich man as an insolvent debtor. Almost every day there are interests in property possessed by insolvents, which are undisclosed at the insolvency, and consequently never taken possession of by the assignee. But does that affect the assignee's title? It is every day's practice to deal with these interests in Court when discovered by creditors or their assignees at any period of time. As to the insolvent himself setting up a title as against creditors or any one else, such a thing was never heard of. *Herbert* v. *Sayer* upset new law and re-established old law. This decision of the Court of Exchequer upsets old law—introduces by judicial act a new clause into an absolute assignment, not to meet the mischief, but to further the mischief guarded against by the statute—and establishes new law, and openly justifies the assumption of legislative power.

It is singular to observe while on the one hand the Court of C. P. in *Abley* v. *Dale* profess so servile an adherence to the strict legal signification of two words in a new Act of Parliament, that they give them the effect of upsetting the whole bankruptcy and insolvency codes, which no one doubts are still the law of the land; the Court of Ex., on the other hand, goes to the opposite extreme in the other direction. It is clear although the system of administering law as established at Westminster is the nearest approach to perfection, yet, like every human institution, it is not absolutely perfect. It is, however, one great advantage that the press, legal and non-legal, can comment upon their decisions, without giving personal offence, which is not always the case when a tribunal is presided over by a single Judge. There is only one other remark in reference to *Jackson* v. *Burnham* which it is necessary to make, namely, that Mr. Baron Parke had evidently nothing to do with the decision, and that the other learned barons, Alderson, Platt, and Martin, doubted or differed from it, yet notwithstanding it stands as a decision of the Court of Ex.

COUNTY COURT FEES.

TO THE EDITOR OF THE LAW TIMES.

SIR,—It is not many weeks since you stated in the LAW TIMES the propriety of members of the profession sending a statement of cases in which they had been concerned in the County Courts, where the remuneration was inadequate to the labour, and the suggestion of any scale of fees they might think remunerative for the purpose of guiding those with whom the fixing of such scale rested. It is unnecessary for me to state that in no one case in the County Court is a professional man adequately remunerated for his time and labour, as you will find in nine cases out of ten tried there, as much law (and sometimes more) is involved in a case to recover 1*l.* as to recover 100*l.* in the Superior Courts. I therefore think that when the Attorney is entitled to be paid for his time and labour (I hope in an adequate manner) so soon as the new scale of fees is framed, that it would be a great boon to the profession if you would aid us in urging those who can settle the fees to do so at once, and, not like the new rules in bankruptcy just issued, keep us waiting two years: surely there is not so much doing now that this cannot be accomplished. When it was necessary to settle a scale of fees in the Superior Courts, to deprive the profession of half their remuneration, it took but little time to do it.

I am, Sir, yours, &c.
W. RICHARD PRESTON.

23, New Broad-street, London, Dec. 30, 1852.

THE RAMSHAY INQUIRY.—We understand the Lords of the Treasury have agreed to pay the whole of the expenses (within about 150*l.*) of the recent inquiry at Preston into the conduct of the late Judge of the County Court in this town.—*Liverpool Mercury*.

THE LAWYER.

Summary.

EQUITY PRACTICE.—The number of points of practice reported last week was swoln by the introduction of four cases which had been sent in by the reporters, as our rule is, immediately on their decision, but which by an accident had been mislaid at the printing office.

We note first the decisions on the new practice. In *The Attorney-General* v. *The Drapers' Company*, 20 L. T. Rep. 151, the M. R. refused to appoint as a surveyor a person who had already given evidence in the case,—"he would appoint an independent surveyor." He refused also to instruct the surveyor to value the property according to what it was worth the to company, "but only at the market value." This is obviously just.

In *Saunders* v. *Walter*, 20 L. T. Rep. 151, V. C. TURNER adjourned the proceedings on a case to Chambers, for the evidence to be heard by himself with the assistance of the Chief Clerk. In *Cook* v. *Hull*, 20 L. T. Rep. 152, his HONOUR stated, that witnesses to be examined *de bene esse* should be examined *viva voce*, except under special circumstances, which might render such a course improper. In *Smith* v. *The Swansea Dock Company*, 20 L. T. Rep. 154, V. C. KINDERSLEY refused to allow the plaintiff, who was in Court, to be called and examined orally. "The claim," he said, "although it applied to proceedings on motion, required that the witness should be summoned before the examiner by subpœna in the ordinary way, and that must be done under an application made before the motion was brought on."

Service of copy of bill was, in *Lea* v. *Smith*, 20 L. T. Rep. 54, allowed where there were thirteen defendants, all in the same interest, by service of copy on one.

In *M'Neille* v. *Acton*, 20 L. T. Rep. 154, it was held, that application for appointment of an examiner of witnesses under sect. 31 of the new Act should be made to the Court and not at chambers. In *Sharp* v. *Blondeau*, 20 L. T. Rep. 154, a printed indorsement on a bill or claim, where defendant is residing out of the jurisdiction, was allowed to be altered in writing, by inserting fourteen instead of eight days; and in *Robinson* v. *Hewitson*, 20 L. T. Rep. 154 a petition was held to be within the 53rd section, and therefore where a female petitioner had married after the filing and stamping of the petition, and it thereby become necessary to amend it by making it the petition of husband and wife, it was held that such amended petition must be restamped.

Where an agreement had been executed in two parts, one of which was lost, the Court, at the instance of the plaintiff, to whom the lost part had belonged, ordered defendant to produce the part in his possession, for the purpose of having same stamped, plaintiff paying stamp duty, penalty, and costs. (*Bryson* v. *The Warwick, &c. Canal Company*, 20 L. T. Rep. 154.)

In *Windsor* v. *Cross*, 20 L. T. Rep. 152, an alter-

ation made in an order and acted on was allowed, without requiring a supplemental order.

In *Llewellin* v. *Pace*, 20 L. T. Rep. 150, a nonsuit at law was held to have the same effect upon proceedings in equity as a verdict would have done, and, therefore, where at a trial in law the merits had been gone into and then the plaintiff selected to be nonsuited, the result was the same to the proceedings in equity as if the case had proceeded and a verdict found for the defendant. The M. R. also laid it down in the same case, that "If a party sought to discredit the testimony of a witness, he could only do so by bringing evidence to prove him to be a person not deserving of credit, but not that the evidence he has given is false."

In the *Law of Attorneys* should be noted a point in *Re Mole*, 20 L. T. Rep. 154, that under the 39th section of the Attorneys' Act, on a petition by a *cestui que trust* for the delivery and taxation of certain bills of costs which had been proved by the trustee, the latter should not be brought before the court, and the petition against it was dismissed with costs.

WRITS SENT INTO THE COUNTRY FOR SERVICES.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Having perused in your last week's paper a letter from one of my profession complaining of the omission of many of the London attorneys to remit to their correspondents in the country the amount of their charges for service of writs, I am induced to write to you on the subject, not only to corroborate the statement of your correspondent, but also to suggest some mode by which the conduct of such ungentlemanly practitioners may be checked. In the majority of cases in which I have been engaged by a London agent or attorney to serve writs within my neighbourhood, I have never received a farthing in payment of my charges, and in one or two instances where a *distringas* was required I experienced considerable trouble and paid several shillings to the messenger instructed to make the necessary call at the defendant's residence some eight or nine miles from my office, and as yet have not been re-imbursed; and I believe that many of the country solicitors to whom a large amount of writs are forwarded for service in the course of a year, have met with similar treatment. In making, however, these remarks, I would wish it to be understood that they are not directed to the whole body of my professional brethren in London, for I must confess that some firms are very punctual in paying these charges, and, in the event of an omission to do so, cheerfully and promptly respond to any notice of their inadvertence. I would suggest, therefore, that in every action the taxing master be empowered to refuse to tax the plaintiff's costs until his attorney has produced to him an acknowledgment in writing from the country agent of the due payment of his charges for service of the writ, affidavit, &c. I do not think the resolution your last week's correspondent has come to, viz. to "send back writs unless remittances accompany them" can be justly acted upon, as the London agent cannot always ascertain the exact amount of costs to remit, where a mileage is to be added; and again, the charge for the affidavit of service would not be allowed on taxation in the event of defendant paying the debt and costs within four days. I dare say my suggestion is not free from objections, and I shall be obliged by any your readers calling my attention to it and devising some other means for securing to us a just remuneration for our services.

I am Sir, yours, &c.

Dec. 28, 1852. A COUNTRY ATTORNEY.

SMALL DEBTS ACT, 8 & 9 Vict. c. 127.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Will some of your readers be good enough to give me a little information as to the costs allowed by the borough and other small courts of record, to the plaintiff seeking an order for commitment in default of payment of a judgment debt under this act?

In the Manchester Borough Court of Record, no costs whatever are allowed, and the matter stands thus. If a creditor having a judgment debt and costs together above 10*l.* and under 20*l.* take out a summons under this act in that court, he has to prepare a petition, pay 9*s.* 3*d.* for the summons, attend the hearing, and if an order be made, pay 1*l.* 1*s.* 9*d.* (!) for the order; and should the debtor have removed from the district in which the judgment was recovered, then the creditor will have to summon and pay for the attendance of the proper officer of the court for that district at the hearing of the summons, to produce the *original* Judgment Roll, *an office copy not being admitted as evidence in our Borough Court of Record.* When the order is made for payment or commitment under this act, it would reasonably be supposed that the costs (at all events the 1*l.* 10*s.* paid for court fees) would be costs in the cause; but no such thing, not one penny is allowed, and the plaintiff pays all out of his own pocket. However, if the mischief stopped here it would perhaps not be so bad, but should the court make an order for payment by instalments, as is the case in the first instance, and default be made, the farce has to be re-enacted; so that if the debt were originally 7*l.* and the costs 4*l.* the whole of the 7*l.* debt would be swallowed up by the two hearings, allowing only very moderate costs to the attorney; and, in case of bringing the judgment from a distance, the whole 11*l.* would be gone.

In case of commitment, the plaintiff has to pay 3*l.* additional, to take the debtor to Lancaster, whereas as many shillings would secure him in the Borough Gaol.

After the 7 & 8 Vict. c. 96, was passed abolishing imprisonment on final process under 20*l.*, it was found that fraudulent debtors took advantage of the protection thereby given to them. The 8 & 9 Vict. c. 127, was then passed, enabling judgment creditors in the most simple and cheap manner (were the act properly carried out) to imprison the debtor. But, if before the judgment creditor were allowed to set that simple machinery in motion, the act had said that he should first pay into court, to be for ever forfeited, the amount sought to be recovered, and take his chance of getting what part of that amount he could from the fraudulent debtor, it would have been exacting, under the authority of Parliament, what is now being exacted without that authority, and what it is presumed never was intended.

I am, Sir, yours, &c.

Manchester, Dec. 28, 1852. X.

SIR THOMAS MORE & LORD ST. LEONARDS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—After reading the Letter from the late Chancellor's Secretary, Mr. John Stuart, jun., which appeared in the *Times* of the 24th inst., I am reminded of what once occurred to the first above-named Chancellor: on directing the next cause to be called on, the reply was, "Please, your good Lordship, there is no other." An epigram was written thereon—

"When *More* sometime had Chancellor been,
No *more* suits did remain;
The same shall never *more* be seen,
Till *More* be there again!"

Yours, &c.,

J. R.

Newcastle-upon-Tyne, July 28, 1852.

MERCANTILE LAWYER.

Summary.

THERE is only one case for notice this week, and that merely a point of *practice* in Bankruptcy. An affidavit was sworn before a Magistrate at New York, whose signature was attested by a notary public, although the affidavit did not appear to have been sworn in his name. It was held to be sufficiently sworn, and that no objection could be made on the ground that the notary was not present when it was sworn: (*Ex parte Bird*, 20 Law T. Rep. 150.) The other Bankruptcy case is really a decision falling under another department, where a note of it will be found.

ASSISTANT TO THE COMMISSIONERS OF PATENTS.—One of the most recent appointments made by the late ministry will, we think, give general satisfaction. At all events, we are sure that his very numerous friends in Manchester and Lancashire generally, as well as those of more recent date in the metropolis, where he has of late resided, will rejoice to learn that Professor Bennett Woodcroft—best known to the scientific world, perhaps, by his patent screw-propeller for marine and river steamers, has received, in a way which reflects honour on all parties concerned, a responsible and permanent appointment—one for life indeed,—in a department where his intimate and extensive knowledge of its past history, and his practical acquaintance with its details pre-eminently qualify him to discharge its important duties with the greatest possible benefit to the public service. The appointment is that of "Assistant to the Commissioners of Patents"—those commissioners being the Lord Chancellor, the Master of the Rolls, the Attorney-General, and the Solicitor-General. This appointment was conferred in the most handsome and flattering manner, and was wholly unsolicited and unexpected by Professor Woodcroft. We believe that Mr. Woodcroft will commence his duties immediately at the Patent Office, Southampton-buildings, late the offices of the now abolished posts of Masters in Chancery. We believe that this appointment renders necessary his entire withdrawal from his professional practice as a consulting engineer, &c., and that he will devote the whole of his time to the duties of his office; which will include the indexing of all patents, and assistance to the Queen's printer in the preparation for the press of past specifications. We are glad to learn that the commissioners of patents are about purchasing of Mr. Woodcroft the whole of his MS. "Indices of Patents," compiled at his own private cost and labour, and including every British patent from the commencement of the reign of James I. (when the first act was passed abolishing monopolies, and laying the foundation for the existing patent laws) to the present time. This immense work, the laborious compilation of more than seven years, is not a mere bald reference to every patent as enrolled, but consists of three different indices; one, chronological, not only giving the date of enrolment of every patent, but also containing references to all the works, serials, &c., in which notices of the patents have been published. Another index is arranged alphabetically, containing the names of all patentees during this long period of nearly two centuries and a half; and the third classifies under convenient heads of arrangement the subject-matter of the different patents. Nor is this all. A patentee, having reason to suspect that another person is, knowingly or otherwise, infringing his patent, applies for and, on cause shown, usually obtains, an injunction; in some cases the patent right is questioned and brought to trial at Nisi Prius; and in all these instances of litigation or legal proceedings, Professor Woodcroft's indices present the only existing means of reference. We may congratulate the public generally, and especially all ingenious inventors, on the disposition which has been manifested of late to put the regulation of patents on a better footing, and to afford, under proper regulations, all the information (which has hitherto been wholly unprocurable) which shall enable an inventor, before he embarks in the cost of a patent, to be sure that the ground has not been pre-occupied, and that, with an unquestionable right to the merit of discovery, he may not find himself placed (through no fault of his own) in the unenviable position of one who is infringing on the rights of the prior patentee.—*Manchester Guardian.*

COURT PAPERS.

Common Pleas.

Sittings at Nisi Prius in Middlesex and London before the Right Hon. Sir JOHN JERVIS, Knight, Lord Chief Justice of Her Majesty's Court of Common Pleas at Westminster, in and after Hilary Term, 1853.

MIDDLESEX.—IN TERM.

Thursday, Jan. 13. | Thursday, Jan. 20.

AFTER TERM.

Tuesday, Feb. 1.

LONDON.—IN TERM.

Monday, Jan. 17. | Monday, Jan. 24.

AFTER TERM.

Saturday, Feb. 12.

The Court will sit during and after Term at 10 o'clock.

The Causes in the List for each of the above sitting days in Term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

Exchequer of Pleas.

Sittings at Nisi Prius in Middlesex and London, before the Right Hon. Sir FREDERICK POLLOCK, Knight, Lord Chief Baron of Her Majesty's Court of Exchequer, in and after Hilary Term, 1853.

MIDDLESEX.—IN TERM.

1st sitting, Wednesday, Jan. 12.
2nd sitting, Wednesday, Jan. 19.
3rd sitting, Wednesday, Jan. 26.

AFTER TERM.

Tuesday, Feb. 1.

LONDON.—IN TERM.

1st sitting, Monday, Jan. 17.
2nd sitting, Monday, Jan. 24.

AFTER TERM.

Wednesday, Feb. 2, to adjourn only.

The Court will sit during and after term at 10 o'clock.

The Court will sit in Middlesex, at Nisi Prius, in Term, by adjournment from day to day until the causes entered for the respective Middlesex Sittings are disposed of.

In each of the London Sittings during Term there will be two days for the trial of causes.

INNS OF COURT.

PUBLIC EXAMINATION, HILARY TERM, 1853.

THE COUNCIL OF LEGAL EDUCATION have approved of the following Rules for the Public Examination of the Students. To afford a longer period for preparation, the Council have postponed the examination until the 22nd, 24th, and 25th days of January, 1853.

The attention of the Students is requested to the following Rules of the Inns of Court:—

"As an inducement to students to propose themselves for examination, studentships shall be founded of fifty guineas per annum each, to continue for a period of three years, and one such studentship shall be conferred on the most distinguished student at each public examination; and further, the examiners shall select and certify the names of three other students who shall have passed the next best examinations, and the inns of court to which such students belong may, if desired, dispense with any Terms, not exceeding two, that may remain to be kept by such students previously to their being called to the Bar. Provided that the examiners shall not be obliged to confer or grant any studentship or certificate, unless they shall be of opinion that the examination of the students they select has been such as entitles them thereto."

"At every call to the Bar those students who have passed a public examination, and either obtained a studentship or a certificate of honour, shall take rank in seniority over all other students who shall be called on the same day."

Rules for the Public Examination of Candidates for Honours, or Certificates entitling Students to be called to the Bar.

An examination will be held in next Hilary Term, to which a student of any of the inns of court, who is desirous of becoming a candidate for a studentship or honours, or of obtaining a certificate of fitness for being called to the Bar, will be admissible.

Each student proposing to submit himself for examination will be required to enter his name at the treasurer's office of the inn of court to which he belongs, on or before Wednesday, the 12th day of January next, and he will further be required to state in writing whether his object in offering himself for examination is to compete for a studentship or other honourable distinction; or whether he is merely desirous of obtaining a certificate preliminary to a call to the Bar.

The examination will commence on Saturday, the 22nd of January next, and will be continued on the Monday and Tuesday following.

Each of the three days of the examination will be divided as under:—From half-past nine A.M. to half-past twelve; from half-past one P.M. to half-past four.

The examination will be partly oral, and partly conducted by means of printed questions, to be delivered to the students when assembled for examination, and to be answered in writing.

The oral examination and printed questions will be founded on the books below mentioned; regard being had, however, to the particular object with a view to which the student presents himself for examination.

In determining the question whether a student has passed the examination in such a manner as to entitle him to be called to the Bar, the examiners will principally have regard to the general knowledge of law and jurisprudence which he has displayed.

The Reader on Constitutional Law and Legal History proposes to examine on the following Books:—

Hallam's Constitutional History, Vols. I. and II. Clarendon's History of the Rebellion, Vols. I. and II. May's History of Parliament. Rapin's History of the Reigns of Elizabeth to James the Second, inclusive.

Those who present themselves to obtain distinction will be examined more minutely, and expected to answer more difficult questions, drawn from the same sources, and to be acquainted with the important statutes and trials of the period; and also to answer questions relating to the progress and alterations of English law during the aforesaid reigns.

The Reader on Equity will examine in the following books:—

1. Milford on Pleadings in the Court of Chancery; Calvert on Parties to Suits in Chancery, chap. 1 & 2; Story on Equity Jurisprudence, Vol. I., and chapters 17 and 18, Vol. II.; the Act for the Improvement of Equity Jurisdiction, 15 & 16 Vict. c. 86. 2. Sir James Wigram's Points in the Law of Discovery, "Defence by Plea;" the remainder of Story's Equity Jurisprudence, Vol. II.; the principal Cases in White and Tudor's Leading Cases, Vols. 1 & 2.

Candidates for certificates of fitness to be called to the bar will be expected to be well acquainted with the books mentioned in the first of the above classes.

Candidates for a studentship or honours will be examined in the books mentioned in the two classes.

The Reader in Jurisprudence and the Civil Law proposes to examine in

The Roman Law of Persons, as contained in the Institutes of Justinian, and as explained and illustrated by Heineccius (Elementa Juris Civilis); and Bowyer (Modern Civil Law.)

Candidates for a studentship or other distinction will be expected to answer all questions of principle suggested by the text of the Institutes. They will also be examined in Mackintosh—Law of Nature and Nations; Bentham—Principles of International Law, Vol. II. pp. 535 *et. seq.* of Bowring's edition; Montesquieu—Esprit des Lois, livre 28; Spence—Equitable Jurisdiction of Court of Chancery, part 1, book 1, chap. 7; part 1, book 2, chap. 7; part 1, Appendix; Story—Conflict of Laws, chapter on "Capacity of Persons," and "Domicile."

Candidates for a Certificate will be examined exclusively in Bowyer—Modern Civil Law, chap. 1 to 12; Mackintosh—Law of Nature and Nations; Spence—Equitable Jurisdiction of Court of Chancery, part 1, book 1, chap. 7; Story—Conflict of Laws, chapter on "Capacity of Persons."

The Reader on the Law of Real Property proposes to examine in the following books and subjects:—

BOOKS.

CLASS I.—2 Blackst. Com., or 1 Steph. Com, book 2; 1 Spence, Eq. Jur. book 2, chap. 4; book 3, chap. 1—7; Cru. Dig. tit. 11, 12, 16; Butler's Notes to Co. Lit., 191 a, sect. 2, 5; 271 b.

CLASS II.—Shelford on Mortmain, chap. 3; Roper on Legacies, chap. 19; Lewis on Perpetuity, and Jarman on Wills, with reference to 1 Vict. c. 26, ss. 28, 29.

SUBJECTS.

CLASS I.—The Nature of Estates of Freehold Tenure—their Quantity and Quality—their Rights and Incidents.

The Nature and Properties of Uses and Trusts, prior and subsequent to the Statute of Uses.

The Origin and Nature of a Lease and Release, as an ordinary mode of Assurance.

CLASS II.—The alterations effected by the Legislature during the last preceding and present reigns in the Practice of Conveyancing.

The Law of Mortmain; including therein the Law affecting the Alienation of Lands to Corporations, and the Disposition of Property to Religious and Charitable Purposes.

The Law of Lettlement; its effect upon the rights and Liabilities of Husband and Wife, as exemplified in the case of Marriage Articles, Ante-Nuptial and Post-Nuptial Settlements—and upon the Rights of Creditors and Purchasers under 13 Eliz. c. 4, and 27 Eliz. c. 5.

Students offering themselves for the public examination, and not going out in honours, will be expected to be well acquainted with the books and subjects comprised in Class I.

Students offering themselves for the public examination, and who are candidates for studentships or honours, will be expected to answer questions drawn from the books and subjects comprised in Class I. and Class II.

The Reader on Common Law proposes to examine in the following subjects and books:

CLASS I.—As to the nature of the common law generally (Stephen, Com., Vol. I. Introd. s. 3.) The law of principal and agent, and of bills of exchange and promissory notes (so far as treated of in Smith's Merc. Law. 4th ed., book 1, chap. 5, and book 3, chap. 1.) The law respecting tenancies from year to year, and for shorter periods (Woodfall on Landlord and Tenant, 6th ed. book 1, chap. 5, ss. 1 and 2.) The law respecting larceny and obtaining money by false pretences (Arch. Cr. Pl. 12th ed. book 2, part 1, chap. 1, ss. 1 and 3.)

CLASS II.—The law of partnership and corporations (so far as treated of in Smith's Merc. Law, 4th ed. book 1, chap. 2 and 4.) The law of distress (Woodfall, Landlord and Tenant, 6th ed. book 2, chap 2, ss. 1, 2, 3.) The cases of *Ashby* v. *White* (1 Smith, L. Cas. p. 105), and *Marriott* v. *Hampton* (2 Id., p. 237), with the notes thereto. The Common Law Procedure Act (15 & 16 Vict. c. 76), so far as it treats of the writ, appearance, joinder of parties and of causes of action (ss. 1-41.)

Students desiring merely to obtain a certificate to be called to the bar, will be examined in the books and subjects comprised in Class I.

Candidates for studentships or honours will be expected to be familiar with the books and subjects specified in both the above classes, and also with leading cases (if any) bearing upon the several branches of law therein enumerated, decided since the last editions of the books above-mentioned.

By Order of the Council,
RICHARD BETHELL, Chairman.

Council Chamber, Lincoln's Inn,
December 11th, 1852.

ATTORNEYS TO BE ADMITTED.

QUEEN'S BENCH, HILARY TERM, 1853.

Adye, Arthur, jun. 9, Devonshire-street, Red Lion-square; Bradford, Wilts; and Gt. James-st., articled to Wm. Stone
Appleton, Henry, Stokesley J. P. Sowerby
Aspinall, Clarke, New Ferry, near Liverpool—J. Collinson, Richard Radcliffe
Ayre, Charles Edward, 8, New Palace-yard; and Kingston upon-Hull—W. Ayre, jun.; W. Sanger
Babington, John, 37, Store-street, Bedford-sq—E. Babington; J. Scott
Baddeley, Thomas, jun. 38, Gloucester-terrace, Mile-end—T. Baddeley
Bartlett, William Smith, Stourbridge; and Blakedown—G. C. Vernon and L. Minshall
Baugh, George, 11, Blomfield-terrace, Pimlico; and Brosely—G. Potts
Bayley, Edward D'Oyly, Stockton-on-Tees; and Pakenham-street—W. Bayley, H. Barnes, and J. Dodds
Bell, John Leonard, 2, Vernon-place, Bloomsbury-square; Bourn; and University-street—W. D. Bell
Bell, Octavius, Much Hadham; Newcastle-on-Tyne; 31, Frederick-street, St. Pancras—C. U. Laws
Berridge, Robert Bristow, 18, Ampton-street, Gray's-inn; and Leicester—S. Berridge
Bimson, John, Everton, Liverpool—G. B. Carter
Breeze, Robert, 21, St. Mary-le-Strand-place, Old Kent-road—J. Newbold; E. W. Field
Broad, Joseph, Tunstall—W. Cooper
Bunting, John, 9, Percy-circus, Pentonville; and Mansfield—J. B. Simpson; R. Parsons
Burch, Arthur, 5, Pilgrim-street; St. Thomas the Apostle; Devonshire—W. Lambert, jun.; C. H. R. Rhodes
Calthrop, Thomas Dounie, 4, Upper-park-place, Blackheath—J. S. Rymer
Carrington, Charles James, 2, Cambridge-terrace, Islington; and Crofts Bank, near Manchester—J. Barlow, jun.
Cartwright, John Urry H., Lower Brunswick-terrace; Baker-street; Rawtry—F. H. Cartwright; T. C. Leitch; and W. Thorpe
Clark, Frederick, Snaith—E. E. Clark
Cockerill, Thomas Marshall, 10, Symond's-inn—H. Hoane; W. Dean
Cooper, Thomas, Kidderminster—W. Boycott
Cross, John, 17, Bernard street, Russell-square—J. Cross
Durrant, Benjamin Chandler, Sherborne; and Poole—T. Durant; B. Chandler, jun.
Earle, Charles, 12, Old Quebec-street, Portman-square—G. Sperling
Earle, Henry Benjamin, 47, Lincoln's-inn-fields; and Andover—H. Earle
Edge, James Henry, 7, Denmark-street, Islington; and Liverpool—J. Atkinson
Evans, Asa Johnes, Penrallt, Cadogan; and 18, Upper Marylebone-street—J. Smith
Fewster, John Reed, 41, Alfred-street, Islington; Gordon-street; and Durham—R. J. Shafto
Freeman, Charles Edward, 2, Chalcot-villas, Hampstead—H. Abbott
Galtskell, Alfred Ashley, Stratham—J. Pryer; W. S. Galtskell; and T. H. Devonshire
Girdlestone, James, Kingswinford; and Gerard-street—J. Harwood
Groves, Thomas George, 24, Newington-crescent—J. Leman
Hampson, Francis, Plaistow; and Rusholme—J. Hampson
Hanmer, Phillip, 73, Margaret-street, Cavendish-square—Messrs. Potts and Brown
Hayman, Philip Charles, 4, Gray's-inn-square; and Old Bond-street—H. Trenchard; and H. S. Westmacott
Hodgson, James Leyland, Hulme-within-Manchester; Walmer-place; Longsit-within-Manchester—T. Dodge; and A. L. Hardman
Howell, Nathaniel, 8, Esher-street, Kennington; Portsea—A. Low
Jeffery, George, 42, Seymour-street, Liverpool; and Swinton-street, Gray's-inn-road—H. M. Gibson
Jennins, Charles, 26, Bryanstone-street, Portman-square; and Bath—P. H. Watts
Kaye, George Edward, 8, Russell-street, North Brixton—C. Kaye
Keays, Frederick, 8, Fitzroy-place, Kentish-town—R. Fisher
Kough, Samuel Harley, Shrewsbury; Warwick-court; and New Ross—T. H. Kough
Last, Frederick, Hadleigh—A. C. Veley; J. Last; and H. Last
Lucas, Thomas Edward, Taunton-place, Regent's-park—J. Ingram
Maclure, Bowman, 14, Harley-street, Cavendish-square—T. H. Jones
Mander, Charles John, 38, Ladbrook-square; Notting-hill; Little Ealing—J. J. Millard
Markby, Henry, 63, Charlewood-street, Pimlico—Messrs. Crabtree and Cross
Matthews, John Williams, Plymouth—A. Rooker
Moore, William Walter Kelland, 5, Blenheim-terrace, Abbey-road, St. John's-wood; and Tooley-street—H. W. Hooper
Nairn, Henry Pearson, Twickenham—E. Watts; and J. Kingsford
Naters, Henry Trewhitt, 17, King Edward-street, Liverpool-road; and Nassau-street—G. W. Wright; and F. Turner
Neate, Albert, 40, Duke-street, Manchester-square—J. Neate
Nisbet, Henry Curtis, 10, Charles-street, Middlesex Hospital—A. Bell
Payne, John Brown, Manchester—A. Oliver
Pollock, Alfred Atkinson, 6, Frederick's-place, Old Jewry—P. R. Alderson; P. J. T. Pearse; and P. J. T. Pearse, jun.
Pownall, Henry Smith, 22, Gloucester-road, Regent's-park—W. Pownall
Proud, John, jun., 2, Studley-road, Clapham; and Durham—H. J. Marshall
Purchas, James Bishop, 43, Ampthill-square; and Ross—W. P. Hooper
Ram, Stephen Adye, 23, Red Lion-square; and Bartholomew-place—J. Inglis
Roberts, Samuel, Lincoln; River-street, Myddleton-square; and Gerard-street, Islington—R. Mason
Robson, John, jun. 7, Clarence-terrace, Regent's-park—J. Robson
Sanger, John Hill Melton, Lower Calthorpe-street; Exeter; Devereux-court; Maze-pond; and Devonshire-street—R. Wreford; and J. N. Wilson
Sankey, Herbert Tritton, 11, New Ormond-street; Canterbury; and Great Ormond-street—R. Sankey; and W. P. Beecham
Scott, George Edward, 22, Alpha-road, St. John's-wood; and Conduit-street, Regent-street—F. J. Fuller
Scott, George Wm. 2, Great Dean's-yard, Westminster—J. Scott
Selby, James Addison, 17, Clifford's-inn; and Albany-street, Regent's-park—T. Selby
Senior, Frederick Bernard, 3, Warwick-square, Kensington; and Kew—W. Chapman
Sheppard, Augustus Frederick, Bellofield-house; and Parson's-green, Fulham—W. Parsons; and J. King
Simpson, James Tennant, 5, Montague-place, Russell-square—J. A. Simpson
Smith, Frederick, Hungerford; and Caroline-street, Bedford-square—W. W. Smith; W. Turner; and W. Withall
Smith, Job Orton, 25, Bernard-street, Russell-square; and Canonbury-terrace—P. Richardson
Snowball, George, Sunderland—G. W. Wright
Sparrow, William David Lloyd, Derby; and 6, Waverley-place, St. John's-wood—J. B. Simpson
Stiffe, Francis William Everitt, 8, Clement's-inn; Clifton; and Percy-circus, Pentonville—A. Cox
Thomas, Richard Aubrey, Green-hall, Carmarthen; Surrey-street, Strand; Hall-street, Islington—G. Thomas, jun.
Turner, George, Kinghorne-cottage, Coborn-street, Bow-road—W. H. Turner
Utterton, Edwin, Earl's-wood, Reigate—Messrs. Dawes and Sons.
Waller, Robert, Albany-street, Regent's-park; Wolverhampton; Westbourne-terrace—Messrs. Deakin and Dent
Wallis, Wm. Talbot, Devereux-chambers, Strand—R. B. Beddome
Warwick, James Bailey, 17, Upper North-place, Gray's-inn-road—M. P. Moore
Waugh, George, jun. 5, Great James-street; and Worthing—G. Waugh, sen.; and R. Edmunds
Weekes, Charles Henry, 4, High-street, Bloomsbury; and Lamerton by Tavistock—G. W. Snell; and J. V. Bridgman
Whitfield, John Charles, Bristol—W. Gresham; W. B. Cooper; G. W. Whitaker; W. Bartholomew; and W. Beavan
Wightwick, William, Newgate-street; Brunswick-street, Dover-road; Spencer-place, Brixton-road—P. W. Fry
Williams, Ebenezer Robins, 30, Claremont-square, Pentonville; and Edgbaston—R. Gillam; I. O. Jones; and R. Gillam, jun.
Wincarls, William Good, 45, Gower-place, Euston-square; Norwich—W. Rackham
Wright, Egerton Leigh, Wigan—R. Bloxham; R. Darlington; and T. F. Taylor
Wyatt, William, 12, Cavendish-road, Wandsworth; and Stratford-place, Camden New-road—Nathaniel Mason

Added to the List pursuant to Judge's Orders.

Chisholme, John, 29, Edward-street, Hampstead-road—J. C. Hall
M'Clure, Edward Wade, Sandbach—E. Lewis; A. M'Clure; and J. Remer

PROCLAMATION OF OUTLAWRY.—At the Sheriffs' Court yesterday the following persons were called upon to surrender, under penalty of outlawry:—Charles Frederick Augustus William Guelph and Charles Cassimer Reinhold, at the suit of the Queen; Samuel Lucas Lancaster, C. B. Reynolds, John Edwin Spalding, George Broderick Hartwell, Edward John Upton and Susan his wife, Henry Dundas Campbell, Henry H. Griffin, and Porter Brown François Charles Gillies.

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

Commission Signed by the Lord-Lieutenant of the North Riding of Yorkshire.—Digby Cayley, Esq., to be Deputy-Lieutenant.

Vice-Chancellor Sir George Turner has been appointed one of the Lords Justices of Appeal, in the room of Lord Cranworth.

Sir W. Page Wood succeeds Sir George Turner as Vice-Chancellor.

Mr. Keogh, Q. C. has been appointed to the office of Solicitor-General for Ireland.

The Hon. H. Fitzroy has accepted the office of Under-Secretary to the Home Department.

Mr. Grenville Berkeley has been appointed Secretary to the Poor Law Board.

C. S. Whitmore, Esq. the Recorder of Lichfield, has relinquished that appointment and accepted the Recordership of Gloucester; and H. W. Cripps, Esq. of the Oxford Circuit, has been appointed in his place.

PROCEEDINGS OF LAW SOCIETIES.

ATTORNEYS AND SOLICITORS, IRELAND.

At the general half-yearly meeting of the Incorporated Society of the Attorneys and Solicitors of Ireland, held in the Solicitors' Hall, on Friday, November 26, 1852, Richard Meade, Esq., Vice-President, in the chair, the following report of the Council was read by the Secretary, and adopted by the meeting:—

"Your council congratulate the society on its incorporation this year by a charter, which confers on it many advantages, and forms the necessary basis of future privileges, required not only by the important social position of our Profession, but for the public benefit; and the attainment of those privileges will doubtless be a subject of early consideration to our successors, and the society at large.

"The establishment of a schedule of fees, affording proper remuneration to solicitors for business transacted in the Court of Chancery, being imperatively necessary, your council have zealously followed up the exertions of their predecessors on the subject, but regret to add, without present success, although, shortly after the accession to office of the present Lord Chancellor, they presented to him copies of the memorials which had been laid before the late Lord Chancellor by our predecessors, together with further memorials, and they are now under his lordship's consideration. Your council are disposed to hope, that the delay of so important a matter is caused by the meditated further reform of the court, and the consequent desire of his lordship to arrange one complete schedule of fees.

"The oppressive stamp duties and office fees of the Court of Chancery being amongst the most serious evils of the court, your council, with a view to their abolition by any further measure of Chancery Reform, have submitted a memorial on the subject to the Lord Chancellor, and are satisfied his lordship will give to it the attention which its great public importance demands.

"In the month of February last your council submitted to the Taxing Masters of the Court of Chancery rules and suggestions, tending to expedite the business of that department, and with some modification these rules have been adopted, and are in operation since last Easter Term. Your council have, however, to express their regret that the numerous complaints of delay in the taxation of Chancery costs are too well founded. A remedy for so great an injury to the suitors and our Profession is indispensable, and should be carefully considered by our successors and the society.

"When questions of principle on the taxation of costs arise, we recommend their submission to the council, in order that appeals may (if thought proper) be prosecuted at the expense of the society, so as to relieve individual members from the hardship of trying, at their own expense, questions sometimes comparatively small in themselves, yet important to the Profession. All such cases submitted to the council have been willingly considered; but the council regret that the want of funds has limited their exertions.

"Your council, in conjunction with the Incorporated Law Society of England, made every possible exertion during the last session of Parliament to procure the abolition of the annual certificate duty, and for some time immediate success was reasonably expected, but the disarrangement of Parliamentary business, consequent on the change of ministry, checked the exertions of our Parliamentary friends. Shortly after the formation of the present ministry, a memorial on the subject was presented to the Chancellor of the Exchequer, and a deputation from the Incorporated Law Society of England having submitted to him the injustice of the tax, he made several inquiries, assured them he would carefully consider the question, and bear in mind the several decisions of Parliament favourable to its repeal, and also the probable effects of modern law reform, with a desire to come to a right conclusion. The remission of the impost not having formed part of the financial scheme afterwards submitted to Parliament by the Right hon. gentleman, Lord Robert Grosvenor immediately gave notice of a motion for leave to introduce a bill to repeal the tax, but he was prevented from moving it by a political manœuvre directed against another measure. The late general election having afforded an opportunity of further exertion, your council publicly recommend our profession to exercise their influence to insure, in the present Parliament, all possible support of the measure, and your council have reason to be satisfied with the result of the exertions accordingly made, and it is expected that the bill will be submitted to Parliament on the first opportunity this session; therefore, the continued exertions of the profession are requested, as being absolutely necessary to insure success.

"A system most obnoxious to the rights and character of the profession has come under our notice—namely, contracts made between solicitors and public bodies, under which the former accept salaries for the transaction of their professional business, and the latter receive all the professional fees, though such fees may and do exceed the salaries. The council denounce such dealings, and have their legality under consideration, with a view to its trial when deemed advisable.

"Most Professions have a self-governing power. Ours has not this advantage; yet no profession is more entitled to it, because no profession requires for the discharge of its duties an equal amount of integrity and personal honour. This society is a fit depository for such a power; and, as a step towards its attainment, your council lately submitted a memorial to the benchers, requesting their sanction of a regulation that in future all attorneys and solicitors seeking to take apprentices should be members of this society. The benchers, however, did not feel themselves warranted in complying with the request. Its objects should, therefore, be considered amongst the privileges to be sought in development of those conferred by the Charter.

"The report of the committee of this society for the year 1850, checked for some time the injurious and derogatory practice of advertising for business, previously adopted by one or two members of the Profession, but your council have to regret that the practice has been lately renewed, and by a member of the society who was well aware of such report. The form of advertisement referred to is a lithographed circular, to which our attention was called by an English solicitor, who, with creditable regard for the respectability of his profession, sent us the circular he received. We immediately considered the subject, and directed a letter to be addressed to the gentleman referred to, informing him of what had taken place, and requesting to know if he had any explanation to make; and he, in his reply, avowed the circular, and, not content with insisting on his right to issue it, expressed himself in very unbecoming terms to your council. Under those circumstances, we, in pursuance of the power vested in us by the 18th by-law, felt bound to suspend the gentleman in question from the use of the rooms of the society until the general meeting of the society, to which we referred the correspondence and further consideration of the subject. Your council deeply regret that the exercise of so painful a task should have been forced upon them.

"The council regret to state that many hardships and grievances affecting the Profession and the public are frequently laid before them, which it is not in their power to remedy; and, as an instance, they think it right to notice a case in which an attorney was obliged, on the trial of a record at the Autumn Cork Assizes, 1851, and under the advice of counsel, to bring down an original will from the Prerogative Court at an expense of 23*l.* 12*s.* 6*d.*, yet Mr. Hudson, one of the Law Taxing Masters, disallowed the sum of 11*l.* 12*s.* 6*d.*, part of the sum of 23*l.* 12*s.* 6*d.* which was necessarily paid to that court for sending the original will to the Assizes, stating that in the absence of any authority, rule, or Act of Parliament to warrant the charge made by the Prerogative Court, he would only allow 12*l.* as for an ordinary witness for the purpose.

"Your council congratulate the society on the increase to its numbers this year, and invite the support of those of the Profession who are not yet members, as to join the society is now more than ever an imperative duty. A chartered and united body can effect much, if well aided; the exertions of our society to protect the rights and advance the interest of our profession (both Dublin and country practitioners) were never so wanted as at present. Those exertions will be earnestly made; but we call upon all our professional brethren to join, and give the society that support which is the material element of success."

LEGAL INTELLIGENCE.

Result of the Examination.—At the examination of the candidates for admission on the Roll last Term, 117 had left their testimonials and were entitled to be examined. Of these 108 were passed, two did not attend, and seven were postponed—their answers not being deemed sufficient to warrant a certificate of fitness and capacity to act as attorneys and solicitors.

It will be observed by the Questions, which we published on the 27th of November, that the Examiners carefully avoided any points regarding the Law or Practice recently abolished or altered, or the new enactments and rules and orders now in force.

Southampton.—Sir G. A. Cockburn will be opposed by Mr. A. B. Cochrane, who formerly sat for Bridport.

Oxford City.—Mr. Cardwell is engaged canvassing the electors, but an opposition is threatened, and active steps are being taken to bring forward another candidate. The nomination is fixed for Tuesday.

Foreign Rabbits.—The Lords Commissioners of her Majesty's Treasury having received and considered the application from an eminent importer and salesman of Leadenhall-market, requesting that rabbits, alive or dead, may be admitted to enter free of duty, their lordships have directed Mr. Hamilton, one of the secretaries to the Treasury, to acquaint the Commissioners of Customs that their lordships are of opinion that rabbits, not being specifically mentioned in the schedules of the Act 8 & 9 Vict. c. 90, must be held to belong to the class of goods unenumerated, and not, either in part or wholly, manufactured, and as such are, under the existing tariff, duty free on importation into this country. In pursuance of this decision of the Lords of the Treasury, the Customs' authorities have issued a General Order to their officers at the several ports in the kingdom, directing the delivery of foreign rabbits in future free of duty.

The Card Cheating Case at Brighton.—Richard Sill, the attorney whose name has so often appeared before the public in reference to the card-cheating case at Brighton, and who was convicted and sentenced to a long term of imprisonment at the Central Criminal Court, has been liberated from the House of Correction, Coldbath-fields, a writ of error having been allowed in his case, which will be heard in a Superior Court at some distant period.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

Dendy.—On the 30th ult. at 27, Fortess-terrace, Kentish-town, the lady of Arthur Hyde Dendy, Esq. barrister-at-law, of a daughter.

Giles.—On the 22nd ult. at Grove-road, North Brixton, the wife of John Edward Giles, Esq. barrister-at-law, of a son.

Middleton.—On the 24th ult. at Grove-house, near Leeds, the wife of Joseph Middleton, Esq. barrister-at-law, of a son.

Rawlinson.—On the 27th ult. at No. 39, Oxford-terrace, Hyde-park, the wife of T. A. Rawlinson, Esq. barrister-at-law, of a son.

MARRIAGES.

Colquhoun, George, Esq. of Parson's-hill, Woolwich, solicitor, to Mary, fourth daughter of the late Mr. Joseph Poulton, of Hackney, on the 28th ult. at South Hackney Church.

Hector, Cornthwaite, Esq. second son of the late C. J. Hector, Esq. M.P. for Peterafield, to Ann, second daughter of the late William Hayward, Esq. of the Temple, London, on the 28th ult. at St. Mary's, Lambeth.

Roope, Richard, Esq. of the Inner Temple, barrister-at-law, to Marcella, sixth daughter of the late John Were Clarke, Esq. of Bridwell-house, Devon, on the 23rd ult. at Halberton, Devon.

Wild, W. Stuart, Esq. of the Middle Temple, only son of the Rev. W. T. Wild, B.D. vicar of Westow, Yorkshire, to Jane, youngest daughter of Alexander Brown, esq. of Broadgate-house, Steeple Bumpstead, Essex, on the 21st ult. at Steeple Bumpstead.

DEATHS.

Babington, Alice Helen, youngest child of Benjamin Babington, Esq. of Lincoln's-inn, barrister-at-law, on the 23rd ult. at 31, George-street, Hanover-square, aged two and a half years.

Bloxsome, Edward, Esq. for fifty-three years deputy clerk of the peace for the county of Gloucester, on the 26th ult. at his residence, the Rangers, Dursley, aged 80.

Hoskins, Kedgwin, Esq. a deputy-lieutenant and magistrate for the county of Hereford, and formerly one of its representatives in several successive Parliaments, on the 24th ult. at his residence, Birch-house, near Hereford, aged 75.

Metcalfe, Elizabeth Anne, wife of Thomas Metcalfe, esq. of 5, New-square, Lincoln's-inn, and 29, Hertford-street, May-fair, on the 26th ult. aged 38.

Rogers, Edward, Esq. of Stanage-park, near Ludlow, formerly M.P. for Bishop's Castle, on the 22nd ult. at Bath.

JOURNAL OF PROPERTY.

MONEY MARKET.

English Funds.	Sat.	Mon.	Tues.	Wed.	Thurs.	Frid.
Bank Stock	Christmas Day.	224	223½	223½	223½	223½
3 per Cent. Reduced Annuities		101⅛	101⅛	101⅛	101⅛	101⅛
3 per Cent Consols Annuities		shut	..	..	shut	shut
Consols for Opening		100⅝	100⅝	100⅝	100⅝	100⅝
New 5 per Cent. Annuities		..	..	..	..	..
New 3½ per Cent. Annuities		104⅛	104⅛	104⅛	104⅛	104⅛
Long Annu. (exp. Jan. 5, 1860)		6⅛	6⅛	6⅛	6⅛	6⅛
Do. 30 yrs. (exp. Oct. 10, 1859)		..	..	..	..	..
Do. 30 yrs. (exp. Jan. 5, 1860)		..	..	..	..	..
India Stock		..	..	..	..	..
India Bonds (1,000*l.*)		..	80	..	..	..
Do. do. (under 1,000*l.*)		..	80	80	83	..
South Sea Stock		..	..	..	..	..
Do. do. New Annuities		..	..	..	..	..
Exchequer Bills, 1000*l.* June		69*	71*	69*	..	72
Do. do. 500*l.* June		66*	70*	69*	..	72
Do. do. Small, June		..	70*	69*	..	72

* Premium.

THE SECO[illegible]
COMMON LAW [illegible]
of an Action at Law [illegible]
decided in Michaelmas [illegible]
arrangements. Price [illegible]

THE LAW [illegible] ALMANAC
for [illegible] Almanack, [illegible] of an Abbreviated View [illegible] Tables, [illegible] of Business, Time, and the other Information [illegible] the Office, giving only just [illegible] to any person [illegible]

THE NEW BANKRUPTCY ORDERS
and the BANKRUPTCY [illegible] with all the Cases decided on its construction, added [illegible] By C. J. B. [illegible], Esq., Barrister-at-Law, Author of "The Practice of Bankruptcy and Insolvency," &c.

COX'S CRIMINAL LAW CASES, Part I. of Vol. VI. containing a [illegible] of Cases of Indictment [illegible] at Quarter Sessions, according to the [illegible]

TUDOR'S NEW CHANCERY PRACTICE; the Orders being placed in the [illegible] after the Sections of the Statute to which they relate, thus rendering the whole Law together. By OWEN TUDOR, Esq., Barrister-at-Law, Author of "Leading Cases in Equity," &c.

THE LAWYER'S POCKET-BOOK for 1853, containing the Almanack of the Month's Rising and Setting for the last as well as the present Year, a complete Table of Stamps, Time Taken in Common Law, Equity and Bankruptcy, and much other matter required for Reference in Courts. Price only 6d.

THE PRACTICAL STATUTES for 1849, with Notes of all the Cases that have been decided on their construction, thus giving to the Practitioner the whole Law, viz. the text of it, and the judicial interpretation of the text. In a small volume for the bag or pocket. Price 10s. 6d. cloth. In continuation of the same already published from 1800. By C. J. B. HERSCHELL, Esq. Barrister-at-Law.

To Readers and Correspondents.

COMMUNICATIONS RECEIVED.—"W. R. P." (City); "Flat Justitia" (Manchester); "Lex"; "R. W. B."

"FAIR PLAY'S" *remarks are probably just, but he willigno the impossibility of publishing anything so personal as his allusions.*

We cannot undertake to return rejected communications. Whatever is intended for insertion must be authenticated by the name and address of the writer—not necessarily for publication, but as a guarantee of his good faith.

No notice can be taken of anonymous contributions

THE LAW TIMES.

SATURDAY, JANUARY 8, 1853.

TO READERS.

DESIROUS of bringing up a large arrear of reports that were in type, so as to begin the busy part of the year next week with cleared columns, we have taken advantage of this season of holiday and the temporary lull in legal topics produced by recent changes, to devote a larger space to the reports and a lesser space to legal intelligence and information, than is our custom out of term. Hence the omission of divers of the wonted departments into which the contents of THE LAW TIMES are usually distributed.

CRIMINAL APPEAL.

THE measure of justice which we have so long demanded is likely to be conceded at last. Mr. ISAAC BUTT has given notice that he will introduce a Bill for providing an Appeal in Criminal Cases. Mr. KIRWAN'S case has forced upon the attention of the newspapers that which the LAW TIMES, speaking the experience of the Profession, had long since proposed and advocated. Even the *Examiner*, that sternest critic of our criminal law, with whom accusation suffices for conviction, and who would inflict punishment without mercy, has at length acknowledged that there ought to be some legitimate tribunal for reviewing a criminal trial. With such unanimity of opinion it is probable that justice and humanity will triumph at last, and that it shall no longer be the reproach of English law that while property to the amount of 20*l.* is protected by new trial against the error of human judgment, the same protection is denied to liberty and life.

The arguments against a Criminal Appeal are singularly weak. It is said that it will encourage crime by adding one more to the chances of escape for the criminal; that it will at least delay, if not defeat, justice, as it will be demanded in every case if it is given as a matter of right; and that if it is to be by leave of the Court above, one-half of its sittings would be occupied in hearing applications for new trials.

It will be seen that these objections, which are all that ever have been urged against it, are founded upon the assumption that a new trial is to be had without any difficulty. But such is not the design of those who advocate a Criminal Appeal. We contemplate nothing more than the same privilege as is permitted to parties in civil actions, namely, permission to go to the Court of Appeal, which is already established for deciding disputed points of law, and show cause why a new trial should be had, and that it should

[illegible] reported the [illegible] application, relying upon the Court [illegible] sufficient grounds for [illegible] shown. To this [illegible] appears to be established by the prisoner's counsel, to the satisfaction of the Court, either that the evidence was insufficient to justify a conviction, or that evidence could be adduced for the defence which would rebut the case for the prosecution; and good reasons why this evidence was not produced at the trial should be required.

It has been suggested by some of the newspapers that the power of ordering a new trial should be vested in the Secretary of State. This would be undoubtedly a great improvement, and it would have some advantages; but on the other hand, the applications would be too numerous to receive due attention from the Home Office, and practically all minor offences would thus be excluded from the benefit of the provision; and it is important that it should extend to *all* criminal convictions, the loss of reputation being often a severer punishment than the sentence, and the removal of the stigma would be the primary object of the appeal.

We regret that this question is not to be brought before Parliament by some English Lawyer of distinction. It should have originated in the House of Lords, and would have come with peculiar grace from Lord CAMPBELL, as the author of so many other improvements in our Criminal Law. It is not yet too late for the Lord Chief Justice of England to produce a Criminal Appeal Bill. Sure we are that Mr. BUTT would willingly leave it to hands more able than his own to secure its success.

ELECTION PETITIONS.

THERE is just now a great outcry among the one hundred and odd members against whose returns petitions have been lodged, at the injustice done to them by charges made which may never be substantiated, and costs forced upon them to defend themselves from false and frivolous accusations. All sorts of alterations of the law are proposed, the practical effect of which would be to prohibit petitions altogether, and thus to give impunity to corruption.

But, in fact, very little alteration is necessary. The existing law, with the slightest amendment, would afford ample protection against vexatious and frivolous petitions. The Committee have power to order costs to be paid by the petitioner in their discretion. To secure complete justice for all parties, there needs but this trifling modification. Let it be *enacted* that a notice (say of fourteen days) shall be given by the petitioner to the Sitting Member, of the particular cases, with names and dates, which he proposes to put in evidence. Let each case be treated as is a distinct issue in law, and let the costs follow the result: that is to say, if the Sitting Member disputes the charges, or any of them, let it not be left to the Committee to say whether they are frivolous, but, according to the decision of *the particular case*, let the costs of proving or disputing it be paid by the losing party. If the petitioner brings a charge which he cannot support, let him pay the costs of the Sitting Member in disputing that particular charge; if, on the other hand, the Sitting Member disputes the charge, and the petitioner proves it, let the former pay the latter the costs of the proof to which he has thus been put. Let the *general* costs of the petition follow the general result.

Such a provision would effectually prevent frivolous charges and vain defences. A bill of a single clause would accomplish the object.

THE ECCLESIASTICAL COURTS.

THE long-promised, often-attempted, often-defeated reform of this relic of barbarism may now be looked upon as imminent Lord DERBY placed it among his promises, so that the doomed Courts can find no refuge on his side of the House; and Sir JAMES GRAHAM has promised it on behalf of the present Ministry, so that there is no hope for them from the Ministerial Benches. The only question at issue is, shall they be reformed or extinguished?

We are for their total extinguishment. Reform cannot reach their defects, for they are fundamentally bad. Their jurisdiction is founded upon an assumption which in this age and in a Protestant country is not acknowledged,—the right of the Church to regulate the morals and consciences, not of its own members only, but of the whole community. Hence the origin of their jurisdiction over wills and marriages. They have been handed down to us from Roman Catholic times, and they are [illegible] with the Roman Catholic policy, which yields those demands of the Church. But Protestants dispute the claim and deny the authority, and yet manage to say, in a Protestant country we have Church Courts exercising a jurisdiction over all the marriages and all the wills of the population, whether Churchmen or Dissenters. And to this the Dissenters have submitted quietly, while waging war against a Church Rate!

Undoubtedly, neither with wills nor with marriages can the Ecclesiastical Courts claim any right to concern themselves; these are essentially matters for the civil power, and to the ordinary tribunals of the country they must be consigned. If the Ecclesiastical Courts are to be preserved at all, they must be limited strictly to their proper province, the Ecclesiastical Government of the *Church*; they must be nothing more than tribunals for deciding disputes within the Church itself, and maintaining its discipline over its own clergy.

Nothing less than this will satisfy the requirements of the age we live in.

A COLLEGIATE SCHOOL FOR THE LAWYERS.

WE have received the following letter from the County Court Judge to whom we allnded last week, as having authorised us to put down his name for a subscription of *one hundred guineas* towards the establishment of a Collegiate School for the sons of members of the Profession.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I thank you for your courtesy and readiness in inviting the attention of the Profession to the establishment of a Collegiate School for the education of their sons. You have taken a wider, and I think, upon the whole, a better view of the question than I did. My intention was that the institution should be confined to the maintenance and education of the children of the poorer members of the Profession for a certain period, upon their contributing a small annual payment. There can, however, be no reason why such an institution might not be rendered effectual and valuable to the children of the wealthier members of the Profession, by providing "the *best* education at the *lowest* cost." Until the sense of the Profession be taken upon the question, it would be inexpedient for me to offer any suggestions. I have, therefore, merely thrown out a hint, which may be improved by competent persons. The Medical Profession, I apprehend, have established such a school; and most assuredly the Legal Profession are sufficiently numerous, rich, and powerful to form one for the education of their own children. When I sent my former letter to you I did not intend it for publication, as you rightly conjecture, my object being that of suggestion. You ask whether I will now permit my name to be announced; I consent to it, because it is a pledge of my sincerity in endeavouring to promote so useful an object, and because it may stimulate those who have children to turn their attention to the subject.

I am, Sir, your very obedient servant,
BENJ. PARHAM.

Hawford Lodge, Worcester, Jan. 3, 1853.

Thus the scheme is larger than either had contemplated at first, and the double object may be easily attained. The advantages of a cheap and good education may be well combined with charitable objects. A fund might be provided purposely for the education of the destitute children of members of the profession, in the same institution where those more fortunate pay for an education, the best that can be given, provided for them at the smallest cost. The twofold objects would materially help each other, and we can discover no substantial obstacle. The usual objection to the admission of children on charity, that it associates the paying ones with an inferior class, will not apply to an institution where all belong to one class, for those admitted with the help of the charity would be, in all respects but wealth, the equals of the rest. We now leave the suggestion to the consideration of our readers before we put it into a formal shape, and we shall be obliged by any hints that may be contributed upon so interesting a subject.

THE MAGISTRATE,
AND PAROCHIAL AND MUNICIPAL LAWYER.

EXCLUSIVE AUDIENCE OF THE BAR AT BOSTON SESSIONS.

The following report of proceedings at Boston Borough Sessions has been forwarded to us.—An application was made by *Kent*, of the Midland Circuit, (in the absence of *Flowers*), for the exclusive audience of the Bar at Boston Sessions. He also stated that it was the intention to make a subsequent application to alter the day of holding Spalding Sessions from Thursday to Wednesday.

Millington said he was deputed by a number of his professional brethren to oppose the application of the learned gentleman, not alone as a matter of private interest, but also on public grounds. It was rather, however, on public grounds that he would base his opposition than on any appeal *ad misericordiam*. Whoever had watched the progress of legislation for the last 20 years, must be convinced that it was the object and intention to make law as simple, and its administration as easy and economical as possible. The Legislature had, in fact, succeeded in so far simplifying the law, that the cases which came before these courts were of that common-place nature, that he thought he was not arrogating too much for the gentlemen of the profession to which he belonged, if he stated they were perfectly competent to discharge them. On public grounds, also, he would remind the Bench of what had been done in County Courts, the cases coming before which involved occasionally questions of great variety and intricacy; yet the Legislature had not thought proper to exclude attorneys from them; and he thought the same rule might fairly be extended to Courts of Quarter Sessions. He believed the Bar were about to introduce the rule of personal communication with clients, by which he thought barristers would lose much of their dignity and independence; and he conceived that if the bar usurped the practice at present confined to attorneys, much of the respect which was now justly due to the Bar would pass away. He hoped, however, as the County Courts Act had not thought proper to exclude attorneys, this Court would also be induced to pause ere they adopted that course. The principles decided in cases before the former tribunal were very difficult, —the applications generally much more complicated; and yet they managed to get through them without detriment to public justice. And now, as the practice of Courts of Sessions had become so much more simplified, he thought it would be a hardship to exclude them. It would also entail great additional expense in prosecutions, as much, he believed, as twenty-five per cent. This was a feature worthy of consideration; and he hoped the Bench would pause before they made the order for which the learned counsel prayed. With respect to parochial settlements, he thought attorneys were at least as well qualified as any other parties to conduct such questions; and they heard of scarcely any appeals. He had himself witnessed the conduct of the Bar at Spilsby and elsewhere; and he certainly did not think their presence gave additional facilities to the administration of justice. The cases had probably been prolonged, but no good had therefrom resulted to the public. Of course he conceded, that this Court had a perfect right to make any order it thought fit for the conduct of its proceedings; and he might remark, that in a pecuniary sense the alteration prayed for would not affect the profession to which he belonged; but on the public grounds to which he had referred, he did not conceive the expediency of the case was proved, and he therefore hoped the Court would not grant what the learned counsel sought.

Staniland also opposed the application on the same grounds as those mentioned by *Millington*. He also urged that no public advantage could arise, the Bar being very differently constituted to what it was fifty years ago; no university honours were now necessary; a person had but to attend a certain number of dinners, and at the end of three or five years he was a barrister. The consequence was the introduction of a very different class of persons; such as an auctioneer, or the editor of a newspaper, or any person who had failed in another pursuit, and to whom the Bar was a sort of refuge for the destitute. He stigmatised the application as one of peculiar assurance—

The *Clerk* of the *Peace* here very properly suggested to *Staniland* that he should refrain from indulging in harsh terms.

Staniland thereupon briefly concluded his argument, insisting that the profession to which he belonged were quite as well qualified as barristers to assist in the administration of justice, and urging that if the present application were granted, it would be a stigma on the profession. (The Chairman: "No, no.")

Kent having briefly replied,

The Chairman said the Bench was so closely identified with the magistrates of Spalding, that it would be necessary to consult them on the application; and they would therefore defer the consideration of the question to the adjourned sessions at Spalding.

New Trials in Criminal Cases.—Kirwan's Trial.—On the 15th February Mr. Butt, M.P., who was counsel for Kirwan, is to bring a bill forward in the House of Commons "to make better provision for the granting new trials in criminal cases."

The convict Kirwan has not yet been removed to the Spike Island depôt, one of his medical friends having given a certificate of delicate health. The most earnest efforts are now being made by his friends to have the sentence upon him altogether annulled.

Since the committal of Lord Frankfort to the House of Correction, Coldbath-fields, he has conformed himself very willingly to the rules of the prison, and appears quite reconciled to his punishment. He wears the prison dress, and in every respect is placed on the same footing as the other prisoners, except that by the payment of five shillings per week he is excused from labour, and spends his time principally in reading.

The Militia.—Tuesday's *Gazette* contains an Order in Council, commanding that all deputy-lieutenants, colonels, and commanding officers of corps of militia shall immediately proceed to raise and enrol in their respective counties volunteers to serve for the term of five years, according to the provisions of the act passed last session for consolidating and amending the law relating to the militia in England.

REAL PROPERTY LAWYER AND CONVEYANCER.

Summary.

The Lords Chancellor and the Lords Justices in the Court of Appeal, one of them (Lord Cranworth) dissenting, have held that the bequest of an annuity to A. to be secured by purchase of stock out of the proceeds of the sale of some land, and if that should not be sufficient the same to be supplied out of the personal estate, is a perpetual annuity. Lord St. Leonards observed: "It is perfectly settled and agreed upon that if an annuity be given *simpliciter* to one generally, a life interest only passes. It is equally, I believe, undisputed, that if an annuity be directed to be provided for out of the proceeds of property or out of property generally—if an annuity is to be brought into existence by the application of property, and that is given to a party generally, the party would take the property appropriated to purchase the annuity, and therefore would take the annuity in perpetuity if it were purchased: (*Kerr* v. *The Middlesex Hospital*, 20 Law. T. Rep. 160.)

Whenever a gift is made to husband and wife, the presumption of law is that it is given to one person, and they take as one person. Therefore where a bequest of 700*l.* was made to A. and B. his wife, and C., and there was a subsequent bequest of 200*l.* to C. 200*l.* to A. and 200*l.* to B., it was held that A. and B. were entitled only to a moiety of the 700*l.* and that C. took the other moiety, the general rule of construction not being altered by the context: (*Re Wylde's Estate*, 20 Law T. Rep. 162.)

In the *Law of Vendor and Purchaser* it has been held in *Clark* v. *May*, 20 Law T. Rep. 164, that a purchaser of real estate and of a judgment debt which represents the same property, at a particular price for the whole, has a right to apportion the purchase-money as he thinks fit, and to have a conveyance by two separate deeds, one comprising the real estate and purporting to be in consideration of a certain sum, and the other comprising the judgment debt and purporting to be in consideration of the residue of the purchase-money.

It is vulgarly thought that in England a man may do what he likes with his own. It is not exactly so, as will be seen by the case of *M'Donnell* v. *Hesselrige*, 20 Law T. Rep. 164. The facts were these:—A single lady, foolishly speculating upon a marriage not then arranged, but only hoped for, loving wisely not too well, conveyed a fund to trustees, upon trust for herself until the solemnisation of the marriage, if any, or in case there should be no marriage and after the solemnisation of the same marriage, if any, upon trust for her for life, for her separate use, exclusive of the contemplated or any other husband, and after her decease in trust for her children, and in default of children in trust for such persons as she should appoint, and in default of appointment in trust for her next-of-kin. The contemplated marriage did not take effect, and she afterwards married another, having previously prevailed on the trustees to whom the stock had been transferred to sell out a portion of it. It was held that she was not mistress of her own money; that she was bound by her own settlement on herself; that she had no power to revoke the settlement previously to the second marriage; and that the trustees were guilty of a breach of trust—another instance also of the *liabilities of trustees*.

The law of a foreign country governs a contract made in England with respect to landed property in that country. Thus, in Demerara mortgages cannot be made without certain formalities. A mortgage made here of certain lands there, without those formalities, was in *Waterhouse* v. *Stansfeld*, 20 Law T. Rep. 165, held to be bad against the assignees of the mortgagor.

Another *Will case* is reported from V. C. Stuart's Court. A. by will gave stock to *the wife* of his nephew B. At the date of his will B. was living with a woman whom he had introduced to the different members of his family as his wife, and who was believed by them to be so. The testator also believed that B. was married to this woman, but he was not personally acquainted with her. B. died without having been married. The reputed wife was held *not* to be entitled to the legacy (*Re Davenport's Trustees*, 20 Law T. Rep. 165).

JOINT-STOCK COMPANIES' LAW JOURNAL.

Summary.

Although a Scotch case, *The North British Bank* v. *Collins*, 20 Law T. Rep. 157, presents some points of general interest in this branch of the law: thus, where the deed provided that the yearly abstract of the company's affairs exhibited by the directors should be binding on the partners, who were to have no right to examine the company's books, but it was to be competent for a majority of the partners at a general meeting to appoint two of their number to examine and report on the general state of the company's affairs, it was held that an individual shareholder was not thereby precluded from filing a bill alleging that the yearly abstracts were false and fraudulent, and that these allegations were sufficient to warrant a reference to an accountant to inspect the company's books and report whether the abstracts were *bonâ fide* and not fraudulent.

The late Lord Chancellor has decided a case of considerable interest to *Building Societies*, reversing the decision which we formerly reported from the Court below. *Seagrave* v. *Pope*, 20 Law T. Rep. 158, was a bill to redeem a mortgage to a building society formed under the original scheme, before they were made permanent societies and mortgages expressly redeemable. It will be remembered that V. C. Bruce held that the mortgagor *was* entitled to redeem upon certain calculations of the value of his unpaid subscriptions. But upon appeal the Lord Chancellor has reversed this decision, holding that, upon a review of the Building Societies Act, the rules of the particular society, and the terms of the mortgage, the condition of the mortgage was not to repay the sum advanced and interest, but for the due payment of all future monthly payments, subscriptions, and fines, according to the rules of the society. "There is," he said, "an entire absence of any provision for advance, except in the way of the payment of a share by anticipation; and by a security for the advance was intended a security for the performance of the contract in relation to which the payment by advance was made—that is, the contract to pay the future subscriptions."

It will suffice to direct the reader's attention to the very important case of *Reg.* v. *The York and North Midland Railway Company*, 20 Law T. Rep. 166, in which it was decided by the Court of Q.B. that, where a railway company had taken land under the compulsory clauses of its Act of Parliament, and had constructed and opened a part of the line, it was bound to complete the whole line, however unprofitable, or unnecessary, or injurious it might be, and whether it had or had not funds for the purpose. It will be satisfactory to observe that from this astounding conclusion of legal logic one judge (Erle, J.) dissented. Doubtless, the judges felt themselves compelled to it by deductions from former decisions; but it is very greatly to be regretted when the conclusions of law are found to differ from those of common sense, for it tends to bring the law itself into odium. But the reasons for the various judgments are given at length in the report, and the reader will form his own opinion how far they are satisfactory.

Queries.

LIFE INSURANCE—RIGHT TO BONUS.

By a policy dated July 21, 1816, in the Norwich Office, a sum of money was assured on the life of H. G., payable within three months after proof of her death, and such further sum or sums as should at any time or times thereafter be appropriated under the regulations of the office as a bonus upon that policy. The premium was payable on July 21, yearly.

The above policy became vested in C. D., who, on July 21, 1851, paid the year's premium in advance to July 21, 1852. On April 8, 1852, H. G. died, and on June 30, 1852, the directors declared a bonus, the calculations for which included the profits up to June 30, 1851, only.

C. D. contends that he is entitled to this bonus, as made before his money became payable. The office refused to acknowledge the claim, and consequently C. D. (the policy being thirty-four years old) loses 10*l.* per cent. on the premiums paid during the existence of the policy.

Will any of your readers say if they have met with a similar case in any other office? A Subscriber.

COURT PAPERS.

COMMON LAW SITTINGS IN TERM.

Queen's Bench.

Sittings at Nisi Prius in Middlesex and London, before the Right Hon. JOHN Lord Campbell, Lord Chief Justice of Her Majesty's Court of Queen's Bench, in and after Hilary Term, 1853.

MIDDLESEX.—IN TERM.
1st sitting, Wednesday, Jan. 12.
Any common jury cause may be taken at this sitting.
2nd sitting, Wednesday, Jan. 19.
Any common jury cause may be taken at this sitting.
3rd sitting, Wednesday, Jan. 26.
For undefended causes only.
AFTER TERM.
Tuesday, Feb. 1.
LONDON.—IN TERM.
1st sitting, Monday, Jan. 17.
2nd sitting, Monday, Jan. 24.
Any common jury cause may be taken in term.
AFTER TERM.
Saturday, Feb. 12.

The court will sit at 10 o'clock every day.

The causes in the list for each of the above sitting days in Term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

CROWN PAPER.

Manchester—Reg. (on prosecution of Corporation of Manchester) v. John Plant and another
Lancashire—Reg. (on prosecution of Omerod and others) v. The Manchester and Southport Railway Company
Surrey—Reg. (on prosecution of Overseers of Christchurch) v. Geo. Chas. Fletcher
Suffolk—Reg. v. Inhabitants of Haughley
London—Reg. v. Inhabitants of St. Leonard's, Shoreditch
Kent—Reg. v. William Waghorn
Somersetshire—Reg. v. Inhabitants of Nempnett Thrubwell
Middlesex—Reg. (on prosecution of Poor-Law Board) v. The Vestrymen and Directors of Poor of St. Pancras
" Wm. Dugdale (plaintiff in error) v. The Queen (defendant in error)
Herefordshire—Reg. (on prosecution of Parish Officers of Bodenham, resp.) v. The Churchwardens and Overseers of the Parish of St. Andrew, Worcester
Bucks—Reg. (on prosecution of the Parish Officers of Aylesbury, resp.) v. Wm. Roberts and others, app.
Middlesex—Reg. v. Geo. Philbrick Swinborne and two others
Suffolk—Reg. v. The Inhabitants of Stowmarket.

SPECIAL CASES AND DEMURRERS.

For Judgment.

The Mayor, &c. of Berwick-on-Tweed v. Oswald.—Dem.
Same v. Renton.—Dem.
Same v. Dobie and another, exors. &c.—Dem.
Tallis v. Tallis.—Dem.
Leverick v. Mercer.—Dem.
Phelps v. Warren.—Special case.

For Argument.

Michaelmas Term, 1853.

Doe dem. Housfield v. Rideal.—Special verdict.

Hilary Term, 1853.

Gill v. Fowke.—Special case
Johnson and Wife v. Lucas.—Dem.
Williams and another v. Evans.—Dem.
Liverpool Tradesmen's Loan Society Company v. Dickenson.—Dem.
Kernot v. Cattlin.—Dem.

NEW TRIAL PAPER.

Standing for Judgment.

Cambridge—Chief Baron. Haylock v. Sparke. Mr. O'Malley.
Liverpool—Mr. Justice Wightman. Mellor v. Leather and others. Mr. E. James.
Middlesex—Lord Campbell. Reg. v. Eastern Archipelago Company. Mr. Crowder.

Michaelmas Term, 1852.

For Argument.

London—Lord Campbell. Hastings v. Brown. Attorney-General.
Bristol—Mr. Baron Platt. Bongleaux v. Swayne and another. Mr. Serjt. Kinglake.
Notts—Mr. Justice Coleridge. Earl of Scarborough v. Pickering. Mr. Willmore.
Oxford—Mr. Justice Williams. Wiltshear v. Cottrell. Mr. Keating.
Wells—Mr. Baron Martin. Doe dem. Butt v. Rons. Mr. M. Smith.
Herts—Chief Justice Jervis. Johnson v. Gibson. Mr. Bovill.
London—Lord Campbell. Bessell v. Wilson. Mr. H. Hill.
Northumberland—Lord Campbell. The Mayor, &c. of Berwick-on-Tweed v. Renton. Mr. Knowles.
Monmouth—Mr. Justice Williams. Keyse v. Powell. Mr. W. H. Watson.
London—Lord Campbell. Heywood and others v. Potter. Mr. Bramwell.
Carlisle—Mr. Justice Wightman. Walton v. M'Grath and another. Mr. Atherton.
Middlesex—Lord Campbell. Maugham administrator, &c., v. Smith. Mr. E. James.
Hereford—Mr. Justice Creswell. Doe dem. Hemings and others v. Parkinson. Mr. Keating.
Liverpool—Mr. Justice Wightman. Neill v. Warhurst. Mr. Serjt. Wilkins.
" Mr. Justice Wightman. Reg. v. Inhabitants of Houghton. Mr. Atherton.
Warwick—Mr. Baron Alderson. Derra de Moroda v. Dawson and others. Mr. Serjt. Miller.
Devon.—Mr. Baron Martin. Northam v. Hurley. Mr. Serjt. Kinglake.
London—Lord Campbell. Gregory v. Cotterell and others. Mr. Chambers for Defendant. Mr. Slowman.
Sussex—Mr. Justice Maule. Doe dem. Bratt v. Ashland, Bart. Mr. Serjt. Channell.
Middlesex—Lord Campbell. Reg. v. Dr. Newman. Sir A. Cockburn.

Tried during Michaelmas Term.

Middlesex—Mr. Justice Crompton. Kernot v. Cattlin. Mr. Udall.

ENLARGED RULES.

First Day.

In the matter of John Smith, gent. one, &c.
In the matter of a plaint between Maurice Webb, plaintiff, and Alexander Jenkins, defendant, in the County Court of Lancashire, holden at Liverpool.
Keating v. Stewart.
In the matter of Richard Lile, gent. one, &c.
In the matter of James Thomas Russell, gent. one, &c.
Wilson v. Simpson.
Robinson and others v. Shaw.
In the matter of Frederick Day, gent. one, &c.
Reg. v. Justices of Middlesex.
Reg. v. Ecclesiastical Commissioners.
Reg. v. Mayor and Assessors, &c. of Harwich.

COUNTY COURT APPEALS.

Mountney v. Collier—From County of Staffordshire, holden at Uttoxeter.

Court of Common Bench.

Sittings at Nisi Prius in Middlesex and London before the Right Hon. Sir JOHN JERVIS, Knight, Lord Chief Justice of Her Majesty's Court of Common Pleas at Westminster, in and after Hilary Term, 1853.

MIDDLESEX.—IN TERM.
Thursday, Jan. 13.
Thursday, Jan. 20.
AFTER TERM.
Tuesday, Feb. 1.
LONDON.—IN TERM.
Monday, Jan. 17.
Monday, Jan. 24.
AFTER TERM.
Saturday, Feb. 12.

The court will sit during and after Term at 10 o'clock.

The causes in the list for each of the above sitting days in Term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

DEMURRER PAPER.

Monday, Jan. 17.

Quartermaine v. Bittleston and others.
Marker v. Kewick.
Tanner v. Benton.

REMANET PAPER—ENLARGED RULES.

Enlarged Generally—In the matter of Sharp, Clerk, and others v. All of Horbury. In Prohibition.
" Dalby v. The India and London Life Assurance Company.

New Trial of Michaelmas Term, 1848.

Surrey—Hamilton v. Cochrane. Standing for arrangement.

New Trials of Michaelmas Term last.

London—Peterson v. Ayre.
" Moffatt v. Dickson, Clerk, &c.
Surrey—Duncan v. Tindall, junr.
Essex—Matthew v. Osborne.
Herts—Rappen v. Hunt.
Middlesex—Sharman v. Sanders and others.
London—Rowe v. Tipper.
" Same v. Same.

APPEALS FROM THE COUNTY COURTS
Under the Statute 13 & 14 Vict. c. 61.

	Appellant.	*Respondent.*
Kent—Margate.....	Winch, C.	Winch, A.
Essex—Chelmsford	Cheveley	Fuller.
Durham—Gateshead ..	Gibbon, W.	Gibbon, M.

Exchequer of Pleas.

Sittings at Nisi Prius in Middlesex and London, before the Right Hon. Sir FREDERICK POLLOCK, Knight, Lord Chief Baron of Her Majesty's Court of Exchequer, in and after Hilary Term, 1853.

MIDDLESEX.—IN TERM.
1st sitting, Wednesday, Jan. 12.
2nd sitting, Wednesday, Jan. 19.
3rd sitting, Wednesday, Jan. 26.
AFTER TERM.
Tuesday, Feb. 1.
LONDON.—IN TERM.
1st sitting, Monday, Jan. 17.
2nd sitting, Monday, Jan. 24.
AFTER TERM.
Wednesday, Feb 2, to adjourn only.

The court will sit during and after term at 10 o'clock

The court will sit in Middlesex, at Nisi Prius in term, by adjournment from day to day until the causes entered for the respective Middlesex Sittings are disposed of.

In each of the London Sittings during term, there will be two days for the trial of causes.

PEREMPTORY PAPER.

To be called on the first day of the term, after the motions, and to be proceeded with the next day, if necessary, before the motions.

6 Nov. 1852.—Doe d. Hulin and others v. Powell—Mr. Whateley. To set aside verdict for defendant on payment of costs, and for a new trial—Mr. Keating.
2 Nov. 1852.—Morgan v. Clifton—Mr. James. To set aside verdict for plaintiff, and for new trial, and for leave to add pleas—Mr. Chambers.
22 Nov. 1852.—Price v. Hewett—Mr. Field. For leave to plead and demur at the same time, and for a stay of proceedings on issue on fact—Mr. Petersdorff.

SPECIAL PAPER.

For Judgment.

Taylor v. Loft and others, special case.—Heard Nov. 10, 1852.

REMANET FROM MICHAELMAS TERM, 1853.

For Argument.

Alcock v. Ashpitel, Administrator, &c.—Dem.
Alcock v. Ashpitel, Administrator, &c.—Dem.

SITTINGS PAPER.

		Banc.	*Nisi Prius.*
Tuesday	Jan. 11	Motions and Peremptory Paper ..	....
Wednesday ..	12	Errors, Peremptory Paper, and Motions..	Midd. 1st sitting. ....
Thursday	13	General Business	....
Friday	14		....
Saturday	15		....
Monday	17	Special Paper	London 1st sitting.
Tuesday	18	General Business	....
Wednesday ..	19	Special Paper	Midd. 2nd sitting.
Thursday	20	Circuits Chosen	....
Friday	21	General Business	....
Saturday	22	Crown Cases	....
Monday	24	Special Paper	London 2nd sitting.
Tuesday	25	General Business	....
Wednesday ..	26	Special Paper	Midd. 3rd sitting.
Thursday	27	General Business ..	....
Friday	28		....
Saturday	29		....
Monday	31		....

NEW TRIAL PAPER.

For Judgment, moved Easter Term, 1852.

Chester—Mr. Justice Williams. Pearson, clerk, v. Beck. Mr. Evans.
Carmarthen—Mr. Baron Martin. Williams and another v. Pearson. Mr. Knowles.

Moved Michaelmas Term, 1852.

York—Lord Campbell. Watson v. Wood. Mr. E. Hill.

For Argument, moved Easter Term, 1852.

Kingston Lord Campbell. Griffin and another v. Humphrey. Mr. Chambers.

Moved Hilary Term, 1853.

London—Lord Chief Baron. Vincent v. Shropshire Union Railway and Canal Company. Attorney-General.

Moved Easter Term, 1852.

Chelmsford—Mr. Justice Coleridge. Gant v. Pattrick. Mr. Serjt. Channell.
" Mr. Justice Coleridge. Gant v. Groom. Mr Serjt Shee.

Moved Michaelmas Term, 1852.

Middlesex—Mr. Baron Martin. Bedford and others, executors, &c. v. Collier. Mr. Butt.
Newcastle—Lord Campbell. Heslop v. Baker and others. Mr. Bliss.
Carlisle—Mr. Justice Wightman. Waters and others v. Towers and another. Mr. Atherton.
Liverpool—Mr. Justice Wightman. Rubberstv and another v. Ward. Mr. Watson.
" Mr. Justice Wightman. Robertson and another v. Wait and another. Mr. Serjeant Wilkins.
Maidstone—Lord Chief Justice Jervis. Hills the younger v. Milson. Mr. Chambers.
Guildford—Lord Chief Justice Jervis. De Clermont v. Bradbury and another. Mr. Chambers.
Worcester—Mr. Justice Williams. Christie and another v. Winnington. Mr. Alexander.
Stafford—Mr. Justice Creswell. Instan v. Yates. Mr. Gray.
Carmarthen—Mr. Justice Crompton. Morgan, administratrix, &c. v. Thomas. Mr. Evans.

Moved after the Fourth Day of Michaelmas Term, 1852.

Middlesex—Mr. Baron Martin. Tanner v. Woolmer and others. Sir A. Cockburn.
" Mr. Baron Martin. Mr. Scothorn and another v. The South Staffordshire Railway Company. Mr. Bramwell.

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

The Queen has been pleased to direct letters patent to be passed under the Great Seal, granting to the Right Hon. William Ewart Gladstone, the offices of Chancellor and Under Treasurer of her Majesty's Exchequer; the Queen has also been pleased to direct letters patent to be passed under the Great Seal, appointing the Right Hon. Sir Charles Wood, Bart. to be her Majesty's Commissioner for the affairs of India; the Queen has also been pleased to direct letters patent to be passed under the Great Seal, granting the office and place of Advocate-General or Judge Martial of her Majesty's Forces to the Hon. Charles Pelham Villiers; the Queen has also been pleased to direct letters patent to be passed under the Great Seal, for nominating, constituting, and appointing the Right Hon. Mathew Talbot Baines to be a Poor Law Commissioner for England; the Queen has also been pleased to constitute and appoint the Right Hon. Sidney Herbert to be her Majesty's Secretary at War; the Queen has also been pleased to grant the office of her Majesty's Advocate for Scotland to James Moncreiff, Esq. The Queen has also been pleased to direct letters patent to be passed under the Great Seal of the United Kingdom of Great Britain and Ireland, constituting and appointing the Right Hon. Sir James Robert Geo. Graham, Bart.; Vice-Admiral Hyde Parker, C.B.; Rear-Admiral Maurice Frederick Fitzhardinge Berkeley, C.B.; Captain the Honourable Richard Saunders Dundas, C.B.; Captain Alexander Milne, and the Honourable William Francis Cowper, to be her Majesty's Commissioners for executing the office of Lord High Admiral of the said United Kingdom of Great Britain and Ireland, and the dominions, islands, and territories thereunto belonging.

The Queen has been pleased to appoint Captain George Thompson Wade to be Civil Commissioner and Collector of Taxes for the Seychelles Islands, dependencies of the Island of Mauritius. Her Majesty has also been pleased to appoint Thomas T. Kelly, Esq., M.D., to be an Assistant Magistrate for the district of Natal, in South Africa.

The Queen has been pleased to appoint the Rev. John Alexander Mathias, Bachelor of Arts, to be Chaplain on the establishment of the Government of the Island of Ceylon. Her Majesty has also been pleased to appoint Richard Davies Hanson, Esq., to be Advocate-general for the colony of South Australia.

Mr. Thomas Kemmis has been appointed Crown Solicitor for the Leinster Circuit, *vice* Mr. William Kemmis, resigned. This is one of the outgoing arrangements of the Tories.

The Lord Chancellor has appointed Mr. W. C. S. Rice, barrister-at-law, to be his Chief Secretary.

The Queen has been pleased to direct letters patent to be passed under the Great Seal, constituting and appointing the Right Hon. John George, Earl of Aberdeen, K.T.; the Right Hon. William Ewart Gladstone; Alfred Hervey, Esq. (commonly called Lord Alfred Hervey); the Hon. Francis Wemyss Charteris; and John Sadleir, Esq. to be Commissioners for executing the offices of Treasurer of the Exchequer of Great Britain, and Lord High Treasurer of Ireland.

Her Majesty having been graciously pleased to deliver the seals of the duchy and county palatine of Lancaster to the Right Hon. Edward Strutt, the oath of Chancellor of the Duchy of Lancaster was this day (Dec 17) by Her Majesty's command administered to him accordingly.

Privy Council.—Extract from a Supplement to the Gazette of Jan. 4.—This day the Most Noble George Douglas Duke of Argyll and the Right Hon. John Robert Viscount Sydney were, by her Majesty's command, sworn of her Majesty's Most Honourable Privy Council, and took their respective places at the Board accordingly.

Her Majesty having been pleased to deliver the custody of the Privy Seal to the Most Noble George Douglas Duke of Argyll, the oath of Keeper of the Privy Seal was this day administered to him, and his Grace took his place at the Board accordingly.

Her Majesty in Council was this day pleased to declare the Right Hon. Edward Granville Earl of St. Germans, Lieutenant-General and General-Governor of that part of the United Kingdom called Ireland.

Her Majesty in Council was this day pleased to appoint the Right Hon. Edward John Lord Stanley of Alderley, President of the Committee of Council appointed for the consideration of all matters relating to Trade and Foreign Plantations, in the absence of the President of the said Committee for the time being.

Irish Affairs.—Lord Chancellor, Right Hon. M. Brady; Attorney-general, Mr. A. Brewster; Solicitor-general, Mr. W. Keogh.

Scotland.—Lord Advocate, Right Hon. J. Moncreiff; Solicitor-general, Mr. W. Deas.

Scotch Law Appointments.—Mr. Moncreiff is, of course, again Lord Advocate, and is before his constituents for re-election. Mr. J. C. Brodie has been reappointed to the office of Crown Agent. The Depute-Advocates will also be the same as under Lord John Russell's late Ministry—viz. Messrs. George Young, Thomas Cleghorn, George Dingwall Fordyce, and A. R. Clark. We believe also that Mr. James Donaldson will be, as before, Advocate-Depute for the Sheriff Court and Exchequer.—*Scotsman.*

Members returned to serve in this present Parliament.

Borough of Hertford. — The Hon. William Francis Cowper, one of the Lords Commissioners of the Admiralty.

Town of Nottingham.—The Right Hon. Edward Strutt, of Kingstone Hall, in the county of Nottingham, Chancellor of the Duchy of Lancaster.

City of Carlisle.—The Right Hon. Sir James Robert George Graham, Bart. First Lord Commissioner of the Admiralty.

City of London.—The Right Hon. John Russell, commonly called Lord John Russell, one of her Majesty's principal Secretaries of State.

City of Oxford.—The Right Honourable Edward Cardwell, President of the Board of Trade.

Borough of Southwark.—Sir William Molesworth, Chief Commissioner of Works.

Borough of Brighton.—Alfred Hervey, Esq. commonly called Lord Alfred Hervey, one of the Lords Commissioners of the Treasury.

Borough of Morpeth.—The Right Honourable Sir George Grey, Bart.

District of Burghs of Leith, Portobello, and Musselburgh.—James Moncreiff, Esq. her Majesty's Advocate for Scotland.

Borough of Wolverhampton.—Charles Pelham Villiers, Esq. commonly called the Honourable Charles Pelham Villiers, Judge Advocate General.

City of Lichfield.—Alfred Henry Paget, commonly called Lord Alfred Henry Paget, Chief Equerry and Clerk Marshal to Her Majesty.

Borough of Aylesbury.—Richard Bethell, Esq. Her Majesty's Solicitor-General.

City of Gloucester.—The Honourable Maurice Frederick Fitzhardinge Berkeley, one of the Lords Commissioners for executing the office of Lord High Admiral of Great Britain and Ireland.

The following buildings are certified as places duly registered for solemnising marriages, pursuant to the Act of the 6 & 7 Will. 4, c. 85:—St. Ann's Church, Aughton, Lancashire; L. Wright, superintendent-registrar, Calvert-street Chapel, St. Saviour, Norwich; F. J. Blake, superintendent-registrar. Ebenezer, Rhydefelen, Glamorganshire; W. B. Watkins, superintendent-registrar.

The *North British Mail*, speaking of the fatality of a ring, says:—"We believe that in October 1845, a man, named Donald Fraser, was transported for the theft of the same ring which formed a very important link in the chain of evidence which was on Friday adduced against George Christie for the murder of Mrs. Ross and her grandson."

THE GAZETTES.

Bankrupts.

Gazette, Jan. 4.

Thom, James, tailor, Peckham, Jan. 7, at one, Feb. 11, at twelve, Basinghall-st. Off. as. Cannan. Sol. Wetherfield, Basinghall-st. Petit'n, Dec. 31.

Ellis, Josiah, machine broker, Preston, Lancashire, Jan. 17 and Feb. 7, at twelve, Manchester Court. Off. as. Pott. Sols. Turner and Son, Preston; Cooper and Son, Manchester. Petition, Jan. 1.

Veals, Charles, miller, Ashwater, Devonshire, Jan. 18, and Feb. 11, at three, Exeter Court. Off. as. Hernaman. Sols. Kingdon, Ridsworthy, and Stogdon, Exeter. Petition, Dec. 28.

Dividends.

Bankrupt Estates.

Official Assignees are given, to whom apply for the Dividends.

Black, J. wine merchant, first, 4s. 1d. Graham, London.—*Cameron* and *Bruce*, pickle merchants, first, 2s. Stansfeld, London.—*Dubbins*, E. common brewer, first, 1s. 11d. Graham, London.—*Farrell*, W. provision dealer, first, 1s. Bird, Liverpool.—*Kirkman*, R. merchant, third, 0¾d. Bird, Liverpool.—*Laing*, J. coal merchant, first, 1s. 3d. Graham, London.—*Lilley* and *Ashmall*, merchants, first sep. of Lilley, 5s. Bird, Liverpool.—*Lowndes* and *Bateson*, merchants, second, 11-128ths of 1d. Bird, Liverpool.—*Mant* and *Gill*, merchants, fourth, 0¾d. Bird, Liverpool.—*Nash*, W. woollen warehouseman, second, 1s. Stansfeld, London.—*Parker*, C. flax spinner, fourth and final, 1-13th of 1d. Baker, Newcastle.—*Strickland* and *Brickwood*, merchants, third, 1-16th of 1d. Bird, Liverpool.—*Tattersall*, T. corn merchant, second, 4s. 0¾d. (making 20s.) Turner, Liverpool.—*Williams*, W. *Williams*, W. jun. and *Williams*, T. R. bankers and millers, first sep. of W. Williams, sen. 5s.; first sep. of W. Williams, jun. 9d.; first sep. of T. R. Williams, 6d. Acraman, Bristol.—*Wraith*, B. carrier, first, 2s. 4½d. Bird, Liverpool.

Insolvent Estates.

Apply at the Provisional Assignee's Office, Portugal-street, Lincoln's-inn-fields, between the hours of eleven and three.

Cortlide, S. H. dissenting minister and author, 2s. 9½d.—*Chesnutt*, G. clerk, 10½d. (making 3s. 10½d.)—*Fagerman*, Z. captain royal marines, 2s. 6d. (making 3s. 7d.)—*Groves*, R. widow, 7s. 2d. (making 17s. 11d.)—*Harris*, H. B. master in the Navy, 12s. 6d. (making 20s.) *Williams*, T. pork butcher, 6s. 1d. (making 11s. 1d.)

Assignments for the Benefit of Creditors.

Gazette, Dec. 28.

Browne, J. cordwainer, Maidstone, Kent, Dec. 3. Trusts. S. Bentlif, widow, Maidstone; W. Linley, leather factor, West Smithfield; and T. Sycklemore, currier, Maidstone. Sol. H. M. Sparham, Basinghall-chambers.—*Campbell*, N. blacksmith, Benenden, Kent, Dec. 13. Trusts. C. Ellis and W. Haynes, ironmongers, Maidstone. Sol. H. A. Wildes, Maidstone.—*Kelwick*, J. merchant, River Lee Wharf, Waltham Abbey, Essex, Dec. 1. Trusts. R. S. Meeson, J. Meeson, E. Meeson, and W. Doyle, coal and lime merchants, Stratford. Sol. C. J. Rawlings, Waltham Abbey.—*Wilson*, W. oil and colourman, Goswell-road. Trusts. R. Wilson, gentleman, Holloway; T. Whitmore, colonial broker, Mincing-lane, Sols. Abbott and Driver, Birchin-lane.

Gazette, Dec. 31.

Austin, R. draper, Allison-terrace, Kensington, Middlesex, Dec. 22. Trusts. D. Laurie, warehouseman, Watling-street; and I. MacCutchan, warehouseman, Friday-st. Sol. T. M. Cattlin, Ely-place.—*Cannon*, G. currier, Marlborough-street, Devonport, Devon, Dec. 21. Trust. W. W. Snell, merchant, Plymouth. Sols. Wright and Bonnar, London-st. Fenchurch-st. *Clapham*, J. Wellington-st. Leeds, York, Dec. 9. Trusts. H. Micklethwait, book-keeper, and S. F. Jones, iron merchant and founder, both of Leeds. Sol. J. Thackrah, Hunslet, Leeds. *Hanney*, J. tea dealer, Leigh, Lancaster, Dec. 22. Trust. U. C. Whittingham, Manchester. Sols. Hitchcock, Buckley, and Tidswell, Manchester.—*Piper*, E. J. wine and spirit merchant, Ledbury, Hereford, Dec. 23. Trusts. J. Stallard, wine and spirit merchant, Worcester, and G. H. Piper, gentleman, Ledbury. Sol. V. Barber, Ledbury.—*Ridgeway*, F. cutler and ironmonger, South Shields, Durham, Nov. 2. Trusts H. Ridgeway, cutler and ironmonger, and W. Mears, ironmongr. both of Sunderland. Sols. Ranson and Son, Sunderland.—*Woodbridge*, S. carpentor and builder, Hornsey, Middlesex, Dec. 17. Trust. N. Saxton, timber merchant, Blackfriars-bridge-wharf, Upper Ground-street, Surrey. Sols. Willoughby and Cox, Clifford's-inn.—*Yates*, J. G. grocer, Angel-terrace, West Hammersmith, Middlesex, Dec. 1. Trust. R. Rawley, wholesale cheesemonger, New-st. Covent-garden. Sol. J. E. Elworthy.

Partnerships Dissolved.

Gazette, Dec. 21.

Brierley, E. and *Jack*, A. patent press dyers and finishers, Rochdale, Nov. 26.—*Brown*, M. *Ingham*, R. and *Newberry*, S. manufacturers of cotton, Read Holme, near Rawtenstall within Lower Booths, as regards Newberry, Dec. 11.—*Carson*, A. and T. K. as regards T. K. Carson, Oct. 28.—*Christian*, T. and A. drapers and silk mercers, Douglas, Dec. 8. Debts paid by A. Christian.—*Dawkins*, W. and J. warehousemen and commission agents, Bread-st. Cheapside, Dec. 8.—*Garwood*, G. and *Myers*, J. horse dealers, Manchester, Dec. 18.—*Howarth*, J., T., and H. cotton cloth manufacturers, Hulshaw Moor, Farnworth, Dean, Dec. 16. Debts paid by J. Howarth.—*Hughes*, J. and *James*, R. coal merchants, Sept. 25.—*Jervis*, J. and H. tea dealers and grocers, Bristol, Oct. 6th. Debts paid by H. Jervis.—*Jones*, T. and J. wine and spirit dealers, Manchester, Oct. 10. Debts paid by T. Jones.—*Leng*, R. sen. *Brown*, R. *Davies*, E. and *Brown*, E. salt proprietors, Knight's Grange, Winsford, Dec. 15.—*Meader*, G. C. and *Foot*, C. wine and spirit merchants, Idol-la, Dec. 9.

Gazette, Dec. 24.

Allen, E. and R. and *Holmes*, J. stuff manufacturers, Bradford, as regards R. Allen, Dec. 22. Debts paid by remaining partners.—*Atkinson*, P. E. and *Musgrave*, C. law stationers, Chancery-lane, Dec. 24. Debts paid by A. B. Carpenter, Elm court, Temple.—*Bens*, B. and *Baldrey*, W. jun. Hanworth, Dec. 21.—*Besemeres*, J. and J. jun. and W. warehousemen, Wood-st. Cheapside, and Houndsditch, Dec. 23.—*Binns*, R. and *Pinder*, S. card setting machine maker, Dec. 21. Debts paid by Pinder.—*Chadwick*, R. and *Buckley*, R. painters, plumbers, and glaziers, Oldham, Dec. 22. Debts paid by Chadwick.—*Cherry*, W. A. veterinary surgeon, Hogyard, St. Giles, and Stephen-mews, Cresse-st. Rathbone-pl. Dec. 21.—*Colthurst*, G. and F. maltsters, Bristol, Nov. 1. Debts paid by E. Colthurst.—*Fry*, T. W. and *Groom*, H. C. ship and insurance brokers, Lime-st. Dec. 24.—*Jackson*, J. and J. drapers and tailors, Macclesfield, July 24.—*James*, C. and J. and L. wine and spirit merchants, Aug. 31.—*Johnson*, B. and *Morgan*, W. nail factors, Bromsgrove, Dec. 1.—*Kay*, J. and *Goff*, H. W. chemists and druggists, Prospect-pl. Kingsland-rd. Nov. 1.—*King*, R. and *Clark*, R. carpenters and builders, St. John's Wold, Dec. 21.—*Kynes*, C. *Ridley*, S. ship chandlers and provision merchants, Strype-gardens, Tower-hill, and Ratcliffe, Rotherhithe, Oct. 3. Debts paid by Kynes.—*Lee*, [illegible] L. and *Cowland*, J. music sellers and publishers, Albemarle-st. Piccadilly, Dec. 28. Debts paid by Lee.—*Lenfers*, H. and *Wild*, J. engine makers and [illegible] [illegible], Dec. 24.—*Masterman*, C. T. and *Lloyd*, [illegible] [illegible]-without, Dec. 21. Debts paid by [illegible] P. and *Orione*, L. merchants Gardens, Little Tower-street, Dec. 24. Debts paid by Mc Murray.—*Oliver*, W. Liverpool, and [illegible] C. baker, Kittering, as regards [illegible] of shares, Dec. 24. Debts paid by Bell.—*Pitt*, J. and *Pitt*, T. [illegible] Hill, Heywood, Mar'st. Debts paid by Pitt.—*Pringle*, D. and *Hobson*, J. H. woollen and lambswool spinners and wool dealers, Leicester, Dec. 11.—*Smithurst*, J. and *Rawlins*, W. engineers, millwrights, and iron and brass founders, Old Gravel-lane, St. George's East, Dec. 21. Debts paid by Swinburne.—*Thistleton*, W. and *Lukey*, J. grocers, [illegible]-st. and house agents, Dover, Dec. 23. Debts paid by W. Thistleton.—*Welsh*, H. D. *Livingston*, E. and *Hodges*, W. tailors, drapers, and outfitters, Bristol, Dec. 17.—Debts paid by Hodges.—*Webb*, T. *Webb*, J. and *Hopkinson*, W. general merchants and commission agents, Huddersfield, and Sydney, New South Wales, Dec. 17, as regards Hopkinson. Debts paid by remaining partners.—*Worley*, R. and *Fisher*, G. ship insurance brokers and agents, Liverpool, Dec. 21. Debts paid by Worley.

Gazette, Dec. 28.

Brear J. and *Patchet*, F. wire manufacturers, Popplewell, near Cleckheaton, Dec. 24.—*Brierley*, A. and *Travis*, F. W. manufacturing chemists, Dewsbury, Dec. 24. Debts paid by Brierley.—*Carr*, S. and *J.* manufacturing chemists, Leeds, Dec. 23.—*Crabb*, C. sen. and C. jun. linen drapers, Nottingham Dec. 24. Debts paid by Crabb, jun.—*Crawford*, J. and *Franklin*, F. G. painters and glaziers, Redcross-st. and Bridge-st. Southwark, Dec. 25.—*Dennis*, G. N. and *Duncan*, A. tailors, Jermyn-st. Saint James, Dec. 1. Debts paid by Hunter.—*Hall*, E. and T. grocers and cheesemongers, Sevenoaks, Dec. 23. Debts paid by T. Hill.—*Lees*, A. and *Cooper*, W. japanners, Birmingham, Dec. 21.—*Martin*, J. *Stone*, G. and *Martin*, J. and R. bankers, Lombard-st. as regards Stone, Dec. 25.—*Morrish*, F. E. and *Young*, J. licensed victuallers and dining-room keepers, Liverpool, Dec. 23.—*Peterson*, W. sen. and W. jun. boot and shoe makers, Pentiry, Dec. 24. Debts paid by W. Peterson, jun.—*Rayment*, G. W., and E. wharfingers and coal merchants, Brehen Wharf, Upper Thames-st. as regards W. Rayment, Dec. 27.—*Scully*, T. and J. merchants, Curtain-road, Dec. 13. Debts paid by Scully.—*Stilwell*, E. and *Holbeck*, J. gold and silver lacemen, Vigo-st. Regent-st. Dec. 24. Debts paid by Holbeck.—*Sutton*, W. S. and *Lupard*, J. H. cork manufacturers, Brighton, Dec. 23.—*Taylor*, H. and *Harmer*, H. grocers, drapers, general shopkeepers, tailors, wine and spirit merchants, Hurleham, Sept. 8.—*Whitfield*, E. and J. and *Mee*, S. general factors, Birmingham, Dec. 21.

Gazette, Dec. 31.

Allbut, T. and M. booksellers, &c. Manley, Dec. 18. Debts paid by E. Allbut.—*Bannerman*, J. and H. *Young*, W. *Bannerman*, J. A. *Winterbottom*, A. *Gillibrand*, P. and *Bannerman*, D. merchants, Manchester, London, Leeds, Bradford, and Huddersfield, as regards A. Winterbottom, Dec. 28.—*Bannerman*, J. and H. *Young*, W. *Bannerman*, J. A. *Winterbottom*, A. *Gillibrand*, P. and *Bannerman*, D. under the firm of "The Patent Dacian Company," Strangeways, Manchester, Dec. 28. Debts paid by Winterbottom.—*Barrowclough*, T. and *Ashworth*, T. porters for a railway company, Waterfoot and elsewhere, Dec. 16.—*Berthelmes*, E. and *Buckup*, J. commission merchants, Bradford, Dec. 31.—*Brierley*, A. and *Travis*, W. manufacturing chemists, Clifton-bridge, Dewsbury, Dec. 24. Debts paid by Brierley.—*Compton*, J. and *Ritchie*, T. printers, Middle-st. Smithfield, June 30.—*Derrington*, J. and *Sminett*, H. brass founders, Manchester, Dec. 21.—*Dobell*, E. J. and *Fordham*, S. wine and spirit merchants, Bath, Dec. 28. Debts paid by Dobell.—*Ellis*, J. R. and *Porter*, N. merchants, Clement's-lane, Dec. 31. Debts paid by Ellis.—*Fitch*, J. Queen-st. Golden-square, and *Fitch*, W. Princes-st. St. James, Dec. 31.—*Fordati*, J. *Coxhead*, J. *Goldsmid*, Y. H. general merchants, Old Jewry-chambers, as regards Fordati, Dec. 31.—*Franklin*, J. and *West*, W. farriers, Wigmore-st. Cavendish-sq. Dec. 25. Debts paid by Franklin.—*Gibson*, T. S., M. B., and C. *Thompson*, J. *Reynolds*, C. *Dignum*, E. *Williamson*, E. jun. *Neuman*, C. W. *Firth*, T. *Worthington*, W. *Ashton*, H. *Blackburne*, J. L. *Corbett*, E. *Barton*, J. and T. and *Hubbs*, W. rock salt proprietors and white salt proprietors, under the firm of the Meadow Bank Company, Over, Oct. 6.—*Green*, F. *Tucker*, W. *Denny*, G. and *Ratsbone*, H. M. Cornhill, as regards Denny, Dec. 31.—*Jones* J. and *Turner*, W. cotton doublers, Manchester, Dec. 24. Debts paid by Turner.—*Kitchin*, J. P. and *Gregson*, J. I. stock and share brokers, Old Broad-st. Dec. 29.—*Latham*, J. and *Grindrod*, T. power-loom cloth manufacturers, Clitheroe, Dec. 24. Debts paid by Latham.—*Moore*, F. L. and *Moore*, L. G. wine and spirit merchants, Basing-lane, Dec. 31. Debts paid by F. L. Moore.—*Pearson*, E. and *Rutland*, W. B. printers, booksellers, &c. Shrewsbury, Dec. 28. Debts paid by Rutland.—*Ranking*, J. and H. and *Christian*, S. merchants, St. Helen's-place, Bishopsgate-st. as regards H. Ranking, Dec. 31.—*Rawlings*, W. and *Johnson*, W. J. dyers, scourers, &c. Judd-st. New-road, Marchmont-st. Russell-square, and at High-st. Highgate, Dec. 24.—*Robinson*, W. *Oldroyd*, M. *Firth*, J. *Robinson*, G. *Oldroyd*, I. and M. *Pickles*, J. *Oates*, J. B. *Parritt*, J. *Day*, C. and M. *Blakeley*, G. *Fox*, M. sen. and M. jun. *Day*, J. *Firth*, E. *Oldroyd*, M. jun. and *Lassington*, W. scribbling millers, under the firm of Day, Parritt, and Co. Batley Carr, as regards M. and C. Day, and G. Blakeley, M. Fox, sen. M. Fox, jun. and J. Day and M. Oldroyd, Dec. 17. Debts paid by remaining partners.—*Rusby*, W. *Brown*, G. and *Booth*, H. stone merchants, &c. Bankside, Southwark, and Bridge-wharf, Kingsland-road, as regards H. Booth, Jan. 1.—*Stanley*, E. and *White*, M. A. milliners, Portsmouth, Dec. 29.—*Straith*, J. and *Frull*, R. Y. sworn brokers, Great Tower-st. Dec. 31. Debts paid by Straith.—*Taverner*, J. and *Berry*, J. ale and porter dealers, Birmingham, Dec. 6.—*Usborne*, M. and *Moore*, J. A. corn factors, New London-st. Dec. 21. Debts paid by Usborne.—*White*, J. B., J. B. jun. G. F. and R. S. eminent manufacturers and [illegible] makers, Millbank-st. Westminster, Swanscomb, and Erith, as respects J. B. White, sen. Dec. 21.—*Williamson*, W. A. and C. upholsterers and cabinetmakers, Ludgate-hill, Dec. 31.—*Zulueta* P. J. de, P. de, and M. de, merchants, London, Liverpool, and Gibraltar, as regards P. J. de Zulueta, Dec. 31.

Bankrupts.

From the Gazette of Friday, Jan. 7.

Bradbury, Samuel, cheesemonger, Holborn-hill.

Brown, James Hollebar, shipbuilder, Yarmouth.

Emmett, John, corn dealer, Blandford-street, Eaton-square.

Hoaten, William, draper, St. Blazey, Cornwall.

Mayson, Stephen, builder, Mount-pleasant, Liverpool-road.

Nixon, James, woollen manufacturer, Leeds, near Oldham.

Shaw, William, bookseller, Ludgate.

THE NEW [illegible]
LAW COURTS [illegible]
to the Pages in the last [illegible]
PROCEDURE ACT. [illegible]
N.B.—This is referred to [illegible]
a separate work. [illegible]

THE SECOND [illegible]
[illegible]
ALL THE NEW [illegible]
Forms. Price [illegible]

THE LAW [illegible] ALMANAC
for 1853, [illegible]
Attorneys, Their Duties, [illegible]
Statutes and Two Useful [illegible]
and five other important subjects in the
Office. Price only [illegible] other part to any

THE NEW BANKRUPTCY ORDERS
and the BANKRUPTCY ACT, [illegible] Circular Cards destined in its construction, and a very Useful Index. By C. J. B. HUNTERBERT, Esq., Barrister-at-Law, Author of "Leading Cases and Forms," &c. Price 1s. 6d.

COX'S CRIMINAL LAW CASES, Part I. of Vol. VI. containing [illegible] of Indictment for use at Quarter Sessions, [illegible] Price 1s. 6d.

TUDOR'S NEW CHANCERY PRACTICE; [illegible] the Orders lately passed [illegible] the Statutes of the Session to which they relate, [illegible] and which Law together. By CHARLES TUDOR, [illegible] Law, Author of "Leading Cases in Equity," &c. Price 12s.

THE LAWYER'S POCKET-BOOK for 1853, containing the Almanack of the Month; Rules and Sittings for the last as well as the present Term; complete Table of Stamps, Time Tables to Common, Local, Bankruptcy and Insolvency, and much other matter required for Reference in Chambers. Price only 6d.

THE PRACTICAL STATUTES for 1849, with Notes of all the Cases that have been decided on their construction, thus giving to the Practitioner the whole Law, viz. the text of it, and the Judicial Interpretation of the text, in a small volume for the bag or pocket. Price 5s. 6d. cloth. In continuation of the series already published from 1846. By C. J. B. HUNTERBERT, Esq. Barrister-at-Law.

To Readers and Correspondents.

"AN OLD SUBSCRIBER."—*We would advise him to apply to the Board of Inland Revenue, who are now required to state what the stamp ought to be, and not to rely upon answers from our readers; therefore we do not insert his query. He will be pleased to expect it should he find any difficulty in the course we recommend, and then it shall appear.*

"E. H."—*We have no doubt that he would be admissible as a solicitor.*

"E. W. J. (Manchester) *should ascertain if any such society exists bona fide. If not, it will be a proper subject for animadversion; if there be such a society, it is not within our jurisdiction.*

"AN ARTICLED CLERK."—*Tudor's is as good a description of the new practice as may—at least, it appears to find favour with those who are the best judges of the value of a law book—the actual practitioners who use it.*

"W. F. N." (Rotherham) *desires the name and address of our correspondent, "A Clerk of a single Court." Will he send it?*

"J. B" (Derby.)—*His case is a hard one; but we could not with propriety permit an appeal through the* LAW TIMES *against judicial decisions.*

We cannot undertake to return rejected communications. Whatever is intended for insertion must be authenticated by the name and address of the writer—not necessarily for publication, but as a guarantee of his good faith.
No notice can be taken of anonymous contributions.

THE LAW TIMES.

SATURDAY, JANUARY 15, 1853.

TO READERS.

Desirous of presenting to our readers the new Common Law Rules, issued so unexpectedly at the commencement of this Term, and which are now in operation, we have been compelled to omit almost all other legal intelligence, the usual leading articles, correspondence, &c. and several reports that were in type.

Next week, a Double Number will bring up the arrears.

THE NEW RULES.

A BODY of *New Rules*, in framing which the Judges have adopted the admirable plan of repealing and re-enacting, instead of adding, has been issued. They will be found entire in another part of this number of THE LAW TIMES.

They are now being [illegible] so as to form either a Supplement to *Mr. Kerr's Common Law Procedure Act*, or a separate work, with notes and index, and with marginal references to all the pages in the first and second editions of that book to which the rules relate, so that the practitioner possessing it may be enabled instantly to find the portions of the *New Act* and of the practice to which the *New Rules* [illegible]. It will also be added as an appendix to the second edition of *Kerr's Procedure Act*, of which it will now form a part, and all the copies hereafter ordered will contain it.

Thus the [illegible] will constitute the whole of the law as it is.

THE LAW [illegible]

THE Secretary of the [illegible] is very desirous [illegible] Society has no purpose to [illegible] the [illegible]

[illegible] we did not [illegible] an open [illegible] of it—only that they sanctioned an [illegible] of it. Of this there can be no doubt, for the proof is before us in a [illegible] able essay by Mr. Erskine Beower Denison, Barrister-at-Law, published and circulated by the Association, and the object of which is to prove the validity of Marriage with a Wife's Sister celebrated abroad. But let it not be supposed that we find any fault with the Society for looking and touching how to evade a bad law: the fault is not with them, but with the makers of such a law. The duty of obedience to a law is not unlimited:—it is clearly bounded by the limit of the right of Society to make such a law. If law-makers trespass beyond their province, they have no moral claim to the obedience of the subject—might may enforce it, but there remains to the oppressed the right of resistance, or the privilege of evasion. In dictating to a man whom he shall not marry, beyond that limit of relationship which nature herself prohibits by degeneracy of the race, the Legislature exceeds the powers vested in Society, and invades individual liberty in a matter which in no manner concerns Society. The oppressed in such case being few, resistance is out of the question: but evasion remains, and they have a moral right to resort to it. How this may be done Mr. DENISON tells us in the very able pamphlet that lies upon our desk.

It is based upon the principle thus emphatically declared by Lord STOWELL; "English decisions have established this rule, that a foreign marriage, valid according to the law of the place where celebrated, is good everywhere else."

We cannot attempt to compress into the limits of a leading article Mr. DENISON's review of the cases bearing upon either side of the question, which he puts with admirable impartiality, shirking no difficulties and omitting no doubts; but we state briefly his conclusion to be, that if a man wants to marry his wife's sister he can do so at Hamburg, where the Dutch law has not disgraced itself by any such trespass upon the liberty of the subject, and that such a marriage will be held to be valid here, in spite of the statute, of so discreditable an origin, that has wrought so much misery and wrong in England.

We recommend all of our readers who may be consulted where such a marriage is sought, before they advise their clients, to peruse this pamphlet, weigh well its arguments, and judge for themselves of the worth of its conclusions.

CONVEYANCING REFORM.

THE Solicitor-General, in his address to his constituents at Aylesbury, made an emphatic statement of his views with respect to changes which he deems to be necessary in Conveyancing, and which are well known to be of the most radical nature. He seeks nothing less than to make the transfer of land as simple and as inexpensive as that of a bale of merchandise.

Such a revolution is *impossible*, we know, but the desire for it marks the *animus* of the speaker and gives warning that no changes that may be proposed will be too extensive to receive his approbation. Moreover, the Profession cannot and must not close its eyes to the fact, that there is a very wide spread discontent with the present costliness of conveyances, and that this discontent is not altogether without foundation. In the present temper of the times it will be impossible to maintain the present system for two years longer, and seeing that a great change cannot be long averted, we again and again repeat the exhortation we have so often taken the liberty of addressing to the lawyers, to *anticipate* the impending changes that will be constructed by their enemies, and avert the threatened mischiefs by bold but moderate and reasonable reforms, planned and promoted by themselves. We rejoice to find, from the correspondence that comes to us from every part of the country, that the Profession is at last awaking to a sense of its danger, and of the only means of avoiding it, and there seems to be tolerable unanimity of opinion among them as to the necessity for doing something. But unhappily they cannot agree what that something should be. A scale of *ad valorem* charges has been proposed, but is stoutly opposed by many. A charge proportioned to skill and labour required, without any reference to the length of the deed, has numerous supporters, but none has suggested how the difficulty is to be overcome of determining what was the labour and skill required, save from the statement of clients, that the conveyance in some cases bears so large a proportion to the value of the property, or the amount of the purchase money, as we have said, we are still of opinion that, with the whole, the *ad valorem* plan is the best. It is the most inexpensive certainly, but it offers many advantages both to solicitor and client, and in the long run it would be found the most profitable.

But a change in the mode of charging will not suffice to save us from the threatened innovation. Some plan must be devised for lessening the cost of conveyancs, and we must look to their consequent multiplication to compensate, in part at least, for the loss so produced. How may this be done?

First, by *abbreviating* them. In honest truth there is no doubt that this might be done with perfect safety. Half the words used are superfluous. For instance, why repeat the words "heirs, executors," &c. every time that the parties' names are used? Why not insert a general declaration, once for all, that the deed is made by A. on behalf of his heirs and assigns, and by B. on behalf of his executors, &c. This alone would sweep away several folios. Why should not the invariable covenants be put in the same words as they are stated in an abstract, seeing that their meaning is universally understood? Many such improvements might be suggested which would please the public, prove, that the Profession is not averse to reasonable alteration, and probably save it from those sweeping changes which will certainly be forced upon us from without if we do not, and speedily too, something very effective within, for the lessening of the cost of conveyancing.

In our next we shall proceed to consider how the cost of conveyancing is consequent upon the law of real property, and what improvements might be effected in this without resorting to the equivocal scheme of a Registration of Deeds.

THE ECCLESIASTICAL COURTS.

THE practitioners in these Courts have held a meeting for the purpose, if they can, of saving them from entire destruction.

They declare their willingness to submit to any reforms that may be desired; but they protest against their abolition.

But it is not a case for reform; the objection to them is not merely that they abound in monopolies and abuses, but that their foundation and structure are unsound, unfitted for the time, an insult to one half the community, and an injustice to the other. It is as *Ecclesiastical* Courts that they are condemned. It is as such that they have usurped a jurisdiction over wills and marriages, which they cannot be permitted to retain under any pretence, or with any promises of reform. But then they say, you must have tribunals for these questions. Why not the regular Courts of Law and Equity? Why should a will be tried twice over? Why could not the same Judges, who now determine the validity of wills in certain cases, do so in all cases? And why should not the regular Courts try a divorce as well as the validity of a marriage?

Let the Ecclesiastical Courts continue, if they please, their purely ecclesiastical jurisdiction; let them try church questions arising *within* the church; but take away from them everything that savours of a civil jurisdiction, and transfer it to the tribunals which are constituted for the protection of civil rights and the punishment of civil wrongs, to which all the people have access, in whose wisdom they have confidence, and where they may have the widest choice of lawyers to conduct their suits and plead their causes.

SHAM LAWYERS.

HERE is another of the fraternity.

8, Princess Street,
Manchester, 5th January 1853.

Sir,

I am instructed by Mr. J. Richardson to apply to you for payment of the sum of £3 13*s.* 9*d.* owing by you to him. And unless the same be paid at my office on or before Friday next proceedings will be commenced against you for the recovery thereof without further notice.

I am yours obediently,
THOS. BALE.

NEW PRACTICE IN THE COURT OF CHANCERY.(a)

HAVING already shown how a suit may be instituted by bill or information; and assuming that the defendant has voluntarily, either by himself or by his soli-

(a) Continued from p. 143.

claim, demurrer, or an appearance [illegible] accordingly for him by the modes already [illegible] you may now consider in what manner [illegible] against whom the bill has been filed can [illegible] himself.

He may do in different ways—First, by *demurrer*; secondly, by *plea*; thirdly, by *disclaimer*, by which he disclaims all interest in the matters in question in the suit; fourthly, by answer; and all or any of these different modes of defence may be joined, provided each relates to a separate and distinct part of the bill. (Mitf. p. 106.)

DEMURRER.

Whenever any ground of defence is *apparent on the bill itself*, either from matters contained in it or from defect in its frame, a defence may be set up against it by demurrer. A demurrer is, in effect, an allegation of a defendant, which admitting for the purpose of arguing the demurrer, that the *matters of fact* alleged by the bill are true, shows that, as they are therein set forth, they are insufficient for the plaintiff to proceed upon, or to oblige the defendant to answer (*Gittersen v. Muir*, 2 Ves. jun. 95; 21 Bro. C. C. 270; *East India Company v. Henchman*, 1 Ves. jun. 289), and it therefore demands judgment of the court, whether the defendant shall be compelled to answer the bill, or the particular part of it to which the demurrer applies.

Although a demurrer admits facts which are well pleaded to be true, it does not admit inferences or matters of law which in strictness ought not to be stated on the record; for instance, suppose a particular deed is set out and a legal inference is averred as arising from the words of the deed, a demurrer put in to the bill, although it admits the deed as a matter of fact, does not admit the legal inference drawn from it in the bill (*see Campbell v. Mackay*, 1 My. & Cr. 603, 618); nor will a demurrer be held to admit facts which are repugnant to each other (*Loker v. Hills*, 2 Ves. 4, 7); or to a record stated in the bill (*Arundel v. Arundel*, Cro. Jac. 12; *Mortimer v. Fraser*, Dan. Ch. Pr. 500); or which are contrary to facts of which the court takes *judicial notice*, as the recognition of the independence of a foreign state (*Taylor v. Barclay*, 2 Sim. 213); or of a war in which this country is engaged with a foreign country (*Dolder v. Lord Huntingfield*, 11 Ves. 292); many other instances might be given. If therefore a bill states any matters incorrectly of which the court is bound to take judicial notice, such statements on the argument of a demurrer will be of no effect.

OF THE DIFFERENT GROUNDS OF DEMURRER.

Demurrers to original bills may be divided into two classes; first, demurrers to relief, which frequently include a demurrer to discovery; and secondly, demurrers to discovery only, which sometimes consequentially affect the relief. Without entering into minute particulars, it may be useful to mention the objections to relief appearing *on the bill itself*, which, according to Lord Redesdale, can be taken advantage of by demurrer; they are as follows:—

1. That the subject of the suit is not within the jurisdiction of a Court of Equity, as where the plaintiff may obtain relief at Common Law, in the Ecclesiastical, Admiralty and Bankruptcy Courts; 2. That some other Court of Equity has the proper jurisdiction; 3. That the plaintiff is not entitled to sue by reason of some personal disability. Thus, if an infant or a married woman, an idiot or a lunatic, exhibiting a bill, *appear upon the face of it* to be thus incapable of instituting a suit alone, and no next friend or committee is named in the bill, the defendant may demur; but if the incapacity did not appear upon the face of the bill, the defendant must take advantage of it by plea; 4. That he has no interest in the subject, or no title to institute a suit concerning it. Where, for instance, a plaintiff claims under a will, and it is apparent upon the construction of it, that he has no title, a demurrer will be allowed. (*Brownswood v. Edwards*, 2 Ves. 247; *Parker v. Fearnley*, 2 S. & S. 592.) So where an executor does not appear by his bill to have proved the will of his testator, or appears to have proved it in an improper (3 P. Wms. 371) or insufficient (*Combes' case*, 1 P. Wms. 766) court, as he does not show a complete title to sue as executor a demurrer will hold; 5. That he has no right to call on the defendant concerning the subject of the suit; for instance, a legatee has no right to file a bill against the creditors of his testator to compel them to pay their debts in satisfaction of his legacy: (*Alsager v. Rowley*, 6 Ves. 148;) 6. That the defendant has not that interest in the subject which can make him liable to the claims of the plaintiff; thus, where a bankrupt is made party to a bill against his assignees touching his estate, he may demur to the relief, all his interest having been transferred to his assignees: (*Whitworth v. Davis*, 1 V. & B. 545; 2 Rose 116; *Bailey v. Vincent*, 5 Madd. 46; but it seems that if fraud had been charged and costs prayed against him, he could not demur: (*Lloyd v. Lander*, 5 Madd. 282; 7. That for some reason founded on the subject-matter of the case, the plaintiff is not entitled to the relief he prays. To these may be added; 8. The [illegible] of the bill to answer the purposes of complete justice; thus, where the bill is defective in point [illegible] (*Hopkyr v. Stapleton*, 2 Atk. 187), or is without the signature of counsel (*Kirkley v. Burton*, 5 Madd. [illegible] whenever a want of parties appears on the [illegible] it is a good cause for a demurrer, the

demurrer must however show who are the proper parties to such, indeed by name, for that might be impossible; but in such a manner as to point out to the plaintiff the objection to his bill, and enable him to amend by adding the proper parties. Mitf. Pl. 180. And 9, the impropriety of confounding distinct subjects in the same bill, or of unnecessarily multiplying suits: (Mitf. Pl. 110.)

The objections to a bill, which are causes of demurrer to *discovery* only, are these:—1. That the case made by the bill is not such in which a Court of Equity assumes jurisdiction to compel a discovery; where, for instance, a bill of discovery does not allege that the discovery is in aid of proceedings either pending or intended: (*Cardale v. Watkins*, 5 Madd. 18.) 2. That the plaintiff has no interest in the subject, or no interest which entitles him to call on the defendant for a discovery. Therefore, when a plaintiff filed a bill for a discovery, namely, to support an action, which he alleged by his bill he intended to commence in a Court of Common Law, although by this allegation he brought his case within the jurisdiction of a Court of Equity to compel a discovery, yet the court being of opinion that the case stated by the bill was not such as would support an action, a demurrer was allowed; for unless the plaintiff had a title to recover in an action at law, supposing his case to be true, he had no title to the assistance of a Court of Equity to obtain from the confession of the defendant evidence of the truth of his case: (Mitf. 187.) 4. Although both plaintiff and defendant may have an interest in the subject, yet that there is not that privity of title between them which gives the plaintiff a right to the discovery required by his bill. 5. That the discovery, if obtained, cannot be material. And, 6. That the situation of the defendant renders it improper for a Court of Equity to compel a discovery. It is a general rule, that no one is bound to answer so as to subject himself to punishment, in whatever manner that punishment may arise, or whatever may be the nature of the punishment. If, therefore, a bill requires an answer which may subject the defendant to any pains or penalties, he may demur to so much of the bill; as, if a bill charges anything, which if confessed by the answer would subject the defendant to any criminal prosecution, or to any particular penalties, as an usurious interest, maintenance, champerty, simony. And in such cases, if the defendant is not obliged to answer the facts, he need not answer the circumstances, though they have not such an immediate tendency to criminate: (Mitf. Pl. 194.)

FORM OF DEMURRER.

A demurrer requires to be signed by counsel; but as it asserts no fact, and relies merely upon matter apparent on the face of the bill, it is put in without oath: (Mitf. Pl. 208.) The following is the form of a demurrer:—

The demurrer of A. B. (or *of A. B. and C. D.*) *to the bill of complaint of E. F.*

This defendant by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill to be true in such manner and form as the same are therein set forth and alleged, doth demur thereto, and for cause of demurrer sheweth, &c.; and concludes—*Whereupon this defendant demands the judgment of this honourable court, whether he shall be compelled to make any further or other answer to the said bill, or any of the matters and things therein contained, and prays to be hence dismissed, with his reasonable costs in this behalf sustained.* (Smith's Ch. Pr. 304.)

The demurrer as in the above form, is always preceded by a protestation against the truth of the matters contained in the bill; a practice borrowed from the common law, and probably intended to avoid conclusion in another suit: (Mitf. Pl. 212.)

A demurrer must express the several causes of demurrer; and in case it does not go to the whole bill, it must clearly express the particular parts of the bill demurred to. (Mitf. Pl. 213.)

No demurrer, as was formerly the case, is to be held bad and overruled upon argument only because such demurrer does not cover so much of the bill as it might by law have extended to: (86th Order, August 1841.)

No demurrer is to be held bad and overruled upon argument only because the answer of the defendant may extend to some part of the same matter as may be covered by such demurrer: (87th Order, August 1841.

Where a *new fact* is introduced into a demurrer for the purpose of supporting it, it will be overruled as being a *speaking demurrer*. The introduction, however, of new argument will be considered only as surplusage: (*Davies v. Williams*, 1 Sim. 5; *Cawthorn v. Chalie*, 2 S. & S. 127.)

DEMURRER ORE TENUS.

A defendant may, at the hearing of his demurrer, orally assign another cause of demurrer, different or in addition to those assigned upon the record, which, if valid, will support the demurrer, although the causes of the demurrer, stated in the demurrer itself, are held to be invalid. This oral statement of a cause of demurrer at the Bar is called demurring *ore tenus*: (Dan. Ch. Pr. 543.)

FILING, SETTING DOWN, AND HEARING DEMURRERS.

The engrossment of the demurrer must be filed in the Record and Writ Office; but a separate demurrer

[illegible] the plaintiff [illegible] by bill does it [illegible] defendant, or [illegible] defendants may, without any leave of the court, put in a demurrer to the plaintiff's bill within the time allowed to the defendant for demurring alone (twelve days), to a bill, or within a time to be fixed by any general order of the Lord Chancellor for that purpose; but *after that time a defendant or defendants, not required to answer* the plaintiff's bill, shall not be at liberty to put in a demurrer to the bill without leave of the court; and it is provided that the power of the court to grant *further time* for demurring to any bill, upon the application of any defendant or defendants thereto, *whether required to answer* the bill or not, is to remain in full force, and not be in anywise prejudiced or affected; and it is also provided, that if the court shall grant any *further time* to any defendant for demurring to the bill, the plaintiff's right to move for a decree under the provisions hereinafter contained, shall in the meantime be suspended. By the 19th of the Orders of 7th August, 1852, a defendant *required to answer a bill* must put in his demurrer, not demurring alone, within fourteen days from the delivery to him or his solicitor of a copy of the interrogatories which he is required to answer; but the court is to have full power to enlarge the time, from time to time, upon application being made to the court for that purpose.

Applications for time to demur are to be made to the judge at chambers: (15 & 16 Vict. c. 80, s. 38.)

EFFECT OF DEMURRER.

Where a demurrer to the whole bill is allowed, the bill is considered out of court; but although it is but rarely done, it is in the discretion of the court to allow the bill to be amended: (*Baker v. Mellish*, 11 Ves. 68, 72; and see 4 My. & Cr. 277.) An amendment after a general demurrer has been allowed is irregular; but if the defendant demur to the amended bill, he waives the irregularity: (*Watkins v. Bush*, 2 Dick. 701.)

Leave to amend for the purpose of adding proper parties will, however, be given, unless the court sees that the plaintiff can have no relief under any circumstances, under the record before it: (*Tyler v. Bell*, 2 My. & Cr. 89.)

The allowance of a partial demurrer does not, as in the case of a general demurrer, put the bill out of court, except as to that part of it which is covered by the demurrer; an order to amend, or to refer an answer upon exceptions, or to adopt any other proceedings in the cause, may be obtained in the same manner as if there had been no demurrer: (Mitf. Pl. 215.)

Where the court, on a demurrer, has decided the question between the parties on the *merits*, the decision may be pleaded in bar of a new suit; but another bill may be filed in general where a demurrer has been allowed on a mere point of form: (Mitf. Pl. 215.)

After a demurrer has been overruled a second demurrer will not be allowed; for it would be, in effect, to rehear the case on the first demurrer. On an argument of a demurrer, any cause of demurrer, though not shown in the demurrer as filed, may be alleged at the bar, and, if good, will support the demurrer: (Mitf. 217.) The defendant may apply to the court to put in a less extensive demurrer (*Devonshire v. Newenham*, 2 S. & L. 199; *Clegg v. Legh*, 4 Madd. 207), or a plea; but if he neglects to apply to the court for leave to file the plea it will be taken off the file, as it is the rule of the court not to allow two dilatories at once: (*Rowley v. Eccles*, 1 S. & S. 512.)

If, after a demurrer to the whole bill has been overruled, the defendant cannot obtain leave to put in another demurrer or a plea, he must put in a full answer. Where a demurrer accompanied by an answer is overruled, the defendant need not answer further until the plaintiff has excepted to his answer for insufficiency: (Dan. Ch. Pr. 559.)

THE MAGISTRATE,
AND PAROCHIAL AND MUNICIPAL LAWYER.

Summary.

THERE is one case only in this department, and it belongs to the *Criminal Law*. It was decided in *Reg. v. Pierce*, 20 Law T. Rep. 182, in the Oxford Circuit, by WILLIAMS, J., that the law of finding of lost property does not extend to the case of a railway servant finding things left in a railway carriage, it being his duty to take them to the office; and to appropriate them to his own use is larceny. It is a question for the jury whether such larceny was committed in the course of the journey or afterwards, on an indictment in county A., under 7 Geo. 4, c. 64, s. 13.

In the same case it will be observed that the Judge refused to make an order for delivery to the prisoner of money found on his person, although that money was not the subject of the charge. WILLIAMS, J. was of opinion that neither Judge nor Justice had power to make such an order; nor even could the Secretary of State.

[illegible] of a prisoner [illegible] The wholesome [illegible] The Court [illegible] order. It further [illegible] Litigation.

EXCLUSIVE AUDIENCE TO THE BAR.

THE Cardiganshire Michaelmas Quarter Sessions were held on the 4th and 5th instant, before E. C. L. Fitzwilliams, Esq. chairman, and a full bench of magistrates, when the learned chairman brought on his motion for Exclusive Audience for the Bar, of which he had given notice at the previous quarter sessions. The learned gentleman adduced many of the arguments which he had submitted, when Mr. Lloyd Hall, to the Judge of the County Courts, when moving for Exclusive Audience in 1846, reported in 1 C. C. Chron. 122, dwelling particularly on the great advantage to every Judge presiding over a Court of Law in having the best Advocates that could be obtained to practise there, and showing the reason why Attorneys so very seldom make good Advocates, however learned or talkative they might be. He stated that when he was first called to the Bar, upwards of twenty years ago, it never had been doubted that no Attorney could be heard whilst there was a barrister disengaged in court and willing to hold a brief in the case; and to show how dangerous it was for an attorney to address a court where not expressly enabled by statute so to do, he cited Lord Campbell's dictum in *Reg.* v. *Amos*, Comyn's Digest, tit. "Maintenance"; Hawkins's Pleas of the Crown, c. 83, s. 127; *Doe d. Bennett* v. *Hale*, 15 Q. B. Rep. 171; and 19 Law J. N. S. 358, Q. B.; and the able commentary upon that case by his learned friend Mr. Pulling, in 18 Law Review, p. 122. The motion was carried *nem. con.*, so that, for the future, no attorney can be heard in that court when barristers are present.

TITHE COMMUTATION.

TO THE EDITOR OF THE LAW TIMES.

SIR,—As your agricultural as well as clerical readers may feel anxious to know the result of the corn averages for the seven years to Christmas last, published in *The Lowton Gazette* of this evening, viz:

	s.	d.	
Wheat.....	6	0¼	per imperial bushel.
Barley.....	3	9¼	"
Oats.....	2	6¾	"

I beg to state for their information that each 100*l.* of tithe rent-charge will, for the year 1853, amount to 91*l.* 18*s.* 5½*d.*, which is a reduction of more than two per cent. from last year's value.

The following statement from my *Annual Tithe Commutation Tables*, will show the worth of 100*l.* of tithe rent-charge for each year since the passing of the Tithe Commutation Act, viz:—

	£	s.	d.
For the year 1837	98	13	9¾
" 1838	97	7	11
" 1839	95	7	9
" 1840	98	15	9¼
" 1841	102	12	5¾
" 1842	105	8	2¾
" 1843	105	12	2¾
" 1844	104	8	5¾
" 1845	103	17	11¾
" 1846	102	17	8¾
" 1847	99	18	10¾
" 1848	102	1	0
" 1849	100	3	7¾
" 1850	98	16	10
" 1851	96	11	4¾
" 1852	98	16	11¾
" 1853	91	18	5¾
	£1,697	19	4¾

General average for 17 years, £99 17 7¾

I am, Sir, yours &c.

CHARLES M. WILLICH.

25, Suffolk-street, Pall-mall East, 7th Jan. 1853.

DUTIES OF CONSTABLES AND POLICE OFFICERS AS TO SEARCHING PRISONERS.

On Thursday, in the Court of Q. B. on a motion in the case of *Bessé* v. *Wilson*, Lord CAMPBELL said that he wished to take this opportunity of correcting a misapprehension as to what was his opinion with respect to the practice of searching persons who were charged with offences. At the conclusion of the trial of this case he had expressed his disapprobation of the manner in which the plaintiff had been searched when taken to the station-house. He repeated the disapprobation which he had then expressed; for there was no right in a case of this kind to inflict the indignity to which this plaintiff had been subjected. But he had been informed that an erroneous impression of what he said had gone abroad, it was supposed that he had said that there was the right in any case of search a prisoner at any time. He had not said so. It was the duty of an officer to search [illegible] instance, a man was about to commit a felony, he might be searched to see whether he had any fire-boxes or matches about his person. He took this opportunity of correcting the error, because he had received from that most useful officer, Sir Richard Mayne, to whom the country was much indebted for a most excellent discharge of his public duties, a communication stating that an idea had gone abroad that to search any person charged with an offence was forbidden by law. No such doctrine had been stated by him, nor would it be stated by any one who had the honour to occupy the seat which he then occupied. It might be highly satisfactory, and indeed necessary that the prisoner should be searched. He (Lord Campbell) had never said that searching a prisoner was always a forbidden act. What he said applied to circumstances such as existed in this case. If a tradesman was charged with such an offence as that with which he was charged in this case, and he appeared before the magistrate by counsel and not in person, and a warrant issued against him, not charging him with any crime, but merely to make him appear in person, the act of searching him was contrary to law. It was said that the search here was justified because the person in custody might have some instrument about him with which he might make away with or injure himself, or the alderman before whom he was brought. This did not appear a satisfactory reason; it assumed that when a man was apprehended because he had in the first instance appeared by counsel, and not in person, he would take with him the means of committing suicide or murder. This was a most absurd supposition.

REAL PROPERTY LAWYER AND CONVEYANCER.

Summary.

AN extremely curious case, arising out of an eccentric will, was last week reported from the House of Lords. In *Ferrie* v. *Atherton*, 20 Law T. Rep. 170, it appeared that A. devised his real and personal estate to trustees, charging them not to sell, if they could avoid it, the real property till the end of nineteen years; but if they should sell part, to apply the proceeds to pay off his mortgage debts and to hold the residue till the end of the nineteen years, when the proceeds were to be paid to his children B., C., and D. in certain shares. The trustees disclaimed, and thereupon the *cestui que trusts* executed a deed by which they agreed to divide the property into two classes. Class 1 was to be sold immediately to pay testator's debts. Class 2 was to be held by trustees named in the deed, in trust for the purposes of the will, so far as not inconsistent with the deed, to pay the rents to the parties as entitled under the will, and with power to a majority of the trustees to sell even within the nineteen years, at the end of which period, however, the property was to be sold absolutely, and the proceeds divided as directed by the will. B. died before the end of the nineteen years. Was the property by this deed converted into personalty so as pass to his next-of-kin? It was held that the deed had converted the property in Class 1 at the time of sale, and that the property in Class 2 was converted, but not until the end of the nineteen years or previous sale, under the provisions of the deed. And as for the rents, until such sale "they would go to the parties who would take them as real property."

In *Cox* v. *Dolman*, 20 Law T. Rep. 171, Lord St. LEONARDS said, "It appears to be settled law that while the legal estate in a term remains unbarred and uncalled in, and is still vested in the trustee who may obtain possession and so execute the trusts of the will, the estate of that trustee is not barred; and if the estate of the trustee is not barred, the right of the *cestui que trust* also is not barred."

The question to what extent the court will support the purchase of a reversionary interest or set it aside on the ground of inadequacy of value, has been the subject of much controversy and conflicting decision. Hence the interest that will attach to the case of *Edwards* v. *Burt*, 20 Law T. Rep. 172, decided in the Court of Appeal. It was there laid down that, on a purchase by private contract of a reversionary interest from an expectant heir, if the transaction is impeached within a reasonable time, it is incumbent upon *the purchaser* to show that he gave the fair market value for it, and where he did not this, the sale would be set aside. The court said, "It was urged upon us that if we should set aside the present transactions on the ground of undervalue, we should in effect be deciding that no sale of a reversion can be sustained unless it be made by public auction. *This we certainly do not* mean to decide. The [illegible] sale was not a sale by auction, but no effectual steps were taken to acquire a knowledge of the market value before the bargains were completed. As to the first transaction, no steps whatever were taken. As to the second, nothing was done except to obtain the opinion of an actuary, and such an opinion is evidently unsatisfactory with reference to the local circumstances likely to influence market value. Indeed, on such a subject an actuary is by no means the best authority to refer to. If, previously to the sale of a reversionary interest, the vendor and purchaser consider in ascertaining from persons of competent skill, and having knowledge of the property and of all the circumstances likely to influence value, a well-considered estimate of what the property would be likely to fetch on a sale, and act on that opinion, we are far from meaning to decide that such a transaction could be afterwards impeached merely because other surveyors should come to a conclusion different from that on which the parties had acted. The court would probably be inclined in such a case, as a matter of fact, to believe the original and not the subsequent estimate to be correct." This should be carefully noted by our readers.

Another case in the *Law of Vendor and Purchaser* is that of *Pegg* v. *Ureden*, 20 Law T. Rep. 174. A. being in occupation of premises belonging to B. entered into an agreement with him on April 2, 1846, to hire the same at a rent of 160*l.* a year, and to pay down 650*l.*, A. to have the right of purchasing the same at any time within nine years, at the price of 2500*l.* in addition to the 650*l.* on giving three months' notice of his intention to do so. A. gave notice accordingly on 14th May, 18, 1850. On Sept. 4, B. complained of delay in completing the purchase, and on Nov. 3 gave notice to A. that unless he completed in six weeks, he should consider the contract abandoned. A. continued the investigation of title, but did not complete before the six weeks expired. B. treated the contract as abandoned, and A. filed a bill for specific performance. The question was, whether time was of the essence of the contract? The M. R. held, that it was *not* so, and that even if it had been so, it had been waived by the defendant. It was also intimated, but not expressly decided, that the plaintiff had accepted the title by proceeding to compare the abstract with the deeds.

The very interesting question What passes by a demise of all "in occupation under a lease" was illustrated in *Whittington* v. *Corder*, 20 Law T. Rep. 175. V. C. TURNER said,—"I apprehend the true meaning of the words 'occupation under a lease' is not actual personal use and occupation, but occupation to which he is entitled under the instrument by which the right of possession was granted." Therefore where A. was owner of two houses and demised one to B., and afterwards found a subterranean chamber extending under both, and converted it into a cellar for his own use, and then mortgaged both houses to C. with powers of sale, and the mortgagee sold to B. the house that had been leased to him, describing it as in "his occupation," and thereupon B. opened a way into the cellar, and partitioned off so much of it as was under his house, the Court held him to be entitled to it, as it had passed under the lease, although not known at the time.

Where A. had entered into a negotiation with B. for the purchase of an estate in August, and in October B. wrote to his solicitor, stating that A. had agreed to purchase on the production of a sufficient title, and directing him to prepare an agreement, and an unsigned memorandum to this effect was then delivered by B. to A., and on Nov. 29 A. wrote to B.'s solicitor, desiring to know when he would forward the agreement "relative to the purchase he had concluded with B.;" the contract was signed in February, and the purchase completed in April; and in the meanwhile, on Jan. 9, A. made a will, and devised personalty to D. and E. upon trust to complete the purchase he had recently made of B., and get the same conveyed to them upon trust, &c. it was held that, at the date of this will, he had a devisable interest in the estate, and that it passed by the devise to D. and E.: (*Morgan* v. *Holford*, 20 Law T. Rep. 177.)

In the *Law of Trusts and Trustees* the reader should note the case of *King* v. *Mallings*, 20 Law T. Rep. 178, in which V.C. KINDERSLEY, held that, "as the question of a trustee having a strict right to insist upon a release under such [illegible] of opinion that, where it was the case of a declared trust, as where the trust was apparent on the face of a deed, the fund clear, and the trust

clear the fund, and the trustee was paying either the interest or the capital of such fund in strict accordance with the terms of the trust, a trustee under those circumstances was not entitled to a personal release by deed. " " Where a trustee is paying in strict accordance with the trust it is entirely unnecessary; *a general receipt would be sufficient.*" It is otherwise in the case of an encumbrancer. He is entitled to a general release on the distribution of the funds.

A case of unusual interest is reported from the Oxford Circuit. In *Doe v. Powell*, 20 Law T. Rep. 181, which was an action of ejectment brought to recover property settled on the heirs of A., the plaintiff claimed title through the maternal ancestor, it being admitted that A. had no descendants living. A statement of A.'s father, that he had no father or mother to cry him, was proved; and all the witnesses swore they had never heard of any other relative on the father's side except the father and grandfather, both long since dead. This was held to be a *prima facie* case, and that it was not necessary to go further the paternal line, nor to trace the heirs of the grandmother or great grandmother on the father's side.

We need but to direct attention to the very interesting case of *Stultz v. Schoeffle*, 20 Law T. Rep. 183, in the Prerogative Court, in which Dr. LUSHINGTON reviewed the question how far a wife may exert her authority over the testamentary disposition of her husband. The facts are too complicated for a summary.

CONVEYANCING COSTS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Now that the practice in the Courts of Common Law is reformed, and (thanks to the diligence and perseverance of our late Chancellor) a chancery suit, like other things, will have an end in a definite space of time, the cry for reform is echoed with redoubled vigour against the existing state of the law of real property. But the cry is raised by those who know very little of the laws of England respecting real property, and it only finds a faint echo from those who are best acquainted with it. No one doubts that the existing state of the law requires some modification and amendment; but there are few who can show any plan by which such modification can beneficially be made. Those who advocate a sweeping reform, and who, whilst pretending to render a title safer and more eligible to a purchaser, desire every mortgage or conveyance to be registered in a public office, are very much mistaken as to the subject they have to handle. Such a registry as is proposed would lay bare all the defects of every title in the kingdom, and thus render a purchaser for a valuable consideration liable to be ousted from the possession of an estate which he had bought and honestly paid for, by reason of some defect which the vigilance of his solicitor had failed to discover. Besides, few who have real property would wish their title to be registered with the mortgages and incumbrances which necessity sometimes compels. Some plans are almost amusing from the utter stupidity with which they are proposed. *The Morning Post*, in a late article on this subject, suggested a registry only to be searched by solicitors, thus, if A. conveys an estate to B. and B. to C. and so on, each transaction being enrolled, the titles of the kingdom in about sixty years' time would become marketable "by the mere inspection of the registry."(a) Thus argues the editor, and who doubts the correctness of his logic? But if transactions such as the editor mentions were the only ones which were resorted to by the owners of real property, the expenses of investigating a title would certainly be as little under the present as under the proposed arrangement. I dare assert as a positive fact (and the experience of every solicitor must corroborate the assertion) that not one title out of a hundred would be as simple as the example which the editor of *The Morning Post* puts as an illustration of his proposition. It is, in fact, the desire men have to confine their property to their own family, and the various provisions which in the settlement or will are made for the various members of the family (and in which all the legal skill and ingenuity of the conveyancer are invoked to make the rules of law tally with the intentions of the party), which causes such expense in investigating and abstracting up the titles of half the property in the realm. No doubt a registry would in some cases be of great service; but whilst the registry would give, perhaps, a safe title to the purchaser, it certainly would add to the expense of investigating the title. If the deeds are registered in full, there would be at least one-eighth of the solicitor's bill to be paid for the copies registered. If only registered shortly (as proposed in the Bill brought into Parliament by Mr. Drummond), no solicitor would dare to accept a title from the extracts enrolled. Necessity and experience have shown that short deeds lead to very great confusion and danger. The leases and conveyances under Lord Brougham's Acts are seldom, if ever, used. And what solicitor would be satisfied with and take the extract as the legal effect of the deed. A mistake, a difference in opinion in the registrar, and the title is upset! What security, therefore, does a registry on these principles afford?

But as to the question of costs, much may be done. As to myself, I do not approve of the per-centage system. I should suggest that the scale of costs now adopted be considerably modified, and that every bill of costs for a conveyance, before it is sent in to the client, be taxed by an officer to be appointed for that purpose. The names of the parties and of the estate might be left in blank, and thus, whilst it would give the practitioner a fair remuneration, it would secure the client from imposition and fraud.

I am, Sir, yours, &c.,
A CONSTANT READER AND
Jan. 8, 1853. AN OLD PRACTITIONER.

(a) The editor cites the usual case of transfer of stock and asks why land cannot be transferred as readily? The editor ought to know that personal property is governed by far different laws from real property!

TO THE EDITOR OF THE LAW TIMES.

SIR,—In your number of the 8th inst. you have an observation reprobating the state of the law as laid down by the majority of the judges in the case of *The Queen v. the York and North Midland Company*, and you infer that the law, as so laid down, differs from common sense, and has a tendency to bring the law itself into odium. With submission to you, I cannot for a moment bring myself to think that the decision in the case mentioned, or in the case of *The Queen v. the Lancashire and Yorkshire Railway Company*, which is reported in your last number, has any such tendency. On the contrary, it seems to me that the decisions in both the cases are reasonable, fair, just and equitable, and that, if sustained, they will have a most wholesome and beneficial effect. A contrary state of the law would leave the public at the mercy of any body of persons who, for their own money purposes, have chosen to clothe themselves, through the medium of Parliament, with exclusive powers, would render Parliament a mere machine to be used for speculative purposes, and would enable companies to say "We will not let any body else do this work, and we ourselves will do it only in case we so choose." Before they clothe themselves with the advantages of parliamentary powers, and with the disadvantages of parliamentary liabilities, companies should deliberate, and having ultimately obtained special powers and privileges, should not, in my humble judgment, be permitted to repudiate their responsibilities and thus, as it were, play false with Parliament and with the public. It seems to me that the reasoning of Lord Campbell in the judgment delivered by him in the two cases mentioned is unanswerable, and I even think that Parliament itself should be very chary of relieving companies from liabilities sought for and obtained by themselves, and should do so only in cases of such an extraordinary nature that I can scarcely imagine they can arise.

I am, Sir, yours, &c.
Jan. 10, 1853. A SUBSCRIBER.

Queries on Points of Practice.

SALE UNDER DECREE.

Would any of your subscribers inform me what the practice is under the following circumstances: A decree for sale of estate for payment of mortgages and costs has been made, the estate sold, and the purchase money in court. I am now about proceeding to have the cause heard on further directions and costs. Do the mortgagees execute the conveyance first and afterwards receive their mortgage money under the decree on further directions; or is it the practice for the purchasers, under the circumstances, to wait for the execution of mortgages, after they have been paid under the order?

Answers to Queries.

CERTIFICATE OF ACKNOWLEDGMENT.

IN answer to the question of "A Purchaser's Solicitor," whether the vendor is not bound to file in the proper office the certificate of acknowledgment at his own expense, I think he is bound to do so. Until the certificate and affidavit are recorded in the proper office, the deed will have no effect as regards the party under coventure.

It is laid down in Dart's Vendors and Purchasers, page 884, "that the costs of perusal and execution by all necessary conveying parties fall upon the vendor, including, it is conceived, the costs of all matters essential to the validity of the deed as a perfect conveyance: *e. g.* the acknowledgment of married women, and the filing of the certificate of acknowledgment. J. S. H.

JOINT-STOCK COMPANIES' LAW JOURNAL.

Summary.

It seems that the affidavit of the party entitled to dividends of money paid into court by a railway company is not required where the application is for payment of these dividends, but the affidavit of title by the solicitor is sufficient. It is otherwise, however, where the affidavit is for payment of the capital. (*Ex parte Bodyngton*, 20 Law T. Rep. 187.)

In the Vice of a County Court appeal the following question was raised:—A. bought shares in a railway company, which [illegible] and sold them to B. [illegible] B. [illegible] the shares to A. [illegible] A. [illegible] B. [illegible] A. [illegible] B. [illegible] A. [illegible] B

of enlarged [illegible] there are [illegible] murders, two [illegible] In the Exchequer [illegible] which three [illegible] on the special paper [illegible] and two for argument; and of [illegible] there are sixteen for argument, and [illegible] judgment. Of County Court appeals there are only four, of which three are in the Common Pleas, and one in the Queen's Bench. In the Court of Chancery we have the unprecedented [illegible] there being no arrears, the labours of Lord St. Leonards having for the first time in memory cleared the list before he quitted the woolsack, and the Lords Justices must have worked well, for their list has but eight appeals. It is otherwise with the Vice Chancellors. In Vice Chancellor Kindersley's Court there are one hundred and ten causes, of which twenty-three are claims, and three are special cases. In Vice Chancellor Stuart's Court there are one hundred and forty-seven causes, of which twenty-seven are claims, and seven special cases; and in Vice Chancellor Woon's Court there are eighty-three causes, of which sixteen are claims, and four special cases. It must not, however, be supposed that this difference results from difference of speed in the despatch of business. The fact is, that the Profession are somewhat gregarious, and prefer particular courts, without any cause that can be assigned. Thus of late they have been flocking to Vice Chancellor Stuart's Court, and deserting Vice Chancellor Turner's, and this preference appears to be quite independent of the character of the judges: it is given to the court. There is a *fashion* even in this.

Equity Practice.—It has been held in *Bowen* v. *Price*, 20 Law T. Rep. 174, that the delivery of interrogatories for the examination of a defendant need not be made to his solicitor personally, but, under the new statute and orders, it will be sufficient if it be made at the solicitor's office.

Where a sale of a mortgaged estate was prayed under sect. 48 of cap. 86, instead of foreclosure, it was held in *Girdlestone* v. *Lavender*, 20 L. T. 176, that it must be applied for at the hearing; and if the decree be then made for foreclosure, it cannot afterwards, on motion, be converted into a decree for sale.

Where a claim for the appointment of new trustees of real estate was filed by a mortgagee of a portion of the beneficial interest against the heir-at-law of the surviving trustee, without making any of the other *cestuis que trust* parties, the court declined to order an enquiry as to the parties beneficially interested, and directed the claim to stand over, with leave to amend: (*Wetherill* v. *Garbett*, 20 L. T. Rep. 178.)

Common Law.—We have to note two points on the *law of evidence*, decided by Williams, J. in the same case, *Doe* v. *Powell*, 20 L. T. Rep. 181. In a former unsuccessful action of ejectment brought on the same demise to recover the same property, A. defended as landlord, and obtained a commission to perpetuate testimony. Before the witnesses were examined under it, A., finding he had no legal claim, agreed to defend for B. (the defendant, as landlord, in the subsequent action), to be repaid the costs out of the rents received on B.'s account. It was held, that the deposition of a deceased witness under the commission in the former suit was admissible in the second, although it did not appear that the lessors of the plaintiff had notice that A. defended the first action on B.'s behalf.

The other point was as to secondary evidence. The deed by which property was settled on the wife of A. being in the hands of defendant B., a subpœna was taken out by the plaintiff for its production. The clerk of defendant's agent attended and opposed the application, and in order to show that defendant had no such deed as that described in the affidavits, he stated the real contents of the deed. It was held that such statement was not admissible as secondary evidence of the contents of the deed.

SERVICE OF WRITS IN THE COUNTRY.

[illegible] in your Number of the 10th inst. from [illegible] of the London attorney, and requesting [illegible] Sir, the [illegible] of this old custom of [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] correspondent, "and receive the favour of a post-office order by return for the amount of their charges." The object of this is to prevent the London agent from receiving the amount. Now, Sir, it is far less trouble to pay the charges to the London agent than to obtain a post-office order and write a letter therewith (to say nothing of the postage). For my part I always adopt this plan:—When I am desired to pay the charges in town, I do so *immediately*; if a "post-office order" is to be sent, I allow the country attorney to write me several letters before sending it. I hope others will do likewise. I am, Sir, yours, &c.,

A London Attorney.

Elm Court, Temple, Jan. 4th, 1852.

AN ADVERTISEMENT.

To the Editor of the Law Times.

Sir,—In the first page of your Number of the 1st of January is an advertisement under the title "Situations wanted and vacant," as follows:—*To Equity Draftsmen.—A Solicitor* would be glad to receive a *Card* from a gentleman at the Chancery Bar, of easy private means, to whom business would be desirable. Address," &c. What does this mean? Is it an invitation for a member of the bar to go snacks with the solicitor, or to let the solicitor go snacks with him in the amount of his fees? Or else to do the work of this precious solicitor at an under price, or gratis, for the sake of having something to do; or perhaps give a bonus for it? That it means something of this sort is transparent. I am therefore astonished to see such an advertisement in your columns, and cannot account for it, unless with the new year the "unlimited competition" principle is to be engrafted into the practice of the law. First, attorneys usurp the place of barristers as advocates! Then accountants usurp the place of attorneys as agents! And lastly, I suppose, everybody will be allowed to be everybody else's attorney and advocate according to his will and pleasure: (see Com. Dig. tit. "Maintenance;" Hawk. P. C. c. 83; and 13 Law Rev. 122.) Alas poor Lawyers!

An Old Member of the Bar.

[We thank our correspondent for directing attention to this advertisement, and should equally with him like to know what it means. But it should be observed that it is impossible for a journal to play the censor with advertisers. An Editor does not see the advertisements, and has nothing to do with them. Provided they be not illegal or immoral, the public have a right to insert any advertisements they please.—Ed. L. T.]

Queries on Points of Practice.

THE NEW PROCESS.

I should feel obliged by any of your numerous correspondents answering the following question for me:—

A client of mine has had an execution put into his house; he owes the plaintiff the money, but he has not been served with any writ or other proceeding. I have had the office searched, and find an affidavit of service filed with a copy of a writ of summons at the suit of the plaintiff annexed thereto, upon which judgment under the Common Law Procedure Act has been signed. My client is prepared to swear (in which he can be corroborated) that on the *very* day the affidavit states the defendant was *personally* served he was confined to his bed by illness some 100 miles from his residence. The amount of the levy has been paid to the sheriff under *protest*.

Query,—Under the foregoing circumstances what remedy has my client against the plaintiff or other person? A. B.

Answers to Queries.

PRACTITIONERS IN CANADA.

To "Alpha," in Law Times *of April* 10, 1852.

Any attorney or solicitor in Her Majesty's courts of law or equity in England or Ireland, or any writer to the signet or solicitor before the higher courts of Scotland, is admitted to practise as attorney of all the courts of Upper Canada upon proof of service under articles of clerkship to a practising attorney in the province for three years, unless such attorney, solicitor, writer to the signet, or solicitor before the higher courts shall have taken a degree at any of the universities in the United Kingdom, in which case he is admitted after *two* years' such service.

Graduates of any university in Great Britain or Ireland (who are not attorneys) are admitted as attorneys in Upper Canada after three years' such service: all other parties after five years.

Graduates of any university in Great Britain or Ireland (whether attorneys or not) are called to the Bar in Upper Canada three years *after examination and admission* into the Law Society of Upper Canada, on payment of about 28*l.* sterling: all other persons five years after such examination and admission; same fees.

Barristers who are also attorneys, and attorneys who are barristers, practise both professions at once in all the courts in Upper Canada; but attorneys who are not barristers cannot practise as barristers, and barristers who are not attorneys cannot practise as attorneys.

In the United States each state has its own peculiar laws as to the admission of attorneys and counsellors. They generally require from three to six months' residence in the state, and to pass an examination before the court. There is very little difficulty and no expense in an English attorney getting admitted in the courts of the United States. There is no such word as "barrister" in the United States; attorneys are all "counsellors," and practise as barristers.

In Lower Canada, the laws being different from those in Upper Canada (which are similar to those in England), no English attorney or barrister could do anything were he admitted. Graduates of any incorporated college or seminary are there admitted by examination after four years' service under articles to a practising advocate in Lower Canada; other persons after five years' such service and examination.

COUNTY COURTS.

Summary.

A County Court appeal is reported from the Q. B.; but as it relates entirely to a question of general law, and in no way to the peculiar law or practice of the County Courts, it is omitted in the department to which it belongs.

Some decisions in *Insolvency* are to be noted by the County Court practitioners. In *Re* [illegible], 20 Law T. Rep. 179, a petition as a trader was dismissed on the evidence showing he was not a trader. It was held in *Re Fry*, 20 Law T. Rep. 179, that where a protecting order had been given under sect. 28, and a warrant discharging the insolvent issued by mistake, the Court might revoke the order and recommit the petitioner. In *Re Smith*, 20 Law T. Rep. 180, it was held that an insolvent owing debts contracted whilst in trade must petition as a trader; and in *Re Rendall*, 20 Law T. Rep. 180, that payment of debts within three months of the date of the petition is not within the exceptions specified in the petition, and therefore is a parting with property under the statute, and fatal to the *locus standi* of the petitioner.

SCALE OF FEES.

To the Editor of the Law Times.

Sir,—On the 30th of last June the royal assent confirmed the deliberation of the two Houses of the Legislature which recognised the right of "attorneys in the County Courts" to be paid costs and charges for their labours, and directed a scale to be framed for that purpose.

Is it not a gross injustice that we are deprived of our acknowledged rights by the delay in forming the scale of fees? I am, Sir, yours, &c.

Birmingham. A Subscriber.

[We are happy to say that they are now prepared, and will be published in a few days.—Ed. Law T.]

COUNTY COURTS ABUSES.

To the Editor of the Law Times.

Sir,—As the scale of fees in the County Courts is to undergo revision, it would be a very great advantage to the Profession if you would urge the reduction of fees now payable out of pocket, as they are at present perfectly preposterous, and quite out of keeping even with the fees in the Superior Courts (although they have lately been added to in number, and extended in amount to obtain a judgment by default). To recover a debt over 20*l.* in the Superior Courts the costs allowed, including attorney and all fees, is 3*l.* 8*s.* in a town, and 4*l.* in a country case: whereas the actual money out of pocket in the County Courts to sue for any sum between 20*l.* and 50*l.* is, summons 2*l.* 6*s.* 8*d.*, and hearing fee 3*l.* 5*s.*, in all 5*l.* 11*s.* 8*d.*, and mileage in addition 2*l.* 8*s.* 8*d.*; more than is allowed for the whole costs of attorney and fees in the Superior Courts in a town case, and 4*l.* 11*s.* 2*d.* more in actual money out of pocket; and this is the cheap Law so much cried up in the County Courts! Surely something must be done to remedy the evil, and it might easily be accomplished by compelling the defendant, as in the Superior Courts, to appear in so many days, and in default of his doing so to let execution issue on the summons, and thus save the hearing fee, which must now be paid, even if the defendant does not dispute the debt. No doubt it will be urged that the fees payable include everything but the attorney and witnesses, and that if a trial took place in the Superior Court the fees would be heavier. I am willing to admit it would cost a trifle more in some cases; but they do not there charge for what they don't do, nor do they compel a defendant to pay a hearing fee to settle an action. For it may be settled by a judge's order on payment of five shillings; whereas, in the County Court it cannot in any way be settled, even when the amount and terms of payment are agreed, unless, as I have before stated, prepayment of 3*l.* 5*s.* for a hearing fee when the amount is over 20*l.* and under 50*l.*, and in like proportion in other cases. There is also another abuse which should be done away with if County Courts are to do a respectable business, namely, the increased scale over 50*l.* In the Superior Courts the fees do not increase for any amount over 20*l.*, whereas in the County Courts, if you seek to recover a debt over 50*l.* you have to pay in fees 2*l.* 6*s.* 8*d.* for a summons, and 5*l.* 12*s.* 6*d.* for a hearing fee. It could hardly be supposed that such abuses existed in these so-called model courts, and I think the sooner you give us your powerful aid in upsetting them, the better, and I am sure you will have the thanks of the Profession; for the risk of paying such heavy fees and getting them back 2*s.* 6*d.*, and 3*s.* a month (as is often the case) should be done away with. I am, Sir, yours, &c.

W. Richard Parsons.

28, New Broad-st., London, Jan. 11, 1853.

County Court Appeals.—*Thursday.*—Lord Campbell said that, under the new rules, appeals from the County Courts would be heard in full court in term time. They would be entered in the special paper, and proper books must be delivered to the judges, as in other cases which were entered in that paper.

MERCANTILE LAWYER.

Summary.

A SHIPPED goods on board defendant's ships, to be carried from Genoa to London. By the bills of lading, which were in the usual form, the master bound himself to deliver the goods safe and free from damage in London. In the course of the voyage they were much damaged by rats, although defendant had kept cats on board, and used the usual means to protect his corn from damage; nevertheless, the defendant was held to be liable as a common carrier for the damage done. "The only part of the exception," said the Court, "under which it is possible it could be contended to fall, is as a danger or accident of the sea; but this, we think, includes the dangers properly so called by the violence of the winds and waves, which may be acting on a seaworthy ship, and does not cover damages by rats, which is a kind of destruction not peculiar to navigation, but to which all commodities are liable on land or in warehouses." (*Leveroni* v. *Drury*. 20 L. T. Rep. 178.)

COURT PAPERS.

CHANCERY SITTINGS.

HILARY TERM, 1853.

Lord Chancellor's Court.

At Lincoln's-Inn.

Tuesday ... Jan. 11	Appeal Motions
Wednesday 12	Petition day
Thursday 13	Appeals
Friday 14	
Saturday 15	
Monday 17	
Tuesday 18	
Wednesday 19	
Thursday 20	Appeal Motions
Friday 21	Petition day
Saturday 22	Appeals
Monday 24	
Tuesday 25	
Wednesday 26	
Thursday 27	Appeal Motions
Friday 28	Petition day
Saturday 29	Appeals
Monday 31	Appeal Motions

Lords Justices.

Tuesday 11	Appeal Motions
Wednesday 12	Appeals
Thursday 13	
Friday 14	Petitions in Lunacy, Bankruptcy, and Appeal Petitions
Saturday 15	Appeals
Monday 17	
Tuesday 18	
Wednesday 19	Petitions in Lunacy, Bankruptcy, and Appeal Petitions
Thursday 20	Appeal Motions
Friday 21	Appeals
Saturday 22	
Monday 24	
Tuesday 25	
Wednesday 26	Petitions in Lunacy, Bankruptcy and Appeal Petitions
Thursday 27	Appeal Motions
Friday 28	Appeals
Saturday 29	
Monday 31	Appeal Motions

Rolls Court.

Tuesday ....Jan. 11	Motions.
Wednesday 12	Petitions in General Paper
Thursday 13	Pleas, Demurrers, Causes, Claims, further Directions, and Exceptions
Friday 14	
Saturday 15	
Monday 17	
Tuesday 18	
Wednesday 19	
Thursday 20	Motions
Friday 21	Pleas, Demurrers, Causes, Claims, further Directions, and Exceptions
Saturday 22	
Monday 24	
Tuesday 25	
Wednesday 26	
Thursday 27	Motions.
Friday 28	Pleas, Demurrers, Causes, Claims, further Directions and Exceptions.
Saturday 29	Petitions in General Paper.
Monday 31	Motions.

Short Causes, Short Claims, Consent Causes, Unopposed Petitions and Claims, every Saturday at the sitting of the court.

NOTICE.—Consent Petitions must be presented and copies left with the secretary on or before the Thursday preceding the Saturday on which it is intended they should be heard.

Vice-Chancellor Kindersley's Court.

Tuesday 11	Motions, and seven adjourned Petitions
Wednesday 12	Petition day. Petitions (unopposed first)
Thursday 13	Pleas, Demurrers, Exceptions, Claims,
Friday 14	Causes, and Further Directions
Saturday 15	Short Causes, short Claims and Causes
Monday 17	Pleas, Demurrers, Exceptions, Claims,
Tuesday 18	Causes, and Further Directions
Wednesday 19	
Thursday 20	Motions
Friday 21	Petition day. Petitions (unopposed first)
Saturday 22	Short Causes, Short Claims, and Causes
Monday 24	Pleas, Demurrers, Exceptions, Claims,
Tuesday 25	Causes, and Further Directions.
Wednesday 26	
Thursday 27	Motions
Friday 28	Petition day. Petitions (unopposed first)
Saturday 29	Short Causes, Short Claims, and Causes
Monday 31	Motions

N.B.—Unopposed Petitions, not exceeding ten, at the sitting of the court every day (except seal-day.)

Vice-Chancellor Stuart's Court.

Tuesday 11	Motions
Wednesday 12	Short Causes, Short Claims, Pleas, Demurrers, Causes, Exceptions, and, Further Directions
Thursday 13	Pleas, Demurrers, Exceptions, Claims,
Friday 14	Causes, and Further Directions
Saturday 15	Petitions (unopposed first)
Monday 17	Pleas, Demurrers, Exceptions, Claims,
Tuesday 18	Causes, and Further Directions
Wednesday 19	Short Causes, Short Claims, and Causes
Thursday 20	Motions
Friday 21	Pleas, Demurrers, Causes, Claims, Exceptions, and Further Directions
Saturday 22	Petitions (unopposed first)
Monday 24	Pleas, Demurrers, Causes, Claims, Ex-
Tuesday 25	ceptions, and Further Directions
Wednesday 26	Short Causes, Short Claims, and Causes
Thursday 27	Motions
Friday 28	Pleas, Demurrers, Causes, Claims, Exceptions, and Further Directions
Saturday 29	Petitions (unopposed first)
Monday 31	Motions

Vice-Chancellor Wood's Court.

Tuesday 11	Motions and claims
Wednesday 12	Petition Day. Petitions (unopposed first) and Causes
Thursday 13	Pleas, Demurrers, Exceptions, Causes, Claims, and Further Directions
Friday 14	Short Causes, Short Claims, Claims, and Causes
Saturday 15	Pleas, Demurrers, Exceptions, Causes, Claims and Further Directions
Monday 17	
Tuesday 18	
Wednesday 19	
Thursday 20	Motions and Claims
Friday 21	Unopposed Petitions, Short Causes, Short Claims, Claims, and Causes
Saturday 22	Pleas, Demurrers, Exceptions, Causes, Claims, and Further Directions
Monday 24	
Tuesday 25	
Wednesday 26	
Thursday 27	Motions and Claims
Friday 28	Petition day—Petitions, Short Causes, Short Claims, Claims, and Causes
Saturday 29	Pleas, Demurrers, Exceptions, Causes, Claims, and Further Directions
Monday 31	Motions and ditto.

Arches Court.

First Session, Tuesday, Jan 11.
Second Session, Wednesday, Jan. 19.
Third Session, Thursday, Jan. 27.
Fourth Session, Friday, Feb. 4.
Bye Day, Saturday, Feb. 12.

Admiralty Court.

First Session, Thursday, Jan. 13.
Second Session, Friday, Jan. 21.
Third Session, Friday, Jan. 28.
Fourth Session, Saturday, Feb. 5.
Bye Day, Tuesday, Feb. 15.
Default Day, Thursday, March 17.

Prerogative Court.

First Session, Friday, Jan. 14.
Second Session, Saturday, Jan. 22.
Third Session, Monday, Jan. 31.
Fourth Session, Tuesday, Feb. 8.
Bye Day, Thursday, Feb. 17.
Caveat Day, Wednesday, March 16.

Appeals Court.

First Session, Saturday, Jan. 15.
Second Session, Tuesday, Jan. 25.
Third Session, Tuesday, Feb. 1.
Fourth Session, Wednesday, Feb. 9.
Bye Day, Friday, Feb. 18.

Consistory Court.

First Session, Tuesday, Jan. 18.
Second Session, Wednesday, Jan. 26.
Third Session, Thursday, Feb. 3.
Fourth Session, Thursday, Feb. 10.
Bye Day, Saturday, Feb. 19.
Extra Court Day, Thursday, March 11.

Vice-Chancellor Stuart's Court.

NOTICE TO SOLICITORS.—It is necessary to draw the attention of solicitors to the following notice posted up in this court:—

"It is requested by the Vice-Chancellor that all papers for the use of the court be left with the proper officer at least one clear day before any petition, cause, or other matter, can come on to be heard.

"Lincoln's-inn, Nov. 6, 1852."

Upon a short cause being called on to-day, his Honour said that no papers had been left with the proper officer of the court, and that he should make the solicitor pay the costs of the day. After his having repeatedly had occasion to speak of the court's requiring the papers to be left, the omission to do so could only arise from gross neglect, and he must endeavour to reform the regulation by making the solicitors pay the costs of the day where it was not complied with.

COURT OF CHANCERY.

FURTHER GENERAL ORDERS AND RULES.

Order of Court, Friday, Dec. 24, 1852.

THE Right Honourable Edward Burtenshaw, Lord St. Leonards, Lord High Chancellor of Great Britain, doth hereby order and direct in manner following, that is to say:—

1. "When any of the Masters in Ordinary shall request the opinion of any of the conveyancing counsel, nominated by the Lord Chancellor under the 15 & 16 Vict. c. 80, s. 41, to be taken upon any matter depending before such Master, such business is to be laid before the conveyancing counsel in rotation, to be ascertained in the manner prescribed by the General Orders of the 16th day of Dec. 1852; and a memorandum or minute of every such request is to be prepared by the Master's chief clerk, and signed by him, and such memorandum or minute, when marked with the name of conveyancing counsel in rotation, shall be a sufficient authority for such counsel to proceed with such business; and if the conveyancing counsel in rotation shall be unable or decline to proceed therewith, the same shall be offered to the other conveyancing counsel nominated as aforesaid, successively, according to their seniority at the bar, until some one of them shall accept the same.

2. "Where, under a decree or order of the court, whether already made or hereafter to be made, any estate or interest shall be put up for sale with the approbation of one of the Masters in Ordinary, an abstract of the title to such estate or interest is, upon the request of the Master, to be laid before the conveyancing counsel in rotation, for the opinion of such counsel thereon, to the intent that the said Master may be better enabled to give such directions as may be necessary respecting the conditions of sale of such estate or interest.

3. "Notwithstanding the preceding orders, the Master is to be at liberty to request the opinion of any one in particular of the said conveyancing counsel to be taken upon any matter before such Master, where the circumstances of the case may render it expedient to do so.

"(Signed) ST. LEONARDS, C."

Order of Court, Thursday, Dec. 16, 1852.

The Right Honourable Edward Burtenshaw, Lord St. Leonards, Lord High Chancellor of Great Britain, doth hereby, in pursuance of an Act of Parliament passed in the fifteenth and sixteenth years of the reign of her present Majesty, intituled "An Act to abolish the Office of Master in Ordinary of the High Court of Chancery, and to make provision for the more speed and efficient despatch of business in the said court," and in pursuance and in execution of all other powers enabling him in that behalf, order and direct as follows:

1. "The business to be referred to the conveyancing counsel nominated by the Lord Chancellor, under the 15 & 16 Vict. c. 80, s. 41, is to be distributed among such counsel in rotation by the first clerk to the registrars for the time being, and during his occasional or necessary absence by the second clerk to the registrars for the time being, and during the occasional or necessary absence of both such clerks, then by such one of the other clerks to the registrars as the first registrar for the time being may nominate for that purpose.

2. "The clerk making such distribution as aforesaid is to be responsible that the business is distributed according to regular and just rotation, and in such manner as to keep secret from all persons the rota or succession of conveyancing counsel to whom such business is referred; and it shall be his duty to keep a record of such references, with proper indexes, and to enter therein all such references.

3. "When the court, or a judge sitting at chambers, shall direct any business to be referred to any such conveyancing counsel, a short memorandum or minute of such direction is to be prepared and signed by the registrar, if the same shall have been given in court, or by the judge's chief clerk if given in chambers, and the party prosecuting such direction, or his solicitor, is to take such memorandum or minute to the registrar's clerk, whose duty it shall be to make such distribution as aforesaid; and such clerk is to add at the foot thereof a note specifying the name of the conveyancing counsel in rotation, to whom such business is to be referred, and such memorandum or minute is to be left by the party prosecuting such direction, or his solicitor, with such conveyancing counsel, and shall be a sufficient authority for him to proceed with the business so referred.

4. "In case the conveyancing counsel in rotation shall from illness or from any other cause be unable or decline to accept any such reference, the same shall be offered to the other conveyancing counsel appointed as aforesaid successively, according to their seniority at the bar, until some one of them shall accept the same.

5. "The preceding orders are not to interfere with the power of the court, or of the judge sitting at chambers, to direct or transfer a reference to any one in particular of the said conveyancing counsel, where the circumstances of the case may, in his opinion, render it expedient. "ST. LEONARDS, C."

HILARY TERM, 1853.

REGULÆ GENERALES.

WHEREAS the practice of the Courts of Queen's Bench, Common Pleas, and Exchequer, in civil actions, in respect of which the said courts possess a common jurisdiction, has been to a great extent superseded or altered by the Common Law Procedure Act, 1852, and it is expedient that the written rules of practice of the said courts should be consolidated and rendered uniform: It is ordered, that all existing written rules of practice in any of the said courts in regard to such civil actions, save and except as regards any step or proceeding heretofore taken, shall be and the same are hereby annulled, and that the practice to be observed in the said courts with respect to the matters

hereafter mentioned shall be as follows; that is to say,

WRIT OR SUMMONS.

1. When a writ of summons is indorsed in the special form mentioned in sect. 27. of the Common Law Procedure Act, 1852, the following are the amounts which may be indorsed by the plaintiff's attorney or agent upon the writ for costs; and to include mileage:

In actions above 20*l.*

	£	s.	d.
In town causes	3	8	0
In country or agency cases (including mileage)	4	0	0

In actions under 20*l.*

In town causes	2	14	0
In country or agency cases (including mileage)	3	2	0

Where the plaintiff's attorney, at the time of issuing the writ, claims more than the sums fixed as above, the indorsement on the writ of summons in respect of costs shall be as follows: "Such sum as shall be allowed on taxation for costs." And in case the plaintiff shall be found not entitled to more costs than such fixed sums, or if more than one-sixth shall be disallowed, the plaintiff's attorney shall pay the costs of taxation. So if the attorney has indorsed on the writ one of the fixed sums for the costs of judgment, and claims more costs on signing judgment, and on taxation shall be found not entitled to more than such sum, or if more than one-sixth be taken off on taxation, the plaintiff's attorney shall in like manner pay the costs of taxation.

APPEARANCE.

2. If two or more defendants in the same action shall appear by the same attorney and at the same time, the names of all the defendants so appearing shall be inserted in one appearance.

ATTORNEY AND GUARDIAN.

3. An attorney not entering an appearance in pursuance of his undertaking shall be liable to an attachment.

4. No attorney shall be changed without the order of a judge.

5. A special admission of *prochein amy*, or guardian, to prosecute or defend for an infant, shall not be deemed an authority to prosecute or defend in any but the particular action or actions specified.

JOINDER OF PARTIES.

6. Whenever a plaintiff shall amend the writ after notice by the defendant, or a plea in abatement of a nonjoinder by virtue of the Common Law Procedure Act, 1852, sect. 36, he shall file a consent in writing of the party or parties whose name or names are to be added, together with an affidavit of the handwriting, and give notice thereof to the defendant, unless the filing of such consent be dispensed with by order of the court or a judge.

PLEADINGS.

7. No side bar rule for time to declare shall be granted.

8. The defendant shall not be at liberty to waive his plea, or enter a *relicta verificatione* after a demurrer, without leave of the court or a judge, unless by consent of the plaintiff or his attorney.

9. In case the time for pleading to any declaration or for answering any pleadings, shall not have expired before the 10th day of August in any year, the party called upon to plead, reply, &c. shall have the same number of days for that purpose after the 24th day of October as if the declaration or preceding pleading had been delivered or filed on the 24th of October.

10. Where a defendant shall plead a plea of judgment recovered, he shall in the margin of such plea state the date of such judgment, and if such judgment shall be in the Court of Record, the number of the roll on which such proceedings are entered, if any; and, in default of his so doing, the plaintiff shall be at liberty to sign judgment as for want of a plea; and in case the same be falsely stated by the defendant the plaintiff, on producing a certificate from the proper officer or person having the custody of the records or proceedings of the court where such judgment is alleged to have been recovered, that there is no such record or entry of a judgment as therein stated, shall be at liberty to sign judgment as for want of a plea.

PAYMENT OF MONEY INTO COURT.

11. No affidavit shall be necessary to verify the plaintiff's signature to the written authority to his attorney to take money out of court, unless specially required by the Master.

12. When money is paid into court in respect of any particular sum or cause of action in the declaration, and the plaintiff, accepts the same in satisfaction, the plaintiff, when the costs of the cause are taxed, shall be entitled to the costs of the cause in respect of that part of his claim so satisfied, up to the time the money is so paid in and taken out, whatever may be the result of any issue or issues in respect of other causes of action, and if the defendant succeeds in defeating the residue of the claim, he will be entitled to the costs of the cause in respect of such defence, commencing at "Instructions for Plea," but not before.

13. Where money is paid into court in several actions which are consolidated, and the plaintiff, without taxing costs, proceeds to trial on one and fails, he shall be entitled to costs on the others up to the time of paying money into court.

DEMURRER.

14. The party demurring may give a notice to the opposite party to join in demurrer in four days, which notice may be delivered separately or indorsed on the demurrer, otherwise judgment.

15. No motion or rule for a *concilium* shall be required; but demurrers as well as all special cases, special verdicts, and appeals from County Courts, shall be set down for argument in the special paper at the request of either party, four clear days before the day on which the same are to be argued, and notice thereof shall be given forthwith by such party to the opposite party.

16. Four clear days before the day appointed for argument the plaintiff shall deliver copies of the demurrer book, special case, special verdict, or appeal cases, with the points intended to be insisted on, to the Lord Chief Justice of the Queen's Bench or Common Pleas, or Lord Chief Baron, as the case may be, and the senior puisne judge of the court in which the action is brought; and the defendant shall deliver copies to the other two judges of the court next in seniority; and in default thereof by either party, the other party may on the day following, deliver such copies as ought to have been so delivered by the party making default; and the party making default shall not be heard until he shall have paid for such copies, or deposited with the Master a sufficient sum to pay for such copies. If the statement of the points have not been exchanged between the parties, each party shall, in addition to the two copies left by him, deliver also his statement of the points to the other two judges, either by marking the same in the margin of the books delivered, or on separate papers.

17. When there shall be a demurrer to part only of the declaration or other subsequent pleadings, those parts only of the declarations and pleadings to which such demurrer relates shall be copied into the demurrer books; and if any other part shall be copied, the Master shall not allow the costs thereof on taxation, either as between party and party, or as between attorney and client.

VENUE, CHANGE OF.

18. No venue shall be changed without a special order of the court or a judge, unless by consent of the parties.

PARTICULARS OF DEMAND OR SET OFF.

19. With every declaration (unless the writ has been specially indorsed under the provisions contained in the 25th section of the Common Law Procedure Act, 1852,) delivered or filed, containing causes of action such as those set forth in Schedule B. of that Act, and numbered from 1 to 14 inclusive, or of a like nature, the plaintiff shall deliver or file full particulars of his demand under such claim, where such particulars can be comprised within three folios; and where the same cannot be comprised within three folios, he shall deliver or file such a statement of the nature of his claim, and the amount of the sum or balance which he claims to be due, as may be comprised within that number of folios; and with every plea of set-off containing claims of a similar nature as those in respect of which a plaintiff is required to deliver or file particulars, the defendant shall in like manner deliver particulars of his set-off. And to secure the delivery or filing of particulars in all such cases, it is ordered, that if any such declaration shall be delivered or filed, or any plea of set-off delivered, without such particulars or such statement as aforesaid, and a judge shall afterwards order a delivery of particulars, the plaintiff or defendant, as the case may be, shall not be allowed any costs in respect of any summons for the purpose of obtaining such order, or of the particulars he may afterwards deliver; and a copy of the particulars of the demand, and set-off, shall be annexed by the plaintiff's attorney to every record at the time it is entered with the proper officer.

20. A summons for particulars, and order thereon, may be obtained by a defendant before appearance, and may be made, if the judge think fit, without the production of any affidavit.

21. A defendant shall be allowed the same time for pleading after the delivery of particulars under a judge's order which he had at the return of the summons, unless otherwise provided for in such order.

SECURITY FOR COSTS.

22. An application to compel the plaintiff to give security for costs must, in ordinary cases, be made before issue joined.

DISCONTINUANCE.

23. To entitle a plaintiff to discontinue after plea pleaded, it shall not be necessary to obtain the defendant's consent, but the rule shall contain an undertaking on the part of the plaintiff to pay the costs, and a consent that if they are not paid within four days after taxation defendant shall be at liberty to sign judgment of *non pros.*

STAYING PROCEEDINGS.

24. In any action against an acceptor of a bill of exchange, or the maker of a promissory note, the defendant shall be at liberty to stay proceedings on payment of the debt and costs in that action only.

COGNOVIT; WARRANT OF ATTORNEY; JUDGES' ORDER FOR JUDGMENT.

25. No judgment shall be signed upon any cognovit or any warrant of attorney without such cognovit or warrant being delivered to and filed by the Master, who is hereby ordered to file the same in the order in which it is received.

26. Leave to enter up judgment on a warrant of attorney above one and under ten years old, is to be obtained by order of a judge made *ex parte*, and if ten years old or more, upon a summons to show cause.

27. Every attorney or other person who shall prepare any warrant of attorney to confess judgment which is to be subject to any defeasance shall cause such defeasance to be written on the same paper or parchment on which the warrant is written, or cause a memorandum in writing to be made on such warrant, containing the substance and effect of such defeasance.

28. The costs of filing a judge's order for judgment against a trader defendant under the Bankrupt Act, shall not be allowed unless specially ordered by the judge.

EVIDENCE; ADMISSION AND INSPECTION OF DOCUMENTS; SUBPŒNA TO PRODUCE RECORDS DEPOSITIONS ON INTERROGATORIES.

29. The form of notice to admit documents referred to in the Common Law Procedure Act, 1852, section 117, may be as follows:

In the Q. B.
C. P.
or Exchequer. } A. B. *v.* C, D.

Take notice that the { plaintiff / defendant } in this cause proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the { defendant, / plaintiff, } his attorney or agent, at , on , between the hours of ; and the { defendant / plaintiff } is hereby required, within forty-eight hours from the last-mentioned hour, to admit that such of the said documents as are specified to be originals were respectively written, signed, or executed, as they purport respectively to have been; that such as are specified as copies are true copies; and such documents as are stated to have been served, sent, or delivered, were so served, sent, or delivered respectively; saving all just exceptions to the admissibility of all such documents as evidence in this cause. Dated, &c.

G. H. attorney
[or "agent"] for { plaintiff / defendant. }

To E, F. attorney
or ["agent"] for { defendant / plaintiff. }

[Here describe the documents, the manner of doing which may be as follows:]

Originals.

Description of the Documents.	Date.
Deed of covenant between A. B. and C. D. 1st part; and E. F. 2d part	1st January, 1848.
Indenture of lease from A. B. to C. D.	1st February, 1848.
Indenture of release between A. B., C. D., 1st part, &c. ...	2d February, 1848.
Letter, defendant to plaintiff ...	1st March, 1848.
Policy of Insurance on goods by ship *Isabella* on voyage from Oporto to London	3d December, 1847.
Memorandum of agreement between C. D., captain of said ship, and E. F....	1st January, 1848.
Bill of exchange for 100*l.* at three months, drawn by A. B. on and accepted by C. D., endorsed by E. F. and G. H. ...	1st May, 1849.

Copies.

Description of Documents.	Dates.	Original or duplicate, served, sent, or delivered, when, how, and by whom.
Register of baptism of A. B. in the Parish of X.	1st Jan. 1808	
Letter—plaintiff to defendant...	1st Feb. 1848	Sent by general post, 2nd Feb. 1848
Notice to produce papers	1st March, 1848	Served 2d Mar. 1848, on defendant's attorney, by E. F. of——
Record of a judgment of the Court of Queen's Bench in an action, J. S. *v.* J. N....	Trinity Term, 10th Vict.	
Letters patent of King Charles II. in the Rolls chapel	1st Jan. 1680	

30. In all cases of trials, writs of inquiry, or inquisitions of any kind, either party may call on the other party, by notice, to admit documents in the manner provided by and subject to the provisions of the Common Law Procedure Act, 1852; and in case of the refusal or neglect to admit after such notice

given, the costs of proving the document shall be paid by the party so neglecting or refusing, whatever the result of the cause may be, unless at the trial or inquisition the judge or presiding officer shall certify that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice be given, except in cases where the omission to give the notice is in the opinion of the Master a saving of expense.

31. An order upon the lord of a manor, to allow the usual limited inspection of the court rolls, on the application of a copyhold tenant, may be absolute in the first instance, upon an affidavit that the copyhold tenant has applied for and been refused inspection.

32. No subpœna for the production of an original record shall be issued unless a rule of court or the order of a judge shall be produced to the officer issuing the same, and filed with him, and unless the writ shall be made conformable to the description of the document mentioned in such rule or order.

33. All depositions of witnesses taken under the order of a judge, rule of court, or writ of commission, shall be returned to and filed in the office of the Masters of the court in which the action or proceeding is pending.

TRIAL, NOTICE OF TRIAL, AND INQUIRY.

34. Notice of trial or inquiry, and of continuance of trial or inquiry, shall be given in town; but countermand of notice of trial or inquiry may be given either in town or country, unless otherwise ordered by the court or a judge.

35. The expression "short notice of trial," or "short notice of inquiry," shall in all cases be taken to mean four days.

36. Notice of trial or inquiry may be continued to any sitting in or after term, on giving a notice of continuance four days before the time mentioned in the notice of trial or inquiry, unless short notice of trial or inquiry has been given, in which cases two days previous notice shall be sufficient, unless otherwise ordered by the court or a judge, or by consent.

37. Countermand of notice of inquiry shall be given four days before the day of inquiry mentioned in the notice, unless short notice of inquiry has been given, and then two days before such day, unless otherwise ordered by the court, or a judge, or by consent.

38. On a replication or other pleading denying the existence of a record pleaded by the defendant, a rule for the defendant to produce the record shall not be necessary or used, and instead thereof a four days' notice shall be substituted, requiring the defendant to produce the record, otherwise judgment.

39. The costs of the day for not proceeding to trial or to execute a writ of inquiry may be obtained by a side bar rule, on the usual affidavit.

40. In all cases where the plaintiff's pleading is in denial of the pleading of the defendant, without joining issue, the plaintiff's attorney may give notice of trial at the time of delivering his replication or other subsequent pleading: and in case issue shall afterwards be joined, such notice shall be available; but if issue be not joined on such replication, or other subsequent pleading, and the plaintiff shall sign judgment for want thereof, and forthwith give notice of executing a writ of inquiry, such notice shall operate from the time that notice of trial was given as aforesaid; and in all cases where the defendant demurs to the plaintiff's declaration, replication, or other subsequent pleading, the defendant's attorney, or the defendant, if he plead in person, shall be obliged to accept notice of executing a writ of inquiry on the back of the joinder in demurrer; and in case the defendant pleads a plea in bar or rejoinder, &c. to which the plaintiff demurs, the defendant's attorney, or the defendant, if he plead in person, shall be obliged to accept notice of executing a writ of inquiry on the back of such demurrer.

41. Notice of a trial at bar shall be given to the Masters of the court before giving notice of trial to the party.

42. No trial by proviso shall be allowed in the same term in which the default of the plaintiff has been made, and no rule for a trial by proviso shall be necessary.

43. All causes to be entered for trial in London and Middlesex shall be entered as follows; that is to say, if notice of trial shall be given for any sitting within term, two days before the day of sitting; and if for a sitting after term, before eight o'clock, P.M. of the day before the first day of such sittiug, and if the same shall not be so entered for such sittings respectively, a *ne recipiatur* may be entered.

JURY AND VIEW.

44. No rule for a special jury shall be granted on behalf of any defendant (or plaintiff in replevin), except on an affidavit, either stating that no notice of trial has been given, or if it has been given, then stating the day for which such notice has been given; and in the latter case, no such rule is to be granted unless such application is made for it more than six days before that day; provided that a judge may, on summons, order a rule for a special jury to be drawn at any time.

45. No cause shall be tried by a special jury in Middlesex or London, unless the rule for such special jury be served, and the cause marked in the Associate's book as a special jury cause, on or before the day preceding the day appointed in Middlesex or London respectively for the trial of special juries.

46. There shall be no rule for the sheriff to return a good jury upon a writ of inquiry, but an order shall be made by a judge upon summons for that purpose.

47. Sheriffs, other than the sheriffs of London and Middlesex, shall, seven days before the commission Middlesex, shall, seven days before the commission day, make and keep at their offices, for inspection, a printed copy of the panel of the special jurymen to try the special jury causes at the assizes, as directed by the Common Law Procedure Act, 1852; but such special jury need not be summoned, except notice be given as provided for by the 112th section of the said Act.

48. The rule for a view may in all cases be drawn up by the officer of the court, on the application of the party, without a motion for that purpose.

49. Upon any application for a view, there shall be an affidavit, stating the place at which the view is to be made, and the distance thereof from the office of the under sheriff, and the sum to be deposited in the hand of the under sheriff shall be 10*l.* in case of a common jury, and 16*l.* in case of a special jury, if such distance do not exceed five miles, and 15*l.* in case of a common jury, and 21*l.* in case of a special jury, if it be above five miles. And if such sum shall be more than sufficient to pay the expenses of the view, the surplus shall forthwith be returned to the attorney of the party who obtained the view; and if such sum shall not be sufficient to pay such expenses, the deficiency shall forthwith be paid by such attorney to the under sheriff. And the under sheriff shall pay and account for the money so deposited according to the scale following; (that is to say,)

	£	s.	d.
For travelling expenses to the under sheriff, showers and jurymen, expenses actually paid, if reasonable.			
Fee to the under sheriff, when the distance does not exceed five miles from his office	1	1	0
Where such distance exceeds five miles ...	2	2	0
And in case he shall be necessarily absent more than one day, then for each day after the first a further fee of	1	1	0
Fee to each of the showers the same as the under sheriff, calculating the distance from their respective places of abode.			
Fee to each common juryman, per diem ...	0	5	0
For each special juryman, per diem ...	1	1	0
Allowance for refreshment to the under sheriff, showers, and jurymen, whether common or special, each, per diem ...	0	5	0
To the bailiff for summoning each juryman whose residence is not more than five miles distant from the office of the under sheriff	0	2	6
And to each whose residence does exceed five miles of such distance	0	5	0

NEW TRIALS, MOTIONS IN ARREST OF JUDGMENT, AND JUDGMENT NON OBSTANTE VEREDICTO.

50. No motion for a new trial, or to enter verdict or nonsuit, motion in arrest of judgment, or for judgment *non obstante veredicto*, shall be allowed after the expiration of four days from the day of trial, nor in any case after the expiration of the term, if the cause be tried in term, or after the expiration of the first four days of the ensuing term when the cause is tried out of term, unless entered in a list of postponed motions by leave of the court.

51. No suitor who appears in person shall be at liberty to set down any motion in such list of postponed motions, without the express leave of the court.

52. No affidavit shall be used in support of a motion for a new trial in any case, unless such affidavit shall have been made within the time limited for the making such motion, without the special permission of the court for that purpose.

53. If such motion as above mentioned be entered in such list of postponed motions, or if such motion be postponed by leave of the court, in the case of a cause tried in term, the attorney who has instructed counsel to make the motion shall give notice of it to the attorney of the opposite party, otherwise judgment signed on behalf of the opposite party shall be deemed regular, and every suitor who appears in person shall give a similar notice.

54. If a new trial be granted without any mention of costs in the rule, the costs of the first trial shall not be allowed to the successful party, though he succeed on the second.

JUDGMENT.

55. No rule for judgment shall be necessary; and after the return of a writ of inquiry judgment may be signed at the expiration of four days from such return.

56. All judgments, whether interlocutory or final, shall be entered of record of the day of the month and year, whether in term or vacation, when signed, and shall not have relation to any other day; but it shall be competent for the court or a judge to order a judgment to be entered *nunc pro tunc*.

57. When a plaintiff or defendant has obtained a verdict in term, or in case a plaintiff has been nonsuited at the trial in or out of term, judgment may be signed and execution issued thereon in fourteen days, unless the judge who tries the cause, or some other judge, or the court, shall order execution to issue at an earlier or later period, with or without terms.

58. Where issue shall be joined in any cause which is ordered to be tried before the sheriff or a judge of an inferior court of record, the defendant may at the time when, according to the 101st section of the Common Law Procedure Act, 1852, a defendant might give notice to the plaintiff to bring on an issue to be tried, give twenty days notice to the plaintiff to bring on the issue to be tried before such sheriff or judge at the court to be holden next after the expiration of such twenty days; and if the plaintiff neglects to give notice of trial before such sheriff or judge, or to proceed to trial in pursuance thereof, the defendant may proceed as provided for by the said 101st section.

COSTS; SETTING OFF DAMAGES ON COSTS.

59. One day's notice of taxing costs, together with a copy of the bill of costs and affidavit of increase (if any), shall be given by the attorney of the party whose costs are to be taxed to the other party, or his attorney, in all cases where a notice to tax is necessary.

60. One appointment only shall be deemed necessary for proceeding in the taxation of costs of an attorney's bill.

61. Notice of taxing costs shall not be necessary in any case where the defendant has not appeared in person, or by his attorney or guardian.

62. When issues in law and fact are raised, the costs of the several issues both in law and fact will follow the finding or judgment, and if the party entitled to the general costs of the cause obtain a verdict on any material issue, he will also be entitled to the general costs of the trial; but if no material issue in fact be found for the party otherwise entitled to the general costs of the cause, the costs of the trial shall be allowed to the opposite party.

63. No set-off of damages or costs between parties shall be allowed to the prejudice of the attorney's lien for costs in the particular suit against which the set-off is sought; provided, nevertheless, that interlocutory costs in the same suit, awarded to the adverse party, may be deducted.

ERROR.

64. Within eight days after the filing with the Master of the memorandum of error in fact, required by the Common Law Procedure Act, 1852, the plaintiff in error shall assign error; and in default, the defendant in error, his executors or administrators, shall be entitled to sign judgment of *non pros.*

65. No rule to plead to assignment of error in fact, or any other pleadings in error, shall be necessary, but either party may give to the opposite party a notice to answer such pleading within four days, otherwise judgment; which notice may be delivered separately, or indorsed on the pleading.

66. Notice of trial, and all other proceedings thereon, shall be the same as in issues joined in an ordinary action.

67. After the suggestion of error in law, alleged and denied as prescribed by the Common Law Procedure Act, 1852, is entered, either party may set down the case for argument, and forthwith give notice in writing to the opposite party, and proceed to the argument thereof as on a demurrer, without any rule or motion for a *concilium*.

68. Four clear days before the day appointed for argument, the plaintiff in error shall deliver copies of the judgment roll of the court below to the Judges of the Queen's Bench on error from the Common Pleas or Exchequer, and to the Judges of the Common Pleas on error from the Queen's Bench; and the defendant in error shall deliver copies thereof to the other Judges of the Court of Exchequer Chamber before whom the case is to be heard; and in default by either party, the other party may on the following day deliver such books as ought to have been delivered by the party making default, and the party making default shall not be heard until he shall have paid for such copies, or deposited with the Master a sufficient sum to pay for such copies.

69. The costs of proceedings in error shall be taxed and allowed as costs in the cause.

EXECUTION.

70. It shall not be necessary, before issuing execution upon any judgment whatever, to enter the proceedings upon any roll.

71. No writ of execution shall be issued till the judgment paper, *postea*, or inquisition, as the case may be, has been seen by the proper officer, nor shall any writ of execution be issued without a *præcipe* being filed with the proper officer.

72. Every writ of execution shall bear date on the day on which the same shall be issued, and shall be tested in the name of the Lord Chief Justice or of the Lord Chief Baron of the court from which the same shall issue, or in case of a vacancy of such office then in the name of the senior puisne judge of the said court, and may be made returnable on a day certain in term.

73. Every writ of execution shall be indorsed with the name and place of abode or office of business of the attorney actually suing out the same, and in case such attorney shall not be an attorney of the court in which the same is sued out, then also with the name and place of abode or office of business of the attorney of such court in whose name such writ shall be sued out; and when the attorney actually suing out any writ shall sue out the same as agent for an attorney in the country, the name and place of abode of such attorney in the country shall also be indorsed upon the said writ; and in case no attorney shall be employed to issue the writ, then it shall be indorsed with a memorandum expressing that the same has been sued

out by the plaintiff or defendant in person, as the case may be, mentioning the city, town, or parish, and also the name of the hamlet, street, and number of the house of such plaintiff or defendant's residence, if any such there be.

76. Writs of capias ad satisfaciendum for the purposes of outlawry, or final process, or to fix bail, must be made returnable on a day certain in term, and may be so returnable on any day in term, and it shall be sufficient for either purpose that there be eight days between the *teste* and return.

75. A writ of *capias ad satisfaciendum* to fix bail shall have eight days between the *teste* and return, and must, in London and Middlesex, be entered four clear days in the public book at the sheriff's office.

76. Every writ of execution shall be indorsed with a direction to the sheriff, or other officer or person to whom the writ is directed, to levy the money really due and payable and sought to be recovered under the judgment, stating the amount, and also to levy interest thereon, if sought to be recovered, at the rate of four pounds per centum per annum from the time when the judgment was entered up, or if it was entered up before the 1st of October 1838, then from that day; provided that in cases where there is an agreement between the parties that more than four per cent. interest shall be secured by the judgment, then the indorsement may be accordingly to levy the amount of interest so agreed.

77. In cases of an assessment of further damages, pursuant to the statute of 8 & 9 Will. 3, it shall be stated in the body of the writ of execution that the sheriff, or other officer or person to whom the writ is directed, is to levy interest on the damages assessed, and costs taxed in that behalf, at the rate of four pounds per centum per annum from the day on which execution was awarded, unless execution was awarded before the 1st of October 1838, and in that case from that day.

REVIVOR AND SCIRE FACIAS.

78. A plaintiff shall not be allowed a rule to quash his own writ of *scire facias* or revivor, after a defendant has appeared, except on payment of costs.

AUDITA QUERELA.

79. No writ of *audita querela* shall be allowed unless by rule of court or order of a judge.

ENTRY OF SATISFACTION ON ROLL.

80. In order to acknowledge satisfaction of a judgment it shall be requisite only to produce a satisfaction piece, in form as hereinafter mentioned; and such satisfaction piece shall be signed by the party or parties acknowledging the same, or their personal representatives; and such signature or signatures shall be witnessed by a practising attorney of one of the Courts at Westminster expressly named by him or them, and attending at his or their request, to inform him or them of the nature and effect of such satisfaction piece before the same is signed, and which attorney shall declare himself, in the attestation thereto, to be the attorney for the person or persons so signing the same, and state he is witness as such attorney; [provided that a judge at chambers may make an order dispensing with such signature under special circumstances, if he thinks fit,] and in cases where the satisfaction piece is signed by the personal representative of a deceased, his representative character shall be proved in such manner as the Master may direct.

Form of Satisfaction Piece.

In the
Monday, the day of A.D. 185 .
" to wit.—Satisfaction is acknowledged
"between , plaintiff, and , defendant,
"in an action for and ;
"And do hereby expressly nominate
"and appoint , attorney-at-law, to witness
"and attest execution of this acknowledg-
"ment of satisfaction."

"Judgment entered on the day of
"in the year of our Lord 185 . Roll No. ."

Signed by the said in the presence of me of , one of the attorneys of the Court of at Westminster. And I hereby declare myself to be attorney for and on behalf of the said expressly named by h and attending at h request to inform h of the nature and effect of this acknowledgment of satisfaction (which I accordingly did before the same was signed by h). And I also declare that I subscribe my name hereto as such attorney. — Signature. the above-named plaintiff. Date.

SEIZABLE PROCEEDINGS, BAIL, AND BAIL IN ERROR.

81. The sheriff, or other officer or person to whom any writ of *capias* shall be directed, or who shall have the execution and return thereof, shall, within six days at least after the execution thereof, indorse on such writ the true day of the execution thereof.

82. Where the defendant is described in the writ of capias or affidavit to hold to bail, by initials, or by a wrong name, or without a Christian name, the defendant shall not be discharged out of custody, or the bail-bond delivered up to be cancelled, on motion for that purpose, if it shall appear to the court that due diligence has been used to obtain knowledge of the proper name.

83. An action may be brought upon a bail-bond by the sheriff himself in any court.

84. In all cases where the bail-bond shall be directed to stand as a security, the plaintiff shall be at liberty to sign judgment upon it.

85. Proceedings on the bail-bond may be stayed on payment of costs in an action, unless sufficient reason be shown for proceeding in more.

86. When bail to the sheriff becomes bail to the action, the plaintiff may except to them, though he has taken an assignment to the bail-bond.

87. A plaintiff shall not be at liberty to proceed on the bail-bond pending a rule to bring in the body of the defendant.

88. No rule shall be drawn up for setting aside an attachment, regularly obtained against a sheriff, for not bringing in the body, or for staying proceedings regularly commenced on the assignment of any bail-bond, unless the application for such rule shall, if made on the part of the original defendant, be grounded on an affidavit of merits, or if made on the part of the sheriff, or bail, or any officer of the sheriff, be grounded on an affidavit, showing that such application is really and truly made on the part of the sheriff, or bail, or officer of the sheriff, as the case may be, at his or their own expense, and for his or their indemnity only, and without collusion with the original defendant.

89. Whenever a plaintiff shall rule the sheriff on a return of *cepi corpus* to bring in the body, the defendant shall be at liberty to put in and perfect bail at any time before the expiration of such rule; and a plaintiff having so ruled the sheriff shall not proceed on any assignment of the bail-bond, until the time has expired to bring in the body as aforesaid.

90. In case a rule for returning a writ of *capias* shall expire in vacation, and the sheriff or other officer having the return of such writ shall return *cepi corpus* thereon, a rule may thereupon issue, requiring the sheriff or other officer, within the like number of days after the service of such rule as by the practice of the court is prescribed with respect to rules, to bring in the body issued in term, to bring the defendant into court, by forthwith putting in and perfecting bail above to the action; and if the sheriff or other officer shall not duly obey such rule an attachment shall issue in the following term for disobedience of such rule, whether the bail shall or shall not have been put in and perfected in the meantime.

91. Notice of more bail than two shall be deemed irregular, unless by order of the court or a judge.

92. The bail, of whom notice shall be given, shall not be changed without leave of the court or a judge.

93. No person or persons shall be permitted to justify himself or themselves as good and sufficient bail for any defendant or defendants if such person or persons shall have been indemnified for so doing by the attorney or attorneys concerned for any such defendant or defendants.

94. If any person put in as bail to the action, except for the purpose of rendering only, be a practising attorney, or clerk to a practising attorney, or a sheriff's officer, bailiff, or person concerned in the execution of process, the plaintiff may treat the bail as a nullity, and sue upon the bail-bond as soon as the time for putting in bail has expired, unless good bail be duly put in in the meantime.

95. In the case of country bail, the bail-piece shall be transmitted and filed within eight days.

96. A defendant may justify bail at the same time at which they are put in, upon giving four days' notice for that purpose, before eleven o'clock in the morning, and exclusive of Sunday. If the plaintiff is desirous of time to inquire after the bail, and shall give one day's notice thereof as aforesaid to the defendant, his attorney or agent, as the case may be, before the time appointed for justification, stating therein what further time is required, such time not to exceed three days, then (unless the court or a judge shall otherwise order) the time for putting in and justifying bail shall be postponed accordingly, and all proceedings shall be stayed in the meantime.

97. Every notice of bail shall, in addition to the descriptions of the bail mention the street or place, and number (if any), where each of the bail resides, and all the streets or places, and numbers (if any), in which each of them has been resident at any time within the last six months, and whether he is a housekeeper or freeholder.

98. If the notice of bail shall be accompanied by an affidavit of each of the bail, according to the following form, and if the plaintiff afterwards except to such bail, he shall, if such bail are allowed, pay the costs of justification; and, if such bail are rejected, the defendant shall pay the costs of opposition, unless the court or a judge thereof shall otherwise order.

Form of Affidavit of Justification of Bail.

In the Queen's Bench [or "Common Pleas," or "Exchequer of Pleas," *as the case may be.*]

Between *A. B.* plaintiff, and *C. D.* defendant.

A. B. one of the bail for the above-named defendant, maketh oath and saith that he is a housekeeper [or freholder, *as the case may be*] residing at [*describing particularly the street or place, and number, if any*]; that he is worth property to the amount of £ [*the amount required by the practice of the courts*] over and above what will pay all his just debts [if bail in any other action, add "and every other sum for which he is now bail"]; that he is not bail for any defendants except in this action [or, if bail in any other action or actions, add "except for *C. D.* at the suit of *E. F.* in the Court of in the sum of £ , for *G. H.* at the suit of *I. K.* in the Court of , in the sum of £ " *specifying the several actions, with the courts in which they are brought and the sums in which the deponent is bail*]; that the deponent's property, to the amount of the said sum of £ [*if bail in any other action or actions, here add* "and of all other sums for which he is now bail as aforesaid"], consists of [*here specify the nature and value of the property in respect of which the bail proposes to justify, as follows:* "stock-in-trade, in his business at , carried on by him at , of the value of £ ; of good book debts owing to him to the amount of £ ; of furniture in his house at , of the value of £ ; of a freehold or leasehold farm of the value of £ , situate at , occupied by ; or of a dwelling-house of the value of £ , situate at , occupied by ; *or of other property, particularising each description of property, with the value thereof*]; and that the deponent hath for the last six months resided at [*describing the place or places of such residence*].

Sworn [*&c. as usual*].

99. If the plaintiff shall not give one day's notice of exception to the bail by whom such affidavit shall have been made, the recognisance of such bail may be taken out of court without other justification than such affidavit.

100. Where notice of bail shall not be accompanied by such affidavit, and in bail in error, the plaintiff may except thereto within twenty days next after the putting in of such bail and notice thereof given in writing to the plaintiff or his attorney, or where special bail is put in before any commissioner, the plaintiff may except thereto within twenty days next after the bail-piece is transmitted and notice thereof given as aforesaid; and no exception to bail shall be admitted after the time hereinbefore limited.

101. Affidavits of justification shall be deemed insufficient unless they state that each person justifying is worth double the amount sworn to over and above what will pay his just debts, and over and above every other sum for which he is then bail, except when the sum sworn to exceeds 1,000*l.*, when it shall be sufficient for the bail to justify in 1,000*l.* beyond the sum sworn to.

102. It shall be sufficient in all cases if notice of justification of bail be given two days before the time of justification.

103. In all cases bail either to the action or in error shall be justified, when required, within four days after exception, before a judge at chambers, both in term and vacation.

104. Bail, though rejected, shall be allowed to render the principal without entering into a fresh recognisance.

105. Bail shall be at liberty to render the principal at any time during the last day for rendering, so as they make such render before the prison doors are closed for the night.

106. On application by a defendant or his bail, or either of them, for an order to render a defendant to a county gaol, it shall be specified on whose behalf such application shall be made, the state of the proceedings in the cause, for what amount the defendant was held to bail, and by the sheriff of what county he was arrested, which facts shall be stated in the order; and that on such order being lodged with the gaoler of the county gaol in which such defendant was so arrested, the defendant may be rendered to his custody in discharge of the bail; and that on such lodgment and render a notice thereof, and of the defendant's being actually in custody thereon, in writing, signed by the defendant or his bail, or either of them, or the attorney or agent of any or either of them, shall be delivered to the plaintiff's attorney or agent, and thereupon the bail for the said defendant shall be wholly exonerated, without entering any *exoneretur*.

107. If a defendant shall be in custody of the gaoler of any county gaol by virtue of any process issued out of any of the said courts, he may be rendered in discharge of his bail in any action depending in the said court in like manner as is last hereinbefore provided, and thereupon the bail shall be wholly exonerated without entering any *exoneretur*.

108. Where the plaintiff proceeds by action on the recognisance of bail, the bail shall be at liberty to render their principal at any time within the space of eight days next after the service of the process upon them, but not at any later period; and notice thereof given, the proceedings shall be stayed upon payment of the costs of the writ and service thereof only.

109. Bail shall only be liable to the sum sworn to by the affidavit of debt and the costs of suit, not exceeding in the whole the amount of their recognisance.

110. To entitle bail to a stay of proceedings pending a writ of error, the application must be made before the time to surrender is out.

111. Whenever two or more notices of justification of bail shall have been given before the motion on which bail shall appear to justify, no bail shall be permitted to justify without first paying (or securing

to the satisfaction of the plaintiff, his attorney or agent) the reasonable costs incurred by such prior notices, although the names of the persons intended to justify, or any of them, may not have been changed, and whether the bail mentioned in any such prior notice shall not have appeared, or shall have been rejected.

EJECTMENT.

112. No judgment in ejectment for want of appearance or defence, whether limited or otherwise, shall be signed without first filing an affidavit of the service of the writ, according to the Common Law Procedure Act, 1852, and a copy thereof, or, where personal service has not been effected, without first obtaining a judge's order or a rule of court authorising the signing such judgment; which said rule or order, or a duplicate thereof, shall be filed together with a copy of the writ.

113. Where a person not named in the writ in ejectment has obtained leave of the court or a judge to appear and defend, he shall enter an appearance according to the Common Law Procedure Act, 1852, entitled in the action against the party or parties named in the writ as defendant or defendants, and shall forthwith give notice of such appearance to the plaintiff's attorney or to the plaintiff if he sues in person.

114. If the plaintiff in ejectment appears at the trial, and the defendant does not appear, the defendant shall be taken to have admitted the plaintiff's title, and the verdict shall be entered for the plaintiff, without producing any evidence, and the plaintiff shall have judgment for his costs of suit as in other cases.

CAUSES REMOVED FROM INFERIOR COURTS.

115. Rules to appear in causes removed from inferior courts shall in all cases be a four-day rule, both in term and vacation.

116. In cases of removal of causes from inferior courts by *habeas corpus*, where bail is required to be put in on behalf of the defendant, the same practice shall be used, as near as may be, as in putting in bail to an ordinary action, and in the event of no bail being put in within eight days after the *habeas corpus* allowed a *procedendo* may issue.

117. If a cause be removed from an inferior court having jurisdiction of the cause, the costs in the court below shall be costs in the cause.

PENAL ACTIONS, COMPOUNDING OF.

118. Leave to compound a penal action shall not be given in cases where part of the penalty goes to the Crown, unless notice shall have been given to the proper officer; but in other cases it may.

119. The rule for compounding any *qui tam* action shall express therein that the defendant thereby undertakes to pay the sum for which the court has given him leave to compound such action.

120. When leave is given by the Court of Queen's Bench to compound a penal action, the Queen's half of the composition shall be paid into the hands of the Master of the Crown Office for the use of Her Majesty.

PAUPERS, ACTIONS BY.

121. No person shall be admitted to sue *in formâ pauperis* unless the case laid before counsel for his opinion, and his opinion thereon, with an affidavit of the party or his attorney that the same case contains a full and true statement of all the material facts, to the best of his knowledge and belief, shall be produced before the court or judge to whom application may be made; and no fees shall be payable by a pauper to his counsel and attorney, nor at the offices of the Masters, or Associates, or at the judges' chambers, or elsewhere, by reason of a verdict being found for such pauper exceeding five pounds.

122. Where a pauper omits to proceed to trial, pursuant to notice, he may be called upon by a rule to shew cause why he should not pay costs, though he has not been dispaupered, and why all further proceedings should not be stayed until such costs shall be paid.

PRISONERS, AND PROCEEDINGS AGAINST.

123. Every rule or order of a judge directing the discharge of a defendant out of custody upon special bail being put in and perfected shall also direct a supersedeas to issue forthwith where defendant is in a county gaol.

124. The plaintiff shall proceed to trial, or final judgment, against a prisoner in the term next after issue is joined, or at the sittings or assizes next after such term, unless the court or a judge shall otherwise order, and shall cause the defendant to be charged in execution within the term next after such trial or judgment.

125. The keeper of the Queen's prison shall present to the judges of the courts in their respective chambers at Westminster, within the first four days of every term, a list of all such prisoners as are supersedeable, stating as to what actions and on what account they are so, and as to what actions (if any) they still remain not supersedeable.

126. If, by reason of any writ of error, special order of the court, agreement of parties, or other special matter, any person detained in the actual custody of the keeper of the Queen's prison be not entitled to a supersedeas or discharge for want of proceeding to trial or judgment, or charging in execution, within the time prescribed, then and in every such case the plaintiff or plaintiffs at whose suit such prisoner shall be so detained in custody shall with all convenient speed give notice in writing of such writ of error, special order, agreement, or other special matter, to the keeper, upon pain of losing the right to detain such prisoner in custody by reason of such special matter; and the keeper shall forthwith after the receipt of such notice cause the matter thereof to be entered in the books of the prison, and shall also present to the judges of the respective courts, from time to time, a list of the prisoners to whom such special matter shall relate, showing such special matter, together with the list of the prisoners supersedeable.

127. All prisoners who have been or shall be in the custody of the keeper for the space of one calendar month after they are supersedeable, although not superseded, shall be forthwith discharged out of the Queen's prison as to all such actions in which they shall have been or shall be superseded.

128. After notice given to any plaintiff by a prisoner of his intention to apply for his discharge under any Act for the Relief of Insolvent Debtors, no such prisoner shall be superseded or discharged out of custody at the suit of such plaintiff, by reason of such plaintiff's forbearing to proceed against him according to the rules and practice of the courts from the time of such notice given, until some rule or order shall be made in the cause in that behalf.

129. A rule or order for the discharge of a prisoner who has been detained in execution for a year for a sum under twenty pounds may be made absolute in the first instance, on an affidavit of notice given ten days before the intended application, which notice may be given before the year expires.

SHERIFFS.—RULES TO RETURN WRITS OR BRING IN THE BODY.

130. All rules upon the sheriffs of London and Middlesex to return writs or to bring in the bodies of defendants shall be four-day rules, and upon other sheriffs eight-day rules.

131. When the rule to return a writ expires in vacation, the sheriff shall file the writ at the expiration of the rule, or as soon after as the office shall be open; and the officer with whom it is filed shall indorse the day and hour when it was filed.

132. No judges' order shall issue for the return of any writ, or to bring in the body of a defendant, but a side bar rule shall issue for that purpose in vacation as in term, which shall be of the same force and effect as side bar rules made for that purpose in term.

133. In case a rule shall issue in vacation for the return of any writ of *capias, ca. sa., fi. fa., elegit, habere facias possessionem, renditioni exponas*, or other writ of execution, and such rule shall have been duly served, but obedience shall not have been paid thereto, an attachment shall issue for disobedience of such rule, whether the thing required by such rule shall or shall not have been done in the meantime.

134. Where any sheriff, before his going out of office, shall arrest any defendant and take a bail bond and make return of *cepi corpus*, he shall and may within the time allowed by law be called upon to bring in the body by a rule for that purpose, notwithstanding he may be out of office before such rule shall be granted.

IRREGULARITY.

135. No application to set aside process or proceedings for irregularity shall be allowed unless made within a reasonable time, nor if the party applying has taken a fresh step after knowledge of the irregularity.

136. Where a summons is obtained to set aside proceedings for irregularity, the several objections intended to be insisted upon shall be stated therein.

137. In all cases where a rule is obtained to shew cause why proceedings should not be set aside for irregularity with costs, and such rule is afterwards discharged generally without any special direction upon the matter of costs, it is understood as discharged with costs.

AFFIDAVITS.

138. The addition and true place of abode of every person making an affidavit shall be inserted therein.

139. In every affidavit made by two or more deponents the names of the several persons making such affidavit shall be written in the jurat.

140. No affidavit shall be read or made use of in any matter depending in court in the jurat of which there shall be any interlineation or erasure.

141. Where any affidavit is sworn before any judge or any commissioner by any person who from his or her signature appears to be illiterate, the judge's clerk or commissioner taking such affidavit shall certify or state in the jurat that the affidavit was read in his presence to the party making the same, and that such party seemed perfectly to understand the same, and also that the said party wrote his or her mark or signature in the presence of the judge's clerk or commissioner taking the said affidavit.

142. No affidavit of the service of process shall be deemed sufficient if sworn before the plaintiff's own attorney or his clerk.

143. Where an agent in town, or an attorney in the country, is the attorney on the record, an affidavit sworn before the attorney in the country shall not be received; and an affidavit sworn before an attorney's clerk shall not be received in cases where it would not be receivable if sworn before the attorney himself; but this rule shall not extend to affidavits to hold to bail.

144. An affidavit sworn before a judge of any of the courts shall be received in the court to which such judge belongs though not entitled of that court, but not in any other court unless entitled of the court in which it is to be used.

145. Where a special time is limited for filing affidavits, no affidavit filed after that time shall be made use of in court or before the master, unless by leave of a court or a judge.

146. No rule which the court has granted upon the foundation of any affidavit shall be of any force unless such affidavit shall have been actually made before such rule was moved for, and produced in court at the time of making the motion.

147. All affidavits used before a judge out of court shall be filed with the Masters of the said courts, and be alphabetically indexed; and such affidavits shall be delivered to the Masters of the respective courts, in order to be filed, ten days next after that on which the matter is disposed of.

148. No commission for taking affidavits shall be issued to any person practising as a conveyancer, unless such person be also an attorney or solicitor of one of the courts at Westminster; and no such commission shall issue without an affidavit made by the person intended to be named therein, that he is not and does not intend to become a practising conveyancer, or that he is an attorney or solicitor duly enrolled in one of the said courts, and hath taken out his certificate for the current year.

RULES, SUMMONSES AND ORDERS.

149. Every rule of court shall be dated the day of the week, month, and year on which the same is drawn up, without reference to any other time or date.

150. Side bar rules may be obtained on the last as well as on other days in term.

151. A rule may be enlarged, if the court think fit, without notice.

152. All enlarged rules shall be drawn up for the first day in the ensuing term, unless otherwise ordered by the court.

153. It shall not be necessary to issue more than one summons for attendance before a judge, upon the same matter, and the party taking out such summons shall be entitled to an order on the return thereof, unless cause is shown to the contrary.

154. An attendance on a summons, or on an appointment before a master, for half an hour next immediately following the return thereof, shall be deemed a sufficient attendance.

155. All written consents upon which orders for signing judgments are obtained shall be preserved in the chambers of the judges of the respective courts.

156. In actions where the defendant has appeared by attorney no such order shall be made unless the consent of the defendant be given by his attorney or agent.

157. Where the defendant has not appeared or has appeared in person no such order shall be made unless the defendant attends the judge, and gives his consent in person, or unless his written consent be attested by an attorney acting on his behalf; except in a case where the defendant is a barrister, conveyancer, special pleader, or attorney.

158. Where a judge's order is made during vacation, it shall not be made a rule of court before the next term.

159. When a judge's order or order of Nisi Prius is made a rule of court, it shall be a part of the rule that the costs of making the order a rule of court shall be paid by the party against whom the order is made, provided an affidavit be made and filed that the order has been served on the party, his attorney or agent, and disobeyed.

160. Rules to shew cause shall be no stay of proceedings unless two days' notice of the motion shall have been served on the opposite party, except in the cases of rules for new trials, or to enter verdict or nonsuit, motion in arrest of judgment, or for judgment *non obstante veredicto*, to set aside award or annuity deed, or to enter a suggestion, or by the special direction of the court.

NOTICES, SERVICE OF, AND OF RULES, PLEADINGS, &c.

161. All notices required by these rules, or by the practice of the court, shall be in writing.

162. Where the residence of a defendant is unknown, rules, notices, and other proceedings may be stuck up in the office, but not without previous leave of the court or a judge.

163. It shall not be necessary to the regular service of a rule or order, that the original rule or order should be shown, unless sight thereof be demanded, except in cases of attachment.

164. Service of pleadings, notices, summonses, orders, rules, and other proceedings shall be made before seven o'clock, P.M. If made after that hour, the service shall be deemed to be made on the following day.

165. The Masters of the several courts shall cause to be kept an alphabetical book at their offices, to be there inspected by any attorney or his clerk, without fee or reward; and every attorney practising in the said courts, and residing within ten miles of the General Post-office, shall enter in such book (in

alphabetical order) his name and place of business, or some other proper place, within three miles of the said post-office, where he may be served with pleadings, notices, summonses, orders, rules, and other proceedings; and as often as any attorney shall change his place of business, or the place where he may be so served as aforesaid, he shall make the like entry thereof in the said book; and all pleadings, notices, summonses, orders, rules, and other proceedings which do not require a personal service shall be deemed sufficiently served on such attorney if a copy thereof shall be left at the place lastly entered in such book with any person resident at or belonging to such place; and if any such attorney shall neglect to make such entry, the fixing up of any notice, or the copy of any pleadings, notice, summons, order, rule, or other proceeding, for such attorney, in the Masters' offices, shall be deemed a sufficient notice.

166. In all cases where a party sues or defends in person, he shall, upon issuing any writ of summons or other proceeding, or entering an appearance, enter in a book to be kept for that purpose at the Master's office an address within three miles from the General Post Office at which all pleadings, notices, summonses, orders, rules, or other proceedings not requiring personal service shall be left; and if such address shall not be entered in the said book, or if such address shall be more than three miles from the General Post Office, then the opposite party shall be at liberty to proceed by sticking up all pleadings, notices, summonses, orders, rules, or other proceedings in the Master's office without the necessity of any further service.

167. In all cases where a plaintiff shall have sued out a writ in person, or a defendant shall have appeared in person, and either party shall by an attorney of the court have given notice in writing to the opposite party, or the attorney or agent of such party, of such attorney being authorized to act as attorney for the party on whose behalf such notice is given, all pleadings, notices, summonses, orders, rules, and other proceedings which according to the practice of the courts are to be delivered to or served upon the party on whose behalf such notice is given shall thereafter be delivered to or served upon such attorney.

ATTACHMENT.

168. Rules for attachments shall be absolute in the first instance in the two following cases only; viz., first, for nonpayment of costs on a Master's *allocatur*; secondly, against a sheriff for not obeying a rule to return a writ or to bring in the body.

AWARDS AND ANNUITIES.

169. Where a rule to show cause is obtained to set aside an award or an annuity, the several objections thereto intended to be insisted upon at the time of moving to make such rule absolute shall be stated in the rule to show cause.

170. Costs may be taxed on award, notwithstanding the time for setting aside the award has not elapsed.

MISCELLANEOUS.

171. On a reference to the Master to ascertain the amount for which final judgment is to be signed, the Master's certificate shall be filed in the office when judgment is signed.

172. On every appointment made by the Master, the party on whom the same shall be served shall attend such appointment without waiting for a second, or in default thereof, the Master may proceed *ex parte* on the first appointment.

173. The Master's offices in the several courts shall be open in term time from eleven o'clock in the forenoon till five o'clock in the afternoon, and not in the evening; and in the vacation from eleven o'clock in the forenoon till three o'clock in the afternoon, except between the 10th day of August and the 24th day of October, when they are to be open from eleven in the morning till two in the afternoon, and except on Good Friday, Easter Eve, Monday and Tuesday in Easter week, Christmas-day, and the three following days, and such of the four following days as may not fall in the time of term, but not otherwise, namely, the Queen's birthday, the Queen's accession, Whit Monday, and Whit Tuesday, when the offices shall be closed.

174. In all cases in which any particular number of days, not expressed to be clear days, is prescribed by the rules or practice of the courts, the same shall be reckoned exclusively of the first day, and inclusively of the last day, unless the last day shall happen to fall on a Sunday, Christmas-day, Good Friday, or a day appointed for a public fast or thanksgiving, in which case the time shall be reckoned exclusively of that day also.

175. The days between Thursday next before, and the Wednesday next after Easter-day, and Christmas-day and the three following days, shall not be reckoned or included in any rules, notices, or other proceedings, except notices of trial or notices of inquiry.

176. In all causes in which there have been no proceedings for one year from the last proceeding had, the party, whether plaintiff or defendant, who desires to proceed, shall give a calendar month's notice to the other party of his intention to proceed. The summons of a judge, if no order be made thereupon, shall not be deemed a proceeding within this rule. Notice of trial, though afterwards countermanded, shall be deemed a proceeding within it.

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

COMMISSIONS SIGNED BY LORDS LIEUTENANT.

COUNTY PALATINE OF DURHAM.—Henry Lipscombe, Esq. and William Lamb, Esq. to be Deputy-Lieutenants.

COUNTY OF STAFFORD.—William Mott, Esq.; John Newton Lane, Esq.; and William Arden, Esq. to be Deputy-Lieutenants.

COUNTY OF PEMBROKE.—John Stokes, Esq. and Henry Foley, Esq. to be Deputy-Lieutenants.

COUNTY PALATINE OF CHESTER.—William Davenport Davenport, Esq.; John Dixon, Esq.; Egerton Leigh, jun. Esq.; Thomas William Tatton, Esq.; Lee Forcher Townshend, Esq.; and William Jackson, Esq. M.P. to be Deputy-Lieutenants.

At a Privy Council, held at the Castle, Dublin, his Grace the Archbishop of Dublin, the Right Hon. Lieutenant-General Sir Edward Blakeney, K.C., G.C.B., and the Lord Chief Justice of the Queen's Bench were sworn in Lords Justices, in the absence of the Lord-Lieutenant.

The Master of the Rolls has appointed Mr. Kenyon L. Parker, Q.C., to succeed Mr. Thomas Hall Plumer, deceased, as one of the Examiners in the Court of Chancery. The other Examinership, vacant (after many years' service) by the promotion of the Hon. C. P. Villiers, M.P. to the office of Judge Advocate to the Queen, will be conferred upon Mr. C. Otter, barrister-at-law, of Lincoln's-inn. Mr. Charles Cardwell, of Lincoln's-inn, is the private Secretary of the President of the Board of Trade.

NOTICES OF NEW LAW BOOKS.

An Epitome of the New Chancery Practice, &c. &c. By THOMAS W. BRAITHWAITE, of the Record and Writ Clerks' Office. London: Stevens and Norton.

The New Chancery Acts, with Notes, &c. By T. S. HEADLAM, Esq. M.P. Q.C. London: Stevens and Norton.

Two books on the same subject, by the same publishers, but differing somewhat in their treatment of it. Mr. BRAITHWAITE'S plan is novel and ingenious, and we should think of much practical utility. He gives an Epitome of the new Acts and Orders, arranged under the most important subjects to which they relate, distinguishing the order from the statute by a different type. For instance, under the title of "Receivers," we find a brief summary of the sections and orders relating to them. In this the author has employed much care and labour. An Appendix contains the statutes and orders in full.

Mr. HEADLAM'S volume is only a collection of the statutes and orders, with explanatory Notes at the foot of the page. No attempt at arrangement is made, and, consequently, the practitioner consulting it is obliged to turn backwards and forwards from the statute to the orders that explain it, and from the orders to the statute, and hazards the danger of overlooking the one or the other. Manifestly, in all editions of the new statutes designed for practical use, the orders should appear on the same page with the sections of the statute which they explain or carry out; and we are surprised that so experienced a legal writer as Mr. Headlam should have omitted an arrangement so obviously necessary in such a case as this, for his notes, though not numerous, are sound and practical. We would recommend him, by all means, to cure this defect in his second edition.

Popular Tables, &c. By CHARLES M. WILLICH. Second Edition.

Mr. WILLICH has improved this new edition of his valuable Tables by the introduction of various new ones for ascertaining the values of life, lifeholds, leaseholds, and church property, renewal fines, &c. If we had occasion to commend the first edition, much more may we now recommend this new one.

The Second Edition of the Common Law Procedure Act, with the New Orders, the New Tables of Fees, all the Cases decided upon it to this time, the Forms required, numerous practical Notes, an Introductory Chapter describing an Action at Law as it is under the New Practice, and a very copious Index. By R. MALCOLM KERR, Esq., Barrister-at-Law. Author of *The Absconding Debtors' Act, &c.* London: Crockford.

MR. KERR has at least achieved the honour of a second edition, and he only has done this of all the many editors of the Procedure Act. That his treatment of the subject was approved by those who are the best judges, because they test a law book by its practical utility, was proved by the fact that a large edition of it was exhausted within a fortnight after its publication.

Mr. KERR has taken advantage of the call for a second edition to introduce various *improvements*. He has added greatly to its value by giving all the cases that were decided upon the construction of the Act, and the practice under it during the last term, and he has framed many new forms to meet their requirements; he has appended the New Tables of Fees, and he has much extended the Index, which before was extremely copious. There are also some typographical improvements. The numerous forms are printed in *italics*, so as to catch the eye readily; and the matter of the index is arranged in separate lines with the same purpose, for to the practitioner, who usually consults a work like this in a hurry, it is important that he should be able to see at a glance what he is seeking. The Introductory Sketch of an Action at Law (after the manner of that by Smith) as it is now to be conducted under the new practice, gives to the practitioner a concise view of all the changes that have been made. It will doubtless be found of special utility to the articled clerk and law student, who must have some difficulty in fishing that practice for himself out of the confusion of a long statute.

LEGAL INTELLIGENCE.

THE BAR AND THEIR CLIENTS.—The following truthful letter on the project of the Junior Bar for practising without the intervention of an attorney, appeared some time since in *The Times*. It deserves preservation here:—"Under the rule which requires an attorney to intervene between the client and the barrister, the client has an advantage which, in many cases, has not been of slight importance to him. The fee to the barrister, being in the first place marked and paid by the attorney, being next subjected to the consideration of the taxing-master, and being then recoverable only to the extent which secures that master's approval, is, in effect, taxed before it is marked. The interest of the attorney is enlisted in favour of a low fee to the barrister, and the client is proportionately the gainer. Lord Denman has laid it down that rules will not restrain men of a dishonourable character. With the greatest submission to him, this is a very unexpected *dictum* of our revered Chief Justice, especially to those who are not unaware that in his own long career he was not altogether inexperienced in giving effect to some of those rules by which the Bar is regulated. But whether or not that *dictum* is to be taken as more than *obiter*, no one will doubt that the abrogation of a rule or a practice which has the effect of putting a check on the covetousness of an unscrupulous barrister would give him new opportunities of gratifying his greed of gain; and, therefore, that the interests of clients demand that a new protection to them in respect of fees shall be substituted for that which is to be taken away. Again, if an attorney be guilty of gross negligence in the conduct of his client's case, the client may be recompensed by damages in an action against the attorney. I have heard that the yearly amount paid by attorneys to avoid the publicity which would be given to their negligence by their appearing as defendants is very large. But barristers, under the existing state of things, are not exposed to such actions. If then the remedy of the client for loss by the negligence of his present legal adviser be taken away, he ought to have a substitute for it by an action against the barrister. Perhaps it may be found that legislation on this point is needless, and that where the client employs the barrister without the intervention of an attorney he does not lose his right of action, but only has another defendant to sue. Should legislation on the matter be requisite, it appears to me that the character and incidents of a *mercenarium* must be made to attach to the fee paid directly by the client to the barrister; that authority over the barristers who dispense with the intervention of attorneys must be given to the taxing-masters; and that those barristers must be made liable to damages for negligence in actions by their clients. If something like this be not done, the fancied boon to clients of abolishing the existing etiquette will prove to be a boon to no one but the very junior Bar. At the same time it would be a great injustice to those barristers who wish to maintain the honorary character of their services and their fees to degrade them to that mercenary position; and therefore I would suggest the expediency of there being two distinct Bars—the one, that which has hitherto existed, with its old etiquette and privileges; the other, a new Bar, with the privilege of audience in the courts, and liability to taxation and actions. It is clear enough to many that some such change is demanded, and it is equally clear to me that the change now so vehemently called for is not demanded with a single eye to the interests of the client, or with any view to the interests of those barristers who have surmounted the first difficulties of getting into practice. My impression is that the extraordinary increase of barristers within the last twenty years, from about 1,000 to above 3,000, is at the bottom of all this present stir. The benchers are greatly to blame for the present state of things. The time of studentship before the call to the Bar has been lessened from five years to three; the inducements to remain a fair time in the condition of a student have thus been lessened; and the consequence is that the courts are crowded by barrister-chicks with the shell on their heads, full-fledged only as regards their wigs and gowns. We consequently hear much of the overstocked state of the Bar; but the Bar is, in fact, very much under-stocked with men who are really competent for anything above mere routine practice. On

[illegible] the Court of Common Pleas [illegible] the Court [illegible] the very junior Bar. It [illegible] of old practitioners, both at the Bar and [illegible] that within the last twenty years the [illegible] of the Bar as a body has been [illegible] that of the attorneys as a body has [illegible] been raised; and one proof of this is, that in many of the County Courts the attorney advocates [illegible] than a match for the young barristers who frequent those tribunals. A return from the County Court Judges would curiously illustrate this position. The plain, hard, unpleasant truth is, that of the men who are now called to the Bar only large majority have had a most imperfect legal education; that not a few of them are without any legal education whatever; that some of them, if they can construe, cannot parse the Latin that is to be found in the law books; and that there are existing instances of barristers whose spelling and grammar are often at variance with those of the majority of their brethren. I am not thus "fouling my own nest," for the legal nest in which I was hatched was not so ill-tenanted. Thirty years' experience of the Profession make me regret that our brethren have too much forgotten the days of their youth.—Your obedient servant,—A BARRISTER."

HILARY TERM EXAMINATION.—The examiners appointed for the examination of persons applying to be admitted, attorneys, have fixed Tuesday, the 25th instant, at half-past nine in the forenoon, at the Hall of the Incorporated Law Society, in Chancery-lane, to take the examination. The articles of clerkship and assignment, if any, with answers to the questions as to due service, according to the regulations approved by the judges, must be left with the secretary, on or before Tuesday, the 18th inst. Where the articles have not expired, but will expire during the term, the candidate may be examined conditionally, but the articles must be left within the first seven days of term, and answers up to that time. If part of the term has been served with a barrister, special pleader, or London agent, answers to the questions must be obtained from them, as to the time served with each respectively. A paper of questions will be delivered to each candidate, containing questions to be answered in writing, classed under the several heads of—1. Preliminary. 2. Common and Statute Law, and Practice of the Courts. 3. Conveyancing. 4. Equity, and Practice of the Courts. 5. Bankruptcy, and Practice of the Courts. 6. Criminal Law, and Proceedings before Justices of the Peace. Each candidate is required to answer all the Preliminary Questions (No. 1); and it is expected that he should answer in three or more of the other heads of inquiry.—Common Law and Equity being two thereof.—*Legal Observer.*

EXTRAORDINARY SCENE IN A COURT OF JUSTICE.—One of the most extraordinary scenes ever witnessed in a court of justice took place at the Quarter Sessions of Galway, on Wednesday. In an action with regard to a right of property, a witness was subpœnaed to produce a lease. When he came on the table he refused to surrender the document, although he admitted it was in his possession, "without the consent of his partners" in it. The court threatened to send him to jail, but without effect; and, as he still persisted in refusing, his worship ordered him to be searched. Accordingly, four or five policemen seized him, and attempted to throw him down on the table. The witness, however, nothing daunted by so formidable an array, showed fight, kicking and tripping with all his might. In the *melée* the witnesses' chair was upset, and, there being now a clear stage, physical force gained the ascendant, and poor Paddy was stretched on his back, but not until he had succeeded in causing some consternation among the young gentlemen of the bar who sat round the table, and who, having a due regard for the preservation of their faces, quickly vacated their seats. Though down, the man did not yet surrender, and it was not without considerable difficulty that the police effected their purpose. As soon as the deed was taken from him, and he had recovered his legs, he laughed heartily, saying he "did not care about it, as they took it from him by force; but he would not give it up without the consent of his partners."

THE GAZETTES.

Bankrupts.

Gazette, Jan. 7.

BOWEN, JAMES HOLLIDAY, fishmonger, Yarmouth. Jan. 20, at eleven, and Feb. 24, at twelve, Basinghall-street. Com. Evans. Off. as. Bell. Sol. Barrone, Old Jewry-chambers. Petition, Jan. 6.

BRADBURY, SAMUEL, cheesemonger, Holborn-hill. Jan. 14, and Feb. 18, at twelve, Basinghall-street. Com. Goulbourn. Off. as. Nicholson. Sols. Pontefex and Megenie, St. Andrew's-court, Holborn. Petition, Dec. 29.

[illegible], JOHN, corn dealer, Elizabeth-street, Eaton-square. [illegible]. 18, at two, Feb. 15, at twelve, Basinghall-street. [illegible]. Holroyd. Off. as. Groom. Sols. Newbon and Evans, Wardrobe-place, Doctors' Commons. Petition, Jan. 4.

HEATLY, WILLIAM, draper, St. Blasey, Cornwall, Jan. 18, at eleven, Feb. 10, at one, Exeter. Com. Bere. Off. as. Hernaman. Sols. J. R. Elworthy, Plymouth; and J. Blogdon, Exeter. Petition, Dec. 27.

MILTON, GEORGE, builder, Elizabeth-terrace, Liverpool-road, Islington. Jan 13, and Feb. 18, at eleven, Basinghall-street. Com. Pepys. Off. as. Cannan. Sol. Mr. Rushbury, Surrey-street, Strand. Petition, Dec. 26.

[illegible], Leeds. Com. Alpass. Sols. Chadwick and [illegible], Lincoln. Petition, Jan. 2.

Gazette, Jan. 11.

ROBERTSON, WILLIAM HENRY, builder, Stroud-green, Hollowell, Jan. 20, at eleven, Feb. 24, at twelve, Basinghall-street. Off. as. Pennell. Sol. Dodd, Basinghall-street. Petition, Jan. 8.

BOSSEY, EDWARD, miller, East Coker, Somersetshire, Jan. 19 and Feb. 18, at eleven, Exeter. Off. as. Hirtzel. Sols. Batten, Yeovil, and Stogdon, Exeter. Petition, Dec. 20.

Dividends.

BANKRUPT ESTATES.

Official Assignees are given, to whom apply for the Dividends.

Allen, T. warehouseman, first and final, on new proofs, 9½d. *Groom*, London.—*Boyd*, I. silk manufacturer, second, 2½d. Groom, London.—*Burton*, S. and J. chemists, first, 2s. 6d. Carrick, Hull.—*Cross*, R. watch maker, first, 8s. Cannan, London.—*Godden*, R. coach proprietor, fourth, 3d. Bird, Liverpool.—*Hewitt*, W. brewer, first, 4d. Carrick, Hull.—*Hunter*, J. merchant, third, 9½d. Groom, London.—*Mallens*, J. A. printseller, second and final, 3½d. Groom, London.—*Moyle*, T. draper, first, 5s. Fraser, Manchester.—*Nicholson*, R. first, 1s. 10d. Carrick, Hull.—*Oliver*, J. plumber, second, 1s. 7d.—*Peego*, W. builder, second, 2d.; and on new proofs, 2s. 6d. Edwards, London. *Williams*, W. G. draper, third and final, 2½d. Fraser, Manchester.

INSOLVENT ESTATE.

Bury, S. farmer, second and final, 2s. 5½d. Apply at the County Court, Altrincham.

Assignments for the Benefit of Creditors.

Gazette, Jan 4

Arnold, C. grocer, High-street and Rosamond-buildings, Islington, Dec. 8. Trusts. T. Conway, wholesale grocer, Mincing-lane, and J. Todd, merchant's clerk, Rood-lane Sols. Hill and Matthews, St. Mary-axe.—*Brissenden*, T. grocer, Uxbridge. Dec. 6. Trusts. H. Harris, cheesefactor, Slough, and J. Bishop, wholesale grocer, Warner's-yard, Mincing-lane. Sols. Hill and Matthews, St. Mary-axe.

Cannon, G. carrier, Marlborough-street, Devonport, Dec. 21. Trust. W. W. Snell, merchant, Plymouth. Sol. J. E Elworthy, Plymouth.—*Fuller*, H. jeweller, Ludgate-hill, Dec. 23. Trusts. J. French, jun. wholesale jeweller, Clerkenwell. E. T. Mackrell, jeweller, Thavies-inn, and S. Chenill, Jeweller, Newcastle-place, Clerkenwell. Sol. T. M. Cattlin, Ely-place.—*Pollock*, W. tailor, North-place, Kingsland-road, Dec. 20. Trusts. T. Williams and C. Rimmer, drapers, Blackfriars-road. Sols. Sole, Turner, and Turner, Aldermanbury.—*Yates*, J. G. grocer, Angel-terrace, West Hammersmith, Dec. 1. Trust. H. Rawley, wholesale cheesemonger, New-street, Covent-garden. Sols. Wright and Bonner, London-street, Fenchurch-street.

Gazette, Jan. 7.

Howell, T. farmer, Mayfield, Sussex, Dec. 18. Trust. J. Barden, Burwash, farmer. Sols. Elliman, Whitmarsh, and Ballingham, Battle.—*Paice*, R. C. clothier, Windsor, Berks, Dec. 27. Trust. R. Parnell, clothier, Bishopsgate-street Sol. G. J. Huson, Ironmonger lane, Cheapside.—*Potter*, R. C. innkeeper and farmer, Bacton, Suffolk, Dec. 29. Trust. S. Freeman, gent., and R. Smith, innkeeper, Stowmarket. Sol. J. Gudgeon, Stowmarket.—*Steel*, R. draper, Blyth, Northumberland, and Bedlington, Dec. 24. Trust. J. Coxon, draper, and J. Todd, hatter, Newcastle. Sols. R. Wheldon, North Shields, and W. Crighton, Newcastle.

Partnerships Dissolved.

Gazette, Jan. 4.

Adam, N. and *Chatfield*, G. surgeons and apothecaries, Lymington, Jan. 1. Debts paid by Adams.—*Arkell*, J. and C. wholesale grocers, tea dealers, and cheesemongers, Maldstone, Jan. 1.—*Ashby* J. and *Banks*, J. ironmongers, seedsmen, hop merchants, and oil and colourmen, Northampton, Dec. 31. Debts paid by Banks.—*Baker*, W. and H. clock and clock case manufacturers, Birmingham, Dec. 31.—*Barker*, R., M., W. and R. and *Owen*, W. builders, farmers, and copperas manufacturers, West Derby, as regards M. W. and R. Barker, and W. Owen, Jan. 1. Debts paid by R. Barker.—*Bateman*, R. and *Von Daadelsen*, G. J., metal and oil brokers, Leadenhall-street, Dec. 31.—*Bateson*, G. and *Hurn*, R. ginger beer manufacturers and pork butchers, Newport, Dec. 21. Debts paid by Hurn.—*Boyd*, R. G. K., and J. millwrights, engineers, iron and brass founders, Kingston-upon-Hull, Dec. 21. Debts paid by Messrs Oates, Son, and Capes, of Hull, auctioneers.—*Brown*, J. and C. *Redpath*, J. ironmongers, ship smiths, and fire hearth makers, Dean's buildings, Commercial-road, Poplar, Dec. 31.—*Burch*, W. and J. farmers and hop planters, Boughton-under-Blean, Oct. 11.—*Capper*, J. and G. C. merchants and agents, Little Tower-street, Jan. 1. Debts paid by J. Capper.—*Carpenter*, M. and R. carpenters and undertakers, Mortlake, Dec. 29.—*Cartwright*, T. and J. linen drapers and hosiers, Chester, Dec. 13. Debts paid by T. Cartwright.—*Clayton*, J. and *Gladstone*, M. commission agents, Manchester, Dec 31. Debts paid by Clayton.—*Crawford*, R. and G., woollen drapers and tailors, Leicester, Dec. 31.—*Crowther*, J. of Masbrough, and *Wiffall*, J. of West Melton, par. Wath-upon-Dearne, grocers and general shopkeepers, at West Melton, Dec. 29.—*Criswick*, J. and *Lepard*, J. composition ornament manufacturers and frame makers, New Compton-street, St Giles-in-the-fields, Dec. 31. Debts paid by Criswick.—*Downing*, G. and J. H. floor cloth manufacturers, Knightsbridge, and King's-road, Chelsea, Dec. 31.—*Duncan*, W. H. E. and *Peirce*, J. S., firewood manufacturers, South Wharf Road, Paddington, Dec. 31.—*Gonne* C. and *Gribble*, T. merchants, St. Helen's-place, Bishopsgate-street, Dec. 31.—*Goodman*, W. and *Yoke*, G. linen drapers, silk mercers, &c. Uxbridge, Dec. 31.—*Hatfield*, G. S., and G. jun., conveyancers, attorneys, and solicitors, Manchester, as regards G. Hadfield, Dec. 31.—*Hillhouse*, W. and *Andrews*, J. tailor, Woodstock-street, Bond-street, Dec. 31.—*Holliday*, W. *Lewis*, J. and *Powell*, G. drapers, silk mercers, upholsterers, and carpet dealers, Birmingham, as regards Powell, Sept. 4. Debts paid by remaining partners.—*Hurren*, R., C. and J. wholesale clothiers, Wormwood-street, as regards C. Hurren, Jan. 3.—*Johnson*, R. and *Pask*, H. builders, Baker-street, Lloyd-square, and of Bell-yard, Grapechurch-street, Dec. 31.—*Jones*, W., *Blaxland* G. and *Jones*, W. H. G. attorneys and solicitors, Crosby-square, Dec. 31. Debts paid by W. Jones and Blaxland.—*Kirkby*, S. and J. merchants, Sheffield, Jan. 1. Debts paid by Kirkby.—*Kirke*, S. W. and *Simpson*,

Gazette, Jan. 7.

Inaster, C., *Goone*, G. and *James*, R. dyers, Sneaton, as regards James, Jan. 1.—*Brown*, W., *Ridley*, G. and H. timber, deal and slate merchants, Ipswich and Bury St. Edmunds, Dec. 31.—*Buchan*, R. sen., *Welch*, J., *Buchan*, R. jun. and *Welch*, A. calico printers, Manchester, Oct 30. Debts paid by R. Buchan, sen. and R. Buchan, Jun.—*Burnett*, R. L. and *Critchell*, S. wine and spirit merchants, Teignmouth, Dec. 31. Debts paid by R. L. Burnett.—*Corkburn*, J. A. and *Fordyce*, T. paper manufacturers, Haughton Paper Mill, near Hexham, Dec. 2.—*Curtler*, J. and *Holyoake*, J. attorneys and solicitors, Droitwich, Dec. 31. Debts paid by Holyoake.—*Davey*, P. and *Pegg*, W. coal merchants, Upper Ground-street, Blackfriars, and elsewhere, Dec. 31 Debts paid by Davey.—*Davey*, P., *Pegg*, W., *Watson*, W., *Pegg*, S. and *Fewron*, A. F. workers of collieries and coal merchants, Llansamlet, near Swansea, and elsewhere, as regards Peter Davey and Samuel Pegg, Dec 31. Debts paid by remaining partners.—*Dawson*, T and *Postlethwaite*, J. common brewers, Wigan, Jan. 4 *Hughton*, A., *Hyde*, J. B. and *Gosling*, F. N. newspaper proprietors and printers, Worcester, Dec. 3.—*Eglinton*, R. and *Deurie*, C. East India agents and merchants, London, Sept. 15.—*Eglinton*, R., *Deane*, C., *Hunter*, R. H., *McEwen*, H. and *Eglinton*, R. L. Calcutta, as regards R. Eglinton and R. H. Hunter, Dec. 31, 1851.—*Ernest*, H. and *Cromwell*, C. auctioneers and accountants, Cheapside, London, and Brecon, Jan. 5. Debts paid by Ernest.—*Falcke*, D and I. importers of and dealers in curiosities, New Bond-street, Jan. 6.—*Fulton*, J. A. and *Green*, C. spice dealers, South Lambeth. Aug. 14. Debts paid by Fulton.—*Gibb*, G. H. and *Hill*, T. G. Manchester, Dec. 31. Debts paid by G. H. Gibb.—*Hardside*, T. and *Tyser*, G. D. merchants and brokers, Cornhill, Jan. 4. Debts paid by Hardside.—*Hughes*, S. and E. and *Patton*, J. dealer in china, earthenware, and glass, Montreal and Toronto, North America, Jan. 1.—*Hughes*, S. and E. manufacturers of earthenware, Cobridge, Jan. 1.—*Hulme*, G. and T. machine makers, Rochdale, Dec. 31.—*James*, W. and *Morrow*, R. merchants and shipowners, Liverpool, Dec. 31.—*Jones*, G. and J. grocers, Wolverhampton, Dec. 28.—Debts paid by J. Jones.—*Moore*, E. and *Adkins*, H. surgeons, and apothecaries, Hales Owen and Cradley, Dec. 31.—*Newell*, B. F. and *Johnson*, B. linendrapers and silk mercers, Bradford, Jan. 3.—*Nutt*, J. W. and S. E. share-brokers, York, Dec. 8.—*Ogilvie*, L. and *Macfee*, A. house and ship joiners, Liverpool, Jan. 4.—*Payne*, E. and E. W. coach and livery lace and fringe manufacturers, Great Queen-street, Lincoln's-inn-fields, Dec. 31.—*Pears*, W. and *Poney*, J. japanners and blank tray manufacturers, Birmingham, Jan. 4. Debts paid by Pears.—*Rennison*, R. and *White*, G. linen and woollen drapers, Scarborough, Jan. 5. Debts paid by Rennison.—*Robinson*, G. and *Walton*, J. mercers and drapers, Darlington, Dec. 31. Debts paid by Walton.—*Rodgett*, M. and E. cotton manufacturers, Preston, Jan. 5.—*Salt*, J., *Crookes*, J., *Bateman*, J., and *Schofield*, H. coal masters, Oxclose, Dronfield, Jan. 4. Debts paid by Bateman, Knight, and Co.—*Shoiwell*, J. and *Gamble*, W. H. carpenters and undertakers, Stratford, Jan. 3. Debts paid by Showell.—*Simons*, S. and *Robinson*, J. tailors and drapers, Store-street, Bedford-square, Dec. 31. Debts paid by Robinson.—*Smith*, R., *Postlethwaite*, J. and *Tipton*, R. T. commission merchants, Liverpool and New Orleans, Oct. 5.—*Stewart*, M. A., *Jones*, E. and J. Princes-street, Cavendish-square, Jan. 3. Debts by E. & J. Jones.—*Strear*, T. and E. *Jeffryes*, surgeons and apothecaries, Wisbeach, Jan. 3.—*Tibbener*, W. and *Smith*, F. brass founders and general manufacturers, Birmingham, Jan. 1.—*Taylor*, J. and D. H. woollen merchants, Liverpool, Jan. 4.—*Thompson*, J. and *Clegg*, J. attorneys and solicitors, Bradford, Dec. 31.—*White*, John and *O'Donnell*, W. woollen cloth merchants, Leeds, Jan. 4.—*Wilson*, E. and *Stubbs*, E. W. manufacturing chemists, Prestolee, near Bolton, and Manchester, Dec. 31.—*Wormall*, H. and R. grocers and tea-dealers, Huddersfield, Dec 31, 1845.—*Yates*, E. and *Burgess*, R. wholesale druggists, Budge-row, Dec. 31.

Bankrupts.

From the Gazette of Friday, Jan. 14.

CORRINGTON, GEORGE BENJAMIN, merchant, Great Yarmouth. LOCKYER, JOHN, warehouseman, Clerkenwell-green.

HARDIE, BENJAMIN JAMES and THOMAS (Hardwood), builders, Newport, Monmouth.

PEARS, JOHN, confectioner, Plymouth.

On Monday.

THE NEW RULES of PRACTICE of the COURTS of COMMON LAW, with explanatory Notes, Index, and Marginal References to the Pages in the 1st and 2nd Edition of KERR'S COMMON LAW PROCEDURE ACT. By R. M. KERR. Price 3s.

N.B.—This is adapted for a Supplement to Kerr's Procedure Act, or as a separate Work.

THE SECOND EDITION of KERR'S COMMON LAW PROCEDURE ACT, on Tuesday, will contain ALL THE NEW ORDERS, the Decisions of last Term, and the Forms. Price 12s. cloth; 13s. 6d. half-calf; 14s. calf.

Now ready at the LAW TIMES Office,

THE LAW TIMES SHEET ALMANAC for 1853, comprising, in addition to the regular information of an Almanac, Time Tables of all the Courts under the New Practice, Stamp and Tax Tables, Table for ready Calculation of Income Tax, and the other Information required for immediate reference in the Office. Price only 1s.; or stamped for post, 1s6d. A copy sent to any person inclosing thirteen postage stamps to the office.

THE NEW BANKRUPTCY ORDERS and the BANKRUPTCY ACT, with all the Cases decided on its construction, and a very Copious Index. By C. J. B. HILBRLET, Esq., Barrister-at-Law, Author of the "Law of Master and Servant," &c. Price 7s. 6d. cloth; 6s. half-calf; 10s. calf.

COX'S CRIMINAL LAW CASES, Part I. of Vol. VI containing a collection of Forms of Indictment for use at Quarter Sessions, according to the New Acts. Price 6s. 6d.

TUDOR'S NEW CHANCERY PRACTICE; the Orders being placed in the Text after the Sections of the Statute to which they relate, thus showing the whole Law together. By OWEN TUDOR, Esq. Barrister-at-Law. Author of "Leading Cases in Equity," &c. Price 8s. 6d. cloth; 9s. 6d. half-calf; 10s calf.

THE LAWYER'S POCKET-BOOK for 1853, containing the Almanacs of the Moon's Rising and Setting for the last as well as the present Year, a complete Table of Stamps, Time Tables in Common Law, Equity and Bankruptcy, and much other matter required for Reference in Courts. Price only 6d

THE PRACTICAL STATUTES for 1849, with Notes of all the Cases that have been decided on their construction thus giving to the Practitioner the whole Law, viz the text of it, and the judicial interpretation of the text. In a small volume for the bag or pocket. Price 10s 6d. cloth. In continuation of the series already published from 1850. By C. J. B. HILBRLET, Esq. Barrister-at-Law.

To Readers and Correspondents.

"W. J. L." (Winchester), "A CLERK." "AN ASSISTANT CLERK," *and several others on the same subject, will see that their communications have been anticipated: but we thank them for their endeavours to set our correspondent right.*

"O. P. Q." *—I barrister is so entitled, but not an attorney.*

"FIAT JUSTITIA" *is too long for insertion; and the same cause keeps by the omission of the letter of "AN ATTORNEY"* (Bristol). *The first condition of correspondence is brevity.*

"W. S." (Reading) *Thanks for the report of the County Courts case, but it is too long for our columns at this season, and we have therefore handed it to the Editor of the County Courts Chronicle, who will make good use of it.*

Several queries and other anonymous communications have been put on the fire because not authenticated by the names and address of the writers. Our numerous subscribers must understand that no notice is taken of any anonymous communication.

"AN ARTICLED CLERK." *We are quite ready to procure the information he asks for; but it is difficult to obtain.*

We cannot undertake to return rejected communications. Whatever is intended for insertion must be authenticated by the name and address of the writer; not necessarily for publication, but as a guarantee of his good faith.

No notice can be taken of anonymous communications.

THE NEW RULES AND ORDERS.

THE plan that has been adopted with respect to the New Rules just issued is this:

MR. KERR has edited them, with practical explanatory Notes and a copious Index, and Marginal References to the pages of both the first and second editions of his *Procedure Act* to which each rule relates. Thus the possessor of either edition, by using this Appendix, will have *the whole* of the New Procedure, as now regulated by the New Rules, conveniently arranged for practical use. The price of Mr. KERR's edition of the New Rules, thus noted and indexed, is 3s.

This edition of the Rules will form a part of all the remaining copies of the *Second Edition of Kerr's Common Law Procedure Act*, which will thus give the *entire* law as it now is, and for a long time is likely to continue.

THE LAW TIMES.

SATURDAY, JANUARY 22, 1853.

THE NEW SCALE OF COSTS IN THE COUNTY COURTS.

THE Committee of the Judges of the County Courts have framed a scale of costs to be allowed to Attorneys in the County Courts, under the section of the County Courts Improvement Act of which it was our good fortune to procure the introduction; and that scale has been submitted, as by the statute was required, for the approval of the Judges of the Superior Courts.

It is with deep regret we have to announce that some of these latter object to it *as being too liberal in its allowances*, and that it will not be sanctioned in its present shape.

We have not seen the proposed Scale of Costs; but we understand that it was constructed with express reference to the costs allowed in the Superior Courts, and studiously kept below them, in fair proportion, very much as in the Superior Courts themselves a difference is observed with causes triable before the Sheriff. But this does not satisfy the Judges, who appear as if desirous of treating the County Courts as simply small debt courts, and not as that which in truth they now are—*local tribunals for the general administration of justice.*

The same fallacy lurks in the minds of not a few of our Legislators, Lawyers, and writers for the newspapers, who, remembering the old County Courts and Courts of Request, which the new County Courts have superseded, continue to attach to the latter, not the name only, but also the functions, of the former, and therefore contemplate them, esteem them, treat them, and treat of them as nothing more than what are should now term reformed County Courts, having a jurisdiction slightly extended in amount and a procedure considerably improved in its machinery. They think of the business of the new County Courts, and speak of it, as being the recovery of small debts, and they object to attaching to this process anything beyond the most trifling costs in any shape, and they demur especially to the fees of a skilled Lawyer being chargeable upon suitors for doing that which, in ninety-nine cases out of a hundred, does not require the interposition of a Lawyer's skill.

Such, we have no doubt, is the feeling that has moved the Judges to reject the proposed scale of costs constructed by the Committee, and it is in itself a commendable one. But in this instance it is out of place: it is founded upon a misconception of the facts and erroneous impressions as to the nature of the claim that has been submitted to them.

Will they permit us respectfully to indicate to them what are the precise grounds upon which the Profession now asks them to sanction the scale of fees which the County Court Judges have framed, with the fullest knowledge of the facts and requirements, and after the maturest deliberation, for the purpose of accomplishing the design of the Legislature, which certainly was that Professional services, *when properly required*, should be properly and fairly, but moderately, recompensed?

The County Courts, although preserving the old name, are, to all intents and purposes, entirely new tribunals. They were at first designed almost exclusively for the recovery of small debts, and the settlement of such *very petty* disputes as might be better disposed of summarily. But, by degrees, as the uses of such tribunals were proved by experience, the Legislature has continued to extend their jurisdiction, so that, in addition to the subject-matters for which, previously to their existence, no justice was to be had, because they were too small for the regards of the Superior Courts, a considerable portion of the business that previously came into the Superior Courts has been *transferred* to the County Courts.

Thus the County Court business *now* consists of two classes:—1st. The old small debt jurisdiction, ranging over all matters too trifling in amount for the Superior Courts. 2nd. The *new* jurisdiction over a vast range of business that might be unlimited in amount of claim, and is almost unlimited in point of difficulty and importance, and in which they are designed to be *substitutes* for the Superior Courts.

Now in the first class of business, the old small debt jurisdiction, the Profession do not ask for any departure from the old allowance. Undoubtedly it will not bear professional fees; except in rare cases it does not require professional aid; and the power which the Act vests in the County Court Judge to give or refuse costs will always be a security against the needless employment of professional aid in very trifling cases, unless at the employer's own expense.

But we entreat the Judges of the Superior Courts to draw the distinction here, and to take the claim of the Profession to a fair remuneration for their services in the County Courts at the point at which those services become *necessary to the due administration of justice*, and that is, in relation to the conduct of the *second* class of County Court business, namely, *the trial of disputed demands*, and which now are not limited to debts, but range over almost the entire domain of the law. *Here* it is that the Profession are *wanted*; *here* it is that they ask to be reasonably paid; *here* it is that the Legislature has enacted that they shall be paid; and *here* it is that, in pursuance of this enactment, the County Court Judges have framed the scale of fees for them which is now before the Judges of the Superior Courts, and to which some of them are objecting.

We entreat their Lordships, in settling these allowances, not to permit any fear of the *unnecessary* employment of professional services to induce them to withhold or reduce the costs to be allowed where such services *are* necessary: for the effective prevention of this is found in the power vested in the Judge, to give or refuse costs in his discretion; and surely the County Court Judges may be trusted to use that discretion, so that defendants shall not be harassed by professional costs, except in cases where they are properly required, and where they ought fairly to fall upon the losing party.

But it is not the Profession only who have an interest in this matter. The suitors have yet a larger interest in it, for it is upon them, and not upon their attorneys, that the loss will ultimately fall. The injustice of the present state of things, and which the statute was mainly designed to remedy, is this:—

In a disputed demand, where evidence is to be collected and difficult questions of law and fact are likely to arise, the suitor is compelled to have professional aid; he *could not* get up nor conduct his own case. But according to the present practice of the County Court, whatever the labour requisite for this purpose, the plaintiff can only recover in costs from the other party a trifling sum in payment of the services of his attorney, and consequently he is obliged to pay all the costs *beyond that trifle out of his own pocket*. The attorney does not lose his fees, only he obtains them at the expense of the wrong party. Contrary to all the principles of justice and to the practice of all other courts in the civilised world, the costs in the County Courts are not paid by the loser, but by the winner; and a man has only to defend an action there to punish his adversary most effectually by imposing upon him the professional expenses of *proving* his claim. *This* is the injustice which it was the design of the Legislature to remedy; *this* it is which the County Court Judges, guided by practical experience, consider they can best remedy by such a scale of fees, to be allowed between party and party, as they have framed, and which, *for the sake of the suitors*, the Judges of the Superior Courts should allow without any reduction—for, if reduced, the effect will only be to continue partially the existing injustice, and still to throw the burden of costs upon the party whom the other party has wrongfully put to cost.

For these reasons we entreat the Judges of the Superior Courts to reconsider the question, which perhaps may not have presented itself to them from the point of view in which we have now sought respectfully to present it to them; and then, we think, they will be inclined to accede to the proposition, which has emanated from the *practical experience* of the Committee of County Court Judges, who must be peculiarly qualified to advise upon the requirements of their own courts.

CRIMINAL APPEAL

THE sentence on KIRWAN has been commuted to transportation for life.

This *cannot* be justice. He is either guilty or innocent; or, we should rather say, there is or there is not sufficient *proof* of guilt. If there is, he ought to be hung; if there is not, he ought to be acquitted.

No intermediate course *can* be right; yet is this the only expedient that offers itself to avoid the consequences of possible frailty of human evidence and human judgment!

Why should it be so? There is no necessity for any such absurd violation of common sense. The law is not so intractable that it cannot be reconciled with reason. In truth, reason would say that there must be something wrong in a law that works so clumsily and so ill.

And so there is! The law is manifestly faulty in this—that it makes no provision for revising its own errors. It denies a second trial in criminal cases, whatever the mistakes committed in the first trial. It assumes what is notoriously *not* the fact, that witnesses always speak the truth, and that juries cannot err in their judgments; and it makes their verdict irreversible when once pronounced. But it is not consistent even with itself, for it assumes this absence of error in the court and witnesses as being the peculiar privilege of a criminal court. In all other courts it allows an appeal.

Yet we have heard juries, even in criminal courts, give some strange verdicts; we have seen

many men convicted who were undoubtedly innocent, and afterwards proved to be so; we have seen many more convicted who may or may not have been guilty in fact, but who were not *proved* to be guilty to the satisfaction of a single person in court besides a jury weary, sleepy, hungry, and perhaps locked up to be tortured into giving a verdict against their consciences.

Surely it is time that an end should be put to this great defect in our law, by the simple and effective expedient of permitting *a new trial in Criminal Cases!*

SHAM LAWYERS.

How the practice is spreading *downwards* will be seen by the following *literatim* copy of a letter addressed to a tradesman in Wickham Market:—

Sir

I Am Directed by Mr. Samuel Webber, Wickham Market Bricklayer to Apply to you for Possession and Goods contained by you Onlawfull and allso Payment for Damages Done by you on the Primeses Occpyed by the Said Samuel Webber

And I allso beg to inform you that onless a immediate Possession and Proaptey bee Deleived up to Said Samuel Webber lawfull Precedaneaics will taken against you with out further notice.

Ipswich
Mr. Daul Haward ___ Janary 11th 1853.

Here is a still more audacious circular—

22, Tib Lane, Cross Street,
Manchester, Jan. 4, 1853.

Sir,

In soliciting your patronage and offering my services as agent for the Collecting of Rents, &c. permit me to justify my so doing by the advantage to owners of house property to entrust its management to a competent Agent at the expense of a small Commission, amply compensated by the time and trouble which is saved by this mode of collection.

From my long experience in the management of Cottage and other Property, the sale of Land and Buildings, &c., I am enabled to undertake this kind of Agency at a low rate of Commission, and with strict regard to the interests of the owners.

This being only one branch of my business, it may perhaps be necessary for me to state, that from *my extensive practice* as *County Court Agent*, &c., I have greater facilities of ascertaining the eligibility of parties proposing to become tenants. My knowledge of the *working of the County Court* also enables me the better to enforce payment of rent, and to get rid of an objectionable tenant, and this I undertake without further charge of Commission.

I shall be glad to refer you to those with whom I have already done business, who will bear testimony to my *ability and integrity*, and my promptitude in paying over all moneys coming to my hands for them. The most ample references can be given.

Land and Buildings sold on Commission. Persons desirous of disposing of property, on forwarding the particulars may immediately have it offered to the best advantage.

Several sums of Money to Lend on good mortgage security.

I am, Sir,
Yours very obediently,
CHARLES E. STUBBS,
Estate and *County Court Agent.*

A STRANGE ADVERTISEMENT.

The following appears in the Builder's Price Book. Can it be genuine?

LAW COSTS IN CONVEYANCING.

Mr. William Tayler, Solicitor, 5, Furnival's Inn, Holborn, and Truro Lodge, Counter Hill, Deptford, in order to meet the wishes of a large circle of clients, has after great deliberation framed a fixed system of Fees for the preparation of conveyances, mortgages, leases, bonds, marriage settlements, contracts, wills, assignments, deeds of copartnership, &c. which being on a greatly reduced scale will be found highly advantageous to all persons adopting it (especially to members of Freehold Land and Building Societies) by commanding Mr. Tayler's services in such business.

A copy will be forwarded, as may be directed on receipt of two postage-stamps. It may be advisable to state that those clients who honour Mr. Tayler by retaining his services, and who may nevertheless prefer to have their business transacted according to the usual system of costs, will be at full liberty so to do, and in that case will be furnished with regular bills of costs.

N.B.—Offices for the sale, purchase, and mortgage of landed estates, house property, &c. and for effecting Life Assurance Policies in the "Age" or any of the offices.

NEW PRACTICE IN THE COURT OF CHANCERY. (a)

OF PLEAS.

As we have before mentioned, where any objection to a bill is apparent on the face of it, either from matter contained in it, or from defect in its frame or fit the case made by it, a demurrer is the proper mode of defence.

A bill, however, may be often so drawn that, although it would be clearly open to a demurrer were all the facts fairly and openly stated, or nothing stated which was not actually true, yet it does *not on the face of it*, show any objection which may be taken advantage of by demurrer. In such a case the defendant, if he wishes to avoid giving an answer, must defend himself by *plea*, in which he may state the matter which, had it appeared on the face of the bill, would have rendered it liable to a demurrer, showing or relying upon one or more things as a cause why the suit should not be either dismissed, delayed, or barred.

OF THE DIFFERENT KINDS OF PLEAS.

The principal objections which can be taken to a bill by plea are enumerated by Lord Redesdale in his well-known Treatise. The principal are: I. That the subject of the suit is not within the jurisdiction of a Court of Equity. II. That some other Court of Equity has the proper jurisdiction III. That the plaintiff is not entitled to sue, by reason of some personal disability. IV. That the plaintiff is not the person he pretends to be, or does not sustain the character he assumes. V. That the plaintiff has no interest in the subject, or no right to institute a suit concerning it. VI. That he has no right to call on the defendant concerning it. VII. That the defendant is not the person he is alleged to be, or does not sustain the character he is alleged to bear. VIII. That the defendant has not that interest in the subject which can make him liable to the demands of the plaintiff; and IX. That, for some reason, founded on the substance of the case, the plaintiff is not entitled to the relief he prays. (Of these, the second is the plea generally termed a *plea to the jurisdiction* of the Court; and the third, the fourth, and the seventh are treated as *pleas to the person of the plaintiff and defendant*; the others are considered as *pleas in bar of the suit.*) X. The deficiency of a bill to answer the purposes of complete justice may also be shown by plea, which may be considered as in bar of the suit, though perhaps a temporary bar only. XI. The impropriety of unnecessarily multiplying suits may be the subject of a plea, which is also in bar of the suit; but the inconvenience which may arise from confounding distinct matters in the same bill, as it must be apparent on the bill itself, unless very artfully framed, can in general only be alleged by demurrer: (Mitf. Pl. 221.)

As to *pleas to the jurisdiction* of the Court, they are not of very frequent occurrence. They generally arise where the suit is for land within a county palatine (*Edgworth* v. *Davies*, 1 Ch. Ca. 40; *Gerrard* v. *Stanley*, 1 Ch. Rep. 278); or where the defendant claims the privileges of a university (*Draper* v. *Crowther*, 2 Vent. 362; *Stephens* v. *Berry*, 1 Vern. 212); or where a visitor of a college has power to determine the controversies, on account of which the application is made to the Court: (*Attorney-General* v. *Talbot*, 3 Atk. 662; 1 Ves. 78.) Pleas of this nature must however allege, not only that the Court has no jurisdiction, but how it has been deprived of it, and what Court has, jurisdiction (3 Bro. C. C. 301; 1 Ves. jun. 388; *Strode* v. *Little*, 1 Vern. 59; *Earl of Derby* v. *Duke of Athol*, 1 Ves. 202; S. C. Dick. 129); and that it is able to give a complete remedy: (*Wilkins* v. *Chalcroft*, 22 Vin. Abr. 10; *Green* v. *Rutherforth*, 1 Ves. 463.)

With respect to *pleas to the person of the plaintiff*, it may be shown that he is disabled to sue, as being—1, an outlaw; 2, an alien; 3, an infant; 4, an alien enemy; 5, a married woman; 6, an idiot or lunatic; 7, a bankrupt or insolvent; 8, that the plaintiff does not sustain the character he assumes. For instance, where a person sues as administrator, a plea that he is not administrator will be good (*Winn* v. *Fletcher*, 1 Ver. 473; *Simons* v. *Millman*, 2 Sim. 241); so a plea that a plaintiff is not a partner or a creditor will be good where a person has taken proceedings in equity as filling either of those characters: (*Drew* v. *Drew*, 2 V. & B. 159; *Sanders* v. *King*, 6 Madd. 61.) It was indeed at one time doubted whether a plea of this kind, as it is sometimes called a *negative plea*, would be valid; but the doubt has been long since considered as of no weight. The consequence of not allowing such a plea would be, that a person falsely alleging a title in himself might compel a discovery, "and thus," to use the words of Lord Redesdale, "the title to every estate, the transactions of every commercial house, and even the private transactions of every family might be exposed; and this might be done in the name of a pauper, at the instigation of others, and for the worst purposes:" (Mitf. 231.) A plea may be put in to the person of the defendant; as a bankrupt or insolvent debtor may plead his bankruptcy or insolvency, which, in effect, shows that his property has become vested in another: (*Turner* v. *Robinson*, 1 S. & S. 3.) So a person sued as a *feme sole* may plead that she is covert. (Beames on Pleas, 130.) Other instances might be mentioned. A plea that a defendant has no interest ought not to be put in when a defendant can by general disclaimer satisfy the suit: (*Turner* v. *Robinson*, 1 S. & S. 3.)

With regard to *pleas in bar of the suit*, they are generally stated to be of three kinds: 1, Pleas of matter recorded, or as of record, in the Court itself, or some other Court of Equity. 2, Pleas of matters of record in some Court not a Court of Equity; and 3, Pleas of matters in *pais*.

1. Pleas of matters recorded or as of record in the Court itself, or some other Court of Equity, may be where there has been a decree or order of the Court by which the rights of the parties have been determined, or another bill for the same cause dismissed (3 Atk. 626; *Pritman* v. *Pritman*, 1 Vern. 310; 1 Atk. 571); but the decree must be in its nature final, or afterwards made so by order, or it will not be a bar. For instance, a decree for an account of principal and interest due on a mortgage, and for foreclosure in case of nonpayment, cannot be pleaded to a bill to redeem unless there is a final order for foreclosure: (*Senhouse* v. *Earl*, 2 Ves. 450; *Hulsey* v. *Smyth*, Mos. 186; *Venemore* v. *Venemore*, Dick. 93.) Upon such a plea, so much of the former bill and answer must be set forth as is necessary to show that the same point was then in issue: (*Child* v. *Gibson*, 2 Atk. 603.) So a decree or order dismissing a former bill for the same matter may be pleaded in bar to a new bill (*Earl of Peterborough* v. *Germaine*, 6 Bro. P. C. 1 Toml. Ed.) except where it is dismissed without prejudice (*Seymour* v. *Nosworthy*, 1 Ch. Ca. 155), or merely for want of prosecution: (*Brandlyn* v. *Ord*, 1 Atk. 571; 14 Ves. 232.)

2. The plea of another suit depending in the same or another Court of Equity for the same cause is a good plea, except, perhaps, in the case of a suit depending in an inferior Court of Equity, the effect of which the defendant has avoided by going out of the jurisdiction of the Court: (Mitf. Pl. 246.)

3. Pleas in bar of matters of record, or of matters in the nature of matters of record, in some Court not being a Court of Equity, may be put in as a fine or a recovery, or, since they are abolished by 3 & 4 Will. 4, c. 74, a deed and enrolment under that Act may be shown to the Court by plea. So the judgment of a Court of ordinary jurisdiction (Mitf. 255), as the Lord Mayor's Court (*Behrens* v. *Pauli*, 1 Keen, 456), Court of Admiralty (*Parkinson* v. *Lucas*, Mitf. 257), of an Ecclesiastical Court (*Penvill* v. *Luscombe*, 2 J. & W. 201), or even of a foreign Court (*Gage* v. *Bulkeley*, 3 Atk. 215; *White* v. *Hall*, 12 Ves. 321,) may be pleaded in bar to a suit in equity. But it must be borne in mind that the plea must show that the subject-matter of the suit is the same, and that the suit is for the same purpose (*Behrens* v. *Sieveking*, 2 My. & Cr. 602); and the Court must have been one with full jurisdiction to determine the rights of the parties (*Gage* v. *Bulkeley*, 3 Atk. 215); and the judgment must have been final, and not merely interlocutory: (*Samuda* v. *Furtado*, 3 Bro. C. C. 70, 71.)

Pleas in bar of matters *in pais* are principally:—1. A plea of a stated account. 2. Of an award. 3. Of release. 4. Of a will or conveyance, or some instrument controlling or affecting the rights of the parties. 5. Of a statute in bar of the plaintiff's demand.

1. A plea of a stated account is a good bar to a bill for an account: (*Dawson* v. *Dawson*, 1 Atk. 1.) It must show that the account was final (*Dawson* v. *Dawson*, 1 Atk. 1), and that it was in writing; and what the balance was (*Sewell* v. *Bridge*, 1 Ves. 297); and whether error or fraud be charged or not, the defendant pleading a settled account must aver that it is just and true to the best of his knowledge and belief: (*Anon.* 3 Atk. 70.)

2. An award may be pleaded to a bill to set aside the award and open the account (*Kingood* v. *Croucher*, 2 Atk. 395; *Burton* v. *Ellington*, 3 Bro. C. C. 196); or to disturb the matter submitted to arbitration: (*Tittenson* v. *Peat*, 3 Atk. 529.) But

(a) Continued from p. 160.

if fraud or partiality are charged against the arbitrators, those charges must not only be denied by way of averment in the plea, but the plea must be supported by an answer showing the arbitrators to have been incorrupt and impartial; and any other matter stated in the bill as a ground for impeaching the award must be denied in the same manner (Mitf. Pl. 260, 261); but as a mere covenant or agreement to submit disputes to arbitration will not be enforced in a Court of Equity, such covenant or agreement cannot be pleaded: (*Street* v. *Rigby*, 6 Ves. 815.)

3. If the plaintiff or person under whom he claims has released the subject of his demand, the defendant may plead the release in bar of the bill, and this will apply to a bill praying that the release may be set aside: (Mitf. 261.) In a plea of a release the defendant must set out the consideration upon which the release was made; the plea, therefore cannot extend to a discovery of the consideration; and if this be impeached by the bill, the plea must be assisted by averments covering the grounds on which the consideration is so impeached: (Mitf. 262.) A release pleaded to a bill for an account must be under seal, though it need not be signed: (*Taunton* v. *Pepler*, 6 Madd. 166.) A release not under seal must be pleaded as a stated account only: (Mitf. Pl. 263.)

4. On a bill filed by the heir-at-law on some equitable grounds, against a devisee, the latter may plead the will, and that it was duly executed: (*Anstis* v. *Downing*, 2 Ves. 361; and *Meadows* v. *Duchess of Kingston*, Ambl. 756; 3 Mer. 171.)

5. A defendant may plead a statute in bar of the suit; as, for instance, the Statute of Frauds and Perjuries (29 Car. 2, c. 3), the Statute of Limitations; but fraud, if charged by the bill in such cases, must be denied: (Mitf. Pl. 269.)

X. In certain cases, although the plaintiff's title may be good, the court will nevertheless stand neutral when the defendant has an equal claim to its protection. Thus, where the defendant is a purchaser or mortgagee for valuable consideration without notice of the plaintiff's title, he may set up that defence in bar of the suit by plea. The plea must aver the seizin and possession of the person who conveyed or mortgaged the premises at the time of the execution of the deed, and the consideration and payment of it: (Mitf. Pl. 275.) The plea must also deny notice of the plaintiff's title or claim previous thereto (*More* v. *Mayhow*, 1 Ch. Ca. 34); and fraud as particularly as it is charged in the bill: (*Radford* v. *Wilson*, 3 Atk. 815.) And they must also be denied in the answer, in order that the fact of notice or fraud may be put in issue by the plea (*Harris* v. *Ingledew*, 3 P. Wms. 94); and also in order that the plaintiff may be enabled to except to the answer for insufficiency: (*Price* v. *Price*, 1 Vern. 185; *sed vide Pennington* v. *Beechey*, 2 Sim. & Stu. 282.)

XI. The defendant may by plea object to the bill if it be deficient to answer the purposes of complete justice; for instance, a want of proper parties not apparent on the face of the bill, may be shown to the court by a plea for want of parties, going both to discovery and relief when relief is prayed: (*Ashurst* v. *Eyre*, 2 Atk. 51; S. C. 3 Atk. 341; *Plunket* v. *Person*, 2 Atk. 51.) The allowance of a plea of this kind does not determine the suit, as liberty to amend will be given by the court.

With regard to the objections to *discovery only*, which may be taken by plea, they are nearly the same as those which, in a former number, have been mentioned as causes of demurrer to discovery, viz.: 1. That the plaintiff's case is not such as entitles a Court of Equity to assume jurisdiction to compel discovery in his favour. 2. That the plaintiff has no interest in the subject, or no interest which entitles him to call on the defendant for a discovery. 3. That the defendant has no interest in the subject to entitle the plaintiff to institute a suit against him even for the purpose of discovery only. 4. That the situation of the defendant renders it improper for a Court of Equity to compel a discovery.

OF THE FORM OF A PLEA.

The following may be given as an example of a form of a plea: it commences:

This defendant by protestation not confessing or acknowledging all or any of the matters and things in the said complainant's bill of complaint mentioned and contained to be true, in such sort, manner, and form as the same are therein set forth and alleged; in plea to the whole of the said bill saith, &c.; [If a plea to a part of the bill, *to so much or such part of the bill as prays, &c., or seeks a discovery, and whether, &c.*; and concludes] *therefore the said defendant doth plead the said —— (in bar) to the said complainant's bill; and prays the judgment of this honourable Court whether he shall be compelled to make any further answer to the said bill; and prays to be hence dismissed with his reasonable costs in this behalf most wrongfully sustained.*

AN ACTION AT LAW UNDER THE NEW PRACTICE. (a)

ARTICLE VII.

It was said in the last article that there were three subjects which might be conveniently referred to before coming to the pleadings themselves: the new procedure for deciding questions of law and fact without formal pleadings was mentioned, and the new provisions for amending before trial misjoinder and nonjoinder of parties were stated. Reference has now to be made to the joinder of causes of action; but previous to this the practice prescribed by one of the new Rules of Court in certain cases of nonjoinder of plaintiffs may be mentioned. It may be considered as an addition to the paragraph at p. 149 *ante*, beginning "The defendant," and ending "(sect. 36)."

If after such notice by the defendant, or plea in abatement, the plaintiff intend to amend the writ, he must file a consent in writing of the party or parties whose names are to be added, together with an affidavit of the handwriting, and give notice thereof to the defendant unless the filing of such consent be dispensed with by order of the Court or a Judge: (R. G. H. T. 1853, r. 6.)

JOINDER OF CAUSES OF ACTION.

There are also two new provisions as to joining causes of action; and though these might perhaps have been mentioned in the first article of this series, and before the issuing of the writ, still, considering their connection with and effect on the pleadings, they are not inappropriate here.

Actions used to be arranged in certain classes called "Forms of Action," named from some actual fact or leading fiction existing in the cases included in each form. The forms of personal actions were Covenant, Debt, Assumpsit, Account, Annuity, and Scire Facias (included under the general name of "Actions on Contract"); and Trespass, Case, Trover, Detinue, and Replevin (included by the name "Actions on Tort.") It is not necessary to explain the application of these different forms of action, but the rule previous to the recent statute was that, although no two forms of action could be joined in one suit (with the exception of debt and detinue), causes of action coming within the same form might be joined. To quote the illustrations of the Common Law Commissioners in their Report (p. 32), the plaintiff might join in one action a claim on a promissory note, on a breach of promise of marriage, and a complaint of negligence against an attorney; in a second he might join a claim for criminal conversation with trespass to his person, his land, or his goods; in a third he might sue for the seduction of his daughter, infringing his patent, for negligently driving over him, and for slandering him, because in all these cases the form of action was the same. Beyond doubt it would be very inconvenient that such incongruous claims should often be joined in one action; but the truth is, in the language of the Commissioners, "that plaintiffs may be safely trusted in this matter: a plaintiff is not likely to damage his claim for criminal conversation by adding a claim which may divert attention to a question of whether he is entitled to the price of goods sold, or other incongruous matters."

The restriction on joining causes of action is therefore now removed; and although forms of action are not in express terms abolished by the recent Act, they are so in effect as a consequence of several new provisions. One of these, very effectual in this respect, is that causes of action of whatever kind, provided they be by and against the same parties and in the same rights, may be joined in the same suit; but this does not extend to replevin or ejectment; and where two or more of the causes of action so joined are local, and arise in different counties, the venue may be laid in either of such counties; but the Court or a Judge has power to prevent the trial of different causes of action together, if such trial would be inexpedient, and in such case such Court or Judge may order separate records to be made up, and separate trials to be had: (sect. 41.)

The other provision is for joining claims by a husband in his own right with claims by the husband and wife. Formerly, in an action brought by a man and his wife for an injury done to the wife, the husband could not recover for any loss or expense which had accrued to him even in consequence of such injury; but he was obliged to bring an action in his own name, as these are claims in his own right. Thus, in an action for an assault on the wife, the expense of the surgeon could not be recovered, nor in an action for slander of a wife could the damage arising from her loss of employment be recovered: (*Dengate* v. *Gardiner*, 4 M. & W. 5.)

Now, however, in any action brought by a man and his wife for an injury done to the wife, in respect of which she is necessarily joined as co-plaintiff, the husband may add thereto claims in his own right, and separate actions brought in respect of such claims may be consolidated if the Court or a Judge think fit; but in case of the death of either plaintiff, such action, so far only as relates to the causes of action, which do not survive, will abate: (sect. 40.)

Leaving then the collateral subjects, as they may be called, which have been considered—the amendment of misjoinder and nonjoinder before trial, and the joinder of causes of action—and returning to the main proceedings in a contested action, the pleadings between the parties are an essential part of the machinery.

PLEADINGS IN GENERAL.

Anciently the pleadings were delivered *vivâ voce* by the counsel. The plaintiff's counsel stated the circumstances from which the action arose; this statement was then called "the count," from the Norman-French *conte*; and, until the old real actions (for the recovery of real property) were abolished, the declaration in these actions was always called the count. The answer of the defendant's counsel was called "the plea," which is still the name for the analogous step in modern practice; and to this the plaintiff's counsel replied, and so on, until they contradicted as to a fact or facts, which was an issue in fact, or until one of them thought his opponent's statement bad in law, and then he demurred to it, that is, stayed from further pleading, and contended that, supposing such statement to be true, it was no answer to the case which he had stated. If there were an issue in fact between the parties, it was usually decided by a jury; if it were of law, it was decided by the court. These proceedings the officer of the court entered on a parchment roll or record as they took place. This record was called "the plea roll" when the pleadings only were entered; when the issue was entered it was called "the issue roll;" and when the judgment had been entered it was called "the judgment roll;" being the same parchment, but having different names at the different stages of the action.

Afterwards the system of *vivâ voce* pleading was found inconvenient, and the pleadings were written on paper, and delivered between the parties or filed in the office of the court. The introduction of written pleadings is generally supposed to have taken place about the middle of the reign of Edward III. (Step. Plead. note 6), but perhaps it was somewhat after this.

The pleadings were spoken in Norman-French (probably from the time of the Conquest) until the 36 Edw. 3, st. 1, c. 15, which enacted that for the future they should be in English. But whichever language was used in oral pleading, the record was entered in Latin from the earliest period to which it can be traced until the 4 Geo. 2, c. 26, which enacted that both pleadings and record should be in English. On the introduction of paper pleadings they followed the language of the record, and were therefore in Latin until the statute just mentioned: (Step. Plead. note 12.)

The Attorneys, after a time, themselves prepared and carried in the roll; but they subsequently found that doing so was needless until it was required for some purpose, as for the Master's signing judgment, and they omitted to do so. Now it will probably altogether cease to be used, except for bringing error or for some proceeding ulterior to the action, for it is not necessary, before issuing execution upon any judgment under the authority of the Common Law Procedure Act, to enter the proceedings upon any roll; but they may be entered upon the roll whenever the same may become necessary for the purpose of evidence, or of bringing error or the like: (sect. 206.)

There are several provisions in the Common Law Procedure Act affecting pleadings in general, and it will be therefore advisable to refer to such of these as may affect the declaration before considering the pleadings individually. These provisions relate mainly to the detail of pleading, so that, were they old-established rules, most of them would only be mentioned incidentally; but, considering their novelty, it is thought best to give them explicitly, as they become applicable.

NOTICES TO DECLARE, REPLY, &c.

Formerly, when it was desired to urge an adversary on to declare or reply, or to plead any subsequent pleading in the action, it was necessary to obtain a rule of the court for that purpose. These rules were granted as of course, and had at most only the effect of a notice to the party, that if he did not plead the particular pleading referred to, his adversary would sign a judgment against him. Afterwards, by a rule of all the courts, a written demand of the pleading in question was made necessary, and since the Common Law Procedure Act has been in force, some difficulty has arisen from there being three rules of court made at different times and also a provision made by that statute on this subject, and it was generally thought necessary that there should be both a notice to declare and a demand of declaration; however, by the new rules of court just issued, all former written rules of court are annulled, and no new rule is made on the subject; and, therefore, now there is simply the following provision of the Common Law Procedure Act, by which a notice is substituted for the rule: "Rules to declare or declare peremptorily, and rules to reply and plead subsequent pleadings, shall not be necessary; and instead thereof a notice shall be substituted, requiring the opposite party to declare, re-

(a) By George Tayler, Esq., Barrister-at-Law.

ply, rejoin, or as the case may be, within four days, otherwise judgment; such notice to be delivered separately, or indorsed on any pleading to which the opposite party is required to reply, rejoin, or as the case may be:" (sect. 53.)

The notice may be in this form:—

In the Queen's Bench.

A. B. plaintiff, against C. D. defendant.

Take notice that the defendant requires the plaintiff to declare herein within four days, otherwise judgment.

Dated the day of , 185 .

Yours, &c.

G. H. defendant's attorney.

To Mr. E. F. plaintiff's attorney.

ENTITLING PLEADINGS.

Until certain rules of court as to the entitling of pleadings (R. G. M. T. 3 Will. 4, r. 15, and H. T. 4 Will. 4, r. 1), pleadings were not entitled as of any day, but as of the term in which the writ was returnable. The practice established by these rules, with the addition that pleadings other than the declaration be entitled of the proper court, is now enacted by statute, so that every declaration and other pleading must be entitled of the proper court, and of the day of the month and the year when the same was pleaded, and must bear no other time or date; and every declaration and other pleading must also be entered on the record made up for trial, and on the judgment roll under the date of the day of the month and year when the same respectively took place, and without reference to any other time or date, unless otherwise specially ordered by the court or a judge; (sect. 54.)

It has been held that the pleading must be entitled on the face, and entitling it on the back merely is not sufficient (*Ripling* v. *Watts*, 4 Dowl. 290); and that the year must be preceded by the words "in the year of our Lord:" (*Holland* v. *Tealdi*, 8 Dowl. 320.) It was also held that if the pleading is not properly entitled, it is not a nullity, but only irregular (*Hodson* v. *Pennell*, 4 M. & W. 378), and it will probably now be amended without costs under sect. 222.

STATEMENTS NOT REQUIRING PROOF.

There were certain statements frequently occurring in pleadings which were merely formal; some were considered immaterial averments, and the proof of them was not essential to the maintenance of the case of the party using them; and others were statements of matters which the law presumed from certain other facts, and therefore needed no proof though required to be asserted: (*Hayter* v. *Moat*, 2 M. & W. 56.) Now, however, all statements which need not be proved, such as the statement of time, quantity, quality, and value, where these are immaterial; the statement of losing and finding and bailment, in actions for goods or their value; the statement of acts of trespass having been committed with force and arms, and against the peace of our lady the Queen; the statement of promises which need not be proved, as promises in indebitatus counts, and mutual promises to perform agreements; and all statements of a like kind, are to be omitted: (sect. 49.)

CONDITIONS PRECEDENT.

In cases where a party had to aver the performance of several things on his part, his pleading sometimes extended to a considerable length in consequence; and though this cause of prolixity would have been removed by another provision of the recent statute (the abolition of special demurrers), a substantive enactment has been made on this point: that the plaintiff or defendant in any action may now aver performance of conditions precedent generally, and the opposite party cannot deny such averment generally, but must specify in his pleading the condition or conditions precedent the performance of which he intends to contest: (sect. 57.)

It may perhaps be doubted whether this provision will make a general averment of performance sufficient in cases where there has been in fact only a readiness and willingness to perform some condition the actual performance of which has been prevented by the other party (*Cort* v. *Amberyate Railway Company*, 20 L. J. 465, Q. B.), though it seems to be generally thought that such averment will now be sufficient.

PROFERT AND OYER—INSPECTION OF DOCUMENTS.

There was a very ancient practice, called "profert and oyer," which arose from the system of *viva voce* pleading above mentioned. It appears that at that time, when a person who relied on a deed produced it in court (*profert in curiam*) the other party might require to hear it read; which demand was called craving "oyer" (the Norman-French verb "to hear"). The officer of the court or the counsel who produced it then read it aloud, and it was entered on the pleadings.

The modern rule that arose from this practice was that, whenever either party stated in his pleading a deed which operated at common law or letters of administration, he was obliged to make profert thereof, that is, to state that he brought the document into court: the other party might then serve a written demand of oyer; and he was entitled to hear the document read. In practice it was exhibited to the party claiming oyer, and usually a copy was demanded as well as oyer, which was also supplied. These modern proceedings of course took place between the attorneys out of court; and the party claiming oyer was entitled to as many days for pleading after it had been given as he had unexpired at the time of demanding it. When a party had had oyer, he usually set out the document at the head of his next pleading, though this was optional with him; but by a rule of court, if the defendant omitted to do so, the plaintiff might insert it, and the costs were in the discretion of the Court.

Now however it is not necessary to make profert of any deed or other document mentioned or relied on in any pleading; and if profert is made, it does not entitle the opposite party to crave oyer of, or set out upon oyer, such deed or other document: (sect. 55.) And a party pleading in answer to any pleading in which any document is mentioned or referred to, is at liberty to set out the whole or such part thereof as may be material; and the matter so set out will be deemed and taken to be part of the pleading in which it is set out: (sect. 56.)

The proceeding really substituted for profert and oyer is that given by 14 & 15 Vict. c. 99, s. 6, under which, on application by either party to the Court or a Judge in any case in which previous to that Act a discovery might have been obtained by filing a bill, or by any other proceeding in a Court of Equity, at the instance of the party so making the application, the Court or Judge may compel the opposite party to allow the party making the application to inspect all documents in the custody or under the control of such opposite party relating to such action, and, if necessary, to take examined copies of the same, or to procure the same to be duly stamped.

This application must be supported by affidavit, the contents of which will almost wholly depend on the circumstances of the particular case. The practice under the above section was fully considered and is stated at length in the judgment in *Hunt* v. *Hewitt*, 7 Ex. 286. The requirements of the affidavit in support of this application, and of that in answer, are there summed up as follows:—"The party applying therefore, who is in the same situation as a plaintiff in equity, must show, first, what is the nature of the suit, and of the question to be tried in it; and it seems, also, that he should depose in his affidavit to his having just ground to maintain or defend it; secondly, the affidavit ought to state with sufficient distinctness the reason of the application and the nature of the documents, in order that it may appear to the Court or Judge that the documents are asked for for the purpose of enabling the party applying to support his case, not to find a flaw in the case of the opponent, and also that the opponent may admit or deny the possession of them. To this affidavit the opponent may answer by swearing that he has no such documents, or that they relate exclusively to his own case, or that he is, for any sufficient reason, privileged from producing them; or he may submit to show parts, covering the remainder, on affidavit that the part concealed does not in any way relate to the plaintiff's case. The same course would be pursued in equity."

The declaration itself will next be considered.

THE MAGISTRATE,

AND PAROCHIAL AND MUNICIPAL LAWYER.

ANOTHER MAIDEN SESSIONS AT PONTEFRACT.—R. Boothby, Esq. the Recorder of Pontefract, held the Borough Quarter Sessions, on the 18th inst. There was again, however, as at the three preceding Quarter Sessions, not a single prisoner for trial.

BENEFICES.—A parliamentary paper which has just been issued contains several abstracts from the latest returns made by the archbishops and bishops in pursuance of 1 & 2 Vict. c. 156, s. 53. From these it appears that the total number of benefices in England and Wales was 11,728 in 1850, and upon 8214 of these there was a glebe-house. It also appears that 6132 clergymen were resident in the respective parsonage houses, 664 in the houses appointed by the bishop in his licence, and 1218 within the limits of the benefice, there being no parsonage house; making the total number resident 8077. The total number exempted from residence was 1861; but of these 329 performed the duties of their parishes. The principal grounds of exemption are residence in other benefices, official chaplaincies, and offices and masterships in the universities and public schools. The number exempted by licence, on the ground of infirmity and other causes, was 674, of whom 176 were doing duty in their parishes. Number nonresident without licence or exemption 917, of whom 522 were doing the duties in their parishes. The number of sequestrations was 51; and from 557 benefices no return was received.

POOR-LAW OFFICERS.—There has just been printed, by order of the House of Commons, an interesting document respecting the Tewkesbury Union. The Board of Guardians carried resolutions to reduce the salaries of the several officers on account of the "cheapness of provisions." The officers appealed to the Poor-law Board, and the reasons were required from the guardians that induced them to pass the resolutions. They urged that the value of agricultural produce had been diminished at least 30 per cent.; that the rates had increased, and that food was cheap. The Poor-law Board replied that they had "never recognised the principle that salaries should be liable to vary as the price of food fluctuates." The Poor-law Board thought that no sufficient reason had been assigned for the reduction, declaring that the fixed salaries of the medical officers remunerated them only for their ordinary duties.

REAL PROPERTY LAWYER AND CONVEYANCER.

Summary.

So many reports that were in type were omitted last week to make room for the New Rules of the Common Law Courts, that there are only two cases to be found there belonging to this branch of the law. In *Re Northampton Charities*, 20 Law T. Rep. 186, the Lord Chancellor held a general affidavit verifying the deaths of trustees of a charity, by a person acquainted with them, to be sufficient evidence of their deaths, without the production of certificates of burial.

In the *Law of Mortgages*, under the 48th section of the New Chancery Act (c. 86), the M. R. said that he was unwilling to order a sale, unless by consent, in a case where there was not such complication as to render it inconvenient to work out the common decree.

The same case has some interest for the Profession in its facts. A.'s solicitor, without his knowledge, arranged for a loan to B. of 1000*l.* on a second mortgage of a certain property already mortgaged for 1000*l.* The mortgage was prepared and executed by B.; but no money was paid. When A. was informed of what had been done, he refused to concur; but agreed to advance B. 2000*l.*, taking a transfer of the first mortgage by way of further charge. The deed of transfer and further charge was executed; but the deed of second mortgage was not cancelled, but remained in the hands of the solicitor, who fraudulently prevailed on C. to advance 1000*l.* upon a transfer of it, and thereupon the solicitor handed him the deed, which he had induced A. to sign, undertaking to transfer the second mortgage. Subsequently the solicitor induced A. to execute the transfer accordingly, and to sign a receipt for the 1000*l.*, which the solicitor applied to his own use. The deed of transfer was expressed in words sufficient to convey the legal estate, which was vested in A. by the deed of transfer and further charge. On whom should the loss fall? It was held that, as between A. and C., the former must bear the loss occasioned by the fraud which he had enabled his solicitor to commit; and that C. was entitled to half the benefit of the security of the deed of transfer and further charge, and to costs of the suit, to be paid by A., except the costs of the mortgagor and defendant, who ought not to have been made a party: (*Hiorns* v. *Holtom*, 20 Law T. Rep. 188.)

Queries on Points of Practice.

CHURCH PROPERTY.

I SHOULD feel obliged by any of your numerous correspondents replying to the following question:—

A client of mine is possessed of some property which he holds by lease for lives under a dean and chapter: is there any statute, new or old, or any means by which the dean and chapter are enabled to convert this leasehold into a fee simple? A SUBSCRIBER.

EXECUTORS.

IN 1847 a party died, leaving a will, by which she bequeathed the bulk of her property, consisting of about 1600*l.* in the Funds, to a relative for life, with remainder to other persons absolutely. The tenant-for-life is now dead. Her two executors are also dead; and the executors of the survivor are about to make the necessary distribution. I shall be obliged to any of your correspondents who will say whether it is customary in such a case to require a release to be executed, in addition to the legacy receipts which the parties will have to sign? T. B. C.

JOINT-STOCK COMPANIES' LAW JOURNAL.

NORWICH UNION LIFE OFFICE.

TO THE EDITOR OF THE LAW TIMES.

SIR,—In reply to the query of a "Subscriber" in your paper of the 8th inst., I am sorry to say I have met with a similar case, and in this *same* office.

In Nov. 1825, the policy was granted; the assured died in May 1852, having in the previous Nov. paid to Nov. 1852. The general meeting was held in June 1852, and a bonus declared, calculated on the profits *made prior to June 1851*, being nearly a year before the meeting was held, and a year and a half before the period covered by the payment of the premium.

The Norwich Union Office refused to pay, and referred to the deed of settlement as justifying such refusal; but when asked for an extract from such deed, *they refer me to the solicitors.*

If this society were a *proprietary* one I could under-

stand its object, though I might doubt its policy; but, as it professes to be a *mutual* one, I am wholly at a loss to account for such a course of dealing. I know it is useless to apply to the solicitors, as I have already, on a technical ground, been driven to incur heavy costs, and pay those gentlemen their charges, before I could obtain the money due on a policy of upwards of *twenty years'* standing. I have therefore determined in no case to transact business with this society, nor will I again look at their policies.

I am, Sir, yours, &c.
W. Manby.

Wolverhampton, 19th Jan. 1853.

WINDING-UP.

Monmouth and Glamorgan Banking Company.—Of the 15*s.* in the pound arranged to be paid to creditors under the winding-up of this company, which failed some time since to the extent of several hundred thousand pounds, 18*s.* 4*d.* has been paid over, leaving a further payment of 1*s.* 8*d.* due.

Tring and Reigate.—On Monday a meeting was held in this matter before Master Humphry. Mr. Torr (firm of Sudlow, Torr, and Kingdon) stated, that the terms of the proposed compromise having fallen through, it now only remained to settle the members of the managing committee on the list, with a view to making a call to liquidate the outstanding debts, and this having been done, a call will be declared.

Royal Bank of Australia.—On Monday a meeting was held before Master Richards, to examine Mr. J. N. Smith (firm of Campbell, Smith, and Co., Australian agents), Mr. Duncan Dunbar, Mr. Falconer (of the London Chartered Bank of Australia), and Mr. Millikin (of the Bank of Australasia), relative to the disputed charges of Messrs. Smith and Campbell, the late agents of the Royal Bank. Attention having been called by Mr. Walton to a certificate of Mr. Orr, of Sydney, touching a certain portion, amounting to some thousands, of Messrs. Smith and Campbell's accounts, Mr. Roxburgh and Mr. H. Harris, for Mr. Wryghte, the official manager, insisted that they had no advice on the subject. After a discussion of two hours the Master intimated that the parties might agree to the proposed reference of the question, involving about 27,000*l.*, to two merchants, on the understanding that if they found that Mr. Orr was authorised to make the certificate it should be binding on the official manager, otherwise that it should be void, and that his examination into the matter should be proceeded with.

Abortive Railway Schemes.—Of the 157 railway companies that lodged plans and sections in November, thirty are not able to proceed this session in consequence of not having also lodged the necessary deposits with the accountant-general, and other causes. These thirty are as follow: Albert Dock and Railway; Ayr, Maybole, and Girvan; Barnet and Willesden; Birkenhead Dock Branch; Birkenhead (Great Western), Corris, Machynlleth, Aberdovery, and Towyn; Dorchester and Exeter (Coast Extension); East and West Surrey Union; Glasgow, Earlwood, Busby, and Eaglesham; Hawick and Carlisle; Inverleithen and Peebles; Jedburgh; Kingroad Harbour; Lewes, Uckfield, and Tonbridge Wells; Mid-Kent; Newport, Abergavenny, and Hereford (Extension to Swansea); North and South Wales; Norwood, Streatham, and Wanstead; Rugby, Southam, and Banbury; St. George's Harbour and Railway; South Derbyshire; South Midlands Union; South and West London; Shrewsbury and Aberystwith; Staffordshire, Midland, and Mineral; Stockton and Hartlepool (Haswell Branch); Sunderland and Leeds Northern Junction; Torquay and South Devon; Vale of Clwyd; Yarmouth and Lowestoft.

PETITIONS, ORDERS, MEETINGS, APPOINTMENTS, CALLS, &c.

[Announced, issued, and made, during the past week.]

Kollmann's Railway Locomotive and Carriage Improvement Company.—Meeting of contributories at Master's chambers on 24th inst. at two o'clock. Humphry.

Guadal Canal Silver Mining Association Company.—Appointment of R. P. Harding to be official manager, Jan. 13. Rose.

Ten Bells Club.—Petition to wind-up presented on Jan. 17. To be heard on Jan. 29.

THE LAWYER.

Summary.

Equity Practice.—In the new practice, some points were reported last week. In *Crofts* v. *Middleton*, 20 Law T. Rep. 189, it was held, that the Court had power to appoint an examiner to take the *viva voce* examination of witnesses out of the jurisdiction. In *Evans* v. *Bath*, 20 Law T. Rep. 189, a solicitor not interested in the cause was appointed examiner of witnesses resident in a distant county, on an affidavit of the respectability and competency of such solicitor; and in *Glengall* v. *Johnston*, 20 Law T. Rep. 189, where a decree referring certain inquiries to the Master had been made previous to the passing of the Amendment Act, the Court, by consent, ordered the parties and witnesses to be examined *viva voce*. But where, after publication had passed, and the cause been set down for hearing, the plaintiff applied for leave to examine the defendant orally, as being important to the case and the discovery of the truth, V. C. Stuart refused. "The application had been resisted," he said, "on the ground that, under the 39th section, the Court could only upon the hearing, if it should then see necessary, require the attendance and oral examination of the party. That, in his view, *was the more just construction*; and although, upon the ground of convenience, the purposes of all parties might be better served by giving the defendant notice, his notions of what was convenient and proper did not justify him in stretching the construction of an Act beyond what the words authorized:" (*May* v. *Biggenden*, 20 Law T. Rep. 189.)

In *Smith* v. *Harwood*, 20 Law T. Rep. 190, V. C. Stuart made an order that the copy of a petition left for the use of the Court might be filed instead of the original petition, which had been lost.

In *Balinhard* v. *Bullock*, 20 Law T. Rep. 189, V. C. Turner, in chambers, dispensed with service of a decree made in an administration suit upon some of the parties, and ordered it to be made upon others. He said: "The form of order which was originally adopted on claims, directing what parties were to be summoned, and that when such parties had been served the accounts should be taken, is not now applicable to this case. * * The General Orders of the Court which have been made are well adapted to provide for any such difficulty as that which is represented to occur in this case. The Judge in chambers is enabled to dispense with service of the decree upon any party as to whom it shall appear to him that from absence or other sufficient cause it ought to be dispensed with, or cannot be made. The course is this—Having ascertained who are the parties interested in the estate, upon the first summons before the Judge in chambers to proceed with the decree, the Judge will consider any circumstances which may be brought before him with reference to any of the parties, and direct who are the parties to be served, and whether service on any of them may be dispensed with."

In a question as to jurisdiction, the new Lord Chancellor has held that a petition for the appointment of new trustees of a charity, if entitled under the General Trustee Act, may be heard by the M. R. or one of the Vice-Chancellors: (*Re Northampton Charities*, 20 Law T. Rep. 186.)

Common Law.—A point of practice in the service of a writ of *mandamus* arose in *Reg.* v. *The Birmingham, &c. Railway Company*, 20 Law T. Rep. 190. The defendant had never been served, and he made an affidavit to this effect and moved that the writ be set aside. The objection was that *a copy* of the writ had been served instead of the original. But the Court said, "Why may not a return be made to a copy? The Master tells us that it is constantly done, and unless there is authority for setting aside the service, I do not see why we should interfere."

In *Price* v. *Hewett*, 20 Law T. Rep. 191, the C. P. held that under the New Procedure Act it is competent to a defendant to plead and demur to the declaration at the same time.

Where a plaintiff had not proceeded to trial, for good reasons alleged in the affidavit, and the defendant's attorney had served plaintiff with a notice under sect. 101 of the Procedure Act to bring on the issue to be tried, it was held by Erle, J., in the Bail Court, that the notice mentioned in sect. 101, being merely a substitute for the old proceeding of a motion for judgment, as in case of a nonsuit (which is abolished by sect. 100), it was competent to the plaintiff to avail himself of the same defence on the new as on the old proceeding; and that, as the reasons now alleged for not going to trial would have been sufficient under the old practice to discharge the rule, the same excuse must be used now in the shape of a motion for a rule, calling upon the defendant to show cause why he should not be restrained from taking any further proceedings to compel the plaintiff to proceed to trial, or to show cause why the time for proceeding to trial should not be extended, with a stay of proceedings: (*Farthing* v. *Read*, 20 Law T. Rep. 192.)

In the *Law of Attorneys* there is to be noted the case of *Re Smith*, 20 Law T. Rep. 190, in which the Court of Q. B. discharged a rule for striking an attorney off the rolls, which had been obtained on the ground that he had been struck off the rolls of the Court of Chancery, as it appeared that he had been subsequently restored to the rolls in that court and suspended for six months. The Q. B. also refused to suspend him from practising for the same period. "We cannot say," observed Lord Campbell, C. J., "that the Lord Chancellor did not think that the punishment he inflicted in his own court was not a sufficient punishment. If we were to make it greater by any addition here, we might in fact be acting against the exercise of his discretion."

It will be seen by the decision of the Lords Justices in *Ex parte Dufaur*, 20 Law T. Rep. 186, that a solicitor is not a scrivener within the bankrupt law, merely because money has been occasionally lodged with him for investment. Lord Cranworth said: "Lord Eldon and Lord Chief Justice Gibbs have both plainly laid down that the fact of scrivening, isolated acts of scrivening, is not sufficient to support a commission against an attorney as a scrivener, but it must be shown that the general course of his business is of that nature."

In the *Law of Evidence*, under the new Evidence Act, the Lords Justices have held that the extracts from parish registers of entries of marriages, &c., purporting to be signed by the incumbents of the respective parishes, are admissible without further verification.

FEES IN THE COMMON LAW COURTS.

TO THE EDITOR OF THE LAW TIMES.

Sir,—Can any of your numerous readers inform me who is the usher at the Common Pleas Office; what services he renders that a shilling should be charged for him when a judgment is signed; and whether it is a legalised charge or not?

I see no mention made of this "one shilling for the usher" in the new scale of fees, but simply "paid signing judgment five shillings," while in fact six shillings is the sum demanded, for the reason above *stated*.

If the extra shilling be merely an exaction, I see no reason why the Profession should submit to it. Their fees have been, I think, of late quite sufficiently curtailed; and I for one have no desire, unless compelled, to recognise this officer's services, which, if they be not imaginary, should be paid for out of some other fund than that supplied from the pockets of the attorneys.

I am, Sir, yours, &c.
A Subscriber.

CHANCERY ABUSES.

TO THE EDITOR OF THE LAW TIMES.

Sir,—in these times of Chancery reform, the following case may draw the attention of those to whose ability the public are indebted for such reform; and future measures may provide some alteration in the existing practice, which will meet the point in question. In 1844, bill filed by trustees for opinion of court on construction of will. Cause heard on further directions, &c. in 1845, and order made for distribution of estate; costs to be paid as directed, and charged on the trust estate. In 1845 and 1846 conveyances were executed to the parties entitled, who have since dealt with their interests in divers ways. Some portion of the estate so conveyed has been sold. Until this time, close on eight years from the hearing, no steps have been taken for the taxation of the costs. The parties *now* interested in the trust estate have notice of taxation, and that such estate will be chargeable with the deficiency between assets received by trustees and amount of taxed costs.

There is no resisting such taxation; the order of the court is still in force. Should not some reasonable limit be assigned, beyond which costs payable even under order of the court should be barred?

I am, Sir, yours, &c.
Jan. 11, 1853. Subscriber.

INVASION OF THE ATTORNEYS.

TO THE EDITOR OF THE LAW TIMES.

Sir,—The Profession ought to be much obliged to you for exposing the inroads made upon us by persons out of the Profession, such as accountants, auctioneers, or agents, who not only arrogate to themselves the ability to do purely lawyers' work, but have the impudence to send in their bills in the same form, and make the same charges as the latter. I inclose the bill of another genus, "the Civil Engineer." This gentleman, you will see, charges 8*s.* 6*d.* each for his letters: he is not, however, satisfied with the simple 6*s.* 8*d.* for attendances, but charges 10*s.* 6*d.* or 1*l.* 1*s.* The aggregate account for letters and attendances is 48*l.* 2*s.* 6*d.* His bill altogether is 195*5l.* 8*s.* for salary, surveying, and letter-writing. Surely he might have left the crumbs for the attorney!

Yours,
Worcester, Jan. 12, 1853. An Attorney.

[Inclosed is a copy of the bill, much too long for insertion; but our correspondent has accurately described the character of the charges.—Ed. Law. T.]

THE NEW RULES.

TO THE EDITOR OF THE LAW TIMES.

Sir,—Amongst the new rules is one which will lead to great inconvenience: I allude to that which directs

that there shall be but one summons on the same matter, in lieu of two as heretofore.

In the case of agency business, or of the client residing in the country, it will not be possible to have any communication on the subject of the summons previous to its return; and this, as you know, is frequently most essential. Besides which, when summonses are returnable at ten, or even at eleven, in the morning, many occasions will happen where an attorney or his clerk cannot be prepared in time to attend the summons. The rules direct that summonses, &c. shall be served before seven o'clock in the evening: this, however, is too late for post, and is, indeed, an hour after the time at which a large number of the attorneys' offices close. If an attorney leaves his office before seven, and is engaged (as frequently he must be) on business at the courts or elsewhere, away from his office, the following morning an order may be obtained before he is even aware that a summons has been served.

I apprehend this evil was not contemplated by the judges when framing the rules; and I hope by thus directing their attention to it through your columns they will alter it.

I am, Sir, yours, &c.

Jan. 20, 1853. AN ATTORNEY'S CLERK.

SERVICE OF WRITS IN THE COUNTRY.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I know from my own experience that the letters you have received complaining of many of the London attorneys not paying their country correspondents' charges are not without foundation.

I have often called at the offices of London attorneys for amounts due to me, sometimes about a month after the service of the writ, and then the excuse has been, "The costs are not taxed yet;" at other times, at later periods, and then the reply was, "The papers are put away, we will send you a Post-office order;" or, "The common law clerk is not within;" and this, after they have received a letter stating that I intended to call upon them on a day named. Such parties only deserve a County Court summons; and if that plan were always adopted wherever the facts justified it, I think you would not be troubled again upon this subject. I am, Sir, Yours, &c.

A COUNTRY ATTORNEY.

Queries on Points of Practice.

DUTIES OF AN ATTORNEY.

HAVING practised the Profession of the Law for twenty-five years, and having a moderate competency, I have determined to retire from the Profession, but find myself in this fix:—In the course of my practice I have accumulated a vast number of papers, which are carefully packed in boxes, and for the warehousing of which I am paying a rental. Now that which I desire one of your numerous correspondents to inform me is, *When will my duty to preserve these papers cease?* Am I a trustee for the production of them either to the parties *for* or *against whom* I have been employed, and if I am, *then* when will such trusteeship determine? and if I am *not* such trustee, then can I safely destroy all such papers (except drafts of deeds) as have *not* come to my hands within the last six years? A. B.

THE NEW PROCEDURE.

THE New Common Law Procedure Act has afforded facilities for proceeding against debtors resident in foreign parts. I have failed to find any provision therein for the following difficulty, which I will thank any of your readers to remove:—A debt is nearly barred by the Statute of Limitations, and the debtor is resident in New South Wales. To prevent the operation of the statute, a writ is issued, and forwarded to the colony for service; but on account of the migratory disposition of the colonists at the present time, it is feared that there may be some delay in effecting service. The point is this: Supposing service is not made immediately, before the writ can be transmitted to this country for re-sealing the six months allowed for service will have expired, and the statute will have taken effect.

Does the 18th section provide for such a case? Or could two concurrent writs be issued, one being retained here and re-sealed in the event of receiving advice that the other had not been served? C. W. C.

COUNTY COURTS.

Summary.

Two *Insolvency* cases are all that are for noting this week. In *Re Burgess*, 20 Law T. Rep. 192, it was held that an insolvent owing debts contracted while in trade, must petition as a trader; and in *Re Pritchard*, 20 Law T. Rep. 192, that a creditor who has taken a warrant of attorney or other security in respect of a debt improperly contracted, is not thereby precluded from opposing the debtor's discharge, upon his application under the Act to get rid of such security and the debt for which it was given.

The proceedings with respect to the scale of costs for attorneys in the County Courts are noticed in a leading article, to which the reader's attention is directed.

LATE CASES ON THE LAW AND PRACTICE OF THE COUNTY COURTS. (a)

IX. CASES ON QUESTIONS OF REPLEVIN.

To replevy, is where a person distrained upon applies to the sheriff or his officers, and has the distress returned into his own possession, upon giving good security to try the right of taking it in a suit at law; and if that be determined against him, to return the cattle or goods once more into the hands of the distrainer. This is called a replevin.

The provisions contained in the statutes 8 Anne, c. 14, s. 1, and in the 9 & 10 Vict. c. 95, set forth in our last article on the Law and Practice of the County Courts, and which bear in part on the present subject, will be fresh in the recollection of the reader, and a reference to them will save the necessity of repeating them here.

By sect. 119 of the last-mentioned act, it is enacted, that all actions of replevin in cases of distress for rent in arrear, or damage faisant, which shall be brought in the County Court, shall be brought without writ in a court held under that act. Sect. 120 enacts, that in every such action of replevin, the plaint shall be entered in the court holden under that act for the district wherein the distress was taken. By sect. 121 it is enacted, that in case either party to any such action of replevin shall declare to the court in which such action shall be brought that the title to any corporeal or incorporeal hereditament, or to any toll, market, fair, or franchise is in question, or that the rent or damage in respect of which the distress shall have been taken is more than the sum of 20*l.* (extended by the County Courts Extension Act to 50*l.*), and shall become bound with two sufficient sureties, to be approved by the clerk of the court, in such sums as to the judges shall seem reasonable, regard being had to the nature of the claim, and the alleged value or amount of the property in dispute, or of the rent or damage, to prosecute the suit with effect and without delay, and to prove before the court by which such suit shall be tried that such title as aforesaid is in dispute between the parties, or that there was ground for believing that the said rent or damage was more than 20*l.*, then, and not otherwise, the action may be removed before any court competent to try the same in such manner as hath been accustomed. It was held in *Mungeam* v. *Wheatley*, 1 Cox & Mac. 445, that the 13 & 14 Vict. c. 61, does not apply to actions of replevin.

The first cases decided on this subject to which we shall refer are those which relate to the jurisdiction of the County Court in cases of replevin.

In the following case the declaration on a replevin bond set forth that A. H. levied his plaint in a County Court held under 9 & 10 Vict. c. 95, against the present plaintiff, and a judgment by that court that A. H. should take nothing by his writ, *prout patet*, &c. Plea: *nul tiel record*, and issue thereon. A minute of the proceedings of the County Court was produced, stating that the cause had been "struck out for want of jurisdiction, on the ground of a disputed title having been sworn to." It was held that, as this entry did not support the averment in the declaration, the defendant was entitled to judgment: (*Tubby* v. *Stanhope*, 1 Cox & Mac. 105.) In another case (*Re the County Court of Lancashire*, 1 Cox & Mac. 170) it was held that in replevin the County Court has jurisdiction, although the damages are laid above 20*l.*, and that it is no ground for a prohibition that a verdict is given for damages above that sum.

The jurisdiction of the Court Baron of the Honour of Pontefract was extended by 17 Geo. III. c. 15, which recognised its ancient right of granting replevins. The 2 & 3 Vict. c. 85, further extended the jurisdiction under the title of the Court of the Honour of Pontefract, and provided that six months after the passing of any general act for the recovery of small debts, the operation of which should interfere with the powers given by that act, that act should cease and determine; and the 9 & 10 Vict. c. 95, gave power to Her Majesty to appoint County Courts, and repealed all acts affecting the jurisdiction of such courts. It was held that the construction of these statutes was to destroy the newly constituted Court of the Honour of Pontefract. That the old court being previously put an end to, was not revived by the subsequent act, and therefore that no power remained to grant replevin: (*Halliwell* v. *Eastwood*, 1 Cox & Macrae, 452.)

In the above case, certain cotton-spinning machines were fixed by means of screws, some in wooden fastenings, and some fixed in stones with molten lead, and thereby fastened to the building. The machines were distrained for rent, and subsequently replevied. It was held that they were not a part of the freehold, but were properly distrainable. PARKE, B., in delivering the opinion of the court in this case, gave the following very able and learned exposition of the law, as to what articles, though fixed to the premises, are still distrainable. The question, he observed, was whether cotton-spinning machines, which were fixed by means of screws, some in wooden fastenings, some let in a molten state in stones, for the purpose of receiving the screws, were, by law, distrainable for the rent of the mill in which they were affixed. Before the machines were so attached, they were mere chattels, and undoubtedly they were distrainable chattels. The question is, whether they lost that character by being attached to the floor in the manner described? The question is to be determined exactly in the same way as it would have been if the statutes on the subject had not passed. No chattels could be distrained which were not the subject of distress at common law, except those provided for by the statute, and this description of chattels is not. Neither the power to sell a distress, given by the statute of Will. 3, nor the power to impound on the premises, given by the 11 Geo. 2, extends the right of distress to chattels not before the subject of it; still less does the right of the landlord for a year's rent before the goods taken in execution can be removed, afford a reason for holding that all goods that can be taken in execution can also be distrained. We must decide the case in the same way as if the distrainer was obliged to take the chattels distrained immediately to a public or private pound. At common law, things fixed to the freehold, and which become part of it, cannot be distrained, for two reasons. GILBERT, C. B. says, "whatever is part of the freehold cannot be distrained, for what is part of the freehold cannot be severed from it without detriment to the thing itself in the removal, consequently that cannot be a pledge which cannot be restored in *statu quo* to the owner. Besides, what is fixed to the freehold is part of the thing demised, and the nature of the distress is not to resume part of the thing itself for the rent, but only the *inducta illata* upon the soil or house. Hence it is that doors, windows, furnaces, &c., affixed to the freehold, are not distrainable" (Gilbert on Distress, 34—48). And on the sole ground that they were parcel of the freehold in the construction of law. Keys, windows, and shutters, concerning the realty are not liable to be distrained. It was, besides, a rule at common law that things which could not be restored in the same plight and condition cannot be distrained for rent; that is laid down in Comyn's Digest, 47, and Gilbert on Distress, in the part I have already cited. We have therefore to decide whether these machines fall within either of these categories, otherwise they were not protected. They do not fall within the latter, for, being taken to the pound, they might be brought back without damage to themselves. They are not of a perishable nature; they would not suffer by careful removal, If it were necessary to take some to pieces in order to remove them, that circumstance would make no difference, for that might occur to chattels with respect to which there is no question; as, for instance, a post bedstead, which could not be carried to a pound without being first taken to pieces, and the distrainer would have no reason to complain that they were restored to him in a disjointed state at the pound, where he must attend to receive them. Nor does it make any difference that the distrainee would be obliged to bear the expense of refixing the machinery. Precisely the same objection might be made to a distress on any article which it required expense to carry back from the pound and restore to its former position. A distrainee at common law must be at the trouble and expense of taking back his goods from the pound. This practical inconvenience is now obviated by the power of impounding upon the premises. The only question, therefore, is, whether the machinery, when fixed, was parcel of the freehold? and this is a question of fact depending on the circumstances of each case, and principally on two considerations; first, the annexation to the soil, or, if brick, the house to which it is united, whether it can be easily removed *integra et salva*, or not without injury to itself or the fabric of the building. Secondly, upon the object and purpose of the annexation, whether it was for the permanent and substantial improvement of the dwelling, in the language of the civil law, *perpetui usus causâ*, or that of the Year Book, 28 Hen. 7, 13, *per resta en quel propriété remain, &c. en la possession*, or merely for a temporary purpose, or the more complete enjoyment and use of it as a chattel. Now, in considering this case we cannot doubt that the machines never were part of the freehold, but were attached slightly to it, and were capable of being removed without the least injury to the fabric of the buildings. The object and purpose of annexation was not to improve the inheritance, but to render the machinery steadier, and for the more convenient use of the inheritance. They never were part of the freehold any more than a carpet would be which is attached to the floor by nails for the purpose of keeping it stretched out, or curtains, or looking-glasses, pictures, and other matters of an ornamental nature which have been slightly attached to the walls of a dwelling as furniture, and which is probably the reason why these and similar articles have been held in different cases to be removable. The machines would have passed to the executors: that is laid down by Lord Lyndhurst in *Trappes* v. *Harter*, 2 Cro. & M. 153. They would not have passed by the conveyance or demise of the mill; they never ceased to have the character of movable chattels, and were therefore liable to the distress.

A replevin bond conditioned for the party replevying to appear at the next County Court to be holden at, &c. that not being a County Court holden under the 9 & 10 Vict. c. 95, and then and there to prosecute his suit with effect, is insufficient since that Act, It was held, also, that the whole amount of the rent distrained for was recoverable as damages: (*Edmonds* v. *Challis*, 1 Cox & Mac. 216.) In this case it was also held that an averment in the declaration that the said County Court had not, at the time of the taking of the said bond, any jurisdiction to hear or determine any action of replevin, is a sufficient allegation after verdict that it had not jurisdiction at the time of the plaint to the sheriff.

(a) By GEORGE HARRIS, Esq., Barrister-at-Law.

COLTMAN, J. in delivering the judgment of the court, thus laid down the law applicable to the case. The bond, he observed, which has been taken in this case, is in a form often used before the passing of the Act 8 & 9 Vict c. 95. Now the question is, whether such a form, since the passing of that statute, is sufficient? By the 119th section of that Act, all actions of replevin in cases of distress for rent in arrear, which shall be brought in a County Court, shall be brought without writ in a court held under the Act; and by sect. 120, plaint shall be entered in the court holden in the district wherein the distress was taken. As this statute leaves the former statutes relating to replevin unrepealed, there is no reason why the sheriff, on complaint made to him, should not grant replevin as before, and take bond under the stat. 11 Geo. 2, as before, and if the bond were taken in the terms of the statute, conditional to prosecute the suit with effect, and without delay, and to make return, if return should be awarded, the sheriff would have been under no difficulty; but the bond being taken with a condition for the plaintiff to appear at the next County Court for Middlesex, to be holden at the Sheriff's Office in Red Lion-square, and then and there to prosecute her action with effect, and to make return, if return should be adjudged,—the question arises whether such a bond is sufficient? Various cases are to be found in which the courts have held that bonds strictly conformable to the statute of Geo. 2 are assignable within that statute, so as to enable the assignee to maintain an action on the bond, where there had been a breach of one of the branches of the condition which had been taken conformably to the statute. Thus, in the case of *Short* v. *Hubbard*, 9 Moore, 667, it was held to be no objection to such a bond that it was conditioned, *inter alia*, to indemnify the sheriff. So, in *Dunbar* v. *Dunn*, 10 Price, 54, where the bond was conditioned to prosecute with effect, and to make a return, if a return was adjudged, and to indemnify the sheriff, it was held that the assignee might sue on the bond, though it was not conditioned to prosecute his suit without delay. These were questions between the assignees of the sheriff and the obligors of the bond; but the question may be different where it arises between the party distraining and the sheriff who has taken a bond conformably to the statute. In order to determine this question, it will be convenient to consider the effect of a bond taken in the form here used before the passing of the stat. 9 & 10 Vict. c. 95. The object of taking a bond conditioned for the obligor to appear at the next County Court, and then and there to prosecute his suit, appears to be in order to secure the commencement of action without delay, so as to meet the requirements of the statute that the obligor shall prosecute his suit without delay; and if the obligor omitted to appear at the next County Court, and there prosecute his suit, it was an infringement of the statute, and the bond was forfeited, and might be put in suit by the assignee: (*Dias* v. *Freeman*, 5 T. R. 195.) The effect and meaning of a bond conditioned like the bond now in question was under the consideration of the Court of Exchequer in the case of *Jackson* v. *Hanson*, 8 M. & W. 487; and the court held the meaning of such a bond to be, that the obligor should appear at the next County Court, and then and there begin to prosecute his suit, and afetrwards prosecute it with effect; and by prosecuting with effect is meant prosecuting with effect not only in the County Court, but in every other court into which the cause may be removed in the ordinary course (*Chapman* v. *Butcher*, Carth. 248; *Gwillim* v. *Holbrook*, 1 B. & P. 410.) Now, the meaning which ought to be put on the bond is not altered by the passing of the statute 9 & 10 Vict. c. 15, and the question will be whether such a bond is a substantial compliance with the requisitions of the statute 11 Geo. 2, the condition of the bond being, first, that the obligor shall appear at the next County Court, and then and there begin to prosecute his suit. This branch of the condition will be merely idle if the effect of the statute of Victoria is to substitute a proceeding in the District Court in lieu of the old proceedings in the County Court; and it appears to us that such is the intention and effect of the act. The words of the act, sec. 119, are express, that all actions of *replevin*, in cases of distress for rent, shall be brought in a court held under the act; and can it be supposed that the plaintiff in *replevin* is to bring two concurrent actions, one in the old County Court, the other in the District Court? It may be said, however, that although this branch of the condition is idle, as imposing a duty on the obligor which the statutes do not any longer warrant, and for the breach of which the assignee of the bond could maintain no action, yet the rest of the condition is conformable to the statute of 11 Geo. 2, and may be enforced by the assignee of the bond. Now the remaining branch of the condition is, that the obligee will prosecute his suit with effect; and the proceeding in replevin having been well commenced in the first instance by the plaint to the sheriff out of court, and the bond entered into by him, and the proceedings being in effect, by force of the act 9 & 10 Vict. c. 95, directed to be transferred to the District Court, and then and there prosecuted; the effect of this portion of the condition may be to bind the obligee to prosecute with effect in the District Court, on the same principle on which it was held that such a condition bound him to prosecute, not only in the Sheriff's Court, but in every other court into which the case might be removed in due course of law. Still, there is another requisite of the statute which the bond does not comply with; for the bond shall be conditioned to prosecute *without delay*. As the law stood before the passing of the 9 & 10 Vict. this was considered as sufficiently provided for by requiring the obligor to appear at the next County Court, and then and there to prosecute his suit; but this provision is no longer applicable; the suit is no longer to be prosecuted in the County Court, but in the District Court. The District Courts are to be held by sect. 56, at such times as the judge shall appoint; and it may well be, that the court of the district within which the distress was taken, and in which the plaintiff ought to enter his plaint, will be holden before the holding of the next County Court, in the Sheriffs' Office in Red Lion-square. And be that as it may, there are no conditions requiring the plaintiff to prosecute his suit at the next or any other District Court, and the proceeding may be indefinitely delayed without any breach of the condition of which the assignee of the bond can take advantage. We think, therefore, the bond is insufficient, and consequently the defendants are not entitled to have a verdict entered for them.

On the removal of an action of replevin from the County Court into a Superior Court, under the 9 & 10 Vict. c. 95, ss. 121, 127, the judge of the County Court, instead of taking the bond to the other party to the suit, as directed by the latter of these sections, took it through mistake to himself, as trustee for him. That party having succeeded in the court above, it was held: 1. That the bond, though irregular, was not void, but might be sued on by the judge as a voluntary bond. 2. That by declaring in the court above, the opposite party had waived the objection to the want of a regular bond; and, 3. That the obligee of the bond was entitled to recover under it, as trustee of the party, the amount of the costs incurred by him in the replevin suit: (*Stansfield* v. *Hellawell and others*, 16 Jur. 817, Ex.)

SUPERIOR COURTS AND COUNTY COURTS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—In your last number was a letter from Mr. Preston, of 23, New Bond-street, on the comparative costs and advantages of these courts, in which letter are statements not founded on facts.

Mr. Preston says, "To recover a debt over 20*l.* in Superior Courts, the costs allowed, including attorney and all fees, is 3*l.* 8*s.* in town, and 4*l.*, in a country cause, whereas the actual money out of pocket in the County Courts to sue for any sums between 20*l.* and 50*l.* is, summons 2*l.* 6*s.* 8*d.* and hearing, &c. 3*l.* 5*s.*, in all 5*l.* 11*s.* 8*d.*, and mileage in addition 2*l.* 3*s.* 8*d.*"

As I understand the practice in Superior Courts, the 3*l.* 8*s.* in town and 4*l.* in country causes are the costs indorsed on the writ first issued; and if debt and such costs be paid within four days from service, further proceedings will be stayed.

In County Courts the costs for any sum between 20*l.* and 50*l.* are—summons 1*l.* 6*s.* 8*d.*; if settled before cause called in court no further costs are incurred; if neither party appear when cause called, it is struck out and no fee payable; if cause be heard, the hearing fee is 2*l.* 5*s.*; in all 3*l.* 11*s.* 8*d.*, including everything but attorneys and witnesses.

I do not understand Mr. Preston's "mileage in addition 2*l.* 3*s.* 8*d.*;" if defendant reside more than two miles from court-house an addition is charged of 6*d.* per mile on each mile beyond two. I do not know of any other mileage.

Take the following specimen of County Court proceedings:—On Nov. 29 last, plaintiff entered a plaint in the Trowbridge court against a defendant who had carried on trade in partnership at Trowbridge, and a separate trade at Frome. At the hearing on Dec. 10, an order was made for immediate payment—Debt 22*l.* 13*s.* 8*d.*; court fees 3*l.* 11*s.* 8*d.*; attorney and witnesses 1*l.* 15*s.*; total 27*l.* 19*s.* 8*d.* On Dec. 9 defendant's property at Trowbridge had been removed. On Dec. 10 plaintiff took out execution, which was immediately transmitted to Frome, reissued, and on same day the bailiff seized defendant's goods at Frome just as defendant's relation was loading them to be carried away.

Defendant's relation gave notice of his claim to the goods; interpleader summonses were issued; the cause was tried at Frome on Jan. 5; the claim disallowed; claimant was ordered to pay all court fees and costs of plaintiff's attorney and witnesses in attending the trial at Frome, amounting to 6*l.* 1*s.* 6*d.*, which were paid on Jan. 15; and the proceeds of the sale of the goods paid over to plaintiff. Had plaintiff proceeded in a Superior Court in November last, defendant could have pleaded, and sent plaintiff to trial at the assizes in March next. Execution might then have issued, and the goods seized being claimed by a third party would leave plaintiff a right to try the interpleader cause at the next August assizes, when some legal question might arise to be decided in the court above in the following Michaelmas Term or some other subsequent term. Perhaps Mr. Preston can guess better than I can what the costs would have been in this case.

That the costs of County Court proceedings ought to be lowered I agree with Mr. Preston. On the summons above-named half the 1*l.* 6*s.* 8*d.* goes to the Government Fund; nineteen-twentieth parts of the other half, as also of the entire hearing fees, are paid to the treasurer in the name of judge's fees; whilst there is no class of men holding such responsible situations so badly paid for their services as the clerks who have been induced to keep their posts on promise of fair fixed salaries.

I am, Sir, yours, &c.
GEORGE MESSITER,
Chief Clerk of the Frome County Court.
Jan. 18, 1853.

COUNTY COURT FEES.

TO THE EDITOR OF THE LAW TIMES.

SIR,—In the LAW TIMES of the 15th instant you have published a letter, signed "W. Richard Preston." He states that in the County Courts "to recover a debt between 20*l.* and 50*l.* the summons fee is 2*l.* 6*s.* 8*d.*; and the hearing fee, 3*l.* 5*s.*; in all, 5*l.* 11*s.* 8*d.*" This statement is most strangely incorrect. The summons fees are really 1*l.* 6*s.* 8*d.*, as below; and the hearing fee, 2*l.* 5*s.*; making together 3*l.* 11*s.* 8*d.* instead of 5*l.* 11*s.* 8*d.* Mr. Preston may perhaps reply, that in causes tried by a jury the hearing fees would be 3*l.* 5*s.* This is true; but he knows very well, or might know, that in the County Courts there is not one action in five hundred tried by jury; and then only in such cases as would otherwise have been tried by a jury at Nisi Prius, at ten times the expense. It therefore appears that the fees are only 3*s.* 8*d.* (instead of 2*l.* 3*s.* 8*d.*) more than are allowed in the Superior Courts. But it must be borne in mind, that for these costs the plaintiff may obtain final judgment, and have leave to issue execution immediately, and the defendant may avoid the payment of the hearing fees, 2*l.* 5*s.*, by payment of debt and summons fees into court before trial.

I am Sir, yours, &c.
Kidderminster, Jan. 17, 1853. FRED. TALBOT.

Fees in an action in the County Courts for debt exceeding 19*l.* and not exceeding 50*l.*:—

SUMMONS.	£	s.	d.	£	s.	d.
General Fund	0	13	4			
Summons fee	0	11	8			
Bailiff's fee	0	1	8			
				1	6	8
HEARING.						
Hearing fee	2	3	4			
Bailiff's fee	0	1	8			
				2	5	0
				£3	11	8

MERCANTILE LAWYER.

Summary.

THE Lords Justices have held, in *Re Dufaur*, 20 Law T. Rep. 186, that a solicitor who deals only occasionally with money for the purpose of investment, is *not* a scrivener within the bankrupt law; to make him such, that must have been the general course of his business.

In *Ex parte Eyre*, 20 Law T. Rep. 187, it appeared, on the petition coming on for hearing, that the petitioning creditor had been unable personally to serve the bankrupt, who had gone out of the jurisdiction. The petition was dismissed with costs as against the assignees, but without costs as against the bankrupt, on the petitioners undertaking not to file another petition.

Another case of considerable interest in *Bankruptcy* is reported from the Court of Ex. A. assigned goods to B. as security for advances, but remained in possession as apparent owner, and afterwards, in August 1850, committed an act of bankruptcy. On 4th Sept. B., with notice of the act of bankruptcy, took possession. On 9th Sept. A. was adjudged a bankrupt and C. was appointed official assignee, and on the 20th the trade assignees were appointed, who, on Oct. 7, took possession of the goods. After this the Court of Bank. made an order for their sale under sect. 125. B. brought an action of trover, and the question now was to what period the order of the court had reference back, whether to the date of the act of bankruptcy, or the adjudication. It was held that the order related to the date of *the act of bankruptcy*, from which time the assignees became entitled for the creditors, and that in order to vest the property in them the Court of Bank. must make an order under the 125th section; (*Heslop* v. *Baker*, 20 Law T. Rep. 191.)

COURT PAPERS.

ORDER OF THE MASTER OF THE ROLLS,

APPOINTING EXAMINERS.

January 7, 1853.

WHEREAS, by an order made by the Right Honourable the Master of the Rolls, on the 18th day of January, 1844, it was, amongst other things, ordered, that every person who has not previously been ad-

mitted an attorney of the Courts of Queen's Bench, Common Pleas, and Exchequer, or one of them, should, before he be admitted to take the oath required by the statute 6 & 7 Vict. c. 73, to be taken by persons applying to act as solicitors of the High Court of Chancery, undergo an examination touching the fitness and capacity to act as a solicitor of the said Court of Chancery, and that twelve solicitors of the said court, to be appointed by the Master of the Rolls in each year, be examiners for the purpose of examining and inquiring touching the fitness and capacity of any such applicant for admission as a solicitor; and that any five of the said examiners shall be competent to conduct the examination of such applicant.

Now, in furtherance of the said order, the Right Honourable the Master of the Rolls is hereby pleased to order and appoint that Benjamin Austen, Keith Barnes, Edward Savage Bailey, William Loxham Farrer, John Swarbreck Gregory, William Henry Palmer, Edward Rowland Pickering, William Sharpe, John James Joseph Sudlow, Augustus Warren, William Williams, and John Young, solicitors, be examiners until the 31st December, 1853, to examine every person (not having been previously admitted an attorney of the Courts of Queen's Bench, Common Pleas, and Exchequer, or one of them), who shall apply to be admitted a solicitor of the said Court of Chancery, touching his fitness and capacity to act as a solicitor of the said court. And the Master of the Rolls doth direct, that the said examiners shall conduct the examination of every such applicant, as aforesaid, in the manner and to the extent pointed out by the said order of the 13th day of January, 1844, and the regulations approved by his Lordship in reference thereto, and in no other manner and to no further extent.

(Signed) JOHN ROMILLY, M. R.

ADMISSION OF ATTORNEYS.

Hilary Term, 1853.

ADDED TO THE LIST PURSUANT TO JUDGE'S ORDER.

QUEEN'S BENCH.

Baty, Isaac, Hexham, articled to C. Head, Hexham
Borini, John, 91, Great Russell-street, Bloomsbury; and Flanders—M. Davis, jun. Usk; Flanders
Lewis, Edward John, 10, Ely-place, Holborn—J. G. Lewis, Ely-place
Pummer, William, jun. 34, Southampton-street, Russell-square; and Canterbury—S. Plummer, jun. Canterbury
Williams, William Henry, Denbigh; and Carnarvon—T. Hughes, Denbigh; and P. Morris, Denbigh.

TAKING OUT AND RENEWAL OF ATTORNEYS' CERTIFICATES.

QUEEN'S BENCH.

On 20th January, 1853.

Parkin, William, Staines-road; Hounslow.

For 1st February, 1853.

Barrell, William, 14, Robert-street, Manchester
Biller, George, 1, Onslow-terrace, Walworth
Bourne, Henry, Wolsingham, Durham
Carter, Joseph, 9, Hanover-street, Walworth
Clark, Alfred, Moulton; and Kingston-upon-Hull
Dalby, John Francis, West Bromwich
Darke, Samuel Wallwyn, Grove-lane, Camberwell; and Great Newport-street
Farrar, Frederick Augustus, 47, Charlwood-street, Belgrave-road
Gough, Charles Souldern, Oxon.; and Lantisillio, near Llangollen
Gwynne, Sampson, Southampton-street, Camberwell.
Gwyn, William Horatio, of Bungay
Hall, James Turbutt, 18, Eagle-street, City-road
Hall, Lawrence Robert, Bramcote-grove, Nottinghamshire
Hardy, Edward Webb, West Wickham
Harrington, John Joseph, 8, North-street, Westminster
Haynes, James Haynes, 11, Grafton-terrace, Kentish Town; and Gower-street
Juckes, James, Augustine, 36, Goswell-street
King, Charles Stafford, 15, Serjeant's-inn, Fleet-street
Langston, Henry, 16, Northampton-place, Canonbury-square
Law, Robert Dalton, Manchester
Llewellyn, John, Bristol
Ottaway, Philip Watson, New Sarum
Poole, David, 27, Albany-street; and Harrington-street
Phillips, William, 6, Stonefield-terrace, Islington; and Stoke
Raper, Robert George, 41, Great Russell-street, Bloomsbury; Lansdowne-place; and Wakefield-street
Rattenbury, Charles Thomas, Orange Grove, New Cross
Reynard, Francis, 7, Gordon-place, Kensington
Rhoden, Frederick Jackson, Market Rasen
Richards, James George, 57, Great Portland-street
Sanderson, Charles, 28, Parliament-street; Surrey-street; Denbigh; and Wellingboro'
Shattock J., 55, Alfred-road, Paddington; Tilchester-road; and Alfred-road
Smallwood, Thomas, Shrewsbury, Salop
Smart, Samuel Walton, near Lutterworth; and Cape of Good Hope
Spencer, Robert, Gateshead
Summers, William Henry, 1, Caversham-street, Chelsea; Lower Belgrave-place; Warwick-street; Cottage-road; and Upper Eaton-street
Sykes, William, Heckmondwike; and Millbridge, near Leeds
Tooth, Robert, 156, Strand
Wells, Thomas, 18, St. Alban's-street, Lambeth; Mile End-road; Baker's-row; and Chapel-street, Pentonville
Williams, Henry, 11, Dudley-place, Paddington; North-street, Belgrave-street; and Westbourne-park Villas

Legal Observer.

EXCHEQUER CHAMBER.

THE judges have appointed the 28th Jan. for the hearing of errors from the Court of Queen's Bench, on which day judgment will be given in two cases from that court. They also appointed the 1st and 2nd Feb. for hearing errors from the Court of Exchequer; and the 3rd Feb. for errors from the Court of Common Pleas.

THE SPRING CIRCUITS.

On Wednesday morning the judges assembled in the Exchequer Chamber for the purpose of selecting their respective circuits for the ensuing Spring Assizes. The following is the result of the selection:—

Norfolk.—Lord Campbell and the Lord Chief Baron.

Midland.—Lord Chief Justice Jervis and Mr. Baron Parke.

Home.—Mr. Baron Alderson and Mr. Justice Coleridge.

Northern.—Mr. Justice Cresswell and Mr. Baron Martin.

Western.—Mr. Justice Erle and Mr. Justice Crompton.

Oxford.—Mr. Justice Williams and Mr. Justice Talfourd.

North Wales.—Mr. Justice Maule.

South Wales.—Mr. Justice Wightman.

Mr. Baron Platt will remain in town.

THE GAZETTES.

Bankrupts.

Gazette, Jan. 14.

CAUNT, THOMAS, coal merchant, Newark-upon-Trent, Nottinghamshire, Jan. 28 and Feb. 18, at ten, Birmingham Court held at Nottingham. Off. as. Bittleston. Sols. Hodgkinson, Newark-upon-Trent, and Rawlins and Rowley, Birmingham. Petition, Jan. 10.

COSTERTON, GEORGE BENJAMIN, merchant, dl. & ch. Great Yarmouth, Norfolk, Jan. 24, at half-past one, Feb. 24, at two, Basinghall-st. Off. as. Johnson. Sols. Bell & Co. Bow Church-yd. Petition, Jan. 1.

EVANS, STEPHEN, grocer, Troedyrhiw, near Merthyr Tydfil, Glamorganshire, Feb. 1 and March 1, at eleven, Bristol Court. Off. as. Acraman. Sol. Pridaux, Bristol. Petition, Jan. 8.

FORD, JAMES, cattle dealer, Wolverhampton, Staffordshire, Jan. 20 and Feb. 19, at ten, Birmingham Court. Off. as. Whitmore. Sol. Hayes, Wolverhampton. Petition, Jan. 13.

JAMES, BENJAMIN, and HARDIE, THOMAS GIRDWOOD, builders, copartners, both of Newport, Monmouth, Jan. 26 and Feb. 23, at eleven, Bristol. Off. as. Hutton. Sols. G. Bachelor, Newport, W. Bevan, Bristol. Petition, Jan. 8.

LOCKYER, JOHN, metal tool, steel and iron warehouseman, Clerkenwell-green and St. John's-sq. Jan. 24, at eleven, Feb. 24, at one. Off. as. Johnson. Sol. Pearce, Giltspur-st. Petition, Jan. 14.

PETRIE, JOHN, confectioner, Cornwall-st. Plymouth, and Catherine-st. Devonport, Jan 20 and Feb. 17, Plymouth. Off. as. Hernaman. Sol. J. E. Elworthy, Plymouth. Petition, Jan. 5.

PRIES, ROBERT FERDINAND, merchant, Crosby-hall-chambers, Bishopsgate-street Within, Jan. 28, at eleven, and Feb. 25, at twelve, Basinghall-street. Off. as. Johnson. Sols. Van Sandau and Cumming, King-street, Cheapside. Petition, Jan. 10.

THORNTON, PETER, plumber, Preston, Lancashire, Jan. 28 and Feb. 18, at twelve, Manchester Court. Off. as. Lee. Sol. Dodge, Liverpool. Petition, Jan. 12.

Gazette, Jan. 21.

BENNISON, STEPHEN, miller and corn and flour dealer, Bridlington-quay, Yorkshire, Feb. 16 and March 9, at twelve, Hull. Com. Ayrton. Off. as. Carrick. Sols. Messrs. Wood, York; and Wilson, Hull. Petition, Jan. 10.

CLAYBURN, HENRY, builder, Hulme, Manchester, Feb. 1 and March 1, at twelve, Manchester. Off. as. Pott. Sol. Hardman, Manchester. Petition, Jan. 15.

GRANT, HENRY, wine merchant, Lowther-arcade, Jan. 31, at one, March 4, at twelve, Basinghall-street. Com. Fonblanque. Off. as. Graham. Sols. Messrs. Linklaters, Sise-lane, City. Petition, Jan. 8.

GUDE, SAMUEL, innkeeper and brushmaker, Exeter, Jan. 27 and Feb. 24, at one, Exeter. Com. Bere. Off. as. Hirtzel. Sol. Terrell, Exeter. Petition, Jan. 12.

GUNNING, HENRY JAMES, surgeon and apothecary, Okehampton, Devonshire, Feb. 2, at eleven, Feb. 24, at one, Exeter. Com. Bere. Off. as. Hirtzel. Sols. Hawkes and Bragg, Okehampton; and Stogdon, Exeter. Petition, Jan. 13.

KERSHAW, THOMAS, stone quarry worker and stone merchant, Crossland, near Huddersfield, Yorkshire, Jan. 31 and Feb. 22, at twelve, Manchester. Off. as. Fraser. Sols. Dearden, Rochdale; and Potter, Manchester. Petition, Jan. 11.

PARKER, EDWARD, stationer, Cheapside, and 17, Chadwell-street, St. John-street-road, Feb. 4, at twelve, March 4, at eleven, Basinghall-street. Com. Holroyd. Off. as. Groom. Sols. Jones, Spyer, and Son, Broad-street-buildings. Petition, Jan. 20.

BANKRUPTCY ANNULLED.

Gazette, Jan. 21.

GABRIELLI, ANTONIO, and EDMOND, THOMAS, merchants, Broad-street, City, and Bombay, May 22.

Dividends.

BANKRUPT ESTATES.

Official Assignees are given, to whom apply for the Dividends.

Barnsdall, N. timber merchant, first, 10½d. Bittleston, Nottingham.—*Beach*, J. apothecary, second, 1s. Young, Leeds.—*Boyce*, W. sen. hotel keeper, first, 5s. 2d. Edwards, London.—*Canning*, C. H. draper, first, 2s. 7d. Christie, Birmingham.—*Cooke*, V. cabinet maker, first, 1s. 4d. Christie, Birmingham.—*Crook*, T. manufacturer, first, 3s. 3d. Lee, Manchester.—*Cullen*, J. grocer and tea dealer, second, 8½d. Bittleston, Nottingham.—*Higginbotham*, W. silk manufacturer, first, 2s. 6½d. Lee, Manchester.—*Hucks*, J. cooper, first, 11d. Edwards, London.—*Hunter*, R. linen draper, first, 3s. 6d. Miller, Bristol.—*Lampleigh*, T. grocer, first, 1s. 8d. Carrick, Hull.—*Long*, F. importer of foreign lace, second, 1s. 1½d. Groom, London.—*Lucas, Wilkinson*, and *Bond*, calico printers, final, 6s. Lee, Manchester.—*Meadowcroft*, W. cotton spinner, first, 10s. 5d. and as the surviving partner of J. Butterworth, first, 11s. 4½d. Lee, Manchester.—*Parker*, J. innkeeper, second, 7s. 7½d. Lee, Manchester.—*Parrett*, T. C. money scrivener, third, 2s. 6d. Carrick, Hull.—*Scott* and *Thompson*, iron founders, first, 4s. 8½d. Whitmore, London.—*Smith* and *Irvine*, merchants, first, 3½d. sep. of A. Smith. Bird, Liverpool.—*Stafford*, W. H. painter and paperhanger, first, 1s. 6d. Freeman, Sheffield.—*Stocks*, A. L. draper, first, 3s. 4d. Freeman, Leeds.—*Thomas*, J. grocer, first, 2s. 4d. 1-6th. Christie, Birmingham.

INSOLVENTS' ESTATES.

Corthorn, C. currier and leather seller, first, 6s. 3d. Apply at the County Court, Lincoln.—*Ware*, H. boot and shoe maker, 3s. 10½d. Apply at the County Court, Lincoln.

Assignments for the Benefit of Creditors.

Gazette, Jan. 11.

Evans, E. dealer in wines and spirits, Ludlow, Salop, Jan. 1. Trusts. M. Evans, innkeeper, and J. Evans, draper, both of Ludlow. Sols. G. and R. Anderson, Ludlow.—*Meader*, G. C. and *Foot*, C. wine and spirit merchants, Idol-lane, City, Dec. 11. Trusts. W. H. Mogford, wine and spirit merchant, Fenchurch-street; and S. W. Tucker, solicitor, St. Mildred's-court, Poultry.—*Price*, C. commission agent, Eglwysilan, Glamorgan, Jan. 3. Trust. W. Price, Eglwysilan. Sols. R. O. Maugham, Paris; W. Perkins, Groscade.—*Pust*, R. woolcomber and shopkeeper, Modbury, Devon, Jan. 8. Trusts. C. Trick, miller, Ashford Mills, Aveton Gifford; and H. King, butcher, Modbury. Sol. J. T. Savery, Modbury.—*Shears*, A. and *Gowland*, J. linen drapers and hosiers, under the firm of Shears and Gowland, both of Huddersfield, Yorkshire, Dec. 24. Trusts. A. Moon, staff merchant, Bradford; F. Turner, accountant, Huddersfield; and W. Gowland, butcher, Knottingley. Sols. Clough and Bantoft, Huddersfield.

Gazette, Jan. 14.

Borton, H. currier, Leamington Priors, Warwickshire, Jan. 5. Trust. T. Green, plumber, Leamington Priors. Sol. A. T. Forder, Leamington Priors.—*Colt*, W. beer brewer and maltster, North Walsham, Norfolkshire, Jan. 10. Trusts. M. J. Shepheard, Esq. and J. Barcham, gentleman, both of North Walsham. Sols. Tillett and Mendham, Norwich.—*Devenish*, M. H. stationer and printer, Southampton, Dec. 16. Trusts. J. Platch, wine merchant, and J. Bailey, builder, both of Southampton. Sol. W. H. Mackey, Southampton.—*James*, E. druggist, Lampeter, Cardiganshire, Dec. 16. Trusts. T. J. Hughes, Llwyngroes, Llanwenon, surgeon, W. Rees, Velindre, Pencarreg, and D. Morgan, gentleman, Lampeter. Sol. P. Vaughan, Lampeter.—*Kicks*, G. carpenter and joiner, Soham, Cambridgeshire, Dec. 21. Trusts. Rev. W. Clack, Unitarian minister, and C. Mainprice, auctioneer, both of Soham. Sol. T. Hustwick, Soham.—*Meader*, G. C. and *Foot*, C. wine and spirit merchants, Idol-lane, City, Dec. 11. Trusts. W. H. Mogford, wine merchant, Fenchurch-street, and S. W. Tucker, solicitor, Saint Mildred's-court, Poultry. Sols. Phillips and Sons, Abchurch-lane.—*Taylor*, E. confectioner, of Cooper-street and Princess-street, Manchester, Dec. 18. Trust. E. Moore, builder, Greenheys, near Manchester. Sol. C. Heywood, Manchester.—*Traylen*, A. farmer, Gamlingay, Cambridgeshire, Dec. 23. Trust. M. Traylen, spinster, Whittlesey. Isle of Ely. Sols. Bullivant and Whitlesey, Whittlesey.—*Wright*, A. carpenter and builder, Poland-street, Oxford-street, Dec. 14. Trusts. E. Shums, timber merchant, Pimlico, and O. Wood, cement merchant, Market-wharf, Regent's Park-basin. Sol. J. F. Reed, New-inn, Strand.

Partnerships Dissolved.

Gazette Jan. 11.

Allnutt, J. and J. jun. and *Arbouin*, J. wine and spirit merchants, Mark-la. Jan. 1, as regards *Arbouin*. Debts paid by remaining partners.—*Bembridge*, E. and *Haynes*, W. B. G. saddlers' ironmongers, Birmingham. Dec. 31. Debts paid by Bembridge.—*Brooke*, T. S. and *Greaves*, J. coalmasters, Dewsbury, Jan. 1, 1849.—*Bushby*, H. G. and *Jennings*, G. woollen and linen drapers, Moreton-in-Marsh, Jan. 8. Debts paid by Jennings.—*Carver*, J. and G. and *Brierley*, W. card setting and general machine makers and iron founders, Cleckheaton, Jan. 6.—*Cooper*, T. and *Howlett*, B. attorneys, solicitors, and conveyancers, Congleton, Jan. 4.—*Cottle*, E. and *Doogood*, T. plumbers, glaziers, and painters, Cheltenham, Dec. 31. Debts paid by Doogood.—*Dakin*, E. and *Waterhouse*, A. tea dealers and merchants, St. Paul's Churchyd. Dec. 31.—*Edge*, T. and F. *Millington*, W. and *Laing*, W. (trustees and executors of Thomas Edge, deceased) and *Hill*, J. and *Sandland*, W. jewellers, Hatton-garden and Birmingham, Jan. 6. Debts paid by Hill and Sandland.—*Eglington*, R. *Dearie*, C. *Hunter*, R. H. *McEwen*, H. and *Eglington*, R. L. Calcutta, as regards R. Eglington and Hunter. Dec. 31, 1851.—*Fairbrother*, W. and *Tanner*, R. linen drapers, Banbury, Jan. 1. Debts paid by Fairbrother.—*Foster*, F. and *Mann*, W. T. brokers, Liverpool, Dec. 31. Debts by Foster.—*Foster*, S. and B. drapers, Nottingham, Jan. 7. Debts paid by S. Foster.—*Foster*, T. and S. and *Furniss*, M. lace manufacturers and lace merchants, Mansfield, Nottingham, as regards Furniss, Jan. 1. Debts paid by remaining partners.—*Gray*, E. and J. common brewers and maltsters, Tanfield, Jan. 1. Debts paid by J. Gray.—*Griffiths*, E. L. and *Blake*, F. attorneys, solicitors, and conveyancers, Newport and Cowes, Dec. 31.—*Hamilton*, J. and *Fowles*, R. coal fitters, ship brokers, and commission agents, Sunderland, Jan. 6. Debts paid by Hamilton.—*Hinchliffe*, A. *Wimpenny*, S. *Woodhead*, J. *Clayton*, E. *Dyson*, J. *McClellan*, A. *Mellor*, A. *Riley*, W. *Brearley*, S. *Bocock*, T. *Child*, W. *Ellis*, J. *Hale*, M. *Robinson*, B. *Ward*, S. *Shaw*, S. and *Robinson*, G. proprietors of *The Huddersfield and Holmfirth Examiner* newspaper, Huddersfield, Jan. 31. Debts paid by Woodhead.—*Hooper*, W., H., and W. W. limeburners, Exeter, Dec. 31.—*Hughes*, S. and F. and *Hales*, J. dealers in earthenware, china, and glass, Dublin, Jan. 1.—*Hutchingson*, E. and *Needham*, T. coal merchants, Liverpool, Dec. 31. Debts paid by Hutchingson.—*Jeffreys*, L. *Miles*, A. and J. H. Greenville-street, Brunswick-square, Sept. 30. Debts paid by J. H. Miles.—*Johnson*, W. and *Hardy*, J. manufacturing chemists, Church Bridge, Jan. 8.—*Kay*, J. and T. grocers, tea-dealers, and ship chandlers, Sunderland, Jan. 5. Debts paid by J. Kay.—*Kilner*, J. H. stuff manufacturer, Hipperholme, Halifax, and *Barker*, J. card cutter, Thornton, Bradford, Jan. 6.—*Kirk*, J. and *Shuttleswood*, F. hosiers and coal dealers, Sileby, Dec. 28.—*Lees*, A. and *Barnes*, S. machine makers and iron founders, Soho, Oldham, Jan. 1. Debts paid by Lees.—*Mumford*, B. and J. mining share brokers, Adams-court, Old Broad-street, Jan. 8.—*Neame*, A. and *Green*, J. tea dealers and grocers, Canterbury, Jan. 1.—*Popplewell*, R. J. and *Lea*, J. wholesale clothiers, Union-court, Old Broad-street, Jan. 7. Debts paid by Popplewell.—*Syddall*, S. *Lomax*, J. and *Rushton*, W. spindle and fly makers, Farnworth, Jan. 8. Debts paid by Syddall and Lomax.—*Travies*, G. and *Armitage*, W. S. tailors and woollen drapers, Barnsley, Jan. 7.—*Tucker*, J., H., and W. silk printers, Gresham-street, as regards J. Tucker, Dec. 27.—*Wilkinson*, J. S. *Clayton*, T. *Clayton*, M. widow, *Shuttleworth*, J. *Slack*, J. *Temperton*, T. *Wise*, T. sen. and T. jun. and *Sharpe*, J. owners and proprietors of three steam packets, called the "Wave," the "Eclipse," and the "Commerce," plying between Lincoln and Boston, for passengers and goods, and also carriers, Jan. 3. Debts paid by Wilkinson.—*Williams*, E. O. and J. coal and coke merchants, Luton and Houghton Regis, Jan. 31. Debts paid by John Williams.

THE FOLLOWING NEW PRACTICAL WORKS FOR THE OFFICE ARE JUST ISSUED AT THE LAW TIMES OFFICE.

THE NEW RULES and ORDERS, the NEW TABLE of FEES, and the NEW RULES relating to the ADMISSION of ATTORNEYS and the EXAMINATION of ARTICLED CLERKS, with Practical Notes, Forms, and Index, by E. MALCOLM KERR, Barrister-at-Law. Price 4s. (This may be had also as a *Supplement* to "Kerr's Common Law Procedure Act," having marginal references to the pages of that work.)

TUDOR'S NEW CHANCERY PRACTICE, with all the Rules, Orders, Costs, Decisions, &c. to this time, with Practical Notes, Forms, and Index, the Orders being placed with the Sections of the Statute to which they relate. By OWEN TUDOR, Esq. Barrister-at-Law. Price 8s. bds.

THE NEW BANKRUPTCY ORDERS, with the BANKRUPTCY CONSOLIDATION ACT, and Notes of all the Cases decided on its construction. By C. J. B. HERTSLET, Esq., Barrister-at-Law. Price 7s. 6d. cloth.

THE PRACTICAL STATUTES of 1849, containing all those ever required in Practice, omitting the Repealed and the Scotch, Irish, Colonial, and Sessional Statutes, with Notes of all the Cases decided on their construction; thus presenting the whole Law *as it is*, in a compact form for ready use, and with a copious Index. By C. J. B. HERTSLET, Esq. Barrister-at-Law. Price 10s. 6d. cloth. (This is in continuation of the Practical Statutes of 1850, 1851, and 1852, which may still be had.)

COX'S CRIMINAL LAW CASES, Part I. of Vol. VI. with a copious collection of Precedents of Indictments. This part contains Forms of Indictments at Quarter Sessions under the New Law. By J. E. DAVIES, Esq., Barrister-at-Law. Price 5s. 6d.

THE LAW TIMES SHEET ALMANAC for 1853, comprising, in addition to the regular information of an Almanac, Time Tables of all the Courts under the New Practice, Stamp and Tax Tables, Table for ready Calculation of Income Tax, and the other Information required for immediate reference in the Office. Price only 1s. 1 or stamped for post, 1s3d. A copy sent to any person inclosing thirteen postage stamps to the office.

THE LAWYER'S POCKET-BOOK for 1853, containing the Almanack and Time of the Moon's Rising and Setting for the last as well as the present Year, a complete Table of Stamps, Time Tables in Common Law, Equity and Bankruptcy, and much other matter required for Reference in Courts. Price only 6d.

On Tuesday.

THE SECOND EDITION of KERR'S COMMON LAW PROCEDURE ACT, containing all the New Rules and Orders, the New Table of Fees, and Cases decided to the end of Michaelmas Term. Price 15s. cloth.

On Thursday,

THE LAW DIGEST for the Half-Year ending January 1. By E. WISE and D. T. EVANS, Esqrs., Barristers-at-Law. Price 8s. 6d. bds.; 9s. cloth.

[This work gives every case, wherever reported, during the half-year, arranged so that the practitioner may find in a moment what is the latest law on any subject on which he may be engaged.

To Readers and Correspondents.

"S. S. N."—*The officers of the chapel might lawfully remove by force, if necessary, a person actually disturbing the congregation or the company.*

"C. E.'s" *query is one of pure* law, *not of* practice; *and it is the latter alone that can be admitted here, for obvious reasons.*

"PHILO;" "VIVIAN."—*There is the same objection to these queries. They are purely points of* law.

"J. S." (Cowbridge.) *We know nothing of the case named; the letter has been sent to the reporter of the court, and if it be a point of any importance it will doubtless be reported. But, in the selection of reports, as all cannot possibly appear at once, precedence is always given to those of most immediate practical interest.*

THE NEW TABLE OF FEES AND NEW RULES.

THE issue during this week of a revised Table of Fees, and of the Rules for the Admission of Attorneys, has necessarily delayed the issue of Mr. Kerr's edition of the New Rules and Orders, to which they will now be added, making that work a complete Supplement to both editions of his *Procedure Act*.

With these additions the work will be issued on Monday, in the following forms:—

1st. *The New Rules and Orders of Hilary Term, 1853, with the New Table of Fees and the New Rules for the Admission of Attorneys, and for the Examination of Articled Clerks*, with Practical Notes and new Forms. Price 4*s*.

2nd. The same, for the use of those who already possess *Kerr's Common Law Procedure Act*, with marginal references to the first and second editions of that work, showing the sections of the statute and pages of the book to which the several new rules relate, so as to facilitate reference. Price 4*s*.; to be ordered as the *Supplement to Kerr's Procedure Act*.

3rd. The SECOND EDITION of *Kerr's Common Law Procedure Act*, containing *all* the New Rules and Orders, the New Table of Fees, and the New Rules for the Admission of Attorneys, with Index, Notes, and References. Price 14*s*. 6*d*. cloth.

THE LAW TIMES.

SATURDAY, JANUARY 29, 1853.

TO READERS.

THE unexpected issue of a new and revised Table of Fees in the Common Law Courts, and of other Orders and Rules, which it is of the first importance to our readers that they should possess immediately, has compelled us, at the last moment, not only to resort again to a double number, but to omit a very considerable quantity of reports, correspondence, legal intelligence, and the usual leading articles, which were in type.

On this occasion, however, the double number is only charged as a single one, the additional pages being presented to the reader.

VOL. XX.—No. 513.

NEW TABLE OF FEES.

WE refer the Profession to the new Table of Fees, which was issued on Wednesday last by the Judges of the Common Law Courts, and which will be found in its proper place among the Court Papers in this number. It will be seen that it effects very considerable improvements upon the former one, the Judges having, with the good feeling and good sense that distinguish them, listened to criticism and complaint, and amended the defects of the Fee Table issued at the beginning of Term.

ATTORNEYS' COSTS IN THE COUNTY COURTS.

WE cannot appeal too earnestly to the Judges who are engaged in revising the Scale of Costs to be allowed in the County Courts as between party and party, and between Attorney and Client, against any considerable curtailment of the figures that were proposed by the Committee of County Court Judges after long and anxious deliberation.

Strange as it may appear, it is strictly true, that it is *for the interest of the suitors*, at least as much as for that of the Profession, that the allowance for professional services should be sufficiently liberal; and it is in this aspect that we are desirous of presenting the case to the consideration of the Judges of the Superior Courts.

They will doubtless admit that, in litigation, the costs should fall upon the loser, except under very special circumstances. Justice demands it. If I wrongfully withhold some debt or right to which another is lawfully entitled, and resist his legal claim, it would be very unjust that I should be allowed to put upon him the costs necessarily incurred in pursuing his right. If, on the other hand, I prosecute a wrongful demand, I ought to pay the costs which I have thus wrongfully imposed upon my neighbour. Such is the practice of all civil tribunals in all parts of the civilised world—except in England—and in England of all the tribunals—except the County Courts.

Strange to say, these Courts, which were professedly established to be a boon to the community by enabling them to obtain justice cheaply and speedily, in practice have failed to do justice, because no sufficient provision was made in them for payment by the losing party of the costs to which he had wrongfully put the other party. Only a very small fee was allowed for professional assistance, however necessary, or whatever its amount. The consequence of this omission was, that suitors were compelled to pay their own costs, even though victorious. Often it was more expensive to win a suit than to lose one. The County Courts almost realised VOLTAIRE's witty saying, "I never was ruined but twice; once when I lost a law suit, and once when I gained one." In the famous case that decided the right of an attorney to charge his client for business done out of court in the preparing of a case for trial, the costs incurred were upwards of 15*l*., of which only about 2*l*. were recoverable from the other party, and the unfortunate plaintiff was compelled to pay the remainder out of his own pocket—having thus gained a loss of 7*l*. or 8*l*. by his verdict; and the triumphant defendant paid his debt and the small costs, and laughed at his victim.

It was to remedy this state of things that the clause was framed, adopted by Lord BROUGHAM, supported in the House of Lords by Lord LYNDHURST, and carried unanimously through both Houses of Parliament. The County Court Judges were directed to frame a scale of costs as between party and party, and submit it for the approval of the Judges of the Superior Courts. They have done so with much labour and consideration; but the latter object to the scale so prepared, as being too high.

Now we again entreat the Judges of the Superior Courts to bear in mind that there is for them one question only—What are the fair costs which ought to be paid to a respectable Attorney for his skill and trouble in conducting a suit to trial?—and those should be the costs allowed to be charged by him and recovered by his client as costs in the cause. Anything less than that would be unfair to the Attorney, but still more unjust to the client, because it would practically throw upon the client the costs to which he had been put by the other party, and which should always be borne by the loser. It is a great mistake to suppose that the Attorneys have the principal, or even a considerable, interest in this matter. On the contrary, it is a question of very secondary interest to them. They will not lose their costs; they will only receive them from the wrong party. If the costs cannot be recovered as between party and party in the suit, the Attorney will charge them to his client, who must pay them. It is the suitors who are really so deeply affected by the existing arrangements, and whom it most concerns that the scale which the Judges are now settling should not be so low that the Attorneys they are obliged to employ should have to make a charge upon them, instead of recovering it from the opposite party, as they do in the Superior Courts.

We trust we have now shown to the satisfaction of their Lordships that there is no solid reason for objecting to a fair and liberal scale of professional costs in the County Courts.

WHO IS HE?

WE have received the following *printed* circular from Manchester. Probably the Profession would like to know who is "the solicitor," who has made this most unprofessional *agreement* with the committee. When his name is ascertained, we shall be happy to give it the widest circulation. So much generosity should not be unknown to fame.

MANCHESTER SOCIETY OF GUARDIANS FOR THE PROTECTION OF TRADE.

DEBT COLLECTING DEPARTMENT.

28, Brazenose-street, 22nd Nov. 1852.

SIR,—I am desired by the Committee to announce to you the following new arrangements for this department, which are now in operation:

Those Members who agree to pay an extra Annual Subscription of 10*s*. 6*d*. will be entitled to have twenty debts twice applied for by the Secretary without further charge; beyond that number a small commission will be charged.

Debts not paid will, with the plaintiff's consent, be handed over to a Solicitor, with whom the Committee have arranged as follows:—For all Debts of Five Pounds and upwards, that he shall make legal application—take out summons—prepare the case—and pursue it through the County Court free of charge to the plaintiffs—he receiving only the Court fees: if under that amount (in which cases no fees are allowed by the Court), and also where the debt is paid to the plaintiff, and the debtor is excused the costs,—in these cases a charge of one shilling will be made for letter, and two shillings and sixpence for summons, as the case may be.

Where no money is recovered the Solicitor will make no charge.

Should you wish to avail yourself of the advantages of this department, please to return the annexed Circular to my office, signed by yourself.

I am, yours obediently,
SAMUEL COTTAM, Secretary.

NEW PRACTICE IN THE COURT OF CHANCERY. (*a*)

OF FILING, SETTING DOWN, AND ARGUING PLEAS.

A PLEA, after having been settled by counsel, must be engrossed on parchment and filed, having been previously sworn before the Master, a Clerk of Records and Writs, or the Clerk of Enrolments, and signed by defendant. Under the old practice it was necessary in certain cases to have a commission to take a plea; but now the practice of the court, of issuing commissions to take pleas in causes and matters pending therein, are, with respect to pleas taken *within the jurisdiction* of the Court, abolished; and they may now be filed without any further or other formality than is required in the swearing and filing of an affidavit: (15 & 16 Vict. c. 86, s. 21.)

All pleas in causes or matters in the High Court of Chancery are now to be sworn and taken in Scotland, Ireland, or the Channel Islands, or in any colony, island, plantation or place under the dominion of her Majesty in foreign parts, before any judge, court, notary public, or person lawfully authorised to administer oaths in such places, *or* before any of her Majesty's consuls or vice-consuls in any foreign parts out of her Majesty's dominions, and the judges and other officers of the Court of Chancery are to take judicial notice of the seal or signature, as the case may be, of any such court, judge, notary public, person, consul, or vice-consul (15 & 16 Vict. c. 86, s. 22); and there are penalties for falsely swearing, &c. (1b. sect. 23), or for forging the signature or official seal of any such judge, notary public, &c. (1b. sect. 24). And pleas, whether taken by commission out of the jurisdiction of the Court or otherwise, may be filed *without the oath of a messenger*; and any alteration made therein previously to the taking

(*a*) Continued from page 178.

thereof is to be authenticated according to the practice in use with respect to affidavits (sect. 25).

Whether the plaintiff in any suit in the Court commenced by bill does or does not require any answer from the defendant, or any one or more of the defendants to the bill, such defendant or defendants may, without any leave of the Court, put in a plea, answer, or demurrer, within the time allowed to the defendant for demurring alone to the bill, or within the time to be fixed by general order of the Lord Chancellor: (15 & 16 Vict. c. 86, s. 13.) By the 19th of the Orders of Aug. 7, 1852, a defendant required to answer a bill must put in his *plea*, answer, or demurrer thereto, not demurring alone, within *fourteen days* from the delivery to him or his solicitor of the copy of the interrogatories which he is required to answer; but the Court is to have full power to enlarge the time from time to time, upon application being made to the Court for that purpose.

It is, however, provided that if the Court shall grant any further time to a defendant for pleading, answering, or demurring to the bill, the plaintiff's right to move for a decree under the provisions hereinafter contained shall in the meantime be suspended: (15 & 16 Vict. c. 86, s. 13.)

Applications for time to *plead* are to be disposed of by the Master of the Rolls and the Vice Chancellors, while sitting at Chambers (15 & 16 Vict. c. 86, s. 26.)

Some pleas are not usually argued, as—1, pleas of outlawry; or 2, of a former decree; or 3, of another suit depending; because the first, being pleaded *sub sigillo*, the truth cannot be disputed, and the two others were generally under the old practice referred to a Master, and if the Master found the facts true, the bill stood instantly dismissed, unless the Court otherwise ordered: (see Mitf. Pl. 305.) It is presumed the Judge in chambers would now make the same inquiries as to those pleas as the Master formerly did.

No step can be taken in the cause until the plea has been disposed of; but the Court will expedite the hearing of a plea so that a motion for an injunction may be heard on the same day: (*Humphreys* v. *Humphreys*, 3 P. Wms. 397.) Nor where an answer is put in with a plea can exceptions be taken to the answer until the plea has been disposed of (*Darnell* v. *Reyny*, 1 Vern. 344), unless, perhaps, when the plea is merely to the relief, and the answer goes to the whole of the discovery: (*Pigot* v. *Stace*, 2 Dick. 496.) If the plaintiff's solicitor considers the plea good, he may, before the time for setting down the plea has expired, submit to the same, and obtain an order as of course to amend his bill, upon payment of 20*s.* costs.

After the plea has been set down, however, the order is made upon payment of taxed costs: (Ayck. 126.)

If the plea requires to be argued, upon the filing thereof by the defendant, either party is at liberty to set down the same for argument immediately (44th Order, May 1845.) Within *three* weeks after the filing of a plea to the whole or part of a bill, the plaintiff desiring to submit such plea to the judgment of the Court is to cause the same to be set down for argument; if he does not, such plea is to be held good to the same extent, and for the same purposes, as a plea allowed upon argument, and the plaintiff is to be held to have *submitted* thereto: (16th Order, May 1845, Art 19.)

Where a plea to the whole or part of a bill is not set down for argument within *three* weeks after the filing thereof, and the plaintiff does not within such three weeks serve an order for leave to amend the bill, or does not within such three weeks, by notice in writing, undertake to reply to the plea, the plea is to be held good to the same extent and to the same purposes, and the same costs are to be paid by the plaintiff, as in the case of a plea to the whole or part of a bill allowed upon argument; and where the plea is to the whole bill, the defendant by whom such plea was filed may, at any time after the expiration of *such three weeks*, obtain as of course an order to dismiss the bill:" (49th Order, May 1845.)

If the plaintiff neither amend the bill, undertaking to reply to the plea, nor set it down for argument, the defendant may move that he pay the costs of the plea and the suit; but it seems that such motion must be after notice, in order that the plaintiff may have an opportunity of replying to the plea (*Roberts* v. *Jones*, 7 Beav. 57); but an order for the dismissal of the bill may be obtained as of course: (49th Order, May 1845.)

The effect of the plaintiff filing a replication is to admit the validity of the plea, if true.

Upon the argument of a plea it may be either allowed simply, or the benefit of it may be saved to the hearing, or it may be ordered to stand for an answer. The effect of such different determinations will be now considered.

OF ALLOWING PLEAS.

If upon argument of a plea it is allowed, the effect of the decision is that it will be considered as a bar to so much of the bill as it covers. The effect of the plaintiff submitting to it without argument is the same; but in either case, whether the Court has decided or the plaintiff has admitted the plea to be good in form and substance, if the plaintiff thinks it untrue in point of fact, he may take issue upon it (Mitf. Pl. 301) by filing a replication in the manner which will be hereafter pointed out. Upon the issue thus taken the defendant must prove the facts suggested by the plea (*Ord* v. *Huddleston*, 2 Dick. 510); and if he fail in doing so, so that at the hearing of the cause the plea is held to be no bar, if it extend to discovery sought by the bill, the plaintiff will not lose the benefit of that discovery, as the Court will order the defendant to be examined on interrogatories: (Mitf. Pl. 302.)

If the defendant prove the truth of the plea, the suit, so far as it extends, is barred, even though the plea is not good in point of form or substance: (*Wichalse* v. *Short*, 3 Bro. P. C. 558.) Thus, where a person put in the plea of a purchase for valuable consideration, but omitted to deny notice of the plaintiff's title, it was held that the plea had been admitted by the replication to be good, and that, the fact of notice not being put in issue, the defendant, upon proof of the truth of the plea, was entitled, although it was irregular to have the bill dismissed: (*Harris* v. *Ingledew*, 3 P. Wms. 94, 95.)

It should be here mentioned that a replication should not be filed to a plea of the pendency of a former suit for the same matter. The proper course in such a case under the old practice was to obtain a reference of the plea to the Master (*Jones* v. *Segueira*, 1 Ph. 82); and it is presumed that under the new system the question would be disposed of at chambers.

Where a plea is allowed, it is considered as a full answer, and an injunction obtained, till answer, will be dissolved upon application, as a matter of course: (*Philips* v. *Langhorn*, 1 Dick. 148.)

With regard to *costs*, "where a plea to the whole or part of a bill is allowed, upon argument the plaintiff, unless he undertakes to reply to the plea, or the Court orders to the contrary, is to pay to the party by whom the plea is filed the costs of the plea, and if the plea be to the whole bill, the costs of the suit also; and in such last-mentioned case the order allowing the plea is to direct the dismissal of the bill:" (48th Order, May 1845.)

OF SAVING THE BENEFIT OF A PLEA TO THE HEARING.

The Court occasionally, upon argument by order, saves the benefit of a plea to the hearing, when it is considered that so far as appears to the Court it may be a defence, but that there may be matter disclosed in evidence which would avoid it, supposing the matter pleaded to be strictly true; and the Court, therefore, will not preclude the question: (Mitf. Pl. 303.) In such case the part of the bill covered by the plea will not require an answer: (For. Rom. 64.) With regard to *costs*, unless otherwise provided for, they must abide the result of the hearing: (Dan. Ch. Pr. 664.)

OF ORDERING A PLEA TO STAND FOR AN ANSWER.

Where a plea is ordered to stand for an answer, it is merely determined that it contains matter which may be a defence, or part of a defence, or it has been informally offered by way of plea, or it has not been properly supported by answer, so that the truth of it is doubtful: (Mitf. Pl. 665.) It will then be allowed to be a sufficient answer to so much of the bill as it covers (*Coke* v. *Wilcocks*, Mos. 73; 3 Atk. 815), unless by the order liberty is given to except (*Maitland* v. *Wilson*, 3 Atk. 814; *Dryden* v. *Robinson*, 2 S. & S. 529); but the exceptions must be taken within six weeks, otherwise the answer will be deemed sufficient: (16th Order, Art. 22, May 1845.) Liberty to except may be qualified, so as to protect the defendant from any particular discovery which he ought not to be compelled to make: (*King* v. *Holcombe*, 4 Bro. C. C. 439; *Bayley* v. *Adams*, 6 Ves. 586.) If, however, a plea is accompanied by an answer, and is ordered to stand for an answer, *without* liberty to except, the plaintiff may yet except to the answer, as insufficient to the parts of the answer not covered by the plea: (*Coke* v. *Wilcocks*, Mos. 73.) If a plea accompanied by an answer is allowed, the answer may be read at the hearing of the cause to counterprove the plea: (Mitf. Pl. 304.)

The plaintiff is entitled to the usual costs of overruling a plea, where a plea is ordered to stand for an answer: (*Howling* v. *Butler*, 2 Madd. 245.)

OF OVERRULING PLEAS.

If the Court, on argument, thinks the plea cannot under any circumstances be made use of as a defence, it is simply overruled (Dan. Ch. Pr. 666); and the defendant must make a new defence, either by a second plea, which however must not be of the same kind as the first (*Freeland* v. *Johnson*, 2 Anst. 407), or by putting in an answer, in which he may insist upon the same matter as was contained in his plea: (*Suffolk* v. *Green*, 1 Atk. 450; 1 Cox, 228.)

On a plea being overruled, the plaintiff may proceed to have his costs taxed, and issue process for the recovery of them: (Dan. Ch. Pr. 666).

OF AMENDING PLEAS AND PLEADING DE NOVO.

The Court will in some cases, where it is apparent that there is a substantial defence, and there has been evidently a slip or mistake, allow a plea to be amended: (Beames on Pleas, 321; and see *Pope* v. *Bish*, 1 Anst. 59; *Merewether* v. *Mellish*, 13 Ves. 437; *Waters* v. *Mayhew*, 1 S. & S. 220.) And where an amendment would be difficult or impossible, leave to withdraw it and plead *de novo* will sometimes be given: (*Nobkissen* v. *Hastings*, 2 Ves. jun. 84; 4 Bro. C. C. 253; *Watkins* v. *Stone*, 2 S. & S. 560.) It seems a second amendment will not be permitted: (1 Ves. jun. 372.) Previous to leave to amend being given, the Court will require to be informed of the precise nature of the proposed amendment, and how the slip or mistake occurred; and this must be shown to the Court, not upon the argument (*Nabob of Arcot* v. *The East India Company*, 3 Bro. C. C. 292, 300; 1 Ves. jun. 371), but on a subsequent motion, supported by affidavit: (*Wood* v. *Strickland*, 2 V. & B. 150, 157; *Jackson* v. *Rowe*, 4 Russ. 514).

Where an amended plea is put in and allowed, the defendant is not entitled to the costs of correcting his own mistake; but is entitled to the costs he would have had if the plea which was allowed had been the plea which was first filed: (*Clayton* v. *Meadows*, 2 Hare, 26.)

DISCLAIMER.

By a disclaimer, which is put in upon oath, the defendant may deny that he has any right or title to the matter in demand by the plaintiff's bill, or any part of it. He could, as we have before seen, *demur*, if his want of interest appeared on the face of the bill; but if it be alleged that he has an interest, and he wishes to avoid putting in a full answer, if he does not put in a plea, he must disclaim: (Dan. Ch. Pr. 288, 670; *Plummer* v. *May*, 1 Ves. 426.)

A disclaimer cannot, however, often be put in alone; for instance, where a defendant may have had an interest which he has parted with, the plaintiff may require an answer sufficient to ascertain whether that is the fact or not; and if the defendant has had an interest which he has parted with, an answer may also be necessary to enable the plaintiff to make the proper party, instead of the defendant disclaiming: (Mitf. Pl. 318.) So the defendant must answer as to fraud alleged against him (*Bulkeley* v. *Dunbar*, 1 Anst. 37); and as to facts by which the plaintiff endeavours to charge him with the costs of the cause: (9 Sim. 103; *Graham* v. *Coape*, 3 Myl. & Cr. 638.) If he puts in a disclaimer inconsistent with his answer, the matter will be taken most strongly against the defendant upon the disclaimer (Mitf. Pl. 320); and upon an application to the Court, on making out a proper case by affidavit, he will be allowed to withdraw a disclaimer which he has put in through ignorance or mistake: (*Seton* v. *Slade*, 7 Ves. 265, 267; *Sidden* v. *Lediard*, 1 Russ. & My. 110.)

Exceptions for insufficiency (the nature and form of which will be noticed when answers are treated of) may be taken to a disclaimer when an answer ought to have been put in, or to a disclaimer and answer: (*Bulkeley* v. *Dunbar*, 1 Anstr. 37; *Glassington* v. *Thwaites*, 2 Russ. 458.)

Where the defendant disclaims, the plaintiff ought not to file a replication: (*Williams* v. *Longfellow*, 3 Atk. 582.)

Where a disclaimer has been filed, the *plaintiff* ought either to dismiss the bill as against the

party disclaiming with costs, or amend the bill; or set down the cause upon the disclaimer and answer, if he thinks he is entitled to costs (*Cash* v. *Belcher*, 1 Hare, 313); and it seems that where the person disclaiming has been made a party vexatiously, he may apply for his costs by motion (Dan. Ch. Pr. 672); but where the suit has been occasioned by the improper claim of the party who afterwards disclaimed, he will have to pay the costs of the suit: (*Deacon* v. *Deacon*, 7 Sim. 378.)

THE MAGISTRATE,
AND PAROCHIAL AND MUNICIPAL LAWYER.

Summary.

A POOR-RATE was made under a local Act which only gave a power to commit for nonpayment where the goods had been removed to evade payment, and no sufficient distress can be found. Have the justices power to commit under the General Act, 13 & 14 Vict. c. 14, in default of sufficient distress, although it was not suggested that there had been any fraudulent removal of the goods? The Q.B. have held, in *Reg.* v. *The Justices of New Sarum*, 20 L. T. Rep. 207, that they might do so, the local Act not limiting the powers given to the justices by the general Act.

An indictment for libel was tried at the Spring Assizes, 1852. After the following Summer Assizes, the costs were taxed under the provisions of the 6 & 7 Vict. c. 96, s. 9. In Hilary Term, 1853, an application was made to ERLE, J, one of the judges of oyer and terminer, before whom it was tried, to review the taxation; but ERLE, J. held that he had no jurisdiction. He said, "The two judges of oyer and terminer would have had jurisdiction down to the time of a new commission appointing their successors. In this case a fresh commission has issued for the last Summer Assizes, and I have, therefore, no further power in this matter: (*Reg.* v. *Newhouse*, 20 L. T. Rep. 212.)

CALLING OUT THE MILITIA.—We understand that it is the intention of the Government to call out the whole of the militia of England, for one lunar month's training, in April or May next. The force is to be out all over the country at the same time, with the object of checking the double, and even triple enlistments, which it is suspected have taken place. The appointment of an adjutant-general of militia is only postponed till the force is raised. Lord Palmerston so perfectly understands the working of the militia that since his accession to office matters have been adjusted which needed the master's hand. All now promises well.—*Naval and Military Gazette.*

THE CONVICT KIRWAN.—Mr. John Wynne, the late Under-Secretary, states, under his hand, that Lord Eglintoun was induced to commute the capital sentence pronounced upon this wretched criminal at the suggestion of the two judges who tried him, the late Lord Chancellor concurring in the recommendation. No other person or party had anything to say in the affair.

REAL PROPERTY LAWYER AND CONVEYANCER.

Summary.

IN the *Law of Mortgage* there are some decisions which it is important for the practitioner to notice. We briefly state the substance of them. In *Bycroft* v. *Sibel*, 20 L. T. Rep. 197, it was held, that a mortgagee is not obliged to produce the title-deeds of property mortgaged to him, because he could not be obliged to show his title, and that the rule extends also to drafts and copies of deeds. In the *Practice of Foreclosure*, under the new Equity Reform Act, there are two decisions. In *Goldsmid* v. *Stonehewer*, 20 L. T. Rep. 202, an estate was twice mortgaged. The first mortgagee filed a claim for foreclosure. The second mortgagee (a defendant) was trustee for parties under a marriage settlement. The mortgagor was tenant for life under the settlement; and the children were infants. It was held, that under rule 9 and section 42 the infant *cestui que trusts* were sufficiently represented by the trustee, but that the adults must be parties. But where some of the shares of the children had been assigned to trustees, they were *not* necessary parties. In *Hanman* v. *Riley*, 20 L. T. Rep. 203, a claim was filed by a mortgagee of a term against the mortgagor's executors and the devisees in trust of the mortgaged premises, and a sale prayed for instead of foreclosure; and that under rule 9 the Court would order that the *cestui que trusts* need not be further represented. *The Court so ordered;* and the decree directed an account to be taken of the debt due on the mortgage, then a general account of the personal estate and debts, and, if deficient, an account of real estate and incumbrances; and that after the report the Court would give plaintiff the benefit of his security, and such right as he might have against the general estate. In *Smith* v. *Robinson*, 20 L. T. Rep. 204, where a mortgagor had appeared to a suit instituted against him for foreclosure, but did not appear at the hearing, the Court refused to direct an immediate sale of the property.

In *Roberts* v. *Collett*, 20 L. T. Rep. 205, where the share of a married woman in some property was not ascertained, but would certainly be less than 300*l.*, the Court ordered, without an examination of the wife, that it should be paid to the husband.

At Common Law it has been decided that, in a declaration in debt for rent, the statement of the time when it became due is material, and must be proved, though laid under a *videlicit;* and therefore, where the declaration stated that, on a certain day, the rent for three quarters of a year then elapsed became due, it was held, that plaintiff could only recover the three quarters next preceding the day mentioned, although no particulars of demand had been delivered, and the day was stated under a *videlicit:* (*Johnson* v. *Gibson*, 20 L. T. Rep. 206.)

In *Ingram* v. *Knowles*, 20 L. T. Rep. 208, it was held by the C. P. that the fact of a tenancy may be proved by parol evidence, although there is a written agreement, but *not the duration* of the tenancy; and in the same *Law of Landlord and Tenant* it was held, in *Blyth* v. *Dennett*, 20 L. T. Rep. 209, that a mere demand for rent accrued due after notice to quit, without acceptance of such rent, is *not a waiver* of the notice to quit.

TO THE EDITOR OF THE LAW TIMES.

Birmingham, 25th Jan. 1853.

SIR,—In the last LAW TIMES, there is a report of a case headed *Powell* v. *Spencer*. This is a mistake; it should have been *Spencer* v. *Powell*, our Mr. Spencer being the *plaintiff*.

We beg herewith to send you a report of a case decided (*Re Burt*) bearing upon a point as to the power of trustees to devise such estates. It seems to be at variance with a decision reported in your last number, where A. and B. were chosen trustees. A. declined to act, but did not formally renounce, and, after having survived B. bequeathed his trust estates to C. and D., who acted under his own (A.'s) will, but submitted that they were not committed to the trusts of the testator of A. B.; the court holding that they were so committed.

Indeed, our case seems to go further as to the effect of a devise of trust estates than any reported one, for it places the trust *in mitibus* until the Court of Chancery comes to its assistance.

We are, Sir, yours, &c.

SPENCER and SARGANT.

Re BURT.

Power of trustee to bequeath trust estates.

Burt bequeathed to Richards and Potter, their executors and administrators (not their assigns), personal property upon certain trusts, and he appointed them his executors.

Both proved Burt's will.

Potter, the survivor, bequeathed his first estates to Eborall and Watson, and he appointed them, jointly with his wife, his executors.

All three proved Potter's will.

Part of Burt's trust estates consisted of certain Consols, and Eborall and Watson petitioned that the dividends might be paid to them as Burt's trustees.

Sargant, for the petition.

KINDERSLEY, V. C.—I do not see that the present petitioners are the trustees of Burt's will. Potter had no authority to bequeath the execution of the trust. He could only pass the legal estate.

Sargant then applied for leave to amend, by joining Elizabeth Potter's name to those of the present petitioners, thus making the petition that of the executors of Potter. If Potter had not attempted to bequeath this trust, his executors would unquestionably have been competent trustees.

The VICE-CHANCELLOR.—But Potter has declared that those executors shall not be trustees. By the bequest he has taken away the legal estate from those persons who ought otherwise to have been the trustees.

Sargant.—By amending the petition, and making Eborall, Watson, and Elizabeth Potter all petitioners, the petition will be that of both classes—that of the legatees of the legal estate, and also that of Potter's executors. Is not your Honour of opinion that these two classes together can exercise the trust?

The VICE-CHANCELLOR.—No. You may amend by making this petition for the appointment of new trustees, with a further prayer for the payment of the dividends to such new trustees.

Queries on Points of Practice.

PROGRESSIVE DUTY.

SIR,—In the new Stamp Act, under the head Progressive Duty, are the following words:—"Where any deed or instrument of any description whatever chargeable with any stamp duty, together with any schedule, &c. endorsed thereon shall contain 2160 words or upwards, then for every entire quantity of 1080 words contained therein *over and above the first* 1080 words, there shall be charged the further progressive duty," &c. I have a draft which contains about forty folios, and it is contended that three skins will be required under the above clause. It has always been the practice with me and other solicitors in such cases only to use two skins. It will be obliging if any of your experienced readers will give their opinion of the construction of this clause.

T. H.

Answers to Queries.

IT appears to me that the case of *King* v. *Mallings*, 20 L. T. Rep. 178, answers the question of T. B. C. in your number of the 22nd instant. H.

Liverpool, 26th Jan. 1853.

SALE OF CHAPTER PROPERTY.

THE statute 14 & 15 Vict. c. 104, gives power to any ecclesiastical corporation to sell to any lessee under any lease granted by such corporation, the reversion, estate and interest of such corporation in all or any of the lands comprised in such lease. A. T. STEAVENSON.

Darlington, 23rd Jan. 1853.

JOINT-STOCK COMPANIES' LAW JOURNAL.

Summary.

IN the judgment of the Lords Justices, in the case of *Ex parte Wood*, 20 L. T. Rep. 196, the Lord Justice K. Bruce drew this distinction between the powers of ordinary partners and the powers of directors of companies to waive or vary the terms of the deed. He said, "In ordinary partnerships, any clause of a deed may be departed from or waived, where two, or three, or four partners alone are interested; and thus it often happens, on winding up such concerns, a different course is pursued from that pointed out by the deed. The same course, attended with the same results, is not absolutely impossible in cases of larger companies, called joint-stock companies, in which, as it is impossible for every proprietor to interfere directly in the management of the business, it is delegated to a chosen body of directors. There is a difference in acting in such case, because agents (as the directors are) must carry their instructions exactly into effect and cannot depart from their deed." This should be noted by Directors and their Solicitors.

It has been decided by the Court of Ex. that the mere payment of deposit upon shares does not constitute the payer a member of the company, so as to be liable to calls, until he has executed the deed of settlement. Referring to the Companies' Clauses Consolidation Act, MARTIN, B. said,—"I have very little doubt that it was intended that a contract of some sort should be signed, and the jury are not to draw an inference, from the mere payment of a deposit, that the person thereby intended to bind himself as a subscriber:" (*The Dublin &c. Railway Company* v. *Pidcock*, 20 L. T. Rep. 210.)

WINDING-UP.

WINDING-UP cases are happily becoming rare; that fearful litigation is fast drawing to a close, the costs being found in almost every instance to exceed the estate divided, and even the debts proved. Still, a few questions as to the liability of contributories linger in the reports. Last week presented two. *Ex parte Wood*, 20 L. T. Rep. 196, was a point as to the liability of a legatee of shares, where it appeared that the executor had not assented to the legacy, and the directors had not approved of the legatee as a proprietor, as was required by the deed of settlement. It was held that the legatee was *not* a contributory, and that the executor *was* such. In *Ex parte Meyer*, 20 L. T. Rep. 197, it appeared that the company had been projected in 1836, and a prospectus issued. It was established in 1837, but on a plan essentially different from the original one. A. took ten shares in the original company, and paid his deposit, but did not sign the deed. He took no shares in the altered company, except that he agreed to have all the deposits he had paid considered as having been paid upon one share, and he paid up the balance due on that share and the other nine shares were cancelled. This was done by a resolution of the Board in 1838, which was passed at one meeting and confirmed at the following. A.'s name was placed by the master on the list of contributories in respect of the nine shares, on the ground that the Board had not power to cancel them. But now, upon appeal, it

was held that he was not liable in respect of the nine shares, but only in respect of the one share, A. not having done any act to make himself a shareholder in the new company.

RAILWAY AND OTHER BILLS ON STANDING ORDERS.

On Tuesday, Mr. Smith and Mr. May, the barristers appointed by the House of Commons to inquire into compliance with the standing orders, in the case of railway and other bills in session 1853, met for the first time at eleven o'clock, in Committee Rooms, Nos. 15 and 16. The various parliamentary agents, engineers, solicitors, and other parties interested, were in attendance, and the standing orders were declared to be complied with in the following cases:—

Woodford Railway.—For power to incorporate a company to make a line from the East and West India Docks and Birmingham Junction Railway, at Hackney, to Woodford.

East and West India Docks and Birmingham Junction Railway.—For consolidation, dissolution, and re-incorporation of company under a new name, power to construct new works and raise additional capital, and to convert debentures into a perpetual preference stock.

Bangor and Carnarvon Railway.—For power to sell or lease to the Chester and Holyhead Railway, and erect hotel at Bangor.

Londonderry, Coleraine, and Belfast Junction.—Construction of line from Coleraine to Castle Dawson, with branch to Randalstown.

Eastern Counties Railway.—Line from Loughton to Woodford.

Crystal Palace Company.—For incorporation and establishment.

Her Majesty's Theatre Association.—For incorporation of company and purchase of the lease of Her Majesty's Theatre.

Great Extramural Cemetery Association.

THE LAWYER.

Summary.

Equity Practice.—Again we have to note a number of points decided upon the new practice. In *Lowes* v. *Lowes*, 20 L. T. Rep. 196, the Lords Justices reversed the decision of V. C. Stuart in a case of an administration suit, on the death of the sole plaintiff, and, under sect. 52, made an order on behalf of a person not a party to the suit, but found a creditor by the Master's Report. In *Brooks* v. *Levey*, 20 L. T. Rep. 200, V. C. Kindersley held the Act to be *retrospective* in its provision (s. 22); that pleas, &c. by persons resident in the colonies may be taken before our Consuls, Justices, &c. Where plaintiff had obtained an order for service of copy of bill on defendants out of the jurisdiction, and a time was fixed for appearance, the Court, in *Chatfield* v. *Berchtolott*, 20 L. T. Rep. 204, ordered the indorsement on the bill to be altered so as to correspond with the time mentioned in the order. Where a case was about to be brought before the Court upon motion for a decretal order, it was held not to be necessary to file a replication pursuant to the 36th sect. of c. 86, and order 28; but otherwise where the motion has been made and failed: (*Duffield* v. *Sturgis*, 20 L. T. Rep. 205.)

Where the sole surviving trustee of a fund had become imbecile, on a bill filed by parties interested, the Court refused to appoint a nephew, who acted as family solicitor, guardian *ad litem*, to put in the answer. The M. R. said, "He could find no precedent for making a solicitor guardian *ad litem* to a lunatic defendant: (*Patrick* v. *Andrews*, 20 L. T. Rep. 197.) In *Penny* v. *Cooke*, 20 L. T. Rep. 200, V. C. Kindersley refused a motion to produce documents not in the absolute possession of the defendant. "If," he said, "they are in the possession or control of other persons, I cannot order them to be produced." It seems that under the new practice, witnesses *de bene esse* are to be examined like other witnesses, and it is no sufficient reason for departing from this practice that the evidence is not to be published: (*Cook* v. *Hall*, 20 L. T. Rep. 202.)

In *Warwick* v. *Cox*, 20 L. T. Rep. 204, where a bill had been filed to which executors and trustees were parties, and a compromise was proposed, the Court refused to permit the bill to be dismissed until satisfied that the arrangement was such as executors or trustees could consent to. But such a bill might be dismissed simply by consent.

Where some depositions had been taken in the handwriting of the Examiner, and signed by the witness but not by the Examiner, who died before all the witnesses had been examined, the Court ordered the depositions to be received without his signature: (*Bryson* v. *The Warwick, &c. Canal Company*, 20 L. T. Rep. 205.)

In *Somerville* v. *Jamieson*, 20 L. T. Rep. 205, where the usual papers had not been left with the Court, the plaintiff's solicitor was ordered *personally* to pay to defendant the costs of the day.

Common Law.—In the new practice as to the *inspection of documents*, there is a case to be noted. A Judge in Chambers had made an order on defendant to allow plaintiff to inspect a bill of costs and letter stated to have been sent by plaintiff to defendant, but defendant swore that he did not recollect ever receiving them; that he could find no trace of them, and that it was impossible for him to comply with the order if made. The Court, nevertheless, refused to rescind the order. "That," said Campbell, C. J. "would be an answer to an attachment for disobeying the order:" (*Powell* v. *Spencer*, 20 L. T. Rep. 207.)

The Judges have made a rule with respect to the time for issuing executions after verdict in term. They are not to issue within fourteen days as a general rule, but subject to exceptions in special circumstances, such as defendant making away with his goods, and so on: (Bail Court, 20 L. T. Rep. 212.)

In *Theobald* v. *Cotterell*, 20 L. T. Rep. 212, it was stated by Erle, J. at Nisi Prius, that "if writs are lodged with the Sheriff for execution they are entitled to priority over writs subsequently deposited with him, unless such prior writs have been kept unexecuted by fraudulent collusion."

In the *Law of Attorneys* there is a very important case to be noted by the practitioner. In *Cook* v. *Gillard*, 20 L. T. Rep. 205, where a bill of costs contained items for business done in one of the Superior Courts, but there was no information as to which Court it was, and defendant did not show at the trial that any further information was practically wanted for the purpose of taxation, it was held to *be sufficient* under sect. 37 of the Attorneys Act. The meaning of the statute was thus stated in the judgment. "The defendant who undertakes to prove that the bill is not a *bonâ fide* compliance with the Act cannot found an objection upon the want of information in the bill, if it appears that he is already in possession of that information. It seems to us probable that the Legislature changed the law relating to attorneys bills from having perceived that a clerical error or an accidental oversight often worked the forfeiture of the remuneration due for many years of professional services, and therefore meant, while it secured to the client a right to reasonable information respecting the bill before an action should be brought upon it, at the same time to give the attorney security that the delivery of a bill, intending to give and giving all requisite information, should be a compliance with the Act, unless the client could show that information which was really wanted, was withheld."

Where, in an action of debt defendant called on the attorney of a third party to produce a deed of assignment from him (defendant) and his partner to A. for the purpose of showing that at the date of this deed the partnership, and therefore the liability of him (defendant) had ceased, the attorney refused as being the title deed of his client, and secondary evidence of its contents was rejected. It was held now that the attorney was justified in his refusal to produce it, and that the Judge was right in not looking at the deed to ascertain whether it was or was not a title deed: (*Volant* v. *Soyer*, 20 L. T. Rep. 238.)

SERVICE OF WRITS IN THE COUNTRY.

TO THE EDITOR OF THE LAW TIMES.

Sir,—Absence from home prevented my replying last week to the letter in your journal of the 15th inst. signed "A London Attorney," which is intended, I presume, to answer the complaint I made on the 1st inst. against many of the London attorneys for not paying the charges of the country agents for serving writs.

Your correspondent seems to assert that the fault lies at our own door, from the practice we adopt of sending the affidavits direct to the attorney in London and requesting a remittance by a post-office order, instead of forwarding the affidavits to our agents, and instructing the attorney to call for same and pay the charges. And your correspondent is actually bold enough to confess that any such request as a remittance by a post-office order is disregarded by him, and "hopes others will do likewise;" but that a desire to pay the charges to the London agent immediately receives his attention. I am afraid this only further exposes the *shuffling* system of many of the London attorneys employed in issuing writs. I have long since adopted the system of transmitting the affidavit through my agents when the party instructing me is an entire stranger; but I have always understood it to be highly objectionable to the Profession in London, and on one occasion of my doing so I received a strong letter of remonstrance and indignation from the worthy gentleman for putting him to the inconvenience of calling at my agent's. And I should like to know what "A London Attorney" would say if (supposing his offices are near the Strand or Regent-street, and my agent's in Tokenhouse-yard) I gave him a journey into the city for the purpose of obtaining possession of the affidavit. He would immediately condemn me for not instructing him to remit my charges by a post-office order.

However, I am resolved never to send any affidavit of service direct to the attorney (unless an acquaintance) however great the inconvenience may be to him, but to transmit it through the hands of a third party; and *I hope others will do likewise.* But still this does not get rid of the difficulty of obtaining payment of charges where appearances are entered and no affidavit required; and I see no general and better mode of securing the payment than as suggested in my letter of the 1st inst.

I am, Sir, yours, &c.
Jan. 26, 1853. A Country Attorney.

PROCEEDINGS AGAINST BRITISH SUBJECTS ABROAD.

TO THE EDITOR OF THE LAW TIMES.

Sir,—As by the 18th section of the Common Law Procedure Act, 1852, any defendant, being a British subject, residing out of the jurisdiction of the Superior Courts (except in Scotland or Ireland) can be proceeded against for debts contracted in this country, and consequently a residence abroad is now no protection to parties wishful to evade payment of their debts, I beg to suggest, in order to facilitate service process of under the above-mentioned section, that a correct list of attorneys resident in the principal cities and towns of our Colonies should be from time to time published either in the "Law List" or in some other shape which would be easily accessible to the profession in this country. A similar list of professional gentlemen resident in the principal cities and towns on the Continent, who may be conversant with the English Law and Practice, would also be desirable for the same purpose. And I hope that you or some other competent authority will take up the matter so as to make the above provision of the new Act really available. I also hope that any of my professional brethren, to whom the subject is of moment, will express their opinions on the matter through your valuable columns.

I am, Sir, yours, &c.
Windermere, Jan. 25, 1853. G.

FEES IN THE SUPERIOR COURTS OF COMMON LAW.

TO THE EDITOR OF THE LAW TIMES.

Sir,—I tried, and was successful in, a cause in the Queen's Bench at Westminster last week, and paid *in court* the following fees:—

	£	s.	d.
Associate	1	0	0
Tipstaff, jury, and ushers ...	1	2	0
Officer of court	0	2	6
	2	4	6

In the Law Times of Nov. 27 last are Tables of "Fees in the Superior Courts of Common Law," as recently settled by the judges, from which it appears that I should have paid 1*l.* only for (as expressed in the table relating to the Associate's fees) "every trial of a cause from plaintiff." At the foot of this table is the following memorandum:—"*All other fees than those before mentioned are abolished, and are not to be taken by any person in the Associate's office under any pretence whatever.*" Can any of your readers explain this singular discrepancy?

I am, Sir, yours, &c.
London, Jan. 26, 1853. One, &c.

SERVICE OF PLEADINGS, &c.

TO THE EDITOR OF THE LAW TIMES.

Sir,—By the 164th of the new common law rules, it is provided, that "service of pleadings, notices, summonses, orders, rules, and other proceedings, shall be made before seven o'clock p. m. If made after that hour the service shall be deemed as made on the following day." Now if a "pleading, notice," &c. were served after seven o'clock p. m. on Saturday, as it would, pursuant to the above-mentioned rule, be deemed to have been served on the following day (Sunday), the service would, I apprehend, be wholly void, as being deemed to have been made on a *dies non.*

I am, Sir, yours, &c.,
24th Jan. 1853. M. Nordon.

THE NEW RULES.

TO THE EDITOR OF THE LAW TIMES.

Sir,—Among the recent Common Law Rules there is one that is likely to cause so much inconvenience and loss to attorneys in small practice, that I can scarcely think the judges would have sanctioned it, had they considered the probable effect; I allude to the 153rd rule, providing that it shall not be necessary to issue more than one summons for attendance before a judge. I pass over the loss of the service and attend-

ance; we are so used to reductions that I am surprised at none which stop short at allowing us the expense of shoe-leather and our annual certificates; but this alteration goes beyond, and is not the less mischievous because apparently trifling. Many cases might be cited to show how inconveniently it will work; I will content myself with selecting one, a summons for time to plead. Most offices now close at six o'clock; a summons may be served up to seven. Suppose the attorney is absent from office the following day, through business or pleasure, until after eleven o'clock; if his business is too small to allow him to keep a clerk competent to manage it in his absence (and how many, alas! now are so), he may find on his arrival that an order of great importance has been obtained by his opponent without his knowledge, which can only be set aside, if at all, on payment of costs. In this way an order for a month's time to plead (the time inserted in the printed forms of summonses) may be obtained on the eve of the Assizes, or the 10th Aug. Surely the old practice must be restored, or service should be made at least one clear day before the return of the summons. In Chancery, where the first summons is also peremptory, it must be served two clear days before the return.

I think the judges might have taken the opportunity of increasing the almost nominal costs allowed by the Masters under the new Act on judgments for want of appearance, at least to the extent of the 5s. 6d. which has been added to the outlay since the trumpery sum was fixed; and also have reduced the office fees at least in actions under 20l., as the attorneys' fees are so much less in those actions.

I subjoin an account of what I submit would be but a reasonable scale of allowance:—

	Under 20l. £	s.	d.	Above. £	s.	d.
Letter before action	0	2	0	0	3	6
Instructions	0	3	4	0	6	8
Writ of summons, and paid ...	0	12	6	0	14	6
Bill and copy to indorse... ...	0	2	0	0	2	0
Drawing and indorsing statement of particulars	0	2	6	0	5	0
Copy and service of writ and particulars	0	5	0	0	5	0
Searching for appearance and paid	0	3	10	0	3	10
Affidavit of service, and paid	0	5	0	0	6	0
Copy of writ and particulars to annex	0	2	0	0	2	0
Paid for filing writ and affidavit, and attending	0	7	4	0	7	4
Drawing judgment	0	3	4	0	3	4
Engrossing on paper	0	3	4	0	3	4
Entering on Roll and paid for ditto	0	4	4	0	4	4
Paid for signing and attending	0	9	4	0	9	4
Letters	0	2	0	0	4	0
	3	7	10	4	0	2
Present allowance	2	14	0	3	8	0
Proposed increase	0	13	10	0	12	2

I am, Sir, yours, &c.

Jan. 17, 1853. N. S.

SERVICE OF WRITS IN THE COUNTRY.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I am not surprised that you have received several letters on this subject. I have been honoured with the agency of many London solicitors, and had a list of about thirty owing me money. A short time since I wrote to all of them, having previously written twice or thrice to several, and I have only been favoured with replies from *four*. With your permission I will insert in your periodical the names and addresses of such as I find immovable after two more applications. I think this will be a better course than a County Court summons, as their conduct will be more exposed.

I am, Sir, yours, &c.

X. Y. Z.

COUNTY COURTS.

Summary.

A COUNTY COURT appeal, involving an interesting point of practice, on the trial of an *interpleader*, was last week reported from the Ex. The plaintiff (the claimant of the goods in dispute, as against the execution creditor) put in and proved an assignment by way of mortgage to him of the goods in question. The defendant then proceeded to prove the deed to be fraudulent as against creditors. The Judge held it to be fraudulent. The plaintiff proposed to put in evidence to show that it was not fraudulent, but the Judge refused to receive it. Itwas now held that he was wrong in rejecting this evidence, and a new trial was directed. PARKE, B. in his judgment, said,—

After the case of *Wright* v. *Wilcox*, in the C.P. I will not say it is not in the Judge's discretion; but the Judge ought to have exercised that discretion in this case by receiving the evidence. *Browne* v. *Murray*, Ry. & Moo. 254, was a decision by Abbott, C.J. and is in my opinion quite correct. That was an action for a libel, where the general issue was pleaded, and also special pleas in justification; it was there held the plaintiff may, in the outset, give all the evidence he intends to offer to rebut such justification, or he may do so in reply to evidence produced by the defendant; but he is not entitled to give part of such evidence in the first instance, and to reserve the remainder for reply to the defendant's case. That is the rule generally acted on in the Superior Courts, and should be adopted in the County Courts. Certainly there are no pleadings, as all is there by parol; the bailiff having seized the goods for the execution creditor, the plaintiff claims them by virtue of this deed which he gives in evidence. If fraud be imputed to the plaintiff by the defendant, it is incumbent on him to prove it; and when he has done so, it was then competent to the plaintiff to give evidence to negative that alleged fraud. No consideration was necessary to support the deed, and the deed therefore was *primâ facie* good. It was incumbent on the defendant then to prove fraud, which he appears to have done to the Judge's satisfaction, and I am far from saying he was wrong in that as far as it went; but it certainly was open then to the plaintiff to be allowed to tender evidence to disprove the fraud; the Judge refused the evidence offered, in which I think he was wrong.

This should be noted in the books of practice, as the point is not unlikely to recur: (*Shaw* v. *Beck*, 20 L. T. Rep. 211.)

THE NEW SCALE OF COSTS IN THE COUNTY COURTS.—A CASE IN POINT.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I have read your article in the LAW TIMES of the 22nd inst. with considerable interest, and have a case which completely exemplifies the truth of your remarks. A client of moderate means has just sustained a loss of about 30l. through the gross neglect of the officers of a certain railway company, and unless the company make proper compensation, I shall bring an action on his behalf against them, not in the Superior Courts at Westminster, or for our next county assizes, but in the monthly County Court, held at the scene of the loss, a very few miles from us, and where all the evidence is to be had,—this mode of bringing the point to an issue being very much cheaper, more convenient, and speedier, with the great advantage, too, of having the case decided by a painstaking, sensible, and impartial judge, instead of being exposed to the piebald, capricious, and guess-kind of verdicts which my experience teaches me to fear as too probable from a county, or even a Middlesex jury. Indeed, I think, but for the County Court, we should leave the matter alone, as a powerful company, having the public money to sport with, would not feel *our* apprehensions of the mazes, costs, delays, and uncertainties of an action in the Superior Court. I shall (entirely sharing in your views upon the separation of duties of attorney and advocate), for the sake of having the case properly argued before the judge, and the various points and cases properly raised and cited at the trial, employ a counsel, previously getting up the evidence and preparing my brief, in addition to a case for his opinion and advice thereon. If we succeed, I, as the attorney, shall be entitled to the *single fee* prescribed by the Act, *i. e.* so far as the *defendant's* liability to pay extends; but my client must, hard enough, pay me all other charges necessarily incurred, *by way of penalty*, as it were, for preferring the more convenient mode of redress provided by the County Court. It must be remembered that a case of this kind, one which involves important public principles and professional trouble and responsibility equal to that bestowed if the action were to be tried before a judge and jury at Westminster, is quite exceptional to those generally tried in County Courts. No injustice, but much advantage, as well as *common fairness*, would attend the speedy settlement of a proper scale of costs to meet such cases. It is quite an error to suppose that parties will be *driven* to the Superior Courts, though they are unfairly dealt with by placing the successful suitor in the local courts on an unjust and unequal footing compared with suitors in the higher courts; and, from what I have seen of County Courts, I feel convinced that your reasoning on the subject, and results of the two distinct classes of cases which now come before them, is *perfectly correct*. Those sitting in *high places* know very little of the real estimation in which these local jurisdictions, with all their real or fancied defects, are held by the multitude, or of their moral influence and striking effects in the country.

I am, Sir, yours, &c.

AN ORIGINAL SUBSCRIBER, AND ATTORNEY OF SEVENTEEN YEARS' STANDING.

P.S.—Is there any prospect of the new scale being settled and coming into operation within a month?

Jan. 24, 1853.

COUNTY COURT ABUSES.

TO THE EDITOR OF THE LAW TIMES.

SIR,—My object in addressing you upon the above subject, was with a view of showing the variance between the moneys payable actually out of pocket in the conduct of causes in the Superior and County Courts, and with a hope that some member of the Profession might suggest a remedy which would render the course of procedure in the latter less expensive to the suitor, and yet remunerative to the professional man. I am exceedingly obliged to your correspondents, Mr. Messiter and Mr. Talbot, for their correction of my errors as to the amount of fees payable to recover a sum between 20l. and 50l. in the County Court; no doubt they will be equally obliged to me for the correction of some of theirs. Mr. Messiter says, "As I understand the practice in Superior Courts, the 3l. 8s. in town, and 4l. in country cases, are the costs indorsed on the writ first issued, and if debt and such costs be paid in four days from service further proceedings will be stayed." Therefore, as Mr. Messiter understands the Superior Court practice, he understands it wrongly; the scale of costs payable in four days from service of the writ is not different under the new scale of fees to what it always has been, with the exception of one item—the indorsement of special particulars being allowed at 5s. over, and 2s. 6d. under 20l.; whereas, before the scale was framed, 2s. only for costs to indorse was allowed in all cases; the 3l. 8s. and 4l. is, therefore, the whole costs allowed for a judgment by default, including all fees to the attorney and the court. Mr. Messiter can, with little trouble, inform himself of the correctness of this statement. Mr. Messiter next tells us, "In County Courts the costs for any sum between 20l. and 50l. are—summonses, 1l. 6s. 8d.; if settled before cause called in court no further costs are incurred." This is one of the abuses I complain of, for the whole 1l. 6s. 8d. goes in court fees, and is all the defendant is called on to pay, when (as in many instances is the case) a plaintiff may have been compelled to employ an attorney to draw and engross two fair copies of his particulars of demand to be issued with the summons, and for which he must pay out of his own pocket. Why should not 5s. be charged for issuing all summonses as for all writs, and the difference paid to the attorney (if there be one) as in the Superior Courts? And, further, I presume the settlement Mr. Messiter means is payment of debt and costs "instantur," for if time be given to pay by instalments, a hearing-fee of 2l. 5s., instead of settling, as in the Superior Courts, by a judge's order, at an expense of 4s. out of pocket, must be paid. Mr. Messiter next gives us the full particulars of some cause tried in the Trowbridge County Court, and says, "Had plaintiff proceeded in a Superior Court in November last, a legal question might have arisen to be decided in Michaelmas Term next. No doubt a legal question "might" have arisen, and if it had, the action being to recover more than 20l., was there not a right of appeal, which "might" have been decided next Michaelmas Term. It is to be presumed that the legal question did not arise, or it "might" have gone into the much dreaded Superior Courts. Mr. Messiter next tells us that he agrees with Mr. Preston that the fees ought to be lowered, and concludes by stating that no class of men are so badly paid as County Court clerks. Why does not Mr Messiter resign? and let all others who are dissatisfied follow his example; and when the Legislature finds that men of adequate ability cannot be found without adequate remuneration, their salary will be increased. Now, a word with Mr. Talbot (and let him bear in mind I am complaining of moneys out of pocket); he admits that to recover a judgment by default between 20l. and 50l., the fees in the County Court are 3s. 8d. more than in the Superior Courts; now let us see how much is out of pocket in each case. In the County Court all the 3l. 11s. 8d. is paid out of pocket; the attorney does not receive one shilling; in the Superior Court the fees paid are 1l. 0s. 6d., which leaves 2l. 7s. 6d. profit for the attorney. Mr. Talbot is perhaps aware that in the County Courts a plaintiff is bound to prove his case whether the defendant appears or not, and let the expense of doing so be what it may. "He knows very well, or might know" also, if he liked, that to try a cause with a jury in the County Court over 50l. the fees are, summons 2l. 6s. 8d. and hearing fee 8l. 2s., and that it does not "quite" cost ten times as much in fees out of pocket in the Superior Court as in the County Court. In conclusion he tells us that it must be borne in mind that on payment of these most exorbitant demands, the plaintiff is entitled to final judgment and may have leave to issue execution immediately. I wish him to understand that on payment of 1l. 0s. 6d. money out of pocket in the Superior Court, instead of 3l. 11s. 8d. in the County Court, he is entitled to the same advantage in the case of a judgment by default without being compelled to take the debt and costs at 5s. or 10s. per month.

In conclusion allow me to apologize for writing so long a letter, and assure you that your regard for the interests of the profession is my only excuse for requesting its insertion.

I am Sir, yours, &c.

W. RICHARD PRESTON.

23, New Broad-street, Jan. 25, 1853.

COUNTY COURTS CLERKS

TO THE EDITOR OF THE LAW TIMES.

SIR,—I beg through the medium of your columns to bring under the notice of the profession the circumstances following, which, if not absolutely illegal, are at all events very irregular, and I believe I am correct in stating, that at almost every County Court for which this gentleman acts as clerk, there appears an attorney from a town twelve miles distant, with a

brief made out in the clerk's office, and who can in most cases never have previously seen the parties he appears for.

A client of mine some time ago applied to this clerk of the County Court, in some *County Court business*, and *merely as clerk*; and some time afterwards was served with a signed bill, containing (amongst other similar charges) the items following:

	s.	d.
Yourself		
Attending, consulting, &c.	6	8
Drawing and making three copies of particulars of your claims	5	0
Attending you as to the evidence to be given in this case. Drawing minutes of same, and making copy thereof	7	6

I purposely abstain from all remark at present, but submit the circumstances to our profession; and may add, that attempts have been privately made to stop this irregular practice, hitherto without effect.

AN ATTORNEY.

SITTINGS FOR HEARING DEFENDED CAUSES.

TO THE EDITOR OF THE LAW TIMES.

SIR,—It has occurred to me that a great boon would be conferred upon both branches of the Profession, and the public generally, if the judges of the County Courts would set apart a specified portion of the day during the sittings for the hearing of defended causes intended to be argued by counsel or attorney, after the practice at judges' chambers.

This would enable the suitor, in many cases, to obtain the assistance of solicitors of the highest respectability and good practice, who, under the present system, cannot undertake a case in these courts for their clients without in most cases suffering a positive loss, owing to the impossibility of ascertaining at all when any cause is likely to come on, and the trifling fee allowed for appearing compared with the great loss of time. This would of course secure the attendance of a more numerous Bar, and be a great step towards giving to these courts that high position in the estimation of the public to which, as a branch of the judicial administration of this country, they are entitled.

Practically this might easily be done, by requiring all parties appearing by counsel or attorney to signify their intention of so doing within a specified number of days previous to each sitting, so that a cause list might be made out by the proper officer of the court.

I enclose my card, and remain, Sir, yours, &c.

E. C.

COURT PAPERS.

Privy Council.

Colonial Appeals.

REGULATIONS OF THE JUDICIAL COMMITTEE.

AT the court at Windsor, the 27th Nov. 1852. Present, the Queen's most excellent Majesty, in Council.—Whereas by an Act passed in the session of Parliament, holden in the seventh and eighth years of her Majesty's reign, intituled "An Act for amending an Act passed in the fourth year of the reign of his late Majesty, intituled 'An Act for the better Administration of Justice in his Majesty's Privy Council, and to extend its Jurisdiction and Powers;'" it was amongst other things provided, that it should be competent for Her Majesty, by an order or orders, to be from time to time for that purpose made, with the advice of her privy council, to provide for the admission of any appeal or appeals to Her Majesty in council, from any judgments, sentences, decrees, or orders of any court of justice within any British colony or possession abroad, although such court shall not be a Court of Errors or a Court of Appeal within such colony or possession; and it shall also be competent to her Majesty, by any such order or orders as aforesaid, to make all such provisions as to her Majesty in Council shall seem meet for the instituting and prosecuting any such appeals, and for carrying into effect any such decisions or sentences as her Majesty in Council shall pronounce thereon: provided always, that it shall be competent to her Majesty in Council to revoke, alter, and amend any such order or orders as aforesaid, as to her Majesty in Council shall seem meet.

And whereas it is expedient that provision should be made in pursuance of the said recited enactment to enable parties to appeal in civil causes from the decisions of the Supreme Court of the province of New Brunswick to her Majesty in Council, the same not being a Court of Error or of Appeal;

It is hereby ordered by the Queen's most excellent Majesty, by and with the advice of her Privy Council, that any person or persons may appeal to her Majesty, her heirs and successors, in her or their Privy Council, from any final judgment, decree, order, or sentence of the said Supreme Court of the province of New Brunswick, as a Court of Civil Judicature, or as a Court of Revenue or of Escheat, in such manner, within such time, and under and subject to such rules, regulations, and limitations as are hereinafter mentioned; that is to say, in case any such judgment, decree, order, or sentence shall be given or pronounced for or in respect of any sum or matter at issue above the amount or value of 300*l.* sterling, or in case such judgment, decree, order, or sentence shall involve, directly or indirectly, any claim, demand, or question to or respecting property in any civil right amounting to or of the value of 300*l.* sterling, or in case the matter in question relates to the taking or demanding any duty payable to her Majesty, her heirs and successors, or to any fee of office, or other such like matter or things, whereby the rights of her Majesty, her heirs or successors, may be bound, the person or persons feeling aggrieved by any such judgment, decree, order, or sentence, may, within fourteen days next after the same shall have been pronounced, made, or given, apply to the said court by motion for leave to appeal therefrom to her Majesty, her heirs and successors, in her or their privy council, or if the said court be not sitting, then by petition to either of the judges of the said court. And in case such leave to appeal shall be prayed by the party or parties who is or are directed to pay any such sum of money, or perform any duty, the said court or such judge as aforesaid, shall and is hereby empowered either to direct that the judgment, decree, order, or sentence, appealed from shall be carried into execution, or that the execution thereof shall be suspended pending the said appeal, as to the said court or such judge as aforesaid may appear to be most consistent with real and substantial justice. And in case the said court, or such judge as aforesaid, shall direct such judgment, decree, order, or sentence, to be carried into execution, the person or persons in whose favour the same shall be given, shall, before the execution thereof, enter into good and sufficient security, to be approved by the said court, or such judge as aforesaid, for the due performance of such judgment or order as her Majesty, her heirs and successors, shall think fit to make upon such appeal. And that in all cases, security shall also be given by the party or parties appellant in a bond or mortgage or personal recognizance, not exceeding the value of 500*l.* sterling, for the prosecution of the appeal and for the payment of all such costs as may be awarded by her Majesty, her heirs and successors, or by the judicial committee of Her Majesty's Privy Council, to the party or parties respondent; and that such security as aforesaid for the prosecution of the appeal, and for the payment of all such costs as may be awarded, be completed within twenty-eight days from the date of the motion or petition for leave to appeal; and the party or parties appellant shall then, and not otherwise, be at liberty to prefer and prosecute his, her, or their appeal to her Majesty, her heirs and successors, in her or their privy council, in such manner and under such rules as are or may be observed in appeals made to her Majesty from her Majesty's colonies and plantations abroad.

And it is further ordered, that it shall be lawful for the said court, at its discretion, on the motion, or if the said court be not sitting, then for either of the judges of the said court, upon the petition of any party who considered himself aggrieved by any preliminary or interlocutory judgment, decree, order, or sentence of the said court, to grant permission to such party to appeal against the same to her Majesty, her heirs and successors, in her or their privy council, subject to the same rules, regulations, and limitations, as are herein expressed respecting appeals from final judgments, decrees, orders, and sentences.

Provided also, that if in any action, suit, or other proceeding, it shall so happen that no final judgment, decree, order, or sentence can be duly given in consequence of a disagreement of opinion between the judges of the said court, then and in such case the final judgment, decree, order, or sentence may be entered, *pro formâ*, on the petition of any of the parties to the action, suit, or other proceeding, according to the opinion of the chief justice, or in his absence, of the senior puisne judge of the said court: provided that such judgment, decree, order, or sentence shall be deemed a judgment, decree, order, or sentence of the court for the purpose of an appeal against the same, but not for any other purpose.

Provided always, and it is hereby ordered, that nothing herein contained doth or shall extend or be construed to extend to take away or abridge the undoubted right and authority of her Majesty, her heirs and successors, upon the humble petition of any person or persons aggrieved by any judgment or determination of either of the said courts, at any time to admit his, her, or their appeal therefrom, upon such terms, and upon such securities, limitations, restrictions, and regulations as her Majesty, or her heirs or successors, shall think fit, and to reverse, correct, or vary such judgment or determination as to her Majesty, her heirs or successors, shall seem meet.

And it is further ordered, that in all cases of appeal made from any judgment, order, sentence, or decree of the said court to her Majesty, heir heirs or successors, in her or their privy council, a true and correct copy of all evidence, proceedings, judgments, decrees, and orders, had or made, in such cases appealed against, so far as the same have relation to the matters of appeal, such copies to be certified under the seal of the said court. And that the said court shall also certify and transmit to her Majesty, her heirs and successors, in her or their privy council, a copy of the reasons given by the judges of such court, or by any of such judges, for or against the judgment or determination appealed against. And it is further directed and ordained, that the said court shall, in all cases of appeal to her Majesty, her heirs or successors, conform to and execute, or cause to be executed, such judgments and orders as her Majesty, her heirs or successors, in her or their privy council, shall think fit to make in the premises, in such manner as any original judgment, decree, or decretal orders, or other order or rule of the said court, should or might have been executed.

And the Right Honourable Sir John Pakington, Bart., one of her Majesty's Principal Secretaries of State, is to give the necessary directions herein accordingly.

C. C. GREVILLE.

Equity Courts.

Lord Chancellor's Court.

ORDER OF COURT.

"WHEREAS the Right Hon. Sir George James Turner, Knight, hath resigned his office of Vice-Chancellor of the Court of Chancery, and whereas the Hon. Sir William Page Wood, Knight, hath been appointed by her Majesty Vice-Chancellor of the said Court of Chancery, and whereas it is necessary to make provision for the hearing of the causes and matters which at the time of such resignation were attached to the court of the said late Vice-Chancellor, now I do hereby order,—

"1. That every cause and matter which at the time of the said resignation was attached to the Court of the late Vice-Chancellor Sir George James Turner be transferred to the Court of the Vice-Chancellor Sir William Page Wood, and every such cause and matter is henceforth attached to the Court of the said Vice-Chancellor Sir William Page Wood, unless removed therefrom by any special order to be made by the Lord Chancellor, or the Lords Justices of Appeal.

"2. That all pleas, demurrers, causes, claims, rehearings, further directions, exceptions, and petitions now standing for hearing in the paper of the late Vice-Chancellor Sir George James Turner be transferred to the paper of the Vice-Chancellor Sir William Page Wood, unless removed therefrom by any special order to be made by the Lord Chancellor or the Lords Justices of Appeal.

"3. That all motions, petitions, and further proceedings in causes and matters to which the foregoing orders refer shall (subject to the provisions of the 15th of the General Orders of the 5th of May, 1837) be heard before the judges to whose court the same are, under the provisions of these orders, respectively attached, unless removed therefrom by any special order of the Lord Chancellor or the Lords Justices of Appeal.

"CRANWORTH, C."

ADMISSION OF SOLICITORS.

The Master of the Rolls has appointed Monday, Jan. 31, at the Rolls Court, Chancery-lane, at four in the afternoon, for swearing solicitors.

Every person desirous of being sworn on the above day must leave his common law admission or his certificate of practice for the current year at the Secretary's office, Rolls-yard, Chancery-lane, on or before Saturday, the 20th instant.

Common Law Courts.

HILARY TERM, 1853.

DIRECTIONS TO TAXING MASTERS, AND SCALE OF COSTS.

(*In lieu of directions now in force.*)

1. Between the 1st day of September and the 24th day of October in each year, one of the Masters of the Court of Queen's Bench, Common Pleas, or Exchequer shall have authority to tax bills of costs, take references, and perform other necessary and immediate matters arising in or appertaining to any or either of the said courts at the office of his own court; and for such purpose one of the said Masters shall attend on certain days in each week, as may be found necessary, and of which due notice shall be affixed in the judges chambers and in the respective offices of the Masters of each court; and such Master shall be considered as the vacation Master.

2. In order to diminish as much as possible the costs arising from the copying of documents to accompany the briefs of counsel, the Masters are to allow only the copying of such documents, or such parts of documents, as they may consider necessary for the instruction of counsel, or for use at the trial.

3. No fee to counsel to be allowed on writs of trial, except on trials before the judge of the Sheriffs' Court of London, or of other Courts of Record where attorneys are not allowed to practise, and then one guinea only.

4. The Masters shall have discretion in all cases to allow as between party and party the fees of counsel or special pleader for drawing pleadings or other proceedings, whether special or otherwise, and advising.

5. When judgment is signed on a cognovit, or on a judge's order authorising the plaintiff to sign judgment, no declaration to ground judgment shall be necessary or allowed on the taxation of costs.

6. The costs of attendance by counsel or special

pleader before a judge at chambers shall in no case be allowed as between party and party, unless the judge shall certify for such allowance.

7. In all actions on contract, other than cases wherein by reason of the nature of the action no writ of trial can by law be issued, where the sum recovered or paid into court, and accepted by the plaintiff in satisfaction of his demand, or agreed to be paid on the settlement of the action, shall not exceed twenty pounds (without costs), the plaintiff's costs as against the defendant shall be taxed according to the lower scale of allowances in the schedule of costs hereunto annexed. Provided, that in case of trial before a judge of one of the Superior Courts, or judge of assize, if the judge shall certify on the postea that the cause was proper to be tried before him, and not before a sheriff or judge of an inferior court, the costs shall be taxed on the higher scale.

8. Where in like actions the sum endorsed on the summons shall be more than twenty pounds, but the plaintiff fails to recover more than that sum, and the judge does not certify as aforesaid, the plaintiff's costs against the defendant, whether between party and party or as between attorney and client, shall be taxed as upon a writ of trial before a judge of a Court of Record where attorneys are not allowed to act as advocates, as hereinafter provided for, but the defendant's costs, if any, are to be taxed upon the higher scale: provided, that in cases triable before the sheriff or judge of an inferior court, where the judge shall refuse to make an order for such trial, the judge may, if he shall think fit, direct at the time of such refusal on what scale the costs of each party shall be taxed, and in default of such direction the costs of both parties shall be taxed on the higher scale.

9. At the head of every bill of costs taken to the taxing officer to be taxed, it shall be stated whether the sum recovered, accepted, or agreed to be paid exceeds the sum of twenty pounds, or not, in the following form:—

Debt above twenty pounds.
Debt twenty pounds or under.

GENERAL ALLOWANCE FOR PLAINTIFFS AND DEFENDANTS; AND IN CASES UNDER 20*l.* AS WELL BETWEEN ATTORNEY AND CLIENT AS BETWEEN PARTY AND PARTY.

WRITS.	Above 20*l.* £ s. d.	Under 20*l.* £ s. d.
Summons	0 12 6	0 10 0
Concurrent summons	0 10 0	0 7 6
Renewed summons	0 10 0	0 7 6
Capias	0 12 6	—
Alias	0 10 0	—
Pluries	0 10 0	—
Capias ad satisfaciendum	0 12 0	0 11 0
Renewed ca. sa.	0 9 6	0 8 6
Ca. sa. for the residue	0 14 0	0 13 0
Renewed	0 11 6	0 10 6
Fieri facias	0 12 0	0 11 0
Renewed	0 9 6	0 8 6
Renewed for the residue	0 14 0	0 13 0
Renewed	0 11 6	0 10 6
Fi. fa. de bonis ecclesiasticis	0 14 6	—
Renewed	0 12 0	—
Habere facias pos. and fi. fa. or ca. sa. for costs in one writ	0 18 0	—
Habere fa. pos. alone	0 15 0	—
Special indorsements on writs of summons	0 5 0	0 2 6
Writ of revivor	0 12 6	0 10 0
Ejectment	0 15 0	—
Of trial, exclusive of fee		0 8 0
Subpœna ad test.	0 7 0	0 5 0
Subpœna duces tecum	0 9 0	0 7 0
If above four folios, additional per folio	0 0 8	0 0 4
Exigi facias	1 1 0	—
Capias utlagatum	1 1 0	—
Elegit, Nos. 9, 10, and 11, in New Rules	0 15 0	—
Ditto, Nos. 12, 13, and 14	1 0 0	—
Attachment	0 12 0	—
Detainer	0 12 6	—
Habeas corpus obtained by plaintiff, including allowance	1 0 0	—
Procedendo	0 15 0	—
Venditioni exponas	0 13 6	—
Supersedeas, if not issued by a prisoner	0 11 0	—
COPY AND SERVICE OF WRITS.		
Of summons, the defendant being served in London, Middlesex, or Surrey, within two miles of the place of business of the attorney, for each defendant	0 5 0	0 5 0
If beyond that distance, additional for every mile, but in cases under 20*l.* not to exceed ten miles	0 1 0	0 0 6
If the defendant should be served in any other county, the same allowance, but the distance to be calculated from the office of the attorney employed to effect service.		

	Above 20*l.* £ s. d.	Under 20*l.* £ s. d.
Of writ of revivor, the same as summons.		
Of writ of ejectment, the same as of writ of summons for each defendant And in addition, for every folio of copy beyond three	0 0 4	—
Correspondent's charges for service of writ, including affidavit of service, and exclusive of mileage in cases in which the fixed sum for costs does not apply	0 18 0	0 12 0
The like for service of subpœnas	0 8 6	0 5 0
Extra for subpœnas *duces tecum*	0 2 0	0 2 0
Notice of writ for service on a foreigner out of jurisdiction	0 3 0	0 3 0
Agents charges according to circumstances, &c.		
In cases in which the defendant shall avoid service, and an order shall be made to proceed, a sum will be allowed for attendances to serve according to circumstances.		
Of subpœna *ad test.*	0 5 0	0 3 0
Of subpœna *duces tecum*	0 7 0	0 5 0
Mileage as before.		
INSTRUCTIONS.		
Instructions to sue or defend, for pleadings, special affidavits where allowed, and to counsel on special matters	0 6 8	0 3 4
To counsel in common matters	0 3 4	0 3 4
For brief	0 13 4	0 6 8
If difficult, and many witnesses or documents, discretionary		Nil.
For every suggestion	0 6 8	0 3 4
For plea of suggestion	0 6 8	0 3 4
For issue in fact by consent	0 13 4	0 6 8
For suggestion to revive, or writ of revivor when no rule necessary	0 6 8	0 3 4
For rule for writ of revivor, when necessary	0 6 8	0 3 4
For proceeding in error	0 6 8	—
To defend for executor, after suggestion of death of original defendant	0 6 8	0 3 4
For agreement of damages	0 6 8	0 3 4
For grounds of error	0 6 8	—
For assignment of errors after notice	0 6 8	—
For confession of action in ejectment as to the whole or in part	0 6 8	—
To reduce special jury	0 13 4	—
DRAWING PLEADINGS, &c.		
Declaration, inclusive of instructions and engrossing, and of attendance to file or deliver	1 5 0	0 10 0
If above ten folios, for every folio	0 1 0	0 1 0
One or more pleas, if three folios or under, exclusive of instructions but inclusive of ingrossing	0 4 0	0 3 0
If above three folios, for every folio drawing	0 1 0	0 1 0
Joinder of issue, inclusive of ingrossing	0 4 0	0 3 0
Demurrer inclusive of ingrossing	0 4 0	0 3 0
Joinder in demurrer, inclusive of ingrossing	0 4 0	0 3 0
Marginal statement of matter of law for argument, exclusive of copies for the judges	0 6 8	0 3 4
Replications, new assignments, grounds of error, assignment of errors, pleas to assignment of errors, and other pleadings, the same as the foregoing charges for pleas.		
Issue or demurrer book	0 6 8	0 3 4
Record	Nil.	Nil.
Postea, when drawn by attorney, including engrossing, for every folio	0 1 0	0 1 0
Judgment, whether by default or final	0 3 4	0 3 4
Authority to receive moneys out of court	0 3 0	0 2 0
Suggestions, pleas to suggestions, and subsequent pleadings, of three folios or under, inclusive of ingrossment	0 4 0	0 3 0
If above three folios, for every folio drawing	0 1 0	0 1 0
Issue for the trial of facts by agreement, for every folio	0 1 0	0 1 0
Special case, per folio	0 1 0	0 1 0
Agreement of damages and copy, if five folios or under	0 6 8	0 3 4
Above five folios, for every folio drawing	0 1 0	0 1 0
And copy per folio	0 0 4	0 0 4
Drawing writ of inquiry	0 3 4	Nil.
Special particulars of demand or set-off and copy, per folio	0 0 8	0 0 4
Short ditto, and copy	0 5 0	0 2 6

	Above 20*l.* £ s. d.	Under 20*l.* £ s. d.
Abstract of pleas, when necessary, and fair copy, and copy for judge	0 5 4	0 3 4
Bill of costs and copy for taxation, per folio	0 0 8	—
Copy for the opposite party	0 0 4	—
Drawing bill of costs and copy, per folio 4*d.*, not to exceed		0 4 0
Copy for the opposite party, per folio 4*d.*, not to exceed		0 4 0
Drawing and ingrossing common cognovit, and attendance thereon	0 13 4	0 6 8
If special and long	1 0 0	0 10 0
Replication accepting money out of court in full of demand, inclusive of instructions	0 4 0	0 3 0
Similiter or joinder of issue to obtain order to try before sheriff		0 3 0
INGROSSING AND COPYING.		
Declarations, above ten folios, per folio	0 0 4	0 0 4
Other pleadings before enumerated, above three folios, per folio	0 0 4	0 0 4
Issue (pleadings), if fifteen folios, or under	0 5 0	—
If above fifteen folios, for every folio	0 0 4	0 0 4
Issue (pleadings), if ten folios or under		0 3 4
Above ten folios, per folio		0 0 4
All proceedings on paper, per folio	0 0 4	0 0 4
The like on parchment, per folio	0 0 6	0 0 4
Judgments for non-appearance on specially indorsed writs, or writs of revivor, and in ejectment, to be taken as nine folios, including the writ in actions above 20*l.* and six folios under 20*l.*		
The allowance of 1*l.* 3*s.* 2*d.* for interlocutory judgments will be discontinued, and the drawing, entry, and other charges will for the future be according to this scale.		
The length of interlocutory and final judgments will be allowed as heretofore.		
NOTICES.		
To declare, reply, and subsequent pleadings, copy and service	0 4 0	0 3 0
By defendant to bring issue to trial, copy and service	0 4 0	0 3 0
For special jury to opposite attorney, copy and service, pursuant to section 109	0 5 0	0 3 0
The like to sheriff, pursuant to section 112	0 5 0	0 3 0
To executor or administrator of sole defendant deceased, to appear to writ and suggestion	0 5 0	0 3 0
To sheriff of renewal of execution exclusive of any payment	0 5 0	0 3 0
To plaintiff in error to assign errors	0 5 0	0 3 0
Of discontinuance of error	0 4 0	0 3 0
Of confession of error	0 4 0	0 3 0
Of plaintiff's in error intention to proceed to personal representatives of defendant deceased	0 5 0	0 3 0
Of appearance when appearance duly entered and notice given on the day of appearance, but not otherwise	0 4 0	0 3 0
Of appearance to writ of revivor	0 5 0	0 3 0
To plead	0 4 0	0 3 0
Of declaration when necessary, copy and service	0 5 0	0 5 0
Of objection for misjoinder or nonjoinder of plaintiff, copy and service	0 4 0	0 3 0
To sheriff to discharge a prisoner out of custody, copy and service	0 5 0	0 4 0
Notice in ejectment to defend for part of premises and service	0 5 0	—
If above three folios, for every folio additional	0 1 0	—
Notice of admission of right and denial of ouster by a joint tenant, &c.	0 6 0	—
If above three folios, for every folio	0 0 4	—
Discontinuance by claimant in ejectment and service	0 5 0	—
Of confession of action of ejectment as to the whole or in part, and service	0 10 0	—
Of trial, inquiry, demand of residence of plaintiff, of authority for issuing writ, and all other common notices	0 4 0	0 3 0
To admit or produce, if short	0 7 6	0 5 0
The like, if long	0 10 0	0 5 0

	Above 20*l.* £ s. d.	Under 20*l.* £ s. d.
If very long and special, a larger allowance may be made in cases above 20*l.*		
Additional allowance for mileage, as upon the service of a writ.		
COPY AND SERVICE.		
Of special and common rule	0 5 0	0 4 0
Of special rule, above three folios, per folio additional	0 0 4	0 0 4
Of summons or order of a judge	0 3 0	0 3 0
Of order to charge a prisoner in execution	0 5 0	—
Of Master's note of receipt and of affidavits in error in fact	0 7 0	—
Of Master's note of receipt in error in law	0 5 0	—
Mileage on services as upon a writ of summons.		
EJECTMENT.		
Instructions to sue, and examining deeds	0 13 4	—
If a question of title	1 1 0	—
ATTENDANCES.		
To search for appearance to writ of summons	0 3 4	0 3 4
Two searches will be allowed, if necessarily made.		
To obtain undertaking to appear to process	0 5 0	0 5 0
To give undertaking to appear	0 5 0	0 5 0
Deponent to be sworn (where allowed) for rules where no attendance in court, to enter exception to bail, to leave writ at sheriff's office, to obtain return to writ, to alter or amend pleadings, to file any proceeding, to obtain office copies, consent to any summons, for postea (if necessary), to set down case, or demurrer, each judge with demurrer book or special case, to deliver points to each judge, to ascertain if books delivered, and other like attendances	0 3 4	0 3 4
To set down causes for trial	0 6 8	0 3 4
On each counsel with brief at trial, fee under twenty guineas, to reduce special jury, summons before a judge, and to pay money into court	0 6 8	0 3 4
On counsel with brief, fee twenty guineas and above	0 13 4	—
To receive money out of court	0 10 0	0 6 8
Counsel with brief on motion, if above one guinea fee	0 6 8	0 3 4
If one guinea only	0 3 4	0 3 4
Consultation with counsel	0 13 4	Nil.
Conference with counsel	0 6 8	—
Fee on every record or writ of trial	0 6 8	0 3 4
For common jury panel	0 3 4	0 3 4
For special jury panel	0 6 8	0 3 4
To obtain names of viewers	0 6 8	0 3 4
To enter any suggestion on roll when necessary	0 3 4	0 3 4
Attending court cause made remanet	0 13 4	0 6 8
Attending for fresh panels after remanet as before.		
Attendances incidental to agreement of amount of damages according to the circumstances.		
Attendance in pursuance of notice to admit	0 6 8	0 3 4
For every hour beyond one	0 6 8	0 3 4
Attending making admissions, except under special circumstances	0 6 8	0 3 4
On reference to Master upon common matters, such as to compute upon a bill or bond	0 6 8	0 6 8
Special matters	0 13 4	0 6 8
For every hour after the first	0 6 8	0 3 4
If counsel in attendance, attorney attending	0 6 8	0 3 4
Above one hour	0 13 4	0 6 8
To attest confession in ejectment	0 6 8	—
To file memorandum of error and obtain Master's receipts	0 6 8	0 3 4
Assizes each day, exclusive of expenses, but inclusive of all matters transacted except one attendance upon each counsel with brief	2 2 0	—
Expenses, exclusive of travelling, for each day	1 1 0	—
Travelling expenses, the amount actually and reasonably paid, but in no case to exceed 1*s.* per mile one way.		
If two causes, in each per day for attendance	1 11 6	—
If three causes or more, each	1 1 0	—
If more than one cause, expenses at 1*l.* 1*s.* each day, and travelling expenses to be divided equally.		
Clerk's attendance discretionary if more than one cause, or in special cases not exceeding per day, inclusive of expenses, except travelling	1 1 0	—
In assize towns in which two lists are made, and in special jury causes, the attendance of the attorney will not be allowed from the commission day, but only from such period as his attendance became proper.		
On writ of inquiry or writ of trial at a distance, if no other business, inclusive of expenses, per day	2 2 0	1 1 0
If two cases, each	1 11 6	0 13 4
If more than two cases, each	1 1 0	0 13 4
Travelling expenses as before, and to be apportioned if more than one cause.		
In London or Middlesex or in same town, on trial or writ of inquiry, when cause in paper and not tried, per day	0 13 4	0 6 8
On trial	1 1 0	0 13 4
Ditto, if occupied the whole day	2 2 0	—
Managing clerk to conduct cause at a distance when only one cause, per day	1 11 6	0 13 4
If more than one cause, each	1 1 0	0 10 6
Travelling and other expenses the same as attorney.		
Court on motion rule nisi granted	0 6 8	0 3 4
The like on rule absolute after rule nisi	0 13 4	0 6 8
The like previous to argument, per day	0 6 8	0 3 4
The like in cases set down in the paper, not exceeding for a whole term	2 0 0	1 0 0
After term when sittings, not exceeding	1 0 0	0 10 0
Taxation on postea	0 13 4 to 1 0 0	0 3 4 to 0 6 8
More according to time occupied.		
Ditto, costs of cause otherwise than on postea	0 6 8 to 0 13 4	0 3 4
Ditto, costs of judgment only, and ordinary interlocutory matters	0 3 4	0 3 4
BRIEFS.		
Minutes of evidence		0 13 4
Brief and one fair copy where cause tried before a judge of a Court of Record where attorneys are not allowed to act as advocates, not exceeding		2 0 0
In the like case, fee to counsel and clerk		1 3 6
For drawing, per folio	0 1 0	—
Copying	0 0 4	—
TERM FEES AND LETTERS.		
Proper business	0 13 0	0 10 0
Agency	0 15 0	0 12 0
Letters when no term fee proper business	0 3 0	0 2 0
Agency	0 5 0	0 3 0
Letters in interlocutory matters proper	0 2 0	—
Agency	0 3 0	—
In actions under 20*l.* no allowance will be made for "letters" for the vacation preceding the term in which a term-fee shall be allowed.		
LETTERS.		
Letter before action and other letters	0 3 6	0 2 0
Circular letters after the first	0 1 6	0 1 0
AFFIDAVITS.		
Drawing special affidavits, per folio	0 1 0	0 1 0
Ingrossing same, exclusive of affidavits of increase	0 0 4	Nil.
Common affidavits, of five folios or under, including ingrossing and oath	0 6 0	0 5 0
Affidavit of increase, including ingrossing and oath		0 5 0
Copy for the other side		0 2 0
SEARCHES.		
All common searches, exclusive of payment	0 3 4	0 3 4
If very long	0 13 4	0 6 8
COUNSEL.		
To attend reference to Master, not exceeding, except on examination of witnesses	2 2 0	Nil.
To settle special indorsement on writ	Nil.	Nil.
WARRANT OF ATTORNEY.		
Costs of signing judgment	3 10 0	—
DEFENDANTS.		
Appearance	0 7 0	0 6 0
For each additional defendant, inclusive of payment	0 1 6	0 1 6
A second summons and order for time to plead shall be allowed in special cases above 20*l.* when necessary.		
COUNSEL'S CLERK'S FEES.		
The fees to be allowed to counsel's clerk not to exceed as under :—		
Upon a fee under 5 guineas	0 2 6	—
5 guineas and under 10 guineas	0 5 0	—
10 guineas and under 20 guineas	0 10 0	—
20 guineas and under 30 guineas	0 15 0	—
30 guineas and under 50 guineas	1 0 0	—
50 guineas and upwards	2 10 0 per cent.	—
ON CONSULTATIONS.		
Senior's clerk	0 7 6	—
Junior's clerk	0 2 6	—
On general retainer	0 10 6	—
On common retainer	2 2 0	—
On conference	0 5 0	—

ALLOWANCE TO WITNESSES.

	If resident in the town in which the cause is tried. £ s. d.	If resident at a distance from the place of trial. £ s. d.
Common witnesses, such as labourers, journeymen, &c. per diem	0 5 0	0 5 0 to 0 7 6
Master tradesmen, yeomen, and farmers, per diem ... from	0 7 6 to 0 10 0	0 10 0 ... 0 15 0
Auctioneers and accountants, per diem	0 10 6 to 1 1 0	0 10 6 to 1 1 0
Professional men, per diem	1 1 0	—
Ditto inclusive of all, except travelling expenses, per diem	...	2 2 0 to 3 3 0
Attorneys or other clerks, per diem	0 10 6	0 15 0 to 1 1 0
Engineers and surveyors, per diem	1 1 0	1 1 0 to 3 3 0
Notaries ... per diem	1 1 0	1 1 0
Gentlemen	1 1 0 with subpœna, but no daily allowance, except after the first day, and then a reasonable sum for refreshment and conveyance.	1 1 0 per diem
Esquires		
Bankers		
Merchants		
Females according to station in life, per diem ... from	0 5 0 to 0 10 0	0 5 0 to 1 0 0
Police Inspector, per diem	0 5 0	0 7 6 to 0 10 0
Police Constable	0 3 0	0 5 0 to 0 7 6

If the witnesses attend in one cause only they will be entitled to the full allowance. If they attend in more than one cause they will be entitled to a proportionate part in each cause only.

The travelling expenses of witnesses shall be allowed according to the sums reasonably and actually paid, but in no case shall exceed 1*s.* per mile one way.

MISCELLANEOUS.

Close copy of proceeding in agency cases, 4*d.* per folio, according to actual length.

In cases under 20*l.* no allowance will be made in respect of the following matters :—

Attending deponent to be sworn to affidavit.
Advice on evidence.
Maps, plans, or models.

For maps or plans, when used in cases above 20*l.*, from 1*l.* 1*s.* to 3*l.* 3*s.*

All other allowances will be made as heretofore, except so far as it may be necessary to reduce or increase the same conformably to the scale of fees published on the 24th November, 1852.

CAMPBELL.
JOHN JERVIS.
FRED. POLLOCK.
E. H. ALDERSON.
W. WIGHTMAN.
T. J. PLATT.
W. ERLE.
T. N. TALFOURD.
27th January, 1853. SAML. MARTIN.

GENERAL RULES OF THE COMMON LAW COURTS RESPECTING THE ADMISSION, &c. OF ATTORNEYS.

THE subjoined regulations, dated Jan. 20, 1853, have lately been issued to the public:—

EXAMINATION, ADMISSION, AND RE-ADMISSION OF ATTORNEYS.

Whereas by sect. 15 of the statute 6th & 7th Vict. c. 73, it was enacted "That it shall be lawful for the judges of the Courts of Queen's Bench, Common Pleas, and Exchequer, or any one or more of them, and he and they is and are hereby authorised and required, before he or they shall issue a fiat for the admission of any person to be an attorney, to examine and inquire by such ways and means as he or they shall think proper touching the articles and service, and the fitness and capacity, of such person to act as an attorney; and if the judge or judges as aforesaid shall be satisfied by such examination or by the certificate of such examiners as hereinafter mentioned, that such person is duly qualified, and fit and competent to act as an attorney, then, and not otherwise, the said judge or judges shall, and he and they is and are hereby authorised and required to administer or cause to be administered to such person the oath hereinafter directed to be taken by attorneys and solicitors in addition to the oath of allegiance, and after such oaths taken, to cause him to be admitted an attorney of such court;" and by sect. 16 of the said statute it was further enacted, for the purpose of facilitating the inquiry touching the due service under articles as aforesaid, and the fitness and capacity of any person to act as an attorney, "That it shall be lawful for the judges of the Courts of Queen's Bench, Common Pleas, and Exchequer (or any eight or more of them, of whom the chiefs of the said courts shall be three), from time to time to nominate and appoint such persons to be examiners for the purposes aforesaid, and to make such rules and regulations for conducting such examination as such judges shall think proper."

And whereas, in order to carry the said statute more fully into effect, it is expedient annually to appoint examiners, subject to the control of the judges, in manner hereinafter mentioned:

And whereas, pursuant to the said statute, certain rules, orders, and regulations were made by the judges of the said courts in Easter Term, 1846; and other rules, orders, and regulations of the said courts, or one of them, have been from time to time previously made relating to the examination, admission, and readmission of attorneys and their annual certificates; and whereas it is expedient to consolidate and amend the said rules, orders, and regulations, in manner hereinafter mentioned:

It is therefore ordered, that from and after the first day of Trinity Term next, all rules, orders, and regulations relating to the examination, admission, and re-admission of attorneys, and the taking out and renewal of their annual certificates, be, and they are hereby annulled: provided that all notices, appointments, and other steps and proceedings duly made, had, or taken, or to be had or taken under and by virtue of the rules, orders, or regulations, or any of them hereby to be annulled, shall be valid, and may be carried into effect, anything herein to the contrary notwithstanding; and it is ordered that the following rules, orders, and regulations shall, from and after the said first day of Trinity Term next, be substituted in lieu of all such former rules, orders, and regulations whatsoever.

I. The several Masters for the time being for the Courts of Queen's Bench, Common Pleas, and Exchequer respectively, together with sixteen attorneys or solicitors to be appointed by a rule of court in every year to be examiners for one year, any five of whom (one whereof to be one of the said Masters) shall be competent to conduct the examination; and that, subject to such appeal as hereinafter mentioned, no person who shall not have been previously admitted a solicitor of the High Court of Chancery shall be admitted to be sworn an attorney of any of the courts, except on production of a certificate signed by the major part of such examiners actually present at and conducting his examination, testifying his fitness and capacity to act as an attorney, and in the usual business transacted by an attorney; such certificate to be in force only to the end of the term next but one following the date thereof, unless such time shall be specially extended by the order of a judge.

II. The examiners so to be appointed shall conduct the said examinations, under regulations to be first submitted to and approved by the judges.

III. In case any person shall be dissatisfied with the refusal of the examiners to grant such certificate, he shall be at liberty within one month to apply for admission by petition, in writing, to the judges, to be delivered to the clerk of the Lord Chief Justice of the Court of Queen's Bench, upon which no fee or gratuity shall be received; which application shall be heard in Sergeant's-inn Hall by not less than three of the judges.

IV. And whereas the hall or building of the Incorporated Law Society of the United Kingdom in Chancery-lane is a fit and convenient place for holding the said examinations, and the said society have consented to allow the same to be used for that purpose:

It is ordered, that until further order such examinations be there held on such days as the said examiners, or any five of them, shall appoint; and that any person not previously admitted an attorney of any of the three courts, and desirous of being admitted, shall give notice to the said examiners before the commencement of the term next preceding that in which he shall propose to be examined, of his intention to apply for examination by leaving the same with the secretary of the said society, at their said hall; which notice shall also state his place or places of residence or service for the last preceding twelve months, and in case of application to be admitted on a refusal of the certificate, shall give ten days' notice, to be served in like manner, of the day appointed for hearing the same.

V. Three days at the least before the commencement of the term next preceding that in which any person not before admitted shall propose to be admitted an attorney of either of the courts, he shall cause to be delivered at the Master's office a written notice, which shall state his place or places of abode or service for the last preceding twelve months, and the name and place of abode of the attorney or attorneys to whom he was articled and assigned (if any such assignment has been made), and the Master shall reduce all such notices as in this rule first mentioned into an alphabetical table or tables under convenient heads, and affix the same on the first day of term in some conspicuous place within or near to and on the outside of each court; and such person shall also for the space of one full term previous to the term in which he shall apply to be admitted, enter or cause to be entered in two books kept for that purpose, one at the chambers of the Lord Chief Justice or Chief Baron of the Court in which he applies to be admitted, and the other at the chambers of the other judges or barons of such court, his name and place or places of abode; and also the name or names and place or places of abode of the attorney or attorneys to whom he shall have been articled and assigned (if any such assignment has been made.)

VI. Every person so proposing to be admitted an attorney of either of the said courts, who shall have given such notice of his intention to apply for examination and admission as aforesaid, or as authorised by this rule, and who shall not have attended to be examined, or not have passed the examination, or not have been admitted, may within one week after the end of the term for which such notices were given, renew the notices for examination or admission for the then next ensuing term, and so from time to time as often as he shall think proper; and that all such renewed notices shall be added to the list of notices of admission and re-admission, and placed up on the first day of the term in the said courts, chambers, and offices; and the applicants named in such renewed notices may be examined in the ordinary way in pursuance of such last-mentioned notices, but shall not be admitted until the last day of the term, unless otherwise ordered by one of the said courts, or a judge thereof.

VII. On an application to re-admit an attorney who has been struck off the rolls, the applicant shall, before the commencement of the term next preceding that in which he intends to apply to be re-admitted, give notice thereof, as in the case of an original admission; and the affidavits in support of which application shall be filed at the office of the Master, and a copy thereof left at the chambers of the Lord Chief Justice of the Court of Queen's Bench before the term on the last day of which the notice for re-admission is intended to be made, and the rule for such re-admission shall be drawn up on reading such affidavit, and an affidavit of such copy having been left and notices given in compliance with this rule.

VIII. A printed copy of the list of the admissions and re-admissions shall be stuck up in the Queen's Bench, Common Pleas, and Exchequer offices, and at the judges' hall or chambers of each court in Rolls-gardens.

REGULATIONS, APPROVED BY THE JUDGES, FOR THE EXAMINATION.

I. Every person applying to be admitted an attorney of any of the said courts pursuant to the said rules shall, within the first seven days of the term in which he is desirous of being admitted, leave or cause to be left with the secretary of the said Incorporated Law Society his articles of clerkship, duly stamped, and also any assignment which may have been made thereof, together with answers to the several questions hereunto annexed, signed by the applicant, and also by the attorney or attorneys, London agent, barrister, or special pleader, with whom he shall have served his clerkship.

II. In case the applicant shall show sufficient cause to the satisfaction of the examiners why the first regulation cannot be fully complied with, it shall be in the power of the said examiners, upon sufficient proof being given of the same, to dispense with any part of the first regulation that they may think fit and reasonable.

III. Every person applying for admission shall also, if required, sign and leave, or cause to be left, with the secretary of the said society, answers in writing to such other written or printed questions as shall be proposed by the said examiners touching his said service and conduct, and shall also, if required, attend the said examiners personally, for the purpose of giving further explanations touching the same; and shall also, if required, procure the attorney or attorneys with whom he shall have served his clerkship as aforesaid to answer, either personally or in writing, any questions touching such service or conduct, or shall make proof to the satisfaction of the said examiners of his inability to procure the same.

IV. Every person so applying shall also attend the said examiners at the hall of the said society, at such time or times as shall be appointed for that purpose, pursuant to the said rule, as the said examiners shall appoint, and shall answer such questions as the said examiners shall then and there put to him, by written or printed papers, touching his fitness and capacity to act as an attorney, and in the usual business transacted by an attorney.

V. Upon compliance with the aforesaid regulations, and if the major part of the said examiners actually present at and conducting the said examination (one of them being one of the said Masters) shall be satisfied as to the fitness and capacity of the person so applying to act as an attorney, the said examiners so present, or the major part of them, shall certify the same under their hands in the following form, namely:—

"In pursuance of the rules made in Hilary Term 1853 of the Courts of Queen's Bench, Common Pleas, and Exchequer, we, being the major part of the examiners actually present at and conducting the examination of A. B. of, &c. do hereby certify that we have examined the said A. B. as required by the said rules, and we do testify that the said A. B. is fit and capable to act as an attorney of the said courts, and in the usual business transacted by attorneys."

Questions as to due service of articles of clerkship to be answered by the clerk:—

1. What was your age at the date of your articles?

2. Have you served the whole term of your articles at the office where the attorney or attorneys to whom you were articled or assigned carried on his or their business, and if not, state the reason?

3. Have you at any time during the term of your articles been absent without the permission of the attorney or attorneys to whom you were articled or assigned, and if so, state the length and occasion of such absence?

4. Have you, during the period of your articles, been engaged or concerned in any profession, business, or employment other than your professional employment as clerk to the attorney or attorneys to whom you were articled or assigned?

5. Have you, since the expiration of your articles, been engaged or concerned, and for how long time, in any and what profession, trade, business, or employment, other than the profession of an attorney or solicitor?

Questions to be answered by the attorney, agent, barrister, or special pleader with whom the clerk may have served any part of the time under his articles:—

1. Has A. B. served the whole time of his articles at the office where you carry on your business, and, if not, state the reason?

2. Has the said A. B. at any time during the term of his articles been absent without your permission, and, if so, state the length and occasions of such absence?

3. Has the said A. B., during the period of his articles, been engaged or concerned in any profession, business, or employment other than his professional employment as your articled clerk?

4. Has the said A. B., during the whole term of his clerkship, with the exceptions above-mentioned, been faithfully and diligently employed in your professional business of an attorney or solicitor?

5. Has the said A. B., since the expiration of his articles, been engaged or concerned, and for how long time, in any and what profession, trade, business, or employment, other than the profession of an attorney or solicitor?

And I do hereby certify that the said A. B. has duly and faithfully served under his articles of clerkship (or assignment, as the case may be), bearing date, &c., for the term therein expressed, and that he is a fit and proper person to be admitted an attorney.

TAKING OUT AND RENEWAL OF ATTORNEYS' CERTIFICATES.

Whereas by sect. 25 of the stat. 6 & 7 Vict. c. 73, it was enacted, that if any attorney shall neglect to procure an annual stamped certificate, authorising him to practise as such within the time by law appointed for that purpose, then and in such case the registrar of attorneys and solicitors shall not after-

wards grant a certificate to such attorney without the order of one of the Courts of Queen's Bench, Common Pleas, or Exchequer, or of one of the Judges thereof to issue such certificate.

And whereas it is expedient, that upon the application of an attorney having neglected for the space of one whole year to procure or to renew an annual stamped certificate, the Judges should have the means of inquiring as to the circumstances under which he has omitted to commence, or has discontinued to practice, and as to his conduct and employment during the term of such omission or discontinuance:

It is ordered that, from and after the last day of Trinity Term next, every person who shall intend to apply on the last day of term, or in vacation, for such order shall, three days at the least previous to the first day of the term on the last day of which the application is intended to be made, or in case the application is to be made in vacation, shall, previous to the first day of the preceding term, leave at the office of the Masters of the court in which he intends to make the application, a notice in writing, containing his name and place of abode for the last preceding twelve months; and that before the said first day of term he shall enter, or cause to be entered, a like notice in two books kept for that purpose, one at the chambers of the Lord Chief Justice or Chief Baron, and the other at the chambers of the other Judges or barons; and shall before the said first day of term cause to be filed the affidavit upon which he seeks to obtain or renew his said certificate at the office of the Masters aforesaid, and a copy thereof to be also left at the chambers of the Lord Chief Justice of the Court of Queen's Bench.

2. The Masters shall reduce such notices into alphabetical order, and add the same to the list of admissions and re-admissions; and the order for the granting the certificate shall be drawn up on reading such affidavit of such copy having been left in compliance with this rule.

3. Upon an application to dispense with the usual notice, and to take out or renew the certificate of an attorney, as aforesaid, the summons shall be served on the registrar of attorneys, calling on him to show cause within ten days why such certificate should not be issued; and, if no cause be shown to the satisfaction of the judge, an order may be made for issuing such certificate, if the judge shall think proper.

(Signed) CAMPBELL.
JOHN JERVIS.
FREDERICK POLLOCK.
J. PARKE.
E. H. ALDERSON.
J. T. COLERIDGE.
C. CRESSWELL.
W. ERLE.
CHARLES CROMPTON.

ATTORNEYS TO BE ADMITTED.

Easter Term, 1853.

QUEEN'S BENCH.

Adye, Arthur, 38, Norfolk-street; Great James-street; Devonshire-street; and Bradford—articled to W. Stones, Bradford, Wilts
Allen, William, 4, Southampton-street; Mornington-crescent; and Derby—W. Williamson, Derby
Appleton, Henry, Stokesley—J. P. Sowerby, Stokesley
Aspinall, Clarke, New Ferry, Cheshire—J. Collenson, Doncaster; R. Radcliffe, Liverpool
Atkinson, Richard Mathew, 38, Grove-place, Brompton; and Northallerton—J. C. Atkinson, Northallerton
Babington, John, 37, Store-street, Bedford-square—E. Babington, Horncastle; J. Scott, Lincoln's-inn-fields
Banks, Charles Edmund, 4, Henrietta-street, Cavendish-square; and Louth—H. Pye, Louth
Barber, William, Birmingham—W. P. Allcock, Birmingham
Barker, Horace Isaac, Beeston, Bedfordshire—E. Ayles, Biggleswade
Bartleet, William Smith, Stourbridge; and Blakedown—G. C. Vernon, Bromsgrove; L. Minshall, Bromsgrove
Baugh, George, 11, Blomfield-terrace, Pimlico; and Broseley—G. Potts, Broseley
Bell, Octavius, 31, Frederick-street, St. Pancras; Newcastle; and Much Hadham—C. N. Lewis, Newcastle
Bell, John Leonard, 2, Vernon-place, Bloomsbury; University-street; and Bourn—W. D. Bell, Bourn
Bellas, Thomas, 12, Compton-street, East, Brunswick-square—J. Coverdale, Bedford-row
Bentley, S. Green Beverley, Fitzroy-square, Kentish Town; Deadmanstone, near Huddersfield—J. Freeman, Huddersfield
Berridge, Robert Bristow, 18, Ampton-street, Gray's-inn-road; and Leicester—S. Berridge, Leicester
Booker, George, jun., 14, Ampton-street, Gray's-inn-road; and Allerton, near Liverpool—S. Booker, Liverpool
Boucher, Benjamin, 52, Frederick-street, Gray's-inn-road; and Wivelscombe—T. N. Bower, Wivelscombe
Braund, Marwood Kelly, 15, Upper Park-street, Islington; and Exeter—E. H. Roberts, Exeter
Brutton, Charles, jun., 2, Abbey-terrace, St. John's-wood; and Plaistow—C. Brutton, Exeter; T. H. Law, Barnstaple; F. Impey, Bedford-row
Burch, Arthur, 5, Pilgrim-street, Ludgate-hill; and St. Thomas-the-Apostle—W. Lambert, jun., Exeter: C. H. R. Rhodes, Chancery-lane
Butler, Francis George, Lincoln's-inn-fields; and St Neot's—O. R. Wilkinson, St. Neot's
Calthorp, Thomas Downie, 4, Upper-park-place, Blackheath-park—J. S. Hymer, Whitehall
Carr, Edward Slater, 32, Gloucester-place, Hyde-park; and Leamington Priors—J. Newbold, Bedford-row; A. S. Field, Leamington Priors
Carrington, Charles James, 2, Cambridge-terrace, Barnsbury-park; and Manchester—J. Barlow, jun., Manchester
Chisholm, John, 29, Edward-street, Hampstead-road—J. C. Hall (since dead) Lincoln's-inn-fields
Clark, Frederick, 12, Wilmot-street, Russell-square; and Snaith—E. E. Clark, Snaith
Clarke, Edmund J. H. W., 55, Acton-street, Gray's-inn-road; and Lower Calthorpe-street—T. Rogers, Helston
Coates, John, 8, Everett-street, Russell-square; and Clifton—C. Savery, Bristol
Cobb, William Wise, 1, Soley-terrace, Amwell-street—C. F. Cobb, Moorgate-street
Cooke, John Thomas, 6, Frederick's-place, Old Jewry; and Tamworth—J. Shaw, Tamworth
Cooper, Thomas, Kidderminster—W. Boycott, Kidderminster
Cope, Arthur, 58, Euston-square—N. Bridges, Red-lion-square
Cotterill, William Henry, jun., 32, Throgmorton-street; and Croydon—W. H. Cotterill, Throgmorton-street
Cotton, Stapleton, 82, Judd-street, Brunswick-square; and Tavistock-place—W. J. Grane, Bedford-row
Dixon, Albert, Staple-inn; and Fulham—W. Dixon, Staple-inn
Drake, Montague W. T., 47, Baker-street—H. Maltby, Bank-buildings
Earle, Henry Benjamin, 47, Lincoln's-inn-fields—H. Erle, Andover
Edge, James Henry, 7, Denmark-street, Islington; Bedford-row; and Liverpool—J. Atkinson, Liverpool
Edwin, William, Baydon-house, Walworth—M. Cooper, Southwark; G. Ade, High-street
Evans, Asa Johnes, 18, Upper Marylebone-street, Portland-place; and Kilgerran—J. Smith, Cardigan
Evans, Edward, 7, King's-bench-walk, Temple—F. Boydell, Chester
Fewster, John Reed, 10, Gordon-street, Islington; Alfred-street; and Durham—R. J. Shafto, Durham
Fitter, Matthew Alexander, Edgbaston, near Birmingham—W. S. Harding, Birmingham
Froom, Charles Poole, 6, Oxford-square, Hyde-park—W. W. Aldridge, Gray's-inn
Garrod, John James, 3, Belgrave-street, South Pimlico; and Wells—E. Davies, Wells
Giraud, Francis Fred., 23, Calthorpe-street, Gray's-inn-road, and Ashford—R. Furley, Ashford; S. C. Venour, Gray's-inn-square
Glubb, Albert Charles, Lyne, 10, Essex-street, Strand; Chadwell-street; and Liskeard—P. Glubb, Liskeard
Goodman, William Benjamin, King's Lynn—C. Rollings (since dead) Birmingham
Greenhill, Charles Pope, 38, Woburn-place, Russell-square; and Lewes—J. E. Fullagar, Lewes
Haddelsey, George Robert Foster, Calstor; and Kingston-upon-Hull—C. R. Haddelsey, Calstor
Hannay, William, 8, Tichborne-street, Edgeware-road; Goulden-terrace; and Nottingham—W. Enfield, Nottingham
Hargreaves, Joseph, Bradford—J. Wood, Bradford, Yorkshire
Haye, James, 20, Chadwell-street; Myddleton-square; and Launceston—N. H. P. Lawrence, and S. R. Pattison, both of Launceston
Heathcotes, Edward, 9, Albion-place, Hyde-park—S. Bellamy, Gainsborough; C. Bell, Bedford-row
Hodgson, James Leyland, Pendleton, near Manchester—T. Dodge, Liverpool; and A. L. Hardman, Manchester
Hyde, Jas., Trevelyan, 1, Highgate-rise, Middlesex—C. Hyde, Ely-place
Jackson, Samuel, jun., York—E. R. Anderson, York
James, Richard, 10, Warwick-court, Holborn; and Aberystwith—W. H. Thomas, Aberystwith
Jebb, John Joshua, 17, Chester-terrace, Eaton-square; and Boston—S. H. Jebb, Boston
Jennins, Charles, 26, Bryanstone-street, Portman-square; and Bath—P. H. Watts, Bath
Jessop, Richard, 13, North-crescent, Bedford-square; and Huddersfield—W. Jacomb, Huddersfield
Johnson, Edward, jun., 5, Goulden-terrace, Barnabury-road: and Saffron Walden—G. S. Burdett, Saffron Walden; N. C. Milne, Temple
Jones, Josiah, Worcester—J. Jones, Worcester
Jones, Thomas, 60, Stanhope-street, Hampstead-road—G. Wray, Percy-street; T. Robinson, South-square; G. Wray, Percy-street
Kelsall, Frederick Henry, 14, Upper Porchester-street, Paddington; and Chester—J. Robinson, Liverpool
Kendall, Edmund, 17, Lower Calthorpe-street, and Upper Bedford-place—R. H. Rolls, Banbury; E. W. Field, Bedford-row; W. Kendall, Bourton
Kent, Alfred Clement, 22, Everett-street, Russell-square; and Thanet-place, Liverpool—E. J. Kent, Liverpool; W. K. Tyrer, Liverpool
Lenke, John, York—L. Thompson, York
Leigh, Arthur William, Collumpton, Devon—F. Leigh, Collumpton; R. R. Crosse, Collumpton
Lott, Thomas Edward, 10, Carlton-villas, Camden-road, Holloway—T. Lott, Bow-lane, Cheapside
Lovett, Philip William, Chertsey—D. Grazebrook, Chertsey; H. G. Grazebrook, Chertsey
Lowe, Francis, 12, Chapel-street, Bedford-row; and Nottingham—J. Wadsworth, Nottingham
Lucas, Thomas Edward, 9, Taunton-place, Regent's-park—J. Ingram, Lincoln's-inn-fields
Mallon, William Davies, 36, Wimpole-street, Cavendish-square; and Carey-street—W. F. Baynes, Carey-street
Markby, Henry, 63, Charlewood-street, Belgrave-road—Messrs. Crabtree and Cross, Halesworth
Marett, Edmund Rowe, 1, Staple-inn—W. Clarke, Colemon-street
Maclure, Edward Wade, Sandbach—E. Lewis, Manchester; A. Maclure, Nantwich; and J. Romer, Sandbach
Miller, Mark Benjamin, 18, Calcott-villas, Haverstock-hill—M. B. Miller, Clifford's-inn
Moss, Alfred, 6, Clixton-place, Camberwell—J. Gurney, Nicholas-lane; J. H. Torr, Clifford's-inn
Murray, Andrew, 23, Davies-street, Berkeley-square—H. S. Lawford, Throgmorton-street
Nairn, Henry Pearson, Twickenham—E. Watts, Hythe; and J. Kingsford, Essex-street
Nash, Alfred Dormor, 14, Great Coram-street, Russell-square—A. Mayhew, Carey-street
Naters, Henry Trewhitt, 17, King Edward-street, Islington; and Nassau-street, Middlesex—G. W. Wright, Sunderland; and J. Turner, Aldermanbury
Neate, Albert, 40, Duke-street, Manchester-square—J. Neate, Orchard-street
Nickolls, William, 39, Keppell-street, Russell-square; and Chew Magna—C. Mullins, Chew Magna
Noble, John Gould, 7, Claremont-terrace, Pentonville—W. G. Bolton, Austin Friars
Pain, John David, Newport; Christchurch, Monmouth—T. M. Llewellin, Newport
Payne, John Brown, Manchester—A. Oliver, Manchester
Perrin, Edward Hayward, 2, Dorset-cottages, Dalston; and Temple Cloud, near Bristol—J. R. Mogg, Temple Cloud, near Bristol
Pollock, Alfred Atkinson, Frederick's-place, Old Jewry—P. R. Alderson, Norfolk-street; P. J. T. Pearse, jun. Frederick's-place
Powles, Kenneth, 50, Upper Albany-street—A. Lace, Liverpool
Price William Greene, 28, Bedford-square; Brompton-square; Woburn-place; and Ben-hall, near Ross—T. G. Norcutt, Gray's-inn-square; and J. F. Isaacson, Norfolk-street
Prudence, Stanley George, Clapham-common—G. F. P. Sutton, Basinghall-street
Ranson, Thomas Wilson, 14, Featherston-buildings; and Sunderland—G. S. Ranson, Sunderland
Reade, George William, 4, Ordnance-road, St. John's-wood—G. Reade, Congleton; G. F. Hudson, Bucklersbury
Rhodes, Abraham, 41, Granville-square—S. W. Johnson, Gray's-inn-square
Rhodes, Arthur Charles, Denmark-hill—C. H. Rhodes, Chancery-lane
Richardson, Robert, 10, Charlwood-place, Pimlico—M. Pearson, and T. Hawdon, Selby
Richardson, William Rodgers, 27, Frederick-street, Gray's-inn; and Hatton-garden—F. Short, Bristol
Robson, John, jun. 7, Clarence-terrace, Regent's-park—J. Robson, Castle-street, Leicester-square
Rudge, Edmund, jun. 10, Chepstow-place, Kensington; and Tewkesbury—J. Thomas, Tewkesbury
Scott, George William, 2, Great Dean's-yard, Westminster—J. Scott, Lincoln's inn-fields
Senior, Frederick Bernard, 3, Warwick-square, Kensington; and Kew—W. Chapman, Richmond, Surrey
Shelton, Richard, 12, Bryanstone-street, Portman-square; and Birmingham—C. Ingleby, Birmingham
Sheppard, Augustus Frederick, Bellfield-house, Parson's-green, Fulham—W. Parsons, Charing-cross; and J. King, North buildings
Simpson, James Tennant, 5, Montague-place, Russell-square—J. A. Simpson, Moorgate-street
Smale, Arthur William, 2, Lincoln's-inn-Fields—C. Smale, Bideford
Snowball, George, 2, Henrietta-street, Brunswick-square; and Sunderland—G. W. Wright, Sunderland
Sparrow, William D. Lloyd, 6, Waverley-place, St. John's-wood; and Derby—J. B. Simpson, Derby
Steward, Thomas, 15, Everett-street, Russell-square; and Ipswich—C. Steward, Ipswich
Stiffe, Francis William Everitt, 8, Clement's-inn; Percy-circus; and Bristol—A. Cox, Bristol
Stringer, Charles, West Bromwich—G. Hinchliffe, West Bromwich; G. F. Hinchliffe, ditto
Talbot, William Henry, 40, Stanhope-street, Hampstead-road; and Tenterden—J. Munn, Tenterden
Thomas, Richard Aubrey, 14, Featherstone buildings; Surrey-street; Hall-street, Greenhall—G. Thomas, jun. Carmarthen
Thurgood, Henry John, Battle, Sussex—M. Lane, Braintree, Essex; R. Young, Battle
Tindell, William Frederick, 7, Rockingham-row, East; and New Kent-road—M. Cooper, High-street; G. Ade, ditto
Walter, Charles, Kingston-upon-Thames—J. Johnson, Chancery-lane; W. Walter, sen. Kingston
Walter, James, Kingston-upon-Tames—W. Walter, Kingston; and H. Chester, Newington
Weatherall, Frederic, 2, St. Mary's place, Highbury—E. Weatherall, King's-bench-walk
Whitefield, John Charles, Bristol—W. Gresham, Castle-street, Holborn; W. B. Cooper, Hatton-garden; G. W. Whittaker, Heathcote-street; W. B. Bartholomew, Gray's-inn; W. Bevan, Bristol
Wightwick, William, Spencer-place, Brixton-road; Newgate-street, Brunswick-street; and Dover-road—P. W. Fry, Cheapside
Wilkinson, Edward, 15, Margaret-street, Cavendish-square; and Horbling—G. Wiles, Horbling
Wilkinson, George, jun., 15, Everett-street, Russell-square; and North Walsham—G. Wilkinson, sen. North Walsham
Williams, Ebenezer Robins, 40, Upper Cumming-street, Pentonville; Claremont-square; and Edgbaston—R. Gillam, sen. Worcester; I. O. Jones, Liverpool; and R. Gillam, jun. Birmingham
Withers, James Tuck, Sherborne, Dorset; and Bristol—H. W. Ravenscroft, Gray's-inn-square; and W. Craven, Guildhall-chambers
Wright, Egerton Leigh, 37, Woburn-square; and Wigan—R. Bloxham, New Boswell-court: R. Darlington, Wigan; and T. T. Taylor, Wigan
Wrigley, Barton, 5, Grove-terrace, Grove-road; Bernard-street; and Liverpool—J. Eden, Liverpool
Wyatt, William, 12, Cavendish-road, Wandsworth-road; and 21, Stratford-place, Camden-town—N. Mason, 23, Red-lion-square

Added to the List pursuant to Judge's Orders.

Mander, Charles John, 38, Ladbroke-square; and Little Ealing, Middlesex — J. J. Millard, Cordwainer's-hall, London
Carter, Thomas, St. Peter's-terrace, Hammersmith; and Kingston-upon-Hull — T. Holden, jun., Kingston-upon-Hull

At the Rolls.

APPLICATION TO BE RE-ADMITTED.

Easter Term, 1853.

Marshall, William, George-street, Aston, Warwickshire—J. Moss, Derby

Queen's Bench.

APPLICATION TO BE RE-ADMITTED.

Last Day of Easter Term, 1853.

Marshall, William, George-street, Aston, Warwickshire—J. Moss, Derby

PROCEEDINGS OF LAW SOCIETIES.

SOCIETY FOR AMENDMENT OF THE LAW.

THE ECCLESIASTICAL COURTS.

On Monday, at the usual meeting of the Law Amendment Society, Mr. Pitt Taylor in the chair, the question as to the best mode of dealing with the jurisdiction of the Ecclesiastical and Peculiar Courts in matters relating to the grant of probate and letters of administration, which had been discussed by the

society on two previous occasions, was again taken into consideration.

There were four propositions before the meeting on this subject. 1. The original resolutions, which proposed to transfer the jurisdiction of these courts to the Court of Chancery, with increased powers, and to give a subsidiary jurisdiction to the County Courts. 2. An amendment by Dr. Waddilove, which proposed a distinct tribunal to be called "Her Majesty's Court of Probate and Succession for England and Wales," which was to have full legal and equitable jurisdiction in all matters relating to wills and intestacies. 3. An amendment by Mr. Collier, M.P., which proposed to give this jurisdiction to the County Courts, with liberty to either party, in cases of dispute involving a sum beyond a certain amount, to remove the bill into one of the Superior Common Law Courts; and 4. An amendment by Mr. Stewart, which proposed the establishment of a new court, with the full and conjoined powers of a Court of Law and Equity, to be clothed with jurisdiction over wills of real and personal estate, in case no existing court could be found to which such enlarged powers could be properly entrusted.

The discussion was opened by Mr. Crawford, who avowed his preference for the proposition of Mr. Collier, with an appeal to a Superior Court in order to insure uniformity of procedure. Mr. M'Queen, Mr. Webster, Dr. Spinks, Mr. Field, Mr. Pitt Taylor, and others, addressed the meeting, but with a view rather of sending back the whole question to the committee for reconsideration. Dr. Spinks moved a resolution for referring the original resolutions and the several amendments thereto to the committee for reconsideration, in conjunction with a more extended inquiry as to what should be done with the Ecclesiastical and Peculiar Courts, and the jurisdiction exercised by them. This proposition having been carried, Mr. Stewart proposed his resolution in the form of an instruction to the committee. It was also moved that the further consideration of the subject should be postponed till after the committee had made their report. This motion was put and carried in the midst of some confusion, during which Mr. Taylor and a great number of the members left the room. Mr. Stewart then moved Mr. Webster into the chair, and proposed his resolution. Mr. Field said it would not be seemly, after the first chairman and several members had retired, to put the resolution. Mr. Stewart having persisted, Mr. Jackson moved and Mr. Crawford seconded a motion for the adjournment of the meeting, which, on a show of hands, was declared to be carried by ten to seven. Mr. Stewart called for a division, when it appeared there were eleven against and ten for the adjournment. Mr. Stewart again moved his resolution, when a second motion of adjournment was made by Mr. Crawford. A division was taken, and the adjournment declared to be carried by eleven to ten.

The meeting then broke up, it being past eleven o'clock.

WOLVERHAMPTON LAW ASSOCIATION.

At the annual general meeting of the members, held at the Alliance Club and Hotel, Wolverhampton, on Friday, the 14th day of Jan. 1853, Mr. Crisp in the chair, the report of the committee at their meeting held on the 31st Dec. last having been read, it was unanimously resolved:—

First. That the report of the committee read at this meeting be received and entered on the minutes.

Second. That Mr. Crisp be elected to fill the office of president, and Mr. Pinchard the office of vice-president of the association and library until the general meeting of 1854.

Third. That Mr. A. H. Browne be elected honorary secretary and treasurer of the association until the general meeting in 1854.

Fourth. That Mr. Deakin and Mr. Thorne be re-elected members of the committee, and that Mr. Rutted, Mr. Manby, and Mr. Underhill, be elected in lieu of those who go out and are ineligible under rule 8, and that Mr. Lilley be also elected a member of the committee.

Fifth. That the report of the committee, and the resolutions of this meeting, be printed, and a copy thereof sent to each member of the society, including the honorary members, and also to the solicitors residing within the district, and to the secretaries of the Metropolitan and Provincial Law Societies, and that the portion relating to auctioneers, law stationers, and accountants be extracted and sent to each person carrying on business in those respective callings in Wolverhampton.

Sixth. That the thanks of the meeting be given to the president, vice-president, honorary secretary, and committee of the past year for their attention to the interests of the society.

Report of the Committee, 1852.

The labours of your committee during the past year have been light: they have been in some degree lessened by the work of recent legislation. The session which has just closed, was signalized above all others in modern times, for great and fundamental alterations in the practice of the Superior Courts of Law and Equity. The Court of Chancery Procedure, and the Common Law Procedure Acts, of 1852, are remedial reforms which had been long and loudly called for in the administrative machinery of our courts. The avenues to justice have been for generations thronged with technicalities and useless forms which disgraced our jurisprudence, and brought the law themselves, and the great principles of equity on which they are founded, into ill repute. Few were or could be better acquainted with these irrational and costly impediments to justice than the country attorneys, who participated with the public as well in the grievance as in the loss, and many in their ranks, in past and present times, have laboured to remove or modify the evils. Those fetters on social progress in England, as well in the legal as in other departments, *vested interests in sinecures and fees*, have hitherto impeded attempts at amelioration, but to the hour of the late administration, Government has at last applied the power of Parliament to break the barrier, and an earnest and practical reform has commenced. The injurious distinction which has so long prevailed between the principles of the law (the morality of which, as lately remarked by V. C. Kindersley, in the case *Bodenham* v. *Hoskins*, is of a higher character than that which originally prevails amongst mankind,) and the practice of the courts, which enforced a lower tone of morals will, it is trusted, soon cease to spoil the suitor or perplex the jurist. The lustre of our laws, administered by a simple practice, will shine the more clearly and become the better fitted for their great end and purpose.

Whilst acknowledging, with commendation, the accomplishment of measures calculated to free the course of justice from reproach, your committee deem it right to reiterate their condemnation of one in abeyance, which is in their opinion fraught with contrary tendencies. "The Registration of Assurances" is still a somewhat popular panacea for the grievances supposed to be inflicted by the present mode of investigating titles to land, and dealings on its transfer and transmission. This subject was considered in the report of last year, and the Profession need only to be reminded, by way of warning, that the learned author of a masterly pamphlet in condemnation of this scheme, has ceased to occupy the woolsack, and that the present ministry contains members by whom it was introduced or supported in 1851. They cannot conclude this sketch without expressing a hope that the good work begun at Westminster will soon reach Doctors' Commons. The abuses of the Ecclesiastical Courts exceed those so lately swept from the Superior Courts. The former are moreover an anomaly in our Constitution. Foreign in their origin, and antagonistic to our national principles of jurisprudence, their sufferance since the Reformation in the midst of our social and political progress is a problem. Your committee consider that the only remedy is the entire abolition of these courts, and the transference of their jurisdiction to the tribunals from which it was withdrawn by the power long repudiated in every other department of our institutions.

Your committee has not been required to decide any disputed point, or to arbitrate on any question affecting the practice or conduct of the members of your society; but with regard to the practice of parties within the surveillance of the society, a case occurring in October last has been investigated, to which it is considered expedient to refer. It has been long known to practitioners individually, that accountants, law stationers, and the lower class of auctioneers, unconscientiously invade the privileges of the Profession, and infringe the provisions of the statute, by preparing agreements, bills of sale, and other documents, without having qualified themselves for such duties. In the case referred to, a communication has been made to the person who prepared the instrument in question, and the society has determined in future to report all cases brought within their knowledge to the authorities at Somerset-house. The practice has been too long suffered to prevail with impunity, and parties who thus offend (many of whom are indebted to the legal profession for much of their legitimate business), must be taught that to "stick to their last" is not only more honest but better policy.

The attention of your committee has been given to the subject of costs in the County Courts, as one not only affecting suitors and practitioners in those courts, but the question of actions generally, and the practice in the Courts at Westminster. The judges appointed to frame a scale of costs under the provisions of the "County Courts Amendment Act" having caused a circular to be issued to this society amongst others, inviting suggestions on the subject, a list of such costs as appeared desirable to be considered was prepared by the secretary, and laid before your committee. After consideration, and an adjustment of the items, the scale was submitted to the opinion of gentlemen practising as advocates in the Wolverhampton County Court, and, on being revised and settled in committee, was forwarded to the judges as directed by their circular.

The annual statement and professional protest in regard to the Class-Capitation-Tax, imposed on the Profession for war purposes and continued against good faith during more than thirty years of peace, was duly made in the late Parliament. The presentation of petitions on the subject has hitherto yielded no fruit, and till of late has been but a stereotyped ceremony; Lord Robert Grosvenor, however, by his exertions on the question, has won for us a position, from which, on the approaching revision of taxation, we may reasonably hope to obtain redress.

The attention of your committee has been also directed, at the instance of some of the members, to the practice of fees on declarations and oaths. It has been urged that, as a matter of principle and fairness, although the result may be trifling, the attorney as the commissioner taking the declaration or administering the oath, and not the attorney in the matter in which either is required, ought to receive the fee; that the contrary practice is more particularly disadvantageous to the younger members of the Profession, to the benefit so far as it goes of the older or more extensive practitioners. Your committee consider the practice that has obtained is in strictness objectionable for the above reasons, and think the fees should be placed on the same footing as those taken under the other professional commissions, for example, on the acknowledgment of deeds by married women, and they accordingly recommend the members of this society, and the attorneys generally practising in Wolverhampton, to alter the practice in this respect.

Your committee have the pleasure to report the election of an additional honorary member.

The members of the retiring committee, ineligible for election under rule 8, are Mr. Bolton, Mr. Corser, and Mr. Price.

NOTICES OF NEW LAW BOOKS.

The Practical Statutes for 1849, *with Notes of all the Cases decided on their Construction, and a copious Index.* By C. J. B. HERTSLET, Esq., Barrister-at-Law. Crockford.

THE series of *Practical Statutes* is well known to most of our readers. Their design is simple and useful. It is to give in a compact shape, and of a size convenient for carrying to Courts or for reference, all the statutes the English Practitioner can ever require, *verbatim*, omitting the Scotch and Irish and Colonial statutes, and those which are called Sessional, and simply re-enacted every year. These are printed in a small volume, with occasional explanatory Notes, and a copious general Index. Of those which are brought out at the end of each Session, the volumes for 1850, 1851, and 1852 have regularly appeared.

It is now designed to go backwards, and to publish the previous volumes in like manner, omitting *non*-practical statutes, and also all the *repealed* statutes and parts of statutes, and to increase its value by giving in notes the constructions which the Judges have put upon the words of the Acts. In this manner all the present volume has been annotated by Mr. HERTSLET, so that it contains the whole law as it is—the very words of the statute-book, and the meanings which the Courts have put upon those words when called upon to construe them. This union of the Statute and Case Law in one page is precisely what the practitioner wants, and is especially useful in Courts, where compactness and completeness are the two requisites of a law-book for reference.

It will be seen from the list of contents in the Advertisement that this volume contains many statutes of great importance and frequently in request—and foremost among them the Bankruptcy Consolidation Act and the Second Winding-up Act.

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

INNER TEMPLE, JAN. 26.—The undermentioned gentlemen were this day called to the bar by the Honourable Society of the Inner Temple:—Mr. Frederick Ross Vallings, M.A., Mr. Thomas Chandless, the younger, Mr. Robert George Moncreiff Sumner, M.A., Mr. Charles Dudley Robert Ward, Mr. Charles Samuel Bagot, Mr. William Finnie, B.C.L., Mr. John Bell Brooking, Mr. William Finch Edwards, M.A., Mr. James Christie Traill, Mr. Henry John Simonds, Mr. Franklin Lushington, M.A., Mr. Charles Penruddocke, Mr. Nathaniel Simpson, Mr. Felix Vincent Raper, B.A., Mr. William Pearson, Mr. William George Harrison, B.A., Mr. John Lindsey Reed, Mr. Frederick Hoare Colt, B.A., Mr. William Ernst Browning.

MIDDLE TEMPLE, JAN. 26.—The undermentioned members of this society have been called to the bar, and were sworn in this evening before several of the benchers:—Edward Godman Kirkpatrick, Esq. Wilfrid Hudlestone Simpson, Esq. Charles Smith, Esq. Stephen Martin Leake, Esq. William Talfourd Salter, Esq. Albany Fonblanque, Esq. Owen Saunders Wilson, Esq. John Henry Patteson, Esq. James Maurice, Esq. John Thornely, Esq. John William Grigg, Esq. Edmund Macrory, Esq. Thomas M'Enteer, Esq. Robert Orridge, Esq. John Price, Esq. Edward William Hornby, Esq. Henry Stephen Hansler, Esq. Boswell Hensman, Esq. Roger Gadsden, Esq. and George Pringle, Esq.

GRAY'S INN, JAN. 26.—At a pension of the Honourable Society of Gray's Inn, holden this day, Leonard Hill, Gent., Esq. was called to the degree of barrister-at-law.

LINCOLN'S INN, JAN. 26.—The undermentioned members of this society have been called to the bar, and were sworn in this evening before several of the benchers:—Henry Bonham Carter, Esq., George Norman Maule, M.A., Elphinstone Barchard, M.A.

The Right Honourable Sir John Jervice, Knt., Lord Chief Justice of her Majesty's Court of Common Pleas at Westminster, has appointed Thomas Gold Edwards, of Denbigh, in the county of Denbigh, Gent., to be one of the Perpetual Commissioners for taking the acknowledgments of deeds to be executed by married women, under the Act passed for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance, in and for the county of Denbigh, also in and for the county of Flint.

CORRESPONDENCE.

CHRISTMAS BOXES IN THE TEMPLE.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Permit me through your columns to complain of the tax imposed upon all who have chambers in the Temple, in the shape of demands for Christmas-boxes. Every well-paid servant of the Benchers comes begging. The porters, warders, sweeps, dustmen, postmen, and I know not how many more, levy a contribution upon us poor lawyers, who are already overburdened by enormous rents and an increased house-tax. I am told the Benchers of the Middle Temple have prohibited this toll gathering by their servants. Why has not the Inner Temple done the same? Doubtless the servants are well paid; why should they be permitted also to prey upon such as,

Yours, &c.

Inner Temple, Jan. 26. A POOR TEMPLAR.

THE GAZETTES.

Bankrupts.

Gazette, Jan. 25.

COLE, WILLIAM, wine merchant, North Walsham, Norfolk, Feb. 5, at eleven, March 11, at one, Basinghall-street. Off. as. Whitmore. Sols. Messrs. Linklater, Size-lane, Bucklersbury. Petition, Jan. 14.

TATE, ROBERT, jun. miller, Uxbridge-moor, Hillingdon, Jan. 31 and March 7, at eleven, Basinghall-street. Off. as. Stansfeld. Sols. Messrs. Linklater, Size-lane. Petition Jan. 22.

BROOKS, JOHN, coal merchant, Eling, Southampton, Feb. 4 and March 8, at one, Basinghall-street. Off. as. Edwards Sols. Philbrick, Basinghall-street, and Deacon and Co. Romsey, Hampshire. Petition, Jan. 11.

COCK, ROBERT CHARLES ROSWALL, merchant, Liverpool-road, Islington, Feb. 4, at eleven, March 12, at twelve, Basinghall-street. Off. as. Pennell. Sol. Jewitt, Lime-street. Petition, Jan. 19.

ALLEN, HERBERT, tailor, Birmingham, Feb. 8 and March 2, at twelve, Birmingham. Off. as. Bittleston. Sols. Barrett, Leeds, and Benson, Birmingham. Petition, Jan. 22.

SIMMONS, HENRY, innkeeper, Leicester. Feb. 4 and 25, at ten, Nottingham. Off. as. Bittleston. Sols. Ashurst and Sons, Old Jewry, and Motteram and Co., Birmingham. Petition, Jan. 3.

FLETCHER, CHARLES, cardboard and silk manufacturer, Derby, Feb. 4 and 25, at ten, Nottingham. Off. as. Harris. Sol. Balguy, Nottingham. Petition, Jan. 24.

PASS, JOHN, innkeeper, Far Town, Huddersfield, Yorkshire, Feb. 18 and March 11, at eleven, Leeds. Off. as. Young. Sols. Messrs. Sykes, Huddersfield; and Bond and Barwick, Leeds. Petition, Jan. 21.

FLETCHER, JOHN, cattle dealer, Bradford, Yorkshire, Feb. 7 and March 7, at eleven, Leeds. Off. as. Hope. Sols. Upton and Yewdall, Leeds. Petition, Jan. 24.

COLDWELL, GEORGE, bootmaker, Ashton-under-Lyne, Lancashire, Feb. 8 and March 1, at twelve, Manchester. Off. as. Fraser. Sol. Brooks, Ashton-under-Lyne. Petition, Jan. 21.

DONALD, WILLIAM, Hayton, Cumberland, Jan. 31, at eleven, and March 7, at one, Newcastle-upon-Tyne. Off. as. Wakley. Sols. Bischoff and Coxe, Coleman-street, City; Steel, Cockermouth; and Watson, Newcastle-upon-Tyne. Petition, Jan. 6.

Gazette, Jan. 28.

ANDREWS, WILLIAM WARD, ironmonger, Wolverhampton, Feb. 15 and March 8, at twelve, Birmingham. Com. Daniell. Off. as. Bittleston. Sols Thorne, Wolverhampton; and Motteram, Knight, and Emmit, Birmingham. Petition, Jan. 22.

BOSLAL, TALES, merchant, Mogadore, Ribat, and Mansell-street, Goodman's-fields, Feb. 5, at half-past eleven, March 11, at half-past one, Basinghall-street. Com. Fane. Off. as. Whitmore. Sol. Cotterill, Throgmorton-street. Petition, Jan. 24.

BOTTERILL, JOHN, miller, corn factor, maltster, and coal merchant, Marton, Lincolnshire, Feb. 16 and March 9, at twelve, Kingston-upon-Hull. Com. Ayrton. Off. as. Carrick, Hull. Sol. Stamp, Hull. Petition, Jan. 12.

BOWLES, RICHARD, confectioner, Langley-place, Commercial-road, and Botolph-lane, City, Feb. 8, at two, March 8, at twelve, Basinghall-street. Com. Holroyd. Off. as. Edwards. Sols. Wright and Bonner, London-street, Fenchurch-street. Petition, Jan. 19.

CANNAN, THOMAS and JOHN, livery stable keepers, Little Moorfields, Cripplegate Without, Feb. 7 and March 11, at twelve, Basinghall-street. Com. Fane. Off. as. Cannan. Sols. Keddell and Smith, Lime-street, City. Petition, Jan. 26.

COHEN, ABRAHAM, wholesale clothier, Houndsditch, Feb. 8, at one, March 11, at twelve, Basinghall-street. Com. Fonblanque. Off. as. Graham. Sols. Sold, Turner, and Turner, Aldermanbury. Petition, Jan. 23.

GREENWOOD, JOSEPH and BENJAMIN, worsted spinners and stuff manufacturers, Bradford, Feb. 18 and March 11, at eleven, Leeds. Com. West. Off. as. Freeman. Sols. Wavell, Philbrick, and Foster, Halifax. Petition, Jan. 14.

POWELL, WILLIAM JOHN, and HIND, CHARLES, linen drapers, Carnaby-street, Golden-square, Feb. 5, at two, March 12, at one, Basinghall-street. Com. Goulburn. Off. as. Edwards. Sol. Buchannan, Basinghall-street. Petition, Jan. 26.

SMITH, GEORGE, hatter, Manchester, Feb. 11 and March 4, at twelve, Manchester. Off. as. Lee. Sol. Faulkner, Manchester. Petition, Jan. 21.

Dividends,

BANKRUPT ESTATES.

Official Assignees are given, to whom apply for the Dividends.

Ashworth, J. gardener and confectioner, first, 1s. 1d. Fraser, Manchester.—*Bentley*, J. cheesemonger, first, 4s. 9d. Graham, London.—*Burnip*, T. draper, second, 3s. 6d. Baker, Newcastle.—*Calvert*, H. woollen draper, second, 5s. Pennell, London.—*Coleman*, S. L. draper, first, 5d. Groom, London.—*Collingwood*, T. butcher, second, 1¼d. Graham, London.—*Colquhoun*, J. money scrivener, second, 2s. Nicholson, London.—*Croulson*, J. money scrivener, first, 1s. Fraser, Manchester.—*Daw*, R. jun. linendraper, first on new proofs, 2s. 1-12ths of 1d. Pennell, London.—*Fray*, T. check manufacturer second, ¼d. Fraser, Manchester.—*Fuller*, J. glass merchant, second, 2s. 8d. Pennell, London.—*Guillaume*, L. manufacturer of artificial flowers, second, 10d. Graham, London.—*Gurney*, H. victualler, first, 3s. 2d. Graham, London.—*Hall*, E. packer and innkeeper, first and final, 1s. 4¼d. Fraser, Manchester.—*Ingram*, J. seedsman, 3s. 6d. Nicholson, London.—*Knight* S. cheesemonger, first, 3s. 2¼d. Whitmore, London.—*Lawson*, T. draper, first, 4s. Fraser, Manchester.—*McLean*, H. C. clerk, first, 1s. Pennell, London.—*McQueen*, F. merchant, second, 1¾d. Pennell, London.—*Moulton*, J. joiner and builder, first, 1s. 4d. Pott, Manchester.—*Pearman*, and *Pearman*, silk dyers, first, 2s. Pennell, London.—*Peters*, R. T. hotel keeper, first, 4¼d. Pennell, London.—*Rumsey*, W. S. druggist, second, 1s. 11d. Graham, London.—*Rust*, E. brickmaker, second, 1s. 5d. Graham, London.—*Staley*, T. grocer, first, 1s. 6d. Fraser, Manchester.—*Thomas*, J. builder, first, 9d. Graham, London.—*Wall*, A. B. apothecary and surgeon, first, 10d. Pennell, London.—*White*, C. H. dealer in china, &c., second, 3¼d. Nicholson, London.—*Winstanley*, G. H. and E. chemists, first, 10s. Nicholson, London.

Assignments for the Benefit of Creditors.

Gazette, Jan. 18.

Benson, W. silversmith and jeweller, Cheapside, London, Jan. 13. Trusts. A. Alexander, Hatton-garden, J. Stokes, Birmingham, and F. Haslack, Hatton-garden, jewellers. Sol. W. Stopher, Cheapside.—*Brake*, J. tailor, Broad-st., Birmingham, Jan. 5. Trusts. M. Jones, warehouseman, and T. Holroyd, woollen draper, both of Birmingham. Sol. R. Cheshire, Birmingham.—*Easlea*, J. miller, Wetherden, Suffolk, Jan 6. Trusts. S. W. Hunt, auctioneer, Wetherden, and W. Boulter, miller, Stowmarket. Sol. J. Gudgeon, Stowmarket.

Gazette, Jan. 21.

Church, J. W. hat manufacturer, Redcross-st., Southwark, Jan. 12. Trusts. E. Galibert, French silk plush impoter, Bridge-st., Southwark, and E. E. Molladay, hat manufacturer, Warwick. Sols. Lepard, Bannatyne, and Gammon, Cloak-la.—*Frost*, G. builder, Broad-st.-buildings, London, Dec. 30. Trusts. T. E. Jones, North-buildings, Finsbury-sq., and J. Horne, ironmonger, Hayes-pl., Kingsland. Sols. Beaumont and Thompson, Lincoln's-inn-fields.—*Johnson*, W. tailor and draper, Cateaton-st., Manchester, Dec. 26. Trusts. R. Acheson, agent, Manchester, and E. Walker, accountant, Huddersfield, Sol. C. Heywood, Manchester.—*Lakin*, W. hosier, Leicester, Dec. 24. Trusts. T. Sunderland, commission agent, and A. Burgess, worsted-spinner, both of Leicester. Sol. G. Stevenson, Leicester.—*Lee*, H. watchmaker, Worthing, Sussex. Dec. 30. Trusts. C. Scott, watchmaker and jeweller, Ely-pl., Holborn. Sols. Taylor and Collisson, Bodford-row.—*Priestman*, F. innkeeper, Staindrop, Durham, Jan. 14. Trusts. R. Heslop and T. Smith, cabinet maker, both of Darlington. Sol. F. Newburn, Darlington. *Smith*, T. innkeeper, West Teignmouth, Devonshire,, Jan. 15. Trusts. J. H. Martin, brewer, East Teignmouth, and W. Stooke, ironmonger, West Teignmouth, Sol. R. W. Templer, Teignmouth.

Partnerships Dissolved.

Gazette, Jan. 14.

Archer, T. and *Pryke*, H. W. tailors and drapers, Braintree, Dec. 31.—*Ashton*, J. and B. cotton spinners and manufacturers, Werneth, Bredbury, and Manchester, Dec. 31.—*Bancroft*, J. and J. and *Harrop*, J. cotton spinners, Bardsley, Ashton-under-Lyne, Jan. 1, 1851.—*Bayley*, H. T. and *Cole*, W. L. linendrapers, Canterbury, Jan. 14. Debts paid by Bayley.—*Bontoft*, C. and H. stationers, booksellers, and printers, Boston, Jan. 1. Debts paid by H. and J. A. Bontoft.—*Booth*, T. and C. merchants, Liverpool, Jan. 11.—*Bramley*, W. and *Derbyshire*, J. ironfounders, Old Accrington, Jan 12. Debts paid by Bramley.—*Brooks*, J. W. and *Whalley*, C. J. attorneys and solicitors, Gray's-inn, Nov. 13. Debts paid by Mr. H. Johnson, solicitor, Great James-street.—*Catling*, F. J., *Beerbohm*, J. E. and *Chittenden*, H. corn factors, Mark-lane, as regards Chittenden, Dec. 31.—*Chapman*, G. and *Hansell*, H. attorneys and solicitors, Norwich, Dec. 25.—*Cordeux*, J. and T. S. linen manufacturers, Barnsley, Jan. 1, 1850.—*Dearden*, J. and C. painters, Leeds, Jan. 6. Debts paid by C. Dearden.—*Foster*, S. and *Scholes*, A. joiners and cabinet makers, Lindley, Huddersfield, Jan. 8.—*Hall*, B. and *Maltby*, C. painters and decorators, Bradford, Jan. 10. Debts paid by Maltby.—*Handford*, G. and *Howard*, C. lace manufacturers, Birmingham, Jan. 12. Debts paid by Handford.—*Hecht*, M., S. and P. merchants, Seething-lane, as regards M. Hecht, Dec. 31.—*Hodgkinson*, J. and G. wine and spirit merchants, Chesterfield, and victuallers, Black Princerow, Walworth, Jan. 12.—*Horton*, E. G. and *Marsh*, H. surgeons, Leeds, Jan. 11. Debts paid by Horton.—*Little*, W. H. and J. timber merchants and saw mill proprietors, Brighton-place and Edwards-place, Hackney-road, Dec. 31.—*Matthews*, S. A. and *Chamberlain*, C. M. dealers in Berlin wool and fancy articles, Worcester, Dec. 31. Debts paid by Mathews.—*Perrens*, W. K. and *Wakefield*, C. millwrights and engineers, Porto Bello, Stourbridge, Dec. 31. Debts paid by Wakefield.—*Roberts*, E. and *Matthews*, T. frame smiths, Leicester, Jan. 1.—*Salusbury*, G. T. and *Saunders*, E. wharfingers, Devizes, Dec. 31.—*Stephens*, P. and *Crane*, J. H. leather sellers, Cross-street, Islington, Jan. 4. Debts paid by Stephens.—*Sudlow*. J. J. J. jun. and *Gunnell*, A. V. parliamentary agents, Great George-street, Westminster, Jan. 6. Debts paid by Sudlow.—*Waddington*, J., W. E. and R. E. umbrella and parasol manufacturers, Coleman-street, as regards R. E. Waddington, Jan. 13. Debts paid by J. and W. E. Waddington.

Gazette Jan. 18.

Allanit, J. and J. jun. and *Arbouin*, J. wine and spirit merchants, Mark-lane, as regards Arbouin, Jan. 1, 1849. Debts paid by remaining partners.—*Allanit*, J. and J. jun. wine and spirit merchants, Mark-lane. Jan. 10. Debts paid by J. Allanit, jun.—*Brenner*, G. W. and J. A. oil merchants, Manchester, Jan. 4. Debts paid by A. Brenner.—*Buchanan*, J. and *Gibson*, P. ship builders, ship owners, and timber merchants, Sunderland-near-the-Sea, Dec. 31. Debts paid by Buchanan.—*Burd*, W. and *Baker*, E. L. British wine manufacturers, Manchester, Jan. 13. Debts paid by Burd.—*Cain*, R. and *Owens*, T. common brewers, Liverpool, Jan. 14. Debts paid by Cain.—*Colquhoun*, L., E., S., A., and J. woollen cloth manufacturers, Holmfirth, Jan. 1.—*Cook*, T., *Haworth*, R., *Procter*, J. and *Bowker*, J. cotton manufacturers, Greenfield-mill, Bury, Jan. 6. Debts paid by Cook.—*Crook*, R. and *Sharpe*, M. milliners and dress makers, Conduit-street, Bond-street, Dec. 31. Debts paid by Crook.—*Dodsworth*, M. and *Percy*, J. joiners and cabinet makers, New Malton, Jan. 1.—*Draper*, M. and *Burn*, T. tailors, High-street, Huddersfield, Dec. 31. Debts paid by W. Golden.—*Hutton*, Southwark, Aug. 21. Debts paid by Draper.—*Friend*, R. and *Beckwith*, C. woollen factors and warehousemen, Gresham-st. Jan. 17.—*Golden*, W. and C. gun makers, A. and *Whitworth*, J. commission merchants and shipping and insurance agents, Liverpool, Jan. 13.—*Hyslop*, J. and *Hindley*, H. silk manufacturers, Leigh, Jan. 1. Debts paid by Hyslop.—*Kay*, M. and W. and *Barnes*, L. woollen manufacturers, Walmersley-cum-Shuttleworth, near Bury, Jan. 14.—*Maddy*, W. G. and *Bull*, J. outfitters, Liverpool, Jan. 15.—*Mounsey*, W. H. and *Farrer*, J. wine and spirit dealers, Liverpool, Jan. 14.—*Mutchinson*, S. and *Applebee*, J. K. boot and shoe manufacturers, Northampton, Jan. 18. Debts paid by Muddiman.—*Muir*, M. M. and *Meegan*, E. pattern designers, Kidderminster, Jan. 13.—*Pyslop*, J. and *Hindley*, H. silk manufacturers, Leigh, Jan. 1. Debts paid by Hyslop.—*Ray*, M. and W. and *Barnes*, L. woollen manufacturers, Walmersley-cum-Shuttleworth, near Bury, Jan. 14.—*Maddy*, W. G. and *Bull*, J. outfitters, Liverpool, Jan. 15.—*Mounsey*, W. H. and *Farrer*, J. wine and spirit dealers, Liverpool, Jan. 14.—*Mutchinson*, S. and *Applebee*, J. K. boot and shoe manufacturers, Northampton, Jan. 18. Debts paid by Muddiman.—*Muir*, M. M. and *Meegan*, E. pattern designers, Kidderminster, Jan. 13.—*Pussavant*, P. J., *Beckenbach*, F. W. and *Pussavant*, P. J. commission agents, Bradford, as regards Beckenbach, Jan. 15. Debts paid by remaining partners.—*Pelton*, R. T. and F. tailors, hatters, and undertakers, Dartford, Dec. 1.—*Salisbury*, E. G. and *Virtue*, G. publishers of certain works called the *Art Journal* and the *Vernon Gallery*, Jan. 14.—*Saul*, T. and *Harverson*, F. sawyers, Norwich, as regards Haverson, Dec. 18. Debts paid by Saul.—*Watson*, J. jun. and *Haggarth*, H. land agents and land surveyors, Kendal, Jan. 10. Debts paid by Haggarth.—*Whitehead*, J. and *Hudson*, W. painters, glaziers, and paper hangers, Davenham and Hartford, Jan. 7. Debts paid by Whitehead.—*Whittaker*, J. and *Greenhalgh*, T. and W. engravers to calico-printers, Hulme within Manchester, Jan. 14. Debts paid by T. and W. Greenhalgh.

Gazette, Jan. 21.

Armitage, T. and *Milnes*, J. stone masons, Huddersfield, Jan. 19.—*Barker*, J. and W. cotton spinners and manufacturers, Barewise, near Todmorden, Jan. 15.—*Baylis*, J., *Bristed*, H. R. and *Morley*, W. P. crape manufacturers, Luton and Dunstable, Jan. 16.—*Blackburn*, J. and *Teall*, W. iron founders and millwrights, Wakefield, Jan. 1. Debts paid by Teall.—*Booty*, R. and J. drapers, Piccadilly, Westminster, Jan. 17.—*Clarke*, T. T. and J. linen and woollen drapers, Stalybridge, Jan. 17. Debts paid by J. Clarke.—*Craig*, H. and *Main*, G. commission merchants, Liverpool, Jan. 1. Debts paid by Craig.—*Crowshaw*, J. and *Ainsworth*, R. glue and size manufacturers, Manchester and West Leigh, Jan. 17. Debts paid by Ainsworth.—*Cuthbertson*, J., *Chorley*, J. jun. *McLeod*, D. and J., *Brown*, J., *Miller*, W., *Hendry*, W., *Ayre*, G., *McKendry*, J. and T., *McLackland*, S., *Coltman*, R., *Willis*, R., *Thompson*, W. and *Edmundson*, J. glass bottle makers, under the firm of The Seaham Harbour Bottle Company, as regards D. McLeod, J. McLeod, J. Brown, W. Miller, W. Hendry, G. Ayre, S. McLackland, R. Coltman, W. Thompson, and J. Edmundson, Jan. 3. Debts paid by remaining partners.—*Dugard*, W. jun. and H. plate, factors, and lamp manufacturers, Upper Priory, Birmingham, Jan. 18. Debts paid by W. Dugard.—*Goodband*, J. and *Pickling*, T. merchants, Leicester and New York, Jan. 10.—*Goodyear*, J. sen. and J. jun. schoolmasters, Barnet, Jan. 20.—*Gunn*, T. and W., printers and engravers, Hand-court, Holborn, Jan. 19. Debts paid by W. Gunn.—*Harrison*, J. and J., and *Boddington*, H. common brewers, Strangeways, Manchester, Jan. 18. Debts paid by Boddington.—*Jackson*, E. and *Neild*, J. timber merchants, Oldham, Jan. 17.—*Keeling*, J. S. and *Porter*, F., colonial brokers, Mincing-lane, Jan. 19.—*Lloyd*, J. and *Blythe*, J. H. mercers, Shrewsbury, Dec. 31. Debts paid by Lloyd.—*Mankelow*, T. and *Alder*, T. W. zinc workers, Cumberland-place, Newington, Jan. 17.—*Marsden*, T., *Swingler*, J. and *Taylor*, J. S. engineers and ironfounders, Derby, Jan. 16. Debts paid by Marsden and Taylor.—*Mason*, J. and E. C. colour and graining tool manufacturers, Derby, Jan. 1. Debts paid by E. C. Mason.—*Meyer*, J. and J. and *Mortimer*, J. army and navy contractors, George-street, Edinburgh, Dec. 31. Debts paid by Mortimer.—*Miller*, H. M. and *Beck*, F. wine-merchants, Eastcheap, Jan. 1.—*Mills*, T. sen. and T. jun. builders, Brewers-green, Westminster, Dec. 31.—*Pussavant*, P. J., *Preller*, E. and *Beckenbach*, F. W. commission agents, Bradford, Dec. 31.—*Phillips*, M. A., C. T. and A. brush manufacturers, King-street, Soho, as regards A. Phillips, Jan. 20. Debts paid by M. A. and C. T. Phillips.—*Pigott*, D. W., D. S. and C. button-manufacturers, Gresham-street, Jan. 19.—*Reynolds*, F. and J. J. hatters, Strand, Jan. 20.—*Rodgers*, R., *Russell*, T. and *Horsfield*, H. R. saw manufacturers, Sheffield, Dec. 31 Debts paid by Horsfield.—*Schotz*, G. L. and *Genth*, F. merchants, Manchester, Dec. 9. Debts paid by Genth.—*Small*, T. and *Fry*, D. H. shipping and general commission agents, Lowestoft, Jan. 1.—*Startin*, G., *Calder*, T. and *Fry*, J. jun. sugar factors, and dealers in colonial produce, Glasgow, as regards Startin and Fry, Dec. 31. Debts paid by Calder.—*Startin*, G., *Fry*, J. jun. and *Startin*, J. sugar factors and coffee merchants, Liverpool, as regards Fry, Dec. 31. Debts paid by G. and J. Startin.—*Startin*, G. and *Fry*, J. jun. commission merchants, and dealers in sugar and colonial produce, Fenchurch-street, Dec. 31. Debts paid by Startin.—*Stephenson*, I., *Barker*, J., *Stephenson*, R. and *Ellison*, C. commission wool combers, Bradford, Dec. 31. Debts paid by I. Stephenson and Barker.—*Urch*, W. and *Springford*, W. knit hose manufacturers and general shopkeepers, Nettlebridge, Jan. 8.—*Vieyra*, A. and *Repington*, A. watch and clock makers, and jewellers, Regent-street, June 30. Debts paid by Repington.—*Whitehead*, M. and J. joiners and builders, Sheffield, Jan. 17. Debts paid by M. Whitehead.—*Wilkinson*, W. *Bibby*, T. and *Monk*, W. cotton-piece manufacturers, Padiham, March 9.—Debts paid by Wilkinson and Monk.—*Williams*, J. and *Trevethan*, J. farmers, Beer Barton, Beerferris, Jan. 12. Debts paid by either. *Walden*, J., *Simmons*, G. and *Newton*, J. iron-founders and pattern makers, Hyde. Jan. 11.—*Yarwood*, R. B. and *Fryer*, W. H. tailors, Leeds, Jan. 14.

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THE LAW TIMES.

SATURDAY, FEBRUARY 5, 1853.

THE NEW SCALE OF COSTS

With reference to the New Scale of Costs, and the Directions to the Taxing Master in lieu of those now in force, which we published last week there is one point to which we think it desirable to call early attention, as its practical operation will largely affect two branches of the Profession, relieving the attorneys of great responsibility, and maintaining the position of the special pleaders—a body whose practical value has always been acknowledged not merely in carrying on the purely formal proceedings of a suit and in advising, but in the education of both the higher and the lower branches of the Profession.

The 4th Direction to the Masters, here alluded to, is as follows —

"4 The Masters shall have discretion in all cases to allow, as between party and party, the fees of counsel or special pleader, for drawing pleadings or other proceedings, whether special or otherwise, and advising

We invite the attention of our readers to the following note on the subject by Mr THOMAS CHITTY —

This is a most beneficial direction and will be received with great satisfaction by all branches of the Profession It will tend to remove a hardship which has been severely felt, particularly since the Common Law Procedure Act, 1852, came into operation For although it must be obvious that the Act in providing short forms of pleadings could not impart the special knowledge necessary for their *application*, yet the Attorney has reasonably hesitated to seek the assistance of his Counsel or Special Pleader in many cases falling properly within their province in consequence of the uncertainty which existed as to whether the Masters would feel justified in allowing the fee for such assistance upon taxation The Attorney therefore, was generally obliged either to undertake the duties of another branch of the profession, in addition to the complicated labours and responsibilities already devolved upon him, or to incur the expenditure of a fee which might eventually fall upon his own client, although successful, or perhaps upon himself The Special Pleader, on the other hand found that the range of "questions" which he had been in the habit of answering gratuitously for the general guidance of his client, was being gradually extended beyond the accustomed limit Thus he was often asked as to the applicability and sufficiency in given cases of the forms of pleadings prescribed by the Act although it was obvious, and it still must be that it is the proper business of Counsel or Special Pleader to prepare such pleadings (no matter how short the form into which they are resolved), if his knowledge or experience is in any way required in order to frame or apply them The tendency of this state of things as regarded the Pleader in particular, was to deprive him of that proper business in the sense which was remunerative, and to leave him only that which was gratuitous, and thus, too, at a time when the working out of a new system made the latter branch of his duties doubly onerous It would seem, from the above direction that the learned judges have determined to put an end to this hardship, and although a discretion is given to the Masters, yet the direction will no doubt be carried out liberally, and it is hoped, will be found to be an adequate remedy. The necessity for this great alteration, and the advantage of it to all branches of the Profession and to the suitors, will be at once apparent It is clear that, although the late statute has happily shortened and simplified the forms of special pleadings yet the same exact knowledge of the law and the same acquaintance with the latest authorities are still as necessary as formerly to secure the rights of the parties It is also still of primary importance with reference to the pleadings, that the claim and defence should be framed in the most advantageous and correct form, and equally so with a view to costs that parties should not unadvisedly as has hitherto been too often the case "join issue" on the opponent's pleading Although amendments may be made more easily than formerly yet it will be very desirable to avoid the necessity for them as the expense of an amendment at almost any stage, will often exceed the costs of employing Pleaders on both sides throughout the whole cause The Pleaders fees, in fact, are altogether an inconsiderable item in the general costs, and bear no comparison to the advantages which are generally derived from their connection with the cause. Even in a case where it may eventually turn out that it was not absolutely necessary to employ a Pleader the general assistance required in the cause and which hitherto could be paid for only by the pleadings is often wanted in the simplest as in the heaviest cases —so that the suitor in any event receives the full benefit of the fee It will be observed that the Direction extends not only to the framing of pleadings and proceedings but also to advising. So that although the Attorney will now continue to receive from the Pleader that general assistance which the latter has hitherto given the Attorney will be warranted in other cases in becoming within the range of more questions in obtaining regular advice for his guidance By these means the best interests of the suitor will be consulted and the Attorney will be protected from an undue amount of responsibility, which ought not to be cast upon him Whenever he reasonably thinks that the matter is within the province of Counsel or Pleader rather than within the range of his own duties it is believed that the Masters will under the above direction, sanction the exercise of the Attorney's discretion

We think the Profession generally will concede with the views expressed by Mr CHITTY For the present we shall leave them to speak for themselves, but in our next number we propose elucidating and enforcing them by some further observations of our own

CONVEYANCING REFORM

Although undoubtedly something may be done to lessen the cost of conveyancing, by establishing a better system of charges and abbreviating needless verbosity, no substantial improvement can be made without material alterations in the law of real property

When Radical M P s and democratic newspapers talk of making the transfer of land as inexpensive as that of a bale of cotton, they but show the most profound ignorance of the subject, and the only answer to their wild and visionary rhapsodies is that the scheme is simply *impossible*

The cost of conveyancing does not consist so much in the conveyance itself as in the investigation and proof of title The drawing, engrossing, and execution of the deed is usually but a fraction of the whole costs of a purchase or mortgage We presume that no purchaser would be content to pay his money without a previous investigation of the title, that title must be investigated so far back as the law allows a claim to exist without being barred by lapse of time, every transaction within that interval must be carefully traced, to be sure that there are no claims not extinguished In sixty years there are many changes Sixty years comprise almost two generations. Hence births and deaths, wills and administrations, insolvencies and bankruptcies must be sought for and seen to be correct Here it is that costs arise, this is the main cause of the expenses so much complained of. But the law *destroyers* are either ignorant of this or they carefully keep it out of sight, while they set all down to the account of the Lawyers Not one of them has ever attempted to explain how he would grapple with the true difficulties of the case what changes he would introduce into the *law* of real property, so as to make more possession a good title; and nothing short of that could accomplish the design of making a transfer of land as cheap as a transfer of merchandize.

But does it follow that there can be no improvement, and that the law of real property is to continue unchanged, and that conveyancing is always to be so burdensome as now? By no means It is capable of very considerable improvements, without tearing it up by the roots and destroying it, and some of these we propose to suggest,—with deference, but not without hope that there is something practical in these hints.

The foundation of all the difficulties and consequently of the expenses, of the transfer of real property, undoubtedly lies in the extensive powers which the law gives to the owner to charge his Properly to understand the character of these powers it is necessary to bear in mind what are the *natural* rights of property in land. These are strictly limited to the life of the possessor. But society, for its own peace, has permitted owners to dispose of their lands after their decease So with incumbrances. Naturally there can be no right of property apart from possession, but for certain purposes of convenience, society has permitted the possessor to give to others certain claims upon it, which the law will enforce

Now it is in the extent to which the law of society permits a departure from the law of nature, that the more or less of difficulty (and consequently of cost) in the transfer of land will be found to consist, and the obvious and only remedy is to restrict those powers

Nor is there anything new or alarming in such a proposition It has been the steady aim of the administrators of the law from the earliest times to the present endeavours have always been made by our landowners to extend their power over their lands, and by our Courts to restrain them. The reason why this duty fell upon the Courts, instead of being undertaken by the Legislature, was, that the landowners were, until lately, the law makers But the time is come when the Legislature should do what the Courts have sought to do and have done, but partially, namely, to adapt the powers permitted to be exercised over the soil by its possessors to limits more rational in themselves and better suited to the present condition and requirements of the community

The power of *disposal* after death is too extensive and so also is the power of *charging*

It would suffice for all necessary uses of property in land that the power of devising it should be strictly limited to some person or persons living at the time of the devisor's death. This would simplify titles somewhat

But the expenses of investigations, which are the costly part of a conveyance do not so much arise from difficulties in the proofs of a devise as from the necessity for guarding against charges, and hence no substantial improvement can be made in conveyancing without a revision, and a large restriction, of the power of *charging* lands.

We cannot go nearly the length of those who advocate the entire suppression of the power of imposing any charge of land without actual possession, placing it in this respect upon the same footing as personal property. But we are quite ready to go a great way towards attaining the same object We would not forbid a charge unaccompanied with possession, but we would make provision for any charge being easily ascertained, and for its easy discharge

We propose to secure the first object, that a ready knowledge of any charge by any person dealing with the land so charged, by the very simple process of requiring an *indorsement of the fact of such charge*, with the amount and the name and abode of the person in whose favour it is made, upon the last deed under which the owner holds the property, declaring all charges to be invalid that are not so indorsed. This would effectually prevent the purchaser from being defrauded, and would limit the cost of investigation as to charges to the title-deeds themselves

Then, for the more easy *discharge* of lands from charges and incumbrances, the Legislature should give in absolute power to the party who is in actual rightful *possession* for the time being to go to the Court and claim to have the value of the charge assessed, and to pay the amount into court upon the trusts of the instrument creating the charges, and this power should not be limited by any act of the owner, or require the assent of the parties interested, but be an absolute right to all lawful *possessors* of the land.

We believe that, by the combined effects of these two provisions, simple though they be, a vast improvement would, ere long, be effected and the costs of transfer of land be materially lightened.

With these changes in the law we would combine a voluntary Encumbered Estates Court, similar in its powers to that which is working so well in Ireland, with this only difference, that the English court should not be a compulsory but a voluntary resort. If any man has a title which he *desires* to clear, let him resort to this court, which, after seeing that all existing interests are properly protected, would give him an indefeasible parliamentary title with which to start afresh. As such a court would be for the advantage of individuals more than for the general public, let its expenses be paid by those who use it. Possibly it might have little to do at first, until its utility was understood by the landowners; but whenever a complicated title is offered for mortgage or sale, we might be sure that it will be required to be passed through the court, and thus in time would the greater portion of the land come to be cleared of its accumulated difficulties in title.

Such are the rational and moderate reforms in the law of real property which we, looking at the question *practically*, would propose. It is only the wildest dream or the sheerest ignorance that could hope for any conceivable revolution by which land could be made as easily and cheaply transferable as merchandise.

LAW AND EQUITY.

The distinction between Law and Equity which, from early habit, lawyers had learned to look upon as a natural division, is rapidly losing its prestige, and it is beginning to be very generally understood in the Profession that it is only an artificial and ideal distinction; that there is no essential difference—that the law ought to be *one* rule of right, and not two rules—that if Law and Equity agree there is no need for the distinction; and, if they differ, one must be wrong and ought not to be suffered to exist.

It is wonderful what progress this opinion has made of late: it has penetrated to the highest places; many of the Judges have embraced it; the Attorney-General proclaimed it long ago; we believe that it is an article of faith with our able and eloquent Solicitor-General and proximate Chancellor, Mr. Bethell; and now we hear that the Common Law Commissioners, in the report they are about to issue, are going to recommend the addition of a very considerable equity jurisdiction to the Courts of Common Law—such as the powers of injunction and, so it is said, the conduct of Winding-up Cases. This is but a step, it is true, but it is in the right direction, and the ideal barrier that separates equity and law being once overstepped, it cannot be long maintained. Many of us will yet live to see the complete fusion of equity and law.

That this subject is making way among the public, as well as in the Profession, is proved by the following sensible petition, which has been circulated and extensively signed in the country.

To the Hon. the House of Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled.

The humble petition of, &c.

Showeth,—That it is the duty of the State to provide a just system of civil jurisprudence for the nation, sure and accessible to every citizen, and as far as possible, simple, expeditious, and costless.

That while bearing willing testimony to the general liberty of the subject, and especially to the pure administration of the law by its judges, your petitioners are of opinion that the civil jurisprudence of this country is incommensurate with the just expectations of a free and enlightened people.

That, without entering into professional details, with which many of your petitioners are necessarily unacquainted, they are of opinion that the defects of our civil jurisprudential system reduce themselves chiefly to the following, that is to say, the redress administered to the suitors is either—1. Incomplete; 2. Uncertain; 3. Dilatory; or, 4. Expensive.

That such defects are not the peculiar misadventure of any isolated cases, but the habitual and inevitable effects of the application to practice of the principles which govern respectively the courts of law equity.

Co[illegible] in seeking to discover the causes of such ano[illegible] in a country conspicuous in general for the [illegible] of its social institutions, and the jealousy which it protects the right of individuals, your Co[illegible]oners are struck with the distinctive administration of law and equity as a feature peculiar to the al establishment of this country.

That in such distinctive administration your petitioners can clearly trace the existence of the above-mentioned heads of defect, for example—

That the courts of common law, by systematically excluding cognizance of those equitable principles which enter into so large a proportion of all social rights, often close their doors against really deserving suitors, and thereby frustrate that administration of justice, which courts of justice are expressly designed to dispense.

That even in cases to which the courts of common law do extend redress, such redress is frequently of an incomplete character, falling short of that extensive, specific, equitable relief to which the suitor is of right entitled.

That courts of equity themselves, although originally intended to supply the defects of the common law courts, have by degrees been moulded into a system as inflexible as the common law courts themselves, and suitors whose cases fall within the scope of their principles are yet denied relief in those courts, because of the concurrent jurisdiction which the common law courts may chance to exercise on the particular subject matter.

That the distinction between law and equity being arbitrary in its creation, and not arising from any recognition of its abstract propriety, the limits of legal and equitable jurisdiction are so ill defined that in many cases great uncertainty prevails in ascertaining the wrongs which form the subject matter for redress in the respective courts.

That the necessary result of two systems of jurisprudence, of different origin, antagonistic in their respective jurisdictions, and employing different modes for the attainment of one and the same end, is, by the multiplication of labour, to increase the cost, and by the encouragement thereby afforded to technicality and subtlety of pleadings, to aggravate the complication of lawsuits.

That for the above-mentioned disadvantages occasioned by the distinct administration of law and equity, your petitioners are unable to discover any compensating advantages.

That understanding by "equity" the real beneficial right as contrasted with the more legal control over property, your petitioners are of opinion, that the basis of the principles of the courts of common law may be advantageously enlarged, so as to comprise all cases demanding relief, including such as have been reached hitherto only by the equity courts.

That such an extension, while it would leave untouched to the legal owners of property such control as he has hitherto possessed, and the possession of which it might be expedient he should retain, for the purposes of the due management and settlement of property, would cause the claim of the beneficial owner to be recognised and prevail, wherever the ends of substantial justice so required, in every court in the kingdom.

That your petitioners are further of opinion, that such an unity of the principles of jurisprudence might be advantageously accompanied by an uniformity of procedure, selecting from each of the existing systems of pleading and practice whatever specific merit they may possess, and combining therefrom one single scheme of litigation applicable to and governing the conduct of every civil suit.

Your petitioners therefore humbly pray your hon. House to pass such an act, or to adopt such other measures for abolishing the distinctive administration of the courts of common law and equity, and for giving to them one common procedure, as to your hon. House shall seem meet.

And your petitioners, as in duty bound, will ever pray," &c.

WHO IS HE?

We have received the following letter in answer to this question in our last. We leave it to our readers to say if *they* think that such an arrangement with the society, as was described in the circular, is or is not in accordance with the recognised rules of professional etiquette.

TO THE EDITOR OF THE LAW TIMES.

Sir,—The last number of your paper has just been put into into my hands, and in answer to your question of "Who is he," I refer to my signature and address below.

The general arrangements I made with the Guardian Society, and which it appears enabled them to offer to their subscribers the terms stated in their circular relating to the County Courts, I think would little interest your subscribers.

I am too well known to the respectable part of the Profession in Manchester and the neighbourhood, to fear your accusation of acting unprofessionally in anything I have done or am likely to do. But a friend has pointed out an ambiguity in the circular which had not struck me, inasmuch as by the circular it would appear that I was doing the business for individuals instead of the Society—the fact is otherwise. I have nothing to do with any individual member, and only act as one of the solicitors to the society. I am, Sir, yours, &c.

73, Princes-street, S. TUFFLEY HARDING.
Manchester, Feb. 1, 1858.

In justice to Mr. HARDING we subjoin a letter received from another correspondent, on the same subject, who considers that such an arrangement and announcement are at least not uncommon.

TO THE EDITOR OF THE LAW TIMES.

Sir,—Referring to the article under this head in the LAW TIMES of last Saturday, I beg to state that the arrangement between the Manchester Society of Guardians for the Protection of Trade and their solicitor, is similar in effect to the arrangements which exist between *every* Trade Protection Society in England and their solicitor; and it therefore seems to me rather unfair to select in particular the solicitor of the Manchester Society of Guardians for the Protection of Trade for attack.

I am, Sir, yours, &c.
London, Feb. 1, 1858. W. B.

If such be the general practice, Mr. HARDING of course stands exonerated. But is the practice itself justifiable? Much of course depends upon the *bona fides* of the society, and whether it was got up by the attorney for his own benefit, or really by tradesmen and others, who appoint their solicitors in the regular way.

NEW PRACTICE IN THE COURT OF CHANCERY. (a)

WHERE a defendant cannot protect himself by a demurrer or plea, and has not disclaimed, he must, if required, put in an answer to the whole of the plaintiff's bill, or to such parts of it as are not covered by the demurrer or plea. For it is the right of the plaintiff to have a discovery from the defendants of the matters stated in his bill, provided they are necessary to ascertain facts material to the merits of his case, and to enable him to obtain a decree. The plaintiff may require this discovery, either because he cannot prove the facts, or in aid of proof, and, to avoid expense. (Mitf. Pl. 306.)

It must be borne in mind that no defendant is called upon or required to put in any answer to a bill, unless interrogatories have been filed and a copy delivered to him or his solicitor, as we have before shown. (See ante p. 148.)

But, whether the plaintiff in any suit commenced by bill, does or does not require any answer from the defendant, or any one or more of the defendants to the bill, such defendant or defendants *may*, without any leave of the Court, put in an *answer* to the plaintiff's bill, within the time allowed for demurring alone (15 & 16 Vict. c. 86, s. 13); and by the 19th of the Orders of 7th Aug. 1852, a defendant required to answer a bill must put in his answer within fourteen days from the delivery to him, or his solicitor, of a copy of the interrogatories which he is required to answer. After that time a defendant *not* required to answer is not to be at liberty to put in an answer without leave of the Court; but the Court is to have full power to enlarge the time, from time to time, upon application being made to the Court for that purpose. If, however, the Court grants any further time to any defendant for answering the bill, the plaintiff's right to move for a decree under the provisions thereinafter contained are in the meantime to be suspended. (15 & 16 Vict. c. 86, s. 13.)

Applications for time to answer are to be disposed of by the judge sitting at chambers: (15 & 16 Vict. c. 80, s. 26.)

The answer has a twofold object. First, that of giving discovery to the plaintiff, by answering the interrogatories put to him by the plaintiff founded on the statements in the bill. Secondly, that of stating to the Court the defence upon which the defendant means to rely; or, in other words, the defendant's case.

It is desirable in framing an answer to keep these two objects distinct, though it is not often practicable to do so.

With regard to the latter, the defendant must let the plaintiff know by his answer the nature of the defence he means to set up; for if he does not, he cannot avail himself of matter which he might have urged by his answer, although it appears in his evidence: (*Harrison* v. *Borwell*, 10 Sim. 382; *Stanley* v. *Robinson*, 1 Russ. & My. 527.)

A defendant may by his answer insist upon the same benefit as if he had demurred or put in a plea. He may, for instance, insist by his answer upon the benefit of the Statute of Limitations (*Norton* v. *Turvill*, 2 P. Wms. 144); or a purchase for valuable consideration without notice: (Mitf. Pl. 309.)

With regard to the answer to the plaintiff's case, where interrogatories have been delivered, the defendant must put in a full answer; he may however object to making discovery of what

(a) Continued from page 181.

might subject him to any pain, penalty, or forfeiture (*Mitf.* by *Lor.* 241); or of what is immaterial to the relief prayed (*Lyon* v. *Kensit's Canal Company*, Sir Geo. Coop. 219; *Codrington* v. *Codrington*, 3 Sim. 539); or of what relates only to the private affairs of the defendant (*Francis* v. *Wigsell*, 1 Madd. 258); or of what is the subject of professional confidence.

It must, however, be remembered, that as a general rule a defendant who answers must answer fully: (*Lancaster* v. *Evor*, 1 Ph. 349.) This rule, however, was very much cut down by the 38th Order of Aug. 1841, which provides "that a defendant shall be at liberty by answer to decline answering any interrogatory, or part of an interrogatory, from answering which he might have protected himself by *demurrer*; and that he shall be at liberty so to decline, notwithstanding he shall answer other parts of the bill from which he might have protected himself by *demurrer*."

FORM OF ANSWER.

The answer of the defendant may contain, not only the answer of the defendant to the interrogatories so filed as aforesaid, but such statements material to the case as the defendant may think necessary or advisable to set forth therein, and such answer is also to be divided into paragraphs numbered consecutively, each paragraph containing as nearly as may be a separate and distinct statement or allegation: (15 & 16 Vict. c. 86, s. 14.)

The following is the form of answer given in schedule D. to the Orders of 7th Aug. 1852, though it is to be varied as the nature and circumstances of each particular case may require.

In Chancery.

John Lee, plaintiff.

James Styles and Henry Jones, defendants.

The answer of James Styles, one of the above-named defendants, to the bill of complaint of the above-named plaintiff.

In answer to the said bill, I, James Styles, say as follows:—

1. *I believe that the defendant, Henry Jones, does claim to have a charge upon the farm and premises comprised in the indenture of mortgage of the 1st of May, one thousand eight hundred and fifty, in the plaintiff's bill mentioned.*

2. *Such charge was created by an indenture, &c.*

3. *To the best of my knowledge, remembrance, and belief, there is not any other mortgage, charge, or incumbrance affecting the aforesaid premises.*

M. N.

(Name of Counsel.)

Answers are either joint or separate, and persons having the same interests and appearing by the same solicitor ought to put in a joint answer. By the 27th Order of 1828 it is provided, "that where the same solicitor is employed for two or more defendants, and separate answers shall have been filed, or other proceedings had by or for two or more defendants separately, the Master shall consider in the taxation of such solicitor's bill of costs, either between party and party, or between solicitor and client, whether such separate answers or other proceedings were necessary and proper; and if he is of opinion that any part of the costs occasioned thereby has been unnecessarily or improperly incurred, the same shall be disallowed."

In the case, however, of trustees, if they sever their defences, they will not, unless a good reason is given for the severance, or unless one of them has a beneficial interest, be allowed the costs of separate defences: (*Tarbuck* v. *Woodcock*, 3 Beav. 289; *Dudgeon* v. *Corley*, 4 Drur. & W. 158. If an answer is wrongly entitled, the plaintiff may move to have it taken off the file for irregularity: (*Pieters* v. *Thompson*, Sir Geo. Coop. 249.) So may also the defendant, or he may leave it there, and put in another answer: (*Griffiths* v. *Wood*, 11 Ves. 62; *Upton* v. *Sowton*, 13 Sim. 45; *Fry* v. *Mantell*, 4 Beav. 485.)

An answer must in general be signed by counsel (*Brown* v. *Bruce*, 2 Mer. 1); but that was unnecessary when, under the old practice, the answer was taken by commission: (*Barley* v. *Pearson*, 3 Atk. 429.)

OF TAKING AND FILING ANSWERS.

Under the old system, unless the defendant resided within twenty miles of London, or could attend at the Record Office in London, to swear the answer there, a special commission was directed to certain solicitors, as Commissioners of the Court, to take the answer. But, under the new practice, commissioners to examine witnesses *within the jurisdiction* are abolished, and an answer may be filed without any further or other formality than is required in the swearing and filing an affidavit: (15 & 16 Vict. c. 86, s. 21.) They may be sworn and taken *out of the jurisdiction* in the manner before mentioned as the mode of taking demurrers and pleas. And, whether taken by commission out of the jurisdiction of the Court or otherwise, they may be filed without the oath of a messenger; and any alterations made therein previously to the taking thereof are to be authenticated according to the practice in use with respect to affidavits: (15 & 16 Vict. c. 86, s. 25.)

It may here be observed that though in general answers must be sworn to, persons who have the privilege of peerage put in an answer upon attestation of honour; other persons, as Quakers or Moravians, may put them in upon solemn affirmation or declaration.

Sometimes by consent an answer is allowed to be put in without oath or signature: (Dan. Ch. Pr. 699.)

An infant's answer is put in by a guardian appointed by the court; that of a lunatic by his committee; that of a corporation under its seal.

OF EXCEPTIONS TO ANSWERS.

Answers may be excepted to for *scandal* (Dan. Ch. Pr. 721), and formerly they could have been excepted to on account of *impertinence*, but that practice is now abolished; the Court, however, may direct the costs, occasioned by any impertinent matter introduced into any proceeding, to be paid by the party introducing the same, upon application to the Court for that purpose, which must be made at the time when the Court disposes of the costs of the cause or matter, and not at any other time: (15 & 16 Vict. c. 86, s. 17, Order XXX., 7th Aug. 1852.) Exceptions may also be taken to an answer for *insufficiency*; that is to say, when it does not fully answer the interrogatories of the plaintiff: (Dan. Ch. Pr. 725.) They must be in writing, and be properly entitled, otherwise they will be taken off the file (*Earl of Lichfield* v. *Bond*, 6 Beav. 88; *Bradstock* v. *Whatley*, 6 Beav. 61), and signed by counsel: (*Yates* v. *Hardy*, Jac. 223.)

By the 8th of the Orders of Nov. 2, 1850, after the filing of a defendant's answer, the plaintiff has six weeks within which he may file exceptions for insufficiency; and if he do not file them within that time the answer will be considered sufficient: (*Nicklin* v. *Patten*, 4 Beav. 126.) A defendant has eight days within which he may submit to the exceptions (Order IX. Nov. 2, 1850); and he has thereupon three weeks, within which he may put in his further answer (Order X.), except in election or injunction cases. Exceptions for insufficiency are not to be set down for hearing till eight days from filing of exceptions, but within fourteen days. If he does not, the answer on the expiration of such fourteen days is to be deemed sufficient: (Orders XI. and XIV.)

After the filing of exceptions after further answer, the plaintiff has fourteen days from the filing thereof within which he may set down the old exceptions. If the old exceptions be not set down within fourteen days after such further answer put in, the answer is, on the expiration of such fourteen days, to be deemed sufficient: (Ord. XVI.)

Where exceptions for insufficiency being set down are allowed or submitted to, the Court may appoint the time within which such defendant is to put in his further answer.

If such defendant does not obtain time from the Court, or does not answer within the time which the Court allows, the plaintiff may sue out process of contempt against such defendant: (Ord. XVII.)

The answer of a defendant is to be deemed sufficient:

1. If no exceptions for insufficiency be filed thereto within six weeks after the filing of such answer.

2. If, exceptions being filed, the plaintiff does not set them down within fourteen days after the filing thereof.

3. If, within fourteen days after the filing of the further answer, the plaintiff does not set down the old exceptions: (Ord. XVIII.)

If, after a defendant's second or third answer is filed, the plaintiff sets down the old exceptions for insufficiency, then the particular exception or exceptions to which he requires a further answer is or are to be stated in the notice of setting down such exceptions: (Ord. XIX.)

If, upon the hearing of exceptions, the answer is held to be sufficient, it shall be deemed to be so from the date of the order made on the hearing; and if the defendant submit to answer without an order from the Court, the answer shall be deemed to be insufficient from the date of the submission: (Ord. XX.)

The Court, holding a first or second answer to be insufficient, may appoint the time within which a defendant, who is not in contempt, is to file a further answer: (Ord. XXI.)

Upon a third answer being held to be insufficient, the Court may order the defendant to be examined upon interrogatories to the points held to be insufficient, and to stand committed until he shall have perfectly answered the interrogatories; and the defendant is to pay such costs as the Court shall think fit to award: (Ord. XXII.)

OF SUPPLEMENTAL ANSWERS.

The Court will occasionally allow a defendant who has made a mistake or error to put in a supplemental answer; but it is very cautious in allowing it to be put in, and always requires an affidavit of what the defendant wishes to put upon the record, in order that it may judge whether it be reasonable: (*Livesey* v. *Wilson*, 1 V. & B. 149; *Greenwood* v. *Atkinson*, 4 Sim. 54; *Haslar* v. *Hollis*, 2 Beav. 236; *Smith* v. *Hartley*, 5 Beav. 432.)

AN ACTION AT LAW UNDER THE NEW PRACTICE. (*a*)

ARTICLE VIII.

TIME FOR DECLARING:—JUDGMENT OF NON PROS.

THE declaration begins the pleadings between the parties, and in the first place the time allowed for declaring has to be considered. If the plaintiff does not declare before the end of the term next after the term or vacation in which the appearance was entered, and has not obtained further time to declare, and if the defendant has given a notice requiring him to declare (*b*) (*ante*, p. 174), the defendant may sign judgment against the plaintiff for his costs. This judgment is commonly called judgment of *non pros.* from *non prosequitur*, because the plaintiff does not follow up his action, and it is founded on a provision made by stat. 13 Car. 2, st. 2, c. 2, s. 3.

If the plaintiff has issued a writ of summons against several defendants, and omitted one or more in the declaration, it seems that the omitted defendants may severally proceed to obtain judgment of *non pros.* against the plaintiff (*Hamlet* v. *Bresdon*, 4 M. & G. 909); and so also it would seem that in cases within the 38rd section of the Common Law Procedure Act (*ante*, p. 132), where one or more of several defendants has appeared to a writ specially indorsed, and others have not, and the plaintiff has signed judgment against those who have not appeared, the other defendant or defendants will be entitled severally to sign judgment of *non pros.* for their costs.

The plaintiff may declare immediately the defendant appears, although this is before the expiration of the eight days allowed for appearance. If no judgment of *non pros.* is signed against him, it seems he may declare at any time after the appearance within twelve months from the return day of the writ (*Barnes* v. *Jackson*, 3 Dowl. 404); and the return day of the writ, as has been said, is now considered to be the day of service. But a plaintiff is deemed out of court, unless he declare within one year after the writ of summons is returnable (sect. 58), and after that time the defendant cannot sign judgment of *non pros.* against him: (*Cooper* v. *Nias*, 3 B. & Ald. 271.)

If the plaintiff is unable to declare before the end of the term next after the appearance is entered, to prevent his being liable to have judgment of *non pros.* signed against him, he should obtain further time to declare by a rule of Court or an order of a Judge at chambers. Time could formerly be obtained by taking out from the Master's office what was called a side bar rule for time to declare, and successive rules might be obtained. They were granted as of course, and were in reality a mere mode of authorising the plaintiff to delay the action, and each of them extended over a term or a vacation. They cannot now be obtained: (R. G. H. T. 1853, r. 7.)

THE DECLARATION.

Next as to the contents of the declaration:—It is the statement by the plaintiff of the wrong which he alleges the defendant has done to him. It was said by Lord Coke to be "an exposition of the writ, and addeth time, place, and other circumstances that the same may be triable." But it has been found that in the majority of

(*a*) By George Tayler, Esq., Barrister-at-Law.

(*b*) It may be doubted whether, in the Queen's Bench, at any rate, a notice is now necessary previous to signing judgment of *non pros.* for want of a declaration; but it will be safer for the present to give it.

cases litigated at the present day time and place are not necessary, and that all the declaration need add to the notice of action given by the writ is a brief statement of the cause of the action, and the amount of damages claimed (which has been also indorsed on the writ in cases of debt). Before commenting on the different parts of a declaration, it will be well that two or three forms should be seen.

Every declaration must commence as follows, or to the like effect—

(Venue.) *A. B. by E. F. his attorney* (or *in person*, as the case may be), *sues C. D. for* ; and must conclude as follows, or to the like effect :—

And the plaintiff claims £ , (or, if the action be brought to recover specific goods, *the plaintiff claims a return of the said goods or their value, and £ for their detention*). (Sect 50.)

Between these two parts the cause of action has to be stated, and this completes the declaration. The following is the complete form of a declaration for the price of goods sold :—

In the Queen's Bench.

The day of , in the year of our Lord one thousand eight hundred and fifty .

Middlesex. *A. B. by E. F. his attorney sues C. D. for money payable by the defendant to the plaintiff for goods bargained and sold by the plaintiff to the defendant; and the plaintiff claims £ .*

For money lent it is—

Same. A. B. in person sues C. D. for money payable by the defendant to the plaintiff for money lent by the plaintiff to the defendant; and the plaintiff claims £ .

For the wrongful conversion of goods, the body of the declaration is—

Lancashire, } A. B. by E. F. his attorney
Southern Division. } sues C. D. for that the defendant converted to his own use, or wrongfully deprived the plaintiff of the use and possession of, the plaintiff's goods, that is to say, iron (or *hops*, or *household furniture*, or as the case may be) ; *and the plaintiff claims a return of the said goods or their value, and £ for their detention.*

For the breach of a covenant to repair a house it is—

London. A. B. by E. F. his attorney sues C. D. for that the plaintiff, by deed, let to the defendant a house [*No. 25, Cheapside*], *to hold for years, from the day of , in the year of our Lord one thousand eight hundred and ; and the defendant by the said deed covenanted with the plaintiff well and substantially to repair the said house during the said term* (according to the covenant), *yet the said house was during the said term out of good and substantial repair ; and the plaintiff claims £ .*

In an action by the payee against the maker of a promissory note, the statement of the cause of action is :—

for that the defendant, on the day of , in the year of our Lord 185 , *by his promissory note now overdue, promised to pay to the plaintiff £ , [two] months after date, but did not pay the same.*

And in an action by the payee against the drawer of a bill of exchange, it is—

for that the defendant, on the day, &c., by his bill of exchange directed to A., required the said A. to pay to the plaintiff £ [two] months after date ; and the said bill was duly presented for acceptance, and was dishonoured, of which the defendant had due notice, but did not pay the same.

The above are sufficient as instances of the present prescribed forms of declaration, the substantial difference in them being in the statement of different causes of action. From these it will be easy to draw similar ones in analogous cases ; thus in an action by an indorsee against the acceptor of a bill of exchange, the statement of the cause of action might be—

for that A. on the day, &c., by his bill of exchange, now overdue, directed to the defendant, required the defendant to pay to the said A. or order (or, as the case may be) £ , [*two*] *months after date, and the defendant accepted the same, and the said A. afterwards indorsed the said bill of exchange to B., and the said B. afterwards indorsed the said bill of exchange to the plaintiff, but the defendant did not pay the same.*

These forms seem strangely brief, even to those whose experience is confined to the forms used since the pleading rules of 1834, but on careful examination they will be found to contain all the requisites of the declaration, concisely put together. Many other statements of causes of action are given in schedule (B.) to the Common Law Procedure Act, which it is advisable to adopt *verbatim* where applicable. That statute provides that the forms contained in the schedule (B.) shall be sufficient, and those and the like forms may be used with such modifications as may be necessary to meet the facts of the case ; but nothing therein contained shall render it erroneous or irregular to depart from the letter of such forms, so long as the substance is expressed without prolixity : (sect. 91.)

There is, however, a special form of commencement of declaration given by the statute for all cases in which, after a plea in abatement of the nonjoinder of another person as defendant, the plaintiff shall, without having proceeded to trial on an issue thereon, commence another action against the defendant or defendants in the action in which such plea in abatement shall have been pleaded, and the person or persons named in such plea in abatement as joint contractors, or shall amend by adding the omitted defendant or defendants; and in these cases the commencement of the declaration must be in the following form, or to the like effect:—

(Venue.) *A. B. by E. F. his attorney* (or *in his own proper person*) *sues C. D. and G. H., which said C. D. has heretofore pleaded in abatement the nonjoinder of the said G. H. for*, &c. : (sect. 60.)

The different parts of which the declaration is composed, and which have been the subject of much discussion and technical learning, are still distinguishable, and each deserves a separate mention. They are the Title, the Venue, the Names of the Parties, the Statement of the Cause of Action, and the Statement of Damages.

The present mode of entitling the declaration as well as other pleadings has already been mentioned: (*ante*, p. 174.)

THE VENUE.

The venue requires more explanation, though it is now simply the name of the county or other other local district in which the cause of action arose if it be what is called a local cause of action, or, if it be a transitory cause of action (the meaning of these terms will be presently explained), then that in which the plaintiff proposes that the action shall be tried. Its history is very interesting, and is curiously interwoven with that of the most valuable of our jurisprudential institutions—trial by jury. To trace its history in detail, even briefly, would require more space than can conveniently be devoted to it in this article; but the mention of one or two prominent points will help to explain it.

The venue or visne, from *vicinetum*, originally meant the place or neighbourhood in which the transaction in dispute took place, and the jury anciently consisted of persons who were in some measure personally cognisant of the facts. This was so much so that total ignorance of the facts was a complete disqualification, though at the present time it is almost considered an essential qualification. The consequence was, that the venue was the place from which the jury were to be summoned ; and hence it became a rule that every allegation in the pleadings which the other party could with effect deny should state, not merely the county, but the parish or place at which it was alleged to have happened. The marginal venue, or venue in the action as it used to be called, was then simply a memorandum showing the county into which the original writ had issued, and in which the trial must take place.

Gradually a change took place in the constitution of the jury, and in consequence of a provision by 16 & 17 Car. 2, c. 8, for curing what was then a mere formal ground of error, it became the established practice that the jury of the venue in the action tried the issues raised even on facts laid with a venue different to that in the action. And in consequence of a subsequent statute (4 Ann. c. 16, s. 6) the sheriff was directed to summon all the jury from the county at large named in the margin, and none are now summoned from any particular part of it.

When the change had taken place in the constitution of the jury, a distinction began to be made between cases in which the truth of the venue was material and cases in which it was not so, and hence arose an important classification of actions into local and transitory actions. Local facts are, in law, such as carry with them the idea of some certain place, comprising all matters relating to real property, and hardly any others; transitory facts are such as may be supposed to happen anywhere, and comprise the incurring a debt, the making an express contract, and all matters relating to the person or personal property. An action is local if all the principal facts on which it is founded be local, and transitory if any principal fact be transitory : (Step. Plead. p. 120.) Ever since this distinction has been established the rule has been, that the plaintiff must in a local action lay the venue in the action in the county where the land lies, but that in a transitory action he may lay it in any county he pleases; and this appears still to be the rule.

He must bear in mind, however, that if he lay it in a county in which it is likely that an impartial trial cannot be had, or where the expenses of witnesses will be unnecessarily great, he exposes himself to an application by the defendant to the court, in a transitory action to change the venue, or in a local action to order the trial to take place in another county.

Beside the distinction between local and transitory facts, there are many actions which are in effect made local by statute. In penal actions, that is, actions brought for the recovery of penalties imposed by statute, it is enacted by 31 Eliz. c. 5, s. 2, that "the offence against any penal statute shall not be laid to be done in any other county but where the contract or other matter alleged to be the offence was in truth done." So also actions against public officers, for anything done in the execution of their office, are now usually required by statute to be laid in the county where the cause of action arose: (See list of many of these in Lush's Pract. p. 342, note *n.*)

NAMES OF THE PARTIES.

The declaration should correspond as to the names of the parties with the appearance if there has been one, and if not, then with the writ. It must contain the names of all the plaintiffs mentioned in the writ, or explain why it does not, or it may be set aside. If one of the several plaintiffs has died before declaration, it may commence thus :—

A. B. by, &c. comes and informs the Court that since the issuing of the writ of summons at the suit of the said A. B. and E. F. against C. D., the said E. F. died, and the said A. B. hath survived him, and thereupon the said A. B., by, &c. sues C. D. &c.

As to the names of the defendants, however, it is not objectionable if the declaration omit one or more inserted in the writ (*Coldwell* v. *Blake*, 3 Dowl. 656), though it must not include any not in the writ : (sect. 4.) But if any defendants included in the writ be omitted from the declaration, the plaintiff cannot afterwards declare against them separately : (*Rogers* v. *Jenkins*, 1 Bos. & P. 383.)

If either of the parties sue or is sued as executor or assignee this special character should be stated in the declaration, though it is not necessary to describe them so in the writ (*Ashworth* v. *Ryal*, 1 B. & Ad. 19); but if the writ show the action to be brought in or against the special character, it seems that the declaration must not omit it : (*Anon.* 1 Dowl. 97, n. *a.*) The rule appears to be that the writ may be more comprehensive or more general than the declaration, but that the declaration must not be more so than the writ.

THE MAGISTRATE,
AND PAROCHIAL AND MUNICIPAL LAWYER.

Summary.

In the law of *Lunatic Paupers*, it has been held by the Q. B. that sect. 5 of 12 & 13 Vict. c. 103 (which throws the charges upon the common fund in certain cases) does *not* apply to the case of a pauper lunatic removed to an asylum by an order made by the officiating clergyman and the relieving officer under sect. 48 of 8 & 9 Vict. c. 126, and therefore that the costs of maintenance are chargeable on the parish of settlement, and not on the common fund : (*Reg.* v. *Inhabitants of St. Leonard's, Shoreditch*, 20 L. T. Rep. 218.)

In the *Law of Settlement*, it has been decided that a pauper who was born a bastard after the passing of 4 & 5 Will. 4, c. 76, has the settlement of his mother only until he attains the age of sixteen. After that age his birthplace becomes his place of settlement, unless he has acquired one in his own right : (*Reg.* v. *Churchwardens, &c. of St. Andrew, Worcester*, 20 L. T. Rep. 221.)

In the *Law of Rating*, it has been decided that *market tolls are not rateable*, and that the fact that they are and always have been payable in a particular room in the market-house, of which the owner of the tolls is also the owner, does not make them so. But the lessee of *stallage dues is rateable* in respect of them ; these being connected with the actual use of the soil : (*Roberts* v. *Churchwardens, &c. of Aylesbury*, 20 L. T. Rep. 219.)

At length the question has been formally submitted to the Courts as to clerks to justices

under the Municipal Act conducting prosecutions. A clerk was sued for the penalty of 100*l.* for so doing, the 142nd sect. of the Municipal Act having prohibited the justices from appointing any alderman, councillor, clerk of the peace, or person employed in the office of clerk of the peace for the same borough, to be their clerk; and the clerk to the justices is prohibited from being employed or interested in the prosecution of any offenders committed by the justices. The section then imposes a penalty of 10*l.* on any person who, being an alderman, councillor, clerk of the peace, or person employed, &c., shall act as clerk to the justices, or otherwise offend on the premises." It was held that the intention of the Legislature was not sufficiently expressed, and that a clerk conducting a prosecution did not forfeit the penalty unless he was also an alderman, councillor, &c. as above described. Thus the statute only prohibits; there is no penalty, because the law is clumsily framed. But an indictment will lie for disobedience of a statute: (*Cox* v. *Lawrence*, 20 L. T. Rep. 222.)

In Criminal Law there is a curious and interesting question reported from the Appeal Court, viz., whether, when a man took a lamb by mistake, and, after having discovered his mistake, sold it, he is guilty of larceny? The Judges held him to be so, drawing the distinction between this case and that of a finder; with the latter the original possession is lawful; in this case the possession is unlawful from the beginning (*Reg.* v. *Riley*, 20 L. T. Rep. 228); and in *Reg.* v. *Dugdale*, 20 L. T. Rep. 219, a count in an indictment charging defendant with having possession of indecent prints, with intent afterwards to sell them, was held to be bad; but a count charging him with procuring indecent prints with intent to sell, is *good*, because the *procuring* is *an act done*.

REAL PROPERTY LAWYER AND CONVEYANCER.

Summary.

ANOTHER case involving the question as to the validity of a purchase by an attorney from his client in embarrassed circumstances, was decided by Lord ST. LEONARD'S. The sale was sought to be set aside upon this ground and that of inadequate consideration. A further question was raised whether, if such sale was in itself impeachable, it could be subsequently confirmed when the client is aware that he had a right to set it aside. "What," said his Lordship, "is the interest of a man in an estate which he has conveyed to his attorney in a manner which the attorney cannot maintain—that is, which he cannot maintain as a conveyance? Why he is still, in the view of this Court, owner of his own estate, subject to the repaying to his attorney, when he impeaches the transaction, the money which the attorney has paid; he remains owner subject to the estate which he had conveyed away to his attorney for an improper price." Then as to the confirmation he observed, "It is said that a conveyance to an attorney may or may not be good in this Court; it is certainly good at law, beyond all question, where there is no absolute startling fraud; such as that upon which a jury would find there was no deed at all executed; but a deed properly executed by a client to his solicitor is *primâ facie* good, and you can only impeach it in this Court on equitable grounds under certain circumstances." By his will the person entitled to take advantage of the defect confirmed the deed. His Lordship said upon this, "I am clearly of opinion he had an equitable estate. It is beyond dispute that a man may confirm, if he pleases, a voidable conveyance which he has made. If I deal with my attorney, and he commits what in this Court may be considered a fraud in obtaining my estate, and he afterwards claims and obtains from me a confirmation, he has to show fair dealing upon that confirmation, and that he communicated to me all knowledge that I could set aside the first deed, and that I confirmed with a knowledge of all the circumstances of my right to set it aside:" (*Stamp* v. *Gaby*, 20 L. T. Rep. 213.)

In the Law of *Vendor and Purchaser* there is an important case, *Roberts* v. *Berry*, 20 L. T. Rep. 215, in which the conditions of sale stipulated that the abstract should be delivered within seven days, and objections to the title were to be made within eight days from delivery of abstract. Owing to the absence of the mortgagee on the Continent, the title-deeds could not be procured in time, and consequently the abstract was not delivered till long after. The purchaser wanted to rescind the contract on this ground; but the Court of Appeal held that time was not of the essence of the contract, and that the excuse for non-delivery of the abstract was sufficient.

A testator by will gave property to two persons by name, one of whom he described as "my first cousin V. B. son of my late uncle P. B." He had no cousin named V. B.; but he had a cousin named G. V. B. son of his uncle J. B., and another cousin F. B. son of his uncle V. B. G. V. B. was held to be the fortunate cousin: (*Bernasconi* v. *Atkinson*, 20 L. T. Rep. 217.)

Stamp cases are very rare since the improvements effected by the last Stamp Act, and the facilities thereby given for securing proper stamps. But there was a stray case in our last, *Lord Canning* v. *Roper*, 20 L. T. Rep. 218. The question was, as put by Lord Campbell, C. J., "whether the assignment of chattels to secure to the assignee an indemnity in case he should be called upon to pay the amount secured by a bond which he had entered into as security for the assignor, is a mortgage liable to an *ad valorem* stamp?" It was held to be so.

In *Markes* v. *Harwick*, 20 L. T. Rep. 223, it was held that an action on the case will lie for waste by a lessee, even although there is an express covenant against waste, the remedies being accumulative.

In the *Law of Administrators* there is reported the case of *Morgan* v. *Thomas*, 20 L. T. Rep. 225. The widow of a tradesman, who died intestate, carried on her husband's business, and incurred a debt, for which execution issued against her. The sheriff seized her late husband's goods. The son, who lived with her, took out administration to the effects of his late father, and claimed the goods. He was held to be entitled to do so, for that administration does not relate back to the death of an intestate, except in cases which must be for the lawful benefit of the estate, and in the rightful course of administration.

Queries on Points of Practice.

COSTS.

Can any of your readers refer me to any authority as to the right of an intended mortgagee, in the absence of any express agreement on the subject, to recover from the intended mortgagor his costs respecting the investigation of the title and other preliminary business, where the business has been broken off and the mortgage not been completed in consequence of a defect in the title to the property?

A SUBSCRIBER.

Answers to Queries.

PROGRESSIVE DUTY.

In answer to the inquiry of T. H in your last number under this head, I beg to point out to him what in my opinion is the proper construction of the clause quoted, which will clearly show that his deed of forty folios will only require to be stamped as of two skins.

The statute, in effect, says, where a deed contains 2160 words or upwards, then for every *entire quantity* of 1080 words over and above the first 1080 there shall be charged a further duty. Now in his deed there is only *one entire quantity* of 1080 words over and above the first, and consequently but *one* follower stamp is necessary.

The words "entire quantity" mentioned in the statute appear to admit of no other construction.

HENRY JONES.

JOINT-STOCK COMPANIES' LAW JOURNAL.

Summary.

GOODS were delivered in Staffordshire, directed to the ship *Melbourne*, East India Docks. Subsequently a countermand was given to a clerk at the London station, and they were desired to be sent to Bell-wharf, Ratcliffe-highway. By mistake they were delivered to the original address. The railway company was held to be liable for the loss: (*Scothorne* v. *The South Staffordshire Railway Company*, 20 L. T. Rep. 225.)

The Companies' Clauses Consolidation Act prohibits any contract being made by a director of a company incorporated by Act of Parliament with the company. It was held in *Barker* v. *The Oxford, &c. Railway Company*, 20 L. T. Rep. 224, that this does not invalidate the contract, but only vacates the office of such director.

RAILWAY AND OTHER BILLS ON STANDING ORDERS.

Wednesday the standing orders of the House of Commons were complied with in the case of the following undertakings:—

WORCESTER AND HEREFORD RAILWAY.—For construction of railway between Worcester and Hereford, at an estimated cost of 560,000*l.*

SOUTH-EASTERN RAILWAY.—For power to enable the South-Eastern to extend the Reading, Guildford, and Reigate Railway, to the Great Western at Reading, or to use the station of the Great Western, or construct a separate one, at an estimated expense of 10,000*l.*

AMBERGATE, NOTTINGHAM, AND BOSTON AND EASTERN JUNCTION RAILWAY.

SEVERN VALLEY RAILWAY.—For a railway from the Oxford, Worcester, and Wolverhampton, near Hartlebury to the Shrewsbury and Chester at Shrewsbury, with branches to Madeley and Ironbridge Works, with power to use connecting railways, at an estimated cost of 600,000*l.*

SOUTH DEVON AND TAVISTOCK RAILWAY.—The standing orders inadvertently reported not complied with, were in this case complied with.

SWANSEA VALE RAILWAY AND BRANCHES.—The standing orders were declared not complied with, on the ground of some errors in levels and books of reference. The estimated cost of construction is 120,000*l.*

The other bills that passed muster were Sheffield Waterworks (extension of works), Lowestoft Water, Gas, and Markets, Preston Waterworks, Ormskirk Gas Light Company, Evesham-bridge and Blackpool Improvement.

PETITIONS, ORDERS, MEETINGS, APPOINTMENTS, CALLS, &c.

[Announced, issued, and made, during the past week.]

London and Birmingham Extension, and Northampton, Daventry, Leamington, and Warwick Railway Company.—To consider proposal of Mr. Weiss and managing committee on 9th Feb. Blunt.

London Conveyance Company.—Petition to dissolve presented on 1st Feb.: to be heard on the 11th.

THE LAWYER.

Summary.

EQUITY PRACTICE.—The new procedure has been again the subject of several decisions. In an *Anonymous case*, 20 L. T. Rep. 214, an appearance had been entered to a bill by a plaintiff for a defendant who had absconded. The Lords Justices directed that notice of filing replication should be served at defendant's last place of abode, and an advertisement in the *Gazette* and two country newspapers.

In *Holland* v. *Harper*, 20 L. T. Rep. 216, the solicitor in the cause was allowed to receive money out of court on account of a lady who had been appointed attorney for certain parties in America to recover it, and who was too ill to attend, on her receipt given for it, and her signature verified by affidavit.

In *Edmonston* v. *Harrison*, 20 L. T. Rep. 216, V.C. Kindersley said that the Judges had determined that in future all unopposed applications for *stop-orders*, where the parties did not object, would be disposed of by summons in chambers.

Where, before the passing of the new statute, a cause had been referred to the Master, and after the statute came into operation a petition was presented under sect. 42, that the prosecution of the decree might be transferred to a Judge at chambers, in order to have the assistance of an accountant, V. C. Turner held this to be the proper course. He added—"I have no power to authorise the Master to employ an accountant. . . It has already been held that the Act does not give the Master any authority to call in the assistance of such persons:" (*Morrell* v. *Tinkler*, 20 L. T. Rep. 217.)

A. directed a sale of his estate and division of the produce. A bill was filed for the administration of the trusts, and the trustees of the will and the parties entitled to the produce were made parties. One of these persons had married, and her share was settled for her benefit and that of her husband and the children of the marriage. It was held that, under rule 9 and sect. 42 of the new statute, the trustees of the settlement must be parties, and the interests of the children would be sufficiently represented by them: (*Densem* v. *Elworthy*, 20 L. T. Rep. 217.)

Where the Court held certain persons to be entitled for life, and at their deaths their then surviving children were entitled to their shares, it was held to be a case wherein the Court would, under the 50th section of the new statute, declare the future rights—thus saving, perhaps, the cost of another suit: (*Fletcher* v. *Rogers*, 20 L. T. Rep. 218.)

COMMON LAW.—Already a case has arisen upon the new rules. Rule 67 provides that after suggestion entered of error in law, alleged and denied, as prescribed by sect. 49 of the Procedure Act, either party may set down the case for argument and forthwith give notice in writing to the opposite party, and proceed to the argument thereof as on demurrer, without any rule or motion for a *concilium*. What was the limit of

time for setting down the case for argument? The Ex. held that it may be set down *four days* before the day of hearing: (*North-Eastern Railway Company* v. *North-Western Railway Company*, 20 L. T. Rep. 226.)

The following cases have been decided upon the *Procedure Act*. On sect. 210 it was held by the Ex. that upon motion for judgment in *ejectment*, an affidavit was sufficient that stated "that three quarters of a year's rent were in arrear, and that there was no sufficient distress to be found upon the premises countervalling the said arrears of rent then due:" (*Cross* v. *Jordan*, 20 L. T. Rep. 226.)

To an action on two mortgage deeds and collateral bonds, the defendant pleaded the Statute of Limitations; replication, acknowledgment within twenty years. On an application under sect. 52, the Court ordered the replication to be amended, so as to show on what description of acknowledgment the plaintiff intended to rely, but refused to put him on terms as to giving dates and stating particulars of such acknowledgment: (*Forsyth* v. *Bristowe*, 20 L. T. Rep. 226.)

It was held in *Boodle* v. *Davis*, 20 L. T. Rep. 225, that sect. 128 (which provides for the issuing of execution upon a judgment in certain cases without reviving it by *sci. fa.*) is retrospective, and applicable to a judgment more than a year and a day old when that Act came into operation.

In *Farthing* v. *Reed*, 20 L. T. Rep. 228, it was ruled by Erle, J. that under sect. 101, plaintiff is not bound to wait until a suggestion has been entered by defendant, but may come to the court at once, on being served with the notice to proceed to trial, with reasons for not doing so.

WINDING-UP.

It has been recommended that all appeals from the Master's decisions in winding-up cases should be taken at once before the Lords Justices, who were stated to be willing to hear the appeals in the first instance: (*Re the Worcester Corn Exchange*, 20 L. T. Rep. 217.) We trust that this recommendation will be adopted, and thus the costs of two appeals saved to the parties.

FEES IN THE COMMON LAW COURTS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Now the Common Law Procedure Bill has become law, and the lawyers' fees have been reduced in pursuance of the intention of that Act, allow me to ask, how it comes to pass that the fees paid out of pocket to the different officers of the common law offices and courts, have not *de facto* been likewise reduced. Surely it was intended that such should have been the case. Instead of being lessened, they are positively in many instances increased more than twofold. Fees are moreover now required where they never before were thought of, and on the whole are far more oppressive, than they were before the recent alterations. What makes the case still worse is, the fees are so arranged that they fall unnecessarily heavy in the commencement of an action, so that in most cases extravagant fees are squandered contrary to the benefit and expectations which the suitors were led to expect.

Surely such a state of things cannot be permitted to exist without an attempt to rectify the grave injustice done; the result moreover is most injurious, the enormous fees paid out of pocket swell the attorneys costs to a very unjust extent. And the public will ere long find that the extra costs paid to the officers of the different offices greatly negative and reduce the advantages which have been gained by the reduction of the lawyers' fees. The whole Profession, without a dissenting voice, I believe, are aware of, and are constantly denouncing, the present system; still nothing that I am aware of has been done or attempted to be done to rectify it.

I feel sure that the facts have only to be placed before the judges in a proper manner, and they will, with their ever just sense of right, be ready and desirous to put things on their proper footing. Another question if you please. Can you inform the Profession what is to be done with respect to the 153rd of the new Common Law Rules, providing that it shall only be necessary to issue one summons for attending before a judge?

The practical inconvenience and injurious results are so evident, that the entire Profession exclaim against it. Either there should be two summonses, as before, or at least twenty-four hours notice of the single summons should be given.

The only gainers by the present system are a nameless set of men, who exercise any opportunity and power they may have to take parties by surprise and obtain an undue advantage whenever opportunity offers.

As this letter is intended for those practically acquainted with the subject, I have dealt thus generally with it, and venture to hope that with your assistance the grievances above alluded to will at once meet with attention by those who have influence enough to succeed in their removal. I beg to apologise for troubling you to this extent.

I am, Sir, yours, &c.

A LONDON SOLICITOR.

London, Feb. 3, 1853.

SERVICE OF WRITS IN THE COUNTRY.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Your paper has been inundated lately with complaints made by country solicitors of nonpayment of their charges for service of writs by London correspondents. Have we London solicitors, though, no cause of complaint? I think we have; for I have heard many complain that their country brethren seldom charge what is allowed on taxation, but generally claim more; and if so, I think they do rightly in delaying payment. I have issued some fifteen or twenty writs in the country lately; but in every case but one or two the charges have been more—in one or two much more—than are allowed; and on my remitting either the proper sum, or sometimes more, I have had angry letters in reply for not remitting the amount demanded. Surely country solicitors ought not to expect more than taxed costs, except under extreme circumstances; for if they do, as they must well know, they come out of the London attorneys' pockets.

Yours, &c.

A LONDON ATTORNEY.

SALARIES OF LAWYERS' CLERKS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Might I, through the medium of your valuable paper, call the attention of the law profession to the state in which we (lawyers' clerks) are as regards our salaries. We have low salaries and must appear respectable, which I (one of the lawyers' clerks), as well as several of my fellow clerks, find it impossible to do, and in several offices there are youths employed, each of whom is kept to do a man's work to save paying higher wages. Thus it is that clerks not having sufficient salaries are, through want, placed in such a position that they must either commit some crime or starve.

Surely something might be done to rescue us from our awful and pitiable state. Trusting that the members of the profession will take this as a hint in good part, and give us (the lawyers' clerks) the benefit of it.

I remain, Sir, yours, &c. (for self and others),

ONE WHO HAS TOO LOW A SALARY.

Manchester, Jan. 21, 1853.

COUNTY COURTS.

Summary.

Two questions of jurisdiction have been raised upon appeals. Before we notice their particulars, let us direct the attention of the judges' clerks and practitioners to a *dictum* of Jervis, C. J. in *Winch* v. *Winch*, 20 L. T. Rep. 223, that "he should have thought that *where the judge entertained doubts about his jurisdiction, he would have exercised it.*" This, we believe, is opposed to the rule usually observed by the Judges, who, if they have a doubt about their jurisdiction, decline to exercise it. Perhaps his Lordship is right. If it should prove that the judge has not jurisdiction, and the parties are dissatisfied with his decision, they have their easy remedy in prohibition. But if he should refuse to act because he has doubts about his jurisdiction, he incurs the hazard of denying justice, or putting the parties to cost and trouble to satisfy his own scruples. The former course is certainly the least of two evils. In this case an action had been brought in the County Court to recover a legacy of 50*l.* from executors. It involved a question of *devastavit*. Nevertheless, it was held to be within the jurisdiction of the County Court, under sect. 65 of the County Court Act, extended in amount by the Extension Act, c. 61.

It was otherwise with *Walsh* v. *Jonides*, 20 L. T. Rep. 218. There a cargo was sold to A., to be delivered at any port in the United Kingdom, the price to be paid on delivery of the shipping notes and policy of insurance. A demand of them was made at Liverpool and refused, but the cargo was ordered to be delivered at Drogheda. Thereupon A. sued in the County Court of Liverpool, claiming damages for the non-delivery of the cargo. It was held, now, that no cause of action for non-delivery of the cargo arose within the jurisdiction of the Liverpool Court; but that plaintiff had a cause of action there for not delivering the shipping notes and policy. The prohibition, therefore, was not to be a general oneas to the whole cause, for the plaintiff could apply to the County Court to amend his particulars of claim.

DEFENDED CAUSES—COUNTY COURTS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Observing in the LAW TIMES of the 29th of last month a letter signed "E. C.," respecting sittings for hearing defended causes in these courts, I think if an order were made such as the one I enclose, and which is strictly adhered to in this circuit, throughout the other courts in England, great advantage would accrue both to the attorney and client. At least the Profession in the county appear to think so; and I think other professional men would consider if it were so generally acted on.

I enclose my card, and remain, Sir, yours, &c.,

A COUNTRY ATTORNEY.

Feb. 3, 1853.

(COPY.)

County Courts of Gloucestershire and Wiltshire, holden at Cheltenham, Cirencester, Dursley, Gloucester, Malmesbury, Newent, Newnham, Northleach, Stow, Stroud, Tewkesbury, and Winchcomb.—Circuit 54.

NOTICE IS HEREBY GIVEN, That after the 31st day of December 1852, at every sitting of each of the above-named County Courts, the Cause List will be called over twice; that every cause which on the first calling shall appear to be *undefended*, and also every summons after judgment, will be then heard and disposed of; and that on the second calling of the list, all the other causes will be taken in the order in which they are entered.

Parties intending to prosecute or defend their suits should not be guided by the numbers on their plaint notes or summonses, nor by their position in the Cause List, but should attend the court at the hour appointed for its sitting.

By order of the Judge.

COUNTY COURT COSTS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—As the subject of attorneys' costs in the County Courts is now justly occupying your attention, permit me to instance a case in point.

An action for breach of warranty of a horse has been recently brought in this neighbourhood, the hearing of which occupied about six hours. No less than nine witnesses were called and examined, and having already intimated that it was a *horse case*, further comment upon its tedious intricacy would be superfluous. When it is remembered that each of the plaintiff's witnesses was probably examined previously even to the issue of the summons, and that this process must have been repeated in the interval between that stage of the proceedings and the hearing, and when, moreover, the trouble incidental to the preparation of such a brief is taken into account, your readers will, I think, feel with me that a regulation awarding a fee of 30*s.* as a compensation to a skilful attorney for conducting such a case (a pittance insufficient to remunerate him for his services at the hearing alone) calls for *extensive* and *liberal* amendment.

I am Sir, yours, &c.,

Yeovil. AN ATTORNEY.

MERCANTILE LAWYER.

Summary.

ONE of the most important cases on the *Law of Copyright* that has come before the Court for a long time, was reported a fortnight since (*Murray* v. *Bogue*, 20 L. T. Rep. 198.) It was a motion for an injunction for piracy of one of MURRAY'S famous Handbooks, and it failed because, although the extracts were numerous, it was considered that no unfair use had been made of the plaintiff's book. But it involved also a point under the Copyright Act, as, whether a book of which the first edition had appeared before that Act required registration for the protection of the second edition, and this was decided in the affirmative; at least, that if subsequent editions are not registered, the *new* matter contained in such new editions is not protected, although the matter contained also in the first edition would be so.

A Court of Equity will not sanction a *legal* liability that had been obtained by undue influence. Thus, in *Espey* v. *Lake*, 20 L.T. Rep. 203, a stepfather had applied for a loan of 500*l.* from a party who required that the stepdaughter, who had lived with the borrower from infancy, should join in a note for payment of principal and interest. She was not twenty-two years old, and entitled to a property of 550*l.* which the lender knew. The lender sued her on the note, and obtained judgment at law; but a Court of Equity granted an injunction to stay execution on account of undue influence, arising out of the relative positions of the parties.

Under the *Copyright of Designs Act*, there was the case in the Q.B. of *Heywood* v. *Potter*, 20 L.T. Rep. 207. It was held that by the 4th sect. of that statute, the proprietor of a registered design for paperhangings is bound to put the letters "Rd." and the number on the pattern-pieces containing the whole design published to the world, though such pieces may be of a size so small as to be inapplicable to papering walls, such pieces being deemed by the Court to be articles of manufacture within the section. But from this construction of the Act COLERIDGE, J. dissented.

A charter-party between A. & B. agreed to

carry cargo to Calcutta on the usual and customary terms. It appeared that usual and customary terms gave the consignee a right to send a cargo home, and entitled him to commission on such return cargo. It was held in *Robinson* v. *Wait*, 20 L. T. Rep. 210, that the consignor might sue for such commission.

In *Rossiter* v. *Cobbaun*, 20 L. T. Rep. 211, it was held that the *Weights and Measures Act*, 5 & 6 Will. 4, c. 63, did not apply to a contract made to supply palm oil at so much per gallon, old measure, by the plaintiff on the coast of Africa to defendant, who was to send his vessel there for it.

A. had, between his shop and the backdoor, a dangerous opening. Whilst B. was in his shop as a customer, it was closed, and she was directed to go out at the back door, and she fell into the hole. Another person had previously fallen in, and the defendant had been cautioned of the danger. He was held to be liable to B. in damages for the injury done: (*Clapson* v. *Allen*, 20 L. T. Rep. 212.)

An interesting case is that of *Peachy* v. *Rowland*, 20 L. T. Rep. 208. A. had contracted to make a sewer, and had sub-contracted with B. to excavate it. A.'s carts were to carry away the surplus earth. B. left a heap of earth, which overturned the plaintiff's carriage, and he brought an action against A. for the damage; but the C.P. held that it would not lie. MAULE, J. said, "If a man employs another to do a thing, and there are several ways of doing it—one criminal and another innocent—and he does it in a criminal manner, the employer is not liable."

The liability of a boarding-house keeper for loss of a lodger's goods was defined by ERLE, J. at Nisi Prius, in *Dancey* v. *Richardson*, 20 L. T. Rep. 213: "It is," he said, "very different from the care required from an innkeeper. By law an innkeeper is responsible for goods brought to his inn, and would be responsible for them if stolen, unless the owner had contributed to their loss; but there is no such extensive responsibility with respect to the keeper of a boarding-house; in such a house a person must look after his own goods to a much greater extent. A person keeping a boarding-house is bound to use such care as a prudent owner would use with regard to his own premises. If he does so he will not be responsible for any loss.

A ship bound from Nantes to Dublin was obliged, from stress of weather, to run into the Bay of Palais. The ship lost her anchors, and it was necessary for her preservation to run into the tidal harbour of Sanzon, where she took the ground in consequence of its being low water. She was detained there a month, and floated only eight days, and these at the top of the spring tides. Was that a *stranding* within the meaning of the usual memorandum in the policy? It was held by the Q. B. so to be. COLERIDGE, J. thus defined the principle:—"Where the vessel takes the ground by reason of something which is ordinary and regular, as, where she is in her proper place in a tidal harbour, and is expected to take the ground when the water falls, in such a case there is no stranding; but if the event arises from something out of the ordinary course, it is a stranding: (*Corcoran* v. *Gurney*, 20 L. T. Rep. 221.)

It was held in *Platt* v. *Else*, 20 L. T. Rep. 226, that, to an action for the infringement of *a patent*, the defendant may plead *non concessit*, and also a traverse of the specification.

Another case under the *Law of Patents* is *Shaw* v. *The Bank of England*, 20 L. T. Rep. 227. The plaintiff, having brought an action for the infringement of a patent, was permitted an inspection. He subsequently discontinued the action, and having begun a fresh one, applied under sect. 42 of the Patent Law Amendment Act for a second inspection. The Court of Ex. refused it.

THE LAW OF DEBTOR AND CREDITOR.—A most important view of the law of debtor and creditor was recently announced at an Edinburgh jury trial. The case itself was one between Mr. M'Cowan, as trustee on the sequestrated estate of Mr. James Howie, merchant, in Glasgow, as pursuer, and Mr. John Wright, merchant, in Naples, as defender. The verdict, under the direction of the court, as to the law, was given to the pursuer. We now understand that the case is to be reheard on a bill of exceptions, before the court of session, and appealed to in the House of Lords, if necessary, in order to determine whether or not the law was rightly laid down by the presiding judge. The defender in the action was proved to be a creditor to the extent of about 16,000*l.*, and about ten months before the bankruptcy he received from the debtor certain stocks and property in security of his debt. It was laid down by the presiding judge, that if at that time the debtor was insolvent, he had no power to pay any of his creditors, however honest, in full, and that no creditor could take such property in payment of his debt, even although he were entirely ignorant of the insolvent condition of his debtor. Accordingly, his lordship told the jury, that though the defender's honour was not impugned in the slightest degree, yet he must give back the property if the debtor was in insolvent circumstances, and knew it at the time it was given. The bill of exceptions challenges this law. The law stated by the presiding judge strikes very widely indeed. If it be correct, can a creditor be in safety to take payment from his debtor, and give him a discharge, without ascertaining whether or not he is insolvent at the time? Upon the faith of the payment or security which the creditor has received, the debtor may have obtained further credit, and thus, in the end, leave the creditor in the lurch, both as regards the former and subsequent debt. His lordship further stated it was a mistake to suppose that if a party were not made bankrupt for sixty days after he had given security or payment to his creditor for a prior debt, such payment or security would be sustained. According to his lordship, the law now is, that if upon investigating the debtor's books at the time of giving the security (although it should be months or years before), it turn out that he was insolvent (that is to say, unable to meet his debts at the time), the creditor must give up the security he got. This is a most important and, at the same time, a startling view of the law of debtor and creditor, more especially in a speculative and commercial country, where a man's books may show him to be to-day below the world, while the result of to-morrow's speculations may place him far above it.—*Glasgow Constitutional.*

COURT PAPERS.

Equity Courts.

Rolls Court.

SITTINGS AFTER TERM,

Tuesday....	Feb. 8	Motions.
Wednesday	9	Pleas, Demurrers, Causes, Claims, further Directions, and Exceptions
Thursday	10	
Friday	11	
Saturday	12	
Monday	14	
Tuesday	15	
Wednesday	16	
Thursday	17	
Friday.....	18	
Saturday	19	
Monday	21	
Tuesday	22	Motions
Wednesday	23	Petitions in General Paper.
Thursday	24	Pleas, Demurrers, Causes, Claims, further Directions and Exceptions.
Friday	25	
Saturday	26	
Monday	28	
Tuesday....	Mar. 1	Pleas, Demurrers, Causes, Claims, further Directions, and Exceptions
Wednesday	2	
Thursday	3	
Friday	4	
Saturday	5	
Monday	7	
Tuesday	8	Motions.
Wednesday	9	Pleas, Demurrers, Causes, Claims, further Directions, and Exceptions.
Thursday	10	
Friday	11	
Saturday	12	
Monday	14	
Tuesday	15	Petitions in General Paper
Wednesday	16	Pleas, Demurrers, Causes, Claims, further Directions, and Exceptions.
Thursday	17	
Friday	18	Motions.
Saturday	19	Pleas, Demurrers, Causes, Claims, further Directions, and Exceptions.
Monday	21	
Tuesday	22	
Wednesday	23	
Thursday	24	

Short Causes, Short Claims, Consent Causes, Unopposed Petitions and Claims, every Saturday at the sitting of the court.

NOTICE.—Consent petitions must be presented, and copies left with the secretary, on or before the Thursday preceding the Saturday on which it is intended they should be heard.

TAXATION OF COSTS OF REFERENCE TO CONVEYANCING COUNSEL.

LORD ST. LEONARDS, on the 24th December, intimated to the Taxing Masters that, in his Lordship's opinion, "where, in pursuance of any direction by the court or judge or of any request by a Master in Ordinary, drafts are settled by any of the conveyancing counsel under 15 & 16 Vict. c. 80, s. 41, the expense of procuring such drafts to be previously or subsequently settled by other counsel is *not to be allowed on taxation*, as between party and party, or as between solicitor and client, unless the court shall specially direct such allowance. This intimation, however, is not to prevent the allowance of the expense in cases which may have *already* occurred, where, in the judgment of the Taxing Master, there has been a reasonable ground for laying the papers before other counsel."

Common Law Courts.

Queen's Bench.

MIDDLESEX SPECIAL JURY APPOINTMENTS.

Saturday, Feb. 5.

Reg. *v.* Jackson and Sulari.

Monday, Feb. 7.

Anderton *v.* House	Bullock *v.* The Midland Railway
Reg. *v.* Hunter	Reg. *v.* Hunter.

Tuesday, Feb. 8.

Reg. *v.* Orchard and Cox	De Vaney *v.* Fane
Dunn *v.* Coutts	Metcalf *v.* Booth.

Wednesday, Feb. 9.

Mary Kane *v.* The Queen, and James Child and others.

Court of Exchequer.

Saturday, Jan. 22.

This Court will, in addition to the sittings already appointed for Saturday, the 12th day of February next, hold a sitting on Monday, the 14th day of February next, and will at such sittings on Saturday the 12th and Monday the 14th days of February next, proceed in disposing of the business then pending in the Paper of New Trials, and in the Special Paper, and also in giving judgment in cases then standing for judgment.

FRED. POLLOCK. E. H. ALDERSON.
J. PARKE. SAML. MARTIN.

QUESTIONS AT THE EXAMINATION,

Hilary Term, 1853.

I. PRELIMINARY.

1. Where, and with whom, did you serve your clerkship?

2. State the particular branch or branches of the law to which you have principally applied yourself during your clerkship.

3. Mention some of the principal law books which you have read and studied.

4. Have you attended any, and what law lectures?

II. COMMON AND STATUTE LAW, AND PRACTICE OF THE COURTS.

5. Is a civil action maintainable in any case in which the cause of action constitutes an indictable offence?

6. When are specialty and simple contract debts respectively barred by the Statute of Limitations, if no proceedings have been taken to prevent that statute from operating?

7. When the Statute of Limitations is, in point of time, a bar to the recovery of such debts, state some of the most usual requisites to be proved to take such debts out of the operation of the statute, and will a verbal promise to pay be sufficient?

8. Is it necessary in any, and what, cases, previous to commencing an action, to give notice in writing to the opposite party of the cause of action and claim for damages? And if any notice is necessary, what would be the consequence of the plaintiff failing upon the trial to prove the giving such notice?

9. Is there any, and if any, what, difference between the liability of bail above, *i. e.* bail to the action, and bail on a writ of error?

10. Where an executor is sued for a debt owing by his testator, and pleads *plene administravit* only, and the plaintiff cannot disprove that plea, but there is other personal estate of the testator to be got in, what course should the plaintiff take?

11. A. commits an assault upon B.; B. dies before action brought: Can B.'s executors sue A. for the recovery of damages in respect of the assault committed by A.?

12. If a plaintiff recover a verdict against two joint defendants, should he issue execution against each defendant for half? or if he issue execution against one for the whole, would the other be thereby exonerated entirely?

13. In an action on a bill of exchange, Drawer *v.* Acceptor, and the defendant pleads payment only, has the plaintiff anything, and what, to prove?

14. Can a plaintiff be compelled upon a trial to be nonsuited against his will? and if he cannot, what should he do to prevent it? And in what respect is a plaintiff's position better by a nonsuit than by a verdict against him?

15. State some of the most usual grounds upon which new trials are granted, and when generally upon payment of costs, and when without costs.

16. When the rule granting a new trial is silent as to costs, and the verdict on the second trial is the same as on the first, how are the costs of the first trial and of the motion for the new trial disposed of?

17. What are the means of enforcing an award where there is no cause pending, and the submission contains no clause for making it a rule of court?

18. What is the effect of withdrawing a juror on a trial as to costs? and can the plaintiff bring another action for the same cause?

19. After what period does a deed prove itself, without calling the attesting witness?

III. CONVEYANCING.

20. What is an estate in tail? and by what words is it created; and what words constitute an entail general, and what an entail special?

21. What power of disposition has a tenant in tail over entailed lands, both as regards his own estate tail, and all remainders over? and distinguish the case where there is a protector of the settlement from the case in where is no such protector.

22. What is a copyhold or customary estate, and by what description of assurance is it created, and afterwards passed from one party to another?

23. How can the dower of a woman married before the late Dower Act came into operation be now defeated? and how can the dower of a woman married subsequent to that Act be defeated?

52. Will a covenant for production of title-deeds in respect of land, taken run with the land?

53. What are the general rules as to the descent of freehold lands of inheritance?

54. By what means are the respective species of property usually conveyed or transferred?

55. What are the proper modes of mortgaging freehold, copyhold, and leasehold estates? State each severally.

56. A. is mortgagee in fee, and dies without devising the security, and the mortgage debt is applicable by his executor to the payment of the testator's debts; suppose the heir-at-law of the mortgagee to be unwilling or incapable to reconvey the premises, to whom is the mortgagor to pay the principal money and interest, and how is he to obtain an effectual reconveyance of those premises?

57. Is a lessee, under the usual covenants to repair, liable to rebuild in case of fire?

58. State some of the principal points in which the law relating to wills was altered by a late statute.

59. If a person dies intestate, how is his personal estate distributed?

60. What covenants is it usual for trustees or mortgagees to enter into?

61. Can the printed particular and conditions of sale of an estate by auction be varied by parol at the sale?

62. What interest and power does the husband take in and over the following property of the wife:—her freehold estates, her personality in possession, her freehold estates real, her choses in action? and what effect has the death of husband and wife, or wife, on this interest?

IV. EQUITY, AND PRACTICE OF THE COURTS.

63. State the nature of an equity of redemption, and give a general description of the parties entitled to it.

64. Describe "tacking," and in what cases it applies.

65. What is the distinction between legal and equitable assets, and in what order are each applicable to the payment of debts?

66. Can a married woman bind herself by contract in equity, in any, and what, case?

67. State the measures to be adopted by an executor or administrator in order to relieve himself from liability for debts due from the estate, of which he has no knowledge at the time when he is about to transfer the residue of the estate to the parties entitled.

68. If a creditor has omitted to take the necessary proceedings for recovering his debt from an executor or administrator who has relieved himself from the liability, can such creditor recover his debt, and from whom?

69. Is a mortgagee who has taken possession of the mortgage estate liable to account for any, and what, sums of money beyond those which he has actually received out of the estate?

70. State the general purposes for which a mortgagee in possession may expend money upon the mortgaged estate which will be allowed to him by a court of equity in taking the account between mortgagor and mortgagee.

71. State the proceedings to be adopted under the Act of last session, 15 & 16 Vict. c. 86, by a creditor seeking the assistance of a court of equity to obtain payment of his debt, or by a legatee seeking to obtain payment of his legacy out of personal estate.

72. State the alteration made by the Act of last session in cases where parties seek equitable relief under a legal title or right which has not been established at law.

73. State the course to be adopted under the Act of last session in cases where a suit becomes abated by death or marriage of parties, or defective by reason of any change or transmission of interest.

74. State the course of the present practice to compel appearance and answer, and the proceeding to be taken in case of default.

75. State the mode by which a defendant can, under the Act of last session, obtain discovery from the plaintiff, and how such discovery was obtained under the former practice of the court.

76. State the modes in which, under the Act of last session, evidence may be taken in suits commenced by bill, and what option is reserved to the parties in this respect.

77. What alteration was made by the Act of last session in the remedy given in suits for foreclosure?

V. BANKRUPTCY, AND PRACTICE OF THE COURTS.

78. What proceedings must be taken to obtain an adjudication in bankruptcy?

79. What facts must be proved to entitle the petitioning creditor to an adjudication?

80. Has the bankrupt any, and what time, to dispute the adjudication, and how must he proceed for that purpose?

81. State the extent of the jurisdiction of the Court of Bankruptcy in London.

82. How are the creditors to prove their debts before the Commissioners?

83. What property held by the bankrupt passes to the assignees, and are there any, and what, exceptions?

84. Suppose a creditor to possess some security for his debt, but which he deems to be insufficient, what steps must he take to enable him to receive a dividend on the balance?

85. What should be done by the holders of bills of exchange not due at the time of the bankruptcy?

86. What is the rule in bankruptcy as to debts barred by the Statute of Limitations?

87. Is any priority given to any, and what, debts?

88. Is a settlement made by a trader in favour of his wife, before his bankruptcy, valid in any, and what, circumstances?

89. What is the law with respect to partnerships where one only of several members of a firm becomes bankrupt?

90. What are the rights of assignees, either to retain or relinquish property of the bankrupt held on lease?

91. Where a bankrupt has entered into a contract relating to land or buildings, which the assignees consider not to be beneficial to the creditors, what course may they pursue?

92. State the practice under the last Act as to the bankrupt's certificate.

VI. CRIMINAL LAW, AND PROCEEDINGS BEFORE MAGISTRATES.

93. What are the ordinary steps taken in prosecuting a criminal charge up to the trial of the party charged?

94. Under what circumstances may depositions taken before the magistrates be used in evidence on the trial of the party accused?

95. What is the principle upon which a party charged with a criminal offence may be admitted to bail; and will a party charged with murder be admitted to bail?

96. According to the law as it now stands, what are the variances between the evidence and the statements in the indictment which may be amended at the trial, and subject to what restrictions or limitations?

97. If, upon the trial of a person charged with a felony, it is found that he only attempted to commit the felony, but did not succeed, what will be the result?

98. If a party be charged only with the attempt to commit such offences as those referred to in the last question as a misdemeanor, and the offence is proved to amount to felony, what is the course to be pursued?

99. In cases where it is doubtful whether the facts to be proved against the prisoner amount to an actual larceny, or to the receiving of goods, knowing them to be stolen, what is the course to be pursued?

100. Define the offence of embezzlement, and state how many acts of embezzlement may be charged in one indictment, and within what period of each other the acts so charged must have occurred.

101. Define the respective offences of forgery and uttering forged documents, and state whether either or both of these offences may be tried at quarter sessions.

102. State the course of proceedings in bringing error in criminal cases, and in what cases the plaintiff in error is entitled to be admitted to bail.

103. What is the principle upon which the rateable value of property assessed to the poor-rate is ascertained?

104. Enumerate the various modes by which, under the law as it now stands, a settlement may be obtained.

105. State what provisions have been recently made to prevent the removal of paupers in certain cases, and how far the same affect the question of settlement.

106. Upon whom is the liability to repair highways cast by the common law? How may this liability be altered by custom, prescription, or otherwise?

107. What is the nature of a criminal information? What is the course of proceeding to be taken for obtaining a criminal information? In whose name, and in what court, must it be filed, and what are the essential requisites for obtaining it?

USHERS, COURT-KEEPERS, &c. OF THE SUPERIOR COURTS.—TREASURY ORDER.

WHEREAS, by an Act passed in the session of Parliament holden in the fifteenth and sixteenth years of the reign of her present Majesty, c. 73, intituled "An Act to make Provision for a Permanent Establishment of Officers to perform the Duties at *Nisi Prius* in the Superior Courts of Common Law, and for the payment of such Officers and of the Judges' Clerks, by Salaries, and to abolish certain Offices in those Courts," it was amongst other things enacted, that it should and might be lawful for the Commissioners of her Majesty's Treasury, and they were thereby empowered and required, by and with the sanction of the Lord Chief Justices of the Courts of Queen's Bench and Common Pleas and the Lord Chief Baron of the Exchequer, as soon as conveniently might be, to ascertain and fix the number of *ushers, court-keepers, messengers*, and other subordinate officers and assistants in the said Superior Courts, and of attendants on the judges (other than the judges' clerks), which should be sufficient for the due performance of the duties required to be rendered in respect of such subordinate offices and appointments, and for the necessary attendance on the judges; and a list or lists of the offices and appointments, when so fixed and ascertained, should thereupon be published by and under the authority of the said Commissioners of her Majesty's Treasury, in the *London Gazette*, and from and after such publication such of the said offices and appointments as continued in such list or lists should be, and the same were, thereby declared to be abolished:

In pursuance of the said statute, the Commissioners of her Majesty's Treasury, by and with the sanction of the Lord Chief Justices of the Courts of Queen's Bench and Common Pleas and the Lord Chief Baron of the Exchequer, have ascertained and fixed the number of ushers, court-keepers, messengers, and other subordinate officers and assistants in the said Superior Courts, and of attendants on the judges (other than the judges' clerks), to be as set forth in the following list, which are considered to be sufficient for the due performance of the duties required to be rendered in respect of such subordinate offices and appointments, and for the necessary attendance on the judges; and the said Commissioners of her Majesty's Treasury authorise and direct the said list of officers and appointments to be published in *The London Gazette*, namely:—

Court of Queen's Bench.

4 Ushers and Criers.
3 Tipstaffs.
1 Court-keeper.
1 Messenger and Porter.
1 Trainbearer.

Court of Common Pleas.

4 Ushers and Criers.
1 Tipstaff.
1 Court-keeper.
1 Messenger and Porter.
1 Trainbearer.

Court of Exchequer.

4 Ushers and Criers.
1 Tipstaff.
1 Court-keeper.
1 Messenger and Porter.
1 Trainbearer.

PUBLIC EXAMINATION OF THE STUDENTS OF THE INNS OF COURT,

held at Lincoln's-Inn Hall, on the 22nd, 24th, and 25th days of January, 1853.

THE Council of Legal Education have awarded to WILLIAM WHITTAKER BARRY, Esq., Student of Lincoln's-inn, a Studentship of Fifty Guineas per annum, to continue for a period of three years.

Mr. E. GRANT DUFF, Esq., Student of the Inner Temple, a Certificate of Honour, as having passed the second best examination.

WM. O'CONNER MORRIS, Esq. Student of Lincoln's-inn, and JOHN PALMER, Esq. Student of the Inner Temple, Certificates that they have satisfactorily passed a Public Examination.

By Order of the Council,
(Signed) RICHARD BETHELL, Chairman.
Council Chamber, Lincoln's-inn,
29th Jan. 1853.

THE WELSH CIRCUITS OF THE JUDGES, 1853.

NORTH WALES AND CHESTER.

MR. JUSTICE MAULE, the judge appointed to proceed on this circuit, finally fixed the days and signed the precepts for holding the several assizes throughout the circuit, as senior judge, fixing Saturday, the 2nd of April, to meet Mr. Justice Wightman, who proceeds on the South Wales Circuit, at Chester, to hold the assizes for that ancient city and county. The following are the days and places named:—

Montgomeryshire.—Monday, March 14, at Welchpool.
Merionethshire.—Thursday, March 17, at Bala.
Carnarvonshire.—Saturday, March 19, at Carnarvon.
Anglesey.—Wednesday, March 23, at Beaumaris.
Denbighshire.—Saturday, March 26, at Ruthin.
Flintshire.—Wednesday, March 30, at Mold.
Cheshire.—Saturday, April 2, at the Castle at Chester.
City of Chester.—Saturday, April 2, at the Guildhall of the city of Chester.

SOUTH WALES AND CHESTER CIRCUIT.

The Hon. Mr. Justice Wightman, the learned judge appointed to proceed on this circuit and meet Mr. Justice Maule at Chester, has appointed the following days for holding the assizes for this portion of the principality:—

Glamorganshire.—Wednesday, March 2, at Swansea.
Pembrokeshire.—Wednesday, March 9, at Haverfordwest.
Town of Haverfordwest.—Wednesday, March 9, at Haverfordwest.
Cardiganshire.—Monday, March 14, at Cardigan.
Carmarthenshire.—Friday, March 18, at Carmarthen.
Brecknockshire.—Thursday, March 24, at Brecon.
Radnorshire.—Wednesday, March 30, at Presteign.
Cheshire and City of Chester.—Saturday, April 2, at the Castle and Guildhall, Chester.

LEGAL INTELLIGENCE.

MRS. SLOANE.—Mrs. Sloane, whose case has excited so much public interest, and whose husband (who was imprisoned with her) died some time back, has been discharged from Newgate. She was in a bad state of health, and looked very weakly.—*Globe*.

THE BOOKSELLER'S, PUBLISHER'S, STATIONER'S, BOOKBINDER'S, AND LAW-STATIONER'S ASSISTANT.

THE NEW RULES, and CHEQUERS, the NEW TABLE of FEES, and the NEW STATUTE relating to the ADMISSION of ATTORNEYS, with the ALPHABETICAL LIST of ARTICLED CLERKS, with Practical Notes, Forms, and Index, by J. MACRAE EVANS, Clerk of Records and Writs. This Volume will also contain Amendments to the Pleading Act, having reference to the pages of this work.

TUDOR'S NEW CHANCERY PRACTICE, with all the Rules, Orders, Cases, Statutes, &c. to this time, with Practical Notes, Forms, and Index, the Orders being printed with the Sections of the Statute to which they relate. By OWEN TUDOR, Esq. Barrister-at-Law. Price 12s. cloth.

THE NEW BANKRUPTCY ORDERS, with the BANKRUPTCY CONSOLIDATION ACT, and Notes of all the Cases decided thereon. By C. J. B. HERTSLET, Esq., Barrister-at-Law. Price 1s. 6d. sewed.

THE PRACTICAL STATUTES of 1849, 1850, and 1851, with those now repealed in Practice, omitting the Repealed and Obsolete Parts, Local, Colonial, and Sectional Statutes, with Notes of all the Cases decided on the Consolidation; thus presenting the whole Law now in force in a compact form, and amply supplied with a copious Index. By C. J. B. HERTSLET, Esq. Barrister-at-Law. Price 10s. 6d. cloth. (This is the completion of the Practical Statutes of 1846, 1847, and 1848, which may still be had.)

COX'S CRIMINAL LAW CASES, Part I. of Vol. VI. with a copious collection of Precedents of Indictments. This part contains Forms of Indictments at Quarter Sessions under the New Law. By J. E. DAVIES, Esq., Barrister-at-Law. Price 3s. 6d.

THE LAW TIMES SHEET ALMANAC for 1853, comprising, in addition to the regular information of an Almanack, Time Tables of all the Courts under the New Practice, Stamp and Tax Tables, Tables for easily Calculation of Income Tax, and the other Information required for immediate reference in the Office. Price only 2d.; or stamped for post, 3d. A copy sent to any person inclosing thirteen postage stamps to the office.

THE LAWYER'S POCKET-BOOK for 1853, containing the Almanack and Time of the Moon's Rising and Setting for the last as well as the present Year, a complete Table of Stamps, Time Tables in Common Law, Equity and Bankruptcy, and much other matter required for Reference in Courts. Price only 6d.

THE SECOND EDITION of KERR'S COMMON LAW PROCEDURE ACT, containing all the New Rules and Orders, the New Table of Fees and Cases decided to the end of Michaelmas Term. Price 12s. cloth.

THE LAW DIGEST for the Half-Year ending December 1. By E. WISE and D. T. EVANS, Esqrs., Barristers-at-Law. Price 6s. 6d. bds.; 8s. cloth.

This work gives every case, wherever reported, during the half-year, arranged so that the practitioner may find in a moment what is the latest law on any subject on which he may be engaged.

To Readers and Correspondents.

"ENQUIRER."—*The Company is not bound to do either.*

"CUR," &c. — *The advertisement is a legitimate one. The existence of conveyancers who are not lawyers is a great wrong to the real lawyers, who are taxed for the privilege of practising and compelled to prove their competency; but it is legal.*

"A. A. C."—*There will be no alteration in the examination itself.*

"ENQUIRER" *will find the information he seeks in "Tudor's New Chancery Practice," and in the second edition of "Kerr's Common Law Procedure Act."*

"C." (Eye).— *When we have a little more space at command.*

"A SUBSCRIBER."—*The point has not been decided.*

"A. C. S." *might amuse himself gratuitously, or be paid for playing on Sundays. But it must not interfere at all with his office duties.*

"A. J. W."—*Gurney's system, we avoided, is preferred by the reporters.*

We cannot undertake to return rejected communications. Whatever is intended for insertion must be authenticated by the name and address of the writer; not necessarily for publication, but as a guarantee of his good faith. No notice can be taken of anonymous communications.

THE LAW TIMES.

SATURDAY, FEBRUARY 12, 1853.

TO READERS.

THE unprecedented quantity of "Court Papers" that have poured in upon us in a continual stream since the beginning of the legal year, consequent on the great changes effected during the last Parliament in the practice of the law, has completely dislocated all our usual arrangements for giving variety and interest to the pages of THE LAW TIMES. Week after week have our columns been claimed for New Rules and Orders, which would not bear postponement, and to which all other matters were obliged to give place. This week a considerable space is occupied with documents of the same class, again thrusting out divers articles of interest to the Profession and much correspondence, which have been a long time in type, waiting for an opportunity to appear. We hope, however, that the stream is now nearly exhausted, and that we shall have room to bring up this arrear, as well as a still larger one of reports, that has accumulated from the same cause. We can only pray our readers' patience, should our hopes of a clearance be disappointed by more arrivals of Rules, Orders, or Blue Books.

A series of practical papers on the *New Rules*, pointing out the changes made by them, from the pen of an able Pleader, will be commenced next week, for the instruction of students as well as for the information of Practitioners.

These, with the papers now in progress, describing an "Action at Law," and a "Suit in Equity," as *they are* under the new statutes, rules and orders, will amply perform the promise we made to our readers, that THE LAW TIMES should enable them to keep pace with the changes in the law, however numerous and rapid.

THE NEW PLEADING RULES.

It should be understood that the New Rules of Pleading laid before Parliament for its approval are not framed under the Common Law Procedure Act, nor connected with it, but under the provisions of a statute passed two years ago. The New Rules and Orders lately issued complete the Procedure Act; and so far as that measure is concerned, no further changes are likely to be made for many years.

THE LAW REFORMS OF THE SESSION.

THE LORD CHANCELLOR is to state on Monday what law reforms are to be introduced by the new Government during the present session.

Lord JOHN RUSSELL has announced in the House of Commons that, on receipt of the Report of the Commissioners appointed to inquire into the Ecclesiastical Courts, a measure will be introduced for their reform.

Lord CAMPBELL has laid upon the table of the House of Lords the proposed New Rules for the regulation of pleading. They will lie there for three months, and then, if not objected to, they will come into operation.

Lord ST. LEONARDS has lost no time in introducing his promised measures of Law Reform; but how far they will be adopted by the Government will not be known until Monday. He proposes a further reform in Chancery, an amendment of the Law of Lunacy, an extension of the *privileges* of the Bankruptcy Courts to insolvents desirous of dealing honestly with their creditors, and a codification of a part of the Criminal Law. Lord CAMPBELL objects to this being done by bits, and there is reason in the objection.

It is reported, that among the measures to be proposed by the Government is the revival of the unlucky Bill for the Registration of Deeds. But, as *The Times* truly says, we have passed beyond that now. It is a clumsy and costly expedient. The only cure is the more statesmanlike one of improving the Law of Real Property, and we have sought to show how that may be done with simplicity and effect.

Lord BROUGHAM is returning, and he will doubtless press forward his Bill for giving an equity jurisdiction to the County Courts. *That* will be the greatest boon to the public in the way of Law Reform that has been yet proposed, and no less a benefit to the profession, especially to the solicitors in the country; and it is pleasant to find a measure that will thus do good to all—to the Lawyer as well as to the Client. We will give our readers due notice when their assistance may be of service to promote the success of this to them most important Bill.

THE LAST TERM.

ANOTHER term has concluded, and we are now enabled to form some estimate of the effect of the recent changes in the law upon the business of the Superior Courts.

Manifestly, it has suffered a great diminution. The Judges have sat in Error and heard County Court appeals during term. The Q. B. holds but two sittings after term; the C.P. none; the Ex. one, to give judgment in every case remaining on the list, so that the next term will witness the strange scene in that court of no arrears. Mere motions have been enormously reduced in number, and to that extent the juniors have suffered; they have suffered no less in the better business, for there has been an evident economy in the employment of Counsel. Juniors are not wanted now that so many of the formalities of the law have been swept away; the junior was employed for that laborious work which a senior would not or could not do. His occupation is gone now.

At Nisi Prius there has been no such falling off. The cause lists have been as full as ever. Herein we see the good effects of diminishing the costs and hazards of procedure. Now that there is little danger of pitfalls in pleading, and, above all, now that the parties are admitted as witnesses, there is not the disinclination that formerly existed among prudent men to go to law, preferring rather to submit to a wrong than pursue redress through such hazards. It may be anticipated, therefore, that as the public discover the facilities that have been given to them to try their disputes upon the merits, at a lessened cost, the Nisi Prius Courts will be more and more frequented. If a single County Court district can provide some hundreds of causes in a year out of a jurisdiction of 50*l.*, surely there must be disputes and demands enough above that sum to provide tenfold the present list of causes for the Superior Courts. It can scarcely be that quarrelling ceases exactly at 50*l.*; and if the sums above 50*l.* do not yield their proportion, it is only because people, who would readily fight in the County Courts, will not fight in the Superior Courts. The reason of this is plain: they consider it too hazardous and too costly a game. When they find that the hazard is reduced to nothing, and the costs are comparatively trifling, they will be as pugnacious in the Superior Courts as they are in the County Courts, and therefore we look for a steady increase in the number of causes tried there.

This will be an advantage to the Attorneys, but it will not save the Bar from its decline. No increase in the number of causes will compensate to the juniors for what they have lost in the business growing out of the technicalities. Nisi Prius business will of necessity in every court be limited to a few. Except in rare cases, there will not be the array of counsel in a cause that was formerly seen. It is not wanted. The "heavy junior" is no longer needed to sift the pleadings or "get up" the cases. Now every cause is tried upon its merits alone; and to bring out the merits we do not want a learned lawyer, but a clever advocate, a man of business, who knows the world, who can examine a witness well, and make a good speech to the jury. These are qualities possessed by few; at least, they can only be developed by experience; the Attorney, therefore, will always give his briefs to the man in practice who has had experience, rather than to the cleverest junior who has had none. Hence it is that in every court advocacy ever was and ever will be monopolised by a few; and therefore the increase in the number of trials will in no way increase the business of the juniors, nor improve their condition or prospects.

Yet, in spite of these facts and warnings, staring them in the face, and proclaiming that there is not a livelihood for a tenth part of the existing Bar, nearly forty new Barristers were called last term! At a time when it is impossible that those who are at the Bar can subsist by it, forty new competitors have entered themselves for this hopeless race.

To the Attorneys, as we have shown before, the changes in the law will not bring ultimate disadvantage; but they have exhibited more prudence. The list of those admitted last term shows a considerable decline in numbers.

Such is the experience of Hilary Term, 1853.

THE NEW SCALE OF COSTS.

THE PLEADERS, THE ATTORNEYS, AND THE TAXING MASTERS.

IT will be remembered that last week we directed the attention of our readers to the 4th of the new directions by the Judges to the Masters, under which it is ordered that "the Masters in all cases shall have discretion to allow, as between party and party, the fees of counsel or special pleader for drawing pleadings or other proceedings, whether special or otherwise, and advising." We believe we are warranted in saying that, at the time when this direction was given, the learned Judges expressed to the Masters their wish that it should not be carried out in a narrow spirit, but that the Masters should be liberal in the allowance of pleaders' fees. We are, indeed, in a position to know that a strenuous endeavour was made to procure from the Judges a direction that the discretion as to the employment of counsel or pleader, in cases of pleadings and entries, should rest *with the attorney* and not with the Master—that is to say, that whenever the attorney should think it necessary to employ a pleader, the minimum fee usually marked should be allowed on taxation as a matter of course. In our opinion this is the real footing upon which the practice should be based. It is equally a hardship upon the attorney, and unfair to him, that he should be subject to an *ex post facto* law in this respect. It surely might have been left with safety to a body of gentlemen so well educated and so respectable as the attorneys of this kingdom to determine what matters are within their own province, and in what cases the real interests of their clients require the assistance of counsel or special pleader. The fee paid to the pleader is not a profit, but an outlay, to the attorney; and it cannot be supposed that for the small pittance allowed for his clerk's attendance he would reck-

lessly incur an unnecessary expense. No one can be so competent to judge in what cases it is proper and advisable to employ the higher branches of the Profession as the attorney. It is he who feels the difficulty when it arises, and he is the only person really competent to judge of the necessity of the case, because he has to judge of it *before*, while the Master is only called on to judge as to such necessity *after*, the event; and it is for this reason that the discretion of the latter has been frequently exercised in such a manner as to operate with equal harshness and injustice upon the attorney. It is not because a case founded upon a special contract has been resolved into a common count for work and labour, the consideration having been executed, nor because a complicated state of circumstances has resulted in a count for money had and received, that it was unnecessary *à priori* to employ a pleader to prepare or settle the declaration. And when we find that eighteen years of judicial exposition, from the case of *Cousins* v. *Paddon*, 2 Cr. M. & R. 547, down to the date of which we write, have not sufficed to fix the limits of the general issue in debt and assumpsit,—and that only a fortnight ago the effect of Not guilty, in case, as decided in *Tanner* v. *Little*, 5 Bing. N. C. 678 was shaken by the C. P., as will seen by reference to our report of *Mitchell* v. *Crassweller*, 20 L. T. Rep. 287,—it must be obvious that it is unjust to question the discretion of the attorney in employing a special pleader or counsel, because the technical form of the defence has resulted in the general issue. Yet this has been hitherto but too frequently the case. The Masters endeavoured to justify the course adopted; on the ground that they had no power to allow the fee except in special cases; and they seem to have supposed, curiously enough, that deep waters could not present a smooth surface. Under the new direction they will no longer have any pretence for such illiberality.

We believe that some of the learned Judges were disposed to frame the fourth direction in the form to which we have above alluded, and to vest the discretion as to the employment of counsel or special pleader, in case of pleadings and entries, entirely in the attorney; and it is certain that the present rule (although in terms vesting the discretion in the Master) was given with a view to the same end, and for the purpose of remedying (as pointed out by Mr. Chitty in the note we published last week) the evil which has hitherto obtained. Unless the Masters carry out this direction liberally, they will certainly not effect the intention of the Judges, and they will inflict a serious injury upon the Profession, and in too many cases, a still greater injury upon the Suitors. Regarding the question in a pecuniary point of view, they will place the attorney in an unfair position, or otherwise expose him to a responsibility he ought not to bear. Indeed, with this direction before them, the Masters will, to some extent, throw a personal imputation upon the attorneys, if they disallow a fee which has been actually and *bonâ fide* paid. The Master will bear in mind that the simplicity or length of the form is no test of the learning or labour which has been required in order to judge and determine of its *applicability*—for the latter may have involved the perusal of a long correspondence, the unravelling of complicated circumstances, and the anxious consideration of conflicting authorities. The Masters should remember also (and this is a point which cannot be too strongly insisted upon) that the mere pleadings by no means represent all the benefit which the attorneys and the suitors have derived from the special pleader in the course of the cause. We well know that some of the Masters complain of the trouble they are exposed to, by the questions put to them day by day by the attorneys; and they are in a position to judge how much more frequently the attorney has recourse to the gratuitous assistance of his pleader throughout the cause, and how much of time and labour are expended by the latter in this obligation. We will venture to say that in many cases the suitor derives, from the learning and experience of his pleader, an amount of advice and assistance, never appearing in the bill of costs, which alone would be ill repaid by the trifling fees which are marked, and objected to, for the pleadings. All this requires consideration and amendment. The matter is now in the hands of the Masters, and the responsibility rests with them. We think we have shown that the interests of the suitor, as well as the protection of the attorneys from a responsibility they ought not to bear, require the application of this direction in a liberal spirit! At all events, it behoves the Profession to watch narrowly how the direction is carried out; and we are fully warranted in saying that it will give general dissatisfaction if the Masters do not, in its application, evince greater liberality than many of them had shown in other particulars before this important direction was promulgated.

ADVERTISING LAWYERS.

The following advertisements appear in succession in *The Times* of Jan. 24th. One we know is an Attorney, of whom the Chancery Association could give some curious particulars. Who are Messrs. Poole and Co. and Messrs. Herne? If not Attorneys, they should be looked to, and if they do a single act that belongs properly to the Attorney, their names should be sent to the Stamp Office:—

To the Embarrassed.—Persons labouring [under] pecuniary difficulties, desirous of effecting an honourable arrangement, will find it to their interest to avail themselves of the gratuitous advice of Messrs. Poole and Co. of forty years' practical experience in these matters. Hours of conference from four to eight p.m. daily. Offices, 9, Spital-square, Bishopsgate.

Protection to the Embarrassed.—There are thousands of persons who have long struggled against the force of misfortune; but few are aware that, under very recent Acts, all small traders owing less than 300*l*., clergymen, farmers, private and professional men, and all others to any amount (the latter without any publicity), can be entirely raised from their difficulties at small expense, and without imprisonment or bankruptcy. All such Mr. Weston (late Secretary to the Chancery Reform Association) begs will apply to him, by letter or personally, at 3, Leadenhall-street, City, next to Mechi's.

Bankruptcy and Insolvency.—Messrs. Herne, from their long practical experience, invite all persons who are struggling against the force of misfortune to apply to them, when, at a small expense, they will be entirely raised from their difficulties, without imprisonment, and in most instances without having recourse even to bankruptcy or insolvency. All small traders owing less than 300*l*., and clergymen, farmers, private and professional gentlemen, owing to any amount, may, without any publicity or difficulty, be relieved under very recent Acts. Strict confidence guaranteed, and high references given. 58, Lincoln's-inn-fields.

NEW PRACTICE IN THE COURT OF CHANCERY. (*a*)

JOINDER OF SEVERAL DEFENCES.

A defendant may demur to one part of the bill, plead to another, and disclaim as to another. See Mitf. Pl. 313, where Lord Redesdale says: "But all these defences most clearly refer to separate and distinct parts of the bill; for the defendant cannot plead to that part to which he has already demurred; neither can he answer to any part to which he has either demurred or pleaded; the demurrer demanding the judgment of the Court whether he shall make any answer, and the plea whether he shall make other answer than what is contained in the plea. A plea or answer will therefore overrule a demurrer, and an answer a plea."

The practice, however, as it existed when Lord Redesdale wrote, has been considerably altered by the 36th and 37th Orders of August 1841, which direct that no demurrer or plea shall be held bad and overruled on argument only because such demurrer or plea shall not cover so much of the bill as it might by law have extended to, or only because the answer of the defendant may extend to some part of the same matter as may be covered by such demurrer or plea.

MOTION FOR A DECREE IN A SUIT COMMENCED BY BILL.

The plaintiff in any suit commenced by bill may, at any time *after* the time allowed to the defendant for answering the same has expired (but before replication) may move the court, upon giving one month's notice to the defendant or defendants, for such decree or decretal order as he may think himself entitled to; and the plaintiff and defendant respectively are to be at liberty to file affidavits in support of and in opposition to the motion so to be made, and to use the same on the hearing of such motion; and if such motion is made after an answer filed in the cause, the answer for the purposes of the motion is to be treated as an affidavit: (15 & 16 Vict. c. 86, s. 15.)

The affidavits to be used in support of such motion are to be filed before the service of such notice, and a list of such affidavits is to be set forth at the foot of such notice: (Orders 7th Aug. 1852, XXIII.)

The defendant, within *fourteen days* after service of such notice, is to file his affidavits in answer, and to furnish the plaintiff or his solicitor with a list thereof: (Ib. XXIV.)

Within seven days after the expiration of such fourteen days the plaintiff is to file his affidavits in reply, which affidavits are to be confined to matters strictly in *reply*, and he is to furnish the defendant or his solicitor with a list thereof; and except so far as these affidavits are in reply, they are not to be regarded by the Court, unless upon the hearing of the motion the Court gives leave to the defendant to answer them; and in that case the costs of such affidavits, and of the further affidavits consequent upon them, are to be paid by the plaintiff, unless the Court otherwise orders: (Ib. XXV.)

No further evidence on either side is to be used upon such motion for a decree or decretal order, without leave of the Court: (Ib. XXVI.)

Every notice of motion for a decree or decretal order is to be entered with the registrar, who is to make out a list of such motions, and the same are to be heard according to such list, unless the Court shall make order to the contrary: (Ib. XXVII.)

Upon any such motion for a decree or decretal order, it is discretionary with the Court to grant or refuse the motion, or to make an order giving such directions for or with respect to the further prosecution of the suit as the circumstances of the case may require, and to make such orders as to costs as it may think right: (15 & 16 Vict. c. 86, s. 16.)

The motion for a decree or decretal order introduced in the practice of the Court by the legislation of last session will be productive of much good; and where formerly, statements, interrogatories, answers, and all the semblance of contentious litigation, even when the suits were of a friendly character, were required, a concise bill, with a few affidavits on either side, will be sufficient to determine the question in dispute. Claims will, in all probability, be in almost all cases superseded by bills when so speedy a result can be obtained; and, as a declaratory decree can now be made under the 50th section of the Act, Sir George Turner's Act will not be much resorted to for the purpose of obtaining the opinion of the Court upon a case. It may be here mentioned that a plaintiff in a suit commenced by bill, before as well as since the statute 15 & 16 Vict. c. 86 came into operation, may move for a decree under the 15th section of that statute: (*Cousins* v. *Vasey*, 9 Hare, Append. 1, xxxi.)

MOTIONS TO DISMISS.

Motions to dismiss a bill may be made either by the plaintiff or by the defendant. Motions to dismiss by the defendant are made either for want of proper prosecution by the plaintiff, or when the suit abates, or becomes otherwise defective, or when a party proceeding both at law and in equity, is put to his election in which court he will proceed.

MOTIONS TO DISMISS ON PART OF THE PLAINTIFF.

A plaintiff may, as a matter of course, at any time *before* decree (*Curtis* v. *Lloyd*, 4 My. & Cr. 194), apply to the Court by motion to dismiss his bill, either as against all of the defendants or against such of them as he thinks he can dispense with, with costs (4 Ann, c. 6, s. 23); and the Court will not dismiss the bill without costs on the mere agreement of the parties (*Fidelle* v. *Evans*, 1 Cox 27; 1 Bro. C. C. 267), but only upon the consent of the defendant actually given in court: (*Dixon* v. *Parks*, 1 Ves. Jun. 402.)

There is an exception in the case of a person suing *in formâ pauperis*, who may move for the dismissal of his bill *without costs*, unless he has been admitted to sue *in formâ pauperis* after the filing of his bill: (Dan. Ch. Pr. 765.)

Another exception is, where the plaintiff has, by his own conduct, as by his absconding, or transferring the property to obtain which was the object of the suit, rendered the motion to dismiss advisable: (*Knox* v. *Brown*, 2 Bro. C. C. 486; 1 Cox 359.)

After decree, a plaintiff cannot, *without consent*, move to dismiss his own bill, as all the parties have an interest in the decree, unless an issue only has been directed; even if the issue has been decided in favour of the defendant: (*Curtis* v. *Lloyd*, 4 My. & Cr. 194; *Gulbert* v. *Hawles*, 1 Ch. Ca. 40; *Carrington* v. *Holly*, 1 Dick. 281.)

If the plaintiff, after the cause is set down to

(*a*) Continued from p. 193, *ante*.

be heard, causes the bill to be dismissed on his own application, or if the cause is called on to be heard in court, and the plaintiff makes default, and by reason thereof the bill is dismissed, then and in such case such dismissal is, unless the Court otherwise orders, to be equivalent to a dismissal on the merits, and may be pleaded in bar to another suit for the same matter: (117th Order of May 1845.)

MOTION BY DEFENDANT TO DISMISS FOR WANT OF PROSECUTION.

Any defendant may, upon notice, move that the bill may be dismissed with costs for want of prosecution, and the Court may order accordingly,

1. "If the plaintiff, having obtained an order to enlarge the time, does not obtain and serve an order for leave to amend the bill, or does not file a replication, or set down the cause to be heard on bill and answer, within four weeks after the answer, or the last of the answers is found or deemed to be sufficient, or after the filing of a traversing note;" or,

2. If the plaintiff, having undertaken to reply to a plea to the whole bill, does not file his replication within four weeks after the date of his undertaking; or

3. "If the plaintiff, having obtained no order to enlarge the time, does not amend the bill within fourteen days after the date of the order for leave to amend;" or,

4. "If the plaintiff, having obtained no order to enlarge the time, does not set down the cause to be heard, and obtain and serve a subpœna to hear judgment within four weeks after publication has passed:" (114th Order of May 1845.)

The plaintiff, not obtaining an order to amend his bill, must either fill his replication or set down the cause to be heard on bill and answer, within four weeks after the last answer is deemed or found sufficient, otherwise any defendant may move to dismiss the bill for want of prosecution: (16th Order of May 1845, Art. 37.)

Where the plaintiff has, *after answer*, amended his bill without requiring an answer to the amendment, any defendant may, upon notice, move to dismiss the bill with costs for want of prosecution, if the plaintiff, having obtained no order to enlarge the time, does not file the replication, or set down the cause to be heard on bill and answer, within the time following, viz.:—

1. "Within fourteen days after service of notice of the amendment of the bill, in cases where the defendant does not desire to answer the amendments."

2. "Within fourteen days after the Master's refusal to allow further time, in cases where the defendant desiring to answer has not put in his answer within eight days after the service of notice of the amendment of the bill, and the Master has refused to allow further time."

3. "Within fourteen days after the filing of the answer, in cases where the defendant has put in an answer to the amendment, unless the plaintiff has, within fourteen days, obtained from the Court special order for leave to re-amend the bill:" (115th Order of May 1845.)

Where the plaintiff amends his bill without requiring an answer to the amendments, and no answer is put in thereto, and no warrant for further time to answer the same is served within eight days after the service of the notice of the amendment of such bill, the plaintiff is, after the expiration of such eight days, but within fourteen days from the time of such service, either to file his replication or set down the cause to be heard upon bill and answer. Otherwise any defendant may move to dismiss the bill for want of prosecution: (16th Order of May 1845, Art. 39.)

Where the plaintiff amends his bill without requiring an answer to the amendments, and a defendant, within eight days after service of the notice of the filing of the amended bill, serves a warrant for further time to answer the amendments, but the Master refuses to grant such further time, the plaintiff is, within fourteen days after such refusal, either to file his replication, or set down the cause to be heard on bill and answer, otherwise any defendant may move to dismiss the bill for want of prosecution:" (Art. 40.)

And "if a defendant puts in an answer to amendments to which the plaintiff has not required an answer, the plaintiff must, within fourteen days after the filing of such answer, either file his replication or set down the cause to be heard on bill and answer, unless in the meantime he obtains from the Court a special order for leave to except to such answer, or to amend the bill, otherwise any defendant may move to dismiss the bill for want of prosecution (Art. 41); and the vacations are not to be reckoned:" (14th Order of May 1845, Art. 4.)

"A defendant is not to be at liberty to move to dismiss a bill for want of prosecution until after the expiration of the time within which a plaintiff may obtain an order to amend such bill:" (118th Order of May 1845.)

Where a defendant to a suit commenced by bill *shall not have been required to answer* the bill, and *shall not have answered* the same, such defendant shall be at liberty to apply for an order to dismiss the bill for want of prosecution at any time after the expiration of three months from the time of his appearance, unless a motion for a decree or decretal order shall have been set down in the meantime, or the cause shall have been set down to be heard; and the Court may, upon such application, if it shall think fit, make an order dismissing the bill, or make such other order or impose such terms as may appear just and reasonable: (15 & 16 Vict. c. 86, s. 27; 29th Order of 7th Aug. 1852.)

MOTION BY THE DEFENDANT TO DISMISS ON THE SUIT BECOMING ABATED OR DEFECTIVE.

In cases where a suit abates by the death of a sole plaintiff, the Court, upon motion of any defendant, made on notice served on the legal personal representative of the deceased plaintiff, may order that such legal representative do revive the suit within a limited time, or that the bill be dismissed (63rd Order of May 1845); and when, in consequence of the suit becoming defective, the plaintiff is ordered to file a supplemental bill, he is bound effectually to prosecute the supplemental bill as well as to file it; or, in default, the defendant may move to dismiss: (*Ward* v. *Ward*, 8 Beav. 397.) On a motion to dismiss by a defendant, who had become bankrupt after answer, the Court granted the order without costs: (*Findlay* v. *Lawrance*, 12 Jur. 934.) And where, after service of notice of motion to dismiss, the plaintiff became bankrupt, on the motion coming on, and the plaintiff not appearing, an order of dismissal was made: (*Gibson* v. *Edyeworth*, 12 Jur. 972.)

MOTION BY THE DEFENDANT TO DISMISS IN CASES OF ELECTION.

As a general rule, when a plaintiff is proceeding, both at law and in equity, for the same matter, the defendant may move that the plaintiff may elect in which court he will proceed: if in equity, that proceedings at law may be stayed by injunction; if at law, then that the defendant's bill should thenceforth stand dismissed out of court as against the defendant, with costs. For instance, a person cannot, except in a very special case (*Fennings* v. *Humphery*, 4 Beav. 1), proceed at law and in equity upon an agreement (*Carrick* v. *Young*, 4 Madd. 437; *Reynolds* v. *Nelson*, 6 Madd. 18.) So for a debt (*Barker* v. *Smark*, 3 Beav. 64), except in the case of a mortgage, where the mortgagee may proceed in equity by bill of foreclosure, and at law on the bond of the mortgagor for the mortgage debt at the same time: (*Schoole and Wife* v. *Sall*, 1 S. & L. 176.)

So a person must elect when he is proceeding in equity, and in a foreign court of competent jurisdiction for the same matter: (*Pieters* v. *Thompson*, Coop. 294.) This motion to dismiss cannot be made before the defendant has put in his answer (*Tillotson* v. *Ganson*, 1 Vern. 103); and by the 16th of the Orders of May, 1845, art. 20, it is directed, "that a defendant whose answer is not excepted to, or referred back on former exceptions, alleging that the plaintiff is prosecuting him in this court and also at law for the same matter, may, upon the expiration of eight days after his answer or further answer is filed, obtain as of course, on motion or petition, the usual order for the plaintiff to make his election in which court he will proceed. By the 21st article it is directed, "that a defendant whose answer is excepted to or referred back on former exceptions, alleging that the plaintiff is prosecuting him in this court and also at law for the same matter, may, by notice in writing, require the plaintiff to procure the Master's report upon the exceptions within four days from the service of the notice. And if the plaintiff does not obtain the Master's report within such four days, such defendant is entitled as of course, on motion or petition, to obtain the usual order for the plaintiff to make his election in which court he will proceed." The 51st Order directs "that the plaintiff may move to discharge such order, on the merits confessed in the answer."

The order to elect is of course; and not in the discretion of the Court: (*Royle* v. *Wynne*, Cr. & Ph. 255.)

Elections and agreements to proceed at law or in equity may be signed by the solicitor (16th Order of October 1842), and must be filed, and notice thereof given to the defendant's solicitor: (Dan. Ch. Pr. 794.)

THE LEGISLATOR.

NOTICES RELATING TO THE LAW ON THE ORDER-BOOK OF THE HOUSE OF COMMONS.

MR. COLLIER.—Ecclesiastical Courts.

Mr. W. WILLIAMS.—To call the attention of the House to the injustice of exempting real property from paying probate and legacy duties, while personal property of every description is subjected to the payment of the said duties; and to move that, in the opinion of this House, real property should be made to pay the same probate and legacy duties as are now payable on personal property.

Mr. WISE.—To call the attention of the House to the present law of settlement, with a view to its total repeal, and to a more equitable mode of assessing the rates for the relief of the poor.

Mr. RICE.—Select committee to consider the expediency of adopting a uniform system of police in England and Wales.

Lord HOTHAM.—Bill to preclude the judges of the Superior Courts of Law and Equity, and the judges of the Ecclesiastical Courts, from sitting and voting in the House of Commons.

Mr. H. DRUMMOND.—Bill to facilitate the transfer of land.

Mr. HEADLAM.—To ask whether it is the intention of her Majesty's Government to introduce any measure for the alteration of the Laws of Mortmain.

Mr. PHILLIMORE.—Address, that her Majesty will be pleased to appoint commissioners to digest the law of England into a code.

Lord R. GROSVENOR.—Bill to repeal the attorneys and solicitors' annual certificate duty.

Imperial Parliament.

HOUSE OF LORDS.

COMMON LAW PROCEDURE.

THURSDAY, Feb. 10.—Lord CAMPBELL said he had to lay upon their Lordships' table a document of considerable importance, to which he wished briefly to call their attention. By the Common Law Procedure Bill of last session power was given to her Majesty's justices to frame a set of rules and regulations for the purpose of carrying into effect the intentions of the Legislature with reference to their respective courts, under this modification, however,—that the rules and regulations so made should be laid before both Houses of Parliament, and that they should not become law until the expiry of three months, by which time it was supposed that the members of both Houses would have had ample opportunity of examining them and forming their opinion on them. In the exercise of the powers thus conferred upon them, her Majesty's justices had, with the greatest care and anxiety, prepared a set of rules and regulations with reference to the procedure of the Superior Courts of Law in Westminster-hall. He ventured to say that no body of men could be more anxious than her Majesty's judges that the laws should be administered with all possible simplicity, expedition, and economy; and it was with this view, and upon that principle, that the rules and regulations which he held in his hand had been framed. He had also the satisfaction to say that the Procedure Bill of last session had worked admirably. It had greatly improved the practice of the Superior Courts; and it was with the view of still further carrying out the intentions of the Legislature in these respects that these regulations had been framed by her Majesty's justices. He should move that they be printed, and their Lordships would have ample time for considering them, and for disallowing or modifying them, if in their wisdom they should see fit to do so; but, if neither House of Parliament thought proper to interfere with them, they would, by next Trinity Term, become law.

LAW REFORM.

The LORD CHANCELLOR gave notice, that on Monday next he would state to the House the intentions of her Majesty's Government with respect to legal reform.

BANKRUPTCY—LUNACY.

Lord ST. LEONARDS introduced his Bills for amending the law of lunacy, and for enabling insolvents to take the benefit of the bankruptcy law by voluntary cession.

CRIMINAL LAW.

Lord ST. LEONARDS also introduced a Bill for the Digest and Consolidation of part of the Criminal Law.—Lord CAMPBELL was of opinion that the whole law should be codified at once, and not by piecemeal.

THE NEW CRIMINAL CODE.

FRIDAY, Feb. 11.—Lord ST. LEONARDS expressed a hope, as we understood, that before the Government abolished transportation they would consider the important question of secondary punishments.—Lord

Campbell, agreed that the subject of secondary punishments should be fully considered and settled, but he hoped it would not be settled by abolishing transportation, which for his experience, he could say, was the best punishment that had ever been devised, as well for the protection of the public as the reformation of criminals. He was against their being forced on unwilling colonists, but he thought the Government ought to select new settlements where they might be sent without injury to any one.

HOUSE OF COMMONS.

METROPOLITAN GRAND JURIES.

Thursday, Feb. 10.—In reply to Sir F. Thesiger, Lord Palmerston said that there was no intention at present on the part of the Government to introduce a Bill for the purpose of abolishing grand juries in the metropolitan districts.

BETTING HOUSES.

Sir J. Duke wished to know whether it was the intention of the Government to introduce any measure with a view of putting a stop to the extension of betting houses, which he could testify to be a source of serious evil.—Lord Palmerston said the subject excited great attention, and there was great foundation for the opinion that much evil was produced by these betting houses. At the same time the subject was surrounded with great difficulty, and he confessed he was not satisfied in his own mind as to any practical mode of accomplishing the object in view without going beyond the purpose proposed to be attained. At the same time the Government would consider the subject.

ECCLESIASTICAL COURTS.

Mr. Bright wished to know whether it was the intention of the Government to introduce any measure for reforming, or what would be better, for abolishing the Ecclesiastical Courts?—Lord J. Russell said that a commission had been appointed, which had under its consideration a considerable part of the subject relating to Ecclesiastical Courts. It would be desirable to have the report of that commission before proceeding to legislate upon the subject; but if it was likely to be too long delayed, it was the intention of the Government to submit a proposition on the subject without report.

EXAMINER OF THE COURT OF CHANCERY.

The Solicitor-General gave notice that on Monday he would move for leave to bring in a bill for further regulating the office of Examiner of the Court of Chancery.

THE MAGISTRATE,

AND PAROCHIAL AND MUNICIPAL LAWYER.

Summary.

A case of unusual interest in this department of the law was reported last week from the Q. B. Sect. 2 of 11 & 12 Vict. c. 44, provides that no action shall be brought against any justice of the peace for anything done under a warrant issued for disobedience of a previous summons. This was held to apply only to warrants issued previously to a conviction or order for the purpose of compelling appearance, and not to warrants issued after conviction for the purpose of enforcing penalties. In this latter case an appearance by counsel or attorney was held to be an appearance according to the exigency of the summons. We commend the careful perusal of this judgment to magistrates and their clerks: (*Bessell* v. *Wilson*, 20 L. T. Rep. 233.) In a note to this case will be found an important correction by Lord Campbell of a strange misconception that had gone abroad of some remarks he had made upon the bench as to the duty of constables in searching persons in custody. He was reported to have said that a constable had no right to search a person in any case. His Lordship now desires it to be known that such was not his meaning; that it was right to search in all cases of arrest on a *criminal* charge—but not in other cases which are in the nature of civil proceedings, as in the one then under consideration.

An order of sessions was made in *Reg.* v. *Churchwardens, &c. of Heston*, 20 L. T. Rep. 235, for quashing an order of removal from A. to B. on the ground of a subsequent settlement in C. A. then obtained an order of removal to C. on the ground of a settlement gained in B. by hiring and service subsequently to that in C. The removing parish A. was held to be estopped by the first order from setting up the settlement by hiring and service in B. subsequently to that in C., as the same point was in dispute between A. and B. when the first order was quashed, and such subsequent settlement might then have been set up in answer to the settlement in C., on which that order was quashed.

In *Municipal Law* there is a case of some interest. The Municipal Act (s. 38) gives to the town council a control over the decision of the justices as to the amount of salary to be paid to the keeper of the gaol or house of correction, the word "confirmed" in that section being held to be equivalent to the words "approved of." Where, therefore, the justices had appointed a gaoler at a salary of 120*l.* per annum, and made an order on the treasurer for payment of a year's salary, and the treasurer and town council declined to pay, the Q. B. refused a *mandamus* to compel them to do so.

Erle, J., in the B. C., has laid it down, that when a justice has jurisdiction to enter upon a question, he has jurisdiction to decide it, and the court will not interfere with his decision: (*Ex parte Chadwick*, 20 L. T. Rep. 239.) The Court has admitted to bail a prisoner charged with murder, where the coroner's jury, after a full investigation of the facts, had entirely exculpated him: (*Reg.* v. *Blackburn*, 20 L. T. Rep. 239.)

SETTLEMENT OF A BASTARD.

TO THE EDITOR OF THE LAW TIMES.

Sir,—In *Reg.* v. *St. Andrew in Worcester*, reported in your number of the 29th Jan. (p. 221), the Court of Q. B. held that the settlement of a bastard child, after he attained the age of 16, is in the parish in which he was born. There can, I apprehend, be no doubt that the intention of the Legislature is carried out by this decision; but, with great propriety, judges have over and over again stated that they are not to decide according to what *they may deem* the *intention* of the Legislature, but are to take the language of an Act of Parliament and to give to it its close and grammatical meaning. Now with reference to the language of the 71st section of the 4 & 5 Will. 4, c. 76, it does seem to me that a fair argument arises which is adverse to the decision of the court, and which does not seem to have been clearly put by the counsel engaged in the case. The section enacts that every child which shall be born a bastard after the passing of the Act "shall have and follow the settlement of the mother of such child, until such child shall attain the age of 16, *or* shall attain a settlement in its own right;" and there the enactment (so far as the point under argument is concerned) ceases. The section does not say, "*or* shall attain a settlement in its own right" *previous to such child attaining the age of* 16. The language is in the *alternative*; the "or" is disjunctive; and I apprehend that it may fairly be argued that it contains two distinct enactments of a settlement, which the language of the Act separates and disjoins the one from the other, and that, taking this construction of the clause, and omitting one of the distinct enactments, the section may well be read as enacting that "every child which shall be born a bastard shall have and follow the settlement of the mother of such child until such child shall acquire a settlement in its own right." There is no express limit as to the time during which such settlement in its own right is to be acquired; it may be before or after it attains the age of 16. But differing, as I humbly do, from Mr. Justice Crompton, it appears to me that the *grammatical construction* of the words gives to a bastard the settlement of its mother until such bastard acquires a settlement in its own right. Lord Campbell seems not to have entertained any doubt as to the propriety of his decision of the case; but I may observe that throughout the whole of his judgment (as reported in the Law Times) his Lordship did not once allude to the disjunctive "or," or to the words "acquire a settlement in its own right." To those words *some* meaning must be attached; and (as the Legislature has not limited or restricted this meaning) I submit that they should receive their full grammatical and unrestricted construction. I hope that the question will again come before the court; and I hope so the more especially because it is pretty apparent that Mr. Justice Crompton did not cordially concur in the judgment of the other judges.

I am, Sir, yours, &c.

Feb. 5, 1853. J. S.

Testimonial to the Earl Brownlow.—The address of the magistrates and deputy-lieutenants of the county to Earl Brownlow on his retirement from the lieutenancy was presented to his lordship on Saturday last by Sir Robert Sheffield. The address is signed by every gentleman of authority and standing in the county.—*Lincoln Chronicle.*

A Parliamentary paper has just been printed respecting the Tewkesbury Union. The board of guardians carried resolutions to reduce the salaries of the several officers, on account of the "cheapness of provisions." The officers appealed to the Poor Law Board, and the reasons were required from the guardians that induced them to pass the resolutions. They urged that the value of agricultural produce had been diminished at least 30 per cent., that the rates had decreased, and that food was cheap. The Poor Law Board replied, that they had "never recognised the principle that the price of the articles and of the produce referred to are to be the criterion by which the amount of salaries ought to be estimated and regulated, or that such salaries should be liable to vary as the price of food fluctuates." The Poor Law Board thought that no sufficient reason had been assigned for the reduction, declaring that the fixed salaries of the medical officers, remunerated them only for their ordinary duties; and the board did not see that sufficient grounds had been adduced for diminishing the salaries of either of the officers referred to in the resolutions of the guardians.

REAL PROPERTY LAWYER AND CONVEYANCER.

Summary.

It will be seen that Lord St. Leonards has decided, in *Myers* v. *Perigal*, 20 L. T. Rep. 229, that shares in a joint-stock banking company which had an interest in freehold and other real estates, are personal and not real estates, and therefore may be devised to a charity without being subject to the Mortmain Act.

Queries on Points of Practice.

COSTS.

Can any of your readers say what is the usual practice in the Profession, with regard to the following question, in conveyancing costs? 1*s.* 4*d.* a folio is allowed for drawing deeds and fair copy. Does this include the fair copy sent to the opposite solicitor for perusal? or is an extra fair copy allowable for that purpose, at the usual charge of 4*d.* a folio?

An Old Subscriber.

Answers to Queries.

COSTS.

In a subscriber who, in the 195th page of your paper of the 5th inst. asks to be referred to an authority as to the right of an intended mortgagee, in the absence of any express agreement, to recover from the intended mortgagor his costs respecting the investigation of the title, &c. where the business has been broken off, and the mortgage not completed in consequence of a defect in the title to the property, will refer to *Kirby* v. *Williamson*, 19 L. T. Rep. 303, he will find that to be the latest reported case that I know of upon the subject; and, although it does not decide the point, he will there see what was the opinion of the court, and he will find a reference to several cases, to which he will doubtless refer, and be satisfied.

A. T. Stravenson.

In answer to "A Subscriber" who wishes for an authority as to the right of an intended mortgagee to costs, from an intended mortgagor, when the business has broken down, I beg to refer him to the cases of *Seede* v. *Whittington*, 2 B. & C. 11; and *Hodges* v. *Lord Litchfield*, 9 Bing. 713, and 1 B. N. C. 492. The subject is also touched upon in *Thompson* v. *Bond*, 1 Campb. 4.

Fred. Peake.

JOINT-STOCK COMPANIES' LAW JOURNAL.

Summary.

The question whether shares in a banking company, established under 7 Geo. 4, c. 46, and having an interest in freehold and other lands vested in the trustees of the bank, were real or personal estate, was decided by Lord St. Leonards in *Myers* v. *Perigal*, 20 L. T. Rep. 229. In an elaborate and conclusive argument, his Lordship held that the shareholder has not any estate in the land so held by the company of which he is a member, and therefore that a devise of them to a charity was not within the Mortmain Act.

WINDING-UP.

Official Managers do not always find their duties pleasant or profitable. It seems that they may be subjected to positive loss. They are paid by a per-centage on the assets, and in many cases there have been no assets. In *Re The Direct Exeter and Plymouth Railway Company*, 20 L. T. Rep. 231, the Official Manager has been ordered to pay certain costs, although there are no assets, on the ground that he had improperly instituted proceedings in the Master's Office, although he was allowed the costs of defending the order upon appeal when made.

RAILWAY AND OTHER BILLS ON STANDING ORDERS.

The standing orders were declared complied with in the following cases:—

Monday, Feb. 7.

London and North-Western Railway.—There were four Bills connected with this company, which, after some opposition, passed the standing orders.

Shrewsbury and Chester Railway.—For adjustment of share capital, borrowing powers, and mortgage debt, conversion of share capital into stock, scale of voting, creation of new shares for payment of debt, powers to run over the Wrexham and Minschcham Junction and Chester and Holyhead Railways, and for consolidation and repeal of Acts.

Shrewsbury and Birmingham and Shrewsbury and Chester Railways.—For their amalgamation.

Cork and Bandon Railway.—For extension to Bantry and branches to Clonakilty and Skibbereen and at Albert Quay; power to raise further capital and guarantee by county of Cork and baronies. Estimated cost, 328,954*l.*

Aberdeen, Banffshire, and Peterhead Railway.—(No. 1 Bill.)

Caledonian and Greenock and Glasgow Railways.—To authorise the joint working and management of the two undertakings.

Aberdeen Railway.—For sale or lease to Glasgow and South-Western.

Hammersmith and Richmond Grand Junction Railway.—For construction at an estimated cost of 80,000*l.*

Tynemouth Docks and Morpeth and Shields Direct Railway.

The general Bills passed were:—Bangor Waterworks (cost, 6,000*l.*); Irwell Valley Waterworks; Teignmouth Harbour and River Teign Navigation; Bristol and Clifton Gas-light Amalgamation; Bristol Gas-light Company (increase of capital and extension of limits); Ropendale and Bacup Waterworks; Swaffham Drainage. The Hamilton Waterworks Bill was withdrawn.

Tuesday, Feb. 8.

Leeds, Bradford, and Halifax Junction.—For branches to town of Bradford and coal fields at Deighlington; working arrangements with Great Northern and Lancashire and Yorkshire. Estimated cost, 180,000*l.*

Leamington, Warwick, and Stratford-on-Avon Railway.—For incorporation of company, power to make railways, and enter into arrangements with London and North-Western—at an estimated cost of 148,000*l.*

London and North-Western Railway.—For branch from Northampton to Market Harborough—at an estimated cost of 250,000*l.*

Great Northern Railway.—For Bedford branch. Estimated cost, 110,000*l.*

London and Mid-Western Railway.—The standing orders were declared not complied with in the case of this line, on the ground of errors in books of reference, and on validity of subscription contract. The estimated cost of the line is 1,000,000*l.*

PETITIONS, ORDERS, MEETINGS, APPOINTMENTS, CALLS, &c.

[Announced, issued, and made, during the past week.]

Punant and Crainpeen Consolidated Lead Mining Company.—Call of 1*l.* per share on all the contributories, on Feb. 16.—Tinney.

Wheal Providence Mining Company.—Call of 7*s.* per share on all the contributories, on Feb. 24.—Blunt.

THE LAWYER.

Summary.

Equity Practice.—An unusual number of *practice* cases were decided last week. We note the most important of them here, that the busy reader's attention may be directed to them without the trouble of reading the reports.

The Attorney-General v. *Wyggeston Hospital*, 20 L. T. Rep. 230, was curious. The Attorney-General appeared and stated that the petition in this case had been presented in his name without his knowledge and consent, and he moved for its dismissal. The petitioner objected that consent was not necessary—that the use of his name was merely a matter of form. But the Lord Chancellor held it to be otherwise, and granted the application.

The M. R. stated, in *Roby* v. *Scholes*, 20 L. T. Rep. 231, that before a committal for contempt for not obeying an order of the Court, there must be an order *nisi* to do the act in the time; or, if not, then an order to commit may be moved. An endeavour must be made to serve this four-day order, and if that cannot be done, application might be made for substituted service. In *Gordon* v. *Jesson*, 20 L. T. Rep. 231, he said that an order for the substitution of a new assignee, on the death of an official assignee before answer, may be obtained as of course. In *Chaffers* v. *Headlam*, 20 L. T. Rep. 231, it was held that where a deceased debtor's estate was insufficient to pay the creditors under the deed, and no person could be found to undertake the representation of it, the suit might, under sect. 44 of cap. 86, be prosecuted without any such personal representative.

In *Forbes* v. *Forbes*, 10 L. T. Rep. 232, an order, obtained for the further examination of witnesses out of the jurisdiction, was held not to be irregular because it was restricted by the words "not before examined on the same subject-matter."

The question whether, under the new Evidence Act, a defendant can be *compelled* by the plaintiff to give evidence, was decided by V. C. Wood in the *affirmative*, although we cannot conceive what reasonable doubt could be entertained of the meaning of words so plain as those used in the second section of the Evidence Act, which enacts that all persons shall be *competent* and *compellable* to give evidence, &c. (*Hayland* v. *Rees*, 20 L. T. Rep. 232.)

Common Law.—Upon the new Procedure Act a question has arisen as to amendment of an indorsement on a pluries summons. The original writ was tested Oct. 13, 1849, and was regularly continued till May 23, 1851, when a pluries writ was issued and served. The indorsement of the date of the first writ on the pluries served was by mistake the 22nd Oct. instead of the 13th Oct. Defendant pleaded the Statute of Limitations, whereupon plaintiff applied to amend the indorsement on the pluries and copy served. The Q. B. allowed the amendment of the writ, but not of the copy. Upon the effect of this Lord Campbell observed, "As at present advised, I think that the defendant will in vain at the trial attempt to show that this amendment is a forgery, or to show as a defence what has been erased by this rule from the writ; for the amendment we make will show what was the original date of the first writ:" (*Cornish* v. *Hockings*, 20 L. T. Rep. 234.) It was laid down in *Crouch* v. *The London and North Western Railway Company*, 20 L. T. Rep. 238, to be necessary, on obtaining leave to plead several matters, that an affidavit should be made by the party or his attorney in accordance with sect. 81, to the effect that he is advised and believes that he has just grounds to traverse the several matters proposed to be traversed by him, and that the several matters sought to be pleaded by way of confession and avoidance are respectively true in substance and in fact.

To obtain an execution in less than fourteen days an application must now be made to the judge, stating special circumstances, supported by affidavit: (*Sirrel* v. *Camper*, 20 L. T. Rep. 240.)

The rule, allowing the costs of residence in this country of a seafaring man who is a material witness in a cause, is applicable to parties when necessary witnesses. Thus, where a man had engaged a berth for Australia and paid his passage-money, and through a mistake of the clerk it was not credited, and he was turned out of the ship, for which he brought an action, and was detained here till the trial, when he recovered damages, he was held to be entitled to his costs of residence: (*Ansett* v. *Marshall*, 20 L. T. Rep. 240.)

In *Sheriffs' Law* we have two decisions in the same case of *Dalloway* v. *Taylor*, 20 L. T. Rep. 238. A writ of *distringas* was received by the sheriff, who sent a warrant to his officer by post. The warrant was lost, and the plaintiff delayed. The sheriff was held to be liable for the expenses thereby occasioned.—The sheriff seized under a *fi. fa.* Before removal of the goods an interpleader order was obtained. In such circumstances the sheriff ought not to pay the rent due to the landlord. Jervis, C. J. observed: "This matter cannot be affected by the Interpleader Act, which does not propose to deal with the claim of the landlord under the stat. of Anne, and that stat. was only intended to apply to cases where the landlord has lost his chances of distraining on the goods by their removal."

Queries on Points of Practice.

Will any of your readers be so good as to give me some information on the following question in your next number? Is it possible, after having served under articles here, to be admitted as a solicitor in Sydney? In a book written by Mr. Justice Stephen, entitled *Constitutions of the Supreme Court in Sydney*, 1843-5, at page 72, you will see who are eligible for admission; and among such are mentioned those who have been articled and served the full term of five years here. The point is whether or no that has been altered since 1843-5.

Montague R. Tootal.

Can any reader refer me to any book giving directions as to the best mode of arranging and keeping attorneys' *papers*?

Thomas Southall.

COUNTY COURTS.

Summary.

A plaint was tried before the judge without a jury, and judgment given for the defendant. Subsequently a new trial was granted. Has either party a right to demand a jury on the second trial, although there was not one on the first? Erle, J., in the B. C., has held that he may; that the right to have a jury is absolute. This is a very important and useful decision; for now, when dissatisfied with the judge, there will be in fact an appeal to a jury. On the other hand, there is danger of litigious suitors trying double shots; but the protection against this is in the power vested in the judge of granting or refusing new trial: (*Nutting* v. *Nutting*, 20 L. T. Rep. 239.)

There is also a case in *Insolvency*. An insolvent was adjudged to be entitled to the benefit of the Act, but to be detained in custody as to the debt of A. for twenty months. Whilst in custody, it was agreed between the creditor and the insolvent that he should be discharged on giving a warrant of attorney for payment of the debt by instalments; the warrant was given and the insolvent liberated. The warrant so given was held to be void, and ordered to be set aside: (*Ex parte Smith*, 20 L. T. Rep. 239.)

MERCANTILE LAWYER.

Summary.

The liability of *a surety* under peculiar circumstances was decided by the Lords Justices in *Jones* v. *Beach*, 20 L. T. Rep. 230. Application was made to a surety for a joint and several note, in lieu of one then due, on which he was only jointly liable with his principal. In reply he said that he would send the amount and interest due on the joint security in a post or two. Had he thereby rendered himself severally liable? The Lords Justices invited the assistance of Maule, J. who stated his opinion to be that at law this letter did not amount to an acceptance of a new contract. The first letter contained an offer, but the second did not accept it.

How far a master is liable for the negligence of his servant has been of late a much litigated question. In *Mitchell* v. *Crasweller*, 20 L. T. Rep. 237, it was held by the C. B. that he is not liable unless the servant was at the time actually engaged in the business of the master. Therefore, where one of those pests of the London streets, the butcher's carts, ran over a woman through furious driving, and it was proved that the servant had gone out of his way, and was carrying another person home in the cart, contrary to orders, it was held that the master was not liable.

In *Bankruptcy* one case is to be noted. Under sect. 125, authorising the sale of goods in the possession of the bankrupt as reputed owner, with the consent of the true owner, it was held that the order of the Commissioner for this purpose must be so worded as to show what goods are to be so disposed of by the assignees. The case is valuable, as pointing out very minutely what are the duties of the Commissioner where such a question arises: (*Quartermaine* v. *Billestone*, 20 L. T. Rep. 236.)

Masters and Servants.—An action (*King* v. *Pearce*) was brought in the Sheriff's Court to recover damages for the injury occasioned by a collision between the cart of the plaintiff and the van of the defendant. The plaintiff, in stating his case, said that the accident occurred in consequence of the wilful and wanton misconduct of the servant of the defendant. His Honour.—If you prove that the accident occurred through the wilful and wanton conduct of the servant you prove too much; for a master is only liable for the negligence of his servant, not for wilful misconduct. As mere negligence was proved, the plaintiff recovered 6*l.* damages.

COURT PAPERS.

Privy Council.

Balfour and others, apps., Watt and others, resps.—Jamaica.
Pollok and others, apps., Bradbury, resp.—Canada
Murrow, app., Stuart, resp.—Hongkong
Parlar, app., Lane, resp.—Prerogative Court
Jenkins, app., Heycock, resp.—Bengal
Rainy, app., Justices of Sierra Leone, resps.—Sierra Leone
Nash's Petition for extension of patent for "Improvements in Construction of Roofs," &c.
Heath's Petition for extension of patent for "Improvements in the Manufacture of Iron and Steel."

Equity Courts.

SITTINGS AFTER HILARY TERM, 1853, AT LINCOLN'S-INN.

Lord Chancellor's Court.

(Before the Lord Chancellor and Lords Justices.)

Tuesday	Feb. 8	First Seal, Appeal Motions
Wednesday	9	Petitions in Lunacy and Appeals
Thursday	10	Appeals
Friday	11	Petns. in Bankruptcy and Appeal Petns.
Saturday	12	Appeals
Monday	14	Ditto
Tuesday	15	Ditto
Wednesday	16	Petitions in Lunacy and Appeals
Thursday	17	Appeals
Friday	18	Petns. in Bankruptcy and Appeal Petns.
Saturday	19	Appeals
Monday	21	Ditto
Tuesday	22	Second Seal, Appeal Motions
Wednesday	23	Petitions in Lunacy and Appeals
Thursday	24	Appeals
Friday	25	Petns. in Bankruptcy and Appeal Petns.
Saturday	26	Appeals
Monday	28	Ditto

Tuesday....Mar. 1 Appeals
Wednesday .... 2 Petitions in Lunacy and Appeals
Thursday ..... 3 Appeals
Friday ..... 4 Petns. in Bankruptcy and Appeal Petns.
Saturday ..... 5 Appeals
Monday ..... 7 Ditto
Tuesday ..... 8 Third Seal, Appeal Motions
Wednesday .... 9 Petitions in Lunacy and Appeals
Thursday .....10 Appeals
Friday .....11 Petns. in Bankruptcy and Appeal Petns.
Saturday .....12 Appeals
Monday .....14 Ditto
Tuesday .....15 Ditto
Wednesday .....16 Petitions in Lunacy and Appeals
Thursday .....17 Appeals
Friday .....18 Fourth Seal, Appeal Motions
Saturday .....19 Petns. in Bankruptcy and Appeal Petns.

N.B. During these sittings the Court will be formed by the Lords Justices alone upon the days on which the Lord Chancellor shall be engaged in the House of Lords.

The Lord Chancellor and the Lords Justices will also occasionally sit in distinct courts; notice will be given of the days.

Vice-Chancellor Kindersley's Court.

Tuesday ... Feb. 8 First Seal, Motions and three causes
Wednesday ..... 9 Pleas, Demurrers, Exceptions, Claims, Causes, and further Directions
Thursday .....10 Ditto
Friday .....11 Petitions (unopposed first)
Saturday .....12 Short Causes, Short Clms. and Gen. Paper
Monday .....14 Pleas, Demurrers, Exceptions, Claims, Causes, and further Directions
Tuesday .....15 Ditto
Wednesday .....16 Ditto
Thursday .....17 Ditto
Friday .....18 Petitions (unopposed first)
Saturday .....19 Short Causes, Short Clms. and Gen. Paper
Monday .....21 Pleas, Demurrers, Exceptions, Claims, Causes, and further Directions
Tuesday .....22 Second Seal, Motions
Wednesday ....23 Pleas, Demurrers, Exceptions, Claims, Causes, and further Directions
Thursday .....24 Ditto
Friday .....25 Petitions (unopposed first)
Saturday .....26 Short Causes, Short Clms. and Gen. Paper
Monday .....28 Pleas, Demurrers, Exceptions, Claims, Causes, and further Directions
Tuesday....Mar. 1 Ditto
Wednesday .... 2 Ditto
Thursday ..... 3 Ditto
Friday ..... 4 Petitions (unopposed first)
Saturday ..... 5 Short Causes, Short Clms. and Gen Paper
Monday ..... 7 Pleas, Demurrers, Exceptions, Claims, Causes, and further Directions
Tuesday ..... 8 Third Seal, Motions
Wednesday .... 9 Pleas, Demurrers, Exceptions, Claims, Causes, and further Directions
Thursday .....10 Ditto
Friday .....11 Petitions (unopposed first)
Saturday .....12 Short Causes, Short Clms. and Gen. Paper
Monday .....14 Pleas, Demurrers, Exceptions, Claims, Causes, and further Directions
Tuesday .....15 Ditto
Wednesday ....16 Ditto
Thursday .....17 Short Causes, Short Clms. and Gen. Paper
Friday .....18 Fourth Seal, Motions
Saturday .....19 Petitions

N.B. — Unopposed Petitions, not exceeding ten, at the sitting of the court every day (except seal-day.)

Vice-Chancellor Stuart's Court.

Tuesday....Feb. 8 First Seal, Motions
Wednesday .... 9 Short Causes, Short Clms. and Gen. Paper
Thursday .....10 Pleas, Demurrers, Exceptions, Claims, Causes, and further Directions
Friday .....11 Ditto
Saturday .....12 Petitions (unopposed first)
Monday .....14 Pleas, Demurrers, Exceptions, Claims, Causes, and further Directions
Tuesday .....15 Ditto
Wednesday ....16 Short Causes, Short Clms. and Gen. Paper
Thursday .....17 Pleas, Demurrers, Exceptions, Claims, Causes, and further Directions
Friday .....18 Ditto
Saturday .....19 Petitions (unopposed first)
Monday .....21 Pleas, Demurrers, Exceptions, Claims, Causes, and further Directions
Tuesday .....22 Second Seal, Motions
Wednesday ....23 Short Causes, Short Clms. and Gen. Paper
Thursday .....24 Pleas, Demurrers, Exceptions, Claims, Causes, and further Directions
Friday .....25 Ditto
Saturday .....26 Petitions (unopposed first)
Monday .....28 Pleas, Demurrers, Exceptions, Claims, Causes, and further Directions
Tuesday ..Mar. 1 Ditto
Wednesday .... 2 Short Causes, Short Clms. and Gen. Paper
Thursday ..... 3 Pleas, Demurrers, Exceptions, Claims, Causes, and further Directions
Friday ..... 4 Ditto
Saturday ..... 5 Petitions (unopposed first)
Monday ..... 7 Pleas, Demurrers, Exceptions, Claims, Causes, and further Directions
Tuesday ..... 8 Third Seal, Motions
Wednesday .... 9 Short Causes, Short Clms. and Gen. Paper
Thursday .....10 Pleas, Demurrers, Exceptions, Claims, Causes, and further Directions
Friday .....11 Ditto
Saturday .....12 Petitions (unopposed first)
Monday .....14 Pleas, Demurrers, Exceptions, Claims, Causes, and further Directions
Tuesday .....15 Ditto
Wednesday ....16 Short Causes, Short Clms. and Gen. Paper
Thursday .....17 Pleas, Demurrers, Exceptions, Claims, Causes, and further Directions
Friday .....18 Fourth Seal, Motions
Saturday .....19 Petitions.

Vice-Chancellor Wood's Court.

Tuesday ..Feb. 8 First Seal, Motions and Claims
Wednesday .... 9 Pleas, Demurrers, Exceptions, Claims, Causes, and further Directions
Thursday .....10 Short Causes, Short Clms. and Gen. Paper
Friday .....11 Petitions (unoppo. first) and Gen. Paper
Saturday .....12 Pleas, Demurrers, Exceptions, Claims, Causes, and further Directions
Monday .....14 Ditto
Tuesday .....15 Ditto
Wednesday .....16 Ditto
Thursday .....17 Short Causes, Short Clms. and Gen. Paper
Friday .....18 Petitions (unoppo. first) and Gen. Paper
Saturday .....19 Pleas, Demurrers, Exceptions, Claims, Causes, and further Directions
Monday .....21 Ditto
Tuesday .....22 Second Seal, Motions and Claims
Wednesday ....23 Pleas, Demurrers, Exceptions, Claims, Causes, and further Directions
Thursday .....24 Short Causes, Short Clms. and Gen. Paper
Friday .....25 Petitions (unoppo. first) and Gen. Paper
Saturday .....26 Pleas, Demurrers, Exceptions, Claims, Causes, and further Directions
Monday .....28 Ditto
Tuesday....Mar. 1 Ditto
Wednesday .... 2 Ditto
Thursday ..... 3 Short Causes, Short Clms. and Gen. Paper
Friday ..... 4 Petitions (unoppo. first) and Gen. Paper
Saturday ..... 5 Pleas, Demurrers, Exceptions, Claims, Causes, and further Directions
Monday ..... 7 Ditto
Tuesday ..... 8 Third Seal, Motions and Claims
Wednesday .... 9 Pleas, Demurrers, Exceptions, Claims, Causes, and further Directions
Thursday .....10 Short Causes, Short Clms. and Gen. Paper
Friday .....11 Petitions (unoppo. first) and Gen. Paper
Saturday .....12 Pleas, Demurrers, Exceptions, Claims, Causes, and further Exceptions
Monday .....14 Ditto
Tuesday .....15 Ditto
Wednesday ....16 Ditto
Thursday .....17 Short Causes, Short Clms. and Gen. Paper
Friday .....18 Fourth Seal, Motions and Claims
Saturday .....19 Petitions.

THE EQUITY JUDGES AT CHAMBERS.

The following applications are to be made at the Judges' Chambers.

1. As to guardianship of infants (except the appointment of guardian *ad litem*.)
2. As to maintenance or advancement of infants.
3. For the administration of estates under the Act of 15 & 16 Vict. c. 86.
4. For time to plead answer or demur.
5. For leave to amend bills or claims.
6. For enlarging publication or the time for closing evidence.
7. For the production of documents.
8. Relating to the conduct of suits or matters.
9. As to matters connected with the management of property.
10. For payment into court of purchasers' moneys under sales by order of the court, and investing same.
11. For stop orders where the assignor and assignee concur.

Common Law Courts.

Date of Writ.—It is recommended by the judges that attorneys should in all cases insert at the commencement of the pleadings in the briefs the date of issuing the original writ of summons.

ATTORNIES ADMITTED.

Hilary Term, 1853.

Appleton, Henry—J. P. Sowerby
Aspinall, Clarke—J. Collinson; R. Radcliffe
Ayre, Charles Edward—W. Ayre, jun.; W. Sanger
Bell, John Leonard—W. D. Bell
Binson, John—G. B. Carter
Breeze, Robert—J. Newbold; E. W. Field
Broad, Joseph—W. Cooper
Bunting, John—J. B. Simpson; R. Parsons
Clark, Frederick—E. E. Clark
Durant, Benjamin Chandler, B.A.—T. Durant; B. Chandler, jun.
Edge, James Henry—J. Atkinson.
Evans, Asa Johnes—J. Smith
Freeman, Charles Edwards—H. Abbot
Girdlestone, James—J. Harward
Groves, Thomas George—J. Leman
Hampson, Francis—J. Hampson
Hannay, William—W. Enfield
Hodgson, James Leyland—T. Dodge; A. L. Hardman
Kaye, George Edward—C. Kaye
Keays, Frederick—R. Fisher
Kough, Samuel Harley—T. H. Kough
Last, Frederick—A. C. Veley; I. Last; H. Last
M'Clure, Edward Wade—E. Lewis; A. M'Clure; J. Remer
Marett, Edmund Rouse—W. Clarke
Markby, Henry—Crabtree and Cross
Matthews, John Williams—A. Booker
Naters, Henry Trewhitt—G. W. Wright; F. Turner
Neate, Albert—J. Neate
Nisbet, Henry Curtis—A. Bell
Payne, John Brown—A. Oliver
Plummer, William, jun.—S. Plummer
Pollock, Alfred Atkinson—P. R. Alderson; P. J. T. Pearse; P. J. T. Pearse, jun.
Proud, John, jun.—H. J. Marshall
Ram, Stephen Adye—J. Inglis
Rhodes, Abraham—S. W. Johnson
Roberts, Samuel, M.A.—R. Mason
Sanger, John Hill Melton—R. Wreford; J. N. Wilson
Senior, Frederick Bernard—W. Chapman
Sheppard, Augustus Frederick—W. Parsons; J. King
Smith, Job Orton—P. Richardson
Snowball, George—G. W. Wright
Stiffe, Francis William Everitt—A. Cox
Thomas, Richard Aubrey—G. Thomas, jun.
Turner, George—W. H. Turner
Walter, Charles—J. Johnston, W. Walter, sen.
Whitefield, John Charles—W. Gresham; W. B. Cooper; G. W. Whitaker; W. Bartholomew; W. Bevan
Williams, Ebenezer Robins—R. Gillam, sen.; I. O. Jones; R. Gillam, jun.
Winearls—William Good—W. Rackham
Wright, Egerton Leigh—R. Bloxam; R. Darlington; T. F. Taylor.—*Legal Observer*

Circuit Paper for the Spring Assises, 1853.

The following is the Circuit Paper for the Spring Assises, 1853, as finally settled by the judges:—

NORFOLK CIRCUIT.

(Before Lord Campbell and Lord Chief Baron Pollock.)

Assize Town.	Last day for full Notice of Trial.	Commission Day.
Aylesbury	Feb. 16	Feb. 28
Bedford	Feb. 21	March 3
Huntingdon	Feb. 25	March 7
Cambridge	Feb. 26	March 9
Norwich and City	March 4	March 14
Bury St. Edmonds	March 10	March 19

MIDLAND CIRCUIT.

(Before Lord Chief Justice Jervis and Mr. Baron Parke.)

Oakham	Feb. 11	Feb. 21
Northampton	Feb. 12	Feb. 22
Lincoln and City	Feb. 16	Feb. 26
Nottingham and Town	Feb. 21	March 3
Derby	Feb. 26	March 8
Leicester and Borough	March 2	March 12
Coventry	March 8	March 18
Warwick	March 10	March 19

HOME CIRCUIT.

(Before Mr. Baron Alderson and Mr. Justice Coleridge.)

Hertford	Feb. 14	Feb. 24
Chelmsford	Feb. 18	Feb. 28
Maidstone	Feb. 25	March 7
Lewes	March 4	March 14
Kingston	March 7	March 17

NORTH WALES CIRCUIT.

(Before Mr. Justice Maule.)

Welchpool	March 4	March 14
Bala	March 7	March 17
Carnarvon	March 10	March 19
Beaumaris	March 12	March 23
Ruthin	March 16	March 26
Mold	March 19	March 30
Chester	March 23	April 2

SOUTH WALES CIRCUIT.

(Before Mr. Justice Wightman.)

Swansea	Feb. 19	March 2
Haverfordwest and Town	Feb. 26	March 9
Cardigan	March 4	March 14
Carmarthen	March 8	March 18
Brecon	March 14	March 24
Presteign	March 19	March 30
Chester	March 23	April 2

NORTHERN CIRCUIT.

(Before Mr. Justice Creswell and Mr. Baron Martin.)

Lancaster	Feb. 7	Feb. 17
Appleby	Feb. 11	Feb. 21
Carlisle	Feb. 12	Feb. 23
Newcastle and Town	Feb. 16	Feb. 26
Durham	Feb. 19	March 2
York and City	Feb. 26	March 8
Liverpool	March 12	March 22

WESTERN CIRCUIT.

(Before Mr. Justice Erle and Mr. Justice Crompton.)

Winchester	Feb. 16	Feb. 26
Salisbury	Feb. 28	March 5
Dorchester	Feb. 28	March 10
Exeter and City	March 2	March 12
Bodmin	March 10	March 19
Taunton	March 16	March 26

OXFORD CIRCUIT.

(Before Mr. Justice Williams and Mr. Justice Talfourd.)

Reading	Feb. 18	Feb. 28
Oxford	Feb. 21	March 3
Worcester and City	Feb. 26	March 8
Stafford	March 2	March 12
Shrewsbury	March 11	March 21
Hereford	March 14	March 24
Monmouth	March 19	March 29
Gloucester and City	March 23	April 2

Mr. Baron Platt will remain in town for chamber business.

LEGAL INTELLIGENCE.

RESULT OF THE HILARY TERM EXAMINATION OF ATTORNEYS.

The number of candidates entitled to be examined in the last term, was		
Of these twenty-three did not perfect their testimonials of service		23
Leaving therefore to be examined only		62
One of these did not attend, and two withdrew during the examination		3
Ten were not passed		10
		13
The number entitled to be admitted on the Roll, therefore, was reduced to		49

—*Legal Observer.*

Lord Campbell has made the rule for a new trial, in the case of *Constant Derra de Morada* v. *Dawson and others*, absolute; so that the famous *Von Beck* case will again come before the public.

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PROCEEDINGS OF LAW SOCIETIES.

THE LAW STUDENTS' DEBATING SOCIETY. As a means of legal education, debating societies, if strictly limited to subjects either directly or collaterally legal, are of the highest possible value. The importance of fluent, yet accurate, speech, conciseness of logic, and that self-possession which enables a man to address large bodies calmly and collectedly, is daily increasing to the lower branch of the profession; and we receive with great pleasure the most promising accounts of many legal debating societies both in the metropolis and the provinces.

The Law Students' Debating Society, which holds its meetings weekly in one of the rooms at the Law Institution, may be regarded as the central point towards which all the provincial societies tend. Students who have practised themselves in some one or other of the country societies will almost invariably join this when they come up to town for the purpose of completing their articles; and the last quarterly report furnished by the secretary shows that no pains have been spared to bring the society to its present high state of efficiency.

It appears that the number of members at the commencement of the present year was seventy-two, out of which an average of thirty attend each debate. The questions are debated upon in the proportion of two legal, to one jurisprudential question, and many of the questions proposed have been of the most recondite and interesting nature. These facts, we think, fully justify the pardonable boast of the secretary: "That so large a body of the younger members of our profession can be brought together, for no more attractive pursuit than self-improvement and friendly intercourse, is, at once, highly creditable to the profession and to the society." We have made these observations upon the progress of this society more especially for the advantage of our younger country readers, who, when they come to the metropolis, should not fail to make themselves acquainted with, and avail themselves of, the advantages thereby afforded.

THE GAZETTES.

Bankrupts.

Gazette, Feb. 8.

Bendon, George, glass dealer, Bristol, Feb. 21, and March 21, at eleven, Bristol. Off. as. Hutton. Sols. James James, Birmingham, and Brittan, Bristol. Petition, Feb. 4.

Bernon, Numa, tailor, Prince-street, Hanover-square, Feb. 17, at eleven, and March 17, at twelve, Basinghall-street. Off. as. Johnson. Sols. Lawrence and Co., Old Jewry Chambers. Petition, Feb. 5.

Edwards, Samuel, linendraper, Deptford, Feb. 22, at two, and March 15, at eleven, Basinghall-street. Off. as. Edwards. Sols. Depree and Austen, Lawrence-lane. Petition, Feb. 4.

Fraser, Andrew, corn merchant, Newcastle-upon-Tyne, Feb. 18, at eleven, and March 16, at twelve, Newcastle-upon-Tyne. Off. as. Wakley. Sols. Pringle and Co. King's-road, Bedford-row, London; and Philipson, Newcastle-upon-Tyne. Petition, Feb. 3.

Miller, Thomas Butler and William, builders, Headstridgevillas, St. John's-wood, Feb. 18, at half-past one, and April 1, at one, Basinghall-street. Off. as. Whitmore. Sol. Atkinson, Quality-court, Chancery-lane. Petition, Feb. 5.

Ruddock, Edward Harris, and Ellison, Henry, marble masons, Bradford, Yorkshire, Feb. 25 and March 18, at eleven, Leeds. Off. as. Freeman. Sols. Terry and Watson, Bradford; and Carlss and Cudworth, Leeds. Petition, Feb. 5.

Ruddock, Edward Harris, marble mason, Bradford, Feb. 29 and March 19, at twelve, Leeds. Off as. Freeman. Sol. Badger, Rotherham. Petition, Jan 29.

Gazette, Feb. 11.

Bulkin, John, coach builder, Beaumont-street, Marylebone, Feb. 18, at half-past one, and March 22, at one, Basinghall-street. Com. Fonblanque. Off. as. Stansfeld. Sols. George and Smith, 5, Southampton-buildings, Holborn. Petition, Jan. 28.

Gunn, John, meat salesman, High-street, Chatham, Feb. 22, at one, and March 24, at twelve, Basinghall-street. Com. Evans. Off. as. Bell. Sol. Scarman, 20, Coleman-street. Petition. Feb. 8.

Hart, Charles, manufacturing chemist, Huddersfield, Yorkshire, Feb. 28 and April 4, at eleven, Leeds. Com. Ayrton. Off. as. Hope. Sols. Upton and Yewdall, Leeds. Petition, Feb. 2.

Jones, Hugh, linen draper, Liverpool, Feb. 25 and March 24, at eleven. Com. Stevenson. Off. as. Bird. Sol. Dodge, Union-court, Castle-street, Liverpool. Petition, Feb. 9.

Kemble, George, farmer, grazier, cattle dealer, and commission agent, Hurst, Berks., Feb. 23, at twelve, and March 23, at one, Basinghall-street. Com. Fonblanque. Off. as. Stansfeld. Sol. Soames, 55, Old Broad-street. Petition, Feb. 10.

Minchener, William, warehouseman, factor, Cheapside, Feb. 25, at one, and March 21, at twelve, Basinghall-street. Com. Holroyd, Off. as. Edwards. Sol. Thompson, 18, Size-lane, Bucklersbury. Petition, Feb. 8.

Munch, William John, salesman, and general merchant, Beal's-wharf, Tooley-street, Surrey, Feb. 22, at half-past two, and March 21, at twelve, Basinghall-street. Com. Holroyd. Off. as. Groom. Sol. Brewer, 3, Philpot-lane, Fenchurch-street. Petition, Feb. 8.

Unwin, John, licensed victualler and brewer and publican, Newcastle-upon-Tyne, Feb. 18 and March 11, at twelve, Newcastle-upon-Tyne. Com. Ellison. Off. as. Wakley. Sols. Hoyle, 72, Grey-street, Newcastle-upon-Tyne; and Crosby and Compton, Church-court, Old Jewry. Petition, Feb. 7.

Witt, Benjamin, brewer, and wine and spirit merchant, Wimborne, Dorset, Feb. 18, at one, and March 22, at twelve, Basinghall-street. Com. Fonblanque. Off. as. Graham. Sol. Baskett, 18, King's-road, Bedford-row. Petition, Feb. 8.

BANKRUPTCY ANNULLED.

Gazette, Feb 11.

Cole, Thomas, cabinet maker, Newport, Isle of Wight.

Dividends.

BANKRUPT ESTATES.

Official Assignees are given, to whom apply for the Dividends.

Ball, G. wine merchant, first, 5s. Whitmore, London. —*Bell* and *Bell*, paper manufacturers, first, 1s. 9d.; first sep. of E. Bell on new proofs, 9d.; second sep. of ditto, 2s. 4d. Wakley, Newcastle.—*Burnley*, J. cloth manufacturer, first, 1s. 6¾d. Freeman, Leeds.—*Clayton, Clayton*, and *Wilson*, bankers, &c. fifth, 10½d. Lee, Manchester.—*Cogar*, W. A. boot and shoe dealer, second, 1s. 8d. Whitmore, London.—*Gibson*, D. grocer, first, 1s. Baker, Newcastle.—*Gundry* and *Gundry*, bankers, third, 1s. Hernaman, Exeter.—*Lake*, T. grocer, &c. first, 2s. Lee, Manchester.—*Marsden* and *Clayton*, cotton manufacturers, first, 5s. 6d. Lee, Manchester.—*Moone*, A. stone merchant, second, 2½d. Stansfeld, London. *Peel*, R. ironmonger, first, 8¾d. Fraser, Manchester.—*Philip, Clayton, Wynne*, and *Lancaster*, builders, first sep. of Philip, 8s. 8d. Stansfeld, London.—*Price* and *Lavender*, paper dealers, first, 6s. Christie, Birmingham.—*Roberts*, J. innkeeper, first, 2s. Bird, Liverpool.—*Rowell*, G. jun. painter, &c. first, 5s. 10d. Wakley, Newcastle.—*Tennant*, W. draper, second, 9½d. Stansfeld, London.—*Wilks*, S. clock dial maker and factor, first, 1s. 3d. Christie, Birmingham.—*Williams*, W. J. hosier, &c. first, 1s. 4d. Christie, Birmingham.—*Wynne* and *Lumsden*, builders, first, 9s. 1d. Stansfeld, London.—*Young*, T. grocer, first, 3s. 4d. Baker, Newcastle.

INSOLVENT ESTATES.

Kingsnorth, D. farmer and wheelwright, 11s 1d. Apply to Mr. W. Robinson, wholesale ironmonger, Maiden-lane, College-hill.—*Smith*, A. boot and shoemaker, 1s. 9½d. Apply at the County Court, Gravesend.

Assignments for the Benefit of Creditors.

Gazette, Feb. 1.

Brown, R. grocer, draper, and general shopkeeper, Bere Regis, Dorsetshire, Jan. 20. Trusts. J. Hayne, merchant, Fordington, and J. Fraud, chemist and druggist, Dorchester. Sols. Garland and Fear, Dorchester.—*Elmer*, J. N. innkeeper, New Malton, Yorkshire, Jan. 24. Trusts. W. Taylor, draper, and B. Bind, bank agent, both of New Malton. Sols. A. and W. Simpson, New Malton.—*Harbour*, W. yeoman, Diss, Norfolk, Jan. 29. Trusts. J. Kent, gentleman, and R. Aldrich, grocer, both of Diss. Sol. A. F. Barnard, Diss.—*Shotton*, G. S. draper, South Shields, Jan. 26. Trust. S. Sutherland, ironmonger, South Shields. Sol. R. Bowlby, South Shields. —*Terrell*, T. farmer, Whitchurch, Herefordshire, Jan. 19. Trusts. J. H. Ambrey, farmer, St. Briavels, and J. Morgan, auctioneer, Ross. Sols. Messrs. J. and J. E. Powles, Monmouth.—*Westmacott*, W. farmer, Batsford, Gloucestershire, Jan. 19 and 26. Trusts. R. Marshall, Aston Magna, and G. Penson, Draycott, farmers. Sols. Sewell and Newmarch, Stow-on-the-Wold.

Gazette, Feb. 4.

Burns, D. draper and tea dealer, St. Austell, Cornwall, Jan. 18. Trusts. W. Browne, mine agent, St. Austell, and R. Dunn, draper, Redruth. Sols. T. Coode and W. Shilson, both of St. Austell.—*Fenner*, G. builder, Birmingham, Jan. 24. Trusts. R. B. Fuller, plumber, and T. Lloyd, timber merchant, both of Birmingham. Sol. A. Harrison, Birmingham.—*Green*, T. and R. grocers and cheesemongers, Tonbridge Wells, Jan. 8. Trusts. T. Wright, wholesale cheesemonger, Giltspur-street, and H. Gold, jun. wholesale grocer, Hibernia Wharf, London-bridge. Sols. Dobson and Spickett, Clifford's-inn, Fleet-street. *Hawkins*, E. gentleman, Chorlton-upon-Medlock, Lancashire, Jan. 20. Trust. S. Smith, draper, Manchester. Sol. R. Gartside, Manchester.—*Knight*, S. maltster, Billingshurst, Sussex, Jan. 28. Trusts. Rev. H. Heath, clerk, Billingshurst, and A. Allen, maltster, Horsham. Sol. H. Padwick, Horsham.—*Osborne*, G. B. land surveyor, and brick, tile, and draining pipe manufacturer, Oldbury-upon-Severn, Thornbury, &c. Gloucestershire, Jan. 8. Trusts. R. S. Pope, architect, F. Adams, merchant, and A. W. P. Bush, lead shot manufacturer, all of Bristol. Sols. T. S. Pursell and H. W. King, both of Bristol.—*Ridout*, H. builder, Princess-terrace, Haverstock-hill, Jan. 26. Trusts. R. Wiltshire, oil and colourman, Bingfield-street, Caledonian-road, and G. Ridout, gentleman, Mitchell Vernon, Middlewitch. Sol. J. M. Dale, Warnford-court, Throgmorton-street.—*Savage*, T. cabinet maker, Greasley Common, Church Greasley, Derbyshire, Jan. 31. Trusts. Luke Severn, auctioneer and appraiser, and W. Risdon, corkcutter, both of Ashby-de-la-Zouch. Sol. G. F. Brown, Ashby-de-la-Zouch.—*Wesling*, G. C. surgeon dentist, Bury St. Edmunds, Suffolk, Jan. 17. Trusts. R. Roby, ironmonger, and S. Sale, upholsterer, both of Bury St. Edmunds. Sol. W. Salmon, Bury St. Edmunds.

Partnerships Dissolved.

Gazette, Feb. 1.

Barnham, W. J. *Sams*, W. H. and *Barnham*, A. G. patent emery and glass cloth manufacturers, Stratford, Jan. 28. Debts paid by W. J. Barnham.—*Bates*, W. and *Gould*, C. fullers and dressers, Leicester, Jan. 29. Debts paid by Bates. *Bickham*, S. H., *Pownall*, J., *Howarth*, A. and *Lancashire*, J. silk and cotton manufacturers, Manchester, Nov. 1. Debts paid by Howarth and Lancashire.—*Bonner*, G. F. and *Bennett*, J. designers, lithographers, and wood engravers, Bride-court, Jan. 29. Debts paid by Bonner.—*Cockin*, J. and J. carpet dealers, Manchester and Bradford, Jan. 17. —*Farthing*, E. and *Reed*, D. tailors and drapers, Cheapside, Jan. 29.—*Frost*, R. sen. R., jun. and J. painters, paper hangers, and decorators, Mansfield, Jan. 27.—*Goodwin*, T., *Lomax*, R. and *Banks*, W. silk manufacturers, Steward-street, Bishopsgate, Jan. 27.—*Holloway*, F. C. and *Carruthers*, W. linen drapers and hosiers, Grosvenor-place, Commercial-road, East, Feb. 1.—*Holton*, J. S. *Almond*, A. and *Slater*, J. bleachers, Manchester and Little Bolton, as regards Almond, Jan. 24.—*Kirk*, P., H. and T. iron manufacturers and brass and iron founders, Chapel-en-le-frith, as regards B. Kirk, Jan. 24. Debts paid by remaining partners.—*Lane*, H. and J. E. nurserymen and seedsmen, Great Berkhampstead, Jan. 31. Debts paid by J. E. Lane. —*Lace*, J. J. and *Izod*, F. surgeons, apothecaries, and accoucheurs, Mortimer and Swallowfield, Nov. 30.—*Maxsted*, J. and W. hat and cap makers, Carlton-street, Jan. 1.—*Medd*, R. and *Capes*, C. tailors and drapers, Kingston-upon-Hull, Jan. 29.—*Miller*, A. and *Chapman*, H. common brewers, and wine and spirit merchants, Bootle, near Liverpool, Jan. 29. Debts paid by Chapman.—*Millner*, A. and *Beech*, I. linen drapers and mercers, Gainsborough, Jan. 27 Debts paid by Millner.—*Milton*, W. and *Kilhck*, J. E. millers, Tonbridge, Sept. 29.—*Richardson*, J. and *Straker*, S. chemists and druggists, Bishopsgate-street Without, Jan. 29. Debts paid by Richardson.—*Royse*, F. and *Stuce*, J. hat manufacturers, Manchester and Macclesfield, Jan. 26. Debts paid by Royse.—*Rurk*, J. jun., *Turner*, W. A. and *Wansbrough*, J. patent cloth manufacturers and waterproofers, The Grove, Southwark, Jan. 10.—*Ruck*, J. jun., *Turner*, W. A. and *Poole*, W. emery and black lead manufacturers, Kent-street, Southwark, Jan. 29.—*Schroder*, A. and *Wirth*, J. G. merchants and commission agents, Gresham-street, Jan. 31. Debts paid by Schroder.—*Wensley*, C. and *White*, J. C. licensed victualler, Newgate-market, Jan. 27.—*Whittell*, S., J. and J. and *Langford*, F. woollen manufacturers, Stainland, Halifax, as regards Lawford, Jan. 4. Debts paid by remaining partners.—*Worswick*, W. *Kendall*, E. C. and *Davies*, W. boot and shoe manufacturers, Leicester, Jan. 29.

Gazette, Feb. 4.

Barry, J. and *Hemsley*, J., mast and block makers; Sunderland, Dec. 31. Debts paid by Barry.—*Bond*, J., R., and M., patent temple makers, Burnley, Jan. 29. Debts paid by R. and M. Bond.—*Carne*, C. F. and W. P., insurance and general agents, and wharehouse keepers, Liverpool, Dec. 31.—*Cheetham*, G. T. and *Dudgeon*, W., Bradford, Jan. 29. Debts paid by Cheetham.—*Coleman*, W., A. W., and *Martin*, H., manufacturers and importers of musical instruments, &c., Eyke's-terrace, Mile-end-road, Jan. 21.—*Cotton*, W. and *Davies*, E., millstone manufacturers, Liverpool, Feb. 1. Debts paid by Davies.—*Day*, J. B., and J., farmers and trainers of race horses, Danebury, Dec. 31.—*Farrow*, W. T., *Bannister*, T., and G. cotton manufacturers, Green Grove Mill, near Rochdale, Jan. 28.—*Plenie*, J. and *Kemp*, J., merchants, Rio de Janeiro, Brazil, and Manchester, Dec. 31, 1849.—*Gorse*, H. and *Wall*, H. F., oilmen and drysalters, Aldersgate-street, Jan. 30.—*Gray*, J. and *Edwards*, S., surgeons and accoucheurs, Upper George-street, Bryanstone-square, Jan. 31. Debts paid by Edwards.—*Halstead*, J., R. jun., and H., brass founders, &c. Hebden-bridge, Halifax, as regards H. Halstead, Jan. 31. Debts paid by H. Halstead, jun.—*Harrison*, J. and *Littlewood*, I., drapers, Great Yarmouth, Feb. 2.—*Hatfield*, T. and *Rippon*, W., farmers and graziers, Blacmorethick-lodge, Oundle, Oct. 11.—*Hodges*, J. F. and *Scott*, W., hosiers and glovers, New Bond-street, Feb. 1. Debts paid by Hodges.—*Kilvington*, R., and *Wakerman*, J., woollen cloth finishers, Leeds, Feb. 1.—*Lyne*, R. *Gulliver*, G. and *Goldthorpe*, J. ironmongers, Barnsley, Jan. 1. Debts paid by Gulliver and Goldthorpe.—*Johnson*, J. T. and W. G. linendrapers and silk mercers, Bishops Stortford, Jan. 31. *Keddell*, J. S. and *Cullen*, W. P. surgeons, apothecaries, &c. Sheerness, Dec. 31. Debts paid by R. Brightman, general agent, Sheerness.—*Maybury*, J. and *Williams*, R. forge iron manufacturers, Wednesbury, Feb. 24. Debts paid by O. Johnson, agent, Bilston, and J. Williams, forgeman, Wednesbury.—*Melrose*, J. and *Cowley*, T. boiler makers and smiths, Bradley Works, near Bilston, Dec. 31.—*Miller*, C., *Wilkinson*, T., *Soper*, R., *Hall*, G. and G. hat manufacturers, Grantham, Nov. 26.—*Munton*, R. N. and F. corn and flour factors, Manchester, Feb. 2.—*Parsons*, E. and W. linendrapers, Gloucester, Jan. 28.—*Thornton*, J., A., W., T., and J. machine makers and iron founders, March Mills, near Cleaketon, as regards A. Thornton, Feb. 2. Debts paid by remaining partners.—*Watson*, T. E. and *Archer*, J. grocers and Italian warehousemen, Liverpool, Jan. 31.—*Whitley*, J. and *Briggs*, W. stuff manufacturers, Botany, Jan. 29.—*Wood*, B. sen. and B. jun. pen and pocket-knife manufacturers, Sheffield, Feb. 1.

THE FOLLOWING NEW PRACTICAL WORKS FOR THE SESSION ARE JUST ISSUED AT THE Law Common Warehouse.

On Wednesday next,

PART VIII. of COX, MACRAE, and BERTHELET'S COUNTY COURT CASES AND APPEALS, together with INSOLVENCY PRACTICE, &c. &c.

This is the authorized and only complete collection of Reports of Cases relating to the County Courts, and is forming every case from the establishment of the Courts. To be continued regularly. Parts I. to VII. may still be had, price 5s. 6d. each. Part IX. is in the press, and will complete the cases to the beginning of 1853.

On Friday next,

PART II. of Vol. VII. of COX'S CRIMINAL LAW CASES, containing all the Cases to this time (for the Circuits) in the Appeal Courts of England and Ireland, in the Central Criminal Court, on the Circuits, and in the Superior Courts; with an Appendix, containing a large collection of Precedents of Indictments under the new Statute, and other Precedents from the Central Criminal Court. Price 5s. 6d.

N.B.—A few copies of the four volumes and parts can still be had to complete sets.

THE NEW RULES and ORDERS, the NEW TABLE of FEES, and the NEW RULES relating to the ADMISSION of ATTORNEYS and the EXAMINATION of ARTICLED CLERKS, with Practical Notes, Forms, and Index, by E. MALCOLM KERR, Barrister-at-Law. Price 5s. (This may be had also as a Supplement to Archbold's Common Law Procedure Act, having marginal references to the pages of that work.)

TUDOR'S NEW CHANCERY PRACTICE, with all the Rules, Orders, Cases, Decisions, &c., to this time, with Practical Notes, Forms, and Index, the Orders being placed with the Sections of the Statute to which they relate. By OWEN TUDOR, Esq. Barrister-at-Law. Price 6s. bds.

THE NEW BANKRUPTCY ORDERS, with the BANKRUPTCY CONSOLIDATION ACT, and Notes of all the Cases decided on its construction. By C. J. B. HERTSLET, Esq., Barrister-at-Law. Price 6s. 6d. cloth.

THE PRACTICAL STATUTES of 1849, containing all those each minded in Practice, omitting the Repealed and the Scotch, Irish, Colonial, and Sessional Statutes, with Notes of all the Cases decided on their construction; thus presenting the whole Law as it is, in a compact form for ready use, and with a copious Index. By C. J. B. HERTSLET, Esq. Barrister-at-Law. Price 10s. 6d. cloth. (This is in continuation of the Practical Statutes of 1850, 1851, and 1852, which may still be had.)

COX'S CRIMINAL LAW CASES, Part I. of Vol. VI. with a copious collection of Precedents of Indictments. This part contains Forms of Indictments at Quarter Sessions under the New Law. By J. E. DAVIES, Esq., Barrister-at-Law. Price 5s. 6d.

THE LAW TIMES SHEET ALMANAC for 1853, comprising, in addition to the regular information of an Almanac, Time Tables of all the Courts under the New Practice, Stamp and Tax Tables, Table for ready Calculation of Income Tax, and the other Information required for immediate reference in the Office. Price only 1s.; or stamped for post, 1s. 2d. A copy sent to any person inclosing thirteen postage stamps to the office.

THE LAWYER'S POCKET-BOOK for 1853, containing the Almanacs and Time of the Moon's Rising and Setting for the last as well as the present Year, a complete Table of Stamps, Time Tables in Common Law, Equity and Bankruptcy, and much other matter required for Reference in Courts. Price only 3s.

THE SECOND EDITION of KERR'S COMMON LAW PROCEDURE ACT, containing all the New Rules and Orders, the New Table of Fees, and Cases decided to the end of Michaelmas Term. Price 15s. cloth.

THE LAW DIGEST for the Half-Year ending December 1, By E. WISE and D. T. EVANS, Esqrs., Barristers-at-Law. Price 5s 6d. bds.; 6s. cloth.

This work gives every case, wherever reported, during the half-year, arranged so that the practitioner may find in a moment what is the latest law on any subject on which he may be engaged.

To Readers and Correspondents.

"AN ARTICLED CLERK."—*Such an arrangement is impracticable without a fresh service and a fresh stamp. Why not recruit health and then be assigned, and serve again the time that has thus been abstracted?*

"J. S." (Cowbridge.)—*The letter has been sent to the reporter of the court, and we have received no reply to it.*

"H. G. S." ((Hibro')—*Was it not in the Statute for Abbreviating Statutes, passed two years ago?*

"A SUBSCRIBER'S" *suggestion with respect to the Examination Question is under consideration. The difficulty lies in obtaining persons who will do it well; and it would be worse than worthless unless very well done.*

"H. T." (Whitechapel) *is under consideration. Some care is necessary to avoid discussions on judicial decisions.*

"STUDENS" (Liverpool.)—*Don't read any old law book or report on Common Law or Chancery; it will be impossible for you to distinguish between the old law and the new. Better at once sell all your library (except such as relates to real property law, which has not changed) to the butterman.*

"READER FROM THE FIRST" (Hull).—*Mr. Kerr is preparing a little volume, containing a complete sketch of an action-at-law as it now is, similar in design to Smith's, which, of course, is now utterly obsolete. It will be published shortly.*

We cannot undertake to return rejected communications. Whatever is intended for insertion must be authenticated by the name and address of the writer; not necessarily for publication, but as a guarantee of his good faith. No notice can be taken of anonymous communications.

THE LAW TIMES.

SATURDAY, FEBRUARY 19, 1853.

THE MINISTERIAL SCHEME OF LAW IMPROVEMENT.

WE are sure that we express the universal sense of disappointment felt by the Profession at the short-comings of the ministerial budget of law improvement.

The LORD CHANCELLOR made a speech of nearly six columns, chiefly to tell us what the Government will *not* do.

It will *not* meddle further with the Common Law Courts; it will *not* further improve the Equity Courts; it will *not* abolish the Ecclesiastical Courts; it will *not* abbreviate conveyances.

The reasons assigned for this standing-still are as unsatisfactory as the halt itself. Ministers will not touch the Procedure Act, and the Equity Reform Acts, because they have worked well, so far as they go. They confess the Ecclesiastical Courts to be a disgrace to the country, but they will not grapple with them, because, to use Lord CRANWORTH'S own words, "there is a risk of shocking a great many interested persons."

Of the little which the Government avows an intention to undertake, the first and most important measure is already condemned by the Profession, and repudiated by the country. The Registration of Deeds is to be again proposed, and to be again rejected.

This scheme for *increasing the cost* of conveyancing is all that the Government of "all the talents" proffers to the country. We beg pardon; there is another shadow looming in the far—the very far—distance,—a Codification of the Statute Law. But that is a work of years. Our grandchildren may see it; our generation will not.

Not a syllable about the Criminal Code, about Lord BROUGHAM'S admirable Evidence Bill, or Lord ST. LEONARDS' prompt and useful measures lying on the table of the House!

What can be the meaning of it?

THE ATTORNEY'S TAX.

LORD ROBERT GROSVENOR will proceed with his motion *before* the CHANCELLOR of the EXCHEQUER introduces his budget, so that, if the new Parliament should confirm the decision of the old one, the finance minister may have no excuse for not including its repeal in his scheme.

Therefore, not a moment is to be lost in backing the appeal of the noble Lord to the House of Commons, both by petitions, and by individual applications from the Attornies throughout the country to the representatives of their various localities. We know that Hon. Members promised largely during the election: let them now be *held* to their promises.

A useful short form of petition was suggested here a few weeks ago. Let it be extensively signed.

THE LAW REFORMS OF LORD CRANWORTH.

ON Monday the LORD CHANCELLOR stated to the House of Lords the measures of Law Reform which the new Government will propose during the present session. His elaborate speech is much more than we could possibly reprint, and therefore we present a summary merely of the contents, with extracts from the more salient points in it.

THE COMMON LAW COURTS.

Lord CRANWORTH eulogised the Procedure Act, and declared that in both branches of the Profession "he had found one universal expression of satisfaction at the change which has taken place." In illustration of its practical results, he stated that the rules, which in 1851 amounted to no less than 34,000, had been abolished. The Court fees on them were between 3000*l.* and 4000*l.* But what did the fees of Counsel and Attorney amount to? In further proof of the benefits conferred upon suitors by these improvements, Lord CRANWORTH said:—

I obtained from Mr. Walton, who has done himself infinite credit in the course of the inquiry of the commissioners, another return, to which I will call your lordships' attention. I said to that gentleman, "Do not merely confine yourself to the fees abolished. Show me upon some one proceeding what is the cost of the whole proceedings under the old system, and what is the cost now." Mr. Walton instanced the case of a party proceeding to recover a debt where the person proceeded against does not mean to offer any defence, but says, in vulgar language, "Do your best and your worst," and leaves his creditor to obtain judgment and get his money as he can. In 1851 there were 1998 of such proceedings, and I got Mr. Walton to ascertain what was the cost of the proceedings in each case under the present and under the old system. He tells me that under the present system it is impossible to state the costs quite accurately, because they vary to some extent, according to the amount sued for, but that upon the highest average it would be 4*l.* I then asked Mr. Walton to take at hazard ten bills of costs for similar proceedings under the old system, and the costs upon those ten cases were 154*l.*, being an average of 15*l.* in each case. It appears, therefore, that the new system effects a saving of 11*l.* out of 15*l.* in proceedings of this nature, and I cannot conceive anything more satisfactory as indicating the great advantages gained by bringing the Act into operation. Mr. Walton, however, made further inquiries as to another ordinary proceeding—a *distringas*, a most cumbrous and clumsy means of forcing into court a party who will not attend to notices served upon him; and it appears that in this instance also the advantages of the new system are most apparent. This, however, is not all. Under the old law, if a debtor was abroad, there were very great difficulties in proceeding against him, which could only be done by the process called outlawry. The new Act, however, remedied the defects of the old law, and that it has worked beneficially is shown, I think, by the fact, that since the measure has been in operation—from the commencement of November last to within a fortnight—116 writs have been issued against parties abroad, whose creditors may be enabled to recover what is their due. There is, however, another mode, in which we may see that the new system works very satisfactorily. The number of suits, litigated and not litigated, is between 80,000 and 90,000 in the course of a year, and, therefore, questions must arise from time to time as to the working of any code of practice, however well matured; but it is a matter of astonishment to me to hear that there have been only twelve motions in all the three courts with reference to proceedings under the recent Act, and, out of those twelve, I believe that ten were not upon proceedings that have originated under the Act, but upon the dovetailing of the new proceedings upon those that had taken place before.

The effect of this sharpening and facilitating of process was seen in the number of writs issued, which, from Oct. 25, 1851, to Jan. 25, 1852, was 19,000; while during the same period in the last and present year the number exceeded 23,000. It was not, therefore, the intention of the Government to propose any alteration in the Procedure Act. But the Common Law Commissioners would soon present their report, proposing reforms in other particulars to which the Procedure Act had not extended.

FUSION OF EQUITY AND LAW.

The LORD CHANCELLOR said that upon this proposition he would not now express an opinion; but he quite agreed with its advocates so far as this—that every court should have jurisdiction to deal with the entire of any cause submitted to it, and that suitors should not be driven for justice from court to court; and the Commissioners would propose that "in cases relating to the specific performance of contracts, a concurrent jurisdiction shall be given to the Courts of Common Law with the Courts of Equity."

TRIAL BY JURY.

His Lordship expressed great doubt whether it would be desirable to permit a jury to be dispensed with, as in the County Courts; but he had not made up his mind.

CHANCERY REFORM.

The changes that have been made in procedure in the Equity Courts were stated to be entirely successful. "So far as I can speak from my own observation," said his Lordship, "and so far as I can collect from the opinions of others, the changes are working admirably well." He illustrated the diminished costs under the new procedure by these facts:—

I shall take intentionally an uncontested case. It is a case where, a person having died, the legatee wants payment of the legacy. The executors say—"We are quite ready to do so, provided we can do so without injury to the creditors." In this case all that has to be done is this:—An application is made for an order to have the property distributed. All the parties are then required to attend before the Master of the Rolls to show cause, if any, why an order should not be made. No objection being offered, an order is accordingly made, almost in as many words as I have used in stating the case. An account is ordered to be taken of the amount of property left; an advertisement is ordered to be inserted in the newspapers; and then, after payment of the creditors, the remainder of the property is handed over to the legatee. Under the old system by bill and answer this proceeding would have cost 58*l.* The expense was materially reduced by an alteration in practice which was introduced by Lord Cottenham, by substituting a claim for a bill. Under that system the expense would have been 22*l.*; it is now reduced to 13*l.* This is, however, by no means a favourable specimen of the reduction of expense effected by the new system, because this is a proceeding which originates in chambers, before a Master; whereas, under the new practice, the bulk of the orders are orders which originated in the progress of cases depending before the court.

As the present measures work so well, no further alteration will be proposed.

ECCLESIASTICAL COURTS.

His Lordship considers the "testamentary jurisdiction" "discreditable to the country." But he is not prepared to introduce any measure for its reform. First, because "there is a risk of shocking a great many interested persons;" secondly, of "imposing hardships upon many innocent and meritorious persons;" thirdly, because there are commissioners sitting on the subject, and he would wait their report.

TRANSFER OF REAL PROPERTY.

The Lord Chancellor recognises the true causes of the cost of conveyancing:—

But the real difficulty in what is called the transfer of land does not arise from the state of the law relative to the transfer of land, but from the law as it exists for the purpose of the social and political institutions of the country. I find that what many persons mean by facility of transfer of land, when pressed to it, is that there should be no ownership except that of ownership in fee simple, as it exists in the state of New York at this moment. If there were no ownership but that of fee simple, there would be very little difficulty indeed in the transfer of it; but once admit the complication of interests arising from mortgages, settlements, jointures, entails, and what are called shifting estates, the difficulties are very considerable; because, when a party sells he must prove that none of these circumstances affect his title. I believe that this is at the root of the difficulty and expense in the transfer of land in this country, and not in the system of conveyance; and as I do not think it my duty, even if I thought it beneficial, to propose any alteration of the existing system of entail, settlements, &c. in this country, I must deal with the question as I find it, and proceed upon the assumption that such is still to be the state of the law, and that parties are to continue in the possession of the rights they now enjoy with regard to the settlement and disposition of their property.

There are two causes of cost in conveyancing—first, the length and complication of conveyances; second, the investigation of titles. For the first his Lordship proposes no remedy, inasmuch, he says, as it does not arise from the state of the law, but "from the desire of the person purchasing to have the fullest details on the subject entered in the conveyance." But he proposes to remedy the cost of investigating titles by "a registration of deeds."

My proposition, then—I call it mine in now submitting it to your lordships—is similar to that which was embodied in the bill of my noble and learned friend of 1851. I propose, when anybody purchases an estate, that he is to go to the registrar and put it upon the register. When time passes, and I want to sell, it will be seen that I have that register, and my deeds will show what my title "was," because I do not propose to affect bygone titles; and then I propose that nothing shall affect the title to that land beyond what is seen upon the register in conjunction with my own original deeds. I can have no interference with the registry. It is possible, indeed, that there might be cases of gross fraud, but they can be dealt with as they arise. We are not to pause in a great good because there are difficulties in the way, and I think that very considerable good is to be effected in this direction. It will make the mode of transferring land safe, simple and cheap. I do not propose, in moving the introduction of this measure, to enter into any discussion upon the details of this subject, except with a view to the suggestions which have been made to me as to the working of the bill, that it will not effect a great many objects which I, in truth, am persuaded it will effect. It is said that there are difficulties in the way of settlements. The way in which I propose to deal with that question is this:—A party registers his title. If he wishes to make a settlement he may make it, and put it upon the register; then anybody who purchases the land may see what that settlement is. But if he wants to retain the power of selling the land, notwithstanding the settlement, I propose that he shall have the power, if he desire it, of stipulating that the settlement shall not appear upon the register. It is argued that that affords an opportunity of defeating the settlement. Undoubtedly, I admit that it does; but if you wish to make the settlement binding you must put it on the register, and then it cannot be defeated. At the same time, provisions are made that any persons entitled under a settlement which is not on the register may obtain an inhibition upon the land being sold, and may prevent injustice being done.

CHARITIES.

The bill of 1851 is to be reintroduced, with some amendments, rendered necessary by the abolition of the Masters' offices.

CODIFICATION.

The Lord Chancellor is very desirous to codify the statute law. He stated some interesting facts. He told you that from the first of Edward III. to the end of Queen Anne there were 3256 statutes passed. That fact I obtained from the appendix to the report made in 1835 upon the subject of a consolidation of the statute law. Well, but how many of those statutes now remain, because those only are the statutes with which we have practically to deal in consolidating the law? Upon this subject the report is also very explicit. Of these 1814 had expired, and 524 were local, personal, and private bills; only 918 then were left, of which 260 were partially repealed. If we take these 260 partially repealed as representing 180 complete bills, we shall then have to deal with only 800 statutes up to that period, or not quite so many. Were we to assume that all the remaining statutes stood upon the same footing that I have first described with regard to those up to Queen Anne, this assumption would reduce the number of statutes at once from 20,000 to 5000.

And the manner in which this great work of codification is proposed to be accomplished was thus stated:

What I propose is to take a very simple course, and it is this:—I think I may be able to secure the services of Mr. Bellenden Kerr, one of the former commissioners, to act under my own immediate superintendence, having, further, the co-operation of two or three gentlemen well skilled in the subject, and whom I shall, as it were, retain in the case, to give their whole time to it. I do not propose for them to inquire how the thing is best to be done; but the course I contemplate is to say to them,—"Gentlemen, first of all complete that which has been already done up to the reign of Queen Anne, and mark every statute that is now in force, so that we may know precisely of what the statute law at this moment consists; and then distinguish what of these statutes is of a local or temporary character." I next propose to direct them to reduce the statutes upon a particular subject into one statute, and, in so doing, not necessarily to adopt the order which they may find in the statute-book, or the language of the statute-book; only, where any particularity of language has led to particularity of construction, I shall instruct them to report the special case to me, and I will endeavour to have the language to be adopted, upon mature consideration of such construction, rendered clear and intelligible for future reference. As I watch the progress of the work itself, ideas will doubtless develope themselves from the work itself, which will enable me to carry the undertaking to a successful and satisfactory issue much more effectually than any abstract references or inquiries addressed to commissions or to learned individuals. That which I desire has been done in the State of New York, where all the statutes of the Legislature are placed before the community in a compact and practicable form, and in language perfectly intelligible to the whole community. The consolidation of past statutes is not the only benefit we shall derive from the proposed principle; it will be a result of incalculable advantage if we are enabled to classify future statutes, so that when an Act is passed it shall not be huddled and hidden among the mass of legislation of a particular session, as merely chapter so and so of session so and so; but shall be at once classed under its particular head,—an Act on the subject of marine insurance, for example, being classed under the category to which it naturally belongs, and in which it would be naturally sought.

Such is the Government programme of what it will *not* do, and what it will propose to do. We need not say that it will be utterly unsatisfactory to the Profession, and still more so to the public. But we reserve commentary for another article.

AN ACTION AT LAW UNDER THE NEW PRACTICE. (a)

Article IX.

[It will perhaps be a satisfaction to some readers to be informed that none of the preceding articles have been made in any way incorrect by the new rules of practice. The recent rules have re-established old rules, which have been referred to, and they have supplied some detail of practice applicable to subjects which have been considered, but they contain nothing inconsistent with the previous articles. To any who may think it worth while to note up on the preceding articles the new rules applicable to them, and probably to other readers also, it will be convenient to have mentioned here the new rules which bear on the subjects referred to in the preceding articles:—

Rule 1. Indorsing costs on writ specially indorsed—applies at p. 132, and p. 148, note (*b*).

2. Appearance by several defendants—applies to p. 148.

6. Nonjoinder of plaintiffs—applies to p. 149.

20. Particulars of plaintiff's demand—may be added to heading "Proceedings after service." p. 124.

55. Signing judgment after writ of inquiry—applies to p. 133.

56. Entering judgment—applies to p. 132.

135—137. Amending irregularities in writ, &c.—apply to pp. 107 and 124.

138—147. Affidavits—apply to pp. 114, 115, 132, and generally where affidavits mentioned.

149—160. Rules, summonses, and orders—apply generally.

161—167. Service of notices, rules, pleading, &c.—ditto.

171—173. Reference to Master to compute, &c.—apply to p. 133.

174 and 176. Calculation of time—apply generally.]

THE *DECLARATION*—STATEMENT OF CAUSE OF ACTION.

Even previous to the Common Law Procedure Act it was not necessary that the declaration should state the *form* of action; all that was necessary was, that the cause of action disclosed by the declaration should agree with the form of action mentioned in the writ. Now, however, no form of action is mentioned in the writ (sect. 3); and therefore this ground of objection no longer exists. It has been mentioned that causes of action, provided they be by and against the same parties and in the same rights, may be joined in an action (*ante*, p. 173); and the objection that two forms of action have been misjoined can therefore no longer be made unless replevin or ejectment be one of them.

The statement of the cause of action is especially that part of the declaration which, like the body of the plea and of the subsequent pleadings, is understood by what is technically called "pleading," and is within the province of the "special pleader." These articles are not intended as a treatise on special pleading, but as showing the practice in an action. A few general remarks will therefore suffice on this subject, in addition to the forms of declarations in simple cases (given *ante*, p. 194) and the reference to the forms in Schedule B. of the Common Law Procedure Act. In special cases, where these forms are not easily applicable, the main principle to be observed is, that the declaration must state all such facts as are necessary to sustain the claim of the plaintiff with such distinctness and particularity that any of them can be traversed, i. e. denied, by the defendant. The primary object of pleading is, that the parties may be brought to the statement of some matter in dispute (an issue, as it is called), on the decision of which they are willing respectively to rest their cases. An issue on fact may be in some cases wide and in some narrow,—that is, it may include several facts, all of which it is necessary for one party to prove in order to sustain his case, or it may depend on the determination of a single fact. The various rules of detail established to effect the object of pleading (well stated and illustrated in "Stephen on Pleading") will still apply, except so far as they are modified by the provisions of the recent Act. Such of these provisions as affect the declaration have been mentioned (pp. 173 and 174, *ante*); but there is a provision in sect. 50 that "either party may object by demurrer to the pleading of the opposite party on the ground that such pleading does not set forth sufficient ground of action, defence, or reply, as the case may be;" the general terms of which will probably have some influence in the construction to be put on pleadings.

The learned editors (*a*) of one edition of the recent Act prove, in an elaborate and learned introduction, that the ancient system of pleading was much more simple, and probably truthful, than the present, and that it was then enough for the plaintiff in the first place to "show some certain matter as to which the cause related, and only adding some statement showing, in the most general way, that a right of action had arisen (as by stating that the defendant had '*not kept*' his covenant);" so as to ground or lay a foundation for an action. To this the defendant either pleaded in an equally general form that which he considered his justification as to the whole or a part of the plaintiff's claim, or denied generally the plaintiff's statement. In the latter case, it became the plaintiff's duty, in his replication, to state with particularity the injury, breach, or default of which he complained. The effect of allowing these general statements in the first place, appears to have been that the now frequent miscarriage of justice, from the actual proof differing in some way from the precise allegations made, was rare and almost unknown, and that usually nothing more came in issue than was actually in dispute between the parties; whereas now there is almost always much more in issue than is really disputed by the parties. The learned editors argue from several of the provisions of the Common Law Procedure Act, and especially the words in the 50th section—"sufficient ground of action"—that it is intended, instead of requiring the plaintiff as now to state all the facts necessary to sustain his claim, that the ancient system should be restored, and he should only be required to ground his action by a general statement. This is, perhaps, too sanguine a view of the matter; it is, of course, impossible to say precisely what greater generality of statement will now be allowed than was formerly; but probably the new provisions will receive a liberal construction, and, to some extent, it will be allowed.

The parliamentary rule, H. T. 4 Will. 4, r. 5, that "several counts shall not be allowed unless a distinct subject-matter of complaint is intended to be established in respect of each," is perhaps

(a) By Charles Tarlee, Esq. Barrister-at-Law.

(a) R. Morris and W. F. Finlason, Esqrs.

still in force, or will be restored by the new rules on the subject of pleading now in contemplation of Parliament. A distinct subject-matter of complaint does not always mean a distinct transaction between the parties, but a distinct legal cause of action; for there may be two distinct contracts, one express and one implied by law, arising from the same transaction. Thus a count upon a bill of exchange, and one for the consideration of the bill in goods, money, or otherwise, are allowed; for the security and the debt itself are different contracts. So also a count upon a policy of assurance, and a count for money had and received to recover back the premium upon a contract implied by law, are allowed. And it was provided "that a count for money due on an account stated may be joined with any other count for a money demand, though it may not be intended to establish a distinct subject-matter of complaint in respect of each of such counts."

Besides the formal mention of a county as the venue in the action (*ante*, p. 194), it is necessary sometimes to mention place in the body of the declaration or other pleading as a matter of local description. Where this is the case, it is necessary to allege the place truly according to the fact, and to prove it as laid. Thus, where the plaintiff complains of a trespass to his close, and the defendant claims a right of way over it from one terminus to another, the declaration for greater certainty states the name of the close and of the parish and county where it is situate, and the plea sets forth the termini of the way. (Step. Plead. p. 326.) So also time, quality, quantity, and value are in some few cases a material part of the issue, and in these cases must still be alleged and proved as laid. When not material they may now be omitted: (*ante*, p. 174.)

There is a special enactment as to the statement of the cause of action in actions of libel and slander. It is intended to prevent the great prolixity frequently shown in declarations in these actions, where the expressions used are only actionable in connexion with certain other facts. Thus, if the defendant said of the plaintiff "he was concerned in the late affair at B.'s house," the words unexplained are not actionable; but if it was intended to impute to the plaintiff a participation in a burglary lately committed, they are actionable. So the charging a plaintiff with having "forsworn himself" is not actionable, unless it be shown that a particular occasion of forswearing in some judicial matter was alluded to, so that it was meant to charge him with perjury: (Starkie on Slander, pp. 391, 397.) Where the words used stated expressly that which was by law a cause of action, there was no need for other statements; but where the words were only actionable in connexion with and in consequence of other facts, it was necessary to state such facts in the declaration, and to aver that the words were used in reference to such facts, and with what slanderous meaning they were used. This averment of meaning is called an *innuendo*, and very much difficulty and technical argument has arisen in reference to it, especially as to its being sufficiently explained and warranted by the facts previously stated, in other words as to the connexion between these facts and the *innuendo* being sufficiently shown.

To avoid this serious cause of prolixity and difficulty in actions of libel and slander, the plaintiff will now be at liberty to aver that the words or matter complained of were used in a defamatory sense, specifying such defamatory sense without any prefatory averment to show how such words or matter were used in that sense, and such averment will be put in issue by the denial of the alleged libel or slander; and where the words or matter set forth, with or without the alleged meaning, show a cause of action, the declaration will be sufficient: (sect. 61.)

STATEMENT OF DAMAGES.

It was necessary until the recent Act that the declaration should allege in conclusion that the injury was to the damage of the plaintiff of a certain sum, and thereupon he brought suit (formerly *sects*, a number of persons prepared to confirm his allegations). This mere form is now abolished; the present conclusion being that given *ante*, p. 194. There appears to be nothing to alter the rule that the plaintiff cannot recover a greater amount of damages than claimed at the conclusion of his declaration (*Watkins* v. *Morgan*, 6 C. & P. 661); but there is no doubt an amendment in this respect will now be allowed, either previous to or at the trial.

PARTICULARS OF DEMAND.

The declaration must, in a large proportion of cases, be accompanied by a statement of the particulars of the plaintiff's demand; for with every declaration (unless the writ has been specially indorsed under sect. 25 of the Common Law Procedure Act) delivered or filed, containing causes of action, such as those set forth in schedule B. of that Act, and numbered 1 to 14 inclusive, or of a like nature, the plaintiff must deliver or file full particulars of his demand under such claim, where such particulars can be comprised within three folios; and where the same cannot be comprised within three folios, he must deliver or file such a statement of the nature of his claim and the amount of the sum or balance which he claims to be due, as may be comprised within that number of folios: (R. G. H. T. 1853, r. 19.) The only penalty on the plaintiff for not furnishing the particulars, however, is that if a judge shall afterwards order a delivery of particulars, the plaintiff will not be allowed any costs in respect of any summons for the purpose of obtaining such order, or of the particulars he may afterwards deliver. The causes of action referred to (numbered 1 to 14) are—goods sold; work and materials; money lent; money paid; money received; account stated; an estate sold; goodwill of a business; use of a house and land; use of a fishery; copyhold fines; hire of goods, &c.; freight; demurrage.

Where the special indorsement has been made on the writ, that indorsement will be considered as particulars of demand, and no further or other particulars of demand need be delivered unless ordered by the Court or a judge: (sect. 25.)

It is usual and proper that the particulars should be entitled in the court and cause, and signed by the plaintiff's attorney. They are entirely the result of an equitable jurisdiction of the courts, and do not form part of the declaration, nor are subject to the technicalities which belong to pleadings. They should in general specify items, dates, and amounts, as the plaintiff may otherwise be ordered to give further and better particulars. By means of them the defendant gains more specific information than can be derived from the declaration, while they serve to define the plaintiff's cause of action; but the plaintiff is not concluded by them except so far as he may thereby have misled the defendant. Thus, where the particulars claimed damages for the non-return of certain goods, the plaintiff was not allowed to go into evidence of damage done to the goods: (*Moss* v. *Smith*, 1 M. & G. 228.) So where the particulars in an action of covenant charged non-cultivation of land, the plaintiff was not allowed to give evidence of miscultivation: (*Doe dem. Winnall* v. *Broad*, 2 Scott, N.R. 685.) It seems quite settled that the plaintiff need not give any items which he admits as reducing his demand, but that he should state the items of his own demand, the amount by which he admits it to be reduced, and the balance for which he really proceeds: (*Smith* v. *Eldridge*, 4 A. & E. 64.)

THE LEGISLATOR.

Imperial Parliament.

HOUSE OF LORDS.

LAW REFORM.

MONDAY, Feb. 14.—The LORD CHANCELLOR introduced a measure for facilitating the transfer of land. His lordship, having traced the progress of law reform from the days when Jeremy Bentham first essayed to rouse public attention to the question down to the present time, and stated that it was his intention to endeavour to classify and reduce the past legislation of the House, from the time of Queen Anne, into one complete code—Lord ST. LEONARDS expressed some doubts of the practicability of the scheme as a whole. There were some parts of it which met his cordial approbation, and it was his anxious desire to see some facilities given for the transfer of landed property. Lord CAMPBELL complimented the Lord Chancellor upon the lucid statement he had submitted to the House, and having referred to some details of the Bill, reminded their lordships that the select committee appointed to inquire into the burdens upon land, reported they found the most intolerable burden to be the expense of the transfer of real property; and they suggested that one mode of removing that burden would be by the introduction of a system of registration.—Leave was then given to bring in the bill.

LAW REFORM.

THURSDAY, Feb. 17.—Lord BROUGHAM moved for leave to bring in a Bill to extend to Scotland the provisions of Lord Denman's Act for the Amendment of the Law of Evidence, which enabled the parties to a suit to be examined in their own cause. He took that opportunity of expressing a hope that his noble friend who now occupies the woolsack would give his best aid in the great question of the amendment of the law. He could only say of the two measures which his noble and learned friend had already introduced,—that of the registry, and the other of the digestion of the statute law,—that none which could be achieved could possibly be of more importance. He gave his entire and cordial approbation to the measure taken by the late Lord Chancellor with regard to the digestion of the law; and he strongly recommended that the course suggested by the commissioners, of first digesting chapter by chapter, and then, when that was completed, reducing the whole into one, should be followed. He was glad to perceive that his noble friend (Lord St. Leonards) had already introduced the first chapter with respect to offences against the person in a digested form. It was not desired to take away the right of the subject to have his case tried by a jury, but simply to give him the option. Certainly the experience of all the County Courts showed that where the option was given, 97 persons out of 100 elected to be tried by the judge alone.—The LORD CHANCELLOR said, he could not conceive himself open to the imputation of a desire merely to "keep time" instead of advancing, when the measures he had announced were measures of such great importance and interest as those of registration, of the amendment of the system of charitable trusts, and the consolidation of the statute law. He could assure his noble and learned friend that he had pronounced no opinion against the option to the litigant subject between trial by a jury and trial by a judge. All he had said was, that the question was one of grave weight. He had not at all contended that there were not cases in which the trial by a judge might not be the most effective, as well as the cheapest.

HOUSE OF COMMONS.

EXAMINER OF THE COURT OF CHANCERY.

MONDAY, Jan. 14. — The SOLICITOR-GENERAL moved for leave to bring in a Bill to make better provision for the execution of the office of Examiner in the High Court of Chancery. On this subject a measure had been passed in the preceding session, the framers of which inadvertently omitted to provide for two points. One was the inapplicability of the oath of office prescribed by the stat. 50 Geo. 3, to the new functions devolving upon the Examiner. The second was, that no qualifications were specified as requisite in candidates for the situation, as length of service and standing, or the like. These omissions it was the object of the present bill to remedy, by provisions directed to that purpose. Leave was then given.

CONVEYANCING.

TUESDAY, Feb. 15.—Mr. HENRY DRUMMOND moved for leave to bring in a bill to facilitate the sale and purchase of land. After tracing the history of our conveyancing system, and dwelling upon its utter inapplicability to modern requirements, he remarked that no lawyer was ever satisfied that any man was the owner of the land he possessed, but that every transaction necessitated a fresh examination of title. He contended that, after one inquiry into title by a proper tribunal, its certificate ought to be good for ever. The real property commission had recommended a registry, and his bill was designed to carry out that recommendation, and to register titles to real property. He sketched the history of legislation on the subject, urged the unfitness of lawyers to deal with it, and explained that his bill provided that, when once a registration had been effected, nothing but a statement of the new transaction should be requisite.—Mr. HEADLAM seconded the motion, and warmly defended a system of registration.—Mr. HUME was of opinion that a merely permissive bill would not be useful.—Leave was given to bring in the bill.

PARISH CONSTABLES BILL.

WEDNESDAY, Feb. 16.—Mr. DEEDES moved the second reading of this bill, and stated the object to be to amend certain acts on the subject. In 1839 a permanent Act was passed, called the Rural Police Act; and it appeared that only a portion of the counties had adopted it. In fact, only twenty-three counties had availed themselves of it; twenty-three also had not adopted it; and in six, namely, Cumberland, Dorset, Northampton, Westmoreland, Warwickshire, and Yorkshire, it had been only partially adopted. There being twenty-three counties still under the Parish Constables' Act, it was to them his bill was to apply; and if at any time any of those counties adopted the Rural Police Act, they would be exempted from the provisions of this bill. The county of Chester being under a local Act, and Middlesex being under the Metropolitan Police Act, they would be exempted from its provisions. In 1842 a bill was brought in by the right hon. baronet, the member for Carlisle, on the subject of parish constables. The existing Acts were therefore three in number, and it was desirable that they should be consolidated; and to that portion of his bill he thought there would be no objection. The amendments he proposed were that the appointment of a superintendent of a petty sessional division, who should have the control of the petty constable, should

be made imperative. He also proposed that there should be a chief superintending constable, but it would be optional in the justices to make such an appointment or not. He proposed to extend the powers under which lock-up houses were built, and also to charge the supply of handcuffs on the county rates. There would be a clause allowing superannuation allowances to retired superintending constables. After stating some other formal provisions of the bill, the hon. member concluded by moving the second reading, and proposed that it should be referred to a select committee.

The bill was read a second time.

FEES IN COUNTY COURTS.

THURSDAY, Feb. 17.—Viscount PALMERSTON stated that a scale of fees to be taken in County Courts had been prepared and submitted to the Lord Chancellor in December last; it had since been referred to the judges at Westminster Hall, who still had it under consideration. After they had determined upon it, it would be published, and would take effect on a day fixed by them for that purpose.

LORD ST. LEONARDS'S NEW LAW OF BANKRUPTCY.—Lord St. Leonards' Bill on the law of bankruptcy has just been printed by order of the House of Lords. There are forty-one clauses in the Bill. A bankrupt is to have allowed him 20*l.* of excepted articles, as now allowed by the Insolvent Debtors' Court. Certificates are not to be classified; but a commissioner may express his approbation on the certificate of the bankrupt's conduct.

BAIL IN ERROR FOR MISDEMEANOR.—Lord Campbell's Bill to amend the law on bail in error for misdemeanors has just been printed. Among the improvements to be made, a judge may issue a warrant to take a defendant in execution where the recognisance of bail had been estreated.

LOCAL BOARDS OF HEALTH.—A Bill has been printed to establish Local Boards of Health at the following places:—Wakefield, Elland, Wallasey, Dudley, Barnsley, Dorchester, Brighton, and Welshpool. The elections at those places are to take place on the 26th of April next.

THE MAGISTRATE,

AND PAROCHIAL AND MUNICIPAL LAWYER.

Summary.

Two cases relating to *highways* were reported last week. The first turns on the construction of a local statute, and therefore is of no general interest. The other is of considerable importance, for it decided that on an indictment for nonrepair and plea of "Not guilty," a former judgment on a presentment against the inhabitants of the same parish for nonrepair of the same road is conclusive evidence of defendant's liability; and even evidence to show that the road in question is in another parish is inadmissible, although it was recited in a local Act as a fact that the road was in another parish, and although the presentment on the face of it showed a defect which would have been fatal on demurrer or in arrest of judgment, and the fine was not proved to have been paid: (*Reg.* v. *Inhabitants of Houghton*, 20 L. T. Rep. 247.)

A question as to a sewers-rate is scarcely capable of being described in a summary like this, which is designed merely briefly to inform those, who have *not time* to *read* all the reports, what are the *points of law* that have been recently decided.

The trustees of a turnpike in the province of York mortgaged the tolls; the mortgage-deed contained no covenant for repayment. The mortgagee died within the province of Canterbury, the deed being in his house at the time, and administration was taken out in Canterbury. The administrators applied for a *mandamus* to the trustees of the turnpike to pay twelve months' interest that was in arrear. It was held that administration should have been taken out in the province of York, *where the road was situate*. It was held, also, to be an equitable and not a legal right of the mortgagee, and therefore that a *mandamus* would not lie to enforce it: (*Re The Trustees of the Bawtry, &c. Roads*, 20 L. T. Rep. 252.)

BASTARDY.

TO THE EDITOR OF THE LAW TIMES.

SIR,—The grammatical (?) argument of I. S. in your last is not a little surprising to me.

The statute declares that "the child shall have and follow its mother's settlement *until* it attains the age of sixteen, *or* acquires a settlement in its own right;" that is to say, as plainly as any words can say, until one *or* the other of those events shall occur.

Whenever, therefore, *either* of them occurs, the settlement conferred is determined.

If I. S. were the trustee of an estate "until his daughter Jane shall attain the age of twenty-one or be married," I suspect he would not doubt that the occurrence of either of those events determined his trust. Should he construe the trust deed as he construed the statute, he would be saddled with the trust so long as his daughter should live unmarried, although she should be sixty years old instead of twenty-one.

The Justice of the Peace lately gave vent to another notable grammatical argument on this subject, namely, that the Court of Q. B. ought to have coupled the word "until" with the word "settlement," instead of coupling it with the words "have and follow!" Now, I always supposed "until" to be an adverb, that is, a word *added* or annexed to a *verb* for the purpose of qualifying its meaning. But "J. P." seems to have invented a new part of speech, and to consider "until" as an *acknown*, instead of an adverb. It is obvious to any grammarian that the court could not adopt any other view than that which it has taken. I do not see how any of the alleged severity and cruelty to pregnant single women can arise, as they are no longer deemed chargeable, and therefore removable, as formerly; neither can I see any reason for the panic which has arisen as to settlement by birth in workhouses, which seems effectually met by the words of 54 Geo. 3, c. 170, s. 3, and 7 & 8 Vict. c. 101, s. 56.

17th Feb. 1858. I am, Sir, yours, &c.
W. P. P.

Queries on Points of Practice.

VESTRIES.

I SHALL feel obliged by some legal brother giving me, through your valuable paper, an answer to the following question:—

Can the Act of Parliament 1 & 2 Will. 4, c. 60 (Hobhouse's Act) be adopted in a parish having an open vestry (each ratepayer being a vestryman, if rated at not less than 20*l.*)? The difficulty arises in consequence of the Act requiring that the number of vestrymen to be lotted out at the first election shall be one-third of the vestrymen in actual existence: (See *Rex* v. *St. Pancras*, 3 Nov. & M. 425.)

If the Act can be adopted, how should the one-third be selected? And who should they be, out of 9000 ratepayers who may attend a parish meeting and thus become vestrymen?

J. L.

REAL PROPERTY LAWYER AND CONVEYANCER.

Summary.

AGAIN it has been decided that a voluntary conveyance is void against a purchaser for value. A married woman, entitled in fee to certain property with her husband, conveyed it to trustees in trust for herself for life, then for her husband, then for the children, as they should jointly appoint; in default of appointment, for all the children; and if no children, to the husband in fee. Afterwards she and her husband mortgaged the same property, with power of sale. All the deeds were duly acknowledged. The purchaser from the mortgagee was held to have a good title, the first deed being voluntary, and therefore void as against a subsequent purchaser for value: (*Butterfield* v. *Heath*, 20 L. T. Rep. 242.)

V. C. KINDERSLEY has supported the opinion of the M. R., and held that the impression which had generally prevailed in the Profession, that where the wife's property was under 200*l.* the Court would not recognise her equity to a settlement, was an erroneous one, and that she was entitled whatever its amount. He said: "The rule which entitles the wife to a settlement is one independent of the question of amount. I do not see why a wife is not entitled as much to a portion out of a small amount as out of a larger:" (*Re Kincaid's Trustees*, 20 L. T. Rep. 243.)

In *Barnes* v. *Forsyth*, 20 L. T. Rep. 244, a bequest to a married woman for her sole use and benefit was held to be a bequest to her separate use.

In the law of *Vendor and Purchaser*, we have a satisfactory case, which we hope will do something to check the growing practice of vendors making unjust conditions of sale, and thus entrapping unwary purchasers. In *Keyse* v. *Hayden*, 20 L. T. Rep. 244, one of the conditions of sale was that the purchaser should take such title as the vendor had. V. C. WOOD has held that this does not relieve the vendor from the duty of showing a *bonâ fide* title, and the best title he can produce from the materials within his power.

PUBLIC CHARITIES.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I have been consulted on two or three important matters, and am at a loss to know how to advise. One is, where the trustees and feoffees are actually receiving the whole amount, about 100*l.* per annum, and dividing it amongst themselves. The other amounts to 150*l.* a year, and divides it amongst the relatives of the three (surviving) trustees. If the extraordinary doctrine in *Wyppeston Hospital*, noticed by you last week, is to hold water, adieu to all re-

lator's suits; and, however gross may be the breaches of trust, yet *no ordinary solicitor* can be otherwise than a jackal for the Attorney-general's solicitor, or the abuses continue as in the case stated. I do not know what the last sentence are for; yet I think the solicitors should look out for themselves. What steps can I advise my clients to take to remedy the abuses mentioned, and keep my clients in my own hands?

LEX.

Queries on Points of Practice.

PRACTICE.—ASSIGNMENTS.

A. obtains a lease of certain planed land to B. who assigns the lease to C. C. agrees to grant a lease of one of the said pieces of land for the remainder of his term to D. at a greater rental than is reserved for that piece in the original lease. Whose attorney is entitled to prepare the lease, the attorney of C. or D.?

Q.

Answers to Queries.

MORTGAGES.

In reference to the query of "A Subscriber" in your journal of the 6th inst., if the question has not been already answered, I beg to say that I remember a case reported in the LAW TIMES at the end of 1856 or beginning of 1849 exactly bearing upon it; but for want of an index at that date I cannot refer to it.

Having my attention called to the particular point at that time, I distinctly remember that the result of the case was that an intended mortgagee had no right to recover from an intended mortgagor his costs in a case similar to the one proposed.

H.

JOINT-STOCK COMPANIES' LAW JOURNAL.

Summary.

Mandamus had gone commanding a company to complete a portion of a railway. The defendants returned that the whole capital required by the company's Act had not been subscribed, and that the company were unable to procure the subscription. To this it was pleaded that the company were estopped from this answer because, on another portion of the line, they had exercised their compulsory powers. On demurrer to this plea it was held, first, that the return was a good answer, because the Lands Clauses Act prohibited the company from exercising the compulsory powers until the capital had been subscribed; and, secondly, that the exercise of those powers on another part of the line was *res inter alios acta*, and therefore no estoppel: (*Reg.* v. *The Ambergate, &c. Railway Company*, 20 L. T. Rep. 246.)

WINDING-UP.
PETITIONS, ORDERS, MEETINGS, APPOINTMENTS, CALLS, &c.

[Announced, issued, and made, during the past week.]

Gloucester, Aberystwith, and Central Wales Railway Company.—Call for 4*s.* per share on Feb. 28.—Tinney.

Newcastle, Shields, and Sunderland Union Joint-Stock Banking Company.—To appoint an official manager, at the Master of the Rolls' chambers, on Feb. 21.

THE LAWYER.

Summary.

EQUITY PRACTICE.—The M. R. stated last week (*Anon.* 20 L. T. 243) that applications to vary minutes should be made in chambers, where such variations are merely formal, or not opposed; if opposed, however, the motion should still be made in court. He has also held, in *Senior* v. *Prichard*, 20 L. T. Rep. 243, that the 58th sect. of c. 86, which enacts that the practice in injunctions to restrain proceedings at law shall be assimilated to that in cases of special injunction, as far as the nature of the case will admit, does *not* discharge defendant from the obligation to make a full discovery in aid of plaintiff's defence in the action at law, and therefore that plaintiff still enjoyed his old right to an injunction in default of answer. In *Re Page*, 20 L. T. Rep. 248, a married woman was allowed to sue in respect of her separate estate, without the intervention of a next friend. In *Eaton* v. *Lewis*, 20 L. T. Rep. 243, a defendant had admitted possession of certain documents set forth in schedules to his answer. Two letters in this schedule had passages sealed up, which defendant in an affidavit stated to be irrelevant, and to relate to family affairs only. A motion was made to commit for contempt. The Court inspected the concealed passages, and handed them to defendant's counsel, who admitted that he could not resist their production. The Court refused to commit, but ordered the production, and that defendant should pay the costs of the motion.

Some points of much interest as to *Taxation of Attorney's Bills* were decided by the Lords Justices in *Re Barnard*, 20 L. T. Rep. 241. First, whether

the jurisdiction to tax being equally in a Court of Equity and a Court of Law, and the latter being first applied to, the former can still deal with the taxation. It was held in the affirmative. It was next held that such an application could not be supported without special circumstances. Lord CRANWORTH doubted whether the statute meant to give jurisdiction at all after judgment. The Lord Justice KNIGHT BRUCE assented to this view of the statute, but added: "I reserve to myself the faculty of deciding, when it shall be necessary to decide, that where judgment has been obtained on a question of taxation of bills of costs, then the right to have them taxed under the statute is gone." It appeared also that a solicitor may make several charges for different attendances on the same day, and that a mere overcharge, made without any appearance of fraud, does not amount to a special circumstance calling for taxation of the bill.

Where a suit is pending in respect of a matter in which an Equity Court has concurrent jurisdiction with a Court of Law, which cannot give relief for a long time in a subject which requires a speedy remedy, it will not in general allow the defendant in equity to proceed at law in respect of the same subject-matter: (*Brenan* v. *Preston*, 20 L. T. Rep. 241.)

Notice of motion to dismiss bill was given by defendant on 24th April, 1851. On 27th May, 1852, the bill was ordered to be dismissed with costs. In the meanwhile another motion of plaintiff was pending, and negotiations for settlement were proceeding. The Taxing Master was held to have *rightly* allowed defendant's solicitor for attendances in court, upon motion to dismiss, only upon such days as he could swear that he attended *bonâ fide* in expectation that the motion would come on: (*Hollocombe* v. *Hollocombe*, 20 L. T. Rep. 244.)

SHAM LAWYERS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I beg to inclose you for publication another specimen of a "lawyer's letter," from the unprivileged class who are now encroaching to so large an extent upon the province of the attorneys. The delinquent appears to be an auctioneer and accountant; and, from the number appearing at the conclusion of his letter, it is very apparent it cannot be the first application of the kind that has emanated from the same quarter. Surely there is, *or ought to be*, some remedy to crush an evil so rapidly increasing.

I am, Sir, yours, &c.
F. HAWLEY.

102, Chancery-lane, 14th Feb. 1853.

62 (late 35), Great College-street,
Camden-town, 12th Feb. 1853.

Gentlemen,—I am desired by Mr. ——— to apply to you for the payment of £—, due from you to him. This claim is for 3 doz. bottles of champagne; and I beg to inform you that unless the amount be paid by Monday, the 14th inst., that legal proceedings will be taken against you for the recovery thereof without further notice.

As this application is made to prevent you the expense and inconvenience attendant on recourse being had to coercive measures, I trust the opportunity this affords will not be lost.

I am, gentlemen, yours obediently,
Messrs. ———, THOS. JOSH. WADE.

N.B.—If you call to make any arrangement, bring this (No. 2068) with you.

Office hours from nine to seven.

SUMMONS FOR ORDERS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I perceive that Mr. Kerr, in his annotations upon the New Rules, expresses his approbation of the alteration respecting the number of judges summonses prior to an order. I believe his opinion is not seconded by any attorney, and that no alteration could have been made more fraught with annoyance to the Profession, and less beneficial to suitors.

As the motive of the change was economy, allow me to suggest that there be still but one summons, but that it shall be returnable in the alternative, either on the following or the second day after its service.

I am, Sir, yours, &c.
15th Feb. 1853. M.

BUSINESS OF THE PEERS.—At the sittings after Term in London the C. P. list contained 54 causes, 22 of which were for special juries. In the Q. B. the list contained 74 causes, of which 13 were remanets, and 15 were marked for trial by special jurie. The Chief Justice said the list was unusually heavy; he believed heavier than had been known for years before, and he understood that, after eliminating undefended causes and those that had been withdrawn and stayed, there were still 51 *bonâ fide* cases, which must be tried.

Queries and Points of Practice.

Can any of your legal readers inform the writer if an affair can be introduced into a "writ dum?"—"John Barry, alias Barry." R.

Answers to Queries.

ATTORNEYS IN AUSTRALIA.

I am to inform you, in answer to Mr. Tootal's inquiry, that by the last rules of the Supreme Court in Sydney, gentlemen who have duly served under articles in England are still eligible for admission there, on giving the usual notice—I believe, a month's. F. H.

COUNTY COURTS.

Summary.

AN interesting point of practice was decided in an appeal to the Ex. A plaintiff claimed a sum exceeding 50*l.*, but reduced it below that sum by giving defendant credit for a set-off, and sued for the balance. Defendant had never agreed to the set-off, nor allowed it in any balance of account. The County Court Judge was of opinion that he had not jurisdiction, whereupon the plaintiff agreed to abandon the excess above 50*l.* in order to give jurisdiction. The Judge was of opinion that it was not competent to the plaintiff to do this; and that was the question raised on the appeal. The Ex. held that the Judge had rightly decided. "We think," said Pollock, C.B., "that the demand, originally exceeding 50*l.*, being only reduced below it by offering to allow a set-off never agreed to as a part payment, was one over which the Court had no jurisdiction. The offer to abandon the excess at the trial appears to us to make no difference, as the claim from the first was one over which the County Court had no jurisdiction:" (*Anard* v. *Rhodes*, 20 L. T. Rep. 252.)

There is also an interesting *Insolvency* case. An insolvent was remanded for *two years* by the County Court, and while in prison had a detainer lodged against him by a creditor whom he had omitted from the schedule. His wife also contracted fresh debts. When the period arrived for his discharge, he procured his removal to the Queen's Prison. He was now desirous of releasing himself from that creditor's debt, and those incurred by his wife, and it was held that he might do so by filing a petition in the Insolvent Debtors' Court, and include those debts in his schedule. In the course of the case Mr. Commissioner Law stated his opinion to be that the County Courts have power to direct a rehearing: (*Re Fardell*, 20 L. T. Rep. 252.)

We have received from Manchester a complaint that, if well founded in fact, deserves the serious attention of the Profession in that town. We are assured that some of the Attorneys who practise in the County Court there as advocates frequently take briefs from "the agents" who infest those Courts, and even have the name of such agent indorsed, precisely as an Attorney would indorse a brief for Counsel. If this be true, and our correspondent says it is "openly and flagrantly adopted" in the Court, and "excites the astonishment of every respectable member of the Profession who enters it," something should be done to put a stop to so bad a practice—for not only is it in direct violation of the law, but it is fostering, by encouragement, that band of harpies who prey upon the Profession under the title of "agents" and "accountants." Let the Manchester Law Society look to it. Surely some means could be devised by which the fact may be detected and brought under the notice of the Judge, who would exercise his authority by refusing to hear any Attorney so instructed, or by requiring the production of a written retainer from the client before he will permit an Attorney, once found guilty of such a practice, to appear again.

A PRACTITIONER'S EXPERIENCES OF THE COUNTY COURTS.

[We have received from a Practitioner of very extensive experience in the Profession, and who has a large practice in the County Courts, an elaborate statement of the results of the knowledge thus acquired of the advantages and defects of the new tribunals. Were we permitted to mention his name, it would of itself command a respectful attention for any communication from him on any subject of *practical* law. We give it a place, without subscribing to all his views; indeed, we differ entirely from some of them; but on a question which is yet in debate, and which can be determined only by the evidence of positive experience, it is right that all should be heard who can speak with the authority of experience. For the same reason we make no apology for the length of this article, which will be continued for two or three weeks. Its interest and importance will excuse the space it occupies.]

As much that I have to say is in the way of complaint, I ought also to premise that I am no grumbler against law reform, though, like many others, a great sufferer by it. Indeed, I may boast that the very first great practical step in the way of reform was suggested by myself in a pamphlet published in 1828, for the improvement of the police; and Sir Robert Peel adopted my suggestions and proposed amendments to the letter, though only a few of the daily papers gave me the credit of the new system. I am, in short, no anti-reformer; but I complain, in the hope of amendment.

That the extension of the County Court jurisdiction has done much good is unquestionable. It has facilitated litigation of the most legitimate kind, and by making petty debts easily recoverable, has improved the trade of small shopkeepers, and placed credit on a more substantial footing. Nor can it be denied that it has provided redress in many cases of serious injury where compensation was previously unattainable because the remedy was too costly. I may add too, that, in cutting away all defences merely technical it has in great measure defeated what may be termed the chicanery of practice, and superseded the necessity of legal aid in the conduct of a cause. These are great benefits certainly; but here they stop. I can carry my eulogy no further; I am even compelled to say that these benefits, great as they are, have been dearly purchased; and if the evils with which they have been attended cannot be checked, it will in a few years become a question whether they were worth the purchase.

The first of these evils is only partially attributable to the system; it has its source in the new law of evidence, but it is the system that developes the mischief, and gives opportunity.

I have never yet attended a single court where the most frightful perjury was not committed on the one side or the other, and often on both; perjury, not as to distant dates and facts that might be forgotten, but on the occurrences of yesterday; perjury, not as to equivocal circumstances, admitting of mistake, but on plain yes or no occurrences. A man's receipt is shown to him, and he swears that he never wrote it. He is asked whether he did not meet B. at a gin-shop a week ago, and he swears he never saw him in his life; B. is called, and contradicts every word; C. corroborates B. and proves that on the very day he and the first witness were buying cattle at a market fifty miles off; tenders of payment are averred and denied on oath; agreements for labour are produced and proved, and then sworn to be forged; a servant sues for wages, and a mistress swears she has been overpaid; trade books are called for, and entries interlined in different ink are sworn to have been made at the apparent date; shop boys make oath to the delivery of goods, and servants swear that they were never ordered nor received. To such an extent is this carried that, only three weeks ago, one of our judges publicly declared from the bench that he should exclude all witnesses from court while he heard a cause, whether counsel requested it or not.

It may be said why are not the offenders to be prosecuted and punished? But who is to determine which is the offender? and even if that difficulty did not present itself *in limine*, all the gaols in the county would not hold a tenth part of the prisoners.

The share which the County Court system has in this demoralising work is this: it has brought into the field of litigation a class of parties and witnesses of the most ignorant description; people quite uneducated even in the elements of religious knowledge, or any knowledge whatever; but naturally indulging in all the partisanship of contention, whether legal or personal; they enter the court in the same spirit that a second enters the prize ring with his principal—determined at all hazards to "carry their man through," and then celebrate their triumph at the gin palace. They conceive that this is to be done by hard swearing, and they have sense enough to know that to deny in terms the plaintiff's or defendant's statement is the point.

Then, in the majority of plaints, usually about nine in ten or more, neither counsel nor attorney is employed, so that there is no previous sifting or collation of evidence; no implied pledge of professional character that the case or the defence is presumptively honest; no scrutiny of any kind into the proofs, or the consistency or character of the witnesses by whom it is to be sustained; but the witnesses and the parties have met together and compared notes over a pot of beer, and are thus tutored into their statements

to be made next day on oath. In the absence of counsel they know that they are safe from cross-examination, and therefore from palpable detection. "Oath against oath" is their maxim, and the Judge has often no other guide to the truth than the number of witnesses for or against any given fact, though his decision must turn upon it.

(To be continued.)

TO "THE CLERK OF A SINGLE COURT."

If the gentleman whose letter with this signature appeared in the LAW TIMES of the 13th Nov. last, will send his address to the Editor, giving his name and residence, the writer of this letter will at once enter into a correspondence with him on the subject, and will pledge the co-operation of several gentlemen similarly situated, in obtaining the redress alluded to in his letter of the 13th Nov. last.

A CLERK OF A SINGLE COURT IN YORKSHIRE.

MANCHESTER COUNTY COURT.

Friday, Feb. 11.

(Before R. BRANDT, Esq. the Judge.)

BALL *v.* CUTTLER.

Costs to County Court agents.

This was an action brought by the plaintiff, who is one of the class called County Court agents, who have before figured in these columns, to recover 2*l.* 15*s.* 2*d.*

Myers, of the firm of Myers and Birkbeck, represented the plaintiff.

Owens, barrister, instructed by Mr. S. Simpson, solicitor, appeared for the defendant.

It appeared that, in the evening of the 21st July last Mr. Cuttler was driving in a gig through Ardwick, in company with a horse dealer called Thompson; they came to a place where the street was being repaired by a contractor on behalf of the corporation, and there being large heaps of earth thrown up, and no light or protector, the gig was nearly overthrown, and Mr. Cuttler thrown out and seriously injured. The next morning Thompson brought the plaintiff to Mr. Cuttler's residence "as a person who would do business cheaper than a regular lawyer," and they were shown by his daughter into his bedroom.

The plaintiff swore that upon this occasion he took instructions from the defendant to commence an action against the corporation of Manchester, to recover damages for the injuries sustained, the terms being "5 per cent. on the amount recovered and costs out of pocket;" and that he issued a summons accordingly, laying the damages at 50*l.*, for which he paid 1*l.* 6*s.* 8*d.*; the remaining 2*l.* 12*s.* 6*d.* was for his commission on the amount claimed, and for cab hire. Plaintiff stated that he had issued some hundred plaints out of this court.

Mr. Cuttler deposed that when Thompson and plaintiff called upon him in his bedroom, he was too ill to talk about the matter, and positively denied that any such instructions were ever given, and that he was not aware an action had been commenced until Mr. Taylor, the deputy-registrar of the Court of Record, at the request of the town clerk, called upon him; that as soon as he was able to leave his room he went to his solicitor, who at once took steps to discontinue the action, the corporation not being liable for the negligence of their contractor. The defendant's statement was confirmed by the evidence of his daughter.

Owens, after contending that the plaintiff had never been instructed to commence the action against the corporation, said, that he felt it to be his duty to take higher ground; that he considered the present a case of importance, particularly to the legal profession. Here was a person acting as an attorney in the strictest sense of the word,—taking instructions for an action, commencing and carrying on proceedings, and charging a commission on the amount to be recovered. The learned counsel contended that the contract upon which the plaintiff sued (if any) was void on grounds of public policy; that it had always been a part of the policy of this country that the profession of the law should be exercised by a body of gentlemen, bound by certain rules, and subject to certain responsibilities; that this was clearly shown by the vast number of statutes that had been passed for their government, and by the many rules that had from time to time been laid down by our courts of justice for their guidance, and securing as far as possible their fitness for their duties and their general good conduct. The present case was an instance of the wisdom of that policy, for the action brought against the corporation was against the wrong party, their contractor only being liable, a point of law known by every solicitor, and which was at once apparent to Mr. Simpson, the solicitor interested for the defendant.

His Honour, in delivering judgment said, that, upon the facts, he felt inclined to be with the defendant; but even if there had been clear proof of a contract, he considered he would not be doing his duty, filling the place he did, were he to decide the case merely upon that ground. He agreed with the observations of the learned counsel, except that this was important only to the legal profession,—it was much more so to the public at large; that these courts were intended for the poor as well as the rich; and where the amounts were small and the cases simple, as ordinary debts, it might be desirable that these people should employ an agent to sue out the plaint, but in such cases the agent had no right to express as much as an opinion upon the merits, much less to give advice, as in this case, and usurp the functions of an attorney. In doing so agents were going beyond their depth, and abusing the indulgence of the court, and he for the future would keep a watchful eye over their proceedings. The want of a legal education in conducting cases involving often nice points of law, must necessarily result in leading parties astray, and entailing upon them fruitless expense. The plaintiff in what he had done had gone quite out of his province; he had far exceeded the utmost limits that could be permitted to persons of his description. It was contrary to public policy, and injurious to the public interest, that he should be permitted to do so, and that he could not recover either the commission he charged or the money he had paid in professing to act on behalf of the defendant. *A nonsuit was entered accordingly.*

MERCANTILE LAWYER.

Summary.

A., PRESSED by a creditor, borrowed 200*l.* of B. on an agreement that the money should be paid to the creditor, A. executing to B. an assignment of all her estate and effects by way of security for the loan, with power to B. in default of payment to enter and take all the effects upon the premises at the time of entry. A. sold the goods, and out of the proceeds paid B. the 200*l.* Was this an act of bankruptcy? It was held by the Q. B. not to be so, it not appearing that the assignment was made to defeat or delay creditors, or in contemplation of bankruptcy: (*Hutton* v. *Cruttwell*, 20 L. T. Rep. 245.)

The *Truck Act* has been the subject of judicial interpretation. In *Sharman* v. *Sanders*, 20 L. T. Rep. 247, an "artificer" within the meaning of that Act was held to be "a person hired to labour with his hands; and that a person who merely contracts to procure labour to be done, either by himself or others, is not within the intention of the statute. A person entering into such a contract is a speculator, who necessarily calculates the price of labour at the time, and is very different from the mere workman who is paid for his own labour:" (per MAULE, J.) Where, therefore, a man was employed in unloading and bringing ironstone at so much per ton, to be paid monthly, and he hired men to work under him at weekly wages, he not being bound by his contract to give personal services, it was held that, though in fact he did part of the work himself, he was not an artificer within the meaning of the Truck Act, and consequently could not recover from his employer the wages paid in goods to him or his men.

A. signed a blank note stamp in July 1846: in May 1851 he obtained his certificate in the Court of Bank.; in Oct. 1852 the blank stamp was filled up and indorsed to a third person, *bonâ fide*, for a good consideration. It was held to be a valid note: (*Temple* v. *Pullen*, 20 L. T. Rep. 252.)

CONSOLIDATION AND AMENDMENT OF COMMERCIAL LAW.—The annual report of the Manchester Chamber of Commerce contains the following observations:—"Few ameliorations are more needed than the reduction, in a country like ours, of the law which should govern commercial transactions to simple and just principles; there is none which your board would more gladly see begun. The board has a proper sense of the largeness of the question and of the difficulties which surround the execution of so important a codification. It cannot but be sensible of the length of time which will be required to perfect it, and, therefore, would be unwilling that the many incongruities which now exist should be continued until a perfect code should be prepared; but it would have every future amendment of isolated portions to be so constructed that it might enter at the proper time into its place on the general code. It was under this conviction that, in accepting an invitation from the Earl of Harrowby, as President of the Law Amendment Society in London, to send a deputation to a meeting of delegates from chambers of commerce, town councils, and other bodies, to be held at the rooms of that society for the consideration of this subject, your board framed a resolution to indicate the course by which the vice-president, who kindly undertook the deputation, should be guided, and which he might show to the committee which was to direct the proceedings. The board took this step because it knew that a committee of merchants and legal gentlemen had long studied the grievous evils which arise daily from the dissimilarity of commercial laws in different portions of this kingdom, and had prepared a bill for the amendment and assimilation of the laws of bankruptcy; and it feared that, without some manifestation, the valuable labours of the committee might be lost, or an amendment which presses for immediate adoption might be postponed to an indefinite period. This was fortunately remedied by a resolution adopted by the meeting which was held on the 16th November; and it is hoped that the bill prepared under the auspices of the committee of London merchants will be forthwith brought into Parliament, when every assistance ought to be given towards procuring a perfect measure."

COURT PAPERS.

Equity Courts.

NEW ORDER IN CHANCERY.

PAYMENT OF LEGACY DUTY ON FUNDS IN COURT.

Monday, 31st January, 1853.

I, the Right Honourable Robert Mounsey Lord Cranworth, Lord High Chancellor of Great Britain, do hereby order and direct in manner following, that is to say:—That the Registrar, in drawing up any decree or order whereby the Accountant-General shall be directed to pay or transfer any fund, or part of any fund, in respect of which any duty shall be payable to the revenue under the Acts relating to legacy duty, shall, unless such decree or order expressly provide for the payment of the duty, direct the Accountant-General to have regard to the circumstance that such duty is payable; and where, by any decree or order, any carrying over to a separate account of any fund in respect of which any such duty may be chargeable shall be directed, the Registrar shall add the words "subject to legacy duty," to the title of the account. And, in order the better to provide security against the payment or transfer by the Accountant-General of any fund chargeable with any such duty without the duty being first paid, the Accountant-General is, on receiving notice from the proper officer that the duty is payable, to cause a memorandum to be made in his books in conformity with such notice. And the Accountant-General, before executing any decree or order directing the payment or transfer of any fund or part of any fund in respect of which any such duty shall be payable, shall require the production of the official receipt for the duty, or a certificate from the proper officer of the payment of the duty chargeable in respect of any such fund, or any portion thereof respectively, by any such decree or order directed to be paid or transferred. And I do further order and direct that where, in making any decree or order express provision for the payment of any such duty shall be intended to be made, such duty shall by such decree or order, be directed to be paid to the Receiver-General of Inland Revenue for the time being, or his official assistant duly constituted, to be named in the order.

(Signed) CRANWORTH, C.

Common Law Courts.

EXAMINATION OF CANDIDATES FOR THE ROLL OF ATTORNEYS.

NEW REGULATION AS TO THE LAW OF REAL PROPERTY AND CONVEYANCING.

THE mode of conducting the examination, hitherto adopted by the examiners, has been to propose fifteen questions on the principles and practice of each of the following branches of the law, viz.—1st. Common law; 2nd, Conveyancing; 3rd, Equity; 4th, Bankruptcy; and 5th, Criminal law and proceedings before magistrates.

The examiners have hitherto required that the candidate for admission should satisfactorily answer a majority of the fifteen questions in the branches of common law and equity; and also in one of the three other branches; thus making a satisfactory examination in law and equity indispensable, and leaving it optional with the candidates to answer in any one of the three other branches.

But looking to the great importance to the community that attorneys and solicitors should be well acquainted with the laws of real property, and qualified to prepare and superintend the due execution of wills, deeds, and other instruments, it is understood that the examiners, with the sanction of the Lord Chief Justice of the Court of Q. B., the Master of the Rolls, the Lord Chief Justice of the Court of C. P. and the Lord Chief Baron of the Court of Ex. (to whom the regulation of the examination is confided by the statute), have determined in future to require the candidates to pass a satisfactory examination in the department of *conveyancing*.

We believe that the examiners will continue the practice of proposing questions in bankruptcy and in criminal law and proceedings before the magistrates, in order that candidates may have given their attention to these subjects may have the advantage of answering such questions, and having the correctness of their answers in this department taken into consideration in estimating the merit of their general examination.

It is expected that the new regulation will be carried into effect in and after next Michaelmas Term.—*Legal Observer.*

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

COMMISSIONS SIGNED BY LORD LIEUTENANTS.

ROSS-SHIRE.—William Hugh Murray, to be deputy-lieutenant.

YORKSHIRE.—The Right Hon. Lord Hawke; Viscount Milton; the Right Hon. Sir Charles Wood, Bart.; Sir William Foster Charles Cooke, Bart.; Sir Charles Slingsby, Bart.; Sir George Goodman, Knt.; Edward Akroyd, Esq.; William Aldam, jun. Esq.; Joseph Beaumont, Esq.; Thomas Davison Bland, Esq.; James Brown, Esq.; Samuel James Brown, Esq.; Edmund Calverley, Esq.; Thomas Clapham, Esq.; John Cooper, Esq.; Ralph Creyke, Esq.; John Crossley, Esq.; Francis Darwin, Esq.; Joseph Dent, Esq.; John Dent Dent, Esq.; Joseph Eastwood, Esq.; Francis Hawkesworth Fawkes, Esq.; John Foster, Esq.; John Fullerton, Esq.; James Milnes Gaskell, Esq.; John Gott, Esq.; John Berwicke Greenwood, Esq.; John Hague, Esq.; Alfred Harris, Esq.; Joseph Holdsworth, Esq.; Ralph Markland, Esq.; Joseph Marshall, Esq.; William Stithorp Maude, Esq.; William Mordaunt Edward Milner, Esq.; Richard Monckton Milnes, Esq.; William Nicholson Nicholson, Esq.; Wilson Overend, Esq.; John Rand, Esq.; George John Serjeantson, Esq.; John George Smyth, Esq.; Walter Thomas William Spencer Stanhope, Esq.; Joseph Mason Tennant, Esq.; William Bradley Wainman, Esq.; Edmund Waterton, Esq.; John Thomas Wharton, Esq.; Lamplugh Wickham Wickham, Esq.; John Wilson, Esq.; Basil Thomas Woodd, Esq.; John Yorke, Esq.; Hugh Charles Meynell Ingram, Esq.; James Garth Marshall, Esq.; Henry Cowper Marshall, Esq.; and John Gylby Uppleby, Esq., to be deputy-lieutenants.

NEWCASTLE-UPON-TYNE.—William Armstrong, Esq.; Sir John Fife, Knight; George Fenwick, Esq.; Thomas Emerson Headlam, Esq.; James Hodgson, Esq.; Joseph Hawks, Esq.; Joseph Lamb, Esq.; Robert Plummer, Esq.; and Henry West, Esq., to be deputy-lieutenants.

NEW MAGISTRATES.—Anthony Sproule and Frederick James Prior, Esquires, have been sworn into the commission of the peace for the borough of Tewkesbury.

The Attorney-General has nominated Mr. John Wickens and Mr. T. H. Terrell to represent him in Equity, in the matters relating to public charities. The right hon. gentleman has also selected Mr. Alfred Harrison to be Counsel in Equity to the Board of Works and to the Commissioners of Stamps and Taxes. The above offices are vacant by the appointment of Mr. W. Milbourne James to the office of Vice-Chancellor of the Duchy of Lancaster, in the room of Mr. Bethel, Her Majesty's Solicitor-General. —*Observer.*

The Queen has been pleased to make the following appointments for the Colony of Victoria, viz. Edward Eyre Williams, Esq. to be Second Puisne Judge of the Supreme Court; William Foster Stawell, Esq. to be Her Majesty Attorney-General; James Croke, Esq. to be Her Majesty's Solicitor-General; Henry Field Gurner, Esq. to be Crown Solicitor; Robert Williams Pohlman, Esq. to be Commissioner of the Court of Requests and Chairman of General and Quarter Sessions; Frederick Wilkinson, Esq. to be Master in Equity of the Supreme Court, and Chief Commissioner of Insolvent Estates.

NOTICES OF NEW LAW BOOKS.

The New Practice of the Court of Chancery. By C. C. WEIGALL, Solicitor. London: Sweet.

THIS is a Digest of the New Statutes, Rules, and Orders, arranged alphabetically for convenience of reference. Mr. Weigall, being a solicitor, is of course a practical man, and knows what practical men require, and he has constructed his work accordingly. He does not, however, attempt anything in the shape of treatise; it is little more than a rearrangement of the statutes and orders, with some of the decisions: he adds to these a bill of costs and the usual collection of forms.

A Treatise on the Proceedings of Election Committees, with an Abstract of the Costs, and an Appendix. By CHARLES FRERE, Esq., Barrister-at-Law. Westminster: Bigg and Sons.

THE Election Committees commenced their arduous labours on Tuesday, and, therefore, Mr. Frere's little volume is as timely as it is useful to those who may be engaged professionally in the task of contesting the 100 seats said to be in dispute. Mr. Frere has arranged his work very conveniently. He commences with an abstract of the Acts regulating committees; he then proceeds to describe minutely the proceedings of the committee, its meeting, power of adjournment, the parties before it, the rights and duties of counsel, the documents before the committee, the issue, the forms of procedure, and the division of the case. He next treats of witnesses, the summoning of them, their duties and punishment, and then of the poll-books, &c. He then considers the various kinds of petitions, as for want of qualification, for bribery and treating, and for disqualification, with the proceedings and evidence in each. A scrutiny is next described, from the production of the register, the inquiry into the votes, and the course of proceeding on each vote. This is followed by the resolution of the committee, and their report to the House, regulated accordingly as the petition is against the return only or for the seating of the petitioner; the report on votes struck off or added, and the consequent correction of the register; and the report in case of bribery. Then he considers the course in case of withdrawal or abandonment of charges of bribery, the important subject of costs, and reports with a view to ulterior proceedings, or on the prevalence of corrupt practices. Finally the author treats of the issue of commissions in Irish cases, and of the consequences of the committee being reduced in number. An appendix of statutes and a copious index complete the volume.

LAW PAMPHLETS.

SIR GEORGE STEPHEN has republished, in the form of a pamphlet, a series of letters which originally appeared in the *Liverpool Mail* about two years since, on *Bankruptcy and Credit Trade.* It is an emphatic protest against the present system of trade and the law of bankruptcy, by which that system is rather encouraged than otherwise. He would limit credit by law; or rather refuse the powers of the law for the enforcement of the debt after a certain interval. Coming from one of so large an experience, these letters cannot fail to interest.——Mr. STEWART has published a second edition of his little book entitled *How to Enfranchise your Copyholds?* a proof that it has been found useful; but some months must yet elapse before the Act comes into operation.——We have received from GEORGE PATERSON, Esq. Advocate, an *Historical Account of the Fiars in Scotland;* the Fiars Courts being those at which the corn averages are struck, by which the stipends of the clergy, of the schoolmasters, and a vast amount of rents are regulated. He contends that they are extremely faulty, and recommends some improvements in the system.——CHARLES PURTON COOPER, Esq., Q.C. has added to his many useful little treatises a *Manual of Chancery Chamber Practice,* describing the business to be done there under the new procedure, and the manner of doing it.

LEGAL INTELLIGENCE.

PROPOSED LAW REFORMS.—Though the session only commenced on Thursday last, Parliament was "seised," before the end of the week, of at least twenty bills on different branches of legal amendment. In the Commons, Mr. Henry Drummond, Mr. Isaac Butt, the Lord Advocate, the Solicitor-General, Mr. Whiteside, Mr. Collier, and Lord Hotham, are each and all ready and willing to apply a specific remedy to some well-recognised defect in our jurisprudence. In the upper House, the aspect of affairs is equally promising. Lord St. Leonards has no fewer than six separate measures under his charge—Lord Brougham has four—and the Lord Chief Justice has a little one. The subjects proposed to be dealt with are of infinite variety. Three Bills relate to the management of lunatics; a like number have reference to the enlargement of the jurisdiction of the County Courts; a seventh seeks to amend several material particulars in the law of bankruptcy; an eighth introduces some very valuable changes in the law of evidence and in procedure; a ninth remodels the practice of the Common Law Courts in Ireland; a tenth proposes to facilitate the transfer of land; an eleventh strikes a death-blow at the Ecclesiastical Courts—so far, at least, as relates to their testamentary jurisdiction; a twelfth regulates the office of Examiner of the Court of Chancery; a thirteenth aims at disqualifying certain judicial officers from sitting in the House of Commons; a fourteenth confers on the Sheriff's Courts in Scotland many of the powers now exercised by the English County Courts; a fifteenth introduces a new system of management in the Accountant-General's Office, which will probably save the suitors many thousands a year; a sixteenth makes provision for the granting of new trials in criminal cases; and the last which we shall here notice forms the commencement of a digest of the criminal law. It will thus be seen that, even apart from the plans of legal reform which are to be promoted under the immediate auspices of the Ministry, the Legislature has no small amount of work cut out for it.—*Morning Chronicle.*

FRAUD BY AN ATTORNEY AND HIS CLERK.—Court of Q. B., Feb. 8 (before Lord Campbell, C. J. and a special jury)—*Orchard* v. *Cox.*—This was an indictment removed from the Central Criminal Court by *certiorari*, which charged the defendant, William Henry Orchard, an attorney in Staple-inn, and George Cox, his clerk, with conspiring to deceive and defraud the Court of Common Pleas, and the Master of the said Court. The indictment also charged the defendants with conspiring to defraud a person named Rackstraw. The defendants pleaded that they were "not guilty." It appeared that an action had been brought in the C. P. in the year 1850, in which Frederick George Orchard and Augustus Orchard were the plaintiffs, and a person named Rackstraw was the defendant. The action was in trover for a horse, which the defendant claimed to retain in satisfaction of a lien which he set up for the keep of the horse. The plaintiffs recovered a verdict with 31*l.* 10*s.* damages; and the present defendant, who acted as attorney for the plaintiffs, his clerk Cox went before the Master to have the costs of the action taxed. He there produced an affidavit which had been sworn by his clerk, the other defendant Cox, in which the deponent stated that he had paid, or caused to be paid, certain expenses to the witnesses who had attended at the trial. The Master refused to allow the amounts, upon the ground that the affidavit contained no positive averment that the money had been paid. Mr. Wilkin, an attorney, who appeared for the defendant in the action at the taxation, then stated that, if Orchard would give his word of honour that the money had been paid, he would make no further difficulty. That assurance was given by both defendants, and the expenses were allowed. It was afterwards discovered that large sums of money charged for witnesses' expenses had not been paid, though the defendant Cox had obtained receipts from the witnesses on the statement that the money could not be paid without their signature, and, when before the Master, had produced the receipts in proof that the money had been paid. The witnesses were at first told that no expenses were allowed, but this was afterwards discovered to be false. The defendant Orchard, on being taxed with the fraud, said that two of the witnesses owed him a bill of costs, and he wished to set off the sums allowed for their expenses against his own claim. An order was then obtained from a judge to disallow the taxation of the costs, which was done accordingly; and it was agreed that the horse should be given up, and that the damages and costs obtained from the defendant Rackstraw should be returned. This was done, and the matter dropped till the present indictment was preferred by Frederick George Orchard, the defendant's brother, who was stated to have been actuated by some private motive in wishing to have his brother struck off the rolls. *Wilkins*, Serjt. and *James* severally addressed the jury for the two defendants, and then called a large number of witnesses, who gave them both good characters for integrity.—Lord CAMPBELL, in summing up the case to the jury, said the question for their consideration was, whether the defendants, when they made the untrue statement before the Master, did so with the intent to defraud Rackstraw or the court. The question was one which intimately concerned not only the defendants, but the pure administration of criminal justice in this country. His Lordship then carefully read over the evidence, and observed that the good character which had been given to the defendants would be very valuable in case there should be any reasonable doubts upon the minds of the jury as to their guilt; but if they should be of opinion that they entered into the scheme with the intention to defraud the Master or the defendant Rackstraw, it would be their duty to say that they were guilty of the conspiracy charged against them.—The jury retired to consider their verdict, and upon their return into court found both the defendants guilty.—*Chambers* thereupon prayed the judgment of the court.—*James* applied to have judgment postponed, and stated that he wished to read affidavits in mitigation of punishment.—Lord CAMPBELL: I am quite ready to hear any affidavit now.—*James* said he was not at present defendants must then appear on Thursday at the prepared with affidavits.—On Thursday Lord CAMPBELL sentenced the defendants to six months' imprisonment; but they did not appear; and it is said that they have sailed for Australia.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

BRACE.—On the 16th inst. at 9, Chandos-street, Cavendish-square, the wife of Thomas Brace, Esq. of a daughter.

HILLIER.—On the 29th ult. at Bury St. Edmunds, the wife of Charles B. Hillier, Esq. Chief Magistrate of Hong-Kong, of a daughter.

BROADMEAD.—On the 13th inst. at 16, Gloucester-gardens, Hyde-park, the lady of Thomas P. Broadmead, Esq. Barrister-at-law, of a son.

MARRIAGES.

STRONG—WELLS.—On the 12th inst. at St. Dunstan's, Stepney, Richard Isaac, fourth son of Samuel Strong, Esq. of Woking, Surrey, to Elizabeth Jane, eldest daughter of Mr. George Wells, solicitor, of No. 1, Brunswick-terrace, Commercial-road, East.

DEATHS.

EVANS.—On the 6th inst. at his chambers, Lincoln's-inn-fields, John Holman Evans, Esq., solicitor, formerly of Wells, Somersetshire.

WATTS.—On the 27th ult. at Epping, aged 61, Mr. Anthony A. Watts, late of Cornhill and Woodford, solicitor.

ROSE.—On the 12th inst. aged 16, Henry, the second son of Mr. William Rose, solicitor, of South Hackney and Great Prescot-street.

THE GAZETTES.

Bankrupts.

Gazette, Feb. 15.

Graves, Humphrey, oil and colour man, Ealing, Feb. 23, at half-past eleven, and April 1, at twelve, Basinghall-street. Off. as. Cannan. Sol. Johnson, Gray's-inn-square. Petition, Jan. 31.

Hanson, Richard Stock, John, and Edward, coal merchants, Stratford, Essex, Feb. 25, at one, and April 1, at half-past one, Basinghall-street. Off. as. Cannan. Sols. Messrs. Hillearys, Fenchurch-street. Petition, Feb. 14.

Spence, Jane Emma, boarding-house keeper, Ladbroke-square, Notting-hill, Feb. 23, and April 1, at half-past twelve, Basinghall-street. Off. as. Whitmore. Sol. Vaughan, Porteous-road, Paddington. Petition, Feb. 16.

Sperry, George, draper, Whittlesea, Cambridgeshire, Feb. 24, at half-past twelve, and March 24, at one, Basinghall-street. Off. as. Johnson. Sol. Jones, Size-lane. Petition, Jan. 26.

Gazette, Feb. 18.

Appleyard, George, tavern-keeper and builder, South Shields, March 12, at twelve, Newcastle-upon-Tyne. Com. Ritson. Off. as. Baker. Sols. Philipi, Gray's-inn-square; and Bagnal, Durham. Petition, Feb. 4.

Bogen, William, merchant and commission agent, Morpeth-terrace, Hackney-road, March 2, at half-past one, April 6, at one, Basinghall-street. Com. Fonblanque. Off. as. Graham. Sols. *S.* and H. Linklater, 17, Size-lane, City. Petition, Feb. 15.

Bonnard, Bonnet, warehouseman, Addle-street, Wood-street, March 4, and April 12, at twelve, Basinghall-street. Com. Holroyd. Off. as. Groom. Sols. Messrs. Linklater, 17, Size-lane, Bucklersbury. Petition, Feb. 10.

Cornelius, Mikey, plumber, glazier, and painter, Market Lavington, Wilts, March 1 and 31, at eleven, Bristol, Com. Hill. Off. as. Hutton. Sol. Neate, Devizes. Petition, Feb. 8.

Daly, Daniel, builder, Kidsgrove, near Tunstall, Staffordshire, March 9 and 30, at twelve, Birmingham. Com. Daniell. Off. as. Christie. Sols. Llewellyn, Tunstall; and Hodgson, Cherry-street, Birmingham. Petition, Feb. 1.

Davis, John, licensed victualler, Colney Hatch, Middlesex Feb. 26, at one, April 9, at twelve, Basinghall-street. Com. Goulburn. Off. as. Pennel. Sols. Ashurst and Son, 6, Old Jewry, London. Petition, Feb. 12.

Hunt, Richard Parkes, hosier, Kidderminster, March 2 and April 15, at twelve, Birmingham. Com. Daniell. Off. as. Christie. Sols. Saunders and Son, Kidderminster; and Motteram, Knight, and Emmet, Bennett's-hill, Birmingham. Petition, Feb. 14.

Jagger, Luke, woollen cloth manufacturer and merchant, Huddersfield, March 7 and April 4, at twelve, Leeds. Com. Ayrton. Off. as. Hope. Sols. Messrs. Sykes, Huddersfield; and Bond and Barwick, Leeds. Petition, Feb. 14.

Lemon, John, shopkeeper, Newton Moor, Chester, March 1, and 22, at twelve, Manchester. Off. as. Fraser. Sol. Buckley, Ashton-under-Lyne. Petition, Feb. 14.

Morgan, Henry Mawnington, ship owner, Victoria-square, Reading, March 7, at twelve, April 6, at half-past one, Basinghall-street. Com. Fonblanque. Off. as. Stansfield. Sol. Freeman and Bothamley, 23, Coleman-street, City. Petition, Feb. 17.

Shaw, William, bookseller, stationer, toyman, and dealer in musical instruments, music, and fancy articles, Lincoln, March 2, at twelve, Kingston-upon-Hull. Com. Ayrton. Off. as. Carrick. Sol. Tweed, Lincoln. Petition, Jan. 3.

Tuerman, George Henry, hosier and outfitter, Plymouth, Feb. 26, at half-past one, March 24, at half-past ten, Plymouth. Com. Bere. Off. as. Hernaman. Sols. Sole, Turner and Turner, 68, Aldermanbury; Overbury, Frederick's-place, Old Jewry; and Little and Billing, Devonport. Petition, Feb. 15.

Unwin Isaac, builder, 30 and 65, Poland-street, Oxford-street, March 1, at eleven, April 7, at twelve, Basinghall-street. Com. Evans. Off. as. Johnson. Sol. Rivolta, 10, Hart-street, Bloomsbury. Petition, Feb. 14.

Dividends.

BANKRUPT ESTATES.

Official Assignees are given, to whom apply for the Dividends.

Adams, W. B. and *Ralston*, G. engineers, second joint, 1*s.* 6*d.* Cannan, London.—*Armitage and Sons*, woollen cloth manufacturers, first sep. of J. Armitage, 11*d.* Hope, Leeds.—*Baston*, B. J. corn and coal merchant, first, 1*s.* 8*d.* Edwards, London.—*Boyle*, S. manufacturer of china and earthenware, first, 5*s.* Whitmore, Birmingham.—*Crocker*, T. sail maker, first, 2*s.* Groom, London.—*Dalby*, E. H. butcher, first, 10½*d.* Whitmore, London.—*Dickens*, G. clerk, third, 4*d.* Stansfeld, London.—*Emmison*, R. scrivener, second, 11½*d.* Bittleston, Nottingham.—*Gladwin*, H. draper, first, 2*s.* 1*d.* Bittleston, Nottingham.—*Groocock*, S. hosier, &c. first, 1*s.* 10*d.* Bittleston, Nottingham.—*Harris* and *Burle*, brewers, first sep. of Harris, 6*s.* 3*d.* Cannan, London.—*Hartley*, M. and H. stationers, first, 2*s.* 9*d.* Hope, Leeds.—*Holroyd*, F. twine spinner, first, 1*s.* 6*d.* Hope, Leeds.—*Lawson*, J. cloth merchant, first, 2*s.* Young, Leeds.—*M'Cree*, T. and A. grocers, first, on new proofs, 8*s.* 3*d.* Second on total proofs, 4*d.* Second and final sep. of A. McCree, 7*s.* 9*d.* Walley, Newcastle,—*Metcalfe*, J. corn and coal merchant, second and final, 1*s.* 7½*d.* Hope, Leeds.—*Middlewood* and *Foster*, linen drapers, first on new proofs (on account of 6*s.*). 2*s.* 6*d.* Cannan, London.—*Millard*, J. coppersmith, second, 9*d.* Groom, London.—*Moody*, S. B. civil and colonial engineer, first, 1*s.* 2*d.* Stansfeld, London.—*Oldroyd*, W. clerk, second, 1*s.* Stansfeld, London.—*Roe*, T. upholsterer, first, 2*s.* 6*d.* Pennell, London.—*Smallwood*, E. brick maker, second, 1*s.* 6½*d.* Stansfeld, London.—*Spender*, J. builder, first, 2*s.* 6*d.* Edwards, London.—*Stevens*, J. sail maker, first, 1*s.* 3½*d.* Whitmore, London.—*Tunnett*, R. builder, first, 1*s.* 6*d.* Pennell, London.—*Taylor*, S. C. wine merchant, first, 3*s.* 6*d.* Pennell, London.—*Wilson*, R. grocer, first, 1*s.* 9*d.* Groom, London.—*Winterbottom*, J. spinner and doubler, first, 8*s.* 4*d.* Hope, Leeds.

CERTIFICATE ESTATES.

Crosthwaite, H. lodging-house keeper, 9½*d.* Apply at the County Court, Brighton.

Assignments for the Benefit of Creditors.

Gazette, Feb. 8.

Bowen, W. ironmonger, Bridgend, Glamorganshire, Jan 31. Trust. J. King, gentleman, Cowbridge. Sol. G. H. Nerity, Bridgend. *Gould*, G. confectioner, Huddersfield, Feb. 1. Trusts. J. Blackett, commercial traveller, Gecle, and T. Dickinson, grocer, Huddersfield. Sols. Clough and Bantoft, Huddersfield.—*Gothard*, J. dry salter, Huddersfield, Jan 17. Trust. F. Turner, accountant, Huddersfield. Sols. Clough and Bantoft, Huddersfield.—*Thompson*, T. and *Hollinworth*, L. Hyde Cheapers, Great Yarmouth, Jan. 31. Trusts. W. Hitchcock, Wood-street, and W. White, Cheapside, warehousemen. Sols. Sole, Turner, and Turner, Aldermanbury.—*Poole*, W. emery cloth manufacturer, under the firm of Poole and Company, Kent-street, Southwark, Feb. 4. Trusts. B. Stephenson and G. Muger, blue manufacturers, Maiden-lane, King's-cross. Sol. H. Hamond, Furnival's-inn.—*Pullen*, H. house agent and dealer in berlin wool, Ryde, Isle of Wight, Feb. 5. Trusts. S. W. Block, warehousekeeper, Paternoster-row; and J. Hatch, commercial traveller, Stanwell. Sols. Read, Langford, and Marsden, Friday-street, Cheapside.

Gazette, Feb. 11.

Bowley, B. general smith, Smethwick, Staffordshire, Feb. 4. Trusts. H. Banks, iron merchant, J. Maybury, iron manufacturer, both of Wednesbury, and S. Thompson, maltster, Smethwick. Sol. H. Holland, Westbromwich.—*Brewster*, W. M. stationer, bookbinder, and factor, Swansea, Glamorganshire, Jan. 10. Trusts. J. Cock, grocer, and T. Glover, auctioneer, both of Swansea. Sol. J. Howard, Swansea.—*Dale*, T. J. draper, Sunderland, Dec. 17. Account. T. Lorimer, York-street, Manchester.—*Dekamey*, L. B. and M. turkey red dyers, Blackley, Lancashire, Jan. 14. Trusts. R. Lodge, drysalter, Manchester, J. Calrow, manufacturer, Bury, and E. Atkin, drysalter, Manchester. Sol. J. Barlow, Manchester.—*Driver*, P. auctioneer, Yorkshire, Jan. 22. Trusts. T. M. Carter, brewer, Wakefield, and W. Mason, maltster, Apperley-bridge. Sol. W. R. Bakewell, Wakefield.—*Frackelton*, W. and *Edmonds*, W. passenger brokers and provision merchants, Liverpool, Jan. 22. Trusts. R. M'Elroy and J. Lythgoe, coopers, both of Liverpool. Sol. M. J. Hore, Liverpool.—*Green*, H. H. ship builder and inn keeper, Kingston-upon-Hull, Jan. 24. Trusts. R. W. Gleadow and W. T. Dibb, brewers, both of Hull. Sols. Galloway and Son, Hull.—*Neal*, W. grocer, Farrock-street, Milton next Gravesend, Kent, Jan. 20. Trusts. F. T. Clarke and R. Rowe, wholesale tea dealers, Arthur-street West, London-bridge. Sols. Messrs. Linklater, Size-lane.—*Pratt*, C. carpenter and wheelwright, Horsham, Surrey, Feb. 3. Trusts. J. Montgomrey, Brentford, and T. Andrews, Mousley, timber merchants. Sol. F. Hewson, Lincoln's inn-fields.—*Scricener*, C. A. wholesale milliner, Old Change, Jan. 31. Trusts. J. Howell, St. Paul's-churchyard, and C. Candy, Watling-street, warehousemen. Sol. T. Parker, St. Paul's-churchyard.—*Sheppard*, E. tobacconist, Broad-street, Bristol, Jan. 24. Trusts. E. Jonas, J. Jonas, N. Jonas, and D. Jonas, cigar manufacturers, High Holborn. Sol. M. Abrahams, Southampton-buildings, Chancery-lane.—*Wormington*, J. innkeeper, Broadwas, Worcestershire, Jan. 20. Trust. E. B. Guest, gentleman, Broadwas. Sol. E. Corles, Worcester.

Partnerships Dissolved.

Gazette, Feb. 8.

Allen, W. and *Webb*, G. hook and eye manufacturers, Orset-street, Vauxhall, Jan. 31.—*Ashworth*, R. and *Whitehead*, P. engineers and millwrights, Rochdale, Feb. 2. Debts paid by Ashworth.—*Bramden*, J. and *Melbuish*, S. coal and firewood merchants, Twig Folly-wharf, Bethnal-green, Feb. 5.—*Clark*, S., E. S., and T. perfumers, perruke makers, and court hair dressers, Vigo-street, Regent-street, as regards T. Clark, Feb. 5.—*Clubb*, H. S. and *Croft*, J. J. carded wool and mill puff manufacturers, Pendleton, near Manchester, Feb. 4.—*Cohen*, H. and G. tailors and outfitters, Old Hall-street Liverpool, Dec. 11.—*Collins*, M. and *Waters*, J. P. linen drapers, Lowndes-terrace, Knightsbridge, Feb. 3.—*Collins*, S. and *Chesters*, T. common brewers, Manchester, Jan. 1.—*Cory*, W. sen., W. jun., and R. coal merchants and coke burners and merchants, Now Barge House Wharf, Commercial-road, Lambeth, as regards W. Cory, sen. June 30. Debts paid by remaining partners. *Dawson*, H. and W. cotton spinners and manufacturers, Preston, June 30.—*Duncan*, G. *Hutton*, A. and *Thomas*, C. coopers, Chelsea-wharf, Chelsea, Feb. 4. Debts paid by Hutton.—*Evans*, T. and *Clint*, W. ship bread bakers, Liverpool, Feb. 3. Debts paid by Evans.—*Fowler*, J. and *Walton*, S. silk manufacturers, Macclesfield, Feb. 5.—*Gorne*, H. and *Underwood*, W. drysalters, Aldersgate-street, Feb. 4. Debts paid by Garne.—*Harris*, W. and *Brewster*, J. tailors, drapers, and juvenile dress makers, Barnsbury-place, Islington, Dec. 25.—*Helliwell*, W. and *Nuttall*, J. cotton spinners and manufacturers, Kitson Wood or Higher Lydgate Mill, near Todmorden, Dec. 29. Debts paid by Halliwell.—*Jacobs*, C. and *Elmer*, H. drapers, haberdashers, and milliners, Cambridge, Feb. 5. Debts paid by Jacobs.—*Johnson*, J. T. and W. G. linen drapers and silk mercers, Bishops Stortford, Jan. 31.—*Morgan*, H. and *Bird*, S. J. common brewers, Weston, near Bath, Dec. 25. Debts paid by Bird.—*Morton*, J. and *Butler*, W. contractors and builders, Doncaster, Feb. 3. Debts paid by Morton.—*Pearson*, J. sen. J. jun. and *Grayson*, J. woollen manufacturers, Leeds, Jan. 8.—*Phenix*, C., *Parr*, M. and *Edwards*, J. common brewers, Ruabon, Feb. 5 Debts paid by Phenix.—*Richardson*, H. M. and *Markland*, G. attorneys, solicitors, and conveyancers, Bolton-le-Moors, Jan. 28.—*Rosenberg*, C. T. and *Pusey*, J. W. engravers and printers, Strand, Feb. 5. Debts paid by Pusey.—*Salmon*, T. and *Dibley*, G. iron and brass bedstead and bedding manufacturers, High-row, Knightsbridge, Feb. 1. Debts paid by Salmon.—*Saunders*, W. and R. blacksmiths and makers of ploughs and other agricultural implements, North Cave, Yorkshire, July 1. Debts paid by R. Saunders.—*Stancliffe*, J. and J. common brewers and maltsters, Mirfield, Yorkshire, and Sutton, near Macclesfield, Cheshire, Jan. 26. Debts paid by John Stancliffe.—*Stubbs*, W. and *Bird*, J. figure manufacturers, Stoke-upon-Trent, Feb. 2. Debts paid by Stubbs.—*Thompson*, T., R. J., and J. merchants and commission agents, Kingston-upon-Hull, as regards T. Thompson, Dec. 31.—*Tunstall*, J. and *Hudson*, J. manufacturing chemists, Bottle Village, near Liverpool, June 30. Debts paid by Hudson.

Gazette, Feb. 15.

Burrill, T. and *Grierson*, J. tallow and drapers, Manchester, Feb. 9.—*Bocock*, R., *Tunnett*, T., *Pickup*, R. and *Sheldon*, T. Victoria Foundry, Leeds, as regards Pickup and Sheldon, Feb. 7. Debts paid by Bocock and Tunnett.—*Burden*, E. and *Low*, J. tailors and drapers, Liverpool, Feb. 6.—*Coppard*, T. and *Hamilton*, J. T. attorneys and solicitors, Horsham, Jan. 29.—*Cranenagh*, G., *Pyatt*, E. sen. *Hunt*, T., *Piper*, J., *Bissell*, T., *Edwards*, T., *Young*, J. and *Austin*, W. wood screw manufacturers, under the firm of the Cookley Wood Screw Company, Cookley, as regards Austin, Jan. 24.—*Dawson*, T., *Marthinsen*, W. and *Critchlow*, C. King's Arms-yard, Nov. 30.—*Farmer*, W. and *Hall*, C. chemists and druggists, Worcester, Dec. 31. Debts paid by either.—*Gaine*, J., *Bush*, F. C., *Doling*, E. and *Bush*, J. B. omnibus proprietors, Liverpool, Feb. 2. Debts paid by Evans and Son, solicitors, Liverpool.—*Glover*, P. *Thornford*, T. furniture and general dealers, Stratford, Feb. 8. Debts paid by Thornford.—*Hayes*, J. H. and *Pickering*, J. timber, slate, coal, and lime merchants and tile manufacturers, Frodsham, Jan. 1.—*Holmes*, E. and *Holt*, W. hat-pressers, finishers, makers up, and packers, Manchester, Jan. 25. Debts paid by Holmes.—*Humphrys*, W. and *Robinson*, J. solicitors, Hereford, Feb. 7. Debts paid by Humphrys.—*Hutchinson*, J. and W. card makers, Halifax, Dec. 31.—*Joy*, T. and A. tailors and robe makers, Oxford, Dec. 31.—*King*, T. D. and *Cooma*, H. P. opticians, Bristol, Feb. 8.—*Knapman*, W. and *Smith*, C. C. drapers, &c. Okehampton, Feb. 1.—*Rock*, J. jun. and *Watts*, W. merchants, factors, and wholesale ironmongers, Birmingham, Feb. 9. Debts paid by Rock.—*Sharpe*, G. South Retford, and *Sharpe*, J. East Retford, stone masons, Feb. 8. Debts paid by G. Sharpe.—*Skelton*, R. and *Smith*, G. C. engravers and printers, Strand, Feb. 8.—*Spooner*, J. and D. and *Fearnley*, J., Malcombe Regis, as regards D. Spooner, Sept. 16.—*Sutcliffe*, J., *Butterworth*, J., *Lord*, J., *Petrie*, W., and *Wood*, T. B. cotton spinners, Rochdale, as regards Lord, Feb. 9. Debts paid by remaining partners.—*Wallwork*, R. and B., *Kenyon*, J., *Coop*, R., J. and J., *Greenwood*, S., *Clough*, R., and *Grundy*, B. corn dealers and grocers, Higher Hurst, Ashton-under-Lyne, under the firm of Robert Wallwork and Company, and Benjamin Wallwork and Company; and at Hurst Nook, under the firm of James Kenyon and Company, Feb. 5. Debts by R. Wallwork and J. Kenyon.—*Ward*, W. and *Mudd*, J. smiths and ironmongers, Union-place, Kennington-road, Lambeth, Feb. 10.—*Whiting*, J. and J. fellmongers and tawers, Hitchin, Feb. 8. Debts paid by Joseph Whiting.

JOURNAL OF PROPERTY.

Public Sales.

On Thursday, February 17, 1853.

By Mr. Moore, at the Mart.

A freehold semi-detached eight-roomed residence, with front and back gardens, &c. and a frontage of 87 feet to Ford-road, Old Ford, Bow, of the annual value of 40*l.*, tenant paying taxes—610*l.*

3 dwelling-houses (one a corner shop), Nos. 1, 2, and 3, Sun-street, East-lane, Walworth; let at 30*l.*, tenant paying taxes; term 18 years unexpired; ground rent 12*l.* per annum—95*l.*

6 houses, Nos. 13 to 18, Upper Mary-street, Bromley, Middlesex, let at 85*l.* 16*s.* per annum, vendor paying rates; term 39 years unexpired; ground-rent 35*l.*—120*l.*

The lease with possession of a corner house with shop and extensive premises, suitable for any business, and situate at No. 5, Back-road, St. George's, East, of the annual value of 42*l.*, tenant paying rates; term 38 years unexpired; ground-rent 6*l.* per annum; the fixtures to be taken at a valuation—275*l.*

In 5 lots, 3 houses in Exmouth-place, Commercial-road, East; let at 30*l.* per annum; term 41 years; ground-rent 6*l.* 15*s.* 3 dwelling-houses in the York-road, Commercial-road; let at 36*l.* 10*s.* per annum; term 97 years; ground-rent 10*l.* 10*s.* 4 houses in John-street, Cambridge-road, Mile-end; let at 40*l.* 6*s.* per annum; term 17 years; ground-rent 10*l.* per annum, vendor paying rates on the whole. And 2 plots of freehold building ground near the terminus of the North Woolwich Railway—the whole produced 36*5l.*

In 2 lots, 5 dwelling-houses in Henry-street, Back Church-lane, St. George's; let at 38*l.* 6*s.* per annum—landlord paying rates; term 43 years; ground-rent, 10*l.* 18*s.*—195*l.*

3 five-roomed houses, Nos. 1, 2, and 3, Richard-street, St. Leonard's-road, Poplar; let at 37*l.* per annum, vendor paying rates; term 17 years; ground-rent 7*l.* 10*s.* per annum—420*l.*

MONEY MARKET.

English Funds.	Sat.	Mon.	Tues.	Wed.	Thurs.	Frid.
Bank Stock	227½	228	228	227	228	228
3 per Cent. Reduced Annuities	100⅝	100⅝	100⅝	100⅝	100⅝	100⅝
3 per Cent Consols Annuities	99¼	99⅜	99⅜	99⅜	99⅝	99⅝
Consols for Account	99¼	99⅜	99⅜	99⅜	99⅝	99⅝
New 3 per Cent. Annuities	..	..	..	..	..	..
New 3½ per Cent. Annuities	103⅛	103⅜	103⅛	103⅛	103⅜	103⅜
Long Annu. (exp. Jan. 5, 1860)	..	6⅜	..	..	..	6⅜
Do. 30 yrs. (exp. Oct. 10, 1859)	..	..	..	..	..	..
Do. 30 yrs. (exp. Jan. 5, 1860)	..	..	..	..	..	..
India Stock	..	..	266	266	..	269
India Bonds (1,000*l.*)	..	..	..	..	60	..
Do. do. (under 1,000*l.*)	70	60	..	..	50	45
South Sea Stock	..	..	..	..	..	..
Do. do. Old Annuities	..	..	..	..	..	..
Exchequer Bills, 1000*l.*	45*	42*	..	45*	35*	25
Do. do. 500*l.*	..	42*	..	45*	45*	35
Do. do. Small	..	42*	..	45*	30*	..

* Premium.

DIARY OF SALES BY AUCTION, DURING THE NEXT WEEK,

ADVERTISED IN THE "LAW TIMES."

DATE.	PLACE.	AUCTIONEER.	WHEN ADVERTISED.	PROPERTY.
Tuesday, Feb. 22.	Mart.	Ellis and Son.	February 5	Freehold Property in Cheshill.
Thursday, Feb. 24.	Ibid.	Young.	February 19	Property at De Beauvoir-terrace, Kingsland-road.
Ibid.	Ibid.	Ibid.	Ditto	Residence, Forest-hill, Surrey.
Tuesday, March 1.	Ibid.	Chinnock and Galsworthy.	February 12	Freehold Ground-rents.
Wednesday, March 2	Garraway's.	Boyes.	February 19	Copyhold and Leasehold Estates.
Ibid.	Ibid.	Ibid.	Ditto	Two capital modern Residences, Chapel-street, Grosvenor-square.

THE FOLLOWING NEW PRACTICAL WORKS FOR THE OFFICE ARE JUST ISSUED AT THE LAW TIMES OFFICE.

On Tuesday next,

PART IX. of COX, MACRAE, and HERRTSLET'S COUNTY COURT CASES AND APPEALS, together with INSOLVENCY PRACTICE. 2s. 6d.

This is the authorized and only complete collection of Reports of Cases relating to the County Courts, and it contains every case from the establishment of the Courts. To be completed quarterly. Parts I. to VIII. may still be had, price 2s. 6d. each. Part X. is in the press, and will complete the cases to the beginning of 1853.

On Friday next,

PART II. of Vol. VII. of COX'S CRIMINAL LAW CASES, containing all the Cases to this time (for the Circuits) in the Appeal Courts of England and Ireland, in the Central Criminal Court, on the Circuits, and in the Superior Courts; with an Appendix, containing a large collection of Precedents of Indictments under the new Statute, and other Precedents from the Central Criminal Court. Price 5s. 6d.

N.B.—A few copies of the back volumes and parts can still be had to complete sets.

Now ready,

THE LAW DIGEST for the Half-Year ending December 1, 1852. By E. WISE and D. T. EVANS, Esqrs., Barristers-at-Law. Price 6s. 6d. bds.; 9s. cloth.

This work gives every case, wheresoever reported, during the half-year, arranged so that the practitioner may find in a moment what is the latest law on any subject on which he may be engaged.

THE NEW RULES and ORDERS, the NEW TABLE of FEES, and the NEW RULES relating to the ADMISSION of ATTORNEYS and the EXAMINATION of ARTICLED CLERKS, with Practical Notes, Forms, and Index, by R. MALCOLM KERR, Barrister-at-Law. Price 4s. (This may be had also as a Supplement to "Kerr's Common Law Procedure Act," having marginal references to the pages of that work.)

TUDOR'S NEW CHANCERY PRACTICE, with all the Rules, Orders, Costs, Decisions, &c. to this time, with Practical Notes, Forms, and Index, the Orders being placed with the Sections of the Statute to which they relate. By OWEN TUDOR, Esq. Barrister-at-Law. Price 9s. bds.

THE NEW BANKRUPTCY ORDERS, with the BANKRUPTCY CONSOLIDATION ACT, and Notes of all the Cases decided on its construction. By C. J. B. HERTSLET, Esq., Barrister-at-Law. Price 7s. 6d. cloth.

THE PRACTICAL STATUTES of 1849, containing all those ever required in Practice, omitting the Repealed and the Scotch, Irish, Colonial, and Seasonal Statutes, with Notes of all the Cases decided on their construction; thus presenting the whole Law *as it is*, in a compact form for ready use, and with a copious Index. By C. J. B. HERTSLET, Esq. Barrister-at-Law. Price 10s. 6d. cloth. (This is in continuation of the Practical Statutes of 1850, 1851, and 1852, which may still be had.)

COX'S CRIMINAL LAW CASES, Part I. of Vol. VI. with a copious collection of Precedents of Indictments. This part contains Forms of Indictments at Quarter Sessions under the New Law. By J. E. DAVIES, Esq., Barrister-at-Law. Price 5s. 6d.

THE LAW TIMES SHEET ALMANAC for 1853, comprising, in addition to the regular information of an Almanac, Time Tables of all the Courts under the New Practice, Stamp and Tax Tables, Table for ready Calculation of Income Tax and the other Information required for immediate reference in the Office. Price only 1s.; or stamped for post, 1s. 1d. A copy sent to any person inclosing thirteen postage stamps to the office.

THE LAWYER'S POCKET-BOOK for 1853, containing the Almanacs and Time of the Moon's Rising and Setting for the last as well as the present Year, a complete Table of Stamps, Time Tables in Common Law, Equity and Bankruptcy, and much other matter required for Reference in Courts. Price only 6d.

THE SECOND EDITION of KERR'S COMMON LAW PROCEDURE ACT, containing all the New Rules and Orders, the New Table of Fees, and Cases decided to the end of Michaelmas Term. Price 14s. 6d. cloth.

To Readers and Correspondents.

L. W.—*Law reform is just in that state when enough has been done to damage the Profession by lessened profits, and not enough to increase the amount of business by way of compensation. Thus the transfer of wills, &c. to the civil courts would immensely increase the business of the Profession; so would giving a small equity jurisdiction to the County Courts; so would facilitating briefs, by more frequent sittings and assizes.*

SUB.—*It would leave them still burdened.*

PRETA'S *sketch of an Act of Parliament is good.*

PATER FAMILIAS *is probably not aware that advertisements do not come under the inspection of the Editor of a journal; and he has nothing to do with their reception or localities. The one alluded to was placed there without his knowledge.*

T. S.—*Not for a long time to come.*

STUDENS.—*The second edition of "Kerr's Procedure," and "Tudor's New Chancery Practice."*

We cannot undertake to return rejected communications. Whatever is intended for insertion must be authenticated by the name and address of the writer; not necessarily for publication, but as a guarantee of his good faith. No notice can be taken of anonymous communications.

THE LAW TIMES.

SATURDAY, FEBRUARY 26, 1853.

TO READERS.

ILLNESS has prevented our contributor from commencing his "Practical Notes on the New Rules;" but he promises them next week.

In our next we shall be enabled to give some reports of the most interesting points in election law, decided by the Election Committees. We have made arrangements for giving the whole of them in the LAW TIMES Reports.

Notwithstanding a double number to-day, we have a large arrear of reports, especially from the Equity Courts, the increased number and increased business of which have lately claimed a much larger space than formerly; and there is this difficulty with these, that they cannot be much abbreviated—they are unintelligible, and therefore useless, without a tolerably full statement of the facts.

LAW OF EVIDENCE.

IT is gratifying to be able to report Lord CAMPBELL'S emphatic testimony to the successful working of the new Law of Evidence. The LAW TIMES was the first to propose the change that has been made, and was alone in advocacy of it for many years, when almost every judicial authority in the country, with the exception, we believe, of Lords DENMAN and BROUGHAM, was not merely doubtful of its propriety, but avowedly hostile to it. On the occasion of the second reading of the Bill for amending the Law of Evidence in Scotland, the Lord Chief Justice, in giving his assent to it, stated to the House that the admission of parties as witnesses had proved so conducive in practice to the ends of justice, that all the Judges, even those who were most opposed to it at first, were now convinced of its advantages; and he specially named Baron Parke, who, he said, had been one of the most hostile to the proposition, but who now frankly avowed himself its warmest approver.

To make the Law of Evidence perfect, it will be necessary to remove two obstacles to the discovery of the very truth—and two only—which yet linger. These are, the inadmissibility of a wife, and the noxious privilege permitted to a witness to refuse to tell the truth, because doing so might criminate him.

In Lord BROUGHAM'S admirable Evidence and Procedure Bill now before the Lords, provision is made for the removal of these obstacles to justice in the manner which we had suggested here; namely,—

The wife is to be a good witness, but privileged not to reveal confidential communications made to her by her husband: putting that relationship on the same footing in this respect as that of attorney and client.

No witness is to be privileged to refuse to answer a question because it might criminate him; but his answers are to be protected, so that they may not be in any way used against him, except on a charge of perjury made upon them. A precedent for this, and in which it has proved to be completely successful, was afforded by the St. Alban's Commission, who were empowered to give protection to witnesses answering truly criminatory questions, and who thus obtained the truths which could not have been procured but for this provision.

We observe with pleasure that the Lord Chancellor has expressed his approbation of this bill. Lord CAMPBELL has already given his sanction to the admission of the wife, and we hope he will not refuse it to the still more important and beneficial provision for extracting the truth against that much-abused privilege of protection. Lord LYNDHURST, we believe, cordially supports both, and Lord St. LEONARDS has shown himself too zealous and enlightened a law-reformer not to throw the weight of his intelligence and great legal authority into the same scale.

REGISTRATION OF DEEDS.

IT is with extreme regret we record the revival of this measure. We believe it to be a mistake altogether; that its promoters look at the question partially, with reference to its operation in large conveyances,—forgetting the effect of it upon the vastly greater number of small ones.

No scheme of registration has been yet devised which would not add to the cost of small conveyances and mortgages. Let the memorial be as brief as it may, there must be a solicitor's labour in the preparing and registering it, besides the registration fees. There will be a serious addition to the cost of all transactions in which the expenses do not exceed 20*l.*; to the multitude of small transfers, where the costs do not exceed 5*l.*, the costs of registration would be an intolerable additional burden. But the conveyances in which the costs are less than 20*l.* are probably fifty times more than those in which the costs exceed that sum. Is it, then, either just or wise to establish a large machinery, and impose a heavy tax upon all conveyances, for the benefit (if, indeed, a benefit it be) to one in fifty of the whole?

We give this proportion at a guess. But it would be an important fact to ascertain for the purpose of the discussion on this question; and therefore we would suggest to some one of our readers in either House of Parliament to procure a return of the number of conveyance and mortgage stamps issued during twelve months, of each of the sums in each denomination,—that is to say, how many at 5*s.*, how many at 10*s.*, and so forth. This would serve to show in what proportions registration would be likely to increase or diminish the expenses of the transfer of land.

TO READERS.

To our much amazement we learn, from divers communications condemnatory of the scheme, that an advertisement in our last relating to the reports, was taken by many of our readers to be an announcement of the LAW TIMES.

It is, therefore, necessary to state that it proceeded entirely from the four law booksellers whose names were appended to it, and that this office had no connexion with it whatever.

Under any circumstances we should have looked upon a project for a new series of reports as a wild speculation. In the present state of the Profession and of the Law, it would be pure insanity.

They would be worthless. They could not supersede the regular reports as authorities. The Courts would not throw aside their old standard reporters for any new ones. Why should they? The new could not be better than the old.

They are not wanted. It is alleged by the advertisers that the old reports are expensive. So they are, but they could not be otherwise. They are the established authorities of the Courts, because they are done by the ablest men, who prepare them with the utmost care, having access to all the papers, referring to all the authorities, and supplied by the judges with their judgments, and with all the documents necessary to make a perfect report. This it is that gives their value to what are called the *regular* reports; and these could not be materially cheapened, nor could any other reports supersede them.

But if a new series of reports could not possibly take the place of the existing series of the *regular* reports, against which the project is directed, still less is there any want of such as reports of the second class,—commonly called the *omnibus* reports, because they supply in a collected form, and speedily and cheaply, reports not so elaborately and carefully prepared, but which serve well enough for ordinary purposes, and which are admissible as authorities until the case appears in the regular report. Of these there already exist three series, amply supplying the wants of the Profession, and all received by the Courts; viz., the *Law Journal*, *The Jurist*, and the *Law Times* reports. No reports that could be projected could be cheaper or better than either of these. The *Law Journal*, for instance, reports all the Courts, at an annual cost to the subscriber so small, that no other could do it more cheaply; and all will acknowledge that it could not be better done.

Therefore it is not true that there is any desire or demand in the Profession for a new series of reports. Why should there be? In every particular of accuracy, abundance, and cheapness, the existing reports cannot be surpassed; and to suppose that any single member of the Profession would give up his present reports for a new one that could be neither better nor cheaper, and certainly would not have the weight either of age, experience, or authority, appears to us to be a project emanating, not from the sober judgments, but from the angry feelings, of the second-hand booksellers, desirous of punishing the publishers of the established reports, by whom they suppose themselves to have been unjustly treated by the recent lowering of prices of their old stock.

At all events, we trust it will be understood that the advertisement in question was in no way connected with the LAW TIMES, nor has it our approval, but the contrary.

NEW PRACTICE IN THE COURT OF CHANCERY. (*a*)

OF PROCESS IN DEFAULT OF ANSWER.

HITHERTO we have assumed that the defendant has appeared and put in an answer, plea, or demurrer, which, not demurring alone, he must do within six weeks after appearance thereto has been entered by or for him: (Ord. XVI. May 1845. art. 13.). If he does not do so, and if he procures no enlargement of the time allowed, he is subject to the following liabilities:

1. An attachment may be issued against him.

2. He may be committed to prison, and brought to the bar of the Court.

3. The plaintiff may file a traversing note, or proceed to have the bill taken *pro confesso* against him.

1. As to an *attachment*, if there is just reason to believe that any defendant means to *abscond*

(*a*) *Continued from page 201.*

before answering the bill, the Court may, on the *ex parte* application of the plaintiff, at any time after appearance has been entered for such defendant by the plaintiff, order an attachment for want of answer to issue against him; and such attachment is to be made returnable at such time as the Court directs: (Order LXXII. May 1845.)

2. A defendant in custody of the Serjeant-at-arms or Messenger for want of answer, is to be discharged unless brought to the bar of the court within ten days; but eight days afterwards, unless he put in an answer, a new attachment may issue: (Ib. LXXIII.)

If a defendant be in prison for not answering, he is to be discharged within thirty days if not brought to the bar of the court; but eight days afterwards a new attachment may issue against him for want of his answer: (Ib. LXXIV.)

If a person, brought up in custody, be unable through poverty to put in an answer, a solicitor and counsel will be assigned to him: (Ib. LXXV.)

3. Upon execution of an attachment for want of answer, the bill may be taken *pro confesso*, that is to say, as though all the statements contained in it were true or admitted by the defendant to be so (Ib. LXXVI.); and where writ of attachment cannot be executed, the defendant is to be deemed to have absconded (Ib. LXXVII.); and in such case, where he has appeared in person or by his own solicitor, the plaintiff may serve upon such defendant or his solicitor a notice, that on a day in such notice named (being not less than fourteen days after the service of such notice) the Court will be moved that the bill may be taken *pro confesso* against such defendant; and the plaintiff is, upon the hearing of such motion, to satisfy the Court that such defendant ought, under the provisions of Order LXXVII., to be deemed to have absconded to avoid or to have refused to obey the process of the Court; and the Court being so satisfied may, if it thinks so fit, order the bill to be taken *pro confesso* against such defendant, either immediately, or at such time, or upon such further notice as, under the circumstances of the case, the Court may think proper: (Ib. LXXVIII.) If the absconding defendant has not afterwards appeared, upon such notice in the *London Gazette* once in each of four weeks, or on such further notice as the Court may think proper, the bill may be taken *pro confesso*: (Ib. LXXX.)

PROCESS AGAINST PARTICULAR DEFENDANTS.

Against peers and members of Parliament, the plaintiff proceeds to compel an answer by a sequestration *nisi* in the first instance, instead of attachment, which the Court will make absolute within eight days after service thereof, unless cause be shown to the contrary (*Thomas* v. *Lord Jersey*, 2 Myl. & K. 398); and after obtaining the order absolute for the sequestration, the plaintiff moves, as of course, that the clerk of records and writs may attend at the hearing of the cause with the record of the plaintiff's bill, in order that the same may be taken *pro confesso* against the defendant. The cause is then set down for hearing, and the cause taken *pro confesso* against him: (Smith's Hand-book, 165.)

A bill of *discovery* taken *pro confesso* against defendants having privilege of Parliament, or an examined copy thereof, is to be received in a court of law or equity, as evidence of the facts, matters and things therein contained, in the same manner and as fully as if the same were admitted by the answer of the defendant (11 Geo. 4 & 1 Will. 4, c. 36, s. 18); so a bill may be taken *pro confesso* against the attorney-general: (*Groom* v. *The Attorney-General*, 9 Sim. 325.)

The mode of proceeding against a corporation is *by distringas, alias distringas, pluries distringas*, sequestration, and then the plaintiff applies to take the bill *pro confesso*.

With regard to persons under disabilities, as an infant, a guardian will be assigned to him to put in his answer (32nd Order, May 1845); if the infant be a married woman, a guardian will still be necessary for that purpose: (*Colman* v. *Northcote*, 2 Hare, 147.)

With regard to a married woman made defendant with her husband, process issues against him alone: *Cox* v. *Cottle*, 3 Myl. & Cr. 180); but if he resides out of, and the wife within, the jurisdiction, after service upon her, and on special application, upon notice, an attachment may be issued against her: (*Bushell* v. *Bushell*, 1 S. & S. 164.)

The leave of the Court must be obtained in order that a married woman may put in a separate answer: (*Garey* v. *Whittingham*, 1 S. & S. 163.) Where such order has been obtained, she may be proceeded against by attachment: (*Travers* v. *Buckly*, 1 Ves. 386; *Ottway* v. *Wing*, 12 Sim. 90.)

AS TO CONTEMPTS.

A defendant in contempt cannot make any application to the Court (*Voules* v. *Young*, 9 Ves. 173) in the same cause (*Clark* v. *Dow*, 1 Russ. & Myl. 103; *Turner* v. *Dorgan*, 12 Sim. 504), unless to apply to discharge the order upon which he is in contempt for not obeying (Dan. Ch. Pr. 461); or appear to be heard in opposition to special application made against him: (*Parker* v. *Dawson*, Dan. Ch. Pro. 462.)

Contempts may in general be cleared by performing the act required and payment of costs (Dan. Ch. Pr. 464); and they may be waived either by the plaintiff, after the answer being put in, accepting it, or taking a step in the cause; and he cannot renew the process or take any other advantage of it: (Dan. Ch. Pr. 465.)

Process of contempt may also be discharged for irregularity: (Dan. Ch. Pr. 467.)

PROCESS BY SERVING TRAVERSING NOTE.

In default of answer the plaintiff may file a traversing note (Orders May 8, 1845, LII., LIII.); or after insufficient answer (Ib. LIV.); or upon the overruling of a plea or demurrer to the whole bill, unless the Court gives time to plead answer or demur, and the defendant does so within the time allowed: (Ib. LV.) The copy of the traversing note must be served on the defendant (Ib. LVI.); and the effect *is the same as if a defendant had filed a full answer, or further answer traversing the whole bill as the note relates to, on the day on which the note was filed* (Ib. LVII.); after service of the traversing note the defendant cannot plead answer or demur without special leave: (Ib. LVIII.)

HEARING AND DECREE, &C. AFTER PRELIMINARY ORDER, BY TAKING A BILL PRO CONFESSO.

The decree is not to be taken on the same day as the order to take the bill *pro confesso* is made (Orders LXXXI. May 8, 1845); and the defendant is entitled to be heard on taking the bill *pro confesso* (Ib. LXXXII.) and in case any defendant who has appeared at the hearing, and waived all objections to such order, to take the bill *pro confesso*, or against whom the order has been made after appearance by himself or his own solicitor, or upon notice served on or after the execution of a writ of attachment against him, the decree is absolute (Ib. LXXXIII.); and the Court may order a receiver or sequestrator, and payment to the plaintiff of sums he is entitled to: (Ib. LXXXIV.) The decree must be passed and entered as other decrees (Ib. LXXXV.); and served on defendant or his solicitor; and also, if decree be not absolute, to be accompanied with a notice of time for opening decree: (Ib. LXXXVI.) The cause may be reheard before inrolment (Ib. LXXXIX.); but the decree *nisi* may be made absolute.

1. After the expiration of three weeks from the service of the copy of the decree on the defendant, when the decree has been served within the jurisdiction.

2. After the expiration of the time limited by the notice provided by Order LXXXVI when the decree has been served out of the jurisdiction.

3. After the expiration of three years from the date of the decree, when a defendant has not been served with a copy thereof; and such order may be either immediate or deferred: (Ib. XC.)

The decree not being absolute, the Court may, on terms, open the inrolment, and permit the defendant to answer and rehear: (Ib. XCI.)

The rights and liabilities under decrees *pro confesso* extend to representatives, but the Court may permit ulterior proceedings: (Ib. XCII.)

OF REPLICATION.

When the defendant has put in his answer to the bill, the plaintiff must then take into his consideration whether the defendant has made sufficient admissions to enable him to put down the cause upon bill and answer without his going into evidence.

When the cause is put down to be heard upon bill and answer, it must be borne in mind that the answer will be taken to be true in every point; it will be necessary, therefore, whenever the plaintiff's case is not sufficiently admitted in the answer, or if the admissions are avoided by new matter there introduced, to put in a *replication*, and the plaintiff must go into evidence to prove his case if not admitted, and the defendant will be compelled to prove his case as set forth in the allegations in his answer: (Coop. Eq. Pl. 329; Dan. Ch. Pr. 796.)

A replication may also be put in to a plea, whether accompanied by an answer or not (but, as before observed, the validity of the plea, if true, is thereby admitted: *Harris* v. *Ingledew*, 3 P. Wms. 94); but not to a general disclaimer: (*Williams* v. *Longfellow*, 3 Atk. 582.)

By the 33rd Order of May 1845 it is directed that no subpœna to rejoin is hereafter to be issued, and only one replication is to be filed in each cause, unless the Court otherwise orders; and then replication is to be in the form set forth at the foot of this order, or as near thereto as circumstances admit and require; and upon the filing of such replication the cause is to be deemed to be completely at issue, and each defendant may, without any rule or order, proceed to examine his witnesses, and the plaintiff may, in like manner, proceed to examine his witnesses, so soon as notice of the replication being filed has been duly served on all the defendants who have filed an answer or plea, or against whom a traversing note has been filed.

The replication is in the following form:—

Between A. B., plaintiff,
and
C. D., E. F. and G. H., &c. defendants.

The plaintiff in this cause hereby joins issue with the defendant C. D. [all the defendants who have answered or pleaded, against whom a traversing note has been filed], *and will hear the cause on bill and answer against the defendant E. F.* [all the defendants against whom the cause is to be heard on bill and answer], *and on the order to take the bill as confessed against the defendant G. H.* [as the case may be].

The signature of counsel is not required to a replication. It is prepared by the solicitor of the plaintiff, written upon parchment, and filed with the clerk of records and writs; and the solicitor must, on the same day, give notice thereof to the solicitors of all the defendants to whose answer the replication applies: (Order XXIII. Oct. 1842; Dan. Ch. Pr. 797, 798.)

A replication may, on special application, be withdrawn, either for the temporary purpose of amending the bill (58th Order, May 1845; and see 4 Myl. & Cr. 8), or altogether for the purpose of setting down the cause for hearing on bill and answer: (*Rogers* v. *Goore*, 17 Ves. 130.)

By the 15 & 16 Vict. c. 86, s. 26, it is enacted, that in suits commenced by bill, when notice of motion for a decree or decretal order shall *not have* been given, or *having been* given, where a decree or decretal order shall not have been made thereon, issue shall be joined by filing a replication in the form or to the effect of the replication now in use in the court; and where a defendant shall not have answered the plaintiff's bill, he shall be considered to have traversed the case made by the bill.

By the 28th Order of 7th August, 1852, where a defendant shall not have been required to answer, and shall not have answered the plaintiff's bill, so that under the 15 & 16 Vict. c. 86, s. 26, he is to be considered as having traversed the case made by the bill, issue is nevertheless to be joined by filing a replication in the form or to the effect now in use.

THE LEGISLATOR.

Imperial Parliament.

HOUSE OF LORDS.

LAW OF EVIDENCE.

TUESDAY, Feb. 22.—Lord BROUGHAM moved the second reading of the Law of Evidence (Scotland) Bill.—The Lord CHANCELLOR said, his noble and learned friend had introduced this Bill to assimilate the law of the two countries. He had, however, gone beyond the actual existing law of England, because he had introduced into this Bill, as he naturally would, a clause with reference to which a bill had already been read a first time in their lordships' House, and he hoped it would soon become the law of the land. It had reference to the evidence of husbands and wives; and it was but due to his noble and learned friend to say that it was introduced into his Bill of 1851. He had in that Bill a clause extending the law of evidence to husband and wife, and he (the Lord Chancellor) was then opposed to it; but he must confess that he had many and reason to change his opinion, and he now approved of such a clause, but the husband and wife would not be compelled to disclose that which passed in confidence between themselves.

LAW OF DIVORCE.

After a few words had been addressed on the subject of the law of divorce, which were not distinctly heard in the gallery, Lord CAMPBELL said that he had

the pleasure of informing their lordships that the commissioners appointed to inquire into the law of divorce had signed a report, which would no doubt in a few days be presented to the House by the order of her Majesty. They recommend that their lordships should not confine to past Acts of Parliament in each individual case, but that a regular tribunal should be established, consisting of a vice-chancellor, an ecclesiastical judge, and a common law judge, and that the proceedings should take place judicially when it came from the husband for adultery. But, in the extraordinary case where a wife sought for a dissolution of the marriage contract, on the ground of the husband's immorality or other misconduct, it must still be a matter of legislation, because it would be impossible that any code could be framed by which any court of justice could be regulated in deciding such matters.

CHANCERY SUITORS' FURTHER RELIEF BILL.

THURSDAY, Feb. 24.—Lord ST. LEONARDS moved the second reading of this bill, observing that he thought the better course of proceeding would be to refer it and the several other measures of legal reform now standing for a second reading to a select committee.—The LORD CHANCELLOR expressed his concurrence in the course suggested by the noble and learned lord, which he thought the most expedient and convenient that could be adopted. In assenting to the second reading of the bill, he hoped he should not be understood as assenting to the assertion that it would effect a saving of expense in the Accountant-General's office, because he thought the contrary would be the fact.—After a few remarks from Lord Lyndhurst, Lord Brougham, and Lord Truro, the bill was read a second time.—The following bills were also read a second time:—Lunacy Regulation Bill, Lunatic Asylums Bill, Lunatics' Care and Treatment Bill, and Bankruptcy Bill.

CRIMINAL LAW AMENDMENT BILL.

Lord ST. LEONARDS moved the second reading of this bill.—Lord CAMPBELL did not object to the second reading, but said, as he should be absent for some weeks in the discharge of his public duty, he wished to take this opportunity of protesting against the bill coming into operation until the criminal code should be completed. Lord ST. LEONARDS said it was not indispensable that the whole code should be completed before any change took place, for many offences, such for instance as offences against the person, were quite distinct from other offences. Any alteration in the law respecting offences against the person, would not be affected by alterations with regard to a different class of offences.—The LORD CHANCELLOR said the commissioners appointed to inquire into the subject of the statute law had made many valuable reports, and the result had been the framing of a bill including the whole digest. It had been thought desirable to split the bill into different portions, in order to make it more manageable, and that portion of it now in charge of the noble and learned lord could not be in better hands.—Lord BROUGHAM observed, that the Criminal Law Commissioners had approved of a digest of the whole criminal law with reference to crimes and punishments, reserving for a future report the digest relative to criminal proceedings. The report respecting crimes and punishments was referred back to the commissioners, in order that some alterations might be made, and one or two gentlemen were then added to the commission. The commissioners made a second report, and a bill founded on such report was brought in, and was referred to a select committee. That bill had, however, been delayed until the commissioners had agreed upon a digest as to the mode of criminal procedure. In 1850 he had done all he could to induce the then Government (as we understood) to provide for the continuance of the commission for another year, when they might have completed the whole digest of criminal procedure; but the Government declined to accede to his suggestion, stating that enough had been done to enable them to proceed themselves in the matter. He had been hopeless of seeing the digest completed at all, when the late Government promised to give immediate attention to the subject. Then came the question how they were to proceed, and it was suggested that instead of proceeding with the whole digest in one bill it might be considered and adopted piecemeal,—that first one chapter should be taken, and then another, until the whole digest should be passed into law. The noble and learned lord opposite (Lord St. Leonards) then took up that chapter which he (Lord Brougham) thought was the most important—namely, that relating to offences against the person. He did not understand that the noble and learned lord (St. Leonards) abandoned the other bills, but that, beginning with the measure, he intended to introduce others afterwards. He would fain hope, therefore, that there would be no difficulty in following up the enactment of the first chapter by the enactment of others, and that the result would be that before the end of the session such a clearly digested view of the criminal laws of this country would be provided as would suffice to inform, authoritatively and distinctly, the subjects of the crown what these laws were to which their obedience was exacted under such high punishments. He did not think that it would, upon these grounds, be necessary to postpone the operation of any part of the digest until the whole was completed.—The bill was then read a second time, and, upon the motion of Lord St. Leonards, all the six bills were referred to a select committee.

HOUSE OF COMMONS.

COUNTY BOARDS BILL.

WEDNESDAY, February 25.—Mr. M. GIBSON observed that the subject had been before Parliament for the last twenty years; that the title of the ratepayers to a voice in the control of county expenditure, in conjunction with the magistracy, had been admitted; and that, this bill, while it adopted the representative principle, reserved considerable power to the magistrates, and did not trench upon their judicial authority. He justified the departure from the bill of 1851, as respected the constitution, powers, and functions of the financial boards; but merely asked the House now to sanction the principle of the measure.—Lord PALMERSTON, on the part of the government, acknowledged the importance of the subject, which involved matters of national consideration—police, treatment of prisoners, and care of lunatic asylums—and was, moreover, connected with the personal feelings of the unpaid magistracy. The expediency of introducing the representative principle into the control of county expenditure, he considered, had been conceded, and acquiescing in the bill so far as that principle was concerned he should offer no opposition to the second reading; but in his opinion the measure should, with the exception of the mode in which the financial boards were to be elected, be brought back in the committee to the bill of 1851. It must not be supposed, he added, that the acquiescence of the Government in the principle of the bill arose from any distrust in the unpaid magistracy.—Mr. FRESHFIELD spoke in opposition to the bill. He thought it unfortunate that the Government had acquiesced in the establishment of county boards, and wished that they had undertaken the responsibility of introducing a measure upon this subject.—Sir H. HALL supported the bill.—Sir J. PAKINGTON, agreeing in much of what had fallen from Lord Palmerston, drew attention to what he deemed the *animus* of the Bill, namely, to strike a blow at the magistracy. He noticed what he regarded as fallacies in the views of Mr. Gibson, in respect to the financial powers of the magistrates, and the invidious distinction drawn between them and the ratepayers. He did not oppose the second reading of the bill, reserving to himself, however, the power of objecting to all its most material provisions. Sir G. GREY concurred entirely in the course taken by Lord Palmerston. He thought it desirable that the representative principle should be applied to the constitution of bodies charged with the administration of county financial affairs; but that the amendments made by the select committee in the bill of 1851, which reserved to the magistrates not only their judicial but their executive functions with reference to the constabulary, gaols, and lunatic asylums, should be reintroduced into this bill.—After some further discussion, in which Mr. Henley, Mr. Baines, Mr. Barrow, Mr. J. B. Smith, Mr. Packe, Mr. Whalley, Mr. Hume, and Mr. Buck participated, the bill was read a second time, and was ordered to be committed *pro formâ*, on Friday, in order that it might be adapted to the views of the Government.

The Courts of Common Law (Ireland) Bill was committed *pro formâ*.

COURTS OF LAW.

THURSDAY, Feb. 24.—Lord R. GROSVENOR wished to ask a question of the noble lord (Lord J. Russell.) A few days ago he presented a petition from the legal profession, complaining of the inconvenience under which they laboured from the present defective accommodation in the courts of law in Westminster-hall, and also of the site where the courts were held. The petitioners suggested the propriety of removing the present law courts from Westminster-hall to a part of the town more contiguous to the residences of the members of the profession. They considered that the subject was one that deserved the attention of the Government, not only on account of the state of the present buildings, but for want of convenient internal arrangements. He wished, therefore, to ask the noble lord whether the subject of the improvement or the removal of the law courts at Westminster was engaging the attention of the government? Lord J. RUSSELL said, he would give an answer to the question of his noble friend to-morrow.

NEW TRIALS IN CRIMINAL CASES.

Mr. T. BUTT obtained leave to bring in a bill to make provision for the granting of new trials in criminal cases.

THE MAGISTRATE,
AND PAROCHIAL AND MUNICIPAL LAWYER.

Summary.

A POINT in that now rarely disputed law—of *Removal*—was decided last term in *Reg.* v. *Inhabitants of Stowmarket*, 20 L. T. Rep. 258. Pauper had resided in a parish for more than five years. Then she married and continued to live with her husband in the same parish. The husband died, having resided only three and a half years in the parish, and having a settlement in another parish. Was the widow removable? Could she unite her residence as single woman with her residence as a wife, so as to make up a complete five years' residence? The Q. B. held her to be *irremovable*. "Settlement," said the Court, "is one thing, and residence is another. The marriage altered the settlement, but left the residence untouched." In the form of a case upon an appeal a point was raised, which is in fact one of *Evidence* rather than of Magistrates Law. The attesting witness to an instrument that had been destroyed was dead. Was it necessary to prove his handwriting in order to let in secondary evidence of the contents? It was held *not* to be so; EARLE, J. observing: "Our decision, in my opinion, goes the full length of deciding that in no case where an instrument is lost, and the subscribing witness is dead, is it necessary to give evidence of the handwriting of the party attesting it; and that where it is proved that the witness is dead, nothing further is necessary:" (*Reg.* v. *Camberwell*, 20 L. T. Rep. 259.)

In *Criminal Law* there is a decision of the Q. B. of some importance. It was held in *Sill* v. *The Queen*, 20 L. T. Rep. 258, that notwithstanding Lord CAMPBELL'S Act, it is still necessary to state in an indictment for obtaining goods under false pretences to whom the goods belong. It seems, however, to be a defect which the judge might amend under the powers given by sect. 1.

TRANSPORTATION OF CONVICTS.—The Lords Commissioners of the Admiralty have just chartered a vessel for the conveyance of 300 male convicts to Freemantle, Western Australia. All the transports to be conveyed by this ship have undergone a probationary imprisonment in this country, and received instruction in trades and pursuits required in the colony. There are also a number of the class termed Pentonville exiles, whose position in society previous to conviction, and conduct since condemnation have warranted the authorities in extending to them a free pardon on reaching Freemantle, Western Australia, on the condition that they do not quit the colony. The convict guard is to consist of seventy-five of the enrolled out pensioners of Chelsea Hospital. They will be accompanied by their wives and children, and will remain in Western Australia as military colonists, receiving from Government, in addition to their pension, a grant of land, and a further sum of 2*s.* per diem when called on to perform military duty.

REAL PROPERTY LAWYER
AND CONVEYANCER.

Summary.

A., PREVIOUSLY to the marriage of his daughter with B., agreed verbally to give certain leasehold premises to the young couple. After the marriage A. gave the deeds and possession of the premises to B., who laid out money upon them. Was this void under the Statute of Frauds, the agreement being only parol? The Lord Justices held it to be a valid contract, there having been a part performance of it: (*Surcome* v. *Pianiger*, 20 L. T. Rep. 255.)

Kelson v. *Kelson*, 20 L. T. Rep. 257, was a question as to whether a settlement was voluntary. A. conveyed property, "in consideration of natural love and affection, and other good and valuable considerations," to trustees in trust for his wife and children. He afterwards mortgaged the same property. It was held to have been *prima facie* a voluntary settlement.

What are fixtures? is a question of frequent recurrence in practice. An interesting decision on this subject is reported from the Q. B. In *Wiltshire* v. *Cotterel*, 20 L. T. Rep. 259, under a conveyance of land, a farm-house and fixtures, the following were held *to be* fixtures:—1. Rick-straddles, mortared to a brick foundation let into the earth. 2. A threshing-machine, fixed by bolts and screws to posts let into the ground, so that the machine could not be got out without disturbing some of the soil. But a granary which rested on a wooden foundation, supported by straddles, and capable of being lifted by sufficient power from the straddles without disturbing them, was held *not* to be a fixture, but a mere chattel.

In the form of a Co. C. Appeal, there has been a decision on an important point of real property law. A. bequeathed as follows:—"To my son William I give all my interest and claim in household property in Percy-street, &c. belonging to the successors of the late J. H. on which I have a mortgage of 1500*l.*; also all my claims to the shops and houses situate, &c. occupied by &c.; likewise all moneys that I may have advanced for him at any time, to him, his heirs and assigns for ever." Arrears of interest were, at

the time of the testator's death, outstanding on the mortgage of 1500*l*. Was William or the executrix entitled to them? It was held that they passed with the principal to William. The executrix also claimed a sum for repairs of the mortgaged property done in the father's lifetime. It was held that she, and not the devisee, was liable for such repairs: (*Gibbon* v. *Gibbon*, 20 L. T. Rep. 260.)

Watson v. *Ward*, 20 L. T. Rep. 261, was a question on the *Law of Landlord and Tenant*. A. agreed to let to B. certain tenements from a time stated, at a specified rent. Afterwards it was found that possession of one of the tenements could not be obtained by A. Before the first half-year's rent became due, A. and B. met, and agreed that B., having had possession of all the rest, should pay the rent of the whole, less the rent of that tenement. On a question of the right of A. to distrain, it was held that the new agreement amounted to a new demise, and a release of the original bargain.

Queries on Points of Practice.

POWER OF ATTORNEY.

In the case of *Holland* v. *Harper*, 20 L. T. Rep. 216, the M. R. is reported to have granted an application that the solicitor in the cause should be allowed to receive a fund in court on behalf of a lady who had been appointed attorney for the *cestuis que trust* of the fund, residing in America; the lady so appointed attorney being too ill to attend personally to receive the money, and she signing a receipt for it, and her signature being verified by affidavit. I believe the law to be, that in the case of a power of attorney, so soon as the grantor of the power dies, the power ceases. In the above case, under ordinary circumstances, I should have supposed that if the *cestuis que trust* resident abroad had died before the money was paid to their attorney, and before she had given her receipt for it, such payment and receipt would, as to the deceased grantors of the power, be of no effect. As the *cestuis que trust* appear to have all resided in America, it was impossible at the time to ascertain whether they were living or dead.

Can any of your experienced readers inform me whether the circumstance of the payment in the above cause being made under an order of court would give effect to the payment, supposing the *cestuis que trust* who gave the power were all or any of them dead at the time?

I consider, for the reason above stated, that payment under powers of attorney are unsafe, and that the only secure course is to have, in addition to an authority for payment of the money, a release under seal from the party entitled, that he and his representatives may be barred by estoppel in the event of his death before payment to the party authorised. If I am wrong in opinion I shall be glad to be set right, because the amounts paid under powers of attorney, with receipts simply from the person authorised, must be very considerable. J. C. D.

JOINT-STOCK COMPANIES' LAW JOURNAL.

Summary.

The registered officer of a joint-stock banking company applied to prove against the estate of a deceased shareholder for calls due. By the deed of settlement an option was given to the representatives of deceased shareholders either to sell the shares or to become members of the company on certain conditions. Prior to the exercise of this option the directors were empowered to retain the dividends, and, after notice, to declare the shares forfeited. No option had been exercised by the executors in this case, and the directors had retained the dividends, but had taken no steps to declare the shares forfeited. They were held *not* to be entitled to prove for the calls due: (*Howard* v. *Wheatley*, 20 L. T. Rep. 256.)

WINDING-UP.

The settlement deed of a Joint-Stock Banking Company provided that every purchaser of shares and every executor or administrator of a deceased proprietor was, as to all obligations, &c. in respect of the shares so purchased by or vested in him, to be considered a proprietor from the time of such purchase or vesting, and that the responsibilities of the old proprietor should cease when any shares were properly transferred to a new proprietor, and not before. A reserved surplus fund was created to meet extraordinary losses or demands, and it was provided that every transfer was to carry with it the profits and share of capital and reserved surplus fund. It was held that under these provisions, a transferree of shares was subject to all the liabilities of the company, as well those incurred before as after the transfer: (*Ex parte Capel Executors*, 20 L. T. Rep. 253.) A member of the managing committee, who was also one of the provisional committee, had concurred in contracting certain debts, and had paid 160*l*. as his share in respect of those liabilities. After his death other claims were made on the company for debts contracted by his orders. His executors were held *to be* contributories: (*Ex parte Pearson's Executors*, 20 L. T. Rep. 254.)

PETITIONS, ORDERS, MEETINGS, APPOINTMENTS, CALLS, &c.

[Announced, issued, and made, during the past week.]

Metropolitan Carriage Company.—Petition to wind-up presented on Feb. 19; expected to be heard on March 14.

THE LAWYER.

Summary.

Equity Practice.—The M. R. has allowed the depositions taken on a commission issued before the new stat. to examine witnesses abroad to be received under sect. 25 of c. 86, upon the affidavit of the solicitor: (*Hind* v. *Selby*, 20 L. T. Rep. 256.) It was held in *Re Colquhoun*, 20 L. T. Rep. 256, that where a solicitor is engaged for more than one defendant in a suit, he is entitled, as against each, to a proportion only of the ordinary costs of suit which are common to all the defendants, according to the number of defendants for whom he is engaged.

Common Law.—A commission of rebellion for contempt of the Court of Chan. is not a criminal matter within the Habeas Corpus Act, and the Lord Chan. is not liable to the penalty imposed by sect. 10 for refusing a *habeas corpus* to a person detained under such writ: (*Cobbett* v. *Lord Truro*, 20 L. T. Rep. 258.) Mr. Cobbett seems determined to exhaust every undecided point of law in the form of actions against the Judges, and the unhappy gaolers who have the misfortune to hold him in custody. This very point was decided in the Court of Ex. in an action by him against another functionary. Probably he will next try it in the Pleas.

In the *Law of Attorneys* it has been determined in *Ex parte Hawley*, 20 L. T. Rep. 258, that an attorney is not privileged from disclosing matters communicated to him by a client which do not relate to business which he is conducting for such client as his attorney, even though made under promise of secrecy, as where a bankrupt had told his attorney that he was going to leave the country, and the vessel in which he should sail: (*Ex parte Hawley*, 20 L. T. Rep. 258.)

DEFECT IN THE COMMON LAW PROCEDURE ACT.

TO THE EDITOR OF THE LAW TIMES.

Sir,—Although the 18th section of this Act extends the jurisdiction of the Superior Courts to all British subjects residing abroad, yet in my opinion a great defect exists with regard to those resident in the colonies. A person may now emigrate from this country to any of our foreign settlements, and yet be liable to be sued for any debt contracted by him while in this country; and if he has any available property in this country that can be taken in execution; but should such not be the case, the plaintiff must remain satisfied with having obtained judgment, but *nothing more*. The defect which I should wish to see remedied is this: that the property of the defendant against whom any judgment in the Superior Courts of this country may be obtained shall be liable to execution in the colony where he may be resident, upon a certificate of the amount and *nulla bona* in this country, under the seal of such Superior Court, being forwarded to the proper officer of the supreme court in such colony. I hope that this point may attract the attention of some of our Legislators.

I am, Sir, yours, &c.

Windermere. G.

PROCTORS' CHARGES.

TO THE EDITOR OF THE LAW TIMES.

Sir,—I should be glad if you or any of your readers could inform me by what authority proctors charge an *ad valorem* fee for "probate under seal;" so that where the personalty is sworn under say 10,000*l*., they claim on this item alone 13*l*. 18*s*. 2*d*., though the will consist but of two lines. The scale is given in the last edition of Burn's *Ecclesiastical Law*, but nothing is there said as to the authority by which it is established; and yet it must be of modern date, since in old times no affidavit of the value of the personalty was required, there being no probate duty. And I apprehend it to be quite clear that the charge could only be established under an Act of Parliament, for the Ecclesiastical Courts clearly have no inherent authority so to tax the public in favour of their own officers. The scale given in Burn is that in use in the Prerogative Court, but I believe a similar one is adopted in the Diocesan and other probate courts. I would also ask, what is the proper charge per folio for "registering, engrossing, and collating the will," which item is given, in the table referred to, as 11*s*. 10*d*., but stated to vary according to the length of the will. I am, Sir, yours, &c.

Feb. 28, 1858. Zeta.

SOLICITORS AND PUBLIC SALES.

TO THE EDITOR OF THE LAW TIMES.

Sir,—I venture to suggest (through your columns) to my brother solicitors and attorneys, whether, instead of endeavouring to obtain a removal of the certificate duty, it might not be advisable to seek to pass a law providing that such charge should confer on every attorney and solicitor, a licence to dispose of his client's estates by auction, without being compelled to resort to the expensive and unnecessary medium of an auctioneer.

The expense of the present arrangement prevents a more frequent attempt to sell by auction. This would be one means of lessening the expenses of conveyancing, and would also be a matter of great convenience both to the solicitor and his client.

Sales under a decree of the Court of Chancery are effected without the aid of an auctioneer. Is there any good reason why other sales should not be made by the attorney or solicitor?

I am, Sir, yours, &c.

X.

[The suggestion is an excellent one.—Ed. L. T.]

Answers to Queries.

WRIT OF SUMMONS.

I beg to direct your correspondent "R." to the following extracts from the plainly written work on the new Procedure Act by R. M. Kerr, Esq., and the cases there quoted:—2nd edit. p. 3: Defendant may be sued by name he bears by reputation;" p. 41: "If defendant sued in a wrong name, appearance should be entered in his true name;" p. 75: "If defendant appears by the name in which he is sued, plaintiff may declare against him in that name; if he appears by another name, plaintiff ought to declare against him in that name, stating also the name by which he was sued in the writ. If defendant misnamed, his remedy is under the 11th sect. of 3 & 4 Will. 4, c. 14." B. G.

COUNTY COURTS.

Summary.

It is not necessary to repeat here the point decided in *Gibbon* v. *Gibbon*, 20 L. T. Rep. 260; for although in form of an appeal from the County Court it was in fact upon a question of general law; and, therefore, it will be found noticed in the summary of that branch of the law to which it properly belongs.

In *Insolvency* there is an elaborate and able judgment of Mr. Commissioner Law on a question of no small importance in practice. He holds, for good reasons there assigned, that the Insolvent Debtors' Act allows interest on debts only under special circumstances and at the discretion of the Court; but the judgment entered up after adjudication carries interest, like any other judgment, from the time of its being entered up: (*Re Joy*, 20 L. T. Rep. 263.)

A PRACTITIONER'S EXPERIENCES OF THE COUNTY COURTS.

(*Continued from page* 212.)

Again, except in the case of set-off or tender, or infancy, or coverture, or the statute of limitations, there is no plea recorded by which the issue can be known previous to the hearing. The defendant knows the plaintiff's case of course, and can prepare accordingly; but the plaintiff rarely knows the intended answer, and is therefore taken by surprise. When he hears it, he entreats to be heard in reply, and to have his witnesses recalled; he is entitled to be heard in contradiction to new facts, and a perjurous contradiction is at once extemporised, if the aid of perjury is required, or more frequently, on the plea of surprise, the Judge will adjourn the case, and time is thus obtained to get up the replication.

Once more—wives are often, perhaps generally, sent to the Court to perform the double duty of counsel and witness, and the chances are, in the lowest classes, that if the wife returns home unsuccessful, the husband gives her a thrashing for her failure.

I am sorry to say, however, that this crime of perjury is by no means confined to the class of illiterate labourers and servants. I have repeatedly witnessed it in shopkeepers and tradesmen of apparent respectability. Often have I been present when the evidence of a shopkeeper has been confuted by his own books, when the Court has compelled their production; still more frequently have I seen it contradicted by the production of his own bills or letters, and then he has accumulated perjury on perjury in futile attempts to explain them away.

And this leads me to another evil, which is, I fear, of very extensive character; it has been that has twice been successfully practised on myself, and attempted at least a dozen times: a shopkeeper writes for payment of some two or

three pounds, inclosing a bill "to account delivered" some three or four years back. The alleged debtor, knowing nothing of the matter, nor even the name of the party, concludes that it is a mistake, and pays no attention to it; in a week or ten days, he receives a second letter, threatening County Court process at some place a hundred miles off, unless a post office order is sent in course of post; he then inquires of his family, and they know nothing about it. Before he has found time to hunt up his papers, and search through a score of receipt files, he is served with a copy of a plaint; the prudential question then arises, whether it is not better to pay the demand, than to incur an expense in travelling, of double the amount, not to mention leaving his business, and meeting in open court an unscrupulous rascal, who will swear to anything, and to whom he can only reply that he knows nothing of the matter.

I have reason to believe that this is a fraud almost daily practised: I have heard repeated complaints of it by my friends. I have been professionally consulted on several demands of a similar description, and I have found that, in order to guard against it, it is now customary in many houses to take written receipts for every tradesman's bill above five shillings. Yet this is a fraud involving perjury; for the Judges will not allow a party to be summoned out of their district till the debt has been sworn to.

A third evil arising from the system is of a somewhat similar character, but not involving either crime or fraud. It gives undue advantage to the inferior class of tradesmen in places like Liverpool, Manchester, or other large towns. The business of County Courts in such places is so enormous that a cause is often in the paper for several days together, and then adjourned to another day: it may be a defended cause, and involve a fair question of liability; the defendant's evidence is essential, and he is obliged to attend from day to day, and all day, for it is the nature of this litigation that fifty cases may be despatched in an hour, or even one may last ten hours. The last in which I happened to be engaged occupied the Court from ten o'clock till seven. If the defendant is a trader or merchant in extensive business this detention is ruinous; he is losing hundreds in defending himself against an unjust demand of five or six pounds: as the shortest mode of getting out of the difficulty, he pays it, after a day's detention; and the plaintiff, who has perhaps speculated on this inconvenience, exults in a success, not obtained by the justice of his claim, but by the injustice of a system which enables a man earning a guinea per diem to make a *quasi* prisoner of another who earns ten or twenty in the same time. I was counsel for a defendant in this very predicament a few weeks ago; and after three days' attendance he paid debt and costs without a hearing, to get rid of the annoyance, though there was no doubt that the defence was good and sustainable.

There is yet a fourth evil of a demoralising character, which to me appears important, though probably some of our ultra-liberal law reformers would not attach much weight to it. Our County Courts unavoidably tend to bring the administration of justice into contempt.

I honestly believe, though I know nothing of him personally, that there is not to be found in the country a more acute, practical, and good-tempered judge than our own; and if there is no great dignity of appearance, yet he is certainly calm, firm, and decided; he keeps his Court in as much order as such a Court will allow; he takes no liberties, and he permits none. Yet the Court is necessarily filled with a class which no judicial dignity or firmness can keep within the bounds of decency: bystanders can be compelled to be silent and are compelled; but how is it possible to restrain within proper limits the tempers and the legal hostility of marine-storekeepers, Jew-brokers, horse-dealers, cab-drivers, tinkers, cobblers, journeyman-tailors, scavengers, publicans, and sinners of every kind, and worst than all, their wives and daughters, when they are called upon to perform their several parts in their new capacity of counsel and witnesses? Those who have not witnessed the scene habitually can form little conception of it. Sometimes they roar at each other like bull-calves, while the Judge in vain commands silence: at other times they will shake their fists in a way that threatens pugnacity even across the Court: abusive names and personal threats are often handed between them, careless of the judicial censure; and witnesses are nudged and prompted, evidence the clearest refuted, and menaces from the bench that would be most formidable to anybody that understood them.

In all cases in which the parties have dispensed with professional assistance, and these, as I have said, form the large majority, the Judge is obliged to act at once as the counsel, the attorney, and the moderator for both parties—as the jury to decide on the facts, and finally, in his own proper capacity, to pronounce judgment. Can it be possible even for the ablest and coolest head to avoid error, or at least seeming error, in the discharge of these multiplied functions? and if he does err, can it be possible to avoid the inference by many, that he is either partial, or hasty, or incompetent? How much must all this tend to lower, and even degrade our legal administration in public esteem! and it has had that effect already: not only among the ignorant and uninformed, but in the higher classes of society. It is true that they see but little of such scenes; but they hear of them from those who are not likely to let them lose by description; and they hear of them so often that they, not altogether unjustly, term the County Courts Her Majesty's licensed bear-gardens! I think it not impossible that the prevalence of perjury and fraud may be in some measure ascribed to this lowering of the dignity of our tribunals. Few men enter our Superior Courts to give evidence in the witness-box, without feeling subdued into reverential respect by the serious and almost solemn decorum of the Bench: a decorum which even the hardiest or the most distinguished counsel dare not violate, unless by some witty sally to provoke a smile.

(To be continued.)

PROFESSIONAL FEES IN THE COUNTY COURTS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—It is to be hoped that the judges in settling the scale of costs for the County Courts will (if not beyond their powers) direct that the plaintiff shall in all cases (where more than forty shillings are recovered) be allowed the costs of employing an attorney. I had to conduct a cause at the Whitechapel County Court on Tuesday last, on behalf of a plaintiff, when the defendant appeared but did not dispute the debt, and accordingly judgment was given by Mr. Serjt. Manning for 9*l.* 13*s.* 3*d.* the full amount. But the defendant having alleged that he had written a letter to the plaintiff after my application to him for payment of the debt and before proceedings were commenced, expressive of his intention not to dispute it but requiring time for payment, the judge disallowed my fee; and this, notwithstanding the oath of the plaintiff that he had never received such a letter, or indeed any letter at all, after the matter had been placed in my hands. I stated that the defendant had written a letter to me, but so far from confessing the claim, he intimated that he should pay only on having the value of the work which formed the subject of the action; and that a few days before the hearing he called upon me and said he had a defence to part of the demand, but would pay the whole if the plaintiff would give him the time he required. I also mentioned that the plaintiff had acceded to this, but the defendant had failed on the previous day to pay 5*l.* on account as he proposed. Unfortunately I had not the letter in court, and therefore cannot much complain that the judge took little notice of it, although, by-the-bye, the defendant did not deny my statement as to what took place when he called upon me. But, Sir, I contend that, even if the plaintiff had received such a letter as the defendant alleged, the fee should have been allowed, for how could he know that the defendant *on the trial* would not defend the action? Would the judge look upon such a letter (if written) as an absolute bar to any defence he might set up? I think not. Besides, the 8th section of the County Courts Extension Act (13 & 14 Vict. c. 61) enables a defendant to confess the action and thereby save the trouble and expense of proving the debt, and gives the judge authority to make the same order at the next sitting of the court as if he had tried the cause and given judgment thereon. The summons served upon the defendant in this case contained a printed indorsement of that fact. If a defendant does not choose to avail himself of the provision, surely he has no cause to complain of being required to pay the fee of the plaintiff's attorney. Indeed, if he does avail himself of it, he ought to be obliged to pay the costs under the new scale up to that time.

Not having much practice in the County Courts, I do not know whether the course taken in this case is generally adopted by the judges; but, if so, it is not too soon to alter it.

I am, Sir, yours, &c.

H. TAYLER.

15, Church-street, Spitalfields, 17th Feb. 1853.

TO THE EDITOR OF THE LAW TIMES.

SIR,—The extension of the County Court jurisdiction, as published in 1851 by Messrs. Cox and Lloyd, Barristers-at-Law, sets forth a number of plaints, for instance, trespass to land, trespass to property, tort, trover, &c., having been thus set forth under and by virtue of the 59th section of the statute, I believe. If such be the case the non-attendance to such *rules* should be fatal if the law means anything whatever.

Now in the country it is a practice at some courts for the judge to amend these pleas at the trial, whereas if they mean anything a nonsuit ought to be entered. Can any of your readers inform the profession how to act in such cases, with the County Courts law, as written, in your favour, and the judge at variance? I am, Sir, yours, &c.

A PERPLEXED PRACTITIONER.

Leeds, 22nd Feb. 1853.

[A judge has large powers of amendment; but these should not be exercised where the consequence would be to inconvenience the party misled by the plea.]

MERCANTILE LAWYER.

Summary.

A PETITIONING creditor's debt must be of a specific or liquidated sum, and a mere claim for damages will not suffice. In *Re Broadhurst*, 20 L. T. Rep. 254, the following facts were held to be the latter and not the former, and therefore not to sustain the petition. A. intending a partnership with B. and C., stipulated that D. should enter into a covenant (which he did) with A. that the debts due to the partnership would realize a certain sum, and if they did not he would, on demand of A., pay the deficiency to B., C. and A.; he also covenanted that the debts owing by B. and C. did not exceed a certain sum, and if they should, he would, on demand of A., pay the former or persons to whom the debts were due, the amount of such debts. A. demanded a sum under both branches of the covenant, and made that demand the basis of proceedings in bankruptcy against D. The Lords Justices, however, held that it was insufficient; it was only a claim for *damages*.

The Q. B. has held in *Ex parte Hawley*, 20 L. T. Rep. 258, that the Court of Bankruptcy may commit an attorney for contempt for refusing to disclose matters communicated to him by a client, not relating to a suit or business which he is conducting for the client as attorney, even although he has promised secrecy. Such a non-privileged question was, whether the bankrupt had told him the name of the port from, or the vessel in which, he intended to sail from this country, and whether he intended to leave the country. In the same branch of the law it has been decided by the Ex. that sect. 224 of the Bankruptcy Act, which came into operation on the 11th Oct. and provided that every deed or memorandum of arrangement *now or hereafter* entered into between any debtor and his creditors, and executed by six-sevenths of his creditors, &c. shall be binding on the rest, is not *retrospective*. It affects only subsequent deeds of arrangement, and not such as were made at the time the Act came into operation. (*Waugh* v. *Middleton*, 20 L. T. Rep. 262.)

COURT PAPERS.

Equity Courts.

Court of Appeal in Chancery.

THE Lords Justices do hereby order that the several causes and special cases set forth in the schedule hereunto subjoined, and now standing in the book of causes of the V. C. Kindersley, be heard before their lordships, and for that purpose be transferred to their lordships' book of causes.

Such causes and special cases will be heard on and after Tuesday, the 1st day of March next.

SCHEDULE.

Williams v. Williams, further directions and costs
Baldwyn v. Rogers, ditto
Rochester v. Taylor, ditto
Mackinnon v. Stewart, ditto
Moore v. Ditto, ditto
Burt v. Jones, ditto
Church Building Society v. Barlow, ditto
Maclean v. Babington, ditto
Haynes v. Haynes, special case
Squire v. Wray, further directions and costs
St. Aubyn v. St. Aubyn, ditto
Roberts v. Roberts, ditto
Same v. Radcliffe, ditto
Horner v. Horner, ditto
Dickenson v. Wolfenden, ditto
Vigurs v. Vigurs, ditto
Miller v. Huddlestone, further directions and costs
Barlow v. Barlow, ditto
Gray v. Gray (6), ditto
Pickering v. Harley, ditto
Wellesley v. Wellesley, ditto
Leonard v. Ord, ditto
Beale v. Symonds, ditto
Solomon v. Solomon, ditto
Eckford v. Boome, ditto
Lord v. Wighwick, ditto
King v. Heenan, special case
Richmond v. Jeffries, further directions and costs
Hodges v. Hodges, ditto
Clark v. Pedder, ditto
Kidd v. Forth (6), ditto
Terrott v. Bonner, ditto
Ellison v. Clark, ditto

CECIL MONRO, Registrar.

Registrar's Office, Court of Chancery, Feb. 24.

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

HEREFORDSHIRE.—John Murray Aynsley, Esq.; Thomas William Booker, Esq.; William Bridgman, Esq.; Bonham Caldwall, Esq.; Elias Chadwick, Esq.; James Cheese, Esq.; William Trevelyan Kevill Davies, Esq.; Thomas Dunne, junior, Esq.; Edward Griffiths, Esq.; Captain Thomas Heywood, Esq.; Edmund Higginson, Esq.; James King-King, Esq.; William Money Kyrle, Esq.; Captain Augustus William Henry Meyrick, Esq.; Robert Barkerville Richards Mynors, Esq.; Reynolds Peyton, Esq.; Captain Kingsmill Manley Power; and Henry Lee Warner, junior, Esq. to be deputy-lieutenants.

(*Substituted for the Gazette of Tuesday, Feb.* 15.)

YORKSHIRE.—John Eastwood, Esq.; Edmund Waterton, Esq.; to be deputy-lieutenants.

LANCASHIRE.—Thomas Edwards Moss, Esq., to be deputy-lieutenant.

PROCEEDINGS OF LAW SOCIETIES.

UNITED LAW CLERKS' SOCIETY.

The following letter has been addressed to the secretary:—

6, Raymond's-buildings, Gray's-inn,
8th Dec. 1852.

Dear Sir,—Observing your name as one of the trustees of the United Law Clerks' Society, I take the liberty of forwarding to you my cheque for 60*l.* as a donation to that institution.

It is proper to add that this is part of a sum received as compensation for serious injuries sustained by Mrs. Lewis and myself by the collision on the Brighton Railway on the 1st ult. which we are desirous of appropriating to charitable purposes, and I know no charity more deserving of support from the profession of which I am a member than the United Law Clerks' Society, which I trust will long continue to prosper.

Believe me to be, dear Sir,
Yours faithfully and very obediently,
(Signed) WM. LEWIS.

John Wm. Willcock, Esq. Q. C.

MANCHESTER LAW ASSOCIATION.

THE annual general meeting of the members of the association was held on Wednesday, the 12th day of January ult., at their rooms, No. 4, Norfolk-street, when an account of the receipts and disbursements (previously audited by two of the members) was submitted and passed.

The proceedings of the society, for the last year, were stated in the following report, which was read by the Honorary Secretary, and unanimously adopted:—

The Fourteenth Annual Report of the Committee of the Manchester Law Association.

"The Committee of the Manchester Law Association, in presenting the following report of their proceedings during the past year, have to call the attention of the members of the association to the very important changes in the law which have taken place.

"Early in the late session of Parliament your committee received copies of various Bills, including particularly the Common Law Procedure Amendment Bill, the Suitors in Chancery Relief Bill, the Law of Wills Amendment Bill, the County Courts Further Extension Bill, and the Law of Patents Amendment Bill, all of which have since become law, and occasioned alterations in the practice and procedure of the several courts of law and equity, greater than any which have taken place in modern times.

"Your committee suggested various amendments to render the working of the bills, when carried into law, practically more efficient.

"The law of Wills Amendment Act will, it is believed, give great security to persons deriving benefits from testamentary dispositions of property, and guard against the mischievous consequences of certain decisions by the Ecclesiastical Courts, the effect of which has been to deprive many persons of their rights.

"The law of Patents Amendment Bill will, it is believed, be found entitled to the general approbation of the Profession.

"Your committee again supported the attempt made to obtain a repeal of the Certificate Duty, which they at one time hoped would have taken place during the last session, but the determination of her Majesty's ministers, as subsequently expressed, not to propose any alteration in the fiscal system of the country, prevented the accomplishment of that object.

"Your committee have to thank Lord Robert Grosvenor for the interest he has taken in the subject, and to notice the great efforts constantly made by the Council of the Incorporated Law Society, and by the Metropolitan and Provincial Law Association, but are sorry that they have not received that support from some of the members of Parliament for this locality which the justice of the case demands.

"Your committee have further to report that having heard that an uncertificated attorney in Manchester had given notice of his intention to apply for a renewal of his certificate, they felt it their duty to send to the secretary of the Incorporated Law Society affidavits which had the effect of preventing the intended application being made.

"Your committee have also had charges against persons under the name of agents, practising as attorneys and conveyancers; some of which charges have been under the consideration of your committee, and will form a subject of consideration for their successors in office.

"Your committee were, in August last, invited by the secretary to the five County Court judges, appointed to frame a scale of costs, to be received by attorneys, under the powers of the Act passed during the last session of Parliament, to offer suggestions on that subject: they took the same into consideration, and communicated with law societies in other towns; and one of your committee subsequently attended in London as a deputation, and met deputations from various other law societies, when a scale of costs was unanimously agreed upon; and at an interview which, on that occasion, took place with the judges, this scale was submitted, and, as your committee believes, met with their general approbation.

"The attention of your committee has been directed to the various and conflicting constructions which have been recently put upon the last Stamp Act by the Commissioners of Inland Revenue and their solicitor, in cases of conveyance on the sale of hereditaments for a pecuniary consideration and a perpetual rent reserved or limited to the vendor; several members of the Association have felt much inconvenience in consequence of the very novel and opposite decisions recently adopted at the Stamp Office; and inasmuch as the gentlemen at the head of that department of the Revenue state that they keep no record of their decisions, and as no certainty therefore exists, that their decision in one case will operate as a rule in another in which the facts may be precisely analogous, your committee undertook to pay the expenses, out of pocket, of an appeal to the Court of Exchequer in a case recently brought before them, considering that it is a question of great practical importance in Manchester and the neighbourhood, and that a decision upon it ought at once to be obtained. In the case referred to the conveyance was in consideration of a gross sum of 100*l.* paid, and of a rent of 80*l.* per annum, limited to the vendor in fee: it was stamped with a 10*s.* stamp, being the *ad valorem* duty on the gross sum paid, and with the proper progressive duty stamps. On its being presented at the Stamp Office, along with a duplicate to have the usual denoting stamp affixed to the latter, the solicitor of the commissioners objected that the original required a 1*l.* 15*s.* stamp in addition to the *ad valorem* stamp. The deed was then submitted to the commissioners for their opinion as to the proper stamp duty under the 14th section of the Act 13 & 14 Vict. c. 97. The commissioners took a new view of the question, stating that, as the deed contained a covenant for the payment of the 80*l.* rent, it was liable to a 2*l.* stamp, under the head of 'Covenant' in the above Act, being the same duty as on a bond for the payment of any annuity or money at stated periods (not being interest nor rent on a lease) for the term of life or other indefinite period. Against this opinion it was determined to appeal; and the commissioners were therefore applied to, to state a case for the opinion of the Court of Exchequer, under the 15th section of the Act; such application was accordingly made in the middle of September last, and, after pressing repeatedly for the case, the applicants on the 5th Nov. received a communication from the Solicitor of Inland Revenue, that the amount of duty involved being so very trifling, and the point one of not much importance and by no means clear, he should recommend to the Board that the duty in dispute, with the costs deposited, should be returned, without putting the applicants to the expense of going to the court. On this being communicated to the committee, they passed a resolution requesting the applicants to urge upon the Solicitor of Inland Revenue the great importance in this district of the question involved, and the desirableness of having it determined by a positive decision. On again applying to the office accordingly it was stated that the commissioners decided that the deed was rightly stamped; and any litigation on the subject was therefore out of the question; and the deed was subsequently returned (stamped as when sent up) with the adjudication stamp of the commissioners affixed, declaring it to be rightly stamped.

"Your committee have to report that they received a circular signed by Lord Harrowby, as chairman of the committee of the Society for Promoting the Amendment of the Law, inviting the attendance of a deputation from this association at a conference proposed to be held in London on the 15th, 16th, and 17th Nov. last, to consider the amendment and consolidation of commercial law, and its assimilation in England, Scotland, and Ireland; and your committee appointed the president of the association, who accordingly attended as a deputation at that conference, which was also attended by several gentlemen representing legal and commercial associations of most of the commercial towns in Great Britain and Ireland, and by several members of both Houses of Parliament.

"The understanding of all parties taking any active interest in the measure appeared to be, that a full inquiry should be instituted into the commercial laws of each country, and an impartial selection taken from those which should be considered the best to be generally adopted; and that when such selection should be made, the sanction of the Legislature should be obtained, so that a uniform law should govern all the commercial affairs of the United Kingdom. A deputation from the conference had a long and satisfactory interview with the Earl of Derby (then the First Minister of the Crown), and your committee believe that the objects of the society will in the result be carried out.

"Your committee cannot, without entering much into detail, give a report of all matters which have engaged their attention during the year in which the affairs of the Association have been confided to their care, but the members will be able to form an opinion of the labours of the committee, from the great and important changes in the law which have been effected during their year of office. It has been the anxious desire of your committee, by a careful perusal of the various Bills submitted to Parliament affecting the law, to render them of advantage to the public. Great as have been the changes during the last few years, it is clear that greater alterations are contemplated; and your committee rely with confidence on their successors to suggest improvements, and by an earnest endeavour to promote practical usefulness in the administration of justice, render the Association an important auxiliary in effecting wise and comprehensive measures of legal reform.

"Since the foregoing part of this report was prepared, the resignation of two of the chief officers of the Association has been received, namely, that of Mr. Whitlow, who has acted as treasurer since the formation of the Association; and that of Mr. Street, who has acted as honorary secretary for the last four years.

"Your committee deeply regret that Mr. Whitlow has been compelled, from indisposition, to retire from the office of treasurer; and that the Association will be deprived of the valuable services of Mr. Street, as honorary secretary, who has resigned in consequence of other engagements which have devolved upon him, and which in his opinion, are not compatible with an efficient discharge of the duties incident to the office.

"Your committee are happy to announce that they have prevailed upon Mr. Street to accept the office of treasurer; and that Mr. Charles Gibson has very kindly consented to accept the important office of honorary secretary for the ensuing year."

The following gentlemen were elected officers and committee of the society for the ensuing year:—*President*: Mr. John Harlow.—*Vice-Presidents*: Messrs. G. B. Withington, Manchester; W. D. Nicholls, Altrincham.—*Treasurer*: Mr. James Street.—*Honorary Secretary*: Mr. Charles Gibson.—*Committee*: Messrs. J. P. Aston, T. Baker, James Barratt, J. F. Beever, T. P. Bunting, William Burdett, H. Charlewood, R. D. B. Cobbett, F. C. Faulkner, Samuel Fletcher, Walley Foster, Wm. Foyster, James Gill, George Hadfield, jun. Isaac Hall, Stephen Heelis, Wm. Heron, Jos. Janion, Thomas Neild, William Norris, W. H. Partington, Francis Robinson, John Speakman, John Sudlow, Thomas Taylor, Norfolk-street, Frederick Thomas, J. B. Vickers, W. L. Welsh, R. M. Whitlow, John Wilson.—*Chairman of the Committee*: Mr. W. L. Welsh.—*Vice-Chairman*, Mr. Francis Robinson.

NOTICES OF NEW LAW BOOKS.

New Commentaries on the Laws of England (partly founded on Blackstone.) By HENRY JOHN STEPHEN, Serjeant-at-Law. *Third Edition.* Prepared for the press by JAMES STEPHEN, Esq. of the Middle Temple, Barrister-at-Law, and Professor of English Law at King's College. In 4 vols. London: Butterworths.

THE many changes lately made in the practice of the law have reduced all existing law libraries to waste paper. The best thing the lawyer can do now is to burn his books and reports, or consign them to the butterman at a penny per pound. They are worse than worthless, more troublesome than lumber; for not merely do they not supply the information required—they positively mislead. Only an idiot would now buy past reports, or a law book three years old, however cheaply offered, they are just so much money thrown away; like the bargains at an auction—dear at any price. Time was when lawyers were as proud of their libraries as a farmer of his beeves; they were their legal stock-in-trade, and the measure of their wealth—with many, perhaps, the measure also of their pedantics. Things have changed now: he is the richest and happiest lawyer who has no library, but is beginning to form one, starting from the present position of the law, and emancipating himself altogether from the ponderous lumber that imbedded his ancestors. Some wealthy in a distant settlement of the United States, which

had been proclaimed an Arcadia by the landowners, tells a good story of his passing over one of these be-pulled estates with a friend, to whom he remarked that "the owner of such miserable land as that must be plaguy poor." Upon which he was greeted by an angry voice from behind a clump of starved thorns, "Not so poor as you think for, master. I've a given Ben Thompson one half of the estate to take clothes back." So might a lawyer rejoice now that he had got rid of his old library, even though he had given somebody one half of it to relieve him of the other. At least his shelves are empty; he has not to fear being misinstructed by his obsolete advisers.

If any of our readers should feel inclined to make a bonfire of their books, we recommend them to throw into it without mercy several hundred volumes of the Reports—all that relate to the practice of the Common Law and of Equity; all of older date than 1847, relating to Magistrates' Law, Poor Law, Evidence, and Nisi Prius—and to preserve only such as treat of Real Property Law and Criminal Law, the only branches of the law that have not been subjected to material changes. The former, indeed, has hitherto strangely escaped the general massacre, and it is likely to preserve itself intact for some time to come; there being, in truth, great practical difficulties in the way of any changes of importance. The Criminal Law has been much amended in its practice, but its principles have been unchanged, and for a time it may be exempted from the flames. But even that is doomed to codification; and then another holocaust!

Assuming, then, that all prudent practitioners and students will wash their hands of the past, and begin to form small practical libraries entirely of the recent law, they could not find a better foundation than this third and new edition of *Serjeant Stephen's Commentaries*, which has been moulded throughout to the *present* state of the law, and comprises all the recent alterations. Every lawyer knows the worth of this famous work as it came from the hands of its author; we can assure them that it has lost none of its value in the hands of his son, who has performed his laborious task of editing all, and rewriting much, with the same care, the same industry, the same mastery of the principles of our law, and in the same clear and graceful style, that recommended the compositions of his father to popularity even more than the fullness of learning, without its parade, that distinguished these Commentaries. The yet unsurpassed treatise of Blackstone was made the basis of the work; but instead of giving the text, with notes, Mr. Serjeant Stephen preferred the more difficult but more effective plan of rewriting the whole, preserving the words of the original whenever they were applicable still, but omitting what was obsolete, adding what had since accumulated, and thus making a complete treatise, in the same shape and with much of the same language, only giving it, as Blackstone might be supposed to have done, had he lived and lectured now instead of then: that, to prevent any mistake as to authorship and authority, the utmost care was observed to indicate by brackets the passages, and even the words, interpolated by the second author.

In this manner Mr. James Stephen has yet further improved upon the work of his father. He has presented the law *as it is now*, with all its many changes, so that the student may read it with confidence that he is not mistaking the old law for the new; and the practitioner will find the double duty of unlearning as well as learning, which is now imposed upon him, much facilitated by the comprehensive view which such a work as this will give him of the entire domain of the law of England, changed, modified, reformed, deformed, improved, botched and tinkered as it has been, by skilful and unskilful hands, by practical and by unpractical men, by those who would improve it as well as by those who would destroy the goodly fabric. We heartily recommend these *Commentaries* as beyond all measure the best book that has ever appeared to form a foundation for the study of the law of England.

LEGAL INTELLIGENCE.

ADDRESS TO MASTER FARRER,

On his retirement as Senior Master of the Court of Chancery.

On the 7th instant, a deputation of solicitors waited upon J. W. Farrer, the Senior Master of the Court of Chancery, to present him with an address upon his retirement from office.

Mr. Sudlow, of the firm of Sudlows, Torr, and Janeway, presented the address accompanied by Mr. W. H. Palmer, Mr. E. W. Field, Mr. C. N. Wilde, Mr. Bridges, Mr. Tilson, Mr. W. H. Woodhouse, Mr. Armstrong, Mr. Goodford, Mr. Trinder, Mr. Kennedy, Mr. J. H. Turner, Mr. Devey, Mr. Fox, and a numerous body of other solicitors, with Mr. Maugham, the Secretary of the Incorporated Law Society.

Mr. Sudlow, in presenting the address, said, "That on this occasion he felt himself honoured in being deputed to express, however imperfectly, the feelings of respect and gratitude entertained for the Master, not only by himself and the other solicitors who had concurred in the address, but, he might add, by the profession at large. The gentleman (Master Farrer) whom he had the honour of addressing, had received his appointment from Lord Chancellor Eldon so long ago as the year 1824, and had risen to be the Senior Master; that during the long interval from that period to the present time, he had invariably discharged the functions of his important office with unblemished integrity, the clearest intelligence, and the most exact punctuality; that his earnest desire to administer justice was exhibited in the pains taken to investigate every case brought before him in all its details,—by unwearied patience in listening to the statements and arguments which were adduced on all sides, and the caution with which his judgments were formed and delivered. He need not enlarge on the labours encountered by the Master in the transaction of the vast amount of business which had fallen to his share, especially in the hearing of the numerous solicitors present, who had themselves witnessed those exertions; but he could not help referring to the printed returns of the Suitor's Fee Fund for several years (one sure test of the business transacted), which stated the various amounts paid by the different Masters into that fund; and it would be found that the Senior Master was at the head of the list, his payments having far surpassed in amount those of any one of his colleagues,—thus showing that the energies and abilities which had been so ably displayed for nearly thirty years, were still vigorous and unimpaired. Mr. Sudlow said he should not do justice to his own feelings, which he was sure concurred with the sentiments entertained by the profession, if he did not express the grateful sense with which the urbanity and kindness that marked the Master's conduct were remembered;—so that amidst the difficulties that surrounded and occasionally embarrassed the solicitor in dealing with important cases, his anxiety was essentially relieved by the courtesy and patience of the Master, and his readiness, so far as his advice and assistance could avail, to meet and remove whatever obstacle impeded the proceeding before him. The legal profession, and the public also, owed a deep debt of gratitude to the Master for the judicious and temperate course taken by him on the subject of law reform. By his writings and by the evidence given under commissions, and especially before the Lords' Committee, in 1851, his vast experience and sound judgment had enabled him to point out to Parliament and to Government such measures as were safe and salutary, and to check those hurried and impetuous alterations which in the eagerness for change were not weighed as they deserved, and were, therefore, instead of introducing an improved system, calculated to lead to serious mischief and expense. In conclusion, he begged, in the name of himself and of the gentlemen then present, to assure the Master that, in quitting his office, he would be followed by their sincere respect (perhaps he might be permitted to say, their affectionate respect), and their best wishes that his retirement might, among other consolations, be solaced by the pleasing recollections of a life honourably and usefully spent, and the hope that he and his family might enjoy for many years the blessing of health and continued prosperity. He (Mr. Sudlow) could not let the occasion pass without adding, also, his testimony to the ability, zeal, and urbanity which had always been displayed by Mr. Whiting, the chief clerk, in the management of the important business committed to his care, from which both the solicitor and suitor had derived the most essential advantages."

The address was as follows:—

"The undersigned solicitors desire, upon your retirement from office under the Master's Abolition Act, to express the deep feeling of respect and gratitude which their experience of your services to the suitor, and your uniform kindness and attention to the practitioners have led them to entertain."

Master Farrer, in answer to the address, said—

"If he consulted his own inclination, he should sink down into his chair and indulge in silence in the enjoyment of the very pleasing and grateful feelings, which the address he then held in his hand, and the kind observations with which it had been presented, had awakened in him. Another reason for wishing to indulge himself in silence was, the consciousness that he could not find words fit to express the intensity and sincerity of those feelings. This expression of favourable opinion and approbation of his conduct as a Master, signed by so large a number of most highly respected and learned gentlemen who were experienced in the Masters' offices, would, under the ordinary circumstances of resignation of office, have been very gratifying, but under the circumstances which had led to the abolition of the office of Master in Chancery, it was peculiarly acceptable and consolatory. When in March, 1824, Lord Chancellor Eldon conferred upon him the office of Master, he formed the determination that he would use his best exertions so to discharge its duties as to gain the approbation and confidence of the Profession, especially of that branch of it to which the deputation belonged. The proceedings of this day justified him in entertaining the conviction, that he retired from office having succeeded in carrying that determination into effect. The Master requested to be allowed to take that opportunity of acknowledging the sense of the efficient services of the two officers who had assisted him in carrying on the work of this office. He alluded to Mr. Whiting and Mr. Slade. To his friend, Mr. Whiting, he made his cordial acknowledgment of the valuable assistance he had for many years rendered him. He had ever found in him a zealous, laborious, and able coadjutor. He had found united in him the useful qualities of one well practised in business with the pleasing manners of a gentleman. Although at his time of life, and in his state of health, after nearly twenty-nine years' service, retirement from public life was acceptable, although he could not describe himself as

Statis prime sub luce cadentem;

yet he could say, that he quitted office with as fresh and lively a feeling about business (he might confess fondness for business), as he experienced when a young man at the bar. He was then about, for the probably short time that his life might be prolonged, to enter, he trusted, upon a state of comparative rest and quiet. Amongst the happy reflections of peaceful, musing old age, the kindness of the solicitors, through a long course of years, and especially their kindness that day, would form a prominent and never wearying subject. He would no longer detain them, but must entreat all those who had signed the address, to accept all that he could offer in return,—"The tribute of a thankful heart." To his friends, present and absent, he then said "farewell," not in the thoughtless, heartless manner in which that word was too commonly used; but in the fullest, deepest, and richest meaning of the word, comprehending his earnest wish and prayer for their happiness in time present, and in futurity, he said "Farewell."—Mr. *Whiting* begged to express his deep sense of gratitude for the flattering manner in which his name had been mentioned, as well by the deputation as by the Master, and stated, that had it not been for the confidence reposed in him by the Master, and his uniform kindness, he (Mr. Whiting) could not have transacted the business of the office; and he trusted that in the office he now held he should be equally successful in his exertions for the benefit of the suitors and the Profession. The deputation then withdrew.

Lord Mayor's Court.—*Privileges of the City Pleaders.*—When the first case was called on, Mr. Randall said he would ask his lordship's indulgence for a moment while he, as one of the officers of the court, called his attention to a matter of a little importance to himself and his friends who filled the same capacity in the court as he did. It was one of their privileges, which had for a long time existed, that they should be instructed before other counsel were brought in in any case; but in the case called on he was not instructed for any of the parties concerned; his friend Mr. Locke was engaged, with several other learned gentlemen, for the plaintiff, and his friend Mr. Ryland had been instructed, with two other gentlemen, for the garnishee. How this would be regarded under the new practice of the court (which is now an open court for attorneys), he could not be aware; but as this was the first time the question had arisen, he would call his lordship's attention to it, and should be glad to hear what his views upon the matter were.—*Ryland* said it would, if carried out, annul their privileges altogether.—The Recorder said the matter certainly was one of very great importance, and he would take time to consider, and communicate with parties upon it.—*Ryland* said he was in this position—he had had a brief delivered to him for the garnishee; but as a gentleman had been brought into lead who was, as he should have thought every one would have known, his junior, he had declined to appear in the case. They simply protested, and had not the least desire to impede the trial of the case.—The Recorder said that would be quite sufficient. He should consider the subject.

Removal of the Courts from Westminster to the vicinity of the Inns of Court.—A petition has been prepared and signed under the seal of the Incorporated Law Society, on the part of the attorneys and solicitors, for the purpose of being presented to the House of Commons as early as possible, praying the House to take the very important subject of the removal of the courts into its consideration, with a view to the erection of new buildings for the accommodation of the judges, the bar, the solicitors, and suitors, and generally for the more convenient administration of justice. The petition sets forth the inconvenience of the present site at Westminster, away from the centre of the metropolis and the district where both branches of the Profession and all the offices of the court are located. It also describes the defective

construction of the existing courts, their insufficient number, and lamentable want of accommodation, as well for the public as the Profession, especially since the large addition made to the Equity Courts. It is suggested that the new building should be in the neighbourhood of the Inns of Court, and combine under the same roof accommodation, not only for all the courts, both of law and equity, but of the various Masters, Record Clerks, and other officers, and particularly the chambers of the Equity judges, their chief clerks, &c. The site suggested lies between the Temple and Lincoln's-inn, having the Strand on the south, Carey-street on the north, Chancery-lane on the east, and Clement's-inn and New-inn on the west, being on the borders of the cities of London and Westminster, and forming, on the south side of the new street intended to connect the city to the West-[illegible] State Record [illegible] ways and means [illegible] professional im-[illegible]—1st. The sur-[illegible] the Court of Chancery, [illegible] 2nd. The ac-[illegible] 3rd. The surplus fees of the Common Law Courts paid into the Treasury since 1833. 4th. The amount to be derived from the sale or letting of the numerous chambers, now occupied by the officers of the several courts. 5th. The value of the site of the present courts at Westminster. 6th. The ground-rents which may be obtained for such part of the site as will not be required for the courts and offices, and which may be let or disposed of for professional chambers.—*Legal Observer.*

THE SPRING CIRCUITS.

NORTHERN CIRCUIT.—*Appleby, Feb.* 22.—This morning, Mr. Baron Martin (who arrived here alone last night, and opened the commission), after attending divine service, proceeded at eleven o'clock to the court-house. There were no civil causes to try, and the criminal calendar contained only six cases—three of them petty larcenies, one case of assault, one of burglary, and one a charge of placing an obstruction on the railway of the Lancaster and Carlisle Company, with intent to upset the carriages.

JOURNAL OF PROPERTY.

MONEY MARKET.

ENGLISH FUNDS.	Sat.	Mon.	Tues.	Wed.	Thurs.	Frid.
Bank Stock	227½	228	227	227½	226½	227½
3 per Cent. Reduced Annuities	100¼	100⅜	100¼	100⅛	100⅛	100⅛
3 per Cent. Consols Annuities	99½	99½	99⅜	99⅝	99⅜	99⅜
Consols for Account	99⅝	99⅝	99⅜	99⅝	99⅜	99⅜
New 3 per Cent. Annuities	..	..	..	..	..	..
New 3½ per Cent. Annuities	103½	103½	103½	103⅜	103⅜	103⅜
Long Annu. (exp. Jan. 5, 1860)	6⅝	6⅝	6⅝	6⅝	6⅝	..
Do. 30 yrs. (exp. Oct. 10, 1859)	..	..	..	..	..	..
Do. 30 yrs. (exp. Jan. 5, 1860)	..	6¼	6¼	..	..	..
India Stock	..	266	269	..	266	266
India Bonds (1,000*l.*)	..	50	50	45	..	..
Do. do. (under 1,000*l.*)	..	..	..	..	..	40
South Sea Stock	..	..	..	..	..	..
Do. do. Old Annuities	..	..	..	..	..	..
Exchequer Bills, 1000*l.*	15	18	..	18	17	12
Do. do. 500*l.*	12	18	20	15	17	12
Do. do. Small	10	10	..	10	20	12

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

ADDISON.—On the 20th inst. the wife of Thomas Henry Addison, Esq. of Gloucester, solicitor, of a daughter.

MARTELLI.—On the 22nd inst. at 35, Eastbourne-terrace, Hyde-park, the wife of Chas. H. A. Martelli, Esq barrister-at-law, of a daughter.

MARRIAGE.

DAY—MADOX.—On the 21st inst. at Lee Church, Kent, James Frederick Day, Esq. of Park-road, Stockwell, to Anna, third daughter of the late Erasmus Madox, Esq. barrister-at-law, of Camberwell.

DEATHS.

CURTIS.—On the 21st inst. Jane Juliet, wife of J. E. B. Curtis, of Lincoln's-inn, barrister-at-law, and the eldest daughter of the late Dr. John Major Wilson, H.E.I.C.S.

FLOOD.—On the 18th inst. at Islington, Mr. James Flood, o. the Queen's Bench-office, aged 65, of bronchitis.

GREVILLE.—On the 20th inst. of rapid consumption, in her 22nd year, Louisa, the beloved wife of F. G. Greville, Esq. of Park-villas, Holloway, and Lombard-street, solicitor.

LISTER.—On the 18th inst. at an advanced age, Margaret Lister, of No. 37, Claremont-square, Pentonville, relict of the late Samuel Lister, Esq. solicitor.

PULLEN.—On the 13th inst. at Peckham, suddenly, James Thomas Pullen, of Ashley-lodge and Union-court Broad-street, solicitor, aged 45.

NECROLOGY

OF LEGISLATORS, MAGISTRATES, AND LAWYERS.

THE RIGHT HON. DAVID BOYLE.

This estimable gentleman, who so long filled the most prominent legal position in Scotland, died on Friday last, at his seat at Shewalton, in Ayrshire, in his 81st year. His illness was of brief duration. The deceased judge was born at Irvine, in July, 1772, and was the son of the Hon. Patrick Boyle, of Shewalton, and the grandson of the second Earl of Glasgow. He was called to the Bar in 1793, and was appointed Solicitor-General for Scotland in 1807. Subsequently he represented his native county of Ayr in Parliament, and in 1811 he was elevated to the bench as a Lord of Session and Justiciary. In the same year he was promoted to the office of Lord Justice Clerk; and in 1841 he was appointed to the highest judicial office in the kingdom—viz., that of Lord Justice-General of Scotland, and Lord President of the Court of Session. He resigned in May, 1852, after having been a judge for the long period of forty-one years, and was succeeded by Lord Colonsay (Mr. Duncan M'Neile.) He was appointed a Privy Councillor in 1821. He was offered a baronetcy by the Derby administration, at the same time when the honour was conferred on Sheriff Alison, the historian of Europe, but he saw cause to decline the honour.

THE GAZETTES.

Bankrupts.

BEVAN, WILLIAM, baker, Gilbert-street, Oxford-street, March 1, at half-past eleven, and April 7, at one, Basinghall-street. Off. as. Johnson. Sols. Messrs. Hilbery, Fenchurch-street. Petition, Feb. 12.

DAVIES, CHARLES, innkeeper, Worcester, March 6 and April 19, at twelve, Birmingham. Off. as. Whitmore. Sols. W. Cories, Worcester; and E. and H. Wright, Birmingham. Petition, Feb. 21.

JONES, ENOCH, ironfounder, Elton, Lancashire, March 4 and April 8, at twelve, Manchester. Off. as. Lee. Sol Grundy, Bury, Lancashire. Petition, Feb. 17.

LOVE, ANDREW, and KEYS, CHARLES, looking-glass manufacturers, Liverpool, March 3 and April 7, Liverpool. Off. as. Bird. Sols. Taylor, St. Helen's; and Bannor, Liverpool. Petition, Feb. 18.

MORATT, WILLIAM, coach proprietor, Leeds, March 11 and April 15, at eleven, Leeds. Off. as. Young. Sol. Middleton, Leeds. Petition, Feb. 17.

PRICE, EDWARD, livery-stable keeper, Birmingham, March 8 and April 6, at twelve, Birmingham. Off. as. Bittlestone. Sol. J. Smith, Birmingham. Petition, Feb. 19.

Gazette, Feb. 25.

BROWN, GEORGE TAYLOR, draper, 6, Gloucester-terrace, Newroad, Whitechapel-road, March 7, at one, April 6, at two, Basinghall-street. Com. Fonblanque. Off. as. Stansfeld, Sols. Lawrence, Plews, and Boyer, 14, Old Jewry Chambers. Petition, Feb. 8.

CHIDWICK, WILLIAM HENRY, tobacconist, Dover, Kent, March 8, at twelve, April 5, at half-past twelve, Basinghall-st. Com Evans. Off. ass. Bell. Sols. Messrs. Linklater, 17, Sise-lane. Petition, Feb. 21.

COLLIER, LOUISA and MATILDA, bookbinders and pocket-book makers, 72, Hatton-garden, March 8, at half-past eleven, April 5, at twelve, Basinghall-st. Com. Evans. Off. as. Bell. Sol. Chippendale, Nicholas-lane. Petition, Feb 19

DANDY, GEORGE, jeweller and watchmaker, 2a, Wigmore-street, Cavendish-square, March 11, at two, April 12, at twelve, Basinghall st. Com. Holroyd. Off. as. Edwards. Sols. Jay and Pilgrim, 14, Bucklersbury, Cheapside. Petition. Feb. 19.

HODGSON, THOMAS, ship owner, Kingston-upon-Hull, March 23 and April 13, at twelve, Hull. Com. Ayrton. Off. as Carrick. Sol Ayre, jun. Hull. Petition, Feb. 2

HOLLAND, THOMAS, manufacturer, Langhaw, near Godalming, March 8 and April 5, at eleven, Basinghall-st. Com. Evans. Off. as. Bell. Sols. Lawrance, Plews, and Boyer, Old Jewry Chambers. Petition, Feb. 21.

JAMES, WILLIAM, chemist and druggist, oil and colourman, Waterside North, Lincoln, March 23 and April 13, at twelve, Hull. Com. Ayrton. Off. as. Carrick. Sol. Tweed, Lincoln. Petition, Feb. 16

JONES, SAMUEL, joiner and builder, Kidsgrove, Wolstanton, Staffordshire, March 12 and April 2, at ten, Birmingham. Com. Balguy. Off as. Christie. Sols Cooper, Tunstall; and Hodgson, Cherry-street, Birmingham. Petition, Feb. 21.

MAY, BENJAMIN EDWARD, linen draper, No. 7, Leicester-square, and 6, Albion-place, East, King's-cross, March 4, at twelve, April 5, at one, Basinghall-street. Com. Fane. Off. as. Whitmore. Sol Overbury, 4, Frederick's-place, Old Jewry. Petition, Feb. 22.

MAY, WILLIAM, linen draper, Exeter, March 4. at one, and March 30, at eleven, Exeter. Com. Bere. Off. as. Hirtzel. Sols. Brutton, Exeter; and Holmes and Impey, Bedford-row. Petition, Feb. 22.

WELLER, WILLIAM, maltster, seedsman, baker, farmer, fruiterer, and market-gardener, Chatham, March 7, at two, April 6, at half-past two, Basinghall-street. Com. Fonblanque. Off. as. Graham. Sols. Nichols and Clark, 9, Cook's court, Carey-street. Petition Feb. 24.

WHEELER, JAMES, wine and spirit merchant, Scarborough, Yorkshire, March 11 and April 15, at eleven, Leeds. Com. West. Off. as. Young. Sols. Donner and Wondall, Scarborough; and Bond and Barwick, Leeds. Petition, Feb. 11.

YOUNG, THOMAS, ship-owner and sail-maker, Gray's-terrace, Sunderland, March 9 at eleven, April 7, at one, Newcastle-upon Tyne. Com. Ellison. Off as. Baker. Sols. Hartley, 6, Southampton-street, Bloomsbury; and Bignal, Durham. Petition, Feb. 21.

Dividends.

BANKRUPT ESTATES.

Official Assignees are given, to whom apply for the Dividends.

Atwood, G. W. merchant, first, 10½*d* Pennell, London.—*Brown*, C. Flax-spinner, first, 1*s.* 9*d.* Carrick, Hull.—*Cooper*, J. W clerk, fourth, 2*s.* Stansfeld, London.—*Everett*, J. I hydraulic engineer, second, 1*s.* 4*d.* Pennell, London.—*Hollingworth*, J. shipowner, first, 6*d.* Carrick, Hull.—*Knowles*, F. C. banker, first, 1½*d.* Pennell, London.—*Lake*, W. printer, third, 10½*d.* Pennell, London.—*Monkman*, J. cotton spinner, further, 2½*d.* Lee, Manchester.—*Warren*, M. silk dyer, further, 1*s.* 3*d.* Lee, Manchester.—*Witty*, W. draper, first, 3*s.* 4*d.* Carrick, Hull.

INSOLVENT ESTATES.

Badham, R attorney-at-law, 8*d.* Apply at the County Court, Bromyard.—*Chadwick*, C. F. widow, second, 2*s.* Apply to F. Paynter, official assignee, Redruth.—*Moore*, M. general dealer in small wares, 5*s.* 1*d.* Apply at the County Court, Durham.—*Sturmer*, F. clerk, second, 2*s.* 1*d.* Apply at the County Court, Galusboro'

Assignments for the Benefit of Creditors.

Gazette, Feb. 15.

BEAN, S. timber merchant, Friar's-mount, Bethnal Green, Jan. 29. Trusts. W. Andrew, West India Docks; and H. L. Winter, North-green. Saw-mills, Finsbury, timber merchants. Sol. J. H. Taylor, South-street, Finsbury-square.—*Doubleday*, W. grocer, Brill-row, Somer's-town, Jan. 21. Trusts. J. Warren, wholesale grocer, Rounde itch: and R. Woollatt, wholesale tea dealer, Crown-court, Philpot-lane. Sol. E. R Clarke, Bishopsgate-churchyard.—*Cooper*, G. veterinary surgeon, Melbourne, Derbyshire (dec.). April 6. Trusts. J. Wyley, chemist, Coventry; and T. C. Sowter, liquor merchant, Castle Donington. Sol. C. C. R. Dewe, Derby.—*Jones*, C. shopkeeper and coppice dealer, Hawley Heath, hamlet of Mattingley, Southampton, Jan. 24. Trusts. E. Hailis, Odiham; and G. Pyke, Basingstoke, auctioneers. Sol. C. Easton, Reading.—*Lockett*, J. grocer, Leominster, Herefordshire, Feb. 1. Trusts. R. West, grocer, Worcester; and J. Mabley, Leominster, auctioneer. Sol. H. James, Leominster.—*Morris*, J. Rosliar, Spondon, Derbyshire, Jan. 16. Trust. J. Clowes, farmer, Spondon. Sol. J. Briggs, Derby.—*Pratt*, C. carpenter and wheelwright, Horsham (and not Hoesham, as advertised in last week's *Gazette*), Surrey, Feb. 3. Trusts. J. [illegible], and T. Ashcroft, Mosley, timber merchants. Sol. F. Simpson, Lincoln's-inn-fields.

Gazette, Feb. 18.

Ashton, S. wine and spirit merchant, and general agent, John-street, Crutched-friars, [illegible] Trusts. J. [illegible] some wine merchant, Fenchurch-street, and E. Hale, needle manufacturer, Cannon-street, [illegible] Sol. Edmund and Alexander, London-street, Fenchurch-street.—*Bellamy*, R. ironmonger and salesman, Barbican, Jan. 24. Trusts. G. Attenborough, silversmith, Regent-street, Oxford-street; and J. M. Sevestre, watch manufacturer, Great-Saint Sol. [illegible] Chancery-lane.—*Chignell*, W. publican, Colchester, Feb. 9. Trusts. T. Daniel and E. Bradbrook, farmers, West Bergholt. Sol. J. S. Barnes, Colchester.

Partnerships Dissolved.

Gazette, Feb. 18.

Asquith, J., *Ford*, E., *Blackmore*, A., *Gill*, R. and *Dibb*, G. earthenware manufacturers, Castleford and Allerton Bywater, Feb. 10.—*Balmforth*, W. and T., *Brook*, J., *Smithson*, T. and *Allott*, W. iron manufacturers, Kingston-upon-Hull, Dec. 31.—*Bishop*, E., *Pengelly*, J. and *Wills*, E. G. limestone merchants, Feb. 24. Debts paid by Bishop.—*Boyes*, G. M. and *Saffell*, H. W. accountants, auctioneers, appraisers, and estate and house agents, Abchurch-lane, Feb. 1. Debts paid by Boyes.—*Brayshaw*, W., C. and F. dyers and ware grinders, Leeds, as regards F. Brayshaw, Dec. 31. Debts paid by remaining partners.—*Bullivant*, G. B. and *Wilders*, J. W attorneys and solicitors, Old Bailey, and Whittlesey, Isle of Ely, Dec. 31.—*Capner*, H. and *Warren*, F. die sinkers and enamellers, Birmingham, Jan. 15.—*Cunningham*, W. and *Way*, E. commission merchants, Liverpool, and Montreal, Canada, Feb. 10. Debts paid by Way.—*Duckworth*, P. and *Heap*, T. cotton spinners and power-loom weavers, Cooker Lumb Mill, within Oswaldswistle, Feb. 5.—*Edwards*, W. and T. cigar manufacturers and tobacco dealers, Liverpool, Feb. 1. Debts paid by T. Edwards.—*Finch*, J. sen., J. jun. and E. iron-merchants, Liverpool, Feb. 2.—*Gater*, T. and *Wreyford*, J. glass and china dealers, Torquay, Dec. 25. Debts paid by Wreyford.—*Hawkins*, J. V. and *Randall*, J. surgeons and medical practitioners, George-street and Portman-street Portman-square, June 1. Debts paid by Randall.—*Hodge*, C. and *Ward*, W. wine, spirit, and beer merchants, Halkin-wharf, Pimlico, and Duke-street, Grosvenor-square Feb. 2. Debts paid by Ward.—*Hutton*, T. and C. W. C., *Sice*, C. W. and *Hutton*, T. O. fringe manufacturers, Newgate-street, as regards T. O. Hutton, Dec. 31.—*Jackson*, J. and *Strymaker*, E. boot and shoemakers, Southampton-street, Strand. Jan. 23.—*Keates*, W. and E. Ironmongers, grocers, tea dealers, and tallow chandlers, Uttoxeter, Feb. 12.—*Kitchiny*, J. and *Aboil*, R. goldsmiths and jewellers, Conduit-street, Bond-street, Jan. 31. Debts paid by Abud.—*Logan*, E. F. and *Parker*, T. hair dressers, Birkenhead.—*Lomax*, E. and *Gungon*, T. civil engineers, Water Works Chambers, Saint Martin's-le-Fields, Jan. 31. Debts paid by Lomax.—*Marsh*, W. and *Simpson*, A. W. shipping and general commission agents, Leadenhall-street, Feb 14.—*Marshall* R *Lockwood*, M., *Miles*, J. and J. jun. booksellers, stationers' Hall-court, Lndgate-hill, as regards Marshall, Dec. 31.—*McCutcheon*, J. and W. commission agents and brokers, Wellington-street, London-bridge, Feb. 11.—*Phillips*, S. M. and *Gething*, G. B. iron, oil, and guano merchants, Newport, Feb. 8.—*Rhodes*, G. and *Stacey*, T. brewers, Worksop, Feb. 9.—*Stokes*, J. and *Dowes*, R. coach builders, Penny-bryn, Wrexham, Feb. 8. Debts paid by H. Lewison.—*Stringer*, E., *Chambers*, G., *Aylard*, J., *Mathews*, J., *Aylard*, C., and *Curtis*, J. type founders, East Harding-street, as regards C. Aylard and J. Curtis, Feb. 10.—*Thomas*, H. and C. general ironmongers, cutlers, and manufacturers of edged tools, Birmingham, June 12.—*Tinsley*, T. and *Danks*, T. nail and chain manufacturers, Tividale, Jan. 1. Debts paid by Danks.—*Townsend*, T. and *Ballsdon*, G. florist, nursery and seedsmen, Canonbury and Manchester-terrace, Islington, Feb. 9.—*Vivian*, J. and J. L. iron founders and general merchants, Rowehill, Cramborne, Aug. 31.—*Weston*, J. and J., E. wholesale shirt-makers, Silver-street, City, May 19.—*Whitsell*, H. and *Cookson*, J. colliers and coal dealers, Bradley, Huddersfield, Feb. 9. Debts paid by Cookson.—*Windeyer*, G. R. and *Cackett*, W. H. booksellers, printers, and stationers, Chatham, Jan. 1. Debts paid by Windeyer.—*Worsnip*, W. and *Nutt*, J. coal and lime merchants, Leicester, Feb. 11. Debts paid by Worswick.

Gazette, Feb. 18.

Barclay, R. G. *Ward*, E. and *Broadwood*, T C. merchants, Liverpool, Dec. 31.—*Birch*, E. and *Pollard*, J. booksellers, printers, and stationers, Wigan, Feb. 10.—*Clark*, F. and *Morris*, G. Liverpool, Feb. 16.—*Bridgeman*, J. K. and *Stahlschmidt*, F.L.C. ship and custom-house agents, Mark-lane, Jan 1. Debts paid by Drolenvaux.—*Dunn*, W. and *Smith*, H. L. auctioneers, valuers, &c. Manchester, Jan. 24 Debts paid by Dunn.—*Gater*, T. and *Wreyford*, J. glass and china dealers, Torquay, Dec. 25. Debts paid by Wreyford.—*Green*, J. and W. house and land agents, Chelsea, Feb. 2.—*Jeffrey*, W., *Hills*, G. and *Jeffrey*, C. wire workers, Allen's-court, Oxford-street, as regards Hills, Feb. 17. Debts paid by Jeffrey and Jaffray.—*Redmond*, J. and *Richardson*, S. coach and harness makers, Whitby, Feb. 13.—*Rennie*, W. *Johnson*, J. *M'Donell*, J. *M'Leod*, R. (since deceased) *M'Lachlan*, D. (since deceased) and *Wilson*, J. shipbuilders, Liverpool, Dec. 31. Debts paid by Rennie.—*Shaw*, F. and *Howe*, J. hat manufacturers, Manchester, Jan. 31. Debts paid by Royce.—*Smart*, R. *Gilmore*, J. *Campbell*, T. *Walker*, C. J. and *Marshall*, W. H. Bristol, Nov. 21.—*Smith*, R. and *Body*, G. J. surgeons, Chertsey, Dec. 26.—*Webb*, H. and J. merchants and carriers, Worcester, Feb. 14.

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To Readers and Correspondents.

"R. H. D." (Plymouth.)—*The suggestion is being considered.*

"W. S." (Bromyard.)—*Certainly not.*

"A SUBSCRIBER."—*Thanks for the hints; but the Reports could be bound separately if desired.*

"LEX."—*No fear from being an injustice, we think that "consequences" such are neither barristers nor attorneys should not be permitted [illegible].*

"A YOUNG PRACTITIONER."—*Addison certainly.*

"H. M."—*Probably in our next.*

ERRATUM.—In the report of *Fuller* v. *Cheveley*, 20 L. T. Rep. 278, in the head-note as to nonsuit, "plaintiff" has been inadvertently substituted for "defendant." The error is obvious.

We cannot undertake to return rejected communications. Whatever is intended for insertion must be authenticated by the name and address of the writer; not necessarily for publication, but as a guarantee of his good faith. No notice can be taken of anonymous communications.

THE LAW TIMES.

SATURDAY, MARCH 5, 1853.

EXAMINERS IN CHANCERY.

A BILL is passing through Parliament, under the auspices of the Solicitor-General, designed to make better provision for this office; but it contains a clause limiting the appointment to Barristers of seven years standing.

This, be it observed, is an innovation. It was not so before. At present Attorneys are eligible to that office. There is no reason why they should be excluded now. They are quite as competent to fill it. There is nothing in the training of a Barrister to make him more fit. It is impolitic and unjust to limit the honours and rewards attainable by the Attorneys, who are advancing day by day in intelligence, social position, and influence. Instead of restricting the offices of honour and emolument to which the Attorney may look forward as the reward of an honourable career, the wiser course would be to *increase* them, and thus to encourage high character and cultivated intelligence among those in whose characters the public have a particular interest; for, as we have often urged, the client retains the *honour* and *honesty* of his Attorney, while he employs only the *ability* of his Counsel.

Mr. MULLINGS spoke energetically on behalf of his brethren, and moved the omission of the clause, but was beaten on a division by a large majority.

However, the Bill must go through the Lords; and our readers may depend upon an effort being made there, with better chances of success, to expunge so unjust, uncalled-for, and injurious a provision. Practically, it will in itself affect but few of our readers; but it would be the affirmation of a bad principle, and the recognition of an unwise policy, and therefore it ought to be steadfastly resisted.

THE ATTORNEY'S TAX.

Are our readers yet stirring in this? If not, it is time they should be up and doing. Lord R. GROSVENOR'S motion for leave to bring in his bill for the repeal is appointed for *Thursday next*. There is not a moment to be lost, or petitions will come too late. If not well backed both by petitions and by the still more effectual pressure from without, which the Profession are peculiarly capable of bringing to bear upon members of Parliament, he will be beaten, and then the redress of our greatest grievance will be indefinitely deferred.

We entreat every reader not to let Monday night's post go without a letter addressed by himself personally to each of the representatives of his borough or county, or both, urging attendance on Thursday to vote for the redress of this great wrong, with such persuasions as are likely to be most effectual with M.P.s desirous of preserving their seats by conciliating those who have the greatest influence in placing and keeping them there.

SALES BY SOLICITORS.

A CORRESPONDENT, who is among the most respectable of that great, intelligent, and influential body, the Provincial Attorneys, and whose long experience as well as high standing in the Profession entitles any suggestion of his to respectful attention from his brethren, suggested in our last that Solicitors should be allowed to act as auctioneers, without licence, and sell the estates of their own clients.

The suggestion appears to us to be an admirable one. At the first glance it will perhaps appear to some to be a lowering of the Profession for Attorneys to become auctioneers. And so it would; and to *that* we should be as hostile as they. But such is not the meaning of our correspondent. It is not proposed that Attorneys shall become auctioneers, and sell property of all kinds for any person who may choose to employ them for the purpose; it is suggested only that Attorneys should be allowed to sell the property of *their clients*, as Solicitors for the vendors, *by way of bidding*,—that is to say, to take biddings, and declare the highest bidder and purchaser.

And, after all, what is it more than they now do? The Solicitor at present attends the sale, and takes a note of the biddings, and draws and attests execution of the contract. Surely he might also read the advertisement and conditions of sale, and announce that he was ready to receive biddings, and then take the biddings on paper as they are given, and declare the purchaser; for which purpose he would not need to mount a pulpit, nor to speak a puff, nor to say "going, going, gone."

Such a permission would be a great boon to the Solicitors: it would increase the respectability of land sales; it would much diminish the expenses of sales, and it would be equally satisfactory to clients. Really some earnest effort should be made by the Profession to secure this advantage.

THE PROFESSION AND LAW REFORM.

THE abbreviated report of the proceedings at the annual dinner of the great and influential Law Society of Manchester, which appears among the legal intelligence in another page, expresses precisely the views which we have endeavoured to promote with respect to Law Reform in its relationship to that which is properly here made our foremost object, *the interests of the Profession*,—those of the public having protectors and promoters in journals whose business it is not, as it is that of the LAW TIMES, to watch over and advance the welfare of a class.

Such being our mission, some readers have expressed a doubt whether we ought to say anything about Law Reform, or give it any help, either by suggestion or support. Our readers for doing so are admirably stated by the various speakers at the Manchester meeting; and we ask those who question the prudence or propriety of the course we have taken to read the speeches there made, in which they will find a complete justification of the policy we have here adopted.

Let us briefly set it forth.

We assume that it had become impossible to *prevent* Law Reform. No opposition, even if all of the Lawyers would have wasted their time, would have been accomplished without them, if they had refused their help. [illegible] only have produced more [illegible] alliance more destructive changes.

If, then, it would have been [illegible] sist, and neutrality would not have stayed the progress of reform, obviously the *prudent* course for the Lawyers was to submit with a good grace to changes they could not help, and, by giving their assistance to the work, so to direct, mould, and modify it that it should be made most effective for its purposes and least injurious to themselves. Doubtless it would have been better for the Profession if things could have been kept as they were; but as that was an admitted *impossibility*, the duty of their advisers was to consider, how the least mischief could be done and the utmost advantages secured.

It was in this spirit that we proceeded. Every proposition for Law Reform was examined with an eye to its practical effect upon the interests of the Profession, and improvements were suggested in such parts as appeared likely to be particularly injurious. We were not content with doing the critic's simple duty of fault-finding and objecting; but it was a rule with us always to accompany an objection with a suggestion of some other plan in lieu of it. Thus, when the County Courts were first proposed, perceiving their dangerous consequences if carried, and conscious that the public mind was bent upon possessing cheaper and speedier local tribunals, we took some pains to digest a scheme for converting the Quarter Sessions into local Courts for the cheap and speedy administration of justice in civil and criminal cases. The Profession approved the plan; but they made no exertion to procure it to be substituted for the County Courts scheme, which thus was imposed on them, and will never now be removed.

In the same spirit we have sought earnestly to procure improvements to be introduced into measures of law reform. Thus, in the County Courts, we were enabled to procure the introduction of a provision for giving to the Profession a more liberal remuneration, by means of a scale of costs, instead of a fixed fee, and which, we trust, will soon be in practical operation, to the incalculable benefit of the Profession, and extension of their profits. If we had taken part against all law reform, while we should have been unable to arrest its progress for an hour, we should have been deprived of the ability to do this good service, as well as many others, which we have been enabled quietly to effect by means of the help we have given to measures in their conception and progress.

Our readers may be assured that we have never framed a clause, or suggested an alteration, without having first carefully weighed its probable effects upon the well-being of the Profession; and it will be some satisfaction to them to know that almost all the propositions we have promoted with this view have received the sanction of the Legislature, and have become law.

We are acting on the same principle still; we are keeping a steady eye upon the welfare of the Profession in all that we suggest or support in the way of law reform. We are profoundly convinced that safety lies in going on; that change has proceeded so far as to diminish profits without having proceeded far enough to compensate for that loss in an increased amount of business. Therefore it is that we desire further improvements in procedure and in evidence. Whatever increases the number of *trials* will increase the emoluments of the Profession. The obstacles to *trials* of disputed demands are the difficulties, doubts, and delays, which induce suitors to settle or lay down their arms rather than fight. The welfare of the Profession will be promoted by simplifying procedure, speeding trial, and facilitating the discovery of the truth. Hence it is that we were the first to propose and strenuously to advocate the admission of parties as witnesses, and that we are now seeking to sweep away all

the remaining obstacles to truth at a trial, by removing the disability of a wife and destroying the privilege of refusing to answer criminatory questions. We believe that the adoption of these measures will be a great boon to the Profession, or we should not have suggested them, and helped them into existence.

For the same reason, and with the same regard to the circumstances, we desire and promote improvements in Conveyancing and the Law of Real Property. We know that the public mind is made up to have some reforms in this. We remember the history of the County Courts, carried adversely to the lawyers. We desire that they should not commit the same suicide now; but that they should avoid noxious innovations, which will be thrust upon them by their foes,—by wisely anticipating popular clamour, taking the matter into their own hands, and introducing safe improvements, by which they will disarm their enemies, conciliate rational reformers, and ward off those destructive measures which are sure to find favour if moderate progress of improvement be not visible. It is with this conviction that we recommend a voluntary change in the form of conveyancing charges, an abbreviation of conveyancing language, and certain improvements in the law of real property which would make its transfer less costly.

Of this we are profoundly convinced,—that safety lies now only in carrying improvements in the law and its practice to such a point that increased *quantity*, so produced, may compensate for diminished profits on each particular business. If, for instance, cheaper and speedier trial should lead to twice as many trials as there were before, the Profession will find its compensation for the loss of half the profits formerly produced by a single trial. We believe that, after a while, when the public begin to understand how easily, safely, and cheaply they can try their disputes, they will be less inclined to submit to wrongs, and there will be an *immense* increase of *trials*; in proof of which we adduce the County Courts, which dispose of some hundreds of thousands of matters before unknown to the tribunals, because without a remedy. So it will be with the Superior Courts. But even if in this anticipation we should be disappointed, still the fact remains that changes were inevitable; that the Profession could not successfully have resisted them; that it is wise to yield to the force of circumstances, and strive to turn them to the best advantage, than obstinately to offer a fruitless opposition, only to be swept away by the tide. This is the view which the able and intelligent speakers at Manchester took of the duties and interests of the Profession at this juncture, and that is precisely the course which we, consulting as our single object the general welfare of *the Profession*, have endeavoured to pursue. We believe that, in the long run, whatever improvement in the law is for the real benefit of the public will prove to be for the substantial advantage of the profession also. But if any question arises between them, on which their interests are opposed, we shall not hesitate to "stand by our order;" we shall side with the lawyers, as our duty is, fight *their* battle, promote *their* well-being to the best of our ability, and leave the public to be taken care of by their own champions.

Does this meet the approval of the reader? Does it not recommend itself to his judgment as the common-sense view of the question?

NOTES ON THE NEW RULES OF THE COMMON LAW COURTS.

The object which the author has in view in furnishing these notes is to elucidate the New Rules by reference to decisions on analogous rules annulled, revived, or obsolete—to point out the various alterations which have been in consequence effected in the proceedings of actions, and to embody, in the course of the commentary, such observations and directions as may be of service to the practitioner in the conduct of business in the Superior Courts. These rules, then, were framed by the Judges in pursuance of the authority conferred upon them by the Legislature under the 113rd section of the Common Law Procedure Act, and came into immediate operation, by virtue, it would seem, of the first and last clauses contained in that section, on their promulgation on the first day of Hilary Term, 1853. But the Rules of Pleading, which, it is understood, the Judges have recently framed for simplifying the pleadings in actions, require the previous sanction of Parliament under the 18 & 14 Vict. c. 16 before they can take effect. The extensive alterations which the Common Law Procedure Act introduced in the proceedings of the Superior Courts rendered it desirable, if not absolutely necessary, that rules should be framed by authority, as well to adapt the provisions of that statute to the new state of things as to ensure uniformity and simplicity of practice in the administration of justice in these Courts.

Uniformity of procedure was generally established in the Courts by the Rules of Practice of Hilary Term, 2 Will. 4. The Judges, too, announce in the preamble to the present rules that uniformity of practice is one of the objects contemplated in issuing them. That object, it will be seen, has been to a very considerable extent accomplished, as well as a consolidation of all the written rules of practice in force in the Courts.

Before we proceed to the consideration of the rules, it will be necessary to give the preamble *in extenso*, in order to render the illustration more convenient. It runs as follows:—

Whereas the practice of the Courts of Queen's Bench, Common Pleas, and Exchequer, in civil actions, in respect of which the said Courts possess a common jurisdiction, has been to a great extent superseded or altered by the Common Law Procedure Act, 1852, and it is expedient that the written rules of practice of the said Courts should be consolidated and rendered uniform: it is ordered, that all existing written rules of practice in any of the said Courts in regard to such civil actions, save and except as regards any step or proceeding heretofore taken, shall be and the same are hereby annulled, and that the practice to be observed in the said courts with respect to the matters hereafter mentioned shall be as follows; that is to say.

In the first place, then, it will be observed, that the rules are expressly limited in their operation *to civil actions* in respect of which the Superior Courts possess a common or concurrent jurisdiction. They will not, therefore, apply to informations filed by the Attorney-General in the Court of Ex. relative to revenue matters, or for the violation of the revenue laws (*Attorney-General* v. *Halling*, 15 M. & W. 687, 16 L. J. 303, Ex.; *Attorney-General* v. *Donaldson*, 7 M. & W. 422); that Court possessing a Common Law jurisdiction in addition to its original jurisdiction as a Court of Revenue. But where an action is brought by a private individual against a revenue officer for misconduct or excess of authority in the discharge of his duties, in any other court than the Ex., and the Attorney-General removes the action into that Court (which he may do at any stage of the proceedings,—see *Attorney-General* v. *Kingston*, 8 M. & W. 168; *Adams* v. *Freemantle*, 6 D. & L. 10; 3 Exch. 453), the action when so removed will nevertheless be proceeded with according to the ordinary rules of practice, as being *a civil action*. Nor will the rules apply to *prohibition* in all the branches of that proceeding, although each of the Superior Courts possesses the power of issuing writs of prohibition. The recent case of the Bishop of Exeter, who applied to the Courts in succession for the writ against Mr. Gorham, is an instance. The proceedings in prohibition, however, are not, of course, in the nature of a civil action, and so not within the immediate scope of the rules. But when the parties have been directed to declare in prohibition, the subsequent steps in the proceeding as regards the time for pleading, demurring, joinder in demurrer, setting the same down for argument and other similar incidents common to an action, will it seems, be regulated by the new practice: for the Act of 1 Will. 4, c. 21, which amended the proceedings in prohibition, has not prescribed the practice on these points. So the time and mode of pleading and demurring to returns to writs of *mandamus* will be according to the rules, although the Q. B. exercises an exclusive jurisdiction, with the exception of the Courts of the Counties Palatine, in issuing such writs. The 9 Ann. c. 20, 1 Will. 4, c. 21, and 6 & 7 Vict. c. 67, in substance provide that the practice in such matters which prevails in personal actions should be followed. The term "civil actions" has been adopted by the judges in preference to the term "personal actions," no doubt with a view of avoiding as much as possible limitation in the application of the rules. An ejectment will therefore be within the operation of the rules, except where the specific provisions of the Common Law Procedure Act otherwise apply to that action. So they will apply to replevin on removal of the proceedings in the plaint to the Superior Court, as a civil action in respect of which the Courts possess a common jurisdiction. But these and similar points of difference, which are found daily to occur to the practitioner, will be pointed out as we proceed, in their appropriate places.

In the second place it should be particularly noticed that the rules which are annulled are only the *written* rules of practice previously existing in the Courts in regard to civil actions. Although the abrogation of these rules is thus comprehensively and unconditionally effected, yet the substitution of other rules, and the practice consequent thereupon, is plainly limited to the particular matters mentioned. The words—"It is ordered that the practice to be observed in the Courts *with respect to the matters hereafter mentioned* shall be as follows:"—shows, on the part of the framers, either that the whole civil procedure of the Courts is not yet settled, or that further rules may be necessary, as circumstances may arise to require them. But all *unwritten* rules, such as the rule of ordering witnesses out of Court during the trial of a cause; of the right to begin on the argument of demurrers or special cases, or at the trial; the rule which regulates the audience of counsel, in point of seniority and number; the rule against hearing counsel at chambers during term (*Doe d. Roberts* v. *Roe*, 13 M. & W. 691); and many others which might be enumerated, remain unrescinded.

We proceed now to the consideration of the rules themselves. We reserve for a distinct commentary the forms which accompany the rules. We propose to treat of the rules separately, in the consecutive order, and according to the arrangement which the Judges have adopted, adding to each rule a short heading explanatory of its contents. Thus—

Writ of Summons, indorsed in Special Form, with Costs of Judgment.

R. 1. When a writ of summons is indorsed in the special form mentioned in sect. 27 of the Common Law Procedure Act, 1852, the following are the amounts which may be indorsed by the plaintiff's attorney or agent upon the writ for costs; and to include mileage:—

	£	s.	d.
In actions above 20*l.*:			
In town causes	3	3	0
In country or agency causes (including mileage)	4	0	0
In actions under 20*l.*:			
In town causes	2	14	0
In country or agency cases (including mileage)	3	2	0

Where the plaintiff's attorney, at the time of issuing the writ, claims more than the sums fixed as above, the indorsement on the writ of summons in respect of costs shall be as follows:—"Such sum as shall be allowed on taxation for costs." And in case the plaintiff shall be found not entitled to more costs than such fixed sums, or if more than one-sixth shall be disallowed, the plaintiff's attorney shall pay the costs of taxation. So if the attorney has indorsed on the writ one of the fixed sums for the costs of judgment, and claims more costs on signing judgment, and on taxation shall be found not entitled to more than such sum, or if more than one-sixth be taken off on taxation, the plaintiff's attorney shall in like manner pay the costs of taxation.

The immediate object of this rule was fixing the amount of costs to be indorsed when the writ is in the special form, under the 25th section of the Common Law Procedure Act, which the Legislature had confided to the Masters to fix, subject to the approval of the judges. These costs were fixed shortly after the Act came into operation. It may be well to notice that the costs thus respectively fixed include all costs to the time of signing final judgment in the action. It will seldom happen in practice that more than the fixed amount will be claimed *at the time of issuing* the writ, so as to necessitate the making of the blank indorsement, "such sum as shall be allowed on taxation for costs." For it is difficult to conceive how the costs in the ordinary class of actions to which the section applies can be made to exceed the fixed amount, to justify such an indorsement. When the object of issuing the writ with a special indorsement is speedy judgment and execution, it is not at all probable that this part of the rule will be brought into frequent or general requisition. The claim for excess is attended with the penalty of depriving the attorney of the costs of taxation. The application to tax the costs will be made generally by the defendant, after judgment against him upon a settlement, or on payment of the debt under a writ of execution. The latter branch of the rule is calculated, however, to be of much more practical effect in litigation where less than the fixed amount for costs has been indorsed on the writ;

and more are claimed on signing judgment, it will frequently happen that by reason of difficulties in effecting the service of the writ, extra costs may have been necessarily or reasonably incurred. These expenses the Masters will, in the majority of cases, undoubtedly allow. It is now usual for the Masters, on being satisfied of the justice of the additional claim, to allow the costs to the attorney *ex parte* on signing judgment. Notice of taxation of these costs is clearly not necessary to be given to the defendant within r. 61 of the New Rules, as no appearance has been entered by or for the defendant. The practice in this respect is similar to signing judgment on a *cognovit*, where a fixed sum for costs of judgment is always marked by the Master without taxation: (*Griffiths* v. *Lipscombe*, 2 Dowl. P. C. 143; *Clarke* v. *Jones*, 3 Dowl. P. C. 277.)

It will rarely happen that a defendant will apply to the Court or a Judge for a taxation of these costs. This could only be successfully done in clear cases, as where the Master has been grossly imposed upon, or the circumstances under which the costs were alleged to be incurred have been exaggerated. This portion of the rule would also seem to apply where the writ has been indorsed by mistake or inadvertence with a minimum sum for costs, as in a town cause, instead of the maximum sum, as in a country cause, or with a minimum sum, as in an action under 20*l.*, instead of the maximum sum, as in an action above 20*l.* There would apparently seem to be no reason against this allowance; but the point, it is believed, has not been raised.

This will be a favourable opportunity to mention an important point that should be observed in indorsing the writ, under the 25th section of the Common Law Procedure Act, where the debt is for the amount of a bill of exchange, promissory note, or cheque. The particulars in each of these cases should be so framed as to include a claim for the original consideration when the action is between the immediate parties, and for the amount as money due on an account stated when there has been an admission of liability to pay. For if the action is defended, and the particulars should not be amended, the plaintiff will be precluded from giving evidence at the trial under the count upon the consideration (*Wade* v. *Beasley*, 4 Esp. 7; *Ryder* v. *Ellis*, 8 Car. & P. 357); or from relying upon an admission under the count upon an account stated: (*Roberts* v. *Elsworth*, 2 D. N. S. 456; 10 M. & W. 153; 12 L. J. 15, Ex.; *Hedley* v. *Bambridge*, 2 G. & D. 483; 3 Q. B. 316.) Such is the practice in regard to the particulars when they are delivered in an action where the writ is not specially indorsed, and there does not seem to be any valid reason why a different rule should prevail when the writ has been specially indorsed. The 25th section enacts that the indorsement on the writ of the claim in such case should be "considered as particulars of demand," which would rather seem to indicate that these particulars should be subject to the same rule of practice. It is understood that the under-sheriff of Middlesex has recently ruled, in a case before him under the Writ of Trial Act, in accordance with the view here taken.

THE NEW COMMON LAW PRACTICE.

SERVICE OF DECLARATION WHERE DEFENDANT APPEARS IN PERSON.(a)

WHERE a defendant has appeared to the writ by an attorney having an address within three miles of the General Post-office, there is no doubt the declaration should be delivered at such address. The present rule of Court (R. G. H. T. 1853, r. 165) is quite clear on that point, and it would seem from the rule that, supposing the attorney has neglected to enter such an address in the book in the Master's office, the declaration may be fixed up without any previous application to or order of the Court or Judge.

But there is much more difficulty in determining the procedure after an appearance by the defendant in person. The defendant in such case is required to give an address in the appearance, and by sect. 36 of the Common Law Procedure Act, "if an address so given shall be illusory or fictitious, the appearance shall be irregular, and may be set aside by the Court or a Judge, and the plaintiff may be permitted to proceed by sticking up the proceedings in the Master's office without further service." By R. G. H. T. 1853, r. 166, however, the defendant is required upon entering an appearance to "enter in a book, to be kept for that purpose at the Master's office, an address within three miles from the General Post-office, at which all pleadings, notices, summonses, orders, rules, or other proceedings not requiring personal service, shall be left; and if such address shall not be entered in the said book, or if such address shall be more than three miles from the General Post-office, then the opposite party shall be at liberty to proceed by sticking up all pleadings, notices, summonses, orders, rules, or other proceedings, in the Master's office, without the necessity of any further service."

From inquiry at the Appearance Office in the Queen's Bench, it appears that the practice in this matter is to refuse appearances by defendants in person which do not contain an address; and whenever such appearances give an address, they are received and the defendant's attention is called to the requirement of the 166th rule, a notice of which is posted up in the office. It appears, too, as might have been supposed, that the officers receiving the appearance do not themselves cause an entry of the address in the appearance to be made in the address book, but simply inform the defendant that it is necessary he should enter an address which is within three miles of the General Post-office. No doubt the practice is similar in the other Courts.

It is not easy to see the solution of all the questions that arise from the different states of facts which these circumstances afford.

First, suppose the address on the appearance and that in the book are the same, that it is within three miles from the General Post-office, and that it is a true address. It is clear the declaration, should be left there. But suppose this address is fictitious; in this case the appearance might, under the 30th section, be set aside on an application made to the Court or a Judge; but then this question arises, is it afterwards necessary to stick up the declaration? The 30th section evidently contemplates this being done; but after an order setting aside the appearance, it would seem that there must be a nonappearance of the defendant, and that therefore the plaintiff would be at liberty, if the writ were specially indorsed, to file an affidavit of personal service of the writ of summons, or a Judge's order for leave to proceed, and a copy of the writ, and sign final judgment under sect. 27. If, on the other hand, the writ were not specially indorsed, it seems that the plaintiff would be at liberty, on filing an affidavit of personal service of the writ, or a Judge's order for leave to proceed, and a copy of the writ, to file the declaration, and sign judgment by default in eight days, under sect. 28. Of course, if an application is made, the order setting aside the appearance may, perhaps, impose terms as to the mode of proceeding.

Secondly, supposing the address in the appearance and that in the book are the same, but that it is more than three miles from the General Post-office, or that there is none in the book, then, whether the address given be true or fictitious, may the plaintiff disregard it, and stick up the declaration in the office under the 166th rule? Probably it is so. If so, is any previous application to the Court or a Judge necessary? The language of the 166th rule leads one to answer in the negative, especially when that of the 162nd is looked at, in which pleadings are not mentioned, and which probably applies to cases where a change of residence has taken place after appearance. "When the residence of a defendant is unknown, rules, notices, and other proceedings may be stuck up in the office, but not without previous leave of the Court or a Judge." The 30th section is not imperative, and therefore there is little doubt that service might, in the cases now supposed, be made at the address given. But if the address so given be fictitious, then the appearance may be set aside, "and the plaintiff may be permitted to proceed by sticking up the proceedings," under the 30th section, or under the 166th rule he is "at liberty to proceed by sticking up all pleadings," &c. It would seem, therefore, that in these cases the plaintiff must consider whether he had better stick up the declaration under the rule of Court, and not apply for an order, or whether he will apply for an order, and adopt any conditions that may be imposed by it; and if it be unconditional, then, whether he will stick up the declaration, or treat it as a nonappearance as mentioned above.

Thirdly, then suppose the address on the appearance is more than, and that in the book within, three miles from the General Post-office, and that they are both true, where should service be made? There is little doubt that at either address it would be sufficient, though the language of the 166th rule is more like the imperative than that of the 30th section. Practically, no doubt it will usually in this case be served at the address entered in the book under the rule. But suppose the address in the book be fictitious, then, if the 166th rule had been the only provision in the matter, it would probably have been necessary to make a special application to the Court; but it is hardly likely that the Court or a Judge would be satisfied in this case (assuming there is a power to dispense with service), unless some inquiry had been made at the address given in the appearance; and, if this were a true one, they would doubtless require it to be served there. If, on the other hand, the address entered in the book be a true one, service should certainly be made there, whether that in the appearance be true or false.

Fourthly, suppose the address in the appearance be a true one, and within three miles from the General Post-office, but no address entered in the book, the plaintiff seems then to be "at liberty to proceed by sticking up all pleadings," &c. under the 166th rule, or he might certainly serve the declaration at the address given in the appearance.

The 162nd rule above quoted may be supposed to have some influence on these questions, but probably it will be found not to have any effect. Although pleadings were held to be within rather less general words in the old rules as to the attorney's address (*Blackburn* v. *Peate*, 2 C. & M. 244), they can hardly have been meant to be included in this rule, as they are expressly mentioned in rules 164–167. This rule is evidently copied from the former rule as to sticking up the notice of the declaration (R. G. H. T. 2 Will 4, r. 49); indeed, it is a verbatim copy of the old one, substituting "rules, notices, and other proceedings" for "notice of declaration." Under the former rule it was held, that a separate application and order was necessary for sticking up each proceeding.

The general practical advice to the plaintiff as to these difficulties seems to be briefly this:—First apply to the address in the book, if there is one, and it is within three miles of the General Post-office; if one is not entered, or it is more than three miles, or it is unsatisfactory, apply to the address in the appearance; if that is fictitious, it will depend somewhat on the circumstances of each case whether it will be wiser to proceed under the 30th section, or under the 166th rule.

(a) By GEORGE TAYLOR, Esq., Barrister-at-Law.

THE MAGISTRATE,

AND PAROCHIAL AND MUNICIPAL LAWYER.

Summary.

WHERE a workhouse had been erected and maintained under local Acts, which exempted it from poor-rates, and afterwards purchased by the guardians of the union of which the parish in question was a part, and used by them as the union workhouse, it was held that the premises, being no longer used under the local Act, were liable to be rated at their improved rateable value, and that the exemption in the local Act ceased: (*Reg.* v. *Guardians of the Worcester Union*, 20 L. T. Rep. 275.)

A curious and interesting point on the jurisdiction of magistrates in cases of libel, and involving some other important questions, was decided by the Q. B. in *Haylock* v. *Sparke*, 20 L. T. Rep. 276. It was held, that in some cases of libel against a private person, a magistrate *may* require sureties for good behaviour. The cases and data are collected in Lord Campbell's very learned judgment, which we recommend the reader to peruse. The warrant of commitment for not finding sureties was quashed by the Q. B.; but defendant had given notice of action against the committing magistrate before the quashing of the warrant. This was held to be sufficient notice. The warrant recited the information, and this was held to be *evidence* that the magistrate in granting the warrant had jurisdiction, if, by law, such jurisdiction existed; and, lastly, it was held, that evidence was not admissible at Nisi Prius to show that plaintiff had actually written the libel.

Section 26 of 9 Geo. 4, c. 61, provides that so much of any penalty imposed by that Act as is not awarded to the prosecutor shall be paid to the treasurer of "the county or place" for which the justice was acting when the penalty was imposed. The word "place" was held to be a place for which a court of quarter sessions is held. Where,

therefore, a penalty was imposed by two justices of a borough which had a commission of the peace, but no court of quarter sessions, and a moiety only was awarded to the prosecutor, the informer of the county was held to be entitled to the remaining moiety: (*Reg. v. Dale*, 20 L. T. Rep. 284.) Strange to say, this point was raised in this form of a case for the *Court of Criminal Appeal!* How, let the reader learn by reference thus.

As it was impossible, within the limits of a journal that is designed to keep the Profession informed of the progress of all departments of the law, to give more than a summary of so extensive a branch of it as that which is administered by magistrates, it was deemed desirable to issue a monthly sheet devoted entirely to this subject, giving in full the information which here could only be given briefly. In this manner *The Magistrate* has been published for several years. But the recent changes in the law, especially of *Removal*, have so diminished the quantity to be reported, that we find even a monthly sheet to be more than is necessary to convey the information required by magistrates and their clerks. In consequence with the suggestions of many of the subscribers, it has been determined accordingly to make an important alteration, and instead of a monthly sheet, in the form of a journal, to issue, at the same annual cost, a *quarterly* part, *in the form of a book*, to appear immediately before each Quarter Sessions, containing all the law of the preceding quarter, forming, in fact, a constant supplement to Burns or Archbold, and at a very trifling cost; and thus it will have all the value and authority of a book, and be a permanent addition to the library.

To this end its contents will be arranged. It will comprise, 1st. Reports of all the Magistrates' and Sessions Cases decided during the quarter, paged separately, so as to bind into volumes as a complete series of reports. 2nd. The new Magistrates' Statutes, with notes and index, &c. separately paged in like manner, so as to bind in distinct volumes. 3rd. A digest of the new Magistrates Law, similar to Burn and Archbold, to which it will be a supplement; and, 4th. Short practical Treatises on important branches of magistrates' law, not large enough to justify the cost of separate publications, but nevertheless of great utility and value to all engaged in the administration or practice of magistrates' and parish law.

All this practically useful information will be supplied in quarterly parts, at a less annual cost than was that of the reports of the Sessions Cases alone, namely, 5*s.* 6*d* per part. Its size will be *octavo*, and it will be a BOOK, and not a journal, containing all the law decided by the courts or enacted by the Legislature upon the subjects to which it relates, arranged and indexed for practical use. It will be sent to subscribers by post on the day of publication, previously to each Quarter Sessions (paid). The first part will appear on June 30th, and it will be called "The Magistrates Courts and Quarter Sessions Hand-Book."

SETTLEMENT OF BASTARD CHILDREN.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Your correspondent W. P. P., at page 210 of your impression of the 19th Feb., referring to the recent judgment of the Court of Q. B. as to the settlement of illegitimate children when they have attained the age of sixteen years, states as follows:—

"I do not see how any of the alleged severity and cruelty to pregnant single women can arise, as *they are no longer deemed chargeable, and therefore removable, as formerly.*"

I should feel obliged if your correspondent would refer me to the authority under which he propounds this proposition. Probably, when your correspondent asserted this to be the law, he had in his mind the provisions of the 9 & 10 Vict. c. 66, sect. 4. But, if this be so, it will be found, on a careful perusal of the clause, that it applies only to cases of "sickness."

To support W. P. P.'s proposition that a pregnant single woman is not removable, it must therefore (unless indeed there be other authority for it, of which I am ignorant) first make out that pregnancy is a *sickness* within the meaning of the clause; secondly, that under any circumstances in which relief is given to a pregnant single woman it is "*made necessary by such sickness*" (see the express wording of the clause); and thirdly, that such sickness "*will not produce permanent disability.*" If all these conditions be fulfilled in every possible case, then, of course the proposition laid down by W. P. P., that pregnant single women are not removable (I don't say not chargeable), is correct.

W. P. P.'s doctrine appears to me so very unsound that I can afford to admit, for the sake of argument (and for that only), that pregnancy *is* a sickness within the meaning of clause 4 of the statute referred to. But W. P. P. will then be reduced to the necessity of showing that where a pregnant single woman has confined to her, without increase or diminution, the relief which was originally granted to her under circumstances of ordinary destitution, such relief is, in the words of the clause, "made necessary" by such sickness. May I beg W. P. P. to attempt the solution of this difficulty?

As to pregnant single women who are in the actual receipt of relief, not being chargeable, I am equally at a loss for the authority under which W. P. P. expresses such an opinion.

I am, Sir, yours, &c.

H. CLEMENTS LLOYD.

ABSCONDING OF THE GOVERNOR OF CHESTER GAOL.—Information was received on Thursday last at the various Metropolitan and City Police stations from the magistrates acting for the city of Chester, offering a reward for the apprehension of Mr. Horatio Nelson Tivy, late governor of Chester city gaol, who had absconded in the course of last week with several sums of money he had embezzled, the property of the town council. He is described as forty-eight years of age, rather slender in person, and of dark complexion. He is supposed to be a native of Cork, having formerly been an officer at Tranmere. He is also accused of having purloined a quantity of property belonging to the prisoners in the gaol, which had been deposited in his hands for security. He is suspected to be concealed in the metropolis, preparing for a trip to Australia. It is stated that an examination of his accounts disclosed serious frauds. What renders his case more painful is, that he has left his children at Chester unprovided for.

REAL PROPERTY LAWYER AND CONVEYANCER.

Summary.

AMONG the mass of reports in our last, two only related to this branch of the law, usually so fertile, especially in the Equity Courts. One of them was on the construction of a will, and not capable of being usefully analysed here. The other was on the *Law of Landlord and Tenant*, and was raised in the form of a County Court appeal. It was held in *Mountney* v. *Collier*, 20 L. T. Rep. 277, that in an action for rent, the tenant, although still in possession, may show that his landlord's title has expired by notice to quit given by the rightful claimant to the landlord, and notice to the tenant not to pay any further rent; and that he may also show the right of the party claiming, by declarations of a deceased person through whom the landlord came into possession as personal representative. At the first blush this appears to be in fact a question of title, and, therefore, out of the jurisdiction of the Co. C.; but Coleridge, J. laid down the law thus: "*As a general rule, we think that a tenant may show that his landlord's title has expired*, and that, if the case *then* resolves itself into a question of title, the Judge of the Co. C. has no further jurisdiction.

COSTS OF CONVEYANCING.

TO THE EDITOR OF THE LAW TIMES.

SIR,—A good deal has been said respecting the costs of conveyancing. We have been preparing conveyances and mortgages of a land society here at 10*s.* each; and we are preparing mortgages of 50*l.* at from 2*l.* 2*s.* to 2*l.* 10*s.* as we can get it. The London lawyers will not do this, nor should they; but we must, as, if one will not do it another will, such is the system of "cadging" in the country. LEX.

Queries on Points of Practice.

STAMP.

By indenture A. conveys certain freeholds absolutely to B. in consideration of a yearly fee-farm rent of 30*l.* There is a power of distress and a proviso for redemption of the rent on payment of 800*l.* and arrears. What stamp or stamps should be placed on the deed? L.

REGISTRATION OF DEEDS.

THE following is from an article in *The Times* proving that public opinion, as well as the judgment of the profession, is opposed to this scheme.

Probably, of all subjects connected with law reform, there is none so important in itself, and so eagerly desired by the nation, as the *simplification* of the *titles* and *facilitation* of the *transfer of land*. It is felt that by such a measure the value of real property would be raised, and that not merely litigant parties, but every one possessed of an interest in the soil, would profit largely by the change. It is, therefore, with much regret that we hear it reported that it is the intention of Government to introduce a measure for the registration of deeds and assurances, instead of directing their attention to the means of effecting more readily a transfer of the ownership in land.

There was, indeed, a time when the registration of deeds would have been considered a great advance towards a reform of the Law of Real Property. The assumption on which that idea rested was, that our landed and immovable system of titles was in itself good and wise, and only required greater notoriety and publicity. An exaggerated idea was entertained of the evil of secret conveyances, and a fear of the effects of constructive notice. It was also felt, very truly, that under the present system no lawyer has the full evidence of title before him when he declines, and can only give his opinion, subject to the production of deeds not disclosed on the abstract. We may readily concede, that had the Law of Real Property been in itself really sound and rational, a registration of deeds, fixing every purchaser with actual notice of their contents, would have brought it some steps nearer to perfection.

But of late years mankind have left off considering the law of England as the perfection of reason, and have begun to doubt whether, by more completely carrying out its principles and tendencies, they are not aggravating a great evil, instead of promoting a great good. The registration of deeds has been ably combated by Lord St. Leonards with reasons of great weight and force; and it has come to be admitted by most men that cheapness is not among the advantages to be expected from the introduction of this elaborate and costly expedient. The belief is more and more gaining ground that the principle of our Law of Real Property is radically and essentially faulty. That principle, has been to fetter the land by saddling its title with every contract relating to its possession. If a man conveyed land to another in trust for a third party, the reasonable construction of the contract would seem to be, that the trustee should be the owner of the land, and that the right of the person for whose benefit it was conveyed should be a mere personal confidence, not binding on the land at all. The law of England, however, determined otherwise. It held that by this transaction two estates in the land were created, and that no title would be good which did not thoroughly trace out and unite them both. The object of this doctrine was the praiseworthy wish to carry out the original intention of the parties. Its unforeseen effect was to render the titles to land a mass of complexities and absurdities. The land became, so to speak, the tablet on which any owner could write whatever he pleased, and the caprice, the vanity, or the prodigality of one person is thus perpetuated in baneful inheritance to future generations. People have begun to feel that, had these same principles been applied to stock, had every person in whose name a hundred pounds of the public debt stood in the books of the Bank of England been compelled to show, not merely his ownership, but all the interests, several and successive, of the persons for whom he is trustee, the title to stock would be at this moment as intricate as the title to land, and the conveyance as expensive. If we are to have cheap conveyances and simple titles, this can only be done in one of two ways,—either by reducing the different forms of ownership to a fee simple, and thus curtailing the dominion which Englishmen have been for ages in the habit of exercising over their property, or, if we are not prepared for such a sacrifice, by disconnecting these lesser interests from the land, and recognising, for the purpose of conveyance, nothing short of the most complete ownership. Complicated titles cannot co-exist with short and cheap conveyances, and it was mainly because it tends to perpetuate and stereotype these complexities that public opinion runs so strongly counter to a registration of deeds. We do not want to know the history of our neighbour's land for the last 100 years, not to be fixed with notice of every transaction affecting it. What we want is to be dispensed from the necessity of such knowledge, and to be referred by the law to persons with whom we may safely deal without entering into any such perilous investigation. This desideratum has been effected in stock and in manors where the rolls have been carefully kept, and there is no reason in the nature of things why the same facility of transfer and dispensation from the investigation of title should not be extended to freehold land.

THE TITHE COMMISSION.—The Tithe Commissioners' Report is printed. To the close of last year the commissioners had confirmed 13,711 distinct mergers of tithes or rent charges. Additional powers are required before tithe commutation can be completed.

JOINT-STOCK COMPANIES' LAW JOURNAL.

Summary.

WHERE two railway companies had agreed to use a line jointly upon certain terms, and afterwards one of those companies leased their line to a third company for a long term, it was held that, upon the construction of their Act of Parliament, such third company was entitled to the benefits of the agreement made by the lessors: (*London and South-Western Railway Company* v. *The South-Eastern Railway Company*, 20 L. T. Rep. 281.)

WINDING-UP PETITIONS, ORDERS, MEETINGS, APPOINTMENTS, CALLS, &c.

[Announced, issued, and meeting during the week.]

Oxford and Worcester Extension and Oxford Junction Railway, with branches to Wolverton and Northern, Confirmed.—Call for 1*l.* 15*s.* [illegible] transferees included in the first class list who have not paid the deposit of two guineas per share. 1st July, 1853.—Rose.

THE LAWYER.

Summary.

EQUITY PRACTICE.—The M. R. stated, in *Brown* v. *Oakshot*, 20 L. T. Rep. 268, that he should dispose of applications for appointment of a receiver, either at chambers, or, if the parties disputed it, in court; but should not order a reference to the *Master*; and in *Prince* v. *Cooper*, 20 L. T. Rep. 269, his Honour observed that "the 55th section (of cap. 86) was intended to apply to cases where, for the protection of the property or any other cause, it was necessary to come to the Court for an order for sale; but not to enable any party in a contested suit, upon such an application, to obtain a decision of the questions in the cause before the hearing, and he should discourage any such attempt." STUART, V. C. has permitted the answers of defendants in a suit to be read as affidavits, the plaintiff to be at liberty to cross-examine them in the same manner as if they had made affidavits: (*Howell* v. *Williams*, 20 L. T. Rep. 274.) And WOOD, V.C. has held it to be necessary to ask leave of the Court to set down a special case, under sect. 13 of Sir G. Turner's Act, where the defendant is a *feme covert*: (*Anon.* 20 L. T. Rep. 275.) Where a plaintiff desired the production of documents which his solicitor in an affidavit stated that he believed were in defendants' possession, and upon this affidavit alone applied for a summons, it was held by STUART, V.C. to be insufficient. "The plaintiff," he said, "should have filed an affidavit with interrogatories, which was a practice now sanctioned; or should have proceeded by bill and obtained an answer, making a case for production, and ought not to rely on his own affidavits and letters from the defendants on the subject of the documents:". (*Wing* v. *Harvey*, 20 L. T. Rep. 274.) In *Chadwick* v. *Chadwick*, 20 L. T. Rep. 272, TURNER, V.C. refused to protect a defendant from the production of documents which would expose him to a prosecution for perjury. Where a claim for specific performance alleged a joint contract, WOOD V.C. held, that it must be proved, or the claim dismissed: (*Wollaston* v. *Osborn*, 20 L. T. Rep. 274.)

SALES BY SOLICITORS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—The suggestion of X. in your last is a good one. As all classes are trying to oust the respectable part of the Profession by curtailing the cost of conveying, &c. and by employing auctioneers and accountants to do what they can, and which the solicitor ought to do, I do not see why solicitors should not have the power to dispose of their clients' *real* property by auction. Unless it is done, some plan will be devised by disposing of it by ticket, the candle, or some other means, as the auctioneer's charges form a large item in the solicitor's charges. I trust some influential member will take it up. Why should not Lord Robert Grosvenor agitate the question on his proposed motion respecting the certificate duty, or the Law Institution? I am, Sir, yours, &c.

LEX.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I fully agree with your correspondent X. as to the propriety of attorneys and solicitors being allowed to dispose of estates by auction, provided the certificate duty should not be taken off. I for one intend, when the proper time arrives, to take out an auctioneer's licence.

The auctioneers and accountants are continually making inroads upon the regular business of the attorney. A short time since a client of mine happened to purchase a small property by auction, and an abstract of title, of considerable length, was left at his house, but the sales was not indorsed with the name of any one. Upon inquiry it turned out that the auctioneer, who had been an attorney's clerk, furnished the abstract; and it was understood that this personage continues still occasionally to carry on the same trade in the [illegible] in which he resided. I am, Sir, yours, &c.

AN ATTORNEY.

TO THE EDITOR OF THE LAW TIMES.

SIR,—We see with much pleasure that you approve the suggestion of your correspondent X. that attorneys be taxed, by payment of the present certificate duty, to support the Law Institution.

Now that law reform and extinction in law charges have become almost fashionable topics," we think that the hunting-up of abuses might profitably turn his attention to reform in auctioneers' bills, which it has hitherto been the practice of the public to pass and allow without demur, and almost without looking to more than the totals, though on investigation they present charges most incomprehensible. And why is this? First, because when the auctioneer's services are required there is in most cases a considerable sum of money to receive, of which he takes advantage; and secondly, because the auctioneer *pays himself* out of the deposit which it is the practice for him to hold, and merely hands over the balance and his receipted bill. And what a bill! We have several now before us; we also turn to our own bills in the same transactions; we compare them; mark the result. In the three transactions to which these accounts relate we find that *the solicitor*—the professional man, who has contributed 120*l.* to the revenue for leave to be articled; who has paid nearly 50*l.* more in the shape of stamp and fees for permission to commence practice; who still pays a considerable yearly sum to continue to practise; who has, moreover, had a long, expensive, and unpaid noviciate to pass through—receives in two of them nearly half, and in the other less than a third, of the *hard-earned* amount paid to himself by *the auctioneer*, the non-professional man, who, without any special education, may yesterday have been but a man and to-day is "an auctioneer," and therefore qualified to remunerate himself at a rate, considering the amount of work done, the skill required, and last, though not least, the responsibility incurred, of ten times the *exorbitant* charges of the solicitor. And, not satisfied with these great privileges conferred upon him by his licence, he (I speak of him as of a genus) is ever encroaching upon the province of the solicitor. He prepares agreements; he draws wills; he adjusts complicated accounts; and, to crown all, he styles his employers his *clients*.

We say, then, let the solicitors, now that every man's hand is against them, make common cause, and serve at once their clients' interests and their own by demanding of the Legislature, as a matter of justice, that the suggestion above alluded to be carried out.

Liverpool. We are, Sir, yours, &c.

A COUNTRY FIRM.

Queries on Points of Practice.

ABSCONDING DEBTORS' ARREST ACT, 1851.

SECT. 1 of this Act empowers "the judge of any district County Court (except the County Court judges acting in the counties of Middlesex and Surrey), on application, &c. and proof of debt and intention to abscond, to grant a warrant for the debtor's apprehension."

On applying to the judge of one of our Yorkshire Courts, a few days ago, his Honour declined granting a warrant, on the ground that he was not then sitting in the particular district in which the debtor resided. It was urged, on behalf of the creditors, that if this were the requirement or meaning of the Act, it would have been so expressed in the enactment, and that this would render the Act, except in very rare instances, perfectly nugatory; but his Honour adhered to his own construction of the enactment, observing that he believed there was as yet no authority to the contrary.

Perhaps some of your readers can refer me to a case on the subject, or will kindly state what is the usual practice?

ALPHA.

Answers to Queries.

THE NEW PROCESS.

IF the question of A. B. in LAW TIMES of the 15th ult. has not already been answered, he will find the information he wants on referring to *Parson* v. *Lloyd*, 2 Wils. 309; *Jarman* v. *Hooper*, 7 Scott, N. R. 663; *Green* v. *Elgie*, 5 Q. B. 99; and Macnamara on "Nullities and Irregularities," pp. 6, 25.

C. N.

COUNTY COURTS.

Summary.

Two Co. C. appeals were reported last week. In *Mountney* v. *Collier*, 20 L. T. Rep. 277, besides a question of general law noted elsewhere in its proper place, the Court laid down this rule for the guidance of the Judge, and which should be carefully noted: "As a general rule, we think that a tenant may show that his landlord's title has expired, and that if the case *then* resolves itself into a question of title, the Judge of the Co. C. has no further jurisdiction."

In *Fuller* v. *Cheveley*, 20 L. T. Rep. 278, it was held by the C. B., that where letters unstamped were tendered in evidence to prove a contract, it was a question of law for the Judge, and not of facts for the jury, whether they were admissible. In the same case it was determined also, that the Court of Appeal has power to order a nonsuit to be entered, because in effect a nonsuit is a judgment for the defendant.

Several cases in *Insolvency* are to be noted by the practitioner. In reckoning the amount of a trader debtor's liabilities, debts barred by the statute are to be included, and if these, added to the debts not yet barred, exceed 300*l.* there is no jurisdiction: (*Re Lockwood*, 20 L. T. Rep. 283.) Where a petition had been filed in the London Court by mistake for the adjoining County Court, the Court dismissed the petition, directed the books to be given up, and restrained the assignee from selling: (*Re Stephens*, 20 L. T. Rep. 283.) In the same case it was held that, although the residence of an insolvent be within twenty miles of the General Post Office, yet, if the parish church of the parish be beyond that distance, an insolvent must petition in the Co. C. In *Re Trotter*, 20 L. T. Rep. 284, a vesting order on a creditor's petition obtained against a prisoner who is only in custody on mesne process on a capias was held to be void *ab initio*. In *Re Atkins*, 20 L. T. Rep. 284, debts secured by mortgage were required to be reckoned in the amount of a trader debtor's liabilities; and in *Re Meacock*, 20 L. T. Rep. 284, it was held that a petitioner, who has assigned all his property to a trustee for his creditors generally, within three months of the date of the petition, has no *locus standi* under the Protection Acts.

A point in this branch of the law is reported from Nisi Prius. In *Levy* v. *Hook*, 20 L. T. Rep. 284, it appeared that A. had in his schedule described a bill as drawn by B. and accepted by himself. It was held that if he knew who was *the holder*, this was an insufficient description, and that he was *not* discharged from the claim of such holder. If he knew that it had left the hands of the drawer and was at the time of filing his schedule out in the world, he is bound to show some effort to ascertain the holder, or he will not be discharged. Nor would he be so if the amount was wrongly stated, should the jury be of opinion that the error arose from culpable negligence.

COUNTY COURTS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—There is one evil attending the County Court practice which has not, I believe, been noticed either by yourself or by any of your correspondents, and that is the expense and inconvenience incurred by suitors living at a distance from the court town, in going to the court for the purpose of making an application for leave to summon a party residing out of the district. In the metropolis, where the distances are short, and the cost of conveyance is inconsiderable, it is not of much consequence; but in the country it is a real grievance, especially as there are no costs whatever allowed for it.

In the district in which I live, parties are obliged to travel as much as fifteen or sixteen miles to the court, and on roads where not even a coach passes; so that unless they have a vehicle of their own, they must either hire one or travel on foot, however inconsiderable the debt may be.

Amongst the improvements suggested, there should be a remedy for this. Surely the clerk of the court would be competent in every case to grant such an order *at the time of entering the plaint*.

I am, Sir, yours, &c.

March 3, 1853. M. M.

TO THE EDITOR OF THE LAW TIMES.

SIR,—The 22nd section of 1 & 2 Vict. c. 110, authorises the removal of judgments of inferior courts of record into the superior courts upon the application of the persons recovering them. Now is it not desirable that some enactment should be passed declaring the County Courts to be inferior courts of record *within* the meaning of the section referred to? or is there no room for a doubt that they are not within the section?

The County Courts, it will be recollected, have been established since the passing of the 1 & 2 Vict. c. 110.

I am, Sir, yours, &c.

A SUBSCRIBER.

BREACH OF CONTRACT WITH A CABIN PASSENGER.—A very important case was tried in the Sheriffs' Court before Mr. Russell Gurney. It was the case of *Hill* v. *Roskell*, and was an action to recover damages for a breach of contract in the conveyance of plaintiff, his wife, and family, from Australia to London. The damages were laid at 50*l.* From the evidence adduced it appeared that in June last the defendant, whose vessel, the *Asia*, was then lying at Adelaide, contracted to convey the plaintiff, his wife and family, to London as cuddy passengers, supplying them with provisions, &c. of the first quality, medical comforts, &c., in consideration of a payment of 130*l.*; he, however, failed, inasmuch as there was a deficiency of water and medical comforts, there was no milk, an insufficient supply of bread and preserved tin meats, and other comforts and luxuries to which first-class passengers were entitled, the result being that plaintiff and his family suffered severely, and one of the children, from want of medical comforts, contracted scurvy, and was not yet recovered. Captain Roskell and the cuddy servant gave testimony that the pas-

sengers were amply supplied, except when interrupted by stormy weather; the passage had been very well received, and the sheep, pigs, and other stores provided for the passengers' use, were washed overboard, and could not be replenished, until the vessel reached Bahia. His Honour considered defendant had not fulfilled his contract. Verdict for plaintiff. Damages 30*l*.

MERCANTILE LAWYER.

Summary.

Several cases, in the *Law of Bankruptcy* were reported last week. The following were the most interesting. In *Ex parte Reply*, 20 L. T. Rep. 267, a landlord had distrained for rent prior to an act of bankruptcy; but before the sale the tenant was adjudicated a bankrupt. The landlord was held, upon appeal, to be entitled to retain six years' arrears of rent distrained. It was held in *Ex parte Bull*, 20 L. T. Rep. 267, that drawers in a mine, being employed by the colliers, and not by the occupiers, could not prove against the estate of the latter for wages due to them at the time of bankruptcy.

A case of very great importance is that of *Pannell v. Ex*, 20 L. T. Rep. 269. The creditor of a bankrupt in England, instead of proving his debt under the bankruptcy here, proceeded in the Court of Session in Scotland to establish his debt, and to attach property belonging to the bankrupt which was vested in the assignees in England. The Court of Chan. restrained the creditor from prosecuting such action.

Where a trader under s. 41 of 7 & 8 Vict. c. 96 filed a declaration of insolvency and was adjudicated a bankrupt, and on his own application, the act of bankruptcy, on which a creditor afterwards founded his petition, was held to be the declaration of insolvency, and that there could be no relation further back than to that Act. Therefore, where there had been an alleged fraudulent preference and taking in execution, the assignees could not treat either of such as the act of bankruptcy. They might treat the transaction as fraudulent; but, if it were so, it did not make it absolutely void, but only voidable, at their option. Goods, therefore, so assigned passed to the purchaser, and he was entitled to sue for all injuries done to them until the assignees interfered and claimed them; and even subsequent interference by the assignees did not take the property out of the purchaser from the time of his first possession of them. In the same case it was intimated that a fraudulent preference might be impeached by the assignees as voidable, though at the time there was no petitioning creditor's debt; and that under ss. 88 and 101 of 12 & 14 Vict. c. 96, where a trader is adjudicated a bankrupt on his own petition, there can be no relation back to any prior act of bankruptcy. (*Stoveken v. Newnham*, 20 L. T. Rep. 279.)

ASSURANCE CHRONICLE.

The Railway Passengers Assurance Company.—*By the report read at the seventh half-yearly meeting on Wednesday, it appears that the total amount received for premiums during the half-year is 4,856l. 4s. 5d., and the entire income for the year 1852 is 9,422l. 12s. 6d. against 7,352l. 18s. for 1851. The latter sum included, however, 649l. 17s. 6d. for insurance of railway servants, which has not been renewed, and which should be deducted in order to estimate the actual increase of business from passengers during the past year.*

The following table shows the number of tickets issued during the three years of the society's existence:—

	Single Journey Tickets.			Double Journey Tickets.			Periodical Tickets.
	1st Class.	2nd Class.	3rd Class.	1st Class.	2nd Class.	3rd Class.	
1850	34,626	60,040	40,226	—	—	—	2,820
1851	29,390	74,616	123,468	—	273	19,471	2,227
1852	23,494	40,582	72,342	3,027	5,431	12,299	2,715

PROCEEDINGS OF LAW SOCIETIES.

METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

The following letter has been addressed to Lord St. Leonards by the secretary of this association:—

TO THE LORD ST. LEONARDS.

My Lord,—Your Lordship is reported in the daily papers of the 13th Nov. last, to have made the following observations in delivering judgment in the Court of Chancery:—"In compliance with orders to that effect, letters had been written to 4,480 persons who appeared as Masters Extra in Chancery, calling on them to show by what authority they exercised their office, and for the production of their certificates. Answers had been received from no more than 2,480 of the number. His Lordship now knew something more of these gentlemen, and would have them a little better under control than they had hitherto been."

From this it might be inferred that your Lordship considered that the Masters Extraordinary of the Court had been wanting in proper respect in not answering a communication of your Lordship's on the subject of their authority to exercise their office. Several of those gentlemen, therefore, who are members of this association, have requested the committee to inquire into the matter, and, if possible, to remove any erroneous impression of your Lordship's upon the subject.

These gentlemen feel that it is due both to your Lordship and to themselves that the matter should be inquired into; as, on the one hand, they would be much pained that your Lordship should think them wanting in respect towards yourself, and, on the other hand, they do not doubt that if any mistake has been made, it will be your Lordship's wish to have it set right.

The committee have accordingly put themselves into communication with the general body of their provincial members, who include several hundreds of the leading solicitors in all the principal towns of the kingdom; and the result is, that they have not been able to find *one* solicitor who has received or even heard of any such circular as that mentioned by your Lordship, and they have received letters to this effect from Masters Extra in upwards of forty towns in all parts of England.

They have, however, learned that in July last an order of your Lordship's was inserted in the *London Gazettes*, requesting "all Masters Extra to transmit to the principal secretary of the Lord Chancellor, on or before the last day of August, a statement in writing mentioning their names, their place of residence, their actual occupation, and the date of their appointment."

The *London Gazette* is very seldom seen, and still more seldom read, even by solicitors; and if that had been the only notice they had received, it is probable that the order would not have been seen by one in a hundred of the Masters Extra, instead of its being complied with, as it was, by considerably more than half of the entire number.

The order was copied into the three principal law papers, the *Jurist*, the Law Times, and the *Legal Observer*. The committee have also ascertained that it was in several instances mentioned to provincial solicitors by their London agents, and by these means a considerable number of Masters Extra became aware of it, and made the desired return; but many of the gentlemen with whom the committee have now been in correspondence upon the subject state that they had heard nothing whatever about it until they received the first communication from the committee.

Under these circumstances the committee have felt it their duty to put your Lordship in possession of the real state of the matter, and trust that your Lordship will feel satisfied that the imperfect return obtained to your Lordship's order did not arise from any inability on the part of those to whom it was addressed to make the return, or from any want of a proper respect to the order made by your Lordship; and they earnestly hope that when an opportunity occurs your Lordship will relieve the members of the Profession from the erroneous imputation which your Lordship's reported observations are calculated to convey.

I have the honour to be, my Lord,

Your Lordship's obedient servant,

William Shaen, Secretary.

8, Bedford-row, 16th Feb. 1853.

MANCHESTER LAW ASSOCIATION.

(Abbreviated from the Manchester Guardian.)

ANNUAL DINNER.

The annual dinner took place on Monday evening, at the Palatine Hotel, Hunt's-bank. There were between forty and fifty gentlemen present, amongst whom were Mr. John Barlow, president of the Association, who occupied the chair; the Mayors of Manchester and Salford; and Messrs. S. Heelis, G. Thorley, C. Gibson, J. Street, E. Worthington, R. B. B. Cobbett, S. Fletcher, T. T. Bellhouse, F. Robinson, N. Earle, P. Bunting, R. Radford, T. L. Rushton, of Bolton, &c.

The usual loyal toasts having been enthusiastically received,

The Chairman proposed "Prosperity to the Manchester Law Association." This Association was not founded upon any selfish views, or upon class principles, on the part of the profession, but upon the broad basis indicated by its motto, "*Fiat Justitia.*" The unpaid services of an intelligent, painstaking body of professional men had for the last fourteen years been directed towards protecting the public of this immediate neighbourhood from the malpractices and designs of those pests to society who, under the cloak of the law, brought it into discredit, whilst they battened on the fruits of their villany at the expense of the respectable and honourable practitioner. The same body had, without ostentation and without reward, during a like period watched over the numberless bills that had passed through Parliament—bills affecting deeply the interests of the public, and their energies had been cheerfully devoted to the protection of those interests. During the past year many amendments had been suggested by this Association, in various bills—particularly the Common Law Procedure Bill—the Suitors in Chancery Bill—the Law of Wills Amendment Bill—the County Court Extension Bill, and the Law of Patents Amendment Bill, in order to render the working of the bills practically more efficient and advantageous to the public. During the past year a disputed question, arising out of the last Stamp Act, upon which this Association took a different view from the Commissioners of Inland Revenue, has been practically settled by means of the efforts of this Association, and had effected a pecuniary saving to the public which in course of time would be very considerable. Whilst thus engaged, the efforts of this body had also been directed in promoting the observance among the profession of a right-minded and honourable conduct towards one another. One other topic he had to refer to, and he undertook it as a matter of duty. One of the vocations of this Association was to watch over the administration of the laws in this district—and if it should happen that through the eccentricities or other failings of a judge, or through unseemly dissensions in any court, the interests of the commercial public should suffer, it would become necessary for this Association to follow the example of Liverpool on a recent occasion. And he thought the funds of the Association and the energies of the committee could not be applied to a better object than in attempting to obtain the removal of an evil so much to be complained of.

Mr. G. Thorley said, in complying with the call made upon him by the chair, to respond to the toast of the "Manchester Law Association," he could not forbear congratulating its members on the extended influence and elevated position to which it had attained, as well in their own as in distant localities, and in the metropolis itself—a position which was accompanied by an increase in the number of its members, in its means, and in its efficiency; and if not by an increase, at least by a continuance of that public sympathy and countenance in its ends and its objects, so well exemplified by the presence of the two chief magistrates of their important boroughs, who had again honoured them by their society, and who might aptly be said to represent the sentiments, the feelings, and intelligence of the large and influential municipalities over which they presided. And if it were asked how this had been accomplished, he believed the true answer would be found to be, because the association had, in all its acts and proceedings, maintained in its integrity that fundamental axiom with which it was originated, that the interests of the public and the interests of the profession were identical and the same. That whether the exertions of their branch of the profession had been bestowed in obtaining wise and well-considered law reforms, or in opposing mischievous measures of legislation (and they had been frequent and laborious), or in obtaining the abandonment of fiscal laws, which would have the effect of imposing stamp duties exclusively upon the landowners of Manchester and its immediate neighbourhood—or in bringing courts of justice into their own county, to their own doors, or whether in opposing, and successfully opposing, the passing of a measure which would have created a monster centralisation, registration office for deeds in London, with all its attendant staff of policemen and officers, and which would have compelled every purchaser of land to be at the expense of two conveyances where one only is necessary, and each landowner's principal title deeds, however small the property, to be sent to London with all its attendant inconveniences and expense;—in all these and similar measures it had been manifest that the public interest was a main object of their exertions, and which by their success had been secured—and it was gratifying to reflect that those shafts of calumny and slander which a short time ago were so unsparingly hurled at their branch of the profession by those whose measures they had caused to be rejected, or whose attempts to mislead the legislature and the public they had succeeded in preventing, had either fallen impotent and harmless, or "returned to plague the inventors." One of those slanders, it would be remembered, was that the legal profession was really opposed to all reforms or changes in the law, and anxious only for their own interests to keep everything in its present state. But with reference to their part in these reforms, and of the Court of Chancery especially, what, in reality, were the facts? Why, that for the last five or six years their branch of the profession had been incessant in urging the adoption of the reforms of abuses, which, so long as they were suffered to exist, not only were attended with large unnecessary outlay, expense to their clients and themselves, but rendered chancery proceedings unpopular and odious to those who were unfortunate enough to be dragged into them, and directly operated injuriously to the interests of the profession, by the determination of hundreds to submit to injustice and loss rather than undergo the

ordeal of applying to such a tribunal. Indeed, the course adopted by their own and all kindred associations had illustrated another of their leading principles, that none are more desirous or more really interested in promoting wise and well-considered legal reforms than the profession itself,—objects, however, which, as individuals, they were powerless to obtain, and which could only be successfully urged as they had been by the combined efforts which their association afforded. But the efficiency of the association had not only been manifested in the objects to which he had alluded—it had been shown in its exertions to correct the exertions and abuses of the lower grades as well as in maintaining its position and in protecting its just rights and privileges from encroachment by the higher branches of the profession. They would remember that on the discussion of the County Courts Bill, the Attorney-General and members of the bar in the House of Commons endeavoured to give to the bar the right of pre-audience over the attorneys, which was a direct interference with the privileges of the latter, as well as with the rights of the public. It was an innovation highly important to that portion of their branch of the profession who practise advocacy in those courts; and their own and other law associations felt bound to take the most efficient means to resist it, as well to obviate the more immediate consequences of such an infringement, as also to prevent the equally important object, that of preventing it being used as a precedent in the pending and prospective legal reforms; and although the law associations were so far successful in their objects, it would be remembered that in a recent Act a declaratory clause had been inserted with regard to a subject which had been much discussed, viz.—the right of the bar to receive instructions from litigants themselves, and without the intervention of attorneys; in effect, to break down that line of demarcation which he thought was not less useful in being maintained to preserve the real interests of the bar than their own and those of the public. He believed, however, that up to the present time the members of the bar had not availed themselves of this practice. In making those observations, he (Mr. T.) wished to guard himself from any feeling of hostility towards the Bar, for whom, as a body, he had always entertained the highest esteem and regard, both for their learning, integrity, and that fearless spirit of independence, to which we may mainly attribute, in a constitutional point of view, the protection of our rights and our liberties, and the maintenance of the pure administration of the laws, as well by their learning and research as by the salutary influence they produce, even in the highest tribunals; and he believed them to be highly useful, both to the public and their own branch of the Profession. His only hope was, that nothing should occur with regard to such a body—and least of all emanating from itself—that should injure its prestige or impair its usefulness, or which should bring the two branches of the Profession into hostility and unfriendly feeling. And although it was perhaps to be expected that in the extensive changes which had taken place in various departments of the law, and the confusion and jostling of the Profession out of their usual and accustomed positions, some encroachment might naturally be expected, yet he had great confidence that in the exercise of a sound discretion and right feeling by both branches, and, he would add, a sense of the mode in which the administration of justice and the public good would be best served, that a short time only would be required to dispel any difficulties, and that the Profession would settle down into that useful division of labour and pursuits, within the principles of their ancient and accustomed limits, which he believed would be found to be in the result most conducive to the best interests of both branches of the Profession as well as of the community. On the other hand, he by no means wished to be understood that they should relax in their exertions to connect themselves still more closely, and to render their association more powerful in organisation and efficiency, "to stand by their order, and to protect their own just rights and privileges."

The CHAIRMAN proposed the health of the Mayor of Manchester.

Mr. SERJEANT HEALIS proposed the healths of the Lord Chancellor and the Judges. Mr. Healis observed, that this toast included all the judges of the superior courts, both of law and equity in London, who, he had no hesitation in saying, were a body of men unequalled in the world. He did not mean to say (for it would be affectation if he did), that there were not to be found in other professions, and in high places in other professions, men of great ability, but, without fear of contradiction, he asserted that there was no profession which had at its head the same galaxy of talent which was displayed by the judges of the superior courts in this country.

Mr. N. EARLE proposed "The Metropolitan and Provincial Law Association," and returned his thanks to the working members of that society for the great services they had rendered to the country at large. The object of forming "The Metropolitan and Provincial Law Association" was to bring about a better understanding between the London and provincial members of the profession. When it was said to be right on the part of members of the Legislature to interfere with a rough hand in cutting down the privileges and monopolies of the law associations and the profession, he thought the difficulties which the younger members of the profession had to encounter were entirely left out of view. What was the position of a young man entering the profession? It was said that all the capital they required was as much as would obtain pens, ink, and paper. But this was not the fact. An enormous capital had to be laid out upon the education of the law student. After he had attained eighteen or twenty years of age, with a certain degree of knowledge acquired by himself, he had to give 120*l.* for stamp duty; next, his 300 guineas for a fee, and to continue five years in one common round of study. He had then to wait two years before he could enter the profession; and he ventured to say, as a general rule, that unless a man was "born with a silver spoon in his mouth," or had a profession handed down to him, it took ten years more of his life before he could get a common maintenance out of the profession. It was, therefore, the duty of the older members to endeavour to put a stop to the innovations which Parliament might introduce.

Mr. TAYLOR responded, on behalf of "The Metropolitan and Provincial Law Association." He looked upon that association as possessing a concentration of all the advantages that a law society could have, for it brought within its scope all the strength of the profession in England. By its medium the members of the legal profession could put forth their endeavours to carry into effect that which was good and proper in the way of reform, and to oppose with effect that which would be injurious and improper if carried into law.

Mr. F. ROBINSON then proposed the "Liverpool and other Provincial Law Associations," and, in doing so, suggested the propriety of forming law associations in towns, however small, which returned members to Parliament. It must be evident that wherever they had associations formed in towns which returned members to Parliament, they would have a direct means of communication, and an influence with the Members of that particular borough, and by their instrumentality would be able to operate upon the Legislature. He did not suggest this for the maintenance of anything like the privileges of the profession, if those were inconsistent with public advantage, for he held that whenever the public advantage required it (no matter what might be their privileges) those privileges must give way. He wished these associations to be formed for the purpose of bringing before Members of Parliament the views which the profession entertained on many matters, upon which, from their practical knowledge, they could give better reasons, and introduce them with more benefit to the public than could be done by those who had not had the advantage which the practice of the law generally gave. Unless they brought practical views to bear upon Members of Parliament, and so induce them to pass laws which could be practically useful—which would work in every-day life, and answer the purposes of every-day transactions, they might look in vain for that boasted effort of legislation which they had been promised by theoretical reformers and impracticable statesmen.

The CHAIRMAN next gave the health of the "President of the past year," to which Mr. THORLEY responded.

Mr. T. L. RUSHTON, of Bolton, proposed the health of "The Committee," which was acknowledged by Mr. R. B. B. Cobbett. After urging upon the members of the association to take an active part in aiding the committee to carry out the objects which they had in view, Mr. Cobbett alluded to some of the matters to which the committee for the ensuing year would have to attend. Although a good deal had been done in the shape of law reform, it was perfectly clear that much remained yet to be done, because that which the public were determined to have was the means of having their disputes in all branches of the law settled as expeditiously and cheaply as possible. He knew that it was the feeling of the committee and of the society to aid as far as they possibly could in that object, because, although none of them, he hoped, approved of any man performing labour without being paid to the full extent of that labour, yet none of them had any sympathy with those incumbrances with which all their proceedings were choked, and which caused great expense to them and unnecessary expense to the country. The subject of bankruptcy and insolvency, to which the president alluded, was one in which some change must be made. There never was anything so absurd and so contradictory as the state of the law off that subject. In common law reforms there was no doubt that the immense disproportion in the expense between trying cases at the assizes for 60*l.* and trying cases at the County Courts for 50*l.* was so anomalous that some alteration ought to be made in it. The ordinary rule undoubtedly would be that to try a case in which 50*l.* were at stake in the County Court, some 10*l.* or 15*l.* more or less would be the outside that a man would have to risk. Or 10*l.* higher—let the plaintiff determine upon having the full amount of that which he claimed—he would have to go to the assizes, thirty miles off, to get the case tried, and if they dealt fairly with the client, they must tell him he must be prepared, in the event of losing the cause, to pay 100*l.* Now there could be no reason for such a state of things as that; and it was not to be supposed that some alteration would not be made in it, and if those alterations were to be made, the labour of seeing that they did not make matters worse would devolve upon the members of the legal profession, and, in some degree, upon the committee of this society.

Mr. S. FLORENCE proposed "The Treasurer of the past year (Mr. R. M. Whitlow), and his better health," to which Mr. RADFORD responded on behalf of Mr. Whitlow.

The CHAIRMAN proposed "The Health of the Honorary Secretary for the past year, Mr. J. Street," who has also been appointed treasurer in the place of Mr. Whitlow, who has resigned from ill health.

Mr. STREET, in acknowledging the compliment, said he felt that in resigning the office of secretary he was resigning it into the hands of one who could perform its duties most efficiently.

The other toasts were "The President," proposed by the Mayor of Manchester; "The Honorary Secretary" (Mr. C. Gibson), proposed by Mr. J. B. Bunting.

Mr. C. GIBSON expressed the pleasure he had experienced in his appointment to the office of honorary secretary, and his determination to devote his best energies to its interests.

LEGAL INTELLIGENCE.

SPRING ASSIZES.

HOME CIRCUIT.—*Hertford, Feb. 25.*—The business commenced on Wednesday, when the commission for Herts was opened by Mr. Justice Coleridge, and his Lordship afterwards tried two or three cases of felony. The cause list is very light, there being only seven causes entered for trial, the whole of them being common jury cases. The cases on the Crown side are of a serious character.

HOME CIRCUIT.—*Chelmsford, March 1.*—The commission for the county of Essex was opened on Monday, Mr. Baron Alderson presiding on the Crown side, and Mr. Justice Coleridge as Nisi Prius. The gaol calendar and cause list are unusually light for this county, there being only forty prisoners for trial, and fourteen law causes, one only being a special jury case. The magistrates held an adjourned quarter session last week, which may in some measure account for the small number of prisoners; but the calendar is still very much lighter than usual at the Spring Assizes, and there are no grave cases contained in it.

MIDLAND CIRCUIT.—*Lincoln, Feb. 27.*—Mr. Justice C.J. arrived here yesterday evening. The calendar for the county contains the names of thirty prisoners, and several of the charges are of a serious nature. They include two of murder, one of manslaughter, one of child-murder, two of concealing the births of children, three of stabbing, one of shooting with intent, two of rape, one of highway robbery, four of setting fire to stacks of corn, hay, &c. one of sheep-stealing, one of burglary, two of night poaching, one of perjury, and several cases of larceny. There are seven prisoners in the city charged with the offences of highway robbery, felonious wounding, uttering counterfeit coin and larceny.

MIDLAND CIRCUIT.—*Nottingham, March 2.*—Baron Parke arrived to-day, and proceeded to try the town prisoners, of whom there were nineteen, charged chiefly with larceny and false pretences. There were, however, three cases of burglary and one of robbery with violence.

OXFORD CIRCUIT.—*Reading, March 1.*—The business of this circuit commenced here to-day, with a heavy calendar and an average cause list. In the latter there were one special and six common jury cases.

NORTHERN CIRCUIT.—*Carlisle, Feb. 24.*—The cause list contained an entry of six causes, one marked for a special jury. The calendar contains the names of twenty-seven prisoners; one charged with shooting with intent to rob, one with arson, two with stabbing, one with threatening to accuse of perjury in order to extort money, several with riot and assault, one with obtaining goods by false pretences, the rest with ordinary larcenies.

NORTHERN CIRCUIT.—*Newcastle-on-Tyne, Feb. 28.*—Mr. Justice Cresswell and Mr. Baron Martin this morning proceeded to the courts at 10 o'clock; Mr. Justice Cresswell taking his seat at the Town-hall to try the town prisoners; Mr. Baron Martin trying the county prisoners at the Moot-hall. The cause list is very light, there being only six entries, two for this town, which are undefended, and four for the county, one of which is a special jury.

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

COMMISSIONS SIGNED BY LORD-LIEUTENANTS.

YORKSHIRE, WEST RIDING.—John Eastwood, Esq., and Edmund Waterton, Esq., to be deputy-lieuts.

LANCASHIRE.—Thomas Edwards Moss, Esq.; Thomas Ainsworth Crook, Esq.; Richard Ashton, Esq., and Edmund Grundy, Esq., to be deputy-lieutenants.

SOMERSETSHIRE.—John Monson Cartow, Esq., and Henry Danby Seymour, Esq., to be deputy-lieutenants.

SUFFOLK.—John Kerrich, Esq., to be deputy-lieutenant.

FLINTSHIRE.—Honoratus Leigh Thomas, Esq., to be deputy-lieutenant.

STANNARIES.—The Hon. George Matthew Fortescue; John Michael Williams, Esq.; Thomas Simon Bolitho, Esq.; and Edwin Ley, Esq. to be Special Deputy Wardens.

Mr. Pierce Mahony, who held the office of Clerk of the Crown to the Court of Queen's Bench, died on Sunday morning of paralysis of the brain. Mr. Wilson, of the Crown Office, was sworn in Clerk of the Crown *ad interim*. The emoluments are about 1,000*l.* a-year.

Mr. J. Blakeney, of Galway, has been appointed Crown Solicitor for that county in the room of his brother, Mr. James Blakeney, who has retired from the office.

At the General Quarter Sessions of the Peace held for the borough of Sudbury, in the counties of Suffolk and Essex, on the 18th ult., George Williams Fulcher, Arthur James Skrimshire, and Robert Alfred Allen, esquires, qualified as magistrates for the said borough.

Mr. Pickering has been appointed Recorder of Pontefract, in the room of Mr. Boothby, appointed Puisne Judge at Adelaide.—*Globe.*

JOURNAL OF PROPERTY.

MONEY MARKET.

English Funds.	Sat.	Mon.	Tues.	Wed.	Thurs.	Fri.
Bank Stock	..	226½	227	228	228	227
3*l.* Cent. Reduced Annuities	100½	100½	100⅝	100½	100½	100⅝
3*l.* Cent. Consols Annuities	99½	99½	99⅝	99⅝	99⅝	99⅝
Consols for Account	99½	99½	99⅝	99½	99½	99⅝
New 3*l.* Cent. Annuities	..	..	..	..	..	..
New 2½ per Cent. Annuities	103½	103½	103½	103½	103½	103½
Long Annu. (exp. Jan. 5, 1860)	6⅛	..	..	6⅛	6⅛	6⅛
Do. 30 yrs. (exp. Oct. 10, 1859)	..	..	..	6½	..	..
Do. 30 yrs. (exp. Jan. 5, 1860)	..	6½	..	..	..	..
India Stock	..	267½	..	265	266½	..
India Bonds (1,000*l.*)	..	..	..	..	45	47
Do. do. (under 1,000*l.*)	50	40	40	48	47	..
South Sea Stock	110	..	110	..	..	..
Do. do. Old Annuities	..	..	..	..	..	..
Exchequer Bills, 1000*l.*	17*	12*	14*	12*	17*	18*
Do. do. 500*l.*	19*	19*	14*	..	17*	18*
Do. do. Small	19*	11*	12*	..	12*	18*

* Premium.

Public Sales.

On Tuesday, March 1, 1853.

By Messrs. CHINNOCK and GAISWORTHY, at the Mart.

Freehold ground-rents, forming part of the Westbourne-grove estate, Hyde-park, the whole of the estimated rack annual value of 5,715*l.* land-tax redeemed, but let on leases at the ground-rents mentioned in each lot.

Lot 1. Six houses, Nos. 14 to 16, Norfolk-terrace, and a plot of ground, producing 40*l.* per annum.—1300*l.*

Lot 1 *a.* A plot of ground in the rear of the preceding, with two villas thereon, producing 14*l.* 12*s.* per annum.—450*l.*

Lot 2. A plot of ground, with pair of villas, known as Norfolk-villas, and an unfinished villa on the west side of Norfolk-road, producing 20*l.* per annum.—640*l.*

Lot 3. A plot of ground and pair of villas adjoining the preceding, producing 6*l.* per annum.—200*l.*

Lot 4. A pair of detached villas on the west side of the preceding, let at 38*l.* per annum.—1,230*l.*

Lot 5. A family residence, known as Norfolk House, Westbourne-grove, West, and a villa residence, also nine sets of stabling, &c. producing 25*l.* per annum.—1,010*l.*

Lot 6. Two pairs of villas adjoining the preceding lot, on the west side; ground-rent 40*l.* per annum—1200*l.*

Lot 7. A freehold plot of ground, at the corner of Westbourne-grove West and Ledbury-road, on which is erected a baptist chapel; let on lease at 40*l.*—1210*l.*

Lot 8. A large plot of ground in the Ledbury-road, on which are erected three dwelling-houses; also the whole of John's-mews, in the rear thereof; two shops, the building intended for a tavern, and called the Walmer Castle; and two houses and shops adjoining; the whole let on a ground-rent of 110*l.*—3180*l.*

Lot 9. A large plot of ground on the north side of Drayton-road, on which is erected a terrace of 13 houses, with premises and stabling in Drayton-mews; let at a ground-rent of 101*l.* 8*s.* per annum—3230*l.*

Lot 10. A plot of ground on the west side of Ledbury-road and south side of Drayton-road, containing 16 houses, with stabling in the rear, producing 71*l.* 13*s.* yearly—2120*l.*

Lot 11. Fourteen houses, Nos. 1 to 14, Westbourne-gardens, let at ground-rents amounting to 102*l.* 18*s.*—3050*l.*

Lot 12. Three houses, Nos. 10, 11, 12, Ledbury-road, ten houses, Lambton-terrace, and premises in Denbigh-mews in the rear, the whole producing in ground-rent 120*l.* per annum—3300*l.*

Lot 13. A plot of ground in the Ledbury-road, at the corner of Westbourne-grove West, on which are erected five houses with shops, let at a ground-rent of 52*l.* 10*s.*—1560*l.*

Lot. 14. A detached villa residence, known as Vernon Villa, Pembridge-villa-road, let on lease at 21*l.* 10*s.* per annum—660*l.*

Lot 15. A pair of residences, Nos. 34 and 36, Pembridge-villas, producing 26*l.* per annum—840*l.*

Lot 16. Another pair of villas, in Pembridge-villa-road, let at 17*l.*—510*l.*

Lot 17. A detached cottage and piece of ground in Pembridge-villa-road, producing a ground-rent of 7*l.* per annum.—220*l.*

The day's sale was attended by a large number of builders and speculists, and the total sum realised by the sales was 29,310*l.*

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

GROVES.—On the 15th ult., at Hemel Hempstead, Herts, the wife of Charles E. Grover, Esq. of a son.

HAIG.—On the 26th ult., at Titchfield-terrace, the wife of James Haig, Esq. Lincoln's-inn, of a son.

MANSETT.—On the 2nd inst., at No. 7, Caroline-place, the wife of Henry Mansett, Esq. barrister-at-law, of a son.

NEELD.—On the 23rd ult., at the Manor-house, Holt, Wilts, the wife of John Neeld, Esq. M.P. of a son.

MARRIAGES

KNIGHT—PEARSON.—On the 24th ult., at St. James's Church, Paddington, Captain Brook John Knight, youngest son of the late Edward Knight, Esq. of Godmersham-park, Kent, and Chawton-house, Hants, to Margaret, eldest daughter of Charles Pearson, Esq. of Gloucester-square, Hyde-park, and late of Wormleybury, Herts.

PASHLEY—LAUER-MUENCHHOFEN.—On the 25rd ult., at the British Embassy, Berlin, Robert Pashley, Esq. one of Her Majesty's counsel, to Anna Josephine Maria, only daughter of the Baron Von Lauer-Muenchhofen.

DEATHS.

BORTON.—On the 23th ult. aged 28, Elizabeth, daughter of John Henry Borton, Esq. of Bury St. Edmund's.

CARR.—On the 23rd ult at her residence, Dale-villa, Belper, Derbyshire, aged 55, Harriet, relict of the late Laurence Carr, Esq. solicitor.

GILLBANKS.—On the 8th inst. at Whitefield-house, Joseph Gillbanks, Esq. aged 73, one of Her Majesty's Deputy-Lieutenants for the county of Cumberland, and for nearly forty years an active magistrate for the same. He was formerly an eminent merchant of Kingston, Jamaica.

LAKE.—On the 24th ult at De Beauvoir-town, aged 61, John Lake, Esq. of Lincoln's-inn.

PARRATT.—On the 23rd ult. at St. Leonard's, aged 68, Edward Parratt, Esq. Clerk of the Journals of the House of Lords.

BABINGTON.—On the 27th ult. at her house in Blessington-street, Dublin, aged 75, Eliza Frances Babington, relict of the late Thomas Richard Babington, Esq. barrister-at-law, and one of the magistrates of the head police office in that city.

THE GAZETTES.

Bankrupts.

Gazette, March 1.

ATKINSON, THOMAS LAMB, linen warehouseman, Wood-street, City, March 11, at twelve, April 16, at one, Basinghall-street. Off. as. Pennell. Sol. Mason, Ironmonger-lane. Petition, Feb. 24.

KERSLAKE, JAMES, sawyer, Collingwood-street, Blackfriars-road, March 10, at half-past eleven, April 12, at eleven, Basinghall-street. Off. as. Johnson. Sol. Hare, South-square, Gray's-inn. Petition, Feb 18.

MONTON, WILLIAM, bill discounter, Belgrave-place, Pimlico, March 11, at eleven, April 16, at twelve, Basinghall-street. Off. as. Nicholson. Sol. Reed. Coleman-street. Petition, Feb. 8.

NEES, WILLIAM, and SNOWDON, THOMAS, tar distillers, Leeds, March 18 and April 15, at eleven, Leeds. Off. as. Young, Sol. Payne and Co. Leeds. Petition, Feb. 22.

NORTH, GEORGE, coal dealer, Chesterfield, March 12 and April 16, at twelve, Leeds. Off. as. Freeman. Sols. Messrs. Palmer, Bedford-row, and Busby, Chesterfield. Petition, Feb. 15.

PLUMMER, EDMUND, butcher, Diss, Norfolk, March 11, at half-past one, April 15, at one, Basinghall street. Off. as. Whitmore. Sols. White and Borrett, Whitehall-place; and Messrs. Hazard, Harleston, Norfolk. Petition, Feb. 19.

PRICE, WILLIAM, eating-house keeper, Bucklersbury, Cheapside, March 15, at half-past twelve, April 13, at one, Basinghall-street. Off. as. Stansfeld. Sol. Thompson, Bucklersbury. Petition, Feb. 25.

TAYLOR, JOHN, brewer, Newcastle-upon-Tyne, March 10, at half-past twelve, April 13, at one, Newcastle-upon-Tyne. Off. as. Wakley. Sols. Crosby and Compton, Church-court, Old Jewry; and Hoyle, Newcastle-upon-Tyne. Petition, Feb. 23.

Gazette, March 4.

CAVALIER, ANTHONY WILLIAM JOHN, sugar refiner, Attercliffe, near Sheffield, York, March 19 and April 30, at twelve, Sheffield. Com. West. Off. as. Freeman. Sol. Broadbent, Sheffield. Petition, Feb. 23.

DEAN, JAMES STEPHEN, Leather seller and coal shipper, Chelmsford, Essex, March 15 and April 14 at one, Basinghall-street. Com. Evans. Off. as. Johnson. Sols. Messrs. Hilleary, Fenchurch-street. Petition, March 2.

MILSTED, ALBERT, furrier and hatter, Swansea and Cardiff, Glamorgan, March 12 and April 15, at two, Basinghall-street. Com. Fane. Off. as. Whitmore. Sol. Lawrence, 12, Bread-street, Cheapside. Petition, Feb. 28.

ROEBUCK, JONATHAN and ELI, woollen cloth manufacturers, Bank End Mill, Holmfirth, Yorkshire, March 18 and April 15, at eleven, Leeds. Com. West. Off. as. Young. Sols. Jacobs and Son, Huddersfield. Petition, Feb. 23.

ROYSTON, WILLIAM, builder, Manchester, March 17 and April 7, at eleven, Manchester. Off. as. Lee. Sols. Blair and Parry, both of Manchester. Petition, March 3.

SHAW, WILLIAM, bookseller, stationer, toyman, and dealer in musical instruments, music, and fancy articles, High-street, Lincoln, March 22, at one, Basinghall-street. Com. Evans. Off. as. Bell. Sol. Goddard, King-street, Cheapside. Petition, Jan. 3.

SKIDMORE, JOHN, paste-board manufacturer, Sutton, near Macclesfield, Chester, March 14 and April 6, at twelve, Manchester. Off. as. Pott. Sols. Vickers and Diggles, Manchester. Petition, Feb. 22.

BANKRUPTCY ANNULLED.

Gazette, March 1.

VENNALL, HENRY, stonemason, Hastings, Sussex, Feb. 26.

Dividends.

BANKRUPT ESTATES.

Official Assignees are given, to whom apply for the Dividends.

Bailey, C. F. boot and shoe maker, first, 3*s.* Whitmore, Birmingham.—*Clare*, W. T. ironmonger, first, 2*s.* 6*d.* Freeman, Leeds.—*Dawson*, J. draper, third, 4*d.* (in addition to 4*s.* 4*d.* previously declared.) Baker, Newcastle.—*Evans, Foster*, and *Langley*, East India merchants, sixth, 2½*d.* Cannan, London.—*Hall*, J. corn factor, first, 1*s.* 6*d.* Baker, Newcastle.—*Hatch*, J. H. victualler, farmer, second, 2*s.* Groom, London.—*Kinnell*, G. and W. tailors, second and final, 4*d.* Groom, London.—*Mayhew*, E. wine merchant, first, 8*d.* Turner, Liverpool.—*Pooley*, T. pork butcher, second, 4*d.* Cannan, London.—*O'Neill*, C. metal dealer, first, 4*s.* 1*d.* Christie, Birmingham.—*Tetlow*, E. dealer in mules, first, 1*s.* 10*d.* Groom, London.

CERTIFICATES.

Apply at the Provisional Assignee's Office, Portugal-street, Lincoln's-inn-fields, between the hours of eleven and three.

Briggs, Rev. W. T. clerk, 9½*d.*—*Cockburn*, R. gardner, 12*s.* 9*d.*—*Cotter*, T. P. master in Her Majesty's Navy, 1*s.* 1½*d.* (making two shillings and three pence.)—*Davies*, D. upholsterer, 4*s.* 10*d.*—*Davies*, T. E. mathematical master Royal Military Academy, &c. (making nine shillings and ninepence halfpenny.)—*Emmens*, P. general labourer, 11½*d.*—*Law*, J. pensioner and quartermaster-sergeant of the Local Department, 1*s.* 8½*d.*—*Maynard*, J. J. H. master in R. N. 3*s.* 6*d.* (making twenty shillings.)—*Mills*, E. T. carpenter and undertaker, 7*s.* 9½*d.* (making seventeen shillings.)—*Seabrook*, J. commission agent, 2*s.* (making three shillings and threepence.)—*Von Hagen*, C. baker, 1*s.* 2½*d.* (making three shillings and fourpence.)—*Wade*, E. T. commander, R. N. on half pay, 7*s.* 0½*d.* (making sixteen shillings and threepence three farthings.)

Assignments for the Benefit of Creditors.

Gazette, Feb. 22.

Furse, T. boot and shoe maker, Fore-street, Exeter, Feb. 10. Trusts. W. Davy and J. Rew. curriers, both of Exeter. Sol. H. W. Hooper, Exeter.—*Wild*, W. H. chinaman, Newington-causeway, Feb. 7. Trusts. M. Pratt, putter, Fenton; W. Fairbairns, Crosby-hall chambers, Bishopsgate-street, and P. Lock, Hatton-garden, agents to glass manufacturers. Sols. H. R. Silvester, Great Dover-street, Newington; H. Phillips, size-lane.

Gazette, Feb. 25.

Norton, C. innkeeper, Pontefract, Yorkshire, Feb. 3. Trusts. T. Hick and R. Hick, wine merchants, Leeds, Sols. Curlis and Cudworth, Leeds.

Partnerships Dissolved.

Gazette, Feb. 22.

Avery, J. C. *Wills*, G. and *Edwards*, C. wine and spirit merchants, Bristol, as regards Avery, June 30.—*Bowden*, G., *Parkes*, W. H. and *Wilde*, W. K. linen and woollen drapers, Altrincham, Feb. 10. Debts paid by Bowden and Parkes.—*Bradshaw*, J. *Howarth*, R. and *Cryer*, W. machine and tool makers, Bolton, as regards Bradshaw, Feb. 18. Debts paid by remaining partners.—*Burbidge*, J. I. and J. T. jun. wine and spirit merchants, Grantham, Jan. 1. Debts paid by Burbidge, jun.—*Clarke*, J. N. and *Major*, S. ship stove dealers, Liverpool, Feb. 19. Debts paid by Clarke.—*Coates*, P. E. and W. attorneys and solicitors, Stanton-court, Dec. 29.—*Copestake*, W. and *Tipper*, M. manufacturers of china, Longton, Feb. 16. Debts paid by Tipper.—*Freeman*, C. *Austen*, B. S. ironmongers and oil and color men, Aylsham, Feb. 14.—*Hallett*, J. B. and J. butchers, Bridport, Jan. 22.—*Helm*, B. and J. stone masons, Sowerby-bridge, and Halifax, Feb. 1.—*Isaacs*, E. *Cowen*, I. and *Brahant*, M. manufacturers of waterproof garments, Feb. 21.—*Kerr*, C. D. and *Burton*, T. merchants, Moorgate-street, Dec. 31.—*Lang*, G. and *Coombs*. W. W. ironmongers, grocers, and tallow-chandlers, Ilminster, Feb. 17. Debts paid by Coombs.—*Potts*, R. U. and J. chemists, South Audley-street, Dec. 31.—*Quaile*, A. and E. fur skin dyers, Russell-street, Bermondsey, as regards A. Quaile, Dec. 22. Debts paid by remaining partners.—*Rothwell*, J. and *Richardson*, S. coach and harness maker, Whitby, Feb. 12.—*Rowdon*, H. M. and *Alford*, S. S. surgeons, Reyham-street, Camden-town, June 24, 1849.—*Sharples*, S., *Hamer*, H. (administrator of S. *Hamer*, dec.) and *Horrocks*, W. fine spinners, Little Bolton, as regards Hamer, Feb. 17. Debts paid by Sharples and Horrocks.—*Smith*, S. B. and *Cox*, J. electro platers and gilders, Birmingham, Dec. 31. Debts paid by Smith.—*Strutt*, J. and *Ledger*, F. conductor and proprietor of the *Era* newspaper, Catherine-street, Strand, Feb. 21.—*Taplin*, W. M. and *Beck*, W. warehousemen and factors, Birmingham, and Hatton-garden, Feb. 16. Debts paid by Taplin, Birmingham, and Beck, London.—*Tatham*, S. and *Taylor*, C. cotton spinners and manufacturers, Dick-bridge, near Over Darwen, May 20. Debts paid by Tatham.—*Taylor*, W. and *Mosley*, S. K. accountants and general agents, Nottingham, June 4. Debts paid by Mosley.—*Thomas*, J. and *Smith*, C. manufacturers of fancy hosiery, Leicester, Feb. 16.

Gazette, Feb. 25.

Burningham, T. and *Gregory*, J. stick manufacturers, Manchester, Feb. 19.—*Cash*, S. and J. cotton doublers, Mansfield, Feb. 23.—*Chapple*, C. P. and *Long*, T. and J. wine and spirit merchants, Ilminster, Feb. 18. Debts paid by Chapple.—*Davison*, J. and J. millers, West Hartlepool, Feb. 16. Debts paid by J. Davison.—*Frankland*, R. and W. jun. tailors and drapers, Feb. 18. Debts paid by R. Frankland.—*Guest*, J. and W. jewellers, Birmingham, June 30.—*Harris*, J. D. and R. jun. and *Elwood*, W. merchants, Mark-lane, Feb. 23. Debts paid by Elwood.—*Hartopp*, T. and *Noon*, C. hosiers, Leicester, Feb. 18. Debts paid by Noon.—*Haycock*, H. and *Hamilton*, R. Manchester and Bombay, Feb. 12. Debts paid by H. Haycock.—*Howson*, F. sen. and F. jun. cooks and confectioners, Wimpole-street, St. Mary-le-bone, Feb. 18.—*Hurst*, T. *Stathesham*, E. and *Hurst*, H. engineers and machinists, Quicksdale, Huddersfield, Feb. 19.—*Hyam*, L. and S. Oxford-street, Dec. 31. Debts paid by S. Hyam.—*Matthew*, J. E. De Beauvoir Town, and *Chambers*, J. Trafalgar-place east, Hackney-road, surgeons and apoth. Feb. 16.—*Milner*, E. and J. cutlery manufacturers, Sheffield, Feb. 23. Debts paid by J. Milner.—*Nelson*, H. and *Utton*, C. P. attorneys, solicitors, and commissioners, Noble-street and Gravesend, Feb. 26.—*Pearson*, J. Castleton, and *Pearson*, C. Brough, cotton spinners, Feb. 3, 1853.—*Powell*, T., *Bridgewater*, J. and *Cross*, F. wholesale dealers, Wood-street, city, as regards Cross, Dec. 31.—*Rigby*, E. and *Haynes*, J. Poland-street.—*Rowton*, T. jun. and *Rowton*, W. pianoforte makers, Baker-street.—*Thompson*, W. and *Marsh*, J. surgeons and apothecaries, Newcastle-upon-Tyne, Aug. 17.—*Toy*, A. and *Stroud*, J. T. gas contractors and lamp manufacturers, Leicester-square, and lamp and chandelier manufacturers, Birmingham, Feb. 19. Debts paid by Stroud.—*Woolley*, C. and *Conquest*, W. S. wine and spirit merchants, Mark-lane, Feb. 23. Debts paid by Woolley.

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To Readers and Correspondents.

"STUDENS" *inquires if the writ of pone in the courts of Durham is abolished? We believe it is. If not, will any practitioners there so inform our correspondent.*

Ignoramus" is bound by his own laches. His best remedy will be to call in his money, if the mortgagor will not supply the required information.

"ONE, &c." (Wigan).—*His letter contains facts of which we shall make good use hereafter.*

"R. D." *questions are not of practice but of law.*

"W. A."—*Thanks for the hints.*

"J. M." (Wimborne).—*Next week.*

We cannot undertake to return rejected communications. Whatever is intended for insertion must be authenticated by the name and address of the writer; not necessarily for publication, but as a guarantee of his good faith. No notice can be taken of anonymous communications.

THE LAW TIMES.

SATURDAY, MARCH 12, 1853.

HURRAH!

ANOTHER victory! In an unusually full House, the representatives of the people, they whose peculiar duty it is to regulate taxation, have again, by a majority of *fifty-two*, declared their opinion that the Attorneys' Tax is unjust and ought to be forthwith abolished.

The CHANCELLOR of the EXCHEQUER opposed the motion of Lord ROBERT GROSVENOR; but all the strength of the strongest Government we have had for many years was unable to resist the claim of the Attorneys for *justice*.

Surely even Mr. GLADSTONE, with all his persistency of temper, will not venture longer to refuse concession to the majority which has been so often affirmed and by two Parliaments. The *Times*, that unrelenting foe of the Attorneys, in a mighty wrath, tries to encourage the Government to close its ears to the resolutions of the House by intimating that Honourable Members voted not freely, but from fear or favour. What a libel upon them to assert that they could be so influenced to act against their sense of public duty! What an opinion must the *Times* entertain of the honesty and patriotism of the House of Commons!

But we must not rely too much upon the victory we have won. It is manifest, from the tone of the CHANCELLOR of the EXCHEQUER'S speech and the language of the ministerial organ, that the repeal of this tax will be resisted by the Government, in defiance of any number of hostile votes of the House of Commons. As it will not be conceded, it must be wrenched from the reluctant grasp of Mr. GLADSTONE. The bill will be opposed at every stage, and the Attorneys must be vigilant, and keep their friends on the watch, or they will be defeated by some manœuvre in Committee.

Thanks, a thousand times, to those who have so manfully voted for justice even to the abused Attorneys, many of them against the persuasions of the Government they support. Thanks to Lord ROBERT GROSVENOR for his successful exertions on behalf of the Profession. Thanks to Sir FREDERICK THESIGER for his generous and able speech on behalf of those whom he does not, like so many others, forget in the high position he has won!

Again, we say to all our readers, be wakeful, watchful, resolute; the battle is to be fought again, perhaps, many times—though the victory we have won will vastly inspirit our friends and depress our opponents.

THE ECCLESIASTICAL COURTS.

MR. COLLIER'S motion for a committee, prefaced by a very able speech, has produced the desired effect. The Ecclesiastical Courts, with all their abuses and absurdities, were doomed to speedy extinction amid the almost unanimous applause of the House of Commons. One voice only was raised in their defence, and that was of one whose duty it was to struggle to the last for an institution that had been so liberal a benefactor to his family. But even he was compelled to admit the manifold abuses, to promise large reforms by those who have hitherto pertinaciously resisted all reform; and he ventured only to pray that a new lease of life might be given to them on condition of amendment. The Solicitor-General was emphatic in his condemnation, and manifestly sincere in his promises that, with or without the report of the Commissioners, the Ecclesiastical Courts should be deprived of their testamentary jurisdiction. The Attorney-General appeared to be less large in his views of the extent of reform required. But Mr. COLLIER stuck to his text, and insisted upon the use of the knife, and the House manifestly echoed his demand.

Nevertheless, we shall not feel that this great reform is safe until it is positively secured by Act of Parliament. These Courts have been so long denounced—so often threatened; so many attempts have been made even by powerful Governments to reform them, and they have succeeded so many times in evading attacks upon them,—that it is impossible to try the chances of their existence by the ordinary calculations of probabilities. In almost any other case, such a scene as was presented by the House of Commons last week—a powerful Government calling them a disgrace to a civilised country, *all* parties uniting in condemnation, a solitary voice heard in support, but admitting so much that the help was more damaging than hostility—would have been taken as an assurance that an institution so repudiated could not survive the year. But these strange courts have outlived many assaults scarcely less formidable, and they will succeed in evading this if the utmost vigilance is not exercised by their opponents.

They will fight now with new tactics. Hitherto the game has been that of passive resistance in public, and the backstairs influence of powerful interests in private. The new strategy will be to endeavour to avoid destruction by voluntary proposals of reform. "Let us live," they will say, "and see how good we will be in future. We will give you a procedure as cheap, speedy, and efficient, as the public can desire." This will be a plausible argument, and will impose upon many; but it will not satisfy the demands of justice, of reason, and of policy. The testamentary jurisdiction is an anomaly. Spiritual Courts should have no control over anything temporal. Their business is strictly limited to the affairs of the Church: to them they should be confined: and the ordinary tribunals should have the care of wills and administrations as well as of conveyances and trusts. Even the Admiralty Court should be converted into a civil tribunal.

These are the points on which Law Improvers should *insist*. They must accept no conditions short of the entire transfer of the jurisdiction in wills and administration to the Civil Courts. This conceded, it will be a matter for subsequent arrangement which should have them. Mr. COLLIER proposed to make the County Courts the tribunal for proof of wills and granting of administrations, with a jurisdiction over disputed wills when the property is below a certain value. Others propose to give it to the Common Law Courts, now scarcely half employed, and others prefer the Equity Courts, which are already over-burdened. But we entreat those who hold various opinions on this point not to let their differences as to the place of transfer to give an advantage to those who are for keeping them as they are, and who will eagerly grasp at any straws of this sort that may be floating about to snatch the Courts from the destruction that menaces them.

To the Profession this is a question of incalculable importance. The throwing open to them of so vast an amount of business properly belonging to them, but from which they are now excluded by a monopoly, will be a boon for which they cannot make too strenuous an effort.

REGISTRATION OF DEEDS.

THE LORD CHANCELLOR'S Bill is before us. It does not differ substantially from that which formerly passed the House of Lords. The original, or a copy, is to be deposited. The same objections we offered to the former measure are equally applicable to this one. It will, by the admission of Lord CRANWORTH himself, *increase the cost* of small conveyances. It seems to be forgotten by its promoters that nine-tenths of all the conveyances *are* small ones, and that it is not equitable to make them more costly for the benefit of the few large transactions.

The Lawyers have been commonly accused of being hostile to Registration from a fear that it will diminish their profits. It will do no such thing. At least, for many years to come it will largely increase them, for they must continue to investigate titles for the next sixty years precisely as now they do, with the added costs of making a copy for the register and registering.

We fear, however, that objection now will be of no avail. Unfortunately the Lords are already committed to the measure, and in the Commons there is not an opposition.

Nevertheless there should be petitions against it from all quarters. At least, it should not be permitted to become law without an emphatic protest from those who are most competent to express an opinion upon its *practical* consequences.

A CURE FOR BRIBERY.

THE Election Committees are doing their duty, and corruption is suffering exposure and punishment.

The public has been startled by its universality and extent. Almost every petition has succeeded. It is probable that if every member in the House had been petitioned against, not a third of the whole would have preserved their seats.

The question now occupying every mind is, how it is to be prevented in future.

An inquiry by a commission into every convicted borough, with a view to its disfranchisement, is the remedy suggested; but how will it be possible to disfranchise twenty of our great towns—as Cambridge, Hull, and Chatham? Besides, it would be extremely unjust to all the honest electors in those boroughs to be deprived of their franchise because a few bad fellows have taken bribes.

There is a better remedy than this, which we submit to the consideration of Legislators desirous of applying some remedy to so frightful an evil.

We propose, then, that in all election inquiries, whether of committees or by commissioners, a witness should be deprived of the privilege he now has not to answer criminatory questions, protecting that answer against any use being made of it in any other proceeding except perjury. Then, inasmuch as the bribed men in every borough are always *known*, although the fact cannot always be *proved*, they could be called and compelled to answer questions as to moneys paid or promised.

When an Election Committee has reported that more than two cases of bribery were proved before them, let the Commission of Inquiry issue under the statute of last year, but as a matter of course. Let that commission go to the borough and sift every alleged case of bribery on both sides, examining the voters alleged to have been bribed. Let the names of all who shall have been proved to the satisfaction of the commission to have taken bribes be reported to the House of Commons; let that report operate as a *disfranchisement for life* of all persons so reported. To

prevent any injustice being done, allow to the persons so reported an appeal against the decision to some inexpensive tribunal—say to a County Court judge, with a jury not taken from the borough, so as to secure impartiality.

This would operate more fairly than *local* disfranchisement. It would only punish the guilty, and thus in time it would weed the constituencies, for, be it observed, all parties have an equal desire to be rid of *bribable* men, so that there would be no difficulty in procuring their exposure.

Lord BROUGHAM proposes a solemn declaration by the member, on taking his seat, that he has spent nothing but the legal expenses, naming them, and does not intend to do so, and does not believe that any person has done or will do so on his behalf. But this would be evaded by clubs and other means. It would exclude the honest and admit the unscrupulous.

If you disfranchise a whole constituency, there is no shame in any single voter, for the most honest shares it with him. But a disfranchisement of individuals by name would be felt as a severe stigma, and would deter all but the most abandoned.

ASSURANCE OFFICES.

At length the Government has consented to a Select Committee to inquire into the present state of the law with respect to Assurance Offices.

The investigation will exhibit some of the most gigantic frauds of modern times. What sort of a revelation might be made will appear from a remarkable history of some of the recent projects, which we have in type, and will lay before our readers next week.

The remedies are obvious. First, it should be required, as a preliminary to commencement of business, that a certain amount of capital should be *paid up*, sufficient, at least, to insure the *bona fides* of the shareholders; secondly, there should be official auditors, appointed by the Government, but paid by the offices.

These would suffice to put an end to the fearful swindles now concocted almost every week in the form of new Assurance Offices.

HINTS TO BUSY PRACTITIONERS.

[Under this title we propose from time to time to remind the practitioner of useful facts which, amid the claims of business and the flood of changes in the law, he may possibly have overlooked. As we also may overlook many, we shall be obliged by "hints" from any of our readers.]

VENUE.

THE New Rule of Court (No. 18) provides that no venue shall be changed without a special order of the Court or a Judge. The effect of this rule is only, it would appear, to do away with the old rule, which was obtained as of course.

A defendant wishing to change the venue now does so by a summons at chambers, PLATT, B. having a few days ago made an order on the common affidavit. This should be noted in the Supplement to KERR's Common Law Procedure Act, p. 6.

HINTS TO LAW REFORMERS.

(From a Correspondent.)

ALLOW me to suggest to Law Reformers the advisability of doing away with the necessity in ejectment of the freeholder proving the surrender or satisfaction of terms of years, or, at all events, of throwing the onus of proving their existence on the defendant. Cases have come within my own experience where very considerable expense has been occasioned to a remainderman of the freehold seeking to recover property in ejectment from a mere disseisor who had disseised the tenants for life. There were three terms of years created by a will, and of course he had to prove their satisfaction (under the 8 & 9 Vict. c. 112). The [illegible] entailed on him a most serious expense; and as defendant was insolvent, plaintiff had to bear it himself.

Such an enactment would enable the true owner to more easily recover his property, and would injure no one. The 8 & 9 Vict. c. 112, which was intended (practically) to have this operation, is worse than useless.

Could not such a provision be inserted in the bill now about to be presented in Parliament?

NEW PRACTICE IN THE COURT OF CHANCERY.

Continued from page 216.

OF MATTERS TO BE PROVED.

THE replication having put the cause at issue, the plaintiff and defendant must then consider what is necessary to prove the case each respectively sets up, and how such proof is to be made. It will, however, be unnecessary for either party to prove what is admitted by the other.

OF ADMISSIONS.

Admissions are divided into two classes. 1. Those upon the record. 2. Those by agreement between the parties.

The first class of admissions may be subdivided into two different kinds. 1. *Constructive* admissions on the record, as when a plea is put in to the whole or part of a bill, the bill, or such part of it as is not controverted by the plea, is admitted to be true.

So distinct allegations in the bill, but not such as are put forward hypothetically by way of pretence, are admissions by the plaintiff in favour of the defendant which he cannot afterwards dispute.

2. *Actual* admissions on the record, as when a defendant admits a statement in a bill as to which he is interrogated. The admissions, however, must be explicit and unqualified. (*Cox* v. *Allingham*, Jac. 337.) Thus if a defendant admits a deed stated by the plaintiff, but refers to it for greater certainty, he may compel the plaintiff to read it: (Ib. 337.)

The plaintiff may read any part of the answer of a defendant (not being an infant) against him, although by his replication he denies the truth of it; but any passages in the answer qualifying such part must be read with it, the rule being "that when a plaintiff chooses to read a passage from a defendant's answer, he reads all the circumstances stated in the passage. If the passage so read contains a reference to any other passage, that other passage must be read also" (*Bartlett* v. *Gillard*, 3 Russ. 157; *Lady Ormond* v. *Hutchinson*, 13 Ves. 47, 53; 16 Ves. 94); but the plaintiff may read evidence against such passage: (*Price* v. *Lytton*, 3 Russ. 206.)

Although the Court does not consider the statement in an answer that a defendant has been *informed* of a certain fact, to be a sufficient admission, yet if he says he has been "*informed and believes*," that will be sufficient: (*Potter* v. *Potter*, 1 Ves. 274.) So if he says he "*believes*" anything to be true, he will be considered to have admitted it, except in the case of an heir-at-law stating his belief as to the execution of a will, in which case, as it appears not to be considered a direct admission, proof of its execution will be required: (*Potter* v. *Potter*.)

An infant's answer may be read against his guardian (*Beasley* v. *Magrath*, 2 S. & L. 34), although it cannot be read against himself (*Wrottesley* v. *Bendish*, 3 P. Wms. 236), except upon a rehearing after he attains his majority, and neither amends his former or puts in a new answer: (Dan. Ch. Pr. 807.)

A lunatic's answer, put in by his committee, may be read against him. (*Loring* v. *Caverly*, Prec. Ch. 229.)

In general, the answer of one defendant cannot be read by the *plaintiff* as evidence against another (*Jones* v. *Turberville*, 2 Ves. Jun. 11), except where the answer of the other defendant refers to it, so as, in fact, to make it his own (*Anon.* 1 P. Wms. 301); or in the case of the answers to an interpleader (*Clarret* v. *Jones*, 6 Mad. 268); or the answers of parties or persons jointly liable: (*Crosse* v. *Bedingfield*, 12 Sim. 35.)

After a replication the *defendant* cannot read his own answer as evidence for himself, except on a question of costs (*Vancouver* v. *Bliss*, 11 Ves. 458; *Howell* v. *George*, 1 Mad. 1; *Dawson* v. *Ellis*, 1 J. & W. 524); but the Court may from the answer determine whether any further investigation of any particular facts is to take place: (*Miller* v. *Gore*, 1 Y. & C. C. C. 59.)

It has long been established as a general rule that where a defendant in express terms negatives the allegations in the bill, and the evidence of one person only affirms what has been so negatived, there the Court will neither make a decree, nor send it to a trial at law: (*Pember* v. *Mathers*, 1 Bro. C. C. 52; Dan. Ch. Pr. 808.) It is probable, since the Legislature has conferred power upon the Court of *orally* examining the parties (which will be hereafter noticed), that in future in such cases an *oral* examination might lead to some result. It must, however, be remembered that there is an exception to the rule when the case of the plaintiff is fortified by circumstances corroborating the evidence of his single witness, in which case the Court would either make a decree, or direct an issue: (*Pember* v. *Mathers*, 1 Bro. C. C. 52; *Hine* v. *Dodd*, 2 Atk. 275.)

2. AS TO ADMISSIONS BETWEEN THE PARTIES.

In order to save expense the parties often agree upon admissions, which are generally but not necessarily in writing, and if so, are signed either by the parties or their solicitors: (Dan. Ch. Pr. 811.)

ON WHOM THE ONUS PROBANDI LIES.

Whatever is material to the matters in issue, and which is not admitted by either of the two modes already pointed out, must be proved by evidence. The *onus probandi* rests upon the person asserting the affirmative (*Eyre* v. *Dolphin*, 2 Ball & B. 303; *Field* v. *Sowle*, 4 Russ. 112); and where there is a legal presumption in favour of one party the other party must disprove it: (Dan. Ch. Pr. 813.)

EVIDENCE RESTRICTED TO MATTERS IN ISSUE.

It must however be remembered that, in order to prevent injustice which might result to either party from being taken by surprise, neither can the plaintiff adduce evidence to prove what is not alleged in his bill; nor can the defendant do so, to prove what is not put forward as his case or defence in his answer: (Dan. Ch. Pr. 814.)

Under general allegations, however, evidence of particular facts may be given (*Sidney* v. *Sidney*, 3 P. Wms. 269; *Clarke* v. *Periam*, 2 Atk. 333; and see *Wheeler* v. *Trotter*, 3 Swanst. 174 n.); and it is not requisite that the materials by which facts are to be proved should be put in issue; (*Blacker* v. *Phepoe*, 1 Moll. 355.).

VARIANCE BETWEEN STATEMENTS AND PROOFS.

It may be stated as a general rule, that the case established by the evidence must be, in effect, the same as the case stated in the record, otherwise a party might be taken by surprise, in consequence of a case being proved against him which he did not know would be set up, and therefore did not prepare to meet. "I know of no case," says Lord Redesdale, "which allows an amendment in order to enable the party to make *a new case*. I have known, in a case where the answer stated a qualified agreement, the plaintiff to have amended his bill, and accepted the agreement as stated by the defendant, and brought his cause to a hearing, desiring performance of it; but here the plaintiff has brought his cause to a hearing, attempting to controvert the agreement as stated in the answer, and, failing in that attempt, now desires to amend his bill and seek performance of that agreement. This, I think, would be mischievous:" (*Denison* v. *Little*, 2 S. & L. 11, n.; and see *Lindsay* v. *Lynch*, 2 S. & L. 1; *Daniels* v. *Davison*, 16 Ves. 249; *London and Birmingham Railway Company* v. *Winter*, Cr. & Ph. 62.)

MODE OF TAKING EVIDENCE.

Without considering here the nature of documentary evidence, whether it be of that kind which either does or does not prove itself, or as to the competency of witnesses (as to which the reader is referred to the fourth edition of Starkie on the Law of Evidence), it is now proposed to consider a branch of Chancery Procedure which recent legislation has greatly improved, viz., the mode of taking evidence in the Courts of Equity.

First, however, in order to show the improvement which has been effected, it will be necessary to detail the ordinary mode of taking evidence under the old system. After replication, when the cause was at issue, the papers were laid before the respective counsel of the parties to advise as to the evidence, and, if necessary, to prepare interrogatories for the examination of witnesses. The evidence was taken by *written interrogatories*, upon which the witnesses were examined in *private*, none of the parties or their agents being present. The examination was conducted in London by the Examiner, a permanent officer of the Court, and in the country by a Commissioner specially appointed for that purpose. The interrogatories being framed beforehand by counsel, without its being certain what witnesses would be forthcoming, or what answer a witness would give to any particular question, were framed to meet the contingencies which were likely to occur and were deemed necessary to be provided against. Several witnesses were frequently produced to prove the same facts, or to prove facts leading to the material conclusion, from the uncertainty whether one witness (who, if examined orally and publicly, would have been found sufficient) has in his deposition given sufficient evidence of the necessary facts. The Examiner or Commissioner took down and recorded the answers of the witnesses to the written interrogatories, and were under the obligation of an oath not to disclose the evidence taken. The theory of

the Court was that the witnesses were subject to cross-examination; but the cross-examination by written interrogatories of witnesses, whose examination-in-chief was not known, was so ineffective and dangerous that it was seldom resorted to, except where the witness was known to be friendly to the cross-examining party, and had previously communicated facts to be the subject of such cross-examination. If the witnesses were examined in the country, a special commission issued for the purpose to a Commissioner, at considerable expense. A day was appointed for opening the commission, generally at an inn. Besides the Commissioner, there was a clerk, who was sworn to secrecy. The Commissioner was furnished with the interrogatories and the cross-interrogatories of the parties; and each witness was sent in with a note specifying the interrogatories which were to be administered to him. The Commissioner put the interrogatory to the witness, often, if not generally, being obliged to translate it into less technical language more intelligible to the witness, whose answers were taken down and fair-copied by the clerk. The process was very slow; the solicitors and witnesses were in attendance during the execution of the commission, which often lasted several days, and not unfrequently weeks, the Commissioner and his clerk being entitled to daily fees, and heavy expenses being incurred by the attendance of the solicitors and witnesses. The depositions, being completed, were sealed up by the Commissioner, and returned to the Office of Records, either by himself, or by some messenger on oath.

A day was fixed for what was called the publication of the evidence; the parties then, for the *first time*, got copies of the depositions, for which copies fees were, of course, charged. After publication no further evidence could be adduced without special leave of the Court.

The depositions were copied on brief paper, and, with the pleadings and copies of the documentary evidence, formed the brief for the hearing: for which the cause might then be considered ripe. Sometimes, however, the parties moved to suppress the depositions, by reason of the interrogatories being *leading* or otherwise objectionable, or by reason of some irregularity in the mode of taking or returning the depositions. Sometimes it was discovered that, through an accidental slip, either of the solicitor or counsel, or of the Commissioner, some material piece of evidence had been omitted, and it was necessary to make special application to the Court to supply the omission by a further examination, conducted in the same way: (Chan. Com. Rep. 8.) In the next number we shall give the mode of taking evidence under the new system.

THE LEGISLATOR.

THE REGISTRATION OF ASSURANCES BILL.

SECT. 1. A land register office to be established, and proper buildings to be provided therefore by Treasury.

2. The Queen may appoint registrars and assistant-registrars.

3. The Lord Chancellor to appoint clerks and subordinate officers.

4. How registrar and assistant-registrar shall be qualified, and oath to be taken by them. (a)

5. Registrar, assistant-registrar, and such other officers as Treasury think proper, to give security.

6. Registrar, with other persons appointed by her Majesty, to divide England into districts.

7. Commencement of registration.

8. Assurances of land in England executed after commencement of registration may be registered by depositing original or a copy and making the proper entries.

9. An index of titles to be kept, and assurances to be indexed therein under heads designated by numbers.

10. An index of the names of grantors to be kept.

11. Reference to entries may be made of appointments of new trustees, &c. in index to testators and intestates, instead of the index to the names of grantors.

12. Decrees in equity creating, declaring, &c. interests in land, and also decrees in equity by which any such decree is varied or reversed, to be considered assurances.

13. All private Acts of Parliament affecting lands to be assurances.

14. Where by a public Act lands are vested upon payment of money, &c. a memorandum of such payment or other act may be registered, and evidence of the payment deposited with it.

15, 16. Equitable mortgage by deposit of deeds, and liens by reason of nonpayment of purchase-money, may be registered by depositing a memorandum.

17. Assurances to be considered to have been made by the person whose right, &c. in the lands shall be bound by the decree, &c.

18. As to the registration of wills.

19. Letters of administration or affidavit of intestacy may be registered.

20. An "Index to Testators and Intestates" to be kept for all England; and where a will, &c. is registered, an entry of testator's or intestate's name to be made in such index, and also an entry of the will, &c.

21. Copies deposited for registration may be copies made or examined in the register office, or copies furnished by the parties requiring registration.

22. Provision for registration in the case of assurances lost or destroyed.

23. Any person claiming under an assurance may compel the registration thereof, by application to a judge.

24. Judge may make order as to costs, and order an office copy to be furnished at the expense of the applicant.

25. Application may be made to the court against the order of judge, or upon his refusal to make an order.

26. Where order or rule for delivery of any document to be registered is not complied with, the order or rule may be registered in lieu thereof.

27. Petitions for adjudication of bankruptcy, and for commissions of bankrupt, and appointment of assignees in bankruptcy, in England and Ireland; and acts and warrants of confirmation in Scotland, may be registered.

28. Vesting orders and appointments, &c. of assignees in insolvency may be registered by deposit of a copy or certificate, and making the proper entry.

29. An "Index to Bankrupts and Insolvents" to be kept.

30. Assurances authorised to be registered to be void as against purchasers if not registered.

31. Estate or interest arising upon Act, upon payment of money, &c., equitable mortgage by deposit of deeds, and lien for purchase money, to be void as against purchasers, unless memorandum registered.

32. Assurance merging any interest not to have such effect as against subsequent purchaser of such interest, unless entry be made to lead such purchaser to the assurance. (a)

33. If assurance duly entered as to part only of the lands, it shall be deemed duly registered as to such part only.

34. Unregistered will to be void against purchaser from persons entitled under a registered will, or to default of a will where letters of administration or affidavit of intestacy registered.

35. Court of Chancery may order registration of affidavit of a will to be cancelled.

36. Purchasers protected against bankruptcy and insolvency, unless appointment of assignees, &c., be registered.

37. Protection of purchasers against subsequent adjudication in bankruptcy where the petition is not registered.

38. The priority given by the foregoing provisions to be enforced in equity, notwithstanding notice.

39. Notice or uses or trusts not manifested by a registered assurance, and uses or trusts declared by reference to an unregistered assurance, not to affect purchaser for valuable consideration.

40. Inhibition against alienation may be entered by persons interested under uses or trusts affecting estates vested under a registered assurance.

41. Inhibition to be entered in index of titles.

42. Provision for cancelling inhibition.

43. Power to Court of Chancery to restrain registrar from cancelling inhibition.

44. Persons claiming under assurances made while inhibition is on the register, to be affected by and take subject to the uses and trusts not shown by a registered assurance.

45. Power for any person to enter a caveat.

46. How caveat shall be entered.

47. Extent of protection to be afforded by caveats.

48. Entries to be made immediately on receipt of documents, and time of receipt to be marked.

49. The protection of the Act to extend to persons who claim under purchasers.*

50. Priority or protection by legal estate and taking, not to be allowed.*

51. Certificate of registration may be delivered out, and may be deposited by way of equitable mortgage.*

52. Registration substituted for enrolment under 3 & 4 Will. 4, c. 74, and 4 & 5 Will. 4, c. 92, as respects land in England.

53. A seal to be made and kept, and the impressions thereof to be taken judicial notice of.

54. Duplicate originals of deposited documents may be compared at the office, and certified, and every document so certified shall be received as evidence that another part of the same assurance has been deposited.

55. Copies of and extracts from deposited instruments to be provided on application, and to be certified; and the seal of the office, with a certificate, to be evidence of such copies and extracts.

56. In cases where there are duplicates of a registered assurance, one duplicate to be exempted from stamp duty, provided the other is duly stamped; but the exemption not to apply to duplicates of leases where either part is executed by lessee.

57. Memorials, office copies, extracts, and certificates, requisitions, &c. to be exempt from stamp duty.

58. No documents deposited at the register office to be removed except on legal process.

59. Any will deposited at register office may be removed for the purpose of being proved, &c., but after being proved, &c. must be returned.

60. Searches of indexes to be permitted, and inspections of deposited instruments allowed; such searches to be made on requisition, and certificates given.

61. The duty of an attorney, &c. to be deemed fulfilled if he have caused an office search to be made; attorneys, &c. indemnified in relying on the accuracy of certificates.

62. Registrar may order that documents to be deposited shall be written boustrophedon, or otherwise, &c.; additional payment on persons sending documents to be deposited which shall not be conformable with such order.

63. Registrar may require statements for regulating the entries to be sent with assurances.

64. Officers of the register office not to be held responsible for omissions or mistakes occasioned by defects in the statement.

65. Errors in entries may be corrected by registrar.

66. Registrar, with approval of Lord Chancellor, Master of the Rolls, and two common law judges, may make regulations.

67. Registrar to report to Lord Chancellor, and reports to be laid before Parliament.

68. Fees under this Act to be fixed by Treasury.

69. Salaries may be assigned to the registrar and other officers of the register office.

70. Expenses of the register office to be allowed out of the Consolidated Fund.

71. Moneys received by the office may be applied in payment of the expenses of the same.

72. Subject to the last power, all moneys received by the office to be paid by the Consolidated Fund.

73. Audit of accounts of the office.

74. Repealing local Register Acts.

75. Bargains and sales not to be enrolled in local offices after commencement of registration under this Act, and no assurance to be registered in local offices after time appointed by Lord Chancellor.

76. Lord Chancellor, &c. to appoint time for closing local register offices.

77. Vacancies in office of register for local offices in Yorkshire not to be filled up, and offices of registers for Middlesex to cease.

78. Treasury to fill up vacancies in local register offices.

79. As to the custody of documents in local register offices.

80. Copies of assurances to be made after closing of offices by persons nominated by Treasury to fill vacancies in local register offices to be good evidence.

81. Compensation to officers of local register offices.

82. Instruments required to be registered in the local register offices may be registered in the register office established under this Act.

83. Saving as to Crown lands.

84. Copyhold lands not to be affected.

85. Leases, &c. for not more than twenty-one years not to be affected where possession goes along with such leases, &c. Proviso, where actual possession does not go along with such lease, &c.

86. Inclosure awards not to be affected.

87. Shares in companies not to be affected.

88. Adventurers' lands within the Bedford Level not to be affected.

89. None of the exceptions to affect the provision to prevent protection by legal estates or tacking.

90. Before whom affidavits to be sworn.

91. False swearing to be punished as perjury.

92. Punishment for forging signatures or counterfeiting impressions of seal of register office.

93. Actions for damages to be brought against the registrar, and if final judgment recovered damages to be paid out of Consolidated Fund. Notice to be given to Attorney-General; registrar not personally liable.

94. As to costs if judgment be given for defendant, &c.

95. Provision for case of a writ of error.

96. Registrar may compromise action.

97. Limitations of actions brought against the registrar.

98. Actions not to abate by death of the registrar, &c.

99. Lord Chancellor may transfer registry of judgments, &c., to Land register office.

100. Treasury may alter fees; and fees to be accounted for and applied as other fees received by registrar.

101. Compensation to senior Master of Common Pleas.

102. Interpretation of terms.

(a) Attorneys and solicitors, who were included by Lord Truro in the qualification for office, are retained in the present bill.

(a) The clauses marked thus * are transferred from other parts of the former bill.

Imperial Parliament.

HOUSE OF LORDS.

COUNTY COURTS.

TUESDAY, March 8.—Lord BROUGHAM presented a petition from the merchants, tradesmen, and inhabitants of Margate, in the county of Kent, who complained of the expenses and vexatious delays occasioned to them in their trade by the present state of the administration of the bankruptcy law; and of the great distance they were obliged to come for the purpose of resorting to the bankruptcy courts. The distance they had to travel was sometimes 70, 80, or even 90 miles, and they prayed that their lordships would give their assent to a bill which was now before their lordships for vesting in the County Courts jurisdiction in bankruptcy. He had another petition, most numerously signed by the inhabitants of the great town of Brighton, to the same effect. The noble and learned lord having laid the petitions on the table, said that it was impossible for him to present these petitions for the purpose of extending the jurisdiction of the County Courts without calling the attention of their lordships, and once more entreating that of his noble friends of Her Majesty's Government, to the immense importance of the system of local judicature. He would only mention one circumstance for the purpose of illustrating that which, indeed, no argument were required to prove, but which was itself a proof of the vast importance of that jurisdiction. By the Superior Courts of Westminster-hall, in the course of one year, there were somewhat under 2000 writs issued and sent to be tried in all the circuits for London and Middlesex. More than half of those cases, all of which were tried, and on which verdicts were given and judgments entered up, were for amounts under 50*l.*, which was the extent for which local courts could issue process; consequently more than half of the cases tried by the Superior Courts in that one year in those circuits might have been tried more easily, more expeditiously and infinitely more cheaply in the County Courts. The County Courts had a concurrent jurisdiction to the extent of 50*l.*, and how many causes did those courts try, during the same period of time, where the cause of action was between 20*l.* and 50*l.*? (He would say nothing of the 100,000 cases under 20*l.*) Why, the number of cases which the County Courts tried, where the cause of action was between 20*l.* and 50*l.*, during the same period of time, was 6000. Let him repeat, that while the number of causes tried by the Superior Courts under 50*l.* in a given space of time was under 1000, the number of causes tried by the County Courts was 6000 during the same time and for the same amount. Anything more monstrous than the present state of the law upon this subject he could not conceive. The whole salaries of the judges of the Superior Courts were now most properly and most justly paid, not by the suitors, but out of the Consolidated Fund. It was the bounden duty of Government and of Parliament to provide for the people of the country the whole expense of the administration of justice; but in the County Courts, where that immense mass of business was conducted, to the infinite relief of the suitor, even saddle the law was with the expense of which he (Lord Brougham) complained—in the County Courts, instead of the county paying the expense, the poor suitor paid the expense, and because he was less rich and less capable of enduring the burden, it was therefore, as it would seem, that he was saddled with that expense! This was an anomaly which he trusted he should not long have occasion to press upon the attention of Parliament. No less than 174,000*l.* were exacted from these poor suitors in the County Courts to pay the expenses of administering the law to them; and what made the case more iniquitous was, that after all the expenses of the court had been paid, there was a surplus left, and that surplus went to the consolidated fund.

LAW OF EVIDENCE AND PROCEDURE.

THURSDAY, March 10.—Lord BROUGHAM moved the second reading of the Law of Evidence and Procedure Bill. His lordship then proceeded at some length to explain the principles of the Bill; after pointing out with great minuteness the anomalies which at present existed in the law by which the rules of evidence and of procedure were governed, and the various steps taken by the Legislature to remedy them, he described the manner in which this Bill proposed to deal with them.——The LORD CHANCELLOR cordially approved of a considerable portion of the measure, but intimated that he could not give his concurrence to the whole of it.——The bill was then read a second time.

HOUSE OF COMMONS.

LAW OF PROBATES.

MONDAY, March 8.—Mr. HADFIELD moved for leave to introduce a bill to prevent the necessity of obtaining several probates of the same will, and several grants of administration in respect of the estate and effects of any deceased person; and to make certain amendments in the law of evidence in respect to the proof of wills and of probates and grants of administration. He observed that the bill was exceedingly short, that it made one probate and grant of administration sufficient, and enacted that a probate should be proof of the devise of real estate in the same manner as it was of a personal estate. He could have wished that this should have been included in one general measure; still, the subject was of so pressing and important a nature, that he felt justified in introducing it *per se*; and he had the sanction of the Solicitor-General for saying that he had no objection to the bringing in of the bill.——Mr. W. BROWN seconded the motion.——Mr. COWAN also supported the measure, and expressed a hope that it would be extended to Scotland. Leave was then given to introduce the bill, and it was afterwards brought up and read a first time.

THE ATTORNEYS' TAX.

THURSDAY, March 10.—Lord R. GROSVENOR moved to bring in a bill to repeal the attorneys' and solicitors' annual certificate duty. He traced its origin and history, and pointed out the injustice of imposing a heavy and oppressive tax on the mental exertions of members of a particular profession. The yearly produce of the tax was 120,000*l.*, and he contended that such an amount ought not to be allowed to stand in the way of an act of national justice.——Mr. COWAN supported the motion, which was one of great importance to his constituents, the tax being paid by 445 persons in Edinburgh, who contributed one-twentieth of the whole produce.——The CHANCELLOR of the EXCHEQUER objected to all attempts at considering isolated cases of taxation. He did not regard this duty as unjust; and there were many which had stronger claims for removal. It might be a question whether there should not be an important modification of the high stamp duty on articles of admission, which had, to some extent, the effect of creating a monopoly in the profession. The entire taxation affecting it would deserve consideration when the whole state of the finances was under review; but he protested against dealing with our system of taxation in a bit-by-bit way, or at haphazard.——Sir F. THESIGER denounced the tax as utterly wanting all colour of fairness or justice. The tax on articles of admission to clerkship amounted to 120*l.*, besides 25*l.* more of other charges for the annual certificate tax every London attorney had to pay 12*l.* and every country attorney 8*l.*, a weight of taxation without parallel in any other profession.——After a few words from Mr. J. D. FITZGERALD and Mr. HUME, the House divided, and the motion was carried by a majority of 52, the numbers being 219 to 167.

BRIBERY AT ELECTIONS.

Mr. PHINN gave notice of his intention, on an early day after Easter, to move for leave to bring in a bill giving jurisdiction to County Courts for the recovery of penalties in cases of bribery at elections.

ATTORNEYS' AND SOLICITORS' CERTIFICATE DUTY.

FRIDAY, MARCH 11.—Lord R. GROSVENOR brought up this bill, and amidst considerable laughter and cheers, proposed that it be read a first time. He said it was not his intention to propose the second reading until after the Chancellor of the Exchequer had made his financial statement. After the right hon. gentleman's decided expression of opinion last night, he had no doubt he would take the question into his serious consideration, with the view of remedying the injustice complained of.——The bill was then read a first time, and ordered to be read a second time on Wednesday the 13th April.

THE MAGISTRATE,

AND PAROCHIAL AND MUNICIPAL LAWYER.

Summary.

A QUESTION as to the jurisdiction of the magistrates of Hertfordshire over an offence committed within the liberty of St. Alban's, within the county, under certain local Acts, was considered and decided in the affirmative in *Arnold* v. *Gaussen*, 20 L. T. Rep. 262; but its interest is purely local, and therefore it is not necessary to notice it further here.

Many reports of interesting and important questions decided by the Election Committees were reported last week at pp. 294, 5, 6. It will suffice to direct to them the attention of the reader.

ARNOLD *v.* GAUSSEN AND ANOTHER.
20 L. T. REP. 292.

TO THE EDITOR OF THE LAW TIMES.

SIR,—We think some corrections are needful to make the report of this case clear. In the statement of the case two material facts are omitted: first, that the charter of Edw. 4 to the abbot and convent of St. Alban contained a clause prohibiting any other justices than those appointed by the abbot and convent to interfere in matters within the liberty of St. Alban; and, secondly, that the liberty (which comprises several parishes) has a rate in the nature of a county rate, out of which the expenses of the gaol or house of correction at St. Alban's (which is under the visitation and management of the liberty, and not the county, justices) are defrayed. These omissions, however, may be mainly supplied by the arguments of counsel and the judgment.

But several defects are apparent in the judgment:—

1. Instead of the first clause, read—"This case stated the *charter under which power to appoint jus-*tices in the first place was granted to the abbey of St. Alban in the reign of Edw. 4, and the commission under which justices of the peace for the county hold under the Crown, and the commission *under which justices of the peace for the liberty also now hold under the Crown*, and a great number of other documents," &c.

2. In the clause—"It does not prohibit justices from *inquiring*, as the charter of King Edw. 4 did, *whether* the offence was committed within the liberty"—instead of "inquiring" *read* "interfering," and instead of "whether" *read* "when."

3. In the clause—"The commission under which the justices of the liberty acted, and which was *not* set out in the case," &c.—*dele* the word "not."

4. Towards the close, the court is made to say—"The county magistrates have performed their duty by hearing and deciding; and as soon as a *conviction* took place they were *functus officio*;"—instead of "conviction" *read* "commitment."

We are Sir, yours, &c.

LONGMORE AND SWORDER,
Attorneys for the Defendants.

Hertford, March 9, 1853.

LAW OF BASTARDY.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I am sorry my hasty form of expression has misled your correspondent, Mr. Lloyd. Before the passing of 4 & 5 Vict. c. 76, s. 69, unmarried women with child were *deemed* chargeable and liable to be removed, although not actually chargeable: (35 Geo. 3, c. 101, s. 6.) I referred in my former letter to the abolition of this constructive chargeability by the clause first above cited; and had no idea that my words would bear the construction put upon them by Mr. Lloyd, as referring to chargeability in fact.

I am Sir, yours, &c.

March 7, 1853. W. P. P.

RESIGNATION OF THE CHIEF COMMISSIONER OF POLICE.—For some time it has been rumoured that Sir Richard Mayne intended to resign his office of Chief Commissioner of the Metropolitan Police, and several of our police magistrates were spoke of as his successor: but now it is finally understood that Sir Richard will shortly retire on a full pension, and that Mr. Henry, the magistrate at Bow-street Police-court, will succeed him. Captain Hay will still retain his situation as second commissioner, and the only reason of his not being promoted is that a recent Act of Parliament specifies that the chief commissioner must be a barrister-at-law of no less than seven years' standing. The situation of chief commissioner is worth rather more 1500*l.* a year: and from the well-known experience of Mr. Henry as a magistrate of the metropolitan police-courts, there can be no doubt he will equal his predecessor.

REAL PROPERTY LAWYER, AND CONVEYANCER.

Summary.

AN estate was conveyed to trustees in trust, "as and when it should seem to them meet, to sell and dispose of the said hereditaments and premises," and to apply proceeds to purposes which exhausted the entire value. This was held, in *Page* v. *Cooper*, 20 L. T. Rep. 287, to authorise a sale only, and not a mortgage. Where A. by will, after giving a life-interest to his son in real estate, enabled the son by any deed on his marriage to settle a sum not exceeding 400*l.* per annum by way of jointure on his wife, and to be in bar of dower, &c., legacy duty was held to be payable on the value of the rent-charge so created. (*Sweeting* v. *Sweeting*, 20 L. T. Rep. 288.) A. gave personal estate by will on trust for B. for life, and afterwards to C. for life, and on decease of survivor in trust for such person or persons as should at the decease of B. be entitled thereto as the testator's next of kin." C. survived B., and at B.'s death two persons were next of kin to the testator, and they were held to take as *tenants in common*: (*Horn* v. *Coleman*, 20 L. T. Rep. 290.) Another case, illustrative of the cruelty and injustice of our law towards illegitimate children is that of *Re Overhill's Trusts*, 20 L. T. Rep. 290. A. bequeathed stock to be equally divided between the children of B, and the children of C., the wife of D. At the date of the will C. *was* married to D., but for eighteen years previously she had cohabited with him, and had six children by him. The testator did not know that they were illegitimate, and C. had no legitimate children, and was forty-nine years old. Nevertheless, although there was not the slightest doubt as to the intention of the testator, the unfortunate children were deprived of the provision thus made for them. A more cruel and iniquitous state of the law cannot be conceived, and we think that to prevent so palpable a wrong the

Courts might relax a little. But why should not the Legislature interfere?

The delicate question as to whether an interest under a will was vested or contingent was determined in *King* v. *Isaacson*, 20 L. T. Rep. 291; but it turned on the facts, and decided no principle of law: therefore we do not further notice it here. A similar question was involved in *Openheim* v. *Henry*, 20 L. T. Rep. 291. Another point in the latter case, however, deserves noting. The Court would not order the original will of personalty to be produced to contradict the probate.

ENFRANCHISEMENT OF COPYHOLDS.

The following is the eleventh report of the Copyhold Commissioners to Her Majesty's Principal Secretary of State for the Home Department:

"Copyhold Commission, Dec. 31, 1852.

"My Lord,—We have the honour of presenting to your Lordship our eleventh report of the progress made under the Copyhold Acts, and the state of the proceedings during the present year. In submitting these results to you, we have to remark that the uncertainty in the public mind during the early part of the year as to whether any compulsory measure would be passed by the Legislature materially retarded voluntary enfranchisement until the Extension Act, 15 & 16 Vict. c. 51, was actually passed. We append a list of the enfranchisements effected, or which are now in an advanced state, showing a decrease in the number of the cases dealt with as contrasted with the return of the former year. Under this Extension Act, which provides (with certain exceptions) that, after the next admittance to any land which shall take place after the 1st July next, either lord or tenant may compel an enfranchisement, it may be expected that many enfranchisements will be effected. We have to request your Lordship's special attention to the fact that the 14 & 15 Vict. c. 104, gives to ecclesiastical corporations, sole or aggregate, with the consent of the Church Estates Commissioners, the power to enfranchise any copyhold or customary land held of any manor belonging to any such corporation. The jurisdiction, therefore, of the Church Estates Commission is concurrent with that of the Copyhold Commission in the case of ecclesiastical manors, whilst the application of the money received for enfranchisement by ecclesiastical Lords under the two Acts is different, the Church Estates Commissioners having authority to require that a certain portion of the proceeds of the enfranchisement should be paid to the Ecclesiastical Commissioners, to be dealt with by them as part of their common fund, the Copyhold Commissioners possessing no such power. It seems to us desirable that by some legislative provisions these differences should be reconciled. There are other matters connected with the Copyhold Acts and proceedings under them, which, in our opinion, appear to call for the very early interference of Parliament, but which we consider it would be inexpedient prematurely to enter upon.

We have the honour to be, &c.

WM. BLAMIRE.
G. DARBY.
H. C. MILES.

ENFRANCHISEMENTS AND COMMUTATIONS.

Years.	Clerical.	Collegiate.	Lay.	Total.
1841	1	—	—	1
1842	7	2	3	12
1843	13	3	13	29
1844	13	11	15	39
1845	19	25	12	56
1846	24	25	7	56
1847	12	27	13	52
1848	10	7	8	25
1849	13	7	10	30
1850	13	15	9	37
1851	24	9	31	64
1852	17	14	13	44
Total	166	145	134	447

ENFRANCHISEMENTS AND COMMUTATIONS.

Yrs.	No.	Consideration. Payment in full. £ s. d.	Rent Charges. £ s. d.	Land. A. R. P.
1841	1	8 14 0	—	—
1842	12	534 19 0	120 0 0	—
1843	29	4,815 7 2	17 0 0	—
1844	39	9,572 0 0	138 19 5	—
1845	56	10,651 8 4	767 5 6	—
1846	56	18,162 18 6	286 0 0	97 3 6
1847	52	12,158 14 8	474 15 0	—
1848	25	8,091 17 7	56 19 1	—
1849	30	3,329 6 10	174 7 6	—
1850	37	7,580 6 3	88 0 1	798 2 2
1851	64	22,728 4 8	273 18 8	—
1852	14	16,699 17 9	116 12 0	313 1 25
Tot.	445	104,988 9 9	2,479 11 7	1,209 2 33

THE CHURCH ESTATES COMMISSION.

THE following is the second general report from the Church Estates Commissioners:—

"To the Right Hon. the Secretary of State for the Home Department.

5, Whitehall-place, March 1, 1853.

"My Lord,—We, the Church Estates Commissioners, have the honour to make our second general report of our proceedings under the Act passed in the session of Parliament held in the fourteenth and fifteenth years of her Majesty's reign, intituled 'An Act to facilitate the Management and Improvement of Episcopal and Capitular Estates in England.'

"The facilities for enfranchisement afforded by the Act, which at the date of our last report were but imperfectly known, have since become more generally understood, and we have during the past year received numerous applications for our sanction to agreements conditionally entered into by ecclesiastical corporations with their lessees. We have already approved the terms agreed on in ninety-seven cases for the sale of reversions, and in eight cases for the purchase of leasehold interests, and in twelve instances we have refused to approve the terms: in seven of the last-mentioned cases, however, the original proposals were subsequently so modified as to meet with our sanction, and they are accordingly included in the number of those above stated to have been approved.

"The value in fee of the leasehold estates enfranchised by these sales and purchases exceeds the sum of 650,000*l.*; and many of the cases afford evidence of the advantage to the public interest, as well as to the lessees and to the resources of the church, resulting from enfranchisement.

"We have reason to expect that the enfranchisement of their estates will be shortly proceeded with by several other ecclesiastical corporations to a considerable extent, and we are confirmed in the opinion expressed in our last report, that the operation of the Act would be to promote a satisfactory settlement of the church leasehold question.

"In conformity with the requirement of the 10th section of the Act, we have annexed hereto a schedule of all applications, specifying in each case the terms proposed, the terms on which the sale or purchase has been effected, or, if refused, the grounds of such refusal.

"The schedule also specifies the like particulars in eleven cases of enfranchisement of copyholds effected under the Act.

"With regard to this latter class of cases, we have found ourselves placed in a position of some difficulty, by reason of the alleged concurrent jurisdiction therein of the Copyhold Commissioners, which, as materially affecting the interest of the church at large, we felt it to be our duty to question, and which now appears to be very doubtful.

"Under the Ecclesiastical Leases Restriction Act of 1836, and subsequent statutes, Parliament has, in cases of leaseholds for lives, restrained ecclesiastical corporations from exchanging the lives, and has also provided that any surplus arising from enfranchisement shall be appropriated to the purposes of the common fund of the Ecclesiastical Commissioners. But, under the Copyhold Enfranchisement Act, the existing members of the respective corporations have, in cases of copyholds for lives, been allowed, after exchanging the lives in consideration of fines, and thereby reducing the value of the reversions, to appropriate the whole annual proceeds of the prices of such reversions.

The enfranchisement of ecclesiastical copyholds, as carried on under the authority of the Copyhold Commissioners, was therefore, assuming it to be legal, obviously inconsistent with the principles adopted by the Legislature in regulating enfranchisements by ecclesiastical corporations. Moreover, the leasehold and copyhold properties of ecclesiastical corporations are frequently much intermixed, forming together an estate held by one lessee; and the separate enfranchisement of these several portions of the same estate must necessarily be attended with inconvenience.

"Having reference to the recently-published report of the Copyhold Commissioners, in which, after noticing some of the difficulties above mentioned, an opinion is expressed that there are matters connected with the Copyhold Enfranchisement Acts which require the very early interference of Parliament, we beg leave to suggest that ecclesiastical copyholds should be subject to such restrictions, and be dealt with upon such principles, as will place Ecclesiastical Corporations in the same position with respect to all portions of their property.

"We have the honour to be, my lord, your lordship's most obedient servants,

"CHICHESTER, JOHN G. SHAW LEFEVRE,
HENRY GOULBURN."

SALES BY SOLICITORS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—One of your correspondents, in a recent number, suggested that solicitors should be allowed to conduct sales by auction of real property for their clients, instead of being obliged to employ auctioneers, and in lieu of taking off the certificate duty. I think this a very excellent proposition, and remember hearing it well spoken of thirty years ago, when I was a clerk. Still, however, I do not perceive that it would be any material advantage to those practitioners who are in limited practice. The boon would be to the flourishing firms who have plenty of conveyancing business, by whom the certificate duty is not felt, and to their clients. For the sake of these (the clients) I would advocate the suggestion with all my heart.

I am, Sir, yours, &c.

March 4, 1853. L. E. X.

SALES BY SOLICITORS.

THE following letter, stating the reasons for this proposition, were submitted to the Members of the *Kent Law Society* some time since:—

"SIR,—I consider the subject contained in my notice for discussion at our next Annual Meeting so novel in its character, and so important to others, as well as to ourselves, and may so materially affect the interests of another class of professional gentlemen, that I am anxious to state the principal grounds upon which I have felt justified in submitting it to the consideration of the Profession, in order that the subject may be well digested before the time of meeting.

"1. There is a very strong feeling at the present day in favour of facilitating and cheapening the transfer of real property, and for that purpose the lawyers are to be sacrificed, if necessary, and therefore it behoves them to look to themselves.

"2. The lessening of expenses(*a*) at present attending a sale by auction, and thereby removing the greatest obstacle to offering property to public competition, and facilitating and cheapening the transfer of property more than can be done by any act of the Legislature.

"3. That all the work, saving the act of sending the advertisements to the printer, and asking the gentlemen assembled in the auction room for a bidding, is now, or may be better done by the lawyer—that such acts are a link in the chain of his professional business, and that there can be no reason (except a custom to the contrary, which arose under a different state of circumstances) why that mechanical part should be worked by deputy at so great a cost.

"4. I can see no sound distinction between sending an advertisement for sale by private contract, giving particulars and asking an applicant to buy (which is within our acknowledged professional duties), and doing the same thing on a sale by public auction; nor between sitting at the side of the auctioneer's chair giving directions and suggestions, and frequently correcting the reading of, and explaining the particulars and conditions of sale, and answering any important questions which arise, and sitting in that chair doing the same thing, with the addition of the word "gone," and a rap upon the table.

"5. One very great advantage would arise if the lawyer were solely acting: it would keep the price of sale within the knowledge of himself and his client, it would leave open *a discretion at the last moment*,—a most important one. Under the present system it is necessary positively to fix the buying-in price for the guidance of the auctioneer, who is unacquainted with circumstances and parties, and cannot exercise any discretion, or take upon himself any responsibility; but it sometimes happens, during the progress of a sale, that events arise which would operate upon the lawyer. A real bidding within a moderate sum of the price fixed, and seeing there were no other persons likely to purchase, might induce the lawyer, from his knowledge of his client's circumstances, and to avoid the expenses of a further attempt to sell, to take the responsibility of saying "gone;" or he might discover from the parties bidding, or other circumstances, that he was sure of a customer, either then or after the sale, at the same or a better price, and act accordingly; the experience of many of us will bring to our recollection cases of this description.

"6. We have high authority and good example in the practice of the Court of Chancery, where the auction sale is, or is supposed to be, conducted by the Master of the court: and I think that fact is a sufficient warranty that it would not or should not be considered unprofessional or *infra dignitate* for an inferior member of the same profession to perform the same duties.

"7. Most of us must have seen many instances (and I have recently had and heard of some strong cases which have forced the subject upon my attention) where the auctioneer's commission and the extra expenses incurred by an attendant upon his employment, have exceeded the profit of the lawyer's bill, when the whole work, with the exceptions before mentioned, and the whole responsibility have rested with the lawyer. These observations apply with greater force where the sale is made by the client or lawyer, as frequently happens, after the employment of the auctioneer, and where he has not been in the least degree instrumental in effecting the sale, but claims and is considered to be entitled to his commission.

"8. I consider the necessity of taking out a licence to act as an auctioneer may be placed upon the same footing as the necessity of obtaining the annual certificate to act as a lawyer.

"9. In olden times the auctioneer was the person entrusted and expected to gather all the particulars for the sale, to decide the lotting, manner, and price

(*a*) I propose the lawyer should charge a fee on sale, say three, five, or ten guineas, according to circumstances.

of sale, to prepare, insert, and print the advertisements, particulars, and conditions, to find lawyers from his commercial descriptions and persuasive eloquence, and in fact to conduct the whole business of the sale (frequently without the intervention of the lawyer), leaving the lawyer only to make out the title when the auctioneer had accomplished his task—those times are gone, and with them, I think, the necessity for the lawyer to employ an auctioneer.

I am, Sir, yours, &c. "A. B."

Answers to Queries.

STAMP.

It seems clear, from the case briefly reported in 20 L. T. Rep. 336, under the head *Re The Stamp Duty on a Conveyance from Lord Mount Edgecombe and Thomas Gill to the Plymouth Great Western Dock Company*, that an ordinary deed stamp will be sufficient for the indenture mentioned by L. in your last number. C. N.

THE LAWYER.

Summary.

EQUITY PRACTICE.—In *Blakeney* v. *Dufaur*, 20 L. T. Rep. 337, a plaintiff going to reside abroad for a purpose likely to keep him there, for such a length of time that he would not be likely to be forthcoming if the defendant were to come upon him for costs of suit, was required to give security for such costs.

COMMON LAW.—In *Hayling* v. *O'Key*, 20 L. T. Rep. 293, a defendant, who has remained on the land of another against his will, and therefore, *primâ facie*, against right, was held to be bound in his pleading to justify the trespass by showing all the circumstances that make such possession lawful.

PROCEEDINGS AGAINST BRITISH SUBJECTS ABROAD.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Though distant, I am a yearly subscriber to your valuable paper, through my agent in London, and have noticed a letter inserted in No. 513, whereby the writer properly suggests that, as by the 18th section of the Common Law Procedure Act 1852 any defendant, being a British subject, residing out of the jurisdiction of the Superior Courts, can be proceeded against for debts contracted in England, and in order to facilitate the service of process, a correct list of attorneys resident in the principal cities and towns of our colonies should be published. I therefore beg to inform you, for the purpose above-mentioned, that I am an English notary and solicitor established here, though but a short time still with success, and shall be happy to act in any legal matter which your subscribers may think fit to entrust me with. I may add, for their satisfaction, that I was duly admitted in the courts of law in England as solicitor in Michaelmas Term 1851, and as notary in 1852: the latter a privilege granted to English solicitors in the colonies on producing the required certificates as to character and ability. An English practitioner settling here must have a perfect knowledge of the Italian language, and Roman, civil, and local laws, &c.

I am Sir, yours, &c.,

Malta, Feb. 22, 1853. GEORGE D. PAGE.

Valletta, No. 36, Strada Zaccaria.

THE ATTORNEYS' TAX.

TO THE EDITOR OF THE LAW TIMES.

SIR,—As the circuits are now on, and it is usual for the different law societies to hold a general meeting in the assize towns and in the assize week, I beg to suggest the propriety of each law society sending up petitions, signed by the president, on behalf of the Society for a Repeal of the Certificate Duty.

I am, Sir, yours, &c.,

March 4, 1853. ONE, &c.

Answers to Queries.

ABSCONDING DEBTORS' ARREST ACT, 1851.

Your correspondent "Alpha" informs us that, on applying to the judge of one of the Yorkshire County Courts, his Honour declined granting a warrant, on the ground that he was not then sitting in the particular district in which the debtor resided. His Honour's attention was, it seems called to the 1st section of the Act, and it was urged, on behalf of the creditors, that if this were the requirement or meaning of the Act, it would have been so expressed in the enactment, and that this would render the Act, except in very rare instances, perfectly nugatory. The judge, we are informed, declined to grant the warrant, and alleged as a reason "that he presumed there was as yet no authority to the contrary."

No doubt no judge is to grant a warrant under a statute until there be an *authority* for his doing so, it is just possible that no warrant will be granted under any statute whatever.

I think, for my own part, that the judge in the case above referred to was wrong; for, with all respect to that learned person, it seems to me that the views of the intention and scope of the Absconding Debtors' Arrest Act, expressed by Mr. Kerr, in his useful and practical manual on that statute (a book which ought to be in the hands of every practitioner in the country), are correct. At page 4 Mr. Kerr states: "The application need not be made by a creditor within the district of the commissioner or judge from whom a warrant is sought, nor need it be made to the commissioner or judge in whose district the debtor may happen to be at the time."

If the reading of the statute by the learned judge referred to by your correspondent "Alpha" be the correct one, then the act is little better than a dead letter, for it will be as easy to procure a *capias* at once as to wait till a County Court judge is sitting in the district where the debtor resides. This remark brings me to the other, and I should suggest the most important, view of the statute, viz. that the power thereby given to the judge of the County Courts and Commissioners in Bankruptcy, is not given to them when sitting as judges or commissioners, *i. e.* it is not given to the County or Bankruptcy Courts. It is in the nature, "rather, of a personal power in the judge than a proceeding in the court" (as is stated in an erudite article on the County Courts in the *Companion to the Almanack for* 1852), and hence may be exercised by the judge out of court, if necessary. And, if this view be the correct one, it justifies the opinion expressed by Mr. Kerr, which is certainly the only reasonable interpretation which can be put upon the statute. Possibly the letter of "Alpha" and this epistle may call forth communications from others of your subscribers, who will be able to inform us what has been the course pursued by the County Court Judge within their experiences. It is extremely desirable that the effect of the important statute above mentioned should be thoroughly understood. OMEGA.

COUNTY COURTS.

Summary.

EDITORIALLY we by no means assent to the objections made to the County Courts by the practitioner who has been giving in so graphic a manner the results of his own experiences. But it is a rule with us to give a fair hearing to both sides, and, having ourselves much lauded the County Courts, we deemed it but just to afford a place to a pleading against our views, especially as the writer is not young, or unknown, or inexperienced, or incompetent to form a judgment, but a man of mature years, who has enjoyed a large practice as an attorney, whose name, if we were permitted to give it, would be instantly recognised by, and command instant respect from, every member of the Profession; and that he has the ability to form an opinion will readily be admitted by all who have read his graphic sketch.

Nevertheless, while we permit to him a hearing, as in duty bound, we are also bound to declare that his description has not changed our own opinion of the general merits and utility of the County Courts. We have witnessed the proceedings in many of them in various parts of the country; and although undoubtedly some comical scenes occur, some very bad law is often promulgated, and a good deal of "hard swearing" may be heard occasionally, still, upon the whole, substantial justice is done, and disputes and demands are determined which could not have been disposed of at all but for these tribunals. Our lively correspondent has manifestly fallen into the common error of looking only at one side of the question: he has contemplated the defects and overlooked the virtues; his picture is the sketch of a clever advocate making the most of his case, and not the summing up of a calm, impartial judge. We have always freely admitted that the County Courts have many defects in their constitution and procedure, which legislation might and probably will remedy; but they have certainly performed their purpose, which was to provide a speedy and inexpensive tribunal for the recovery of small debts and demands, which were previously without remedy. Whether they are equally adapted for larger duties is altogether another question; without considerable improvements we do not think that they are; but these improvements cannot now be long deferred. In the meanwhile, it is right that Legislators and the Profession should know what are their defects, that they may turn their minds to the consideration of the proper remedies; and the graphic description of our correspondent, although unquestionably highly wrought and over-coloured, will be serviceable, by showing that the County Courts are really not that "perfection of wisdom" which they are always represented to be when spoken of in Parliament, and that they are yet susceptible of very considerable amendment to make them that which they are supposed to be by those who are not personally acquainted with them.

A PRACTITIONER'S EXPERIENCES OF THE COUNTY COURTS.

(*Continued from page* 219.)

A FIFTH evil is one that, in these liberal days, would be regarded by the public with more apprehension than all that I have yet mentioned, were it clearly understood. These Courts (I am speaking of those that are provincial) are, in any sense of practical responsibility, private tribunals, excluded from the notice of the world. The Judge is almost supreme in the extent of his jurisdiction; the right of appeal from his decision is so cramped by the condition of separating law from fact, by the submission to him of every special case where the parties disagree in the statement of facts, (as in almost every case), and by the mode of appealing, when recourse is had to the Courts above in important cases, only to three, that the right is almost neutralised. I have studied these appeals: in every one my opinion of the judgment has been confirmed, by far higher authority, in two out of the three the expenses have deterred from the appeal, and in the third, the Judge refused to settle the case, on the ground that he could not disengage the law from the fact. Thus the right of appeal gives but scanty protection.

Neither can any be found from the attendance of reporters for the press. In the Courts in small towns there are no reporters. I have attended many, perhaps more than a hundred, and seen no reporter. In a large place like this there is frequently a short-hand writer present, but he attends only on speculation, to take the chance of an interesting case occurring for which he may obtain a few shillings; and when it does occur, it is inserted in the newspapers in such an abridged form, that even those who have been engaged in it can scarcely recognise their work. The law, if legal argument has arisen, is not understood, the facts are unintelligibly stated, because the evidence has been directly contradictory; and above all,—for in reference to this head of complaint it is the most important omission,—those little dramatic touches by which the bearing of the Court, the parties, the witnesses, and the characteristic traits of the tribunal, are usually conveyed to the public, are wholly dropped; probably because the reporter has not the tact to describe them. Again and again, I have seen reports in the provincial papers condensed within a dozen lines, of cases which, had they occurred in Westminster Hall, would have occupied a column of the *Times* or *Chronicle*, and have well repaid the space by their general interest.

Nor does the character of the audience afford any chance of publicity. You may scrutinise every corner of the Court, and, except in the attorneys' seats round the table, you will find nobody even in the outward garb of respectability. It is scarcely too much to say that not one in five is, to all appearance, so far educated as to be able to write his name. The greatest number are females; the others, labourers, domestic servants, and the lowest orders of mechanics; those who do not belong to one or other of these classes are generally shopkeepers in the lanes and byeways, or agents for the owners of tenements let out at ten shillings per week, who have on every court-day a regular batch of petty debts to recover, and are consequently as much satellites of the court as the usher or under-bailiff.

The professional part of the audience is, though better qualified, still less likely to give the public the advantage of their attendance. There will usually be found in every court some three or four attorneys who always are present; some of these are shrewd and able men, who, allowing for the disadvantage of a want of high education, whether academic or forensic, would fill a respectable rank at the bar. They have acquired tact and fluency; in addressing a jury they are deficient; but in making a point or in answering an objection they show that they understand their business. If these men felt sufficient confidence in themselves, and occupied their places in perfect independence of the Bench, they would, no doubt, find the means of securing a useful publicity to all cases that required publication; but they are restrained by a painful consciousness that any step that might be offensive to the Judge might subject them to censure, or, in vulgar phrase, to snubbing, that would diminish the confidence of their clients; nor are they forgetful that the doctrine of contempt has latterly been carried very far. You may imagine how strongly this feeling operates when I tell you that I have twice been specially retained at a very great distance from home, avowedly to face a Judge of whom my clients were afraid.

Other attorneys only frequent the Courts occasionally, when asked by clients whom they cannot discoblige; in fact, the first and second-class men will never willingly set foot within them, nor would they ever do so if the cases allowed them in all cases to give a brief to counsel; and, from similar reluctance, counsel rarely attend unless specially requested. During the last few months, a very small list has generally shown itself for an hour or two on the first day's sitting, that it may be understood that they are willing to accept briefs if offered; otherwise, the practice

is only to attend when it suits his own convenience in chambers. It is obvious that under such circumstances there can be no systematic publicity, and thus a power which, except as to the limit of the jurisdiction, is far greater than was ever before entrusted to the judicial Bench—a power of adjudicating on facts and law, for the most part without appeal, a power of administering equity as well as law in many important points of practice—is exercised without any real responsibility over, either to the profession or the public.

And from this results a sixth evil, of scarcely inferior moment—that, whether the opportunity is abused or not, a suspicion exists that it is. From all that I have myself witnessed, I can truly say that I believe the suspicion is groundless, barring, perhaps, a few rare exhibitions of temper. That I have now and then heard some dicta from the bench of very questionable law, and some occasional excess of jurisdiction of unquestionable error, may be true; but beyond a few venial mistakes of this nature, I have marked nothing to condemn. On the other hand, in several cases of concurrent jurisdiction, where I have been called upon to advise, remarks like the following have been repeatedly made to me. "How can we expect justice where the judge meets the defendant at his own or his neighbour's table on terms of intimacy?—when they daily interchange courtesies in the news room, or the library, or the club?—when they constantly meet as magistrates on the same bench, or as shareholders in the same company?" And at other times it has been said in the same distrustful and querulous tone, "It is of no use going into the County Court; the judge does as he pleases there; no man can get a hearing unless he can soft-solder him; I never open my lips but he stops my mouth."

It matters little that these suggestions or reproaches come from angry or disappointed men: they are the more likely to be widely circulated, and unfortunately there is but too much plausibility and probability about them, arising from the moral constitution of the court itself, not to pass current with the million. And what calamity of the kind can be more serious to the public, than to have our courts of law, in which more than half of the litigation of the country is already transacted, thus tainted with suspicion and calumny, whether merited or not?

(*To be continued.*)

COUNTY COURTS DEFECTS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I am no very great admirer of the County Courts; nevertheless I cannot help thinking the unfavourable picture which one of your correspondents presents you with is rather overcharged. I will, however, with your leave, mention a grievance which occurred in the course of my practice. A client of mine obtained a judgment in his favour in an action of trover or detinue, I forget which, but it is not material. The damages were ordered to be paid in one month. The County Court clerk's office was twenty miles from my residence, and fourteen miles from my client. When the damages and costs were paid, I wrote to the clerk requesting him to forward the amount to me by his cheque, and authorising him to sign any acquittance which might be necessary. I received no reply to this letter, although the clerk was an acquaintance. I afterwards was informed that some clerks had made a rule amongst themselves not to answer letters. But this was not all; when my client came to me for the money, and I had not got it, there was no possibility of his obtaining it, except by making a journey of fourteen miles to the office of the clerk. Being only a little country tradesman, this occasioned the loss of one day to him; when he got to the town where the clerk's office was, the clerk and his book-keepers were out for the day, and did not return until after office hours, so that the poor plaintiff not only lost two days out, but was obliged to be at the expense of lodging and boarding at an inn all day and part of the next.

I am, Sir, yours, &c.

March 4, 1853. OBSERVER.

MERCANTILE LAWYER.

Summary.

A speculator who had lost within a year, by the purchase of railway stock (the original contract being carried over by means of a continuation contract), a sum without broker's commission less than 200*l.* but with it more than 200*l.*, has been held upon appeal not to be entitled to a certificate of conformity under sect. 207 of the Bankruptcy Act. In that section the word used is "contract," but the Lords Justices have decided that this includes the plural word "contracts," so as to bring in a loss amounting to 200*l.* under several contracts, and that railway shares are within the meaning of the section. (*Ex parte Copeland*, 20 L. T. Rep. 286.)

In an action by indorsee against indorser of a bill, proof that plaintiff, on the day after the dishonour, endeavoured without success to obtain from the other parties to the bill, one of whom was defendant's brother, the address of defendant, and sent a note to him at his brother's house, where the bill was payable, and that such letter was not received, was held to be evidence for the jury that defendant had due notice: (*Chatteris* v *Durter*, 20 L. T. Rep. 296.) A., owner of a patent, gave a share to B. for advancing capital, and C., an engineer, manufactured machinery for it on the credit of B., and which A. superintended. C. made out his account to B., and a bill for part of the cost was drawn by C. on B., and indorsed by A. at C.'s request. The bill was paid. B. became insolvent, and C. sued A. for the balance, and it was held that A. and B. were liable as partners for the whole amount; and there being no plea in abatement, the action against A. alone could be sustained. (*Gerish* v *Lockhead*, 20 L. T. Rep. 296.)

COURT PAPERS.

Common Law Courts.

Court of Queen's Bench.

IN AND AFTER EASTER TERM, 1853.

MIDDLESEX.—IN TERM.

1st sitting, Monday, April 18.
Any common jury cause may be taken at this sitting.
2nd sitting, Monday, April 25.
Any common jury cause may be taken at this sitting.
3rd sitting, Monday, May 2.
For undefended causes only.

AFTER TERM.

Tuesday, May 10.

LONDON. IN TERM.

1st sitting, Friday, April 22
2nd sitting, Friday, April 29.
Any common jury cause may be taken at [illegible]

AFTER TERM.

Friday, May 13

The court will sit at 10 o'clock every day.

The causes in the list for each of the above sitting days in term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

Court of Common Bench.

Sittings at Nisi Prius in Middlesex and London before the Right Hon. Sir John Jervis Knight, Lord Chief Justice of Her Majesty's Court of Common Pleas at Westminster, in and after Easter Term, 1853.

MIDDLESEX.—IN TERM.

Tuesday, April 19.
Tuesday, April 26.

AFTER TERM.

Tuesday, May 10.

LONDON.—IN TERM.

Friday, April 22.
Friday, April 29.

AFTER TERM.

Friday, May 13.

The court will sit during and after Term at 10 o'clock.

The causes in the list for each of the above sitting days in Term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

LIST OF SHERIFFS, UNDER-SHERIFFS, DEPUTIES, AND AGENTS, FOR 1853.

Note. Warrants are not granted in town for these places (*).
The term of office of the Sheriffs, &c., for cities and towns, expires on 9th Nov.

Office hours, in Term, from 11 till 4; and in Vacation from 11 till 3.

(From Mr. LAMBERT'S List.)

ENGLAND.

Bedfordshire—Henry Littledale, Kempstone-grange, near Bedford, *Sheriff*; Theed William Pearse, Bedford, *Under-Sheriff*; Messrs. Maples, Maples, and Pearse, 6, Frederick's place, Old Jewry, *Agents.*

Berkshire—Head Pottinger Best, Donnington Castle, *Sh.*; John Jackson Blandy, Reading, *U. Sh.*; Messrs. Gregory, Faulkner, Gregory, and Skirrow, 1, Bedford-row, *Ag.*

Berwick-upon-Tweed—Robert Ramsey, Tweedmouth, Berwick-upon-Tweed, *Sh.*; James C. Weddell, Berwick-upon-Tweed, *U. Sh.*; Messrs. Pringle, Stevenson, and Shum, 3, King's-road, Bedford-row, *Ag.*

**Bristol, City of*—Robert Bright, Bristol, *Sh.*; William Ody Hare, Small-street, Bristol, *U. Sh.*; Messrs. Budges, Mason, and Budges, 23, Red Lion-square, *Ag.*

Buckinghamshire—Abraham Darby, Stoke-court, Slough, *Sh.*; Acton Tindal, Aylesbury, (A. U. Edward Robert Baynes, Aylesbury), *U. Sh.*; Charles Cooke, 7, Lincoln's-inn-fields, *Ag.*

Cambridge and Hunts—William Whitting, Manea and Thorney Abbey, *Sh.*; Edward Jackson, Wisbeach, *U. Sh.*; Messrs. Wing and Du Cane, 1, Gray's-inn-square, *Ag.*

**Canterbury, City of*—Thomas Thorpe De Lasaux, Canterbury, *Sh.*; Thomas Thorpe De Lasaux, Canterbury, *U. Sh.*; James Plaker, 10, Symond's-inn, *Ag.*

Cheshire—John Hurleston Leche, Carden-park, *Sh.*; Richard Barker, Chester (A. U. John Hastage, Chester), *U. Sh.*; Messrs. Tatham and Proctor, 10, New-square, Lincoln's-inn, *Ag.*

**Chester, City of*—Thomas Quellyn Roberts, Chester, *Sh.*; John Hastage, Chester, *U. Sh.*; Messrs. Chester, Todmin, and Chester, 11, Staple-inn, *Ag.*

**Cinque Ports*—The Most Hon. James Andrew, Marquis of Dalhousie, *Sh.*; Thomas Pain, Dover, *U. Sh.*; Messrs. Wright and Kingsford, 24, Essex-street, Strand, *Ag.*

Cornwall—Richard Pearce Castle, Looe (Hall, Corsewall), *Sh.*; Edward Hosken Fuller Tilsland (A. U. Thomas Commins, jun., Bodmin), *U. Sh.*; Messrs. Coode, Browne, and Kingdons, 10, King's-arms-yard, Moorgate-st., *Ag.*

Coventry, City of—Abolished by 5 & 6 Vict. c. 10, s. 19; warrants are granted by the Sheriff of Warwickshire.

Cumberland—Francis Reginald Atkinson, Rampsbeck Lodge, Penrith, *Sh.*; Miles Sewell, Carlisle, *U. Sh.*; Messrs. Capes and Stuart, 1, Field-court, Gray's-inn, *Ag.*

Derbyshire—Sir John Harpur Crewe, Calke Abbey, Bart. *Sh.*; John James Simpson, Derby, *U. Sh.*; Messrs. Taylor and Collisson, 28, Great James-street, Bedford-row, *Ag.*

**Devonshire*—Edmund Bastard Henn, Gennys, Whitleigh Hall, *Sh.*; Thomas Edward Drake, New-buildings, Exeter, *U. Sh.*; Messrs. Buckley and Philbrick, Girdler's Hall, 39, Basinghall-street, *Ag.*

Dorsetshire—William Bragge, Sadborow, *U. Sh.*; [illegible] Fox, Beaminster, *U. Sh.*; George Weller, 8, [illegible], Bedford-row, *Ag.*

**Durham*—Frederick Aclom Milbank, Hart, *Sh.*; [illegible] Emerson Wooler, 3, Bailey, Durham, *U. Sh.*; [illegible] Pollard and Hollings, Carlton Chambers, 12, Regent-street, *Ag.*

Essex—John Gurden Rebow, Wivenhoe-park, *Sh.*; John Stuck Barnes, Colchester (A. U. Messrs. Gepp and Veley, Chelmsford), *U. Sh.*; Messrs. Hawkins, Bloxam, and Hawkins, 2, New Boswell-court, Carey-street, *Ag.*

Exeter, City of—Thomas Edward Drake, New-buildings, Exeter, *Sh.*; Thomas William Hartnell, Exeter, *U. Sh.*; Messrs. Buckley and Philbrick, Girdler's-hall, 39, Basinghall-street, *Ag.*

Gloucestershire—John Raymond Raymond Barker, Fairford-park, Fairford, *Sh.*; John Burrup (firm Messrs. Burrup and Son), Berkeley-street, Gloucester, *U. Sh.*; Messrs. White and Sons, 11, Bedford-row, *Ag.*

**Gloucester, City of*—Joseph Carter, Bell-lane, Gloucester, *Sh.*; Frederick George Beale, Gloucester (A. U. George Peter Wilkes, Blackfriars, Gloucester), *U. Sh.*; Messrs. Abbott and Simpson, 7, Golden-square, *Ag.*

Hampshire—John Shelley, Avington-house, Winchester, *Sh.*; Charles Sengrim, Winchester, *U. Sh.*; William Braikenridge, 16, Bartlett's-buildings, Holborn, *Ag.*

Herefordshire—William Money Kyrle, Homme-house, Much March, *Sh.*; George Musgrave, Ledbury, *U. Sh.*; Messrs. Dobinson and Geare, 37, Lincoln's-inn-Fields, *Ag.*

Hertfordshire—Sir Thomas Gage Saunders Sebright, Beechwood-park, Bart. Flamstead, *Sh.*; Messrs. Longmore and Sworder, Hertford, *U. Sh.*; Messrs. Hawkins, Bloxam, and Hawkins, 2, New Boswell-court, Carey-street, *Ag.*

**Huntingdon and Cambridge*—William Whitting, Manea and Thorney Abbey, *Sh.*; Edward Jackson, Wisbeach, *U. Sh.*; Messrs. Wing and Du Cane, 1, Gray's-inn-square, *Ag.*

Kent—Francis Colville Hyde, Syndale House, Osprings, *Sh.*; Alfred King, Earl-street, Blackfriars, London (A. U. William Henry Palmer, Bedford-row, London), *U. Sh.*; Messrs. Palmer, France, and Palmer, 24, Bedford-row, *Ag.*

**Kings'-upon-Hull*—William Hunt Pearson, Kingston-upon-Hull, *Sh.*; Thomas Holden, jun., Parliament-street, Kingston-upon-Hull, *U. Sh.*; Messrs. Hicks and Son, 3, Gray's-inn-square, *Ag.*

**Lancashire*—John Talbot Clifton, Lytham Hall, *Sh.*; Messrs. Wilson, Son, and Deacon, Preston, *U. Sh.*; Messrs. Birkbeck and Craddock, 5, Gray's-inn-square, *Ag.*

Leicestershire—Frederick Wollaston, Shenton Hall, Hinckley, *Sh.*; Stafford Stratton Baxter, Atherstone, *U. Sh.*; George James Robinson, 35, Lincoln's-inn-Fields, *Ag.*

**Lichfield, City of*—Henry Hall, Lichfield, *Sh.*; John Philip Pyott, Lichfield, *U. Sh.*; Messrs. Baxter, Somerville, and Co. 48, Lincoln's-inn-Fields, *Ag.*

Lincolnshire—Joseph Livesey, Stourton Hall, *Sh.*; Henry Ward, 51, Lincoln's-inn-Fields (A. U. Henry Williams, Lincoln), *U. Sh.*; Messrs. Abbott, Jenkins, and Abbott, 8, New-inn, Strand, *Ag.*

Lincoln, City of—Benjamin Wilson, Lincoln, *Sh.*; Richard Mason (firm Mason and Dale), Lincoln, *U. Sh.*; Messrs. Taylor and Collisson, 28, Great James-street, Bedford-row, *Ag.*

London, City of—John Carter, 61, Cornhill, and Alexander Angus Cyrill, 28, Coleman street, London, *Sh.*; William James, 5, Basinghall-street, and Thomas Mortimer Cleobury, 10, Poultry, *U. Sh.*; Messrs. James and Potter, Secondaries' Office, Basinghall-street, City, and Messrs. Burchells and Hall, 21, Red-lion-square, *Ag.*

Middlesex—Ditto, ditto.

**Monmouthshire*—Henry Bailey, Nant-e-Glo, *Sh.*; William Woodhouse Secretan Jan e Woodhouse, Aberga enny, *U. Sh.*; Messrs. Gregory and Sons, 12, Clement's-inn, *Ag.*

**Newcastle-upon-Tyne*—Henry Ingledew, Newcastle-upon-Tyne, *Sh.*; William Daggett, Newcastle-upon-Tyne, *U. Sh.*; Messrs. Williamson, Hill, and Williamson, 10, Great James-street, Bedford-row, *Ag.*

Norfolk—David Gurney, North Runcton, Lynn, *Sh.*; Frederick Robert Partridge, Lynn (A. U. Messrs. Adam Taylor and Sons, Norwich), *U. Sh.*; John Wickham Flower, 17, Gracechurch-street, *Ag.*

Northamptonshire—Cary Charles Elwes, Great Billing, *Sh.*; Henry Philip Markham, Northampton, *U. Sh.*; Frederick Ouvry, 13, Tokenhouse-yard, *Ag.*

Northumberland—Walter Selby, Biddleston, *Sh.*; William Forster, Alnwick, *U. Sh.*; George Mounsey Gray, 9, Staple-inn, *Ag.*

**Norwich, City of*—George Womnak, jun., Norwich, *Sh.*; Arthur Dalrymple, Norwich, *U. Sh.*; Messrs. Bircham, Dalrymple, and Drake, 46, Parliament-street, *Ag.*

Nottinghamshire—Thomas Spragging Godfrey, Balderton, *Sh.*; Godfrey Tallents, Newark-upon-Trent (A. U. John Brewster, Nottingham), *U. Sh.*; Messrs. Taylor and Collisson, 28, Great James-street, Bedford-row, *Ag.*

Nottingham, Town of—William Page, Nottingham, *Sh.*; Christopher Swann, Nottingham, *U. Sh.*; Messrs. Holme, Loftus, and Young, 10, New-inn, Strand, *Ag.*

Oxfordshire—James Morrell, jun., Oxford, *Sh.*; John Marriott, Devenport, Oxford, *U. Sh.*; Messrs. Davies, Son, Campbell, and Rand, 17, Warwick-street, Regent-st, *Ag.*

Poole, Town of—William Waterman Poole, *Sh.*; William Parr, Poole, *U. Sh.*; Messrs. Holme, Loftus, and Young, 10, New-inn, Strand, *Ag.*

Rutlandshire—John Parker, Preston, near Uppingham, *Sh.*; William Shield, Uppingham, *U. Sh.*; Messrs. Capes and Stuart, 1, Field-court, Gray's-inn, *Ag.*

Shropshire—Algernon Charles Heber Percy, Hodnet Hall, *Sh.*; Joseph Loxdale Warren, Market Drayton (A. U. Joshua John Poole, Shrewsbury), *U. Sh.*; Harvey Lewis Jones, 72, Austin-friars, *Ag.*

Somersetshire—Francis Henry Dickinson, Kingweston, near Somerton, *Sh.*; John Nicholetts, South Petherton, *U. Sh.*; Messrs. Dynes and Harvey, 61, Lincoln's-inn-fields, *Ag.*

Southampton—William Aldridge, Southampton, *Sh.*; Messrs. [illegible], Southampton, *U. Sh.*; Messrs. Tribe, [illegible], 1, John-street, Bedford-row, *Ag.*

Staffordshire—Edward Baller, Dilhorn Hall, *Sh.*; Bowyer Wand (firm Messrs. Keene and Wand, Stafford, *Sh.*; Messrs. White and Sons, 11, Bedford-row, *Ag.*

Suffolk—The Right Hon. John Lord Henniker, Thornham Hall, Eye, *Sh.*; George Layton, Eye (A. U. Messrs. Clarkson, Sparke, and Holmes, Bury St. Edmunds), *U. Sh.*; Messrs. Abbott, Jenkins, and Abbott, 8, New-inn, Strand, *Ag.*

Surrey—Thomas Grissell, Norbury-park, Leatherhead, *Sh.*; William Heydon Smallpiece, Guildford, *U. Sh.*; Messrs. Abbott, Jenkins, and Abbott, 8, New-inn, Strand, *Ag.*

Sussex—Francis Burchard, Worsted-place, Sussex, *Sh.*; William Woodgate, Lincoln's-inn-fields, *U. Sh.*; Messrs. Palmer, France, and Palmer, 24, Bedford-row, *Ag.*

Warwickshire—Sir William Edmund Cradock Hartropp, Bart. Four Oaks Hall, Sutton Coldfield, *Sh.*; Thomas Heath, Warwick, *U. Sh.*; Messrs. Taylor and Collisson, 38, Great James-street, Bedford-row, *Ag.*

Westmorland—John Wakefield, Sedgwick House, Kendal, *Sh.*; John Heelis, Appleby, *U. Sh.*; George Mounsey Gray, 2, Staples-inn, Holborn, *Ag.*

Wiltshire—Francis Layborne Popham, Chilton, *Sh.*; Thomas Bayerstock Merriman, Marlborough (A. U. West Awdry, Chippenham), *U. Sh.*; Messrs. Lewis, Wood, and Street, 6, Raymond-buildings, Gray's-inn, *Ag.*

Worcestershire—Charles Noel, Bell Hall, near Belbroughton, *Sh.*; George Croft Vernon, Hanbury (A. U Messrs. Hyde and Tyrabs, Worcester), *U. Sh.*; Messrs. Hall and Smith, 11, New Boswell-court, Carey-street, *Ag.*

Worcester, City of—Charles Bedford, Worcester, *Sh.*; Charles Sidebotham, Worcester, *U. Sh*; Henry Bedford, 4, Gray's-inn-square, *Ag.*

Yorkshire—Andrew Montague, Melton-park, Doncaster, *Sh.*; William Gray, York, *U. Sh.*; Messrs. Bell, Brodrick, and Bell, Bow-churchyard, *Ag.*

York, City of—William Hudson, York, *Sh.*; Henry Anderson, High Peter-gate, York, *U. Sh.*; Charles Fiddey, 3, Paper-buildings, Temple, *Ag.*

NORTH WALES.

Anglesey—Richard William Prichard, Erianell, *Sh.*; Thomas Owen, Llangefni, *U. Sh.*; Messrs. Abbott, Jenkins, and Abbott, 8, New-inn, Strand, *Ag*

Carnarvonshire—Robert Vaughan Wynne Williams, Llandudno, *Sh.*; David Williams, Bron Eryri, Portmadoc, *U. Sh.*; Messrs. M'Leod and Cann, 3, Paper-buildings, Temple, *Ag.*

Denbighshire—Pierce Wynne York, Dyffryn Aled, Denbigh *Sh.*; John Copner Wynne Edwards, Denbigh, *U. Sh.*; Messrs. Tooke, Son, and Holland, 39, Bedford-row, *Ag.*

Flintshire—Whitehall Dod, Cloverley, Whitchurch, *Sh.*; Arthur Troughton Roberts, Mold, *U. Sh.*; Nathaniel Charles Milne, Harcourt-buildings, Temple, *Ag.*

Merionethshire—Thomas Arthur Bertie Mostyn, Kylan, *Sh.*; Isaac Gilbertson, Bala, *U. Sh.*; Messrs. Holme, Loftus, and Young, 10, New inn, Strand, *Ag.*

Montgomeryshire—John Naylor, Leighton Hall, *Sh.*; Abraham Howell, Welshpool, *U. Sh.*; Nathaniel Charles Milne, Harcourt-buildings, Temple, *Ag.*

SOUTH WALES.

Brecknockshire—Wyndham William Lewis, Llanthetty Hall, *Sh.*; Frederick Rowland Roberts, Aberystwith, *U. Sh.*; Messrs. Hawkins, Bloxam, and Hawkins, 2, New Boswell-court, Carey-street, *Ag.*

Cardiganshire—Lewis Pugh, Aberystwith, *Sh.*; James Webb Jones, Quay-street, Carmarthen, *U. Sh.*; Robt. Gamlen, 3, Gray's-inn-square. *Ag.*

Carmarthen, Borough of—David Bowen, Priory-street, Carmarthen, *Sh.*; Thomas Parry, Carmarthen, *U. Sh.*; Edward Towsey, Quality-court, Chancery-lane, *Ag.*

Glamorganshire—Richard Hill Miers, Ynispenllwch, Swansea, *Sh.*; Alexander Cuthbertson, Neath, *U. Sh.*; Messrs. Rowland, Hacon, and Rowland, 31, Fenchurch-street, *Ag.*

Haverfordwest, Town of—John Maddocks, Haverfordwest, *Sh.*; William Davies, Haverfordwest, *U. Sh.*; Messrs. Hastings, Best, and Smith, 3, Southampton-street, Bloomsbury-square, *Ag.*

Pembrokeshire—Adrian Nicholas John Stokes, Saint Botolphs, *Sh.*; Jonathan Rogers Powell, Haverfordwest, *U. Sh.*; Messrs. Tinder and Eyre, 1, John-street, Bedford-row, *Ag.*

Radnorshire—Jonathan Field, Esgairdrainllwyn, *Sh.*; Wm. Hosford Daubney, Great Grimsby (A. U. Richard Green, Knighton), *U. Sh.*; Messrs. Taylor and Collisson, 38, Great James-street, Bedford-row, *Ag.*

BIRTHS, MARRIAGES, AND DEATHS.

BIRTH.

SCUDAMORE.—On the 4th inst. the wife of Frederick Scudamore, Esq. of Maidstone, of a son, stillborn.

MARRIAGE.

COWIE—STEWART.—On the 18th Jan. at St. Paul's Cathedral, Calcutta, Thomas Hardwicke Cowie, Esq. of the Middle Temple, Barrister-at-Law, to Margaret Baillie, eldest daughter of Duncan Stewart, M.D. Presidency surgeon.

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

COMMISSIONS SIGNED BY LORD LIEUTENANTS.

Yorkshire.—The Right Hon. Lord Londesborough; Sir Thomas Becket, Bart.; John Charlesworth Dodgson Charlesworth, Esq.; Robert John Coulman, Esq.; Thomas Fairfax, Esq.; Henry Hall, Esq.; John Spencer Stanhope, Esq.; John Vance, Esq., M.P.; Frederick William Thomas Vernon Wentworth, Esq.; Sir Thomas Edward Pilkington, Bart.; Colonel Ferrars Loftus, Lieut.-Colonel John Barnett, Lieut.-Colonel the Hon. Edward Gambier Monckton, Captain Cuthbert Athelstan Baines, Captain Charles Augustus Cobbe; Captain Edward Prothero; Joseph Priestley Edwards, Esq.; William Hey, Esq.; William Henry Leatham, Esq.; George Pollard, Esq. (Halifax); William Henry Rawson, jun., Esq.; Francis Salvin, Esq.; Samuel Waterhouse, Esq.; and Francis Frederick Whitehead, Esq.

THE GAZETTES.

Bankrupts.

Gazette, March 8.

CLARK, ROBERT, licensed victualler, Holyhead, Anglesea, March 14. and April 11, at eleven, Liverpool. Off. as. Cazenove. Sol. Yates, jun. Liverpool. Petition, Feb. 22.

HARRIS, MORRIS, furrier, Regent-street, March 12 at two, and April 23 at twelve, Basinghall-street. Off. as. Pennell. Sol. Sole and Co. Aldermanbury. Petition, March 1.

M'LACHLEN, JOHN, auctioneer, Spital-square, Norton Folgate, March 12 and April 23, at one, Basinghall-street. Off. as. Nicholson. Sols Messrs. Boulter, Northampton-square, Clerkenwell. Petition, March 4.

PLATTS, ALFRED, tailor, Sheffield, March 19 and April 30, at twelve, Sheffield. Off. as. Freeman. Sol. Chambers, Sheffield. Petition, March 4.

ROSS, HUGH HENRY, draper, Liverpool, March 18 and April 14, at twelve, Liverpool. Off. as. Turner. Sols. Sale and Co. Manchester Petition, Feb. 25.

SYMES, JOSEPH, cheesemonger, Queen's-buildings, Knightsbridge, March 22 at one, and April 19 at twelve, Basinghall-street. Off. as. Groom. Sols. Sturmy and Co. Philpot-lane, City. Petition, March 3.

WELLS, JOHN, builder, Bold-place, Dalston, March 16 at two, and April 20 at one, Basinghall-street. Off. as. Graham. Sol. Ashley, Charles-square, Hoxton. Petition, March 8.

WEST, WILLIAM, and WEST, JOHN, linendrapers, Donnington, Lincolnshire, March 21 at one, and April 19 at twelve, Basinghall-street. Off. as Edwards. Sols. Heather and Moger, Paternoster-row. Petition, March 2.

WHITE, RICHARD, cut nail manufacturer, Birmingham, March 19 and April 9, at half-past ten, Birmingham. Off. as. Bittleston. Sol Standbridge, Birmingham. Petition, March 14.

Gazette, March 11.

BAKER, THOMAS WILLIAM, tobacconist and cigar dealer, 9, Little Woolton-street, West Derby, Walton-on-the-hill, Lancashire, and 4, Roe-street, Liverpool, March 22 and April 12, at eleven, Liverpool. Com. Perry. Off. as. Morgan. Sol. Griffiths, Otrel-place, Lord-street, Liverpool. Petition, March 2.

BAXTER, ROBERT, currier and leather seller, Wisbech St. Peter, Cambridge, March 22 at two, April 25 at one, Basinghall-street. Com Holroyd. Off. as. Edwards. Sols. Messrs. Abbott, Jenkins, and Abbott, 8, New inn, Strand; Thomas Stead Watson, Wisbech, Cambridgeshire. Petition, March 10.

BURGESS, JAMES, contractor, Over Tabley, Cheshire. April 7 and 28, at eleven, Manchester. Off. as. Lee. Sols. Taylor, 32, Cooper-street, Manchester; and Hartley, Colne. Petition, Feb. 28.

GIBBS, NATHANIEL BIRKETT, chemist and druggist, 81, Connaught terrace, Edgeware-road, March 19, and April 22, at one, Basinghall-street. Com Fane. Off. as. Whitmore Sol. Randall, 56, Welbeck-street, Cavendish-square. Petition, March 10.

HEWITT, CHARLES FRANCIS butcher, 9, Tavistock-street, Plymouth, March 24 and April 21, at half-past ten, Plymouth. Com. Bere. Off. as. Hernaman. Sol. Elworthy, Exeter. Petition, March 4.

HOUGHAM, JAMES BISHOP, school master, Stoke Newington-road, Hornsey, March 24, at half past twelve, and April 21, at twelve. Basinghall-street. Com. Evans. Off. as. Bell. Sol. Nias, Copthall-buildings. Petition, Jan. 11.

JENKINS, ARTHUR HAMMOND, and WOODHOUSE, EDWARD JOHN, wine merchants, Gloucester, March 23 at twelve, April 20 at eleven, Bristol. Com. Stephen. Off as. Acraman. Sols. Lovegrove, Gloucester; Messrs. Abbot and Lucas, Bristol. Petition, Feb. 21

PLUMMER, JOHN, brewer, Britten-street, Chelsea, March 22 at one, April 25, at twelve, Basinghall-street. Com. Holroyd. Off. as. Groom. Sols. Messrs. Lawrance, Plews, and Boyer, 14, Old Jewry-chambers, Cheapside. Petition, March 2.

PRIOR, HENRY, and ATKINSON, HENRY, Manchester warehousemen, 125, Wood-street, March 23, at half past one, and April 22, at twelve, Basinghall-street. Com. Fonblanque. Off. as. Stansfield. Sol. Mason, 17, Ironmonger-lane, City. Petition, March 7.

SIMMONDS, HENRY, brick maker and builder, Ore, Sussex, March 23, at two, and April 20, at half-past one, Basinghall-street. Com. Fonblanque. Off. as. Stansfield. Sols. Messrs. Hill and Matthews, 1 Bury-court, St. Mary Axe. Petition, March 9.

SMITH, JOHN JOSEPH, ship owner, Stockton-upon-Tees, Durham, March 18, at eleven, April 22, at twelve, Newcastle-upon-Tyne. Com. Ellison. Off. as. Baker. Sol. Fenwick, Tyne-street, North Shields.

SOLOMON, HENRY, furniture broker, 45, Holborn-hill. City, Cumberland-place, Old Kent-road, and 2, Surrey-place, Old Kent-road, March 18 and April 22, at twelve, Basinghall-street. Com. Fane. Off. as. Cannon. Sol. Jones, 9, Quality-court, Chancery-lane. Petition, March 8.

WALKER, JANE, linen draper. Halifax, Yorkshire, April 7 and 29, at eleven, Leeds. Com. West. Off. as. Young. Sols. Wavell, Philbrick, and Foster. Halifax; and Bond and Barwick, Leeds. Petition, March 8.

BANKRUPTCY ANNULLED.

Gazette, March 8.

BOHLAL, TALES, merchant. Mogadore, Africa, Feb. 25.

Gazette, March 11.

BETTERIDGE, JAMES, [redacted] dealer and grocer, Watlington, Oxford, Jan. 19.

Dividends.

BANKRUPT ESTATES.

Official Assignees are given, to whom apply for the Dividends.

Carlisle, R. T. brick maker and railway contractor, first, 3d. Freeman, Sheffield.—*Dobson*, J. optician, first, 8s. Edwards, London.—*Davey*. C. linendraper, first, 10s Edwards, London. *Featherstonaugh*, J. coal factor, third, 3½d. Graham, London.—*French* and *Sands*, coal factors, &c. second sep. of Sands, 2s Nicholson, London.—*Harries*, J. carpet warehouseman, second, 1s. 1d. Edwards, London.—*Hills*, A. oil and vitriol manufacturer, first, 2s. 10d. Graham, London.—*Hodson*, W. farmer, second, 3½d. Edwards, London.—*Jones*, P. joiner and builder, 9½d. Morgan, Liverpool.—*Marshall*, C. brewer, second, 4d. Graham, London.—*Marshall*, M. cut nail manufacturer, first, 2s. 9d. and second, 4s. 6d. Hope, Leeds.—*Monkhouse*, W. C. wine merchant, 12s. Hutton, Bristol.—*Morley*, P. A. linen manufacturer, first, 9d. Christie, Birmingham.—*Palfreyman*, L. scrivener, third, 13s. 7d. and on new proofs, 18s, 1d. Freeman, Sheffield.—*Pearson*, J. Z. wine and spirit merchant, third, 1d. and 3-10ths. Hope, Leeds.—*Pinnerbury*, A. builder, 4s. 2½d. [illegible]

[illegible] 4½d. Whitmore, Birmingham.—[illegible] first, 11½d. Graham, London.—[illegible] Liverpool.—[illegible] Hull.—*Wrigley*, E. and R. G. [illegible] Hope, Leeds.—*Wrigley*, E. and R. G. [illegible] Hope, Leeds.—[illegible] of E. Wrigley. 20s. Richardson, London.

INSOLVENT ESTATES.

Apply at the Provisional Assignee's Office, Portugal-street, Lincoln's-inn-fields, between the hours of ten and three.

Burman, I. clerk, 5s. 3d. [illegible] 6s. 8d.—*Hodgson*, W. commander in the navy, 4½d. (making 11s.).—*King*, J. maltster and farmer, 2s. 9½d.—*Mawdsley*, G. J. T. clerk, 6s. 6d. (making 13s.).—*Nathan*, M. grate agent and shopseller, 6s. 7½d.—*Tribe*, T. lieut. in the coast guard service, 2s. 11½d. (making 4s. 9d.)

Amos, N. saddler, 4d. Apply at the County Court, Rugby.

Fletcher, R. grocer and shopkeeper, 6d. Apply at the County Court, Rugby.—*Holland*, J. builder, first and final, 1s. 10½d. Apply at the County Court, Rawdon.

Assignments for the Benefit of Creditors.

Gazette, March 1.

Artingstall, W. joiner and builder, Pendleton, Lancashire, Feb. 7. Trust. J. Lofthouse, accountant, Manchester. Sol. S. Simpson, Manchester.—*Clarke*, W. cabinet maker, Holme, Lancashire, Feb. 23. Trusts. R. Norfolk, Manchester, and T. Challinor, Macclesfield, timber merchants. Sol. J. Barry, Manchester.—*Hunt*, H. grocer and baker, Buckland, near Dover, Kent, Feb. 12. Trusts. J. Green, grocer, Canterbury; and J. Wood, tallow chandler, Dover. Sol. E. Elwin, Dover.—*Tapley*, A. draper, Ilkeston, Derbyshire, Feb. 17. Trusts. W. Fryer and W. H. Taylor, wholesale drapers, Nottingham; and W. Butterfield, merchant, Manchester. Sol. J. S. Sykes, Nottingham.—*Thompson*, J. publican, Telegraph Inn, London-road, Derbyshire, Feb. 1. Trust. J. Wright, farmer, Brampthorpe. Sol. J. Briggs, Derby.

Gazette, March 4.

Burritt, J. W., linen draper, Bradford, Yorkshire, Feb. 23. Trusts. W. Butterfield and W. H. Newton, merchants, both of Manchester. Sols. Hampson and Sons, Manchester.—*Edwards*, W. upholsterer, Peterborough, Feb. 26. Trusts. T. Tapling, warehouseman, Wood-street, London; and J. Cattel, gentleman. Peterborough. Sols W. C. Sole, Aldermanbury; J. Broughton and A. Percival, Peterborough.—*Ford*, J. and *Cellars*, J. joiners and builders, Alderley, Cheshire, Feb. 21. Trusts. J. Kay, plasterer, and W. Griffiths, plumber and glazier, both of Manchester. Sol. J. H Dearden, Manchester.—*Longstaff*, F. leather dealer, Chester-road, Hulme, Lancashire, Feb. 26. Trusts. H. Bowman, leather merchant, Manchester; and J. T. Cunliffe, farmer, Ardwick. Sols. Hulton and Brett, Salford.—*Sturgis*, O. and *Adams*, W. builders, New Finchley-road, Middlesex, Jan. 21. Trusts. J. N. Helling, plumber, Hampstead-road; R. Ohbard, glass merchant, Bridge-street, Blackfriars; and J. Chadwick, stone merchant, Augustus-street, Regent's-park. Sol. H. J. Turner, Percy-street, Bedford-square. *Turk*, J. butcher, Palling-next-the-Sea, Norfolk, Jan. 26. Trust. J. Woods, auctioneer, Great Yarmouth.

Partnerships Dissolved.

Gazette, March 1.

Barratt, J. L. and J. H. and *Wilson*, P. bible and prayer book warehousemen, Fleet street, Feb. 28.—*Beaumont*, G. and *Hoole*, J. warehousemen Manchester, Feb. 25. Debts paid by Beaumont.—*Clarke*, J. B. and *Hellyer*, G. millers, Havant and Emsworth. Feb. 26. Debts paid by Clarke.—*Coulthart*, J. sen. and J. jun. woollen drapers, Liverpool, Feb. 25.—*Douglas*, J., *Rankart*, A. and *Charton*, A. C. stuff merchants, Bradford, as regards Rankart, Dec. 31.—*Dove*, W. and *Rex*, J. ironmongers, York, Feb. 21. Debts paid by Dove.—*Dunlop*, J. and *Walkington*, S. spirit merchants, Liverpool, Jan. 1.—*Ford*, J. and *Cellars*, J. joiners and builders, Alderley, Feb. 21.. *Jowitt*, T. and *Bottle*, J. G. file and steel manufacturers, Sheffield, Feb. 24.—Debts paid by Jowitt.—*Knowles*, J. and *Lord*, C. chemists and druggists, Todmorden, Jan. 2.—*Lomax*, C., *Lord*, J. and *Howarth*, J. coal proprietors, Fern Hill Colliery, Spotland, Rochdale, as regards Howarth, Feb. 26.—Debts paid by remaining partners. — *O'Connor*, J. and *Bennett*, R. W. common brewers, West Bromwich, Feb. 18. Debts paid by Bennett.—*Reid*, G. sen. and *Hayley*, T. livery-stable keepers, Huddersfield, Dec. 31.—*Robinson*, R. and *Newstead*, W. grocers and tea dealers, Newark-upon-Trent, Feb. 21.—Debts paid by Robinson.—*Rowe*, R. and *Robinson*, W. coach builders, Birmingham, Jan. 3.—*Skeene*, J., *Davis*, C. and *Skeene*, S. K. mustard, cocoa, and chicory manufacturers, Oxford, Feb. 19. Debts paid by Davis.—*Samuels*, L., S. R., and J., lace manufacturers, Nottingham, as regards L. Samuels, Feb. 24. Debts paid by remaining partners.—*Stuart*, R. and *Smith*, J. J. stove grate manufacturers, Sheffield, Jan. 1. Debts paid by Smith.—*Turner*, W. T. and *Holloway*, T. and B. woollen cloth manufacturers, Cam Mills, Gloucestershire, Feb. 24. Debts paid by Turner.

Gazette, March 4.

Barstow, J., F., and G., builders, Leeds and Pontefract, Feb. 26.—*Barnacott*, G. V. and *Riddell*, D. architectural modellers and plain and ornamental plasterers, Cheshire-street, Tottenham court-road, Dec. 25.—*Blacke*, H. and *Redhead*, J., linen and woollen drapers and silk mercers, Durham, Feb. 26. Debts paid by Blacket.—*Booth*, S. & W. and *Slater*, W. grocers and provision dealers, Heywood, Feb. 26.—*Burgess*, A. and *Peck*, W. F. engravers and printers, Manchester, Mar. 2. Debts paid by Burgess.—*Carver*, J. sen., W., J. jun. and W. J., *Derbishire*, G. S. and *Crossell*, T. merchants and commission agents, Lisbon, as regards J. Carver, sen. W. J. Carver, and G. S. Derbishire, Dec. 31.—*Carver*, J. sen., W., J. jun. and W. J., and *Derbishire*, G. S. merchants, Manchester and Gibraltar, Feb. 29. Debts paid at Manchester by J. Carver, sen. and at Gibraltar by W. Carver.—*Cowell*, W. M. and *Thomas*, J. builders, &c., High-street, Marylebone, Mar. 3.—*Dixon*, H. and *Thwaites*, J. coal owners, Keyper colliery, Durham, Feb. 12. Debts paid by Dixon.—*Fry*, A., J. F., and *Tennent*, R. M. Rio de Janeiro, July 15, as regards J. F. Fry.—*Gadge*, J. and *Lambourne*, T. King's Arms-yard, Moorgate-street, Feb. 24.—*Harris*, J. and *Tomkins*, J. shop sellers, Abingdon, Feb. 26.—*Ledger*, E. and *Bannister*, W. cigar manufacturers and dealers in tobacco, Liverpool, Feb. 8. Debts paid by Bannister.—*Mackay*, H. A. F., and D. coal proprietors, Uphall, near Wigan, and Liverpool, Mar. 1.—*Moore*, A. and G. tailors, Manchester, Feb. 26.—*Morgan*, F. and *Bowen*, J. grocers and provision merchants, Claypath, Durham, Feb. 26. Debts paid by Morgan.—*Phillips*, B. and *Sleft*, J. ship riggers and stevedores, North-street, Poplar, Feb. 26.

THE FOLLOWING BOOKS [illegible] ARE JUST ISSUED AT THE LAW TIMES OFFICE.

PART IX. of COX, MACRAE, and HINDLEY'S COUNTY COURT LAWS AND CASES, together with INDEX TO PART VI. Price 2s. 6d.

This is the earliest and only complete collection of Reports of Cases relating to the County Courts, and contains every case from the establishment of the Courts. To be continued regularly. Parts I. to VIII. may still be had, price 2s. 6d. each. Part X. is in the press, and will complete the cases to the beginning of 1853.

THE LAW DIGEST, PART XV., for the Half-Year ending December 1. By E. WISE and D. T. EVANS, Esqrs., Barristers-at-Law. Price 6s. 6d. bds.; 8s. cloth.

This work gives every case, wherever reported, during the half-year, arranged so that the practitioner may find in a moment what is the latest law on any subject on which he may be engaged.

THE NEW RULES and ORDERS, the NEW TABLE of FEES, and the NEW RULES relating to the ADMISSION of ATTORNEYS and the EXAMINATION of ARTICLED CLERKS, with Practical Notes, Forms, and Index, by R. MALCOLM KERR, Barrister-at-Law. Price 4s. (This may be had also as a *Supplement* to "Kerr's Common Law Procedure Act," having marginal references to the pages of that work.)

TUDOR'S NEW CHANCERY PRACTICE, with all the Rules, Orders, Costs, Decisions, &c. to this time, with Practical Notes, Forms, and Index, the Orders being placed with the Sections of the Statute to which they relate. By OWEN TUDOR, Esq. Barrister-at-Law. Price 9s. 6d. cloth.

THE NEW BANKRUPTCY ORDERS, with the BANKRUPTCY CONSOLIDATION ACT, and Notes of all the Cases decided on its construction. By C. J. B. HERTSLET, Esq., Barrister-at-Law. Price 7s. 6d. cloth.

THE PRACTICAL STATUTES of 1849, containing all those ever required in Practice, omitting the Repealed and the Scotch, Irish, Colonial, and Sessional Statutes, with Notes of all the Cases decided on their construction; thus presenting the whole Law as it is, in a compact form for ready use, and with a copious Index By C. J. B. HERTSLET, Esq. Barrister-at-Law. Price 10s. 6d. cloth. (This is in continuation of the Practical Statutes of 1850, 1851, and 1852, which may still be had.)

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To Readers and Correspondents.

"ALPHA."—*The suggestion is good. We shall certainly adopt it.*
"W. D."—*It was clearly a clerical error of the reporter.*
"P. H. S."—*His note has been sent to the reporter.*
"N. R." (Portsea) *is too long for this number.*

We cannot undertake to return rejected communications.
Whatever is intended for insertion must be authenticated by the name and address of the writer; not necessarily for publication, but as a guarantee of his good faith.
No notice can be taken of anonymous communications.

THE LAW TIMES.

SATURDAY, MARCH 19, 1853.

THE ATTORNEYS' TAX.

LORD ROBERT GROSVENOR has prudently deferred the second reading of his Bill for the repeal of this often-condemned impost until after the CHANCELLOR of the EXCHEQUER shall have produced his budget, expressing his hope that the emphatic division on Thursday will receive from the Government the respect which such a majority is entitled to command, and that by a voluntary surrender of the wrong any further adverse proceedings may be rendered needless.

This course was wise, not because it is expected that Mr. GLADSTONE will yield—for he is one of those whom defeat would rather make more resolute—but that he might be left without any plea for diverting attention from the point at issue when the battle comes to be fought again. He would eagerly grasp at any charge of factiousness or undue pressure to create a feeling in his own favour, and against the claimants for justice. We can well afford to wait a little.

The position of our cause is not only more favourable than ever it was before as respects numbers, but also in regard to time. Every former division, we believe, in the previous Parliament took place after the Government had produced its financial scheme for the year, and consequently there was the ready excuse—"It is too late; we cannot alter the whole Budget for this one tax." No such excuse can be put forth now. The opinion of the House has been emphatically declared before the CHANCELLOR of the EXCHEQUER has framed his Budget, so that he may easily mould it to the requirements of the House.

The *Times*, after sneering at the division as the expression, not of the honest opinions of the members, but of the influences brought to bear upon them, and endeavouring thus to induce the Government to resist the decision of the House, turns round to the Attorneys and thus tries to persuade them that the Tax is neither a burden nor an injustice. It says:—

We shall follow his example so far as not to go into the thick of the question; but, as our remarks might wear a look of harshness to a profession as respectable, and, indeed, as necessary as any other, we will just make one observation to show that the tax is not necessarily that hardship some attorneys would have us believe. There are many costly legal institutions maintained in this country in the shape of courts of law, judicial functionaries, prisons, and other modes of punishment and repression. They must be paid for, and, though all derive benefit from them and all help to pay for them, yet it is evident some derive greater and more immediate benefit than others. The persons thus directly, and in the first instance benefited are necessarily the clients of attorneys, and it is fit that those clients should pay something more than others for the common benefit in which they have an extraordinary share. They can only be taxed through attorneys, stamps, and fees, and, as it would be impossible to tax every legal consultation or lawyer's letter, the best way to tax this part of the affair is by a poll-tax on the attorney himself. There is one other alternative, indeed, but it need only be mentioned to be rejected at once—viz., a percentage on every lawyer's bill. What would attorneys say to one per cent. on every account? With ever so small a practice, they would rather pay a round sum and have done with it; particularly as the other course would involve a disclosure of their affairs. The tax, undoubtedly, presses hard on young attorneys with small practice; but they hope in time to be in large practice; and, if they are worth anything, they would rather not see their profession made the refuge of all the penniless schemers in the country. But after all, it is not an attorney's, it is a client's affair. The former charges it on the client in the fee he demands for every consultation, letter, or other necessary step, and, when an ignorant client complains of what he fancies an excessive charge, the attorney is always able to point at his immense admission-fee and his yearly duty.

The fallacy of the argument, that the tax on the attorney is in fact a tax upon the client—just as a tax on tea is borne by the consumer and not by the seller—will be apparent from this, that it is nowaay regulated by the amount of business transacted by the attorney. If that theory of the tax be the true one, the clients of Mr. A., who pay him a thousand a year, should each be charged nine-tenths of it less than the clients of Mr. B. who pay him only 100*l.* a year. But in fact the charges for letters and attendances are to both precisely the same. The *Times* has energetically assailed the injustice of the Income Tax for taxing the rewards of industry at the same rate as the proceeds of accumulated property; but surely greater still is the injustice of taxing all attorneys equally, whether their profits are 1000*l.* a year or nothing! From this dilemma, at least, the advocates of the tax cannot escape. Either the tax is bad in principle and ought to be abolished, or it is most unjust in its incidence and ought to be amended. If it is a tax on attorneys, it combines the two most objectionable features of any tax—it is at once a class tax and a poll-tax upon the class. If it is, as the *Times* contends, a tax levied upon clients through the attorneys, then it is most unfairly and iniquitously levied; for the half-dozen clients of one man are made to pay as much as the hundred clients of another.

The supporters of the Attorneys Tax must be indeed hard driven for a defence of it when even the *Times* can find nothing better to adduce in its favour than the argument we have cited and answered.

The CHANCELLOR of the EXCHEQUER is reported to have thrown out a hint of the repeal of the Articled Clerks' Stamp Duty, instead of the Certificate Duty. If there is not, as we suspect, some error of the reporter's in this, the threat was an effusion of pitiful spite against the Attorneys; for its purport is obvious—it means "I'll pay you off; under pretence of relief I will do you an injury." To any such project the most resolute opposition must and will be offered by the Profession; but we will not believe the insult seriously intended until we see it taking formal shape in the Budget.

LORD BROUGHAM'S LAW OF EVIDENCE BILL.

THE LORD CHANCELLOR has expressed his approval of so much of Lord BROUGHAM'S Bill as admits the wife as a witness, but only permits communications made to her by her husband to be privileged to the same extent, and for the same reasons as those between attorney and client. So far good. This will remove one more impediment to the discovery of the truth.

There remains, however, another obstacle to justice, which we fear will not be so readily thrust aside. Every person acquainted with our tribunals knows how frequently justice is defeated, and the discovery of the truth prevented, by a privilege which the law allows to a witness to refuse to answer any question which he may choose to consider, or even pretend to consider, might involve him in a criminal prosecution. This protection was based upon another principle of our law, that a man should not be compelled to convict himself; and, inasmuch as any evidence given by a witness on oath in one trial might be used in evidence against him on another, to compel him to answer would be to compel a self-conviction. Nobody desires to invade the wholesome rule of our law that forbids a culprit being forced to convict himself; and the problem to be solved is, how to preserve this privilege, and yet to prevent its operating as an obstacle to justice in other matters. Lord BROUGHAM'S bill proposes to effect this double object by the very simple arrangement of *protecting the answer*—that is to say, to treat communications made in a court of justice as we do those between attorney and client, as confidential, or as a letter written "without prejudice," and prevent its being made use of against the witness in any other proceeding. This plan is not new, nor untried. It was adopted, with admirable effect, in the St. Alban's Inquiry Act, and it is one of the provisions of the recent Bribery at Elections Act.

But Lord CRANWORTH objects to it that, although it will not in form lead to compulsory self-conviction, it will do so in fact; for he fears that witnesses will be pumped to obtain information which may supply the means of a criminal prosecution.

To this objection there are two answers.

First, we contend that, even if such were the consequence, it is no substantial objection. It must be remembered that only *criminal acts* are now thus protected. A man is compellable to answer questions that might affect his whole property, and yet we find that in practice no evil results proceed from it. The safeguard against the abuse of the power is found in the other rule of law, that a question must be *relevant*, and in the power vested in the Court to forbid irrelevant questions. Why should more mischief or inconvenience arise from the other class of questions being allowed? If relevant to the matter at issue, why should a man who has committed a crime be allowed the privilege of doing an injury to others, or defeating justice, by refusing to answer? If the question is not relevant, it would not be permitted at all.

Secondly, if his answers supply facts for inquiry, although those answers cannot be used as admissions, there is no harm in that; if there has been crime, why should it not be brought to light? If the witness is guiltless, he has the advantage of being able publicly to declare himself so upon his oath.

If, however, the objection still lingers in any mind, we would suggest, as a first step, and to make trial of it upon a limited scale, that the questions should be allowed to be put only where relevant to the matter in issue, and *not* when the object is merely to impeach the credit of the witness. This was the objection made by Lord CRANWORTH. The objection is not without weight, although, we think, met by the considerations stated above; but a very great point will be gained if so much is done towards the removal of the present obstacle to justice as would be effected by taking away the privilege so far as relates to questions relevant to the issue—leaving questions merely impeaching credit upon their present footing.

We throw out this suggestion to the Law Lords as a solution of the difficulty suggested by Lord CRANWORTH; and, if *thus* modified, we hope the clause will have his approval and support.

THE SOLICITORS AND THE EXAMINERS IN CHANCERY BILL.

THE LORD CHANCELLOR has stated in the House of Lords that the nature of the duties to be performed by the Examiners under this bill is such that a Solicitor could not discharge them properly; and hence the new provision limiting the appointment to Barristers. But his Lordship did not state why a Soliciter should not be competent

to the work, or why, if competent, he should not be eligible. If the choice of the Chancellor is left open to take from either branch of the Profession, why suppose that he would choose an incompetent Solicitor more than an incompetent Barrister? If the mere fact of being a Barrister of seven years' standing were a guarantee for fitness, there would be some reason in the limitation; but as that is notoriously not the case, and as certainly many Barristers could be found unfit, and many Solicitors could be found capable for the post, with all deference to the LORD CHANCELLOR, we cannot admit the validity of his plea for drawing a new line of limit, that does not mark either competency on one side of it or incompetency on the other. It seems to us not only an unjust, but also impolitic, exclusion.

PROGRESS OF LAW IMPROVEMENT.

THOUGH much has been talked about, little has been *done*. Lord LYNDHURST suggested that some contrivance for securing a more careful framing of statutes, before they become law, would be at least as useful as a consolidation of existing statutes, and the Lord CHANCELLOR assented, but gave no hope of any practical plan being devised. The Government have promised a Commission to inquire into the means of assimilating the Mercantile Law of England and Scotland. Lord ST. LEONARDS has promised to introduce a clause into the new criminal code for the better protection of women and children against assaults and cruelty. The LORD CHANCELLOR has announced that the consolidation of the law will be commenced immediately, some small subject being first selected by way of experiment.

The SOLICITOR-GENERAL appears to be the only real Law Reformer in the Government. He takes the right view of the present position of Law Reform—that too much has been done or not enough—that the only hope of the Profession lies now in carrying out changes to their completion, so that increased quantity may compensate for diminished fees. As the SOLICITOR-GENERAL must be the next Chancellor, his views on this subject are of more than common interest, for what he preaches now he will probably be called upon to practise. Sir R. BETHELL combines to an extraordinary extent a capacious grasp of intellect with rare practical ability.

SALES BY SOLICITORS.

THE proposition started by a large and influential section of the Profession has excited uncommon interest, and we have received a pile of letters upon the subject, some supporting, others disapproving—opinion appearing to be pretty equally balanced. The arguments *for* were exhausted in a letter to which we gave a place last week. The arguments *against* are well put in a letter we publish to-day, and certainly they are very cogent. If there was the slightest probability of the Solicitor becoming the Auctioneer, or anything like it,—in fact, of doing more than the Masters in Chancery have done—it should be stoutly opposed, whatever advantages it might appear to offer. We are promised, also, a statement of the case of the Auctioneers, which will explain to the Profession what they do not appear to be quite aware of at present,—the actual duties and labours of that functionary; which, we are assured, will satisfy the reader that the Auctioneer performs many necessary duties, besides those of the pulpit, which the Solicitor could not do, and that for such work he is by no means overpaid. We, therefore, request our readers and correspondents to suspend their judgments until they have fairly heard the case adduced by all the parties in this controversy, whose importance is too great for it to be hastily decided and disposed of.

THE INCOME TAX.

THE newspapers, and especially the *Morning Chronicle*, have been teeming with long, tedious, and extremely dull discussion upon the question whether and to what extent a tax on precarious incomes should differ from a tax on incomes arising out of realised property.

Notwithstanding the ingenious pleadings of our contemporary and some of its correspondents, the common sense of the world—the practical experience of every one—shows that there *is* a difference between the one source of income and the other—that the owner of the one is really a richer man than the owner of the other; and we have no doubt that the maintainers of the equality doctrine in argument would not hesitate in their choice between the two kinds of income, were it offered to them. Their practice would contradict their theory.

Assuming, then, that there is a difference, and that they ought not to be taxed on the same scale, the problem remains, how is the proportion to be ascertained, so as to do something like justice to all?—for perfect justice is unattainable in any scheme of taxation ever yet devised.

It has occured to us that the difficulty may be thus solved. We put it in the form of an illustration.

A. has 300*l.* rental of land.

B. has 300*l.* profits from a profession.

Is B. as rich a man as A.? Certainly not.

If not, why not?

Because if A. dies, his property remains, and the income continues to his successors. If B. dies, the income is lost to his successors.

What, then, will be requisite to make A. and B. equal in point of wealth, and therefore equal subjects for taxation?

Only this: that B.'s successors should be as well off as A.'s successors.

This can be done by an assurance of B.'s life, which would put him on an equality with A.

Therefore, before B.'s income can be fairly taxable, he must be allowed to deduct from it so much as would assure to him at his death the same capital as A. would possess at his death.

There would not be the slightest difficulty in ascertaining this. Given the age, the ordinary tables of an assurance office would show what sum per annum B. must pay to secure at his death a property equal to that of A. Deduct this payment, and the remainder of the income would be the proper subject for taxation. Parliament might enact a table for calculating this deduction, and which any actuary could supply. The only inequality then would be that of health; but this is a contingency to which all are subject, and it would be impossible to make so nice an adjustment. For every purpose of justice to the community, it would suffice that the table was calculated at healthy rates.

BUBBLE ASSURANCE OFFICES.

A TABULAR statement in the *Post Magazine Almanac* for 1853 reveals some curious facts respecting Fire and Life Offices, and their promoters. We derive from it a further proof of the manner in which the public are deceived and misled, to their great loss; and we learn how a thriving establishment, with offices, directorate, and "Capital Half a Million" may grow, mushroom-like, out of the brain of a coatless man, or a disappointed and discharged Secretary, or a dubiously-educated Gentleman, or an Esquire without reputation, position, or wealth.

During the year 1852 there were registered no less than 70 new offices to carry on the business of Fire or Life Assurance, or both. Of these a few were revivals of defunct establishments.

Only 12 out of the whole number were *completely* registered, and but 5 profess to have commenced business! Of these 12, one is known to be a respectable company, with the largest list of shareholders to be found in the Registration Books. One is an old and unsuccessful office under a fresh name. In no less than *seven* instances *not a single share has been paid upon*, although several of these had "commenced business;" and respecting the other three the information is altogether *nil*.

In the establishment, or rather registration, of these 70 offices, 114 promoters have been concerned; but for seven of the number no promoters' names are registered.

It is curious to note the trades, professions, and "no-calling," of these 114 promoters. The latter class greatly preponderates. Thus are the qualifications divided:—Of "Gentlemen," there are 30, and of "Esquires," 10; of Merchants 10, and Actuaries and Secretaries 12; of Barristers 6, and of Solicitors 8; of Surgeons and Warehousemen 3 each; of Reverends, Accountants, and Stationers, 2 each; and there are an Author and a "Shoe-manufacturer!" a Doctor of Divinity and a Grocer; an Artist and an "M.P.;" a Civil Engineer and a Baronet; a Bullion Merchant and a Manager of a Life Office; an Architect and a Life Assurance Agent; a Calico Printer and a Marble Merchant; a Cabinet Maker and a Manufacturer; a Printer and a Farmer and Grazier; an Iron Merchant and a Provision Merchant; a Share Broker and a Publisher; a Naval Pensioner and a Shipowner; and a Builder and a Lieut.-Colonel.

No unusual pressure was felt at any period at the Registration Office. The registrations were thus divided, according to the months:—

January . . 8	May . . . 9	September . . 3
February . 5	June . . . 7	October . . . 7
March . . . 8	July . . . 4	November . . 7
April . . . 3	August . 4	December . . 3
Uncertain 2		

Thus "the season" had little to do with the work of Company-making; but it will be seen that May and June received more favours than any other two consecutive months; and July and August fewer than any two consecutive months. The tide was at its highest in May, and at its lowest in April, September, and December.

In several instances the company was registered to do an entirely new class of business, as well as to do the public. One sanguine promoter proposed "to assure constant medical attendance to the assured"—thus perpetually flourishing a lancet above the heads of the policy-holders, after the fashion of the Dionysian sword. In another case, the object was "to transact business at the 'diggins'"; and in a third, the purpose was the very questionable one of "guaranteeing the due performance of contracts." More sensible, one speculative society "guarantees the collecting and payment of rents;" while one, more daring than them all, is "for the assurance of money to be paid on the marriage of the assured, or his or her nominee." More impracticable still, one office "insures the delivery of colliers [collier vessels, we presume] on their arrival in London, and a supply of ballast;" and another professes to guard against bankruptcy and its terrors. But enough. This list of quackeries is as tiresome and unwholesome as it is dishonest. The provident should be on their guard against year-old assurance offices, whose promoters happen to be "gentlemen" or "shoe-manufacturers," "esquires" or "grocers," "M.P.'s" or "baronets,"—which seem to vegetate on the air, and have immense capitals on paper, but no paid-up shares—which, like the "Lion of England Life and Fire," have grown out of a defunct "Sceptre;" or, like the "Adamant," have sprung from a long-dormant "Alleviator."

It is an alarming fact, however, and one we would impress on the public mind, that of the seventy assurance offices registered in 1852, only five have commenced business, and *that several of these have not received a shilling upon their shares*. The question is if their share lists be not altogether impostures. Yet do we hear that some of these bubble offices, through the medium of the agency system, are enabled to "do a good business." But the assured, or rather their dependants, will be sufferers; and on behalf of these we feel apprehension and desire redress. Some practical man in the House of Commons should take this subject in hand. An Inspector of Assurance Offices would be even a more useful public servant than an Inspector of Prisons. His work would certainly be none of the cleanest, but it would do good service.

Since the above was written, we have received a letter from a subscriber stating that he had insured in one of the new Fire-offices—had suffered a loss of 450*l.* for which he had made application to the Board, but could obtain no reply—and inquiring if we could give him any information as to the office and its directors. Unfortunately for him, we can do so. The office is shut up; the secretary and promoter was a returned convict under a false name; the directors are men of straw; and there is not a single *bonâ fide* shareholder. So our reader loses his 450*l.*

AN ACTION AT LAW UNDER THE NEW PRACTICE. (*a*)

THE DECLARATION—INDORSEMENT OF NOTICE TO PLEAD.

IT is not necessary in cases where the defendant has appeared to the writ that the declaration should be indorsed with a notice to plead; the notice may be indorsed, or afterwards delivered separately: (sects. 62, 63.) It seems, however, to be essential to signing judgment by default where the defendant has not appeared that the notice to plead should be indorsed (sect. 28, *ante*, p. 133); and practically, no doubt, it will be indorsed in almost every case. When indorsed it is simply,

The defendant is to plead hereto in eight days, otherwise judgment. Dated the day of A.D. 185 . *C. H. plaintiff's attorney.*

If delivered separately, it should, of course, be entitled in the court and cause; and instead of

(*a*) By GEORGE TAYLER, Esq. Barrister-at-Law.

the word "hereto," it should be *to the declaration herein.*

SERVICE, &c. OF DECLARATION.

In case of the defendant's nonappearance to a writ not specially indorsed, the declaration indorsed with a notice to plead in eight days is to be filed (sect. 28, *ante*, p. 133); that is, delivered to the proper officer at the office of the Masters of the Court. In what cases particulars of demand must also be filed has been shown, *ante*, p. 209.

Where the defendant has appeared to the writ by an attorney having an address within three miles of the General Post-office, there is no doubt the declaration should be delivered at such address. There was formerly a rule in the Q. B., requiring every attorney residing in or within ten miles of London or Westminster to enter in a book in the Master's office an address in London or Westminster where he might be served with notices, summonses, orders, and rules, and ordering that all such not requiring personal service, might be served at the address so entered. In the Court of Ex. there was a slightly different rule. Pleadings, though not mentioned in either, were held to be within both of them: (*Blackburn* v *Peate*, 2 C. & M. 244.) The existing rule for all the Courts is that the Masters of the several Courts shall cause to be kept an alphabetical book at their offices, to be there inspected by any attorney or his clerk without fee or reward; and every attorney practising in the said Courts, and residing within ten miles of the General Post-office, shall enter in such book (in alphabetical order) his name and place of business, or some other proper place within three miles of the said Post-office, where he may be served with pleadings, notices, summonses, orders, rules, and other proceedings; and as often as any attorney shall change his place of business, or the place where he may be so served as aforesaid, he shall make the like entry thereof in the said book; and all pleadings, notices, summonses, orders, rules, and other proceedings which do not require a personal service, shall be deemed sufficiently served on such attorney if a copy thereof shall be left at the place lastly entered in such book with any person resident at or belonging to such place; and if any such attorney shall neglect to make such entry, the fixing up of any notice, or the copy of any pleadings, notice, summons, order, rule, or other proceeding for such attorney in the Master's office shall be deemed a sufficient notice: (*b*) (R. G. H. T. 1853, r. 165.) It would seem from this rule that, supposing the attorney has neglected to enter such address, the declaration may be fixed up without any application to, or order of, the Court or Judge.

But there is some difficulty in determining the procedure after an appearance by the defendant in person. The defendant is required in such cases to give an address in the appearance, and by sect. 30, if an address so given is illusory or fictitious, the appearance will be irregular, and may be set aside by the Court or a Judge, and the plaintiff may be permitted to proceed by sticking up the proceedings in the Master's office without further service. By R. G. H. T. 1853, r. 166, however, the defendant is required, upon entering an appearance, to enter in a book, to be kept for that purpose at the Master's office, an address within three miles from the General Post-office, at which all pleadings, notices, summonses, orders, rules, or other proceedings not requiring personal service shall be left; and if such address shall not be entered in the said book, or if such address shall be more than three miles from the General Post-office, then the opposite party shall be at liberty to proceed by sticking up all pleadings, notices, summonses, orders, rules, or other proceedings in the Master's office, without the necessity of any further service. If the defendant observes both these provisions, there is no doubt that the service of the declaration should be at the address given in the book; but if he has not observed the rule of Court some difficulty arises as to how far the plaintiff is bound to regard the address in the appearance. If this address be fictitious, a more complex difficulty arises as to the plaintiff's proceedings. The subject has been considered in more detail than is necessary in these articles in an article on "Service of Declaration where Defendant appears in person," in last week's number (*ante*, p. 225), and the practical result seems to be briefly this,—that application should first be made to the address entered in the book, if there is one, and it is within three miles of the General Post-office. If one is not so entered, or it is more than three miles, or it is unsatisfactory, application should be made to the address in the appearance, and if that is fictitious it will depend somewhat on the circumstances of each case whether it will be wiser to proceed under the 30th section or under the 166th rule.

Although the defendant has appeared in person, if he afterwards appoint an attorney, who gives notice to the opposite party before the declaration is served, it must be served on such attorney; for in all cases where a plaintiff has sued out a writ in person, or a defendant has appeared in person, and either party has, by an attorney of the Court, given notice in writing to the opposite party, or the attorney or agent of such party, of such attorney being authorised to act as attorney for the party on whose behalf such notice is given, all pleadings, notices, summonses, orders, rules, and other proceedings which, according to the practice of the Courts, are to be delivered to or served upon the party on whose behalf such notice is given, must thereafter be delivered to or served upon such attorney: (r. 167.) (*c*)

If there be several defendants, and they have appeared personally or by separate attorneys, each defendant or attorney should be served with a copy of the declaration. If several defendants have appeared by one attorney, service of one copy on him is sufficient as to these.

If to a writ not specially indorsed one of several defendants appear, and others do not, the declaration will be in the same form as if they had all appeared: the defendant who has appeared must be served as if he were the sole defendant, and a copy must be filed under sect. 28 for the defendants who have not appeared. And under that section an interlocutory judgment by default may be signed against these defendants at the expiration of the time to plead.

In cases within sect. 33 (*ante*, p. 132), that is, where one of several defendants has appeared to a writ specially indorsed and others not, and the plaintiff has signed judgment against those who have not appeared, the declaration must be served on the defendant who has appeared, as if he were the sole defendant.

The form of the commencement of the declaration, in this case might have been referred to under the heading "Names of the Parties" (*ante*, p. 194). For it is necessary that in this case the declaration should suggest the judgment obtained; and the following form is offered, though not without hesitation, on account of the novelty of the proceeding under the 33rd section:

A. B. by, &c. comes and informs the court that a writ of summons indorsed in the special form mentioned in the 33rd section of the Common Law Procedure Act, 1852, *was duly issued at the suit of the said A. B. against C. D. and E. F., and that the said C. D. has appeared to the said writ, and the said E. F. has not appeared thereto, and that by reason of such nonappearance the said A. B. did on the day of last* [*or* instant] *sign judgment against the said E. F., whereupon the said A. B. by, &c. sues the said C. D. for* (the cause of action which there was against the defendants jointly may be stated).

The service of the declaration need not be personal; and as to service on the defendant, the same language as that used in the above cited rule of court as to service at the attorney's address may appropriately be used to define the mode of service at the defendant's address. It should be on some person "resident at or belonging to" the address given: (*Taylor* v. *Whitworth*, 9 M. & W. 478; S. C. 1 Dowl. 600.)

The service should be made before seven o'clock P. M.; if made after that hour it will be deemed as made on the following day: (r. 164.) In case of service after seven o'clock on a Saturday, probably this rule will be held to mean that the service shall be taken as made on Monday.

Service on a Sunday, there is scarcely a doubt, would now be held void, though there is an old case (*Walgrave* v. *Taylor*, 1 Ld. Ray. 705) which has been cited to show that it is good. The declaration had been served on Sunday in that case; but the decision was really this, that after the defendant had suffered judgment by default and writ of inquiry to be executed, the Court would not permit the objection to be taken. It has, however, been expressly decided since, that service of a notice of a declaration on a Sunday (like service of a writ, see *ante*, p. 123) is void, as being within the mischief of 29 Car. 2, c. 7, s. 6, though not perhaps expressly included in its terms: (*Walker* v. *Torane*, Barnes, 309; *Morgan* v. *Johnson*, 1 H. Bl. 628.)

Formerly, where the declaration was filed it was necessary to give a notice of declaration—questions as to the form and service of which have often been before the Courts; and in cases where particulars of demand were required to be given, it was necessary they should accompany the notice. But from the language of sect. 28, and the abolition of the old rules of court, the service of these is not now necessary. Probably in some cases, especially where the defendant is out of the jurisdiction, the Court or Judge will, on making an order giving the plaintiff leave to proceed, impose the condition that a notice of the declaration having been filed shall be served.

After service of the declaration there are two or three minor matters, subsidiary proceedings as it were, which may arise.

AMENDMENT OF DECLARATION, &c.

The plaintiff may, after service, amend his declaration or particulars of demand. Even before the Common Law Procedure Act it was recognised as a general rule that, before judgment, either party was at liberty, upon application to, and by permission of, the Court or a Judge, to amend his pleadings: (*Brazier* v *Jones*, 6 B. & C. 196.) As to the declaration, the only limit to the discretion really defined seems to have been, that amendments which would introduce a substantially different claim or cause of action from that in the declaration were not allowed: (Lush's Prac. 384.) Of course the recent statute will tend to make the allowance of amendments less strict than heretofore: (See also *ante*, p. 107.) The payment of the costs of the application (and those occasioned by the amendment, if the defendant has pleaded or demurred) are almost universally a condition of the amendment being allowed.

SETTING ASIDE, &c. DECLARATION FOR IRREGULARITY.

The defendant, on the other hand, if he thinks there is any irregularity either in the declaration or its service, may apply to set it aside. This application should always be made on an affidavit verifying the declaration, &c.; and when it is necessary to state any matter of fact to ground the application on, an affidavit must be made. Where a summons is obtained to set aside proceedings for irregularity, the several objections intended to be insisted upon must be stated therein: (r. 136.) The preceding is a new regulation, but the following is a former one revived:—No application to set aside process or proceedings for irregularity shall be allowed unless made within a reasonable time; nor if the party applying has taken a fresh step after knowledge of the irregularity: (r. 135.) And the following is a carrying out of what was the former practice:—In all cases where a rule is obtained to show cause why proceedings should not be set aside for irregularity with costs, and such rule is afterwards discharged generally, without any special direction upon the matter of costs, it is understood as discharged with costs: (r. 137.)

A similar application, common formerly, and which will still be made under the new pleading rules, is to strike out a count or counts of the declaration inserted in violation of the rule that several counts shall not be allowed on the same cause of action: (see *ante*, p. 208.)

And if any pleading be so framed as to prejudice, embarrass, or delay the fair trial of the action, the opposite party may apply to the Court or a Judge to strike out or amend such pleading, and the Court or any Judge will make such order respecting the same, and also respecting the costs of the application, as such Court or Judge shall see fit: (sect. 52.)

APPLICATION FOR PARTICULARS OF DEMAND.

The defendant may also obtain particulars of the plaintiff's demand in many cases where they are not furnished. Beside those actions mentioned at p. 209 *ante*, in which particulars of demand must be delivered or filed with the declaration, the Courts have always exercised, on the application of the defendant, an equitable jurisdiction in ordering the delivery of particulars of demand, and that proceedings be stayed in the meantime: (*Boulnois* v. *Mackenzie*, 4 Bing. N. C.

(*b*) This word "notice" is unusual and untechnical in this position; most likely it is the result of a clerical error, and has been substituted for "service" by mistake. From its connection it will probably be considered to be equivalent to the latter.

(*c*) For the future, when the New Rules of Practice of Hilary Term last are cited in these articles, it will be by its number of the rule merely, as in this case.

127.) As a general rule they do so in all cases where it appears to be necessary for the furtherance of justice that the defendant should have more specific information than is given by the declaration. The cases in which this application is usually granted are more particularly stated in Arch. Pract. p. 1252; Lush's Pract. p. 373. The application for such an order should be made to a Judge at chambers in the first place.

If the particulars so obtained or those given under the rule of court referred to above are considered not sufficiently explicit, a precisely similar application may be made for an order for "better particulars."

A summons for particulars and order thereon may be obtained by a defendant before appearance, and may be made, if the Judge think fit, without the production of any affidavit: (r. 20.) (This rule may be noted as an addendum to the heading "Proceedings after Service," *ante*, p. 124.) And a defendant is allowed the same time for pleading after the delivery of particulars under a Judge's order, which he had at the return of the summons, unless otherwise provided for in such order: (r. 21.)

NOTES ON THE NEW RULES OF PRACTICE OF THE COMMON LAW COURTS.

(*Continued from p. 225.*)

We proceed, in continuation of our plan, to the further consideration of these rules, viz.:—

Appearance of several Defendants by the same Attorney.

R. 2. If two or more defendants in the same action shall appear by the same attorney and at the same time, the names of all the defendants so appearing shall be inserted in one appearance.

This rule is an extension, to all the courts, of a similar rule which formerly existed in the Court of Ex: (R. G. M. T. 1 Will. 4; 1 C. & J. 275.) The sole object of the rule would seem to be, to prevent unnecessarily incurring costs in entering separate appearances for several defendants who have retained the same attorney to defend them, and in the subsequent proceedings in the action. Therefore, an attorney appearing for two or more defendants jointly sued, will be entitled only to the costs of one appearance, and if one defendant obtains a verdict in his favour, he will only be allowed one half of the costs of his appearance as against the plaintiff: (*Holroyd* v. *Breare*, 4 B. & Ald. 43.) Neither would a plaintiff be entitled to deliver separate declarations for each of the defendants so appearing, nor to the costs of the same. These views would appear to embrace the whole practical effect of the rule. If several defendants defend separately, and apparently by different attorneys, but all the business is really done by one, they are not entitled to charge by separate bills of costs, but must make a joint charge: (*Nanny* v. *Kenrick*, 2 D. P. C. 334.) So if several defendants appear by separate attorneys who are members of the same firm, costs will only be taxed as if they had appeared by the same attorney: (*Gambell* v. *Earl Falmouth*, 6 M. & M. 859.) And if one of several defendants alone employs the attorney for all of them, the others are not entitled to costs at all: (*Starling* v. *Cozens*, 3 D. P. C. 782.) The appearance of several defendants by the same attorney will not, however, deprive them of their right to sever in their pleas, if their defences are different and independent; and they would be entitled to the costs of so pleading, and the evidence necessary to establish their pleas.

Undertaking of Attorney to appear.

R. 3. An attorney not entering an appearance in pursuance of his undertaking shall be liable to an attachment.

The former Rules of Court on this subject were R. G. M. T., K. B. and C. P. 1654; and H. T. 2 Will. 4, r. 31. By the first rule it was ordered that an attorney who has undertaken to appear shall be compelled to cause an appearance to be entered, or be liable to an attachment, or struck off the rolls, as the case requires, and the defendant, when he appears, shall plead as of the time when he should have pleaded, if his appearance had been duly entered. The rule of H. T. 2 Will. 4, extending to all the Courts, was simply that any attorney who undertakes to appear shall enter an appearance accordingly, without assigning any specific remedy for nonperformance of the undertaking. It appears from the reports that the Courts have always compelled an attorney to perform an undertaking of this nature with scrupulous fidelity, as well with a view no doubt of discouraging any temptation of collusion with a client to delay or defeat his adversary in the prosecution of his rights, as also of upholding the important principle of good faith in all transactions with mankind in his professional character. Hence, in the case of *Wigg* v. *Rook et Ux.* 6 Mod. 86. an attorney, on sight of a writ against husband and wife, undertook to appear for them, but afterwards would not do it. A declaration was delivered, which he received *de bene esse*, and judgment was entered for want of a plea: the Court set it aside; but ordered the attorney *to be laid by the heels*; and it was said, "that if an attorney undertakes to appear, and afterwards will not do it, upon summons before a judge, he shall be compelled to do it; and for an attorney to undertake to appear, and not to do it afterwards, is a contempt of the Court."

But an application of this description, it must be observed to the honour of the practitioner, is of rare occurrence; and, as a plaintiff may now proceed in his action under the Common Law Procedure Act, without an appearance being entered for a defendant, the rule will be of still less practical utility. Recourse, however, to the rule may become necessary, where a plaintiff, in consequence of the attorney's neglect to appear according to his undertaking, has been delayed going to trial at a particular sittings or assizes, or where the object of the attachment is vindictiveness or punishment on the part of the applicant. When a plaintiff has been thus prejudiced in his proceedings in the action, the terms that the defendant should plead *instanter*, and take short notice of trial would undoubtedly be imposed: (*Hudson* v. *Handley*, 1 C. & J. 373, n.) Before moving for an attachment, the attorney should be requested to enter the appearance pursuant to his undertaking, otherwise the Court would discharge the rule: (*Jacob* v. *Magnay*, 12 L. J. 93. Q. B.) The same end is sometimes satisfactorily attained, and at a less expense, and with less delay, by taking out a summons before a Judge at chambers, to show cause why the attorney should not enter the appearance.

A question may arise whether a *verbal* undertaking to appear can be enforced against an attorney. There would seem to be no substantial difference between the case of a written and a verbal undertaking, except perhaps in the medium of proof, to stand in the way of enforcing the verbal one. The principle upon which the Courts exercise a summary jurisdiction over an attorney, in compelling him to perform a guarantie given by him in his professional character, where such an instrument is not in writing or void for want of a consideration, according to the Statute of Frauds, would seem to be applicable to the case of a verbal undertaking: (See *Re Greaves*, 1 C. & J. 374; *Re Hilliard*, 14 L. J. 225, Q. B., 2 D. & L. 919.) "Even supposing the undertaking," the Court observed in giving judgment in the first of these cases, "to be void by the Statute of Frauds, the Court may, nevertheless, exercise a summary jurisdiction over one of its own officers, an attorney of the Court. . . . An attorney is cognisant of the law; and if he gives an undertaking which he must know to be void, he shall not be allowed to take advantage of his own wrong and say that the undertaking cannot be enforced."

A case was recently, in the early part of the present vacation, before Parke, B. at chambers, which well illustrates the principle in question. There the attorney for the plaintiff, in the course of conversation with the defendant's attorney on the day on which his time for pleading would expire, mentioned that he might want further time to plead, and the latter said that if he did, he should have it, and afterwards being unable, until late in the evening, to get the abstract of pleas from his counsel, he applied to the former to give further time having taken out a summons for the purpose, as he found it was necessary to obtain a judge's order for pleading the pleas prepared, which however was refused: whereupon he delivered on the following morning such pleas as would prevent the plaintiff from signing judgment as for want of a plea, and afterwards took out a summons to add a plea in the abstract which he was prevented from pleading by reason of the time promised being withheld. Parke, B. on hearing the application held that the promise ought to have been fulfilled, and made an order for adding the plea, and with costs to be paid by the plaintiff's attorney.

It is safer and more usual, however, to require the undertaking to be given in writing.

Changing Attorney.

R. 4. No attorney shall be changed without the order of a judge.

By an order of the K. B. and C. P. in Michaelmas Term 1654, it was provided that no person without a rule of Court or an order of a Judge, and notice to the adverse party or his attorney, shall change or *shift* his attorney; and if done by rule or order, such attorney is to take notice at his peril of the rules in the cause whereunto the former attorney was bound to take notice, and shall also pay such first attorney, upon demand, all such fees as shall be taxed to be due to him. A similar rule likewise existed in the Ex.: (*May* v. *Pike*, 6 Dowl. P. C. 197.)

The difference between the ancient and modern practice, it will be seen, is in regard to directing the change to be by the order of a Judge instead of by a rule of Court, with the view of diminishing the costs of such a proceeding. But the application has, of late years, been invariably made to a Judge at chambers. The object of the rule itself is to prevent a party from being harassed by a number of attorneys appearing for his opponent, and without affording him the means of knowing who is his real representative. When therefore an attorney has once appeared or acted, he cannot afterwards be changed by the party without an order. Hence it was said by Lord Holt, "You can't change your attorney without leave, though he be ever so great a cheat:" (*Anon.* 7 Mod. 50.) Until an order is obtained accordingly, the opposite party is justified in treating the former attorney as still representing the principal. In *Powell* v. *Little*, 1 Bl. 8, the plaintiff had privately changed his attorney in the cause. The defendant afterwards paid the attorney the debt in dispute for the use of the plaintiff; the Court held it a good payment, because the attorney was changed without leave. But proceedings taken by an attorney changed without an order are not, however, null and void. Therefore it is no ground for treating a rule *nisi* for a new trial as a nullity, and signing judgment upon the verdict in the action, because the rule was obtained by a different attorney from the attorney on the record, without an order to change him: (*Doe d. Bloomer* v. *Branson*, 6 D. P. C. 490,) Nor would a plea pleaded by a different attorney than the attorney who appeared for the defendant be such a nullity as would entitle the plaintiff to sign judgment as for want of a plea: (*Hill* v. *Mills*, 2 D. P. C. 696; *Bayley* v. *Thompson*, 2 D. P. C. 655.) Proceedings taken by another attorney, without obtaining an order to change the former attorney, are merely irregular, and may be set aside on that ground. But an order to change will in no case be necessary where the opposite party has treated the new attorney as the attorney in the cause: (*Farley* v. *Hebbes*, 3 D. P. C. 538.) So a plaintiff may issue execution by a different attorney from the attorney on the record without an order (*Tipping* v. *Johnson*, 2 B. & P. 357; *Bevins* v. *Hulme*, 15 L. J. 226 Ex.; 15 M. & W. 88); or enter satisfaction on the roll (*Marr* v. *Smith*, 4 B. & A. 466), because the original attorney's authority and retainer determine with judgment being obtained in the action. A person who proceeds at first in person, and then appoints an attorney, may give the opposite party notice of the fact by the very step which the attorney takes in the cause as attorney, without any formal notice of his appointment: (*Jones* v. *King*, 2 B. C. C. 192.) To obtain an order to change the attorney, a summons should be taken out for that purpose, and a Judge's order made thereon; a copy of which should be served on the opposite attorney, for, until it is served, the order is inoperative (*Rex* v. *Boyd*, 2 D. P. C. 147); and the party is not bound to notice the proceedings of the new attorney. As a security to the attorney for any costs he may have incurred for the party who applies to change him, the order is made and drawn up conditionally upon payment of his bill to be taxed by the Master. A copy of the order appointing him is then annexed by the new attorney to the proceeding which he next takes in the cause, and served upon the opposite party, or his attorney. There would appear to be no necessity to enter the change by way of formal suggestion on the record, as, for instance, when a new appointment of his attorney takes place, in the case of a plaintiff after declaration and before replication, or in the case of a defendant after plea and before rejoinder. It is sometimes done in practice; but its omission would not be a ground of error, and therefore wholly immaterial. The new attorney's name may be inserted in the proceedings, without formally noticing his appointment.

THE MAGISTRATE, AND PAROCHIAL AND MUNICIPAL LAWYER.

Summary.

SURETIES were given by a treasurer to a *municipal corporation* for duly accounting during the whole time of his continuing in office. Under 5 & 6 Will. 4, c. 76, s. 58, he was elected annually, and continued in office until after the 6 & 7 Vict. c. 89, when he was elected during the pleasure of the council. It was held that his sureties were not thereby discharged: (*Mayor, &c. of Berwick* v. *Oswald*, 20 L. T. Rep. 306.)

A. was summoned under the Poundkeepers' Act (6 Geo. 4, c. 43) for a penalty. The magistrates adjourned it for a fortnight, instead of a month, as usual. At the adjourned meeting A. did not appear, and was convicted in his absence. Before the court closed, he came in and protested against the conviction, declaring that the adjournment for a fortnight was without his knowledge, and one of the magistrates present thereupon refused to sign the conviction. The Court refused a *mandamus* to compel him. (*Reg.* v. *Creagh*, 20 L. T. Rep. 316.)

CHILDREN IN WORKHOUSES.—On Saturday was printed in a Parliamentary paper obtained by Mr. Rice, M.P. an abstract return of the number of children in the workhouses of the several unions and parishes in England and Wales on the 25th March, 1851, and 1852. On the 25th March 1851, there were 27,032 boys in the workhouses, and 22,420 girls, making 49,452. On the 25th March last the number was 46,600 boys and girls, of whom 5,297 were capable of entering upon service.

Government have purchased the Brixton House of Correction, which has ceased to be used as a prison since the completion of the County Gaol on Wandsworth-common. It is supposed that it is intended to convert the building into barracks.

The Berlin police has just done a very clever thing. A Jew, occupying an old dilapidated house in an obscure street, and suspected as a receiver of stolen goods, was secretly arrested in the night and carried off to prison. His shop, however, was opened as usual the next morning; a policeman disguised as a Jew was stationed in the back-room, and several others of the force lay hid in the cellar. It was not long before customers began to make their appearance. They were requested by the supposed Jew to accompany him to the cellar, where the proprietor of the shop was busy, and would discuss the bargain. They were there seised, gagged, and handcuffed, and kept till they could be conveyed at night unobserved to prison. By this stratagem the police has succeeded in entrapping not only the chief professional thieves, but several servants, who unsuspectedly robbed their masters.—*Berlin Correspondent of the Daily News.*

REAL PROPERTY LAWYER AND CONVEYANCER.

Summary.

AN extremely interesting case on *Copyhold Law* is *Eddleston* v. *Collins*, 20 L. T Rep. 298, from the Court of Appeal. A deputy-steward, who was a minor, took a surrender of copyholds, the property of a married woman, by herself and her husband. The surrender was held to be *valid*, inasmuch as the office of a deputy steward is ministerial merely, and not judicial. In *Re S. Thomas*, 20 L. T. Rep. 299, the costs of an order vesting the estate of a lunatic mortgagee in the mortgagor were directed to be paid by the mortgagee, and the committee was ordered to convey at the expense of the lunatic's estate, except the stamp on the vesting order, which the mortgagor was ordered to pay. Where a lunatic, resident abroad, was entitled to a sum in Consols, which, in consequence of no dividends having been claimed for thirteen years, had been transferred to the National Debt Commissioners, the Lord Chancellor ordered the fund to be transferred to the name of the Accountant-General, in trust for the lunatic, and the dividends to be paid to him: (*Re Saryaswista*, 20 L. T. Rep. 299.)

Where a mortgagee had been in possession of the mortgaged premises for upwards of twenty years, and then, in answer to a letter of mortgagor's solicitor, requesting to know when he could see him as to his claims on the property, he replied he did not see the use of a meeting "unless some party is ready with the money to pay me off:" it was held to be a sufficient acknowledgment to take it out of the Statute of Limitations: (*Stansfield* v. *Hobson*, 20 L. T. Rep. 301.)

Two *Charity* cases of some interest are reported from the Rolls Court, but they do not require special notice in this place. They will be found at 20 L. T. Rep. 301, 302.

A. by will bequeathed to B. all the property which he should leave in the colony of the Cape of Good Hope. A person living at the Cape was indebted to testator in a sum secured by a promissory note. The note was held to pass under the word "property" in the will: (*Scarey* v. *Harrison*, 20 L. T. Rep. 302.)

A case on the construction of a lease of a coal mine, reported from the Court of Error, turns upon the language of the deed, and therefore is too long for description in this summary. It must be read in the report: (*James* v. *Cochrane*, 20 L. T. Rep. 310.)

SALES BY SOLICITORS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I was both surprised and sorry to see your correspondent X.'s suggestion in your paper of the 26th ult., and an approval of the suggestion. I hoped that your next number would have contained some communication showing the disadvantages of the proposed plan; but instead of that I find letters highly approving of the course. I believe there are many of my professional brethren who, like myself, either have not the leisure or the liking for entering into a discussion of the various topics which from time to time are started in your valuable publication. But on questions which seem seriously to affect the Profession, silence amounts to culpability; and as this appears to me to be such a question, my present communication is addressed to you, in the hopes of inducing others freely to express their opinions on the matter.

For my own part, I confess I have no wish to turn auctioneer, even in the restricted sense and limited capacity which your correspondent X. thinks so desirable. In your article in your paper of the 5th inst. you intimate that, at the first glance, it appears to be a lowering of the Profession for attorneys to become auctioneers. Let me ask whether the second or any subsequent glance really alters the aspect. The meaning of your correspondent can only be collected from his letter. He proposes that the solicitor should be licensed to dispose of his client's estate by auction, that is to say, he may become auctioneer in the service of his client. You add, it is suggested that attorneys shall sell the property of *their clients* as solicitors for the vendors by *way of bidding*.

This leaves it as it was before. You say, "for this purpose he would not need to mount a pulpit, nor to speak a puff, nor to say Going, going, gone!" Surely, Sir, it cannot have escaped your penetration, that if this great boon were to be inflicted on the Profession, one of the qualifications necessary to be a successful practitioner would be to be a good auctioneer. It would not be *necessary* that the solicitor should mount a rostrum and puff without compunction, and say Going, going; but a certain class of the Profession would, without hesitation, adopt that course; and a large proportion of small proprietors having property to dispose of, and having no family solicitors, would, previously to their employment of a solicitor, carefully inquire which of the various practitioners in their neighbouring town was the best auctioneer, and their selection of the solicitor would be regulated by the information they obtained in answer to their inquiry.

Indeed, Sir, we are going down the hill fast enough, as this proposition seems strongly to indicate; but at present we have, at any rate, our respectability as a Profession left to us. But should we retain that if we were to become auctioneers, even in the proposed limited character? I think not.

Your correspondent, "An Attorney," in your paper of the 5th instant, states his intention to take out an auctioneer's licence when the proper time arrives. I submit that that is the proper course for those to take who desire to act as auctioneers. Don't degrade the whole Profession (for a degradation it assuredly would be), because certain individuals find it necessary to act as auctioneers. Let those who wish so to act pay for the licence and act. They may mount the rostrum and puff *ad libitum*; but don't let us as a body imagine that we can gravely and with great dignity hold an auction, even for our clients' estates, and lose nothing of our professional *prestige*. Besides, Sir, if we are to profit by the plan, we must of course charge as *auctioneers*, and how can we then pretend to keep our professional character intact? My anxiety that the Profession shall not lose caste, must be my excuse for this hastily-written letter.

I am, Sir, yours, &c.

NEWTONIENSIS.

Answers to Queries.

PRACTICE.—LEASEHOLDS.

In reference to the inquiry of "C." in your number of the 19th ult. I beg to say that, as a rent with powers of distress and re-entry will have to be reserved to C., his attorney will be entitled to prepare the lease, there being no distinction between the case put and a conveyance in fee, reudering rent, which, and the duplicate, is always prepared by the vendor's attorney: (*Doe dem. Bateman* v. *Freeman*, 2 B. & Al. 168.) C. N.

JOINT-STOCK COMPANIES' LAW JOURNAL.

Summary.

A POINT as to the liability of a shareholder to calls, where the arrangements of the company, on the faith of which he subscribed, had not been carried out, was decided by the House of Lords in the *Midland Great Western Railway Company of Ireland* v. *Leech*, 20 L. T. Rep. 297. There was a treaty for the amalgamation of two companies. At a special general meeting of the company into which the other was to be merged, it was resolved that 4,000 shares of the merged company should be taken, a deposit of 2*l.* 10*s.* per share paid, and the line surrendered on payment of certain expenses. A list of the parties to whom the 4000 shares were to be allotted was forwarded to the secretary, and the name of the defendant appeared in it for 170 shares. Afterwards he applied for and obtained thirty more shares, and paid the deposit on the whole, and signed the subscription contract and deed. At a subsequent meeting of the shareholders, the arrangement was confirmed, and the amalgamation ordered to be carried out. Defendant refused to pay calls on his shares, on the ground that the amalgamation was not actually accomplished, but there was only a recommendation to that effect, and so the House of Lords, upon appeal, has held.

In *Re Long's Estate*, 20 L. T. Rep. 305, a company, taking leasehold land, under the powers of their Act, was ordered to pay the costs of the annual sales of stock representing the purchase-money, for the purpose of distributing the fund.

An elaborate judgment of a Court of Error, on a question as to the construction of certain agreements between two companies as to leasing the line by one to the other, is that of the *West London Railway Company* v. *The London and North-Western Railway Company*, 20 L. T. Rep. 307. The main point in dispute was whether the lessees were bound to use the line for passenger traffic. But the case is much too complicated for analysis.

WINDING-UP.

A SUIT had been commenced against a company which was ordered to be wound up. By direction of the Master the official manager prosecuted the suit, which was dismissed, with costs to be paid by the official manager. The decree was subsequently altered by the insertion of the official manager's name before the description. Defendants issued a subpœna against the official manager personally, and an attachment followed. Was he personally liable? V. C. Wood held that he was not so, but only as official manager; but his Honour seemed to be of opinion that the Court had jurisdiction, if it pleased to use it, to award costs against an official manager personally: (*The Official Manager of the Grand Trunk, &c. Railway Company* v. *Brodie*, 20 L. T. Rep. 305.)

PETITIONS, ORDERS, MEETINGS, APPOINTMENTS, CALLS, &c.

[Announced, issued, and made, during the past week.]

Gloucester, Aberystwith, and Central Wales Railway Company.—Call of 1*s.* per share on all the contributories to be paid by March 29 inst.—Finney.

THE LAWYER.

Summary.

EQUITY PRACTICE.—V. C. Stuart has decided that a plaintiff examining a witness in support of his case is not now prevented from taking a decree against him: (*Robinson* v. *Briggs*, 20 L. T. Rep. 304.)

On motion for a decree plaintiff gave notice of reading one affidavit, but at the hearing proposed to read that, and another, and defendant's answer; and a defendant in the same interest as plaintiff proposed to read the answer of a co-defendant. But it was held by V. C. Wood that no affidavit but that one could be used; that defendant's answer could be read without notice; but that a defendant could not, under any circumstances, read a co-defendant's answer: (*Cousins* v. *Vasey*, 20 L. T. Rep. 305.)

COMMON LAW.—Wightman, J. has ruled on circuit, in *Davies* v. *Pritchard*, 20 L. T. Rep. 316, that the rule excluding a wife's evidence does not prevent the widow of a testator from giving evidence in an action against the executor.

A point of *Nisi Prius* practice is reported from another circuit. In *Buckmaster* v. *Meikeljohn*, 20 L. T. Rep. 316, Williams, J. stayed execution where there appeared to be a *bonâ fide* intention

to contest the verdict, on the defendant bringing the amount of damages into court.

In the *Law of Attorneys* there is an interesting case reported from Nisi Prius. Lord Campbell, C.J. has held that one partner in a firm of attorneys is not liable on a bill of exchange or note given by another in the name of the firm for money left with such partner to be placed out on mortgage, unless there has been a course of dealing between the partners of drawing and accepting bills or notes. But such other partner is liable for *the money*, although it was paid to his partner without his knowledge, and by him appropriated to his own use: (*Harman* v. *Johnson*, 20 L. T. Rep. 314.)

WRIT OF PONE.

TO THE EDITOR OF THE LAW TIMES.

Sir,—In reply to "Studens" (*Law Times*, March 12, 1853, p. 231), I beg to say that, by the 15 & 16 Vict. c. 76, s. 2, it is enacted that "all personal actions brought in the Superior Courts of Common Law shall be commenced by writ of summons"—and by sect. 229 all the enactments and provisions of that Act, with respect to writs for the commencement of personal actions (except as to the test, &c. &c.), are made to extend and apply to the Courts of Pleas at Lancaster and Durham; that the mode of proceeding in the Court of Pleas at Durham by process called a writ of *pone*, was this:—It issued out of the Court of Chancery at Durham, directed to the sheriff of that county, commanding him to put, by gages and sure pledges, C. D., so that he answer A. B. of a plea, &c. in the Court of Pleas, at the return thereof, on, &c.

If C. D. appeared, an action was prosecuted in the Court of Pleas in like manner as if it had been commenced by summons.

Most of the practitioners who have considered the subject, hold that the writ of *pone* has been extinguished by the recent statute, because all personal actions are to be commenced by serviceable process. Others contend that the writ of *pone* has not been extinguished; and this they endeavour to support by alleging that 2 Vict. c. 16 enacted that the process in all actions thereafter to be prosecuted in the Court of Pleas at Durham by serviceable process, shall be by writ of summons, and the writ of *pone* was supported afterwards. And I presume that they also contend that where a statute is made in the affirmative, without any negative expressed or implied, it doth not take away the common law (2 Inst. 200), and that the writ of *pone* is by common law. This presumption is advanced, because I am told that the learned Commissioner of Bankruptcy sitting at Newcastle-on-Tyne is of opinion that the writ of *pone* may still issue. But, according to my reading of the statute, the language not only implies, but contains, a negative; and therefore I am of opinion that the writ of *pone* is abolished.

I am, Sir, yours, &c.

A. T. STEAVENSON.

Darlington, March 15, 1853.

TO THE EDITOR OF THE LAW TIMES.

Sir,—In reply to your correspondent "Studens," I beg to inform him that the writ of *pone* is not abolished in this county.

The 2nd section of the Common Law Procedure Act directs that all actions brought in the Superior Courts of *Common Law* shall be commenced by writ of summons; but as the *pone* issues out of our local Court of *Chancery*, the intention of applying the provisions of the Procedure Act to the Court of Pleas at Durham, with respect to writs for the commencement of personal actions, is not effected by the 229th section.

I am, Sir, yours, &c.

Durham, March 14, 1853. DUNELM.

COUNTY COURTS.

Summary.

THREE interesting cases in *Insolvency* are reported from Ireland, where the law on all the points in question is the same as our own, and therefore the cases are authorities here. In *Re Murray*, 20 L. T. Rep. 314, defending proceedings to try a right was held not to be a vexatious opposition, although the verdict was against the defendant. In the same case it was held that, where an insolvent possesses himself of money belonging to the trustees of his marriage settlement, and purchases with it property in a foreign country, which he returns on his schedule, it will be deemed a "making away" with his property, even though the trustees do not oppose. In *Re Watt*, 20 L. T. Rep. 314, a poor-rate collector who had paid a penalty for not paying in his collection weekly was remanded for breach of trust on account of a balance remaining in his hands on the same collection. Where a trader had contracted a debt when in a state of insolvency, but during some months after had reduced his liabilities, he was deemed not to have contracted a debt without probable expectation of paying it: (*Re Egan*, 20 L. T. Rep. 314.)

LATE CASES ON THE LAW AND PRACTICE OF THE COUNTY COURTS. (a)

X. CASES ON CERTIORARI.

A WRIT of *certiorari facias*, or of *certiorari*, as it is ordinarily termed, is issued from a Superior to an Inferior Court for removing any record or other proceeding into the Superior Court, which thereupon supersedes the jurisdiction of such Inferior Court, and makes all subsequent proceedings therein entirely erroneous and illegal. This writ issues of right, and is granted upon an *ex parte* application, which should be made to a Judge at chambers, and not to the Court. This was decided in *Bowen* v. *Evans*, 1 Cox & Mac. 207, which was an application for a writ of *certiorari* to remove a replevin suit, under the 9 & 10 Vict. c. 95, s. 121, from a County Court into one of the Superior Courts at Westminster. And in *Robertson and another* v. *Womach*, 1 Cox & Mac. 363, it was held that the words "by leave of a Judge," mean by leave of a Judge at chambers. An application, therefore, under sect. 40 of the 9 & 10 Vict. c. 95, for a *certiorari* to remove a plaint from a County Court must be made only at chambers.

Cases of partnership accounts under sect. 65 of 9 & 10 Vict. c. 95, cannot be removed by *certiorari*, as, even should the defendant waive the question of jurisdiction, the Courts of Common Law have no machinery by which they can decide the claim of partners, and could only send such cases to a Court of Equity: (*Durrant* v. *Tomlin*, 14 L. T. Rep. 289.) Where a plaint in a County Court for 20*l.* damages was removed by *certiorari* into a Superior Court, and another plaint, including the same cause of action, but laying the damage at 5*l.*, was entered, a prohibition having been moved for, it was held that the pendency of the first action in the Superior Court was no ground for issuing a prohibition to the County Court in the second: (*Edwards* v. *Rogers*, 1 L. M. & P. 196.)

If the cause has been improperly removed, the opposite party should apply to the Court or a Judge for a writ of *procedendo*, which is a judicial writ issuing from the Superior Court, and commanding the Judge of the County Court to proceed in the cause: (Pollock's Prac. Co. Co. 117.)

In all cases in which jurisdiction was given to the County Court by stat. 9 & 10 Vict. c. 95, the judgment of the Court was final and conclusive between the parties, no method of reviewing the Judge's decision, whether in point of law or fact, existing. In cases, however, in which a more extended jurisdiction is given by the late Act, 13 & 14 Vict. c. 61, there is an appeal to a Court constituted for that purpose; and in actions where the debt or damage sought to be recovered is above 20*l.*, or where a jurisdiction beyond its ordinary limits is given to the Court by agreement of the parties, if either party is dissatisfied with the direction or determination of the County Court in point of law, or upon the admission or rejection of any evidence, he may appeal from the County Court to any of the Superior Courts of Common Law at Westminster.

To obtain a writ of *certiorari* to remove an action of *replevin*, it is required by sect. 121 of the 9 & 10 Vict. c. 95, that a declaration should be made that the title to a corporeal hereditament, &c. is in question, or that the rent in respect of which the distress had been taken was more than 20*l.*, and also that a bond should be entered into, with sureties, to be approved by the Clerk of the Court, to prosecute the suit with effect and without delay, and to prove before the Court by which the suit should be tried that such title was in dispute, or that there was ground for believing that the said rent or damage was more than 20*l.* It was held that it is not necessary that these conditions should be complied with before applying for a *certiorari*. It was held, also, that the 13 & 14 Vict. c. 61, does not apply to actions of *replevin*: (*Mungeam* v. *Wheatley*, 1 Cox & Mac. 445.)

It was determined in *Fowler* v. *Golding*, 1 Cox & Mac. 253, that a *certiorari* will be granted, on the ground that a jury had been applied for, and that a fair trial could not be had in the County Court by a jury from the locality.

A plaint in an action of trespass was entered in a County Court; both plaintiff and defendant appeared at the hearing, and the case was fully heard. The Judge, however, postponed the delivery of his judgment. In the meantime an application was made to a Judge at chambers for a *certiorari* to remove the plaint to a Superior Court. It was held that it was not too late to make the application: (*Mitchell* v. *Thompson*, 1 Cox & Mac. 271.)

It has been held that a *certiorari* does not lie to remove a plaint entered, under sect. 122 of the County Courts Act, for the recovery of a tenement. A question of title is not necessarily involved in a plaint for the recovery of tenements: (*Price* v. *Price*, 1 Cox & Mac. 333.)

An action having been brought in the County Court, demanding 20*l.* for damages done to certain premises by lime kilns of the defendant, the plaint was removed by *certiorari*, on the ground that, inasmuch as the value of the lime-kilns would be destroyed if the plaintiff were to obtain a verdict, and that they were worth more than 20*l.*, the cause was not within the jurisdiction of the County Court. A second plaint was then brought, demanding 5*l.* for the same injury, but stating it to have accrued between a longer period of time. At the hearing the defendant pleaded in abatement that the former suit was pending; but the Judge proceeded to hear the cause. On a motion for a prohibition, it was held that a prohibition would not lie to restrain the Judge from proceeding with the second action: (*Edwards* v. *Rogers*, 1 Cox & Mac. 373.)

Sect. 16 of the County Court Extension Act enacts, "that no judgment, order, or determination given or made by any Judge of a County Court, nor any cause or matter brought before him, or pending in this court, shall be removed by appeal, motion, writ of error, *certiorari*, or otherwise, into any court whatever, save and except in the manner and according to the provisions hereinbefore mentioned." And sect. 2 of the same Act enacts that this and the General County Courts Act shall be construed as one. It was held that the first-mentioned section is to be construed with reference to sect. 90 of 9 & 10 Vict. c. 95, and that the *certiorari* is not thereby taken away or limited to cases within the former jurisdiction: (*Jones* v. *Holdsworth and another*, 1 Cox & Mac. 426.)

In the case of *Parker* v. *The Bristol and Exeter Railway*, 1 Cox & Mac. 435, it was also held that when an application is made to a Judge of one of the Superior Courts at chambers for a *certiorari*, he should be put in possession of all the facts, the situation of the parties, and the stage of the cause, so as to be enabled properly to exercise the discretion given by 9 & 10 Vict. c. 95, s. 90; and therefore, where a *certiorari* had been obtained without the Judge having been informed that the cause had already been heard in the County Court, the writ was set aside. Parke, B. in delivering his opinion in this case observed, "I have not the least doubt upon the point whether the *certiorari* is taken away by the 16th section of the County Courts Extension Act, and I am clearly of opinion that it is not, although it becomes unnecessary to decide that here. That Act, by the 2nd section, provides that such Act and the previous County Court Acts shall be read and construed as one Act, and as if the several provisions in the said recited Acts contained, not inconsistent with the provisions of that Act, were repeated and re-enacted in it; and section 16 enacts that no *certiorari* is to be allowed except in the manner and according to the provisions thereinbefore mentioned. The only question then is, whether there is anything in the Extension Act (the 13 & 14 Vict. c. 61) inconsistent with the provisions of the other County Court Act (the 9th and 10th Vict. c. 95), under which a *certiorari* may be issued in accordance with the 90th section: clearly there is not, except it may be said there is a power of appeal given. But a power of appeal is not inconsistent with a power or right also to have a *certiorari*. On the application for a *certiorari*, the party applying should certainly communicate all the circumstances attending the case to the Judge, because, upon such information, it is he who is to exercise the discretion given him by the Act as to security for costs, or imposing such other terms as he may think fit; and here, it appears, material facts were not communicated to the Judge, and he may or may not have exercised his discretion; but how could he do so unless all the facts were brought before him?"

A *certiorari* was issued to remove a County Court judgment into a Superior Court for the purpose of suing out an execution upon it from the Superior Court, pursuant to the powers given by the 1 & 2 Vict. c. 110, s. 2. It appears doubt-

(a) By GEORGE HARRIS, Esq. Barrister-at-Law.

ful, however, whether the 22nd section of the 1 & 2 Vict. c. 110 applies to the present constituted County Courts. That section says, that in all cases where final judgment shall be obtained in any action or suit in any inferior court of record, in which, at the time of passing of this Act (Aug. 16, 1838), a barrister of not less than seven years standing shall act as judge. The County Courts Act, 9 & 10 Vict. c. 95, passed Aug. 28, 1846: (*Copeman* v. *Gladden*, 16 L. T. Ex. 393.)

In *Brookman* v. *Wenham*, 16 L. T. Rep. 492, 15 Jur. 249, it was held, that the *certiorari* is not taken away by the 13 & 14 Vict. c. 61, s. 16; it is sufficient to serve the writ of *certiorari* at the office of the chief clerk.

COUNTY COURT DEFECTS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—The three complaints made by "Observer" are certainly not chargeable against the County Courts as a system.

"Observer," as a solicitor practising in the courts, ought surely to know that moneys are only payable to the plaintiff or his agent (rule 29); and that the clerk is expressly prohibited signing "*any acquittance which might be necessary*" (rule 16). Defect 1 rests therefore with "Observer" himself.

The clerk is bound to have some one in attendance every day during office hours; and in the case stated "Observer's" client might, I conceive, have compelled repayment of his expenses. Under any circumstances, however, this defect is not chargeable to the Court, but to an official individually.

Thirdly, as to letters. Does "Observer" reply to or write letters for which he is certain he will receive no remuneration? If the clerk of a court replies to one letter, he must to all; and, so soon as suitors found their correspondence attended to, this correspondence would (in large agricultural districts) absorb the greater portion of the clerk's time, for which he would not be paid—no, not even his postages.

It may not be unnatural, perhaps, for professional men, especially those who deem it *infra dig.* to enter these courts, to dislike them; but I think nine-tenths of the unprofessional public are undoubtedly of opinion that the County Courts (as a whole) have given the greatest satisfaction to the country.

I am, Sir, yours, &c.

C.

MERCANTILE LAWYER.

Summary.

WE have several cases to note in the *Law of Bankruptcy*. The Lords Justices have again, in *Ex parte Manico*, 20 L. T. Rep. 300, mitigated the adjudication of a Commissioner, who had refused a certificate or protection to a bankrupt who had begun without capital as a wine merchant, bought wine on credit, which he immediately pledged to a broker, who sold it for nonpayment. He had been moderate in his expenses, and there was no proof of intended fraud. The Court of Appeal reduced the punishment to a suspension of the certificate for two years and depriving him of protection for six months. We cannot see the justice of this. If a poor man obtains goods by a false pretence, and so cheats a tradesman, he is tried and imprisoned; and morally there is no other difference between his crime and that of a man who takes up goods he cannot pay for, and pledges them immediately, than that the latter is the greater crime. We confess ourselves unable to understand this leniency towards that non-criminal form of cheating which is practised by bankrupts and insolvents. Many of them are greater rogues, and commit worse robberies, than the thieves who are tried in our criminal courts and transported.

Where, since the date of a bankruptcy, certain shares which formed part of the estate had greatly increased in value, the estate was ordered to be credited with one-half the increased proceeds, including dividends, with liberty for the creditors to prove for the residue of their demand: (*Re Turner*, 20 L. T. Rep. 300.) Where, upon appearance to a creditor's summons under sects. 78 to 82 of the Consolidation Act, the trader debtor admitted only a part of the demand, and made an affidavit that he believed he had a good defence upon the merits as to the residue, and the Commissioner dispensed with a bond being entered into to pay the disputed residue: it was held by the Court of Error in *Oldfield* v. *Dodd*, 20 L. T. Rep. 313, not to be an act of bankruptcy.

In the *Law of Debtor and Creditor* there is a case to be noted briefly. A. was indebted to B. and others. He conveyed freehold, leasehold, and personal estate to B. (without prejudice to the mortgage B. had on the property, and to his character as receiver of the whole) on trust to sell and divide proceeds among such creditors as B. in his absolute discretion should think fit. There was an ultimate trust to A. and his heirs. B. was not described as a creditor, but only as a trustee; and no other creditor ever knew of the existence of the deed. C. obtained a judgment, and seized the property in execution. The deed was properly held to be revocable, and therefore void: (*Smith* v. *Hurst*, 20 L. T. Rep. 303.)

COURT PAPERS.

Equity Courts.

NOTICE AT THE CHANCERY REGISTRAR'S OFFICE.

APPEAL MOTIONS ON CLAIMS.—All appeal motions from orders made on the hearing of claims are to be set down with the appeals, and not with the appeal motions; and the solicitors are requested, at the time of setting down such appeal motions on claims, to produce at the order-of-course seat the notice of motion, which must state that it is an appeal from an order of the Master of the Rolls, or one of the Vice-Chancellors, made on a claim.

NEW ORDER IN CHANCERY.

SETTING DOWN ADJOURNED CAUSES.

4th March, 1853.

The Right Honourable Robert Monsey Lord Cranworth, Lord High Chancellor of Great Britan, by and with the advice and assistance of the Right Honourable Sir John Romilly, Master of the Rolls, the Honourable the Vice-Chancellor Sir Richard Torin Kindersley, the Honourable the Vice-Chancellor Sir John Stuart, and the Honourable the Vice-Chancellor Sir William Page Wood, doth hereby, in pursuance of the Act of Parliament made and passed in the 15th and 16th years of the reign of her present Majesty, intituled "An Act to abolish the Office of Master in Ordinary of the High Court of Chancery, and to make provision for the more speedy dispatch of business in the said Court," and in pursuance and execution of all other powers enabling him in that behalf, order and direct:—

That when any cause shall, at the original or any subsequent hearing thereof, have been adjourned for further consideration, such cause may, after the expiration of eight days, and within fourteen days from the filing of the certificate or report of the chief clerk of the judge to whose court the cause is attached, be set down by the registrar in the cause book for further consideration, on the written request of the solicitor for the plaintiff or party having the conduct of the cause, and after the expiration of such fourteen days the cause may be set down by the registrar on the written request of the solicitor for the plaintiff, or for any other party; and the request to set down the cause may be in the form or to the effect set forth in the schedule hereto, marked (A); but the cause, when so set down, shall not be put into the paper for further consideration until after the expiration of ten days from the day on which the same was so set down, and shall be marked in the cause-book accordingly. And notice thereof shall be given to the other parties in the cause at least six days before the day for which the same may be so marked for further consideration; and such notice may be in the form or to the effect set forth in the schedule hereto, marked (B.)

CRANWORTH, C.
JOHN ROMILLY, M. R.
RICHD. T. KINDERSLEY, V. C.
JOHN STUART.
WILLIAM PAGE WOOD.

SCHEDULE (A.)

IN CHANCERY.

A. *v.* B.

I request that this cause, the further consideration whereof was adjourned by the order of the day of , may be set down for further consideration before his Honour the

Dated, &c.

C. D.
Solicitor for (the plaintiff.)

SCHEDULE (B).

IN CHANCERY.

A. *v.* B.

Take notice that this cause, the further consideration of whereof was adjourned by the order of the day of , was, on the day of , set down for further consideration before his Honour the for the day of .

Yours, &c.

C. D.
Solicitor for (the plaintiff).

To Mr.
Solicitor for (the defendant).

Common Law Courts.

FEES OF CLERKS OF ASSIZE.

IN pursuance of an Act, passed in the session of Parliament held in the 15th and 16th years of the reign of her Majesty, entitled "An Act to make provision for a permanent establishment of officers to perform the duties at Nisi Prius, in the Superior Courts of Common Law, and for the payment of such officers, and the judges' clerks, by salaries, and to abolish certain offices in those courts," we, the undersigned, being two of the Commissioners of her Majesty's Treasury, have caused the undermentioned table of fees to be prepared, specifying the fees proper to be demanded and taken on the Circuits by the officers and clerks at Nisi Prius, belonging to the Superior Courts of Common Law, namely:—

Clerks of Assize, as Associates on the Circuit.

	£	s.	d.
Every record of Nisi Prius delivered to be entered for trial	1	5	0
Every trial of a cause, from plaintiff ...	1	0	0
——— from defendant ...	0	15	0
——— if the trial continues more than one day, then for every other day, from plaintiff and defendant, each...	0	10	0
Returning the postea...	0	5	0
Every cause made remanet, at the instance of the parties, to be paid by plaintiff or defendant, as the case may be	0	10	0
Every cause withdrawn, to be paid by the party at whose instance it is withdrawn	0	5	0
Re-entering every record of Nisi Prius, made remanet, &c.	0	2	0
Every reference, from plaintiff and defendant, each	0	5	0
Every amendment of any proceeding whatever	0	2	0
Every order or certificate	0	5	0
Every special case, or special verdict, in addition to the charge for ingrossing and copying, at the rate of 4*d.* per folio, from plaintiff and defendant, each	0	10	0
Attending any court, or otherwise with any record or other proceeding, under writ of subpœna or order of court, per day ...	1	0	0

And no other fees than those before-mentioned shall be demanded or taken by the associates, marshals, clerks, criers, or other persons, performing any duties at Nisi Prius on the Circuits, but all such other fees are hereby abolished.

Given under our hands at the Treasury Chambers, Whitehall, this 23rd day of February, 1853.

W. E. GLADSTONE and ALFRED HERVEY, Two of the Commissioners of her Majesty's Treasury.

We, the undersigned, Judges of the Superior Courts of Common Law, do settle, allow, and sanction the before-mentioned table of fees, prepared by the Commissioners of her Majesty's Treasury, and we do hereby establish the same, under the provisions of the aforesaid Act of Parliament

CAMPBELL, Lord Chief Justice of the Court of Queen's Bench.

JOHN JERVIS, Lord Chief Justice of the Court of Common Pleas.

FREDERICK POLLOCK, Lord Chief Baron of the Court of Exchequer.

W. H. MAULE, T. N. TALFOURD, and C. CROMPTON, Judges of the Superior Courts of Common Law.

The before-mentioned table of fees having been sanctioned and allowed by the Lord Chief Justices, the Lord Chief Baron, and other Judges, as required by the before-mentioned Act of Parliament, we do hereby order that the said table of fees be inserted and published in the *London Gazette*.

Treasury Chambers, Whitehall, the 24th day of Feb. 1853.

W. E. GLADSTONE and ALFRED HERVEY, two of the Commissioners of her Majesty's Treasury.

CORRESPONDENCE.

THE ATTORNEYS' TAX.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I understand, from the debate on Lord Robert Grosvenor's motion, that the Chancellor of the Exchequer is willing to consider the question of the attorneys' certificate-duty, with a view to some re-adjustment, though not an entire repeal.

The reasons which are urged for continuing the tax are twofold:—First, that it yields an amount of revenue which cannot be conveniently spared; secondly, that it excludes improper characters from the profession.

The suggestion I have to make would avoid both these objections, and seems easily practicable.

Let all attorneys pay admission and certificate duties as at present, and deduct their certificate duty from their income tax.

This would be as satisfactory a way of settling the question as any other likely to be proposed. The exclusion test would be as stringent as ever, and a considerable proportion of the revenue would be preserved. Young gentlemen making nearly 150*l.* a year would not escape both the income tax and certificate duty; nor is it reasonable they should. The large class really most worthy of consideration, who maintain and educate their families on 150*l.* to 400*l.* would have to pay one tax only, instead of two; and those in lucrative practice would probably be recon-

[illegible] settlement of both the certificate duty [illegible] income tax. I am, Sir, yours, &c.

THOMAS JOHNSON.

Manchester, March 21, 1853.

JOURNAL OF PROPERTY.

Public Sales.

On Thursday, March 17, 1853.

By Mr. Mapin, at the Mart.

A freehold semi-detached cottage residence, known as Grosvenor cottages, and situate at Tiptree Rise, Walthamstow, Essex; let at 25*l.* per annum each—produced 72*l.*

A brick-stuccoed dwelling-house, No. 16, St. James's terrace, Back-road, Shadwell, of the annual value of 22*l.*, term 5½ years; ground-rent 4*l.* per annum—17*l.*

The lease of No. 286, Strand; let at 73*l.* per annum, held of the authorities of Magdalen College for 12 years unexpired, at 43*l.* per annum—60*l.*

A six-roomed dwelling-house on the Mercers' Estate and being No. 19, Paterson-street, Stepney, let at 22*l.*, term 30 years; ground-rent 4*l.*—20*l.*

MONEY MARKET

English Funds.	Sat.	Mon.	Tues.	Wed.	Thurs.	Frid.
Bank Stock	..	..	..	229½	..	shut
3 per Cent. Reduced Annuities	..	..	..	..	..	100⅝
3 per Cent. Consols Annuities	100½	100½	100½	100	99⅝	99⅝
Consols for Account	100½	100⅝	100½	100⅝	100	99⅞
New 3 per Cent. Annuities	..	..	..	..	..	126
New 3½ per Cent. Annuities	103⅛	..	..	103⅛	..	shut
Long Annu. (exp. Jan. 5, 1860)	..	..	..	..	..	..
Do. 30 yrs. (exp. Oct 10, 1859)	..	..	..	..	..	..
Do. 30 yrs. (exp. Jan. 5, 1860)	..	..	..	6¼	..	..
India Stock	..	..	..	..	..	..
India Bonds (1,000*l.*)	..	..	45	..	50	45
Do. do. (under 1,000*l.*)	..	45	50	48*	45	45
South Sea Stock	..	..	..	..	..	..
Do. do. Old Annuities	..	..	..	..	..	shut
Exchequer Bills, 1000*l.*	14*	10*	14*	10*	..	13*
Do. do. 500*l.*	14*	10*	.	10*	8*	13*
Do. do. Small	13*	10*	..	14*	8*	11*

* Premium.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

GUERNSEY.—On the 10th inst. at 15, Cumberland-street, the Lady Guernsey, of a daughter.

HARRIS.—On the 13th inst. at 5, Sussex-place, Regent's park, the wife of William Harris, Esq. Lincoln's-inn, of a son.

NEWARK.—On the 16th inst. at Torney-street, the Viscountess Newark, of a daughter.

TURNER.—On the 18th inst. at 12, The Terrace, Kilburn, the wife of Hubert F. Turner, Esq. solicitor, of a son.

MARRIAGES

FINNIS—BURNAND.—On the 17th inst. at St. James's church, Westbourne-terrace, William Finnis, Esq., LL.B. of Trinity College, Cambridge, barrister at-law, third son of the late James Finnis, Esq. of Newfield, Ayrshire, and Tulse-hill, Surrey, to Antoinette, youngest daughter of George Burnand, Esq. of Sussex-square, Hyde-park.

DEATHS.

BLAKENEY.—On the 8th inst. at Greenwich, suddenly, of congestion of the brain, aged 49, James Blakeney, Esq. lately Crown Solicitor for the county of Galway, in Ireland.

CLEE.—On the 16th ult. at his house in Wakefield, Robert Clee, Esq. solicitor, aged 63.

CRAKER.—On the 11th inst. at Stow-on-the-Wold, Gloucestershire, Jackson Craker, Esq. aged 76, and for thirty five years resident manager of the bank in that town.

KINGSLEY.—On the 14th inst. at No. 18, Hyde-park-square, Katherine Eliza, the eldest daughter of the Vice-Chancellor Kingsley.

HODGSON.—On the 9th ult. at his residence in Nelson-square, Bradford, Yorkshire, Mr. Joseph Hodgson, solicitor, aged 51.

SCATCHERD.—On the 16th ult. at Morley House, Morley, near Leeds, Norrisson Cavendish Scatchard, Esq. Barrister-at-Law, aged 73.

THE GAZETTES.

Bankrupts.

Gazette, March 15.

BOTTOMLEY, JAMES, contractor, Over Tabley, Cheshire, April 7, and 28, at eleven, Manchester. Off. as Lee. Sol. Sedgeley, Knutsford. Petition, Feb. 28.

BOTTOMLEY, WILLIAM, grocer, Mansfield, Notts, April 1 and 29, at ten, Nottingham. Off. as. Harris. Sols. Shutt[illegible], Nottingham. Petition, March 5.

[illegible], Preston, April 8 and 29, at twelve, Manchester. Off. as. Lee. Sols. Higson and Robinson, Manchester, [illegible], Feb. 18.

DUTTENHAVEN, JOSEPH, corn dealer, Broadwall, Christchurch, Blackfriars-road, March 29, at half-past one, April 26, at one, Basinghall-street. Off. as. Stansfeld. Sols. Angell, Bedford-court, Fleet-street. Petition, March 12.

GEE, WILLIAM, muslin manufacturer, Manchester, April 8 and 29, at twelve, Manchester. Off. as Fraser. Sols. Messrs. Sutcliffe, Ribbon Bridge, Yorkshire. Petition, March 4.

GRAHAM, FRANCIS ROBERT, licensed victualler, Fleet-street, City, April 4, at one, May 5, at twelve, Basinghall-street. Off. at Johnson. Sols. Willis, Queen-street, Cheapside; and Lewerisse and Co. Old Jewry-chambers. Petition, March 10.

HEWITT, JOHN GALE, and REED, WILLIAM JUNIUS, chemists' manufacturers, Horseferry-road, Limehouse, March 31, at eleven, April 29, at twelve, Basinghall-street. Off. as. Bell. Sols. Miller and Hoss, King William-street. Petition, March 12.

HODGES, ROBERT STEN, builder, Wolverhampton, March 31 and April 21, at twelve, Birmingham. Off. as. Whitmore. Sols. Corser and Underhill, Wolverhampton, and Motteram and Knight, Birmingham. Petition, March 12.

TEMPLE, ROBERT, grocer, Brixley, Norfolk, March 29, at half-past two, April 29, at twelve, Basinghall-street. Off. as. Cannan Sols. Nicholls and Doyle, Verulam-buildings, Gray's-Inn, and Deaks, East Dereham, Norfolk. Petition, March 4.

YOUNG, FRANCIS, draper, Union-place, Walworth-road, March 22, at half-past one, April 26, at twelve, Basinghall-street. Off. as. Graham Sols. Reed and Co. Friday-street, Cheapside Petition, March 11.

BANKRUPTCY ANNULLED.

Gazette, March 15

JONES, ENOCH, iron founder, Elton, Bury, Lancashire, March 10.

Gazette, March 18.

AYRES, WILLIAM PORT, nurseryman, Blackheath, April 1 and 29, at one, Basinghall-street Com. Fane. Off as Cannan Sols. Bristow and Tarrant, 2, Bond-court, Walbrook. Petition, March 12

BOYS, JOSEPH, draper, High-street, Peckham, March 30 and April 26 at half past one, Basinghall-street. Com Lonsdale. Off. as Stansfeld Sol Il Braddon, 8, Gray's-Inn place Petition, March 14.

BROADHEAD, JAMES, manufacturer, Scholes, Woodside, Yorkshire, April 11 and May 2, at twelve, Leeds. Com Ayrton. Off. as. Hope. Sols Carus and Cudworth, Leeds Petition, March 7

BROCK, THOMAS, coal and potatoe merchant, Kingston-upon-Hull, April 18 and May 4, at twelve, Kingston-upon-Hull Com Ayrton Off as Carrick Sols. Levett and Champney, Kingston-upon-Hull. Petition, March 9.

BUTT, FREDERICK ARTHUR, grocer and cheesemonger, 22, Henry-street, Pentonville, April 1 at half past two, April 29 at half past one, Basinghall street. Com Lane Off as Whitmore. Sols Fraser and May, 76, Dean-street, Soho. Petition, March 18

CASBURN, JOHN FRANCIS BACKHILL, licensed victualler, King's-cross, Cumberland-row, March 23 and May 6, at twelve, Basinghall-street. Com Goulburn Off. as Nicholson. Sols Dimmock and Buthey, 2, Suffolk-lane, Cannon-street Petition, March 15

CLAY, THOMAS KYNE, woollen warehouseman, 17, Ironmonger lane, April 1, at eleven, April 29, at twelve, Basinghall-street. Com. Goulburn. Off. as. Nicholson, Sols. Miller and Hoss, 76, King William-street. Petition March 10

DUNNE, JOSEPH HENRY, and VENABLES, JOHN, ship owners and merchants 9, Craven-street, Strand, March 29 and May 6 at eleven, Basinghall-street Com. Goulburn. Off. as Nicholson. Sol. William Philp, 26, Bucklersbury. Petition, Feb. 23.

LANGHAM, GEORGE, grocer and provision dealer, Ashton-under-Lyne, April 5 and May 3, at twelve, Manchester Off. as Pott. Sol Brooks, Ashton under-Lyne Petition, March 14.

HEAP, JOHN, sen. and HEAP, RICHARD, silk printers, Longsight, Manchester, April 8 and 29, at twelve, Manchester. Off. as. Lee Sols. Taylor, 72, Cooper-street, Manchester, and Hartley, Colne Petition, March 8.

JOHNSON, JOHN, cabinet-maker, Wakefield, April 11 and May 2, at eleven, Leeds Com Ayrton. Off as. Hope Sols Westmorland and Taylor, Wakefield. Petition, March 14.

Dividends.

BANKRUPT ESTATES

Official Assignees are given, to whom apply for the Dividends

Adams and Co. engineers, second sep. of W B Adams, 3*d* Cannan, London—*Arnatt and Co.* J B, tailor and draper, first, 5*s.* 11½*d.* Lee, Manchester.—*Blundell*, R. builder and corn dealer, second, 7*d* Cazenove, Liverpool—*Ford* and *Hadfield*, paper manufacturers, first, 6½*d* Lee, Manchester—*Harris* and *Bush*, brewers, third, 1*s.* 6*d* Cannan, London—*Heathwaite*, J cheesemonger, first, 1*s* 11*d* Cannan, London.—*Roberts*, J dealer in potatoes, first, 17*s* 6*d* Cazenove, Liverpool.—*Rufford*, *Rufford*, and *Wrenge*, bankers, second, 5*l* Whitmore, Birmingham—*Sandle*, J P cattle dealer and market gardener, first, 3*s* Cannan, London—*Smith* and *Irvine*, merchants, first, 6*d*. Bird, Liverpool. *Thompson*, J. linen draper, second, 2*d*. Groom, London.

INSOLVENT ESTATES

Pierce, T L. R. 5*s* 10*d* Apply to R Prall, solicitor, Chatham

Assignments for the Benefit of Creditors.

Gazette, March 8.

Burgess, W. plumber and glazier, Pendleton, Lancaster, Feb 26 Trust. E R. Ratcliffe, warehouseman, Pendleton Sol. W. M. Atherton, Manchester.—*Evans*, S. lodging-house keeper, Bath, Somerset, Feb. 11 Trusts S Evans, draper, and R. L. Wenlock, furniture broker, both of Bath. Sol R H Hellings, Bath.—*Fletcher*, W. H. butcher, Canterbury, Mar. 5. Trusts C. Mead, cattle salesman, and S. Martin, butcher, both of Canterbury. Sol. R. Walker, Canterbury.—*Lane*, C plumber, painter, and glazier, Cuckoo-hill, Hastings, Mar 3 Trusts C Womersley, upholsterer, Hastings; and H. Beck draper, St Leonards-on-Sea. Sol. J. G Langham, Hastings.—*Terry*, D ironmonger, Dover, Kent, Mar. 1. Trusts. W Udal, factor, Birmingham; and J. G. Drury, ironmonger, Canterbury. Sols. F. Knocker, Dover, and R. Sankey, Canterbury.

Gazette, March 11.

Harpraves, W. R., *Andrews*, S., and *Powell*, H. linen drapers, under the firm of Powell and Co. Lisson-grove, Marylebone, Feb. 24. Trust. G. Howes, warehouseman, St. Paul's Church-yard. Sol. A. Jones, Size-lane.—*Lodge*, J. dealer in canvass, Stockton, Durham, Feb. 26. Trust. J. S. Hopkin, canvass manufacturer, Arbroath. Sol. T. Crosby, Stockton.—*Martin*, W. butcher, farmer, and grazier, Kelvedon, Essex, Feb. 12. Trust. C. Everett, miller, Feering. Sols. Banks and Stevens, Witham.—*Nevill*, C. licensed victualler, New Talbot Inn, Smethwick, Stafford, Dec. 3. Trust. W. Downing, maltster, Smethwick. Sol. E. Hickman, West Bromwich.—*Peirpoint*, S. grocer, Great-church Paddington, Middlesex, Mar. 7. Trusts. R. G. Chorley, wholesale grocer, Whitechapel; and W. R. Jones, wholesale cheesemonger, Jewry-street, Aldgate. Sol. T. M. Castle, Jewry-street.—*Price*, J. grocer and provision dealer, Liverpool, Lancaster, Mar. 8. Trusts. E. Crosfield, wholesale grocer, and E. Appleby, corn and provision merchant, both of Liverpool. Sol. J. Tates, jun. Liverpool.—*Slater*, C. coach builder, Birkenhead, Chester, Mar. 3. Trust. R. Dickinson, victualler, Birkenhead. Sol. J. Neal, West Derby, near Liverpool.

Partnerships Dissolved.

Gazette, March 8.

Allen, J. J. and *Simpson*, P. Feb. 9. Debts paid by Allen. —*Ryland*, S. and *Halsall*, R. candlewick manufacturers and common brewers, Manchester, March 1. Debts paid by the copartnership as candlewick manufacturers by Ryland, and as common brewers by Halsall.—*Barber*, M. and *Burgess*, G. tailors and drapers, Macclesfield, March 5.—*Bellamy*, W. and *Biddle*, J. german silver platers, Sheffield, March 4.—*Brierley*, J. and *Saxilby*, R. glass dealers, Manchester, Feb. 1. Debts paid by Saxilby.—*Brodrick*, W. and *Bell*, W. attorneys and solicitors, Bow Churchyard, Dec. 31.—*Bunbury*, T. and *Merredew*, E. A. ribbon manufacturers, Wood-street, Cheapside, and Coventry, Feb. 28.—*Clegg*, J., *Sloth*, S. and *Bell*, J. woollen manufacturers, Halifax, March 5.—*Davies*, D. and *Max*, G. wholesale clothiers, Broad-street, Cheapside, Jan. 1. Debts paid by Davies.—*Drake*, W. and *Straker*, F. railway truck makers, Wakefield, March 1.—*Embleton*, J. and *Pegg*, H. painters and paper hangers, Manchester, March 8. Debts paid by Embleton.—*Erwood*, J. *Enoch*, W. H. and *Conquest*, G. paper, stainers, High-street, Hoxton Old Town, and Culford-road, Hackney, March 4. Debts paid by Erwood and Conquest.—*Hague*, T. and *Pearce*, J., plasters, Rotherham, Dec. 31. Debts paid by Pearce.—*Hamilton*, T. and R. engineers, millwrights, ironfounders, bell hangers, and whitesmiths, East Dereham, March 5.—*Hargreaves*, W. R. *Powell*, H. and *Andrews*, S. linen drapers, Lisson-grove, Marylebone, Feb. 24.—*Jones*, C. and *Mooney*, A. hosiers and smallware dealers, Liverpool, March 8.—*Knight*, W. and S. wholesale and retail linen and woollen drapers, silk mercers, hosiers, and habe dashers, Devonport, March 31.—*Lear*, C. and J. coach makers, Westminster-bridge-road, Lambeth, March 4.—*Lewis*, J. and F. F. milliners and dress makers, Gloucester, March 2. Debts paid by F. E. Lewis.—*Mirrehall*, C. B. *Knowles*, W. and *Segar*, W. coal miners, coal owners, and coke burners, White Rose Colliery, Newport, as regards Segar, March 8 Debts paid by remaining partners.—*Mottram*, T., *Hawkins*, J. and *Hawkins*, R. M. merchants and cutlery manufacturers, Sheffield, as regards Mottram, March 3. Debts paid by remaining partners *Rothercliff*, J. and F. G lithographers, St. Martin's-lane, Charing-cross, as regards F. G. Rothercliff, Feb. 26.—*Pontifex*, R. and *Mallory*, H. coppersmiths, brass founders, copper, steel, and brass plate makers, Upper St Martin's-lane, March 4.—*Reynolds*, N. and *Turner*, W. cotton waste dealers, Manchester, March 1. Debts paid by Turner.—*Rodgers*, J., G. and W. and *Staniforth*, W. T. manufacturers of cutlery, Sheffield, as regards W. Rodgers, Feb. 26. Debts paid by remaining partners.—*Spencer*, G. H. and J. furriers, Pilgrim-street, Ludgate-hill, Feb 21 Debts paid by G. H. Spencer.—*Stark*, L. *Butler*, W. and *Powell*, H. J. pipe manufacturers, Saville-place, Lambeth-walk, Surrey, as regards Powell, March 8 Debts paid by remaining partners.—*Todd*, H. W., *Laing*, W. G., *Todd*, R. B. and *M'Dougal*, R. general drapers and mercers, Manchester, as regards M'Dougal, March 1 Debts paid by remaining partners.—*Wallace*, J. and *Johnson*, I. carriers, Long-lane, Bermondsey, March 7.—*Wallbourne*, H. B. and *Daniels*, N. tin plate manufacturers, Bailbrook, Feb. 24.

Gazette, March 14.

Abbott, R. H. and *Humphreys*, W. tailors and clothiers, Cornhill-street, March 9. Debts paid by Abbott.—*Arrowsmith*, E. and R. tailors, drapers, and undertakers, Burnley, March 8. Debts paid by R. Arrowsmith.—*Barley*, J., H. and T. and *Paton*, A. C. cloth merchants, Huddersfield, March 8. Debts paid by T. and H. and T. Barbour.—*Bigg*, H. D., J. and P. P. *Green*, B. R., *Houghton*, R. S., *Fernyhough*, J. R., and *Carter*, A. commission merchants and agents, London, and Port Louis, Isle of Mauritius, as regards Houghton, June 30.—*Bradshaw*, W. O and *Hopkinson*, W. E. timber merchants, Little Bolton, March 7. Debts paid by Bradshaw.—*Brooks*, W. J. and *North*, R. F. money lenders, Manchester, March 10 Debts paid by North.—*Brown*, T. and F. hosiers and glovers, Cheapside, London, Feb. 24.—*Butterworth*, J. F. and I. F. paper stainers and paper hangers, London, Bath, and Bristol. Debts paid by F. P. Cathcart.—*Cathcart*, F. W., *Whiting*, E. and *Cathcart*, E. B. government proprietors and printers, Maidstone, as regards Whiting, March 8. Debts paid by E. W. and E. B. Cathcart.—*Dalrymple*, J. and *Neil*, C. drapers and tailors, Sheffield, March 7 Debts paid by Neil.—*Gardiner*, L. and A. merchants and manufacturers, Manchester, March 8. Debts paid by L. Gardiner.—*Gregory*, E. and M. drapers and mercers, Gravesend, March 1.—*Harker*, F. S. and J. T. drapers and tea dealers, Bacup, March 1. Debts paid by F. J. Barker. —*Heywood*, J. and *Horsfield*, J. joiners and builders, Cheetham, near Manchester, March 7.—*Hobson*, G. and H. tailors, Ensbury-place, south, and Lombard-street, Feb. 28. Debts paid by S. Hobson, at Finsbury-place, and G. Hobson, at Lombard-street.—*Howorth*, S. *Crabtree*, J. and T. woollen manufacturers and merchants, Sugar Holme Mill, Newchurch, near Manchester, and Oporto, Dec. 31. Debts paid by S. Howorth and J. Crabtree.—*Irwin*, J. O. and *Chester*, F. architects, surveyors, and valuers, Manchester, Sept. 30.—*Ledbetter*, W. H and *Newnham*, J. brewers, Tonbridge Wells, Feb. 18.—*Ledbetter*, W. H. and *Kelsey*, H. E. and H. brewers, Tonbridge Wells, Jan. 17, 1853.—*Lowther*, T. N. and G. L. clock case manufacturers and cabinetmakers, Red-lion-street, Clerkenwell, Dec. 31. Debts paid by T. N. Lowther.—*M'Lauchlan*, H. and *Bacon*, H. drapers, Sheffield, March 7. Debts paid by M'Lauchlan.—*Milburn*, W. and *Shaw*, T. woolstaplers and fellmongers, Darlington, March 9.—*Palmer*, W. T. and *Webber*, C. J. dealers in Price's candles, Stockwell, March 7.—*Petty*, I. W. and *Myles*, G. engravers, printers, and lithographers, Manchester, March 5. Debts paid by Petty.—*Romers*, J. *Meads*, J. and *Simpson*, T. ship chandlers, Liverpool, March 8., Debts paid by Meads and Simpson.—*Slater*, S. and *Seaton*, W. electro-plate manufacturers, Birmingham, March 9. Debts paid by Slater.—*Warburton*, J., *Whitehead*, J., *Pollard*, J. and *Whitehead*, R. berlin wool manufacturers, Holbeck, Leeds, Jan. 1, 1853.—*Wallis*, R. and *Thompson*, A. iron and brass founders, Horncastle, March 9.—*Wilson*, P. G. *M'Ivor*, L. and *Chippendale*, T. merchants and commission agents, Liverpool, March 8. Debts paid by Wilson and L. M'Ivor.

REPORTS

OF

ALL THE CASES ARGUED AND DETERMINED

IN ALL THE

COURTS OF LAW AND EQUITY, IN BANKRUPTCY, INSOLVENCY, NISI PRIUS, THE CRIMINAL COURTS, AND IN IRELAND,

FROM SEPTEMBER, 1852, TO MARCH, 1853.

Equity Courts.

LORD CHANCELLOR'S COURT.

Reported by C. H. KEENE, Esq. of Lincoln's-inn, Barrister-at-Law.

(Before Lord ST. LEONARDS, L.C.)

July 19, 20, *and* 21.

McCALMONT *v.* RANKIN.

Ship Registry Act—Lien—Consignment—Cargo—Freight—Proceeds of sale—Fraud—Defendants not parties to record.

Plaintiffs, merchants in Liverpool, by letters, agreed with the English agent and representative of a colonial firm to accept the agency of his principals, and, in consideration of all consignments being made to them, to make certain advances. The plaintiffs accordingly made advances to a considerable amount, and were advised by the colonial firm of its intention to consign a ship and its cargo to them, to the credit of the consignors; and they forwarded to the plaintiffs a power of attorney, duly executed, to sell the ship on its arrival in England. On the faith of such information, and on the credit of such promised consignment, they made a further advance to the English agents. The colonial firm subsequently became embarrassed, and previously to the sailing of the ship assigned it, with the cargo and freight, to a second colonial firm, who duly registered the ship in their own names; and who very shortly afterwards (having changed the former master) assigned it to a third colonial firm, who duly registered it in the name of one of its partners. Such third colonial firm retained the new master, and consigned the ship and cargo to its own agents at Liverpool, with a power of attorney to sell the ship, and with the usual invoices, specifications, and bills of lading of the cargo to be delivered to their Liverpool agents. On its arrival in England, plaintiffs claimed possession of the ship and cargo, which being refused them, they filed a bill for sale of the ship, declaration of a lien on the proceeds, and for an account against all the members of the three colonial firms (except one member, a partner both in the first colonial firm and the English branch), the assignees in bankruptcy of the English agents of the first colonial firm, and the master of the ship. None of the defendants, except one, a member both of the third colonial firm and that of its Liverpool agents, had been served with subpœna. The consignees of the third colonial firm sold the ship after the bill had been filed. The Court, affirming the decision of the Vice-Chancellor,

Held, that the registered owner and others claiming an interest in the ship and cargo were necessary parties, and that no case of actual fraud having been made out, the plaintiffs had no lien on the ship, or the produce of its cargo, when sold.

The plaintiffs in this suit were merchants, carrying on business at Liverpool in copartnership, under the firm of M'Calmont, Brothers, and Co. Messrs. H. J. and D. Mackay were merchants and copartners, carrying on business at St. John's, in New Brunswick, North America, whose agents in Liverpool were "Mackay, Brothers." Early in 1841, H. Mackay, on behalf of the firm of H. J. and D. Mackay, and also of Mackay, Brothers, wrote several letters to the plaintiffs, in which he offered to them the agency of his principals on their agreeing to grant them an open credit for 10,000*l.* to be secured by a mortgage of some mills and other property in St. John's. To this, by a letter of the 1st of February, 1841, they consented, on such two firms winding up their establishments at Liverpool, and removing to Glasgow, and on their transferring all shipments of supplies required by the St. John's firm to the plaintiffs as their agents.

The plaintiffs accordingly opened an account with the firm of Mackay, Brothers, and commenced the business of their agency, received remittances and consignments, and made large advances thereon.

In June, 1841, Messrs. H. J. and D. Mackay, being in the possession of a vessel called the *Miracle*, wrote to the plaintiffs informing them of their intention to consign it to them, and forwarded to them a power of attorney to sell the ship, and also a bill of lading of the cargo, upon which ship and cargo the plaintiffs made an advance. Before such vessel had reached, or had even been consigned to the plaintiffs, the Messrs. Mackay made it over to Messrs. Crane and M'Grath (who were registered in America as its owners), and assigned to them the cargo and freight. Messrs. Crane and M'Grath having appointed a new master, subsequently executed a bill of sale to Mr. John Pollok, the managing partner of Messrs. Rankin and Co. a firm in America, and who was immediately registered as its sole owner. He then transmitted to Messrs. Rankin, Gilmour, and Co. the Liverpool agents of the last-mentioned firm, a power of attorney to sell the ship, and a bill of lading of the cargo. On the arrival of the ship in Liverpool possession of the ship and cargo was demanded on the part of the plaintiffs, and refused by the then master, on the ground that they had been bought by Messrs. Rankin and Co. from Messrs. Crane and M'Grath.

The plaintiffs then filed their bill, alleging that the sales and transfers of the ship and cargo to Crane and M'Garth, and by them to John Pollok, were the result of a scheme devised between them and H. J. and D. Mackay, for the purpose of defrauding the plaintiffs and depriving them of the benefit of the power of attorney and consignment previously made to them; that Crane and M'Garth had not given any good or valuable consideration for the sale and transfer of the ship and cargo; and that Rankin, Gilmour, and Co. had, through the firm of Robert Rankin and Co. of which John Pollok was the managing partner, constructive notice of the plaintiffs' lien and claim on the ship, cargo, and freight, and praying for a declaration that the transfers and sales of the ship and cargo were fraudulent, and made for the purpose of defrauding the plaintiffs; for delivery up to them of the ship, cargo, certificate, and papers; for execution of a proper transfer or bill of sale to them; or for sale of the ship by the Court, and declaration that the plaintiffs had a lien upon the proceeds of such sale for what balance might be found due to them on their account; or if the ship and cargo, or either, had been sold, for an account of the proceeds and declaration of lien as aforesaid; but if the Court should be of opinion that the subsequent transfers and sales had deprived the plaintiffs of their claim upon the ship, &c. then for a declaration that they had a lien for their balance on the nominal or ostensible considerations given for the ship and cargo, and an order for payment of such balance; for an account between the plaintiffs and H. J. and D. Mackay and Mackay, Brothers; and for an injunction (which was afterwards refused by the Master of the Rolls) to restrain the sale of the ship and cargo by the firm of Rankin, Gilmour, and Co.

It was proved that Messrs. H. J. and D. Mackay had informed the plaintiffs of their intention to consign to them the *Miracle*, and that they had sent to them a power of sale to enable them to sell; that by the time that announcement had reached London, the house in St. John's, which was represented in England by Mr. James Mackay, was about to fail, and that coming to the knowledge of the plaintiffs, they refused to make any further advance; and in consequence of that, the St. John's house, by their representative in England, immediately considered how they could prevent the ship or its proceeds reaching the plaintiffs, who had made advances at that time amounting to 14,469*l.* although no more than 10,000*l.* were originally stipulated, and how they could make use of its proceeds to enable them to obtain further funds for their own use; that they were desirous not to give effect to the power of sale which they had sent to the plaintiffs, but to realize the property of the ship in some other way. It was proved, also, on the part of the plaintiffs, that Mr. James Mackay, as the representative of the St. John's house, had, before the arrival of the letter which had been sent from America, intimated to the plaintiffs that the ship *Miracle* had in fact started for England to the plaintiffs as consignees, and that

it was upon the faith of that information that the advances were made.

The facts of the case and an abstract of the evidence will be found reported at length, 8 Hare 1, and 19 L.J. 215.

The questions raised were—

First, whether Messrs. Crane and M'Grath and John Pollock were necessary parties to the suit.

Second, whether such a scheme of fraud had been made out as would enable the Court to give relief; and

Third, whether such an agreement existed as would give the plaintiffs a right to the vessel, or, if not a right to the vessel, a right to its proceeds.

The Vice-Chancellor Wigram decided that the suit was defective for want of parties; that no case of actual fraud had been made out; and dismissed the bill so far as it related to the ship and the proceeds of the sale; but rather than decide it adversely, gave either party liberty to try the question of the plaintiffs' claim on the cargo and freight by an action at law.

The Court of C. B. the defendant having elected to try the questions at law, decided that the plaintiffs, under their bill of lading, had a legal title to the cargo; but the Vice-Chancellor, on the hearing of the cause, on further directions, dismissed the bill, with costs.

From that decree the plaintiffs appealed.

Bethell and *Cairns* appeared for the plaintiffs.

Sir *W. Page Wood*, *Bacon*, and *Bird Allen* for the defendant Rankin.

The following cases and those which are referred to in the judgment were cited:—*Du Hourmelin* v. *Sheldon*, 4 M. & Cr. 525; *Davenport* v. *Whitmore*, 2 M. & Cr. 177; *Batteruby* v. *Smyth*, 3 Mad. 110; *Hughes* v. *Morris*, 16 Jur. 603; *Ex parte Yallop*, 15 Ves. 60; *Browne* v. *Blount*, 2 Russ. & M. 83; *Follett* v. *Delany*, 2 De G. & S. 235; *Kirwan* v. *Daniel*, 5 Hare, 493; *Langley* v. *Fisher*, 9 Bea. 90; *Haille* v. *Smith*, 1 Bos. & P. 563; *Gaussen* v. *Morton*, 10 B. & C. 731; *Mestaer* v. *Atkins*, 5 Taun. 381.

The several Acts of Parliament alluded to in the judgment were also referred to.

The Lord Chancellor.—The principal question in this case is one of great importance as regards the operation of the Navigation Act upon contracts. There was no actual contract between the parties for the ship *Miracle*, it was only for the purpose of meeting the advances that the ship was consigned to the plaintiffs; it was consigned to them in order that what was owing to them might be paid by its proceeds when sold. The letters which passed, it is contended, amounted to an agreement, upon the faith of which the advances were made, and this certainly appears to have been the real state of the case. The plaintiffs have acted honourably, but on the part of the defendants this was not an honest dealing as between merchant and merchant; still this Court must proceed upon the ground of law. The first difficulty which presents itself on the part of the plaintiffs is this:—James Mackay, who was the registered owner of the vessel in St. John's, in order to turn the property into money, and to prevent the London house from having the benefit of it, transferred it to Messrs. Crane and M'Grath, who are not before the Court. It was insisted that they were mere nominal parties, and that consequently when they transferred the property to the partners in Rankin's house, Rankins were in point of fact the only real owners of the ship, and that the claims of Crane and M'Grath might be passed by as of persons having no real interest. I am clearly of opinion that I can do no such thing; who the actual purchaser was, is not the question which I have to decide. They were the registered owners, and under the Acts of Parliament that I shall presently consider, they had the legal title. They gave a large consideration for the transfer of the vessel to them. Now they are not before the Court; and I cannot hear it said in their absence that this was not a real transaction. That title subsequently became vested in Pollok, and the result is, that, since the filing of the bill, the vessel has been sold, and the proceeds have been realised. Now, the parties by their bill, are relinquishing their claim to the vessel; and although they insist that, by reason of the fraud throughout the transaction, they might follow the vessel as they certainly might the proceeds, they abandon their claim to the former, and allow the legal and equitable title to have passed, and do not seek to disturb it; yet they say that this Court, by its general jurisdiction, can follow the proceeds in a case like this, and make the Messrs. Rankin, who have received the money, the produce of the sale, with the knowledge of the title of the plaintiffs, liable to their demand. In the first place, I am clearly of opinion that this is not a fraud which can be remedied by this Court, as against this party. This is a trick or contrivance on the part of the St. John's house to prevent the London house from having the produce of the ship and cargo, and to prevent it from getting the benefit of securities to which it was morally entitled. This is not such a fraud as this Court can reach, although it is a transaction which it is impossible for this Court to speak of in any other than terms of reprobation. In order to consider to what relief a party might be entitled, I must glance at the Acts of Parliament. It has been supposed that these Acts of Parliament gave rise to a great difference as regarded the question of contracts. The 26 Geo. 3, c. 60, provided that, where property in a ship was transferred, the certificate of registry should be endorsed upon and recited in the bill of sale or other instrument in writing, otherwise it was to be void. The great object was to keep the certificate of registry always in view, so that the devolution should shew who the real owner of the vessel was. The 34 Geo. 3, c. 68, s. 14, recited the former Act, and that doubts had arisen whether every transfer in the property of a ship was required to be made by some bill or other instrument; or, in other words, whether the contract for the transfer of such property might not be made without any instrument in writing at all. Now, Lord Eldon (8 Price, 274, note) stated, that Lord Liverpool was very much astonished when he was told that his Navigation Act did not include contracts, and a subsequent Act was passed for the express purpose of including them. That Act declared that no transfer, contract, or agreement for the transfer of property in a ship should be valid or effectual for any purpose whatever, either at law or in equity, unless such transfer or contract or agreement for transfer should be made by bill of sale or instrument in writing, containing such recital as was prescribed by the recited Act. The omission, therefore, was supplied, and it is a mistake to suppose that the early statutes of Geo. 3 were not repealed by the Acts of the subsequent reign. The statute 6 Geo. 4, c. 105, repealed all the former Acts, and that of c. 160 made a new enactment. In that Act no particular mention is made of contracts or agreements, but there is a general provision, that "so often as the property in any ship shall, after registry, be sold, the same shall be transferred by bill of sale or instrument in writing containing a recital of the certificate of registry, &c. otherwise such transfer shall not be valid and effectual for any purpose whatever, either at law or in equity." That statute was followed by the 3 & 4 Wm. 4, c. 55, in the same words, and by the 8 & 9 Vict. c. 89. Therefore, from the 6 Geo. 4 to the present time, in point of fact, contracts and agreements were not specifically referred to. Now it would be a most extraordinary proceeding on the part of the Legislature to suppose that, having made a general law which did not touch contracts, and finding that they had missed their point, having passed another Act which expressly included contracts, then, when repealing all former Acts, consolidating and improving the laws, they should make a general provision which should exclude contracts, and I think it perfectly clear that the Acts now existing do relate to contracts. They relate to contracts because they relate to every disposition. Nothing can be plainer than the words of the Act. What is the subject of sale? A chattel,—a ship. What is the form of transfer necessary? Anything,—a bought and sold note,—anything that shews that the one party parts with and that the other acquires the property is sufficient. It is not a real subject; it is a mere chattel; and therefore if you use the words "I contract with you to sell and to let you have the ship *Miracle* at 4,000*l.* to be paid to-morrow, or to be paid down," it is a perfectly good transfer, provided you comply with the terms of the Act. To suppose that contracts are here left out appears to me impossible, because the words are, "that as soon as the property in any ship is to be sold." I apprehend the true construction is, that no contract can be valid unless it complies with the conditions in this Act. It does not abolish or repeal the law as regards the regulation of contracts, but it continues in this general form the regulation as to contracts which before had been imposed; the general terms are sufficient, and I think sufficient to require that every contract shall be in compliance with the Act. Now there are many of these provisions which shew clearly that the notice, &c. were not to have the slightest operation, for in cases where there are successive sales, and which are entered into within a given number of days, and two or more are on the registry, the party first bringing the certificate shall have a right to the property as against other parties who are even prior to him on the registry. It is a mere question who first brings the certificate of registry to have the property endorsed upon it; so that the whole form of the Act negatives any equity arising out of the doctrine of notice. The true ground, both in law and equity, is, that you must have an effectual transfer at law if you mean to have a good title; and if you have an effectual transfer at law, it is just as effectual in equity. Now, in regard to the question of fraud, the cases are very few. *Mestaer* v. *Gillespie* was not decided on the question of fraud, which was there raised. There have been cases very much like fraud in which no relief has been granted. Lord Eldon never laid it down that fraud itself would be an exception; and Sir William Grant, who assisted him in the case of *Mestaer* v. *Gillespie*, did not go with the question of fraud, although an issue was directed to try it. In one of the cases before Sir William Grant, it appeared that a Mr. Dawson, one of several partners, assigned to a Mr. Bland and his partner a ship by a proper bill of sale. The ship was then at sea; and on her arrival in London, to which port she belonged, the plaintiffs took possession, and applied to the captain for the certificate of registry, to get it endorsed within ten days after the arrival of the ship, as required by the Act of Parliament; but the captain, acting in collusion with the assignees of the seller (as the case has been stated), delivered it to them. The Master of the Rolls was of opinion that the registry precluded it, and dismissed the bill; and in *Barker* v. *Chapman*, referred to by the Vice-Chancellor in *Thompson* v. *Leake*, 1 Madd. 39, he thought that there was no case made out for relief, either on the ground of accident or fraud. All the cases, so far as they have gone, are decided against the relief, but I am not prepared to say, nor do I lay it down that there may not be such a case of actual gross fraud as would enable the Court to give relief. It has been clearly decided by Lord Eldon, that while that express clause stood in the Act in regard to contracts, there could be no relief upon a contract, and he refused relief where the certificate was not duly recited. There was there a bonâ fide contract, and the money was paid, but it was informal, because it had not a proper recital, according to the Act, on the face of it; and he said that the Act prevented him from looking at it and giving relief under the contract. Where a contract is void at law, there can be no relief in equity; that may be laid down as a general rule; but I do not mean to say that it admits of no exception. Now, what is the case here? In the first place I am of opinion that there is no actual fraud, and therefore, upon the mere ground of fraud I cannot give any relief as against the registry. The contract is one of those which, according to *Brewster* v. *Clark*, this Court cannot enforce. In that case there was a regular contract, but it had not a proper recital of the certificate. Here the power of sale consists only in the letters that passed, and which are anything but a contract. The late Act of Parliament applies to contracts qua contracts (because if they do not amount to that, they amount to nothing) just as much as the preceding Act, which does so in express words, and which provision, I think, was intended to be carried over and given effect to by the latter Act of Parliament. Then the contract required all the same formalities, the same recital, and the same registration, and the certificate of the same indorsement, as any other transfer would have in order to make an effectual transfer. If this is not contract, it cannot operate to bind the ship in any manner as regards this Court. I am of opinion that, as a transfer, it is void both in law and equity. In the case before the Lords Justices, the contention was, that the contract amounted to an actual transfer of property; but the moment you enunciate that proposition, the Act precludes you from entertaining the jurisdiction; because the Act says that, as a contract operating as a transfer to sell it amounts to nothing, it shall be inoperative for any purpose whatever both in law and equity. I am precluded, therefore, as a judge in equity, from giving it effect under the general rules of the Court, because the moment it is said that it operates as a transfer it is obnoxious to the rule provided by the Act of Parliament. I think, therefore, I am entirely precluded from giving any relief as regards the transfer of the ship itself. Then it has been argued that I might and ought to give effect to these transactions as regards the proceeds of the vessel, although I cannot affect the vessel itself. The party here claims the right under certain documents which he alleges vest the property of the vessel in him, but for the Ship Registry Act. Being forced to relinquish that title, he still says he has an equity to that, which represents the vessel—the price produced by its sale. How can this Court give any relief as regards the proceeds of property which could not be given as against the property itself? There may be cases put with regard to other transactions, in which this Court would follow the money and would not follow the property, but I think the right to the money here must spring out of the right to the vessel. The right created was to the vessel; if there was any right created for the consignment it was of the vessel; and the vessel by its proceeds was to pay its debts; but before effect could be given to that inchoate right, before it ever ripened into a contract, the Act stepped in and enabled the party who was in the act of giving effect to it, to stop it and to prevent it from becoming a legal and binding act. If it did not become a legal and binding act, how then can equity affect the proceeds of property which by law has become no longer liable, and which belongs to somebody else? Suppose, for example, the Messrs. Rankin had got the ship and had thought fit to keep it to the end of time; now, if it is admitted they would have been

entitled to retain the ship, and that the plaintiffs had no claim, it would be singular indeed if the other party could hold the property in defiance of the owner, and that you could never touch the property itself; that an equity did not exist so long as it was kept in specie, but the moment it was converted you might demand the money: what is that but indirectly breaking in upon the intention of the Act of Parliament, and giving the man a right of property in the vessel, though he cannot have the vessel itself? The Act of Parliament intended that the property and the right of property should go hand in hand, and that he who had the vessel should have an equitable right to the property. The cases, if it were necessary to go into them, would prove that. My clear opinion is, that this property, while it was in specie, not being such as under the documents which have been produced would give any title in the plaintiff, that it does not—that the certificate does not—give him the title he now claims to its produce. Upon the whole, therefore, I think that the plaintiffs are not entitled to the relief they claim; I must dismiss the appeal, and if the case had not been elaborately considered in the court below, I should not have dismissed it with costs. I very much disapprove of the conduct of the defendants, but under the circumstances, I cannot help dismissing this appeal with costs.

Reported by Owen Davies Tudor, Esq. of the Middle Temple, Barrister-at-Law.

(Before Lord Truro, L.C.)

Tuesday, Jan. 13.

Re Trusts of the Settlement of W. A. Dalton and Harriet, his wife; and *Re* 10 & 11 Vict. c. 96.

Trustees' Relief Act—Practice—Marriage settlement — Construction — Provision for children—Insolvency of parents.

Under a marriage settlement a sum of 4,232*l.* 16*s. Bank Three per Cent. Annuities, was vested in trustees upon trust to pay the dividends to the husband and wife jointly for their lives, and to the survivor of them, for his or her life, upon condition that they, or the survivor of them, should from time to time, and at all times, during the minority of their children, find and provide them with suitable diet, clothing, and general maintenance and support, in proportion to the circumstances and condition in life of the husband and wife, and to the expectancies of such children, notwithstanding the portions of such children should not have become vested or payable. The husband afterwards presented a petition under the Insolvent Debtors Act, whereupon an official assignee was appointed, and protection was granted to him upon the terms of his paying* 30*l. a-year out of the dividends of the trust funds in payment of his debts. Subsequently the husband and wife assigned all their interest in the fund to A. B. in consideration of* 500*l. lent to them. The trustees, on a demand being made upon them by A. B. paid the fund into court under the provisions of the Trustees' Relief Act, and the infant children presented a petition praying that the whole of the dividends of the trust fund might be applied for their maintenance and support, as it was not more than sufficient for that purpose. A. B. opposed this petition:*

Held, however, affirming the decision of the Court below, that the children were entitled to have the whole of the dividends according to the terms of the settlement:

Held also, that it was a proper question to determine, and that the Court was competent to deal with it under the Trustees' Relief Act.

This was an appeal from the decision of the Vice-Chancellor Knight Bruce under the following circumstances:—By an indenture dated the 29th of July, 1839 (being the settlement made on the marriage of Mr. and Mrs. Dalton), a fund was vested in trustees upon trust (among other things) that they, the said trustees, during the joint lives of Mr. Dalton and his wife, should pay the interest, dividends, and annual produce of the trust moneys and securities into the hands of Mr. Dalton and his wife, or upon their joint receipt or acquittance for the same; and from and after the decease of either of them, then to pay the said interest, dividends, and annual produce to the survivor of them for his or her life, but without any power of anticipating the said interest, dividends, or annual produce, or any part thereof; and, subject to the aforesaid trusts, it was declared and agreed that the trustees should stand possessed of one equal moiety of the trust moneys, and the interest, dividends, and annual produce thereof, in trust after the decease of either of them, Mr. and Mrs. Dalton, to pay over such moiety unto the survivor of them for his or her own absolute use and benefit; and as to the remaining moiety of the trust moneys and premises, in trust for the child, or, if more than one, for such child or children of the marriage as Mr. and Mrs. Dalton should during their joint lives by any deed or deeds jointly appoint, but so nevertheless that no share in the capital should be absolutely vested in any child, being a son, until twenty-one, or being a daughter, until twenty-one or marriage, and in default of such appointment, and so far as the same should not extend, in trust for all the children of the marriage equally, in manner therein mentioned: and it was by the same indenture also declared that it should be lawful for the trustees, at any time during the lives of Mr. and Mrs. Dalton, or the survivor of them, or after their decease at the discretion of the trustees, to apply all or any part of the share or presumptive share to which any child might be entitled, for or towards the education, preferment, advancement, or benefit of such child. And it was thereby agreed and declared the true intent and meaning of the indenture and of the parties thereto, that the dividends, income, and annual produce of the said trust moneys and premiums respectively were thereby reserved and secured to the said W. A. Dalton and Harriet his wife, and the survivor of them, upon condition only that they, the said W. A. Dalton and Harriet his wife, and the survivor of them, should from time to time and at all times during the minorities and minority of all and every the child or children of them the said W. A. Dalton and Harriet his wife, find and provide such child or children with suitable diet, clothing, and general maintenance, and support, in proportion to the circumstances and condition in life of them the said W. A. Dalton and Harriet his wife, and to the expectancy or expectancies of such child or children respectively, notwithstanding the portion or portions of such child or children should not have become vested or payable; and it was thereby also provided and declared that from and after any such advance should have been so made in the lifetime of the said W. A. Dalton and Harriet, his wife, amounting either alone or in the whole to one-third part of the share or shares respectively, then and in such case and from thenceforth the said W. A. Dalton and Harriet, his wife, and each of them should be wholly released and discharged from the condition or obligation contracted by the indenture to find and provide such child or children with diet, clothing, or maintenance as aforesaid. It was by the indenture also declared that the trustees should, after the decease of Mr. and Mrs. Dalton, pay and apply for the maintenance and education of any child the interest, dividends, and annual produce of the portion to which such child should for the time being be entitled in presumption or expectancy, and invest the remainder of the interest, dividends, and annual produce to accumulate; and it was further declared that on failure of issue of the marriage, or in default of any child becoming entitled under the provisions of the settlement, the trustees should, on the death of the survivor of Mr. and Mrs. Dalton, stand possessed of the moiety of the said trust moneys and premises, and the interest, dividends, and annual produce thereof, or of such part or parts thereof respectively as should not have become vested or been applied or appointed under any of the trusts or provisions contained in the settlement, in trust for Mr. Dalton absolutely. Mr. and Mrs. Dalton having made certain joint and several promissory notes, the latter was, in August 1844, taken in execution, for the sum of 67*l.* for the debt and costs of an action brought by the indorsee of the notes, whereupon she applied to the Court of Bankruptcy for protection, and an official and creditor's assignee under the insolvency were appointed. In November 1844 the commissioner made an order for the protection of Mrs. Dalton, upon condition of the payment of the claim for which she had been taken in execution, by the yearly sum of 40*l.* by half-yearly payments out of the funds settled by the indenture. Mr. Dalton was taken in execution in the month of November 1844, whereupon he petitioned the Court of Bankruptcy for protection, and an official assignee was appointed. In February 1845, the commissioner made an order for the protection of Mr. Dalton, directing that a proposal made by him for the payment of his debts should be carried into effect,—namely, that Mr. Dalton should pay to the official assignee 30*l.* in each year until his debts were discharged by half-yearly payments of 15*l.* each.

In the month of December 1845, Mr. and Mrs. Dalton assigned to Robert Obbard all the dividends, interest, and annual proceeds to which they were entitled during their joint lives in the fund, then subject to the trusts of their marriage settlement (being the capital sum of 4,232*l.* 16*s.* Consolidated Three per Cent. Annuities), and also all that one moiety of the capital itself, and the dividends, interest, and annual proceeds thereof, to which Mr. Dalton would become absolutely entitled by virtue of the settlement in the event of his surviving his wife, and also all that the other full and equal moiety or half part of the capital sum, and the dividends, interest, and annual proceeds thereof, to which Mr. Dalton would become entitled, in the event of his surviving his wife, and there not being any child who should become entitled thereto by virtue of the settlement, and also a certain life policy of assurance upon the trusts therein mentioned, for securing to R. Obbard the sum of 500*l.* lent by him to Mr. and Mrs. Dalton. The trustees, it appeared, did not act upon the order of November 1844, which was made by the commissioner on Mrs. Dalton's petition for protection. With regard, however, to the order made on Mr. Dalton's petition by the commissioner, they from time to time, upon the joint authority of Mr. and Mrs. Dalton, paid to the official assignee 15*l.* half-yearly, and the balance of the dividends to Mr. and Mrs. Dalton on their joint receipt.

In July 1849, R. Obbard served the trustees with a notice, that the sum of 500*l.* and a considerable arrear of interest was then due, requiring them not to pay the dividends to any person but to him, R. Obbard, and also not to transfer the sum of 4,232*l.* 16*s.* Consolidated Three per Cent. Annuities to any person without the previous consent of R. Obbard. The trustees thereupon transferred the sum of 4,232*l.* 16*s.* Consolidated Three per Cent. Annuities into court, together with the dividends then due under the provisions of the Trustees' Relief Act, 10 & 11 Vict. c. 96. The infant children of Mr. and Mrs. Dalton, in March 1850, presented a petition, which, after setting forth the before-mentioned facts, stated that for some time past Mr. and Mrs. Dalton had omitted to provide them with suitable diet, clothing, and general maintenance and support, in proportion to the circumstances and condition in life of Mr. and Mrs. Dalton, and the expectations of the petitioners, and that sums were owing for such diet, clothing, and general maintenance for the time past; that no advancement had been made to any of the petitioners under the provisions contained in the settlement. The petition then prayed that the dividends of the trust funds might be applied for the suitable diet, clothing, and general maintenance and support of the petitioners, in conformity with the indenture of settlement. On the 13th June, 1850, the petition coming on to be heard before Vice-Chancellor Knight Bruce, his Honour directed that the dividends of the trust funds, viz. of the 4,232*l.* 16*s.* Bank Three per Cent. Annuities, should be paid to Mr. G. E. Evans, a solicitor, who had been consulted by Mr. and Mrs. Dalton, during the minority of the petitioners, or until further orders, Mr. G. E. Evans undertaking to see the same from time to time properly applied in their maintenance and support.

From this order Mr. R. Obbard now appealed, upon the ground that he had, as mortgagee, a prior claim on the funds.

On the part of the petitioners, it appeared from affidavits in support of the original petition, that they had been brought up with considerable expectations, in consequence of their being in expectation of having a large fortune on the deaths of certain relations; that at the present time Mr. and Mrs. Dalton were in great distress and poverty; that none of the petitioners were able to earn their own livelihood; and that the dividends of the trust funds were not more than sufficient to provide them with diet, clothing, and general maintenance and support. It was, on the other hand, alleged by Mr. Obbard, and denied on the other side, that Mr. Obbard had advanced the 500*l.* for the purpose of enabling Mr. and Mrs. Dalton to maintain their children.

Malins and *Daniel*, for R. Obbard, in the first place took the objection that it was not a proper case to be dealt with under the Trustees' Relief Act; that that Act was intended merely to enable trustees who had money in their hands to discharge themselves from all liability by paying it at once into court whenever they had reason to suppose that there would be danger or difficulty incident to the administration of the fund upon their own responsibility; but the Act did not contemplate the conferring of power upon the Court to deal with adverse interests, or with cases of disputed facts upon petition under the Act. (In *Re Bloye's Trust*, 1 Mac. & G. 488.) Secondly, they contended, on the merits of the case, that the children were, at the utmost, only entitled to one-half of the dividends as against their parents, and in a case raised between the parents and the children, the Court could not, upon the ground that the whole of the dividends were wanted for the maintenance and support of the children, order that the whole thereof should be applied for that purpose; that in the present case the distress and the poverty of the parents would make no difference in the rights of the parties so as to take from the mortgagee a part of the security to which, under the deed of assignment, he was clearly entitled. They also contended, that under the order made by the commissioner, the official assignee was only entitled to two half-yearly payments of 15*l.* until Mr. Dalton's debts were paid, and subject to those payments, Mr. Dalton had full power to assign to Mr. Obbard his interest in the trust funds.

J. V. Prior, for the official assignee, appointed under Mr. Dalton's insolvency, insisted upon his right in respect of the two half-yearly payments of 15*l.* in priority to the mortgage.

Wigram and *C. Hall*, in support of the order of

the Court below, insisted that as the objection to the jurisdiction had not been taken before the Vice-Chancellor, it could not be taken now. But even assuming that it could, it was clearly of no avail, as a disputed question of fact might be decided upon petition. (*Re Upton Warren*, 1 My. & K. 410.) That as all Mr. Dalton's interest in the funds vested in the official assignee on his obtaining the order for protection, he had nothing at the date of the mortgage to assign to Mr. Obbard. Moreover the order of the Court below was right, as it carried into effect the intention of the settlement, by giving to the children the whole of the dividends for their maintenance and support, as they were only just sufficient for that purpose.

Malins, in reply.

The LORD CHANCELLOR said that, in his opinion, and after fully considering the subject, he could see no objection to the order of the Court below, which had been appealed against. That the first point was, whether the question was of such a nature as the Court could properly decide upon a petition. And in reference to this, it had been urged that the evidence was conflicting, as to a certain fact connected with the purpose for which the advance of 500*l.* was made. It was not his opinion that the fact itself was material, as it did not appear that the 500*l.* were lent for any purpose specifically applicable to the children, but for the relief of their parents. His lordship said that he gave no opinion what the case might have been if the money had been borrowed for the payment of a school debt, or for any other purpose which had direct reference to the children; but as the case stood, the fact did not seem to him to affect the case upon which he had now to give his decision. His lordship also said that he thought that it was unnecessary to enter into a discussion of another point, viz. the objection which had been raised on the ground of Mr. Dalton's interest being vested in the official assignee. That the terms of the settlement were what the Court ought really to look at, and from them it was clearly to be gathered that the object of the deed was to secure the interest of the children, and what the Court had now to do was to give effect to that object according to the terms in which the parties had expressed themselves in reference to it. That it was admitted that a condition or trust was annexed to the application of the income for the parents; and the question was, whether, if the parents failed to perform that condition, they were to be entitled to the same interest as if no such condition had been attached. That it appeared, on looking at the terms of the deed, that the duty of the trustees, in the event of the parents not performing the condition, was to apply the trust funds in the same way as it was intended that the parents should themselves do. That being the case, it was the duty of the Court, which ought to put itself in the place of the trustees, to act in the same manner, and to do what the parents ought to have done, viz. apply the fund for the maintenance of the children. The question which then arose was, how the Court was to ascertain the amount which ought to be applied. It had been shewn that Mr. Dalton had been in an independent position, the situation and expectation of his children ought to be in accordance with that of their father. That they were entitled to receive such an education as would enable them to associate on equal terms with those of their own class; and relatives and friends who might be disposed to assist their parents in their present reduced circumstances, might naturally expect that the trust funds should be applied for the education of the children. That no argument could be founded upon the question which might very naturally be asked, what, in such a case, would become of the parents? His lordship said that he was of opinion that they were entitled to all the residue of the funds after providing for the maintenance of the children; but he was also of opinion that he was carrying into effect the intention of the deed, and of the parties to it, by directing so much of the funds as the children required were to be applied for their benefit. That the present appellant, although he might have advanced his money, did so, knowing all the circumstances of the case, and, it seemed, acting under advice; but his lordship observed he thought that there must have been something connected with the transaction which had not been brought to his notice, as it could scarcely be supposed that any competent person would advise a gentleman to lend 500*l.* on such a security. That if Mr. Obbard had lent his money from motives of benevolence and kindness, it was to be regretted that what he had done had resulted in disappointment. His lordship then concluded by saying that on the whole he was of opinion that the order of the Vice-Chancellor was consistent with the power of the Court, and that there was no need to postpone the case in order to put it in any other train of decision; that neither Mr. Dalton nor Mr. Obbard could take anything until after the maintenance of the children had been provided for; and that the fund was so limited that the whole of it must be applied for that purpose. That the appeal ought, therefore, to be dismissed with costs.

Dec. 19, 1851, *and Jan.* 12 *and* 22, 1852.

HARBY *v.* THE EAST AND WEST INDIA DOCKS AND BIRMINGHAM JUNCTION RAILWAY COMPANY.

Railway company — Agreement — Construction — 85th section of Lands Clauses Consolidation Act — Restoration of surface.

The lessees and occupiers of land made use of by them as a ropery, in consideration of the terms entered into with them by a railway company in a certain agreement withdrew their opposition to a Bill, according to which the railway was to pass through the ropery. In the agreement it was stipulated (among other things) that the railway should be constructed so as when finished the present level of the ropery should not be in the slightest degree altered at any portion thereof, nor the surface, area, length, or extent thereof in the least respect diminished, notwithstanding that the section of the said railway, lodged in Parliament, shewed that where the line passed through the said ropery would be cut through and carried away:

Held, affirming the decision of the Court below, that the railway company were bound to restore the surface so as to be available for all the purposes to which it might have been applied before the construction of the railway, and not for the purposes of a ropery exclusively.

The meaning of a covenant on the lessee's part in a mining lease to restore the surface to its original condition, is, that the ground shall be restored for all the practical purposes and uses to which it had been formerly applicable.

This was a motion, by way of appeal, on the part of the defendants, the East and West India Docks, and Birmingham Junction Railway Company, to discharge or vary an order of the Vice-Chancellor Knight Bruce, of the 17th of June, 1851, whereby he in effect decided that according to the true construction to be put upon an agreement entered into between the plaintiffs and the defendants, the owners of a certain ropery, or the plaintiffs, its lessees, were entitled to as firm, strong, and solid a surface as the undisturbed earth presented in its original state before the railway was commenced.

The circumstances of the case were as follow:—

The plaintiffs had taken a lease of the premises in question, which they occupied as a ropery.

The defendants intending to construct a railway which would pass through the ropery, in order to get rid of the plaintiffs' opposition, pending their application to Parliament, entered into an agreement with them as to the mode of constructing the railway through the ropery as follows, viz.: that the construction should be of such a character "that when finished the present level of the said ropery shall not be in the slightest degree altered at any portion thereof, nor the surface, area, length, or extent of the said ropery in the least respect diminished, notwithstanding that the section of the said railway lodged in Parliament shews that where the line passes through the said ropery, it is intended to alter the level thereof; and notwithstanding that the plan of the said line shews that a portion of the said ropery will be cut through and carried away." There were other clauses in the agreement which, as they were not acted upon, it is needless to state at length, by which power was given to the company to substitute another ropery for the plaintiffs', or to pay the plaintiffs 8,000*l.* in full for all their interest in the lease and damage to their ropery.

The defendants proposed to cross the ropery of the plaintiffs by means of a bridge, but disputes having arisen between them as to the nature of the bridge, the defendants forthwith entered into possession of the plaintiffs' premises, having served them with a notice under the 85th section of the Lands Clauses Consolidation Act; the plaintiffs then filed their bill, and obtained an ex parte injunction. However, upon the company undertaking to build a bridge to the satisfaction of an engineer to be approved of by the plaintiffs, the injunction was dissolved by consent. The plaintiffs and defendants afterwards still continuing to dispute as to the proper mode of making the bridge, an application was made to the Vice-Chancellor Knight Bruce to decide upon the proper construction of the agreement; and his Honour, on the 17th of June, 1851, decided the question in favour of the plaintiffs as before mentioned. On the 26th of November, 1851, the plaintiffs applied to Vice-Chancellor Parker, and obtained an order for a sequestration against the defendants, but the same was suspended for a month in order to give the defendants an opportunity, if they should be so advised, of applying by way of appeal to the Lord Chancellor; whereupon the defendants appealed from the order of the Vice-Chancellor Parker granting the sequestration, as well as from the order of the Vice-Chancellor Knight Bruce, the latter of which appeals, however, was alone heard.

Roll, *Daniel*, and *Bazalgette*, for the appellants, contended that the plaintiffs being only lessees, were only entitled to the surface of the ground; that the applicaton of the plaintiffs to Parliament in opposition to the defendants' Bill, was confined merely to the destruction of the ropery; and that it was clearly intended by the parties to the agreement that, in consideration of the plaintiffs withdrawing their opposition, the defendants would make a level surface, equally available for the purposes of the ropery as that formerly enjoyed by the plaintiffs, and nothing more. That the case came within the 85th section of the Lands Clauses Consolidation Act, as the agreement did not provide for the amount of compensation, and that the notice was in conformity with the terms of the agreement. They moreover submitted to the Court that there had been such acquiescence on the part of the plaintiffs, with regard to the construction of the railway, as precluded them from taking so late any objection to what was proposed to be done by the defendants.

Bethell, *Malins*, *Follett*, and *Logie*, in support of the order of the Vice-Chancellor, contended that the construction which the defendants wished the Court to put upon the term "surface," occurring in the agreement was obviously absurd, as the effect of such a construction would be to prevent the plaintiffs from building on the land, or from converting it to any other purposes than that of a ropery. That the notice given under the 85th section of the Lands Clauses Consolidation Act was given in violation of the agreement. That there had been no acquiescence on the part of the plaintiffs, who had filed their bill as soon as they had reason to suppose that the defendants intended to break through the agreement.

Roll, in reply.

The LORD CHANCELLOR said that it appeared to him that the question turned entirely upon the construction of the agreement, which had two main objects in view. That the appellants contended the agreement had only one object,—viz. the restoration of the surface for the purposes of a ropery. In his lordship's opinion there was no doubt but that the restoration of the surface for such a purpose to a given level was the first object; but the agreement had also the object of preventing the railway company from using the land by means of an open cutting; but it did not express how deep below the surface the railway was to be made, in the event of its not being carried over the plaintiffs' ropery. That it appeared that the plaintiffs were the first who used the land for the purposes of a ropery; but that there was nothing to shew that it was in future intended to confine the use of the land to the purposes of a ropery. Indeed, it appeared that two houses had been built thereon by the plaintiffs, and it was asserted that they had it in contemplation to build some more there; that although perhaps this was a circumstance to which it was not necessary to attach much weight, nevertheless, when the point was to be considered for what purpose generally the restoration was to be made, his lordship thought that the question to be answered was, whether he was warranted in holding, or whether there was any more reason for saying that the restored surface was intended only to be of a sufficient degree of strength to support a light carriage, and not a heavy carriage, or a house; and how was he to fix the limit as to weight which the restored surface was to bear, and how was it to be ascertained? His lordship said that he saw nothing in the agreement to qualify its plain meaning, and that as there was nothing in it to restrain its operation to the tenancy of the plaintiff, he thought the surface ought to be restored so as to make it available for all the purposes to which the adjoining surface was available; nor could he justly adopt the construction contended for by the defendants, viz. that because the agreement contained a stipulation for the restoration of the level for the purposes of the ropery, that therefore such agreement implied that the restoration should take place for that purpose exclusively. That in the case of a mining lease, where there were covenants on the lessee's part to restore the surface to its original condition, the obvious meaning was that the ground should be restored for all the practical purposes and uses to which it had formerly been applicable. His lordship therefore came to the conclusion that the construction which the Vice-Chancellor had put upon the agreement was essentially correct, and that the appeal ought to be dismissed with costs.(*a*)

ROLLS COURT.

Reported by J. MACAULAY, Esq. of the Inner Temple, Barrister-at-Law.

Monday, May 3.

AYLES *v.* COX.

Vendor and purchaser—Good title—Conditions of sale—Mistake or error in description—Compensation—Exceptions.

One of the conditions of sale was, that "if any mistake or error be made or discovered in the description of the premises, or any other whatever, shall

(*a*) The defendant did not proceed with the second appeal motion, and a month's further time for the issuing of the sequestration was granted, on payment of the costs of the motion.

ROLLS COURT.

appear in the foregoing particulars, such mistake or error shall not annul the sale, but a compensation or equivalent shall be given or taken, as the case may be, such compensation or equivalent to be settled by the Master in case the parties differ." One of the lots was described as "being copyhold of the manor of D." but it turned out to be partly freehold:

Held, that this did not amount to mistake or error description, but that the thing described was altogether different from the thing as it actually existed, and that a good title could not be made.

Some property was sold by auction in this suit. Lot 10, a cottage and about three acres, was described as "being copyhold of the same manor" (Dover-court), and lot 11 was similarly described.

By the 5th condition of sale it was provided as follows:—"That if any mistake or error be made or discovered in the description of the premises, or any other error whatever shall appear in the foregoing particulars, such mistake or error shall not annul the same, but a compensation or equivalent shall be given or taken, as the case may require; such compensation or equivalent to be settled by the Master, in case the parties differ."

Benjamin Johnson became the purchaser of lot 10 for 465*l.*

By an order of the Court it was referred to the Master to inquire whether a good title could be made to the premises comprised in lot 10.

In the Master's office it turned out that lot 10 was partly *freehold* and partly copyhold, and lot 11, instead of being copyhold, was wholly freehold. The vendor required compensation for so much as was freehold.

The Master reported that a good title could not be made to the premises comprised in lots 10 and 11, and the plaintiffs took exceptions, insisting that the Master ought to have found that a good title could be and had been made out to both lots.

R. Palmer and *Waller* in support of the exceptions.—The condition of sale was that a compensation or equivalent should be not merely taken but given, as the case might be, and that in case of mistake or error of description, or any other error whatsoever. This was sufficiently comprehensive to include the case of describing a freehold as a copyhold. The only mistake was in describing the property as of less value than it really was, and the purchaser would have no reason to complain, inasmuch as he got a better bargain; but they declined completing the purchase except on the terms of receiving a compensation. They cited *Twining* v. *Morris*, 2 Bro. C. C. 325; and *Leslie* v. *Thompson*, 20 L.J. (N.S.) ch. 561.

Grenside, for the purchaser.

The Master of the Rolls.—You have sold a different thing from that which, by your conditions of sale, you purported to sell. It is not a mistake or error. You have agreed to sell copyhold, and you make title to freehold. It may be said it is better, but it is not what the purchaser bargained for, and he has a right to have copyhold if he wishes. The exceptions to the Master's report must be overruled.

March 10 *and* 29, *and April* 2.

IVE *v.* KING.

Will, construction of—Survivors—Tenant for life—Substitution—Period of vesting.

A testator gave real and personal to his wife for life, and after her decease to her executors, to sell and divide the proceeds in moieties, one of which they were to divide into five shares, and to pay each share to a person named by the will, and in case of the death of any or either of them before his wife, the testator, their shares to go to their husbands or wives, if any, and if not, to their respective children, or, if no children, then to the survivors of them, share and share alike. The other moiety the testator directed to be divided in the same way among five persons, and in case of the death of any or either, then he gave their respective shares to their children, if any, and if not to the survivors of them."

Held, that the second moiety was given to the first legatees as tenants in common.

That one of the five persons to whom the second moiety was given in the first instance having survived the tenant for life, took one-fifth absolutely.

That the children of original legatees who survived the testator, but died in the lifetime of the tenant for life, and also the children of those who were living at the execution of the will, but died in the lifetime of the testator, were entitled.

That the children of a person believed by the testator to be living at the execution of the will, but who was, in fact, dead, came under the same principle as the children last mentioned.

That where one of the original legatees named in the will died in the testator's lifetime, the class of children to take by substitution was to be ascertained at the death of the testator; but where the legatee survived the testator, and died in the lifetime of the tenant for life, the class was to be ascertained at the death of the legatee.

That the class entitled to a share under a gift to the survivors was to be ascertained at the death of the legatee whose share went over, or at the death of the testator, whichever last happened.

The question in this case arose upon the construction of the will of John Deverill, late of Langley Marish, Bucks, dated 26th February, 1819. The testator thereby gave his freehold estate, situate in the George-green, Langley Marish, to his nephew, John Deverill, his heirs and assigns, subject to and charged with an annuity of 5*l.* in favour of Elizabeth Deverill, the widow of testator's brother, George Deverill, during her life; and the will then continued thus:—"I give and devise all that my freehold estate in Horsmoor-green, in the parish of Langley Marish, to my wife Elizabeth for life, and also the dividends arising from whatever stock I may die possessed of in the public funds, the use of my household furniture, plate, linen, china, and also all other the rest, residue, and remainder of my estate and effects, of what nature or kind the same may be, after my just debts, funeral and testamentary expenses are paid, to my said wife Elizabeth for life; and from and immediately after her decease, I give and devise the said freehold estate situate in Horsmoor-green, as before described; and also give all the stock in the public funds which I shall die possessed of, and also all my household furniture, plate, linen, china, and all other my property that may be then remaining, to William Ive and Thomas Ashton, my executors hereinafter named and appointed, their heirs and assigns, for ever, in trust that they, the said William Ive and Thomas Ashton, shall sell the said freehold estate in Horsmoor-green by public auction or otherwise, in the best manner they can, and also to sell out all the said stock in the public funds, and to dispose of my household furniture, plate, linen, and china, and also to collect all other of my property that may be then remaining into their hands; out of which I direct my said executors shall pay and reimburse themselves all reasonable expenses in the execution of this my will; and I also bequeath them a further sum of 15*l.* each for their trouble; and whatever may be then remaining in their hands I direct may be divided into two equal parts, the one moiety or half share thereof I give in five equal shares; that is, one share to Elizabeth, the widow of my late brother George, one share to my brother William, one share to my brother Thomas, one share to my sister Mary Merrick, and the remaining share to my sister Elizabeth Edwards: and in case of the death of any or either of them before my said wife Elizabeth, then their respective shares to go to their respective husbands or wives, if any, and if not, then to their respective children, and, in failure of children, then to the survivors of them, share and share alike; and the other moiety, or half part thereof, I give as follows: 10*l.* thereof to Ann Edwards, sister of Edward Edwards, of Slough, Bucks, baker, should she be then living, as a token of my wife's friendship for her; and the remainder of the said moiety, or half part, to my wife's sister, Ann Smith, her brother Charles King, her brother John King, her brother Henry King, and her brother Thomas King; and in case of the death of any or either of them, then their respective shares to their children, if any, and if not, then to the survivors of them, share and share alike." The testator died on the 8th of June, 1837. Elizabeth Deverill, William Deverill, and Elizabeth Edwards died after the execution of the will, but before the testator's death, all three leaving children, some of whom died before the testator, some since his death, and some are still living. Some of these children were born before the date of the will. Thomas Deverill and Mary Merrick died during the life of the testator's widow, having had children, some of whom died in testator's lifetime, some since, and some are still living. Ann Smith died before the date of the will, leaving children, who are now living. Charles King died a bachelor after the date of the will, but before the testator. John King died after the will, but before the testator, leaving children, some of whom died before the testator, some since, and some are still living. Henry King is still living. Thomas King died during the tenancy for life, leaving children who are still living.

Eddis for the plaintiffs, the trustees.

Pownall for John and William, two of the children of Elizabeth Deverill, who died after the execution of the will, but before the testator's decease, contended that all children living at the date of the will and survived the tenant for life, took, notwithstanding the death of their parents in the lifetime of the tenant for life.

Smyth for a child of Elizabeth Edwards, who died before the death of the testator.

Fane for John Edwards, son of Elizabeth Edwards, he having died before the tenant for life.

Baggallay for Henry King, now living.

Sidebotham and *H. C. Jones* for other parties.

The following cases were cited:—*Lejeune* v. *Lejeune*, 2 Keen, 701; *Smith* v. *Smith*, 8 Sim. 353; *Salisbury* v. *Petty*, 3 Hare, 86; *Giles* v. *Giles*, 8 Sim. 360; *Jervis* v. *Pond*, 9 Sim. 549; *Gray* v. *Garman*, 2 Hare, 268; *Ranelagh* v. *Ranelagh*, 2 Myl. & K. 441; *Cripps* v. *Wolcott*, 4 Madd. 11; *Edwards* v. *Edwards*, 21 L.J. (N.S.) ch. 324; *Collins* v. *Johnson*, 8 Sim. 356, n.; *Lyon* v. *Coward*, 15 Sim. 287; *Masters* v. *Scales*, 13 Beav. 60; *Christopherson* v. *Naylor*, 1 Mer. 320; *Watson* v. *England*, 15 Sim. 1; *Butler* v. *Ommaney*, 4 Russ. 70; *Waugh* v. *Waugh*, 2 Myl. & K. 41; *Thornhill* v. *Thornhill*, 4 Mad. 377; *Tytherleigh* v. *Harbin*, 6 Sim. 329; *Crowder* v. *Stone*, 3 Russ. 217; *Bebb* v. *Beckwith*, 2 Beav. 308; *Darrel* v. *Molesworth*, 2 Vern. 378; *McKinnon* v. *Peach*, 2 Keen, 555.

The Master of the Rolls was clearly of opinion that the second moiety of the residue was given to the five legatees as tenants in common in equal shares; the testator, by speaking of "their respective shares," having clearly shewn his intention that each should take a distinct share. But on the other points he reserved his judgment.

Monday, March 29.—The Master of the Rolls stated the facts of the case. There were in this case four classes of claimants; first, a legatee, who survived the tenant for life; second, the children of those legatees who survived the testator, but died in the lifetime of the tenant for life; third, the children of those legatees who were living at the execution of the will, but died in the testator's lifetime; fourth, the children of a legatee who was dead at the execution of the will. The original bequest to Henry King was of one-fifth of the second moiety; and he having survived the testator's widow, was absolutely entitled to that one-fifth. As to the second and third classes of claimants, he was of opinion that the children of the legatees were entitled. His Honour took a distinction between this case and those in which the original legatees were not mentioned *nominatim*, but as members of a class, and he was of opinion that it came within the authority of *Lejeune* v. *Lejeune*, 2 Keen, 701. There was a difference in the wording of the gifts over of the shares in the two moieties, the reference to the deaths of the legatees of the second moiety being simply "in case of the deaths of any or either of them," without specifying any time. The words, "in case of the death," had reference to the same period as to each moiety, and meant in case of death before the period distribution. As to the fourth class, viz. the children of Ann Smith, the case of *Tytherleigh* v. *Harbin*, 6 Sim. 329; *Giles* v. *Giles*, 8 Sim. 360; *Jarvis* v. *Pond*, 9 Sim. 549, are not applicable, for in those cases there was a substantive gift to the children, whereas in this case the children founded their claim on a mere clause of substitution. His Honour could find no authority precisely in point, but he could not see any substantial distinction between a gift by way of substitution to the children of a person known to be living at the date of the will and one to the children of a person believed by the testator to be living at the time, though, in fact, he was dead. And he thought the cases in favour of the children of Ann Smith taking if she had died on the day after the making of the will were to be applied to the present case.

Friday, April 2.—The Master of the Rolls, in reference to the periods at which the classes of children entitled to take by way of substitution were to be ascertained, and also as to the construction to be put upon the limitation to survivors, observed that in cases where one of the legatees named in the will died in the testator's lifetime the class of children to take by substitution was to be ascertained at the testator's death, but where the testator survived the legatee and died in the lifetime of his widow, the tenant for life, the class of children to take by substitution was to be ascertained at the death of the legatee; so that in each case the share of a legatee dying before the period of distribution vested in such of his children as survived both their own parent and the testator. The class entitled to a share under the gift to the survivor being to be ascertained at the death of the legatee, whose share went over, or at the death of the testator, whichever last happened.

V. C. PARKER'S COURT.

VICE-CHANCELLOR PARKER'S COURT.

Reported by Geo. S. Allnutt, Esq. of the Middle Temple, Barrister-at-Law.

April 1 *and June* 21.

Ex parte The Incumbent and Churchwardens of Brompton.

Apportionment of charities—8 & 9 *Vict. c.* 70—"*Parish.*"

A bequest of money had been made for the benefit of the poor of the town of K. The money was laid out in lands, which had been vested in trustees, who had applied the rents for the benefit of the poor of the parish of K. There was no municipal or market town of K. but a place called the

town of K. was situate in that parish and an adjoining parish, though there were no defined metes or bounds to distinguish it:

Held, that this charity was apportionable under the above Act.

The Court has a discretion whether the charities within the above Act are to be apportioned or not.

This was a petition by the incumbent of the district church of Brompton and others for the purpose of having an apportionment made under the 8 & 9 Vict. c. 70, of the charitable gifts which had been made to the parish of Kensington, of which parish the district of Brompton formed a part. The charities upon which the questions arose were called the Campden charities, the particulars of which were as follow:—Baptist Viscount Campden, by his will dated the 12th of October, 1629, made the following bequest: "I do also give and bequeath the sum of 200*l.* of lawful money of England to be equally employed for the good and benefit of the poor of the town of Kensington for ever, in such manner as the Right Honourable Edward Lord Noel and Sir William Blake, knight, and the churchwardens of the said parish of Kensington from time to time, shall think fit to establish for ever." By a deed dated the 20th of October, 1635, certain lands called Chare Crofts, purchased with the 200*l.* bequeathed by Lord Campden, were conveyed to sixteen trustees, to the intent that they should let the same, and yearly employ the rents "for the use, good, and benefit of the poor of the town of Kensington, according to the true intent and meaning of the said will of Lord Campden." Viscountess Campden, by her will dated the 14th of February, 1643, bequeathed as follows: "I give and bequeath to my loving friend Sir John Thorogood, D. Gardiner, esq. Mr. Williamson, William Arnold, John Arnold, Robert Saywell, Francis Blake, Philip Coleby, and Francis Dyson, all of them being parishioners of the parish of Kensington, in the county of Middlesex, and to the churchwardens of the said parish church for the time being, the sum of 200*l.* of lawful money of England, to be paid unto them within eighteen months next after my decease, if they do purchase land of inheritance therewith to the clear yearly value of 10*l.* a-year above all reprises at the least:" the testatrix then directed that a moiety of the rents should be from time to time annually applied for and towards the better relief of the most poor and needy people that were of good life and conversation, and that should be inhabiting within the said parish of Kensington; and that the other moiety should be yearly for ever applied to put forth one poor boy or more, being of the said parish, to be apprentice or apprentices. By a deed dated the 8th of November, 1644, certain lands called "Butt's Fields," which had been purchased with the last-mentioned legacy, were conveyed to eight persons, including the vicar and churchwardens of Kensington, upon the trusts of Lady Campden's will. By a deed dated the 29th of January, 1682, Chare Crofts and Butt's Fields were conveyed to twelve persons upon trust, to let the same and employ the rents for the good and benefit of the poor of the town of Kensington from time to time, according to the true intent and meaning of the wills of Baptist Lord Campden and Lady Campden. In 1742 it was ordered by the Court of Chancery, that new trustees should be appointed, &c. and accordingly a conveyance was made to them by the heir of the surviving trustee, upon trust, for the good and benefit of the poor of the town and parish of Kensington, according to the wills of Baptist Lord Campden and Lady Campden. From this time the lands appeared to have been managed and the rents applied by a body of trustees, the vacancies in the body being from time to time filled up by the existing trustees. At different periods the following districts were created out of the parish of Kensington, viz.—Brompton; St. Barnabas; St. John's, Notting-hill; and St. James, Norland. The present petition came on to be heard before Vice-Chancellor Knight Bruce, when the trustees of the charities objected that Chare Crofts was not held upon trust for the parish, but for the town of Kensington; and further that these charities having been managed by trustees independently of the vicar and churchwardens of the parish, they were not within the 8 & 9 Vict. c. 70. By the order made by Vice-Chancellor Knight Bruce on that occasion, and dated the 31st of March, 1849, it was referred to the Master to inquire and state what charitable devises, bequests, or gifts had been made or given to or for the use of the parish of Kensington, within the meaning of the Act, and how, and in what manner, such charitable devises, bequests, or gifts respectively, or the produce thereof respectively, ought to be apportioned between the district parishes and the remaining part of the parish according to the provisions of the Act; and that the Master should settle and approve of a scheme for the distributions of the proportions of such devises, bequests, and gifts respectively, or the produce thereof respectively, as should be so apportioned to the district parish, &c. By the consent of all parties the Master made a separate report, dated the 22nd of November, 1851, as to the charitable devises, bequests, and gifts only; and by that report he set out several leases of Chare Crofts, by persons stating themselves to be trustees for the parishioners of Kensington, and some vestry minutes of Kensington parish, in which the trustees of Chare Crofts were stated to be trustees of the poor lands; he also set out an Act of Parliament, 17 Geo. 3. c. 64, by which, after reciting a desire that a workhouse should be built for the parish, and reciting the different deeds by which the Campden lands had been settled, and that the vicar, churchwardens, overseers of the poor, and parishioners of Kensington, were desirous that the estates should be let out on lease, and that the rents of such part of the said charity estates as belonged to the poor of the said parish should be from time to time applied in the manner therein mentioned, in aid of the funds for building the workhouse, it was enacted, that leases should be granted as therein mentioned, and that 5*l.* part of the rents should be applied for putting out boys apprentices under Lady Campden's will, and that the remainder of the rents should be applied in aid of the funds for building the workhouse, and when all the moneys borrowed for the purpose of building the workhouse should be repaid, the lands should be held on the old trusts; and that those moneys had long since been repaid, and the lands in question freed from the burdens imposed by the Act. The Master further stated, that at the date of Lord Campden's will there was a place called the town of Kensington, and that there were separate Acts of Parliament (3 & 4 Wm. & Mary, c. 128; 9 Wm. 3, c. 37; 35 Geo. 3, c. 74); all of which related to the lighting and watching of the town of Kensington; and that there was a place called the town of Kensington, situate in the parishes of St. Mary Abbott's, Kensington, and St. Margaret's, Westminster; that there was no municipal corporate town or market town in the parish of Kensington, and that the place called the town of Kensington had not any known or defined metes or bounds to distinguish it from other parts of the parish of Kensington. The Master then found that the distribution of the rents of Chare Crofts and Butt's Field had been at all times made to persons parishioners of the parish of Kensington residing in various parts of the said parish, without limiting any portion thereof to persons residing in any part of the said parish that could be termed or denominated the town of Kensington, and that the said charity estates had ever since the original foundation, except during some part of the period between the years 1682 and 1742, been always vested in a separate body of trustees. Upon this report the petition now came on to be heard.

Wigram and *B. L. Chapman* appeared for the petitioners.

Russell and *Giffard* contended that the case was not within the Act, and referred to *Doe dem. Higgs* v. *Terry*, 4 A. & E. 274; *Doe dem Jackson* v. *Hiley*, 10 B. & C. 885; *Doe dem. Hobbs* v. *Cockerell*, 10 B. & C. 478; *Allason* v. *Stark*, 9 A. & E. 255; and *Rex* v. *Halesworth*, 3 B. & Ald. 717.

Selwyn appeared for other parties.

Swanston and *Goodeve*, for the vicar and churchwardens of Kensington parish.

W. M. James for the Attorney-General.

JUDGMENT.

Thursday, June 24.—The VICE-CHANCELLOR (after stating the order dated the 31st March, 1849, and that the Master had by his report dated the 22nd of November last, found that the charitable gifts or bequests given or bequeathed by Baptist Viscount Campden and Elizabeth Viscountess Campden were charitable devises, gifts, or bequests made or given to or for the use of the parish of St. Mary Abbotts, Kensington, within the meaning of the Act of Parliament) said, that this petition was heard only as to the question arising with regard to Lord and Lady Campden's charities, and as to these, two questions were argued,—the first was, that Lord Campden's bequest originally was for the benefit of the poor of the town of Kensington, and the objection was taken that the town and parish of Kensington were not identical, and therefore that the report finding that this was a charity for the use of the parish of Kensington was erroneous. That point was fully argued, and upon it his Honour stated his opinion at the time, that the Master upon the evidence had come to the right conclusion, and that Lord Campden's charity was a charity for the benefit of the parish of Kensington. The second question that was argued was, whether these Campden charities were or were not to be apportioned under the 8th & 9th Vict. c. 70, s. 22. Now the Master set out in detail the history of these charities to the present time, commencing with the wills of Lord and Lady Campden, and in his report he stated the application which had been made of them. He said it appeared by the books of the trustees, and he found that the incomes of the charity estates had always been applied to or for the use and benefit of the poor of good life and conversation of the parish of St. Mary Abbott's, Kensington, and for apprenticing poor boys of the parish, and then he concluded his report by finding, as his Honour had already stated, that these were charitable gifts within the meaning of the Act in question. Now his Honour could not doubt that the Master's finding in this respect was correct, that is to say, that the Campden charities were charities which the Court had authority and jurisdiction to apportion under the Act; and if that were so, it appeared that the question whether they were in fact to be apportioned was a question that was not open upon the order which the Court had made, for the Court directed that the Master without exercising any discretion should at once proceed to settle a scheme for apportioning all the charities that he should find to be charities within the Act. There was nothing before his Honour to shew what view of the statute the Court took in making the order beyond the order itself. There was no report referred to of any judgment that the Court pronounced in making the order. His Honour found that in the case of the *West Ham Charities* (2 De G. & Sma. 218), the Vice-Chancellor was of opinion that in cases of this kind the Court had a discretion to be exercised as to whether the charities within the Act were to be apportioned or not. He proposed to make a reference that the Master should inquire whether there were any, and what charitable devises, bequests, or gifts that had been made and given for the use of the poor of the parish of West Ham, and whether it was fit and proper, having regard to the state of the parish, that such devises, bequests, or gifts should be apportioned between the district of St. John's and the remaining part of the parish under the statute, and in that case to approve of a scheme for such apportionment." Now, it did appear to his Honour that this case of the *West Ham Charities* proceeded on what he might call a sounder view of the Act of Parliament than that which was applied in the present order, if the order, as he thought it did, regarded the provisions of this statute as imperative,—as provisions binding the Court to apportion all charities coming within the scope of the Act. The language of the Act was, that it should be lawful for the Court to apportion between the remaining part of the parish, and the district and separate parish, or district parish, or district chapelry, any charitable devises, bequests, or gifts which should have been made or given to or for the use of any such parish, or the produce thereof; and in any such case to direct that the distribution of the proportions of these gifts should be made and distributed by the incumbents or spiritual persons serving the church, or by the churchwardens of any such district and separate parish, &c. as the Court of Chancery might think expedient. Now, there was no doubt that in construing statutes words of permission were very often construed as if they were imperative or obligatory on the Court, but this was by no means an universal rule; it must depend on the subject-matter, and the context of the Act of Parliament. The words here were, it is to be "lawful" to apportion any gifts, and in any such case to give directions. It did not appear to his Honour that "any" there should have the force of "every," which would necessarily follow if the provisions of the Act were to be imperative on the Court. Again, it appeared to him that the subject-matter almost forbid the construction which made it imperative on the Court to make the apportionment, because it could not have been the intention of the Legislature that every parish charity, which might be an entire thing,—a charity for founding a school or hospital,—should at all events be apportioned under the provisions of this Act of Parliament. It appeared to him that the sound view of the Act must be, that the Court should have a discretion, and in exercising that discretion that the Court should be guided by the consideration whether or not the administration of the charity was or not affected by the division of the parish into districts to the prejudice of the inhabitants of the new district. It appeared to him, that on the present order the Court had reserved to itself no discretion on that subject, and being of opinion that these were gifts within the statute, he could only affirm the Master's report, and the Master must then proceed under the remaining part of the Vice-Chancellor's order.

Friday, July 23.

GOODMAN *v.* DRURY.

Will—Construction—Vested interests.

A testator charged lands with an annuity of 15*l. to M. F. and after her death charged the lands with the payment of* 100*l. to each of the three children of M. F. and which sums he bequeathed to each of them accordingly; and he directed the same to be paid within six months after the decease of M. F. or to such of them as should be then living. One of the children died in the lifetime of M. F. and it was*

Held, that the legacy was not vested.

This was a special case filed under the following circumstances:—

V. C. PARKER'S COURT.

Henry Bates, by his will dated the 2nd of July, 1827, devised certain real estates to John Goodman, for his life, "charged and chargeable as hereinafter mentioned," and after his death, to William Goodman, his heirs and assigns. The testator then charged the devised estates with an annuity of 50*l.* to his wife, and, after her death, with an annuity of 15*l.* for his niece, Mary Freeman, for her life. The testator then proceeded as follows:—"And from and after the decease of my said niece, I do hereby further direct that the said hereditaments and premises shall stand and be further charged, and I do hereby onerate and charge the same with the payment of 100*l.* a-piece to Richard, Mary, and Louisa Freeman, the children of my said niece, Mary Freeman, and which said several sums of 100*l.* I do hereby give and bequeath to each and every of them accordingly, and do direct the same to be paid and payable respectively within six calendar months next after the decease of my said niece, Mary Freeman, or to such of them as shall be then living." The testator died in 1835, and his widow died in 1836. Mary Freeman, the daughter of the testator's niece, married Mr. Drury, and died in the lifetime of her mother, the annuitant. Mary Freeman, the testator's niece, died in 1851, and the question submitted to the Court by this case was, whether the legacy of 100*l.* had absolutely vested in Mrs. Drury, so as to entitle her husband, who had taken out administration to her, to receive it.

Russell and *Pryor*, for the devisee of the estate.

Malins and *Shapter*, for Drury, the husband.

The following cases were referred to: *Farmer* v. *Francis*, 2 Sim. & Stu. 505; and *Re Bartholomew*, 1 Mac. & Gord. 354.

The Vice-Chancellor said, that when there was a gift of personal estate to a legatee, the postponement of the payment to a future period did not prevent the legacy from vesting. This, however, was not the case where there was a gift of money charged on real estate. Whatever might be the terms of a gift of money charged on land, if the payment should be postponed, the legacy would not vest until the time of payment. There was an exception to this rule, where the postponement of the payment might appear to have reference to the situation or convenience of the estate. Here the direction was, that the estate should be charged with the payment of 100*l.* to each of the three children of Mary Freeman, and which sum he did thereby give and bequeath to them accordingly. Had the will stopped there, the children would have vested interests. It went on, however, to say, "I direct the same to be paid to them within six months after the decease of Mary Freeman, or to such of them as shall be then living." This contingency attached to the time of payment, and made, he thought, the legacy contingent on the legatee surviving Mary Freeman.

Monday, July 26.

CLIFTON *v.* RICHARDS.

Practice—Discharge from custody.

A defendant was taken into custody upon an attachment for want of answer, and then filed his answer and purged the contempt. Upon an ex parte motion on his behalf, the Court ordered him to be discharged upon his depositing 40l. to answer any costs to which he might be liable on account of the contempt.

Horace Wright, on behalf of the defendant in this case, applied ex parte for his discharge from custody under the following circumstances. The defendant was in contempt for want of answer, and being about to put in his answer, he was arrested by the serjeant-at-arms under an attachment for the contempt. He then proceeded with the serjeant-at-arms to the record-office and filed his answer. It was now proposed that the defendant should pay the fees of the serjeant-at-arms, amounting to 6*l.* 10*s.* and deposit 25*l.* to answer any other costs the defendant might be liable to pay to the plaintiff or his solicitor on account of the contempt. The proceedings on the attachment, it was alleged, were irregular, and a motion would be made to set them aside.

The Vice-Chancellor said, that the defendant having purged his contempt by filing his answer, it was most desirable that he should be discharged. The question was, upon what terms, in the absence of the plaintiff, this should be done. His Honour thought that the offer for the deposit should be increased, and that the defendant should deposit 40*l.* to answer any costs to which he might be liable, and upon such deposit being made he might be discharged.

V. C. KINDERSLEY'S COURT.

VICE-CHANCELLOR KINDERSLEY'S COURT.

Reported by W. H. Bennet, Esq. of Lincoln's-inn, Barrister-at-Law.

March 6 and 22.

Will—Legacy—Vested interest—"Survivors or survivor."

A testator gave and bequeathed to his son W. W. "the dividends, interest, and annual produce to arise from certain stock for his life;" and after his decease he gave the principal sum to all and every the child and children of his said son W. W. to be equally divided between and amongst them share and share alike, &c. "the same to be transferred to him, her, or them, on their severally and respectively attaining the age of twenty-one years," with allowance for maintenance and education in the meantime. W. W. attained twenty-one and died, having had one child only, who died an infant in W. W.'s lifetime:

Held, that the child of W. W. took a vested interest in the principal of such sum of stock.

The testator gave two like bequests to another son and a daughter E. W. respectively for life, with like directions on the death of such daughter: and as to all three legacies on the tenants for life dying without issue, then upon the death of either, the dividends, &c. so given to him, her, or them so dying, shall be paid and payable to the survivor and survivors of them:

Held, that the interest of the infant child of W. W. had been divested, and that the other son and daughter as survivors took the principal of such stock.

The words of the testator's will, upon which the above questions turned, were as follow:—I, John Westwood, &c. "give and bequeath unto my son, H. F. Westwood, the dividends, interest, and annual produce to arise from the sum of 3,000*l.* New Three-and-a-Half per Cent. Bank Annuities now standing in my name in the books of the Governor and Company of the Bank of England for and during the term of his natural life; and from and immediately after his decease, I give and bequeath the said principal sum or stock of 3,000*l.* unto all and every the child and children of my said son H. F. Westwood to be equally divided between and amongst them, share and share alike, if more than one, but if there shall be but one such child, then the whole of the said principal stock or sum of 3,000*l.* to such only child; the same to be paid or transferred to him, her, or them, on their severally and respectively attaining the age of twenty-one years, the interest and produce thereof to be in the meantime applied for and towards their maintenance and education."

The testator gave two other sums of 3,000*l.* stock each to a daughter, Eliza Westwood, and to another son, William Westwood, for life, with precisely similar directions on their respective deaths.

The testator then went on as follows:—"And it is my will that the interest, dividends, and produce of the said three several principal stocks or sums of 3,000*l.* so given to my said sons and daughter as aforesaid, shall begin and be made at the end of six months next after my decease, provided they shall then have attained the age of twenty-one years; but in case of their not being then of that age, it is my will and intention that the said interest, dividends, and annual produce shall and may in the meantime be applied in and towards their respective maintenance and education in such manner as my executors shall in their discretion think fit; and upon the death of either of my said sons or daughter without issue, then I direct that the interest, dividends, and produce as aforesaid, given and bequeathed to him, her, or them so dying shall be paid and payable to the survivors or survivor of them my said sons and daughter in equal shares and proportions." The testator then gave two small legacies to his two sisters, and then gave all the rest, residue, and remainder of his property in the funds, and all other his estate and effects whatsoever and wheresoever, and of what nature or kind soever, and every part thereof, unto his said daughter and his said youngest son William Westwood. The testator died in May 1833. A suit was subsequently instituted to administer the estate of the son William, and it appeared that he died, having attained the age of twenty-one, having had an only child, who had died an infant in his lifetime. The widow of William, as his executrix, proved his will, and took out letters of administration to their infant child. The sum of 3,000*l.* stock, to the dividends of which William was entitled for life, had been transferred into court, and two petitions were now presented,—one by Henry F. Westwood, the surviving brother, and the husband of Eliza Westwood, praying that the money might be paid out to them, and the other petition by the widow and executrix of William, praying that it might be paid out to her.

Wigram and *Faber* for the first-mentioned petitioners.

V. C. KINDERSLEY'S COURT.

Malins and *Welford*, for the widow and executrix of William.

The arguments on both sides are shortly stated in the Vice-Chancellor's judgment. The authorities and cases cited during the arguments were:—Williams on Executors, 989; *Hughes* v. *Sayer*, 1 P. Wms. 581; *Billingsley* v. *Wills*, 3 Atk. 219; *Massey* v. *Hudson*, 2 Moriv. 180; *Ranelagh* v. *Ranelagh*, 2 Myl. & K. 441. For the second petitioner:—*Batsford* v. *Kebbel*, 3 Ves. 363; *Hallifax* v. *Wilson*, 16 Ves. 168; *Jones* v. *Jones*, 13 Sim. 561; *Re Bartholomew*, 1 M'N. & G. 354; *Tribe* v. *Newland*, 16 Jur. 286.

JUDGMENT.

Monday, March 22.—The Vice-Chancellor.—The question upon these two petitions turns upon the construction of the will of John Westwood. At the date of his will he had three children, as appears by his will, all of whom appear to have been under age at the time when he made his will—Henry Frederick, Eliza, and William; and the question turns upon the gift of a legacy of 3,000*l.* stock for the benefit of William's children; and as similar legacies were given for the benefit of the other children, and as one of the clauses in the will relates to the three legacies, it is necessary to consider the gifts of all three legacies. After giving certain specific property to the eldest son, the testator proceeds to give in these terms (the Vice-Chancellor then read the terms of the three several legacies). He, the Vice-Chancellor, then said,—In each case it is a specific legacy, for the testator points to its being a "sum of 3,000*l.* 3*l.* 10*s.* per cent. Bank Annuities, now standing in my name in the books of the Governor and Company of the Bank of England." So far, therefore, there is not very much doubt about the construction, but after giving the three legacies, the testator proceeds thus:—He first directs, what is not material to this question, that the interest and dividends of each of these sums of stock should begin to be paid at the end of six months, if the legatees have then attained the age of twenty-one. But then comes the clause which creates a limitation over in a certain event, which it is very material to consider. "And upon the death of either, then I direct," &c. He then gives two small legacies to other persons, and then gives the residue to his daughter and youngest son William. Now, the points upon which the question turns are these: they relate at present entirely to the legacy given for the benefit of William and his children. He attained twenty-one, and had one child; that child died in early infancy, without leaving any issue in the lifetime of William; then William died, having no issue living at his death. In that state of circumstances the representative of the child of William claims to have the legacy as having become vested, not divested. On the other hand, the two children, Henry Frederick, and Eliza, who survived William, claim it by virtue of the gift over. There is a third alternative which might be contended for, but which has not been contended for upon this petition, although the parties are before me, namely, whether the residuary legatees are not entitled; whether the gift to the children gave no vested interest to the child of William, and the gift over is void, and therefore no gift at all after the death of William. That has not been argued; still it is a possible construction of the will. Now in order to determine the questions arising upon this will and this state of facts, the matter divides itself into two points: first, whether, under the prior gift, the child of William took any vested interest at all; and if it did not, it is not necessary to consider what is the effect of the ulterior clause—the ulterior limitation over—upon the interest of that child; but if the child of William did take a vested interest under the prior gift, then it comes material to consider the second point, which is, what is the effect of the gift over in the event that has happened, of William dying without having left any issue living at his death? Now with respect to the first point, as to whether the child of William took a vested interest or not; it has been contended that in this case there is no gift of the corpus of the legacy of the stock until the death of William; that the gift of William is only of the dividends; and that the gift to the children being to take effect after the death of William, and it being first the gift of the principal, it is contended that the child did not take a vested interest; and the cases of *Batsford* v. *Kebbell*, and *Billingsley* v. *Wills*, which are the common vouchers upon cases of this kind have been relied upon. *Batsford* v. *Kebbell* was this case. The testatrix gave Robert Endley the dividends of 500*l.* Three per Cent. Annuities until he should arrive at the age of thirty-two years, at which time she directed the executors to transfer to him the principal for his own use. The question was, as Robert Endley died before he attained the age of thirty-two years, whether he had a vested interest in the stock; and the Lord Chancellor (Loughborough) decided that he had not; and most justly and reasonably, because the Court saw that, upon the true construction of that will, the testatrix did not mean Robert Endley to take anything but the dividends, unless he

attained the age of thirty-two years; and the Lord Chancellor pointed out the distinction between the gift of the dividends and the gift of the principal. He says, "The testatrix meant to give the dividends, whether he attained the age of thirty-two or not, as long as he lived, but did not mean to give the principal, which is a distinct gift, unless he attained the age of thirty-two years; and, therefore, the Court determined that Robert Endley did not take a vested interest. The case of *Billingsley* v. *Wills* is a case a little more complicated, but still the principle of it is easily to be perceived. The gift was in this form. [His Honour read from the report in 3 Atk. 219.] At the time the testator made his will, Capel Billingsley had three children,—a son and two daughters. Lord Hardwicke saw clearly that no child could possibly have a vested interest till the death of Capel Billingsley, because it was first of all the eldest son who was to be excluded, and if there should be no sons, but only daughters, then the eldest daughter was to be excluded. Moreover, there was this clause:—"But no elder son, in case there shall be more than one son, or any elder daughter, if there be any younger daughter of Capel Billingsley living at his decease, shall have any share or interest in the 1,500*l.*" Lord Hardwicke said, these words, "living at his decease," applied not only to the passage "if there be any daughter," but also to the passage "if there be any sons," if there be more than one son. Therefore it comes to this: that it was a limitation over to persons as to whom it could only be ascertained who would answer the description at the death of Capel Billingsley; ex necessitate, it was not a vested interest at the death of Capel Billingsley. Now these two cases have been often supposed to establish this proposition, which I am satisfied they were never meant to establish, and have not been held to establish, namely, that merely because the dividends of a sum of stock are given in the first instance to A. for life, and then afterwards there is a gift of the capital of that stock over to one of his children, that is a vested interest; but it is not a vested interest, because there is a difference between the gift of the principal and the gift of the dividends. That is not the principle established by these cases; and to shew that it is not, I would refer to a case which was not cited in the argument, but which is an important case,—or rather two cases of the same name—*Chaffers* v. *Abell*, both of which are reported in 3 Jur. 577. The two cases relate to two different wills, and therefore was evidently two causes, though there seem to have been two parties of the same name. In the first case I read the marginal summary:—"A testator bequeathed a certain sum of stock (that is, an aggregate sum of stock) to trustees to pay 40*l.* per annum to his daughter for life," (not even the dividends of any government stock), "and after her decease, to pay, assign, and transfer the sum of 10,000*l.* stock equally among all and every the child and children of his daughter, share and share alike, to be paid and transferred to them when and as soon as the youngest should attain his or her age of twenty-one." At the death of the testator, the daughter had four children, one of whom died before the youngest attained twenty-one: the youngest only survived the daughter, yet it was held that the four children took a vested interest in the stock. Now, it might have been equally contended there that there was no gift of the principal until the death of the daughter; and not only so, but there was actually no intermediate gift of the dividends of that sum of stock, which was given to the children; it was only a direction out of the dividends of an aggregate sum of stock to pay 40*l.* a year to the daughter; and yet the Court held that it was a vested interest in the children. In that case, it is true, there was the gift of an aggregate sum of stock to the trustees in the first instance; but in the next case of *Chaffers* v. *Abell*, 3 Jur. 578, there was no gift to trustees at all, and therefore it is extremely like the case before me. Ann Page, by her will, gave to her sister, Mary Abell, the interest of 500*l.* Five per Cent. Navy Stock, standing in the name of the testatrix "in the books of the Governor and Company of the Bank of England,"—exactly, so far, like the case before me,—to her own separate use, and not subject to the control of her present or future husband; and at her death the said 500*l.* to be divided between her children, share and share alike. Now it is impossible to conceive a case more exactly on all fours with the case now before us. It was a gift not to trustees at all, but a gift to the sister during her life of the dividends of a specific sum of stock, mentioned to be stock standing in the name of the testatrix only, without any gift of the principal; and after her death, the said principal sum of stock was given over to her three children. The sister had three children at the death of the testatrix, but only one survived her; and it was held that the three children took vested interests. It seldom happens that a case is found more exactly on all fours with the case under consideration; but even if it were not here the case, I have no hesitation in saying that the cases of *Batsford* v. *Kebbell* and *Billingsley* v. *Wills* have been repeatedly misrepresented, as determining this an abstract proposition, that in all cases where there is only a gift of the dividends in the first instance to A. for life, and then a gift over, after the death of the tenant for life, of the corpus of the stock, in all cases, under all circumstances, the effect is to make the gift over a contingent and not a vested interest. I am, therefore, of opinion that the child of William on its birth took a vested interest in the stock. And I may here observe that the gift is to the children; and then there is another clause directing the time of payment to be at the age of twenty-one, which in the ordinary way makes it a vested gift; and there is the direction also with regard to the application of the interest and dividends, which is not material to the present question. Then assuming that I am right in saying that the child of William took a vested interest at its birth, the next point for consideration is, what is the effect of the limitation over upon the death of William without issue? Does that clause divest the interest that was vested in the children, or what is the effect of it? Now, of course, with respect to the words, "on the death of either without issue," these words, "dying without issue," are in themselves capable of three different constructions. The first is an indefinite failure of issue—failure of issue generally; the second is, "dying without issue," that is, the class of issue before mentioned, by interpolating the word "such;" and the third is, without issue living at the death of the person mentioned as the person dying: and upon the first construction, if that were the right one, if it meant an indefinite failure of issue, the gift over of course would be void. The gift over can only be made valid, by assuming that the "dying without issue," means either dying without "such" issue, or "dying without issue living at the death of the party." That is the only way, by one or the other of these two constructions, that the gift over can be made valid at all; and I need not say that the Court will always, if it can, lean to that construction which will make the gift over, which will make every part of the will effective, if it can do so without violence. Does it, then, here mean "dying without such issue," that is, am I to interpolate the word "such?" or does it mean dying without issue, living at the death? Now, in order to give the just interpretation to this clause, we must have regard to the fact, that the limitation over applies not merely to the particular legacy given for the benefit of William and his children, but that the clause is applicable to legacies given to all the three children, including William; and the language is this:—"On the death of either of my said sons or daughter" (there being three of them at the date of the will), "without issue," then I direct that the interest, dividends, and produce as aforesaid given and bequeathed to him, her, or them so dying shall be paid and payable to the survivor and survivors of them, my said sons and daughter, in equal shares and proportions." So upon the death of either without issue, the gift over is of the interest and dividends to be paid and payable to the survivors and survivor of the other two; that is, to such one or two of the others that shall survive the party dying without issue. Now, it may be stated to be a general rule,—I do not say without exceptions, arising out of different contexts, but as a general and primâ facie rule,—where there is a gift over to the survivors or survivor of several persons after the death of one of them without issue, the words (without issue) are construed to mean without leaving issue living at the death. That may be stated as a general primâ facie rule. For the purpose of shewing that it is the rule, I refer to *Ranelagh* v. *Ranelagh*, first decided by Sir J. Leach, and afterwards upon appeal by the Lord Chancellor (Brougham), in which Sir J. Leach says, "I adopt the language of Sir W. Grant in *Massey* v. *Hudson*, and I take the rule to be, that, primâ facie, a bequest over to the survivors and survivor of two or more persons after the death of one without issue, affords a presumption that an indefinite failure of issue could not be in the testator's contemplation. In that case Sir W. Grant considered, therefore, that the presumption was repelled; consequently, the limitation over was to the survivor, and his or her executors, administrators, and assigns; and the testator therefore had not solely in view the personal enjoyment of the survivor. In the case of *Ranelagh* v. *Ranelagh*, there is no circumstance to repel the presumption; on the contrary, the presumption is fortified by the fact, that the legacies are in the first instance given for life only, as here, and the limitation over is on the determination of the life estate, to which determination the survivorship must refer. If this plain rule is adhered to, there will be no confusion in the subsequent cases." Now in this case there is no larger interest given to William than for his life; the limitation over is in case he dies without issue, to the survivors; and it is a direction to pay the dividends, interest, and produce to the survivors or survivor, sons and daughters of the testator, in equal shares and proportions. There is mention, as there was in *Massey* v. *Hudson*, of executors, administrators, and assigns' and, moreover, it is not a simple gift of the stock, but it is a positive direction to pay the interest and dividends of the stock to the survivors of them. The words "survivors or survivor," clearly must be used in their natural sense; that is, such one of them (or both of them if both survive) as shall be living at the death of William: That must be the meaning of it, because if he meant "the other of them," why say "the *survivors* or survivor." He knew how many of them there were,—they were his own children. He speaks of them *nominatim*,—"his eldest son, his daughter, and his youngest son." He says, "if either of them die without issue, then pay the dividends of the stock to the *survivors* or survivor;" if both of the others survived that one, then pay the dividends of that stock to those two in equal shares; if only one of them survived the party dying, then pay the dividends of the stock to that one,—shewing as clearly as possible an intention of conferring a personal benefit on the *survivors* or survivor. I am of opinion, therefore, that the limitation over, upon the death of any one of them without issue, is to be construed, in that case, on the death of any one of them without leaving issue living at the death. Having got thus far, and considering that I have to interpret this will in the same manner as if the testator had used these words,—that is, on the death of any one of them without issue living at his death, then pay the dividends to the survivors or survivor, the question is, how does that apply to the children in the first instance? It is perfectly true that where a legacy is given to one for life, and after his death to his children, with a gift over, if he dies without issue, and there is nothing to restrict the dying without issue to "issue living at his death," it has been held that the words "without issue" shall be limited to the class of issue before mentioned, that is, the children to whom the first gift is made, as if the words had been "such issue;" and that has been argued at the bar, and very tersely and correctly stated to be the true rule. But what is the ground on which the Court has felt it could be justified in using that violence to the words, and interpolating the word "such?" Why, the ground is this,—that as there is nothing to restrict "dying without issue" to "dying without leaving issue living at the death," the limitation would be void if it were not for the interpretation which it applied to it; it means the particular issue before mentioned. This is commonly called the referential construction—that is, you refer the language of the gift over to the language of the prior gift, in order to limit the general term "issue" to the particular class of issue mentioned in the prior gift; but as I have said, the reason is, because the gift over would be void if you did not do that. But where the dying without issue is in express terms, or, as in this case, by the proper construction of the will, limited to dying without leaving issue living at the death, no reason then exists for interpolating the word "such." The limitation over is valid, without the necessity of resorting to that expedient of doing violence to the words; and I am not aware of any case in which, a legacy being given to one for life and after his death to his children, with limitation over, if he dies without leaving issue living at the time of his death, the word "issue" has been restricted to the children, as if the words "such issue" had been used by the testator. I believe no case can be found in which a construction of that sort has been placed in the way I have mentioned; indeed, such a construction might entirely defeat the testator's intention, for if the words were construed to mean, if he dies without "such" issue; that is, without leaving children only, see what might happen. He might have a single child, attain twenty-one, marry, and leave a family, and die before the tenant for life, and then that child and the issue of that child would be entirely excluded, because the tenant for life would have died without "such issue," that is, without children living at his death. Upon the whole case, therefore, I am of opinion that the child of William Westwood took a vested interest in the 3,000*l.* stock, but that vested interest was liable to be divested by the death of William Westwood without leaving issue living at his death; and that event having happened, the gift over takes effect. I may observe, with reference to the construction that I have put upon this will, that, in the first place, it does no violence to any one clause in the will; it does not interpolate a single word in the will; it does not refuse its full operation to any single word used by the testator, and gives to every word the primary and natural and legitimate signification, without any distortion whatever; and, moreover, the interpretation I have given to this will, would, not only in the event that has happened, but in any event that can happen, be far more in accordance with what one may fairly suppose to be the general intention of the testator, than any other construction that can be put upon the words. These reasons alone, I apprehend, would be sufficient to recommend this construction to the

V. C. [illegible] V. C. KINDERSLEY'S COURT. V. C. [illegible] COURT.

consideration of [illegible] not only as [illegible] are cordance [illegible] Therefore [illegible] the two [illegible] son and [illegible] stock which [illegible] that is to say, [illegible] cular, granting [illegible] viving [illegible]

Friday, May 7.

HARRISON *v.* OGILVY.

Practice—Service of petition—Payment of money out of court.

This was an objection raised by the registrar of the court to the drawing up of an order which had been previously pronounced, on the ground that certain parties who were interested in a fund in court had not been served with copies of the petition on which the order had been made.

Campbell now stated these facts to the Court for its directions. It appeared that a sum of money had been paid into court, which was the amount of a mortgage security and interest paid by a mortgagor, in a suit to redeem the mortgage. The trustees of this mortgage security were such for three sisters (infants), and an order had some time since been made by the Court that the amount should be divided into thirds, and one-third carried to the "separate account" of each sister. This had not, however, been done; but on two of the sisters coming of age, they had obtained payment of their respective amounts in the usual way, leaving the remaining third of the fund in court, standing to the general credit of the cause. The third sister had now applied for her remaining third share, and the registrar thought that, as the fund was still standing to the credit of the cause generally, the mortgagor and the two other sisters ought to have been served with the present petition.

The VICE-CHANCELLOR said, that he considered there was clearly no necessity to serve the mortgagor; and that, as to the two sisters, he considered the practice to be, that when the Court had actually made an order directing the whole amount in court to be divided and carried to the separate accounts of the several parties, although the order had not been drawn up and acted upon, that these parties were not necessary parties to be served.

March 25 and 26, and June 25.

IN THE MATTER OF THE WINDING-UP ACTS, 1848 AND 1849, and *Re* WOLVERHAMPTON, CHESTER, AND HOLYHEAD RAILWAY COMPANY.

ROBERT'S CASE.

Winding-up Acts—Contributory—Costs—Upfill's case.

A provisional committee-man applied to have 100 *shares allotted to him. The managing committee had come to a resolution that each provisional committee-man should take twenty-five shares. The scheme was abandoned. R. the provisional committee-man, having paid a sum of* 105*l. as a full satisfaction for deposit and call on the twenty-five shares offered to him:*

Held, that he was not a contributory.

On appeal from the Master's decision, finding that R. was a contributory:

Held, that the costs of the appeal ought to come out of the general assets of the intended company, but in certain cases should be paid by the official manager personally.

This was a motion to discharge an order of the 5th March, 1852, excluding the name of Mr. Roberts from the list of contributories to the contemplated company, upon which the name had been originally placed by a decision of the Master.

The facts of this case were almost precisely similar to those in *Hutton* v. *Bright* already reported from the House of Lords, 19 Law T. Rep. 269, and in which case the former decision of the House of Lords in *Upfill's* case was in effect overruled. It has been thought advisable to give the Vice-Chancellor's judgment in the present case, inasmuch as it was pronounced before the opinion of the judges was given in *Hutton* v. *Bright*, and as affording an opportunity of giving the exact words of the "question" of the House of Lords proposed to the judges in that case, which were not before quite correctly reported, the precise words of the case having been slightly altered after the Lord Chancellor had penned it.

The question for the judges was as follows:—"Do the facts above stated afford sufficient evidence at law to warrant (in an action against A.) a verdict that A. is liable to a creditor in the employment of the managing directors for work done necessary for obtaining the Act of Parliament." Baron Parke delivered the opinion of the judges, and having stated the facts of the case, said:—"It was the unanimous opinion of the judges who heard the argument, that, before the decision of this House in *Upfill's* case, the facts stated in the question would not have warranted a verdict that A. is liable to a creditor on the employment of the managing directors for work done necessary for obtaining the Act of Parliament." See the judgment of the House of Lords in *Hutton* v. *Bright*, ante 19 Law T. Rep. 269.

E. P. Cooper and *Roxburgh* argued the present case at great length on the 25th and 26th March last.

Malins and *Selwyn* for Mr. Roberts supported the order to exclude his name from the list of contributories.

The cases cited were *Upfill's* case, 2 House of Lords Cases, 674, S.C., 19 Law T. 449; *Carmichael's* case, 16 Law T. 189; *Carrick's* case, 1 Sim. N.S. 505; S.C.; 17 Law T. 269.

On the 25th June the Vice-Chancellor gave the following

JUDGMENT.

The VICE-CHANCELLOR.—This case came on before me by way of appeal by the official manager from a decision of the Master, by which the name of Mr. Roberts had been displaced from the list of the contributories to this contemplated railway company. It is contended by the official manager that this case is precisely within *Upfill's* case, because the two conditions on which Mr. Upfill was held to be a contributory are the same here. 1st. That Mr. Roberts was a provisional committeeman; and 2nd. That he had accepted shares in that character. Now it is not disputed by Mr. Roberts that he was a provisional committeeman; and as to his having accepted shares, three grounds are stated to shew that he had done so—1st. That Mr. Roberts had signed the agreement required by the Registration Act. 2nd. That he had applied for shares, which had been allotted to him by the usual letter of allotment; and 3rd. That he had paid the stipulated deposit, and also a call in respect of those shares. On the other hand, it is contended for Mr. Roberts that there never was a complete or final acceptance of those shares; and that what he paid was only what he was considered to have been liable to at law, as the law was then supposed to be. The question comes to this, whether this case is or is not within the principle of *Upfill's* case. Now this principle, as far as I understand it, is this: that although a provisional committeeman is not liable as such to contribute to the expenses incurred to establish a company which had failed, on the other hand, any individual agreeing to take shares and paying the necessary deposit did not thereby become liable, because they were shares in a company which had, in fact, never been formed; but still, notwithstanding these two principles, if the committeeman said, "If the company be formed I will take so many shares in the contemplated company," that there he does become liable to contribute to the expenses to form that company. Now the principle in *Upfill's* case requires this, that there should be an appropriation and final acceptance of shares, and if there is not this complete and final acceptance of shares I will not, as Lord Cranworth said with reference to such cases, do anything to extend the principle enunciated in *Upfill's* case. I certainly will not be one to extend it. Now, what are the facts of the case before me? They are these:—By a letter of the 10th October, 1845, Mr. Roberts wrote to Smith, the secretary of the proposed company, requesting that his name might be placed upon the list of the provisional committee—and his name was accordingly so placed. He never attended any of the meetings of the committee, nor took any part in the proceedings; but he certainly was a member of that committee. On the same 10th of October, the acting part of the committee passed a formal resolution to the effect that every provisional committeeman was entitled to have 100 shares, but *must* take twenty-five shares to qualify him for the office of committeeman. Now, considering that it has been determined that as committeeman it means only this, that he had only, out of his sense of public utility, and for the benefit of mankind, taken upon himself the office, it is difficult to think how it was necessary to qualify him for such a function that he should necessarily take twenty-five shares in such projected company. Whether this resolution I have mentioned was ever communicated to Mr. Roberts does not, I think, appear, except so far as the letter of the 18th October does so, which, however, does not allude to any resolution as to the taking of the twenty-five shares by him as provisional committeeman. Annexed to this letter was a form of application for shares, intended to be filled up by Mr. Roberts. It was accordingly filled up and sent by him. This was dated on the 1st November, 1845, and to which is the postscript,—"Please let me hear from you." Now, the question here is, what was the effect of these letters of the 29th October and 1st November. The letter sent by Smith (the secretary) was a notification to Roberts that if he pleases he may have 100 shares. Now, the answer does not say, "I do accept them;" but says, "If 100 shares are allotted to me, I will accept them and pay the deposit on them." Now, it is clear that Roberts did not consider that five shares had been allotted to him, and this letter of his did not conclude any contract by which both parties could be bound. He writes to know how his application for 100 shares had been dealt with. Now, supposing 100 shares had actually been allotted to him and sent, what would there have been the effect of such a state of things, it is not necessary for me to decide. Now, nothing further was done in the way of communication until the 20th November, when another letter was sent. On the 17th, however, a resolution had been come to by the managing committee that the provisional committeemen should be *requested* to take up and pay for twenty-five shares. Now, does not this shew what was the view taken by this committee—not that they were going to allot shares, but that they were casting about to raise money to pay their way and get rid of those liabilities which had been incurred. It is beyond question that they were thinking how to raise this money to pay the expenses, and so *requested* the committeemen to take and pay for twenty-five shares. Mr. Roberts had applied for 100 shares, but instead of saying they had allotted him 100 shares, they request him to take up twenty-five shares as a favour, not as a right. Now, on the 19th, two days after the resolution requesting the parties to take the twenty-five shares, a letter was sent by the secretary to Mr. Roberts, By that letter he was directed to go to the bankers, and get the necessary receipt filled up, that he might obtain the scrip; and the form of receipt is annexed to the letter. Now, instead of taking up the twenty-five shares, he takes no notice of this letter, and, in fact, he never went to the bankers or paid the deposit of 2*l.* 2*s.* per share, or in any way complied with the requisitions of this letter. Then this takes place: Notwithstanding the encouraging prospects held out to the public, the managing committee come to the determination to abandon the company and wind up their affairs. [The Vice-Chancellor here read the various resolutions, that no further expenses should be incurred; that the scheme should be abandoned, &c.] Then comes the resolution that a letter should be sent to each provisional committeeman, requesting payment of 52*l.* 10*s.* There is no evidence that this letter was received by Mr. Roberts; but the only communication received by him on the subject was the resolution of the 19th of February, that a call be then made for another 52*l.* 10*s.*, making in the whole a sum of 105*l.* and which said, "If you pay this last sum, '*you shall be protected from the creditors of the company.*'" Now, what all this amounts to is, The concern is abandoned, and the fair thing is, that each member of the provisional committee should pay what would enable them to pay off and satisfy all their liabilities. Although they designate it a call, yet they had no power to make any such call. In the end Mr. Roberts pays this 105*l.* How am I to treat this as a deposit and payment for twenty-five shares? If he had paid it, and received a letter of allotment, and all this whilst the concern was going on, it might possibly have been so held; but when the concern is abandoned, and he pays it, "If you make this payment, you shall be protected from the creditors," and he makes a payment accordingly, this surely cannot bring this case within the principle of *Upfill's* case. On both grounds, therefore, I am of opinion that neither on the ground of allotment, nor on the payment or acceptance of shares can Mr. Roberts be held to be a contributory. The only remaining point is, that Mr. Roberts signed the memorandum by which he agreed to become a provisional committeeman, and under which memorandum is required to be his qualification office. But it has been decided, in numerous cases, that the signing such a memorandum does not constitute him a shareholder or contributory (*Carmichael's* case and *Carrick's* case decide this), and if it had not been so decided I should myself have come to that conclusion. My opinion upon the whole is, that the Master's decision is right,—that this appeal must be dismissed, and the provisional manager must pay Mr. Roberts the costs of the appeal and the costs of the proceedings in the Master's office, and be entitled to have them again out of the estate of the intended company, in his hands as official manager.

As before stated, the judgment of the House of Lords in *Hutton* v. *Bright* was pronounced on the 28th of June. At the conclusion of the Vice-Chancellor's judgment in the present case,

Malins, for Mr. Roberts, asked that the costs of the appeal should be ordered to be paid by the official manager *personally*,—he designated it as a wanton case, brought on pending the decision of the House of Lords in *Upfill's* case, the judgment in which had not been yet pronounced; and as a mere experiment.

The VICE-CHANCELLOR said,—It appears to me that official managers have in several cases totally forgotten their duty, and, by applications to the

Court, have applied the money of others, whose interests they were bound in fact to protect; my opinion is, that an official manager ought generally to be quiescent. But here is a case where his own counsel have strongly recommended the appeal, and in the uncertain state of the law, as it then stood, the Master might not have discouraged the official manager's application. Now, unless where their own counsel are of a strong opinion that there is a good case, or unless the Master had suggested it, or unless a number of contributories had agreed to join in the application, I should generally make the official manager pay the costs. Thus, indeed, I should have done in the present case, unless I had been of opinion that this was a fair case. It is very close to *Upfill's* case, and I think that there was encouragement given by the Master—and I think not improperly—that, as there were many similar cases pending, there should be an appeal in the present case.

The costs of the application to be paid out of the funds in the official manager's hands.

LORD CHANCELLOR'S COURT.

Reported by OWEN DAVIES TUDOR, Esq. of the Middle Temple, Barrister-at-Law.

(Before Lord Chancellor TRURO.)

June 11, 13, *and* 14, 1851, *and Jan.* 14. 1852.

SMITH *v.* PINCOMBE.

Family compromise set aside—Constructive fraud—Non-disclosure of material facts

A family compromise will not be binding, unless there has been an honest disclosure by each party to the other of all such material facts known to them relative to the title of either, as are calculated to influence the judgment in the adoption of the compromise; and if any advantage be taken by either of the parties of the known ignorance of the other, such facts would render the same void in equity, and liable to be set aside.

A married woman, by her next friend, instituted a suit to set aside a compromise, alleging that her husband refused to join as plaintiff, but she did not prove such refusal. An objection was taken to the form of the suit, that the husband ought to have joined as co-plaintiff; the husband, however, not having objected to the form of the suit, and having put in his answer to the bill, and appeared in support of it, the objection was overruled.

A decree cannot be objected to on the ground that relief is thereby granted to a defendant, when such relief is necessarily incidental and consequential to the relief which the Court is bound to grant to the plaintiff.

Where a party neglects to call the attention of the Court below to a mistake in the decree, and the decree is affirmed on appeal upon the general merits of the case, the costs of the appeal ought not to be affected by such mistake.

Remarks on prolixity in bills.

This was an appeal by the defendants William and Thomas Pincombe against the decree of the late Vice-Chancellor of England, under the following circumstances:—The bill was filed by Mary Pincombe Smith by her next friend, against her husband, William Smith (who, as the bill alleged, declined to sue as plaintiff), and Thomas Pincombe and William Pincombe, executors and trustees under the will of John Pincombe, deceased, and other persons interested under his will. The object of the suit was to set aside a compromise which the plaintiff had entered into with the defendants T. Pincombe and W. Pincombe, as executors and trustees under the will of the testator John Pincombe; the bill alleging that they had possessed themselves of the documents and writings of the testator, and among them of two wills, one dated in 1834, the other 1837, and that the plaintiff was led by the defendants T. Pincombe and W. Pincombe to believe that her title to the estate depended entirely on the will of 1837; that the will of 1834 was altogether withheld from her knowledge; and that the plaintiff, her husband, and attorney, all entered into the compromise in ignorance of the existence of the will of 1834, and under the belief that the plaintiff's interest was derivable only under the will of 1837, the defendants T. Pincombe and W. Pincombe having full knowledge at the same time that the plaintiff had a good title to the estate under the will of 1834. The defendants, T. Pincombe and W. Pincombe, by their answer, insisted that the plaintiff, her husband, and solicitor had full notice of the will of 1834, and denied that they had suppressed that will or misled the plaintiff in any respect with regard to the compromise. Evidence on the question was entered into by both parties. Upon the cause coming on to be heard before the late Vice-Chancellor of England, a decree was made by which it was declared that the compromise in the pleadings mentioned, and the several orders and instruments made and executed pursuant thereto, were fraudulently obtained by the defendant, W. Pincombe, and with the knowledge and privity of the defendant, T. Pincombe, and that the same ought to be set aside, and it was thereby ordered that the defendant, W. Pincombe, should execute a declaration of trust of the term in the pleadings mentioned, and that the defendants, T. Pincombe and W. Pincombe, should deliver up all title-deeds and papers in their possession or power relating to the Great Woods estate, and other real estates of the testator, and that the defendant, W. Pincombe, should account for all rents received by him in respect of the said estates since the compromise, and that the defendants, T. Pincombe and W. Pincombe, should pay to the plaintiff and her husband their costs of the proceedings at law in the pleadings mentioned, and of the compromise, and of restoring the plaintiff and her husband to their rights; and that the plaintiff and her husband should return the moneys received by them under the compromise, and should release the defendants therefrom, and that the costs of the defendants other than T. Pincombe and W. Pincombe should be paid by the next friend of the plaintiff, and be repaid by the last-named defendants. From this decision the defendants, Thomas and William Pincombe, appealed.

Bethell and *Terrell*, for the appeal, commented on the evidence, and urged that the case made by the appellants was utterly improbable, as they called upon the Court to believe that the plaintiff being aware of her rights under both wills, had elected to take under the will which gave her the smallest benefit. They cited *Broderick* v. *Broderick*, 1 P. Wms. 239.

Shee, for the defendant W. Smith, the plaintiff's husband, and the children of the marriage.

Rolt, *Follett*, and *Kerslake*, for the defendants T. Pincombe and W. Pincombe, for the appeal, took several objections to the decree. First, that a gross fraud was charged by the bill, but was not proved, and there being, looking at the case in the worst aspect for the executors, a mere oversight committed by them, the decree was clearly wrong. (*Farraby* v. *Hobson*, 2 Phil. 255; *Glascott* v. *Lang*, 2 Phil. 310.) Secondly, the plaintiff's husband, W. Smith, ought not to have been made a defendant, the suit was, therefore, improperly framed. Thirdly, that as the bill alleged that the husband declined to sue, the decree ought not to have been extended to a declaration of his rights, but ought to have been confined to those of his wife. Fourthly, that the decree did not state to whom the accounts were to be rendered or the rents paid. Fifthly, that the defendants T. Pincombe and W. Pincombe ought not to have been directed to pay the costs of the proceedings at law, which had no relation to the compromise, nor to pay the costs of the children and the parties in remainder, whom the compromise did not in any way effect, and who were, therefore, they submitted, unnecessary parties to the suit. Moreover the bill was, they contended, unnecessarily prolix. Lastly, the transaction was a family compromise of doubtful rights, and that the Court would, therefore, support it, when no fraud had been shewn to exist in the conduct of the executors.

Bethell, in reply, cited, as to the objection to the husband being made a defendant, *Reeve* v. *Dalby*, 2 S. & S. 464; *Hughes* v. *Evans*, 1 S. & S. 185; *Sigel* v. *Phelps*, 7 Sim. 239; *Davis* v. *Prout*, 7 Beav. 288; *Wake* v. *Parker*, 2 Keen. 59. He also contended that a family settlement would not be supported if one party acted under a mistake of which the other party was cognisant. (*Gordon* v. *Gordon*, 3 Swanst. 400.)

The LORD CHANCELLOR, after stating the before-mentioned facts, said,—That the case which was presented, was in substance a case which the Court denominated fraud, and the material issues tendered by the bill were, first, whether the plaintiff, her husband, or her attorney, had knowledge of the will of 1834 prior to entering into the compromise; secondly, whether the appellants had knowledge of that will; thirdly, whether the appellants and their agents intentionally suppressed and withheld all information of the existence and effect of that will from the plaintiff, her husband, and attorney, and whether they knew that the compromise was entered into under the influence of that state of ignorance. [His lordship then, at considerable length, examined the case as made by the bill and answer, and the evidence on both sides.] His lordship then observed, that having deliberately considered the case made by the bill, and the case of the appellants made by the answer, and the evidence given on behalf of the respective parties, he had come to the conclusion that the material parts of the case stated in the bill were established by the evidence, and that if his conclusions in regard to the facts of this case were correct, he apprehended there could be no question as to the legal result, and that the compromise ought to be declared to have been fraudulently obtained, and ought to be set aside, together with the deeds executed by the parties, with the view of carrying such compromise into effect. It was not, in his opinion, necessary to cite many authorities in maintenance of the legal result which he had stated, and that he should therefore content himself with stating the principle of law upon which his decision was founded, and name two or three decided cases of undoubted authority in which that principle was recognised and acted upon. That principle was, that to render a family compromise binding, there must be an honest disclosure by each party to the other of all such material facts known to them relative to the rights and title of either, as were calculated to influence the judgment in the adoption of the compromise, and that any advantage taken by either of the parties of the known ignorance of the other of such facts would render the same void in equity, and liable to be set aside. That principle was, his lordship considered, recognised by Lord Eldon in the case of *Gordon* v. *Gordon*, 3 Swanst. 400; by Sir John Leach in *Hawes* v. *Oxale*, 4 Russ. 34; by Vice-Chancellor Shadwell in *Green* v. *Perkins*, 6 Sim. 576; and by Lord Langdale in *Pickering* v. *Pickering*, 2 Beav. 31. That upon the view of the facts and of the law which he had stated, so much of the decree of the Vice-Chancellor ought to be affirmed as declared the compromise to be fraudulent, and decreed that it must be set aside with the deeds referred to in the bill, subject to the question whether the suit had been instituted by the proper party as plaintiff, that is, by the wife apart from her husband; but with regard to that question, there was no doubt that in a suit for the recovery of property belonging to a wife the husband must be a party, and generally as a plaintiff jointly with his wife; but there were recognised exceptions to the rule requiring the husband to be plaintiff; and one exception, necessary to be allowed for the protection of the wife, was, where the husband refused to become a co-plaintiff. If, where that fact occurred, the Court did not admit the wife to sue by her next friend, there would be an obvious failure of justice to a very great extent; and in the present case the bill alleged that the husband refused to join; but it had been objected that, as that allegation precluded a demurrer to the bill upon the ground that the husband was not co-plaintiff, the fact ought to have been proved in the cause, which had not been done. The objection, therefore, resolved itself into the point, whether the fact of the husband's refusal was judicially verified sufficiently for the Court to act upon. The objection was strictly a technical objection, and one of which the party was entitled to the full benefit where it was clearly shewn to be well founded; but, like all other technical objections which operated to defeat the justice of the case, it ought to be clearly made out before it was allowed. In the present case, the husband had made no objection to the form of the suit as it existed, he had put in his answer as a defendant, and he had appeared by his counsel at the bar, and not only had not made any objection, but had appeared in support of the bill; his lordship, therefore, conceived that the fact of the husband having put in such answer, and so appeared and conducted himself, was sufficient to support the allegation in the bill that he had refused to join in the suit; for if he did not refuse (no matter for what reason) to join as co-plaintiff, what conceivable ground could be assigned for his not having joined as co-plaintiff. It was true, that the husband in his answer stated that which amounted to a refusal to join in the suit; but in holding that the objection was not available, his lordship said he did not act upon that statement in the answer, but upon the conduct on the husband's part which he had stated. The propriety of making the husband a defendant was maintained by the counsel for the plaintiff on two other grounds. First, it was said that, inasmuch as the testator, by the will of 1834, restricted his daughter, who was then unmarried, from alienation, it was clear that he intended that her estate, whenever she might marry, should be for her separate use, and that such being the case, it was in accordance with the acknowledged general practice to make the husband a defendant; and, secondly, it was argued that, as under the compromise, the wife was to have an annuity of 25*l.* in case of her surviving the husband, it was necessary that the wife should be the sole plaintiff in a suit for setting aside the compromise, and relinquishing the benefit of that annuity; but as his lordship was of opinion that the frame of the suit might be supported upon the ground of the refusal of the husband to join as co-plaintiff, it was, he said, unnecessary for him to consider the other grounds. Upon this subject his lordship observed, he would merely add, that the objection to the frame of the suit did not appear to have been taken in the Court below; but would seem to have been either a mere afterthought or else to have been purposely reserved as a ground for an appeal, a practice to which no encouragement should be extended. His lordship then said, that it had been further objected against the decree, that it gave relief to the defendant, W. Smith, to which he, not being a plaintiff, was not entitled; but he did not think the objection was valid, because the relief granted to him, and to which the objection was referred, was only such relief as was necessarily incidental and consequential to the relief which the Court was bound to grant to the

plaintiff. The compromise could not be set aside in part, and the plaintiff's right to have the compromise set aside being established, the Court could not withhold a decree to that effect, because such decree must subsequently benefit the husband; he was therefore of opinion that the decree was not objectionable upon that ground. That a fourth objection to the decree was that the decree ordered the costs of the action of ejectment to be paid by the appellants to the plaintiff; that in regard to that objection there was not any ground upon which that part of the decree could be maintained, as his lordship did not consider they were costs incidental to the compromise or costs to which the plaintiff had any claim; that it appeared to him that they were inserted in the decree by inadvertence, that the short-hand writer's notes of the judgment as pronounced by the Vice-Chancellor contained no mention whatever of those costs, from which he inferred that that part of the prayer of the bill had not been adverted to during the argument, and that no discussion had taken place respecting it; and that his Honour's attention not having been called to the point, he pronounced a decree granting relief according to the prayer of the bill, without being aware that the prayer included the costs in question; that he had not heard that any application had been made to the learned judge to correct the minutes in that respect; but that it rather appeared that the objection was reserved to be urged for the first time upon the argument on the appeal. A party was entitled to have a decree corrected upon a well-founded objection urged at that time; but in a case where a decree upon the general merits of the case was affirmed, his lordship did not think it ought to affect the costs of the appeal, as otherwise it would furnish a bounty upon vexatious appeals by parties omitting to call the attention of the Court below to obvious inadvertencies, which would be corrected, upon application, by the Court, or probably consented to by the opponents if pointed out. He did not consider any judgment, in truth, to have been pronounced upon the point, and that the direction was inadvertently inserted, and that therefore no appeal was necessary in regard to it, as it might have been set right below. That the decree, therefore, ought to be corrected in this respect. That with regard to the objection of prolixity in the bill, his lordship was not prepared to say that it was so prolix, that the plaintiff ought to be made to pay any part of the costs; if the prolixity was so gross as to amount to impertinence, the proper course for the appellants to have taken was to have excepted; and although it was the duty of counsel to take reasonable care to avoid even unnecessary verboseness, yet so difficult oftentimes was the attempt to be explicit and minute, and yet concise, and so difficult, if not impracticable, would it often be for the Court to determine where that was accomplished and where it was not, that though the Court might have an impression that the pleadings were more lengthy than they need have been, his lordship said he should not feel that he was acting justly towards the pleader or the suitor if he were to visit the latter with any part of the costs on that ground. It ought to be a gross and palpable case of prolixity to enable the other party to take the objection, and then the objection ought to be taken by way of exception, and not kept back, as in this case, to serve as a makeweight to an unfounded appeal. His lordship was therefore of opinion that, subject to the correction of that part of the decree which ordered the costs of the action of ejectment to be paid by the appellants to the plaintiff, the appeal ought to be dismissed with costs.

Reported by C. H. Keene, Esq. of Lincoln's-inn, Barrister-at-Law.

July 8 and 9.

Re The Royal Bank of Australia, *ex parte* Robinson.

Re The Royal Bank of Australia, *ex parte* Meux's Executors.

Joint-stock Company—Winding-up Acts—Contributory—Misrepresentation by directors.

R. the director of a banking company, in pursuance of a resolution not authorised by the deed, took 100 shares (in addition to those which were necessary for his qualification as a director, and for which he had signed the deed), and gave a promissory note for £500, in respect of them, payable at four months. The 100 shares were not allotted according to the provisions of the deed; R. did not pursue the deed in respect of such shares, but received the dividends, the payments of which were regularly entered in the company's books. The note, when due, was not paid.

On the winding up of this company, R. was held to be a contributory in respect of such 100 shares.

M. a director of the same company, took 500 shares, and gave a promissory note for £2500. M. died, and before proving his will, his executors (upon inquiry) were informed by the surviving directors that their testator had only twenty shares upon which the whole capital had been paid. There was no entry of his ever having received any dividends in respect of the 500 shares. On the faith of the representation of the directors (who had cancelled the 500 shares), the executors distributed M.'s assets. On the winding up of the company, the Master ordered M.'s executors to be placed on the list of contributories in respect of the 500 shares, but,

On appeal, affirming the decision of the Vice-Chancellor, the order was discharged.

If directors (by a transaction not authorised by their deed) become possessed of a greater share in the capital of a company than they would otherwise have been entitled to, the Court will not allow them if it should turn out successful, to insist upon it as a real transaction, and if unsuccessful, to reject it as unauthorised. Directors would be bound by such a transaction, although they could not enforce it against the shareholders. Although a director is bound by an unauthorised transaction as between himself and the shareholders, it does not at all follow that he can claim the benefit of it.

If, upon the representations of directors, the assets of a deceased shareholder are administered, it will require a very strong case to induce the Court to relieve the shareholders, should such representations be even false.

The Court would rather consider directors making such misrepresentations as personally liable to the shareholders than attach the assets in the hands of a legatee; especially if such assets should have been administered for any length of time.

These were separate motions, by way of appeal, to discharge two several orders made by the Vice-Chancellor Knight Bruce under the Winding-up Acts. The facts of each case will be found in 17 Law T. 14, 48.

Sir W. Page Wood, Bacon, Daniel, Busk, Roxburgh, and *Cairns* were the several counsel engaged.

The following cases were cited:—*Cockburn's* case, 15 Jur. 28; *Stanhope's* case, 3 Del. & S. 198; *Gouthwaite's* case, 3 Del. & S. 258; *Burnes* v. *Pennell*, 2 Ho. of Lords cases, 497; *Bosanquet* v. *Shortridge*, 4 Ex. 699; 19 Law T. Rep. 196.

The Lord Chancellor.—The first question which arises in both cases is, whether or not the directors were bound by the transactions into which they entered. I cannot decide upon either of them with any great satisfaction to my own mind; but that is a circumstance which must certainly happen in these cases; for an attempt to do justice between the parties, having regard to the manner in which these transactions are carried on, and at the same time not to break in upon any rule of law, is, indeed, difficult, and in endeavouring to preserve any rule of law you may have to decide contrary to equity and perhaps good conscience; still, the rules of law must be preserved. Now, these directors assumed to buy on credit a very large proportion of the capital of the company. Mr. Robinson's transaction, in my opinion, is not distinguishable from the case of the other directors who took shares. These directors never could have sustained as a transaction binding upon the shareholders, these purchases, or, as they are called, subscriptions; if they had been brought before them, and they had objected, they might have insisted that they, the directors, should be compelled to pay up at once that which was due upon the shares. I am clearly of opinion that these shares were not taken in a way which is binding upon the company. The directors were not entitled to allot to themselves a very large proportion of the capital of the company, without bringing in a single shilling in aid of the company. They give only promissory notes payable at some distant period. They made entries of interest as it became payable on their several notes, and take credit for the dividends to which they would properly have been entitled, as if they had made the payments, the whole remaining no doubt on paper, and forming (as they represented) a real transaction. I am of opinion that they are bound, as between themselves, and their shareholders. If the shareholders chose to bind them by it, they are entitled to do so. I never will maintain, in a court of justice, that directors (having the power by their deed to manage the affairs of the company, and to exclude the shareholders from becoming acquainted with the nature of their dealings) who, behind the backs of the general body of shareholders, entitle themselves to a great proportion of the capital of the company, can be at liberty, if the company should flourish, to insist upon that as a real transaction; and if it should turn out not as they had hoped, to throw it up, as a transaction which was not authorised or sanctioned by the deed. I should hold them bound by the transaction, although they might not be entitled to enforce it against the general body of shareholders. Mr. Robinson, in that respect, cannot be distinguished from the others; he was a party to the original transaction; he knew that he had not paid, and he also must be taken to have been aware it was not represented to the body at large, though it was to be so represented. If the directors had represented to the shareholders the capital which was really paid up, this company must have stopped at once; but by misrepresentation they led on the persons whose interest it was their duty to protect, and I cannot allow them to escape from that common calamity of which they themselves have been the authors. Mr. Robinson went to Australia, and these bills followed him; payment was demanded of him; he did not say that he was not liable, but that he was unable to pay the note. It was not thought right or prudent to press for payment, but before he went to Australia, he and his co-directors concerted this improper transaction, which was duly entered in the books. I hold him bound by that entry—the debt is due from him, and I must, therefore, affirm the order of the Court below as regards him, and dismiss the appeal. It does not at all follow, as a necessary consequence, that because a director is bound by his improper act as between himself and his shareholders, that therefore he could have claimed the benefit of it. It is, in my opinion, very right that the law in that respect should not be so. If a man will do that which is improper and illegal in order to obtain a benefit to himself, he may and often ought to be bound as far as regards a loss, and yet at the same time not be entitled to a benefit which he attempted improperly to obtain. I feel, therefore, not the least difficulty in affirming the decision of the Court below as regards Mr. Robinson. In *Meux's* case, the question of law stands on the same footing as that of Robinson. There is this difference: Mr. Meux died in the early part of the year 1842, and never was credited with any dividends. He makes no entry of this transaction in his own private books. His executors apply, before proving the will, to this company to ascertain what shares their testator had, and what had been paid up; the answer is, that the testator held twenty shares, upon which 10*l.* a share had been paid up. Although it was argued that this was an answer which called upon the executors to inquire, yet I think it was a statement on which the most prudent man might have acted, and on which he might properly have relied. A year afterwards they write to know whether any dividend was due upon these twenty shares; they subsequently sold the shares, in the belief that they had no longer any liability or interest in the concern. An attempt is now made to make the vendors contributories to this winding up, because their testator, Mr. Meux, remained a shareholder, as they contend, to the amount of these 500 shares. These directors had, without the knowledge of their shareholders, entered into an irregular transaction, and when the application was made by Mr. Meux's executors, there had been no representation to the shareholders that any capital had been realized from the shares so improperly taken by the directors. It was at that time a transaction resting simply upon the note and upon the agreement between the directors; it never was a concluded transaction. There were no particular shares which could be considered as belonging specifically to a particular director. Mr. Meux being dead, the survivors, who were then the directors, cancelled that transaction. Now, it is very difficult to say that they were not at liberty to do so: it had never been communicated to the shareholders,—no benefit had been derived from it, no damage had been sustained. This is a case, no doubt, which tries the doctrine of law and equity very strongly. Mr. Meux himself was an original wrong-doer, and his release enures for the benefit of his assets. But shareholders ought not to be at liberty to say that their directors are to make a representation upon the faith of which executors act and distribute assets, and that they are not to be bound by those representations. It would require a very strong case to induce me to relieve the general body from representations made by directors, though improperly, which have led to the distribution of assets. In answer to the party asking me to recall those assets, I should be more disposed to think that the directors who made those representations would be personally liable for any losses sustained by reason of those representations to the general body of shareholders, than inclined to visit upon the assets in the hands of the legatee of the family of the deceased party the effect of those misrepresentations. I am bound to hold that the general body is bound by the representations of the directors, and that the representatives of Meux were properly discharged from their liabilities, and I am very far from thinking (were I called on) that I should decide that they had the power to place in the state in which they found it, that incompleted improper transaction, as a transaction binding upon Mr. Meux. Now, Mr. Meux's executors had to administer his assets: if this application had happened immediately after the transaction, I might still have held that the executors could not be released; but the assets have been released seven years. After such a period of time it is impossible for me to enter into

an inquiry of what has become of those assets, and to trace them through the different persons who might have enjoyed the benefit of these transactions. Such an inquiry would perhaps ruin many persons in order to give to these shareholders a benefit to which they were never entitled. I have given to them the benefit as against those directors who had continued their liability, and who had represented themselves and been regarded by the general body of shareholders as persons who had paid up their capital upon these shares.

COURT OF APPEAL IN CHANCERY.

Reported by OWEN DAVIES TUDOR, Esq. of the Middle Temple, Barrister-at-Law.

Tuesday, March 2.

Ex parte JAMES WHITAKER, *re* JAMES WHITAKER and JOSEPH CROWTHER, Bankrupts.

Certificate—Jurisdiction.

Semble, that with regard to the question whether a certificate ought to be refused or granted to a bankrupt, the Court has no jurisdiction to direct the commissioner to review his judgment.

The bankrupts, James Whitaker and Joseph Crowther, carried on trade as dyers in partnership together. Upon their application for certificates of conformity, the commissioner suspended the certificate of Joseph Crowther for three years, and refused to grant any certificate to James Whitaker; but he gave protection to both after three months' imprisonment. From this decision of the commissioner James Whitaker now appealed.

Bacon and *Steere*, on behalf of the appellant, applied to the Court to refer back the matter so far as regarded the question of the appellant's certificate, upon the ground that, since it was before the commissioners, several facts had been discovered which would in all probability induce him to come to a different conclusion as to the appellant's conduct, so as to allow him a certificate. That the Court had full power to send back the matter to the commissioner under the general power of appeal given by the 12th section of the Bankrupt Law Consolidation Act, 1849, notwithstanding the 207th section of the same statute enacts that the order of the commissioner, allowing, or suspending, or refusing a certificate of conformity, shall not be reversed by him, unless it shall afterwards appear to him to have been obtained by false evidence or fraud.

Mottram, for the assignees.

Lord Justice KNIGHT BRUCE said, that he felt considerable doubt whether the Court had jurisdiction to direct the commissioner to review his decision. He thought that to make such an order would be in effect to disregard altogether the enactment in the 207th section of the statute, and to treat the matter as if there were no such section.

Lord Justice Lord CRANWORTH said that in his opinion, if the Court had no power to refer the matter back to be reheard de novo by the commissioner, a certificate obtained from the commissioner under such an order of reference would be of no avail to the bankrupt. The matter was then heard before their lordships upon the new facts, whereupon they made the same order with respect to the appellants as the learned commissioner had made with respect to the other bankrupt; but their lordships said that they gave no opinion as to what decision they should have come to, had they been obliged to form an opinion upon the materials only which were brought before the learned commissioner.

Thursday, June 10.

HALLIDAY *v.* OVERTON.

Power of appointment—Construction—Confined to coverture.

M. H. a widow, with six children, on her second marriage executed a settlement, whereby, after reciting that the rents, issues, and profits of the property to be thereby settled should be to the separate use of M. H. for life, and, after her decease, for the further purpose of making of the reversion and principal thereof a provision for the children of her former marriage, certain real and personal property then belonging to M. H. was vested in a trustee, in trust to pay the income to M. H. for her separate use for life; and, after her decease, in trust for such persons and in such manner as she, in and by her last will and testament, or instrument testamentary, or in the nature of a will, in writing, to be signed and published by her in the presence of three or more credible witnesses, upon testamentary consideration only, during her intended coverture, should direct or appoint:

Held, affirming the decree of the Court below, that the power of appointment was confined to the coverture, and consequently, that an appointment made by M. H. by will, after her husband's death, was not valid.

This was an appeal from the decision of Sir John Romilly, M.R. (see 19 Law T. Rep. 482), upon the construction of a settlement, under the following circumstances. In September 1825, Mary Heathcote, a widow, having six children by her former husband, intermarried with Mr. E. Drayton. On the 23rd of September a settlement was executed, whereby, after reciting that the rents, issues, and profits of the property to be thereby settled should be for the separate use of Mary Heathcote, and after her decease, for the further purpose of making of the reversion and principal thereof a further provision for the children of her former marriage, certain real and personal property belonging to the said Mary Heathcote was respectively conveyed and assigned to a trustee, his heirs, executors, administrators, and assigns upon trust, after the solemnization of the marriage, to pay the rents, issues, and profits of the said real estate, and the interest, income, and annual profits of the said trust funds "to the said Mary Drayton during her natural life, for her separate use and benefit, without power of anticipation, and from and after the decease of the said Mary Drayton then to stand seised and possessed respectively of the several and respective premises in trust to and for such person and persons to and for such trusts, intents, ends, and purposes, and in such manner respecting the same, and of all and every or any part thereof, as she, the said Mary Heathcote, in and by her last will and testament, or instrument testamentary, or in the nature of a will in writing, to be signed and published by her in the presence of three or more credible witnesses, upon testamentary consideration only, during the intended coverture shall direct and appoint, and for want and in default of such last-mentioned direction or appointment, and as to so much and such part of the said premises whereof no complete direction or appointment shall have been made in trust for the children of the said Mary Heathcote, equally to be divided between them, share and share alike, as tenants in common, and not as joint tenants."

Mr. Drayton died during his wife's life-time without having any issue by her. After that event Mrs. Drayton made a will, dated in November 1845, purporting to be in exercise of the power given to her by the settlement, and executed in conformity therewith; and she thereby devised and bequeathed all her real and personal property to four of her six children of her former marriage. Upon a claim being filed, two points arose: The first whether the power of appointment was not confined to the time of her coverture, so not to be exercisable by her afterwards. The second, whether in the event of the Court determining that the power could not be exercised after the death of the husband, the children of Mary Drayton took fee-simple estates or only life estates in the real property comprised in the settlement. The Master of the Rolls (see 19 Law T. Rep. 482) held, first, that the appointment by Mrs. Drayton was invalid, and the power could only be exercised during coverture. And, secondly, that under the settlement the children took only life estates in the real property.

Lloyd and *Speed*, for the plaintiffs, the appellants.

Roundell Palmer and *Sheffield*, for parties in the same interest as the plaintiffs.

Amphlett, in support of the decree.

Lord Justice Lord CRANWORTH.—The matter lies on the surface. The parties making the settlement made it in a blundering manner. (His lordship then stated the facts of the case, and the terms of the settlement.) Now it is contended that the settlement gave Mrs. Drayton power to make an appointment, either during or after coverture. This depends upon the words "upon testamentary considerations only during the intended coverture." It was urged by the appellants that those words are to be taken as being within a parenthesis. I do not, however, think so. I concur with the Master of the Rolls that there are two independent restrictions on her power: first, it is to be exercised during coverture only; secondly, upon testamentary considerations only. The question is not free from obscurity, but in my opinion this is a more rational and grammatical construction, and the recital is as consistent with this construction as with the other. The order of the Master of the Rolls, as to this part of the case, is in my opinion right.

Lord Justice KNIGHT BRUCE.—I feel some doubt upon the point; but upon the whole I come to the same conclusion.

Amphlett then proceeded to argue the second point, but ultimately an arrangement was come to between the parties upon the terms of the appellants not paying the costs of the appeal.

IN BANKRUPTCY.

Wednesday, July 28.

Ex parte SHERLOCK.—*In re* SHERLOCK.

Certificate meeting, appointment of—198th section of Bankrupt Law Consolidation Act, 1849.

Under the 198th section of the Bankrupt Law Consolidation Act, the commissioner has power to appoint a sitting for the consideration of the certificate of a bankrupt, and it is not necessary, in order to give the Commissioner jurisdiction, that an application for that purpose should be made by the bankrupt himself.

This was an appeal against the decision of Mr. Commissioner Stevenson, refusing the bankrupt a certificate or any further protection. A preliminary objection, however, was taken by the counsel for the bankrupt, namely, that whatever the merits of the case might be, the commissioner had no jurisdiction in it, as the sitting to consider the allowance of the certificate did not take place upon the *application of the bankrupt*. The question turned upon the consideration of the 39th section of 5 & 6 Vict. c. 122, and the 12 & 13 Vict. c. 106 (the Bankrupt Law Consolidation Act, 1849), s. 198, repealing the former Act. By the 39th section of 5 & 6 Vict. c. 122, it is enacted, "that it shall be lawful for the Court authorised to act in the prosecution of any fiat in bankruptcy already issued or hereafter to be issued, on *the application of the bankrupt* named in such fiat to appoint a public sitting for the allowance of such certificate to the bankrupt named in such fiat (whereof, and of the purport whereof, twenty-one days' notice shall be given in the *London Gazette*, and to the solicitor of the assignees); and at such sitting any of the creditors of such bankrupt may be heard against the allowance of such certificate; but it shall not be requisite for such certificate to be signed by any of the creditors of such bankrupt; and such Court, having regard to the conformity of the bankrupt to the laws relating to bankrupts and to the conduct of the bankrupt as a trader before as well as after his bankruptcy, shall judge of any objection against allowing such certificate, and either find the bankrupt entitled thereto, and allow the same, or refuse or suspend the allowance thereof, or annex such conditions thereto, and allow the same, or refuse or suspend the allowance thereof, or annex such conditions thereto as the justice of the case may require: provided always, that no certificate shall be such discharge unless such Court shall, in writing, under hand and seal, certify to the Court of Review that such bankrupt has made a full discovery of his estate and effects, and in all things conformed as aforesaid, and that there does not appear any reason to doubt the truth or fulness of such discovery; and unless the bankrupt make oath in writing that such certificate was obtained fairly and without fraud, and unless the allowance of such certificate shall, after such oath, be confirmed by the Court of Review, against which confirmation any of the creditors of the bankrupt may be heard before such Court." The 198th section of the Bankrupt Law Consolidation Act is as follows:—"That forthwith after the bankrupt shall have passed his last examination, the Court shall appoint a public sitting for the allowance of his certificate (whereof, and of the purport whereof, twenty-one days' notice shall be given in the *London Gazette*, and to the solicitor of the assignees), and at such sitting the assignees, or any of the creditors of such bankrupt, who shall have given to the registrar of the Court three clear days' notice in writing of his intention to oppose, may be heard against the allowance of such certificate; and the Court, having regard to the conformity of the bankrupt to the law of bankruptcy, and to his conduct as a trader before as well as after his bankruptcy, and whether the allowance of such certificate be opposed by any creditor or not, shall judge of any objection against allowing such certificate, and either find the bankrupt entitled thereto, and allow the same, or refuse or suspend the allowance thereof, or annex such conditions thereto, as the justice of the case may require."

Swanston and *Renshaw*, for the bankrupt, in support of the objection, contended, that although, according to the 39th section of the repealed statute, 5 & 6 Vict. c. 122, it is enacted expressly that the application for the certificate must be made by the bankrupt himself, and there is no the same express enactment in the 198th section of the Bankrupt Law Consolidation Act; still, upon a fair construction of that section, it was evidently contemplated by the Legislature. [Lord Justice KNIGHT BRUCE suggested that the *Gazette* in which notice of the meeting was given, and which was not in Court, ought to be produced.] In the last Act, it is provided, that notice of the sitting for the allowance of the certificate is to be given to the petitioning creditor of the assignees, and the assignees and creditors are to give to the registrar three days' notice of their intention to oppose the allowance of certificate; but nothing is said about notice being given to the bankrupt, the person most interested in the proceedings—an omission which evidently shows that it was considered by the Legislature that he was to take the initiative, thus rendering notice to him unnecessary; a contrary construction might lead to very great injustice. Again, by the terms made use of in the last Act, —"allowance" or "refusal" of certificate, an application for it is clearly implied. Moreover, the certificate was a privilege to be conferred upon bankrupts in proper cases; and it would be no hardship to the creditors that the question of

certificate should not be taken into consideration, because by the bankrupt remaining without his certificate, all his property and he himself personally would be liable to their demands; on the other hand, the commissioner had no authority to call a meeting for the purpose of granting or refusing a certificate, for which the bankrupt did not ask, and when, perhaps, actuated by honest motives, he might prefer that his liabilities should remain undiminished.

Bacon and *Speed*, who appeared on behalf of the assignees, were not called upon by the Court.

Lord Justice KNIGHT BRUCE.—Our opinion of the true construction of the 196th section of the Bankrupt Law Consolidation Act, especially when compared with the 39th section of 5 & 6 Vict. c. 122, and, I should say, independently of that statute, is, that the bankrupt's application is not necessary to give the commissioner jurisdiction on this subject. It is a different question whether the bankrupt has had the means of preparing himself; if he has not we will now consider it—it is quite apart from the present question. (*a*)

Friday, Aug. 6.

FIELD *v.* JEGON.

Wife's equity to a settlement—Purchase of annuity.

A lady aged sixty-six, without issue, claimed her equity to a settlement as against her husband's assignees out of a sum to which she became entitled; the Court considering, under the circumstances, that she was entitled to have the whole settled upon her for her life, ordered an annuity to be purchased out of it equal in amount to the interest of the sum, and the residue to be paid to the assignees of the husband.

The question in this case was to what provision the wife was entitled, under her equity, to a settlement as against her husband's assignees. The material facts were briefly as follows:—The husband was living with his wife, who was sixty-six years of age, and had no issue, and they were between them entitled to about 110*l.* annually, arising from two pensions allowed to them from some public institutions. The sum the wife became entitled to was about 2,000*l.*

James, for the wife, submitted to the Court that the whole of the sum ought to be settled upon the wife.

Druce, for the assignees, contended that a part only would be sufficient, or at any rate, considering the lady's age, that she had not, and that it was improbable that she ever would have any issue, the better plan would be to purchase an annuity for the wife equal in amount to the interest of the 2,000*l.* and that the residue of that sum, after the purchase of the annuity, might be paid at once to the assignees—that such a scheme would be equally good for the wife, and much better for the creditors.

The COURT, thereupon, ordered such annuity to be purchased as suggested, to be settled to the wife's separate use, without power of anticipation, and the residue of the 2,000*l.* after purchasing the annuity, to be paid to the husband's assignees.

ROLLS COURT.

Reported by J. MACNAGHTEN, Esq. of the Inner Temple, Barrister-at-Law.

Saturday, July 10.

TIPPIN *v.* LONGMAN.

Will, construction of—Discretion of executors—Relations held to mean next of kin—Advertisements for relations—Claims.

A testator gave property to his daughter for life for her separate use, and after her death to her issue; but if she should die without issue, he directed advertisements to be inserted in the papers for the information of his relations, to whom, that is, to such of them as claimed within two months he left the before-mentioned property, to be divided between them according to the discretion of his executors. The executors predeceased the testator, and no advertisements were inserted. The daughter survived her father and died without issue:

Held, that "relations" meant next of kin living at the death of the daughter, among whom the property was to be divided.

This was a case upon the construction of the will of William Dance, dated the 15th of August, 1806, whereby the testator bequeathed certain property to his daughter, Mary Ann Dance, for life, for her separate use, and after her death to her children, if she should have any. But provided his daughter should die without issue, he then directed that advertisements should be inserted in the daily papers for the space of one week, for the information of his relations, to whom, that is to say, to such and such only as should make their claims within two months after such advertisements. He left the before-mentioned property to be divided between them according to the discretion of his executors, excepting his nephew, Thomas Dance. Should he (the testator) survive his daughter, he willed his property to his relations above mentioned, with the exception of his nephew, Thomas Dance, above mentioned. Mary Ann Dance survived the testator, but died without issue; and the executors named in the testator's will died in his lifetime. No advertisements were ever inserted in the papers, as directed by the testator's will. The plaintiff having taken out letters of administration both to the testator and his daughter, brought the matter before the Court, and the case now came on to be heard.

Shapter in support of the plaintiff's claim, insisted that there was no implied gift to the relations as a class, and that as the discretion in the executors was a mere personal confidence, the case of *Fordyse* v. *Bridges*, 10 Beav. 90, had decided that there were no means of exercising it after the death of the executors. Even if the Court should hold that the relations were entitled, the bequest ought to be confined to the next of kin living at the death of the testator, that is to the daughter alone. He cited *Urquhart* v. *Urquhart*, 13 Sim. 613; *Ware* v. *Rowland*, 2 Phill. 635.

Nichols, contrà, for the next of kin.

The MASTER of the ROLLS thought there was a distinction to be taken between "relations" and "next of kin;" and in this case he was of opinion that the bequest was to those of the testator's relations who were within the Statute of Distributions at the time of the daughter's death, provided they made their claim within the time specified. That view of the case was strengthened by the expressions at the end of the will, from which it appeared that the testator intended to exclude his daughter. The provision in the will as to claiming within a specified time could not now be complied with, but the relations would not for that reason be deprived of the benefit given them under the will any more than they would have been if the executors had survived the testator and had refused to conform to the directions of his will. The property must be divided per capita, equally among the next of kin living at the death of the daughter.

July 10, 12, *and* 13.

WILSON *v.* EDEN.

Will, construction—Devise of real estate—Leaseholds.

Devise of all testator's messuages and lands at a particular place, and all other his real estates in certain places, and elsewhere in Great Britain: Held, to include leaseholds.

This case arose upon the construction of the will of the late Sir Robert Johnson Eden, dated the 14th of April, 1815, whereby he directed his debts, funeral and testamentary expenses, to be paid, and charged all his real and personal estate with the payment thereof and of the pecuniary legacies or sums in gross thereinafter bequeathed; and he directed that his personal estate not specifically bequeathed should be the primary fund for these purposes. The testator then gave several legacies and annuities, and he charged all and singular his real estates *thereinafter* devised with the payment of the several annuities; and he gave and bequeathed all the rest, residue, and remainder of his personal estate, goods, and chattels whatsoever and wheresoever, after and subject to the payment of his just debts, funeral, &c. and the said legacies and bequests (except the said annuities) thereinbefore given by him, and all his estate and interest therein, to his brother Morton John Davison, late Morton John Eden, absolutely to and for his own use and benefit. The testator next gave and devised all and singular his manors or lordships, rectories, advowsons, messuages, lands, tenements, tithes, and hereditaments situate, lying, arising, or being at or near Windlestone, &c. in the county of Durham or in the city of Durham, and Brignall, in the county of York, and all other his real estates in the counties of Durham, York, and elsewhere in Great Britain, and all his estate and interest therein, to trustees and their heirs in trust for his said brother for life, remainder to his first and other sons in tail male, and in default of such issue to Sir William Eden, his heirs and assigns. The testator's brother, Morton John Davison, died without issue in June 1841, and the testator, on the 18th of July following, made a codicil, which he thereby "ratified, confirmed, and republished." The testator died in 1844, seised and possessed of freehold and leasehold estates. The testator died in 1844, seised and possessed of freehold and leasehold estates. The question in the cause related to the leaseholds, which were claimed on the one hand by Sir William Eden, as passing with the freeholds under the ultimate devise to him, and on the other hand by the next of kin of the testator, on the ground that they were comprised within the absolute bequest of the personalty to the testator's brother, which failed by his death in the testator's lifetime. The cause came on to be heard before the late Lord Langdale, who, on the 30th of June 1848, decided that the case came within the Act 1 Vict. c. 26; but that nevertheless the effect of the devise was not altered by the provisions thereof, and that the leaseholds passed under the residuary bequest of the personalty. (See the report 11 Beav. 237.) Leave, however, was given to take the opinion of a Court of Law, and a case was sent to the Court of Ex. and was argued in November 1830; and the Barons certified that the leaseholds passed under the devise of the real estates (see the report 5 Ex. Rep. 752); another case was then sent to the Court of Q.B. who agreed with the Court of Ex.; and the cause now came on upon the equity reserved.

Elmsley and *Giffard*, for the plaintiff, insisted that a clear distinction had been drawn by the testator between his real and personal property, and that the Court of Common Law had come to a wrong conclusion by not attending to this distinction, and if so extensive a construction was given to the 20th section of the 1 Vict. c. 26, as was contended for by the devisee of the real estate, the result would be that a bequest or devise of leasehold or copyhold estates would also pass freehold estates.

Roupell and *Goldsmid*, for certain of the next of kin in the same interest as the plaintiff.

R. Palmer, Lloyd, Faber, Welford, Dickinson, and others, for other parties.

The following cases were cited:—*Arkell* v. *Fletcher*, 10 Sim. 299; *Lane* v. *Earl Stanhope*, 6 T. R. 345; *Goodman* v. *Edwards*, 2 Myl. & K. 759; *Weigall* v. *Brome*, 6 Sim. 99; *Lowther* v. *Cavendish*, 1 Eden, 99; *Hobson* v. *Blackburn*, 1 Myl. & K. 571; *Hall* v. *Fisher*, 1 Colly. 47; *Thompson* v. *Lawley*, 2 Bos. & P. 303; *Day* v. *Trigg*, 1 P. Wms. 286; *Bootle* v. *Blundell*, 19 Ves. 494; *Doe dem. Dunning* v. *Cranstoun*, 7 Mees. & Welsb. 1; *Watkins* v. *Lea*, 6 Ves. 633; *Parker* v. *Marchant*, 2 Y. & Coll. C. C. 279; *Hartley* v. *Hurle*, 5 Ves. 540; *Whitaker* v. *Ambler*, 1 Eden, 151; *Moor* v. *Raisbeck*, 12 Sim. 123; *Farrer* v. *Winterton*, 5 Beav. 1; *Cole* v. *Scott*, 1 Macn. & G. 578; *Eunes* v. *Smith*, 2 De G. & S. 722.

The MASTER of the ROLLS, without hearing counsel in support of the claim of the devise of the real estate, said he was compelled to differ from Lord Langdale, and to confirm the certificates of the two common law courts, before whom, as well as before Lord Langdale, the case had been very elaborately argued. He was of opinion that the case was governed by the provisions of the 1 Vict. c. 26, and that the leaseholds passed under the devise of the real estates. The costs of all parties to be paid out of the fund.

VICE-CHANCELLOR TURNER'S COURT.

Reported by J. HENRY COOKE, Esq. Barrister-at-Law.

April 22 *and* 28.

M'DONNELL *v.* POPE.

Landlord and tenant—Change of tenancy.

Where premises were let to A. and certain acts, as to payment of rent and otherwise, were done by A. and B. and after the death of A., B. continued to pay the rent, and then the landlord sued B. and C. who were the executors of A. for the rent:

Held, that although the joint acts of A. and B. were consistent with the notion of a joint letting, yet, as the landlord denied that there was such, the estate of A. was still liable for the rent, notwithstanding the subsequent acceptance of rent from B.

The claim in this case was filed by Mr. M'Donnell, the landlord of a certain house and premises, at Chepstow, against Miss Pope and Mr. Thompson, the executrix and executor of the will of Mrs. Pope, deceased, for the recovery from her estate of arrears of rent from the year, 1847. The plaintiff filed affidavits, positively swearing that he let the house in question to Mrs. Pope alone. The defendants, by their affidavits, detailed various circumstances of payments of rent made, sometimes by Mrs. Pope, sometimes by Miss Pope, and sometimes by both, and since the death of Mrs. Pope, the payment of rent by Miss Pope; and the defence therefore was, first, that the letting was joint, and therefore on the death of Mrs. Pope it was at an end, and her estate no longer liable; and in the second place, that the acceptance of rent from Miss Pope after her mother's death was the creation of a new tenancy in her, and for the rent upon which she alone and in her own individual character was liable. From part of the evidence it appeared that Miss Pope, since her mother's death, had been discharged under the Act for the Relief of Insolvent Debtors. The defendants admitted assets of the testatrix.

Bolt, for the plaintiff.

Daniel and *Druce*, for the defendants, said, that the defence was twofold: first, that the letting was

(*a*) After this judgment had been delivered the bankrupt was brought into court, and was about to be sworn and the appointment of the assignees on consideration of the certificate had been made, on the application of the said bankrupt. It appeared, however, from the statements made in court, that that was not the correct, and that the notice was merely an old form under the previous Act filled up.

originally a joint letting to Mrs. Pope and her daughter, and, therefore, survived to the daughter; and, secondly, that if not originally a joint letting, yet the plaintiff had, since the decease of Mrs. Pope, constituted Miss Pope his tenant, and put an end to the former tenancy. (*Thomas* v. *Cooke*, 2 B. & Ald. 119; *Doe dem. Hull* v. *Wood*, 14 M. & W. 685; *Lyon* v. *Reed*, 13 Mee. & W. 285; *Johnson* v. *Huddlestone*, 4 B. & C. 932; *Clarke* v. *Moore*, 1 Jou. & Lat. 723; *Doe dem. Hornby* v. *Glenn*, 1 A. & E. 49.)

Rolt, in reply, argued that however plain the intention might be to change the tenancy, and however good such intention might be as between the landlord and Miss Pope, it could not be good against the estate of Mrs. Pope without the assent of Mr. Thompson, the co-executor; and it might well be that the lease was beneficial to that estate. (*Graham* v. *Whichelo*, 1 Cromp. & Mees. 188.)

Wednesday, April 28.—The Vice-Chancellor.—The first point is, whether the letting was to Mrs. Pope alone, or to her jointly with the defendant Miss Pope; and, secondly, whether, if that were so originally, the plaintiff, after the death of Mrs. Pope admitted Miss Pope to be tenant by the acceptance of rent from her, and permitting her to retain possession of the premises. As to the first point, it seems pretty clear that the original letting was to Mrs. Pope alone. The affidavits for the plaintiff distinctly state that, and it is nowhere negatived by the affidavits on the other side. Several circumstances were urged as indicating a joint tenancy, but I think they cannot be put higher than as being consistent with a joint tenancy; these are not inconsistent with the view that Mrs. Pope was the sole lessee, and therefore cannot prevail against the direct denial of the joint tenancy by some of the affidavits in evidence. The second point is more open to doubt, but the case for the defence fails here too. For the defendants it was urged that the circumstances attending the case brought it within *Thomas* v. *Cooke*, but that case is explained by the case of *Graham* v. *Whichelo*, and I think it is clearly referable to this ground,—that a new letting in presenti to an old tenant operates as a surrender of the old lease, because the landlord has no power to let, except the old lease be surrendered. So if the new letting be to a new tenant with the assent of the old tenant, because in that case the intention of the parties will be presumed to be to do such other things as are necessary to be done to give effect to their acts. But we must carry the application of the decision in *Thomas* v. *Cooke* beyond the reason of the rules if we are to say that a bare acceptance of rent from the party in possession without any assent or even knowledge on the part of the executor of the deceased lessee shall constitute evidence of a new letting by the landlord to the party from whom the rent is received. There must be an assent to the change by the original lessee or those claiming under him. After weighing the observations in *Thomas* v. *Cooke*, I cannot give them more weight here than was allowed them in *Graham* v. *Whichelo*. The change of tenancy in 1849 was not assented to by the executors of the old tenant. *Thomas* v. *Cooke* goes entirely on the ground I have mentioned, that there had been an actual letting by the landlord with the consent of the old tenant. The case of *Graham* v. *Whichelo* explains it very satisfactorily.

Friday, April 30.

ASHLEY *v.* ALLDEN.

JONES *v.* ASHLEY.

Costs of two suits—Infant—Next friend.

Where two suits have been instituted on behalf of an infant, and on the hearing the Court has retained the second bill and reserved the costs, the Court will not at a subsequent stage refuse provision for the costs of that suit.

The clerk to the solicitor of the plaintiff in a first suit is not necessarily an unfair and improper next friend to the infant in a second suit.

A bill was filed by one executor in his own name, and in the name of his infant cestui que trust, against the co-executor, praying accounts against the defendant, but not any accounts against the plaintiff, the co-executor. The bill did not, on behalf of the plaintiff's executor, contain any offer to pay into court any money or assets he held of the testator's estate. A second bill was filed on behalf of the infant against both executors, praying the usual administration accounts. A motion was made to have the second bill taken off the file, but the Court (Vice-Chancellor Knight Bruce) did not make any order in the terms of the notice of motion, but made an order directing accounts entitled in both suits, and retained the second bill, reserving the costs both of that suit and of the motion. The case now came on upon further directions and costs, and the question, as stated in the judgment, was argued upon the costs of the motion, and the costs of the second suit.

Rolt and *Terrell* for the plaintiffs in the first suit.

C. P. Cooper for the plaintiffs in the second suit.

The Vice-Chancellor.—The only question for consideration is, as to the costs of the second suit, and a motion by the plaintiffs in the first suit to take the second bill off the file. The Court, by an order on that motion, made in both suits, reserved the costs of the second suit, and of that motion. I am, therefore, bound to consider that the Court did not then hold that the second bill was improperly filed: because, if it had, it would clearly have been the duty of the Court to order the second bill to be taken off the file, and to have made the order in the first suit only, and not in the second suit at all. And not only this order, but whatever has been done since, has been entitled in both suits. The question, therefore, is, whether the Court, having adopted the second suit, and directed a reference to take accounts in both suits, I can consistently with justice consider that the costs in the first suit only are to be provided for, without any subsequent improper conduct being shewn in the second suit. I am in this position, that the Court at the hearing did not consider the second suit altogether wrong; but the Court intended to keep the costs of the motion as a check on the parties in the conduct of the suit. I feel, therefore, to some extent, bound by that order; and, notwithstanding my reluctance to allow two suits to be charged upon the infant's estate, I do not think, if the motion had come as an original motion before me, that I could have made any other order. The original bill was filed by Mr. and Mrs. Ashley concurrently with the infant against the other executor, and not stating that they themselves had any assets, nor praying generally that all accounts might be taken, but only an account from the defendant, the other executor; not offering to pay into court the assets which they had in their hands, nor praying any account to be taken against themselves, nor offering to account themselves. In these circumstances the second suit is instituted on behalf of the infant against both the executors. I cannot say this is improper. Then the objection is raised that the next friend in the second suit is a clerk of the solicitor to the defendant in the first suit. I cannot say that he is such an improper person as to be the next friend as to deprive him or the other plaintiffs in it of all right to their costs. The order of Vice-Chancellor Knight Bruce is most happily adapted for meeting the justice of the case; and I feel satisfied that if the Court had thought that the second suit was altogether improper, or that the retaining it was of no use whatever, it would have been then dismissed. I will therefore make an order for the costs in both suits.

June 4 *and* 5.

CAMBRAY *v.* DRAPER.

Legatee—Executor—Release—Indemnity—Costs.

A. B. a testator who had entered into a contract for supply of goods, died before it was complete, leaving a few legacies, and subject thereto his property, which was all personal, to his wife. The testator was the executor of his late father, and also of his late brother. Claims were then unsettled as to these two estates. The executors of A. B. paid the legacies, but refused to pay over the residue to the widow unless the larger portion were retained as an indemnity fund for twenty years against any claims relating to the contract as to the estates of the father or brother. This the widow resisted, and filed a bill for the administration of the estate of A. B. and payment of the residue. No claims were established against the estate of A. B. The Court determined that, although the executors had required the impounding of an indemnity fund for too long a period, still that was no reason for depriving them of the costs of the suit.

The bill in this case was filed for the administration of the estate of the late Mr. Philip Cambray, and for the payment over of the residue of the same to the plaintiff, who was his widow, and the defendants were the executors of his will, and the cause now came on upon further directions and costs. The testator was possessed of personal property only, and by his will dated August 1846, after giving some pecuniary legacies, bequeathed the whole of his estate to his wife absolutely. The bill was filed by Mrs. Cambray against the executors, and contained many charges of fraud, which were denied by the answer and not substantiated by the evidence in the suit. It alleged the payment of the legacies, and the complete distribution of the estate, excepting as to the 4,000*l.* or 5,000*l.* residue due to the plaintiff. It was alleged, and admitted, that at first the executors agreed to pay over the balance, less 1,000*l.* to be invested in their names and in hers, as an indemnity against any claims on a certain contract for wheat by the testator, left incomplete at his death, and against any claims in respect of any unsettled claims against his estate, he being the executor as well of his father as of his brother. Subsequently the executors refused to pay even the residue until their accounts had been examined by a professional man on behalf of Mrs. Cambray, although she declared herself perfectly satisfied. The accounts were at length audited, and a deed of release and indemnity drawn, according to which the indemnity fund was to be kept in its then state till twenty years from the date of the indenture. The plaintiff refused to concur in the fund being impounded for more than three years. The executors, by the answer, stated that the accounts of the testator's debts and funeral expenses had never been fully taken; and that the defendants had reason to believe that some liabilities of the testator were still outstanding. In particular, it was stated that the testator had been the personal representative both of his father and of a deceased brother, and that legal proceedings were taken against him during his life, and still continued against his estate, in his character of personal representative to each of them his father and brother; and that the testator had very shortly before his death stated that he had contracted for the purchase of 500 quarters of wheat, which contract, if it existed, was still incomplete, but about which the defendants could learn nothing.

Russell and *Rudall* contended, that the executors having refused to pay over the residue, without an unreasonable demand being complied with, which had rendered the suit necessary, ought not to be allowed any costs.

Bacon and *Speed*, for the executors.—Charges of fraud having been made and not substantiated, would be of itself sufficient reason for the plaintiff paying the costs. (*Gibson* v. *D'Este*, 2 Younge & Coll. 542.) And as to the unreasonableness of demanding an indemnity, that was sufficiently answered by the case of *Norman* v. *Baldry*, 6 Sim. 621; and still more so by that of *Knatchbull* v. *Fearnhead*, 3 Myl. & Cr. 122.

Russell was heard in reply.

Saturday, June 5.—The Vice-Chancellor.—The only question in this case is, whether these executors are to be deprived of their costs. It is not asked that costs should be given as against them. The ordinary rule undoubtedly entitles executors to the costs of a release by the legatee; and where the legatees refuse to release the executors by deed, they (the executors) have a right to the costs of a suit in equity instituted for the purpose of taking the accounts, because that is the only way in which the executors can be effectually discharged, viz. by the decree of this Court. It is, I think, on the same principle that the executor or other person administering to the estate is entitled to be indemnified by the legatee in the case of his paying over the residue after the payment of debts. The course which it is requisite that executors should observe is clearly shewn by the decisions, and in none more than in *Knatchbull* v. *Fearnhead*. In that case the breach of trust had been committed by the testator in 1801, thirteen years before his death. His executors had never even heard of the breach of trust, or of the existence of the trust under which their testator had rendered himself liable; and they had long since paid and distributed the whole of the assets of their testator. Yet, the testator having left assets to answer the breach of trust, if they had not been administered, his executors were held personally liable to make good this breach. It is evidently, therefore, the anxious duty of the Court to take care that executors are properly protected as to costs when called on to pay over the balance of the testator's estate. I will not say that in no case is it possible for executors to be so unreasonable as that they cannot be deprived of their costs of coming here for the indemnity of this Court; but this I do say, that it must not only be shewn that the executor has insisted on an indemnification to which he had no right, but that he has insisted oppressively on such an indemnity. What then is the position of the parties in this case? The testator died in 1848, and it appears that he had a short time previous to his decease entered into a large contract for wheat. Independently of that, this testator is the administrator of his deceased brother, and the executor of his deceased father: and it appears that demands have already been made upon these defendants in respect of claims against the testator in both of these capacities. No executor can be said to make an unjust claim, if, under such circumstances, and with such indeterminate liabilities against the estate of his testator, he requires from the legatee an indemnity against them before paying over his balance. But the indemnity thus required is said to be unreasonable because the executor proposed that the estate should be impounded for twenty years. Unfortunately the law has not provided any means for ascertaining what shall be a sufficient indemnity. The Trustee Act of 1850 provides a method, but it cannot be said on whom the residuary legatee disputes the amount of the indemnity, and besides, it was passed since this suit was instituted. In this case, it appears that the solicitor for the legatee had himself approved of the indemnity proposed by the executor, and that the legatee afterwards went back from it. But if a difference arises on the question of the indemnity, does it follow, on the bill raising the question what indemnity the executors are entitled to, and my opinion being that

they are entitled to some indemnity, and there being no other complete indemnity than having the accounts taken in this Court—does it follow, I say, that the executors are to be deprived of their costs because they have insisted on too much, or rather on having the fund locked up for too long a period? I think twenty years is an unnecessarily long period to keep the fund impounded; but it is not because the executor has asked for too long a period of impoundment, he is, therefore, to be deprived of his costs. There is, therefore, no sufficient case to deprive these executors of their costs. As to the arguments founded on the executors having proceeded to distribute part of the fund, and that they were therefore bound to go on with the whole, I think there is no weight at all in it. It is one thing to pay a few small legacies, and another thing to part with the possession of the whole residue. There will, therefore, be the usual decree in a suit by residuary legatee for administration of the estate.

Aug. 2 and 3.

MORGAN v. MILMAN.

Specific performance—Defective execution of a power.

An estate was settled to such uses as father and son should jointly appoint by deed, and subject thereto to the use of the father for life, then to the use of the son for life, with remainders over. The father and son contracted with a railway company to sell part of the estate, but the price was thereafter to be settled. The company advanced part of the money to the father and son on their joint receipt, expressed to be "in respect of the lands, part of our estates," required by the company. The father then died, and subsequently other parts of the settled estates were contracted to be sold to the same company. In a suit filed for specific performance, the Court

Held, first, that the joint receipt was not such a defective execution of the power as would be aided by the Court; and, secondly, that the contract was not such a contract as would be enforced against the remainder-men.

This was a bill for specific performance. Certain estates were settled to the use of the late Sir Charles Morgan, bart. for life, with remainder to the use of the present Sir Charles Morgan, bart. his son, with divers remainders over in strict settlement. The father and son had a joint power of appointment by deed, executed in a particular form as to attestation, under which they could acquire the fee-simple in the estate. The father and son entered into a contract with the South Wales Railway Company to sell part of the land, but, under the circumstances detailed in the judgment, no regular exercise of the power of appointment was made, but part of the purchase-money was paid to the father and son on their joint receipt. The father then died, having appointed his son, the plaintiff, the present baronet, his executor. The plaintiff contended that the receipt operated as an execution of the former, which, though defective in form, the Court would aid, and that the company were bound to complete their contract, and therefore that he, the plaintiff, would be entitled to the purchase-money, whether belonging to the estate of his father, to whom he was executor, or as belonging to him in his own right; on the other hand, the parties entitled under the settlement insisted that the power not having been duly exercised, ought not to be enforced against by the aid of the Court, and therefore that the money was subject to the trusts of the settlement.

Sir *W. P. Wood, Rolt, Glasse, Osborne, Millman,* and *Woolley* for the same parties. They cited and commented on the following cases:—*Coventry* v. *Coventry*, 2 P. W. 222; *Campbell* v. *Leach*, Ambl. 749; *Shannon* v. *Bradstreet*, 1 Scho. & Lef. 52; *Coles* v. *Trecothick*, 9 Ves. 234; *Blagden* v. *Bradbear*, 12 Ves. 466; *Pigott* v. *Pennie*, 2 Sugd. Pow. 168, 6th edit. 99.

Tuesday, Aug. 3.—The VICE-CHANCELLOR.—This was a bill by the present Sir Charles Morgan for the specific performance of a contract with the South Wales Railway Company. The case was singularly circumstanced. By a settlement, the estates in question were settled to such uses as the late Sir Charles Morgan and his son (the plaintiff) should jointly appoint, subject thereto, to trustees for 500 years, then to the late and present Sir C. Morgan successively for life, with remainder to the sons of the present Sir C. Morgan in tail. There was a power in the settlement for the trustees (with consent of the late and present Sir C. Morgan, or the survivor of them) to agree with any railway or canal company for the sale of any part of the settled lands, and for the consideration-money to be paid for taking the same, and for the loss or damage which might be caused thereby. The settlement also contained the usual power of sale and exchange, and the moneys to arise from such sale were to be held for the same uses as the settled lands; so also as to the purchase moneys of lands to be taken by any such companies under the above power. In December 1845, the South Wales Railway Company being about to pass through these estates, the late Sir C. Morgan authorised his solicitor to negotiate with them for any part of the land which they might want. In March 1846, the company gave the usual notices to take part of the land. A surveyor valued the part proposed to be taken at 8,000*l.* The company did not agree to this, but offered 7,500*l.* Pending this valuation, Sir C. Morgan's solicitor wrote to the company's solicitor as to the title which the company would require, and he stated in his letter the joint power of appointment, and said he hoped therefore there would be no objection to the late and present Sir C. Morgan receiving the purchase-money without procuring any further consents. As the company wanted the land, it was agreed that they should deposit in the bank a sum of money sufficient to cover the whole purchase-money demanded, and that thereupon they should be let into possession, the total amount of the purchase-money to be afterwards settled by reference or by a jury. 8,000*l.* were accordingly so deposited, and the company was then asked to allow part of this sum to be paid at once to Sir C. Morgan and plaintiff. This they refused. But afterwards they said they would permit 7,500*l.* to be paid out on a receipt being given. Accordingly the following receipt (signed by the late Sir C. Morgan and plaintiff) was delivered to the company, viz. "30th Sept. 1846. Received this day of the South Wales Company the sum of 7,500*l.* on account of the compensation money to be ultimately fixed and to be paid by the said company in respect of the lands, *part of our estates*, required for the South Wales Railway." The 7,500*l.* were then transferred into the name of the late Sir C. Morgan, and abstracts of the titles to the lands were delivered, but nothing further was done until his death. Since then 20,000*l.* had been agreed to be given by the company for the above-mentioned land, and other lands included in the settlement. The first power of appointment was never exercised, and it was now gone, by the death of Sir C. Morgan. The plaintiff, who was his executor, and also one of the donees of the joint power, contended that the defective execution of the power would be aided by the Court, and that he was entitled, against the company and the trustees of the settlement, to the purchase-money. The cases left no doubt that a valid contract for sale which could be enforced against a donee of a power would also be enforced against the remainder-man; but the cases went no further. A mere intention of the donee of a power to sell under it, would not bind the remainder-man. Then, was there in this case such a contract as bound the plaintiff, and could be enforced against him? I am sorry to say, that in my opinion there is not; the nearest approach to it is in the receipt for the 7,500*l.* but the lands are not sufficiently described there; the words are — "Lands, part of our estates." But what lands were meant? This the document does not inform us. Parol evidence could not be admitted to explain the meaning, and the receipt was not so connected with the notices as to enable them to be referred to for the purpose. Independently of this, the contract was to sell at a price to be afterwards fixed. That price never was fixed, and therefore specific performance could not be had, and the remainder-man under these circumstances, could not be bound. The case of *Campbell* v. *Leach*, Ambl. 740, was much referred to in the argument. But it appeared from Sugden on Powers (see Appendix, No. 25), that there were letters in that case which probably contained the contract. It was clear from the note in Sugden, that the letters were written by the infant's father, and in all probability the case must have gone upon that. My conclusion, therefore, is, that on the whole of this case there is no such contract as I can enforce against the remainder-man; and therefore, perhaps, the strict course would be to do no more than dismiss this bill. I will, however, if the parties desire it, direct a reference to the Master to inquire whether it would be proper for the trustees to adopt this contract with the company.

Common Law Courts.

BANKRUPTCY.

BRISTOL BANKRUPTCY COURT.

(Before Mr. Commissioner HILL.)

July 27 and Aug. 24.

Re T. G. PHILLIPS.

Opposition to certificate—Witnesses examined in the absence of the bankrupt—Privilege of attorney's clerk from giving evidence against the bankrupt as to transactions occurring previously to the bankruptcy—Right to privilege passing to assignees.

Where the ground of opposition goes to the refusal of a bankrupt's certificate altogether, the depositions of witnesses examined in support of an alleged fraudulent removal of property, taken in the absence of the bankrupt, cannot be read or referred to; but the Court, upon the objection being taken, will adjourn the meeting for the production and re-examination of the witnesses de novo.

The clerk of an attorney stated to have been concerned in the preparation of a deed, by which it was sought to charge the bankrupt with having made a fraudulent preference and disposition of property in favour of a relation, has the same privilege as his principal, and cannot, on claiming such privilege, be called on to give evidence against the bankrupt on the application of the assignees, and such privilege does not pass to the assignees or the creditors under the adjudication, but is inherent in, and the personal privilege of, the client, the bankrupt, and is not divested by bankruptcy.

The bankrupt, who was a grocer and tea-dealer at Newport, in Monmouthshire, had been adjourned on his last examination sine die, without protection, and had subsequently been arrested and imprisoned in Monmouth Gaol, having been taken up on a writ of capias issued on a certificate granted under the 257th section of the Act. After remaining in prison some months, he applied, under the 259th section, for his discharge, being before the period thereby limited for bankrupts remaining in prison for offences committed against the Bankrupt Laws had expired, and was, on such application, discharged by the Court ad misericordiam. He afterwards passed his last examination, and now (July 27th) came up upon an application for his certificate.

Abbot supported.

W. Bevan, for Mr. Jerram, of London, the assignee, and principal creditor, opposed the allowance of the bankrupt's certificate, on the grounds of improperly contracting debts, fraudulent preference, and disposition of property, keeping improper books of account, and for concealment of property; and was proceeding to refer to the depositions of witnesses on the file, in support of the last ground of opposition, when

Abbot objected to those depositions being read or referred to; they were not taken in the presence of the bankrupt, but at a meeting of which he had no notice, and he had no opportunity of cross-examining.

Mr. Commissioner HILL allowed the objection, and adjourned the meeting for the production and re-examination of the witnesses de novo; the ground of opposition going, as the learned commissioner observed, to the refusal of the certificate altogether. Adjourned to 24th August. *Objection allowed.*

Tuesday, August 24.—At this, the adjourned certificate sitting, the witnesses were re-examined,—*Abbot* attending to cross-examine and support the application of the bankrupt for his certificate.

Bevan, contrà (*Whitefield* for him).

The witnesses now somewhat varied in their statements of facts from the evidence they had given on their first examination; and did not completely substantiate the charge of concealment and removal of property, being two full chests of tea, alleged to have been improperly obtained from Mr. Jerram, the assignee, and opposing creditor, on the eve of bankruptcy, and as alleged, removed from the stock a day or two previously to the messenger going into possession. At an earlier stage of the proceedings, a lady had been examined as a witness, by the assignee,—in whose favour the bankrupt had executed a mortgage of some property at Newport, which it was now sought to impeach, as having been made in contemplation of bankruptcy, and fraud of the creditors; and this subject formed the ground of opposition for fraudulent preference and disposition of property. It was elicited on examination of this witness, that the instructions for and preparation of the mortgage were given to, and that the deed was prepared and execution obtained by, the clerk of an attorney, then practising at Newport, who was stated at the time to have been concerned for the bankrupt, in the transaction of the mortgage. The attorney's clerk was summoned to-day to give evidence on the part of the opposing creditor and assignee, touching the preparation and execution of this deed, with the object of discovering the circumstances under which it was executed, and in support of the opposition of fraudulent preference; the party in whose favour it was made, being a relative of the bankrupt, and the clerk attended in obedience to the summons. Upon being sworn, this witness objected to give his evidence, or to disclose any facts relative to the transaction, and claimed privilege as having acted on the occasion as the clerk of the solicitor stated to have been concerned for the bankrupt in the preparation of the deed, and refused to state what took place in reference to it, and on being asked for whom or on whose behalf he claimed such privilege, answered on behalf of the bankrupt. It was thereupon argued for the opposition, and in support of admitting the evidence,—first, that clerks to attorneys or barristers were not within the reason and exigency of the rule, as to privileged communications between solicitor and client, al-

though it might be otherwise if the principals themselves were present and claimed the privilege on behalf of the client; and, secondly, that if such privilege existed, and applied to the client before bankruptcy, it became divested, and transferred to the assignee, after the adjudication; and the creditors, therefore, now had a right to the evidence, and to the discovery sought of the witness, for the purpose of ulterior proceedings, if not in opposition to the present application for certificate.

Mr. Commissioner HILL observed, there were circumstances of grave suspicion attaching to the case; but with respect to the privilege claimed, he was of opinion that the evidence could not be disclosed, and the clerk had the same privilege as his principal, if present, and sought to be examined, would have, and neither could be permitted to give evidence of what had come to their knowledge as professional advisers of the client, and in the course of their employment; and with respect to the right to call for the disclosure argued to have passed to the assignees by the bankruptcy and adjudication, ruled that such privilege does not pass to the assignees or the creditors, but is inherent in and the personal privilege of the bankrupt, which is not divested by bankruptcy, but remains intact in the client.

Evidence rejected; certificate of second class; suspended for six months without protection.

(Upon this question see the recent case before Vice-Chancellor Turner, of *Chant* v. *Brown*, 19 Law T. Rep. 361; and see also *Mills* v. *Oddy*, 6 Car. & P. 728; Taylor on Evidence, 632, and cases there cited.)

(Before Commissioner Mr. Serjeant STEPHEN.)

Friday, Sept. 24.

Re JAMES FREDERICK LAWRENCE.

Witness objecting to be sworn—Conscientious objections—Committal—Order to intercept post letters.

A witness, who, from conscientious motives only, not being a member, or entertaining the principles of, the Society of Friends, or belonging to the denomination of people called Separatists, cannot object to be sworn when the oath is tendered; and it is not permitted by law that any such privilege shall extend to a witness so situated and refusing. Upon the objection being persisted in, the witness will be committed to prison; and the Court has no discretion but to exercise its authority; but the solicitor prosecuting the inquiry may waive the oath, and the witness will then be discharged from custody and examined without it.

When a bankrupt absconds, and does not surrender, the Court will make an order to intercept, and for delivery of, post-letters addressed to his place of business, to the official assignee.

The petition in this matter was filed on the 10th instant, by Messrs. Hodgkinson and Barnside, of Upper Thames-street, London; the bankrupt residing and carrying on business as a paper-maker, at Wookey Hole, near Wells, Somerset; and the adjudication made on the following day. The bankrupt did not surrender, and had absconded with a large amount of property in his possession.

W. Bevan, solicitor for the petitioning creditor, had obtained an order of the Court, directing that all post-letters addressed to the bankrupt at his place of business, should be delivered to the official assignee; and to-day witnesses were summoned for examination touching the estate of the bankrupt, and with the object of discovering his retreat, as well as for the discovery of the effects supposed to have been fraudulently removed. Mr. J. P. Lawrence, brother of the bankrupt, attended in obedience to the summons served on him; but on the oath being tendered to the witness, he objected to be sworn, stating that he was an Independent, and had conscientious objections to the oath proposed.

Mr. Commissioner STEPHEN.—You are called upon to be sworn as the law requires, and you must submit to do so, or take the consequences.

Witness.—I am commanded by an authority superior to earthly law, to "Swear not at all." I have no desire to set myself above the law, but I can only give you, "Yea," and "Nay," and for so doing, I must take the consequences.

Mr. Commissioner STEPHEN.—Do you profess to be one of the people called Quakers?

Witness.—No.

Mr. Commissioner STEPHEN.—I do not understand you to belong to the class called Separatists?

Witness.—I am a Separatist from the Church of England, but attend at Highbury Chapel; the congregation of which, it appeared, were not denominated Separatists but Independents.

Mr. Commissioner STEPHEN.—If you were acting upon a principle of conscience, in the course you have taken, it is impossible not to respect your motives, however we may lament your misguided judgment. In the meantime it is my duty to send you to prison.

Witness.—Well, I will go.

Mr. Commissioner STEPHEN.—Then stand down whilst the warrant for your committal is making out.

Committed.

[The witness was further asked, if he had a little time given him, whether he thought there was any chance of his altering in his determination? but he replied, "None whatever," and very coolly submitted to his fate of being sent to prison; he was then removed in custody, but during his temporary absence, the solicitor to the petitioning creditor very liberally intimated, that if the witness could be got to answer at all, he (the solicitor) would not press for his committal. He was thereupon recalled, and having given such information as was asked without oath, the learned Commissioner observed that he had not thought himself called on to interfere with the discretion of Mr. Bevan, the solicitor prosecuting the inquiry, but if the committal had not been waived, the duty of the Court was to send the witness to prison unconditionally.—REPORTER.]

Scotch Reports.

DIGEST OF SCOTCH CASES.

COURT OF SESSION.—FIRST DIVISION.

Saturday, Jan. 31, 1852.

ORR and BARBER v. THE UNION BANK OF SCOTLAND.

Letter of credit—Forged draft—Repetition—Liability—Scotch and English banks.

A. merchant in Glasgow, obtained a letter of credit from a bank in Glasgow upon a bank in England, in favour of B. and C. merchants in Liverpool. The bank in England paid away the contents of the letter of credit on a forged draft:

Held, that an action at the instance of A. B. and C. for recovery of the amount, did not lie against the Scotch bank.

This was an action to recover from a bank a sum of money given for a letter of credit which had been cashed to a party who had absconded with the money.

Upon the 22nd October, 1844, the late Mr. Gordon Campbell, merchant in Glasgow, with the view of making a remittance to the plaintiffs, Orr and Barber, at Liverpool, paid into the Union Bank at Glasgow a sum of 460*l.* 9s. and received in return a letter of credit, addressed to the Manchester and Liverpool District Banking Company, in the following terms:—

"Union Bank of Scotland, Glasgow,
"22nd October, 1844.

"No. 15,583, A, A.—Please to honour the drafts of Messrs. Orr and Barber to the extent of 460*l.* 9s. which charge to the Bank.

"I am, your very obedient servant,
(Signed) "JA. WATSON, Cashier.

"460*l.* 9s.—Entered, M. G. H.

"To the Manchester and Liverpool District Bank, Liverpool.—'Not transferable.'"

On the same day, Mr. Campbell wrote with it to Messrs. Orr and Barber; and the letter of advice, with the letter of credit itself, reached, in due course of post, the counting-house of these parties. When the letter of credit reached Liverpool, Mr. Orr, the only partner of the firm resident in this country, was absent in Ireland. During his absence, their clerk, F. R. Smith, was left in charge of the office, and he advised Mr. Campbell of the receipt of the letter of advice, and accompanying remittance. When Mr. Orr returned, Smith had absconded, and in the meantime the letter of credit had been presented to the Manchester and Liverpool District Bank, along with a draft for the whole sum contained therein, bearing to be subscribed "Orr and Barber." This draft was honoured by the Liverpool Bank, who retain it and the letter of credit as the evidence and voucher of payment; but Messrs. Orr and Barber aver that that payment was made upon a forged draft, and as the Liverpool Bank refuse to make a second payment, the present action has been instituted for recovery of the sum paid into the hands of the defendants at Glasgow by Mr. Campbell.

This action was raised at the instance of Orr and Barber, and also by Campbell, as executor and representative of his brother, "both parties suing as principals, and not one with the consent of the other." The ground of action was based upon the averment, that the defendants failed to perform what they undertook to do, in consideration of the 460*l.* 9s. and did not effectually establish a credit with the Liverpool District Bank in favour of Orr and Barber; and that that bank did not accept or fulfil the mandate contained in the letter of credit, and did not honour the drafts of Orr and Barber to the extent therein mentioned, or to any extent.

The defendants (the Union Bank) lodged in process documentary evidence to prove that in the accounts between the banks, the Union Bank, as on the 22nd October, 1844, credited the Liverpool Bank with the payment, and that these accounts were at once settled according to the invariable practice subsisting between the two banks.

The Lord Ordinary having found for the defendants, the plaintiffs appealed. The process was debated last session, and the Court ordered cases to be prepared, and to be laid, along with the whole cause, before the judges of the whole Court, for their opinion.

For the plaintiffs, it was contended that a letter of credit is not a transference of debt. It is merely a mandate to the party addressed to supply the person named in the letter with a sum of money, and, upon doing so, to charge it to the writer of the letter. But no debt arises against the writer of the letter until the request in the letter is complied with. (1 Bell. Com. 373; 1 Lex Mercatoria, 606, by Bearves; Molloy de Jure Marit. B. II. c. 10, s. 36; Pothier, Contrat de Change, Part II. Art. 3, s. 3, No. 236.) Payment upon a forgery is a nullity, and cannot be charged upon the party whose name is forged. (Thomson on Bills, 258, see note; *Borland* v. *The Thistle Bank*, Feb. 768; Mer. Dict. 877; Byles on Bills of Exchange, 6th edit. 266; Chitty on Bills, 8th edit. 425, 426; Bayley on Bills, 5th edit. 318, 320—322, 369, and 371; Storie on Promissory Notes, 464; *Johnson* v. *Waidle*, 3 Bing. N. C. 225. See also 1 Bell's Com. 373; Starkie on Evidence, last edit. 780; *Calder* v. *Aitchison*, 10th Sept. 1831; House of Lords Rep. 5 M. & S. 410; Pothier, Contrat de Change, p. 2, art. 3, s. 3; Bolt, 4 Bing. 473; *Main* v. *Bailey*, 10 Ad. & El. 616; Thomson, 320. It was not necessary to give Orr and Barber a title to sue that they should themselves be contracting parties with the defendants, provided a stipulation was made or implied in their favour. Stair, 1, 10, 5, p. 95; Ersk. 3, 1, 8; *Merchington* v. *Vernon*, 1 Bos. & P. Rép. 101. See note.

The defendants maintained that the obligation undertaken by them, by granting the letter of credit, has been fully discharged. They deny that they became bound to guarantee Messrs. Orr and Barber should actually receive into their hands the sum of 460*l.* 9s. They contend that the only obligation undertaken by them was to establish a credit with the Liverpool Bank in favour of Orr and Barber, and that as they granted a good and available letter of credit on the Liverpool Bank, being a solvent bank, no recourse can lie against them at the instance either of Campbell's representatives, or Orr and Barber, unless they return to the defendants the letter of credit dishonoured and unpaid. They can only be liable to refund to Campbell, if he could have no defence to an action at the instance of Orr and Barber for payment of the sum due by him to them. But by transmitting the letter of credit, Campbell has discharged his debt. (*Warwick* v. *Noakes*, 21st June, 1791; Peake's Cases, 67,) The letter, therefore, quoad Campbell, was a good document, and he has therefore no title to insist in this action. (See also Bayley on Bills, 138.). The Liverpool Bank having paid upon a forgery, the forged document is the property of Orr and Barber, who are entitled to receive it from that bank. But no action lies at their instance against the defendants, who never contracted with them. (*Johnson* v. *Windle*, Nov. 8, 1836; 3 Bing. N. C. 225.)

The case having been again called to-day,

N. C. Campbell appeared for the plaintiffs.

Inglis and *Wood* for the defendants.

The LORD PRESIDENT announced that a majority of the consulted judges were of opinion that the conclusions against the bank were not well-founded. His own previous opinion was thus confirmed. The duty of the Union Bank, after having received the money from Campbell, was quite plain. It was to establish a credit in favour of Orr and Barber at Liverpool; and this duty was regularly performed by them. The credit was acted on, and the contents of the letter were handed over to the person left in charge of the place of business of Orr and Barber, and admittedly entitled to receive their letters. The clerk absconds, and the simple question now is,—is this an action the conclusions of which can be sustained against the Union Bank in consequence of anything they may have done. It is impossible to find any grounds in law on which to found neglect of duty on their part, and there is nothing else which would render them liable. They established at Liverpool all that was required of them; and it is plain to demonstration, therefore, that it is not to the Union Bank that the plaintiffs must look for redress. As to English law, we have nothing to do with it. We are to administer our own law; and all we have to determine is, whether there is a good ground of action against the Union Bank of Glasgow, to compel them to pay the amount of this letter of credit, which has passed away from them entirely. He concurred in the opinions of the consulted judges that there was not.

Lord FULLERTON.—This case is one of great nicety, and certainly of great practical importance. Such a claim as that of the plaintiffs requires to be very rigorously investigated; and the effect of such

inquiry on me has been to create a very decided opinion that the action cannot be sustained. On the supposition that all the parties are subject to the jurisdiction of the Courts in this country, can there be a doubt that your lordships would reject the claim as now made, and would oblige those plaintiffs to proceed against the bank who cashed the cheque, as the party truly in fault? and this seems to rest on a very obvious principle. While the draft or cheque is the voucher against the receiver of the money of its payment, the letter of credit on which the bank pays is the voucher of that bank against the bank by which the letter was granted. When the persons, then, who have bought the letter of credit, and got it, chose, like the plaintiffs, to demand repayment of the price, it is clear that, in order to support that demand, they must produce and redeliver the letter of credit. No doubt, when admitted that it has not been acted on, its production is of no importance. It may, like any other mandate not acted on, be recalled. But when, on the other hand, the correspondent avers that the credit has been acted on, and payment made, and he retains the letter of credit as a voucher, it is indispensable for the parties claiming repayment of the money from the bank which received it, to recover the letter of credit, the voucher between the two banks, out of the hands of the bank retaining it, before they can advance one step in the action. Now, that is the case here; and the conclusive answer, in these circumstances, would have been,—take your steps against the bank which, as you aver, paid unduly; you can have no claim against us till you restore to us the letter of credit which is retained by our correspondents as a voucher against us in accounting with us, the Union Bank. The circumstance of the correspondents, the Manchester and Liverpool District Bank being subject to the law of England, really makes no difference in the case. That bank must either pay or redeliver the letter of credit; and if they aver as the ground of their refusal that the money was paid, that will just raise the question with the proper parties in England which the plaintiffs now seek, most unreasonably, to press against the defendants here, whether or not it was a payment which is good against the plaintiffs. But to find the defendants liable to repay, while the plaintiffs cannot redeliver the letter of credit, given only in consideration of the advance, seems unsupported by every principle of law, or even of ordinary fair dealing.

Lord CUNINGHAME also concurred.—The case of *Warwick* v. *Noakes*, 1 Peake's Cases, p. 67, shews that parties in England delivering a bill for value to an onerous purchaser, and which is despatched by post to a third party, in terms of his request, is not responsible for the contents of the bill if it is lost or embezzled; and the case of *Johnson* v. *Windle*, 3 Bing. N. Cases, p. 225, proves that there is no excuse for not bringing the action in England against the parties who committed the wrong (if any was committed), on the ground that a suit could not be maintained in England against the District Bank for want of the bill. Now, looking on the present as a case of mandate or obligation in mercantile business, I am of opinion that this is a case juris gentium, and depends on the law of trade generally, and not on any point peculiar to our municipal system. If so, it is believed to be the custom of the Supreme Courts both of England and Scotland, from the obvious policy of making the law of trade the same over the whole empire, to admit authoritative precedents in each country of intelligible and clear import, without seeking the aid of foreign counsel. In these circumstances, he could not sustain the present action against the defendants, whose conduct had been altogether blameless and unexceptionable, when the parties alleged to have been chiefly in fault in paying on a forged receipt are not sued, though amenable in their own forum.

Lord IVORY concurred with the majority of the Court.

Equity Courts.

LORD CHANCELLOR'S COURT.

Reported by C. H. KAINS, Esq. of Lincoln's-inn, Barrister-at-Law.

July 22 and 23.

ABEY v. ARNOLD.

Breach of trust—Liability of trustee—Specialty debt.

The liability arising from a breach of trust held to create only a simple contract debt.

The Courts will not readily imply a covenant so as to create a binding obligation on the part of a trustee.

A sum of 2,262*l.* Bank Three per Cent. Annuities was assigned to Thomas Arnold and the defendant William Arnold upon certain trusts,—2,095*l.* a part of such sum, was afterwards transferred by the Accountant-General into their joint names. The fund was subsequently transferred into the name of Thomas Arnold alone, who sold it out, received the proceeds, and applied them to his own use. Thomas Arnold died in 1844, and appointed the defendant, Arnold, and another person his executors. A suit was instituted for the administration of the testator's estate, under the direction of the Court, and the Master, by his report, found that his estate was liable to the amount of 1,970*l.* 18*s.* 6*d.* in respect of the sum of 2,095*l.* Bank Three per Cent. Annuities which had been sold out, and that the same constituted a debt and liability by specialty. The question was, whether that liability, in consequence of the breach of trust, was a specialty or a simple contract debt, the trust funds having been assigned to the new trustees by the deed appointing them upon the trusts of the settlement.

Lord Cranworth, V.C. on the hearing of the cause on further directions, decreed that the cestuis que trusts were creditors by simple contract only for the amount so misapplied.

From that decree they now appealed.

Willcock, *Malins*, and *Osborne* appeared for the appellants, and cited *Gifford* v. *Manley*, Ca. temp. Talb. 109; *Benson* v. *Benson*, 1 Pr. Wms. 130; *Lord Montford* v. *Lord Cadogan*, 19 Ves. 633; *Mavor* v. *Davenport*, 2 Si. 227; *Randall* v. *Lynch*, 12 East, 179.

Teed and *F. Webb* supported the decree of the Vice-Chancellor, and cited—*Vernon* v. *Vaudry*, 2 Atk. 119; *Cox* v. *Bateman*, 2 Ves. sen. 19; *Turner* v. *Wardle*, 7 Si. 80; *Wood* v. *Hardesty*, 2 Coll. 542; *Bartlett* v. *Hodgson*, 1 T. R. 42.

The LORD CHANCELLOR.—There is no difficulty in this case. A breach of trust does not create a specialty contract debt. That is clear on the authorities of *Cox* v. *Bateman* and *Vernon* v. *Vaudry*. In the case of *Lord Montford* v. *Lord Cadogan*, it was decided that the general words, "it is declared and agreed," amounted to a covenant, and all the cases in which sums misapplied have been held to be specialty debts, were cases in which the misapplication was contrary to a declaration made under seal. In *Bartlett* v. *Hodgson*, "it was declared and agreed that the trustees and their heirs should not be chargeable with, or accountable for, any money arising in execution of the said trusts but what the person or persons so to be accountable should actually receive." In that case, 2,800*l.* had been misapplied, and the Court held that, although the trustees were accountable for what they received, they were not so, as being under a covenant. The Courts will not readily imply a covenant; there must be words upon which the Court can act. The only point which I have to decide is, was Mr. Arnold, at the time of his death, under any covenant? I am of opinion that he was not. The assignment was made from the old to the new trustees upon the trusts of the settlement. There are no words which amount to a covenant. There is nothing to raise the obligation; no action at law could be maintained; and this Court can only enforce the obligation quâ trust. There has been a breach of trust, but there being no words which can raise a covenant, I must dismiss this appeal with costs.

Tuesday, July 27.

GARDEN v. INGRAM.

Lessor and lessee—Covenant to insure—Refusal of lessee to join in a receipt for money receivable under the covenant at the instance of his mortgagee and his lessor.

A lessee who had covenanted to insure leaseholds against fire in the joint names of himself and his lessor, mortgaged them by demise, and the mortgagee, under a power of sale, sold them. The premises were subsequently damaged by fire, and the lessee refused to join the lessor in giving a receipt to the insurance office to enable the mortgagee to receive the money payable under the policy, on the ground of an alleged purchase to himself, and of having a lien on the policy for money expended by him in reinstating the premises. On a claim filed by the mortgagee and his purchaser, it was

Held, affirming the decision of the Court below, that the lessee as mortgagor had no lien, and that he was bound to sign the receipt.

The remainder-man is entitled to the benefit of a policy effected by the tenant for life.

A lessee is not entitled as against his mortgagee to a lien for repairs on a policy which passed to him under the mortgage.

This was an appeal from a decision of the Vice-Chancellor Knight Bruce.

The claim was filed by the plaintiff as mortgagee by demise, and by a purchaser from him against the defendant, the mortgagor of certain leasehold premises, to compel him to deliver up a policy of insurance against fire, and to sign the usual receipt to the office for 190*l.* being part of the sum in which the premises in question were insured, and which had been partially destroyed.

The defendant, who, by his original lease, had covenanted to insure the premises from loss or damage by fire, in the joint names of himself and his lessor, mortgaged them in 1840 to the plaintiff, with a power of sale in default of payment, and who, in 1849 (the money not having been paid), in pursuance of the power, contracted to sell them to a purchaser, who subsequently became bankrupt, and whose assignees refused to complete. The plaintiff then agreed to sell the premises to the plaintiff James, with a stipulation, that as such purchaser he should have the benefit of the insurance money. Part of the premises, pending these negotiations, were destroyed by fire, and the loss sustained was settled at 190*l.* The plaintiff James, as such purchaser (the claim alleged), had rebuilt the premises, and had expended the full sum of 190*l.* in their reparation, and to whom the insurance company were willing to pay the amount on the joint receipt of the defendant and his lessor. The lessor had signed the receipt, but the defendant refused, on the ground that the plaintiff had, previously to the sale to James, contracted to sell the same to him; that on that understanding he had taken possession of the premises, and commenced clearing away the ruins, preparatory to their rebuilding, and had incurred considerable expense. The policy was in the hands of the defendant, who claimed a lien upon it for what he had so expended.

The Vice-Chancellor made a decree in the terms of the claim.

From this the defendant appealed.

Rogers supported the order of the Vice-Chancellor.

T. H. Terrell for the appeal.

The LORD CHANCELLOR.—The first question to be decided is, is not the mortgagee entitled to the benefit of the policy effected by the lessor and mortgagor? There are cases on the books upon the rights of persons in different interests to the benefit of policies of insurance, and I could have wished that they had been cited. It has been decided, that if a tenant for life insures, the remainder-man is entitled to the benefit of the policy. The policy in this case was intended as an indemnity to the lessor, and was effected in the joint names of the lessor and lessee, because the former had an interest in it; any advantage under it would enure to his benefit as landlord; and if the fire had happened before the date of the mortgage, the defendant could not have done any act which would have prevented any benefit receivable under it from being directed, according to its original destination. It must have gone, according to the terms of the covenant, in reinstating the property. Now, the parties interested in this policy are claiming against each other; and in the light in which I view this case, it is not very material to consider, whether, under the mortgage-deed, the policy passed to the mortgagee or not, because as whatever was to be received under it must be applied in reinstating the premises, the mortgagee would, of course, have the benefit. The defendant, the lessor and mortgagor, had covenanted to keep the property insured, and he could never be heard as claiming the money against his mortgagee. Independently of that circumstance, I am of opinion that the policy passed to the mortgagee. As regards the claim of the defendant to a lien on the policy in respect of the money which he says he has, as mortgagor, laid out in repairs, I am of opinion that he has no claim whatever to a shilling of his expenditure: he, as mortgagor, has the benefit of the expenditure, for he can redeem at any time; and if the premises are sold, they will fetch a higher price. He cannot claim for his expenditure as coming in aid of the policy, for the insurance office have the right of reinstating the premises, and if it should so avail itself, the expenditure of the mortgagee becomes a voluntary act on his part. I am of opinion that it is perfectly within the rules of this Court to compel the defendant to give up the policy, and to join the lessor in giving the necessary receipt. This appeal must be dismissed, with costs.

Wednesday, July 7.

Re RUGBY, WARWICK, AND WORCESTER RAILWAY COMPANY.

Ex parte PRENCE and EVANS.

Joint-Stock Companies Winding-up Acts—Company—Costs of winding up—Call to pay costs—Contributory—Discretion of the Master—Upfill's case considered.

An Act of Parliament for the construction of a railway not having been obtained, the directors, under a power in the deed, dissolved the company, and returned to such of the scripholders as consented to the cancellation of their shares 15s. per share, being part of a deposit of two guineas, with an undertaking that they would return such further sum as the committee of management should declare payable after the final settlement of all claims on the company and the directors. The company was subsequently wound up. There were no liabilities, and no funds for the payment of the costs of the winding up:

Held, that the Master had jurisdiction to make a call upon the contributories in respect of such costs.

Held also, that such of the scripholders as had received the 15s. per share were not liable to refund it, such sum having been paid to them in consideration of the cancellation of their shares:

Held also, that such scripholders, although they were not liable to refund the 15s. per share, were not exempt from a common and equal liability with the other contributories to the payment of the costs of the winding up, inasmuch as they had reserved to themselves by their contract with the directors a right to participate in the future assets of the company.

The winding-up Acts do not alter legal or equitable liabilities. They do not impose liabilities, legal or equitable, which did not before exist.

Incomplete companies or abortive schemes are within the operation of the winding-up Acts.

This was an appeal from a decision of the Vice-Chancellor Knight Bruce, the facts of which are reported at length in 17 Law T. Rep. 58; they are briefly alluded to in the Lord Chancellor's judgment.

Russell, *Winstanley*, and *Field* (of the Common Law Bar) appeared for the appellant, and argued that the being a contributory did not necessarily entail the payment of all kinds of debts. Parties might be contributories merely because they might have something to receive, others because they might have something to pay. The appellants were parties entitled to receive, and although in that sense contributories, they were not members of the company. The call made by the Master could not be enforced, because it was not a call for a definite sum, but a call for the payment of a balance, which had not been ascertained; that it ought to have been for a definite and ascertained sum; that the Master had not considered the several liabilities of the contributories, as he was bound to do, under the provisions of the Act; and cited *Hunter's* case, 1 Si. N.S. 435, and the 83rd sect. of the Winding-up Act, 1849.

Daniel, for the official manager, contended that *Hunter's* case did not apply; that the parties under whom the appellants claimed had signed the deed, and were therefore entitled to whatever benefits might accrue from the company; and that being entitled to the benefit, they were subject to the burthen. (*Ex parte Jay*, 5 De Gex & S. 122; and 18 Law T. Rep. 167, 282.)

Russell, in reply.

The LORD CHANCELLOR.—This is rather a singular case. The parties here bought of the persons who took in this incipient railway company certain scrip shares in the share market; the persons to whom they had been allotted had executed a certain deed between the different subscribers and the persons who were to be the officers of the company, and therefore, having bought those shares, and accepting the liabilities, and claiming the benefits, they must be considered as bound by the provisions of that instrument. Now that instrument particularly provided that each party should pay a deposit of two guineas per share, and that he should not be liable for any further call on account of expenses or otherwise, until the proposed Act of Parliament should have been obtained, unless the same should be required by the standing orders of the Houses of Parliament, and then only to the extent so required. The directors were authorised, at any time before the Act should be obtained, and of their sole authority, to dissolve the company; and thereupon to wind up and adjust its business transactions and liabilities, and for those purposes to represent and to act on behalf of and bind all the subscribers thereto, and their respective executors. The company failed to obtain their Act of Parliament, and the directors issued circulars to that effect, stating that they would shortly lay the accounts before the shareholders; that they had determined, in accordance with the wish of many of the shareholders, to return immediately 15s. a share to the holders of the scrip; that the scripholders were to send in their scrip, and be paid on their signing a paper stating that they, being entitled to so many shares in the railway the scrip of which was therewith sent, assented to the cancellation of the shares on their receiving 15s. on each share, and such further sum as the committee of management should declare payable after the final settlement of all claims on the company and the directors; such sums were to be "in full for all my share and interest whatsoever in the undertaking." Profit, no doubt, there could have been none; but still they were to have no other claim on the company. The appellants accepted the 15s. a share, and signed the documents to which I have referred. There can be no doubt that the Act that was then done was within the powers of the deed, and it was binding on all the parties. I must suppose this proposition to have been made with a knowledge of the state of the assets at the time it was made. Now, the acceptance of it has this effect,—it at once removes the scripholder, as a shareholder, from the company. He has no right to any further interference: he gives up his scrip, which is cancelled; but what he has a right to is this, to retain the 15s. which is paid to him as the price of the cancellation of his shares, and also to whatever the committee of management think his ultimate portion of the residue, after payment of all the claims on the company and on the directors; but he has no power to interfere,—he must take what the committee of management allot to him. There was, therefore, a very full consideration for the 15s. It appears, therefore, to be a contract binding all parties, and one with which this Court ought not to interfere. If matters had remained in that state, no question would ever have arisen between these scrip shareholders and the company themselves; whether the creditors could ever have come against those shareholders beyond their two guineas a share would have depended on a very different question; that would have depended whether the scripholder had or not, by dealing or by contract, made himself liable to the particular demand which a given creditor might attempt to establish against him. *Upfill's* case may be considered as no longer binding; that is to say, the House of Lords having considered it as compounded of fact and of law, it did not present such decision as the House was bound to follow. Although there was a difference of opinion as to whether the House had power (I apprehend it has) to correct its own errors, yet everybody was of opinion that case, depending on law and on fact, the House of Lords was at liberty, on a statement of facts, to decide according to the law (as they did decide it) applicable to such state of facts; the consequence of which was, that in a case, stronger than *Upfill's*, that is, where a party had paid his deposit (which in *Upfill's* case he had not), and where he had received a notice of the resolution of the committee, which according to *Upfill's* case he had not, and therefore a stronger case, it was decided that there was no liability; that there was no contract to which he could become liable to answer. As to the Winding-up Acts, they do not alter legal or equitable liabilities. They enable this Court to wind up even incomplete companies; that has also been decided in the House of Lords: the Acts apply to a company which never becomes complete—an abortive scheme is within their operation; still they do not impose liabilities, legal or equitable, which did not exist before. Now, these are costs of a proceeding which has been allowed by the Master and sanctioned by the Court—costs incurred in the winding up of a company, and not in respect of anything else; they are not costs of attempting to get in assets. Are, therefore, the appellants liable or not to contribute to their payment? I am of opinion that they are, although they are not liable beyond the two guineas; and although I may, perhaps, not hold them liable to refund the 15s. a share which they have already received, yet they are liable to contribute to the costs; and for this reason; they have reserved to themselves, by their contract with the directors, a right to participate in the further assets of the company if there should be any; the Act of Parliament applies to a company like this, which is not completely wound up, although it is dissolved; the case falls properly within the Acts, and as costs having been incurred in carrying out the intention of the Acts, these parties are properly contributories; if there ultimately should be any assets which would pay more than 15s. a share, they would be entitled to their share. So far, therefore, I think that they were properly put on the list of contributories, and that the Master's power under sec. 83 cannot be interfered with, he has the discretion, and the Court will give him credit for exercising that discretion, and will consider that his decision in that respect must generally be considered as final. But here the Master has decided a rule of law besides. He says (for that is the effect of his decision) that not only are these parties contributories generally with the other parties in respect of the costs of the winding up, but they are contributories in respect of the 15s. a share which they received out of the assets, that they must pay 15s. a share if it be necessary to the extinction and payment of the cost of winding up before anybody else who has not received that sum shall be called upon to pay a farthing. That certainly looks equitable, because it is putting everybody on the same footing; but the question is, is it legal? That is what I have to decide. Is it according to the rights of the parties? The official manager represents the general body; what right have the general body to come against these parties to whom they have paid the 15s. a share for a good consideration? Why are these parties to refund their 15s.? No authority has been cited for the purpose of supporting such a proposition as that, and I do not apprehend that there is any. The cases that have been quoted do not bear upon it. In the case of a legatee, if a legatee receives more than he is entitled to, he is paid by the trustee or executor; he could not claim against such legatee, but the other legatees who are disappointed may. They may say: "You have been paid more than your share of the assets," and so on; "You have got more than you are entitled to, to the exclusion of us;" but here the directors have exercised the power which was confided to them; they bind all the parties to the association, and they cannot get back that money. I think that the Master has, therefore, miscarried in making these parties liable exclusively in respect of the 15s. a share. It is money that they are entitled to keep; but that does not exempt them from a common and equal liability to the costs of winding up with the rest, for their own benefit as well as the benefit of the others, and, therefore, they are in that respect contributories within the meaning of the Act of Parliament, and I must therefore hold that the order of the Master is to be so far rectified as to place everybody on the same footing. I shall not send it back to the Master, or incur any further expense. I shall endorse the order with this: "The Court, declaring that the scrip shareholders who have received their 15s. a share, are not bound to bring that into contribution for the call now made for costs, let the Master's order stand as a call on all the parties rateably of 4s. a share, irrespective of the 15s. a share received by some of them, and so on."

COURT OF APPEAL IN CHANCERY.

Reported by OWEN DAVIES TUDOR, Esq. of the Middle Temple, Barrister-at-Law.

July 28 and August 4.

PLOWDEN *v.* HIDE.

Will—Revocation—Heir at law—Devisee.

A. contracted for the purchase of an estate at S. B. and made his will, devising it upon certain trusts; subsequently he took a conveyance of the estate at S. B. to the usual uses to bar dower:

Held, affirming the decree of the Court below, on the authority of Rawlins *v.* Burgis, 2 *V. & B.* 382, *that the devise of the estate at S. B. was thereby revoked.*

The same testator A. being the owner of an estate at B. which had been conveyed to him to the usual uses to bar dower, mortgaged the estate, and the proviso for redemption was, that the estate should be reconveyed to him, his heirs, appointees, or assigns, or to such other person or persons, to such uses and in such manner as he or they should direct; afterwards the testator made his will, devising the estate at B. upon certain trusts, and subsequently he paid off the mortgage and took a reconveyance of the estate at B. to the usual uses to bar dower:

Held, reversing the decision of the Court below, that as to the estate at B. the will was not revoked by the reconveyance of the mortgaged estate.

This was an appeal from the decision of the Vice-Chancellor Kinderaley, under the following circumstances:—In the year 1809, Henry Chicheley Plowden mortgaged in fee certain hereditaments in the parish of Boldre, forming part of the Newton-park estate, and he afterwards paid off the mortgage; whereupon, by indentures dated the 22nd and 23rd April, 1811, the same hereditaments were reconveyed to uses to bar dower, viz. "to the use of such person or persons, and for such estate or estates, and in such parts, shares, or proportions, manner or form, and either with or without power of revocation and new appointment, as the said Henry Chicheley Plowden shall by deed or will direct, limit, or appoint; and in default of such direction, limitation, or appointment, or until any such shall be made and take effect, and as to such estate or interest as shall not be directed, limited, or appointed, to the use of the said Henry Chicheley Plowden and his assigns, for and during the term of his natural life, without impeachment of or for any manner of waste; and after the determination of that estate by any means in his lifetime, to the use of John Dyneley, his executors, administrators, and assigns, upon trust, nevertheless, for the only benefit of the said Henry Chicheley Plowden and his assigns, to the intent that any wife of the said Henry Chicheley Plowden may be excluded from all dower or thirds, or right and title to dower or thirds of and in the said premises; and from and immediately after the determination of the said estate hereby limited to the said John Dyneley, his executors, administrators, and assigns, to the use of the said Henry Chicheley Plowden, his heirs and assigns, for ever." Soon after, the said Henry Chicheley Plowden borrowed 3,000*l.* of William Newton, on mortgage of this estate, and by indentures of lease and release, dated respectively the 30th April and 1st May, whereby, after reciting the indentures of lease and release of the 22nd and 23rd April, 1811, the said Henry Chicheley Plowden, in consideration of the 3,000*l.* advanced by Newton, appointed and conveyed the estate to Newton in fee, subject to a proviso for redemption, whereby it was declared and agreed that if the said Henry Chicheley Plowden, his heirs, appointees, executors, administrators, or assigns should pay or cause to be paid unto the said William Newton, his executors, administrators, and assigns the sum of 3,000*l.* with interest at the rate of 5*l.* per cent. per annum, on the 1st November then next ensuing, then the said William Newton, his heirs and assigns, and all and

every other person and persons claiming under him or them, should and would, upon the request and at the costs and charges of the said Henry Chicheley Plowden, his heirs, appointees, or assigns, reconvey and reassure the hereditaments and premises unto the said Henry Chicheley Plowden, his heirs, appointees, or assigns, or to such person or persons, to such uses and in such manner as he or they should direct, free from incumbrances.

In 1809 Henry Chicheley Plowden purchased certain lands called Hornscroft, at South Baddesley, at a sale by auction, for 1,900*l.* These lands were both freehold and leasehold, and were comprised in lot 1. There was, however, no written contract, nor any evidence as to the terms of the contract for the purchase.

On the 15th May, 1811, Henry Chicheley Plowden made his will, whereby he devised to John Dyneley, his heirs and assigns, "all and every my messuages, lands, tenements, and hereditaments, and all other my real estate whatsoever, or which I have contracted to purchase, situate in or near the parishes of Boldre and South Baddesley, in the county of Southampton, or elsewhere in England, or to which I, or any person or persons in trust for me, am, is, or are seised or entitled, for any estate of freehold and inheritance, or of freehold only, in possession, reversion, or expectancy, or of which I have power to dispose of or appoint by this my will, with their rights, members, and appurtenances, to hold to the said John Dyneley and his heirs;" to the use of the testator's wife during her widowhood; and after the determination of her estate, upon trust to sell, and divide the produce into fifteen parts, of which James Chicheley Plowden, the father, hereinafter mentioned, was to have four.

By an indenture, dated 9th November, 1811, and grounded on an indenture of lease, after reciting that the freeholds and leaseholds forming Hornscroft had been put up to sale, and that Henry Chicheley Plowden had been declared the highest bidder for and purchaser thereof at the price of 1,800*l.* and that it had been agreed that the hereditaments intended to be thereby conveyed, and forming the freehold part thereof, were of the value of 400*l.* and that it had been agreed that the said sum of 400*l.* should be the apportioned part of the said sum of 1,800*l.* to be paid in respect of and as the purchase and consideration money for the pieces of land and hereditaments thereinafter mentioned, and expressed to be thereby conveyed; it was witnessed that, in pursuance of the said agreement, and in consideration of 400*l.* paid as therein mentioned, certain persons therein mentioned conveyed unto the said Henry Chicheley Plowden, his heirs and assigns, the said hereditaments called Hornscroft, to hold, unto the said Henry Chicheley Plowden, his heirs and assigns, to such uses as the said Henry Chicheley Plowden should appoint; and in default of and until and subject to any such appointment, to the use of the said Henry Chicheley Plowden and his assigns for his life; and after the determination of that estate by any means in his lifetime, to the use of the said John Dyneley, his executors, administrators, and assigns during the said Henry C. Plowden's life, upon trust for the benefit of the said Henry Chicheley Plowden, and to the intent that any wife of the said Henry Chicheley Plowden might be excluded from dower, and after the determination of the estate so limited to the said John Dyneley to the use of the said Henry Chicheley Plowden, his heirs and assigns, with remainder to the use of the said John Dyneley, his executors, administrators, and assigns, during the life of the said Henry Chicheley Plowden, and his assigns, in trust for the said Henry Chicheley Plowden; with remainder to the said Henry Chicheley Plowden, his heirs and assigns, for ever.

The mortgage to Newton was afterwards paid off, and an indenture of release dated the 7th December, 1813, grounded on an indenture of lease, was made between the said William Newton, of the first part, the said Henry Chicheley Plowden of the second part, and the said John Dyneley of the third part; and thereby, after reciting the said indentures of the 30th April and the 1st May, 1811, it was witnessed that in consideration of the sum of 3,000*l.* to the said W. Newton paid by the said Henry Chicheley Plowden, in full for the said mortgage money and interest, he, the said William Newton, did bargain, sell, and release unto the said Henry Chicheley Plowden, and to his heirs and assigns, all and every the hereditaments comprised in the said indenture of the 1st May, 1811, to hold the same, unto the said Henry Chicheley Plowden, his heirs and assigns, for ever; nevertheless, to the use of such person or persons, &c. (in the same words as were made use of in the indenture of the 23rd April, 1811).

In 1821, Henry Chicheley Plowden died, and his widow entered into possession of his real estates, and amongst others those comprised in the before-mentioned indentures as tenant for life under his will, and remained in possession of them until her death, in 1848. James Chicheley Plowden, the heir of the testator, died intestate, as to his interest as such heir-at-law. In a suit instituted to carry into execution the trusts of the will of Henry Chicheley Plowden, the following questions arose:—First, as to the estate at South Baddesley, which the testator had contracted to purchase before the making of his will, whether his subsequently taking a conveyance to the usual uses to bar dower was a revocation of the will. Secondly, as to the estate at Boldre, mortgaged to Mr. Newton, whether the reconveyance by that gentleman did not revoke the devise of that property contained in the will. Sir R. T. Kindersley, V.C. held that as to the devise of both estates there had been a revocation. The first question his Honour considered quite free from all doubt; with regard to the second, his Honour said, that with respect to the mortgaged property, he thought the testator had an estate in fee-simple in the equity of redemption at the date of his will, and that it would follow, if he confined himself to this view of the matter, that a subsequent conveyance of the legal estate to the testator, in any other form than the fee, would be a revocation of the devise. The devisee had, however, a right to refer to the particular terms of the proviso for the redemption in the mortgage deed, as shewing an agreement between the mortgagor and the mortgagee, that upon the repayment of the mortgage money, the premises should be reconveyed, not simply to the mortgagor in fee, but in some other special form; and that if the legal estate was, as first reconveyed in the form in which, by the terms of the proviso, it was agreed to be reconveyed, the reconveyance did not operate as a revocation of the devise. That the terms of the proviso for redemption did not, however, warrant a reconveyance to uses to bar dower on the payment of the purchase-money, and a reconveyance to such uses, therefore, was a revocation of the devise. He could not decide that a contract to convey to A. his heirs, appointees, and assigns, imported that the conveyance was to be made to uses to bar dower as in the present case. And he referred to the judgment of Lord Langdale in *Bullin* v. *Fletcher*, 1 Keen, 376, as a clear and an important authority on that part of the case. An appeal was thereupon presented by parties interested in the estates under the trusts of the will, against the decision of the Vice-Chancellor.

Willcock and *Jessell*, for the appeal.

Malins and *Erskine*, for parties in the same interest.

J. Russell and *Lewin*, for the heir-at-law.

Sir *W. P. Wood*, *Glasse*, *Daniel*, *Hetherington*, and *Stevens*, for other parties.

Harmood v. *Oglander*, 6 Ves. 222; *Brydges* v. *Chandos*, 2 Ves. jun. 417; *Youde* v. *Jones*, 11 Sim. 163; *Thellusson* v. *Woodford*, 13 Ves. 209; *Goodtitle* v. *Otway*, 2 Hen. Black. 522; *Welby* v. *Welby*, 2 V. & B. 187; *Tickner* v. *Tickner*, 2 Atk. 742; *Doe* v. *Potts*, Dougl. 718; *Williams* v. *Owens*, 2 Ves. jun. 595; *Ward* v. *Moore*, 4 Madd. 368; *Brain* v. *Brain*, 6 Madd. 221; *Bullin* v. *Fletcher*, 2 My. & Cr. 432; *Poole* v. *Coates*, 2 Dru. & War. 497; *Lock* v. *Foote*, 5 Sim. 618; *Anson* v. *Lee*, 4 Sim. 364; *Tennant* v. *Tennant*, L. & G. 516; *Rawlins* v. *Burgis*, 2 V. & B. 382; *Ruscombe* v. *Hare*, 6 Dowl. 1; 2 Bligh, N.S. 192; *Innes* v. *Jackson*, and *Jackson* v. *Innes*, 16 Ves. 356; 1 Bligh, 104, were cited and commented on.

Lord Justice KNIGHT BRUCE.—The question of revocation or ademption, the only question argued before us in this case, relates to two distinct portions of the real estate of Mr. Henry Chicheley Plowden, the testator in the cause; one included in a mortgage of the 1st of May, 1811, and a conveyance of the 7th of December, 1813; the other included in neither of those instruments, but comprised in a deed of the 9th of November, 1811. With regard to the latter portion, I am unable to distinguish this from the case of *Rawlins* v. *Burgis*, which was decided in 1814 by a careful judge, since followed in more than one instance, and never, so far as I am aware, overruled. I do not think that we ought to refuse to follow it now. Whether, if the point of revocation or redemption that it determined were new, I should have held an opinion in conformity with that decision or not, is a question as to which it is unnecessary for me to say anything. With respect to the other portion, the title stands thus:—the hereditaments of which it consists having been acquired by the testator, were, by his desire, conveyed on the 23rd of April, 1811, in this manner: "To such uses as the testator should by deed or will appoint, and in default of and until appointment, to the use of the testator for his life, with remainder to the use of Mr. Dyneley, his executors, administrators, or assigns, during the testator's life, in trust for the testator, with remainder to the use of the testator, his heirs and assigns, for ever. Very soon afterwards, namely, on the 1st of May, 1811, he mortgaged those hereditaments in fee, Mr. Dyneley as his trustee joining in the mortgage to the mortgagee, Mr. Newton, whom in December 1813 the testator paid off, whereupon, by his direction, Mr. Newton, on the 7th of December, 1813, conveyed the mortgaged hereditaments to the testator and his heirs, to such uses as the testator should by deed or will appoint, and in default of and until appointment, to the use of the testator for his life, with remainder to the use of Dyneley, his executors, administrators, and assigns, during the testator's life, in trust for the testator, with remainder to the use of the testator, his heirs and assigns for ever." The testator's will devising these hereditaments having been made on the 15th of May, 1811, the point has arisen whether the effect of the conveyance of the 7th of December, 1813, was or was not to render the will inoperative as to them; a suggestion which, however startling to common sense, however foreign to natural equity, is yet rendered plausible, if not sound, by the state of the law of England, as it stood before the testator died in 1821,—a state upon this particular subject which was discreditable to a civilised country. It has since been altered, but not with reference to the property of men who had ceased to live before 1833. Their property is subject to the old law, which, however, was such as upon the present point, that no man I suppose would be willing, without absolute necessity, to treat a case as falling within it. Does the necessity exist here? I think not. I am of opinion that the object, the intention of the deed of the 1st of May, 1811, was to make the mortgage in fee and not otherwise to affect the title of the mortgaged property; and the conveyance of the 7th of December, 1813, having been to the same uses and for the same purposes as the uses and purposes by which it stood affected immediately upon the making of the mortgage of the 1st of May, 1811, my view of the matter is, that the conveyance of 1813 did not, in freeing the property from the mortgage, affect the title to the lands or the testator's interest in them, or his power over them otherwise than so far only as to make that wholly or in part legal which before had been merely equitable. It is true that Mr. Dyneley never was more than a mere trustee for the testator; this, however, seems to me to make no difference, for if it is conceded, as, in my opinion, it ought to be, that by the deed of mortgage, the testator meant the mortgage merely, and nothing more. Why should it be supposed that he ever intended the land to be reconveyed by the mortgagee simply to the use of the testator in fee, he himself having before the mortgage, as well as after the mortgage, caused them to be conveyed for his benefit to the uses usual for preventing dower? From the only reports that I have seen of the argument before the able judge, in whose court this petition originally was, I collect that neither *Ruscombe* v. *Hare*, nor *Innes* v. *Jackson*, before Lord Eldon, nor *Jackson* v. *Jackson*, before the House of Lords, nor any of that class, were cited before him. This I regret, for I might otherwise not have been placed under the necessity of differing from one whose judgment and the long intimacy I have the happiness to claim with him, make me estimate at least as highly as my own. He seems to have considered the proviso for redemption without reference to those authorities; that is the effect of the judgment. [Counsel here stated that those cases had been cited.] The judgment, however, does not allude to them; and I am not quite sure that were I to do so myself (that is, consider the proviso for redemption without reference to that class of cases), I should not arrive at his conclusion; but neither am I convinced that I should, for, perhaps, if my opinion ought to turn upon the language of the proviso, the expressions used are at least as much in the appellant's favour as against him, the clause being thus worded: "Provided always, and it is hereby declared and agreed that if the said Henry Chicheley Plowden, his heirs, appointees, executors, administrators, or assigns, shall and do well and truly pay, or cause to be paid, unto the mortgagee, his executors," and so on, "3,000*l.* with interest for the same without any deductions in the usual way"—then follow the usual string of unmeaning words,—"then and in such case, and immediately after such payment shall be made as aforesaid, the said William Newton, his heirs and assigns, and all and every other person or persons claiming or to claim, by, from, through, or under him or them, shall and will upon the request, and at the costs and charges of the said Henry Chicheley Plowden, his heirs, appointees, or assigns, reconvey and re-assure, or cause to, be reconveyed and re-assured, the said capital and other messuages, farms, and hereditaments hereby limited and appointed, released and conveyed, or intended to be released and conveyed, to them, and every part thereof, with their appurtenances, unto the said Henry Chicheley Plowden, his heirs, appointees, or assigns, or to such uses, and in such manner as he or they shall direct free from all incumbrances to be created by the mortgagee." On the whole, having, since the argument before us, read the authorities then cited, and every other within my knowledge, that it could on this dispute be important to refer to, and thinking that as to the question of revocation or redemption, this case stands exactly on the footing on which it would have stood if the testator,

having immediately before the mortgage, been simply seised in fee, had upon paying it off, taken from the mortgagee a simple reconveyance to himself in fee, because, having immediately before the mortgage, held the property subject to the usual limitations for preventing dower, he, upon paying it off, took from the mortgagee a conveyance or reconveyance, having limitations, the same in form, and substance, and object (even the trust being the same) as existed when the mortgage was made. I am of opinion that it may, consistently with *Tickner* v. *Tickner*, with *Rawlins* v. *Burgis*, and with every established rule of law, be held as I do hold, that this testator's testamentary dispositions are equitably in force with respect to the mortgaged portion of his real estate, and that so far at least it is not incumbent upon the Court to defeat his wishes, disappoint his intentions, and subvert his will.

Lord Justice Lord CRANWORTH.—I concur in the result at which my learned brother has arrived, and in a great measure upon the same grounds. It might be unnecessary for me to do more than to express that concurrence, but as we differ from the learned Vice-Chancellor, I thought it right unconnected with my learned brother, to put my view of the case down, so that I may state that also. It is unnecessary for me to go through the facts, because they have been already stated. The question divides itself into two branches; first, as it regards the South Baddesley land; and, secondly, as it regards the property at Boldre mortgaged to Mr. Newton. With respect to the former, there is no doubt of the soundness of the opinion appealed from, unless we are prepared (which we are not) to act in opposition to the case of *Rawlins* v. *Burgis*, decided by Sir Thomas Plumer in 1814. The purchase in this case was made at an auction, and in the absence of evidence one cannot assume that there was any special stipulation as to the form of conveyance to be made. The purchaser, therefore, became equitable owner in fee; and *Rawlins* v. *Burgis*, decides that in such circumstances a conveyance to the purchaser to the usual uses to bar dower, operates as a revocation of the previous devise of the equitable fee. As to the lands at South Baddesley, therefore, the present case cannot be distinguished from, and must be governed by, that authority. Indeed, as to these lands, the petitioner can hardly be said to have seriously questioned the correctness of the Vice-Chancellor's decision. The main contention before us was as to the messuages and lands at Boldre, mortgaged to Newton. The Vice-Chancellor decided that the devise of this property was revoked by the reconveyance in December 1813; and my impression during the argument was in favour of that decision, but subsequent consideration of the doctrine applicable to such cases, has led me to a different conclusion. Sir Richard Kindersley reasoned thus:—If a person seised in fee made a mortgage in fee, in the ordinary way, reserving the right of redemption to himself and his heirs; and then before the Act of 7 Wm. 4, & 1 Vict. c. 26, had come into operation, devised his equity of redemption, a subsequent reconveyance to him and his heirs by the mortgagee upon the mortgage debt being paid off, did not affect the previous devise of the equity; but if the reconveyance was made not to the mortgagee in fee, but to him, to the usual uses to bar dower, this effected a revocation, for the same reasons as are applicable to the case of a purchaser. The conveyance in such a case was not merely a uniting of the legal with the equitable estate, it effected and created new rights and incidents in the property, and so operated as a revocation of the devise. Assuming that to be clear in the case of a simple mortgage in fee, with the right of redemption reserved to the mortgagee, and his heirs, the Vice-Chancellor then proceeded to consider how far that general principle was affected by the special terms in which, in this case, the redemption was reserved. The reconveyance is to be "unto the said Henry Chicheley Plowden, his heirs, appointees, or assigns, or to such other person or persons, to such uses and in such manner as he or they shall direct." Even taking these words to indicate the form of reconveyance, which was the most favourable interpretation for the appellant; still, although such a proviso would have warranted a reconveyance to such uses as the mortgagor should appoint, and in default of appointment to him and his heirs; and though a reconveyance so made would, upon this construction of the proviso, have effected a revocation, yet the language used did not, in the judgment of the Vice-Chancellor, warrant a reconveyance in the form actually adopted, namely, to such uses as the said Henry Chicheley Plowden should by deed or will appoint, and in default of appointment, to the use of the said Henry Chicheley Plowden for life, with remainder to the use of the said John Dyneley himself for life, and in trust for the said Henry Chicheley Plowden, with an ultimate limitation to the use of the said Henry Chicheley Plowden, his heirs and assigns. His Honour was of opinion that these uses differed materially from those warranted by the proviso for redemption, and so that the reconveyance not having been made in the stipulated mode, operated as a revocation of the previous devise. Of the correctness of this reasoning, so far as relates to the first branch of it, there cannot, I think, be any doubt. Taking the case of *Rawlins* v. *Burgis* to be a binding authority, I can discover no distinction in principle between the case of a person entitled in fee and an equity of redemption in lands mortgaged in fee, and that of a person equitably entitled to lands under a contract to purchase them. If a conveyance to the ordinary uses to bar dower caused, before the statute of 1837, a revocation of the will in the latter case, it must have had the same effect in the former. Such a construction is in conformity with what would have happened if the devisee had been the owner of the legal instead of the equitable fee. If a person seised in fee made his will before the statute, and thereby devised his inheritance, and afterwards conveyed his legal estate so as to take it back to himself, not in fee simple absolutely, but to the usual uses to bar dower, this unquestionably was a revocation of the devise, and on this analogy the decision in *Rawlins* v. *Burgis* was founded, applying to the devise of the equitable fee the doctrine applicable to a will affecting the legal estate; and, as I have already stated, I see no reason for thinking that a different rule should be applied to the devise of an equity of redemption from that governing the case of a person entitled to the fee simple by contract as a purchaser. So far, therefore, I concur in the view taken of the law by the Vice-Chancellor. But as to the second branch of this reasoning, I think there is at all events very considerable doubt. I am not prepared to assent to the proposition that if an equity of redemption in a mortgage in fee, had before the Act been reserved to such uses as the mortgagor should appoint, and in default of appointment to the use of the mortgagee and his heirs, then a reconveyance to the usual uses to bar dower would have operated as a revocation of a devise made before the reconveyance. When the legal owner in fee, after devising his estate, conveyed it by feoffment or by lease and release to such uses as he should appoint; and, in default of appointment, to the use of himself for life, with remainder to a trustee during his life, and with the ultimate use to himself in fee, there was a change of the seisin; but if the owner of an estate had an absolute power of appointment as well as the legal fee, that is to say, if his estate stood limited to such uses as he should appoint; and in default of appointment, to the use of himself in fee, the consequences might be different. In such a case, if the owner, after making his will and devising, had made an appointment so as to take an estate with the ordinary uses and limitations to bar dower, I know of no authority deciding that this would be a revocation of the will. There would in such a case, be no change of seisin, and so the principles applicable to a devise by a person having a mere estate in fee simple, do not necessarily apply. And if this would not have been a revocation at law, it would seem to follow that it would not have been a revocation in equity, when the subject-matter of the devise was an equity of redemption. Upon this point, however, it is not necessary for me to say that I differ from Sir Richard Kindersley; for even, assuming his view of the law to be correct on this second point as well as on the first, still I think that here there was no revocation, and that upon grounds not apparently brought before the Court below in the argument. The principle upon which I conceive this case must rest is, that by the deeds of the 6th and 7th of December, 1813, the estate was reconveyed to precisely the same uses to which it had stood limited previously to the mortgage. It is a well-established principle, that in the absence of express stipulation to the contrary, a mortgage is to be considered in this court as a mere charge, taking out of the property so much as is necessary for accomplishing the object; and leaving all not so abstracted precisely as it stood before the mortgage. The equity of redemption, therefore, attaches on the estate of the mortgagor, with all the same rights, restrictions, and qualifications to which his legal estate had been previously subject. When, therefore, the mortgagor pays off the mortgage, and takes a conveyance of the property to the same uses to which it had stood limited previously to the mortgage, he is, in fact, only doing that which has been described as bringing home the legal estate, or as clothing the equitable with the legal estate, and all the authorities shew that there was no revocation of a devise of the equitable interest made while the legal interest was outstanding. That is precisely what was done here. The estate previously to the mortgage stood limited to such uses as the said Henry Chicheley Plowden should by deed or will appoint; and in default of appointment to the use of him for life, with remainder to the use of John Dyneley, his executors and administrators, during the life of, and in trust for, the said Henry Chicheley Plowden and his assigns; and after the expiration of those estates, to the use of the said Henry Chicheley Plowden and his heirs. When the mortgage was paid off, in 1813, the property was reconveyed to these same uses, bringing the case within the rule to which I have referred. Of course, however, if the mortgagor had expressly stipulated that the right of redemption should be reserved in a manner not according to the previous state of the property mortgaged, the general rule would then give way to such express stipulation; and the only remaining question, therefore, here is, whether there is any such express stipulation to be found on the face of this mortgage. I am clearly of opinion that there is not. I have already adverted to the language of the proviso for redemption. Sir Richard Kindersley reasoned on the assumption that it was intended to point out a peculiar mode of reconveyance. He did so, because he considered that was the view the most favourable for the party against whom he was deciding, and not because it was the correct construction of the proviso. This, I think, may be fairly inferred from the whole tenor of the observations in this case, in which I concur. There is a profusion of words in the proviso in question; in truth, it is no more than a proviso for repayment of the mortgage-money to the mortgagee, and a reconveyance to Mr. Plowden, his heirs, or assigns. The word "appointees" can hardly be said to have any meaning beyond the word "assigns," and like those which follow, "such person or persons," is, in fact, tautology. It must, therefore, be treated merely as a reconveyance to the mortgagor and his heirs, and it does not shew any intention affecting the nature of the estate out of which the mortgage was granted. I am very glad, therefore, consistently with what I consider the principles applicable to this case, to be enabled to support and give effect to the will of the testator.

ROLLS COURT.

Reported by J. MACAULAY, Esq. of the Inner Temple, Barrister-at-Law.

Jan. 28, *Feb.* 9, *and March* 29.

COULTHURST v. CARTER.

Will, construction of—Gift to parents—Gift to issue by way of substitution—Period to which words referable—Class, children of one of.

The children of a deceased parent who formed one of a class cannot take by substitution when the parent could not have taken according to the terms of the will:

A testatrix bequeathed a moiety of her residuary personal estate on the death of her niece without leaving issue, and after the death of the survivor of her niece and niece's mother, to the children then living of A. A. deceased, and the issue then living of any child of A. A. dying in the lifetime of the niece, such issue taking only their parent's share: and if all or any of the children of A. A. should die without issue in the lifetime of the niece, gave their share or shares among the children of M. H. living at the decease of the niece. The niece died without having been married; then the niece's mother died. M. H. died before the niece, leaving children:

Held, that the children of M. H. were entitled under the will.

The question in this case came before the Court on a special case, under the 13 & 14 Vict. c. 35. It appeared that Eleanor Waisman, by will bearing date 15th December, 1825, devised and bequeathed to John Nicholas Coulthurst, William Sidgwick, and Thomas Kendall, and the survivor of them, his heirs, executors, and administrators, all her real estate, and all her personal estate not specifically bequeathed, to hold to them and the survivor, &c. for ever according to the nature or tenure thereof upon trust, to pay debts, funeral expenses, and legacies out of the personal estate, and to invest the remainder; and upon further trust, to pay, or otherwise permit the testatrix's niece Mariana Wainman during the term of her natural life, and from and after her death her (Mariana Wainman's) mother, during the term of her natural life (if she should survive her daughter, and left no issue her surviving), to receive and take the rents arising from the testator's real estate, and the interest of the residue of her personal estate devised to her trustees as aforesaid, the same to be paid and payable to, or received by, his said niece, and after her death without issue, to or by her said mother during their respective lives when and as the same should from time to time be received or payable, and after the decease of her said niece and also after the decease of her (the niece's) said mother, in case the estate thereinbefore limited to her said mother, should take effect, upon further trust that they the said N. Coulthurst, W. Sidgwick, and T. Kendall, or the survivor of them, or the heirs, executors, or administrators of such survivor, should sell and dispose of the testatrix's real estate. Then follows this clause:—"And my will and mind is, and I do hereby direct that the money to arise by such sale or sales as aforesaid shall sink into and become part of my residuary personal estate, which I dispose of as hereinafter mentioned, that is to say, in case my said niece shall die leaving

issue, then I give and bequeath my said residuary personal estate, and every part thereof, unto, between, and among all and every the child and children, and the issue of any deceased child or children of my said niece Mariana Wainman, living at her decease, equally to be divided between them, share and share alike, and to their respective executors, administrators, and assigns, the issue of such deceased child or children nevertheless taking the share or shares to which their parent or parents would have been entitled if living at the decease of my said niece. And I order and direct that my said trustees, and the survivor of them, and the heirs, executors, and administrators of such survivor, do pay and deliver, and transfer the same accordingly. And in case my said niece Mariana Wainman shall die leaving no issue, I will and direct that my said trustees, and the survivor of them, and the heirs, executors, and administrators of such survivor, shall and do, within six months after the death of the survivor of my said niece and her mother, pay from and out of my personal estate the legacy or sum of 100*l.* unto, between, and among such of the children of Abraham Margerison, as shall be then living equally share and share alike; and as to all the rest and residue of my said personal estate and effects whatsoever, in the event aforesaid, namely, the death of my said niece, leaving no lawful issue her surviving, I give and bequeath the same from and after the death of the survivor of them my said niece and her mother, as follows, namely, one undivided moiety or equal half-part thereof unto, between, and amongst such of the children of the late Richard Margerison and the issue of any deceased child or children of the said R. Margerison as shall be then living, and to their respective executors, administrators, and assigns, share and share alike, such issue of any such deceased child or children of the said R. Margerison nevertheless taking the share or shares only that their parent or parents would have taken in case such parent or parents were then living. And the other undivided moiety or equal half-part thereof unto, between, and amongst the child and children then living of Ann Armitage, deceased, the sister of my late father, and the issue then living of any child or children of the said Ann Armitage dying in the lifetime of my said niece, and to their respective executors, administrators, and assigns, share and share alike, the issue of any such deceased child or children of the said Ann Armitage nevertheless taking only the share or shares that their respective parent or parents would have taken if living at the death of my said niece. And in case all or any one or more of the children of the said Ann Armitage shall die without issue in the lifetime of my said niece, then I give and bequeath the share or shares of him, her, or them so dying unto, between, and amongst the child and children of Mary Haigh, niece of my late father, who shall be living at the decease of my said niece, and to their respective executors, administrators, and assigns, equally to be divided between them share and share alike. And I order and direct my said trustees to convey and assure, pay, deliver, and transfer, the same accordingly."

The testatrix died on the 27th of December, 1825, having appointed her trustees executors of her will, who proved the same on the 27th of March, 1826. The testatrix died possessed of freehold, copyhold, and personal estates. Mariana Wainman was both her heiress-at-law and heiress according to the custom of the manor of which the copyholds were held, and she was also her sole next of kin at the time of her death. On the 15th of July, 1830, Mariana Wainman died without having been married; and on the 13th of January, 1850, Ann Wainman, her mother, died. These were ten children of R. Margerison, some of whom survived the testatrix, but all of them were dead before the 13th of January, 1850; but there were then living many both children and grandchildren of these children, some of them issue of the children of R. Margerison, who died before, and some of them of the children who survived the testatrix. The children of Ann Armitage were seven in number, of whom four sons and a daughter died without issue before the 16th of December, 1825. Hannah Armitage, a sixth child, married the defendant, John Carter, on the 15th of August, 1805, and died on the 7th of March, 1847, leaving two children, John Armitage Carter and Rebecca Ann Wainman, who afterwards became the wife of the Rev. Wm. Lisle, and died in September 1850, and to whom there is now no personal representative. John Carter, however, took out administration to his late wife. Mary Armitage, the remaining child of Ann Armitage, married Mr. Haigh, and died on the 29th of September, 1823, having had eight children, of whom seven are defendants; and Ann Haigh, the eighth, died on the 21st of March, 1849, leaving her seven brothers and sisters her only next of kin at the time of her death, but no representation has been taken out to her. Mariana Wainman, by her will dated the 30th of August, 1829, gave and bequeathed to her mother, Ann Wainman, all her personal estate and effects whatsoever, and thereby appointed Ann Wainman sole executrix and residuary devisee and legatee; and the will was proved on the 30th of January, 1851. On the 2nd of May, 1846, Ann Wainman, by her will, appointed the defendants, Parnall Robert Maillard and Thomas Pulvertoft Phirkill her executors, who proved the same on the 29th of January, 1850. Thomas Kendall, one of the trustees of the testatrix Eleanor Wainman's will, having died, the surviving trustees, Coulthurst and Sidgwick, sold all the real estate, and got in all her personal estate, and the residue, after payment of debts and legacies, amounted to about 2,000*l.* one moiety of which was now claimed by four different parties; first, by John Carter, as personal representative of his late wife; secondly, by John Armitage Carter and William Lisle, in right of his late wife, on the ground that John Armitage Carter and Mrs. Lisle were the only children of Hannah Carter, who survived her and Ann Wainman; thirdly, by the defendants, the children of Mary Haigh; and, fourthly, by the defendants, Maillard and Phirkill, as personal representatives of Mariana Wainman, the testatrix's heiress-at-law and sole next of kin; and the question now was, who was entitled to this moiety of the testatrix's residuary real and personal estate secondly given by her will.

Roupell and *Wickens* contended that the children of Ann Armitage could take nothing unless they survived both Mariana Wainman and her mother, and therefore the children of Hannah Carter could take nothing. The question was not quite so clear as regarded the children of Mary Haigh.

Walpole and *Turner* for the next of kin.

Monday, March 29.—The MASTER of the ROLLS.—I reserved my judgment upon the question whether the children of Mary Haigh, a child of Ann Armitage, who was dead at the date of the will, was excluded. It is a settled rule that children of a deceased parent, who formed one of a class cannot take by substitution when the parent could not have taken according to the terms of the will. Mary Haigh was dead at the date of the will; had she lived till the period of distribution she could have taken only as one of the children of Ann Armitage; she therefore could not have taken under the bequest to the child and children then living of Ann Armitage, the reference being to the death of the survivor of Ann Wainman and Mariana Wainman. If, therefore, the proper construction was, that the issue of a child of Ann Armitage could only take by substitution for their parent, these children of Mary Haigh were not entitled to any interest in the share of the residue. This was a principle established by *Peel* v. *Catlow*, 9 Sim. 372; *Waugh* v. *Waugh*, 2 Myl. & K. 41; *Christopher* v. *Naylor*, 1 Mer. 320. But if the construction was that the issue of a deceased child of Ann Armitage did not take by substitution for the parent, but as passing objects of the gifts, the case was varied, and then if the only condition expressed by the words of the will was that they shall be issue of a child of Ann Armitage who died in the lifetime of Mariana Wainman, and which issue shall be living at the decease of the survivor of Ann Wainman and Mariana Wainman, then the children of Ann Haigh answer the conditions; and the circumstance that Ann Haigh died before the date of the will could not affect the rights of her children; and such was the principle of the cases of *Tytherleigh* v. *Harbin*, 6 Sim. 329; *Giles* v. *Giles*, 8 Sim. 360; *Jarvis* v. *Pond*, 9 Sim. 549, which held that if there was a substitutive gift to the children of a particular person, and to the issue of such of them as should be dead leaving issue, the issue of a child dead at the date of the will would be entitled to a share. In this case, the condition which was to entitle the children of Ann Armitage to take was that they should have survived Ann Wainman and Mariana her daughter; and the condition which was to entitle the issue of the children of Ann Armitage to take was, that the children should have died in the lifetime of the daughter, Mariana Wainman, and that the issue of the children should have survived her and her mother. Upon the first part of the gift, the first question is, who are the objects of it? The gift is to the children "then living" of Ann Armitage, and to the issue "then living" of the children of Ann Armitage dying in the lifetime of the niece. The object, therefore, according to the natural import of the word "and," are both the children of Ann Armitage living at the decease of the niece and her mother, and the issue of the children of Ann Armitage, who might have died in the lifetime of the niece. Upon this standing alone, and if not controlled by any other part of the will, I should be of opinion that there was an original and independent gift to the issue of a child of Ann Armitage, who was dead at the time of the distribution, and that, consequently, the issue of Mary Haigh, who had died before the date of the will, but which issue survived the mother and daughter, Ann and Mariana Wainman, but died before the date of the will, would be entitled. Upon the words taken alone, this appears to be the meaning; the word "dying" does not here import futurity, or require as a condition to entitle the issue of a deceased child to take, that the child of Ann Armitage should die after the date of the will, but implies that the child shall have died in the lifetime of the niece Mariana Wainman. I am next to consider whether this construction is contracted by the subsequent words of the will; and the latter part of this clause in the will, coupled with the state of the family existing at the date of the will, throws considerable doubt on the construction. The state of the family at the date of the will was this: there was only one child of Ann Armitage alive, and of the other children of Ann Armitage who had previously died, one alone, Mary Haigh, had left issue. My first impression was, that the words, "and in case all," &c., would in truth have given the same thing to the children of Mary Haigh as the construction to be put on the former clause, and this argument was strongly pressed upon me; but upon the best consideration I am able to give I have arrived at the conclusion that this is not the true construction of the clause, and that the words "shall die," in the subsequent part of the clause imports futurity, that is, death after the date of the will, and that in the prior part of the clause the word "dying" has not any such effect, but simply imports the circumstance of death at any time prior to the decease of Mariana Wainman, whether it is before or after the date of the will. The result of this construction would be, that the testatrix, when she made her will, contemplated that her estate was to be divided into as many shares as there were children of Ann Armitage then living, or dead having left issue; that in case a child of Ann Armitage then living should die, leaving issue, before the niece, the issue who survived the niece and her mother would take that child's share; but that if a child died before the niece without leaving issue, the share would go to the issue of Mary Haigh. To explain this in the actual state of the family, if the actual state of the family were in truth present to the mind of the testatrix when she made her will, it would be this, that her estate was, in the event of the death of Mariana Wainman without issue, to be divided into two portions, one of which was to go to the issue of Mary Haigh, who survived Mariana Wainman and her mother, and the other portion was to go to Hannah Carter; but that if she died before the niece, leaving issue, it was to go to the issue, but if she left no issue that share was to go to the issue of Mary Haigh who should be then alive. It is obvious to me that the intention of the testatrix has been to a great extent defeated by the words she has used, which, in the case of a child of Ann Armitage living at the date of the will, made it a condition before the issue of such children could take, that the child should have died in the lifetime of the niece. It is obvious that she did not anticipate or provide for the event which has occurred,—viz. that of the niece, Mariana Wainman, dying before her mother, and of Hannah Carter, the child of Ann Armitage, surviving Mariana Wainman and dying before Ann Wainman; but I cannot make a will for her, and the words she has used plainly import a gift over only in the event of Hannah Carter dying in the life of Mariana Wainman. I am of opinion, however, that intestacy only extends to the half which Hannah Carter would have taken had she survived both the niece and the mother; and I am of opinion, therefore, that one-half of the testator's property went to the children of Mary Haigh, who survived Ann Wainman, and that the other half is undisposed of, and goes to the next of kin of the testatrix.

Saturday, June 26.

WEBSTER *v.* WEBSTER.

Practice—Foreclosure—Decree absolute in the first instance.

This was a suit for foreclosure and a mortgage, and came on to be heard on bill and answer. One of the defendants by his answer disclaimed; and the other, who was entitled to redeem, did not by his answer nor by counsel at the bar claim time to redeem. Under these circumstances

C. Webster, on behalf of the plaintiff, asked for a decree of foreclosure, absolute in the first instance and without a reference to the Master to ascertain what was due to the plaintiff.

W. Forbes and *Sidebottom*, for the respective defendants.

The MASTER of the ROLLS made the decree as asked by the plaintiff.

VICE-CHANCELLOR PARKER'S COURT.

Reported by GEO. S. ADLETTE, Esq. of the Middle Temple, Barrister-at-Law.

May 4, 5, *and* 6.

COOMBE *v.* BROMLEY.

Solicitor and client—Partnership—Breach of trust. A. B. and C. were trustees of a sum of stock, the

trusts being for themselves and their respective children. Upon the suggestion of D. their solicitor, who was in partnership with E., they associated D.'s name with their own names in the trust, and by a deed dated in 1822, and executed by the four trustees, the trusts of the fund were declared. In 1824 the stock was sold out for the purpose of investment on mortgage, and D. received the money and paid it into the partnership account of himself and E. A., B. and C. consented to the investment being made in D.'s name, alone, and accordingly D. represented that the money was thus invested, when, in fact it had not been, but D. regularly paid the interest. In 1825, the money was invested in a leasehold security, which investment was adopted by the trustees. In 1828, the securities were realised, and the money was received by D. but was not again invested by him, although he falsely represented that it had been. In 1838, the partnership between D. and E. was dissolved, and thenceforward D. paid the interest by cheques on his private account. In 1844 D. became bankrupt, and the money was consequently lost. A., B. and C. filed a bill against E. to have the fund restored by him, but the bill was dismissed with costs.

Thomas Stokes, by his will bequeathed to his three nieces, Margaret, Jane, and Elizabeth Hitchcock, whom he appointed executrixes of his will, 3,000*l.* Navy Five per Cent. Annuities, upon trust as to 1,000*l.* part thereof, for Margaret, for her separate use for life, and after her decease for her children, as tenants in common, and in case of there not being any children, or of their all dying in their mother's lifetime without leaving issue, upon trust for the executors or administrators of the said Margaret; and as to two other sums of 1,000*l.* part of the said sum of stock, upon similar trusts for Jane and Elizabeth, and their children respectively. The testator died in 1822, and his said three nieces proved the will, and they employed William Bromley, of the firm of William and Joseph Warner Bromley, as their solicitor therein. To answer the legacy before mentioned, the sum of 2,910*l.* Navy Five per Cent. Annuities was purchased. On the suggestion of W. Bromley, his name was associated with the three executrixes as a co-trustee of the legacy, and the stock was purchased in the joint names of the four. By a deed dated the 12th February, 1822, and executed by the four trustees, the trusts of the 2,910*l.* Navy Five per Cents, were declared to be according to the will of T. Stokes, and the three executrixes paid to the firm of W. and J. W. Bromley, a bill of costs for their business as solicitors in these matters. In February, 1822, Elizabeth was married to Thomas Coomer, and in August of the same year Margaret was married to Thomas Trott. The Navy Five per Cents. were, in 1822, reduced, and the 2,910*l.* stock before mentioned was converted into 3,055*l.* 10s. New Four per Cent. Bank Annuities. On the 17th March, 1824, William Bromley, acting under a power of attorney, given to him by the three executrixes, and the husbands of the two who were then married, sold out the stock and received for the same 3,257*l.* 18s. 6d. sterling, the sale having been made for the purpose of investing the money on mortgage security. The three executrixes having, upon W. Bromley's suggestion, consented to the mortgage security being taken in his sole name, the sum of 3,257*l.* 18s. 6d. was paid to the bankers of W. and J. W. Bromley to the credit of the partnership account. On the 4th April, 1824, Thomas Coomer wrote to William Bromley to inquire, in his wife's name, if the stock was sold, what was the price at the time, and if W. Bromley had invested the proceeds on mortgage. On the 31st May, 1824, W. Bromley replied to this letter, enclosing a copy of the broker's note of the sale, as follows:—"I send you above a copy of the broker's ticket of the sale, and the interest is payable on the 19th September and 19th March. The odd 7*l.* 18s. 6d. had better be divided with the first interest. The interest to each will be 54*l.* 3s. 4d. per annum. The property is secured on a freehold estate at Holloway." The money had not, however, in fact, been invested. W. Bromley possessed freehold property of his own at Holloway, subject to an agreement for a building lease for ninety-nine years to John Piper Burnard, on the security of which agreement there was some evidence to show that 3,250*l.* and interest was then due to W. Bromley from J. P. Burnard. W. Bromley did not, however, do anything to appropriate this property as the security for the money which remained in the bank, and in September 1824, W. Bromley paid the interest which he had represented as accruing thereon, and at the same time divided the sum of 7*l.* 18s. 6d. between the parties, as he had suggested should be done, and they signed receipts, dated 20th September, 1824, to W. Bromley, drawn out in his handwriting. After this W. Bromley continued to pay the interest by cheques upon the partnership account. On the 31st July, 1824, Jane was married to Emanuel Newcomb, and, by a letter to W. Bromley, dated July 30, and signed by the three executrixes in their married names, they requested him to invest their money on mortgage on freehold security. By an indenture, dated the 19th March, 1825, certain leasehold messuages and hereditaments situated near the Regent's-park, were underlet by Mortimer William Lewis to J. W. Bromley, as a trustee for W. Bromley, upon certain trusts, to secure the repayment of 3,250*l.* and interest to W. Bromley. Mrs. Coomer, in a letter to W. Bromley, dated the 24th September, 1825, requested him to receive "the half year's interest due from Mr. Lewis," and Mrs. Trott signed a receipt, dated the 22nd March, 1826, for a half-year's interest "on account of Mr. Lewis." In September 1826, Lewis became bankrupt, and thereupon Mrs. Coomer wrote a letter, dated the 27th of that month to W. Bromley, calling his attention to the bankruptcy of Lewis, and stating that it had made her uncomfortable, and begging him to let Mr. Whybrow have a copy of the mortgage-deeds for her. There was some evidence to shew that W. Bromley sent the mortgage-deed and the leases to Whybrow, who, amongst other correspondence between them, wrote to W. Bromley a letter dated the 16th December, 1826, referring to his power of sale under the mortgage-deed. By an indenture dated the 15th of October, 1827, between W. Bromley of the one part, and the three executrixes and their respective husbands of the other part, after reciting the various dealings with the money as above stated, and that part of the said leasehold premises had been sold for 2,000*l.*, which had been received by W. Bromley, who invested 1,000*l.* on mortgage of freehold and copyhold hereditaments at Malden belonging to W. Bell, by indentures dated the 31st of August and 1st of September then last, and the remaining 1,000*l.* on leaseholds belonging to John Claudius Louden by indentures dated the 17th of May, 1824, and the 12th of October, 1827, it is witnessed, and W. Bromley thereby declared himself a trustee of the said sums of 1,000*l.* and 1,000*l.* and 1,250*l.* remaining on the original security upon the trusts of Stokes's will. This deed was executed by W. Bromley and delivered to the plaintiffs. In 1828 the three securities therein mentioned were all realised, and the money was received by W. Bromley. W. Bromley had still the property at Holloway, and as appeared by a memorandum dated the 9th of August, 1825, and signed by Burnard, had advanced at this time to Burnard more than 3,250*l.* upon his aforesaid security. From the evidence it appeared that W. Bromley again represented that this property was the security for the trust-money, but the money in fact was not again secured. In 1834 the partnership between W. and J. W. Bromley was dissolved, and from that date W. Bromley first kept a private account at the bank and paid the interest on these trust moneys by cheques thereon until his bankruptcy, which occurred on the 8th of January, 1844. Shortly afterwards W. Bromley emigrated to New Zealand before obtaining his certificate, and the greater portion of the trust-money was lost. It was admitted that J. W. Bromley had no knowledge of the transactions with reference to these trust-moneys.

On the 9th of July, 1850, the three executrixes and the husbands of two of them, Mr. Trott, who declined to concur, being made a defendant, filed the bill in this suit against J. W. Bromley and W. Bromley, when he should come within the jurisdiction, stating the receipt of the money in 1824, and in effect that it was never invested; that fraudulent representations were made that it had been; and that the partnership had undertaken the duty of investing it, which they had never discharged, and praying that what was due in respect of the said sum of 3,257*l.* 18s. 6d. and interest, might be paid by the said J. W. Bromley, the plaintiffs offering to account for all dividends received under W. Bromley's bankruptcy. The cause now came on for hearing.

Malins and *Prendergast* appeared for the plaintiffs.

Bethell, *Craig*, and *Hardy* appeared for the defendant J. W. Bromley.

Malins, in reply.

The following cases were cited:—*Blair* v. *Bromley*, 5 Hare, 557; 2 Ph. 354; *Wood* v. *Hardisty*, 2 Coll. 542; *Cocker* v. *Quayle*, 1 Russ. & Myl. 535; *Fenwick* v. *Greenwell*, 10 Bea. 412; *Fowler* v. *Reynal*, 3 Mac. & Gord. 500; *Wedderburn* v. *Wedderburn*, 4 Myl. & Cr. 41; *May* v. *Selby*, 1 Y. & C. C. C. 235; *Short* v. *M'Carthy*, 3 Barn. & Adol. 626; *Sims* v. *Brutton*, 5 Ex. Ca. 802; *Sadleir* v. *Lee*, 6 Bea. 324; and *Pennell* v. *Hurley*, 2 Coll. 241.

The VICE-CHANCELLOR, in giving judgment, said that by the will of Thomas Stokes he gave a sum of 3,000*l.* to three unmarried women (whom he named his executrixes), upon trust to invest the same in the funds, and to stand possessed of it upon trust for themselves for life, and then for their children, with certain ulterior trusts. The money was invested regularly, as regarded the amount, in 2,910*l.* Navy Five per Cents. in the names of the three women, and in the additional name of William Bromley, as trustees thereof. On the 12th February, 1822, a declaration of trust was executed by the four persons in whose names the stock was placed according to the trusts of the will of Stokes. William and Joseph Warner Bromley were solicitors for all the parties, in that transaction, and they prepared the declaration of trust. It was said that there was an irregularity in associating the name of William Bromley in the trust with the three original trustees, and no doubt there was; but it was not material to the question which arose in the suit. It was an irregularity in which these three women, who were then unmarried, concurred, and therefore they could not complain of it. Some time afterwards the rate of interest was reduced, and that led to an arrangement that the money should be sold out, and invested on mortgage in the name of William Bromley alone. That was extremely irregular, and was a breach of trust. In the first place, the money ought not to have been invested on mortgage at all; and then not in the name of one trustee without the others. Two of the ladies were then married, and they, their husbands, and the third lady, concurred in executing a power of attorney to sell the stock to William Bromley alone. The stock was sold, and the money produced by that sale found its way into the hands of the bankers of William and Joseph Warner Bromley, to the credit of the partnership account; and that was the foundation of the liability sought to be enforced against Joseph W. Bromley in the present suit. It would be necessary to examine with some minuteness upon what grounds of law the case depended. The plaintiffs had suggested two. One was that the firm of William and Joseph W. Bromley undertook a duty with respect to the investment of this fund, which was not discharged, and that on that ground Joseph W. Bromley was now chargeable. The other was, that the money came into their hands as trust money, to the application of which they were bound to see—an obligation from which they could only discharge themselves by the due performance of the trust. With respect to the first of these grounds, their duty appeared to his Honour to have been to invest the money on mortgage security in the name of William Bromley alone: that appeared to have been the duty which they undertook, in order to carry into effect the arrangement made between William Bromley and the plaintiffs. The way in which that was done was the following:—On the 31st of May, 1824, William Bromley represented that the money had been laid out on mortgage of freehold property at Holloway, which it was admitted was an untrue statement, and the only excuse, if it could be called an excuse, for it, was that William Bromley had possibly the means of making good that statement, for he had then freehold property at Holloway, arising from transactions between himself and a Mr. Burnard, which would have enabled him to make such a security. On the 19th of March, 1825, a mortgage was executed from a Mr. Lewis, to secure to William Bromley a sum of money which was within a small fraction of the same amount as the money which was to be invested. The remainder of the sum appeared to have been accounted for to the parties. The defendant's case was, that this security from Lewis was sufficient for the amount, and that it was appropriated by William Bromley, as an investment for the sum in his hands, and that this was communicated to the parties, and the security was adopted by them. If that were so on the evidence, there must be an end of the liability of the firm arising from their professional engagement as solicitors, because, it having been arranged that the money should be under the sole control of William Bromley as a trustee, if it had been invested in his name, and subsequently lost from some cause other than the professional neglect of the firm, they were not liable. How, then, did that appear upon the evidence? The statement in the bill was, "that on or about the month of March, 1824, and in the course of such business as last aforesaid, William Bromley, then being such partner as aforesaid of the said J. W. Bromley, in continuance of his design of defrauding the plaintiffs in respect of the said trust funds, proposed to invest the said trust-money upon mortgage or real security, and in furtherance of such fraudulent design advised such investment to be made in his sole name, under the pretext that he might be able to receive the interest or dividends with facility for the plaintiffs." His Honour observed in this part of the case what seemed to show that there was such an agreement as to the investment in W. Bromley's sole name; and the declaration of trust of October 1827, recited that agreement, and it was communicated to the parties; and it appeared that it had been acted upon by them afterwards. The mortgage-deed was proved. As to the consideration for it there could be no doubt, because it appeared that the whole sum of 2,910*l.* was actually realised against the estate of Lewis, the mortgagor; and there could be as little doubt of the sufficiency of the security as a mortgage security, according to the duty of William and Joseph W. Bromley. Was it then communicated to the parties? His Honour found that very early the parties were in-

formed of the existence of this security. It was also adopted by them. The mortgage security was dated the 19th March, 1825. The first payment of interest was made on the 28th September, 1825. On the 26th September, 1825, Mrs. Coomer applied by letter to W. Bromley for half a year's interest, then about to become "due from Mr. Lewis." On the 22nd March, 1826, there was a receipt from Mrs. Trott for a half-year's interest, described as received from W. Bromley on account of Mr. Lewis. On the 27th of September, 1826, Mrs. Coomer wrote to William Bromley, calling his attention to the fact that Lewis was a bankrupt, and that she was anxious about it, and begging that Mr. Whybrow should be communicated with and the mortgage-deeds given to him. There was evidence from Whybrow that some deeds relating to the security, and among others, leases of some houses, were placed in his hands, in accordance with the request of Mrs. Coomer, and, whether he ever had the mortgage-deed or not, he had seen it and commented upon the power it contained. Therefore, as long as Lewis's mortgage remained unrealized the declaration of trust might have served as a mortgage, and might have attached upon it. The parties appeared to have been satisfied with it and adopted it, as far as their acts could do so. Before October 1827, Lewis having become bankrupt, 2,000*l.* part of the money, had been realised, and laid out on securities from other persons, named Bell and Louden. In that state of things, on the 15th October, 1827, William Bromley executed a declaration of trust, which recited that it was agreed at the request and with the approbation of the plaintiffs, that the sum of 3,250*l.* sterling should be invested and laid out upon mortgage of good freehold and long leasehold messuages, and so forth, and that the security should be taken by William Bromley alone, to prevent the difficulty that might otherwise arise in making the plaintiffs' husbands parties to the mortgage-deeds, and reciting the indenture of the 19th of March, 1825, and that the 3,250*l.* thereby secured was the same sum as the sum in question, and that it was lent on that security with the full approbation of the plaintiffs, and that 2,000*l.* had been paid off and invested as before mentioned, and 1,250*l.* still remained on the security of the mortgage of the 19th of March, 1825. Thus there was again a declaration of trust of the remaining part. His Honour had heard nothing to impress his mind with the least suspicion that these investments, from 1825 downwards, were fictitious. In 1828 the securities were realised, and the whole money was paid to William Bromley. There was no suggestion that the money when paid off was received by the partnership or came to their hands. If, therefore, the money having been received by William Bromley, the parties having agreed that it should be under his sole control, it were afterwards lost, it was by a breach of duty on the part of William Bromley, and not of the partnership. After this time, William Bromley made an untrue representation as before, that the money was invested on property at Holloway. The only excuse was, that he had or might have the means of making these representations good. But, however that might be, these parties appeared to have been dealing with him as a trustee entirely in consequence of the arrangement they had come to as to the means of investing this fund. For these reasons, it appeared to his Honour that the case as regarded the liability of solicitors was different from *Blair* v. *Bromley*: there, solicitors had money in their hands which they undertook to invest and never did invest; here, there was money to be invested in a particular way, which was so invested and afterwards miscarried, but not from any breach of duty on the part of these persons as solicitors. It was said, again, that this was a trust fund, which, coming to the hands of this firm of solicitors, with notice that it was a trust fund, they could only discharge themselves of their liability in respect of it by shewing that it was duly applied according to the trust. That had nothing to do with their profession as solicitors; if they had been bankers it would have been the same, and it appeared that the answer was that it was applied by the desire and with the consent of the parties who now came to the Court seeking to make the defendant liable for the application of the fund. If the partners were liable to make it good, à fortiori, the plaintiffs by whose wishes they did so apply it, are liable. Two of these were married women, but they were suing together with their husbands, and Mrs. Newcomb, one of these two, was unmarried at the time when the money was first sold out, and therefore these plaintiffs at all events could not come to complain as a breach of trust of the very thing they meant to have done, and the doing of which led to the loss of the fund. His Honour had thought it much more satisfactory not to rest his judgment on the pleadings in the suit: the facts were all before the Court, and, he thought, did not sustain the plaintiffs' case. There were many objections on the pleadings which had not been displayed. His Honour thought it more satisfactory not to rest it on the lapse of time or on the laches of the parties, though those materials would not have been wanting. After the year 1834, they knew quite enough to put them on such inquiry as would have led to the knowledge of the state of the fund, if they had inquired. His Honour, therefore, on the grounds he had stated, did not think he could discharge his duty otherwise than by dismissing the bill with costs.

VICE-CHANCELLOR KINDERSLEY'S COURT.

Reported by W. H. Benner, Esq. of Lincoln's-inn, Barrister-at-Law.

April 21 *and May* 8.

Gray v. Gray.

Implied trust—What constitutes a binding trust.

The rule as to what constitutes a binding trust is this—if the founder of the trust has not only distinctly expressed the object and purpose of his act, but has done all that is necessary to complete the design expressed, the Court will hold the trust completely imposed.

Where, therefore, a testatrix gave to executors a sum of stock in trust for H. her sister, and afterwards expressed to one of the executors, who was also one of the trustees, an intention that her sister H. should have a further sum of stock, but she did not alter her will; and after the death of the testatrix the executrix and trustee sold that amount of stock belonging to the testatrix, and invested the produce in her own name, in addition to the first sum of stock given by the will to H. and had declared frequently her intention of carrying out the intention of the testatrix:

Held, that the second sum of stock was duly impressed with the same trusts in favour of H. as the first sum of stock.

Mary Margaret Cave, by her will, dated the 21st November, 1843, after bequeathing to her brother, David Cave, a sum of 2,000*l.* Three per Cent. Consols, part of a larger sum then standing in her name, gave and bequeathed another sum of 2,000*l.* Consols to her said brother, David Cave, and her sister, Cecilia Cave, upon trust during the joint lives of her sister Harriet and of George Gray, her husband, to pay the interest, dividends, and annual or other produce of the said sum of 2,000*l.* Consols as her said sister Harriet should appoint, but not by way of anticipation; in default of appointment for her said sister for her separate use, and after the death of George Gray, the husband, in case his wife should survive him, upon trust, to transfer the said sum of 2,000*l.* Consols to her sister Harriet absolutely to and for her own proper use and benefit, or otherwise as she should direct or appoint; but if her sister Harriet should die in the lifetime of her husband, then the same 2,000*l.* Consols were immediately after the decease of her said sister, in the lifetime of her husband, to sink into and become part and parcel of and enjoyed with the rest and residue of her estate and effects thereinafter given and bequeathed to her said sister, Cecilia Cave; and the 2,000*l.* Consols was, on the decease of Harriet, in the lifetime of her husband, to be paid and transferred according to the events aforesaid and the residuary bequest thereinafter contained. And as to the rest, residue, and remainder of the funded property of the testatrix, and all other her property, estate, and effects whatsoever and wheresoever, and of whatsoever nature, kind, or quality the same might be, and not thereby otherwise given, bequeathed, or disposed of, but including the said last-mentioned sum of 2,000*l.* Consols, and accrued interest thereon, in the event of the same becoming part of such residue, upon the contingency abovementioned of her sister Harriet dying in the lifetime of her said husband, the testatrix gave and bequeathed the said rest, residue, and remainder, and every part and parcel thereof, respectively unto and to the use of her said sister, Cecilia Cave, to hold the same to her and her executors, administrators, and assigns, absolutely for ever for her and their own use and benefit.

The testatrix died in June 1845, and the will was proved by the residuary legatee, Cecilia Cave, alone, on the 27th June, 1845. David Cave died in the lifetime of the testatrix, whereby the legacy to him became lapsed in the residue. She made no alteration to her will, but she intimated to her sister Cecilia a wish to alter her will, and have the 2,000*l.* Consols intended for her brother David given to her sister, Harriet Gray, in addition to the 2,000*l.* Consols given to her by her will; but the health of the testatrix gradually declining until her decease, she died without having been able to carry her intentions formally into effect.

The bill was filed by the sister, Harriet Gray, stating the above facts, and also that very shortly previous to her sister's decease she exacted from Cecilia Cave a promise which was given to her by Cecilia that the 2,000*l.* Consols given by her will to her brother David should be given by Cecilia (the residuary legatee) to her, the plaintiff, Harriet Gray, in addition to the 2,000*l.* already bequeathed to her, making in all 4,000*l.* Consols.

The question in the cause was, whether the second sum of 2,000*l.* Consols so intended to be given by the testatrix to her sister Harriet, was sufficiently impressed with a trust for the benefit of her said sister.

The only evidence which was given in the cause was by William Woodward, a nephew to the several parties, and who had no interest in the question one way or the other. The effect of this evidence is sufficiently given in the Vice-Chancellor's judgment.

Walker and *Terrell*, for the plaintiff Harriet Gray, contended that the intentions of the testatrix for the benefit of her sister Harriet, as to the additional sum of 2,000*l.* stock, had been carried out as far as under the circumstances they could have been, and that that additional sum of stock was impressed with the same trusts as the other sum of 2,000*l.* Consols given to her by the will of the testatrix.

Willcock and *J. H. Taylor* for the residuary legatee, Cecilia Cave.

Welsh for the husband of the plaintiff.

The cases cited were:—*Ex parte Pye*, 18 Ves. 140; *Thorp* v. *Owen*, 5 Beav. 224; *Antrobus* v. *Smith*, 12 Ves. 39; *Ouseley* v. *Anstruther*, 10 Beav. 461; *Edwards* v. *Jones*, 1 Myl. & Cr. 237.

JUDGMENT.

The Vice-Chancellor.—The question which arises in this case is, whether a sum of 2,000*l.* Reduced Annuities originally 2,000*l.* Consolidated Annuities, is so completely impressed with a trust in favour of Harriet Gray, the sister of the testatrix, and the plaintiff in this cause, that it is capable of being enforced in a Court of Equity. When the cause was argued I confess I had some doubts, but I have, after much consideration, come to the conclusion that a complete trust has been impressed upon this sum of stock. The circumstances are short and simple, although somewhat peculiar. There were there sisters—Mary Margaret Cave, the testatrix; the plaintiff, Harriet Gray, the wife of a Mr. Gray; and the defendant, Cecilia Cave, who was one of the executors and residuary legatee of the testatrix. They had a brother, David Cave. The testatrix was possessed of considerable property, and it principally consisted of investments in the Three per Cent. Consols. By her will, of the 21st November, 1843, she gave 2,000*l.* Three per Cent. Consols, part of her stock standing in her name, to her brother David Cave absolutely. A similar sum was also given to David Cave and Cecilia Cave, as trustees for the benefit of Harriet, the plaintiff, and the trusts were during the joint lives of her and her husband, to her for her separate use,—if she survived him, then the stock was to be for her own absolute use; if she died in his lifetime it was to fall into the general residuary personal estate. This residue she gave to her sister Cecilia, so that there was a legacy of 2,000*l.* Consols for the absolute benefit of David, and 2,000*l.* for the benefit of the sister Mrs. Gray, on such trusts that if she should die in the lifetime of her husband she would not have the absolute benefit. David, one of the trustees of the 2,000*l.* given for the benefit of Mrs. Gray, died in the lifetime of the testatrix. There is no doubt that the testatrix, during her life, expressed an intention to the residuary legatee, Cecilia, to give the 2,000*l.* Consols, so originally intended for her brother David, for the benefit of Mrs. Gray, the plaintiff, and it is also clear upon the evidence that the defendant Cecilia represented that such was the desire of the testatrix. After the death of the testatrix, the will was proved by Cecilia Cave alone, on the 27th June, 1845. On the 29th July, the defendant Cecilia Cave, the surviving executrix and residuary legatee, accompanied by her sister Harriet Gray, the plaintiff, and a nephew, a Mr. Woodward, went to the bank, and with the assistance of Mr. Chant, a stock-broker, for the purpose of executing a transfer of the 2,000*l.* stock given for the benefit of Mrs. Gray. Mr. Chant, it would appear, suggested that as the testatrix had a considerable sum in Consols, which would have to be transferred to the executrix Cecilia Cave, if the 2,000*l.* were transferred into the name of Cecilia Cave, as trustee for Mrs. Gray, there would be nothing to distinguish that from the rest of the stock, and that it would be better in order to distinguish the stock held in trust for Mrs. Gray, that the 2,000*l.* Consols should be converted into Three per Cent. Reduced. This suggestion was adopted by Cecilia Cave, and the stock bequeathed for Mrs. Gray was sold out, and with the proceeds she bought 2,000*l.* Reduced, which were transferred into her name to ensure the 2,000*l.* stock given for the benefit of Mrs. Gray. Now there is no doubt that the sum of 2,000*l.* Reduced Annuities bought and transferred on the 29th July into the name of Cecilia Cave was a complete appropriation of the stock to satisfy the legacy to Mrs. Gray, for it was transferred into her name as the sole surviving trustee. If the brother, David Cave, had been living, it must have been transferred into their joint names; there is no doubt, then, that the stock was duly defined and appropriated as Mrs. Gray's legacy. On the occa-

and if you do not know he has not authority you are perfectly safe; he shall be deemed the owner of the property, and you may deal with him as such, provided you are acting bonâ fide; though you know he is the agent, you may deal with him as owner. Then comes this proviso in sect. 3, upon which everything turns:—"Provided always, and be it enacted, that this Act and every matter and thing contained in it shall be deemed and construed to give validity to such contracts and agreements only, and to protect only such loans, advances, and exchanges as shall be made bonâ fide and without notice, that the agent making such contracts or agreements as aforesaid, has not authority to make the same, or is acting malâ fide in respect thereof against the owner of such goods and merchandise; and nothing herein contained shall be construed to extend to or protect any lien or pledge for or in respect of any antecedent debt owing from any agent to any person with or to whom such lien or pledge shall be given, nor to authorise any agent intrusted as aforesaid in deviating from any express orders or authority received from the owner, but that for the purpose and to the intent of protecting all such bonâ-fide loans, advances, and exchanges as aforesaid (though made with notice of such agent not being the owner, but without any notice of the agent acting without authority), and to no further or other intent or purpose, such contract or agreement as aforesaid shall be binding on the owner, and all other persons interested in such goods." You may, therefore, by this Act, treat any agent, whom you know to be so, as owner, in accepting any pledge of goods from him which you know to have been deposited with or transmitted to him as agent, if you are acting bonâ fide, and have not notice that he is making the contract, either malâ fide or beyond his authority. It is assumed it will be in the ordinary course of business. There is a different provision as regards the misdemeanor; the misdemeanor still continues, but with a very important alteration, to which I shall presently refer. Nothing, then, can be plainer than the Act of Parliament, but the question which must arise is, what is the notice which is to bind the person accepting the pledge? Lord Tenterden, in *Evans* v. *Truman*, 3 Mood. and R. 10, referring to the statute 6 Geo. 4, lays it down very generally. He says, "The expression of the statute is, that a party to be entitled to its protection must not have notice by the documents or otherwise that the pledger was not the actual and bonâ fide owner of the goods pledged. A person may have knowledge of a fact either by direct communication or by being aware of circumstances which must lead a reasonable man applying his mind to them and judging from them to the conclusion that the fact is so; knowledge acquired in either of these ways is enough, I think, to exclude a party from the benefit of the provisions of this statute; slight suspicion, I think, will not." Now that is laid down, I confess, a little too much at large; because "slight suspicion" is out of the question in this Act. I do not say that some circumstances may not be equivalent to an actual notice, because some may be stronger than any words can express. Lord Tenterden says "slight suspicion will not affect it." I should say that no suspicion will affect it. This was an Act intended to enable general dealings between man and man in the city of London, and it would never do to say you may deal with a man who is an agent, and who, as regards you, is considered as the owner, provided you will not notice he goes beyond his authority, and are acting bonâ fide; if there is not any malâ fides there is an end of the case. It is impossible to say that a mere suspicion—slight suspicion of notice—can take from you the protection with which you are surrounded by this Act; I think, therefore, that that is put not so strongly as it should be in favour of the plaintiff. Now in this case the goods were sent by the plaintiff to Messrs. Brownrigg and Co. for sale; and it was argued, and properly argued, that by the common law the power of transmission for sale would not authorise a pledge: that was the very thing intended to be struck out by the Act; unless you can bring it within the proviso, it was the very thing intended to be remedied. Mr. Navulshaw almost immediately drew bills upon Messrs. Brownrigg and Co. as against his consignment for a sum exceeding by 400*l.* what the pearls were really worth. There is no doubt that that act, under the old law, would have given the pledgee, no right, even if he had paid the bills, to have retained the goods; yet, under the clause to which I have just referred, it is impossible not to see that the very act of drawing rendered a pledge almost necessary, unless you are to suppose that the Liverpool house could do without it: you have no right to look at the insolvency, that must be considered a matter of accident or misfortune; it bears very hard on Mr. Navulshaw, but it has nothing to do with the law of the case. In drawing, therefore, for that great amount, he did give a colour to the very right to pledge in order to meet those very bills; and he drove the house, no doubt, to the necessity of pledging in order to obtain funds to meet them. If you are dealing with an agent, you must take for granted that he has a power to sell in every case. The Act says, it has become a usual course of business to pledge;—not that it was legal; on the contrary, it says it was not legal;—but it has become the usual course of business, and it means to give legal effect to that usual course of business. When, therefore, you are dealing for pledge with an agent who has a consignment, the knowledge that he has the power to sell appears to me to amount to nothing, for every agent must be supposed to have a power to sell who has the disposition of goods. What were these pearls sent over to the plaintiff for? Not that he was to cast them into the Mersey, but to dispose of them. He has then the power of sale; and having such a power, this Act of Parliament means to give him the power of pledging in the clearest and strongest terms. Assuming even that Messrs. Collett and Co. knew (the way in which they knew is another question), by express intimation, and before they accepted the bills, and took the pledge, that Messrs. Brownrigg and Co. had a power of sale only, even that would not alter the right; because if they had not been informed of it, they would have been considered to have known it, inasmuch as they were dealing with an agent. If you are dealing with an agent who is in possession of property, either he has the right to pledge, when cadet questio, or he must have the right to sell, because he must have it as an object of merchandise to somebody. But it wants something more than not merely the right positively to sell; it wants a prohibition from the owner not to pledge. If when Mr. Navulshaw had sent over these goods, he had said, "I send these goods to you for sale, but I direct you not to pledge them: I will not authorise you to pledge them; I direct only a sale;" if that had been communicated to Messrs. Collett and Co. I am perfectly clear that in that case they could not safely have advanced their money by way of pledge; because although they might have known that the Messrs. Brownrigg and Co. were only agents, yet they would have had notice that they were making a contract for which they not only had no authority, but from the making of which they were expressly prohibited. In any other view I do not see where the safety of the Act lies. When an agent is in possession of goods, and he is affecting to dispose of them by pledge, it must be assumed that he has the power, at least, of sale, and it must not be assumed that he has not the power to pledge; of that you are not bound under the Act to inquire. In order, therefore, to endanger you in taking a pledge, it would be necessary that you should know he was prohibited from pledging. Now, if we are to speak of probabilities in dealings in a great city like this, where there are ten thousand of these transactions occurring constantly, what presumption can be more reasonable than this,—if a man is in possession of goods, like these, of value, and is known to possess them as agent, that he should come to your house (which are the circumstances of this case), and say, "We have received these pearls from India" (and I will suppose he had received them for sale), "and we desire you to have them valued with a view to a sale." Now the actual deposit, you will observe, was in clear furtherance of the directions of the plaintiff himself. It was not supposed that Messrs. Brownrigg and Co themselves were going to sell these pearls; and as it must be supposed that they were to be sold in London, it was only in furtherance, and not in disobedience, of the instructions or a breach of their authority. They were accordingly valued, and at 2,050*l.* Messrs. Brownrigg and Co. the consignees, go to Messrs. Collett and Co. who had had these goods then for nearly a month, and ask for an advance. These being fancy articles and the times bad, they would not meet with a ready or good sale; they therefore ask for an advance—2,000*l.* Now that very application was as good a security as a man could have under this Act of the whole being bonâ fide. This transaction was in the ordinary course of business. There was nothing to lead to suspicion; although Messrs. Collett and Co. did not know it, Messrs. Brownrigg and Co. had accepted bills to the amount of 2,400*l.* in favour of Mr. Navulshaw, for which, of course, they would have held and been entitled to hold the pearls as a security. I consider, therefore, the very application for the loan as an assurance on the part of Messrs. Brownrigg and Co. that they had the right to pledge; and I think, therefore, that in that view the Messrs. Collett had a right to deal with them as if they were the owners of the property; dealing, too, as they were (for the whole turns upon that), with perfect bonâ fide. Now, independently of that, the only admission as to knowledge or notice is that read from the answer of Jacob Collett, in these words: "They believe that shortly before the pearls arrived in England, Mr. Brownrigg verbally informed defendant's firm that they expected to receive from India parcels of pearls for sale." Now, in construing this Act of Parliament, it would be a very strong thing to say, that that general statement before the pearls arrived should be carried down to bring to those parties knowledge that this was the identical parcel of pearls which were to be sent for sale; it does not say that they were sent for sale and for no other purpose; and again, what was there to have prevented Mr. Navulshaw when he was drawing those 2,400*l.* worth of bills (of which Messrs. Collett and Co. had no notice, but which must have been a large proportion even in his view of the value of these pearls), from saying, "I shall not object to your pledging them for that sum in case you find it inconvenient to make the advance?" Mr. Navulshaw did not desire that the goods should be sold at once, but he was desirous of having not so much a ready as a beneficial sale. I think, therefore, even taking them to have full knowledge that the goods were transmitted for sale, that there is nothing to lead them to see that there might not have been subsequently an authority to pledge. Messrs. Brownrigg and Co. took upon themselves the disposition of the property in a bonâ fide transaction; in a transaction in the ordinary course of business, and I am of opinion that this cannot be considered a case in which a notice to those gentlemen could be deemed to be a notice to Messrs. Collett and Co. Now, in regard to the advances, and the renewal of the bills that have been drawn, both Acts of Parliament provide that an agent exceeding his authority by pledging, is guilty of a misdemeanor; and in the Act of the 6 Geo. 4, where it is called a misdemeanor to do so, it is provided expressly, "that the acceptance of bills of exchange by such person or persons drawn by or on account of such principal or principals, shall not be considered as constituting any part of such debt so due and owing from such principal or principals within the true intent and meaning of this Act, so as to excuse the consequence of such a deposit or pledge, unless such bills shall be paid when the same respectively shall become due." If an agent had accepted bills in favour of the owner, he could not have escaped the penalty of the misdemeanor, unless he paid them. Now, the later Act of Parliament took a very different form, for it says expressly, that "no such agent shall be liable to any prosecution for depositing goods," and so on, "in case the same shall not be made a security for or subject to the payment of any greater sum of money than the amount which, at the time of such consignment, deposit, transfer, or delivery, was justly due and owing to such agent from his principal, together with the amount of any bills of exchange drawn by or on account of such principal, and accepted by such agent." So that there you are allowed to bring into the amount, in order to save you from punishment, any bills of exchange drawn by or on account of such principal, and accepted by an agent; not clogging it with the condition that the bills are actually paid by the agent; so that the drawing of bills, as in this case by Messrs. Brownrigg and Co. amounting to more than the value of the goods, would yet save them from being indicted for a misdemeanor. That, I think, puts an end to the case as regards the renewal of the bill. I am very clear, that the second bill was merely in substance a continuance of the original transaction, which was one loan, an advance of 2,000*l.* on this pledge: of this, 320*l.* were paid off by means of the sale of part of the pearls. The fact of a new bill being drawn, and discounted when the 320*l.* were paid off, was a matter of form, and not of substance; there was nothing to alter the original advance. A portion of the pearls had been sold, and that portion went in liquidation of the advance. Nothing could be more fair or more right, and that of itself shews that it was part of the original transaction; for the pearls which were sold went in part liquidation of the sum advanced, and the security was not for any new, but for the balance of the old sum; I certainly am of opinion that that was a transaction covered by the original transaction. I see no necessity for this bill; this is, no doubt, a single transaction, and the party might, if he had been entitled, have recovered upon that transaction, in an action, without coming here. The foundation of coming here is the allegation of fraud, and contrivance, and malice, and so on; all that having entirely failed, I am of opinion that the appeal must be dismissed with costs.

July 16 *and* 17.

SCRIVENER *v.* SMITH.

Will—Construction.

A testator, by a codicil, gave a life interest in a fund to his wife, and at her death one-half of the fund to his son, and the other to his daughters, and at their deaths to their respective children in equal shares. At the date of the codicil both of the daughters had children, but the son was unmarried:

Held, reversing the decision of the Court below, that the son took his moiety of the fund absolutely.

This was an appeal from a decision of the Vice-Chancellor Lord Cranworth on the construction of a codicil to the will of the late Major-general Fast.

The clause upon which the question arose was in these words: "In consequence of the demise of my eldest daughter Mary Ann, I now give the interest of my property in the Government Funds of Calcutta to my wife, Ann Fast, for her life; at her death, one-half of the said property I give to my son George Mainwaring Fast, the remaining half to be equally divided between my two daughters, Louisa Catherine, the wife of Captain Howarth, &c. and Charlotte Elizabeth Rhods, widow of the late Lieutenant Francis Scrivener, and at their deaths such shares to be equally divided among their children respectively. The executors and trustees to be the same as enumerated in my will, which I signed on the 19th of February, 1849." At the date of the codicil each of the daughters had children: The son was unmarried. The question was, whether the son took his share of the fund absolutely, or for a life interest only.

The Vice-Chancellor held that the bequest to the son and daughters being an entire clause, the restriction had the effect of limiting the interest of the son as well as of the daughters to a life estate.

From that decision the son appealed.

Rolt and *Daniel* appeared for the appellant.

Bethell, *Green*, and *Horsey* for the serveral parties who supported the decree of the Vice-Chancellor.

The LORD CHANCELLOR, at the conclusion of the argument, said, that although the question was not free from doubt, he must reverse the order of the Court below. The testator had given a life estate to his wife in the fund in question, and therefore he knew how to create such an interest when he wished it. He could only take the will of the testator into account for the purpose of ascertaining the intention of the testator at the date of the codicil. The half given to the daughters was directed after their deaths to go to their children, and his lordship was not at all certain as to the channel in which the share of the son would go were his interest to be restricted to a life estate. The safer construction would be to declare that the son took his moiety of the fund absolutely; but in order to give full weight to the opinion of the learned Vice-Chancellor, his lordship took until the following morning to consider the question, when his lordship confirmed his opinion.

Appeal allowed; the costs to come out of the fund.

COURT OF APPEAL IN CHANCERY.

Reported by OWEN DAVIS TUDOR, Esq. of the Middle Temple, Barrister-at-Law.

(Before the LORDS JUSTICES.)

IN BANKRUPTCY.

March 10 *and July* 24.

Ex parte JOHN BOWER, *re* JOHN BOWERS, against whom a petition in bankruptcy has been filed.

Trader debtor — Summons—Particulars of demand.

A fruit-merchant served particulars of demand on a grocer, together with a summons, under the Bankrupt Law Consolidation Act, and the word "goods" was held to communicate a reasonably sufficient degree of information to the alleged debtor as to the particulars of the demand or articles furnished, so as to prevent an adjudication from being annulled on the ground of uncertainty in the particulars.

The certainty of particulars depends in a great measure upon the relative situation of the alleged debtor and creditor. Particulars are not vitiated legally because they contain one claim which is not sustainable, either because the debt claimed is not due at all, or because it was not actually due at the time of the demand, whatever effect such an error ought to have in the exercise of the discretion of the Court upon an application not grantable ex debito justitiæ.

In this case several objections were taken to the validity of an adjudication of bankruptcy, and amongst other grounds, that the particulars of demand served by the petitioning creditor upon the bankrupt did not describe the goods supplied with sufficient certainty according to the exigencies of the 22nd Order of November 12, 1842.

The particulars of the demand were as follow:—

"The Bankrupt Law Consolidation Act, 1849.

"Particulars of demand, and notice requiring payment.

"To John Bowers, of the city of Worcester, in the county of Worcester, grocer, dealer, and chapman.

"The following are the particulars of the demand of the undersigned John Bower, of No. 8, Botolph-lane, in the city of London, fruit-merchant, against you, the said John Bowers, amounting to the sum of sixty-six pounds, nine shillings, and one penny.

1851.	£.	s.	d.
April 14. To goods	20	10	0
June 9. Do.....	17	0	4
October 8. Do.....	36	1	9
1851.	73	12	1
October 6. As per cash.....	7	3	0
	£66	9	1

"Take notice that I the said John Bower hereby require immediate payment of the said sum of sixty-six pounds, nine shillings, and one penny.

"Dated this second day of December, in the year of our Lord 1851.

(Signed) "JOHN BOWER,

"Carrying on business at No. 8, Botolph-lane, in the city of London."

The debtor was adjudicated a bankrupt on the 2nd of December, 1851; the adjudication was, however, disputed, and after several adjournments the matter was heard before the commissioner on the 2nd of February, 1852, who ordered that the adjudication of bankruptcy made against John Bowers should be reversed, but upon different grounds to those upon which their lordships' judgment is given.

It appeared that when the trader attended to shew cause against the adjudication, he was examined, and deposed that he purchased the goods from the petitioning creditor at two months' credit, and received an invoice which had at the top of it the words "Cash in two months;" and that he had given the petitioning creditor a bill, which he had received from a customer, for 29*l.* 17*s.* and paid the 7*l.* balance, and that two months' credit had not expired when the notice of demand was served upon him. Against the decision of the commissioner, reversing the adjudication, the petitioning creditor now appealed.

Sir *W. P. Wood* and *Baggallay*, for the petitioning creditor, proceeded to argue against the grounds upon which the commissioner's judgment proceeded, when their lordships intimated their wish, before hearing any further the argument in support of the appeal, to hear the counsel for the respondent.

Swanston, for the respondent, thereupon took the objection that the particulars of demand were not reasonably certain, so as to shew what were the items of the account, in respect of which the alleged debt was claimed, and so as to enable him (if it was in his power), to disprove that such items were really owing. He then cited and commented on *Ex parte Greenstock*, 1 De Gex, 230. [Lord Justice KNIGHT BRUCE.—Has the bankrupt made an affidavit that he was misled by the particulars, or prevented from setting up any defence to any part of the demand? Lord Justice Lord CRANWORTH.—Can any general rule be laid down à priori, applicable to every case? Or may not particulars which would give sufficient information to one debtor be insufficient as against another? Take, for instance, the debtor himself and his executor. May not a bill be sufficient for one which would not give full information enough to the other? The words "convenient certainty" must (as it seems) be construed with reference to the information already possessed by the person addressed.] That may be so; but in this case the demand is utterly vague, general, and indefinite; the alleged debtor has no means whatever of setting up any defence, and it is difficult to believe that these particulars are framed with that reasonable and convenient certainty required by the orders. Another objection taken was, that the term of credit had not expired, so that when the appellant made an affidavit of a debt being due to him, there was in reality nothing due in this respect; therefore the summons was irregular. Another objection was, that the 28th of the rules made by the commissioners under the Act required that the residence of the attorney should be indorsed upon the summons, whereas in this case his place of business only was given.

Sir *W. P. Wood* and *Baggallay*, for the petitioning creditor, were not further called upon by the Court.

Lord Justice KNIGHT BRUCE said, that as observations had been made during the argument upon *Ex parte Greenstock*, it might not be out of place to observe, that whether all the reasons given for the judgment in that case were sustainable or not, the conclusion appeared to have been correct, namely, that it would have been better that there should not have been an adjudication upon the materials which there existed. The amount of the demand was 132*l.* 15*s.* 2*d.* Now it was requisite, with reference to what had been sworn upon the affidavit, that the whole of this should appear to be due for goods sold and delivered. But upon the amount set out in the particulars of demand, as much as 122*l.* 9*s.* 6*d.* of the total amount was due for bills returned, and interest upon those bills, which (however the truth might have been) were not shewn upon the particulars of demand to have been given for goods sold and delivered. Therefore, out of 132*l.* 15*s.* the particulars were, as to so large a portion as 122*l.* 9*s.* 6*d.* plainly defective with reference to the affidavit. With regard to the small remaining portion of the debt, being 10*l.* 5*s.* 8*d.* only, it was doubtful whether the dates were sufficiently set forth. His lordship agreed that the date 1845 was set at the head of the particulars; but when the separate items were looked at, if all of them belonged to the year 1845, they were not chronologically arranged, and that gave rise to a doubt as to what debts were meant. There were items in September and October, and then one in August. His lordship said he was not persuaded that it was a necessary inference from an account so prepared, that the month of August, 1845, so placed below and separated from September and October, was the month meant. If that were so, the adjudication would on that ground have been insufficiently supported. But if it could have been legally supported, still this jurisdiction was not bound to suffer every adjudication which might be legally valid to remain; and he was of opinion that the Court there rightly exercised its jurisdiction in declining to give effect to the proceeding relied upon as the foundation of an act of bankruptcy. All the reasons there assigned for the decision might possibly not be sustainable; upon that point he gave no opinion. But he adhered to the conclusion. In the present case, several objections had been made to the proceedings relied upon as the foundation of an act of bankruptcy. The most serious objection appeared to be that founded on the form of the particulars of demand, which was a point on which the decision of the commissioner did not proceed, or was not expressed to proceed. It appeared to his lordship that a set of particulars of demand sent out by a trader to one individual might be sufficient, which would have been insufficient if sent to another, although the demand were the same. The question in each case must be whether the particulars communicate a reasonably sufficient degree of information to the alleged debtor as to the demand. Now, in *Ex parte Greenstock*, the information might or might not have been sufficient. But in this case, considering what goods had been furnished, considering the stations in life of the alleged debtor and creditor, and the words of the particulars of demand, his impression was that they were sufficient in the particular circumstances of this case. And he was of opinion that the particulars were not vitiated legally because they contained one claim which was not sustainable, either because the debt claimed was not due at all, or because it was not actually due at the time of the demand, whatever effect such an error ought to have in the exercise of the discretion of the Court upon an application not made ex debito justitiæ. His lordship said that this was the result he had arrived at upon the legal points in the case, on which the inclination of his opinion was against the objection made to the adjudication. The commissioner, however, was here executing a jurisdiction given or conferred by the 104th section of the recent Act of Parliament, which provides thus. [His lordship read it.] Now suppose this case to arise (which occurred frequently in former states of the bankrupt laws), that the validity of the bankruptcy being in question before a Court having jurisdiction to annul it, the legal validity was doubtful. In such a case, under the former law, the Court having this jurisdiction was not in the habit of annulling, unless there were some circumstances to induce the Court so to exercise its discretion beyond the legal doubt. If there were no such circumstances, the legal doubt was not sufficient ground for annulling, for this reason, that the mischief arising from the continuance of the bankruptcy, if unsupported by legal requisites, was remediable; whereas, that arising from annulling the proceedings, if it was valid, was irremediable. His lordship said he considered that the Court was at least in the position which he had described, in the present case. There was an arguable objection against the validity of the adjudication in point of law. But he was not only not satisfied that the objection was sustainable, but the inclination of his opinion was against its sufficiency. Therefore, as he apprehended, it was not the duty of the Court to annul the adjudication, but the proper course was to leave the bankrupt to question the adjudication as he might think fit, giving him every facility to proceed at law for that purpose. Here every consideration as to the consequences of annulling the bankruptcy seemed to be against taking that step. The result was that, in his opinion, so far as that objection was concerned, the adjudication must stand unreversed, and if so, with reference to the objection, must those with reference to others which had been taken, and which were much less deserving of attention.

Lord Justice Lord CRANWORTH concurred.

The order was, that the order of reversal of the 2nd of February should be reversed, and that the appellant should be at liberty, within three weeks from the date of the drawing up of the order of their lordships, to bring an action to try the validity of the adjudication, and that the advertisement should be stayed in the meantime.

The appellant afterwards obtained an extension of the term for bringing an action on the ground of special circumstances relative to a change of his solicitor.

On the 1st of May, the commissioner made an order adjudging the appellant a bankrupt under the arrangement clauses of the Bankrupt Law Consolidation Act. The appellant presented a petition appealing from this order, and also seeking a further extension of time.

Saturday, July 24.—On this day the last-mentioned petition came on to be heard, and was ordered

to stand over with the other petition till further order, except that the stay upon the advertisement was to be removed.

IN BANKRUPTCY.

Wednesday, March 3.

Ex parte ROBERT HESLOP, *re* JAMES ATKINSON, a Bankrupt.

Reputed ownership of goods—Retrospective order to sell goods already sold.

A person having a bill of sale of goods to secure a debt due to him as mortgagee, allowed the goods to remain in the order and disposition of the mortgagor until the latter committed an act of bankruptcy, but took possession before any petition of adjudication was filed. The messenger, on the mortgagor being found bankrupt, took the goods out of the mortgagee's possession and sold them. The latter thereupon brought an action of trover and recovered, on the ground that, under the Bankrupt Law Consolidation Act, 1849, the assignees had no power to sell without an express order of the commissioner. The assignees applied to the commissioner, who made an order retrospectively confirming the sale, and resting as a fact that the goods were in the order and disposition of the bankrupt at the time of the bankruptcy, with the permission of the true owner:

Held, that the mortgagee was not entitled to have the order discharged on appeal, as being invalid on the face of it; and on the appellant declining to enter into the question of notice of the act of bankruptcy when he took possession, his appeal was dismissed with costs.

Held, also, that the time of the commissioner signing and delivering out an order, and not the time of his pronouncing it, is its proper date, from which the time within which appeals are allowed by the Act begins to run.

This was an appeal from an order made by Mr. Commissioner Ellison, under the following circumstances:—

The bankrupt, up to the time of his bankruptcy, was an innkeeper at Newcastle-upon-Tyne, and he committed the act of bankruptcy by departing from home on the 30th of August, 1850. On the 9th of September, 1850, the petition for adjudication was filed, and he was on the same day adjudged a bankrupt, and official and creditors' assignees were appointed.

The bankrupt, four years before his bankruptcy, gave the appellant a bill of sale of his property, furniture, and stock in trade, as a security for a debt due to him for wine and spirits. The appellant, however, permitted the bankrupt to retain possession as apparent owner of the goods. The appellant afterwards took possession of them on the 4th of September under his mortgage security, but before effecting a sale was displaced by the messenger under the adjudication. The assignees then sold the goods in the house, and placed the proceeds to the credit of the bankrupt's estate.

The appellant, thereupon, brought an action of trover against the assignees, which was tried before Cresswell, J. at Newcastle, at the Spring Assizes for the year 1851, when the jury found that the goods in question were in the reputed ownership of the bankrupt at the time of his bankruptcy, and found a verdict for the assignees. An objection was, however, taken by the appellant's counsel, that under the "Bankrupt Law Consolidation Act, 1849," sec. 125, the assignees could not, without an order of the commissioner, take property in the order and disposition of the bankrupt, and that it did not vest in them nor could they deal with it except by means of such an order. The point was reserved, and after an argument before the full Court of Ex. on a motion for a new trial, Parke, B. in July 1851, delivered the judgment of the Court (see *Heslop* v. *Baker*, 6 Ex. 740, Platt B. dissentiente), which in effect decided that there ought to have been an order under the 125th section for the sale and disposal of the goods by the assignees before the property therein could pass, and a new trial was accordingly granted, but which has not yet been had.

The assignees thereupon made an application to the commissioner for an order for the sale of the goods in question, for the purpose of giving validity to the sale already made, by its retrospective effect. The commissioner made an order, which was dated the 9th of December, 1851, whereby upon consideration of the matters, he found and adjudged that the bankrupt committed an act of bankruptcy, and became bankrupt on the 30th of August, 1850, and that, at the time when he so became bankrupt, he had, by the consent and permission of the appellant, who then and still claimed to be the true owner thereof, in his (the bankrupt's) possession, order, and disposition, the goods and chattels in the order particularly mentioned and set forth, whereof he the said bankrupt was reputed owner, and he thereby, according to the Bankrupt Law Consolidation Act 1849, and in exercise of the power thereby in that behalf given, ordered the goods and chattels which the bankrupt at the time when he became bankrupt, by the consent and permission of the petitioner, as owner thereof, had in his, the bankrupt's, possession, order, or disposition, or whereof he the bankrupt was reputed owner as aforesaid, to be sold and disposed of by Thomas Baker, John Hall, and Richard Attree Johnson, the assignees, for the benefit of the creditors of the bankrupt under the bankruptcy: and also so far as the Court could and lawfully might, but not further or otherwise, the Court thereby ordered and directed that the goods and chattels thereinbefore specified, should be vested in Thomas Baker, John Hall, and Richard Attree Johnson, as such assignees as aforesaid; and the Court thereby ratified and confirmed all acts theretofore done by the assignees in and about the seizure, sale, and disposition of the goods and chattels thereinbefore specified, so far as such seizure, sale, and disposition had been well and properly conducted, and ordered and directed that the proceeds of such goods and chattels, so sold and disposed of, should be held and applied by the assignees for the benefit of the creditors of the bankrupt under the bankruptcy.

The commissioner delayed signing the order, dated the 9th of December, till the 28th of January following, in order to give time to appeal against it. The appellant, however, conceiving that the date of the order would, if unexplained, defeat the appeal, got the commissioner to make another order, dated the 13th of February, 1852, reciting, among other things, that on the 9th of December, 1851, when the commissioner gave his judgment, he directed that his order should be drawn up, and considering that it would necessarily occupy a considerable time to reduce the same into writing, he further directed that in order to give time to the appellant to appeal against his order, if he should be advised so to do, the date of the order should be considered to be the day when the order of the 9th of December should be signed and delivered to the appellant's solicitor, and reciting that his order was not drawn up and signed and delivered to the petitioner's solicitors until the 28th of January, 1852, the Commissioner, upon the application of the appellant's agent, so far as he could and lawfully might, did thereby order and direct that, for the purpose of enabling the appellant to present such petition of appeal, the date of the former order should be deemed and taken to be the 28th of January, 1852.

Swanston and *Bichner*, in support of the appeal from the order dated the 9th of December.

Bacon and *Tripp*, for the respondents, took the objection that the appeal was too late, and that the date of the order must be taken to be the correct date. They moreover contended that the commissioner had no jurisdiction to prolong the period for appealing beyond the time fixed by the Act of Parliament, by delaying the signature of his judgment.

Their lordships, however, held, that the day on which the order was signed by the commissioner must be considered to be its proper date.

Swanston and *Bichner*, for the appellant, contended that as the Court of Ex. had decided that the act of the assignees, in selling the goods belonging to the appellant under his bill of sale, was wrongful; the Court of Bankruptcy could not, by a subsequent order, give the sale a retrospective validity. That the appellant was entitled to have the order moved out of his way, as being bad upon the face of it. That the finding of the jury and the state of facts appearing upon the order were insufficient to make out a title in the respondents, independently of the point which was decided against them by the Court of Ex. That if the true owner, without notice of the act of bankruptcy, takes possession of his goods before the filing of a petition for adjudication, he could be deprived of them by the operation of the reputed ownership clause of the Bankrupt Law Consolidation Act, 12 & 13 Vict. c. 106, s. 133; and *Ex parte Styan*, 2 M. D. & D. 219; *Pariente* v. *Pennell*, 2 Moo. & Rob. 517; and *Young* v. *Hope*, 2 Ex. 105, decided upon 2 & 3 Vict. c. 22, were cited and commented upon. [Lord Justice KNIGHT BRUCE asked whether the appellant wished the case to be argued upon the questions of notice of the Act of Bankruptcy, and the time when possession was taken.] They declined going into those questions, and desired the Court to decide as to the validity of the order with reference to the facts stated upon the face of it.

Their LORDSHIPS, without calling on the counsel for the respondents, were clearly of opinion that the facts appearing on the face of the order did not invalidate it, and dismissed the appeal with costs.

VICE-CHANCELLOR TURNER'S COURT.

Reported by J. HENRY COOKE, Esq. Barrister-at-Law.

Thursday, June 4.

Ex parte THE BISHOP OF WINCHESTER.

Railway company—Compensation—Episcopal lease—Reversion.

Lands held of a see were leased. The bishop sold his reversion to a railway company. The lands were renewable on the dropping in of lives, and, as to some, at stated intervals. The Court held that the bishop of the see for the time being was not entitled to the dividends of the compensation money, but that they must be accumulated, the bishop to have liberty to apply as the leases would, by dropping of lives or otherwise, become renewable, to have the deficiency of his fine paid out of the fund.

This was a petition presented by the Bishop of Winchester, praying that the sum of 1,034*l.* 10s. cash, might be invested in Three per Cents. and the dividends might, from time to time, be paid to him or his successors. The facts were as follow:—Under the provisions of the Act incorporating the London and South-Western Railway, and the Extension Act, 1846, with which the Lands Clauses Consolidation Act, 1845, and the Railway Clauses Consolidation Act, 1845, were incorporated, the company had purchased for the sum of 1,034*l.* 10s. the reversionary estate of the bishop in certain lands, which were, together with other hereditaments, demised by a lease, dated 21st June, 1831, to John Portal for three lives, at the yearly rent of 20*l.*; and also the reversionary interest of the bishop in certain other lands, demised by a lease, dated 8th April, 1844, to William Portal for twenty-one years, at a rent of 9*l.* 6s. 8d. The lands were all belonging to the see. The purchase money had been paid into the bank, and the bishop had duly conveyed his estate in the lands in question to the company, but the cash had never been invested. The whole lands comprised in the indenture of 21st June, 1831, amounted to about 1,100 acres, and the lease was renewable by custom. The fine paid in 1831 was 2,800*l.* for adding two new lives. The whole lands comprised in the lease of 8th April, 1844, amounted to 937 acres; this lease was also renewable by custom at the end of every four years, but the lease had not been renewed until October 1851, when a fine of 1,140*l.* had been paid for renewal. This lease was not renewable till October 1855. The compensation money agreed upon of 1,034*l.* 10s. was composed of 500*l.* as the purchase money, and 534*l.* 10s. for consequential loss and damage.

Speed, for the petition, stated that unless the dividends of the money, when invested, were directed to be paid to the bishop and his successors, they would receive no compensation for the loss of fines on the dropping in of lives or other rights on renewal.

The VICE-CHANCELLOR.—I am of opinion that until one of the leases becomes renewable, the bishop is not entitled to anything. I shall, therefore, make an order for the investment of the money in Consols, and direct that the dividends be accumulated. When any lease becomes renewable, the petitioner will have liberty to apply to have the deficiency of his fine paid out of the fund. The costs of this application will be paid by the company in the usual way.

Thursday, March 11.

BENNETT *v.* SMITH.

Specific performance—Vendor and purchaser—Bidding—Evidence—Jurisdiction of the Court for a claim for 50l.

B. bid for a lot at an auction, and signed the contract, but refused to complete, although he had signed an order for payment of the money. A. filed a claim for specific performance, and B. was examined. His answer and his deposition were wholly contradictory, and the Court decreed specific performance, with costs. The discretion of the Court to entertain a claim is judicially discretionary, and a claim for 50l. is not too small for the jurisdiction of the Court.

This was a claim for specific performance of an agreement for the purchase of lot 3 at a public sale by auction, and the question raised for the decision of the Court was whether the defendant had purchased or bought in, as agent for the vendor or as a purchaser on his own account. The defendant signed the agreement for the purchase in his own name, and unconditionally. Great difficulty was caused in the conduct of the case by the very material discrepancy of the evidence as to the minute circumstances under which the signature to the agreement was made. The case made by the defendant in his answer was that he went into the auction-room out of curiosity, without any intention of buying. That after lot 2 had been bid for up to 200*l.* a man named Fream came into the room, and the plaintiff then whispered to him, the defendant, that Fream was a buyer, and asked to have some few words of conversation with him, the defendant, in private; that they went accordingly into the lobby, and the plaintiff then asked him to bid for lot 2, saying, he did not wish it to go under 220*l.* That they then returned, and defendant bid twice accordingly, and the lot was purchased by Fream at 225*l.* That lot 3 was then put up; but that for a short time there was no bidding; that the plaintiff then said to him in a whisper, "Put it in at something;" to which he, the defendant, replied, that he knew nothing about the property, and the plaintiff then said,

"Put it in," or "Set it going at 50*l.*;" and said that he had spent considerable sums of money upon it in repairs. That the auctioneer, hearing this whispered conversation, stated that the two cottages in this lot were let at 7*l.* or 8*l.* per annum, which was not dissented from by the plaintiff. That the defendant, under these circumstances, made a first bidding of 50*l.* upon which no advance was ever made, and the lot was knocked down to him; that he was then asked to sign the agreement, and signed accordingly; "and thought that, after the representations of the auctioneer and the plaintiff, he could do himself no harm, and that it was better to sign than to avow publicly the circumstances under which he had bid." This was the case on the answer; but the defendant was also examined as a witness, and in his depositions he said that he bid solely to oblige the plaintiff, and without the slightest notion of purchasing, being wholly ignorant of the state of the property; and that when the memorandum of agreement was placed before him to be signed, he withdrew from signing it, and said he had nothing to do with purchasing the property on his own account. There was, however, nothing in the answer as to this. The defendant then in his deposition proceeded to say, that the plaintiff urged him to sign, and said he would make it all right to him. There was in the answer nothing as to this; and it was relied on by the plaintiff not to be true, because the defendant was proved not only to have signed the contract, but to have signed an order on his attorney to pay the deposit on the purchase-money.

Russell and *Terrell*, for the plaintiff, argued that, as the defendant had found he had made a bad bargain, he attempted, by prevarication and falsehood, to shuffle out of it, and to say that he bought for the plaintiff, and not for himself. His conduct in inducing the buyer of lot 2 to bid up was sufficient to shew his utter want of fair dealing, and therefore, that no reliance could be placed on his word. If he bought for another, why did he sign the contract and give an order for payment of the purchase-money? If his answer was true, his deposition was false; and as both were on oath, the only safe course for the Court to follow would be to disbelieve him altogether, and to act up to the agreement as signed, and decree specific performance.

Rolt and *Nalson*, for the defendant, contended that the purchase had been made solely for the vendor and not by the defendant for himself. Independently, however, of that, the Court had not any jurisdiction to entertain such a question for such an amount. The question was one for a Court of Law either in County or other Courts, and no jury would give, in such a case, 10*l.* damages. The claim ought to be at once dismissed with costs.

The VICE-CHANCELLOR, after stating in detail the facts as before set forth, said, that the representation of the defendant that he refused to sign the contract must be false, for he not only signed it, but signed an order for the purchase-money, and such a course of conduct would have been entirely out of place if he had not then considered it as his own purchase. His Honour then proceeded thus:—Taking into consideration the signature by the defendant of the memorandum of agreement, the contradiction between his answer and his examination, and his having given in his own name, it is impossible to contend that he purchased as the agent of the plaintiff. It only remains to consider the objection which was attempted to be taken to the jurisdiction of the Court. It was said that as the purchase-money was only 50*l.* the vendor was not entitled to come here, because a jury would not have given him 10*l.* damages. But it is impossible for this Court to say what a jury might have done, or what damage might be caused by a failure of the sale of the property, which may be damaged in a way that cannot be estimated. It was said that the exercise of this jurisdiction in the Court is discretionary—that is so; but it is not an arbitrary discretion, but one which is to be exercised according to the circumstances of the case. If there be fraud or imposition or surprise on the purchaser, the Court will not interfere to enforce the agreement; but here I cannot say that there are any such circumstances; and I am therefore of opinion that there must be a specific performance of this agreement—and believing the defendant to have made representations which are not true, I shall make the decree against him with costs. There must be the usual reference to the Master.

Saturday, July 3.

KENNERLEY *v.* KENNERLEY.

Will—Construction—"Power to settle" upon "children."

A testator devised and bequeathed his real and personal estate to his widow to bring up his children, and when they came of age to "settle" on them what she should deem "prudence," and to reserve maintenance for herself. If she married again, he appointed a trustee for his children. At the wife's death what property remained was to be divided among his, the testator's, children: Held, that an appointment of part of the property on one of the children and her issue was bad, and that the children, who all survived the testator, and their representatives, were entitled equally.

The first question in this case arose on an ill-worded will of Andrew Kennerley, who devised and bequeathed as follows:—"I hereby give to my wife Olivia the whole of my real and personal estate, to bring up my children, and when they come of age 'to settle' on them what shall be deemed by her prudence, reserving to herself sufficient maintenance; but if my wife shall marry again, my will is, that Mr. Thos. Page, shall, in that case, become trustee for my children, so that, in that case, my property may not be subject to the control of such husband. And I hereby appoint my wife whole and sole executrix so long as she remains unmarried, what property remaining at my said wife's decease to be equally divided among my children."

The testator left his widow and five children surviving. Two of these children died under twenty-one. The other three attained twenty-one; they were, the plaintiff, Sarah Ann Kennerley, Mrs. Birch, and Mrs. Boyes. Mrs. Boyes died in the lifetime of her mother, the widow of the testator; the remaining two children of the testator, Miss Kennerley and Mrs. Birch, survived their mother. By an instrument, purporting to be in pursuance of the power in the testator's will, Mrs. Kennerley gave the bulk of the property to Sarah Ann, the present plaintiff, and after making a certain provision for Mrs. Birch, gave the residue to Mrs. Boyes for life, with remainder to her children. Mrs. Kennerley, the testator's widow died, and the suit was instituted by her executor, and who was also the administrator of the two deceased children, on behalf of the surviving children.

Sir *W. P. Wood* and *Bushell*, for the plaintiffs, stated that there were two questions before the Court: first, whether, under the power to "settle" on children, Mrs. Kennerley, the widow, had power to give benefits to grandchildren of the testator; and, secondly, in the event of that part of the appointment being held bad, who were the parties entitled, under the residuary clause of the testator's will; all the children living at the testator's death, or at the decease of his widow, Mrs. Kennerley? It was contended that the words "to settle" meant to dispose in such manner as she might think a proper way of providing for the parents and their children; and that any other construction would leave a difficulty as to what share could be appointed, and at what time any appointment could be made; whether the coming of age of all the children must be waited for, or whether an appointment might be made to each as he attained twenty-one. The following cases were cited:—

Johnstone v. *Wolfe*, 5 Bell's House of Lords Cases, 593; *Wood* v. *Wordsworth*, 2 Jarman, 253, and the cases there collected.

Anderson, *Neale*, *Schomberg*, *Ellis*, and *Hughes*, for the other parties.

The VICE-CHANCELLOR, after adverting to a difficulty in the plaintiff's counsel representing the surviving children and also the representatives of deceased children, proceeded with his judgment thus:—First, let us look at the will. The widow takes only for life. There is a direction to pay when the children come of age,—she is to settle what she deems "prudence," reserving for herself maintenance. She was only to have maintenance out of the whole property. As to whether there could be an appointment in favour of grandchildren, I am of opinion the testator throughout his will contemplated children and children only. What is decisive in this obscure will is this—suppose she died leaving all the children under age, to whom would all the property go? It was to go to the trustee, and upon trust for "children," not for grandchildren. It is clear that if the widow married again, all the children being under age, the property was to go to the trustees, and they were only to hold it for the children, and not the grandchildren. The cases cited from Jarman contained larger expressions. The question is not what is the meaning of the word "settlement" generally, but what is the meaning of the word "settled" in this will? It means, in truth, a *gift* to the children. It is not very clearly stated, but I think the shares vested in all the children living at the death of the testator, and then the limitations are, taken altogether, equivalent to a gift to the widow for life, with remainder to the children, with a power to the widow to appoint among such children as she may select. The answer to the first question in the case will therefore be negativing the power to give benefits to the grandchildren; and to the second question, that the shares vested in the children at the testator's death, are liable to be divested by Mrs. Kennerley's appointment; and therefore, of course, such part as was not well appointed vested in all the children equally.

VICE-CHANCELLOR PARKER'S COURT.

Reported by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.

March 4 and 5.

HEDGES *v.* HEDGES.

Transfer of mortgage—Adoption of debt by owner of estate.

Three persons became entitled in unequal shares, to real estate, subject to a mortgage debt. The mortgagee having required payment of the debt, a transfer of the mortgage was made. By the deed of transfer it was recited that payment of the debt had been required of A. B., C. D. and E. F. (the persons entitled to the equity of redemption), according to their respective proportions thereof, and that they had applied to the transferee to advance the money, which he had consented to do upon having the repayment thereof secured as thereinafter mentioned. There was a fresh proviso for redemption, on payment by A. B., C. D. and E. F. of the money, in proportion to their shares in the estate; and the deed contained a covenant by A. B., C. D. and E. F. with the transferee, for payment of their proportions of the debt. A bond for payment of the money, according to the covenant in the deed of transfer, was also executed by A. B., C. D. and E. F. E. F. afterwards died, and it was Held, that the personal estate of E. F. was not the primary fund for the discharge of her proportion of the debt.

By indentures of lease and release of the 4th and 5th of April, 1800, James Sutton conveyed a messuage and land, situate at Draycott Folliott, in the county of Wilts, to Hannah Clarke, in fee, subject to a proviso for conveyance of the premises to T. Jeffries in fee, on payment to Hannah Clarke of 3,000*l.* and interest. T. Jeffries by his will, dated the 21st of March, 1801, devised the said messuage and land, in trust for the benefit of his wife until his son Thomas should attain twenty-one, and then to the said Thomas and the testator's two other sons, Richard and George, or such of them as should be then living, and their respective heirs and assigns, as tenants in common, subject to the payment of so much of the mortgage debt as should be due thereon at the time of his death. In March 1803, T. Jeffries died. By indentures of the 4th and 5th of April, 1808, Richard Jeffries conveyed his one-third share in the premises, subject as aforesaid, as to one moiety thereof to Sarah Jeffries, the widow, in fee, and as to the other moiety thereof, to Jemima Jeffries in fee. Thomas Jeffries, the son, by his will, dated the 29th January, 1818, devised and bequeathed all his residuary real and personal estate to the said George Jeffries absolutely, and appointed him sole executor. Upon the death of Thomas Jeffries in 1821, George Jeffries proved his will. By indenture of release, dated the 25th of January, 1826, after reciting the said mortgage; that Hannah Clarke died intestate as to the legal estate in the mortgaged premises, leaving John Clarke her heir-at-law, but having by her will bequeathed her residuary personal property to the said John Clarke, and appointed him and John Crook her executors; that they had proved the will, and assigned the said mortgage debt and securities to John Ward and Thomas Merriman, their heirs, executors, administrators, and assigns; that J. Ward and T. Merriman had called in and required payment of the said mortgage debt from George Jeffries, Sarah Jeffries, and Jemima Jeffries, according to their respective proportions thereof; and that G. Jeffries, S. Jeffries, and J. Jeffries, being unable to comply with such request, had applied to Thomas Neale and Philip Neale to lend and advance to them the said sum of 3,000*l.* to enable them to do so, which they had consented to do in manner thereinafter mentioned, upon having the repayment thereof with interest secured to them in such manner as was also thereinafter expressed; it was witnessed that, in consideration of 2,000*l.* to J. Ward and T. Merriman, paid by T. Neale and P. Neale, at the request of Geo. Jeffries, and of 1,000*l.* similarly paid at the request of Sarah Jeffries and J. Jeffries, in equal moieties of 500*l.* each, making together the sum of 3,000*l.* J. Ward and T. Merriman conveyed the said premises to T. Neale and P. Neale, their heirs and assigns, subject to the proviso for redemption therein contained. The proviso was, that if George Jeffries, his heirs, executors, administrators, or assigns, should pay, or cause to be paid, unto T. Neale and P. Neale, their executors, administrators, or assigns, the sum of 2,000*l.* with lawful interest, upon the 25th of July next ensuing, and if S. Jeffries and J. Jeffries, their heirs, executors, administrators, or assigns, or either of them, should in like manner pay, or cause to be paid, unto T. Neale and P. Neale the sum of 1,000*l.* in equal moieties, with lawful interest, upon the 25th of July next ensuing, without making any deduction, &c. then and immediately after such payments should be made as aforesaid the said T. Neale and

P. Neale, their heirs or assigns, should and would, at the request, costs, and charges of Geo. Jeffries, his heirs, executors, administrators, or assigns, reconvey and reassure two undivided third parts, the whole into three equal parts or shares to be divided, of and in the said messuage, &c. unto the said Geo. Jeffries and his heirs, or unto such other person or persons as he should direct or appoint; and should and would, at the request, costs, and charges of the said S. Jeffries and J. Jeffries, their heirs or assigns, reconvey and reassure one other undivided third part, the whole into three equal parts to be divided, of and in the said messuage, &c. unto the said S. Jeffries and J. Jeffries, and their heirs respectively, by equal moieties, or unto such other person or persons as they respectively should direct or appoint, freed and discharged of and from all incumbrances made or committed by the said T. Neale and P. Neale, their heirs or assigns, in the meantime. The indenture contained a covenant by Geo. Jeffries, S. Jeffries, and J. Jeffries to pay their proportions of the said sum and interest. There was also a bond dated the 26th of January, 1826, and under the hands and seals of G. Jeffries, S. Jeffries, and J. Jeffries, for securing the payment of the said sum of 3,000*l.* and interest, in the proportions before mentioned. In April 1839, Jemima Jeffries was married to William Hedges, and in 1843 she died. The before-mentioned estate, subject to the mortgage, became afterwards entirely vested in T. H. Jeffries. In 1845 William Hedges took out letters of administration of the estate of his deceased wife, and in June, 1846, he died, having, by his will, appointed T. Hedges and J. Brown his executors, of whom the former alone proved. Henry Hedges, a residuary legatee under the will of William Hedges, instituted the present administration suit against the executor. A reference having been made to the Master, he, by his report, dated the 2nd of June, 1851, found that the estate of the said William Hedges was not liable in respect of his dealings with the estate of his late wife Jemima Hedges, as her administrator, except that the estate of the said W. Hedges was at law liable to the covenant entered into by Jemima Hedges for payment of the sum of 500*l.* contained in the indenture of the 25th of January, 1826, and to the bond of the 26th of January, 1826, executed by the said Jemima Hedges, as a collateral security for the said sum of 500*l.* To this report exceptions were taken by T. H. Jeffries, and now came on to be heard.

Malins and *Speed* in support of the exceptions.

F. Webb for the plaintiff.

Russell, Grove, Follett, and *Rasch*, for the defendants.

Malins in reply.

The following cases were cited:—*Barham* v. *The Earl of Thanet*, 3 Myl. & K. 607; *The Earl of Oxford* v. *Lady Rodney*, 14 Ves. 417; *Lushington* v. *Sewell*, 1 Sim. 435; *Donisthorpe* v. *Parker*, 2 Eden. 162; *Bruce* v. *Morrice*, 2 De G. & Sma. 389; *Evelyn* v. *Evelyn*, 2 P. Wms. 222; *Shafto* v. *Shafto* (in note to *Evelyn* v. *Evelyn*); *Lord Tankerville* v. *Fawcett*, 2 Bro. Ch. Ca. 57; 1 Cox, 237; and *Lord Clarendon* v. *Barham*, 1 Y. & C. C. C. 688.

The Vice-Chancellor said that there was no doubt as to the rule applicable to such cases as the present. Here was a person who was mistress of both funds, and the question was upon her acts or contracts which fund was primarily liable. The rule of law was, that the intention of a person in that position was to govern the liability. The question of the application of that rule depended on the particular circumstances. The cases cited were no more material in the present case than as they illustrated the existence of that rule. It was the settled law that the mere transfer of a mortgage by one mortgagee to another, although accompanied by a covenant of the owners of the estate, making their personal estate liable to the transferee, would not, of itself, make their personal estate the primary fund for payment of the mortgage-debt. The law was laid down with great precision by Lord Alvanley in *Woods* v. *Huntingford*, 3 Ves. 131, where he said—"If a person succeeding to an estate of that kind has done no act to adopt the debt and make it his personal debt, his personal estate is not liable; but if by his acts he has put himself so far in the place of his ancestor as to make the debt his own, that is understood to be the same as if he were the original mortgagor; but the Court has been extremely anxious not to make that inference unless where it is perfectly clear and obvious; therefore though, the mortgagee pressing for his money, the heir is obliged to have a transfer of the mortgage, and, as every one knows, no assignee will take it without some personal covenant, upon that transaction he executes a bond to the new mortgagee, if he does it only for that purpose, not meaning to make himself more liable, it has been determined not to make it the personal debt of the party whose original debt it was not." What were the circumstances of this case? In 1826, three persons were owners of the equity of redemption in different shares as tenants in common. The recital in the deed of that date, as to the mortgagees having requested George Jeffries and the other part owners to pay off and discharge the mortgage-debt was, that they had called in and required payment of the said mortgage debt from the said George Jeffries, S. Jeffries, and J. Jeffries, according to their respective proportions thereof; and that the said G. Jeffries, S. Jeffries, and J. Jeffries being unable to comply with such request, had applied to Thomas Neale and P. Neale to lend and advance to them the said sum of 3,000*l.* to enable them to do so, which they had consented to do in manner thereinafter mentioned, upon having the repayment thereof, with interest, secured to them in such manner as was thereinafter expressed. The only object in that was to effect a transfer of the mortgage on the mortgagee pressing for payment. There was no object whatever apparent on the deed, except merely to transfer the mortgage debt and the estate from one person who was pressing for payment of the debt, to another who was contented to advance it. So far the case was precisely within the rule stated by Lord Alvanley, and also laid down by Sir J. Leach in *Shafto* v. *Shafto*. What did the deed do more than that? There was a proviso for redemption, which was in a special form, stipulating what clearly the law would have done if it had not been there stipulated. The shares were according to the interest of the parties in the estate: so far from intending to make themselves personally liable by that, it shewed that the liability to pay the debt was to follow the interest each had in the estate. There was a covenant which, it was admitted on all hands, did not change the character of the debt. It appeared to his Honour, therefore, that there was nothing in this case except a simple transfer of the mortgage debt from one person to another. In *Barham* v. *The Earl of Thanet*, Sir John Leach did not dispute the rule, but came to the conclusion on the construction of the deed; in that case there was an apparent intention to change the nature of the debt: no such intention was apparent in the present deed. Something had been said about the form of the proviso for redemption; but his Honour thought that it would be losing sight of the substance on a mere question of form, if anything were made to turn upon that. If the mortgage were transferred, there should be a new proviso for redemption, as the hand to receive and the hand to pay the money would both be altered, and accordingly that was expressed in the deed. His Honour considered that the exceptions must fail.

Wednesday, June 2.

TURNER v. TURNER.

Will—Execution of power—Construction.

Power of appointment of property by deed or other instrument:

Held, to be well executed by will.

Leasehold ground rents and shares in an insurance company:

Held, not to pass under the words "real estate, money, and securities for money."

J. H. Green by his will gave to his wife a life interest in certain property, and empowered her "by any deed or deeds, instrument or instruments, in writing, to be by her signed, sealed, and delivered, in the presence of and attested by two or more witnesses, to appoint, &c. the said property, and by the same or any other instrument or instruments, executed as aforesaid," to require and authorise the trustees to pay or transfer the same to the appointees. The testator died on the 7th of November, 1830. Mrs. Green made a will, dated since the 1st January, 1838, whereby she gave all her real estate, and such part of her personal estate as consisted of money and securities for money, in five shares, and she gave the residue of her estate to another person. From the evidence of the attesting witnesses to this will it appeared that after the will had been signed and sealed, Mrs. Green put her hand upon the wax and gave or delivered the will to one of the witnesses, at the same time saying, "I publish and declare this as my last will and testament." At the death of Mrs. Green there was no real estate, but the property consisted of a sum of Consols, leasehold ground rents, and shares in an insurance company. At the date of Mrs. Green's will there was a small balance of cash at the banker's, which was afterwards laid out in Consols. The present suit was instituted, by claim, by one of the legatees under Mrs. Green's will, and the questions were, whether the will of Mrs. Green was a valid execution of the power given by her husband; and, secondly, whether the description in Mrs. Green's will was sufficient to include the ground rents and shares.

Follett and *Kinglake*, for the plaintiff, cited *Doe* v. *Holloway*, 1 Stark. 431; *Kibbet* v. *Lee*, Hob. 312; and other cases referred to in 1 Sugden on Powers, 276, 6th ed.; and *Francombe* v. *Hayward*, 9 Jur. 344.

Headlam and *W. M. James* for a defendant in the same interest.

Bacon and *Bazalgette*, for Mrs. Green's residuary legatee, referred to *Curtis* v. *Kendrick*, 3 Mees. & Wels. 461.

Russell, Pitman, Wigram, and *Wigglesworth* for other defendants.

The Vice-Chancellor said that the authorities, independently of the Wills Act (1 Vict. c. 26), established the fact of this will's being a good execution of the power. The next question was upon the construction of the will, whether the bequests by the will came within the 27th section of the Act, as a bequest of personal estate described in a general manner. It appeared to his Honour, that in both parts of the will it was a bequest of personal property described in a general manner, and therefore, under one part or another, the legatees under the will were entitled to the whole personal property described in a general manner. Now the Consols passed under the words "securities for money," but as to the ground-rents and insurance shares, his Honour desired to hear a reply.

Follett in reply.

The Vice-Chancellor said that the shares in the insurance company did not pass under the bequest, and that the leasehold ground-rents could not pass as "real estate." All, therefore, that the plaintiff and those in the same interest would take would be the Consols, and the rest would go to the residuary legatee of Mrs. Green.

VICE-CHANCELLOR KINDERSLEY'S COURT.

Reported by W. H. Bennet, Esq. of Lincoln's-inn, Barrister-at-Law.

April 20 and 21, and May 5.

BELL v. MORRALL.

JONES v. MORRALL.

Pleading—Executors—Wilful default · Liability of executors to pay interest on their balances.

If a case is not made by the pleadings (such as wilful default against executors), the point cannot be raised either at the original hearing, or on further directions; and if the plaintiff cannot make a sufficient case for an immediate decree, it is his duty to get inquiries of such a character, that on the result of them the Court may on further directions make a declaration upon the point.

In order to give a claim for interest on balances in the hands of executors, there must be a clear case of improper retention of balances to a considerable or substantial amount.

Where, therefore, there were only small balances remaining in the hands of the executors, and there was no decree on the hearing, declaring them chargeable with wilful default, nor liable to interest on balances, the Court will not on further directions declare the plaintiff entitled to either of such declarations.

This case came on for further directions on the Master's report on the common reference to take the accounts of a testatrix's personal estate. The cause was heard in July, 1845, and the decree contained the usual references to take the accounts—to inquire whether any, and if any, what part of the personal estate remained outstanding or undisposed of; the usual inquiry as to debts, and to ascertain the clear residue of the testatrix's estate; and liberty to state special circumstances with reference to the matters aforesaid. There was no declaration to inquire what might have come to the hands of the defendants, the executors, but for their wilful default; nor any inquiry or declaration as to interest on balances in the defendant's hands.

The finding of the Master, and the other facts so far as they are material to the report of the decision upon the points in the case, are fully stated in the judgment.

Stuart and *Haddon* for the plaintiffs.

Malins and *Piggott* for the principal defendants, the executors.

Kenyon Parker for another defendant.

The principal cases referred to were *Law* v. *Hunter*, 1 Russ. 100; *Tomlin* v. *Tomlin*, 1 Hare, 236; *Tebbs* v. *Carpenter*, 1 Mad. 290, and the cases there cited.

JUDGMENT.

Wednesday, May 5.—The Vice-Chancellor.—This is a suit to administer the estate of a lady who died in the year 1823. The questions raised on the cause coming on on further directions are these:—First, it is contended by the plaintiff, who represents the interest of a residuary legatee, that one of the defendants, who is the surviving executor, and others, who represent the estate of a deceased executor, ought to be declared liable for the value of certain furniture and other effects remaining at the death of the testatrix in the mansion-house at Plas Yallen; secondly, that those defendants are liable to pay interest on balances in their hands from time to time, and for an account of the rents and profits of certain leasehold property; and, thirdly, that the defendants ought to pay the costs of this suit, first, because of a refusal to account; and, secondly, be-

cause they have disputed the plaintiff's claim. Now, the facts, so far as they are material, are as follow:—The testatrix, Mrs. Morrall, in the lifetime of her husband, made, under a power so to do, a will, and appointed certain property, as to which bequest no question arises. Then her husband died, and she made a codicil, by which she disposed of certain leasehold estates; she by this codicil directed "that the household goods, farm horses, cattle, farming implements, and other effects (except money and plate) being in and about the manor-house of Plas Yallen, should remain there for the use of her son William Morrall during his life, and after his decease should be equally divided amongst all her children that should be then living," &c. That is, the furniture and effects as to which the first point is raised. Now, according to the terms of the will, W. Morrall, the eldest son, was entitled to the benefit of the furniture and effects during his life, and after his death the testatrix disposed of her residuary personal estate "equally to be divided among all her children," and she appointed Charles Morrall, the defendant, and R. Morrall, and the plaintiff Jones executors of her will. The plaintiff Jones married a daughter of the testatrix. After the death of the testatrix, which took place in December 1823, the will and codicil were proved by the three executors, the plaintiff proving as well as the others. In May 1829 Jones became a bankrupt. It must be observed that at that time he was entitled in right of his wife to one equal share of the testatrix's residuary estate. The testatrix left eight children, so that the plaintiff, in right of his wife was entitled to one-eighth of the residuary personal estate. And as to the furniture and other effects at the house called Plas Yallen, at the death of W. Morrall, if Mrs. Jones survived W. Morrall, she was entitled to one share of the furniture and effects, &c. Now, shortly after the death of the testatrix, the plaintiff became bankrupt, and on the bankruptcy of the plaintiff his share of the residuary personal estate of course passed to his assignees. The plaintiff Jones obtained his certificate in September 1829. From his bankruptcy till the time which I shall next mention, viz. till 1834, he had no interest in the testatrix's residuary personal estate. It appears that a person named Chattock was, in the lifetime of the testatrix, employed as bailiff to receive the rents of her leasehold estate, and he continued so to act after her death. In December 1831, the share of Mrs. Jones of the testatrix's residuary estate was assigned by Jones's assignees, and by Jones to one Edwards, who was in fact merely a trustee for Jones himself. In March 1835, W. Morrall died, and then the furniture and other effects in and about Plas Yallen became divisable amongst the children then living, and there were then seven living, so that the plaintiff Jones was entitled to one-seventh of the furniture and effects, &c. On the death of W. Morrall, or shortly afterwards, that is, on the 7th of April, 1835, Edwards, to whom the plaintiff's share was assigned, executed a deed declaring that he was a trustee for the plaintiff, and on the 25th of April Jones and his wife filed a bill against the other children, including the two who were the legal personal representatives of the testatrix, for an account of her personal estate, and of course, W. Morrall being dead, that bill must have sought, and did seek, an account of the furniture and effects which were then divisable into seven parts, as well as of the general personal estate which was divisable among the eight children. That bill was not actively prosecuted, but lingered for some years, that is, from 1835 to 1840. In the meantime C. Morrall, one of the executors, died, and his daughter, Mrs. Gooch, whom he appointed his executrix, proved his will, and then the suit was revived, and a bill of revivor and supplement was filed to seek an account of what C. Morrall had received. So matters stood till August 1840; answers were put in, and in the answers put in by R. Morrall and by C. Morrall an account of the personal estate come to their hands, in fact, all the accounts asked for, had been furnished, but no decree was taken. In August, 1840, the defendants in that suit moved to dismiss for want of prosecution; and by an order, dated 3rd of August, 1840, that bill, which had been pending for about five years and a quarter, was dismissed with costs, for want of prosecution. The Master taxed the costs, and on the 23rd December, 1840, he certified the amount; and the general costs of the suit, and certain other costs of proceedings in the suit were directed to be paid by the plaintiffs. They were not, and are not, to this day paid. So matters remained till November 1842, when Jones and his wife filed the present bill. A decree was made in July 1845. These are the facts, so far as they are material. The first point is this: the plaintiffs say that Robert Morrall, the surviving executor, as well as the estate of C. Morrall, is responsible for the value of the furniture, &c. which the testatrix directed should remain at the house at Plas Yallen, that is, ought to be held liable to the plaintiff for one-seventh of the value of that furniture, &c. Now this point, as to the furniture, is raised by the pleadings, and was before the Court on the hearing; the decree, however, not only declared nothing respecting it, but gave no directions for any inquiry as to it, on the result of which the Court could, on further directions, proceed. But what the decree did direct, was an account of the personal estate; that is, of what had been received by the executors, and it directed an account of the furniture and other things no further than as to what part thereof had been received. The direction in the decree is: "It was referred to the Master to take an account of the personal estate of the testatrix not specifically bequeathed by the codicil including the household furniture, goods, horses, cattle, and farming implements, by the codicil directed to remain at Plas Yallen for the use of Wm. Morrall, for his life, and of the rents and profits of the leasehold estate, and of the moneys produced by sales of timber, &c. come to the hands of the plaintiff since his bankruptcy, if any, or to the hands of R. Morrall, C. Morrall, and the defendants Nugent and wife, or of any of them, or to the hands of any other person or persons, by their or either of their orders, or for their or any of their use. And the Master was to inquire whether any, and if any part, what part of such personal estate remained outstanding or undisposed of. Then there was the usual inquiry as to debts; and to ascertain the clear residue of the testatrix's estate, and liberty to state special circumstances relating to the matters aforesaid." There is no direction for any inquiry on which to charge them with what, without wilful default, they might have received. If it had been intended to raise that point, the Court ought at the hearing to have been induced to make some declaration, or to direct some inquiry, on the result of which, on further directions, it might act. The rule on this subject, I conceive, is this, if the pleadings do not raise the point, it cannot be raised either at the original hearing or on further directions; but if the plaintiff's pleadings do, as in this case, raise the point whether the defendants are liable for wilful default, it is the duty of the plaintiff, if he can make a case for it, to get a declaration by the decree; or if he cannot make a sufficient case for an immediate decree, to get an inquiry of such a character that on the result of it the Court may, on further directions, make a declaration. But if the point is raised on the pleadings, and the Court, by its decree, passes it by, and neither makes any declaration nor directs an inquiry, it must be taken that the Court did not mean to give any such relief; either that it was passed by by the plaintiff, or that being urged by the plaintiff, the Court did not think fit to give it. Now, here the Court has not only made no declaration, and directed no special inquiry, but in directing the common account of the general personal estate, has said, "Take that account also as to the furniture and effects," &c.; that is, an account of what has been received, not of what might have been received. But further, the decree directs an inquiry as to what is outstanding. Now, if any part of this furniture, &c. which might have been received has not been received, it would be outstanding estate. But the Master finds there is no outstanding estate, and no exception has been taken to this finding, so that the question is concluded. But if it were now open, I think the plaintiff could not have the relief now asked. Jones was himself one of the executors; he proved the will, and thereby took upon himself the execution of the trusts as much as his co-executors. And if a party thus under the obligation to perform a trust, does not choose to perform it, but leaves it to his co-executors, he cannot then say to his co-executors, "Because neither you nor I have realised this furniture and effects and divided them, I am entitled to call on you to account, not for what you have actually received, but for what you and I might have received." I am of opinion that, for all these reasons, there is no ground for making the defendants liable for the value of the furniture and other effects which ought to have been realised and divided. The next point is this, the plaintiff says the defendants ought to be held liable for interest on the balances from time to time in their hands. Now, the Master's report says the balance of the personal estate is 767*l.* 18s. 5d. of which the plaintiff's share is 95*l.* 19s. 9d.; R. Morrall, the surviving executor, is found liable for 88*l.* 11s.; and the plaintiff's share of the rents of the testatrix's leasehold estate as against C. Morrall, the deceased executor, or his personal representative, is 158*l.* 5s. 9d. out of which 15*l.* 3s. 9d. have been paid into court. Except these small sums, then, every part of the plaintiff's share, as well of the general personal estate as of the leasehold rents, has been duly paid to the plaintiff. Now the defendants sought to be charged insist that, applying the rule to which I have referred, the plaintiff cannot now claim interest on balances, because there was no declaration or inquiry as to the balances at the hearing. But it appears to me that, correctly applying the rule, the plaintiff has a right to raise the question. It is true there was no declaration at the hearing, but there was that which is the first step towards such a declaration, there was a direction to take the common account of what had been received. The Court was not able at the original hearing to say whether there were any balances; but the direction to take an account of the personal estate, if properly answered by the Master, ought to shew what personal estate has been received from time to time, and the state of the receipts and of the payments should be shewn upon the schedule, and then on that report, with the schedule, the Court may hear it argued whether there are any balances in respect of which the Court may either make an immediate declaration, or direct further inquiry. It is still competent, therefore, to the plaintiff under a decree directing a reference, the result of which affords the Court the materials on which to form an opinion to raise the question. In this case, then, are the circumstances such that if there are balances there ought to be interest on those balances? Now I have said, that in 1829, viz. twenty-one years ago, the plaintiff Jones, who now claims interest, was a bankrupt, and all his interest passed out of him to other persons, and not only could he not then ask for payment, but no payment could properly have been offered to him. Now it does not appear that he ever asked for payment, but in 1834 he procured his assignees to assign his share to a trustee for him. In effect, he bought it back in December 1834. Then he was again in a position to ask for accounts in respect of the personal estate of the testatrix; and directly afterwards, that is, in April in 1835, after the death of W. Morrall, he filed his bill, but he let it linger, and ultimately he dismissed with costs for want of prosecution. He files a fresh bill in 1842, and the testatrix having died in 1823, he now claims to have interest on the balances in the hands of the executors. In order to give a claim for interest there must be a clear case of improper retention of balances to a considerable and substantial amount; but here the total balance retained arising from the personal estate amounts to less than 96*l.* and the total share of the rents of the leasehold estate is a little more than 88*l.*; as to the latter balance in an early stage of the proceedings after the testatrix's decease, it was erroneously considered that the leasehold was freehold. If it had been so W. Morrall would have been entitled to the rents; however he, in fact, received them, and the executors have been made liable to repay what was so received; and under these circumstances the plaintiff claims interest on the balances. There is in my opinion no ground under all these circumstances for decreeing interest on the balances. The remaining point is as to the costs, and it is said that the plaintiff ought to have them on the ground of a refusal by the defendants to account. Now on that point the circumstances to be attended to are these: on the 10th of April, 1835, three days after the execution of the deed by which Edwards became trustee of the plaintiff's share for him, a solicitor for the plaintiff wrote to Robert and Charles Morrall, the other executors, the two acting executors as they have been called, as if for Edwards (who was a mere trustee), asking, on behalf of Edwards, for an account. Within fourteen days an answer was returned, that an account should be rendered. Within fifteen days after the first application the bill was filed. In the answers to that bill the accounts were set out, and then that bill was dismissed. In 1842, two years after the dismissal, another solicitor for the plaintiff, called for the accounts and proposed an arbitration. The answer was:—"You have had the accounts; you have them on oath." It was not suggested that the accounts were not fully given. This, then, does not amount to a refusal, the accounts having been already given. Then it is said that the defendants have resisted by their answer the plaintiff's claim. Now the defendants have by their answer suggested that the purchase by Jones from his assignees was without a sufficient concurrence by the creditors. If this suggestion had led to any expense, I should so far have directed that to be borne by the defendants; but it has caused no expense beyond, perhaps, the few lines stating it adding to the length of the answer. Even that I would make the defendants pay if the expense to the plaintiff of the inquiry into the amount would not be more than he could have to receive; for I accede to the principle that if a defendant questions the title of the plaintiff and fails, and by that course puts the plaintiff to any costs, the defendant should pay so much of the costs as has been caused by the objection. But I do not act upon it, because here no perceptible increase of costs has been occasioned. The costs must go, therefore, according to the usual course in administration suits.

Order on further directions accordingly.

Saturday, July 3.

Ex parte PUGH.

Wife—Right to settlement—Bankrupt husband. Two-thirds of a sum which had been paid into court under the Trustee Relief Act, and to which the husband was entitled in right of his wife, but

who had become bankrupt, ordered to be settled on the wife and her children.

This was a petition by the assignees of a bankrupt praying that, after payment of the costs, a sum of 681*l.* standing to the account of "Clara Carter and the assignees of Charles Joseph Carter, her husband," might be divided as the Court should think fit, and after a settlement of a portion on the wife and children of the bankrupt in the usual way, the remainder might be paid to the petitioners, the assignees.

Teed, Simpson, J. H. Palmer, and *Brett*, for the several parties.

The VICE-CHANCELLOR said: I think that the circumstance that this lady, who at the time of her marriage was in easy circumstances, is now left with eleven children reduced in the world by her husband's bankruptcy, must be taken into consideration to some extent. The course which I propose to adopt is,—there are 681*l.* Reduced Annuities; the assignees will of course have their costs of the petition and consequent thereon, and I do not think I shall be exceeding any rule—if there is any rule—by directing that 400*l.* should be allotted to the wife and children, and that the remainder should be paid to the assignees. I do not think I should give her less. It is alleged that there is a rule which gives one half of the fund in similar circumstances. I think, however, that is to be governed by circumstances, and that the position of the wife, past and present, ought to be taken into consideration. Suppose that the wife should be very advanced in years and had no children, I should not, of course, make so large a provision for her; but for this lady and her eleven children, the 400*l.* will still be a very small sum. *Order accordingly.*

Common Law Courts.

COURT OF QUEEN'S BENCH.

Reported by ADAM BITTLESTON and JOHN THOMPSON, Esqrs. Barristers-at-Law.

June 4, 8, *and* 18.

KERNOT *v.* PITTIS.

*Insolvent—Discharge by default without adjudication—Vesting order—*1 & 2 *Vict. c.* 110, *s.* 44.

An insolvent discharged after the vesting order, by default of the execution creditor, and with the consent also of the detaining ones, cannot sue a party acting as the servant of the provisional assignee, for the recovery of property passing under the vesting order, before an order of the Court under 1 & 2 *Vict. c.* 110, *s.* 44, *for the re-delivery to the insolvent of such property.*

Detinue, for surgical preparations.

Plea.—Before the accruing of the causes of action, the plaintiff then a prisoner in actual custody at the suit of J. P. &c. and also detained at the suit of T. M. C. &c. petitioned the Insolvent Debtors' Court, under 1 & 2 Vict. c. 110, for his discharge; that the said Court made the usual order vesting the estate of the petitioner in the provisional assignee; by virtue of which said order, and the said statute, the goods and chattels in the declaration mentioned, and all rights of action in respect thereof, &c. became and were vested in the provisional assignee; that the vesting order still remains in full force, and that the defendant, as the servant and by the authority of the provisional assignee, after the making of the vesting order, detained the goods, &c.

Replication.—That after the making of the vesting order, and before the detention in the declaration mentioned, to wit, on, &c. the plaintiff was discharged out of the said custody by the default of the said J. P. and by the consent of the said T. M. C. the detaining creditors, without any adjudication being made in that behalf upon the plaintiff's petition by the said Court. That the defendant detained the goods after the plaintiff had been so discharged, and not by virtue of any order, authority, or command of said provisional assignee made or given to defendant before plaintiff was so discharged.

Demurrer.—The causes stated in the margin were, that the replication admits the vesting order and does not shew that the goods were revested in the plaintiff; that it shews no right in the plaintiff to sue, and no liability in the defendant to be sued.

Plaintiff's points.—That by the discharge of the plaintiff from custody, the title of the provisional assignee was determined; and the goods revested in the plaintiff. The other points were technical only.

June 4 *and* 8.—*Willes* argued in support of the demurrer; and

Milward, contrà.

Cases cited: *Grange* v. *Trickett*, 21 L. J. 26, Q. B.; and *Re Mander*, 18 Law T. 211, Insolvent Court. *Cur. adv. vult.*

JUDGMENT.

Friday, June 18.—Lord CAMPBELL, C.J.—In this case of *Kernot* v. *Pittis*, we are all agreed that there must be judgment for the defendant, but we do not agree in our reasons, therefore we must give separate judgments. I do not think I am in this case called upon to review our decision in *Grange* v. *Trickett*, as the defendant is entitled to our judgment, whether the property in the goods mentioned in the declaration did or did not revest in the plaintiff, on his discharge from custody. If the property still remained in the provisional assignee, of course the action is not maintainable; but if it revested in the plaintiff, still I think there is a good defence under sect. 11 of the 1 & 2 Vict. c. 110, which enacts that in case any prisoner as to whose estate and effects any vesting order shall have been made, shall by the consent or default of the detaining creditor, be discharged out of custody, without any adjudication being made in such case, no action or suit shall be commenced against such provisional assignee, or against any assignee or assignees appointed under this Act, nor against any person duly acting under his or their authority, except to recover any property, estate, money, or effects of such prisoner detained after an order made by the said court for the delivery thereof and demand made thereupon. The defendant, in his plea, after setting out the proceedings of the Insolvent Court down to the recording and publishing of the vesting order, whereby the goods in the declaration mentioned became vested in Samuel Sturges, the provisional assignee, further says that he, the defendant, as the servant of, and by the authority and command of the said Samuel Sturges, as and so being such provisional assignee, as aforesaid, after the making of the said vesting order, detained the said goods in the said declaration mentioned as he lawfully might for the cause aforesaid. The replication does not allege that any order had been made by the Insolvent Court for the delivery of the goods to the plaintiff, or that they had been demanded from the provisional assignee or from the defendant; but, after stating the plaintiff's discharge out of custody without any adjudication, with the consent of Cattlin, the detaining creditor, concludes with merely averring that he did not detain, nor does he detain, the said goods by virtue of any order, authority, or command of the said Samuel Sturges, made or given to the defendant before the plaintiff was so discharged as aforesaid. The plaintiff thus admits that the goods were detained by the defendant under the authority and command of Sturges, the provisional assignee, after the plaintiff's discharge from custody, but before any order of Court for the delivery of the goods or demand made thereupon. Must not the defendant be taken to have detained the goods under the authority of Sturges, within the meaning of the enactment referred to? It seems quite clear that Sturges himself would not have been liable to the action if he had detained the goods in his own hands, after the plaintiff's discharge from custody, until the order for delivery and demand. Can if be contended that a warehouseman, agent, or servant, employed by him to keep them safely, is liable to this action? I think that the same protection was extended to them as to the provisional assignee. We are now arguing upon the supposition that the discharge of a debtor before adjudication revests in him the property in his effects which had vested in his provisional assignee. To protect the provisional assignee, and those acting under his authority, from an action for detaining goods until they know authentically the debtor is entitled to them, and they have an opportunity of delivering them up, it seems to me that this very reasonable provision is introduced, which is quite consistent with the title being in the debtor, and with his having such a right to call upon the Court to make an order for restoring the goods as suggested by my brother Patteson in *Grange* v. *Trickett*. Objections were made to the allegation in the plea of a detainer by authority of the provisional assignee, on the ground that it was premature, and therefore that there was no occasion to traverse it. But I am of opinion that this allegation might be introduced into the plea, and that on the demurrer to the replication as it is framed, there ought to be judgment for the defendant.

COLERIDGE, J.—I agree with Lord Crmpbell in thinking that it is not necessary in this case we should review our former decision in the case that has been mentioned. If ever that should be necessary, I hope we shall come to the consideration of it with a proper degree of impartiality. It is unnecessary for me to say more, than that up to the present time I have not read nor have I heard anything which satisfies me that that decision was wrong. I agree also in the conclusion to which Lord Campbell has come upon the present pleadings, and also in the reasons upon which he has founded that conclusion.

ERLE, J.—I am of opinion that the vesting order mentioned in the plea continues in force, notwithstanding the discharge of the plaintiff from custody with consent mentioned in the replication. The vesting order under sec. 37 transferred the property to the assignee, and there is no provision for defeating that title, or making the vesting order void, or its power to cease by the discharge from custody. The pernicious effect of such a result in enabling the insolvent to collude with the detaining creditor for the purpose of defeating the rights of other creditors is obvious, and that effect would be prevented by holding the vesting order valid until adjudication under sec. 37 has rendered it void. With respect to sec. 44, although the provisions for the protection of assignees are superfluous, unless the vesting order is rendered void; still I think it the right construction to hold them to be superfluous, rather than create by conjecture a defeasance to an important title, for the purpose of finding an application for them. It is unnecessary for me to say more as the reasons for this construction are fully and clearly given in the judgment of Mr. Commissioner Law, in the matter of Henry Charles Mander. The 44th section has been construed by my lord and my learned brother, to protect assignees from any action, until an order for a delivery of the property by the Court, although the vesting order may be rendered void by such discharge from custody, and so have defeated the present plaintiff. But if the vesting order were intended to be made void, it was anomolous to suppose it should have force after the avoidance, to protect the person who was assignee under it, for the taking and keeping of the property of the person who was insolvent subsequent to such avoidance, and to debar the alleged insolvent from the common remedies for the protection of the property, until he should have obtained an order of the Court authorising him to take such remedies. By this construction the Legislature would have made the vesting order void, and at the same time for many purposes valid, until the order of the Court for insolvent debtors had been made, which seems an inconsistency and an anomaly in respect of title to property to be introduced; and as all the advantages of this construction may be obtained without inconsistency or anomaly, by holding the vesting order valid until made null by that Court. I think the construction holding it void, and the assignee after its voidance to be protected thereby erroneous.

Judgment for the defendant.

BANKRUPTCY.

BANKRUPTCY COURT, DUBLIN.

Reported by J. LEVY, Esq. Barrister-at-Law.

August, 1852.

Re FOXHALLS.

Partnership—Final examination—Reckless trading—Partial payments.

Where partners trade recklessly, and where the managing partner of a firm deposits goods and makes payments to particular creditors, although he swears that at the time of doing so he did not apprehended bankruptcy or insolvency, his examination will be adjourned sine die, although the assignees are satisfied that he had made a full and true disclosure; and although the examination of the other partner may be passed, he will not be allowed to apply for his certificate for twelve months.

The bankrupts, James and Meredith Foxhall, were extensive West India merchants in Dublin, and carried on trade in partnership. Their liabilities, which were chiefly to English creditors, amounted to upwards of 76,000*l.* whilst their assets were of a very trifling character, scarcely amounting to one shilling in the pound. They came before the Court on several successive days with a view to pass their final examination, which was opposed by

Maher, on the part of the English creditors.

Fitzgibbon, Q.C. was for the bankrupts.

The principal ground of opposition was reckless trading, having contracted the debts when in a state of hopeless insolvency, and having made partial payments to their Irish creditors to whom comparatively little was due. It appeared from the examination of the bankrupts, and from other evidence produced, that Meredith Foxhall was the managing partner, who principally conducted the out business, whilst the other attended to the office and the books. Some months before their stoppage they owed Irish creditors large sums of money, which were principally liquidated by handing over to them goods purchased from English creditors, and by payments made under pressure, as they alleged. Counsel for the English creditors complained of this, and sought to draw the inference that these partial payments were designedly made to the prejudice of English creditors, and that, at all events, the system of purchasing goods and then pledging them to raise money was unmercantile; and traders guilty of such misconduct ought not to get their certificate, or be allowed to get into trade again. It appeared that James Foxhall had little to do with the pledging of goods or raising of money in the way complained of, although he knew that these things were done, and such a system pursued in order to keep up the credit of the house. It was also stated as ground of complaint that the books had not been regularly kept, and that they contained erasures, and that a bottle containing acid had been kept in the office for the purpose of making those erasures. The bank-

rupts admitted that such bottle was kept for the purpose of removing blots from the books, but not for making erasures, and it did not appear that any erasure of a fraudulent character had actually been made. It was urged as a further ground of complaint, that a few days before their failure, and when they knew that failure was inevitable, Mr. Meredith Foxhall borrowed 600*l.* from a Mr. Wight, to take up a bill, for 300*l.* of which Wight was now a creditor on their estate. On all these grounds it was contended that they were not entitled to pass their examination, or ever get into trade again. It was not alleged that there was any concealment or suppression of property.

Fitzgibbon, Q.C. said, the question for the Court was, did the bankrupts make a full and true disclosure of their estate and effects, and was there any reasonable ground to doubt the truth and fullness of that discovery? It was not even suggested that there was any suppression of property. And under these circumstances he contended that they were clearly entitled to pass their examination and get into business again; and what was still more favourable, both the trade and official assignees were satisfied with the account the bankrupts had given.

His Honour delivered judgment.—He said it had been the uniform course, since the establishment of that court, in every case of doubt against the insolvent trader, for the commissioner to take the opinion of the trade and official assignees, and he (the commissioner) had not departed from that practice on the present occasion. He did not recollect any case except that of the Scotts, of Belfast, in which such a lengthened and laborious examination had taken place. In the balance-sheet of the bankrupts they charged themselves with debts for value amounting to upwards of 72,000*l.* and it was an important question what residue of that large amount had the Court been able to lay its hands on? The answer was, nothing. Not a single sixpence of that property would be distributed amongst the unpaid creditors, who were nearly all English merchants; upwards of 30,000*l.* worth of it having been deposited amongst some nineteen or twenty Irish creditors. It might be said that if those transfers of property amounted to a fraudulent preference, the assignees might recover back this property. If the assignee was inclined to recover back that property, and that he depended on the evidence of Mr. Meredith Foxhall, who appeared to be the only person who was fully cognizant of those transactions, he would most certainly fail, for the bankrupt took care, in the evidence he gave, to give those deposits such a character as to leave it impossible for the assignee to recover them back. He would refer to the case of Mr. Wight, who had been induced to lend his money to the bankrupts on the very eve of their failure. He lent them a sum of 600*l.* to assist in the taking up their bills upon that good faith and integrity that should exist between traders, and which it was the duty of that Court to inculcate. That money was obtained on the 27th of Jan. when the bankrupts knew they were hopelessly insolvent, for their total stoppage took place on the 6th or 8th of the following month. How was that money obtained? The bankrupts send for 300*l* to assist in taking up a bill, which was given at once. Another demand was made in a few minutes afterwards, which was refused by Mr. Wight until he should have seen one of the partners, who subsequently gave him a bill of lading fully indorsed, but that bill of lading was afterwards got back by Messrs. Foxhall. The accounts given by Mr. Wight and Mr. Meredith Foxhall were at direct variance with regard to that transaction. Mr. Wight swore positively that the bill of lading had been obtained by the bankrupts under a promise of returning it when they copied it, and had shewn it to some person whom they alleged wanted to see it. Well, they got it, but never returned it; and he (the commissioner) was bound to say that, notwithstanding such conduct on the part of the bankrupts, Mr. Wight had not throughout the whole investigation manifested those angry feelings that might naturally be expected to result from the gross injustice that had been done to him. There had been tea transferred in lieu of the bill of lading, but from that Mr. Wight received no advantage whatever. It was not disputed that when Mr. Wight was applied to for the second 300, he refused to give it unless he got the bill of lading as his security. It was not then credible that the man who refused to give the second loan without the bill of lading would, in a few hours afterwards, hand it back, unless there was a distinct promise to return it. Then a transfer order had been given for the teas, but these teas were, as it turned out, not available as a security, and the transaction with regard to them was as bad as the affair connected with the bill of lading. Mr. James Foxhall did not appear to be cognizant of the transaction about the teas, and it would be well if the same could be said of his brother. The explanation given by the bankrupts with regard to the preferences given to certain creditors was most unsatisfactory. The explanations given with regard to the dealings with Wilson and Company and Bowly and Company were most unsatisfactory; and the circumstances connected with Sinclair and Boyd were equally so. The bankrupts had been but the mere factors of these latter gentlemen, to whom they were bound to hand over every shilling received for their goods. No one could find fault with that; but the complaint of the creditors was, that the bankrupts had applied the moneys received for their goods in discharge of what they owed to Sinclair and Boyd as agents, and that when difficulties pressed upon them they paid to those gentlemen within a very short period a sum of no less than 11,000*l.* As regarded the case of Wilson and Co. he was of opinion that the security given to them was a voluntary deposit, because he did not find that there was any pressure at the time. With reference to the bankrupts' dealings with Mr. Lyons, in his opinion the manner in which the accounts were kept of them in the bankrupts' books were not only discreditable, but disgraceful. With regard to the transactions with Foxhall and Barrington, on account of which credit was taken by the bankrupts for upwards of 7,000*l.* instead of being regularly entered in their books in the course of trade, they were entered in a bulk sum at the end of the year, as if to close their accounts. The explanation given was that I O U's had been held by the bankrupts without any entry having been made of the cash or consideration given for them, in the expectation that Foxhall and Barrington would have been able to take them up; now, it was almost impossible to believe such a story, or that that was a true account even, as related to these transactions. Then, when he saw that 30,000*l.* worth of goods had been deposited with particular creditors, and that there was nothing left for other creditors,—even suppose it were true that those deposits had been made under pressure,—that Court could never sanction such conduct, for at best they were made when the bankrupts were in a state of utter insolvency, and if they wished to have acted fairly by all their creditors they should have stopped payment some time previously. He did not believe the statement of Mr. Meredith Foxhall that up to the 7th of February the firm had reason to believe that they would have been able to go on. If he were obliged to find a motive for that extraordinary statement, he could have no difficulty in finding it, because if Mr. Foxhall had made the deposits and payments with any other impression on his mind, every one of these deposits would have been fraudulent as against creditors. If he had admitted in that court during his examination that he knew (as he ought to have known) he could not go in trade, the entire amount of those deposits would, by the verdict of a jury, be brought back to the estate for the benefit of the general creditors. He was bound to say that he should separate the conduct of the two bankrupts, although neither of them could receive the full approbation of the Court; but inasmuch as it was Meredith Foxhall who managed the out business, and was particularly conversant with the transactions relating to the deposits, and as the account given by him was far from being satisfactory, a distinction should be drawn between them. He was further bound to say, his opinion differed from the assignees, and it was therefore the more painful to him to pronounce an adverse decision as regarded either of the bankrupts. But, after the most anxious reflection, he was bound to say it was a case in which he could not grant Mr. Meredith Foxhall his certificate at all, and where he could not grant the other bankrupt an immediate certificate, although none of the suspicious circumstances of the case had been brought directly home to him. He believed, as regarded Mr. James Foxhall, he had to the best of his ability made a full and true disclosure of his estate and effects. But even if he were satisfied that both had made a full and true discovery, he was bound to look to their conduct as traders, and when he found that they had contracted debts for value to the extent of upwards of 72,000*l.* and that they made payments and deposits to favoured creditors, and traded on with the most reckless indifference, he could not give them a free certificate. He would pass the examination of Mr. James Foxhall, but with a condition that he could not apply for his certificate till after the expiration of twelve months; and would adjourn the examination of Mr. Meredith Foxhall sine die.

(Before Mr. Commissioner Plunket.)

Re Burke.

Trader debtors' summons—Petition for arrangement with creditors.

A trader, who files a petition for arrangement with his creditors under the protection sections of the Bankrupt Act, and obtains protection de bene esse, and who is subsequently summoned under the trader debtors' sections of the Act, must appear and admit or deny the debt, the summons not being avoided by the petition for arrangement with his creditors. Distinction between the English and Irish sections.

In this case Burke, who was a trader resident in Tipperary, filed a petition under the protection clauses of the Bankrupt Act, 12 & 13 Vict. c. 107, s. 90 (English analogous 12 & 13 Vict. c. 106, s. 211), and obtained an order de bene esse. After obtaining that order, he was served with a trader debtors summons by another creditor, who was no party to the arrangement petition, and called upon to admit or deny the debt. On the case coming before the Court on the trader debtors' summons,

Levy, for the debtor, contended that the petition for protection and the order de bene esse put an end to the trader debtor summons (Fonblanque, 48); and that, according to the 23rd section of the Bankrupt Act, no commission of bankruptcy could issue until after such petition for arrangement had been dismissed; and the debtor ought not to be called on to commit an act of bankruptcy.

Creighton, for the petitioning creditor, contended that filing a petition for arrangement did not bar the right of any creditor bringing the debtor into court upon a trader debtors' summons, and suing out a commission upon any other act of bankruptcy than the dismissal of the petition, which was the act contemplated by the 23rd section.

Levy, in reply.—The 23rd section did not limit the act of bankruptcy to the dismissal of the petition; it said that no commission should issue until after such petition for arrangement shall have been dismissed. The 76th section of the 12 & 13 Vict. c. 106, was the English analagous section, and there it was stated that no such adjudication shall be made on any such act of bankruptcy (meaning the dismissal of the petition) until after such petition for arrangement shall have been dismissed. There the Legislature made the distinction as to the act of bankruptcy, but under the Irish section it was clear that no commission upon any act of bankruptcy was to issue until after the petition for arrangement had been dismissed.

His Honour said he was struck with the difference between the corresponding sections of the two Acts, and he thought the construction put upon them by counsel was deserving of some consideration, but it was not by the English Act he was to be guided. The 23rd section of the Irish Act provided that "the filing of a petition by any trader for an arrangement between such trader and his creditors, with the concurrence of a certain number thereof, under the provisions of this Act, shall be accounted and adjudged conclusive evidence of an act of bankruptcy committed by such trader at the time of filing such petition, provided a commission of bankruptcy shall be issued against him within two months after notice of such petition having been filed shall have appeared in the *Dublin Gazette*. Provided also, that no commission of bankruptcy shall issue, unless and until after such petition for arrangement shall have been dismissed." Now, he thought it was clear that the commission here alluded to was a commission founded upon an act of bankruptcy committed by the dismissal of the petition for arrangement, and that there was nothing in the section prohibiting a creditor, who was not a party to such an arrangement, from issuing a commission upon any other act of bankruptcy. It had been argued that this would be defeating the objects for which those protection sections had been enacted—he could not help that—he should administer the Act as he found it. The creditor had a statuteable right to bring his debtor there, and call upon him to admit or deny the debt, and he (the commissioner) did not think he could prevent the creditor from doing so, because the debtor thought proper to file a petition for arrangement under other sections of the Act. There was no doubt a distinction between the Irish and English Acts, and it was contended that where the act of bankruptcy was intended to be limitted to the dismissal of the petition the Legislature pointed it out, and that inasmuch as that limit did not appear in the Irish section, no commission at all was to issue upon any act until after the dismissal of the petition for arrangement. He thought he could not put that construction on it—that he was bound under the statute to call upon the trader to admit or deny the debt. An admission of the debt was accordingly filed.

Equity Courts.

LORD CHANCELLOR'S COURT.

Reported by Owen Davies Tudor, Esq. of the Middle Temple, Barrister-at-Law.

(Before Lord Truro, L.C.)

Feb. 13, 11, *and Nov.* 6

Hickling v. Boyer.

Administration of assets—Dilapidations of leaseholds—Indemnity of executors—Legatee taking cum onere—A. by her will gave to B. certain leaseholds absolutely during the residue of her term therein, subject to the payment of the rent and performance of the covenants reserved and contained in the lease, under which she held the same premises. And as to her residuary real

personal estate, subject to the payment of his debts, funeral, testamentary, and other expenses, she gave, devised, and bequeathed the same to C. his heirs, executors, administrators, and assigns absolutely. The lease contained a covenant to keep the premises in repair. At A.'s death there were dilapidations, but it did not appear whether they had taken place before she took possession of the premises under a will, by which they were bequeathed to her. By an order of the Court below, B. was let into possession, and a sum of stock was set aside out of the testatrix's estate to indemnify the executors:

Held, that, according to the true construction of the will, B. took the leaseholds cum onere, and was liable as between herself and the executors, and C. the residuary legatee, for all the dilapidations at the death of A.

Held, also, that the executors of A. being liable as between themselves, and the lessor for such dilapidations, were entitled to an indemnity from B. before he was let into possession.

Distinction between testamentary dispositions of mortgages and leaseholds, when they are bequeathed subject to debts or rents, and covenants respectively, as to whether the legatee takes cum onere or not.

This was an appeal from the decision of Vice-Chancellor Wigram, under the following circumstances:—Zillah Taylor, by her will dated the 27th October, 1837, bequeathed certain leasehold property to Richard Ashby, his executors, administrators, and assigns absolutely, during the residue of her term to come therein, subject to the payment of the rent and performance of the covenants reserved and contained in the lease under which she held the same premises; and, as to her residuary real and personal estate, subject to the payment of her debts, funeral, testamentary, and other expenses, she gave, devised, and bequeathed the same to James Boyer, his heirs, executors, administrators, and assigns absolutely. In September 1839 Zillah Taylor died, and soon after two of her executors filed a bill for the administration of her personal estate, their co-executors and R. Ashby being parties, as defendants, to the suit. By a decree dated the 28th May, 1842, it was referred to the Master to take the usual accounts, and to make certain inquiries as to liabilities. The Master by his report, dated the 26th April, 1844, certified that by an indenture of lease of the 7th April, 1803, a piece of ground and seventeen messuages were granted to George Taylor for ninety-nine years, from the 25th March then last; and that such indenture contained a covenant on the part of the said George Taylor, his executors, administrators, and assigns, to keep the said messuages and premises, and all buildings that might thereafter be erected on the said piece of ground, in proper repair and condition during the continuance of the said term; that the said George Taylor made three under-leases of different parts of the premises comprised in the lease, with similar covenants to repair; that the said George Taylor bequeathed the premises comprised in the lease to his cousin George Taylor a brother of Zillah Taylor, the testatrix, and that the said testatrix, became entitled to the same under the will of her said brother; that at the time of her death dilapidations had taken place (but whether any of the dilapidations had taken place before she became possessed of the premises, he could not state); and that in November, 1839, it would have required 1,849*l.* to be laid out for the purpose of putting the premises in repair; but that in April, 1843, 1369*l.* only would have been required for that purpose.

By an order on further directions, dated 12th July, 1844, by Vice-Chancellor Sir James Wigram, it was amongst other things ordered, that 1,500*l.* Bank Three per Cent. Annuities should be carried over to an account to be entitled "The Executors Indemnity Account," and that the dividends should be laid out in the purchase of like stock, in trust in the cause to the like account. And it was ordered that Richard Ashby should be let into possession, that the deeds should be delivered up to him, and the names would wish to him; and it was ordered that J. Boyer should be at liberty to take legal proceedings to compel the under-lessees or occupying tenants to make good the dilapidations, and that he should be at liberty to make use of the names of the executors of the testatrix, who were to be indemnified therein out of the indemnity fund.

J. Boyer died in the month of April, 1845, and on a petition being presented by the executors, it was ordered that they should be at liberty to take proceedings to compel the under-lessees or occupying tenants to make good the dilapidations, and that they should be at liberty to use the names of the surviving executors of the testatrix. By another order, dated the 30th May, 1846, on the petition of the surviving executors of the executrix, it was ordered that the legacy duty on the residue of the testatrix's estate, with certain costs, should be paid partly out of the executors' indemnity fund, and that the dividends of the fund should be paid to the executors of J. Boyer, and that the deficiency in the indemnity fund caused by such payments thereto should be made up out of certain other funds.

Richard Ashby died in 1847, whereupon William Cherrington the younger, as one of the surviving executors of J. Boyer, appealed from so much of the order of Vice-Chancellor Wigram, dated the 12th July, 1844, as directed that the sum of 1,500*l.* Bank Three per Cent. Annuities should be set aside to indemnify the executors of Zillah Taylor, being carried over to an account, to be entitled "The Executors' Indemnity Account," and the dividends invested in trust to the like account, and the executors of the testatrix to be indemnified thereout; and from so much of the order of the 30th May, 1846, as directed the deficiency in the trustees' indemnity fund to be made good, and the appellant insisted that what remained of the indemnity fund, after the payments directed by the order of the 30th May, 1846, with the dividends thereof, ought to be paid to himself.

The *Attorney-General* and *Shapter*, for the appellant, contended that, as the testatrix took the leasehold premises as assignee, and had not created any liabilities with respect to them, the executors could at any rate only require R. Ashby, to whom the testatrix had bequeathed such leaseholds, to indemnify them from all the liabilities attaching to them. That the decree on further directions, therefore, was wrong, which impounded part of the testatrix's residuary estate, for the purpose of indemnifying the executors. (*The Earl of Ilchester* v. *The Earl of Carnarvon*, 1 Beav. 209; *The Earl of Clarendon* v. *Barham*, 1 Y. & C. C. C. 688; *Shadbolt* v *Woodfall*, 2 Coll. 30; *Jacques* v. *Chambers*, 2 Coll. 435; *Graves* v. *Hicks*, 6 Sim. 398; *Thomas* v. *Montgomery*, 1 Russ. & M. 729; *Scott* v. *Beecher*, 5 Madd. 96; *Simmons* v. *Bolland*, 3 Mer. 547; *Wildridy* v. *M'Kane*, 1 Moll. 122; *Vernon* v. *Egmont*, 1 Bli. 554, N.S. were cited and commented on.

Teed and *Craig*, in support of the orders of the Court below, cited *Cochrane* v. *Robinson*, 11 Sim. 378; *Fletcher* v. *Stevenson*, 3 Hare. 360.)

The Attorney-General, in reply, cited *Lockhart* v. *Hardy*, 9 Beav. 379; *Cox* v. *King*, 9 Beav. 530; *Burch* v. *Couey*, 14 Jur. 1009.

The LORD CHANCELLOR, after stating the facts of the case, said, that the appellant insisted that the effect of the bequest of the lease was such that the legatee took subject to all the liabilities which attached to the lease, and that the legatee, and not the testatrix's estate, was bound to pay the expense of the repairs, or the consequences of any action for the breach of the covenant to repair. He was of opinion that, by the express terms of the will of Zillah Taylor, Richard Ashby was to take the leasehold property cum onere. Upon the part of the respondents, *Cochrane* v. *Robinson*, 11 Sim. 378, and *Fletcher* v. *Stevenson*, 3 Hare, 360, were cited at the Bar, but it did not appear that the wills in those cases contained any expressions similar to those found in the will of Zillah Taylor. There were, however, two cases in which words occurred similar to those which the testatrix had used. In *Serle* v. *St. Eloy*, 2 P. W. 386, the testator devised land in D. to A. an infant, at her age of twenty-one years, subject, nevertheless, to the incumbrances thereon, the rents in the meantime to be paid to her father for her maintenance, and devised his other land to trustees for payment of his debts; the land in D. being in mortgage, this mortgage was ordered to be discharged by money arising from the sale of his other estate. It was objected that the lands in D. were devised subject to the incumbrances thereon, and that for such reason the devisee ought to take them cum onere; but the Master of the Rolls said, that the devise of the estate subject to the incumbrances was no more than what was implied, for the testator could not do otherwise; but when the testator devised other land to pay his debts, this must be intended all his debts, and that this was the stronger by reason of the disposition of the interim rents, which was as much as to say, that they should not go in discharge of the mortgage. In Graves v. Hicks, 6 Sim. 398, a testator devised real estate, subject, nevertheless, to such charges and incumbrances as should, at the time of his decease, be existing thereon by virtue of any marriage settlement or otherwise; and he bequeathed his residuary personal estate, subject and charged with the payment of all his debts: at the time of his decease, the real estate was in mortgage to secure a sum settled on his daughter on her marriage, and in the mortgage-deed there was the usual covenant for payment of the money. The Vice-Chancellor held that the mortgaged premises were charged with and subject and liable, in the first instance, to the payment of that sum; and he grounded his decision partly on the words "subject nevertheless," &c. and partly on the distinction between an ordinary mortgage and a provision in a settlement, and he quoted the words of Lord Hardwicke in *Lanoy* v. *The Duke and Duchess of Athol*, 2 Atk. 445, where his lordship remarked:—"There being a borrowing and a lending in the case of a mortgage, the real estate is considered only as a pledge, and the personal estate which is the natural fund, is liable in the first place." There was this distinction between testamentary dispositions of mortgages and of leaseholds; the words "subject," &c. when used in reference to mortgages, were not mere useless surplusage, even when they were not construed to import that the party was to take cum onere, for they might be intended to prevent disappointment, and perhaps disputes or doubts, by shewing at once that the estate was in mortgage, which might not otherwise be known to be so; but the words "subject," &c. when used with reference to property which had already been described as leasehold, were mere useless surplusage, unless they were used to signify that the bequest was to be subject to the performance of the covenants to repair in respect of dilapidations existing at the time of the testator's death; and the Court ought not without some special reason to construe words as mere surplusage, which might fairly be held to be employed for some useful purpose. His lordship also said that, independently of any direction in the will, it appeared to him to be only natural, and in accordance with the presumable intention of a testator who made a specific bequest of leaseholds, that the legatee should take them subject to the burden of putting them in repair. It was true that, except in special cases, the general personal estate was the natural fund for the payment of debts, and other kinds of property were commonly exonerated; but the doctrine of exoneration had in reality no application to such a case as the present. Lord Hardwicke, in the passage quoted by the Vice-Chancellor in *Serle* v. *St. Eloy*, had pointed out the distinction between ordinary mortgages and provisions in a settlement; and even in reference to a mortgage, the cases of *Scott* v. *Beecher*, 5 Madd. 96; *The Earl of Ilchester* v. *The Earl of Carnarvon*, 1 Beav. 209; and *The Earl of Clarendon* v. *Barham*, 1 Y. & C. C. C. 688, shewed that when the mortgage debt was not the original debt of the person whose estate was to be administered, and he had not made it his own otherwise than by receiving for his own benefit from the original debtor assets sufficient to pay all the debts of such original debtor, the estate ought to bear the burden, even though the person whose estate was to be administered had charged other parts of his property with the payment of all his debts, and though by receiving such assets he had made himself in one sense personally liable to pay the mortgage. Then, if there was a distinction between an ordinary mortgage and a provision in a settlement as regarded exoneration, there was at least an equal distinction between mortgages and the present case. The general personal estate of the testatrix never received anything which it was under a natural obligation, as it were, to return or replace, as in the case of a mortgage debt, nor as the liability in respect of the dilapidations in existence an actual debt of the testatrix for non feasance, but that as soon as the lessor should require repairs to be done the under-lessees would do them. On both these grounds, therefore, namely, the language of the will and general principles, or on either of them singly, his lordship said he was of opinion that Richard Ashby was liable, as between himself on the one hand, and the executors of the testatrix and her residuary legatees on the other hand, to do the repairs in respect of dilapidations existing at the time of the testatrix's decease, and he thought that he had been sufficiently represented by the executors of the testatrix and their counsel to authorise him to express that opinion; but still he thought that Richard Ashby was properly made a party to the suit in respect of that question, and that his personal representative ought to have been served with the petition of rehearing. His lordship then observed that whatever might be the case with regard to the liability in respect of the dilapidations as between the residuary and specific legatees, no disposition made by the testatrix, and no expression of intention on her part could alter the right of the lessor. The testatrix was an assignee of the lease, and the rule was that the assignee could not avoid passing over, get rid of his liabilities for any breach of covenant committed during the period of his occupation. (2 Platt on Leases, 417.) The executors of the testatrix, therefore, were liable in respect of the dilapidations as between themselves and the lessor, and they were entitled to indemnity in respect of such liability. That might be uncertain, inasmuch as the under-lessees might get in repairs in fulfilment of their covenant with Richard Taylor, or the personal representatives of the direct liability, might do them in accordance with the will; and the fact that the executors were uncertain was a sufficient reason why they did not and could not discharge that liability, and they paid the general debts of the testatrix, and, not being able to discharge the liability, they should have retained a fund to indemnify them against it. His lordship did not consider the executors to be barred by not having come

in before the Master, for in that case the liability was known, and yet at the same time it was uncertain whether it would not be removed by the repair of the premises, as, in fact, it had been partially removed by a considerable expenditure since the death of the testatrix. His lordship said that it had been objected, that the right, if any, of the appellant had been waived by the petition of May 1846, and the order obtained thereon. He considered, however, that such objection was not tenable; for the executors of James Boyer were entitled to the residuary estate, and the residuary estate was liable to the lessor, and the under-lessees were liable to those claiming under George Taylor and the testatrix: the executors of James Boyer were therefore justified in endeavouring to compel the under-lessees to repair for the purpose of removing the liability of the residuary estate to the lessor; but this did not affect their right, as between Richard Ashby and themselves, to require that the expense of the repairs should be borne by Richard Ashby rather than by the residuary estate. In *Shadbolt* v. *Woodfall*, 2 Coll. 30, it was held, that an executor who had assented unconditionally to a specific bequest of the testator's personal estate, was not entitled to an indemnity out of the testator's general estate in respect of his covenant contained in the lease; but in the present case it did not appear that such an assent was given. His lordship thought, therefore, that the order of the 12th July, 1844, was wrong in directing the possession of the leaseholds to be given up to Richard Ashby: that he ought to have been required to give an indemnity to the executors of the testatrix against the liability before being let into possession, and then there would be no need of impounding any part of the residuary estate for the purpose of indemnifying the executors. That it was not an easy matter to make a decree which would be consistent with the rights and equities of the various parties interested, namely, the executors of the testatrix, the executors of James Boyer, the representative of Richard Ashby, and the lessor; but for the reasons before given, he thought he should be accomplishing that, as far as might be, by declaring that Richard Ashby took the premises subject to the liability of performing the covenant to repair contained in the lease under which the testatrix held the premises, and by directing the personal representative of Richard Ashby to deliver up possession to the executors of the testatrix, until he should either do the repairs or cause them to be done by the under-lessees, or should otherwise indemnify the executors of the testatrix against their liability, and that the present indemnity fund be made up as directed by the order of the 30th May, 1846; and that when the executors of the testatrix should have been so indemnified by the personal representative of Richard Ashby, then the fund retained as an indemnity out of the original fund be paid to the executors of James Boyer, and the dividends be paid to them in the meantime, and that the personal representative of Richard Ashby should be at liberty to take proceedings against the under-lessees, and for that purpose to use the names of the executors of the testatrix, they being indemnified therein out of the fund retained by them. His lordship concluded by observing that he thought it right that the personal representative of Richard Ashby should have an opportunity of contesting that order, if she thought she could, after his lordship's observations, successfully contend that it should not be made, or that it ought to be varied in any respect; the before-mentioned order would therefore be made, unless she should, within one month, present a petition to have the matter reheard before his lordship, or the Lord Chancellor for the time being. (*a*)

Reported by C. H. Kehrs, Esq. of Lincoln's-inn, Barrister-at-Law.

Saturday, July 31.

Dean and Chapter of Ely v. Bliss.

Tithes—Statute of Limitations—Interpretation clauses.

To a bill by a dean and chapter for tithes accrued within twenty years, and stating a decree in 1813, *establishing the right, but not alleging that tithes had been accounted for under it, and stating that the plaintiffs had in* 1831 *granted a lease of the tithes of the rectory, which existed till* 1837, *but not alleging that the lease was granted with a view to the tithes in question, or that the lessee paid anything on account of them; a plea of the statute of the* 3 *&* 4 *Wm.* 4, *c.* 27, *averring that the right of suit did not first accrue within twenty years, and that the plaintiffs had not been in possession within twenty years, was (overruling the decision of the late Master of the Rolls) disallowed.*

The right to tithes as against an ecclesiastical corporation aggregate is not barred under the 3 *&* 4 *Wm.* 4, *c.* 27, *by non-payment for twenty years.*

This was a plea to a bill for tithes.

The plaintiffs were grantees under letters patent granted in the 33rd year of Henry 8, of the rectory or parsonage of Lakenheath, and of the tithes therein arising. Within the titheable places of the parish of Lakenheath there was a district called Lakenheath Fen, which was formerly uninclosed and unproductive; but the lands therein were afterwards drained, and subsequently brought into a state of cultivation, and had since been used and cultivated as arable, meadow, and pasture land, and produced titheable matters of considerable value, the tithes of which since the year 1837 ought to have been rendered to the plaintiffs; that the defendant, among others, was an occupier of land within the district, and had in every year since that time taken titheable matters without setting out any tithes to the plaintiffs; the bill charged that the lands were not exempted from payment; that in former times they were frequently under water, and were not till about fifty years ago brought into regular cultivation, and did not produce any corn or grain, or not any considerable quantity; that the tithes of lamb and wool of sheep fed thereon were paid to the plaintiffs or their lessees, and other tithes were paid to the vicar; and by way of evidence that the land was not exempt from payment of tithes; that in the year 1808 the lessees of the plaintiffs filed their bill against certain occupiers of land stated to be within the district for an account of tithes; that the defendants to that bill alleged an exemption, but that on the 16th of December, 1813, an account of tithes was decreed; and it further charged that under an indenture dated the 4th of March, 1831, the rectory and tithes of Lakenheath were demised to a lessee for a term of years, which was surrendered on the 21st of December, 1837, from which day the account of tithes was claimed.

To this bill the defendant pleaded the statute of the 3 & 4 Wm. 4, c. 27, and that neither the plaintiffs nor any person through whom they claimed had been in possession or receipt of the profits of the tithes of Lakenheath Fen, or any of them, within twenty years next before the institution of the suit, and that no acknowledgment of the titles (if any) of the plaintiffs to the tithes, or any of them, had ever been given to the plaintiffs or their agent in writing, signed by the defendant, nor to his knowledge or belief by any other person in possession or receipt of the profits of the tithes within twenty years next before the institution of the suit.

The question, therefore, was, whether the plaintiffs' right (if any they had) was extinguished, or whether they were barred of their right or remedy by the statute 3 & 4 Wm. 4, c. 27.

Lord Langdale, M.R. in 1842, allowed the plea, but gave the plaintiffs leave to amend their bill. (5 Bea. 574.) The matter was subsequently brought, on appeal, before Lord Lyndhurst, L.C. who sent a case for the opinion of the Court of Ex. The judges of that Court certified in favour of the plaintiffs, but on the certificate coming before Lord Cottenham, L.C. his lordship sent a case for the opinion of the Court of C.P. The judges of that Court also certified in favour of the plaintiffs, who now appealed against the decision of the Master of the Rolls, and prayed that the plea might be overruled.

Bethell (*Lloyd* and *Fleming* with him) argued the case for the appellant; and

Rolt (with him *Eagle*) for the respondents.

His lordship refused to hear more than one counsel on each side on the argument of a mere point of law.

The following cases were cited: *Grant* v. *Ellis*, 9 M. & W. 113; *Cholmondeley* v. *Clinton*, T. & R. 107; *Doe* v. *Knight*, 2 M. & W. 911; *Culley* v. *Taylornon*, 11 Ad. & E. 1008; *James* v. *Salter*, 3 Bing. N.C. 553; *Governors of Luton School* v. *Smith*, 3 Eag. & Y. 1117. The several sections of the statutes, 2 & 3 Wm. 4, c. 100, and 3 & 4 Wm. 4, c. 27, which (so far as is material) are set out in the judgment of the Lord Chancellor, were referred to and commented on.

Bethell in reply.

The Lord Chancellor.—I think that in this case all the difficulties have arisen from the way in which the legislation, as regards tithes and real property, has been carried on. Lord Tenterden had his plan, and the Real Property Commissioners theirs; both plans were carried on at the same time; and as no proper communication existed between them, nor sufficient attention paid to the several Acts of Parliament, which were leading to the same conclusion, the difficulties have arisen with which the Courts have had to contend. As regards tithes two things were intended to be provided for; the estate in tithes,—tithes in lay hands being just as much a subject of conveyance, of enjoyment, of transfer, and of disposition as the land or any other property, and capable of being, not perhaps strictly divested, but diverted from the right owner into other channels, and in respect to which the right owner himself would have a remedy under the Acts of Parliament, as they stood before those which are now before me were passed;—and the common render of tithes: that was of course a distinct subject, being simply the render of a chattel, and having nothing whatever to do with the inheritance or the persons to whom it belonged. The Acts of Parliament intended to provide in different ways for both those rights; the right as between adverse claimants to tithes,—that is, not the parson, or layman, for example, claiming tithes as against the landholder, but the two persons claiming one adversely against the other, the right to the inheritance and the estate in the tithes. The first Act of Parliament (Lord Tenterden's Act), certainly only intended to apply to the case of tithes as a render, and not to an estate in tithes as between adverse claimants; it was intended only to apply to moduses and to compositions real and the like, and there has therefore been a very great contest, which is now at an end, in the case of *Salkeld* v. *Johnston*, whether or not you could set up, under that Act of Parliament, a mere non-payment, in discharge of tithes, without shewing a foundation to which you were to refer that nonpayment, that is, shewing a composition real, for example, or a conveyance to yourself which would account for their nonpayment. That point now seems to be settled.

Rolt.—That case is under appeal.

The Lord Chancellor.—Of that I was not aware; but it has by considerable authority been decided that a mere nonpayment is within this Act of Parliament. Now, this Act of Parliament, although it provides for rights to tithes, and shortens the time for making out a claim in discharge of them, and as against the claim to the tithe is a statute of limitations, yet it does not provide strictly for the mere recovery of tithes, as tithe in the ordinary case of a render of tithes: and it was not necessary to do so, for the Acts of Parliament which had already passed had provided sufficient remedies for the tithe owner as against the tithe payer, and the time had been limited for which arrears could be recovered, to six years; therefore there was no necessity for any legislation on that head. The construction which has been put on this Act of Parliament would certainly place the law of tithes on a very satisfactory footing, if that be the true construction. Now, after this Act of Parliament had passed, but before it came into operation as regards its enactments, the statute 3 & 4 Wm. 4, c. 27, was passed, and the question is, whether that latter Act of Parliament has or not repealed a portion of the former, and lessened the time imposed by that Act, and created a less bar in the case of a claim to tithes as a chattel. Now, without looking at the Act of Parliament, it would certainly require a very strong case to enable this Court to say that an Act of Parliament passed so recently after the former one (upon the occasion of which it is impossible to suppose that there was not some knowledge of the former Act of Parliament, creating as it did a great sensation, being a very great movement as regarded the rights of the church), which does not profess to repeal a leading enactment in it, should, by construction, have that effect. What one would naturally have expected to have found upon the face of the later Act would have been a statement of what had been done the year before; an intention to diminish the time limited by that Act, and to make a new enactment; that is not to be found, but still, if by the later Act of Parliament the Legislature has really effected that which is represented, I must of course give effect to that later Act, though the operation would be to abrogate a portion of the earlier. I have, then, first to consider what the real operation of the statute 3 & 4 Wm. 4, c. 27, is. The meaning of the words is doubtful. You are told (what you would have supplied if you had not been told) that the words are not to have that meaning attached to them if a contrary intention appears, and therefore if the contrary intention should appear, you are not to apply to the words the meaning you find. It has been very much doubted, and I am afraid I concur in that doubt, whether the interpretation clauses of the Acts of Parliament have not introduced more mischief than they have avoided, for they have attempted to put a general construction on words which do not admit, in the different senses in which the clauses are introduced, of that construction. Under the old mode of drawing Acts of Parliament a man in framing different clauses had to consider the sense in which he used the words, and to apply it according to the provisions which he was making; whereas, in giving them general sense the framer must now go on thinking he has provided or will provide for every sense in which he has used or will use the word, and if words are introduced which are equivalent to the word or question which is wanted, when you come to introduce the word in its proper place you find it has nothing there properly applicable to it. However, it is perfectly clear that "Tithes, other than those belonging to spiritual or eleemosynary corporations sole, and any share, estate, or interest in them or any of them, whether the same shall be a freehold

(*a*) The personal representative of Richard Boyer did not present such petition.

or chattel interest, and whether freehold, or copyhold, or held according to any other tenure," are included, the word "land" shall extend to that; and the word "rent" is made to extend "to all periodical payments, except moduses or compositions belonging to a spiritual or eleemosynary corporation sole." The word "land" is said to include "tithes," and "rent," "periodical payments," but as neither was intended to include either tithe, or what represented tithe,—modus, or composition belonging to a spiritual or eleemosynary corporation sole,—in each case the exception was introduced. We have, therefore, to find out in what sense the word is used when we come to the particular provision. Assuming that the word "land" means "tithes," and that "rent" means modus in lieu of tithes, except in the particular case, we come to what is admitted to be the section which is to govern this case (sec. 2.) It must be borne in mind, that an estate in tithes was for this purpose precisely the same as an estate in land. It might be lost; it might be recovered; it might be the subject of disposition in every way just the same as the land. Now, that clause declares that after such a day "no person shall make an entry or distress, or bring an action, or suit, to recover any land or rent, but within twenty years next, after the time at which the right to make such entry, or distress, or to bring such action or suit, shall have first accrued to some person through whom he claims; or if such right shall not have accrued to any person through whom he claims, then within twenty years next after the time at which the right to make such entry, or distress, or to bring such action or suit, shall have first accrued to the person making or bringing the same." Now, it is admitted that these words do properly apply to the estate in a rent, and to the estate in tithes. Nobody denies or can deny that; and it is supposed, even if that is to be the sole construction, yet that the defendant can maintain his plea. But what is the real intent and meaning of this Act of Parliament? I think it clear, from repeated consideration, that the word "rent" as here spoken of, means "rent of inheritance," and not rent, reserved by a lease for example, or rent in the common and ordinary form of a render of rent for property. That, by some analogy, may be applied to land; land means the inheritance of land—the freehold of land; it does not deal with land in any other sense than in that of a person who has the right to the land itself. Now, "land" includes "tithe," and tithe being represented by land, it must be subject to the same rule, and open to the same interpretation as land itself: must not, therefore, tithe mean primâ facie the very same thing? There is the same subject for it to operate upon; there was the same intention as regards the barring of any adverse claim. It has clearly that operation; but has it any more extensive operation? If it has, it would then interfere with the former Act of Parliament. If I give to the word "tithe" as extensive an operation as the word "land," in which I find it in company, I do no violence to anything,—I leave the former Act of Parliament to operate in the very case which is now before me, independently of the provision of the other Act of Parliament as regards the arrears to be recovered, the penalties for non-setting out of tithes, and so on; but if I do give to "tithes" a greater operation than I do to "land" or "rent," I then interfere with the former Act of Parliament which has not been repealed. These Acts of Parliament are in pari materia, and I ought to make them consistent; I ought to make them provide for the different cases which they were intended to remedy. I do not intend to set up the one against the other, and to give the one an enlarged construction for the mere purpose of repealing the other. This is not a casus omissus; it is not a case which requires to be provided for. I do not intend to cut down a clear, precise provision in a former Act of Parliament, just recently passed for this very case; I am desired to cut it down as to this particular case, but leaving it to operate in every other; I am asked to repeal an Act of Parliament, in order to provide for a case which is already sufficiently provided for. Is there anything to justify me in doing that? Is there anything in the farther provisions of the Act of Parliament to compel me to do so? Assuming that the Act has a consistent operation, I will postpone considering whether it admits of the construction which has been contended for. But to ascertain whether it has a consistent operation or not, let us pass on to the 24th section. That section is, I must say, very much against the plea. Remembering, then, that "rent" means "all periodical payments," and "land" "*tithe*," the section declares "no person claiming any land, or tithe, or rent in equity, shall bring any suit to recover the same but within the period during which, by virtue of the provisions hereinbefore contained, he might have made an entry or distress, or brought an action to recover the same respectively if he had been entitled at law to such estate, interest, or right in or to the same as he shall claim therein in equity." Speaking as a real property lawyer, there is hardly a word in this clause but what militates against the claim set up by the defendant: it as clearly confines it to the estate as almost any words can do. When they are speaking of entry and distress (and I am proceeding on those words), that entry or distress is referred properly to rent, and the action or suit is referred properly to land, and so to tithes. The proper words would be confined to land; but the words are, when any person "brings a suit to recover tithes under the provisions hereinbefore contained." We have already seen that those provisions, according to sec. 2, would only enable you to recover them in respect of an estate in the tithes, and not to recover them quâ tithes from the person who was bound to render them; then looking at it in that view, this clause is perfectly clear, that no person can in equity go beyond the time which is before limited for the recovery of the estate in the tithes,—and the construction I have now adopted gives to every word in this clause its proper operation, without doing the slightest violence. I apprehend, therefore, that that clause tells very much against the claim, and very much in favour of the plaintiff. Then the 43rd clause enacts that, after a given period, "no person claiming any tithes, legacy, or other property, for the recovery of which he might bring an action or suit at law or in equity, shall bring a suit or other proceeding in any Spiritual Court to recover the same, but within the period during which he might bring such action or suit at law or in equity." Now, it was insisted that that section proved clearly that tithes were being dealt with as a chattel, even though it might be admitted that they were also being dealt with as an inheritance; but there is this difference between the 24th and the 43rd clause; you will see that when they are speaking of a remedy in equity being only co-extensive with the right at law, in the 24th clause, they are speaking of the right to recover "by virtue of the provision hereinbefore contained;" but when they are speaking of the 43rd clause, in which they mean to bind the proceedings in Spiritual Courts, a general provision is put in that "no person claiming any tithes, legacy, or other property, for the recovery of which he might bring an action or suit at law or in equity," shall bring a suit or other proceeding in the spiritual or any other court, but within the period. Now, if that be the construction, it leads to no difficulty; and when I find one clause in the Act of Parliament where, by analogy, it meant to confine the proceedings in a court of equity to the remedy at law, and to confine that to the provisions before contained; and when I find another limiting proceedings in another court by the remedies at law or in equity, but not referring to the provisions contained in this particular Act of Parliament, I am bound to consider that the Legislature was there dealing generally with any right of action or any suit, and meant that nobody should go into the Spiritual Court to recover tithes or moduses unless he could within the same time have recovered at law or in equity. My opinion, therefore, is, that the second section of this Act of Parliament, governed and regulated by the other sections, does not embrace the case of a render of tithes. It was then argued, with great ingenuity and force, that, if that be so, still the defendant was perfectly right; for that, if it be confined to the estate, yet in the first place there was the doctrine of non adverse possession. Now, it is perfectly settled that "adverse possession" is no longer used in the sense in which it was formally. Mere possession may be and is sufficient, under many circumstances, to give a title adversely, and after all, no better expression than "adverse possession" can be used; now, because it is "adverse," but not adverse in the sense in which that phrase was used before these Acts of Parliament were passed, it is said, and said truly, that by the 34th clause, where the remedy is gone, the right also is extinguished. The former Act of Parliament left the right in the party, but barred the remedy. This Act of Parliament more wisely intended, when the remedy was barred, to extinguish the right: the words are, when the remedy is gone, "that the right and title of the person shall be extinguished." Now, it is first said, could that be extinguished on a mere duty of rendering the tithes? That question really need not embarrass the Court, because the Act of Parliament says "the right shall be extinguished." It is not necessary to shew that it was transferred to somebody else, but extinguishment would be sufficient. It is then said, that if it be extinguished, any claim between two persons who were proceeding adversely for the estate in the tithes, the extinguishment must take place to all intents; and that therefore the person liable to render the tithes—the landowner subject to tithes—would have the benefit of that extinguishment. They say if A. and B. are disputing, and A. brings an action of ejectment, or a suit against B. for the tithes of a particular place, it is sufficient for B. to say in answer to A. "You have been so many years out of possession, and your right is extinguished, and thereupon it is extinguished." Then the learned counsel says that extinguishment will operate and enure to the benefit of B.; for an extinguishment takes place for the benefit of the whole world; and that B. therefore, who is liable to render the tithe (the right of the person who claims the tithes being extinguished), is wholly discharged of tithe. Now, the fallacy of that is of course this, that in the case supposed it is a case, from the very nature of which, the landholder is rendering the tithe without dispute; but here there is a dispute as to the liability of the landholder to pay tithe, and not a dispute as to his rendering tithe; the dispute is between a person who has been receiving the tithe for a certain number of years, without, as another person alleges, having a title to that tithe; and then the man who claims that tithe brings an action or institutes a suit against the man who has been receiving the tithe, insisting that the estate and the title in the tithes is in him the claimant. Well, the statute being set up, the claimant is defeated; and, as regards him, his right is extinguished if he had any right. But then, what is the consequence? There is no dispute or doubt raised as to the person who was not present, and not a particle of proceeding as regards the person who is to render the tithe; but the primâ facie result is, that the person who has succeeded in defeating the claimant is himself in possession of the tithe; the tithe has been rendered to him, and he will maintain, if he can, his title against the person liable to pay the tithe. It is a question, therefore, to whom the tithe has been rendered. It is a question of extinguishing the title of one of two adverse claimants, but it does not involve in any manner the question of the liability to render the tithe itself; that question could only arise on a claim by one of those persons against the tithe claimer, and never can be effected by a contest or litigation between persons claiming the estate in the tithe. Whether the case might arise in which one claimant would be barred by the statute set up by the other, and on which the person who set up the statute could not afterwards maintain an action against the person claiming the tithe; I have nothing to do with that. I am looking to the Act of Parliament to see whether in this particular case I could apply that doctrine of extinguishment so as to give a title to the defendant; but what possible ground is there for it,—on what foundation is it to rest? Here the person is claiming the tithe and there is no contest about the title to it. There are not two claimants to the tithe: there is but one claimant, and if his title be not good, nobody else can claim it. There has been no plea set up that another person has been receiving the tithe as claimant; it is a simple question whether this corporation aggregate is or is not entitled to the tithes in kind; it is a question of render, not involving a question of title as between two adverse claimants to the estate in the tithe, and therefore this portion of the Act of Parliament, in my clear opinion, has no bearing on the real merits of the case in point of law. I believe full justice has been done to both parties: nothing could have been added, and it would be a waste of time for me to discuss it further. The result, in my very clear opinion is, that this Act of Parliament does not take away the right of the plaintiff as against the defendant. I do not go into the minor point, as to the difficulties which might arise as to the length of time—taking the leading provisions of the Act, I am of opinion that the Courts have properly made the two Acts stand consistently with each other—standing both together, and each having its own operation, they appear to form a very convenient and useful body of law, and I am not at all disposed, nor have I a right to break in upon it in the way I should do were I to agree in the defence set up. The consequence, therefore, is, that the plea must be overruled, and the case must then proceed in the ordinary way.

COURT OF APPEAL IN CHANCERY.

Reported by OWEN DAVIES TUDOR, Esq. of the Middle Temple, Barrister-at-Law.

(Before the LORDS JUSTICES.)

IN BANKRUPTCY.

Wednesday, March 3.

Ex parte THOMAS ORFORD and JOHN ORFORD; and *Re* PHILIP RUFFORD, FRANCIS RUFFORD, and CHARLES JOHN WRAGGE.

The rules of a Friendly Society provided that there should be appointed a treasurer or treasurers, in whose hands should be deposited all the cash belonging to the society, till the same could be placed out at interest; and that, as soon as a sufficient sum should be collected, it should (after leaving in the club-box a sufficient sum to pay the sick, and other expenses of the society), be deposited in the hands of the treasurer or treasurers of the society, and that the clerk and two stewards should take the same to the bank. The moneys of the society were paid into a banker's, who were not, however, appointed treasurers of the society.

Held, that the bankers were not "employed" as officers of the society, so as to enable the society upon their bankruptcy to obtain payment in full.

COURT OF APPEAL.

This was an appeal from the refusal of the commissioner to order payment in full out of the estate of the bankrupts to the appellants, who were the stewards of a friendly society, whose rules had been duly allowed, certified, confirmed, and enrolled under the Acts relating to Friendly Societies.

By rule 2, it was provided, "That there shall be a book or books of account kept by a clerk to be appointed by a majority of the members, who shall be allowed a yearly salary, and if he shall neglect to attend to the business of this society after he shall be so appointed, or wilfully, designedly, or negligently defraud, or attempt to defraud this society, or any member thereof, he shall make good any loss, damage, or deficiency that may be occasioned by such neglect or attempt to defraud, and be expelled the society."

By rule 3 it was provided, "That there shall be a treasurer or treasurers appointed in like manner as the clerk, but who must not be a member or members of this society, in whose hands shall be deposited all the cash belonging to this society, till the same can be placed out at interest upon satisfactory security to be obtained for that purpose."

By rule 21 it was provided, "That as soon as a sufficient sum of money shall be collected, the same shall (after leaving a sufficient sum in the club box to pay the sick and other expenses of the society) be deposited in the hands of the treasurer or treasurers of this society, and that the clerk and two stewards shall take the same to the bank, for which they shall be allowed one quart of ale each; and if any member shall, on any pretence whatever, draw any money from the bank, except the clerk and two stewards are present, he shall be expelled, and make good what he has drawn therefrom."

The bankrupts were bankers, carrying on business under the style or firm of Rufford and Wragge, at Stourbridge, in Worcestershire.

It was not alleged by the appellants that the bankrupts had been appointed to be treasurers or officers of the society; but they alleged by their petition and affidavit that the bankrupts were employed in the office as treasurers of and in the society, and had in their hands and possession at the time of the adjudication of bankruptcy, by virtue of their office and employment, certain moneys belonging to such society amounting to the sum of 132*l.* 0s. 11d. and that this money was in the hands of Philip Rufford, Francis Rufford, and Charles John Wragge, not as bankers of the society, and in the ordinary way of their banking business, but wholly as treasurers of the society.

Bacon and *Renshaw*, in support of the appeal, cited the 167th section of the Bankrupt Law Consolidation Act, 1849, which enacts,—"That if any person already appointed or employed, or who may be hereafter appointed to *or employed* in any office in any society, established under any of the Acts relating to friendly societies, and being intrusted with the keeping of the accounts or having in his hands or possession, by virtue of his office or employment, any moneys or effects belonging to such society, or any deeds or securities relating to the same, shall have been or shall become bankrupt, the Court shall, upon application made by the order of any such society, or any committee thereof, or the major part of them, assembled at any meeting thereof, order payment and delivery over to be made to such society, or to such person as such society or committee may appoint, of all moneys and other things belonging to such society, and shall also order payment out of the estate and effects of the bankrupt of all sums of money remaining due which the bankrupt received by virtue of his said office or employment before any other of his debts are paid or satisfied." They contended that it could not but be observed that this section was very materially different from the language employed in former statutes, which required that the bankrupt should have been "appointed" to an office in the society to enable the society to obtain payment in full of their money in his hands. But the new Act only required that he should be "appointed or employed" in any office in any society. This case was therefore distinguishable from *Ex parte Harris*, 1 De G. 162. They also cited and commented on *Ex parte Riddell*, 3 M. D. & D. 80.

Swanston and *J. V. Prior*, for the respondents, were not called upon by the Court.

Their Lordships said, they considered it to be clear that the bankrupts were not officers within the provisions of the Act, and that the appeal must therefore be dismissed with costs.

IN BANKRUPTCY.

Thursday, March 11.

Ex parte Samuel Bean, *Re* John Wilkinson, a Bankrupt.

A creditor may present a petition to annul an adjudication to the commissioner, and the appeal from the commissioner's decision will be within due time, if it be presented within twenty-one days from the time it was delivered, although much more time may have elapsed since the adjudication.

It is not a sufficient ground for refusing to annul an adjudication, supported by legal requisites, that the order to annul will leave unimpeached, an assignment of all the bankrupt's effects to the creditor applying for the annulling order.

In this case a creditor appealed from the decision of the commissioner, dismissing the appellant's petition of the 30th of June, 1851, to have the adjudication annulled, for want of an act of bankruptcy, or of a sufficient petitioning creditor's debt. The bankrupt, it appeared, had made an assignment of all his property in August, 1847, to the appellant Bean. The adjudications took place on the 12th of May, 1851, upon the petition of Thomas Bittleston and John Watson, the assignees of another bankrupt named Wakefield. The day appointed for hearing his petition was the 11th of July, when he attended the district Court. A sitting took place on the same day for the proof of debts, and the petitioning creditors who were opposed by the assignees, tendered proof of their alleged debts, but the commissioner, after hearing evidence and examining witnesses thereon, ordered the proof to be admitted for 1,291*l.* 14s. 3d.; moreover, he directed the appellant's petition to stand over until the 15th of August. On that day, the petition came on for hearing, but was further adjourned in consequence of an appeal having been presented by the assignees from the admission of the proof of the petitioning creditor's alleged debt. On the 11th of December the appeal was heard by the Lords Justices, who made an order declaring that no evidence had been brought before the Court on which the proof of the sum of 1,291*l.* 14s. 3d. could be sustained, and directed that the proof should be expunged from the proceedings, and that the costs of the appeal should be paid out of the estate of the bankrupt, Thomas Wakefield. The appellant's petition again came on before the commissioner, on the 20th of February, 1852, whereupon it was dismissed with costs. The learned commissioner, as it appeared from his judgment, arrived at this conclusion on the authority of *Ex parte Maxwell*, 3 M. D. & D. 708, from which it appeared that the Court had the discretion to accede to or refuse the application. That the assignment which had been made in the month of August 1847, to Bean, of all the bankrupt's property, would operate certainly to the prejudice of all the other creditors except the appellant, as the effect of annulling the proceedings would be immediately to give the appellant the benefit of that transaction. Upon these grounds, therefore, the commissioner held that he should exercise his discretion improperly if he did not decide against the application of the appellant to annul the proceedings. The commissioner considered it proved that an act of bankruptcy had been committed. The commissioner said the case of *Ex parte Jones*, 3 Deac. & Ch. 697, showed that applications of this kind, although the interest of the creditor was adverse to that of the creditors at large, were sometimes successful, but still there must be a grievance on the part of the creditor, something of which he had a personal right to complain. There must be merits on his part; so that if his application were not acceded to, he would have a right to say he was aggrieved. This, in his opinion, could not be said in the present case, as the application was intended to give the appellant the advantage of what he could not but consider a fraudulent act as regarded the creditors namely, a secret conveyance, when the bankrupt was permitted to remain apparently the owner after his ownership had terminated. Upon this account he therefore refused to annul the bankruptcy, and directed the costs to be paid by the appellant.

Swanston and *Daniel*, in support of the appeal.

Glasse and *Hardy*, for the petitioning creditor, took a preliminary objection that this was an appeal from the adjudication made after the expiration of twenty-one days, as the time for appeal ought to be reckoned from the day on which the adjudication was made. They cited *Ex parte Carter*, 1 De G. Mac. & G. 212.

By an arrangement between the parties it was agreed that the whole case should be argued together, but the petitioning creditor's counsel not being in a position to shew the existence of the legal requisites, they asked the Court to decide upon the preliminary objection, and the grounds upon which the commissioner, in the exercise of his discretion, had refused the application.

During the argument of counsel,

Lord Justice Knight Bruce said, he agreed that the statutory provision with regard to reputed ownership, so far as it went beyond the common law, had been probably productive of more injustice than justice, although in some instances it had, no doubt, done good.

Lord Justice Lord Cranworth said, that there appeared to have been nothing deceptive in the transaction in question as to the assignment. The creditor had left the debtor in possession, and had, when he thought the property in jeopardy, taken possession himself. It might be that he had done so too late, but the proceeding did not appear to be fraudulent.

COURT OF APPEAL.

Bacon and *Terrell*, for the assignees, argued in opposition to the appeal.

Swanston replied.

Lord Justice Knight Bruce said, that the petition for adjudication appeared, so far as the evidence before the Court went, to be unsupported by the legal requisites. The case, therefore, failed at law. That, however, was not decisive. Still, when a bankruptcy was insufficient at law, it lay upon those who attempted to support it to shew equitable grounds for sustaining it. There appeared in this case to be no such grounds shewn. With respect to the time of the application, it was made to the commissioner at the end of seventeen days, and if there was any delay it took place by reason of the pendency of an application by the bankrupt for the same purpose. It was contended that the learned commissioner had no jurisdiction to annul the adjudication upon the application of Mr. Bean, because the adjudication took place on the 12th of May, and Mr. Bean's petition of appeal to this Court was not presented till the 20th of June, after an interval much beyond twenty-one days. That their lordships were, therefore, of opinion that it was not a case of appeal within the 12th section of the Act, from the order of the adjudication, but that the appellant's original application to have the adjudication annulled was properly made to the commissioner under the general jurisdiction conferred upon him by the Act of Parliament, and that it was not until he had adjudicated upon that application of Mr. Bean that a case for appeal arose. So far as Mr. Bean was concerned, from the moment when Mr. Bean's application to the commissioner was rejected, and not before, it became a case for an appeal as regarded Mr. Bean. He had appealed within twenty-one days after the decision. That was the way in which their lordships viewed the case.

Lord Justice Lord Cranworth concurred.

The adjudication was accordingly annulled.

IN LUNACY.

Friday, April 2.

Re Cumming.

Traverse of inquisition—Care of lunatic's person and estate pending traverse—Appointment of committees of person and estate.

Pending a traverse of an inquisition under a commission of lunacy whereby a lady was found a lunatic the Master's report was confirmed, appointing committees of her person and estate, but the Court considered that under the circumstances of the case, the committee of the estate should pay the income thereof to the supposed lunatic, and that the system of personal care already established and subsisting under former orders, should not be interfered with until further order.

In this case a commission having issued in pursuance of an order made by their lordships, dated the 22nd of December, 1851, at the instance of the daughters of Mrs. Catherine Cumming, an inquisition was taken in January, 1852, by which it was found that she was a person of unsound mind, and had been of unsound mind from the 1st of May, 1846.

On the 28th January, 1852, Mrs. Catherine Cumming presented a petition to the Lord Chancellor, stating the facts above mentioned, and further stating that she, the petitioner, was and always had been of sound mind, and that she was aggrieved by such inquisition, and was desirous to traverse the same: the petition prayed that she might be at liberty to traverse the inquisition, and that, in the meantime, all further proceedings before the Masters in lunacy in the matter might be stayed, or that such further or other order in the premises might be made as should seem meet.

The petition was first brought on before their lordships, but was afterwards heard before the full Court of Appeal, viz.—the Lord Chancellor and the Lords Justices. The principal question discussed was, whether Mrs. Cumming was entitled as of right to traverse the inquisition. Upon the petition coming on to be heard, Mrs. Catherine Cumming having, in pursuance of the Lord Chancellor's order in that behalf, personally attended him, and been examined by him as to her wish to traverse the aforesaid inquisition, and having expressed her wish so to do, and it appearing to him upon such examination that the said Catherine Cumming was mentally competent to form and express such wish as aforesaid, the Court declared, under the circumstances, that the said Catherine Cumming was entitled as of right to traverse the aforesaid inquisition; and they thereby ordered that she was to be at liberty to traverse the same accordingly. [Directions are then given as to the mode of the trial of the traverse.] And it was thereby further ordered, that so much of the said petition, as prayed for stay of proceedings in the matter should stand over.

On the 2nd of April, 1852, so much of the petition as was undisposed of by the full Court of Appeal, came on to be heard before the Lords Justices. At the same time a petition presented by the next of kin

of Mrs. Cumming (who was also the co-heiress-at-law) came on to be heard, and it prayed a confirmation of the Master's report, approving of Miss Louisa Baker to be the committee of the person, and Mr. James Sharp to be the committee of the estate of Mrs. Cumming; it also prayed for taxation and payment out of the lunatic's estate, of the costs of the original application for a commission in aid of the proceedings thereon.

Bethell, Roundell Palmer, and *Southgate*, for Mrs. Cumming, contended that pending a traverse, the stay of proceedings, before the passing of 6 Geo. 4, c. 53, would have been a matter of course. That it was not the object of the Legislature by that statute to make it imperative upon the Court to take proceedings as if the right to traverse the inquisition was not conceded, and as if the validity of the commission was not called in question. That statute was merely passed in order to give jurisdiction to the Court in matters wherein it was defective. That with regard to this particular case, it was of the utmost importance that no change should be made in the establishment of the lunatic pending the traverse. That if the Master's report was confirmed, appointing a committee of the person, and Mrs. Cumming was placed in the hands of the friends of those who sued out the commission, and deprived in consequence, either wholly or to a great extent, of intercourse with those friends in whose good wishes and upon whose advice she relied and was now proceeding, she would not have it in her power to contest in a fair and proper manner the validity of those proceedings by which she was declared a lunatic and unfit for the management of her own affairs. It was not shewn that the person who resided with Mrs. Cumming was not in any way a proper and fit person to be with her. With regard to the appointment of a committee of the estate, the property was not of such a nature as to render such an appointment at the present time a matter of immediate necessity or expediency. That in such cases the Court had full power to act according to its own discretion; and in this particular case the evidence shews that if the proceedings are not stayed according to the prayer of the petition of Mrs. Cumming, not only will her comforts and health be most materially affected, but even the administration of justice in a fair and impartial manner will be endangered.

Sir *W. Page Wood* and *Morris*, for the next of kin, said, that they were only desirous of providing for the safety of the lunatic and her property pending the traverse. That as the commission still existed under which Mrs. Cumming had been found lunatic, her lunacy must be assumed to exist, and all proceedings ought to go on, unless, as they contended was not done in the present case, some good cause was shewn for the Court interposing to stay them. Moreover, as the lunatic had not been served with the petition for the confirmation of the report, she was not entitled to appear or to be heard on the petition. With regard to costs, their payment ought to be directed, for if the traverse were successful, the Court might not have it in its power to give them, although it might be most just and equitable that it should do so. *Re Loveday*, 1 De G. Mac. & Gord. 275.

Roundell Palmer in reply.

Lord Justice KNIGHT BRUCE said, that he was of opinion that the benefit of Mrs. Cumming would be best consulted by interposing not at all, or as little as possible, with the system of personal care of her which existed at this present time. But that no sufficient reason had been shewn why the committees should not be appointed, or why the grant should not take place, care being taken that the income of the property should be received by her as if the grant were not made, and that the present system of personal care should not be interfered with till further order. His lordship thought, therefore, that the petition should stand over so far as related to costs.

Lord Justice Lord CRANWORTH concurred.

The order was in the following terms:—

"Whereas the said Catherine Cumming did, on the 28th day of January last, prefer her petition, whereby she prayed, &c. And whereas the said petition having come on to be heard, &c. And whereas Benjamin Bailey Hooper, and Thomasine Catherine, his wife, and John Ince, and Catherine Elizabeth, his wife, did, on the 4th day of February last, prefer their petition, &c. Whereupon all parties, &c. And the said petition, and so much of the petition of the said Catherine Cumming as was ordered to stand over as aforesaid, coming on to be heard before us on this day, in the presence of Sir William Page Wood and Mr. Morris, of counsel for the said Benjamin Bailey Hooper and Thomasine Catherine his wife, and John Ince and Catherine Elizabeth, his wife; and of Mr. Bethell and Mr. Roundell Palmer and Mr. Southgate, of counsel for the said Catherine Cumming, and upon hearing the said petition and the said report read, and what was alleged by the counsel aforesaid, we do think fit, and hereby order that the said report be confirmed. And we do hereby further order, that the custody of the person of the said Catherine Cumming be granted to the said Louisa Baker; and the care and management of the estate of the said Catherine Cumming to the said James Sharp respectively, for the time to come until further order, he, the said James Sharp, first giving such security as her Majesty's Attorney-General," &c. [Here come the general directions.] "And after the said Masters or Master shall in that case have made their or his report, such further order shall be made as shall be just. And we do hereby further order, that the clear yearly income of the estates of the said Catherine Cumming, as and when the same shall be received by the said James Sharp as committee of the estate, be paid by him to the said Catherine Cumming until further order, and that such payment be allowed him on passing his account in this matter. And we do think fit, and hereby further order, that the system of personal care of the said Catherine Cumming's estates hereby and now subsisting under the orders in this matter, dated respectively the 20th day of November, 1851, and the 22nd day of December, 1851, be not in any way interfered with by the said Louisa Baker, as the committee of the person or otherwise, and be continued until further order, excepting that Sarah Wonham, the nurse of Effra Hall Asylum, be discharged. And we do hereby further order that the rest of the matters prayed by the said secondly mentioned petition do stand over."

ROLLS COURT.

Reported by J. MACAULAY, Esq. of the Inner Temple, Barrister-at-Law.

March 17 and April 1.

DUBERLY *v.* DAY.

Chose in action—Chattel real—Reversionary interest—Husband and wife.

A renewable leasehold belonging to the wife was, by her marriage settlement, vested in trustees, upon trust for her separate use, during the joint lives of husband and wife; and if the wife survived, then subject to a trust for raising portions for her absolutely; but if the husband survived, then, subject to a tithe trust, for him for life, with remainder to the issue of the marriage absolutely. The husband and wife executed various deeds, charging, or purporting to charge, the whole property settled, with certain incumbrances. The wife survived:

Held, that the charges were invalid as against the wife surviving, and that the husband could not effectually charge the reversionary interest of his wife in the leasehold, as it could not by possibility vest in possession during his life, being limited to his wife only, if she survived.

By the marriage-settlement of James Golborne and Mary his wife, bearing date the 21st of April, 1812, certain freehold, the property of the wife, together with the rectory of Whitcham, in the Isle of Ely, held by her under a lease from the dean and chapter of Ely for a term of years, were conveyed to trustees upon trust, subject to the payment of the rents, taxes, and other outgoings, and subject to the retaining and laying up an annual sum for payment of the renewal fines for renewing the lease, "from time to time during the joint lives of the said James Golborne and Mary Golborne, to pay the net residue and remainder of the rents and profits of the said freehold and leasehold lands, rectory, and hereditaments unto such person or persons, and for such uses and purposes, as she the said Mary Golborne from time to time, notwithstanding her coverture, should by any note or writing under her hand direct or appoint; and for want of such direction or appointment, then into the proper hands of the said Mary Golborne, or otherwise permit and suffer her to receive the same for her own sole and separate use and benefit and her receipt alone, notwithstanding her coverture, to be a full and sufficient discharge to the person or persons paying the same." And in case there should be issue by the marriage there was a trust, after the decease of either husband or wife, to raise 5,000*l.* for portions. And if there should be issue, and the said James Golborne should die in the lifetime of the said Mary Golborne, then upon trust to "pay the said residue and remainder of the rents and profits of the said freehold and leasehold lands, rectory, and hereditaments (subject nevertheless to the trust for raising the 5,000*l.* for portions) unto the said Mary Golborne, her heirs, executors, administrators, and assigns absolutely; and in case there should be issue, and the said Mary Golborne should die in the lifetime of the said James Golborne, then upon trust to pay the residue and remainder of the rents and profits of the said freehold and leasehold lands, rectory, and hereditaments, unto the said James Golborne and his assigns during the term of his natural life (subject to the portions), and from and immediately after his decease to convey and assure the said freehold and leasehold lands, rectory, and hereditaments, unto or for the benefit of the children of the said marriage in manner therein mentioned." There were other provisions in case there should be no issue. There were five children of the marriage. Mr. and Mrs. Golborne executed sundry deeds charging or purporting to charge the settled property with sums advanced on loan to Mr. Golborne.

On the 24th of November, 1843, the plaintiff, an incumbrancer, filed his bill for an account of what was due, and for payment or foreclosure by the mortgage. Afterwards and before the hearing of the cause James Golborne died, leaving his wife him surviving. A decree being made in the cause, a reference was directed to the Master, who found, among other things, that certain of the indentures so executed by Mr. and Mrs. Golborne did not constitute valid and effectual charges and incumbrances on the estate, right, and interest of the said Mary Golborne of and in the freehold, copyhold, and leasehold hereditaments and premises comprised in or subject to the said indenture of settlement of the 21st of April, 1812. To this report exceptions were taken by the incumbrancers, which now came on to be heard.

Stuart, K. Parker, and *Hardy*, in support of the exceptions.—The Master, in his report, has gone upon the principle that the assignment of the leasehold was invalid, and that, on the death of the husband, in 1847, the wife became absolutely entitled to it. It is contended by the other side that if it be a reversionary interest limited to the wife on a contingency, the husband's assignment cannot affect it; but this objection to the assignment would never have been taken but for the blending of chattels real with choses in action, and applying to the former the rule of law which is only applicable to the latter. Over a chattel real the husband has an absolute power of disposition, but he can only dispose of a chose in action after he has reduced it into possession. (*Mitford* v. *Mitford*, 9 Ves. 970; *Purdew* v. *Jackson*, 1 Russ. 50.) It is argued, also, that a possibility can never be made the subject of assignment, and it is so laid down in Co. Litt. 351 *a*, Butler's note, citing *Lampet's* case; but he applies that doctrine both to a chattel real and a chose in action; and the same note, in a later edition of Co. Litt. is modified. The case of *Lyde* v. *Mynn*, 1 Myl. & K. 683, shews that a possibility or expectancy may be assigned in equity. Then, though the life estate is to the separate use of the wife, the reversionary interest is absolute; and as to its being an equitable interest, there is no distinction between that and a legal interest. (*Donne* v. *Hart*, 2 Russ. & M. 360.) But, secondly, the great argument on the other side is before the Master, and the point that was most strongly pressed was, that it was a stipulation in the marriage contract that the property should go to the wife absolutely, in the events that have happened, and therefore that the settlement operates as a bargain by the husband not to assign the term; and if, instead of being an executed settlement, it had been merely articles for a settlement, the Court might have looked to the intention, and might have directed that the property should be so settled as to put it out of the power of the husband. But this is an executed settlement, in which there are various legal limitations of a leasehold, and the Court must give effect to them; and when it is said you must look to the intention of the settlement, that is true, but you must read that intention in the executed settlement, and not in any other document. The recital in the settlement is that the property shall be settled on the trusts thereinafter mentioned, and therefore you must go to the operative part of the deed and find what the trusts there mentioned are. (*Davies* v. *Thornycroft*, 6 Sim. 420.) The law only recognises one way of securing a wife against the marital rights of her husband, and that is by limiting the property to her separate use. (*Massey* v. *Parker*, 2 Myl. & K. 181.) But this is said to be a marriage settlement, to which argument the answer is, that if it be a deed executed there is no difference between it and any other executed deed.

Shapter for James Golborne and Mary his wife.

Lloyd and *Fuller*, contrà, in support of the Master's report. The reversionary interest of the wife could have been assigned by a fine, but the husband could not by a release affect her interest.

Stuart, in reply. There is a distinction between this case and that of *Donne* v. *Hart*, inasmuch as the contingency in the latter case might have happened in the lifetime of the husband; not so here. So also in the case of *Doe dem. Shaw* v. *Steward*, 1 Ad. & Ell. 34; and in *Dalbiac* v. *Dalbiac*, 16 Ves. 122. See also the observations of the Vice-Chancellor of England in *May* v. *Roper*, 4 Sim. 363.

The following cases and authorities were cited: *Duke of Chandos* v. *Talbot*, 2 P. W. 608; *Grey* v. *Kentish*, 1 Atk. 280; *Theobald* v. *Duffoy*, 3 Russ. 79, n; Fearn. Cont. Rem. 548; *Sir Edward Turner's Case*, 1 Vern. 7; S.C. in n. to *Hanson* v. *Keating*, 4 Hare, 3; *Pitt* v. *Hunt*, 1 Vern. 18; S. C. *Hunt* v. *Pitt*, 1 Freem. 78; *Major* v. *Lansley*, 2 Russ. & M. 355; *Box* v. *Jackson*, Dr. 42; *Gage* v. *Acton*, 1 Salk. 325; *Sturgis* v. *Champneys*, 5 Myl. & Cr. 97; Prest. Abstr. 334, 343-4; 9 Jarm. Bythewood, 11

(2nd ed.); *Richards* v. *Chambers*, 10 Ves. 580; *Whittle* v. *Hemming*, 2 Ph. 731; Co. Litt. 46, c.

Thursday, April 1.—The MASTER of the ROLLS. —This case comes on upon exceptions to the Master's report, who has found that certain indentures of the 10th and 11th of January, 1838, the 13th of February, 1838, the 15th of November, 1839, and the 9th of February, 1842, do not constitute a good and effectual incumbrance upon the estate and interest of Mrs. Golborne in certain hereditaments comprised in a settlement of the 21st of April, 1812, executed upon the marriage of Mrs. Golborne with her late husband. The question to be determined is whether having regard to the terms of settlement of 1812, and the subject-matter of the settlement, the husband can dispose of the reversion of his wife in a chattel real, which is the subject of the settlement. The facts are very simple. It appears that, in the year 1812, prior to the marriage, Mrs. Golborne was possessed of the rectory and rectorial tithes of the parish of Whitcham, held of the Dean and Chapter of Ely, for the term of twenty-one years, renewable from time to time, on certain terms and conditions, which do not affect the question in this case. This property was, in consideration of her marriage, and before its solemnization, settled by an indenture bearing date the 21st of April, 1812, in the following manner, namely, to the separate use of the wife during the joint lives of herself and her husband; and in case there was issue of the marriage—which was the event which occurred—in the following manner, viz. in case she survived her husband, an absolute interest in reversion was vested in her and her executors, administrators, and assigns; and in case she died before her husband, the property was to go to the husband for life, with remainder to the issue of the marriage. All the limitations were subject to a mortgage of 5,000*l.* which, however, does not affect the question at issue. The marriage took effect, and there was issue of the marriage. By the indentures in question, that is, by the indenture bearing date the 9th of February, 1838; the 15th of February, 1839; the 9th of February, 1842, the husband, Mr. Golborne, professed to convey the reversion in this property to secure various sums of money advanced to him in consideration of such charge. The wife joined in this conveyance; and so far as she could, in the absence of all the statutory acknowledgment, professed to create and give effect to these charges. This circumstance is admitted to be immaterial, as she could not bind her interest by merely joining in such a conveyance; and accordingly her concurrence must wholly be disregarded in the determination of this question. There were issue of the marriage; the husband died in 1847; the wife survived him, and if these deeds do not create a valid and effectual charge, she is absolutely entitled to the property comprised in the term, which was the subject of the settlement. The Master has reported that these deeds do not create effectual charges upon the property; exceptions have been taken to this finding, and the question before me is whether the Master is right. In other words, the question is, whether the husband could dispose of the wife's reversionary term in her real estate, under an instrument containing limitations to the effect I have above stated. At common law, the husband, who is bound to support the wife and pay all her debts, whether contracted before or during the coverture, acquires an absolute interest in all the personal chattels and estate of which the wife is actually possessed, or to which she is entitled at any time during her coverture; with this condition, that so far as regards her choses in action, they must be reduced into possession, in order to enable him to dispose of them. With respect to the real estate of the wife, the husband has no power over it, except as he is entitled to the sums due to the wife for rent during the coverture, and he has a contingent interest as tenant by the curtesy during his life. And this may be said to belong properly to the former class; that is, personal property of the wife. It is quite settled that at law the husband may dispose of the wife's term which is vested in him, and of the wife's interest beneficially, so as to convey the same hereafter or immediately. In *Donne* v. *Hart*, reported in 2 Russ. & M. the Master of the Rolls decided that there is no difference between the legal interest in and the trusts of a term. He held that the assignment by the husband of the reversion of the wife in a chattel real was a good and effectual disposition so as to bind the wife who survived the husband. This has always been since considered as good law, and has been followed, it appears, in numerous cases which have been cited to me, and to which I do not consider it necessary more particularly to refer. In these, and indeed in most of the modern cases which have been referred to upon this subject, this distinction between the wife's reversion in chattels personal, that is, in the wife's choses in action, and her reversion in choses real, or in terms of years, has been carefully maintained; and I think it ought certainly to be borne in mind in considering cases of this description; and if this were a case resembling in its circumstances the case of *Donne* v. *Hart*, I certainly should follow that case. A distinction, however, is taken in this case, arising from the limitations of the settlement, which is a great principle, although somewhat refined. It is this: although the general law as stated above is not disputed, it is contended that the power of the husband to dispose of the reversionary term of the wife is confined to those cases where the reversion is so limited that it might by possibility vest in the wife during the coverture, but that in this case where the term is so limited that the wife could not by possibility take any interest in it during the coverture; as, for instance, where a term is limited to the husband during the joint lives of the husband and wife, and then to the survivor of them, or if the term be limited to the wife, in case she survived her husband, on his death, then, it is argued, that as this is an interest which the husband could not enjoy, so it is one that he cannot dispose of. There is no question in the case that the limitation of the reversion to the wife is, in fact, a term of the settlement; that it is such that it could not by possibility take effect during the life of the husband. This is the main point urged on the part of the wife. In addition, and to some extent auxiliary to it, it is further contended that in this individual case the form and scope of the settlement, or what in some cases has been called "the truth and honour of the settlement," forbid the husband disposing of the reversion of his wife in this term. It is in truth obvious, on the first perusal of the settlement, that if the doctrine contended for on behalf of the husband and those claiming under him, can be sustained, the whole scope and object of the settlement is defeated. The husband has contracted, in case of there being no issue of the marriage, and he should survive his wife, he is to take no more than a life estate in the term, with remainder to the issue of the marriage after his decease; and he has further contracted that in case there be issue of the marriage, and his wife shall survive him, she shall take an absolute interest in the hereditaments comprised in the term. And yet if the doctrine urged on his behalf is to prevail he must take an absolute interest in the term if the wife be the survivor, although he has contracted that he is in that event to take nothing; and if he be the survivor he will only take a life interest. The cases of *Richardson* v. *Chambers* and *Seaman* v. *Duill*, both in the 10 Ves. Rep.—the judgment is given in the two cases together—are cited in support of this view of the case; and the decision of the Master of the Rolls in those cases shews that if an application be made to this Court to transfer property so settled to the husband, by consent of the wife, the Court will, notwithstanding such consent, refuse to make any such order. I do not, however, consider it necessary to decide this question, inasmuch as I am of opinion that the distinction which is above taken is the correct one, and that the power of the husband to dispose of the reversionary interest of the wife in chattels real depends upon the circumstance whether such interest could have vested in possession during the coverture. I have come to this conclusion, not upon the grounds that this reversion was a mere possibility in the wife, and that as such could not be assigned, which is the doctrine asserted by some of the earlier cases, and countenanced by considerable authority of a later period, but which doctrine has undoubtedly been exploded by the later decisions; but I have arrived at the conclusion upon the ground that it is a possibility of such a nature that it could not vest in the husband during the coverture, and that a possibility which cannot so vest is not assignable by the husband. In *Gage* v. *Acton*, reported in 1 Salkeld, 325, and which is reported in a great many other contemporaneous reports, Lord Holt held this, that where the wife had any right or interest which by possibility might accrue to her during the coverture, the husband might by release discharge it; but where the wife has a right or interest which by no possibility can accrue to her during the coverture, the husband cannot release it. It is true that his opinion was overruled by the other judges; but the subsequent authorities enforce and confirm his views of the case. I may state here, by way of a parenthetical remark, that the case of *Gage* v. *Acton*, seems to have been considered by Lord Kenyon in the case of *Milbourn* v. *Ewart*, 5 T. Rep. and though the passage to which I have referred, and which gave it some weight, is not commented upon, yet he makes this observation, which it is fit and right that I should mention, because it shews that Lord Kenyon's authority, which was very high, was not favourable to Lord Holt's general view of that case, though he does not refer to this particular point. The passage in *Milbourn* v. *Ewart*, which I will read, is to this effect: "In *Gage* v. *Acton*, Lord Holt had recourse to some technical arguments." The case of *Milbourn* v. *Ewart*, was this:—"A bond conditioned for the payment of money after the obligor's death, made to a woman in contemplation of the obligor's marrying her, and intended for her benefit if she should survive, is not released by their marriage. And if the marriage be pleaded in bar to an action of debt on the bond against the heir of the obligor, a replication stating the purposes for which the bond was made will be good, for they are consistent with the bond and condition." I read that for the purpose of shewing that the point which I am now deciding, did not exist in *Milbourn* v. *Ewart*; and, therefore, the observations of the judge must have regard simply to the point before him. It is fitting that I should state that Lord Kenyon says, "In that case Lord Holt had recourse to some technical arguments, which are not applicable here; one of them was, that it was a present debt to be paid when he should be required, and therefore the wife might have required him to pay it during his lifetime, and yet that she could not maintain an action against him. But that objection does not arise here, for the bond was not payable during the lifetime of the obligor, nor until twelve months after his death. I am glad to find that even in that case the opinions of the other judges occasioned a majority against that of Lord Holt; and if those two judges had been of less eminence than Mr. Justice Gould and Mr. Justice Tirston were, I should not have thought that much difference ought to be paid to the opinion of Lord Holt there delivered, which was as repugnant to the rules of law as of equity." Now, undoubtedly, that is expressed in the forcible manner in which Lord Kenyon frequently expressed his opinion, but it does not apply to this particular point. Lord Kenyon, however, does not appear to have entertained a favourable opinion of Lord Holt's decision in that case; and as I have arrived at an opposite conclusion with respect to the matter immediately before me, I have thought it but right to call attention to that circumstance. Now, the opinion expressed by Lord Holt in this case is the effect of a decision of Sir William Grant in *Dalbiac* v. *Dalbiac*, 16 Ves. The case, however, which most plainly admits and acts upon this distinction is the case cited to me of *Doe dem. Shew* v. *Steward*, 1 Adol. & Ell. In that case the assignee in bankruptcy of the husband claimed the reversion in a term which was given to the wife after the decease of the husband, or in case he should give up the house, or in case he should mortgage it. It was argued for the wife that this was a mere possibility, and was not assignable by the husband; but on behalf of the assignee it was contended that, inasmuch as it was a possibility which might vest in the wife during coverture, it was assignable by the husband, and that consequently it passed to the assignees in bankruptcy. And it was upon this ground, and on this distinction, as it appears to me, that the decision was founded, although it is to be regretted that the grounds of the decision are not so clear and distinct upon this subject as might be desired; but as I collect the grounds of that decision, it was upon this principle that the assignees were held entitled to recover. It appears to me also that there is a clear and intelligible principle to be discovered from this doctrine, although at first sight it appears somewhat vague. As far also as I can collect from the cases, and from such experience as I possess in these matters, it appears to have been the practice of conveyancers to recognise and act upon the distinction. In addition to which considerations, I am confirmed in the view I take of this case by reflecting that, in acting upon this distinction, I shall be carrying into effect the plain and obvious meaning of the contract which was entered into upon the marriage of the parties. I am of opinion, therefore, that the Master's report is right, and that the exception to his report must be overruled.

VICE-CHANCELLOR TURNER'S COURT.

Reported by J. HENRY COOKE, Esq. Barrister-at-Law.

Thursday, June 2 and 4.

BOODLE v. PARTINGTON.

Will—Construction—Legacy—Gift over.

A testatrix by her will gave to her trustees a sum of money upon trust, to pay out of the interest an annuity to A. and an annuity to B. and to pay the remainder of the interest to her two nieces, but if either niece died without issue before both A. and B. were dead, then to pay the whole fund on the decease of the survivor of A. and B. to the survivor of the two nieces, and the testatrix declared that the legacies given to her nieces should not lapse on the death of either of them without issue in the life-time of the testatrix. One of the nieces died a spinster, then one of the annuitants died:

Held, that on the death of the annuitant her annuity did not fall into the residue, but belonged to the surviving niece, and that the surviving niece took the share of the deceased niece in the capital absolutely, and not subject to the trusts of her own original share, the rule being that when a separate legacy is given, and a new gift is made of that separate legacy to a legatee who takes another legacy, the intention must be clearly expressed to subject the new gift of the

separate legacy to the trusts of the original share.

Sarah Milton, by her will, bequeathed to her trustees a sum of 4,000*l.* then out upon mortgage, upon trust to call in and invest it, and out of the interest or dividends to pay to Elizabeth H. an annuity of 60*l.* for her life, and to Harriet A. an annuity of 30*l.* for her life, and subject thereto to pay the residue of the same interest or dividends to her nieces, Mary Ann Partington and Henrietta Partington, and then the will proceeded thus:—

"And in case one or both of them (the said Mary Ann and Henrietta) should die without leaving issue in the life-time of the said Elizabeth H. and Harriet A. or the surviver of them, then to pay the part or parts, share or shares of the said dividends and interest of her or them so dying, for and towards the maintenance, education, or other benfit of her or their children respectively. But in case of the death of either of them, the said Mary Ann or Henrietta, unmarried, and without issue living in the life-time of the said Elizabeth H. and Harriet A. or the survivor of them, then to pay the said residue and remainder of the said interest or dividends unto the survivor of them the said Mary Ann Partington and Henrietta Partington, her executors and administrators, and immediately after the decease of them the said Elizabeth H. and Harriet A. in trust to pay the said sum of 4,000*l.* to the said Mary Ann and Henrietta, in equal shares, or if one of them the said Mary Ann or Henrietta shall die leaving issue in the lifetime of the said Elizabeth H. and Harriet A. or the survivor of them, then immediately after the decease of the survivor of them, the said Elizabeth H. and Harriet A. upon trust to pay or transfer the part or share of her or them so dying of and in the said principal sum of 4,000*l.* and the interest or dividends then due thereon for and towards the maintenance, education, or other benefit of her or their child or children respectively. But in case of the death of either of them the said Mary Ann or Henrietta unmarried, and without leaving issue living in the lifetime of the said Elizabeth H. and Harriet A. or the survivor of them, then immediately after the decease of the survivor of them the said Elizabeth H. and Harriet A. to pay or transfer the whole of the said 4,000*l.* and the interest or dividends then due thereon unto the survivor of the said Mary Ann and Henrietta, her executors, administrators, and assigns; and I declare my will to be that the respective legacies thereinbefore given to my said nieces Mary Ann and Henrietta shall not lapse in the event of their or either of them dying without having been married or leaving issue in my lifetime."

The testatrix died in April 1841; Henrietta Partington died, without ever having been married in June 1849; and in January 1850, Harriet A. one of the annuitants died. A special case was stated for the opinion of the Court to ascertain whether the annuity of Harriet A. belonged to the surviving niece Mary Ann Partington, or fell into the residue, and whether the share of Henrietta passed to her sister Mary Ann or fell into the residue; and if it passed to her, whether it was subject to the trusts of her own moiety, or belonged to her absolutely.

Stuart, Bacon, Bailey, Boyle, Welford, Austen, and *Rawlinson*, for the several parties. The following cases were cited:—*Page* v. *Leapingwell*, 18 Ves. 463; *Skrymsher* v. *Northcote*, 1 Swan. 566; *Packham* v. *Gregory*, 4 Hare, 398; and *Yates* v. *Madden*, 16 Jur. 45.

Friday, June 4.—The Vice-Chancellor.—As to the first point there can be no doubt. On the decease of Harriet A. the portion of the 4,000*l.* let loose, accrued for the benefit of those entitled to the residue of the dividends and annual produce of the 4,000*l.* The other point arises on the dispositions in favour of the nieces, and is this,—who is entitled to the capital of the share of deceased's sister Henrietta Partington? This depends on the wording of the clauses, and in reading them the last clause of all of the will is material. I mean that concerning the non-lapse of the legacies there spoken of as "respective legacies." Now, by this last clause, it is clear that the testatrix contemplated separate legacies of a moiety of the sum of 4,000*l.* to each of her nieces, Mary Ann and Henrietta; and this view agrees with the limitations contained in the prior part of the will, and also with the disposition of the capital to the nieces on the death of the survivor of the annuitants. The effect, therefore, of these two separate legacies (for so they may be called in consequence of the intention manifested by this clause) is this, that in the event of the death of Mary Ann and Henrietta, or either of them, there is a new gift of the income and capital which had belonged to the one or both of them so dying,—that is, in the events which have happened, on the death of Henrietta without issue, there is a new gift of Henrietta's share to Mary Ann. And I take the rule to be that where you have a separate legacy, and a new gift of that separate legacy, you must have either express words or a very clear indication of intention that the additional or new legacy should be intended to be included in the gift of the original share, and to be subject to all the provisions which affect that share. In this case there is a plain and obvious construction to be put on the words "parts and shares," they may be satisfied by applying them to the shares severally as well as by applying them to the shares accumulatively. If Mary Ann or Henrietta leave issue then her interest is to go to such issue; if both Mary Ann and Henrietta leave issue, then both their separate legacies are to go to their respective issue. I am, therefore, of opinion (doubting very much, as every body must doubt, upon reading this will, that on the death of Henrietta, without issue, Mary Ann took absolutely the share previously given to Henrietta.

Thursday, July 15.

Hinder *v.* Streeter.

Vendor and purchaser—Delay of conveyance—Costs of suit.

Where a suit is rendered necessary by the death of the vendor who had sold, but delayed the conveyance at the request of the purchaser, the costs of such suit are not to be borne by the estate of the vendor, but must be paid by the purchaser.

This was a suit for specific performance, but the only question contested was as to the costs. The owner of land, Mr. J. Streeter, entered into a contract to sell to Mr. Hinder a part of it to be used for building purposes. The purchase-money of part was paid, but not for the remainder. By arrangement, at the instance of the purchaser, no conveyance was, or was to be, executed to him, but as he completed the buildings the conveyances were to be made by his direction to the several purchasers from him. Before any conveyance whatever was made, Mr. Streeter, the vendor, died intestate, and the purchaser, Mr. Hinder, filed the bill against the widow and children of the vendor for specific performance of the contract.

Campbell, for the plaintiff, argued that had the purchaser made a will, as under such circumstances he ought, and devised the estate in such manner as would have enabled a conveyance without the intervention of the Court, the costs would properly have fallen upon the purchaser; but under the existing state of things these costs ought to be paid out of the vendor's estate. In *The Midland Counties Railway Company* v. *Westcomb*, 11 Sim. 57, the late Vice-Chancellor of England held that where a man has entered into a contract he is bound to take care that no person with whom he has contracted shall suffer extra trouble or expense from any act or neglect of his, and gave the costs to a plaintiff in circumstances similar to the present.

Sir W. P. Wood and *De Gex* relied upon a later case, in which a former was cited, namely *Hanson* v. *Lake*, 2 Yo. & Col. C.C. 328, where Vice-Chancellor Knight Bruce declined to give costs on either side.

The Vice-Chancellor.—The only question for consideration is, who shall bear the costs, for of the specific performance there is no doubt. The cases on the subject stand thus: Sir Lancelot Shadwell has decided, that if a vendor dies, not having devised the legal estate to trustees to complete the sale, his estate must bear the costs of a suit by the purchaser to obtain a conveyance. The Vice-Chancellor Knight Bruce, on the other hand, has decided that if there be no default on either side, there ought to be no costs given. In this difference of opinion, I prefer to follow the latter decision, especially as in this case the noncompletion and the nonexecution of a conveyance was for the convenience of the purchaser himself. I cannot make the estate of a party pay costs, merely because he has, by the act of God, become unable to execute the conveyance. There must be a decree for specific performance, without costs.

VICE-CHANCELLOR PARKER'S COURT.

Reported by Geo. S. Allnutt, Esq. of the Middle Temple, Barrister-at-Law.

June 30 *and July* 2.

Waite *v.* Combes.

Will—Construction—"Moneys."

Stock in the public funds held to pass under the word "moneys."

In this case a question arose upon the construction of the following will, dated the 19th of August, 1844:—"I, Thomas Staning, of, &c. being at this time of sound mind and good understanding, and desirous of making a settlement of my affairs, do accordingly declare the contents of this paper to be those of my last will, putting aside and totally doing away with any previous will or wills made by me, and therefore appoint William Combes and George Clode, my executors, to take and receive all moneys that may be in my possession or due to me at the time of my decease, and to prosecute for the recovery of the same, if it be found necessary, to be by them placed in the British funds, or otherwise laid out upon such security as they shall deem sufficient, the interest arising from which to be received and paid by them yearly, or oftener, as appears best, unto my dear wife, Caroline Staning, at this time living with me, for her sole use and benefit, but that only during her life, she having but a life interest in it; and, at her death, or as soon afterwards as it can be done, it is my wish (for very sufficient reason), and do therefore authorise my executors to divide equally between my two nieces, daughters of my sister, Mrs. Ann Combes, of Dorking, or to their children, or the child or children of either, supposing one of them not to have any family surviving, all such moneys held in trust by them," &c.

The testator's property, at his death, consisted of 1,200*l.* Three per Cent. Consols, furniture worth about 30*l.* and a balance of a few shillings at his banker's. On the death of the widow, the testator's two nieces instituted, by claim, the present suit against the personal representatives, to establish their right to the sum of stock.

E. Webster, for the plaintiffs, cited *Dicks* v. *Lambert*, 4 Ves. 725; *Kendall* v. *Kendall*, 4 Russ. 360; *Legge* v. *Asgill*, T. & R. 265; and *Glendinning* v. *Glendinning*, 9 Ben. 324.

Drewry, for one of the next of kin, contended that as to the stock there was an intestacy, and referred to *Gouden* v. *Dotterill*, 1 M. & K. 56; *Ommaney* v. *Butcher*, T. & Russ. 272; and *Hastings* v. *Hune*, 6 Sim. 67.

H. Cadman Jones, for another of the next of kin, also argued that the stock was not disposed of by the will, and cited *Rogers* v. *Thomas*, 2 Keen, 8; and *Dowson* v. *Gaskoin*, 2 Keen, 14.

Elderton, for the personal representative.

E. Webster, in reply.

Friday, July 2.—The Vice-Chancellor (after stating the case) said, on the whole will the intention of the testator to dispose of all his property was so clear, that supposing the words used had not pointed specifically to anything but "money" properly so called, it would not be an unsound construction to consider that the testator had passed his whole personalty which was to be held upon the trusts of the will. The language used throughout the will was that of a man disposing of his whole property. The cases which had been cited (and to which his Honour would add *Boys* v. *Morgan*, 3 Myl. and Cr. 661), shewed how unwilling the Court was to leave any part of a testator's property undisposed of. There was, however, no doubt upon the authorities that the word "moneys" would pass stock, but it was a question of intention to be collected upon the construction of the whole will, and upon this will his Honour considered there was sufficient evidence of intention to include it. It was, however, said that the testator having directed his executors to receive all moneys, he could not have meant to include stock, as he goes on to direct the same to be laid out in the public funds; but his Honour considered that this would be taking advantage of a mere slip in the testator's language, where his meaning was sufficiently obvious, to give effect to that argument.

June 25 *and* 28, *and July* 5.

Blann *v.* Bell.

Will—Construction—Charge of debts on realty—Conversion of residue.

Tenant for life of residue held entitled to enjoy leasehold property in specie, but not any other personal estate of the testator.

Thomas Blann, by his will, after desiring that all his just debts, funeral expenses, and the charges of proving his will, might be fully paid and satisfied, and after making certain pecuniary bequests, gave all the residue of his estate and effects whatsoever and wheresoever, whether consisting of freehold, leasehold, or copyhold estates, money in the public stock or funds, and all other moneys and securities for money, to trustees, upon trust, to pay the dividends of 1,500*l.* Three per Cent. Reduced Bank Annuities to Sarah Twitchin for her life, independently of her husband, and free from his debts, &c.; and at her death he directed the dividends arising from the said sum of 1,500*l.* to be equally divided between his wife Edith Blann, and his niece Frances Rayner, and the survivor of them; and as to all the rest, residue, and remainder of his freehold, copyhold, and leasehold estates, and all other his estate and effects, subject to such power of appointment as was thereby vested in his said wife, upon trust to pay the interest, rents, dividends, and annual produce thereof, to his said wife for her life, and after her decease, as to the sum of 10,000*l.* part of the said residue, to such person or persons and in such manner as his said wife should by will appoint, and after her decease upon trust as to such residue of his estate and effects, subject to such power of appointment as aforesaid, to pay the interest, dividends, and annual produce thereof, to his niece Frances Rayner, for life, free from the debts, &c. of any husband, and for which her receipts were alone to be good discharges, and after the decease of the survivor of them, the said Edith Blann and Frances Rayner, then upon trust to divide such residue of his estate and effects unto and amongst all and every the child

and children of his said niece Frances Rayner, equally between them, share and share alike, on attaining twenty-one, with power of applying the interest for their maintenance in the meantime; and in case Frances Rayner should die without issue who should attain twenty-one, then upon trust, from and after the decease of the survivor of them, the said Edith Blann and Frances Rayner, to pay certain legacies to several persons therein named; and as to the residue and remainder of his estate, in the event of Frances Rayner dying without issue lawfully begotten, who should live to attain the age of twenty-one years, then from and after the decease of the survivor of them, the said Edith Blann and Frances Rayner, the testator directed his said trustees to divide such residue into two equal moieties, or half parts, upon trust, as to one moiety thereof for the infirmary at Hertford, to whom he gave and bequeathed the same, and as to the other moiety for the Bath infirmary, to whom he gave and bequeathed the same. In 1846 the testator died. This suit was instituted by the testator's widow against the trustees and the parties beneficially interested; and upon a reference to the Master to inquire of what property, real and personal, the testator died possessed, the Master reported that he died possessed of certain freehold and leasehold estates, also of certain Dutch Bonds, Insurance Shares, and pure personalty. Frances Rayner died without issue. The cause now came on for further directions, and on these several questions arose. Of these questions the principal were:—Whether Edith Blann, having survived Frances Rayner, was entitled to the capital sum of 1,500*l.* stock or only to a life interest in it: whether the real and leasehold estates of the testator were liable, pari passu, with the pure personalty to the payment of the testator's debts: and whether the tenant for life was entitled to enjoy the leaseholds and other personal estate in specie.

Malins and *Collins* appeared for the plaintiff.

Bacon and *Little* for William Arnould, the husband of Frances Rayner, deceased, who was the heiress-at-law and sole next of kin of the testator.

Russell and *Younge* for the executors.

Walker, *Willcock*, *Giffard*, *E. F. Smith*, and *Elderton*, for other parties.

The following cases were cited:—*Howe* v. *Lord Dartmouth*, 7 Ves. 137; *Collins* v. *Collins*, 2 My. & Keen, 703; *Pickering* v. *Pickering*, 4 My. & Cr. 289; *Alcock* v. *Sloper*, 2 My. & Keen, 699; *Hinves* v. *Hinves*, 3 Hare, 609; *Daniel* v. *Warren*, 2 You. & Coll. C. C. 290; *Burt* v. *Scott*, 2 De Gex & Sm. 383; *Chambers* v. *Chambers*, 15 Sim. 183; *Bethune* v. *Kennedy*, 1 My. & Cr. 114; *Goodenough* v. *Tremamondo*, 2 Beav. 512; *Mills* v. *Mills*, 7 Sim. 501; *Pickup* v. *Atkinson*, 4 Hare, 624; *Howe* v. *Howe*, 14 Jurist, 359; *Boughton* v. *James*, 1 House of Lords Cases, 406; *Roberts* v. *Walker*, 1 Russ. & My. 752; *Attorney General* v. *Southgate*, 12 L. J. N. S. Ch. 147; *Young* v. *Hassard*, 1 Jones & Latouche, 466; *Bartholomew's Trust*, 1 Mac. & Gor. 351; *Harrison* v. *Grimwood*, 12 Beav. 192; *Eccles* v. *Birkett*, 14 Jur. 800; *Grimshaw* v. *Pickup*, 9 Sim. 591; *Adamson* v. *Armitage*, 19 Ves. 416; *Page* v. *Leapingwell*, 18 Ves. 463; *Innis* v. *Mitchell*, 6 Ves. 461; *Caldecott* v. *Caldecott*, 1 You. & Coll. 312; *Johnson* v. *Johnson*, 2 Coll. 441; *Litchfield* v. *Baker*, 2 Beav. 181; *Sutherland* v. *Cook*, 1 Coll. 498; *Humphrey* v. *Humphrey*, 1 Sim. N. S. 536; *Oakes* v. *Strachey*, 13 Sim. 414; *Bever* v. *Dixon*, 10 Sim. 636; and *Neville* v. *Fortescue*, 16 Sim. 333.

The Vice-Chancellor said, that upon the first question he was of opinion that the gift to Edith Blann, the testator's widow, was merely a gift of a life-interest in the dividends of the sum of 1,500*l.* stock. It would be observed that the gifts as to enjoyment were gifts in succession, and a life-interest only was given. The next question related to the course of administration of the real and personal estate. The ordinary rule of administration must apply: the personal estate must be first applicable to the payment of the debts, &c. and the real estate must be subsidiary. His Honour did not consider that the case of *Young* v. *Hassard*, was applicable to the present. The real estate, therefore, though charged, would not be applicable until the personal estate was exhausted. Another question was, how the personalty was to be applied, and were the leaseholds to be converted. Where a residue was given to one person for life, with remainder to another person absolutely, the general rule was to melt down all into a common fund, but the case of *Pickering* v. *Pickering*, and others, shewed that the applicability of this rule must be obtained from the intention of the whole will. The will might shew an intention to allow part of the residue to be enjoyed in specie, and part to be converted. His Honour thought here that the intention of the testator sufficiently indicated that the leaseholds should be enjoyed by his widow in specie. As to the Insurance shares, the Dutch Bonds, and the other personalty, it was different. He should, therefore, declare that the plaintiff was entitled to a life-interest only in the 1,500*l.* stock; that the realty was not to be called on for payment of the debts, &c. until the personalty was exhausted; that the leaseholds were not to be converted, but to be enjoyed in specie; and that the Insurance shares, Dutch Bonds, and other personalty, were to be converted.

Wednesday, July 28.

MOORES *v.* WHITTLE.

Will—Construction—Charge of debts on real estate.

A testator devised to his daughter A. B. so long as she continued unmarried, certain copyhold estates held for lives for all his interest therein to come at his decease, and also all his personal estate after the payment of his debts, &c. and the testator desired that if after his death A. B. should be married, the whole of the said estates, with the live and dead stock, &c. should be sold, and the proceeds divided as therein mentioned, &c. There were debts due from the testator at the time of his decease:

Held, that the copyhold estates were by the will charged with the debts.

This was a special case under Sir George Turner's Act. Mr. James Young made his will, dated the 9th of February, 1849, in the following terms:—"I hereby give, devise, and bequeath unto my daughter, Caroline Young, for her sole use and benefit, as long as she may continue unmarried all my copyhold estates, lands, and hereditaments, in Piddletrenthide, held under the College of Winchester, and known as 'Coles's No. 14,' 'B No. 1, and No. 80,' for lives, for all my term, estate, and interest in them respectively, to come at my decease, which I intend to surrender to the use of this my will, and also all my live and dead stock, household furniture, moneys, and securities for money, and farming gear of every description after the payment of my just debts, funeral expenses, and the costs of proving this my will; and it is also my will and desire that if, after my death, my daughter Caroline should be married, that then the whole of the estates above described, together with the live and dead stock, household furniture, farming implements, and goods whatsoever, shall immediately be sold, and all the proceeds arising therefrom be equally divided, share and share alike, between my daughter, at present named Caroline Young; my daughter Jane, the wife of Robert Damon; my daughter Mary, the wife of Charles Phippen; and my daughter Ellen, the wife of Thos. Keetch, for their several use and benefit; or if my daughter Caroline Young should die unmarried, it is my will that then all the aforementioned property whatsoever shall be sold, and the proceeds thereof be equally divided amongst my remaining surviving daughters abovenamed." The testator then appointed George Moores and George Shepherd his executors.

The testator died on the 12th of August, 1851, and his will was proved on the 18th of February, 1852. There were debts due from the testator at the time of his decease. Caroline Young, to enable the executors to sell the copyhold hereditaments, released to them her interest in the same. On the 13th of May, 1852, the executors were admitted to the copyholds, and they afterwards entered into a contract with Mr. Whittle for the sale of the copyholds, but he objected to the title of the executors to sell, upon the ground that the testator's debts were not charged upon the copyholds. The question was, therefore, submitted to the Court by this special case.

W. D. Lewis appeared for the plaintiffs, and referred to *Withers* v. *Kennedy*, 2 Myl. & Keen, 607.

E. N. Ayrton for the defendant.

The Vice-Chancellor said, that although there was some ambiguity in this will, yet the rule of the Court was so to construe the will as to enlarge rather than narrow the charge of debts. Besides, in the present case it appeared that the testator, in the subsequent parts of the will, dealt with the whole property as one mass, and it was quite clear that he intended to throw the whole into one mass. His Honour must, therefore, answer the question by a declaration that there was a charge of debts on the real estate.

VICE-CHANCELLOR KINDERSLEY'S COURT.

Reported by W. H. Bennet, Esq. of Lincoln's-inn, Barrister-at-Law.

Monday, March 22.

MILES *v.* DURNFORD.

DURNFORD *v.* MILES.

Executor—Power of, to mortgage assets of testator for executorship purposes—Parties—Misjoinder.

The principle of this Court is to allow an executor to deal with the assets of his testator to raise moneys for purposes of the estate; but this does not apply where, having obtained money without security, he afterwards gives security on the testator's property for antecedent loans.

Where a party is applied to to advance money on the representation of an executor that it is for purposes of the estate, and he advances money on the mere personal security of the executor—if the lender afterwards takes a security on the assets, the onus of proof is on the person advancing the money to shew that the moneys advanced were applied to the purposes of the testator's estate.

The Court will not assume that such a loan was for the purposes of the administration of the estate, but direct an inquiry whether it was so applied.

This was a suit and cross suit. The first suit was filed by the plaintiff as surviving executor of John Punter the elder to restrain the sale of some premises which had formed part of the testator's estate in mortgage to the defendant Durnford, and to set aside the mortgage, or to redeem it.

A cross-bill was filed by the defendant seeking to establish the deed, and for other purposes.

On the part of the defendant it was attempted to be established that the mortgage had been made to Mrs. Durnford by John Punter the younger, the deceased executor of J. Punter the elder, to raise moneys for the purposes of the testator's estate. On the part of the plaintiff, who was the administrator of J. Punter the younger, as well as the surviving executor of J. Punter the elder, it was contended that J. Punter the younger had obtained the loan of the moneys from the defendant Mrs. Durnford for his own private use, and that the mortgage on the testator's assets was subsequent to this loan, and therefore the mortgagee, Mrs. Durnford, should have been put upon her guard before taking the mortgage, and ascertained that the money lent was for the purposes of the testator J. Punter the elder's estate.

It was admitted by Mrs. Durnford's answer that after the advance had been made by her, and before the formal execution of the mortgage-deed, an equitable mortgage had been made to her by J. Punter the younger, and in respect of which she had formerly filed a bill in this court to establish that equitable mortgage and for a sale.

The other facts appear in the Vice-Chancellor's judgment.

Stuart and *Nalder* for the plaintiff.

Willcock and *Gifford*, for the defendant Durnford, said the bill ought to be dismissed at once, and that it ought to be presumed that what J. Punter the younger had done, was so done in the execution of his duty as executor, and that there was nothing to shew that the loans had been made to him in his private capacity. They also contended that the present form of the bill was wrong, for that Miles, the plaintiff, being the administrator of J. Punter the younger, the mortgagor could not be allowed to file a bill in this court to set aside his own testator's deed.

Bacon, Geo. L. Russell, and *Pole* for other parties.

Stuart, in reply.

The cases relied upon were *Scott* v. *Tyler*, 2 Bro. C. C. 431; *M'Leod* v. *Drummond*, 14 Ves. 353; *Eland* v. *Eland*, 1 Beav. 235; S. C. on appeal, 4 Myl. & Cr. 420; *Keane* v. *Roberts*, 4 Madd. 432; *Watkins* v. *Cheek*, 2 Sim. & St. 199; *Johnson* v. *Kennett*, 6 Sim. 384. As to misjoinder, *Griffith* v. *Vanheythusen*, 9 Hare, 15; *Jacob* v. *Lucas*, 1 Beav. 436.

JUDGMENT.

The Vice-Chancellor.—The testator, J. Punter, died in 1847; his son, J. Punter the younger, proved the will alone. At different periods between October 1846 and February 1848, J. Punter the younger, applied to Mrs. Durnford, the defendant, to lend him several sums of money, representing that he wanted it for purposes connected with the estate; she lent him the sums. It was represented that the testator owed to a person named Smart, 250*l.* that Smart required payment, and 50*l.* were paid by Punter the younger, in 1847, and that 200*l.* more were paid on the 2nd February, 1841. When the advances were made by the defendant to Punter, there was no undertaking or agreement to give any security for the advance, and the effect at the time of making the advance was, that they were made on the personal security of Punter, and gave no lien whatever on the testator's property, and any remedies for the defendant would have been only against Puntor personally. The loans to him, although stated to be for executorship purposes, were not made to him in his character of executor, but were made to him personally, there being no agreement for giving any security on the testator's assets. Now, some months after the last of the advances, viz. on the 30th of October, 1848, Punter deposited certain deeds relating to the testator's leasehold property with the defendant, by way of security for the money advanced to him, and thus an equitable mortgage was created for the whole of the advances amounting to 600*l.* That equitable mortgage having been given in February, 1849, the defen-

ant attempted to enforce it by a bill in this court, to compel payment or sale of the estate. It was a common equitable mortgagee's bill, and in that suit the transaction was treated as the private transaction of Punter, and not as the executorship account; that, however, was not necessary as between the defendant and Punter. In a proceeding to obtain payment or sale, it was not necessary to make such a case, and therefore, perhaps, no weight can be attached to that circumstance, or to the debt having been treated in that suit as the personal debt of Punter. But in consequence of the filing that bill shortly afterwards, viz. on the 14th April, 1849, Punter executed an actual mortgage deed to the defendant, for the purpose of securing not the 600*l.* but the 370*l.* and the recital puts it in this shape. Now, this recital, after stating the devolution of title, was to the following effect: — It states, "that on the application and request of the said J. Punter the younger, the said Elizabeth Durnford had at divers times, between the months of October, 1846, and February, 1848, advanced and lent to the said John Punter the younger, several sums of money amounting together to the sum of 600*l.* and that the sum of 300*l.* part of the said sum of 600*l.* was so advanced and lent to the said J. Punter the younger, for the purpose of enabling him as such executor of the said John Punter the elder, as aforesaid, for the purpose of enabling him as such executor as aforesaid, to pay off or discharge a certain mortgage debt of 250*l.* and interest, to Henry Smart, thereunder charged upon the three houses in Earl-street aforesaid, and also to pay certain charges which the said J. Punter the younger had incurred as such executor as aforesaid, in and about the said testator's estate; and that the said Elizabeth Durnford had taken other security for the remainder of the said sum of 600*l.* and that there was then due from the said J. Punter the younger, as such executor as aforesaid, to the said Elizabeth Durnford, in respect of the said sum of 350*l.* and the interest thereon, the sum of 370*l.* and the mortgage was for 370*l.* only. Now, it is clear that the equitable mortgage of 1848, having been for 600*l.* was a security given for what was an advance to him, partly as executor and partly for money on his private account, and the recitals in the mortgage deed rest only on the statement of the parties, that 350*l.* had been advanced to Punter in his character of executor. Now, the authority of an executor dealing with his testator's assets, rests upon this principle. It is of great importance that there should be no fetter over an executor to deal with the assets for the purpose of raising money for the estate; and, therefore, the law gives him the right of dealing with the assets to raise money for such purposes, and then the onus of shewing that it was wanted for such purposes is not thrown upon the parties advancing the money. It is sufficient for him to shew that he had no fair ground or reason to believe that the money was not wanted for executorship purposes. It is quite true that in such a case as that of the private banker of the executor, to whom he owes a personal debt, if the banker accepts from him assets of the testator, knowing them to be so, then the banker is a party to the devastavit. But although the principle of this Court is to allow an executor to deal with the assets of his testator, the principle does not apply when, having obtained money without security, he afterwards gives security on the testator's property for the antecedent loans. If there is a contract for a security at the time the advances are made, then a subsequent mortgage stands on the same footing as if it had been made at the time of the advance; but when the advance is made on the private security of the executor, his subsequently giving a security on the testator's property is not for the purpose of securing moneys advanced at the time, but is given as a security for amounts previously advanced on the credit of the testator's estate with no obligation to give it, that is, without any legal necessity for giving it. Then, when a party being applied to, to advance money on the representation of an executor that it is for the purposes of the estate, and he advances the money on the mere personal security of the executor, and without taking any security or agreement for security, if he afterwards takes security on the assets, it appears to me that the onus of proof is on the person who advances the money to shew that the moneys so advanced were applied to the purposes of the testator's estate. That rule is just and proper on sound sense and principle. I am not aware of any case in which the contrary has been decided. If here there were no further difficulty I should refer it to the Master to inquire whether any and what sums out of the 600*l.* were applied by Punter the younger in the administration of the testator's estate. But I think I am precluded from making such a reference, because the plaintiff, who seeks to set aside the mortgage, being the representative of the party who executed it, cannot be heard to impeach that deed. He cannot throw off the character of representative to Punter the younger. It is true the bill is filed by Miles wishing to repudiate, for the purpose of this suit, another character which he fills, and he purports to file the bill only as a representative of the testator. If that were the only character filled by him, he would be entitled to sustain it; but unfortunately after proving the will of J. Punter the elder, he took out letters of administration to Punter the younger, and he takes upon himself the character of representative of Punter the younger, and cannot be heard to say that filling two characters, in one of which he could not sue, he has a right to be heard in that character in which, if he filled that only, he might sue; and I think he cannot be heard to say that he wished to repudiate by a short cut that other character. I am of opinion that will not do. It is quite clear that if Punter the younger were living, and Miles, assuming him to be his co-executor, had joined in a bill, such bill could not be sustained. It is clear also that if Punter alone had filed a bill, it could not have been sustained. As the plaintiff in this case has taken upon himself to represent the delinquent party, and appears in the mixed character of a person who could not sue, and of representative of one who could, I think he cannot be allowed to separate them and to sue in one of those characters only. For these reasons I am of opinion that I can make no decree to invalidate the mortgage, and I must dismiss the bill, so far as it seeks to impeach the deed, with costs.

Decree, that so much of plaintiff's bill as seeks to impeach the mortgage, dismissed with costs. On both bills usual reference to take the accounts for redemption or foreclosure.

Common Law Courts.

INSOLVENCY COURT.

INSOLVENT DEBTORS COURT, DUBLIN.

Reported by J. Levy, Esq. Barrister-at-Law.

Re Lazenbys.

Untrue statement in schedule—False credit in balance-sheet.

If an insolvent make an untrue statement in his schedule, and take a false credit in his balance-sheet, although such statement and credit are not any evidence of concealment of property, and that the opposing creditor fails to prove such concealment allunde, the insolvent will not be allowed to swear to his schedule, and his petition will be dismissed.

The insolvents were pickle merchants, and carried on business in Upper Exchange-street, Dublin, and Mancsty's-lane, Liverpool. They were opposed by *Levy*, for a creditor named Glennon, and supported by *Creighton*. It appeared that Glennon, who was a creditor, in 1851, for a debt amounting to upwards of 130*l.* issued a commission of bankruptcy against them, but an arrangement was entered into by passing their bond for the debt, payable by monthly instalments; and the commission, upon which no adjudication had taken place, was superseded, and they went on paying monthly instalments under the bond for some five or six months. About that period, another creditor had proceeded against them, and was near obtaining execution, when they applied to Glennon to issue execution under his bond, with a view of saving the property. He issued execution accordingly, which was put into the hands of the sheriff. The other creditor issued his execution soon afterwards, and compelled Glennon to sell, and at that sale the goods were bought in by Glennon for the insolvents, and left in their possession. The other creditor then issued a ca. sa. and had them arrested, when they filed their petition and schedule, and now came before the Court for their discharge. The only tangible ground of opposition that appeared against them was their having taken credit in their balance-sheet for a large loss sustained by the sale under Glennon's execution, although the goods actually sold were bought and paid for by Glennon with his own money, and left in the possession of the insolvents. It was contended that this was a false credit; that if the goods were of the value stated, the insolvents ought to account for them, they having been all left in their possession; that if they were not of that value, the surplus was a false credit, and was introduced for the purpose of covering concealed property. The statement with regard to the whole transaction was untrue.

Creighton, for the insolvents, contended that this was a fallacy, that proof of concealment of property should be given before the petition could be dismissed or the insolvents remanded. It was never held that putting an exaggerated value on an insolvent's property, and then taking credit for that value as a loss, was a ground of dismissal or remand. If evidence had been given that property had been concealed, there might be some ground for the objection raised; but, although that was attempted, the opposing creditor failed in shewing that there was a single shilling's-worth concealed. Besides, that creditor should not be heard at all, inasmuch as he had entered into collusion with the insolvents to shut out the other creditors by his friendly execution; but now, having quarrelled with them, he ought not to be heard in that Court.

Mr. Commissioner Baldwin thought the objection raised to the schedule and balance-sheet was a valid one. The insolvents first procure the attorney of the opposing creditor to go on with the friendly execution, and they induce the creditor to purchase the goods for their account; he is in fact supplied with a list of what he is to purchase, and articles deemed of little value are allowed to be purchased by the public. All the goods purchased by the opposing creditor are left with the insolvents, and yet they state on their schedule that they have been ruined by that sale, and they take credit in their balance-sheet for a loss consequent thereon, far exceeding what the entire property was worth. These were falsehoods which the Court could not tolerate; and although no actual suppression of property had been proved, yet the schedule and balance-sheet should not be contradictory of the admitted facts of the case. The insolvents, under these circumstances, could not be permitted to swear to their schedule; their petition should, therefore, be dismissed.

Petition dismissed.

Re Maxwell.

Mortgage—Filing an election—Different rule in bankruptcy.

A mortgagee of an insolvent's estate, who sells the mortgaged premises, will not be allowed to file an election under the 71st section of the Insolvent Act, and come in for a dividend on the general estate, although he offers to lodge to the credit of the matter in the Insolvent Court the amount of the purchase money. The rule in bankruptcy which allows a mortgagee to sell the mortgaged premises for his debt, and prove for the deficiency, does not apply in insolvency.

The insolvent was discharged in the year 1846, and returned in his schedule a certain freehold estate mortgaged to a person named Bate. The mortgagee offered no opposition to the discharge, and took no notice of the proceedings in the Insolvent Court; but he filed a bill in the Court of Chancery for a foreclosure, and subsequently brought the estate into the Incumbered Estates Court, where it was ultimately sold for about one-third of what had been previously offered for it by private contract. Under those circumstances, the mortgagee obtained a reference to the chief clerk of the Insolvent Court, to ascertain what was due on foot of the mortgage, preparatory to his filing an election to abandon his mortgage and come in as a simple contract creditor under the 71st section of the Insolvent Act, which enacts, "that nothing in the Act shall extend or be construed to prevent any mortgage charge or lien upon any estate of such prisoner, or any part thereof, made prior to the making of such vesting-order, from taking place upon the lands, tenements, or hereditaments, or personal estate and effects comprised in, or charged or affected by such mortgage charge or lien, unless the creditor having such mortgage charge or lien shall elect to take and receive any dividend under this Act, or, being an annuity creditor, shall elect to have his annuity valued," &c. On reference to the chief clerk he made his finding and report; to this report exceptions were taken by the mortgagee, which raised the abstract question as to whether he had a right to take what he could on foot of his mortgage by proceedings in equity or a sale in the Incumbered Estates Court, and then come back to the Insolvent Court, and, having filed his election, come in and take a dividend with the simple contract creditors.

Creighton, with whom was *Burraught*, were for the mortgagee, and in support of the exceptions.

Adair and *Phillips* contrà.

Mr. Commissioner Curran thought that the case lay within very narrow limits; it came before the Court in the form of exceptions, and the question was, could a mortgagee, after he had sold his pledge, file his election and come in with other creditors, and take a dividend on the general estate of an insolvent. If so, that Court had been in error as regarded the administration of the law under the 71st section since the Insolvent Act came into operation. The simple meaning of the section was, that a creditor having a mortgage on the real estate of an insolvent, must be either content with that security, or, if he thinks it more advantageous, he may make his election between the special security and the general assets, but that election could not be made when the special security was gone, and when, in point of fact, no election could be made. The mortgagee had offered to bring in the balance of the purchase-money and lodge it to the credit of the matter; but he did not think that even that would entitle him to make an election. It appeared that the premises had been valued at 2,000*l.* and that 1,500*l.* was deemed an inadequate price, and they were subsequently sold for 600*l.* Out of that

the mortgagee deducted all his costs, leaving a balance of only 310*l.* which he was ready to bring into the general assets, and take a dividend, when he found that his doing so would bring him a much larger sum; but it was then too late; he should be content with the result of his proceedings as a mortgagee, and could not, when the property was sold, interfere with the assets of the general creditors. The 80th section of the English Insolvent Act was in some respects analagous to the 71st section of the Irish Act, and was wholly analogous to the 70th section of that Act, and related to sums payable by way of annuity. That section provided, that "in case any annuity should be chargeable or payable out of any lands, tenements, or hereditaments of any insolvent, the annuitant shall not be entitled to have the annuity valued, or to prove on the estate of the insolvent, or to sue any surety for the payment of such annuity, unless such annuitant shall *elect* to release the lands, tenements, &c. from all future payments." There an election was to be made by the annuitant having a charge on the insolvent's property, but it could not be made until the lands charged with the payment of it had been released from all future calls or payments on foot of the annuity. After the election had been made and the annuity valued, the lands stood charged with the amount of the valuation and interest, at the rate of five per cent. till paid, but the annuitant could make no election till he released the lands, and in the present case, under the 71st section, the mortgagee could make no election, unless he had the property to offer to the creditors instead of his charge upon it; and it was clearly too late to do so when that property had been sold, even though he offered to give instead of it the balance of the purchase-money, after deducting such costs as he thought proper to incur. On these grounds the exceptions should be overruled, and the mortgagee prevented from coming in on the assets applicable to the payment of the general creditors.

Mr. Commissioner BALDWIN concurred in the judgment of his brother Commissioner. The question at issue, namely, whether a mortgagee could try to make the most he could of his mortgage, and if he did not succeed to his liking come back to the Insolvent Court when the mortgaged premises were sold, and seek to come in upon the general assets, had been fairly raised by the second exception. If that exception were to be allowed, it would overturn the produce of the Insolvent Court on that point, since its first commencement. He thought the rule in bankruptcy did not apply, because it could not be set up in contravention of a plain section in the Insolvent statute, which clearly pointed out what was to be done. It was clear that the mortgagee was now late in making his election, and the exceptions should be overruled.

Circuit Reports.

OXFORD CIRCUIT.

Reported by J. E. DAVIS, Esq. Barrister-at-Law.

Stafford Summer Assizes, July 1852.

(NISI PRIUS COURT, before CRESSWELL, J.)

EDWARDS *v.* LOWNDES.

Health of Towns Act, 11 & 12 *Vict. c.* 63—*Local Board of Health—Provisional order—Appropriation of funds to found right of action—Notice of action.*

By a local Market Act the money received under its provisions, after payment of the costs of the Act, were directed to be applied at the discretion of the trustees in payment of the rents and fines due and to become due to the lord of the manor, in respect of the market-house, &c. and in the purchase of such messuages, &c. as should be necessary for the purpose of the Act, and in keeping the market-house, &c. in repair, and in paying the salary to the organist of the church, and in reducing and paying off mortgage debts, annuities, &c.; and in the next place towards such general improvements as the trustees should think proper. By a confirmed order of the Board of Health, under the 11 & 12 *Vict. c.* 63, *the local Act was repealed, and the property transferred to the local Board. The order directed that all contracts, debts, &c. made, &c. by the trustees of the local Act should be paid and satisfied by and recovered from the local Board, as the same might have been recovered from the trustees. The plaintiff was appointed organist of the church by the officiating clergyman, and received his salary from the trustees of the Local Act, and after its repeal he received about a quarter's salary from the Local Board of Health. On subsequently applying for a year's salary, he was informed by letter that the Board had determined to resist the demand. In a special action on the case, brought to recover the amount, the plaintiff proved that by the published statement of the Board there was, at the time of the refusal, a balance of exceeding* 200*l.* *in the hands of the trustees, but in this account a sum of upwards of* 7,000*l.* *due on mortgage of the market estates, was not included:*

Held, that the action was not maintainable, there not having been any appropriation of the funds by the Board to the payment of the organist's salary.

The Health of Towns Act, 11 & 12 *Vict. c.* 63, *s.* 139, *provides that no action shall be commenced against the Local Board of Health, or its officers, "for anything done or intended to be done under the provisions of this Act" until after one month's notice in writing:*

Held, that this does not apply to an action brought under the above circumstances.

This was an action on the case against Joseph Lowndes, the duly appointed clerk of the Burslem Local Board of Health, and was brought to recover 30*l.* one year's salary, alleged to be due to the plaintiff as organist of Burslem church. The declaration alleged that the plaintiff, after the passing of the Act 6 Geo. 4, c. 131, for regulating the markets in the town of Burslem, &c. and before the passing of the Public Health Act, 1848, to wit, on the 1st January, A.D. 1845, was, and from thence continually hath been, and still is, organist of and in the parish church of the parish of Burslem, in the first-mentioned Act in that behalf mentioned, in that behalf duly appointed, at and for a certain yearly salary to the plaintiff in that behalf therefore payable, to wit, the yearly salary of 30*l.* payable to the plaintiff on the 29th day of September in each and every year, and which salary was duly paid to the plaintiff by the trustees for the time being of and for the Town Hall and Market-place of the town of Burslem, in the county of Stafford, &c. in the first Act mentioned, &c.; as and after the same salary became due and payable to the plaintiff before and up to the 29th day of September, A.D. 1849, pursuant to the last-mentioned Act; and that the said salary which became due and payable to the plaintiff for the year ending on the 29th day of September, A.D. 1850, was paid to the plaintiff by the said Local Board of Health. [The declaration then proceeded to set out out the provisional order of the General Board of Health, by which Burslem was duly brought within the operation of the Health of Towns Act, and providing for the repeal of the above-mentioned local Act, except certain clauses thereof, and directing (Order 13) that after the confirmation of the order, all bonds, mortgages, contracts, debts, moneys, and securities for money, made, given, &c. by the trustees or commissioners respectively, should be paid and satisfied by the local Board out of such parts of the said transferred property and estate as would or ought to have been charged or chargeable in respect of the same if that order had not been made, and should, as near as circumstances would permit, have the same priority, and be paid and satisfied within the same time, and be recovered from the said local Board, as the same might have been recovered from such trustee or commissioner respectively; and that if such property and estate should be insufficient for that purpose, the deficiency should be charged upon and paid, and satisfied by the said Local Board of Health out of the general district rates levied under the said Public Health Act in the parts and places which would or ought to have been chargeable with such deficiency if that order had not been made, &c.; and also providing (Order 17) that the order and the repeal of the parts of the local Act should not annul, defeat, lessen, or otherwise prejudicially affect any rate, assessment, imposition, composition, charge, purchase, sale, conveyance, grant, demise, lease, mortgage, annuity, assignment, bond, contract, covenant, agreement, security, matter, or thing whatsoever, before the passing of any Act of Parliament confirming that order, made, entered, into, or done, under, or by virtue, or in pursuance of the said local Act with reference to the purposes of the same respectively; but notwithstanding that order, all such acts, deeds, matters, and things should be as good, valid, and effectual to all intents and purposes whatsoever, for, against, and with reference to the said Local Board of Health, as if the same had been made, entered into, or done by, to, or with reference to that Board, instead of the trustees or commissioners of that Act respectively, and might be proceeded on and enforced in the same manner in all respects as if that Board instead of such trustees or commissioners had been party or privy to the same, and been named or referred to therein; and further (sec. 18), that that order and the repeal of the parts of the said local Act mentioned in the schedule thereto, should be subject and without prejudice to any penalties incurred under that Act, and to all estates, rights, interests, claims, and demands whatsoever, at the time of the passing of any Act of Parliament confirming that order, created, confirmed, subsisting, and capable of being recovered, enforced, and enjoyed under, and by virtue or in pursuance of the said local Act, but all such penalties might be enforced and recovered by the said Local Board of Health, according to the provisions of that order; and all such estates, rights, interests, claims, and demands might be had, exercised, and enjoyed as if that order had not been made. The declaration then averred that, after making and publishing of the said order, and after the passing of the Public Health Act, 1850, No. 3, the Local Board of Health was duly elected, and the plaintiff further saith, that af the said first election of the said Local Board of Health for the said parish of Burslem (except as aforesaid), and before the commencement of this suit, to wit, on the 29th day of September, A.D. 1851, a large sum, to wit, 30*l.* for one year of the said salary became due and payable to the plaintiff as such organist as aforesaid; and that on that day, and from thence until the commencement of this suit, there were and still are in the hands of the said Local Board of Health for the said parish of Burslem, funds and moneys applicable to and sufficient for the payment to the plaintiff of the said sum of 30*l.* so due and payable to him for his said salary on the said 29th day of September, A.D. 1851, as aforesaid, out of the moneys raised and received by the said Local Board of Health, by virtue of the said order, and the statutes in that behalf made and provided, by and out of which said funds and moneys it was then the duty of the said Local Board of Health to pay to thy plaintiff the amount of his said salary so due and in arrear to him as aforesaid, of all which premises the said Board of Health and the members thereof respectively, after the said sum of 30*l.* so became due and payable to the plaintiff, and before the commencement of this suit, to wit, on, &c. had notice and were then requested by the plaintiff to pay him the same; yet the said Board of Health and the members thereof, not regarding their duty in that behalf, but contrary and intending to injure and defraud the plaintiff in this behalf, did not nor would, when they were so requested, or at any time before or afterwards, pay to the plaintiff the same sum of money, or any part thereof, but have hitherto wholly neglected and refused so to do contrary to their duty in that behalf, and contrary to the statutes in that behalf made and provided, to the damage of the plaintiff, &c.

To this declaration the defendant pleaded:—

First, Not guilty.

Secondly. A traverse of the allegation that the plaintiff was organist of and in the parish church of Burslem, at the salary mentioned payable on the said 29th of September in each and every year.

Thirdly. That the provisional order did not recite or direct in manner and form as in the declaration alleged.

Fourthly. That there were not on the day when the said sum of 30*l.* so became due and payable to the plaintiff for his said salary as alleged, or at any time afterwards before the commencement in this suit in the hands of the said Local Board of Health, funds or moneys applicable to or sufficient for the payment to the plaintiff of the said sum of 30*l.* or any part thereof out of the moneys raised or received by the said Local Board of Health by virtue of the said order, under the statutes in that behalf made and provided in manner and form, &c.

Fifthly. That the said Local Board of Health never did determine to pay to the plaintiff the money for the non-payment whereof the plaintiff has above complained, or any part thereof, and that before the commencement of this suit, and at a reasonable time in that behalf, to wit, on the 29th day of September, A.D. 1851, the said Local Board of Health did, at a meeting of the said local Board then duly holden, in the reasonable exercise of their discretion in that behalf, reasonably determine not to pay the said money, or any part thereof, to the plaintiff, and to apply the whole of the said funds and moneys in the declaration mentioned to be in their hands to the other purposes to which in and by the said local Act the said trustees were empowered at their discretion to apply the same; and the defendant further says, the said other purposes at the time of the said determination reasonably required the whole of the said funds and moneys to be applied for the last-mentioned purposes, concluding with a verification.

The plaintiff joined issue on the four first pleas, and replied de injuria to the last.

Whateley, Q.C. and *Whitmore*, for the plaintiff.

Gray and *P. Mahon*, for the defendant.

The plaintiff sought to establish his claim in the following manner: by the local Act, 6 Geo. 4, s. 131, "An Act for Regulating the Markets in the town of Burslem, in the county of Stafford, and for Lighting, Regulating the Police, and Watching the said town of Burslem, &c." it was enacted (sec. 91), "That out of the first moneys which shall be raised or received by virtue of this Act, the said trustees shall in the first place pay and discharge all the costs, charges, and expenses relative to the procuring and passing of this Act, or so much and such part and parts thereof as the said trustees shall order and direct, with legal interest for such parts thereof as shall have been advanced for that purpose, and the remainder thereof shall be applied, at the discretion of the said trustees, in payment of the rents and fines due and to become due to the lord of the manor for the time being in respect of the said market-house

and the waste lands in the possession of the said trustees, and in the purchase of such messuages, lands, tenements, or hereditaments as shall be necessary for the purposes aforesaid, and in keeping the said town-hall and market-house in repair, and in providing the necessary conveniences for the said market, and otherwise executing the several purposes of this Act as to the said market, *and in paying the salary to the organist of Burslem Church*, and in reducing, paying off, and discharging the principal sums of money and interest which now are owing, or which shall be borrowed upon any mortgage or mortgages, and in redeeming any annuities to be granted by virtue of this Act, and the same shall in the next place be applied for or towards such general improvements in the said parish of Burslem, or for establishing, promoting, or assisting any public works, institutions, or establishments there, as the said trustees assembled at any meeting to be held in pursuance of and according to the directions of this Act shall think proper. And if any surplus shall then remain, such surplus shall be applied in aid and diminution of the police-rates hereinafter directed to be raised."

A copy of the provisional order of the General Board of Health, by which Burslem was brought within the operation of the Health of Towns Act, and providing for the repeal of the above-mentioned Local Act, except certain clauses, was put in evidence. This order having been subsequently confirmed by the Public Health Act, 1850, No. 3, obtained the force of an Act of Parliament under the provisions of the statute.

The provisional order contained the clauses as set out in the declaration, transferring the liabilities and duties of the trustees under the Local Act to the Local Board of Health. By the statute 11 & 12 Vict. c. 63, the clerk of the local board was empowered to sue and be sued on behalf of the board.

The plaintiff was examined on his own behalf. He stated that he was appointed organist of the parish church of Burslem in 1849, by the officiating clergyman. His salary was at first 20*l.* a year, but was subsequently increased on account of extra services to the sum of 30*l.* in the whole. He received this salary from the market trustees down to the year 1850. He subsequently received about a quarter's salary from the Local Board of Health. On afterwards applying by letter to the Board for the balance due, he received the following answer:—

"Burslem, Oct. 22, 1851.

"*Re* Organist Salary.

"Sir,—I am directed by the Burslem Local Board of Health to inform you, that a special meeting has been this day held for the purpose of considering your application for the payment of 30*l.* for a year's salary as organist of the parish church, when it was determined to resist the demand.

"I am, Sir, your obedient servant,

"To Mr. R. J. Edwards." "J. Lowndes."

The defendant was also called as a witness on behalf of the plaintiff, to produce the published statement of the receipts and expenditure of the Board, drawn up by the defendant as secretary, and duly audited. This statement shewed a balance in hand on the market trust account of upwards of 200*l.* On cross-examination it appeared that a large sum had been borrowed on mortgage of the market estates, and that the principal sum of 7,140*l.* was still due, which was not entered in the account.

Evidence was also given shewing the payment of the organist's salary by the treasurer under the original Market Act down to the establishment of the Board of Health.

At the close of the plaintiff's case—

Gray submitted that the action was not maintainable. 1st. No notice of action was proved. The Health of Towns Act, 11 & 12 Vict. c. 63, s. 139, enacts that no writ or process shall be sued out, &c. against the Local Board of Health, &c. or the clerk, &c. "for anything done or intended to be done under the provisions of this Act, until the expiration of one month next after notice in writing shall have been delivered to him, &c. clearly and explicitly stating the cause of action, &c. and upon the trial of any such action the plaintiff shall not be permitted to go into evidence of any cause of action which is not stated in the last-mentioned notice; and unless such notice be proved, the jury shall find for the defendant." The board was here charged with a breach of duty. [Cresswell, J.—They are not charged with doing anything, but simply for not doing it.] The cases certainly formerly laid it down, that something must be done in order to render the notice necessary, but that notion has been recently shaken. The object of requiring a notice is, that the party may have an opportunity of making amends. *Davis* v. *Curling*, 15 L. J. (N. S.) Q. B. 56.) Another objection—2. The 91st section of the local Act, 6 Geo. 4, c. 131, was repealed, and the organist's salary did not come within the provisions of the order of the Board of Health. It was not a contract, nor a debt, nor moneys, within the 13th section or paragraph of that order, which referred to securities. The word moneys must be taken ejusdem generis. Then again, it could not be said to be anything entered into, or done under, or in pursuance of the local Act with reference to the purposes of that Act, so as to fall within the 17th section of the order. Then, was it within the 18th section? That declared that the repeal of the local Act should be without prejudice to any penalties incurred under that Act, and to all estates, rights, interests, claims, and demands whatsoever at the time of the passing of any Act of Parliament confirming that order, created, confirmed, subsisting, and capable of being recovered, enforced, and enjoyed under and by virtue or in pursuance of the said local Act. This proviso, therefore, was simply to keep alive any previously existing liabilities, but did not extend to any liability arising after the repeal of the Act. For example, a penalty, if incurred before, might be recovered afterwards, but not otherwise. 3. Assuming that there was a liability on the part of the board, the liability was not to the organist; there was no duty to him. The organist was not appointed by the trustees. There was not any direct right or claim against the board. If there were no funds, still the organist is to be paid, but not by the trustees. His claim would be probably against the churchwardens. The latter, therefore, are the parties to sue the board for the salary, if there is any liability at all. 4. Another objection is, that the plaintiff has only proved that he acted as organist, and not any appointment; at most only a verbal one by the curate. It is submitted that this is not sufficient in the case of a corporation or quasi corporation. 5. But the substantial point in this case was, that there was no money appropriated by the commissioners or trustees for the purpose of paying the organist's salary, but the whole was, on the contrary, an open fund, and therefore no action would lie. The 91st section directed the money to be laid out in various ways; amongst others, in reducing and paying off the sums due on mortgage; and it appeared that upwards of 7,000*l.* was due on that head alone. The trustees had a discretion, and in its exercise might choose to pay the balance in reduction of that principal, and, in the absence of an express appropriation, no action would lie. (*Pardoe* v. *Price*, 14 L.J. (N.S.), Ex. 216.) There the action was for money had and received; but the decision did not turn upon that, but on the fact that there was no appropriation. On this, the substantial ground of defence, he submitted the action would not lie. Some of these objections were on the record, but the first was not. The fourth and fifth pleas were intended to raise the last point. The fifth plea alleged that the Local Board of Health never did determine to pay the plaintiff, and this plea was supported by the letter of the defendant of the 22nd of October, 1851.

It being agreed that the points should not be further argued here, but that the verdict should be entered as the learned judge should decide, with leave to move the Court above,

Cresswell, J. said,—It appears to me that there is nothing in the objection as to the want of notice of action. The case cited is not in point. The principal point turns on the 91st section of the original Act, for which the order of the Local Board of Health is substituted. Then the question arises, whether an action lies to recover under the circumstances proved. My impression is, that the board is not liable without an appropriation. On the first plea of not guilty, therefore, I think the defendant is entitled to a verdict. As to the other objections, I differ from Mr. Gray. I do not think any formal appointment of the organist was necessary; and it seems to me, so far as I can form an opinion here, that the same duties as devolved on the trustees, with respect to the organist's salary, under the 91st section, devolve on the trustees under the order. With regard to the fourth plea, I think the meaning of that plea is, simply, that the defendant had not money in hand sufficient to pay the amount, without reference to any question of appropriation; but the facts shew that there was, in point of fact, money in hand. That plea, therefore, must be found for the plaintiff. As to the fifth plea, if it is only an allegation that the board was resolved not to pay, it would be insufficient; but, treating it as a plea alleging that there was no appropriation, I shall direct the jury to find for the defendant. The question, however, arises on the general issue.

Under the direction of the learned judge, the jury found a verdict for the plaintiff on the second, third, and fourth pleas, and for the defendant on the first and fifth, with leave to either party to move.

Scotch Reports.

DIGEST OF SCOTCH CASES.

COURT OF SESSION—SECOND DIVISION.

Saturday, Jan. 31, 1852.

Dixon *v.* Ranken.

Master and servant—Liability of master.

A master will be held liable in damages for injuries done to a workman in his service, in the course of his employment, by a fellow-workman, also in the master's service.

This was an appeal from the Sheriff-Court of Glasgow. The action was brought by Mrs. Ranken, the widow of a workman in Dixon's employment, against Dixon for damages, for the injury and loss sustained by her through the death of her husband, caused by the negligence of a follow-workman, also in the employment of the defendant, in working a coal-pit of the defendant. The sheriff-substitute (Skene) found the defendant liable in damages, and to this judgment the sheriff (Alison) adhered.

Patton (with whom *Inglis*) for appellant, argued, that from the facts brought out in evidence the plaintiff had no claim for damages. But even supposing it proved that the death of her husband had been occasioned by the act of his fellow-workman, Dixon could not be held liable. *Hutchison*, 22nd May, 1850, 19 L. J. Ex. 296; *Wigmore*, 22nd May, 1850, 20 L. J.; *Priestley* v. *Fowler*, 3 L. & W. 1.

Pattison for respondent. — The liability of the master to his servant for injuries done by his fellow-servant, has never been disputed in Scotland, whatever may be the law in England. *Sword* v. *Cameron* and *Gellatly*, 13th Feb. 1839. There are not many cases which can be cited, just because the rule never has been disputed.

The Lord Justice Clerk, after going over the evidence, which he held to establish that the injuries had been caused by the negligence of the fellow-workman, said,—It is said, entirely on the authority of certain decisions and opinions of the Courts of England, that the master is not responsible—as I understand in any circumstance—to those employed by him for any injuries caused by the carelessness, inattention, and unskilfulness of other servants in his employment. That there are many cases in which the master will not be liable for injuries done by his servants, whether to a third party or to another servant acting at the time in his master's service, is quite true; but such exceptions (for such they are in the law of Scotland) depend on the state of the facts and the nature of the misconduct in the particular case. These exceptions will cover some of the extreme cases put in the English opinions; while others of these cases seem to apply to the master's liability to third parties. I observe, so far as I can follow or understand the English cases, that the judges lay down the doctrine that by the law of the contract of service as fixed in England, the servant runs all risks arising from the misconduct and unskilfulness of other servants of the same master, for the dangers from such are risks incident to the labour he undertakes in that particular service. If this is the law of England, then the decisions referred to follow necessarily. But this forms only another instance, from which it appears how widely different in essential principles are some of the most common contracts of the law of Scotland and England. The law of Scotland as to the contract of service in regard to such matters as are here raised is perfectly fixed. The master's primary obligation in every contract of service in which his workmen are employed in a hazardous and dangerous occupation, for his interest and profit, is to provide for and attend to the safety of the men. That is his first and leading obligation, paramount even to that of paying for their labour. This obligation includes the duty of furnishing good and sufficient machinery and apparatus, and of keeping the same in good condition—and the more rude and cheap the machinery, and the more liable on that account to cause injury, the greater his obligation to make up for its defects by the attention necessary to prevent such injury. In his obligation is equally included, as he cannot do everything himself, the duty to have all acts by others whom he employs, done properly and carefully, in order to avoid risk. This obligation is not less than the obligation to provide for the safety of the lives of his servants by fit machinery. The other servants are employed by him to do acts which, of course, he cannot do himself, but they are acting for him, and instead of himself, as his hands. For their careful and cautious attention to duty, and for their want of vigilance, and for their neglect of precaution by which danger to life may be caused, he is just as much responsible as he would be for such misconduct on his own part, if he were actually working or present. And this particularly holds as to the person he entrusts with the direction and control over any of his workmen, and who represents him in such a matter. The servant, then, in the contract of service in Scotland, undertakes no risk from the dangers caused by other workmen from want of care, attention, prudence, and skill, which the attention and presence of the master, or others acting for him, might have prevented. His master is bound to protect him from such dangers. There have been many cases in Scotland, at all periods, and during the last fifty years, a *very* large number, which proceeded on this as a fixed principle of the law as to the contract of service. Of course there arise a

number of cases in the varied trades of modern society, in which the acts of the servants may be of such a kind that, although not criminal, they yet do not involve the master in liability; and in such cases the law was clearly admitted on all hands, although its application was matter of nicety. The case of *Sword* is a case which eminently and very strongly brings out the doctrine of the law of Scotland. The injury there was caused by the culpable negligence or rashness of the other workmen employed by the tenant of the quarry, in precipitately firing off a blast, contrary to the plain precautions required for the safety of the men. The law, that the master is liable for injuries done by servants to one another, was not disputed. The sole question was, in truth, whether the plaintiff was not to blame, and was not himself the sole cause of the injury he received. I refer to the full notes of Lord Cockburn, and to the detailed opinions of Lord Gillies, of the late Lord President and Lord M'Kenzie, to shew how perfectly settled and rooted is the doctrine of the law of Scotland as to the contract of service as to this point. It is in vain to attempt to disturb it in this Court; and having heard what is now advanced, I have only to say, that I shall not regard the point as again open for argument. But then it is quite within this doctrine, as settled in our law, to contend that the fault of the man himself occasioned the injury, or that the other workmen were versantes in illicito, or that he and they were misconducting themselves. No attention whatever can be paid to the plea in this case, that the workmen were told to hold on, and that they did not do so, and so violated the instructions given. The master is bound, in such a case, to have such control over the men as will ensure that being done which their safety requires. Every kind of neglect and carelessness on the part of the workmen, is a violation of instructions, direct or implied; and, therefore, to admit this plea, would, in truth, be to protect the master in almost every case from the consequences of the negligence and recklessness of his workmen.

Lord Medwyn gave no opinion on the point of law, as he hold the facts in evidence did not establish the case of the plaintiff.

Lord Cockburn concurred with the Lord Justice Clerk as to the effect of the evidence. The plea that the master is not liable rests solely on the authority of two or three very recent decisions of English Courts. And these decisions certainly do seem to determine, that in England, where a person is injured by the culpable negligence of a servant, that servant's master *is* liable in reparation, provided the injured person was merely one of the public: but that he is *not* so responsible, if the person injured happened to be a fellow workman of the delinquent servant. It is said, as an illustration of this, that if a coachman kills a stranger by improper driving, the employer of the coachman is liable; but that he is not liable if the coachman only kills the footman. If this be the law of England, I speak of it with all due respect. But it most certainly is not the law of Scotland. I defy any industry to produce a single decision, or dictum, or institutional indication, or any trace of any authority to this effect, or of this tendency, from the whole range of our law. If such an idea exists in our system, it has as yet lurked undetected. It has never been directly condemned, because it has never been stated. The case of *Sword* gave the Court a fair opportunity of applying the principle if it existed,—for there it was a workman who had been hurt by the negligence of his fellow workers,—but the employer was found liable. Many similar cases have occurred, and they have all been disposed of without the interference of this conception. The whole course of our practice has proceeded on the assumption that the liability of an employer did not cease, merely because, besides employing the wrong-doer, he also employed him to whom the wrong was done. I am clear for adhering to our own rule, and to our own legal and practical habits. The new rule seemed to be recommended to us not only on account of the respect due to the foreign tribunal—the weight of which we all acknowledge—but also on account of its own inherent justice. This last recommendation falls with me, because I think that the justice of the thing is exactly in the opposite direction. I have rarely come upon any principle that seems less reconcileable to legal reason. I can conceive some reasons for exempting the employer from liability altogether, but not one for exempting him only when those who act for him injure one of themselves. It rather seems to me that these are the very persons who have the strongest claim upon him for reparation; because they incur danger on his account, and certainly are not understood, by our law, to come under any engagement to take these risks on themselves.

Lord Murray.—I do not pretend to know, and have not examined the law of England on the present question. But one point I hold to be clear by the law of Scotland, that a master who carries on a manufacture of any kind in which the lives of those in his employment are exposed to danger, is bound to have all his machinery, &c. in a most sufficient state. Here the evidence shews it was not, and I therefore cannot hesitate to hold the master liable.

The Court adhered.

Equity Courts.

COURT OF APPEAL IN CHANCERY.

Reported by Owen Davies Tudor, Esq. of the Middle Temple, Barrister-at-Law.

August 3 *and* 5.

Owen *v.* Bryant.

Will—Construction—Illegitimate children taking with legitimate children—Intention.

A testator by his will, after reciting that he had nine children, whom he named and described, devised his real estate upon trust for sale, and upon the death of his wife, the proceeds were to be divided among his children by his wife then living, and the issue of such of them as should be then dead, such issue taking per stirpes, and not per capita, but subject, as to the shares of daughters, to the directions thereinafter contained; and the testator thereby directed his trustees, during the life of each of his said children by his then present wife, who should happen to be a daughter, to pay the dividends of her share of the proceeds of the real estate as such daughter should appoint; and in default of appointment, to such daughter for her life to her separate use; and after the decease of such daughter, upon certain trusts for the benefit of her children; and in default of issue of such daughter, then upon trust as such daughter should by will appoint; and in default of appointment, then upon certain trusts for the benefit of the brothers and sisters of the whole blood of such daughter and their issue; and in default of such brothers and sisters, or their issue, then upon trust for the next of kin of such daughter at her death, according to the Statute of Distributions. The testator died, leaving by his wife the nine children mentioned in his will, one of whom, a married daughter, was illegitimate, having been born before his marriage with his wife:

Held, that according to the intention of the testator, on the face of the will, the illegitimate daughter ought to participate in the gift to his children generally of the proceeds of his real estate. There is no rule to the effect that illegitimate children cannot, under any circumstances, participate with legitimate children in the benefit of a gift or bequest to children generally: in each case the question depends upon the intention appearing in the will.

This was a special case, originally set down to be heard before Vice-Chancellor Turner, but, in order that it might be disposed of before the commencement of the long vacation, it was, by the consent of the parties, and by the permission of their lordships, transferred to the keeper of the Court of Appeal. It is as follows:—R. W. made his bill, dated the 24th September, 1836, whereby, after reciting that his two daughters by his first wife were amply provided for by him on their respective marriages, and reciting that he, the testator, had nine children then living by his present wife, viz. Eliza, the wife of A. B.; Charlotte, the wife of C. D.; Harriet, the wife of E. F.; Mary Ann W.; Maria, the wife of G. H.; Robert W. his eldest son; George B. W. his second son; Caroline W.; and Charles Frederick W. his youngest son; and reciting that, on the respective marriages of his four married daughters by his present wife, he had advanced to them sums of money, amounting together to 560*l.* each, and that it was his intention to make similar provisions for his two unmarried daughters, bequeathed the sum of 1,120*l.* to trustees, upon trust, to divide the same into two equal shares, one of such shares to be allotted to each of his said two unmarried daughters, and to be held upon the like trusts for the benefit of such daughter as were declared thereinafter concerning the share which should be allotted to her in the proceeds of the sale of his real estate and leasehold lands thereinafter devised and bequeathed, and the stocks, funds, and securities thereof, in case she were living on the decease or second marriage of the testator's said wife. The testator then gave certain legacies to his sons, and bequeathed the residue of all his personal estate whatsoever and wheresoever (except leasehold lands and tenements) to his wife absolutely. The testator then devised and bequeathed all his real estate, and all his leasehold messuages or tenements, lands, and hereditaments, to the trustees before named, their heirs, executors, administrators, and assigns respectively, upon trust, on the decease of his said wife, or in her lifetime with her consent in writing, absolutely to sell the whole or any such real and leasehold estates, and to invest the proceeds of such sale or sales in the parliamentary stocks or public funds of Great Britain, or at interest in Government or real securities in England or Wales; and upon further trust to permit and suffer his said wife Charlotte W. to receive the rents and profits, interest and dividends, and annual produce of his said real estate and leasehold lands, and trust moneys and securities, during such time as she, his said wife, should continue his widow and unmarried; but if his said wife should marry again after his decease, then upon trust, after such marriage, and during the remainder of her life, with and out of such rents, issues, and profits to pay her an annuity of 50*l.* to her separate use, free from anticipation. The will then proceeds as follows:—"And from and after the decease or marriage of my said wife, but subject and without prejudice to the trusts and purposes aforesaid, the said trustees or trustee for the time being do and shall divide the principal of the said trust moneys, stocks, funds, and securities between all and every my children by my said present wife who shall be living at the time of her decease or second marriage, and the issue of such as shall have departed this life leaving issue then living, such issue taking per stirpes, and not per capita, as tenants in common, and their respective executors, administrators, and assigns, subject, nevertheless, as to the shares of daughters, to the directions hereinafter contained. And I do hereby direct that my said trustees or trustee shall, during the life of each of my said children by my present wife who shall happen to be a daughter, pay the dividends, interest, and annual proceeds of her share of the said stocks, funds, and securities, trust-moneys, and premises, unto such person or persons, for such purposes and in such manner only as such daughter, whether covert or sole, shall from time to time, by any writing signed by her, appoint, but not so as to deprive herself, while under coverture, of the benefit thereof by anticipation; and in default of such appointment, and subject thereto, into the hands of such daughter for her sole and separate use, exclusively of any husband with whom she may marry, and so that her receipts shall be sufficient discharges for the same; and from and after the decease of each and every of such daughters, then upon the trusts thereinafter mentioned, for the benefit of the children of such daughter; and in default of issue of such daughters, then in trust for such person or persons and for such purposes as such daughter should by will appoint; and in default of appointment, upon the following trusts, viz. "upon trust for the brothers and sisters of the whole blood of such daughter then living, equally, and the issue of any brother or sister of the whole blood who may have died leaving issue then living (such issue taking per stirpes, and not per capita) as tenants in common, and their respective executors, administrators, and assigns; and in default of any brother or sister of the whole blood, or the issue of any such brother or sister, then upon trust for such person or persons as, at the time of the decease of such daughter, shall be her next of kin, under and according to the statute made for the distribution of intestates' effects."

The testator died, leaving the nine children mentioned in the former part of the will, being his only children by Charlotte his wife, of whom *Eliza, the wife of A. B. was illegitimate, being born of the testator's wife before his marriage with her.*

The question raised by this special case for the determination of the Court was, whether, upon the death of the testator's widow, which event had taken place, the illegitimate daughter was entitled to a share of the proceeds of the testator's real estate.

W. R. A. Boyle, for the illegitimate daughter Eliza, and her children, contended, that as the testator had described her in the commencement of his will as one of his "children," she ought to take according to the intention of the testator, apparent on the face of the will. The general rule was, that by the term "children" in a will legitimate children only would be considered as meant, but if it appeared on the will itself that the testator intended illegitimate children to take, there was no rule to prevent such intention from being carried into effect. (*Beachcroft* v. *Beachcroft*, 1 Madd. 430; *Bayley* v. *Snetham*, 1 S. & S. 78; *Gill* v. *Shelley*, 2 Russ. & My. 336; *Meredith* v. *Farr*, 2 Y. & C. C. C. 525; *Evans* v. *Davies*, 7 Hare, 499; *Metham* v. *The Duke of Devon*, 1 P. Wms. 529.) [Lord Justice Knight Bruce.—The testator in the commencement of his will in effect says his illegitimate daughter is to be considered as one of his children, and afterwards makes a gift to his children. Where is the difficulty? Transfer the designation from the subject to the object. Suppose a person says in his will a cabinet shall mean a table, and then gives all his tables, would not the cabinet pass?]

Whaley, for the trustees, submitted to the Court that the illegitimate daughter could not take under the gift in the will. That the authorities had clearly

established two propositions; first, that illegitimate children could not take as a class, but as persons designate; second, that illegitimate children could not take as a class with legitimate children. He cited *Wilkinson* v. *Adam*, 1 V. & B. 422; *Fraser* v. *Pigott*, 1 You. 351; and *Bagley* v. *Mollard*, 1 Russ. & My. 581.

Lord Justice Lord CRANWORTH.—This case has been well argued by the learned counsel, but with all respect to them, I think that a very material passage in the will, to which my attention has been called by my learned brother, has not been touched upon in the argument, nor even set forth in the special case. But for that I was on the point of differing from my learned brother as to the construction to be put upon this will. The grounds of the conclusion I had come to were these: I reject the notion of there being any rule to the effect, that illegitimate children cannot, under any circumstances, participate with legitimate children in the benefit of a gift or bequest to children generally. I think that there is no invariable rule of that sort, but that in each case the question is one which depends upon the circumstances appearing upon the will; and that if, from the whole context of the will, it appears that illegitimate children are to be included with legitimate children in the benefit intended, illegitimate children may take. Primâ facie, the word "children" means legitimate children, and is to be read as if the word "legitimate" were annexed. Therefore, where a will purports to give a benefit amongst children, it is the same thing as if it had said "amongst legitimate children," unless something is disclosed on the face of the will which shews that that is not meant. Now, it was said that in this will, that something is disclosed, inasmuch as the testator begins by saying, "Whereas, I have nine children, viz. Eliza, wife of R. B. O.; Charlotte, wife of," &c.; and among the nine children thus enumerated, one is illegitimate, and consequently, that the testator, when he speaks of his children, means to designate his daughter Eliza O. also, who is not legitimate. The question, however, is, whether this recital must of necessity be coupled with the gift afterwards of the real and leasehold estates; for the rule is, that legitimate children must be taken to be intended by the word "children," unless the context leads *necessarily* to the inference that something else was meant. Now, the recital here was for a purpose, viz. as an introduction to, and explanation of, the gift made immediately afterwards in favour of the testator's two unmarried daughters. After enumerating his children, and distinguishing those daughters that were married, the testator goes on to recite his intention to make a provision for each of his two unmarried daughters equal to that which he had previously made upon each married daughter upon her marriage. This provision he then makes, and he then proceeds to give and devise his real estate and leasehold estate in the following manner:—[His lordship read from the will the gift of the real estate of the testator.] Now, I must own, that had the will stopped there, I should have thought that legitimate children, and legitimate children only, were intended; for I cannot see that there would, in that case, have been an absolute necessity to construe the word "children," otherwise than according to its natural import. In some of the cases cited, it was thought impossible to construe the word according to its natural import, as in the case of *Gill* v. *Shelley*, where the gift was to the children of a deceased person, who had died leaving only two children, of whom one was legitimate, and the other illegitimate. There it was held, that the illegitimate child was intended to be included, otherwise it was impossible to give a meaning to the word "children," which was in the plural. So, also, where the gift is to the "children" of a deceased person, who at his death left none but illegitimate children, and there the illegitimate children are supposed to be intended, for otherwise there would be nothing for the will to operate upon. The principle upon which Sir John Leach, M.R. acted in *Bagley* v. *Mollard*, 1 Russ. & M. 586, is, I think, the right one. There the testator bequeathed a leasehold house in trust for Elizabeth Mollard, whom he described as the then only surviving child of his son William Mollard, and concluded his will by a residuary bequest to all and every the children of his sons James Mollard and William Mollard, and of his daughter Sarah Bagley. Elizabeth Mollard, the grandchild, being illegitimate, the question was whether she was entitled to share in the residuary gift. Sir John Leach held she was not, on the principle that whenever it was possible for the general description of children to include legitimate children, it could not also be extended to illegitimate children. Upon that principle I should have come to the same conclusion here, but for a passage in the will to which my attention has been called, viz. the passage in which the testator says, "And I do hereby direct that my said trustees or trustee shall, during the life of each of my *said* children by my present wife, who shall happen to be a daughter, dispose of the interest of her share," &c. in the way mentioned in the will. Coupling that passage with the passage which precedes it, and in which the testator enumerates by name his children by his present wife, I am of opinion that by the words "children by my present wife," he must be taken to have meant all those whom he had previously enumerated as his children.

Lord Justice KNIGHT BRUCE.—The passage upon which so much stress has been laid by my learned brother is not stated in the abstract of the will as set forth in the special case, but was discovered only on my referring to the probate of the will. It will be necessary, therefore, that the probate should be entered. It is important that it should be so, because Lord Cranworth has laid so much stress upon the passage in question. He is, I need not say, probably right; but, for myself, I confess I should have thought the intention of the testator sufficiently apparent without the aid of those words. I think that, consistently with the whole of the authorities cited, except, perhaps, the case of *Bagley* v. *Mollard*, this case may be decided according to the plain intention of the testator. The result is, that the illegitimate daughter and her children are entitled to a share in the proceeds of the real estate.

VICE-CHANCELLOR TURNER'S COURT.

Reported by J. HENRY COOKE, Esq. Barrister-at-Law.

June 11, 12, 21, *and* 28.

SIMPSON *v.* DENISON.

Railway companies—Agreement to apply the funds of one company to purposes not contemplated by Act—Tolls on railway lines—Tolls, what they are. Two railway companies were established by Act of Parliament, each special Act incorporating the Railway Clauses Consolidation Act, 1845. *One railway (A.) agreed with the other (B.) that until an Act could be obtained, the A. company would work the traffic of the B. company, and pay tolls, after the expenses of the B. company, equal to 4l. per cent. on its paid-up capital, and after the Act should be obtained, to guarantee 4l. per cent. to the shareholders of the B. company, and that the A. company should pay all expenses of the Act. Shareholders in the A. company sought an injunction to restrain the carrying into effect the agreement and the application of the funds of the A. company for the purpose of obtaining the Act, and the Court granted the injunction, being of opinion that the payments by the A. company to the B. company were not tolls within the meaning of the 87th section of the Railway Clauses Consolidation Act.*

The bill in this case was filed by Mr. Simpson and Mr. Wright, two shareholders in the Great Northern Railway Company, against the directors of that company, praying an injunction to restrain the company and all directors thereof from working the Ambergate, Nottingham, and Boston and Eastern Junction Railway Company's line, and for applying the funds of the company to pay a certain per centage to the shareholders of that company, and in payment of certain expenses of an application to Parliament. The arrangement which was sought to be restrained was contained in an agreement by which the Great Northern Company stipulated to bear harmless the Ambergate Company against all liabilities they were under, whether to canal companies or otherwise; and that until a special Act of Parliament could be procured to sanction the working of the Ambergate line by the Great Northern line, the latter should work the former at tolls equal to them, the Ambergate expenses, and to 4 per cent. on the paid-up capital; and that when the Act should be obtained, the Ambergate Company should receive 4 per cent. on such capital; and that the Great Northern Company should pay the expenses of such application to Parliament, and of every subsequent application for such purpose; but the Great Northern Company were to have the power of paying off the Ambergate shareholders at any time at par.

Sir W. Page Wood and *Jessell*, for the motion, contended that the whole agreement was unlawful. The Act for the formation of the Great Northern Company authorised them to carry on their own line, and the 87th section of the general Act, namely, the Railways Clauses Consolidation Act, enabled them to use the Ambergate line for their purposes, or the Ambergate Company to use their line. But as to the Great Northern Company becoming carriers, and leasing or buying the Ambergate line, such a thing could not be. If the lines were interchangeably used, a toll would be payable, but the sums which were stipulated for in their agreement were not tolls at all. Beyond this, the stipulation that the funds of the Great Northern Company should be applied for the purpose of an application to Parliament for such a purpose, a purpose clearly unlawful, was not within the powers of those who entered into the agreement, and could not be sanctioned by the company, and would not be permitted by the Court. (*The Attorney-General* v. *The Corporation of Norwich*, 16 Sim. 225; *The Attorney-General* v. *The Guardians of the Poor of Southampton*, 17 ib. 7; and *The Great Western Railway Company* v. *Rushout*, 16 Jur. 238.)

Bethell, Rolt, and *Denison*, for the Great Northern Railway Company, argued, that all that was effected by the agreement was provisional and contingent on the sanction of Parliament. Nothing wrong, nothing immoral was intended, and if some part of the arrangement was in fact ultra vires, the Court could not, therefore, interpose and offer an obstruction to the appeal to the wisdom of Parliament. Whatever might be said of the payments technically, no one could deny but that they were essentially tolls; they were payments for the use of the line, and therefore tolls to all intents and purposes. (*Beman* v. *Rufford*, 1 Sim. N. S. 550.)

J. Bailey, Erskine, and *Hedger*, appeared for the Ambergate Company, and submitted to act as the Court should direct, intimating, however, that in the opinion of the company the arrangement was beneficial to both companies. (*Ware* v. *The Grand Junction Water Works Company*, 2 Russ. & M. 470; *The Great Western Railway Company* v. *The Birmingham and Oxford Railway Company*, 2 Phill. 605; and *Mount* v. *The Shrewsbury Railway Company*, 13 Beav. 1.)

Monday, June 28.—The VICE-CHANCELLOR.—The injunction prayed by the bill extends to three heads: first, to restrain the defendants, the directors of the Great Northern Railway Company, from applying any of the funds of the Great Northern Railway Company in payment of any of the liabilities of the Ambergate Railway Company, either in respect to their contracts with canals, or otherwise indemnifying the Ambergate Company against any of their contracts; secondly, to restrain the directors of the Great Northern Company from making any payments to the Ambergate Company, so as to make up a dividend of 4*l.* per cent. on their paid-up capital, or any other sums of money; and, thirdly, from applying any portion of the funds of the Great Northern Company in making application to Parliament for an Act to ratify the arrangement complained of, either with or without modifications, and also from pledging the credit of the Great Northern Company for carrying into effect any of the steps in the arrangement. The first question to be considered upon this motion is, what is the general principle which ought to be applied to cases of this nature? I take that point to be well settled. The principles which are to govern cases of this description between large companies are the principles which regulate the rights of parties in ordinary partnerships. It must be considered, therefore, how this case would have stood if this had been an ordinary limited partnership. Here these companies have been formed for special purposes, that is, for the purpose of making railways between particular places, with power to carry passengers and goods between those places. In the case of an ordinary partnership formed for this purpose, I take it to be quite clear that no majority of the partnership could by any means bind the minority to make a railway, or to carry upon a railway between other and different places. Suppose a contract between a limited number of persons to trade between particular places—say between London and Oporto—in a particular branch of trade, I think it is quite clear that it would not be competent to any majority of partners to bind the minority to trade between London and Lisbon, although embarking in the same kind of trade, and in the same geographical direction. The case might be put of horsing coaches. Suppose a number of persons agreed to horse a coach to run between London and Bath, it is quite clear that a majority of those persons could not bind the minority to horse it between Bath and Exeter. Then, I think, if the case rested there, I should feel little or no doubt on the subject; but it is the duty of the Court in applying these principles, to consider all the terms of this particular partnership. The Railway Clauses Consolidation Act, 8 & 9 Vict. c. 20, s. 88, provides "that it shall be lawful for the company, from time to time, to enter into any contract with any other company, being the owners or lessees, or in possession of any other railway, for the passage over or along the railway, by the special Act authorised to be made, of any engines, coaches, waggons, or other carriages of any other company, or which shall pass over any other line of railway, or for the passage over any other line of railway of any engines, coaches, waggons, or other carriage of the company, or which shall pass over their line of railway, upon the payment of such tolls, and under such conditions and restrictions as may be mutually agreed upon; and for the purposes aforesaid, it shall be lawful for the respective parties to enter into any contract for the division or apportionment of the tolls to be taken upon their respective railways." This being a general enactment applicable to all railway companies, I consider that any one who becomes a shareholder in a railway company must be considered as contracting to hold those

shares subject to the provisions of that Act. It was argued for the plaintiff, that the general effect of that clause is merely to give a right to contract for passing over the line of another, but that it did not give any right to a company to take up or set down passengers or goods on the line which was to be passed over. This is a narrow construction. The object plainly was to enable the trains of one company to pass to the limits of the railway of another company, so as to avoid the necessity of changing the trains at the point of terminus of each of the railways. Suppose one railway stopped at Grantham, and another proceeded from Grantham to York, it is the precise object of this clause to enable the trains of the company which stop at Grantham, to go on from Grantham to York on the second company's line. There must, therefore, also be held to have been in the contemplation of the Legislature a right to stop at stations, as well as to pass them; and if these words import a right to stop, it is very difficult to say they have no right to take up passengers and goods. "Passing over," in sec. 87, must mean passing over with the ordinary incidents of passing over, that is, with the right of stopping to take up passengers and goods. The clause, therefore, in my opinion, gives a right to agree for leave to pass over another line of railway with the ordinary incidents; but this is not saying that the clause gives a right, under colour of passing over, to acquire the whole trade of the company over whose line such passage takes place. The question, therefore, is, whether this is a bonâ fide agreement for "passing over" the Ambergate line on terms within the meaning of the General Act, 8 & 9 Vict. c. 20; or whether it has been entered into for any other purpose, namely, for the purpose of acquiring the trade of the Ambergate Company; and there is no doubt in my mind, on the agreement itself, but that it was entered into with this latter and more general view. The defendants, feeling some difficulty in their case on the agreement alone, filed an affidavit, stating the mode in which the agreement was intended to be carried into effect, namely, that until a special Act should be obtained, ratifying the agreement, they intended to work the trains of the Ambergate Company over the rails of the Ambergate Company, in conformity with the rules now in force with the Ambergate line; and that they would work the traffic of the Great Northern Company by the same trains, leaving the Ambergate Company in the sole control of their line. Now, this statement might, perhaps, have had some effect in varying the case, so far, at least, as materially to qualify the injunction, if the agreement were in other respects within the powers of the Act. But, in my opinion, it is not, in other respects within the Act. The payment here agreed to be paid is not a toll within the meaning of the Act of Parliament. Tolls are defined to be "dues receivable for the liberty of passing over highways, public or private." They are payments connected with the passing over. It is difficult to know what is the meaning of the word "tolls" as used in the 87th section of the Act. It is not necessary to decide what are tolls, as the word is used in the Act; it is sufficient for my decision in the present case that these payments are not "tolls" within the Act. If I were compelled to give any opinion it would be that tolls should be fixed with reference to the number of carriages passing over this railway, the payment being in consideration of their passing over, both under the Act of Parliament, and from the nature of tolls, being a payment made in reference to their passing over. I do not wish, however, to prejudice the question, whenever it may arise. I do not think it arises here. These payments are, in my opinion, not tolls; and the agreement is one which the defendants had no power to make. I must, therefore, grant the injunction as to the first and second branches; and as to the third branch of the injunction, restrain the defendants from applying the funds of the Great Northern Company in payment of the expense of any applications to Parliament, as mentioned. The case of *Ware* v. *The Grand Junction Waterworks Company* makes no distinction between applying to Parliament for the purpose of altering the scheme and object of the company, and defraying the costs of such applications out of the funds of the company. But later cases have established the distinction, and it is clearly a distinction well founded in reason and sense. The injunction, must, therefore, be granted as to this branch also of the application; but it must be limited in some degree; it must be confined to the proceedings on the agreement now before me. That will leave untouched the injunction restraining the defendants from pledging the credit of the company.

Common Law Courts.

COURT OF EXCHEQUER.

Reported by FREDERICK BAILEY and C. J. B. HEWTSLEY, Esqrs. Barristers-at-Law.

June 9, 10, *and* 26.

HANKIN v. BENNETT.

Bankruptcy—Debt payable on a contingency.

The defendant entered into a bond, conditioned that if he should pay to plaintiff such costs as he should in due course of law be liable to pay, in case a verdict should pass for the defendant in another action, the bond to be void. The last-named action was tried at the Spring Assizes, 1848; *in the Easter Term following, a rule nisi for a new trial was obtained; on the* 11*th November a fiat issued against the defendant; and in Hilary Term,* 1849, *the rule for a new trial was discharged; on the* 29*th May the defendant obtained his certificate, and on the* 22*nd August the costs were taxed, and judgment signed against the plaintiff:*

Held, that the action on the bond was not barred by the certificate, and that the liability was not a debt, payable on a contingency, within the 6 *Geo.* 4, *c.* 16, *s.* 66. (*See now* 12 *&* 13 *Vict. c.* 106, *ss.* 177, 178.)

Action in debt.—The declaration stated that defendant, by his writing obligatory under his seal, bearing date 27th June, 1846, was bound to the plaintiff in 200*l.* subject to a condition thereunder written for making the same void, if one Francis Thomas Gell and the defendant, or either of them, should pay to the plaintiff such costs as the plaintiff should in due course of law be liable to pay, in case a verdict should pass for the defendants in a certain action then pending, which had been brought by one John William Ide Cozens in the name of the now plaintiff, as plaintiff, such costs to be first taxed by one of the Masters in the usual manner. That afterwards, on the 4th day of March, 1848, at the Assizes holden in and for the County of Hertford, a verdict was found for the defendants in the said action; that on the 22nd day of August, 1849, the costs of the said defendants in the said action were duly taxed at 542*l.* 3s.; which sum the plaintiff then became liable to pay to the defendants in the said action; that the said defendant and the said Francis Thomas Gell had not, nor had either of them, paid to the plaintiff the said costs so taxed, whereby the said writing obligatory became forfeited.

Pleas.—1. Non est factum, upon which issue was joined; 2. Fraud and covin; to which plaintiff replied de injuria, and upon that replication issue was joined; and, 3. That on the 29th March, 1849, he, the defendant, became a bankrupt, and that the cause of action in the declaration mentioned accrued to the plaintiff before the defendant so became bankrupt.

The cause came on for trial at the sittings for Middlesex after Hilary Term, 1850, when a verdict was found for the plaintiff for 200*l.* subject to the opinion of the Court upon the following special case:—

In Michaelmas Term 59 Geo. 3, Thos. Hankin entered up judgment in the Court of Common Pleas against Joseph Smith and John Cozens for 6,000*l.* and 5*l.* costs, upon a warrant of attorney, dated 25th June, 1815, given by them to him to secure the payment of 3,000*l.* then due from the said Joseph Smith to the said Thos. Hankin.

The said John Cozens died in the year 1837, and soon after the said Thos. Hankin died, having by his will appointed the plaintiff in this action his executor, who duly proved the same; the said Joseph Smith also died afterwards.

In February 1846, John William Ide Cozens, claiming to be assignee of the judgment debt under an assignment alleged to have been made by the said Thos. Hankin in his lifetime, caused a scire facias to be issued out of the Court of C. P. in the name of the now plaintiff as executor of the said Thos. Hankin, deceased, against the heir and devisees of the said Joseph Smith, for the purpose of enforcing payment of the amount of the said judgment. Whereupon the now plaintiff obtained a judge's order whereby it was ordered that the said John Wm. Ide Cozens should give security to the now plaintiff for the costs which he might be called upon to pay in the event of the defendant's succeeding in the said scire facias.

In June 1846, the now defendant was proposed and accepted, together with one Francis Thos. Gell, as security for the sum of 200*l.* and they thereupon executed the bond upon which this action is brought. The condition of the bond or obligation was, that if the said Francis Thos. Gell and John Bennett, or either of them, their, or either of their heirs, executors, or administrators, should and did well and truly pay or cause to be paid unto the said Daniel Hankin, or his heirs, or executors, or administrators, such costs as the said Daniel Hankin, his heirs, executors, or administrators should in due course of law be liable to pay in case the said John Wm. Ide Cozens should discontinue, become non suit, or a verdict pass for the defendants, or any or either of them, or otherwise, in relation to the said action, such costs to be first taxed by one of the Masters in the usual manner, then the obligation to be void, otherwise to be and remain in full force and effect. Issue was joined on the said scire facias, and the same came on for trial at the Hertford Spring Assizes, in 1848, when a verdict was found for the defendants therein.

In Easter Term, 1848, the said John Wm. Ide Cozens obtained a rule calling upon the defendants to shew cause why the said verdict should not be set aside, and a new trial had, which said rule was, in Hilary Term, 1849, heard and discharged. The defendant's costs in the scire facias were taxed at the sum of 542*l.* 2s. 8d. on the 22nd August, 1849, and judgment was then signed thereon against the now plaintiff. On the 14th November, 1848, a fiat in bankruptcy issued against the now defendant on his own petition, under which he was adjudicated a bankrupt, and he obtained his certificate on the 29th May, 1849. The pleadings formed part of the case, and the question for the opinion of the Court is, whether the plaintiff is entitled to retain the verdict on the issue joined upon the last plea; if the Court shall be of that opinion, then the verdict found for the plaintiff shall stand, but if the Court shall be of the contrary opinion, then the verdict shall be entered for the defendant upon the issue joined on the last plea.

Cleasby, for the plaintiff, contended that the bankruptcy of the defendant at the time, and under the circumstances set forth in the special case, did not discharge him from the cause of action in the declaration mentioned; that the condition of the bond was not forfeited until the costs were taxed by the Master; that such costs could not have been taxed until after the rule nisi was disposed of; and that the bond debt was not proveable under the fiat.

C. E. Pollock, contrà, contended that the condition of the bond was a debt payable on a contingency within the bankrupt laws, and that it was proveable under the fiat.

Cleasby, in reply. *Cur. adv. vult.*

JUDGMENT.

MARTIN, B.—This was a case for the opinion of the Court. The question was, whether the plaintiff was entitled to retain a verdict which had been taken for him on the trial. The plea was, the bankruptcy of the defendant. The action was on a bond dated 27th June, 1846, the condition of which was, that if the defendant and a co-obligor should pay to the plaintiff such costs as he should in due course of law be liable to pay in case a verdict should pass for the defendants in another action then pending, which had been brought by one Couzens in the name of the plaintiff, the costs to be first taxed by one of the Masters in the usual manner, the bond to be void. The action mentioned in the condition was a scire facias on a judgment obtained by the plaintiff which had been assigned by him to Couzens, which had been assigned by Thomas Hankins, since dead, to William Cousins, of whom the plaintiff was executor. The action was tried at Hertford Spring Assizes in 1848, and a verdict was found for the defendants. In the following Easter Term a rule to shew cause why there should not be a new trial was obtained. On the 14th November following, the fiat against the defendant issued; and in Hilary Term 1849, the rule for a new trial was discharged. On the 29th May, the defendant obtained his certificate, and on the 22nd of August, the costs were taxed. The question was, whether the action on the bond for the purpose of recovering these costs, was barred by the certificate? We are of opinion that it was not. The bond itself was not forfeited at the time when the fiat issued; if it had been, the question would have arisen whether the demand was proveable under the authority of the case of *Hodgson* and *Bell*, 7 Term Rep. 97; but it is quite clear no action whatever could have been maintained on the bond, on the 14th November, 1848, when the fiat issued; the defendant, therefore, could derive no advantage from the principle laid down in the above case. It was urged, that the liability continued, as the condition of the bond was a debt payable on a contingency, within the 6 George 4, c. 16, s. 66, the bankrupt laws which were in force at the time the fiat was issued against the defendant, and that it was proveable under the fiat, and a demand therefore barred. We think, however, this liability was not a debt at all within the meaning of that section. It was a contract to indemnify a nominal plaintiff, whose name was used by a third person against such costs as the plaintiff would become liable to pay, if the defendant obtained judgment in his favour. It seems to us impossible to consider that this is a debt; it is a contingent liability, but not a contingent debt. The case of *Bire* v. *Morson*, 4 Bing. 57, decided that costs themselves would not be a contingent debt; à fortiori, we think the contract to indemnify against them could not be one. In —— *Ex parte Tindal*, 8 Bing. 402, the nature

of debts payable on a contingency proveable under a fiat was fully considered by Lord Chancellor Brougham, assisted by the late Lord Chief Justice Tindal and Mr. Justice Littledale, and there is nothing there to be found to support the view that such a liability as the present is proveable under the 66th section of the late Act. In the case of *Morrison* v. *Glover*, 4 Ex. 431, decided in 1849, the Court carefully avoided giving any opinion as to the right to prove on a bond of indemnity when the damage was not ascertained at the time of the claim to prove. That was a case arising on a guarantee to pay a certain sum yearly; a very different contract from the present. It is proper to be observed under the Bankruptcy Consolidation Act, 12 & 13 Vict. c. 106, s. 177, the section in the former statute, as to debts payable on a contingency, is re-enacted, and by the 178th section, there is an extension of the right to claim and prove for a liability to pay the money on a contingency. The judgment will be for the plaintiff.

Judgment for the plaintiff.

Ecclesiastical Courts.

PREROGATIVE COURT.

Reported by Dr. WADDILOVE, of Doctors' Commons.

March 16 *and July* 6.

COOMBS *v.* THE QUEEN'S PROCTOR.

Right to the property of the wife of a convicted felon.

M. C. died intestate whilst her husband was undergoing a sentence of transportation:

Held, that her property accrued to the Crown, and not to her next of kin.

The facts of the case appear sufficiently in the judgment.

Deane appeared for the father, the next of kin of the wife. He cited *Bullock* v. *Dods*, 2 B. & Ald. 258; *Roberts* v. *Walker*, 1 Russ. & Myl. 754; *Ex parte Franks*, 1 Moo. & Scott, 11; *Weyland's* case, Co. Litt. 133, *a*; *Newsome* v. *Bowyer*, 3 P. Wms. 37; *Hyde* v. *Price*, 3 Ves. 443; *Lean* v. *Schutz*, 2 B. C. 1175; *Hatchett* v. *Baddeley*, ibid. 1082; *Lewis* v. *Lee*, 3 B. & C. 297; *Re Church*, 16 Jur. 517; and *In the Goods of Martin*, 13 Jur. 686.

Sir *J. D. Harding*, Q.A. for the Crown, cited *Bullock* v. *Dods*, 2 B. & Ald. 258; *Roberts* v. *Walker*: 2 Wms. Exors. 4th ed. 1219.

JUDGMENT.

Sir JOHN DODSON.—In this case of *Coombes* v. *The Queen's Proctor*, the question is as to the right to the personal estate of Mary Coombes, deceased. She died on the 6th September, 1850, leaving personal property consisting of about 200*l.* in a savings bank, the produce of her own industry. She died intestate, and without a child; her husband, Robert Coombes, survived her; but it appears that upon the 30th January, 1837, he was convicted of two separate felonies, and was sentenced to seven years' transportation for each offence; that is, until the 30th January, 1851, and consequently till after the death of Mary Coombes, the deceased in this case: hence he was a felon convict at the time of her death. It appears that he had a conditional pardon in the year 1848, not from the Crown, but under an Act of Parliament, from the governor of the colony, that colony being Van Diemen's Land, whereupon he went to Victoria. But, as it will presently be seen, this makes no real difference in the question which the Court has to decide. That conditional pardon does not affect certain cases which must be mentioned. Although the period for which the husband was sentenced has since elapsed, still he is no party to the present proceedings; indeed, some doubt has been suggested on one side whether he is still living or not. However that may be there is no doubt he was alive at the time of the wife's death. The parties before the Court at present are, first, the Queen's proctor asserting the right of her Majesty to the property: and secondly, the father of Mrs. Coombes, who insists upon his right to the personal estate left by his daughter, being, as I stated before, the sum of 200*l.* in a savings bank. Now a claim is asserted on the part of the Crown not merely to the effects belonging to a felon at the time of his conviction, but also to any which may accrue to him afterwards during the time that he remains a felon convict, and consequently it has been argued that her Majesty has a right to the personal estate of Mrs. Coombes to which her husband would have been solely entitled but for his conviction as a felon. On the other hand, it is contended on the part of the father of Mrs. Coombes that whatever effect the conviction of the husband might have upon the property possessed by him at the date of his conviction, it can have no effect whatever on the property since gained by the wife when she continued in this country trading as a feme sole: that she is to be regarded as a widow: or as a wife divorced a vinculo matrimonii; and that her property would go to her next of kin, that is, in this case to himself as her natural and lawful father, she having no children. Cases have been cited in support of the right of the Crown, amongst them *Bullock* v. *Dods*, 2 B. & Ald. 258. It appears by the marginal note to that case, there were in it two points; for it says, as to the second point, "By attainder all the personal property and rights of action in respect of property accruing to the party attainted, either before or after attainder, are vested in the Crown without office found, and therefore attainder may be well pleaded in bar to an action on a bill of exchange endorsed to the plaintiff after his attainder." Therefore where a party had been a felon convict, or where he had been attainted, it was held that the Crown was entitled not only to the property which the convict had at the time of his conviction, but that everything which accrued to him afterwards was for the use of the Crown, and not for the benefit of the convict himself. At p. 275 of that case Abbott, C.J. in delivering judgment, is reported to have said, "Upon consideration we are of opinion that the attainder of the plaintiff was perfectly pleadable in bar. An attainted person is considered in law as one 'civiliter mortuus,' and his property does not go to his next of kin, but to the Crown; and this doctrine extends not only to what actually belongs to himself, but also to anything he may afterwards acquire." That case therefore seems very clear and decisive on the point. There was a case cited by Dr. Deane on the other side which he has had the kindness to lend me, and which seems to me to lead very much to the same conclusion, that is, *Church's* case, reported at page 517 of 16th vol. of the *Jurist*. It was a decision in Vice-Chancellor Parker's Court, and in that case the marginal note is, "The property of a felon vests, in the Crown notwithstanding conditional free pardon in the penal colonies." Therefore that brings it very near the present case. "A convict sentenced to death for felony, which sentence was commuted to transportation for life, received a conditional free pardon in the penal colony. Held, that such pardon does not alter the effect of the attainder in vesting his property in the Crown." Therefore the question seems to have been precisely similar to the present, with this one exception, that there the felon had been capitally convicted in the first instance, and afterwards his punishment was reduced to transportation, but he was a felon convict. That is the only difference in the two cases, for here we have a conditional pardon by the governor of the colony. Now the case is stated thus—"T. Church, by his will dated in 1821, gave all his real and personal property to trustees upon trust, to sell and to stand possessed of the proceeds, upon trust to invest the same, and subject to certain annuities to pay the dividends and income of such investment to his wife for life; and subject thereto the testator gave half of the trust fund to the children of his brother, W. Church, who should live to attain twenty-one as tenants in common. In 1840 the testator died. All his real and personal property was subsequently converted, and their respective shares were paid to the children of W. Church, except to one who, having attained the age of twenty-one, had been tried for felony in 1833, and sentenced to death, which sentence was commuted to transportation for life—a punishment he was then undergoing. A conditional free pardon, however, had been granted to him in the penal colony." In that case it was precisely the same as in this—conditional pardon in the colony. In that case, "the trustees paid his share into court under the Trustee Relief Act, and the present petition was presented by her Majesty's Attorney-General praying that the costs thereof might be taxed and paid out of the fund in court, and that the residue of such fund might be paid to such person or persons as her Majesty, by sign manual, should appoint to receive the same." Then the decision is this,—"Notwithstanding the conditional free pardon, his Honour, considering that the convict was still under attainder, made the order as prayed." So, because he was still under attainder, still a felon convict, though he had received this conditional pardon from the governor of the colony, his Honour held that the property belonged to the Crown, and directed it to be paid to any one that appeared for the Crown to receive it. It appears to me that case is on all fours with the present, and in conformity with *Bullock* v. *Dods*. It makes it, I think, quite clear so far, unless something is shewn to the contrary, that the property does belong to the Crown and no body else. It is true, that in the case of Church, the man had been capitally convicted, that seems the only difference; but it is not the punishment of death that makes the attainder, but being a convicted felon. The learned Sir H. Spelman says, the very term "felony" necessarily implies forfeiture of estate; and this derivation and meaning of Spelman is adopted by Blackstone. That seems to be the meaning, and though other learned lexicographers give a different definition, yet they all come to the same conclusion, that a conviction for felony, whether accompanied by capital punishment, whether there be suspension by the neck, or transportation, or burning in the hand, or whatever it be,—a conviction for felony implies forfeiture of estate, and of goods and chattels—goods and chattel without offices found. Although in the case of *Church* the party had been capitally convicted, yet it comes to precisely the same thing. It is quite clear on the authority of the cases mentioned, unless there be something to repel it on the other side, that the property of a felon convict becomes the property of the Crown, and not only such as he had at the time of his conviction, but anything that may accrue to him during the period the conviction remains in force till he receives an absolute pardon from the Crown, or the sentence of punishment has been completed. Now a variety of cases have been cited on the other side to shew that Mrs. Coombes was to be considered as a feme sole, as a widow, or as a person who has been divorced, a vinculo matrimonii, and that therefore there was no doubt that her father would be entitled to the property. The cases which have been referred to do not go at all as to the distribution of property on the death of a person so circumstanced—the wife of a convicted felon;—but they go as to points of trading, whether she could trade as a feme sole, whether she was liable to the bankrupt laws, and questions of that description. Certainly there are expressions from which it appears that the wives of persons who are exiled, persons who were banished, persons who had abjured the realm, and the like, are to be considered in the light which the learned counsel pointed out; but there is nothing to shew that on the death of a party so carrying on trade, the property is to go to the next of kin. The first case, I think, in point of date, so referred to was *Hatchett and Others* v. *Baddeley*, 2 Bl. 1079. The sole point in that case was, whether a woman who had eloped from her husband, and run into debt, could be sued for such debt. The marginal note is,—"Feme covert eloping from her husband, and running into debt, cannot be sued alone," so that, in point of fact, that authority would go the other way. There is another case in the same volume, mentioned by Dr. Deane, *Lean* v. *Schutz*. That is with respect to a feme covert, having a separate maintenance. Though she had a separate maintenance, and was living separate and apart from her husband, still she could not be sued without her husband; but what was referred to was the general question at the end of the case. "The general question was intended by the parties to be decided, but it is not necessary to decide it upon this record, for the whole is totally vicious, as the husband is no party to the record. There is no instance in the books of an action being sustained against the wife, the husband living at the time and under no civil incapacity. Even by the custom of London, though the wife and her effects are alone liable to execution, if she be a sole trader, yet the husband must be a co-defendant; and though a wife may acquire a separate character by the civil death of the husband, as by exile, profession, or abjuration, yet by a voluntary separation she does not acquire such a character which may be called a civil widowhood." Then it was contended by the learned counsel that by abjuration, by exile, or by profession, she did obtain this separate character, and from thence he would infer that her next of kin would be entitled to her property after her death. There is nothing said here about a felon convict. There is profession, exile, abjuration, in none of which is there forfeiture of goods, it is in felony alone that the goods are forfeited. In abjuration, where it is merely voluntary, where the parties abjure the realm out of disgust, as it is said, or where a man abjures it instead of remaining to be punished, and where he makes himself an exile, there is no forfeiture of goods, he departs the kingdom, and then in that case the wife may sue or be sued without the husband being joined with her. Now that does not seem to touch the question, at least not materially. Another case was referred to in Peere Williams, that of *Newsome* v. *Bowyer*. That, again, was a case where a party had voluntarily transported himself, he had been convicted, but he had received an absolute pardon from the Crown, not the governor of the colony, which is entitled a conditional pardon, and which the governor is allowed to grant under a special Act of Parliament. So that the party had been convicted of felony, he had received a pardon, but he had transported himself. It was understood that he should do so. Probably at that time, for this was in 1829, there was no such punishment attached to the offence, but he transported himself. His wife remained here, and some property devolved upon her. A share of the orphanage fund, under the custom of the city of London, came to the wife, and there was great difficulty in knowing what to do with it. It was invested, and the wife was allowed to have the interest for her sustenance and maintenance. The husband who had transported himself, afterwards died; the wife married again; and upon an application to the Court of Chancery, the money was transferred to the second husband. The Lord Chancellor much doubted the propriety of doing so, but, however that may be, that does not touch the present case, be-

cause the person, though he had been a felon convict, had received an absolute pardon from the Crown, and he was not transported in consequence of his conviction of felony, as a part of his punishment, but he transported himself—was voluntarily absent. In that case it was allowed that the wife, to whom the property passed, under the orphanage custom of the city of London, should have the interest, and afterwards, when her husband was dead, and she married again, the second husband took the property. Another case referred to was that of *Roberts* v. *Walker*, 1 Russ. & M. The marginal note is to this effect—"Personal property not belonging to a felon convicted of simple larceny, and sentenced to transportation at the time of his conviction, but accruing due to him afterwards, before his term of transportation has expired, is forfeited to the Crown." So that it goes strongly to support the view taken of the case by the Queen's Advocate. Now, the Master of the Rolls, in deciding this case, said, "In this case two questions are raised, first, whether the personal property not belonging to a felon sentenced to transportation at the time of his conviction, but which accrued to him afterwards, during the term of his transportation, is forfeited to the Crown." That is the first question; then he proceeds to state the second. As to the first, he says, "The first point appears to be settled by the case of *Bullock* v. *Dods*, and a felon, until the term of his transportation has expired, is not restored to his civil rights." So that it seems to be pretty conclusive upon the point. Other cases were cited by Dr. Deane, and particularly the case of *Ex parte Franks, re Kezia Franks*, 1 Moo. & S.; and in that case the only point was this, whether the wife could carry on business as a feme sole, and be liable to the bankrupt laws; her husband had been convicted of felony, and was sent to the hulks, where he was constantly visited by his wife; she had access to him, and so forth. But it was held, notwithstanding, that she was to be considered as a feme sole for the purpose of carrying on the business. The matter was referred to the Court of C. P. and the judges certified to this effect. "We have heard the case argued by counsel at considerable length, and are of opinion that at the date, and suing forth of the commission of bankruptcy against Kezia Franks, to wit, on the 25th day of July, 1827, the said Kezia Franks was a trader, and as such liable to become bankrupt within the true intent and meaning of the Act of Parliament, passed in the 6th year of the reign of his late Majesty King George the Fourth." Then the certificate is signed by the judges, and there are the arguments of counsel, in which they go through the various cases I have already referred to, and mention some others; but this is the conclusion to which the learned judges arrive, and this is the certificate which they give. Then I think these cases, especially those of *Bullock* v. *Dods*, and *Roberts* v. *Walker*, are clearly and directly to the point; and the other cases respecting separate trading, and the wife being considered a feme sole, whether her husband is an exile, or has banished himself, or abjured the realm, cannot affect the law touching the goods of a felon convict, consequently this property must be held to be the property of the Crown. This seems to be the view taken of it by Mr. Justice Williams, in his last edition of the Law of Executors, for at page 1219, he states it thus:—"Where a man is convicted of felony, and sentenced to transportation, not only the personal property which belonged to him at the time of conviction, but also that which accrues due to him afterwards during the term of transportation, such as a legacy bequeathed to him, or a share of a residue devolving on him during that period, is forfeited to the Crown." That, then, is precisely the case that has happened in the present instance; it seems to apply to it most directly. On the death of Mrs. Coombes, this property devolved to her husband, but being a felon convict, he cannot take it for himself; he acquires it for the Crown. This being the result of the cases, this being the opinion expressed by the learned judge in the work to which I have referred, I have no hesitation in deciding that the property in question, the sum of 200*l.* belongs to the Crown, and not to James Coombes, the father of the deceased. The Crown being the party on one side, I say nothing at all as to costs.

LORD CHANCELLOR'S COURT.

Reported by C. H. Keene, Esq. of Lincoln's-inn, Barrister-at-Law.

July 12, 13, 14, *and* 15.

Jones v. Price.

The principle upon which the Court sets aside sales of reversionary interests considered—Purchase by a solicitor from his client—Failure in proof of fraud charged—Costs.

On a bill filed by the assignor of a reversionary interest to set aside the assignment on the ground of inadequacy of consideration and misrepresentation on the part of the purchaser, who was his solicitor, the Vice-Chancellor (on the assignor repaying the purchase-money with interest, at the rate of five per cent.) ordered the deed to be delivered up and cancelled, and this decree was on appeal affirmed.

The Court will not set aside the sale of a reversion on account of inadequacy of price, unless amounting in itself to conclusive and decisive fraud.

The value of a reversion is to be estimated not by the value of actuaries, but at what it will really fetch in the market.

If a solicitor purchase from his client, the purchaser should take care that the vendor has the advice of another solicitor.

When a solicitor enters into a contract with a person, who is or was his client, he ought to be in a position to shew how the contract was entered into, who made the first offer, and what were the general circumstances attending such contract.

A solicitor who conducts the sale of property cannot become the purchaser without full explanation to the vendor, and informing him of his (the solicitor's) intention to purchase.

The Court will not allow the vendor of a reversion to lie by, and, after the reversion shall have fallen into possession, come to the Court to annul the sale merely for want of full consideration.

Where fraud is charged and not proved, the Court will not grant relief on any other ground; except where the relief is granted upon what may be termed a species of fraud. In such a case the Court will not give costs.

This was an appeal from a decree of the Vice-Chancellor Knight Bruce. The facts, in addition to those which are mentioned in the judgment, necessary for the purposes of this report, were these:—A Mr. Price bequeathed the residue of his property to his wife and daughter for life, and in the event of his daughter dying without issue, the capital to be divided between such of the issue of his brother and of another sister, as should be living at the death of the surviving tenant for life. In 1837 the plaintiff being entitled to one-fourth part of such residuary property, which amounted to upwards of 40,000*l.* contingently on her outliving the testator's daughter, and being also entitled to a like contingent interest in the other three-fourths respectively, in the event of the parties respectively entitled to them dying in the lifetime of the tenant for life, assigned (and as the bill alleged) under fraud, pressure, and misrepresentation, such several interests to Mr. Price, the manager of the Brecon Bank, and Mr. Thomas, a solicitor, for the sum of 1,325*l.* with a further sum of 250*l.* if her reversion should fall in. At the date of such assignment the testator's daughter, who had married, survived her mother, was fifty-four years of age, and had never had a child. She died in 1845, when the plaintiff instituted the present suit for the purpose of having such sale declared null and void. The grounds alleged in the bill for setting aside the assignment were inadequacy of value, that at the time of the contract for sale, the plaintiff was under pressure and duress, and that as far as the purchaser, Thomas, was concerned, the relationship of solicitor and client existed between them.

A great mass of evidence was gone into, the material parts of which are alluded to in the Lord Chancellor's judgment.

On the hearing of the cause before the Vice-Chancellor, his Honour ordered the assignment to be given up and cancelled, on the plaintiff paying back the purchase-money, with interest at 5*l.* per cent. From this decree the defendants appealed.

Wigram, *Malins*, and *Rogers* appeared for the plaintiff in support of the decree.

Russell and *Prendergast* for the defendant Price.

Bethell, *Glasse*, and *Berrey* for Thomas.

The following cases were cited during the argument:—

Coles v. *Trecothick*, 9 Ves. 234; *Evans* v. *Peacock*, 16 Ves. 512; *Gowland* v. *De Faria*, 17 Ves. 20; *Addis* v. *Campbell*, 4 Bea. 401; *Lord Aldborough* v. *Frye*, 7 Cl. & Fi. 456; *Hinckman* v. *Smith*, 3 Russ. 433; *Davies* v. *Cooper*, 5 M. & C. 270; *Edwards* v. *Meyrick*, 2 Hare, 60; *Re Bloye's Trust*, 1 Mac. & Gor. 488; *Edwards* v. *Brown*, 2 Coll. 100; *Glascott* v. *Lang*, 2 Ph. 310; *Gibson* v. *D'Este*, Ho. of Lords Cases, Sugden, 614.

The Lord Chancellor, in giving judgment, said, that in order to have a clear understanding of the transaction sought to be impeached it would be necessary to go back to the year 1824. In that year the plaintiff and her two sisters, with their husbands, executed a deed to do away with the proviso in the will of Mr. Price respecting survivorship, and to vest their shares in the testator's residuary property in them absolutely, subject only to the life interests of the testator's wife and daughter. Such a deed could not be binding upon either of the married ladies in the event of their surviving their husbands, which they all did, and the plaintiff always protested against its operation as respected herself. In the year 1835, the residue being at that time divisible into fifths, the reversion of one of the daughters was put up to auction, and agreed to be sold, as were also shortly after the shares of the plaintiff and her other sister, the plaintiff's share being agreed to be purchased by the defendant Thomas for 1,800*l.* Certain correspondence ensued respecting the title of the vendors and the deed of 1824, which resulted in the purchases being abandoned. On the 20th of June, 1837, Thomas, with a view of ascertaining the exact value of the reversions, put one of them up for sale at auction, being only a fifth share of the testator's residue, when a sum of 1,810*l.* was bid for it. It was, however, to be remarked that at that sale nothing but the dry contingent interest in one-fifth of the residue was put up, and not the benefit of survivorship in the whole residue, to which the five reversioners were then entitled. By the death of one of her sisters, the interest of the plaintiff was increased to a fourth, and in 1837, the bare reversion, still without the right of survivorship, was offered to a Reversionary Society, who declined to purchase, on the ground that the title was imperfect. The contract which formed the subject-matter of the present suit was then entered into, and it must be borne in mind that the husband of the plaintiff had died insolvent, and indebted to the Brecon Bank in between 300*l.* and 400*l.* The first contract by the defendants to purchase the reversionary interest of the plaintiff, including the benefit of survivorship, for 1,325*l.* was a parol one, and the evidence as to how it first came about, or who first made the offer, was most unsatisfactory, and from the depositions of the witnesses, he (the Lord Chancellor) was inclined to think that it was not until after the contract had been entered into that Thomas suggested that Mrs. Jones should have another solicitor to act for her in the business. From that it was evident that at the time that Thomas first agreed to buy the plaintiff's interest the relationship of solicitor and client was existing between them, and it was consequently his duty to protect her interest, and that if she sold it, it should not go for an undervalue. In no part of the evidence did it appear what was the price that the defendants had offered for the property. The parol offer had virtually been rejected, and the defendants, being anxious to become the purchasers, had planned together to obtain the property at just what price they wished. Thomas was in effect the purchaser at his own price, he being at the very time the solicitor of Mrs. Jones; he acted throughout the transaction, as her solicitor, and although she was ostensibly placed by him into the hands of Mr. Bevan, yet he never acted bonâ fide in the capacity of her solicitor. The property might have been offered to Thomas by Beaven for 2,400*l.* and an additional 500*l.* if it fell into possession. It was not a likely proceeding. That was an absurd proceeding, if it ever took place. It was offered to a Reversionary Society, who declined to purchase until the title was perfected. It was offered to that society with a suppressio veri—it was represented that there was a cloud upon the title; and it must be remembered that, although to the world the title might have been under a cloud, it was well known to Thomas that that cloud was only the invalid deed of 1824, and that the title was as good as any in the world: he did not think fit to enlighten the Reversionary Society on the subject, when they offered 1,800*l.* for it, nor did Mr. Bevan. He was not aware of the defect, and his letters had the very effect of doing that which Mr. Thomas desired; they had the effect of inducing the society to refuse to become the purchasers. These letters, it appeared from the evidence of Bevan himself, were written at the suggestion of Thomas; and they were such as never ought to have been written. That failure induced the plaintiff to fall back upon the parol contract, and as no sum had been specifically offered as the price of the property, and the plaintiff being anxious to sell, they (the defendants) were at liberty to put what price they wished upon it. That Mr. Bevan did: he filled up the consideration in the contract, as if the plaintiff, through her solicitor, had fixed the sum as its value. That could not be relied on as an act on the part of the plaintiff; it was meant to be represented as such, and considering the position that Mr. Bevan occupied towards Mr. Thomas, whose agent in effect he was, it appeared like an intention to mislead the Court, and to let the Court suppose that the plaintiff had arranged her own price. It was Mr. Thomas's duty to have told the plaintiff that he was in treaty for the purchase; he did not do so—she was not likely to know the real value of the property: she was in want of money, and might, therefore, have been induced to take Mr. Thomas's offer, not knowing that, if bonâ fide put up for sale, she could have obtained a much larger amount. His lordship went through all the facts of the case, and had no hesitation in saying that it was utterly impossible that the transaction could stand. In dismissing the appeal he was anxious not to be misunderstood upon what principle he did so; he did not intend in any way to de

part from the rule laid down by Lord Cottenham, that the sale of a reversion might be perfectly valid if the market price, or anything fairly approaching that price, had been given. The price was to be estimated, not by the valuation of actuaries, but by what the property would really fetch. His lordship did not intend to break in upon the rule, that a solicitor might purchase from his client, if the client had the advice of another solicitor; but if a solicitor did enter into a contract with a person who is or was his client, he must, at least, be prepared to shew how the contract was entered into, who made the first offer, and what were the circumstances. If this transaction had been a bonâ fide transaction, he would have supported it. His lordship fully concurred in the observations of his predecessors that parties must not lie by, and only come to this court when by the event the transaction had turned out unfavourably. His lordship set aside the present transaction because Thomas was well aware at the time that the offer was made to the Reversionary Society that the supposed imperfections of title were altogether visionary, and he had failed to undeceive the society, who were willing purchasers. The mode, too, in which the purchase-money had been applied, mainly in paying debts of the reversioner's husband, and to which she was not legally responsible, was another reason why she ought not to be bound by the agreement, as, so far from her having received any benefit from the transaction, she was actually left indebted in a sum of 46*l.* for which, together with some costs, she was obliged to give a promissory note. As to the doctrine laid down by Lord Cottenham, that when fraud was charged and not proved there could be no relief on any other ground, to a certain extent he (the Lord Chancellor) adopted it; but not in cases where the relief was given upon what was a species of fraud; though in such cases his lordship begged to be understood as always visiting with costs, the failure to prove fraud when charged. If the reversion in the present case had not fallen into possession, in all probability this suit would not have been heard of; and, therefore, in dismissing the appeal, he should follow what had been done in the court below, and not give the plaintiff any costs.

Appeal dismissed without costs.

VICE-CHANCELLOR STUART'S COURT.

Reported by Geo. S. Allnutt, Esq. of the Middle Temple, Barrister-at-Law.

Tuesday, Nov. 2.

Fiott *v.* Mullins.

Practice—15 & 16 *Vict. c.* 86, *s.* 20—*Production of documents.*

Of a motion under the above Act, which did not come into operation until the 2nd of Nov. notice was previously given for the 2nd of Nov. and it was

Held, that such notice was regular.

A defendant in a suit gave notice of motion under the 20th section of the above Act for the production by the plaintiff of all documents in his possession or power relating to the matters in question in the suit. The defendant did not specify the documents required to be produced, and there was no evidence as to what documents were in the plaintiff's possession. The motion was refused with costs.

This was a suit instituted for the purpose of setting aside certain deeds executed by the plaintiff, on the alleged ground of their having been obtained from him by fraud.

Russell and *W. W. Cooper* now moved on behalf of some of the defendants for the production of all documents in the possession or power of the plaintiff relating to the matters in question in the suit. The motion was made under the 20th section of the 15 & 16 Vict. c. 86. That section is as follows:—"It shall be lawful for the Court, upon the application of any defendant in any suit, whether commenced by bill or by claim, but as to suits commenced by bill where the defendant is required to answer the plaintiff's bill not until after he has put in a full and sufficient answer to the bill, unless the Court shall make any order to the contrary, to make an order for the production by the plaintiff in such suit, on oath, of such of the documents in his possession or power relating to the matters in question in the suit as the Court shall think right; and the Court may deal with such documents when produced in such manner as shall appear just."

Malins and *J. J. Hamilton Humphreys*, who appeared for the plaintiff, took a preliminary objection to the hearing of the motion. By the 67th section of the Act it was enacted that "this Act shall commence and take effect from and after the 1st day of November, 1852;" and therefore at the time the notice of this motion was served, the Act was not in operation. It was, however, according to the practice of the Court, that a party who gave notice of a motion should be in a position to make the motion at the time the notice was given. In moving to dismiss a bill for want of prosecution, for instance, the defendant could not give notice of motion before the time had arrived when he could move to dismiss.

The Vice-Chancellor said that he did not think there was anything in the objection.

Russell and *W. W. Cooper* then proceeded with the motion.

The Vice-Chancellor inquired what were the documents which the plaintiff was to produce?

Russell said that the plaintiff must produce all in his possession or power.

The Vice-Chancellor asked what was the evidence of his having any, and what was the nature of them, that the Court might exercise a discretion?

Russell alluded to the documents mentioned in the plaintiff's own bill, and in the depositions. If a defendant was required to state the documents he desired to have produced, how could the Act be applied?

The Vice-Chancellor did not think that he had any authority under the Act, to make an order in general terms for the production of all documents, analogous to that contained in a decree. He was to consider which of the documents were to be produced; it was, therefore, for the party to state what the documents were, and the nature of them, so that the Court might exercise a discretion. The words of the Act were so very plain, that they would hardly bear argument.

W. W. Cooper referred to the 18th section of the Act. He contended that the Court's discretion as to what documents were to be produced, which the Act required to be exercised, related to those documents which the plaintiff might claim to be exempt from production on account of privilege.

The Vice-Chancellor (without hearing *Malins* and *J. J. H. Humphreys*) said that it was perfectly clear that this Act of Parliament could not, according to any reasonable construction of the words of it, be held to sanction an application of this kind. This was a motion for the production of all documents in the possession or power of the plaintiff. The Court could never act upon an application of that kind without some clear and distinct evidence, and some clear and distinct statement of what the documents were. That was the principle and the rule of the Court. But when the terms of the Act of Parliament were looked at, a more obvious misconception of the intention of the Legislature could scarcely occur than was evinced by the terms of this notice of motion. Here was a notice of motion against the plaintiff to produce all documents in general terms; no particular documents were specified, and there was no description to guide the Court as to what was asked. There was not a tittle of evidence to show that the plaintiff had a single document in his possession. There was no pretence for the application, and the motion must be refused with costs.

Nov. 3 *and* 5.

Rogers *v.* Jones.

Practice—Absence of representative of deceased person.

A decree was made on a claim for administration by a residuary legatee against the executors, who were also two of the residuary legatees. One of the executors died intestate, and no administration was taken out to his estate: he had not proved or possessed any of the assets. The Court directed that the suit might proceed without bringing before the Court his personal representative, and that the Master might proceed under the decree in the absence of the legal personal representative.

This was a claim by a residuary legatee for administration of a testator's estate. There were two defendants, Richard Jones and Thomas M'Kiernin, who were the executors and two of the residuary legatees. A decree was made for taking the accounts, and the Master was to be satisfied that all the residuary legatees, or their legal personal representatives, were served. Richard Jones did not prove the will, or possess any of the assets. He died intestate, leaving a widow and four children. The widow refused to take out administration, and would give the plaintiff no information as to the children.

Bird now applied under the 44th section of the 15 & 16 Vict. c. 86, that the suit might be proceeded with without a representative of Richard Jones.

The Vice-Chancellor said that, as uniformity in decisions under the new practice was necessary, he would take an opportunity of consulting the other judges.

Friday, Nov. 5.—The Vice-Chancellor said that he had conferred with the other judges, who agreed with him, that the suit might be proceeded with without a representative of R. Jones.

Bird then said that as the decree required service of writs of summons upon all the residuary legatees, or their legal personal representatives, it would be necessary that the Court should direct that the Master should proceed under the decree, notwithstanding the absence of the representative of R. Jones, who was also a residuary legatee.

The Vice-Chancellor said that such a direction might be given.

VICE-CHANCELLOR KINDERSLEY'S COURT.

Reported by W. H. Bennet, Esq. of Lincoln's-inn, Barrister-at-Law.

Nov. 2 *and* 3.

Jones *v.* Woods.

Cox *v.* Taylor.

New Orders—Practice—Abatement.

Suits which have become abated before the passing of the late Acts for the regulation of the practice, &c. of the Court of Chancery, may, under the 15 & 16 *Vict. c.* 86, *be revived by order of course, under the* 52*nd section; and not by bill of revivor, as heretofore.*

The facts of these two cases were of precisely the same character; and the question for the decision of the Court was, whether, under the 52nd section of the Act for the Improvement of the Jurisdiction in Equity, the suits having become abated before the passing of that Act, they could be revived by an order of course. The following are the words of that section.(*a*)

Karslake, in the first case.

Elderton, in the second.

The Vice-Chancellor said that it was very desirable that there should be a uniformity of practice upon the subject; he would consult with the other judges.

Wednesday, Nov. 3.—The Vice-Chancellor said that the question in these two causes being whether, the suits having abated before the Chancery Act came into operation, it still applied to them, he had conferred with the other judges upon the point, and they were all of opinion that it did, and that it appeared to him (the Vice-Chancellor) to be the good sense of the matter, and therefore a similar order would be made in both cases.

Order of course to revive.

Common Law Courts.

COURT OF QUEEN'S BENCH.

Reported by Adam Bittleston and John Thompson, Esqrs. Barristers-at-Law.

Wednesday, Nov. 3.

Reg. *v.* Barronet and Another.

Bail—Murder—Duelling.

This Court refused to bail the seconds in a duel, though foreigners, where one of the principals was killed, and the seconds had been committed to take their trial for wilful murder, and had confessed to their participation as seconds in a fair duel.

The three things generally speaking to be considered with reference to taking bail are the charge, the evidence, and the punishment for the offence.

M. Chambers (*Parry* with him) moved for a rule to shew cause why a writ of habeas corpus should not issue to admit these two gentlemen to bail and to bring up the depositions against them, taken before the magistrates and the coroner for Surrey. The coroner's jury had pronounced a verdict of wilful murder against these gentlemen, and they had been committed to take their trial at the next Surrey Assizes. These two gentlemen had acted in a duel as the friends of M. Frederic Cournet, a French

(*a*) "Upon any suit in the said court becoming abated by death, marriage, or otherwise, or defective by reason of some change or transmission of interest or liability, it shall not be necessary to exhibit any bill of revivor, or supplemental bill, in order to obtain the usual order to revive such suit or the usual or necessary decree or order to carry on the proceedings, but an order to the effect of the usual order to revive, or of the usual supplemental decree, *may be obtained as of course upon an allegation of the abatement of such suit, or of the same having become defective, and of the change or transmission of interest or liability*; and an order so obtained when served upon the party or parties who, according to the present practice of the said court, would be defendant or defendants to the bill of revivor or supplemental bill, shall, from the time of such service, be binding on such party or parties in the same manner in every respect as if such order had been regularly obtained according to the existing practice of the said court, and such party or parties shall thenceforth become a party or parties to the suit, and shall be bound to enter an appearance thereto in the office of the clerks of records and writs within such time and in like manner as if he or they had been duly served with process to appear to a bill of revivor or supplemental bill filed against him; provided that it shall be open to the party or parties so served within such time after service as shall be in that behalf prescribed by any general order of the Lord Chancellor, to apply to the Court by motion or petition to discharge such order on any ground which would have been open to him on a bill of revivor or supplemental bill, stating the previous proceedings in the suit and the alleged change or transmission of interest or liability, and praying the usual relief consequent thereon. Provided also, that if any party so served shall be under any disability other than coverture, such order shall be of no force or effect as against such party until a guardian or guardians ad litem shall have been duly appointed for such party, and such time shall have elapsed thereafter as shall be prescribed by any general order of the Lord Chancellor in that behalf."

naval officer, who had unfortunately lost his life in the contest. Mr. Justice Crompton had been applied to previously to the Term, but he declined to act in this case on his own judgment alone; and after this hesitation on the part of the learned judge, his learned friend Mr. Parry and himself had deemed it proper that the application should be made in the full Court. The circumstances of the case were these. The learned counsel here went into a detail of the circumstances of the duel at Egham, with which the public are already familiar. The circumstances especially referred to were those which went to shew the fairness of the conduct of the parties in the duel, their entire ignorance of the fact that there was anything which would prevent either of the pistols from being discharged, the endeavours of M. Baronnet to prevent the duel, and his own and M. Allaine's attentions to the deceased after the wound was given.

Lord Campbell, C.J. — The purpose of your argument is to shew that bail may be taken because this was a fair duel. This is surely the first time that a court of law has been called on to interfere on any such ground.

Chambers thought he should be able to shew a full justification for this application.

Lord Campbell, C.J.—Do you mean to contend for the proposition, that if a fair duel takes place, and death ensues, that that is not murder by the law of England?

Chambers did not mean to say that; and he should presently come to the principle on which his application was founded; but at present he wished to shew the Court what had been the conduct and the motives of the parties. They were men of high and honourable feeling, and they had acted in ignorance of what was the English law of duelling, and upon the feelings and habits of society in their own country. The learned counsel here read the declaration of Baronnet, already published in the newspapers, in which he declared his previous ignorance of the English law, and his determination, now that he knew it, never to disclose the name of Cournet's adversary, if that adversary did not himself disclose it. The declaration also set forth, that Baronnet had used all his endeavours to prevent the duel, but that the duties of friendship and the laws of honour, and the customs of France, had prevented him from refusing to accompany his friend in that extremity. To this declaration Allaine adhered. The learned counsel said that M. Baronnet was a victim of the extraordinary revolution which during the last year had taken place in France. He had been born in that country, and resided there till January last, since which time he had been in England, engaged in mercantile pursuits. He was exiled, without trial, by a mixed commission, composed of civil and military men, for the part he had taken in opposition to the dictatorship, and for no other offence whatever. Being informed of the decision of the mixed commission he quitted France, and came to England: he had been educated for the legal profession, and for eleven years before 1843, he had been mayor of the town where he resided, and president of the agricultural society there; he had always maintained a high character in his own country; he did not know the laws of this country as to duelling, which, if fairly conducted, was not a criminal offence in France, though it might end in the death of one of the parties. A similar statement was put forward by Allaine. He now came to the principle on which he should contend that this Court ought to interfere. The Court was the protector of those who took refuge here, and lived under the laws of this country. It was unknown to the policy, humanity, and wisdom of the laws of England that before trial the liberty of any one should be taken away, except as a result of necessity, for the purpose of preventing a defeat of justice. The only object of imprisonment before trial was to secure the appearance of the party to take his trial. There was a very recent case in which the principle he mentioned had been acted on, where persons who were charged with a felony had been admitted to bail. That was the case of *Reg.* v. *Scaife*, 9 Dowl. 553, and there the principle was stated by Mr. Justice Coleridge, in his manner:—"I conceive that the principle on which parties are committed to prison by a magistrate, previous to trial, is for the purpose of ensuring the certainty of their appearing to take their trial. It seems to me that the same principle is to be adopted on an application for bailing a person committed to take his trial, and it is not a question as to the guilt or innocence of the prisoner. It is on that account alone that it becomes necessary to see whether the offence is serious, whether the evidence is strong, and whether the punishment for the offence is heavy." Still more recently there had been a case in which the parties were charged, on the coroner's verdict, with wilful murder, and yet in that case the Court of Q. B. in Ireland had granted a rule for the purpose of admitting the parties thus charged to bail. He referred to the case of the soldiers of the 31st Regiment in the Six-mile-Bridge affair.

Lord Campbell.—In that case did the parties admit that they were guilty of the crime laid to their charge?

Chambers was aware that that was not the case, but submitted that a confession of guilt did not affect the principle of the law. If the Court saw that the appearance of the party to take his trial could be secured, he would be allowed to go out on bail, for the law would not anticipate his punishment. It might not, after all, be a heavy punishment.

Lord Campbell.—If a certain crime is charged, and that crime is confessed, must we not, as judges, give the sentence for that punishment which the letter of the law directs? We cannot anticipate the mercy which the Crown may graciously be pleased to exercise.

Chambers said that the law had always stated the rule as to duelling; but every one knew that the administration of the law had often, not only with reference to duelling but to other offences, adapted itself to the state of feeling in society. There was the case of the Rev. Mr. Allan, recorded in the "Annual Register" for 1782, where it was clear that the prisoner had been at first "committed for trial," and that he afterwards "surrendered to take his trial," the latter fact shewing that he must in the mean time have been admitted to bail. The same spirit had been shewn in various cases, where the rank of the parties led to the impression that they had acted, however wrongly, in accordance with the feelings of the class of society to which they belonged. There were the cases of the duels between the Duke of York and Colonel Lennox, the Duke of Norfolk with Lord Maldon, Mr. Adam with Mr. Fox, Lord Lonsdale with Captain Duff, Mr. Tierney with Mr. Pitt, and Mr. Adolphus with Mr. Alley. Rare had it been in such cases to keep the persons in prison till the time of trial, and rarer still, except there had been unfairness in the duel, had the sentence according to the law been carried into effect. He believed that under circumstances such as existed here, persons in an elevated rank of life had been bailed. The first question was, whether the duel had been fairly conducted; the second was, what was the condition in life of the parties, or were they likely to run away? and if these questions were answered favourably to the accused, as they could be answered here, their application to be admitted to bail had been accustomed to be granted.

Lord Campbell, C.J. said that he was of opinion that no ground had been laid before the Court to justify it in interfering in the way now applied for. For obvious reasons he should abstain as much as possible from observing on the circumstances of the case; but after what had been said on the subject generally, he felt it to be his duty to make some few observations. These two persons were placed in exactly the same situation as if they were native born subjects of this kingdom, and would have the same justice administered to them as would be administered to native born subjects in the highest station in the realm. He was firmly convinced that if any person in the highest station in the realm had been charged by the verdict of a coroner's jury with the crime of murder, and had confessed that he was an accessory in the duel with the deceased in respect of which that verdict had been obtained, there was not any tribunal in this country that would allow him to go at large before trial. The Court had to see, as it had been stated in a most forcible manner by Mr. Justice Coleridge, the seriousness of the charge, the evidence adduced in support of that charge, and the punishment. The Court had to consider the seriousness of the charge—it was murder; the nature of the evidence—there had been a confession; the punishment awarded by the law—death. Under these circumstances could it be supposed that the Court would try by a preliminary investigation whether this duel was a fair or a foul one, and whether there was a certainty of a judgment, and what would be the nature of the sentence? The attempt to do this would be attended with the most injurious consequences. The Court could only look to the case itself. Here was a legal charge, which, on the confession of the accused, must be taken to be established. Was it after that to be said that, under these circumstances, when the confession had been given in evidence, and when, on all the facts before them, and the jurors had given a verdict of guilty, that the sentence of the law would not be pronounced? He hoped that such circumstances might appear that the execution of the sentence might be avoided, but the sentence of death must necessarily be pronounced. The judges of this court could not, at this moment, consider whether there were any circumstances of mitigation, and act as if they were advising the Crown with respect to carrying the sentence into effect, so as to relieve the party from the consequences of the judges doing their duty, which duty was to declare what the law was, and to pronounce judgment according to law. There was no instance cited by Mr. Chambers which formed a precedent for this application. The case in the *Annual Register* was not an authority. The Court did not know, from the vague statement there, what the charge was, nor what was the form of the finding of the coroner's jury, nor whether the charge found was murder or manslaughter. The Court did not know whether the party was bailed, or, if so, by whom he was allowed to be bailed; and whether it was not by some police magistrate, who had acted in violation of the law. Neither was the Six-mile-bridge case an authority. There the coroner's jury had found a verdict said to be contrary to all the evidence, and the parties accused of wilful murder, instead of admitting their guilt, protested their innocence, and gave evidence to shew that they had only acted in self-defence. That case, therefore, did not apply. He was consequently of opinion that these gentlemen must remain in custody. He did not believe that this case would take anything away from the glory which this country had acquired in affording protection to foreigners. If they came to seek refuge in this country they must obey its laws, and be content to place themselves in the situation of native-born Englishmen. In their trial they would have every fair privilege as foreigners. They would have half the jury composed of foreigners. They would have every opportunity to defend themselves by the most able counsel—perhaps by the learned counsel who had now addressed the Court. But the law must take its course.

Coleridge, J.—I am of the same opinion, and think that this application ought to be refused, because if a rule were granted, and the facts now stated received no answer, this Court would still be bound to remand the accused to prison. It is not necessary for me to say much, but for the reliance placed upon what I said in *Reg.* v. *Scaife*. To that judgment I still adhere. A party is not committed for trial on the ground of present guilt, but because there is reasonable ground for presuming him to be guilty. This Court has indeed an unlimited right in all cases to bail the accused; and magistrates, since the 5 & 6 Wm. 4, c. 33, have the right to bail in felony even where the accused has confessed. It is impossible after that to say that guilt alone is a ground on which bail can be refused, but yet guilt may be taken into consideration. The three circumstances generally speaking to be considered are, the nature of the charge, the evidence, and the punishment. Here there is a charge of wilful murder, a confession before the magistrates, and the punishment is by the law a capital punishment. On those grounds there is a probability that no amount of bail will secure the prisoners' attendance to take their trial. Two observations only are made in answer, that these persons are foreigners, and that if they are found guilty, the sentence of the law will never be carried into effect. We are told to lay down a different rule to what we should apply to native born subjects, because these persons are foreigners and ignorant of our law relating to duelling, but we cannot do so. Neither can this Court contemplate that there will be any change in the punishment awarded to the crime by the law. We must assume that the punishment awarded by the law will follow the verdict.

Wightman, J. concurred.

Erle, J. thought it was the duty of the Court to refuse this application. Wherever the crime was of great magnitude, the punishment of a high nature, and the evidence of crime clear, then an application of this sort ought to be refused; but, if any one of these requisites was wanting, the Court might exercise its discretion in the matter. He thought, too, that to make a difference in the case of foreigners would be a most dangerous practice. The law ought to be uniform, and ought to be administered without respect to persons. *Rule refused.*

BUSINESS OF THE WEEK.

MICHAELMAS TERM.

Tuesday, Nov. 2.

The judges who took their seats upon the bench on the first day of Michaelmas Term, and will generally constitute the Court throughout the Term, are Lord Campbell, C.J. and Coleridge, Wightman, and Erle, JJ.

Doe *dem.* Flews and Others *v.* Walters.—Ejectment tried before Wightman, J. at Durham, when a verdict was found for the defendant. *Bliss* moved for a rule for a new trial, on the ground that there was no evidence to sustain the verdict. The question was whether a deed of the 19th May, 1832, under which the defendant claimed, included the property in question or not.

Curr. adv. vult.

Re an Arbitration between Lord Cardigan and Henderson.—*Unthank* moved for an attachment for non-payment of money pursuant to an award. *Rule nisi.*

Mellon *v.* Clough and Another.—Replevin for a pony; tried at Liverpool before Wightman, J. when a verdict was found for the plaintiff. *Jervis* now moved on the part of the defendant Clough to enter the verdict for him. Clough was an inspector of police appointed under s. 76 of the Municipal Corporation Act; and in taking the plaintiff's pony he had only acted as a constable upon a charge of felony. Between the plaintiff and the other defendant Leather there was a dispute as to the right to the pony; and the plaintiff having obtained it surreptitiously from Leather's stables, was charged by the latter with felony. Upon that charge the plaintiff was taken into custody and the pony taken possession of by Clough. Upon the hearing the stipendiary magistrate dismissed

the charge; but under s. 293 of 5 & 6 Vict. (local Act) he made an order for the delivery of the pony to Leather; in obedience to which order Clough did deliver the pony to Leather. Clough, therefore, had a complete justification, and the only question was, whether under the plea of non cessit, he could give the special matter in evidence. It was now submitted that he was entitled to do so by virtue of ss. 76 and 133, of 5 & 6 Wm. 4, c. 76. *Shadwell* v. *Hall*, 10 Mee. & W., was distinguishable from this case; and *Haxelding* v. *Grove*, 3 Q. B. 997; and *Barnett* v. *Cox*, 9 Q. B. 617, were in point. Another point was, that replevin was not maintainable against Clough at all.

Rule nisi.

Reg. v. The Churchwardens of Islington.

Rule enlarged by consent for a week.

Re Smith.—*Gray* applied that this rule, which was to strike an attorney off the rolls of this Court, upon an affidavit that he had been struck off the rolls of the Court of Chancery, should stand over until a petition to the Lord Chancellor for a rehearing had been disposed of.

Ordered to stand over accordingly.

Nind v. Dixie.—This was an action for distraining when no rent was due; with a plea of not guilty by statute. The verdict was for the plaintiff, damages, 250*l.*; and a rule had been obtained for a new trial, substantially on the ground that the damages were excessive. *Knowles* and *Pigott* shewed cause. *J. Brown* was heard in support of the rule. The Court thought the damages ought to be reduced to 120*l.*

Rule discharged upon plaintiff consenting to reduce the damages to that amount.

Wednesday, Nov. 3.

Hastings v. Brown.—Action for the infringement of a patent tried in London before Lord Campbell, C.J. and a verdict for the plaintiff. The *Attorney-General* now moved to set aside the verdict and enter a nonsuit, or for a new trial on the ground that the verdict was against the evidence.

Rule nisi.

Lunell v. Druce.—Case for a collision between two steam vessels in the Avon, tried at Bristol before Platt, B. and the verdict for the plaintiff, damages, 130*l.* *Kinglake*, Serjt. moved for a new trial on the ground of misdirection, and that the verdict was against the evidence.

Cur. adv. vult.

Farquhar v. Willis.—Action upon bills of exchange, tried at Westminster, before Wightman, J. and the verdict for the plaintiff. The *Solicitor-General* moved to set aside the verdict, and enter it for the defendant on the issues relating to the notice of dishonour. *Furze* v. *Sharwood*, 2 Q.B. 388, and two following cases in same book.

Rule nisi.

Haylock v. Sparke.—Action for false imprisonment, tried at Cambridge, before Pollock, C.B. and the verdict for the defendant, with leave reserved to enter it for the plaintiff with 42*l.* damages. The point turned on the sufficiency of the notice of action. *O'Malley* now moved to enter the verdict, pursuant to leave.

Rule nisi.

Reg. v. Justices of Middlesex. — *Pashley* moved to bring up an order made on the treasurer of the County of Middlesex, for the purpose of quashing it.

Rule nisi.

Gregory v. Cotterell.—Action for wrongful levy under fi. fa. tried in Middlesex, before Lord Campbell, C. J. and the verdict for the plaintiff, damages 400*l.* *Bramwell* (*Quain* with him), now moved for a new trial on the ground of excessive damages.

Rule refused.

Reg. v. Henson.—Indictment for exposing a glandered horse for sale in a public market, tried at Leicester, before Coleridge, J. and a verdict of guilty. The defendant was now brought up for judgment, and *Miller*, Serjt. moved in arrest thereof.

Rule refused.

The defendant was then fined 10*l.* and ordered to be imprisoned till the fine was paid.

Adey v. The Deputy-Master of the Trinity-House.—*Willes* moved for a prohibition to the judge of the Devonshire County Court to stay the above plaint.

Rule nisi.

Nott and Wife v. Kent.—Action for slander tried at Maidstone, and the verdict for the plaintiffs; damages, 50*s.* *M. Chambers* moved in arrest of judgment, on the ground of the words not being actionable.

Rule refused.

Corbett v. Hudson.—Action for a false return to a habeas corpus tried before Lord Campbell, C.J. and a nonsuit. This was a rule nisi to set aside the nonsuit, and for a new trial. *W. H. Watson* and *Unthank* shewed cause, and the plaintiff in person supported the rule.

Cur. adv. vult.

COURT OF COMMON BENCH.

Reported by Daniel Thomas Evans and R. Vaughan Williams, Esqrs. Barristers-at-Law.

MICHAELMAS TERM.

Tuesday, Nov. 2.

(Before Jervis, C.J. and Maule and Talfourd, JJ.)

Harris v. Thompson.

New trial—Privileged communication—Evidence of malice.

This cause was tried before Jervis, C.J. at the last sitting for Middlesex; verdict for the plaintiff.

Byles, Serjt. now moved for a rule calling on the plaintiff to shew cause why the verdict should not be set aside and a nonsuit entered, or for a new trial, on the ground that the verdict was against the weight of evidence. The declaration stated that the plaintiff had been secretary to the Brewers' Insurance Company, and that the defendant had said of him "he has been dismissed from the Brewers' Company for gross misconduct in obtaining from the solicitors money under false pretences, and taking up bills of his own with it," meaning thereby that the plaintiff had been guilty of an offence punishable by law—namely, obtaining money under false pretences. The defendant pleaded the general issue. At the trial it appeared that, besides being secretary to the Brewers' Insurance Company, the plaintiff was auditor of the London Necropolis Company, and that the defendant was a director of both companies. The plaintiff had been charged before the directors of the Brewers' Insurance Company with having applied to Messrs. Burnett and Laing for 3*l.* for office purposes, and having applied that sum, when advanced to him, to purposes of his own, and also with having given two of the clerks of the company his I O U for their salaries, and charged the payment of the money to them against the company. The result of an investigation into these charges by the directors was, that the plaintiff was dismissed from his office. The effect of his dismissal was communicated to the Necropolis Company, and at a meeting of the directors of the latter company the defendant moved that he should be dismissed from his office in that company also. The chairman of the Necropolis Company asked what were the grounds of the plaintiff's dismissal by the Brewers' Insurance Company, to which defendant replied, "Obtaining money by false pretences, and giving his I O U for salaries." Ultimately the plaintiff was dismissed by this society also; and he then wrote, threatening proceedings, and demanded to know what charges were made against him. A statement of the grounds of his dismissal was then sent to him, and afterwards he attended a meeting of the directors of the Necropolis Company with his solicitor, and demanded that the charges against him should be repeated in his presence or that of his solicitor. This the defendant refused to do, and therefore the plaintiff brought the present action. It is now contended that—1st. There was no evidence of malice to go to a jury; 2ndly. That if there were, there was no evidence to support the innuendo in the declaration, the evidence adduced being not that the plaintiff was guilty (as the innuendo would shew), but that certain charges had been preferred against him, and that he was dismissed. [Maule, J.—The declaration says he was dismissed for obtaining money under false pretences.] As to the first point, these are the cases: *Taylor* v. *Hawkins* and *Somerville* v. *Hawkins*, 16 Q.B. 308, which shew the law on the question as to what is evidence of malice. At the trial the impression of the Lord Chief Justice seemed to be that there was no evidence of malice for the jury.

Maule, J.—That also is my impression just now.

Jervis, C. J.—I could not see any evidence of malice, unless the defendant's refusing to make any charge against the plaintiff in his presence and that of his attorney could be so interpreted.

By the Court.—You had better take a rule.

Rule nisi.

Wednesday, Nov. 3.

(Before Jervis, C. J. and Maule and Talfourd, JJ.)

Parker v. The Great Western Railway Company.

If, upon taxation of an attorney's bill of costs before a Master, a party does not object to certain items, expecting the bill to be paid by the other side, he shall not be allowed, after the case has been compromised, and he has himself to pay the costs so taxed, to come and say that they were improperly allowed.

Plaintiff, in person, moved for a rule to shew cause why the Master should not review his taxation of the bill of costs of a Mr. Walker, who had originally been attorney to the plaintiff in this action. During the course of the action the plaintiff became dissatisfied with Mr. Walker, and obtained an order from Wightman, J. to change his attorney, Mr. Walker's costs being taxed by the Master as between attorney and client, and he to have a lien on the papers till the conclusion of the case. The bill was taxed at 970*l.* Afterwards the case was compromised by the plaintiff agreeing to accept 1,000*l.* from the defendants, and they agreeing to pay the costs as between party and party. These were taxed at 1,640*l.* and paid. Mr. Walker now set up his lien on the papers, and an order was made by Wightman, J. with the consent of the parties, that 700*l.* should be paid to Mr. Walker, and that 170*l.* should be paid into court, to be taken out by Mr. Walker unless within four days of the beginning of term the Court should grant the plaintiff a rule to shew cause why the Master's taxation should not be reviewed. The plaintiff made the application on the ground that it had been agreed between himself and Mr. Walker that he should pay to Mr. Walker only costs out of pocket, and that Mr. Walker should look to the defendants for the rest; and, secondly, on the ground that some of the items in Mr. Walker's bill had been improperly charged, as being either unnecessary or not done at all, or done by the plaintiff himself. When the bill was taxed before the Master the latter objections were not made, and the plaintiff now stated that he thought he was bound in honour not to make objections to the items so as to prevent Mr. Walker getting them from the defendants.

Jervis, C.J.—An action was commenced by Mr. Parker against The Great Western Railway Company, through an attorney of the name of Walker; and there appears to have been an agreement between them, though not very distinctly sworn to, that the plaintiff should pay Mr. Walker money out of pocket, and that for the rest Mr. Walker should look to the defendants. The plaintiff becomes dissatisfied with his attorney, and changes him, it being ordered by my brother Wightman that Mr. Walker should have a lien for his costs taxed as between attorney and client. The plaintiff afterwards obtains by award certain moneys from the defendants, and a second order is made by Wightman, J. that 700*l.* should be paid to Mr. Walker, and 170*l.* besides, unless the plaintiff should succeed in obtaining a rule from the Court upon the present motion. The bill of costs of Mr. Walker was taxed by the Master in 1851, under the first order, and it is now objected by the plaintiff that items were charged in it contrary to the agreement between the plaintiff and Mr. Walker. But the Master properly disregarded the agreement, because by the order he was to tax as between attorney and client. If, therefore, he were to retax the bill under that order, he must again disregard the agreement. He could not regard it without that order being set aside. But Mr. Parker has waived the agreement by consenting to the second order. The second ground for the application is, that the Master has allowed certain sums which he ought not, and it is said that some of the items were for work which was unnecessary, or done by the plaintiff himself. But these objections were not made at the time before the Master, and we cannot tell him to review his taxation on grounds which were not pointed out to him, and on which, therefore, he cannot be said to have miscarried. The truth is, that Mr. Walker was allowed to put everything in his bill which it was thought could be got from the Great Western, and it cannot be allowed that Mr. Parker should now come and say that those items should not have been allowed by the Master, when he did not then state to the Master that the items should not have been charged for, as being not done. Mr. Parker says that he felt himself bound in honour not to oppose Mr. Walker in the charges made, and which he expected to get from the defendants. But that is a proposition which we cannot assent to. Moreover, the items which are said to have been unnecessary, are not unnecessary as between attorney and client, though they might have been as between party and party.

Maule and Talfourd, JJ. concurred.

Rule refused.

BUSINESS OF THE WEEK.

Tuesday, Nov. 2.

Matthews, Serjt. of the Northern, and *Thomas*, Serjt. of the Oxford Circuit, having been promoted to the degree of Serjeant-at-Law, were, by Jervis, C.J. respectively called, and took their seats within the bar.

Doe *dem.* Bolton v. Roe.—*Combe* moved herein for judgment against the casual ejector. The declaration was delivered on the 18th of August, and personal service was made on the premises on the wife of the defendant, and on a person who had custody of the key, and said she had authority to let the premises. Jervis, C.J.—As there is one irregularity, you must take a rule nisi only.

Rule nisi.

Re Robert William Peake, one, &c.—*Lydekker* moved to strike off the roll of attorneys of this court Mr. Robert William Peake, who has been appointed chief clerk in a Vice-Chancellor's Court, under 15 & 16 Vict. c. 80, s. 20.

Leave granted.

Wednesday, Nov. 3.

(Before Jervis, C.J. and Maule and Talfourd, JJ.)

Roberts v. Bethel.—This was an action by the indorsee against the acceptor of bills of exchange, amounting in all to the sum of 370*l.* Verdict for the defendant, on the plea of infancy. *Byles*, Serjt. now moved, pursuant to leave, for a rule to shew cause why the verdict for the defendant should not be set aside, and a verdict entered for the plaintiff for 370*l.* and interest, or for 20*l.* and interest. The defendant was proved to have become of full age on the 11th of March, 1851. One of the bills for 20*l.* became payable on the 12th of March, 1851; the rest before that time. It was not shewn at the trial when the defendant accepted the bills; and it was objected for the plaintiff that it was incumbent on the defendant to shew that he accepted the bills while he was under age, as he might have accepted them afterwards, and as such acceptance would have been good, although the bills had then become due, the material allegation in the declaration being the promise to pay. Williams, J. however, left the case to the jury, who found for the defendant. Cases cited:—*Milford* v. *Wallicot*, 1 Salk. 128; *Stein* v. *Yglesias*, 1 Cr. Mees. & R. 565; 3 Chitty, jun. on Pleading, 126, n. a, 7th ed.; *Hunt* v. *Massey*, 5 B. & Ad. 902; and *Harris* v. *Clifton*, 17 L.J. 233, Ex.

Rule nisi.

Rochford Clark applied to the Court to have the name of Alfred Hall, an attorney, struck off the roll at his own request.

Granted.

Clearby and Another v. Cook.—*Hugh Hill*, Q.C. moved for a rule to shew cause why the verdict should not be entered for the plaintiff for 7*l.* 7*s.* Declaration was on a promise to reinstate a party walk, and pay incidental expenses. *Plea*.—Payment of money into court. After action and before plea pleaded 7*l.* 7*s.* were paid into court. This was given in evidence in reduction of damages. It was now contended that by rule of Trinity Term, 1 Vict. it ought to have been pleaded in bar. (*Adams* v. *Pole*, 3 Q.B. 2; *Robinson* v. *Harman*, 1 Ex. 850.)

Rule nisi.

Harris v. Tevarell.—Declaration alleged that goods

taken in distress for rent by the plaintiff were fraudulently removed, were pursued by plaintiff, and rescued by the defendant. There was a plea denying the fraudulent removal, and another alleging that the goods had been sold before seizure to the defendant. Verdict for the defendant. *Montague Chambers*, Q.C. now moved to set it aside as against evidence, and for a new trial. In the course of the argument it appeared that the goods in question were worth less than 20*l.* and it was doubted by the Court whether, under the statutes enabling a landlord to follow goods fraudulently removed, and giving him a right of action against a rescuer, entitled him to treble damages, so as to raise them above 20*l.*

Rule nisi, it being open to the other side to contend that the action is for damages under 20l.

LEROUX v. BROWN. *Part heard.*

COURT OF EXCHEQUER.

Reported by FREDERICK BAILEY and C. J. B. HERTSLET, Esqrs. Barristers-at-Law.

Tuesday, Nov. 2.

Doe dem. SMITH v. ROE.

Ejectment—Common Law Procedure Act (15 & 16 *Vict. c.* 76.)

A declaration in ejectment was served before the 24th October last, the day when the Common Law Procedure Act came into operation:

Held, that the lessor of the plaintiff was entitled to move for judgment against the casual ejector, according to the practice before the Common Law Procedure Act.

The ejectment in this case was served last Trinity vacation, and before the 24th October, that being the day when the Common Law Procedure Act (15 & 16 Vict. c. 76) was directed should come into operation. By sec. 168 of that Act it is enacted, that "instead of the present proceeding by ejectment, a writ shall be issued directed to the persons in possession by name, and to all persons entitled to defend the possession of the property claimed, which property shall be described in the writ with reasonable certainty." Sec. 177 says: "In case no appearance shall be entered into within the time appointed; or if an appearance be entered but the defence be limited to part only, the plaintiff shall be at liberty to sign a judgment that the person whose title is asserted in the writ shall recover possession of the land or of the part thereof to which the defence does not apply; which judgment, if for all, may be in the form contained in the schedule (A) to the Act annexed, marked No. 14, or to the like effect; and if for part, may be in the form contained in the schedule (A) to this Act annexed, marked No. 15, or to the like effect."

W. R. Cole now moved for judgment against the casual ejector, according to the practice before the Common Law Procedure Act came into operation. The declaration in ejectment was served on the 16th June; the Act of Parliament did not pass until the 30th June, and did not come into operation until the 24th October.

POLLOCK, C.B.—There may have been very good cause for bringing the ejectment at the time stated; as, for instance, to prevent the operation of the Statute of Limitations, as well as for many other reasons that could be suggested, and I think you are entitled to a rule. *Rule granted.*

Wednesday, Nov. 3.

DAVIS v. WALTON and ANOTHER.

County Court jurisdiction—9 & 10 *Vict. c.* 95, *s.* 58—*Question of right.*

The owner of a wharf, brought an action against the owner of the adjoining wharf for obstructing his premises, by permitting barges, &c. to overlap them. The defendants pleaded a custom of the river Thames that the proprietors of wharves may overlap their neighbour's premises for a reasonable time while unloading. This custom the plaintiff traversed; and there was also a new assignment, that the obstruction was for an unreasonable time:

Held, that the action showed no claim to an incorporeal hereditament or franchise, so as to bring the case within 9 & 10 Vict. c. 95, s. 58, and that the County Courts have jurisdiction to try matters of disputed right.

Case.—Declaration alleged that plaintiff, before and at the time of committing the grievances, was possessed of a certain wharf, called Ratcliffe Cross Wharf, adjoining to and abutting on the river Thames, upon which he then carried on his trade or business of a wharfinger; and all the liege subjects of our Lady the Queen, before and at the times aforesaid, actually and of right had, and of right ought to have, a free passage and navigation along the said river for their ships, vessels, &c. going to, staying at, and returning from the said quay or wharf upon lawful occasions, and were then accustomed to frequent the same with their ships, &c. to load the same, &c. with goods, wares, &c. for wharfage fees and reward in that behalf payable, &c.; yet defendant wrongfully and injuriously, and without, and otherwise than for the purpose of loading and unloading goods and merchandize, &c. at the said quay or wharf, moored, placed, or fastened divers ships and vessels in the said river, so that the bows and divers parts of the said ships, &c. lay before, across, and alongside of, and overlapped the said quay or wharf in the way and passage aforesaid for an unreasonable and unnecessary length of time, and thereby greatly impeded the navigation to and from the said quay, &c. by means whereof plaintiff was hindered from possessing and enjoying the said quay, and from carrying on his trade and business there in so ample a manner, &c. and was deprived of gain and profits, &c.

Plea, 1st, Not guilty; 2nd, That defendants were occupiers of a quay and wharf next adjoining to the quay and wharf of the plaintiff, and abutting upon and on the banks of the said River Thames. And defendants further averred that by an ancient and laudable custom from time immemorial used and approved of in the said river, and by all persons frequenting and using the same, and the wharfs, &c. and by the possessors, &c. any ship or vessel coming to a quay or wharf on the banks of the said river lawfully may, and any occupier lawfully may, suffer or permit, or cause any ship or vessel coming to his wharf for the purpose of loading or unloading, to overlap the adjoining wharf or quay, such adjoining wharf or quay not being a public wharf or quay, with the bows or rigging of such ship or vessel; and if the space before such adjoining wharf or quay so intended to be overlapped is vacant and unoccupied by any other ship, &c. and defendants at times, &c. being occupiers of the wharf adjoining plaintiff's, suffered the said ships, &c. which then lawfully came to the said wharf and quay of the defendants for the purpose of being loaded and unloaded, &c. to overlap the said wharf, &c. so adjoining to, &c. with the bows, &c. of the said ships, &c. the space before the wharfs of the plaintiff at the said times being unoccupied, &c. and the said wharf and quay of the plaintiff not being at any time a public open wharf, with the bows or rigging, as the defendants lawfully might.

Replication—1, similiter; 2, Traverse of custom; and new assignment. That defendants did the act complained of otherwise than for the proper loading or unloading goods, wares, or merchandise, or other things at the said wharf, &c. moored, placed, and fastened the ships, &c. so that other parts of the said ships than the bows and rigging, to wit, the bodies, prows, stems, and other parts of the said ships lay before, &c. and overlapped, &c. and also that the defendants at other times that when the space was vacant and unoccupied, and not for the purpose of loading or unloading, &c. moored, placed, and fastened, &c. ships, &c.

Rejoinder to the new assignment—Not guilty.

The action was tried before Pollock, C. B. at the sittings after last Michaelmas Term, when a verdict was returned for the plaintiff, damages 10*s.* The plaintiff's counsel then applied to the learned judge who tried the cause to certify that the cause was a fit one to be tried in a Superior Court, and that it was brought to try a right, which his lordship refused to do.

Lush having obtained a rule to show cause why the Master should not be at liberty to tax the plaintiff's costs, and why the plaintiff should not recover the same pursuant to the 13 & 14 Vict. c. 61, s. 13.

Hawkins now shewed cause, and contended that the only question was, whether the title to an incorporeal hereditament here came into question? The claim was one over which the County Court had jurisdiction, and there was nothing in the Acts to prevent the cause being tried there; the action was, in fact, for damage done, and not for a breach of any right.

Lush, in support, contended that the cause involved a claim to an incorporeal hereditament or franchise, and that although the 58th section of the 9 & 10 Vict. c. 95, did not actually include the word "custom," yet that the Court might, by giving a liberal interpretation to it, bring a custom within it. The word "franchise" was mentioned in the section, and the action was tried as a right, and not as a matter of damages, as his affidavits would shew.

POLLOCK, C. B.—There is no ground for contending that this was a claim to an incorporeal hereditament or franchise, and I am of opinion that the Legislature intended that the County Court should have power to try a right.

PARK and ALDERSON, BB. concurred.

Rule discharged, with costs.

Thursday, Nov. 4.

TODD v. KELLAGE.

Governess—Domestic servant—General hiring.

Is a governess a menial or domestic servant, so that upon a general hiring the service may be determined by a month's warning, or by payment of a month's wages?

This was an action brought by the plaintiff, a governess, for that part of a year's salary alleged to be due up to the time of action brought, from the defendant, on an engagement entered into between the parties; the declaration was framed as upon a general hiring for a year: the facts were stated to be, that the plaintiff and defendant agreed, upon the 15th June, 1851, that the plaintiff should enter into the defendant's service as a governess, the salary to be 60*l.* a year; the plaintiff, upon her cross-examination, stating that she understood her engagement would continue until the month of March following. The defendant, on the other hand, proving that the engagement with the plaintiff was monthly only, payable at or after the rate of 60*l.* a year. The sort of instruction by the plaintiff to the defendant's children not being quite approved of on the part of the defendant's family, and for that alone, the plaintiff was dismissed at a month's notice, receiving the month's salary. Subsequently this action was brought for the remainder as for a yearly hiring, and was tried at Guildford, before Jervis, C. J. when the jury returned a verdict for the plaintiff for 35*l.*

James, Q.C. now moved, pursuant to leave reserved, to set aside that verdict and enter a nonsuit, and also that the verdict was against the evidence. [PARKE, B.—Is not this a question of fact, whether there was a hiring for a year or any less period?] The declaration was drawn as upon a general hiring for a year, and it would be contended that the plaintiff could not be dismissed at a month's notice with a month's wages. If a governess is a menial or domestic servant, the custom is that she may be discharged at a month's notice or with a month's wages. The defendant had no character with the plaintiff; and it would be hard in principle if a family were to be obliged to retain a person as governess in their house or pay such a person for a twelve-month who may in no respect suit the situation or expectation of the parties engaging her. The plaintiff lived in the house, in this case; but it was due to her to say there was no fault whatever found with her except as to the tuition. The verdict here was clearly against the evidence; in fact, there was no evidence of a hiring for a year, as the plaintiff herself stated that she understood the engagement was from June, when the arrangement whatever it was, was entered into, until the following month of March; and the defendant contradicted that, and said it was from month to month only. He referred to *Nowlan* v. *Ablett*, 2 C. M. & R. 54; and *Beeston* v. *Collyer*, 4 Bing. 309. *Rule nisi.*

STAFF (Town-clerk of Norwich) v. MORRISON.

Building society—Bond by treasurer duly to account—Continuing in operation for one year only.

Does a bond given by the treasurer of a building society to render due accounts, &c. extend over a greater period than the one year for which it is directed to be given according to its form prescribed by the statute 10 *Geo.* 4, *c.* 46?

This was an action brought by the plaintiff against the defendant, who was one of the sureties for one Wortley, a treasurer of a building society, and who had entered into a bond (with his sureties, of whom the present defendant was one) for the due performance of the duties required of rendering accounts, &c. In April, 1848, the bond was given; it was according to the form required by the Act of Parliament, and was to continue in force, as the defendant contends, for one year only. Wortley was first appointed in 1845; he duly accounted to the end of the year 1849. At the end of the year Wortley was again re-appointed, and ultimately neglected properly to account for moneys received. The cause was tried at Norwich before the Lord Chief Baron, when a verdict was returned for the plaintiff.

Palmer now moved to set aside that verdict for misdirection; or, pursuant to leave, to reduce the verdict to nominal damage. He contended that the treasurer was an annual officer only, the bond on which this action was brought being given in 1848, and all the accounts properly rendered and money paid over to the end of the year 1849, when the treasurer was re-appointed, the defendant, as surety, was bound only for the treasurer Wortley during the year of his office from April 1848 until April 1849, when there was clearly no default. (The 10 Geo. 4, c. 56; 4 & 5 Wm. 4, c. 40; 6 & 7 Wm. 4, c. 32; and the rules of the society as certified by the barrister for that purpose, were referred to.) *Rule nisi.*

CHEW v. HOLROYD and ANOTHER.

County Court—Title to land in question—Prohibition.

Cowling moved, on behalf of the defendants, for a rule to shew cause why a writ of prohibition should not issue to the judge of the County Court of Chester. It was an action to recover damages for breaking and entering the apartments of the plaintiff and carrying away goods, and the question was whether the whole cottage had been let or whether two rooms had not been excepted thereout. The judge of the County Court thought it was a mere question of fact and not of law; he determined it therefore himself, and gave a verdict for the plaintiff for 25*l.* The title to the possession of rooms is certainly in question which would therefore terminate the jurisdiction of the County Court judge. He had given time for leave to apply to the Court for a writ of prohibition. *Rule nisi.*

ant Lawrence, the first incumbrancer on the estates not in settlement, may have his costs as against the plaintiff, and add them to his mortgage. I am of opinion that the appeal ought not to have been from the whole decree, which alone has rendered it necessary for the other defendants to appear.

Stuart submitted, that inasmuch as the bill was not filed by the legatee, the allowance of six years' interest should be calculated from the date of the decree.

The LORD CHANCELLOR, however, decided that the calculation should be from the filing of the bill.

Tuesday, Nov. 2.

HICKLING *v.* BOYER.
CHERRINGTON *v.* HICKLING.

Practice—An order made on an appeal against a party who was not before the Court reversed on a rehearing.

Z. T. bequeathed leaseholds to R. A. for the residue of a term, and her residuary personal estate to J. B. The lessee, through whom Z. T. became possessed, was under a covenant to repair, and at her death dilapidations had taken place. On a bill filed by some of her representatives against their co-representatives and R. A. an order was made directing R. A. to be let into possession, and setting aside a sum of stock out of the testatrix's estate to indemnify the executors in respect of the repairs. The leaseholds were subsequently sold, and on the death of R. A. the surviving executor of J. B. appealed against the above order. The representative of R. A. was not served with the petition of appeal. It was held, that R. A. took the leaseholds cum onere, and was liable as between himself on the one hand and the executors of Z. T. and her residuary legatee on the other, to do the repairs in respect of the dilapidations existing at her death, and M. G. the personal representative of R. A. was directed to deliver up possession to her executors until she should either do the repairs or cause them to be done by the under-lessees, or should otherwise indemnify them against their liability: but as M. G. had not been served with the petition of rehearing, and was not before the Court, leave was given her to contest the order if she thought fit.

On an appeal by M. G. so much of the order as sought to make her personally liable, or directed her to do anything, was reversed.

This was a motion, by leave of the Court, to rehear an order made by Lord Chancellor Truro.

Zillah Taylor bequeathed certain leasehold houses to Richard Ashley, his executors, administrators, and assigns absolutely, during the residue of a term subject to the payment of the rent and performance of the covenants reserved and contained in the lease, under which she held the same; and as to her residuary real and personal estate, subject to the payment of her debts, &c. she gave, devised, and bequeathed the same to James Boyer, his heirs, executors, administrators, and assigns absolutely.

In 1839 Zillah Taylor died, and shortly afterwards two of her executors filed a bill for the administration of her personal estate. By that suit it appeared that George Taylor (the party through whom Zillah Taylor acquired the property in question), by indenture of the 7th April, 1803, covenanted for himself, his executors, administrators, and assigns, to keep the said leasehold premises in proper repair and condition during the continuance of the term. At the time of her death, dilapidations had taken place, but whether any of the dilapidations had taken place before she became possessed of the premises could not be ascertained.

Sir JAMES WIGRAM, V.C. by an order dated the 12th July, 1844, on further directions, directed that a sum of 1,500*l.* bank Three per Cent. annuities should be carried over to an account, to be entitled "The Executors' Indemnity Account," and that the dividends should be laid out in the purchase of like stock in trust in the cause to the like account: that Richard Ashby should be let into possession; that the deeds should be delivered up to him, and the mesne rents paid to him; that J. Boyer should be at liberty to take legal proceedings to compel the under-lessees or occupying tenants to make good the dilapidations, and that he should be at liberty to make use of the names of the executors of the testatrix, who were to be indemnified therein out of the indemnity fund.

Shortly after that order was made the leaseholds were put up to sale by public auction and sold.

In 1847 Richard Ashby died; and on an appeal by the representatives of James Boyer from the above order, the late Lord Chancellor held, that R. Ashby took the premises subject to the liability of performing the covenant to repair contained in the original lease, and directed the personal representative of Richard Ashby to deliver up possession to the executors of the testatrix until she should either do the repairs or cause them to be done by the under-lessees, or should otherwise indemnify the executors of the testatrix against their liability; that the present indemnity fund should be made up as directed by the order of the 30th of May, 1846; and that when the executors of the testatrix should have been so indemnified by the personal representative of Richard Ashby, that then the fund retained as an indemnity out of the original fund should be paid to the executors of James Boyer, and the dividends be paid to them in the meantime. Mary Griffin, the personal representative of R. Ashby, was not served with the petition of rehearing, and was not, therefore, before the Court. His lordship therefore thought it right that she, as his personal representative, should have an opportunity of contesting the above order, if, after what he had ordered, she should think she could successfully contend that it should not have been made. (20 Law T. Rep. 33.)

This, therefore, was an appeal from so much of the above order as related to Mary Griffin, the personal representative of Richard Ashby.

Hardy, for the appellant, contended that the order was wrong by reason of its having been made in the absence of his client; the leasehold premises in question had never been in her possession, and that therefore so much of the order as directed their delivery up was a nullity; she was liable to the executors of the testatrix to the extent only of the assets which had come to her hands in her representative character.

Teed and *Shapter* appeared for the several parties interested.

The LORD CHANCELLOR.—This appeal must be allowed. The party appealing was not present when the late Lord Chancellor made the order which is now sought to be varied: that order was altogether a mistake. This lady is in a representative character only; she is the representative of the representative of the lessee, and is not personally liable; she is liable only to the extent of the assets come to her hands, and of these an account, if necessary, must be taken; so much of the order as directs the delivery up of the deeds cannot possibly be enforced, as they are not and never were in her possession. I must allow this appeal, and so much of the order as directs the appellant to do anything must be discharged. *Appeal allowed.*

IN BANKRUPTCY.

Saturday, Nov. 6.

TURNER *v.* CROSTHWAITE.

Practice—Appeal.

W. Morris applied that a petition of appeal which had been heard before the Lords Justices might be reheard before the full Court. An order had been made by the District Court of Bankruptcy at Liverpool, which had been reversed by the Lords Justices, and who had refused a case to enable his client to appeal to the House of Lords. The point was one of great nicety, and involved property to a very large amount.

The LORD CHANCELLOR.—If the Lords Justices will certify to me that they think the case a fit one to be heard before the full court, I will hear it.

ROLLS COURT.

Reported by J. MACAULAY, Esq. of the Inner Temple, Barrister-at-Law.

Jan. 30 *and May* 22.

THE ATTORNEY-GENERAL *v.* THE HABERDASHERS' COMPANY.

Charity—Information—Relator—Appearance by solicitor of deceased relator.

In case of the death of all the relators in an information, new relators ought to be appointed before any further proceedings are taken, and the Court will restrain, as irregular and improper, all further proceedings till the new relators are appointed.

A receiver of charity estates was appointed by order on further directions, dated the 22nd November, 1797, the information having been filed several years before. Receivers were afterwards appointed from time to time under various orders of the Court, and several proceedings had taken place in the suit, notwithstanding the relators were all dead. The orders had been made at the instance of, and the proceedings taken by, the solicitors, who from time to time had succeeded to the business of the solicitors of the relators, and who appeared on behalf of the relators and the Attorney-General. A petition was presented by the Attorney-General, complaining of the irregularity; and it was thereupon declared that this appearance by the solicitors was irregular and improper.

In this case two petitions were presented by the Attorney-General, one respecting the Free Grammar School in the county of Salop, and the other respecting the Free Grammar School of William Jones, in Monmouth, and the object of the petitions was to have it declared by the Court that the appearance of solicitors (who were the regular successors in business of the firm who had acted as solicitors for the relators when the information was originally filed), on applications to the Court to obtain orders, and no secondary proceedings in the suit, was irregular and improper, all the relators having long since died. The accounts had been taken, and the business of the charity had been conducted by those parties, and divers sums of money had been laid out and expended by them in repairs and otherwise, and without any authority from the Attorney-General they had taken on themselves to act for him in the matter of the charity, and had received large sums for costs out of the charity estate. The petition prayed a reference to the Master, to inquire as to the orders which had been made, and the proceedings which had been taken, and the moneys paid for costs.

James, for the Attorney-General.

Ronpell, for the respondent.

Saturday, May 22.—The MASTER of the ROLLS.—In this case, two petitions were presented by her Majesty's Attorney-General, one in the matter of the Free Grammar School at Newport, in the county of Salop, praying to this effect: that it may be declared, that the appearance of the said John Jones Bateman, and Rowland Nevill Bennett, and Benjamin Field, as solicitors for and on behalf of the Attorney-General and the said charity, and that the services of notices upon them as such solicitors, have been irregular and improper, and that it may be referred to the Master in whose office this cause is, to inquire and state what orders and proceedings have been made and had in the matter of the said charity for the last six years, and who have appeared as solicitors therein for and on behalf of the Attorney-General and of the said charity, and what moneys had been paid for costs, and to whom, in respect of such orders and proceedings, and to state any circumstances specially with respect thereto, and that such further orders may be made on such report as may be just. The other petition is in the matter of the Free Grammar School of William Jones, of Monmouth, praying to the same effect with respect to Messrs. Meredith and Reeve, as was prayed in the former petition with respect to Messrs. Bennett and Field. In this latter case the information had been filed nearly a century and a half ago, and the original decree bore date the 10th of July, 1708, by which a receiver was appointed of the charity estates, and these estates have from that time to the present been managed by a receiver appointed by the Court, a new receiver being appointed whenever a vacancy occurred, and the last receiver having been appointed in May 1849. The relators in the original suit have of course long since departed this life, and no supplemental information has been filed. In fact, the business of the estate has been carried on by solicitors for the time being, who were the successors in business of the solicitors originally employed by the relators when the information was filed. It is not contended that any blame attaches to the solicitors who had so acted; and the counsel on behalf of the Attorney-General have disclaimed any desire to obtain a hostile order against the solicitors who are the respondents, but they seek some declaration by the Court as to the course to be pursued for the future in cases of this description, and also some order which may have the effect of putting a stop to these and similar proceedings. When the matter was first opened to me that the Attorney-General was able to remedy the inconvenience complained of without having recourse to this court, I then referred to various passages to be found in the reports, and particularly to an expression of Lord Thurlow's, to be found in the case of *Greenhouse* v. *The Corporation of Ludlow*, 1 Bligh, N.S. which establishes as an indisputable proposition that the Attorney-General possesses entire dominion over every information instituted in his name, whether filed ex officio or at the instance of relators. It was, however, observed on the part of the Attorney-General, that he was never informed and did not practically in most cases become acquainted with the circumstances of the death of the relators, or of the continuance of proceedings in the cause so instituted in his name; that the case before me was an instance of such being the fact, and that the Attorney-General only became acquainted with the circumstances here complained of in consequence of the rule of the Court, which requires the Attorney-General to be served whenever the Master has to consider a scheme for the administration of the charity which had been directed in this case, in consequence of the accumulation of income having arisen, which could be applied only under the direction of the Court. It is manifest that the course which has been adopted in this charity is open to great objection, and, unless checked, may be productive of great abuse. In the first, a permanent office conferring a salary on the person who receives the rent of the charity estates is created, by which, and the expense consequent on the annual passing of his account, the income of the charity is probably diminished to a greater extent than if the trustees, by themselves or by their agents, received the rents, and the officer so constituted, though nominally appointed by the Court, is in reality appointed by the trustees of the charity. Nothing has been

ROLLS COURT.

brought to my attention in this case to shew that a receiver is necessary, or why in this case more than in the vast number of other charities in the kingdom under the control of this Court, it is essential that the accounts should be annually passed before one of the Masters of the court. Assuming, however, that all this is necessary, it cannot be considered that the accounts are satisfactorily passed when no one properly authorised on behalf of the charity attends to check them. The solicitors in this case are undoubtedly gentlemen of the highest respectability, and watch as carefully, I have no doubt, the interests of the charity as if they were regularly retained for the purpose by the Attorney-General or the existing relator; but the Court must regard this matter wholly apart from any such consideration, and must look at the probability of any irregular or improper conduct taking place where there is no proper responsibility. Proceedings relative to charities, unless conducted by the Attorney-General ex officio, and under regular authority of the solicitor attending for that purpose, are required by the Court to be conducted in such a manner as that some persons may be responsible under the orders of the Court in costs for improper conduct. All such responsibility ceases if cases like the present should be permitted to continue. These very instances and these very objections evidently occurred to Lord Thurlow, and were referred to by him in the month of May 1791, when he is reported by Mr. Vesey, jun. to have observed in the very case before mentioned, namely, the case of the *Attorney-General* v. *The Haberdashers' Company*, on the impropriety of keeping these informations alive for ever. His lordship is reported to have said in that case:—"As to the execution of the trusts,"—it is to be observed this is the very identical case now before me,—"as to the execution of the trusts, it is not to be kept under the direction of the Court, to be executed by the Court from time to time, but it is to be executed under a general direction to the trustees, which is the only way of administering a charity. Then the first thing they are to do is to repair, which must be sub arbitris bonorum virorum. If the trustees misbehave, there must be another information upon the new ground. I cannot keep this information here for ever. I know these applications to the Court are very expensive, and for that reason I want to get rid of them." It is singular to observe how utterly fruitless the observations of Lord Thurlow were in this particular case. I have certainly felt considerably embarrassed as to the course proper to be taken in this case, nor do I see, particularly after the experience of Lord Thurlow's observations, how any direction or order which the Court may make in one individual case, can have any effect or control over the proceedings in other suits in which a similar course of proceeding may now be in operation. To effect that purpose, some general order of the Court would probably be necessary, which might regulate or prevent proceedings in these cases of such great ambiguity. What I can do in the present case to prevent this practice from continuing, I shall do; but this will, as I have already stated, I apprehend, have a very limited effect. I shall at the instance of the Attorney-General declare the appearance of the solicitors on behalf of the Attorney-General and the charity since the decease of the relators irregular and improper, and that the services of notices on them as such solicitors have been since that time, and are now irregular and improper. I do not impute the slightest blame to them for having acted according to what appears to have been an existing, though, in my opinion, irregular practice. I shall, of course, make no reference to the Master according to the latter part of the prayer of the petition, and which part, in truth, is not asked for by the Attorney-General; but if the Attorney-General requires it, I will, on the petition being amended for that purpose, make a further order restraining all further proceedings in the suit on behalf of the Attorney-General, or on behalf of the charity, except as he shall direct, or till new relators shall have been duly constituted. The observations I have made with respect to one of the petitions applies equally to the other, and the same order must be made on both petitions. I shall make no order as to costs, except that the Attorney-General may be permitted to have his costs out of the charity estates.

Roupell.—The Attorney-General disclaims anything like a personal imputation, and on that account the Court might feel disposed to give the parties their costs out of the charity.

The MASTER of the ROLLS.—If the Attorney-General does not object, and it is understood they do not intend to resist what I think right in the matter.

Roupell.—I cannot conceive it possible.

The MASTER of the ROLLS.—I do not like to make any conditions on the subject. I will, then, order the costs, because I think it is a common mistake. I will order the costs of all parties to come out of the charity estate.

V. C. TURNER'S COURT.

Friday, June 4.

COTTON *v.* CLARKE.

Practice—Bankrupt trustee—Default—Costs—Set-off.

An executor had retained balances in his hands, and a suit having been instituted to administer his testator's estate, the executor became bankrupt: Held, that the executor was to be charged with interest on the balances, but was entitled to his costs: that he was entitled to the costs out of the estate, and that they were not to be set off against what should be found due from him in respect of interest on the balances.

In this case a suit had been instituted by parties beneficially interested under the will of Thomas Chilner, for an administration of his estate. The testator died on the 22nd of October, 1813, having appointed Richard Nice and Francis Clark his executors, who shortly after proved his will. Richard Nice died in March 1845, insolvent, leaving Francis Clark surviving. Balances had been kept at their bankers' by both executors while Richard Nice lived, and by Francis Clark afterwards, which amounted, in June 1844, to 889*l.* 1s. 4d. and in January 1847, to 724*l.* 11s. 7d. which sum, however, was soon after invested in Consols. In October 1847, Francis Clark became bankrupt, and this suit was instituted in March 1848. A sum of 24*l.* in addition to the balances, was found due from the executor on his general account, but whether this was before the bankruptcy or since, was not ascertained. A decree was made in the cause, and then such inquiries were directed. The cause now came on upon further directions.

Roupell and *Elderton*, for the plaintiffs, asked that interest should be decreed to be paid on the balances in the hands of the executors from time to time, and that the defendant should not be allowed his costs, and if allowed, that they should be set off against the interest which he should be found liable to pay.

Glasse and *Hoare*, contrà, contended, on behalf of the defendant, that he was entitled to his costs. The suit had not been instituted till after the bankruptcy, and the costs incurred had all arisen since then, and they ought not to be set off against a debt which had been discharged by his bankruptcy. They cited *Samuel* v. *Jones*, 2 Hare, 246, as an authority in support of their position.

The MASTER of the ROLLS thought the defendant must be decreed to pay interest on the balances in his hands, from time to time, but that the case was not one in which the defendant should be deprived of his costs; but as to setting them off against the interest, he was of opinion that could not in this case be done. If the defendant were solvent, the costs would be set off against the interest, but it had been expressly decided by the case of *Samuel* v. *Jones* that the Court would not set off a debt of this kind against the costs incurred subsequently to the bankruptcy, and to which the defendant is entitled. He could not distinguish this case from *Samuel* v. *Jones*, and that as he was of opinion that this was a debt which had accrued due previously to the bankruptcy, he was precluded by the case of *Samuel* v. *Jones* from decreeing that it should be set off against the costs incurred since the bankruptcy and now payable to the defendant. The plaintiffs, however, must have liberty to proceed under the bankruptcy for the interest on the balances. As it had not been shewn whether the balance of 24*l.* found due from the defendant had arisen before or after the bankruptcy, it was taken by consent to have arisen after the bankruptcy, and therefore was not barred by the certificate, and that that sum, consequently, should be set off against the costs.

VICE-CHANCELLOR TURNER'S COURT.

Reported by J. HENRY COOKE, Esq. Barrister-at-Law.

Wednesday, Nov. 3.

MARTIN *v.* HADLOW.

Equity Jurisdiction Improvement Act—Revivor—Claim—Section 52.

Where a suit by claim had abated by the death of a defendant, who was an executor, the Court, under the 52nd section of the statute, 15 & 16 Vict. c. 86, made an order for the revival of the suit, and its being carried on against the executrix of that (executor) defendant. Held, that though the section only contained the words "bill of revivor or supplemental bill, the Act was intended to extend to suits by claim.

This was a motion made on behalf of a plaintiff in a claim to revive the suit against the executrix of a deceased defendant, the suit having abated by his death, that defendant being himself an executor.

R. W. E. Forster, appeared in support of the motion, and stated that it was made under the 52nd section of the recent statute to amend the practice and course of proceeding in the Court of Chancery, by which it was enacted that upon any suit becoming abated by death, it should not be necessary to exhibit a bill of revivor or supplemental bill in order to obtain the usual order to revive such suit, or the usual or necessary decree or order to carry on the proceedings, but an order to the effect of the usual order to revive, or of the usual supplemental decree, might be obtained as of course, or an allegation of abatement.

The VICE-CHANCELLOR.—The motion does not ask enough, but I think that enough may be granted. An order to revive will not be sufficient, but there must also be decree as in a supplemental suit, and if such an order is made, it will save expense. I will therefore order that the suit shall be revived, and be carried on against the executrix of the deceased defendant. I am aware that the Act in this section only uses the words, "bill of revivor or supplemental bill," but I consider that the spirit of the Act is to be applied to suits by claim as well as to suits by bill.

The order was then made that suit be revived and be carried on against the executrix.

V. C. TURNER'S COURT.

YATE *v.* LEITHLAD.

Equity Jurisdiction Improvement Act—Revivor—Supplemental claim—Printing bill.

Where proceedings on a claim abated by the death of an executor, and one of the co-plaintiffs, as administrator de bonis non of the original testator, and the other co-plaintiff had filed a supplemental claim to revive, the Court Held, that an order under the 52nd section of the 15 & 16 Vict. c. 86, was not sufficient, but that the supplemental claim should be filed: Held, also, that the directions of the Act as to printing are inoperative.

A claim had been filed by two plaintiffs against an executor and other parties, and the usual order of reference had been made. After this the executor defendant died, and one of the co-plaintiffs took out administration de bonis non of the original testator in the suit. The other plaintiff now moved for leave to file a special claim to revive the suit and carry on the proceedings.

Harrison moved for leave, and submitted whether the course proposed to be taken was or not precluded by the 52nd section of the New Chancery Proceedings Act.

The VICE-CHANCELLOR.—The case now before the Court is neither included in the Act, nor precluded by the 52nd or any other section of it; in short, it is not affected by the Act at all; for the relief asked is more than the common order to revive, and the common order to carry on proceedings could afford. Leave may be taken to file the supplemental claim.

Harrison.—The supplemental claim is not only prepared, but it is actually engrossed; and, therefore, to save expense in printing, the parties were anxious to have the leave of the Court to its being filed as engrossed.

The VICE CHANCELLOR.—The 1st section of the Act is imperative as to the printing of bills or claims, excepting in the cases mentioned in the 6th section, of which the case before the Court is not one. The claim must be printed in the usual way.

Re CADDICK.

Chancery proceedings—Amendment Act—Investment—Conveyancing counsel.

Upon petition for investment of purchase-money paid by a railway company, the Court, under the 40th section of the Act 15 & 16 Vict. c. 80, will order a reference to the conveyancing counsel to report on the title, and upon this being reported satisfactory, the order for investment may be made without a fresh petition, on the production of an affidavit of the eligibility of the investment.

This was a petition for the investment of purchase-money paid by a railway company, unti. the purchase of other land could be made. There was no affidavit that the investment would be proper or eligible.

Buller appeared for the petition.

The VICE-CHANCELLOR said, that by the new practice, the case must be taken before one of the conveyancing counsel of the court, for his opinion upon the title. Affidavits must be filed with the petition, stating that it was a proper purchase. When the conveyancer's opinion was returned to the Court, he would make the order without the presentation of another petition.

Thursday, Nov. 4.

Re CATLING.

Practice—13 & 14 Vict. c. 35, s. 19, and Equity Jurisdiction Improvement Act—Taking accounts—Section 45.

Where an order had been made in an administration suit, referring it to the Master to take an account of the estate of an intestate, the Court under the 45th section of the 15 & 16 Vict. c. 86, directed that the words of the order should be altered by directing the accounts to be at once taken.

Kinglake stated that an order of reference had

been made in an administration suit, directing the account of an intestate's personal estate to be taken in the usual manner, and that it would be desirable that the form should be altered conformably to the 45th section of the statute.

The VICE-CHANCELLOR.—All that seems to be necessary is to have the words of the order altered by directing an account to be taken of the estate of this intestate, instead of directing a reference to the Master to take the account.

Saturday, Nov. 6.

NEWTON *v.* THOMSON.

Order to confirm the Master's report made absolute, and service of the order nisi upon the defendant's solicitor:

Held sufficient, although the premises were not occupied, it being sworn that the place of service was the address given by the solicitor on entering appearance, that he had absconded, and that his client was out of the jurisdiction.

Cole moved to confirm absolutely the Master's report, on the ground that the defendant had gone out of the jurisdiction, and that his solicitor had absconded. The order nisi to confirm the report had been served at the solicitor's office, which, however, did not appear to be occupied by any person, but had been named as the address for service, when appearance was entered.

The VICE-CHANCELLOR granted the order.

Thursday, Nov. 11.

THOMPSON *v.* TEULON.

Practice—Motions for production of documents.

Sir *W. P. Wood*, having in an unopposed case, moved for production of documents,

The VICE-CHANCELLOR said, —The judges have considered the question as to these motions for production of documents. They think that under the new Act all those applications should originate at chambers. The effect of this will be, that if there is no dispute as to the production, all the expense of motions in court for production of documents, will be saved. If, on the other hand, there appears to be any difficulty as to the production, the judges will adjourn the motion into court in order that it may be argued.

DAVENPORT *v.* DAVENPORT.

Practice—Motion on behalf of purchasers to pay money into Court.

The VICE-CHANCELLOR also said, the judges had considered applications on the part of purchasers for payment into court of money accepting the title, might just as well be made in chambers as in court. This, so far as the public are concerned, would save expense.

Practice—Attendance of Common Law Judges.

Holt having applied to the Court to name a day upon which to hear a case in the presence of a common law judge,

The VICE-CHANCELLOR said that under the Act of 1851, the Lord Chancellor would now apply for the attendance of a common law judge. He would write a note to the Lord Chancellor for the purpose, and the parties should be informed of the day on which it would be convenient for the common law judge to attend.

VICE-CHANCELLOR PARKER'S COURT.

Reported by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.

Monday, April 26.

CONSTABLE *v.* BULL.

Will—Construction—Life interest.

A testator directed his debts, &c. to be paid, and gave to his wife all his estate and effects whatsoever for her sole separate use and benefit, and he further directed that at her decease whatever remained of his estate and effects should go to and be equally divided, share and share alike, among certain specified persons, or such of them as should then be living:

Held, that the testator's widow took a life interest only in what remained of the estate after payment of the debts, &c.

John Constable, by his will, dated the 19th of February, 1846, bequeathed as follows:—"First, I direct that all my just debts, funeral and testamentary expenses, be paid out of my estate, as soon as convenient after my decease. I give, devise, and bequeath unto my dear wife, Mary Ann Constable, all and every my estate and effects, goods, chattels, houses, lands, moneys, securities for money due or growing due, every matter and thing whatsoever, wheresoever the same may be at the time of my decease, for her sole separate use and benefit. I further give, will, and direct that at the decease of my said wife, whatever remains of my said estate and effects shall go to and be equally divided, share and alike between the following persons hereinafter named, or so many of them as may be then living." After naming these persons, the testator appointed his wife sole executrix. The testator died on the 17th of August 1847, and his widow died on the 5th of December, 1848, intestate. The present suit was instituted by the administrator de bonis non of John Constable, for the purpose of having the trusts of the will performed; and the question was, whether, upon the construction of the will, the widow became absolutely entitled to the property therein comprised, or whether at her death so much as then remained of the estate and effects of the testator was divisible among the persons named in the will. A reference to the Master was made on the 28th of April, 1849 (see report of the case 3 De G. & Sm. 111, and 13 Law T. 156), and the cause now came on for further directions.

Wigram and *Kent*, for the plaintiff.

Toller, Bichner, Jebb, Craig, Grenside, Elderton, Ede, and *Chichester*, for defendants in the same interest.

Russell and *Metcalfe*, for the representative of the widow, cited *Horwood* v. *West*, 1 Sim. & Stu. 387; *The Attorney-General* v. *Hall*, 1 J. & W. 158; *Ross* v. *Ross*, 1 J. & W. 154; *Bradley* v. *Peixoto*, 3 Ves. 324; *Pushman* v. *Filliter*, 3 Ves. 7; and *Cuthbert* v. *Purrier*, Jac. 415.

The VICE-CHANCELLOR considered that upon the true construction of the will, the widow took merely a life interest in so much of the estate and effects as remained after payment of the debts, and funeral and other expenses. The question then arose how the fund was to be divided after her death.

Elderton, for two of the defendants, contended that the gifts over were to classes, not to persons.

The VICE-CHANCELLOR, however, did not think that the right construction, but held that the gifts were gifts per capita.

Thursday, May 27.

Practice—Election to proceed at law or in equity. Where a plaintiff is suing in equity for several matters, one of which is also cause of suit at law, and upon which he has commenced an action, he may be required to elect whether to proceed at law or in equity.

This was a motion on behalf of the plaintiff to discharge an order which had been obtained by the defendants for the plaintiff to elect whether he would proceed in this court or at law.

It appeared that the plaintiff, being about to be tried for felony, executed certain deeds, conveying all his property to trustees, upon certain trusts, for the benefit of his creditors and his family. Upon the plaintiff's acquittal, however, he filed a bill against the trustees, alleging that the execution of the deeds was obtained from him by fraud, and seeking the cancellation of the deeds and an account from the trustees. Prior to the execution of the deeds, the plaintiff deposited with A. B. one of the defendants in this suit, a sum of 5,000*l.* for certain purposes agreed upon between them. A. B. paid the residue of the 5,000*l.* to the trustees. The plaintiff brought an action at law against A. B. for the 5,000*l.* and thereupon the order, the discharge of which was now sought, was obtained.

Malins and *H. Hamilton Humphreys*, in support of the motion, cited *Anon.* 2 Madd. 395; and *Carwick* v. *Young*, 2 Swanst. 239.

Bethell and *Cotton*, for the defendant, A. B. referred to *Bainbridge* v. *Bainbridge*, 9 Sim. 16; *Hallett* v. *Young*, 1 Madd. 437; and *M'Fadden* v. *Jenkyns*, 1 Ph. 153.

Malins in reply.

The VICE-CHANCELLOR said that the point raised was, whether a deed of assignment did or did not comprise a fund in the hands of the defendants as trustees. That must depend on the construction of the deed creating the trust; but upon that his Honour was not now called on to give an opinion. The plaintiff brought his action, insisting that the sum of money was not comprised in or affected by the deed. But that question would not be tried in the action at law, as those whose interests were to be bound would not be parties to the action. The real question at issue was, whether the sum was or was not bound by the deed; but the question now before the Court was merely one of pleading. The bill sought an account against the trustees on the footing of setting aside the deeds, and did not exclude from the account the sum in question. The plaintiff was, therefore, suing the defendants in equity for several matters, one of which was also cause of suit at law. That appeared to be a case where the plaintiff might properly be called upon to elect. The motion must therefore be refused, with costs.

Wednesday, June 2.

THOMAS *v.* DUNNING.

Foreclosure—Parties.

An equity of redemption was assigned to trustees for the benefit of certain scheduled creditors. To a suit instituted by claim, by the mortgagee for foreclosure, the scheduled creditors should be parties.

This was a claim for foreclosure. The equity of redemption had been assigned to trustees for the benefit of certain creditors mentioned in the schedule to the deed of assignment. The trustees were made defendants, but the creditors were not parties.

Freeling appeared for the plaintiff, and asked for the ordinary foreclosure decree.

The VICE-CHANCELLOR referred to the cases of *Calverley* v. *Phelp*, 6 Madd. 229, and *Holland* v. *Baker*, 3 Hare, 68, and said that the scheduled creditors must be before the Court.

VICE-CHANCELLOR STUART'S COURT.

Reported by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.

July 13, *Nov.* 4 *and* 9.

SMITH *v.* EDWARDS.

Practice—15 & 16 *Vict. c.* 86, *s.* 39—*Evidence.*

This cause came on to be heard before Vice-Chancellor Parker on the 13th of July.

Glasse and *Lovell* appeared for the plaintiff.

Lee and *Allnutt*, for two of the defendants, objected that Graham, one of the defendants stated to be out of the jurisdiction, had not been proved to be so. The answer of the two defendants, which had not been replied to, stated their belief that Graham was within the jurisdiction.

The Vice-Chancellor Parker directed that the cause should stand over, with liberty for the plaintiff to apply on his proving Graham to be out of the jurisdiction.

The plaintiff then filed an affidavit, shewing that in December 1811 Graham was about to proceed to Australia, and the plaintiff believed he had then proceeded, and had ever since resided there. The case now came on again, when

Lee and *Allnutt* objected to this evidence as insufficient.

Glasse and *Lovell* then asked, that if the Court considered the evidence insufficient, the plaintiff might, under the 39th section of the 15 & 16 Vict. c. 86, be produced for oral examination.

The VICE-CHANCELLOR, after consulting with the other judges, said that they agreed with him, that the proper course would be to let the cause stand over until a day sufficiently distant to give the plaintiff a fair opportunity of proving his case in his own way. His HONOUR therefore directed the cause to stand over until the first day in Hilary Term, with liberty to apply.

Saturday, Nov. 6.

WILDING *v.* RICHARDS.

Practice—Order to revive and usual supplemental decree.

By a decree in this case, Harper, a trustee, was ordered to account. Harper afterwards died, having by his will devised all estates vested in him as trustee to Parry Jones.

Bird now asked for an order of revivor and the usual supplemental decree against Parry Jones, under the 52nd section of the 15 & 16 Vict. c. 86. [The VICE-CHANCELLOR said that the judges had agreed that if a mere order to revive, and the usual supplemental decree were asked, it was of course.] He observed that Parry Jones had himself entered into possession of the trust estates, and it was desired that the order should be extended to his own acts and receipts.

The VICE-CHANCELLOR said that he might take the usual order to revive and the usual supplemental decree, but no further.

Monday, Nov. 8.

CABLE *v.* COOPER.

Practice—Mode of taking evidence, 15 & 16 *Vict. c.* 86.

Where issue had been joined before the recent statute was passed, and afterwards interrogatories were filed, and an appointment with the examiner obtained, but no witness had been examined on either side, the Court considering the case a proper one for oral examination, directed that the evidence should be taken according to the new practice, and that the costs already incurred as to the evidence should be costs in the cause.

Rogers applied in this case, under the 39th of the orders of 7th August, 1852, that the Court would order that the evidence should be taken in the mode prescribed by the 15 & 16 Vict. c. 86. The cause was at issue by replication being filed on the 29th of June, and the 15 & 16 Vict. c. 86 received the royal assent on the 1st of July. No witness had been examined on either side.

Stephen, for the defendant, opposed the application. An appointment had been obtained with the examiner for the following day, and the interrogatories had been filed. This expense, therefore, having been incurred, the Court would not, without sufficient grounds, grant this motion; and it was submitted that no satisfactory reason had been given for the application.

Rogers, in reply, stated that the case was peculiarly one for the advantage of an oral examination. The suit was instituted to set aside the sale of a reversion, on the ground of fraud on the part of the defendant's solicitor.

The VICE-CHANCELLOR said that he considered the nature of the issue rendered it expedient that the evidence should be taken *viva voce*; and he should therefore order that the evidence should be taken in the mode prescribed by the recent Act. He thought it reasonable that the costs which had been incurred as to the evidence, as well as the costs of the present application, should be costs in the cause.

Saturday, Nov. 6.

Re MAYNARD'S SETTLEMENT TRUSTS.

Trustee Act, 1850—*New trustee.*

A petition by a tenant for life for an order vesting the property in a trustee appointed in the place of a trustee resident out of the jurisdiction, should be served on the remainder-man, and the fitness of the new trustee should be shewn.

This was a petition under the Trustee Act, 1850, by a tenant for life, praying for an order vesting the property in a trustee appointed in the place of a trustee who had been for some years resident in New York.

Welford appeared in support of the petition, and stated that the petition had not been served upon any person.

The VICE-CHANCELLOR said that the remainder-man must be served, and that before any order could be made on the petition, it should be distinctly shewn that a case had occurred rendering it necessary that the power should be exercised, and that the person proposed was a fit person to be a trustee.

Wednesday, Nov. 10.

ANNING *v.* LAVERS.

Practice—Immediate sale of mortgaged property—15 & 16 *Vict.* c. 86, *s.* 48.

Freeling appeared for the plaintiff in this suit, which was instituted by claim for foreclosure, and asked that a sale of the mortgaged property might be at once directed, pursuant to the 48th section of the 15 & 16 Vict. c. 86.

Wright, for the mortgagor, did not object.

The VICE-CHANCELLOR accordingly decreed a sale, and said that the decree should be drawn up having regard to the recent Act and the new Orders; and that if any difficulty arose in working out the order, the case might be mentioned again to the Court.

Friday, Nov. 5.

LOWES *v.* LOWES.

Practice—Revivor by creditor—15 & 16 *Vict.* c. 86, *s.* 52.

The above section is applicable to the case of an abatement occurring before the Act came into operation.

Of an application for an order to revive by a creditor not a party to the suit, notice should be given to the parties entitled to revive.

The plaintiffs in this suit were the two trustees and executors, and the defendants were the infant heir and widow, of a testator; and the object of the suit was the administration of the testator's estate. In 1848 there was a decree for sale. Both the plaintiffs having died, and the representatives of the survivor having neglected to revive the suit, the infant defendant, the testator's heir-at-law, filed a supplemental bill. Upon the death of this infant, whose interest was by the will given over upon his dying under twenty-one, the suit again abated.

Forster, on behalf of a person not a party to the suit, who had been found by the Master to be a creditor of the testator, applied ex parte for leave to file a supplemental bill, if the representatives of the deceased trustee did not revive within a limited time. (*Dixon* v. *Wyatt*, 4 Madd. 392.)

The VICE-CHANCELLOR considered that notice of the motion should be served.

Forster afterwards applied, under the 52nd section of the 15 & 16 Vict. c. 86, for an order to revive, or for leave to serve notice of the application, if it should be considered that notice was necessary. It had been decided in another branch of the Court, that this section applied to the case of an abatement occurring befor the Act came into operation.

The VICE-CHANCELLOR said that there could be no doubt of that. He would give leave to serve notice of the motion.

Friday, Nov. 12.—*Forster* renewed his application under the 52nd section, the parties entitled to revive having been served.

The VICE-CHANCELLOR said, that the case was clearly not within that section, which was applicable only to the usual order to revive, or the usual decree on an abatement.

VICE-CHANCELLOR KINDERSLEY'S COURT.

Reported by W. H. BENNET, Esq. of Lincoln's-inn, Barrister-at-Law.

June 7, 8, 9, *and July* 8.

HARVEY *v.* STRACEY.

HARVEY *v.* HARVEY.

Will of married woman—Execution of power.

The question, whether a will (duly executed with all the necessary formalities required by law), operates as an execution of a power, is like all questions upon the construction of wills, purely a question of intention.

There are two modes by which that intention may be manifested: one by the will referring to the power itself expressing an intention to execute the power: the other, by its dealing with the special property comprised in the power, without referring to the power itself.

Where, therefore, a married woman had by a settlement powers of appointment over four different species of property, and by her will she expressed it to be made "by virtue of the power and authority reserved to me in and by the deed of settlement made on my marriage, bearing date," &c.; and then proceeded to appoint and dispose of the several four different species of property, and the residue of them:

Held, that without further reference to the several powers of appointment the will operated as a good execution of the power as to the residue of the funds.

In this case there were several points argued upon the effect of the will of one Mrs. Sarah Morrison, as operating upon the powers contained in a settlement made on her marriage. The present report is limited to one only of those questions, viz. whether the will operated as an execution of a power to dispose of the residue of certain of the properties comprised in the settlement. Only those parts of the settlement and will referring to this part of the case are therefore given.

By the settlement made on the marriage of Archibald Morrison and Sarah his wife, dated the 15th of May, 1823, it was witnessed that Sir Robert Harvey and John Stracey, the trustees, should stand possessed of several sums of South Sea Annuities, Reduced Annuities, shares in a gas company, and other property, upon trust, that they should, during the joint lives of said Archibald Morrison and Sarah Morrison, out of the dividends and annual proceeds thereof, raise the yearly sum of 500*l.* and pay the same to Sarah Morrison for her separate use, and subject thereto during the joint lives of the husband and wife pay the interest, dividends, and annual proceeds of said trust moneys, &c. to or allow them to be received by said husband and wife as therein mentioned; and immediately after the decease of the husband, in case he should die in the life-time of said Sarah Morrison, as therein mentioned; and *but if the said Sarah Morrison should die in the life-time of said Archibald Morrison*, then power was given to the wife to dispose by will immediately of 3,000*l.* part of the particular funds put in trust; and after the husband's death of the residue of these funds to relations within certain degrees of consanguinity. Powers were also given to the wife to dispose by will of certain of the household furniture, plate, and other effects. There was also a covenant by the husband that she should have a power to sell, give away, or dispose of by her will or codicil certain shares in the Norwich Public Library or Institution, her ticket of admission in the Norwich Theatre, and all her jewels, pearls, watches, trinkets, and other personal ornaments, and all the money and effects which she might save or purchase out of the income thereby settled for her separate use, or which might arise by the sale of any other separate chattels or effects.

On the 23rd of May, 1825, Sarah Morrison made and published her will of this date, properly attested according to the terms of the settlement. It was partly in the following terms:—"I, Sarah Morrison, the wife of Archibald Morrison, &c. do by virtue of the power and authority reserved to me in and by the deed of settlement made on my marriage, bearing date the 15th day of May, 1823, make, publish, and declare this to be my last will and testament in manner and form following, that is to say:—Whereas by virtue of the said settlement I am entitled to dispose of the said sum of 3,000*l.* by will immediately on my decease; and I do hereby direct and appoint the same to be paid to the persons and for the purposes hereafter mentioned." She then gave legacies thereout to the amount of about 1,000*l.* and then proceeded: "And I do further direct and appoint that my executors hereinafter named, do and shall out of the said sum of 3,000*l.* raise a competent sum of money to produce the annual sum of 25*l.* and place the same in Government or real security during the natural life of my servant, Mary Sewell," with the usual directions, and after her death the money invested for securing the annuity was to fall into the residue "of my personal estate." "And I direct and appoint that all the remainder of the said sum of 3,000*l.* together with the said sum of money set apart for securing the said annuity to the said Mary Sewell, in case she shall die in the life-time of my said husband, and also any sum of money which I may save from and out of the annual sum of 500*l.* reserved to me by my said settlement, in the nature of pin-money, if the same shall exceed 1,000*l.* shall be severally continued out at interest by my said executors, or the survivor of them, during the life of my said husband, and that he shall be at liberty to receive the interest and dividends thereof as the same shall arise, during his life, for his own use, and from and after his decease then that the said several last-mentioned sums shall become part of the residue of my personal estate; but in case such savings should not exceed 1,000*l.* then I give all such savings to my said husband absolutely." She then appointed executors. After disposing of the shares in the Norwich Library, &c. and giving various bequests of jewels, plate, and other effects as legacies, she then made bequests of 200*l.* each to three nieces, and proceeded thus:—"And I give and bequeath to my said husband all the rest of my household furniture, household linen, common china, and all other articles of domestic or culinary purposes; and after payment of all my just debts, funeral expenses, and charges of proving this my will, and of carrying the trusts thereof into execution, I direct and appoint, give and bequeath, *all the rest, residue, and remainder* of *my* moneys, and other *my* personal estate, of whatever description the same may be, unto and amongst all and every the daughters of my said brother John Harvey, the said Charles Day and Louisa Day, the children of my deceased niece, and the two daughters of my said brother Charles Savill only, or to such of them as shall be living at the time of my husband's death, and to the issue of such of them as shall then happen to be dead, to be equally divided amongst them, share and share alike."

She then gave certain specific directions as to those shares of the residue.

The testatrix having executed several codicils to this will, not material to be set forth, died on the 15th of February, 1827. Her next of kin were her brothers, John Harvey and Charles Savill only. A. Morrison, her husband, died in May 1848. On a bill filed by Sir Robert Harvey, the surviving executor, the usual inquiries as to the state of the properties, and the parties entitled, had been made, and the principal point, on the cause coming on for further directions on the Master's report, was, whether the will operated as an appointment of the residue.

B. S. Follett and *Busk* for the plaintiff, the surviving executor.

Kenyon Parker, Haynes, and *Olivier*, for representatives of some of the next of kin. They contended that the will was not an execution of the power, and relied on *Andrews* v. *Emmott*, 2 Bro. C.C. 297; *Jones* v. *Tucker*, 2 Meriv. 533; *Hughes* v. *Turner*, 3 My. & K. 666; *Bowes* v. *Bowes*, 2 Bos. & P. 500, affirmed on appeal.

Campbell and *Wright*, in support of the position that the bill was a complete execution of the power.

L. Wigram and *Law* in the same interest.

Walker, Russell, Bacon, C. Hall, and *other gentlemen*, for the several other parties.

In support of the proposition that the power was duly exercised by the will the following cases were cited: *Pidgley* v. *Pidgley*, 1 Coll. 255; *Churchill* v. *Dibben*, 3 Lord Kenyon's Cases, 85; and also in 9 Sim. 477, in note to *Curteis* v. *Kenrick*, ibid.; *Monk* v. *Maudsley*, 1 Sim. 286; *Morgan* v. *Surman*, 1 Taunt. 289; *Carver* v. *Bowle*, 2 Russ. & M. 301; *Whittell* v. *Dudin*, 2 Jac. & W. 279; *Bailey* v. *Lloyd*, 5 Russ. 330; *Alexander* v. *Alexander*, 2 Ves. sen. 640; *Lorell* v. *Knight*, 3 Sim. 275; 1 Sug. Pow. 7th edit. 403; *Kampf* v. *Jones*, 2 Keen, 756; *Sadler* v. *Pratt*, 5 Sim. 632; *Gray* v. *Garman*, 2 Hare, 268; *Elliott* v. *Elliott*, 15 Sim. 321; and other cases.

Parker in reply.

On the 8th of July the Vice-Chancellor pronounced the following

JUDGMENT.

The VICE-CHANCELLOR, after stating the terms of the settlement, observed, that there were four portions of property comprised therein; first, the 3,000*l.*; secondly, the residue of the fund; thirdly, the furniture, plate, &c.; and, fourthly, the shares in the literary institutions, the ticket of admission, the jewels, &c. and the savings. He then stated the contents of the will. Now the first clause is of very great importance. She sets out, not only by referring to the instrument which creates her power of testamentary disposition, but says, that the will she is now making is made by *virtue of the power and authority* reserved to her by that settlement. With respect to the savings, of course being savings out of her own separate property, it required no special power to enable her to dispose of them by a testa-

mentary instrument; but still the settlement does deal with them, to the effect of professing to give her a power of disposing of them by will, as well as of her jewels and ornaments, and her shares in the institutions, and ticket, as to which latter property of course she could have no testamentary power, except as given by the settlement. There was then a general reference to the settlement, and a special reference to the power to dispose of the 3,000*l.* and a disposition professedly of that 3,000*l.* and a disposition of part of another portion of the property, without any special reference to that particular power, as there was with reference to that particular power enabling her to dispose of the 3,000*l.*; and afterwards, without any further special reference, she disposes of part of the property comprised in the fourth portion, and part of that comprised in the third, calling it her own. She seemed to think that the will would have operated if she had survived her husband, which, of course, was not the case, and she gives him a life interest, which he already possessed under the settlement. In the previous parts of the will there was, without reference to any special power, an actual disposition of the property comprised in the third and fourth portions, but no specific reference to the special power which she had over the second portion, which formed the great bulk of the property, nor any actual gift of anything which in description necessarily embraces any portion of the property. Unless then she does exercise the power of disposing of the second portion by the clause containing the gift of the residue, she has not disposed of it at all. There is no doubt that the description "my moneys and other my personal estate of whatever description the same may be," in itself does not import property over which she had only a power, and which she could not in any way deal with, unless she exercised that power; but she appoints and bequeaths that property to persons who come within the description of persons in whose favour that special power was created, namely, relations within the eighth degree of consanguinity to herself, nieces being of course, of the third degree. Now, I take it to be clear that the question whether a will, assuming it to be, as in this case, duly executed, with the formalities required by the law, operates as an execution of a power, is, like every other question upon the construction of a will, purely a question of intention. It is a question of intention, and the Courts have determined, and necessarily determined, that there are two modes in which that intention may be manifested; the one is by the will referring to the power itself, and expressing its intention to execute that power, although not referring to the special property comprised in the power; and the other is by dealing with the special property comprised in the power, without referring to the power itself, and that is commonly enunciated by the proposition which is well established by all the cases, however it may have been actually adhered to in the application of the rule. It is commonly said, that to make a will an execution of a power, it must refer to the power or the property comprised in the power. What is there on the face of the will to indicate any intention to execute the power? I have to determine, then, this question as to the property comprised in the second portion of property; because as to the rest, there is no question as to the part comprised in the first portion. As to the property comprised in the third and fourth portions, that is, the plate and linen and the shares in the institutions, the ticket of the theatre, the jewels, and the savings of the income,—as to these, there is no question but that there is an execution of the power as to all of these. The question I have to determine is, did she intend to execute the power as to the three portions of the property being the smaller portions of the property, the least considerable portions, and not to execute the power as to the great bulk of property? No doubt it is perfectly possible that she did so, and I am not to conjecture that it is so probable that she should have such an intention, that, therefore, I am to determine upon that ground that she did mean to execute the power as to the second portion. But what do I find here? She sets out by not only referring to the settlement which erected the power, but she sets out by saying that she now makes this testamentary instrument, this will, by virtue of the power and authority reserved to her in and by the deed of settlement in manner and form following. Now it does appear to me, that unless there be something making it almost impossible to imagine that as to some particular portion of the property she meant to execute it primâ facie; that clause alone appears to me to lead strongly to the conclusion that she did intend to exercise the power as to all. But then it is said she refers there to the power and authority. Now it is said she had four powers; she does not say, "by virtue of all the four powers I make my will," but "by virtue of the power and authority;" and, moreover, she proceeds immediately afterwards to recite one of those powers, that is, the power to dispose of one of those portions of property, namely, the 3,000*l.* Now no doubt, in technical language and without impropriety, this lady may be said to have had four powers; but, on the other hand, with an equal propriety of language, she had a power and authority by that settlement to dispose of four portions of property. She had no power to make a will at all, except, indeed, as to the savings. She had no power to make a will at all as a married woman, except as it was given to her by the settlement; and she says, "Now having no power to make a will except by the settlement, I, by virtue of the power and authority given to me to make a will, do dispose in the manner and form following:" and then, though she only afterwards mentioned specially one of those powers, or to use another form of language equally appropriate, the power to dispose of one of those portions of property in specific terms, she does without referring to the particular clause which gave her the power to dispose of the third portion, actually dispose of them. Well, if the specific reference to the power to dispose of the first portion only is a reason why I am to infer that she did not mean to dispose of the second portion, it would be equally a reason why I should presume that she did not mean to dispose of the third and fourth portions; but I am precluded from such a supposition, because she has actually disposed of them. Therefore, it does not appear to me, after the general reference to the power, the reference to the particular power which she sets out by reciting for the purpose of describing the 3,000*l.*—it does not appear to me that reference to the particular power without reference to the other power is a reason why I ought to come to the conclusion that it was not her intention to execute the power to dispose of the second portion of property. But I find that when she is disposing clearly and beyond all controversy of some of the property comprised in the third and fourth portions, she used with regard to that property precisely the same language which she is using in this clause which is now under consideration, namely, the term, "my shares, my plate, my books," everywhere speaking of everything that she disposes of, I will not say of everything, but most or many of the articles she is disposing of, where she is clearly and confessedly executing the power still as her property. Now, it has been held over and over again, that if there be no reference to the power, and the will purports to be made in pursuance of the power, it is necessary to describe the property, but the words "my personal estate" would be sufficient. If a man says, "Whereas I have power to dispose of such and such a sum of money under settlement, and I do by virtue of that power dispose as follows: I give all my money to A. B." it has been held over and over again that his describing it as his money does not prevent it being an exercise of the power, because there is a reference to the power itself. Now, suppose there had been no power in this settlement, except the power to dispose of that which is the second portion of the property in this settlement; and suppose this will had set out, as it does, by saying, "I do, by virtue of the power and authority given me by settlement, make this my will in manner and form following;" and then she had added, "I give all my money and other my personal estate of whatever description to A. B."—a person within the class in whose favour the power is created, and is to be exercised; surely within the authorities it would be sufficient to operate as an execution of the power. Then the question is, am I to say, that because there was power and authority to dispose of four other portions of property (and she uses the term "power and authority" in the singular number) therefore I am to hold that there is no reference to the power and authority to dispose of the second portion of property? It really appears to me that the question resolves itself into this, it being admitted that there is no reference to the property in itself comprised in the second portion. It appears to me clearly that there is such a reference; and that when she uses the term "power and authority," she meant to use the term, not in the technical sense in which a lawyer would say, "she has four different powers under that settlement, but she meant to say the power," and not only the power, but she adds the words, "the authority," which was given to her by that settlement to make a will disposing of the various portions of property which are the subject of that settlement. I have therefore no hesitation in saying that I do not doubt, after her intention to exercise the power and to dispose of the property comprising the second portion; and it certainly is not a little striking how, with respect to every portion of property which she professes to dispose of, she always has regard to the question whether under the terms of the settlement which gives her the power, her power is capable of being exercised to take effect immediately on her death, or only to take effect upon the death of her husband surviving her. Now, I may observe, that if it be said, as it is contended, that this clause, which only uses the term, "all the rest, residue, and remainder of my moneys, and other my personal estate," meant to dispose of nothing but what might be hers, irrespective of any power created by the settlement, it is to be observed, that she does not give that to any body, until after the death of her husband; so that I must attribute this intention to her, if that be the true construction, that she meant to dispose of some property which, irrespective of the settlement, she had the power to dispose of in favour of her husband, but in such a way that it would be undisposed of as long as the husband lived, and the gift only took effect upon the death of the husband. Then, again, I do not mean to say, that that might not be the intention. It is not conclusive on the question, but all these matters, which I must necessarily look at in considering the will, combine and lead to the same conclusion, that the intention was to exercise the power with regard to every portion of the property. Then, it is said, that in this clause, the clause on which the question necessarily chiefly turns, she makes this property subject to the payment of all her debts, and that that is an indication that she did not mean to exercise the power, because, as to the property comprised in the power, she had no right to make it, subject to her debts, or to her funeral expenses, or to the charges of proving her will. Now it must be considered what, if the construction which I think is the right one to be adopted, would be comprised in this gift. First of all, of course there would be the property comprised in the second portion, namely, the bulk of the portion, the whole stock, and the gas shares, after deducting the 3,000*l.* But there is more: she had, when she disposed of the 3,000*l.* or professed to dispose of the 3,000*l.* she had given about 1,000*l.* of it, or something less than 1,000*l.* she had given a sum out of it to meet a life annuity for her servant Mary Sewell, and then she had directed that what was to be set apart to answer Mary Sewell's annuity should become part of what she calls "the residue of *my* personal estate;" and then she directs that what would still remain of the 3,000*l.* and also the stock set apart to meet that annuity, if Mary Sewell died before the husband, and also the savings which she might make out of the 500*l.* a year, if at her death they exceeded 1,000*l.* should go to the husband for his life, and then, after his death, all that is to become what she calls "part of the residue of my personal estate;" so that what she describes here as "all the rest, residue, and remainder of any moneys, and other my personal estate," clearly is meant, as to part of it, at all events, to embrace some property which ex concessis, and without controversy she is disposing of only by virtue of the powers given her by the settlement. The whole property had been originally hers. The whole property was still hers in this sense, that there was no limitation to children. It was not the ordinary marriage settlement, giving it to the husband for life, the remainder to the wife for life, the remainder to the children of the marriage, and so on, with an ultimate limitation as the wife should appoint; but it is given subject to the pin-money of 500*l.* a year for herself, to her and her husband for their joint lives; if she survive the husband, the whole to go to her; if she do not survive her husband, then, as to a good deal of it, her husband to have a life income only, and then to be at her disposal; and as to the rest, to be at her disposal. That was the disposition of the property, both before and after the settlement had taken place; she looks at the whole property as her property; she speaks of it as hers; and this is not conjecture, because she tells us she means by her property, comprised in the settlement, "my plate, my books, my ticket of admission to the theatre, my shares in the Norwich Literary Institution, and my furniture." Both where she is giving to her husband, and where she is giving to other persons; and then she winds up the whole—having stated that "certain portions of what I am appointing by virtue of the power, shall fall into the residue of my personal estate; and having disposed of everything with the exception of what I have directed to fall into the residue of my personal estate, and that which the settlement calls the residue of the funds after setting apart the 3,000*l.*"—by giving all the rest and residue of her property after the death of her husband, who by the terms of the settlement, or by this will, was to have the life interest in it (if it be an exercise of the power); after the death of the husband to certain persons within that degree of consanguinity within which alone she could appoint to relations. I think that this is a far stronger case than many of the cases—I think I might say most of the cases—which have been decided to be a valid execution. It is a stronger case than that case in Lord Kenyon's time, which was referred to,—I mean the case of *Churchill* v. *Dibben*, which has only comparatively recently been made public, and is the subject of observation by the present Lord Chancellor in his book of Powers. In that case, if I am not mistaken, there was no reference to the power at all. However, it is in vain for me to go through all the cases and distinguish this case from some, or shew that it is more like others, or shew that it is a stronger case than others. It is sufficient, I say, that

the principles being established,—about which there really is no controversy,—that it is a question of intention, and that there must be reference to the power or reference to the property, those principles being elementary and beyond all controversy,—I think it would be a loss of time, and attended with very little advantage, to go and compare the language of the instrument in this case with the language of the instrument in other cases; for of course there must be a great variety,—a great dissimilarity,—but it is sufficient for me to say, that having carefully gone through—perhaps it would be bold to say all the cases, they are so numerous,—but having gone through not only the cases cited before me, but a number of other cases, and carefully considered them, the conclusion I have arrived at is, that this is a stronger case than almost any case which has been decided in favour of the execution of the power, where the question has arisen whether there is a sufficient reference to the power: unless it be a case where a party describes the particular property. I will now only advert, then, to the question, whether the fact of there being an appointment in favour of persons,—that is, not actually an appointment, but an attempt to limit what is appointed in favour of persons not objects of the power,—whether I am to consider that a sufficient argument for the conclusion, that she did not mean to execute the power at all, that she did not intend to refer to the property entirely undisposed of, and meant to leave the bulk of it entirely undisposed of. Now, *Carver* v. *Bowles* is a strong authority on the point; and I must say, irrespective of that case, that when I find that all she is doing is this,—she appoints it to her nieces; but she thinks that it would be very expedient to protect nieces, and to take care that each share should be settled to the husband of the niece, if she left one, and to the children of the niece, and in default of appointment to the next of kin in blood to the neice,—it does appear to me that there is no ground, in face of the strong argument to the contrary, sufficient to lead me to the conclusion that it was not a valid execution of the power. It ought to be observed, with reference to that clause, which I did advert to, where she directs that this gift is to take effect after payment of all her just debts and funeral expenses, that the property which, according to the construction I am putting on the will, was embraced in this devise, would not only be such property as could be made subject to her debts, but would comprise property which under this very settlement she could make subject to her debts and funeral and testamentary expenses,—namely, the residue of the 3,000*l.* and also the property comprised in the fourth portion—the jewels, books, &c. and the savings of her pin-money. It is true that, as I have said before, she might have disposed of the savings of her pin-money as the savings of her separate property without a special power; but then it certainly is to be borne in mind that though it is unnecessary the settlement itself does purport to contain in the shape of a covenant by the husband a power to her to dispose of that by will; and she says, "What I am disposing of I dispose of by virtue of the power and authority given by the settlement." Without going further then at present, my opinion is that the will is a valid execution of all the powers.

Nov. 4 *and* 8.

MILDMAY v. METHUEN.

New practice—Reference—15 & 16 *Vict.* c. 80, *s.* 42—*Scientific persons.*

Where the Vice-Chancellors of the Court are to work out questions of reference, which were formerly sent to the Masters, they will do so in Chambers, with (if necessary) the assistance of accountants, merchants, &c. as provided for by the 42nd section of the above Act.

More questions of detail will be worked out by the chief clerk under the Master's direction; but should any question of law or of a grave nature arise, such question to be discussed in open court.

This was a petition presented by a Mr. Holland, a builder, who had entered into a contract with the late Lord Methuen for building works to be done at Corsham-house, in Wiltshire. A suit had been instituted for the administration of the personal estate of the late Lord Methuen, and under the usual reference to take the account of debts the petitioner had carried in a claim to prove against the estate for 10,097*l.* 2s. 6d. and interest, the balance of an account amounting to 23,020*l.* 8s. 3d. for certain building works, alterations, and additions done to the mansion-house before mentioned.

The executors disputed the amount of the petitioner's bill, alleging that the real value of the works so executed by the petitioner amounted to 12,811*l.* 13s. only; that some of the works ought not to be paid for, because they were useless; that others ought not to be paid for because they were executed in too expensive a manner; and that in some particulars too high a price had been charged. The Master had allowed the claim as a claim against the estate, but not as a debt proved.

A former order had been obtained from the Vice-Chancellor, dated 28th of May, 1852, allowing the petitioner to bring such an action at law as he might be advised against the executors, but no action had been brought. The petitioner now asked, by his petition, that that order might be discharged, and that it might be referred to the Master, to whom the cause was referred, to ascertain and state what was due to the petitioner in respect of his said claim, and that the said Master might be at liberty to obtain the assistance in such manner as he might think proper *of such architect or other professional person* as he might think fit and might nominate, to ascertain the amount due to the petitioner in respect of his said claim.

Malins and *Jessell*, in support of the petition, relied upon the words of the 42nd clause of the 15 & 16 Vict. c. 80(*a*), as a foundation for the reference in the terms set out in the petition.

Daniel and *Beavan*, for the executors, said they were bound to protect the testator's estate. That the present was only an experiment to do that in a particular mode, which the petitioner might now do, by trying the questions between the parties by the action at law, which had been already ordered. That it was a question of considerable difficulty as arising upon the legal liability of the executors under the terms of the contract, which might be thus defeated by the proposed mode of proceeding. That the section relied upon did not warrant the Court in delegating such a jurisdiction to the Master, or to dispense with the evidence of facts, which ought to be proved by the petitioner in the usual way. That scientific assistance only related to conjectures and not to facts.

Jessell in reply.

The clauses 10 and 39 of the 15 & 16 Vict. c. 80, and the clauses 61 and 62 of the 15 & 16 Vict. c. 86, were also referred to.

The Vice-Chancellor postponed his decision.

On the 8th November he pronounced the following judgment:—

The VICE-CHANCELLOR said, that as this question arose for the first time since the new Act had come into operation, it was very important that a uniform practice should be established, and he had therefore consulted the other Vice-Chancellors on the point. The section in question was the 42nd section of the 15 & 16 Vict. c. 80, whereby "it was lawful for the Court of Chancery, or any judge thereof, in such way as they might think fit, to obtain the assistance of accountants, merchants, actuaries, engineers, or other scientific gentlemen, the better to enable such Court or judge to determine, and act on the certificate of such persons." The question now was, whether that section conferred the power on the judge himself to act, or authorised him to delegate that power to the Master, calling in the assistance of such scientific gentlemen as should be expedient. He (the Vice-Chancellor) and the other judges were of opinion that it was never intended by the Legislature that the Court should delegate any such power to the Master, and that the purpose of the Act was to enable the judges, in doing that which they were now to do instead of the Master, to decide questions which otherwise would have been referred to the Master, and should have the power to call in the assistance of scientific persons, if necessary. In the form in which this petition prayed for an order he could not grant it; but the question remained whether, either that the matter should be left to go on at law, or that he (the Vice-Chancellor) should himself take the matter in chambers, calling in the assistance of builders, &c. if necessary. It would have been most satisfactory to him (the Vice-Chancellor) that the matter should go to law, but as he ought not to have any personal consideration on the subject, and as the whole matter would be best determined by discharging the former order and taking the matter himself in chambers, that was the course which he intended to adopt. Mere details would be worked out by the chief clerk, under his Honour's direction; and if there should be any question of a grave nature, it would be right to have that question discussed in open court. *Order accordingly.*

(*a*) Sect. 42. "It shall be lawful for the said Court, *or any Judge thereof*, in such way as they may think fit, to obtain the assistance of accountants, merchants, engineers, actuaries, or other scientific persons, the better to enable such Court *or Judge* to determine any matter at issue in any cause or proceeding, and to act upon the certificate of such persons."

Common Law Courts.

COURT OF QUEEN'S BENCH.

Reported by ADAM BITTLESTON and JOHN THOMPSON, Esqrs. Barristers-at-Law.

Wednesday, Nov. 3.

REG. *v.* HENSON.

Nuisance—Bringing glandered mare into public place—Indictment—Scienter.

One count of an indictment charged that the defendant had a mare "inflicted with a contagious, infectious, and dangerous disease, called the glanders," and that he, "well knowing the premises," whilst the mare was so infected, brought it into a public place and way, where divers liege subjects then were, "to the great danger of infecting with the said contagious, infectious, and dangerous disease," the liege subjects in and near, &c. to the common nuisance, &c. against the peace, &c.:

Held, good, after verdict, without an allegation that the defendant knew the glanders to be a disease which was communicable to the human race by infection.

Indictment, for publicly exposing for sale a glandered horse.

The first count was in these words:—"The jurors for our Lady the Queen upon their oath present, that James Henson, late of Melton Mowbray, in the county of Leicester, labourer, on the 1st day of June, in the fifteenth year of the reign of our said Lady the Queen, at Melton Mowbray aforesaid, in the county aforesaid, was possessed of a certain mare, which said mare was then and there infected with a contagious, infectious, and dangerous disease, called the glanders, and the said James Henson, well knowing the premises, afterwards and whilst the said mare was so infected as aforesaid, on the day and year aforesaid, with force and arms at Melton Mowbray aforesaid, in the county aforesaid, unlawfully, wilfully, wickedly, and injuriously did bring, and cause to be brought, the said mare so infected as aforesaid, into and along a certain open public way and place in which then of right were divers liege subjects of our said Lady the Queen, then going, passing, and staying, and amidst and among divers liege subjects of our said Lady the Queen, who were then and there in the said public way and place, to the great danger of infecting with the said contagious, infectious, and dangerous disease, called the glanders, the liege subjects of our said Lady the Queen, who on the said day and time were in and near the said public way and place, to the damage and common nuisance of all the said liege subjects of our said Lady the Queen, to the evil example of all others in the like case offending, and against the peace of our said Lady the Queen, her crown and dignity."

The second count was for a nuisance, in bringing a glandered mare into a public fair where horses were being sold.

The third count was for bringing a glandered mare into a public place, where horses and other cattle were passing and repassing.

At the last Assizes for the county of Nottingham, the defendant was convicted on all the counts of an indictment for a nuisance.

Miller, Serjt. now moved in arrest of judgment. The first count is bad; it does not aver that the defendant knew that the glanders was a disease communicable to man infectiously. The verdict would be wrong unless that was proved; it was therefore necessary to prove it; and if so, there ought to have been a corresponding allegation. [Lord CAMPBELL, C.J.—There is an allegation that he knew the mare to be glandered; and that is enough.] He might know that the glanders was communicable from one horse to another without contact; but that it was so communicable from a horse to a man, if such is the case, he would not, and in fact did not know. [COLERIDGE, J.—In the case of the small-pox, *R.* v. *Vantandillo*, 4 M. & S. 73, there was no averment of knowledge that it was infectious. The judge in passing sentence, however, says, "there could be no doubt that if a person unlawfully, injuriously, and with full knowledge of the fact, exposes in a public highway a person infected with a contagious disorder, it is a common nuisance to all the subjects, and indictable as such. Lord CAMPBELL, C.J.—What fact?] The existence of the disorder and its infectious nature. [Lord CAMPBELL, C.J.—If the case were one of small-pox, and the act was done with intention to endanger the liege subjects, would you say that an allegation of knowledge that small-pox is infectious was necessary?] There would in that case be a human being actually suffering, and the familiar experience that other human beings were liable to danger therefrom. [Lord CAMPBELL, C.J.—Your argument rests on the assumption that the ad commune nocumentum, &c. need not be proved. That is not so.]

COLERIDGE, J.—Here the defendant knew the mare to be glandered, and he took it into a public place "to the great danger of infecting with the said contagious, infectious, and dangerous disease," &c. the liege subjects in and near. What, after verdict for the Crown, does that mean?

By the COURT.—The indictment is good.

Rule refused.

Thursday, Nov. 4.

NICHOLLS and WIFE *v.* BROOKS.

Evidence—Admissibility of wife, she being joined as plaintiff with her husband.

It is quite settled that upon the trial of an action,

in which husband and wife are joint plaintiffs, the wife is an admissible witness.

Keating moved for a new trial in this case, on the ground that the female plaintiff had been examined as a witness on behalf of herself and her husband.

Lord CAMPBELL, C.J.—The point has often been ruled at Nisi Prius.

ERLE, J.—I have often admitted the wife when she is plaintiff.

Lord CAMPBELL, C.J.—When she is a party to the record, she comes within the express words of the statute. *Rule refused.*

Friday, Nov. 5.

DOE *dem.* DALTON *v.* STAPLES.

Trustees—Legal estate.

The surviving trustees had conveyed the trust property to themselves and a number of persons, so that the legal estate was in seventeen persons instead of sixteen, the number appointed by the deed creating the trust:

Held, nevertheless, that the legal estate being in the seventeen, they were entitled to recover on a joint demise by them in an action of ejectment.

Ejectment by the trustees of Hayle's Charity. Tried at the Surrey Assizes, before Jervis, C.J. and the verdict for the lessors of the plaintiff.

It appeared that the charity was constituted by a deed, Dec. 1, 1671, between R. Hayle and his wife of the one part, and the rector of the parish of Lambeth, and fifteen other persons, of the other part; and it was declared by the deed of settlement that when all the trustees, except five, should happen to die, the said five should convey to themselves, and eleven other parishioners, upon the same trusts as thereinbefore declared. For the purpose of carrying into effect the object of the charity, the 9 Geo. 4, c. 45 (private), was passed.

The demise was laid to be in seventeen persons jointly, whereupon it was objected at the trial that that was contrary to the provisions of the deed and the above Act, and that the lessors of the plaintiff could not recover. The learned judge, however, overruled the objection.

Shee, Serjt. now moved for a new trial, on the ground that such ruling at the trial was wrong. The above provision is in the nature of a power which has not been properly pursued. [WIGHTMAN, J.—Suppose there had been no Act of Parliament, and the trustees appointed by the deed had conveyed to seventeen persons?] That would have been a violation of the trust.

By the COURT.—If the legal estate is not in these seventeen persons, where is it? *Rule refused.*

Monday, Nov. 8.

STEWART *v.* JONES.

County Court—Jurisdiction.

By the 1 Vict. c. 33, a right to recover a paring rate in one of the Superior Courts of Record at Westminster, was given:

Held, that the County Court had jurisdiction, and that a plaint might be entered therein for the recovery of the rate.

C. Pollock moved for a prohibition to the judge of the County Court of Cheshire, to restrain him from proceeding further in the above cause. The plaint was for the recovery of 8*l.* 19*s.* 8*d.* alleged to be due from the defendant under a local Act, 1 Vict. c. 33, for sewering and paving, &c. the town of Birkenhead. Sec. 18 of the Act gave a power of recovering rates by distress or by action in any of her Majesty's Superior Courts of Record at Westminster, and the learned counsel contended that the jurisdiction of the local Courts at the time of passing the above Act was thereby ousted, and that it was not the intention of the 9 & 10 Vict. c. 95 (County Courts Act), to give jurisdiction to the County Courts in a case like this. [Lord CAMPBELL, C.J.—No doubt where a new right is created by Act of Parliament, and an appropriate remedy also given, that remedy must be pursued. But here the remedy was given to the Superior Courts in the first instance, and it is then transferred to the County Courts by the later Act. WIGHTMAN, J.—The form of action in the Superior Courts would be debt, and then jurisdiction is given to the County Courts in all cases of debt below a certain amount. COLERIDGE, J.—And this case is not within any of the exceptions in the 58th section.] He then referred to secs. 3 and 58 of the 9 & 10 Vict. c. 95; The Apothecaries' Act; *Foster's* case, 11 Co. Rep. 61 a; *Williams* v. *Pritchard*, 4 T.R. 2; *Owens* v. *Breese*, 6 Ex. 413, 916.

Lord CAMPBELL, C.J.—Having heard the arguments and the authorities cited, I am only confirmed in the impression that I had when the motion was proposed. By the local Act of 1 Vict. c. 33, an action of debt was given for the recovery of the rate in a Court of Record, then by a subsequent Act, the 9 & 10 Vict. c. 95, it was enacted that in all pleas of personal actions where the debt or damage was not more than 20*l.* the County Courts should have jurisdiction. This was a personal action within the limited amount, and comes within the meaning of the enacting clause, and it is not within any of the exceptions. Then why should we not give that construction to the case? There is nothing at all to shew that it was the intention of the Legislature that County Courts should not have jurisdiction over such a cause of action as this. It is more for the convenience of the subject that they should have such jurisdiction. The 1 Vict. c. 33, is relied on, but it is a strange distinction to draw between Courts of Record and Courts of Record in Westminster Hall.

COLERIDGE, J.—I quite agree with Mr. Pollock that there would have been no mode of recovering this rate by action but for the 1 Vict. c. 33. By that Act, the right became a personal action, and when the right was enforced it became a plea of personal action, and jurisdiction over such rights is given by the 9 & 10 Vict. c. 95, s. 58, to County Courts. The 128th section is equally strong to shew that.

WIGHTMAN and ERLE, JJ. concurred. *Rule refused.*

Tuesday, Nov. 9.

BRYAN *v.* CLAY, Executor.

Dilapidations—Case against executor of deceased rector—Priority of debts.

By the custom of England, an action on the case lies against the executor of a deceased rector, at the suit of his successor, for dilapidations; but it is an incident of that custom, that in the order of payment, debts, whether simple contract or specialty debts, should be preferred to damages for dilapidations; and it is consequently a good plea in such an action that the assets are sufficient only for payment of debts.

Case for dilapidations against the executor of a deceased rector by his successor.

Plea that there were outstanding debts, and plene administravit præter. Demurrer thereto.

Kingdon, in support of the demurrer.—The question is whether simple contract debts are to be preferred in order of payment to damages for dilapidations; and there is no sufficient authority for that rule. Between different sorts of simple contract debts there is no distinction in the order of administration, and by 3 & 4 Wm. 4, c. 42, s. 2, damages are to be payable by executors in the like order as simple contract debts. [Lord CAMPBELL, C. J. —That provision would seem to apply to the case of an incumbent vacating his living before his death, so that the action might have been brought against the prior incumbent in his lifetime.] It may also apply to a case like the present, where the action is for a wrong committed by the testator, though the testator himself could not have been sued in his lifetime. Besides, unliquidated damages have long been held to come within the category of debts for which executors are liable. (*Fawcet* v. *Carter*, Palm. 329; *Sanders* v. *Esterbie*, 1 Roll. Rep. 266.) The action is founded upon a duty, which the deceased rector ought to have performed; and the very admission that the action is maintainable seems to involve the consequence that the damages, when recovered, should be payable in the same order as other simple contract debts. (2 Williams's Exors. 815, 1351; *Pinchon's* case, 9 Rep. 87 *a*; *Sollers* v. *Lawrence*, Willes, 421; *Jones* v. *Hill*, 3 Lev. 268; *Hambly* v. *Trott*, Cowp. 371; *Mason* v. *Lambert*, 12 Q. B. Rep. 795; *Wheatley* v. *Lane*, 1 Wms. Saund. 216 *a*. The only authority for saying that damages for dilapidations are to be postponed to debts is that of Sir Simon Degge, p. 75, and he probably spoke only of specialty debts. Mr. Justice Williams mentions the rule with a "*semble*."

M. Smith, contrà.—This action is altogether anomalous, and depends entirely upon custom. That custom is stated by Sir Simon Degge; and one of its incidents is that the damages are to be postponed to debts in the order of payment. From the time of Sir Simon Degge to the present, all the authorities have mentioned that as one incident of the custom. Gibson, Cod. 791; Ayliffe Parer. 217; 2 Burn's Eccl. Law (ed. Phillimore), 148, 153, where an opinion of Sir Wm. Scott to the same effect is given; Dr. Grey's System of Eccl. Law, p. 250.

Lord CAMPBELL, C.J.—Having heard this case ably argued, I am now able to express a clear opinion that the defendant is entitled to our judgment. The action is founded upon a peculiar custom of the realm, which is set forth in the declaration, and not upon the common principles of the law of England; because, according to those principles, no action of tort would lie against an executor, and no action would lie against a representative, there having been no cause of action or foundation of a cause of action in the lifetime of the testator; but this anomalous action is given by custom to the subsequent incumbent, although he had no cause of action in the lifetime of the prior incumbent. We must see, therefore, what the custom is; and Sir Simon Degge, who is the first authority upon the subject, expressly states that, though the action may be maintained, still the payment of damages for dilapidations is to be postponed to the payment of all debts; and by *debts* it seems to me quite clear that he means simple contract as well as specialty debts. From that time to the present every writer has stated the custom in the same terms; and the opinion of Sir Wm. Scott shews, at least, what was the general understanding of the Profession at that time. It is true that Bishop Gibson expresses his discontent with the law in that respect; but that expression adds weight to the authority, because, whilst he laments the rule, he submits to it. Although this is the first time that the question appears to have arisen on the record, which is sufficient to explain the "semble" of Mr. Justice Williams, the law has been uniformly laid down the same way; and the plea, therefore, is good.

COLERIDGE, WIGHTMAN, and ERLE, JJ. concurred.

Judgment for defendant: the plaintiff to be at liberty to take judgment of assets quando.

Wednesday, Nov. 10.

BIBBY and OTHERS *v.* LARPENT and OTHERS.

Debtor and creditor—Deed of arrangement—Bankruptcy.

A deed of arrangement between a debtor and his creditors, whereby it is agreed that the debtor should still carry on the business under the control of inspectors, he covenanting to use his best endeavours to get in the debts, and to conduct his affairs to a conclusion for the benefit of his creditors, and also upon the request of a majority of the inspectors to get in his private property, excepting his household goods, furniture, plate, and the like, for the benefit of his creditors, is not a valid deed of arrangement within sec. 124 of the Bankruptcy Consolidation Act.

Assumpsit on a bill of exchange.

Plea.—That six-sevenths of the creditors of the defendants had signed a deed of arrangement, whereby, amongst other things, the defendants covenanted to manage to the best of their ability, and conduct to a conclusion, the liquidation of their partnership affairs for the benefit of their creditors, to use their best endeavours to get in all the debts of the partnership, and to pay the same into their own or any other bankers; to deliver monthly accounts to certain inspectors, and not to enter into new contracts without their consent; and also, at the request of a majority of the inspectors, to collect and get in the separate and private property of the partners, exempting only their household goods and furniture, plate, linen, china, &c. for the benefit of the creditors. It was further provided that the money should be drawn out of the bankers by the cheques of two partners; that with the sanction of any of the inspectors, the partners might pay, either wholly or in part, the debt of any creditor not exceeding 5,000*l.*; and that they might retain a sum of 3,000*l.* for their services, to be apportioned amongst them as the inspectors might direct. The plea alleged that the plaintiff had notice of this deed. Special demurrer thereto.

Paterson, in support of the demurrer.—*Tetley* v. *Taylor*, 21 Law J. 346, Q.B. governs this case, because this deed does not effectuate a distribution of the whole estate of the debtor amongst his creditors. The plea is also bad for want of a sufficient averment that the plaintiff had three months' notice from the signing of the deed by six-sevenths of the creditors. (12 & 13 Vict. c. 106, ss. 224, 225.)

M. Smith, contrà.—*Tetley* v. *Taylor* was the case of a composition deed simply; and the Court could not have meant to decide that the arrangement must be precisely such as would take place under a bankruptcy. The provisions here are only regulations for the maintenance of the debtors.

Lord CAMPBELL, C.J.—The decision of *Tetley* v. *Taylor*, by the Exchequer Chamber, is binding upon this Court; and the principle there laid down certainly is, that these arrangements are void unless the whole property is distributed as it would be in bankruptcy. The exception of the plate and furniture alone is sufficient to bring this case within that rule; and whatever opinion I might form in the House of Lords, upon contrasting the reasons of the Exchequer Chamber with the reasons previously given by this Court, at present we must act upon that decision. *Judgment for the plaintiff.*

CASTELLI *v.* BODDINGTON.

Policy of insurance—Transfer of interest—Bankruptcy of assured—Set-off.

A set-off cannot be pleaded to a declaration on a policy of insurance claiming for an average loss.

To a declaration on a policy of insurance on goods on a voyage from Havannah to the Baltic, containing a stipulation that there should be a return of part of the premium if the voyage terminated in the United Kingdom, the defendant pleaded the bankruptcy of the plaintiff. The plaintiff replied, that before the bankruptcy he had sold the goods insured to Messrs. Fuge, and had handed over and transferred to them the policy thereon and all his interest therein.

Rejoinder, that before the bankruptcy the risks

ended in the United Kingdom, whereby the plaintiff became entitled to a return of part of the premium, which return had not been made, and was still a subsisting claim upon the policy, in no way assigned or parted with.

Upon demurrer thereto:

Held, no answer to the plea; because, assuming that the plaintiff at the time of his bankruptcy was entitled to the return of premium as money had and received, still no interest in the contract of insurance remained in him so as to pass to his assignees under the bankruptcy.

Assumpsit on a policy of insurance on goods on a voyage from the Havannah to the United Kingdom, or to any port in the Baltic. The declaration set forth the policy, which contained a stipulation that if the risks should end in the United Kingdom, then the assured was to be entitled to a return of 23s. 9d. per cent.; and claimed for an average loss.

Pleas (inter alia).—1. A set-off. 2. The bankruptcy of plaintiff before action brought.

Replication to plea of bankruptcy.—That before the bankruptcy, plaintiff had sold the goods insured to Messrs. Fuge, and had handed over to them the policy of insurance, and transferred all his right and interest therein; and that the action was brought in the name of the bankrupt as trustee for the Messrs. Fuge.

Rejoinder.—That after the making of the policy, and the attaching of the said risks, and before the bankruptcy of the plaintiff, the said risks ended in the said United Kingdom, whereby the plaintiff then became entitled to a return of the sum of 23s. 9d. per cent. but which said return had not been made, and still remained a subsisting claim upon and by virtue of the policy, and in no way assigned or parted with. Verification.

Demurrer thereto, and to the plea of set-off.

Watson, in support of the demurrer.—1. The plea of set-off cannot be pleaded in this action, according to all the authorities. (*Hardcastle* v. *Netherwood*, 5 B. & Ald. 93; *Grant* v. *The Royal Exchange Insurance Company*, 5 M. & S. 439; *Thomson* v. *Redman*, 11 M. & W. 487; *Forster* v. *Wilson*, 12 M. & W. 203. 2. The rejoinder is no answer to the replication. There may be a collateral claim by the bankrupt or his assignees for money had and received, but as to the contract of indemnity, which is the subject-matter of the present action, all interest in that had passed away from the plaintiff before his bankruptcy. (He referred to s. 141 of the Bankruptcy Consolidation Act; *Carpenter* v. *Marnall*, 3 Bos. & P. 40; *Willis* v. *Freeman*, 12 East, 656.)

Bramwell, contrà.—1. The general impression has been against the plea of set-off in this action; but it is allowed in other cases where the demand is really as much a demand for unliquidated damages as here, such as actions for the value of goods, where the price has to be determined by the verdict of the jury. 2. The rejoinder is good. Whether the return of premium could or could not be recovered as money had and received, there is an express contract in the policy to make that return, and upon that contract an action would lie. The plaintiff, therefore, retained an interest in one of the stipulations of the policy; and as he retained that partial interest, the whole contract passed to his assignees under the bankruptcy. As to the contract of indemnity, and the damages recovered under it, the assignees of course would be trustees for the Messrs. Fuge. (*D'Arnay* v. *Chesneau*, 13 M. & W. 796; *Gibson* v. *Overbury*, 7 M. & W. 555.)

Watson, in reply.

Lord CAMPBELL, C.J.—I am of opinion that the plaintiff is entitled to our judgment. First, as to the plea of set-off, it is quite clear that that plea cannot be pleaded to a demand for unliquidated damages; and a claim for an average loss upon a policy of insurance has been invariably considered a demand for unliquidated damages. Secondly, the plea of bankruptcy is a perfectly good plea; but the replication, if true, is an answer to it, because it shews that at the time of the bankruptcy the plaintiff had no beneficial interest in the promise of indemnity contained in the policy, upon which the action is founded. The rejoinder, however, relies upon the stipulation in the policy for a return of premium, if the voyage should end in the United Kingdom; and it says that that was not transferred. Now, the meaning of that stipulation was merely that as a certain premium was to be paid for a certain voyage, a less premium should be paid if the voyage was shorter; but assuming that that demand remained to the plaintiff, how does that shew any right in his assignees to maintain this action for an average loss either in their own name or that of the bankrupt? The demand for a return of premium was easily separable from that which arose upon the contract of indemnity; and the remedy would be by an action for money had and received, founded on failure of consideration. As soon as the goods were delivered in the United Kingdom, a right of action accrued to the assured against the underwriters for the 23s. 9d. and that cause of action might be available to the assignees, though they had no interest in the policy.

COLERIDGE, J.—It may be that if two interests in a contract are inseparably united, both may pass to the assignees of a bankrupt, though he has a beneficial interest in one only; but that is not this case. Here the interests are quite separate.

WIGHTMAN, J.—*D'Arnay* v. *Chesneau* appears to me quite distinguishable; because here the assignees have not, as they had there, any interest whatever in the immediate subject of the action.

ERLE, J. concurred.

Judgment for the plaintiff.

BUSINESS OF THE WEEK.

Thursday, Nov. 4.

THE TRUSTEES OF THE RIVER LEA v. THE NEW RIVER COMPANY.—This was an action on the case for taking a greater quantity of water from the River Lea than the defendants were entitled to take; tried at Maidstone, before Jervis, C. J. when a verdict was found for the defendants. Sir *F. Kelly*, Solicitor-General, now moved for a rule to enter a verdict for the plaintiffs or for a new trial. The question turned upon a private Act of Parliament relating to the navigation of the river Lea (12 Geo. 2, c. xxxii.), and the main question was, whether the defendants had altered the natural course of the river within the meaning of that statute. *Rule nisi.*

REG. v. THE EASTERN ARCHIPELAGO COMPANY.—This was a proceeding by sci. fa. to repeal the letters patent whereby a charter of incorporation had been granted to the defendants. The declaration recited the letters patent, whereby, amongst other things, it was provided that a capital of 50,000*l.* at the least, should be paid up within a year; and that in case the company should not comply with any of the directions and conditions of the charter, it should be lawful for the Crown, by writing under the Great Seal, to revoke it absolutely, or upon such terms and conditions as should be thought fit. The declaration alleged that the capital had not been paid up as required; and the issue taken upon that allegation was found for the Crown. The trial took place before Lord Campbell, C. J. in Middlesex. *Crowder* now moved in arrest of judgment, upon the ground that the payment of the capital within the year was not a condition upon nonperformance of which the letters patent could be repealed by judgment in sci. fa.; and that the only mode of proceeding was to apply to the Crown to exercise the discretion which, in the case that had arisen, the charter expressly reserved to the Crown. *Rule nisi.*

EDWARDS v. LOWNDES.—This was an action for salary as an organist, brought against the clerk to the Local Board of Health, at Burslem, in Staffordshire, tried before Cresswell, J. at Stafford, when a verdict was found for the defendant upon the 1st and 5th pleas. *Whateley* now moved to enter a verdict for the plaintiff upon those issues, with 25*l.* damages. Under the Burslem Market Act, passed in 1826, the Market trustees were directed to apply the funds raised under that Act to various purposes at their discretion, and amongst others to payment of the organist's salary. The powers and liabilities of the trustees had been transferred to the Local Board of Health; and as they had funds in hand, they were bound to pay the organist's salary. (*Pardoe* v. *Price*, 13 M. & W. 267; 16 M. & W. 451.) *Rule nisi.*

HALL and WIFE v. HOCKLEY.—*Shee*, Serjt. moved for a new trial on the ground of misdirection, and that the verdict was against the evidence, or to reduce the damages to 75*l.* The cause was tried in Surrey, before Jervis, C. J. and a verdict found for the plaintiff, damages 220*l.*

Cur. adv. vult.

REG v. HENRY DAVIS.—*Sir A. E. Cockburn* moved for a rule for a criminal information against the defendant, the publisher of the *Cheltenham Chronicle*, for publishing a libel upon Earl Fitzhardinge, imputing that he had corruptly exercised the office of Lord-Lieutenant for political purposes. *Rule nisi.*

POSTLE v. MAGNAY.—This was an action of covenant, tried before Jervis, C. J. in Surrey, when a verdict was found for the plaintiff, damages, 345*l.* *Chambers* now moved for a rule to enter the verdict for the defendant upon two issues. The action was brought to enforce payment of the plaintiff's share of certain partnership effects, pursuant to a deed of arrangement for that purpose. The pleadings raised two issues. First, whether there had been a valuation of the stock in trade, &c. pursuant to the deed; and, secondly, whether there had been a realization of the property and effects of the partnership and an ascertainment of the plaintiff's share. There had been a valuation of the stock in trade, &c. but it was made by two persons only instead of three, as required by the deed; and there had been a statement of account, but in that statement bad debts were included, and it was expressed to be subject to deduction by reason of bad debts. The question was whether, under those circumstances, the issues were proved. *Rule nisi.*

BOUGLERX v. SWAINE and BOVILL.—This was an action of covenant for an instalment of 200*l.* payable on the 20th June, 1852, under a deed of August, 1848. At the trial before Platt, B. at the last Bristol Assizes, a verdict was found for the defendants. *Kinglake*, Serjt. moved for a new trial, on the ground of misdirection. The defendants were licensees under a patent granted to the plaintiff for new and improved machinery for grinding corn; and they had, under the powers of the deed, transferred their licence to a third person. The question was upon the terms of the deed, whether the defendants could be required to pay the plaintiff the sums agreed upon, unless there was an actual use of the invention; or whether the enjoyment of the right to use it rendered them liable to pay. *Rule nisi.*

THE EARL OF SCARBOROUGH v. PICKEN.—Trespass. Plea, a public highway. At the trial, which took place at Nottingham before Coleridge, J. a verdict was found for the defendant. *Willmore*, now moved for a new trial, on the ground of misdirection, and that the verdict was against the evidence. The evidence negatived a dedication by the owner, because he had permitted his tenant every year to fasten up a gate across the alleged road. (*Barraclough* v. *Johnson*, 8 Ad. & Ell. 99; *R.* v. *Lloyd*, 1 Camp. 260, and 263, *n.*) *Rule nisi.*

WILTSHIRE v. COTTERELL.—This was an action for injury to the plaintiff's reversion by removing a granary, a threshing machine, and rick straddles. At the trial before Williams, J. at Oxford, a verdict was found for the plaintiff—Damages, 25*l.* for the granary, 5*l.* for the thrashing-machine, and 5*l.* for the rick straddles. *Keating* moved to enter the verdict for the defendant as to the whole or any part of the plaintiff's claim; and the question was whether the things above mentioned were chattels or fixtures, and whether all or any of them were included in the plaintiff's conveyance. The granary was said to pass because it was represented by a dot on the plan to which the deed referred. *Rule nisi.*

DOE *dem.* BUTT v. ROUSE.—Ejectment by a mortgagee of turnpike tolls pursuant to 3 Geo. 4, c. 126, s. 49. At the trial before Martin, B. in Wiltshire, a prior mortgage to the defendant, one of the road trustees, upon which he had obtained a judgment in ejectment by default, was put in; and upon that evidence the learned judge directed a verdict for the defendant. *M. Smith* moved to enter the verdict for the lessor of the plaintiff, on the ground that the prior mortgage was no answer, each mortgage being of a proportion of the tolls only. (*Doe dem. Thompson* v. *Ledlard*, 4 B. & Ad. 137.) *Rule nisi.*

PRICE v. HEWITT.—*Field* moved to set aside so much of an order of Martin, B. setting aside a warrant of attorney and all subsequent proceedings as directed, that the defendant should enter an appearance. The warrant of attorney was void by reason of the infancy of the defendant, and the judge ought not to have imposed any terms when he set it aside. (*Adlam* v. *Noble*, 9 Dowl. 322; *Sanderson* v. *Marr*, 1 H. Bl. 75.) By the COURT.—Upon application for a summary remedy terms may always be imposed. *Rule refused.*

JOHNSON v. GIBSON, exor.—Debt for rent; tried before Jervis, C.J. at Hertford; and a verdict found for the plaintiff, damages 18*l.* The declaration claimed rent for three-quarters of a year ending 25th March, 1852; but no particulars of demand had been delivered. The defendant had paid 7*l.* 10*s.* into court, and upon the facts proved at the trial it appeared that with the exception of that sum the defendant had paid all the rent that was payable by him. The learned judge, however, thought that upon the pleadings as they stood, the plaintiff was entitled to a verdict for the rent for three-fourths of a year, which had been due. *Bovill* now moved to enter verdict for defendant, or to reduce the damages to a nominal sum or for a new trial. *Rule nisi.*

HALL v. GRENFELL.—*Milward* moved for a rule to take out of court 70*l.* deposited with sheriff in lieu of bail. *Rule nisi.*

Re BLAGG.—*Keane* moved for a rule calling upon an attorney to give up the papers relating to an action of ejectment, upon receiving an undertaking that his lien should not be prejudiced. *Rule nisi.*

MURPHY v. NUGENT.—*Field*, moved to rescind an order of Erle, J. allowing the plaintiff his costs, on the ground that the cause of action arose in some material part within the jurisdiction of the Marylebone County Court, within the jurisdiction of which the defendant resided *Rule refused.*

BISSELL v. WILSON.—Trespass, for false imprisonment. Plea, not guilty by statute. At the trial before Lord Campbell, C. J. in London, a verdict was found for the plaintiff, damages, 100*l.* The defendant was a magistrate of the City of London, who had issued his warrant for the apprehension of plaintiff, who, after his conviction under the Copyright Act, had neglected to attend *personally*, in obedience to a summons, calling upon him to shew cause why he should not pay the penalty. *Hugh Hill* now moved to enter a nonsuit or verdict for the defendant, on the ground that defendant was protected by 11 & 12 Vict. c. 44, s. 2, inasmuch as the plaintiff's appearance by attorney and counsel was not an appearance according to the exigency of the summons. Also on the ground that the notice of action was insufficient, having been given before the conviction was quashed. Lord Campbell, C.J.—That point was not taken at the trial. *Rule nisi on the other point.*

Friday, Nov. 5.

DOE *dem.* BATT v. ACLAND.—Tried in Sussex before Maule, J. and the verdict for the plaintiff. *Channell*, Serjt now moved for a new trial, on the ground that the verdict was against the evidence. *Cur. adv. vult.*

THE MAYOR AND CORPORATION OF BERWICK-UPON-TWEED v. RENTON.—Action upon a bond against a surety tried in Northumberland before Lord Campbell, C.J. and the verdict for the defendant. *Knowles* now moved for a new trial, on the ground of misdirection, and that the verdict was against the evidence. *Rule nisi as against evidence.*

KEYSE v. POWELL.—Trespass q. c. f. tried at Monmouth before Williams, J. and the verdict for the plaintiff. *W. H. Watson* moved to enter the verdict for the defendant on the second and third pleas. *Rule nisi.*

NORTHAM v. HURLEY.—Case for diverting a stream of water, tried in Devon, before Martin, B. and a verdict for the plaintiff with 1*s.* damages. *Kinglake*, Serjt. moved to set aside the verdict and enter a nonsuit or for a new trial on the ground of misdirection. *Cur. adv. vult.*

HEYWOOD v. POTTER.—Action for the infringement of a copyright design tried before Lord Campbell, C.J. and a verdict for the defendant on two issues. *Bramwell* moved to set aside the verdict for the defendant on those issues, and enter it for the plaintiff. *Rule nisi.*

WHARTON v. MCGRATH.—Replevin tried at Carlisle before Wightman, J. and a verdict for the defendant. *Atherton* moved for a new trial on the ground of misdirection. *Rule nisi.*

GREGORY v. SLOWMAN.—Tried in Middlesex before Lord Campbell, C.J. and verdict for the plaintiff. *M. Chambers* moved for a new trial on the part of the defendant Slowman, on the grounds of the improper reception of evidence, misdirection, excessive damages, and that the verdict was against the evidence. *Cur. adv. vult.*

MAUGHAM v. SMITH.—*E. James* moved to set aside the verdict, and for a new trial. *Rule nisi.*

DOE *dem.* HEARNE v. PARKINSON.—*Keating* moved for a new trial. *Rule nisi.*

EDWARDS v. LOWNDES.—(See Nisi Prius report of this case, 20 LAW T. Rep. 43.) *Gray* moved for a cross rule herein. *Rule nisi.*

MALLALIEU v. THE ANGLO-CALIFORNIAN GOLD MINING COMPANY.—*Paterson* moved for leave to abandon the rule for a new trial obtained herein. *Rule nisi.*

QUEEN'S BENCH.

JONES v. EVANS.—*Welsby* moved to review the taxation herein. *Rule nisi.*

Saturday, Nov. 6.

HUTTON and ANOTHER (Assignees) v. CRUTTWELL.—*Kinglake*, Serjt. moved for a new trial. *Cur. adv. vult.*

BERRITT v. WINTERBOTTOM.—Case by assignee for infringement of patent. Plea, denying the novelty. At the trial, before Wightman, J. at Liverpool, a verdict was found for the defendant. *Knowles* moved for a new trial, on the ground of misdirection, and that the verdict was against the evidence. The patent was for an improvement in the mode of stopping bottles by lining the neck of the bottle with an elastic material. There was evidence that a tap had been previously made in which the stopper itself was surrounded by an elastic material, but the plaintiff's patent was founded upon a new combination; and the learned judge should have told the jury that the combination might be new, though the parts were old. By the COURT.—The question of novelty was properly left to the jury; and upon the facts it is clear that the principle was not new. *Rule refused.*

MAYOR OF BERWICK v. DOBIE.—Covenant upon a deed whereby the defendant and two others agreed to become co-sureties for one Murray, as borough treasurer. At the trial before Wightman, J. a verdict was found for the plaintiff. *Watson* moved for a new trial, on the ground that one of the co-sureties had since obtained a verdict on a plea of non est factum, it appearing that he had not executed. The fraud of the obligee in discharging one of the obligors to the bond would be a defence. (*Langston* v. *Wetherwell*, 1 Ex. 634.) By the COURT.—This is not a matter noviter veniens ad notitiam. *Rule refused.*

MAYOR OF BERWICK v. OSWALD.—*Hugh Hill* moved for a new trial in this case, also on the ground that the defendant was discharged because the bond had not been executed by all the proposed sureties, and the defendant had executed upon an undertaking that nothing should be done to defeat the liability of any other surety. By the COURT.—The point was not made at the trial. *Rule refused.*

KEANE v. STEWART.—*Watson* moved for a rule to refer back the taxation of costs herein to the Master. *Rule nisi.*

DEBRA DE MORODA v. DAWSON and OTHERS.—This was an action for a malicious prosecution; tried before Alderson, B. at Warwick; when the plaintiff was nonsuited for want of evidence to connect the defendants with the charge made against the plaintiff and the late Baroness Von Beck. The warrant of apprehension was not produced, and the depositions taken before the magistrates did not shew who made the charge. *Miller*, S. moved for a new trial, on the ground that there was some evidence to be submitted to the jury on that subject; and also upon an affidavit explaining the nonproduction of the warrant. *Rule nisi.*

DON *dem.* LORD SCARBOROUGH v. APPLEYARD.—Ejectment tried before Lord Campbell, C. J. at York; when a verdict was found for the plaintiff.—*Hugh Hill* now moved for a new trial, on the ground of misdirection, and that the verdict was against the evidence. *Rule refused.*

REG. v. THE INHABITANTS OF HOUGHTON.—*Indictment* for non-repair of a highway. *Plea*, not guilty. At the trial before Wightman, J. at Liverpool, the verdict was found for the defendants.

Atherton now moved for a new trial, on the ground that the learned judge ought to have told the jury that a former conviction of the defendants upon a presentment of the same road was conclusive evidence of their liability to repair. *Rule nisi.*

NEILL v. WARHURST.—*Assumpsit* for breach of an agreement by preventing plaintiff from completing a building contract, with counts for work and labour. At the trial before Wightman, J. at Liverpool, a verdict was found for the plaintiff, with 300*l.* damages on the special count, and 21*l.* on the common counts.

Wilkins, Serjt. moved for a new trial on the ground of misdirection, the improper rejection of evidence, and that the verdict on the 1st count was contrary to the evidence, or to reduce the damages. The learned judge had told the jury that if the plaintiff was prevented from proceeding with the work by the defendant's fault, he was entitled to damages for loss of profit, and also for the price of the work done. The price of the work done could not be recovered at all, because the plaintiff had not obtained the certificate of the architect until after action brought (*Morgan* v. *Birnie*, 9 Bing. 672); and the only damage alleged in the special count was the loss of profit. 2. Evidence of carelessness in pulling down a house was tendered for the purpose of shewing that the work was not worth the price charged, and improperly rejected. 3. The evidence shewed that the defendant did not prevent the plaintiff from going on. *Rule nisi.*

REG. v. MORRISON.—*Otter*, in support of the order of Sessions. *Heath*, contrà. *Cur. adv. vult.*

Monday, Nov. 8.

REG. v. ——.—*Webster* moved to set aside the replication to a plea pleaded to a sci. fa. for repealing letters patent granted for improvements in gelatinous substances, and in apparatus to be used therein. *Rule nisi.*

REG. v. TALLIS.—The *Attorney-General* (*P. Francis* with him) moved for a criminal information for a libel by the defendant against Mr. Sheriff Croll. *Rule nisi.*

COOK v. GILLARD.—*Atherton* and *Millward* shewed cause against a rule to set aside a nonsuit and enter a verdict for the plaintiff for 142*l.* *Keating* (*Bagley* with him) supported the rule. *Cur. adv. vult.*

REG. (on the prosecution of Sir W. Worsley) v. THE COMMISSIONERS OF THE RYE AND DERWENT DRAINAGE ACT.—This was a question as to when the time of notice of appeal began to run, and turned purely on the construction of divers sections in a local Act of Parliament. The point is of no general importance. *Cowling* (*E. S. Cayley* with him) for the prosecutor, and *S. Temple* for the defendants. *Judgment for the defendants.*

Tuesday, Nov. 9.

REG. v. THE SOUTH-EASTERN RAILWAY COMPANY.—*Watson* moved to set aside an award, on the ground that the reasons given by the arbitrator on a separate paper, but delivered at the same time with the award, shewed that he had come to a wrong conclusion in point of law. The subject-matter of the reference was certain appeals against rates imposed upon the Reading and Reigate Railway; and the arbitrator had expressed his own dissatisfaction with the award, and with the state of the law on the subject. (*Kent* v. *Elstob*, 3 East, 18.) *Rule nisi.*

KIPLING v. INGRAM.—Special case as to validity of a paving rate. *Crowder*, for the plaintiff. *Watson*, for defendant. *Judgment for defendant.*

Wednesday, Nov. 10.

WALKER v. UNDERHILL.—*Lush*, in support of the demurrer to a replication to a plea of set-off. *Phipson*, contrà. At the suggestion of the COURT,

The parties agreed to amend without costs, as if the case was within the new Procedure Act.

HENNICKER v. HENNICKER.—*Unthank*, in support of the demurrer. *Willes*, contrà. The question was as to the validity of a bond conditioned for the payment of a sum of money, according to the terms of a deed of partition, that deed of partition not mentioning the amount of purchase-money. (11 Geo. 3, c. 140, ss. 22, 24; 55 Geo. 3, c. 184, s. 8.) *Cur. adv. vult.*

KERNOT v. PITTIS.—*Milward*, for the plaintiff. *Willes*, for the defendant. *Judgment for the plaintiff, by consent.*

KERNOT v. CATTLEY. *Stands over.*

COURT OF COMMON BENCH.

Reported by DANIEL THOMAS EVANS and R. VAUGHAN WILLIAMS, Esqrs. Barristers-at-Law.

(Before JERVIS, C.J. and MAULE, CRESSWELL, and TALFOURD, JJ.)

Friday, Nov. 5.

ROBERTS v. CORBETT.

Admissibility of evidence upon a disputed award.

The commissioner under an Act of Parliament who has made an award may be called as a witness to prove the state of his knowledge at the time the award was made, although he could not be called to prove the meaning of the award. A schedule to an award of commissioners determining the boundaries of mines in the Forest of Dean mentioned "old works;" the plan annexed to the award also shewed old works: but the plan was such that it could not conveniently set out everything, there being underground and open workings. There being a dispute as to what the words "old works" in the schedule applied to,

Held—1st. *That one of the commissioners might be called to prove that he did not know of certain old works to which it was contended that those words applied: and 2ndly. That that evidence was properly left to the jury.*

This was an action of trespass for entering a coal mine in the Forest of Dean, tried before Cresswell, J. at the last Gloucester Assizes, in which a verdict was found for the defendant.

Whateley, Q.C. moved to set it aside and for a new trial on the ground of improper admission of evidence, and for misdirection.

1st plea—Not guilty; 2nd. That the vein of coal did not belong to the plaintiff; 3rd. That the coal taken was not the plaintiff's.

The action was brought under an order of Vice-Chancellor Parker to ascertain the right to the property in question. Stat. 1 & 2 Vict. c. 43, s. 24, directed commissioners appointed under the Act to ascertain what persons were entitled to the coal and iron in the Forest of Dean, to determine the boundaries of the different mines, and to cause a plan to be made of the pits, setting out the metes and bounds, and also a schedule describing them to be annexed to their award. The commissioners in their award stated that they had in their plan delineated the gales, pits, levels, &c. "as far as the same can be conveniently ascertained." In the schedule the boundary of the mines in question was stated to extend "up to the old works." The point in dispute was what these old works were; it appearing that there were two sets of old works, and the plaintiff contending that one set of old works were intended, and the defendant the other. The plan marked out only one set of old works, it being difficult to delineate on one map both open and underground workings. At the trial one of the commissioners was called for the defendant, and the question was put to him, "Did you know of any old workings on the top of the crop?" This was objected to, but admitted; and he answered, that he did not. It is now submitted that, as the schedule mentioned old workings, and the plan set out some old workings, there was no patent ambiguity or inconsistency between them, and that evidence, therefore, could not be admitted to shew to what the words "old workings" in the schedule applied, there not being two subject-matters to which the descriptions were applicable. [JERVIS, C.J.—Could not the commissioner be called to prove the fact that there were no old workings at the time?] He was called to prove the state of his knowledge at the time, by which it was sought to explain what was meant; but where subject-matter exists to which the terms are applicable, no evidence is to be admitted to explain them. (Starkie on Evidence, 692.) I objected also that Mr. Justice Cresswell ought to have stated to the jury his opinion of the effect of the plan and the schedule. He did not do so, but summed up only the effect of the parol evidence.

JERVIS, C.J.—There are two grounds for this application. On the first point there is no question at all. The commissioner could not be asked what he meant by the award; but the question objected to was, whether he knew or not of the old workings in the crop, and this being a mere matter of fact, he was as competent to prove it as any one else. As to the second question, it was left doubtful by the map to what point they might go. And it was properly left to the jury.

MAULE, J.—The commissioners say in their award that they had delineated the pits, &c. in their plan "as far as could be conveniently ascertained." The plan therefore may have set out the bounds to some unascertained extent. If, therefore, a tree or wall were mentioned in it, the commissioner might be called upon to prove where it was. So here the commissioner was called to prove a matter of fact, namely the state of his knowledge. You object that it was in effect asking what his meaning was; but he only proves the state of facts, and from that his meaning is inferred. The question is, what are the old workings mentioned in the schedule? The plan does not shew what these old workings were, but it only professes to shew what it conveniently could. It could not conveniently shew these, because the commissioners did not know of them.

TALFOURD, J. concurred. *Rule refused.*

LIDDEL v. THE NEWPORT, ABERGAVENNY, AND HEREFORD RAILWAY COMPANY.

Admissibility of evidence—Proof of agency.

Before a conversation between one of the parties to the action and a third person can be given in evidence to prove an agreement by the other party, proof must be given of preceding authority to the third person to make the agreement, or of subsequent ratification. And the conversation itself cannot be given in evidence to assist in proving a subsequent ratification.

A. a landowner, objects to a railway passing through his lands. B. promises that it shall be carried past his land by means of a tunnel. A parliamentary notice is sent to A. stating that the railway would pass through his land by means of a tunnel, and his consent is asked. He does not oppose it. The Act passes. The company begin to construct their railway on the surface of his land. In an action by A. against the company for not carrying it through his land by a tunnel, A. seeks to give in evidence a conversation between himself and B.:

Held, that he must first prove B.'s agency, and that the notice did not shew a ratification, and that the conversation could not be given in evidence in order to shew that the notice ratified it.

This was an action against the defendants for breach of an alleged agreement to carry their railway past the plaintiff's mansion by means of a tunnel. It was tried before Jervis, C.J. The first count complained of a breach of agreement; the second sought to make the company answerable under their Act of Parliament. On the first issue there was a verdict for the defendants, on the second for plaintiff. A rule nisi had been obtained to set aside the verdict on the second issue, and

Crowder, Q.C. now moved for a rule to shew cause why there should not be a new trial in the event of the defendant's rule being made absolute. The first count alleged that the plaintiff objected to the railway passing through his property, and that an agreement was entered into between him and the provisional committee that the railway should be carried past his mansion by means of a tunnel, and that after the passing of the Act of Parliament incorporating the company, the company promised by deed to perform their agreement. Breach, that they did not do so. After the Act was obtained the company commenced constructing their railway on the surface. An injunction was obtained by the plaintiff, which was confirmed on appeal to the Lords Justices. It was then arranged that there should be an action to ascertain the facts. At the trial, the plaintiff was called to prove a parol agreement made by the plaintiff with a Mr. Sace, as an agent for the provisional committee. It was objected that his agency must be first proved. To answer that objection, a parliamentary notice to the plaintiff that the railway would pass through his land by a tunnel, with a schedule annexed, was put in; and it was contended that this confirmed the alleged agreement made by Mr. Sace, and that if the conversation between the plaintiff and Mr. Sace, were in evidence, this would appear. It was also shewn that Mr. Sace had been engineer to the promoters before the Act passed, and acted as their agent after they became a company. The Chief Justice rejected the evidence, and it was now submitted that he was wrong in so doing.

MAULE, J.—There is no ground at all. It is a very common case that one of the parties is desirous to prove agency, without calling a witness who might give evidence in favour of the other side. After a struggle, if he cannot do so, counsel says, "Well, then, I'll put Mr. So-and-so in the box." The plaintiff sought to give this conversation between himself and Mr. Sace in evidence, and it was objected that proof of agency must first be given.

The plaintiff said he could prove it by other evidence, and the notice was put in; but all that can be said of that notice is, that it is not inconsistent with Mr. Sace being an agent, and that is all. It has no reference to Mr. Sace or to any conversation. This conversation itself would not be competent between the parties until Sace's agency was proved. You must make a case on which the judge could determine that matter in the affirmative. Such proof must be given upon which the judge could properly decide there was such agency. It is not necessary, however, that conclusive proof should be given.

CRESSWELL, J.—The conversation would not be admissible unless in consequence of preceding authority or subsequent ratification. No evidence shewed preceding authority, and the notice does not allude to any authority, or any conversation. There is no allusion to anything else. It merely asks whether plaintiff agreed to what was set down in the notice.

TALFOURD, J. concurred. *Rule refused.*

Saturday, Nov. 6.

GAPP *v.* ROBINSON.

Common Law Procedure Act, 15 & 16 *Vict. c.* 76, *ss.* 10 *and* 12—*Revival of writ of summons—Uniformity of Process Act—Practice.*

Where a writ of summons issued on the 8*th of June, and expiring on* 7*th of Octob*[illegible]*, was sought to be renewed* (*for the purpose of keeping alive the original writ*), *under the directions of the Court, construing the* 10*th and* 12*th sections of the Common Law Procedure Act, the Court*

Held, that the case was within the exception of the 10*th section, which leaves the Uniformity of Process Act*, 2 *Wm.* 4, *c.* 39, *unrepealed*, "*so far as may be necessary for supporting any writs that may have been issued before the commencement of this Act*;" *and the Court directed an alias writ to be issued under the old practice, the plaintiff, when that writ has nearly expired, to proceed under the* 12*th section of the Common Law Procedure Act, and renew his original writ.*

Lush applied to the Court for directions to be given to the proper officer as to the practice of renewing a writ of summons, under the Common Law Procedure Act, 15 & 16 Vict. c. 76. The case had been before Cresswell, J. at chambers, and was by him referred to the full Court. A writ of summons in this cause was issued on the 8th of June last, and would therefore expire on the 8th of October, and the plaintiff now seeks to renew the writ, in order, by keeping it alive, to save the Statute of Limitations. The doubt is, how this should be done. The 10th section of the 15 & 16 Vict. c. 76, says, that "From the time when this Act shall commence and take effect, so much of a certain Act of Parliament passed in the second year of his late Majesty King William the Fourth, entitled 'An Act for Uniformity of Process in Personal Actions,' as relates to the duration of writs, and to alias and pluries writs, and to the proceedings necessary for making the first writ in any action available to prevent the operation of any statute, whereby the time for the commencement of any action may be limited, shall be repealed, except so far as may be necessary for supporting any writs that have been issued before the commencement of this Act, and any proceedings taken or to be taken thereon." The Common Law Procedure Act commences and takes effect on the 24th of October. [JERVIS, C. J.—According to the Uniformity of Process Act, 2 Wm. 4, c. 39, a writ of summons not duly renewed is gone.] Under that Act the plaintiff would have, until the 8th of November, to issue an alias writ, for the second writ may be issued within a month under that statute. [MAULE, J.—The exception in the 10th section of the Common Law Procedure Act, is material here—"Except so far as may be necessary for supporting any writs that may have been issued before the commencement of this Act, and any proceedings taken or to be taken thereon."] The clause prescribing the practice as to renewal of writs issued before the new Act (sec. 12) says, "Where any writ of summons in any such action shall have been issued before, and shall be in force at the commencement of this Act, such writ may, at any time before the expiration thereof, be renewed under the provisions of, and in the manner directed by, this Act; and where any writ issued in continuation of a preceding writ, according to the provisions of the said Act of his late Majesty King William the Fourth, shall be in force and unexpired, or where one month next after the expiration thereof shall not have elapsed at the commencement of this Act, such continuing writ may, without being returned non est inventus, or entered of record, according to the provisions of the said Act of his late Majesty, King William the Fourth, be filed in the office of the Court within one month next after the expiration of the continuing writ, or within twenty days after the commencement of this Act; and the original writ of summons in such action may thereupon, but within the same period of one month next after the expiration of the continuing writ, or within twenty days after the commencement of this Act, be renewed under the provisions of, and in the manner directed by, this Act; and every such writ shall, after such renewal, have the same duration and effect for all purposes, and shall, if necessary, be subsequently renewed in the same manner as if it had originally issued under the authority of this Act." It will be seen, on consideration of these two sections (10th and 12th), that the present case does not in terms fall within either of them.

MAULE, J.—It seems clear that it is not within the 12th section.

JERVIS, C.J. (after consulting the Masters).—This case is within the 10th section; you will, therefore, issue an alias writ. Since the point was brought before them, the Masters have consulted, and have unanimously come to the conclusion that the writ in such cases should be kept alive under the 10th section. When that writ has nearly expired, the plaintiff may then proceed under the 12th section, and renew his original writ.

Order accordingly.

DOE *dem.* HENRY WILTON, and MARY, his Wife, *v.* BECK and OTHERS.

Amendment—Striking out party Ejectment—Nonsuit—3 & 4 *Wm.* 4, *c.* 42, *s.* 23.

In an action of ejectment, the demise by the lessors of the plaintiff shewed the legal estate in both husband and wife. At the trial, the title produced shewed the legal estate in the husband alone; and the learned judge refused to amend the record, by striking out the name of the wife:

Held, that the decision of the judge was right, this not being an amendment, within the meaning of 3 & 4 *Wm.* 4, *c.* 42, *s.* 23, *such as the judge had discretion to allow.*

This was an action of ejectment tried before Williams, J. at Worcester Summer Assizes. A nonsuit was entered, but with leave for the plaintiff to move to set aside the nonsuit, and enter a verdict for the plaintiff, if the Court should be of opinion that the learned judge at the trial should have permitted an amendment of the record by striking out the name of one of the lessors of the plaintiff.

Alexander, Q.C. now moved accordingly to amend the pleadings, by striking out from the declaration the name of Mary Wilton. The lessors of the plaintiff claimed the property in dispute under the will of a Mrs. Stinton; and on putting in the will, it was found that the demise was to Henry Wilton, in trust for Mary, his wife; whereas, by the demise in the declaration, the legal estate was stated as in both the husband and the wife. It was contended for the plaintiff, at the trial, that it was competent for the judge to amend the record, by striking out the name of Mary Wilton; but his lordship thought he had no such power. The question, therefore, is whether such an amendment could have been made. The case of *Doe dem. Edwards*, 1 Mood. & Rob. 321, favours such an application as this. The only other case citable is *Doe dem. Errington*, 1 A. & E. 750, which is adverse; but that case is distinguishable from the present. Here our object is to strike out one of two names on the record, which it is submitted can be done under 3 & 4 Wm. 4, c. 42, s. 23. It is there enacted, that "It shall be lawful for any Court of Record, and any judge sitting at Nisi Prius, to cause the record, writ, or document on which any trial may be pending before any such Court or judge, in any writ, action, or in any information, &c. or proceeding on a mandamus, &c. where any variance shall appear between the proof and the recital, or setting forth on the record, &c. of any contract, custom, prescription, name, or other matter, in any particular or particulars not material to the merits of the case, and by which the opposite party cannot have been prejudiced in the conduct of his action, &c. to be forthwith amended." [MAULE, J.—Brother Williams was certainly right in holding that the Act quoted, which authorises amendments in certain cases, does not apply here.] Certainly, we are unable to produce any case in which the name of the plaintiff has been changed; but it is submitted we are within the letter of the statute, because here one plaintiff remains on the record, and this is a "setting forth on the record" within the purpose of the Act. It is admitted that if the judge had no power, he had no discretion to amend.

JERVIS, C.J.—As to his discretion, no doubt that is so.

MAULE, J.—In this case Henry Wilton and Mary his wife thought they had a joint right of action, and they sued accordingly, but at the trial they found that the right was only in one of them. They ask then to amend; but such a statement as that certainly is not within the scope of the statute authorising amendments.

By the COURT, *Rule refused.*

Monday, Nov. 8.

(Before JERVIS, C. J. and MAULE and TALFOURD, JJ.)

THE BRITISH, &c. LIFE INSURANCE COMPANY *v.* BROWNE.

Demurrer—Joint Stock Company — Companies Clauses Consolidation Act, 7 & 8 *Vict. c.* 110, *s.* 44.

An action may be maintained by a Joint Stock Company on a corenant in a deed, which has not been executed by the company in the manner pointed out in the 44*th section of the above Act, if the company only takes a benefit under the deed, and nothing is contracted to be done by the company.*

An Insurance Company advances 200*l. to A. and A. and B. corenant with the company by a deed inter partes, to pay an annuity to the company, and in the same deed A. and B. assign to trustees for the company, who are also parties to the deed, certain lands as a security:*

Held, that the company can sue upon the covenant, although the deed has not been executed by the company, the contract being unilateral, and the deed being in effect equivalent to a deed-poll, and that contracts on behalf of the company mean contracted by the company.

The action was brought by the company against the defendant on the covenant by defendant and one Loder, inter alia, to pay an annuity to the company, for 200*l.* advanced to Loder. The deed was inter partes, and by it land was assigned to trustees for the company as a security for the payment of the annuity. Plea on the 44th section of 7 & 8 Vict. c. 110, that the deed was not executed on the part of the company as directed by that section and was void. The 44th section enacts "That for the purpose of regulating contracts entered into on behalf of any Joint Stock Company completely registered under this Act (except contracts for the purchase of any article, the payment or consideration for which doth not exceed the sum of 50*l.* or for, &c. and except bills of exchange and promissory notes) every such contract shall be in writing, and signed by two at least of the directors of the company, on whose behalf the same shall be entered into, and shall be sealed with the common seal thereof, or signed by some officer of the company on its behalf, to be thereunto expressly authorized by, &c. and that in the absence of such requisites, or any of them, any such contract shall be void and ineffectual, except as against the company on whose behalf the same shall have been made." To the above plea the plaintiffs demurred.

Willes, in support of the demurrer.—Were I at perfect liberty, I should contend that this section was to protect the company and the shareholders from rash contracts; but in *Ridley* v. *Plymouth, &c. Company*, 2 Ex. 711, it seems taken for granted that the words of the section made a contract within it binding as against the company, but not against other parties; and I cannot now contend, as I otherwise should have done, that the section was applicable to the other parties only, and not to the company. I now, therefore, contend that it must be confined to cases of mutuality, and does not apply to a unilateral contract like this, under which there is nothing to be performed by the company. It could not have been intended by the Legislature that the forms mentioned in the 44th section should have been gone through to shew the intention of the company to take a benefit. There are several cases in which it is not necessary for the one party to execute the deed, as in *Cooch* v. *Goodman*, 2 Q.B. 580. [MAULE, J. mentioned the *Fishmongers' Company* v. *Robertson*.] That case has been doubted by the Court of Q.B. (*Copper Miners' Company* v. *Fox*, 16 Q. B. 229); but the case of *Rose* v. *Poulton*, 2 B. & Ad. 822, is an instance. [JERVIS, C.J.—The 44th section commences, "with respect to contracts entered into on *behalf* of the company;" this is *to* the company.] Yes; that shews that my construction is the right one. Moreover, if it applied to unilateral contracts, it would include bonds to the company.

Hugh Hill, Q.C. contrà.—I submit the contract is within the section. I do not doubt that in some cases a party may sue on a deed that he has not executed; but here the questions are—1st. What the contract is; and, 2nd. Is it within the section? The deed is inter partes, the plaintiffs being the third parties. One of the sets of parties are trustees for the company, and there is nothing to bind the company to recognise these or other trustees but the deed itself. In the deed there is land assigned to the trustees as a security for the due payment of the annuity, and it is thereby *agreed* and declared that the trustees should stand possessed of the land assigned as a security, &c.; and they covenant, in the event of a sale of the land, "to pay the residue of the money to the parties entitled." The exception in the section shews that the word "contract" is not in the first instance to be taken in a limited sense. There being provisions in the deed purporting to bind the company, they should have executed it.

Willes, in reply.—Everything done by this deed might have been done by a deed-poll. And it is now in effect contended by the other side that because it is in another form it ought to have been executed by the company, and cannot be sued on by them.

JERVIS, C.J.—I am of opinion that the plaintiff

is entitled to our judgment. It must be admitted that if this were a bond or a deed-poll, it would not be within the 44th section, and yet it is contended that because it is between parties, it is within it. The section says that all contracts in behalf of the company, except certain contracts mentioned, shall be executed by the company in a particular way, and if not shall be void, except as against the company. This is not a deed in behalf of the company within the meaning of the Act. A sum of money is advanced, and the defendant and another person covenant to pay an annuity. Land is assigned to trustees as a security, and that is to be sold if the annuity is not paid, and the surplus paid over to the parties entitled. This last provision would be binding on the trustees whether the company executed the deed or not, and so with all the other provisions. The section applies where something is to be done by the company, and then the execution by the company is necessary with all the formalities. If not so executed, the other party could enforce it against the company, but the company could not against the other party. This contract is entirely unilateral, and need not be executed by the company.

Maule, J.—I agree. The section is not perfectly clear as to its object; but the words are clear enough. This is a contract upon which, independently of the statute, it is competent for the covenantees to sue without execution by them. And that shews that this is not a contract on behalf of the company, and therefore not within the 44th section. As to the form of the deed, that does not signify.

Talfourd, J. concurred.

James v. Isaac and Others.

Demurrer—Common Law Procedure Act, ss. 51 and 116.

To a declaration brought on an executory agreement, a plea that the plaintiff and a third person have entered into a new agreement for the same purpose, and that the plaintiff received the new agreement in substitution and in satisfaction of the former one, is bad in substance.

A. and B. enter into an agreement for the building of a church. Part of the work is done, and B. receives an instalment for what he has done. B. then enters into an agreement with C. for completion of the church, and agrees to be paid certain instalments by C. and to look for the rest to subscriptions. This agreement being pleaded by A. in answer to an action by B. against him:

Held, that the plea shewed no satisfaction, and was bad in substance.

Quære, whether special demurrers pending at the time the Common Law Procedure Act came into operation are abolished by a retrospective operation of sec. 51 of that Act.

Quære, also, whether the 116th section, as to writs of error, has a retrospective operation.

This was an action on premises. The declaration contained counts for 300*l.* for work and labour and materials, and for money due on an account stated. Two of the defendants pleaded (inter alia) to the first count, that the money mentioned in the first count accrued due to the plaintiff under a certain agreement made on the 1st day of April, A.D. 1847, between him and the defendants, whereby the plaintiff agreed with the defendants to execute and perform all the works necessary in the erection of a church in the parish of Malpas, in the county of Monmouth, agreeably to certain plans, specifications, and details of the same, numbered from 1 to 15 inclusive, provided for that purpose by one J. P. architect, the whole of the said works to be performed for the sum of 1,140*l.* and to the entire satisfaction of the said J. P.; and that, after the making of the said agreement the plaintiff commenced the said works according to the said plans and specifications, and continued and proceeded with the same until the 1st day of August, A.D. 1850, when the said works, and the building of the said church, were finished and completed; and that during the progress of the said works and of the said building, and before the 18th day of February, A.D. 1850, divers sums of money, amounting in the whole to 580*l.* were paid to the plaintiff under the said agreement, and by the plaintiff received as instalments of the said sum of 1,140*l.* for and in respect of the said works and building of the said church as aforesaid; and that after the plaintiff had so received the said sum, and before the said 18th day of February, A.D. 1850, to wit, on the 26th day of January, A.D. 1850, the plaintiff discontinued the said works and the said building, and refused to continue the same or to allow the same to be proceeded with until he received payment of certain other sums of money, to wit, amounting to 320*l.* as instalments of the said sum of 1,140*l.* for and in respect of the said building of the said church, and that the plaintiff did then stop the said works, and the same remained so stopped until, to wit, the 18th day of February, A.D. 1850; and that afterwards, to wit, on the day and year last aforesaid, a certain agreement was made between the plaintiff and one Thomas Prothero, which said agreement was and is in the words and figures following: that is to say, "Whereas I, Benjamin James, having agreed to erect the new church at Malpas, mentioned in the within specification, and accompanying drawings, for the sum of 1,140*l.* have proceeded with the said works, and the building is now roofed and covered in, and I have received on account thereof the sum of 580*l.*; and whereas, in consideration of the sum of 200*l.* to be paid to me by Thomas Prothero as follows:—50*l.* now down, the receipt of which I acknowledge; of 50*l.* more on the 4th day of March next; 50*l.* more on the 18th day of March next, and the remaining 50*l.* on the 4th day of April next; I do hereby agree with the said Thomas Prothero to complete and finish in all respects the said new church, according to the said plans and specifications, so that the same shall be ready for consecration and opening on the 1st day of May next; and further that for the sum that will remain unpaid to me for erecting and completing the said church, I will accept and depend on such subscriptions as have been promised or can be raised to and by the Rev. W. D. Isaac" (averment, that Thomas Prothero paid the said sums of money on the aforesaid days); and that the plaintiff accepted and received the same of and from the said Thomas Prothero in full and complete performance of the said agreement, and that the plaintiff accepted and received the last mentioned agreement and the performance thereof by the said Thomas Prothero in satisfaction and discharge of the said agreement between the plaintiff and the defendants so made as aforesaid, and of the performance thereof by the defendants.

To this plea there was a demurrer.

Lush in support of the demurrer. The plea says that while the building was going on under the contract, another agreement was made by plaintiff with a third person, in substitution of all his rights against the defendants, and the defendants say by their plea that they can take advantage of it, as if they had been parties to it. I submit that they cannot do so. Moreover, if the plea admits that something was due, it does not avoid it by shewing a satisfaction; if it does not admit that anything was due, it is an argumentative denial, and amounts to non assumpsérunt. The plea is informal and bad on special demurrer.

Raymond, contrà.—If reliance is placed on the special demurrer, I submit that the Common Law Procedure Act, 15 & 16 Vict. c. 76, s. 51, which enacts that no pleading shall be deemed insufficient for any defect which could heretofore only be objected to by special demurrer, prevents advantage of it being now taken. There is nothing said about pending demurrers, and the section has, therefore, a retrospective as well as a prospective effect.

Jervis, C.J.—This section was not originally in the Act, and being added in the House of Commons, pending proceedings were forgotten. The 50th section stood originally alone in the Act with reference to special demurrers. I mention this to exonerate Mr. Willes.

Lush, contra, upon this objection. Primâ facie an Act is only intended to apply to what occurs after it came into operation; and a retrospective operation will not be given unless it be clearly shewn on the Act that it is so intended. If a special demurrer had been argued last Term, the Court could not now give judgment, if this section has a retrospective effect. [Jervis, C.J.—You could not have proceeded under the 52nd section to get the pleading amended.] No; and, therefore, we could not have put this pleading right; and at the time of the demurrer we were entitled to costs, and no provision is made for them. The 15th and 49th sections appear in their language to be prospective, and it is only where Acts of Parliament are repealed that there is any reference to previous proceedings.

Raymond, in reply.—There would be no hardship, for the 52nd section gives power to get an embarrassing plea amended. There is a similar provision in the 116th section, by which "no judgment in any cause shall be reversed for any error therein unless error be commenced within six years after such judgment signed or entered of record." [Maule, J.—Surely that does not mean to take away the right of bringing error altogether in the cases you refer to?] It has been held by Cresswell, J. that under sections 104 and 120 application should be made to the judge for issuing execution in all cases. [Jervis, C.J.—That is until rules are issued. We will speak to our brothers on this point, that we may be unanimous. You may now proceed to argue the general demurrer.] Then as to the general demurrer, the meaning of the plea is that the plaintiff was to look to a particular fund and not to the defendants. [Maule, J.—The objection is that it is made between the plaintiff and a third party.] Assuming that it amounts to accord and satisfaction by a third party, that is a good plea, as was decided in this court last Term in the case of *Belshaw* v. *Bush*. Secondly, it is not bad as amounting to the general issue. (Stephen on Pleading, 231; *Smart* v. *Hyde*, 8 M. & W. 723.)

Maule, J.—In that case it is said that every word in the plea is consistent with the contract in the declaration, but that is not so here.

Lush, in reply. This case is distinguishable from that of *Belshaw* v. *Bush*. That was on a bill of exchange. This is an executory agreement, and before that is performed another is entered into for the building of the church upon different terms between plaintiff and a third party. But an agreement cannot be rescinded except by the parties who agreed to it. It is not an accord and satisfaction at all.

Maule, J.—No; there is nothing to satisfy. It is a rescission, if anything. Prothero puts himself in the place of the defendants. But that will not do.

Jervis, C.J.—The plea is bad in substance, and we need not decide the other point. We will, however, speak to our brothers about it.

Judgment for plaintiff.

Wednesday, Nov. 10.

(Before Jervis, C.J. and Maule and Talfourd, JJ.)

Statute of Frauds, 29 *Car.* 2, *c.* 3, *s.* 4.

A foreign parol contract not to be performed within a year, but good according to the lex loci, cannot be enforced by an action in this country.

A. by a parol agreement in France, engages B. to collect eggs for him, and consign them to him in England, at a salary of 100*l. per annum. B. brings an action in this country against A. for not taking him into his service as agreed. Plea, non assumpsit:*

Held, that such action would not lie. That the 4th section of the Statute of Frauds is applicable to procedure, and not to the solemnities of the contract itself, and does not make a foreign contract void, so as to be contrary to the comity of nations, but only prohibits an action being brought upon it in this country.

This case was tried last Term before Talfourd, J. at the sittings in Middlesex. The declaration was in assumpsit, on a parol contract between the plaintiff and the defendant, alleged to have been made "at Calais, in France, to wit, at Westminster," and sought damages against the defendant for not receiving the plaintiff into his service. The material plea was non assumpsit. It was proved at the trial by the plaintiff and his father, that the plaintiff was engaged in France by the defendant to collect eggs in France, and ship them at Calais, consigned to the defendant in England; and that he was to be paid a salary of 100*l.* per annum, beginning from the 25th of December, 1849, whether the business was commenced or not; and a French advocate was called to prove that it was a good contract according to the lex loci. On the issue of non assumpsit there was a verdict for the plaintiff.

Last Term *Hawkins* obtained a rule to shew cause why the verdict should not be entered for the defendant, or why there should not be a nonsuit, on the ground that the contract was within the 4th section of the Statute of Frauds, 29 Car. 2, c. 3, by which it is enacted, that "no action shall be brought upon any agreement that is not to be performed within the space of one year from the making thereof, unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or by some other person thereunto by him lawfully authorised."

Wednesday, Nov. 3.—*Allen*, Serjt. and *Metcalf*, shewed cause. The 4th section of the Statute of Frauds does not apply to a foreign contract sought to be enforced in this country. The question is, whether it applies to procedure or to the right. If it applies to procedure only, it must be admitted that this action is not maintainable. If it affects the right, then it will not extend to contracts abroad, for that would be contrary to the comity of nations. But it does affect the right, and makes contracts within it void in their inception. The words, "no action shall be brought upon any agreement," are equivalent to saying that the agreements referred to shall be void. In *Carrington* v. *Roots*, 2 M. & W. 248; and *Reade* v. *Lambe*, 6 Ex. 130, the 4th section is said to be the same in effect as the 17th, which enacts, that "no contract, &c. shall be allowed to be good." They referred also to Story's Conflict of Laws, sec. 260; 1 Burgess's Colonial Laws, 29, and 3 Ib. 760.

Hawkins and *Honeyman* were now heard in support of the rule. No action is maintainable here upon this contract. Although a foreign contract may be good according to the lex loci of the country in which it is made. The remedy upon it must be taken according to the law of the country in which it is sought to be enforced. (*British Linen Company* v. *Drummond*, 10 B. & C. 903; *De la Vega* v. *Vianna*, 1 B. & Ad. 284; *Laythorp* v. *Bryant*, 2 Bing. N. C. 746; *General Steam Navigation Company* v. *Guillon*, 11 M. & W. 877; *Ferguson* v. *Fife*, 8 Clarke & Fin. 12; 1 Clarke and Fin. 1; Story's Conflict of Laws, 635, B. *n. a.*; *Browne* v. Thornton, 6 Ad. & Ell. 185.) The 4th section of the Statute of Frauds refers to the evidence by which the contract is to be proved.

The contract itself need not be in writing if you can get evidence of it in writing, as e. g. a memorandum of it in a letter to a third party. The agreement in such a case exists antecedently to the memorandum in writing, and that shews that the statute refers to the evidence of the contract, i. e. matter of procedure, and not to the contract or right. (1 Sugd. V. & P. c. 3, s. 38, p. 174, ed. of 1839; *Dobell* v. *Hutchinson*, 3 Ad. & Ell. 355; *Crosby* v. *Wadsworth*, 6 East, 602.) The 4th section only prevents an action being brought. (*Laythorp* v. *Bryant*, 2 Bing. N.C. 746.) The observations of the Court of Ex. in *Carrington* v. *Roots* and *Reade* v. *Lambe* are to be taken only in reference to their subject-matter. In Courts of Equity contracts within this section, of which there has been part performance, are enforced. Reference was also made to 4 Moor. P. C. Cases, 300; and by Maule, J. to the *Sussex Peerage* case, where a perfectly good marriage according to the lex loci where it was solemnised, was held to be no marriage in this country; and to *Davis* v. *Trevanion*, 2 D. & L. 743.

Allen, Serjt. referred the Court to Boullenois' "Traité de Personalité," c. 2, tit. 4, obs. 46, p. 459, in which a passage from Brodeau, letter C, n. 42, was cited, to the effect that where two persons contract by parol in the presence of witnesses in a place where such contracts are good, and an action is brought on such contract in a place where proof of such contract by witnesses is not admitted, proof by witnesses ought to be admitted, as belonging ad vinculum obligationis et solemnitatem.

Jervis, C.J.—I am of opinion that this rule should be made absolute. There is no question at the Bar as to the principle. My brother Allen admits that if the agreement had been made in this country, no action could be brought upon it. It is admitted on the other side, that if the 4th section of the statute applies to contracts, and makes them void, it does not operate on contracts made abroad. I am of opinion that it does not apply to the solemnities of the contract itself, but to its capability of being enforced in this country. It is true that, if it be not enforceable here, it is practically also void here. But it is not the same thing. The words themselves lead to the conclusion to which I have come [his lordship here read the words of the section]. It does not say the contract shall be void. It only requires evidence of the agreement in writing. And therefore it often happens that the agreement exists before the memorandum in writing by which according to the statute it may be proved. That being the view which presents itself on the face of the statute, we find it borne out by the cases which have been decided on the construction of it. If the Courts have thought that the agreement existed before the memorandum which may be evidence of it, then the section applies to procedure, and not to the solemnities of the contract itself. But it has been held, and cannot be doubted, that any writing subsequently made and signed by the party sought to be charged, is a sufficient compliance with this section. Therefore principle and authority agree. But reliance was placed on expressions which fell from the Court of Ex. in the two cases of *Carrington* v. *Roots* and *Reade* v. *Lambe*. It is a sufficient answer to that that the attention of the judges was not called to this particular case, and that they decided those cases on their own subject-matter. It must not be forgotten that in *Crosby* v. *Wadsworth*, Lord Ellenborough says that this section does not vacate the contract. [His lordship also cited *Laythorp* v. *Bryant*.] The contract exists antecedent to the writing, and the section takes away the remedy. It relates, therefore, to procedure, and an action on a foreign parol contract will not lie in this country. As to the passage cited from Boullenois, that is not opposed to our view, for it is there said that proof by witnesses belongs ad vinculum obligationis et solemnitatem, whereas this section does not refer to the solemnities of the contract.

Maule, J.—This case turns upon the plain words of the Act of Parliament. It is said that effect is not to be given to them because the contract was made in France. In literal terms this section does not say no contract shall have any force, but no action shall be brought. That applies to English courts, and therefore its terms apply to something to take place in England, and prohibits it unless the requisites of the statute are complied with. But it is said in some cases cited that these words are equivalent to "the agreement shall be void." Suppose this a universal proposition; still it would not be a legitimate construction to substitute the equivalent words for the actual words, and then proceed to argue as if the equivalent words had been used. The actual words themselves are those to be considered. If both expressions are equivalent, it is idle to substitute the one for the other. If the substituted words are capable of a different construction, that shews they are not equivalent. The words in the 4th section may, on many occasions and for many purposes, be equivalent to the words "the contract shall be void;" but they are not so in terms, and here, according to principle and authority, their meaning is, that you shall not bring an action upon a contract unless it can be proved according to the requisites of the 4th section.

Talfourd, J. concurred. *Rule absolute.*

BUSINESS OF THE WEEK.

Thursday, Nov. 4.

Holmes v. London and North-Western Railway Company.—This was an action for the infringement of a patent; tried before Jervis, C.J. at the sittings after last Trinity Term. Verdict for the plaintiff, with nominal damages. *Knowles*, Q.C. (*Webster* with him) now moved to set aside the verdict, and enter a verdict for the defendant. The declaration alleged that a certain person named Harrison was patentee of a new turning-table for railways, and had assigned to the plaintiff, and that defendant had infringed the patent. The usual pleas were pleaded, any one of which raises the question now before the Court. The substantial defence was, that the invention of Harrison was not new, but the invention of one Hancock, and patented by him, with the exception of one particular. [Jervis, C.J.—The difference between the two was the introduction by Harrison of a suspension-rod which improved on the old invention.] Yes, there were one or two slight differences, which amounted to nothing in the end. The only novelty of note is the suspension-rod, and the question is whether this has been sufficiently described in Harrison's specification. Now every part of Harrison's patent is described in Hancock's patent. The plaintiff's assignor claims, in fact, the same invention as Hancock's; he makes no reference whatever to the suspension-rods. Jervis, C.J.—You may take a rule.

Rule nisi.

Peterson v. Ayre.—This was an action of assumpsit, tried before Jervis, C.J.; verdict for the plaintiff, 165*l*. *Byles*, Serjt. now moved for a rule calling on the plaintiff to shew cause why the verdict should not be set aside, and a verdict entered for the defendant, or why a nonsuit should not be entered, or why the verdict should not be reduced to 27*l*. or for a new trial. The declaration stated that the defendant had sold to the plaintiff 150 tons of linseed cake, "to be shipped at Flensburg the first open water after the end of the month of January." Breach—That the defendant did not ship at the first open water after the end of January, or within reasonable time thereafter, and an allegation of special damage. The defendant pleaded 1st, Non assumpsit; 2nd. A traverse of the bargain; 3rd. Performance (that he did ship, &c.); 4th. That he shipped, &c. in reasonable time. On the 5th plea nothing turned. It appeared that the linseed belonged to Stoppel and Sons, of Hamburgh, and that the defendant was their agent for the sale of these goods. Messrs. Howes and Batten, as agents for the plaintiff, bought the goods, and regular bought and sold notes between Howes and Batten and plaintiff, and Howes and Batten and defendant, were exchanged. The bought and sold notes between Howes and Batten and defendant shew that defendant was a mere agent in the transaction, beginning thus:—"Bought of E. O. Ayre, esq. on account of Stoppel and Sons." The plaintiff at the trial put in as part of his case, the bought and sold note between Howes and Batten and the plaintiff, which was exactly the same as that between them and defendant, with the exception that the words "in the spring" are omitted. Ayre, the defendant, struck out from his note the words "in the spring," as he swore on 6th January, the day following the bargain; but on the 17th February he sent to Stoppel and Co. a letter containing a copy of the contract, with those words included. It appeared that the goods were actually shipped, and bills of lading signed on the 22nd March. On the 5th of February the plaintiff sold the linseed cake at an advance of a few shillings a ton, amounting in the whole to 27*l*. 10*s*. to which sum the verdict, if we fail on the more important point, should be reduced, it being the difference between the market price at the one time and the other. If entitled to recover at all, that is the sum he must have; but he claims and says he could have made 110*l*. more. The first point is, that the defendant here acted as a mere agent, and is not personally liable. In proof of this, the invoice, as will be seen, is made out on account of and in the name of Stoppel and Sons, and there was a correspondence between plaintiff and them relative to this matter. The second point is as to "open water in the spring," which is on one of the bought and sold notes. The defendant says he was afraid they would not get the linseed cakes from the crushers in time for shipment, therefore he substituted the words "after the end of January." Now, if the word "spring" is taken to refer to the season following 21st of March, you make the words "after the end of January" of no use. The true meaning is this, that the linseed cakes are to be shipped at the first open water in the spring, but not until after the end of January. It is admitted that this was not the intention of the parties, but the Court cannot look to that. [Jervis, C.J.—The real meaning of the parties is, "not to be shipped till after the 21st of March." The third point is, that supposing the plaintiff is entitled to succeed, it can only be to the extent of 27*l*. 10*s*. because the only sum he can recover is the difference between the price of the goods at the date of the contract and the delivery. The plaintiff had actually sold to one Crofts at that profit. Lastly, a new trial is asked because the Court may think a question might arise for a jury, with whom the contract was made.

Rule nisi.

Little v. The Newport, Abergavenny, and Hereford Railway Company.—This was an action of covenant, tried at the last sittings in the Guildhall, before Jervis, C.J.: verdict for the plaintiff on one issue, but on some points for the defendants. *Bramwell*, Q.C. (Sir *Thos. Phillips* with him) now moved for a rule to shew cause why the verdict for plaintiff should not be set aside and entered for the defendant. Under the covenant, the defendants undertook to pass under plaintiff's land through a tunnel; instead of doing so, they deviated within the limits prescribed by the statute, but to such a distance that a tunnel could not be constructed, and they passed through the land by means of an open cutting. The plaintiff alleged that defendants were bound to make a tunnel, and the defendants traversed that obligation. It was now contended that the defendants were not compelled, under the Act 8 & 9 Vict. c. 20, ss. 13 and 15, to make the tunnel as marked on the original plans. As to sec. 13, it only applies where it is possible to make a tunnel, which was not the case here. The question is not whether the defendants have the power of deviating from the original line. The declaration, however, assumes the defendants have deviated, and having done this, raises the question whether the defendants were bound to make the tunnel. Jervis, C.J.—Take a rule.

Rule nisi.

Dodd v. Carrach.—This was an action for work and labour, and money paid. *Pleas*—The general issue, set-off, and payment. It was tried before Jervis, C.J. on June 26 last, at the sittings in London. *Hugh Hill*, Q.C. moved for a rule to shew cause why the verdict should not be set aside and a new trial had, on the ground of misdirection. The sum sought to be recovered was 48*l* 7*s* 2*d*. The Court would not entertain the question of misdirection, holding there was nothing in the point.

Rule refused.

Re Mary Taylor.—*Brewer* moved that instructions be given to the proper officer to admit an acknowledgment made by a married woman under the Fines and Recoveries Act. The requisites had been duly complied with.

Order accordingly.

Haynes v. Payne.—*Crosby* shewed cause against a rule obtained on a former day for a new trial, on the ground that the case was struck out because neither counsel nor attorney was present when the case was called on, they not expecting it would be taken when it was. They had all left at a quarter to four. The Court ordered the rule to be made absolute on payment of the costs of the day. Rule to be discharged, unless costs paid within a week.

Rule accordingly.

Re Tomlins.—*Brewer* moved to strike an attorney off the rolls of this court at his own request, and on the usual affidavit.

Rule granted.

Friday, Nov. 5.

Crawford v. Dixon.—Tried before Jervis, C.J. at the sittings at Guildhall. Verdict for plaintiff; damages, 437*l*. 10*s*. *Knowles*, Q.C. moved to have the verdict set aside and entered for the defendant, or for a new trial. Dixon was the clerk to the committee of visitors of the Northumberland Lunatic Asylum, and was a nominal party, the action being really against the visitors. The plaintiff had been employed to make designs for a lunatic asylum, to be approved of by the committee, and, if approved, to complete drawings, &c. for which he was to receive the sum of 437*l*. 10*s*. His drawings were not approved of; he then made others, which were also rejected, and the matter was broken off. He, in this action, sought to charge the visitors personally, sued in the name of their clerk, under 8 & 9 Vict. c. 120. It was now objected, on the part of the defendants, that no action would lie against them, their power being ministerial only under the provisions of the Act, and the justices being directed by the Act to make a rate for the payment of expenses. Cases cited:—*Allen* v. *Waldegrave*, 2 Moore, 621; *Tuck and Others* v. *Ruggles*, 5 Esp. 237; *Bogg* v. *Pearse*, lately decided in the C.B.

Rule nisi.

Duncan v. Tindal.—Action on promises for the purchase of the ship *Midas*. Verdict for plaintiff. *Shee*, Serjt. moved for a rule to shew cause why the verdict should not be set aside, and a nonsuit entered, on the ground that there was no bill of sale, but merely an agreement for a transfer. Cases cited:—*Hughes* v. *Morris*, 16 Jur. 603; Abbot on Shipping, 5th ed. 50.

Rule nisi.

Mathew v. Osborne.—*Bramwell*, Q.C. moved for a rule to shew cause why the verdict for the plaintiff should not be set aside, and a verdict entered for the defendant, or why the damages should not be reduced. The action was for mesne profits. The premises in question were copyhold, and had been assigned by a married woman and her husband to a person through whom the plaintiff claimed as a security for an annuity. The defendant had been let into possession by the grantors of the annuity. He had demised them to tenants for some years, and had paid the annuity. He had never had notice to give up possession. The grounds for the motion were:—1. That the original surrenderee of the premises had never been admitted, and could not devise them by his will, the legal estate being in the grantors of the annuity and their heirs. (*Doe dem. Tofield* v. *Tofield*, 11 E. 246; Watkins, 328—330.) 2. That there had been no surrender to the use of the will, the stat. of Geo. 3, dispensing with a surrender, only applying to cases where a surrender might have been made. 3. That the devise was to three persons in trust, and only one had been admitted, and he was therefore only entitled to a third. 4. That there was no evidence of the married woman having been separately examined. (Watkins, 230.) 5. That defendant was in possession by his tenants, and there had been no demand of possession. (*Doe dem. Whittaker* v. *Hales*, 7 Bing. 322; *Doe dem. Rogers* v. *Cadwallader*, 2 B. & Ad. 473; *Burn* v. *Richardson*, 4 Taunt. 720.) 6. That the plaintiff did not shew possession within twenty years; and if he relied on the payment of the annuity, that proved that defendant had an estate which ought to have been determined. 7. That damages had been given for two years' rent, whereas the plaintiff had been admitted, and had entered into possession only in March, 1852.

Rule nisi, subject to liberty on the part of the plaintiff to move to increase the damages.

Appeals from decisions of Revising Barristers and County Courts were fixed to be taken on Friday, the 12th of November, and on the succeeding Wednesdays and Fridays.

Saturday, Nov. 6.

Griffiths v. D. L'Espinasse and Another.—This cause was tried before Jervis, C.J. in Surrey. Verdict for the defendant. *M. Chambers* now moved for a rule to shew cause why a new trial should not be had, on the ground that the verdict was against the weight of evidence and misdirection. The case will be reported next week.

Robert Jones v. Ann Jones.—This was an action on the case for disturbance of a bridle-way and foot-way. Plea, not guilty. The cause was tried at Ruthin last Assizes before Talfourd, J. Verdict for the defendant. *Welsby* now moved for a rule to shew cause why the verdict should not be set aside on the ground that it was against the weight of evidence. The way in question led through a steep and narrow close called Naut-carreg-y-fran, which had been practically disused for many years except as a foot-way; but proof was given for the plaintiff that it had been used as a bridle-way, for it had gates made at intervals, which, though not wide enough to admit carriages, would well pass horses and cattle. Some of the gates had also stiles adjoining. The way had been used by, amongst others, a man leading a stallion about the country. There

was also evidence of reputation, many persons having heard from their fathers, uncles, and others, that such was the road used by people on horseback in going to Denbigh, Ruthin, and various places. The defence was entirely of a negative character; there certainly had been no bridle-way within twenty years. *Rule refused.*

Ripon *v.* Hunt.—This cause was tried before Jervis, C.J. at Hertford Summer Assizes. Verdict for the defendant on the second plea. *Edwin James*, Q.C. now moved for a rule calling on the plaintiff to shew cause why judgment should not be entered for the plaintiff non obstante veredicto. It was an action on a bill of exchange, to which the defendant had pleaded that he had compounded with his creditors under 11 & 12 Vict. c. 100, and that the bill was included in the composition. Replication that the composition was bad, inasmuch as it was not signed by six-sevenths of the creditors in number and value. (*Tetley* v. *Taylor*, 21 L. J. 346.) *Rule nisi.*

Jones *v.* Booth.—This cause was tried at Stafford before Maule, J. Verdict for the plaintiff, 3*l.* 1*s.* 6*d.* *Miller*, Serjt. now moved for a new trial on the ground of misdirection. It was an action by a builder for value of a quantity of bricks supplied to the defendant in March and April 1851. There had been a former action by defendant against plaintiff, in which the latter actually set off these goods as supplied to the defendant at his request. The defence here is, that there was no credit given at all, but the goods were supplied in part payment of a debt due to defendant. The direction seemed to be against this. *Rule refused.*

Jones *v.* Ambrose.—This cause was tried before Maule, J. in Surrey. Verdict for the plaintiff. *Hawkins* now moved to set aside this verdict and for a new trial, on the ground of misreception of evidence. It was a feigned issue. An action had been brought by the defendant against one Ray, had proceeded to judgment, and he seized goods which plaintiff alleges belonged to him. The plaintiff was a surgeon attending Ray's family, and had lent him 25*l.* on the security of the goods in question. For the plaintiff, evidence was offered to impeach the judgment debt of Ambrose; and it was urged that the judgment debt was invalid, because it was for a debt included in his schedule when he became insolvent. The plaintiff offered to call the debtor Ray, but we objected; but the Judge permitted him to be examined, and he swore he had received no consideration for defendant's debt; and it is to the admission of this evidence we object. Jervis, C.J. after consulting with Maule, J.—You objected, and it turns out that my brother Maule admitted the objection, and did not take down the evidence. That was complying with your own objection, so there is no ground whatever for asking this rule. *Rule refused.*

Re George Hume, One, &c.—*D. T. Evans* moved for a rule to strike George Hance, an attorney, off the rolls of this court at his own request, he having been appointed by the Master of the Rolls, under the recent Act for abolishing the office of Master, one of the chief clerks in Chancery. *Rule granted.*

Shaman *v.* Saunders.—This was an action of indebitatus assumpsit for work and labour, &c. *Plea*—Set off and payment in goods. *Replication* The Truck Act. *Bittlestone* now moved for a new trial, on the ground of misdirection. The substantial question raised was, whether a workman who superintended seven or eight others engaged in the same occupation (getting ironstone), and was paid by the ton, was an "artificer" within the meaning of the Truck Act. *Rule nisi.*

Gapp *v.* Elwes.—*Pearson* moved herein to set aside an award for want of finality, and on the ground that the award exceeded the sums found at the trial, which were, debt 20*l.* and one shilling damages. The arbitrator awarded 30*l.* 1*s.* (He cited Watson on Awards, 4; *Pearce* v. *Cameron*, 1 M. & S. 676; *Bonham* v. *Charlton*, 5 East, 139; *Prentice* v. *Read*, 1 Taunt. 151; *Hayward* v. *Phillips*, 6 A. & E. 119.) Jervis, C.J.—On the authority of the last case you may take a rule. *Rule nisi.*

Monday, Nov. 8.

(Before Jervis, C.J. and Maule and Talfourd, JJ.)

Baker *v.* Halliwell.—*Lush* moved to enlarge a peremptory undertaking to try. *Rule nisi.*

Re Stout.—*Parry* moved for a writ of prohibition against the judges of the Consistory Court, and for a certiorari. *To be mentioned again.*

Foster and Others *v.* Oxford, Worcester, and Wolverhampton Railway Company.—*Phipson* moved to set aside an order of Williams, J. to set aside a judgment which had been entered up against the defendant for not pleading issuably after being put on terms to plead issuably. The declaration was for the price of rails, and for not accepting others. Plea, that one of the plaintiffs was a director of the company at the time of the contract, and that the contract was void under the Companies Clauses Act, ss. 85, 86. Jervis, C.J.—The plea raises a most important question. Maule, J.—It may be a bad plea in point of law; but it is only where the point is a frivolous one that your rule would be granted. *Rule refused.*

Tuesday, Nov. 9.

The Court during the greater part of the day was engaged in the Ex. Ch. on errors from the Q. B.

Alexander *v.* Hartley.—*Channell*, Serjt. moved to set aside an order of Nisi Prius, and for a new trial, unless the defendant will consent to name a new arbitrator, the arbitrator named in the order having died. (He cited *Doe dem. Phillips* v. *Rollings*, 2 C.B. 813.) He suggested, that in such cases the judge ought to have power to name a new arbitrator. *Rule nisi.*

Gladwyn *v.* Aspland.—*Prentice* moved to rescind an order for a peremptory undertaking to go to trial. *Rule nisi.*

Wednesday, Nov. 10.

Clissby *v.* Cooke.—*Byles*, Serjt. (with him *Needham*) shewed cause against a rule. *Hugh Hill*, Q.C. and *Kingdon* were heard in support of the rule. The case went off on a bye point. *Rule absolute.*

The Court announced that they would be engaged in the the Exchequer Chamber on Thursday.

COURT OF EXCHEQUER.

Reported by Frederick Bailey and C. J. B. Hemslet, Esqrs. Barristers-at-Law.

Saturday, Nov. 6.

Morgan and Another *v.* Jones.

Judgment as in case of a nonsuit— Common Law Procedure Act, (15 & 16 *Vict. c.* 76.)

Judgment as in case of a nonsuit cannot be moved for in an action of assumpsit since the Common Law Procedure Act, 1852; *the* 100*th section of that Act having repealed the* 14 *Geo.* 2, *c.* 17, *as to judgment in case of nonsuit, except as to proceedings taken or commenced under the latter statute, as to judgment in case of nonsuit, before the commencement of the Common Law Procedure Act*, 24*th Oct.* 1852.

F. Bailey moved in this case for judgment as in case of a nonsuit. Issue was joined in July last, and notice of trial given for the then ensuing assizes at Cardigan; the question was, whether since the Common Law Procedure Act (15 & 16 Vict. c. 76), ss. 100, 101, such a motion and course of proceeding as this was not now altogether gone. It seemed to him clearly to be so from the terms of the 100 and 101 sections, unless some proceedings under the statute of 14 Geo. 2, c. 17, had been taken previous to the 24th of October last, when the Common Law Procedure Act came into operation and repealed that of Geo. 2. Here there had been no such proceedings. Some doubts by the profession were suggested as to the word "thereupon" in the latter part of the 100th section of the 15 & 16 Vict. c. 76, whether it did not refer to the "cause" or action, instead of the Act of Geo. 2; yet the terms of the 101st section seemed certainly to clear away all doubt. As there were many motions of the same kind, it would be desirable to have a suggestion of the opinion of the Court upon it.

Platt, B.—It is very clear that unless some proceedings had been taken under the Act of Geo. 2, in reference to the judgment, as in case of nonsuit, before the 24th of October last, when it was repealed, you cannot proceed now under it. If any proceedings had been taken, a motion made and a peremptory undertaking given, for instance before the 24th of October, it may have been different.

No rule.

Monday, Nov. 8.

Doe dem. Leigh *v.* Holt.

Common Law Procedure Act —Nonsuit— Ejectment.

The Court refused to grant a rule for judgment as in case of a nonsuit in an action of ejectment, the 101*st section of* 15 & 16 *Vict. c.* 76, *having so far repealed* 14 *Geo.* 2, *c.* 14.

In this case issue had been joined before last Term, and the plaintiffs had neglected to proceed to trial. *Milward* moved for judgment as in case of a nonsuit, and referred to the 100th, 101st, and 202nd sections of the Common Law Procedure Act. He contended that the group of sections in that Act relating to ejectment could not refer to actions now pending, for by the 202nd section it is provided, that "If, after appearance entered, the claimant, without going to trial, allow the time allowed for going to trial by the practice of the Court in ordinary cases after issue joined to elapse, the defendant in ejectment may give twenty days' notice to the claimant to proceed to trial at the Sittings or Assizes next after the expiration of the notice, and if the claimant neglects to proceed to trial in pursuance thereof, and the time for going to trial shall not be extended by the Court or a judge, the defendant may sign judgment in the form contained in the schedule (A.) to this Act annexed, marked No. 19, and recover the costs of defence;" but this action having commenced before the Act, that section could not apply, for there is no claimant on whom to serve the notice. The question, then, is, whether the 101st section, which repeals the stat. 14 Geo. 2, c. 17, as to judgment as in case of a nonsuit, is applicable to cases of ejectment. Then as to the 102nd section, requiring twenty days' notice to be given to the plaintiff, was that applicable to actions of ejectment, and, if so, to whom in such case was the notice to be given.

By the Court.—The 101st section of the Common Law Procedure Act repeals the 14 Geo. 2, c. 17, so far as judgment as in case of a nonsuit is concerned, and you must therefore take the cause down for trial by proviso. *Rule refused.*

Wednesday, Nov. 10.

Shaw *v.* The Bank of England.

Patent Law Amendment Act—Power of Court to grant injunction in cases of infringement—15 & 16 *Vict. c.* 83, *s.* 42. (*a*)

An affidavit to obtain an inspection of a machine, supposed to be an infringement of a patent, must swear that it is in the possession of defendant, and that it is believed to be an infringement.

Quære, whether the power of the Courts of Common Law extends to the granting such an inspection.

Hawkins moved, under the 42nd section of the Patent Law Amendment Act, for a rule to shew cause why one Fothergill, and certain other persons named in the affidavit, should not have leave to inspect the machine used by the defendants for paging and numbering their books. An action was pending in the Court for the infringement of the plaintiff's patent for such a machine, and he was desirous that certain persons should inspect the defendant's machine to see whether or not it was an infringement, and in fact to enable them to give their testimony at the trial. [Martin, B.—You mean to say, that the word "inspection" in this clause applies to every inspection that the Court thinks it necessary that the party applying should have. Pollock, C.B.—This is a power only hitherto exercised by the Court of Chancery; and now that the Legislature has given to the Common Law Courts the power of granting injunctions, it must be presumed that those powers are to be exercised in the same way as they have hitherto been by the Court of Chancery. Cases have occurred in Chancery when such an inspection as here asked for has been granted. [Alderson, B.—You say to the defendant, produce the machine you use; he does so, which is an admission that it is used by him;—this application is in the nature of a discovery.] [The Court desired to see the affidavit.] Pollock, C.B.—This affidavit is very vague and defective, and on it the Court cannot grant what is now asked. You ought to swear that there is such a machine, and that you have reason to suppose it is an infringement; there is nothing of the sort sworn here.

Alderson, B.—At any rate you must amend your affidavit, but I do not think that even then you will take anything by your motion.

Rule refused.

Dublin and Wicklow Railway Company *v.* Black.

A plea of infancy to an action for calls on shares, should aver that the infant disaffirmed and repudiated the contract within a reasonable time.

Action for calls. Plea—Infancy, and repudiation. Demurrer.

Phipson, for the plaintiff.—This plea is bad. It does not say that the defendant repudiated within a reasonable time; it merely says that he took shares, and after he became of age, and before the commencement of the action, disaffirmed and repudiated. The result of the decisions on this subject (*The North-western Railway Company* v. *M'Michael*, 5 Ex. 111, and the same company v. *Pilcher*, reported in the same volume and page) is, that an infant purchaser of shares is much in the same position as an infant purchaser of real estate; that is, he may repudiate the contract, but he must do so within a reasonable time. (He cited *Crep's* case, Cro. Jac. 320; *Carter* v. *Elliott*, 2 Bulst. 69, and cited in *Evelyn* v. *Chichester*, 3 Burr. 1717; *Holmes* v. *Blogg*, 8 Taunt. 35, and 2 Moore.)

Addison, in support.—This contract was in the nature of an agreement for a lease, or to become a partner. The shares were not issued, or the company established, when it was made. The plea shews that the agreement is void; or, if the Court should think that it was only voidable, then the repudiation here was sufficient. (He cited 8 Vict. c. 16, s. 8; *The Cork and Brandon Railway Company* v. *Cazenove*, 10 Q.B. 935; *The Newry and Enniskillen Railway Company* v. *Coombe*, 3 Ex. 565; *Kettley's* case, Brown. Rep.; Co. Litt. 38.)

Alderson, B.—Surely the defendant should have disaffirmed before the call was made, or within a reasonable time. You had better amend the plea by introducing such an averment.

Defendant to amend within a week, otherwise judgment for the plaintiff.

Goodliffe *v.* Neeves.

Common Law Procedure Act—Notice of filing declaration.

Where the plaintiff had entered an appearance see stat. before the Common Law Procedure Act came into operation, and afterwards filed a declaration endorsed with a notice to plead within eight days, and signed judgment and issued execution without giving notice to the defendant, the Court granted a rule to shew cause why such judgment and execution should not be set aside.

J. Brown moved for a rule to shew cause why the judgment signed and execution issued herein should

(*a*) The 42nd section of the 15 & 16 Vict. c. 83, enacts, that "In any action in any of her Majesty's Superior Courts of Record at Westminster and in Dublin, for the infringement of letters patent, it shall be lawful for the Court in which such action is pending, if the Court be then sitting, or if the Court be not sitting, then for a judge of such Court, on the application of the plaintiff or defendant respectively, to make such order for an injunction, inspection, or account, and to give such direction respecting such action, injunction, inspection, and account and the proceedings therein respectively, as to such Court or judge may seem fit."

not be set aside. The writ was served on the 30th September, and the defendant heard no more of the action until the 9th of November, when the sheriff took possession. On searching, it appeared that on the 8th October an appearance had been entered sec stat. and that on the 27th October, three days after the Common Law Procedure Act came into operation, a declaration was filed, with notice to plead in eight days endorsed, but no notice was served on the defendant, and on the 5th November, judgment was signed and execution issued. He referred to the 27th, 28th, and 29th sections of the Act.

PLATT, B.—The question is, is there anything in this Act to render it unnecessary to serve defendant with notice of having filed a declaration. The defendant is in court by Act of Parliament, and is entitled to the service of the declaration or notice.

Rule nisi granted.

Friday, Nov. 12.

LUMLEY *v.* GYE.

Common Law Procedure Act (15 & 16 *Vict. c.* 76, *s.* 80)—*Pleading and demurring together—Affidavit.*

The defendant or his attorney in the affidavit to support a motion for leave to plead and demur together, under the 80*th section of* 15 & 16 *Vict. c.* 76, *should verify all matters within his or their knowledge; and* (*per Alderson, B.*) *where a third person is involved, an application ought to be made to him to depose as to the truth of the pleas it is proposed to plead, or some reason given for not doing so.*

Creasy applied under the 80th section of the 15 & 16 Vict. c. 76, for leave to plead several matters, and to demur, on the ground that the declaration disclosed no cause of action. The plaintiff was the proprietor and manager of her Majesty's Theatre, and the declaration alleged a contract by the plaintiff with Johanna Wagner to sing and perform for three months; that the defendant, with knowledge of the said contract between the plaintiff and the said Johanna Wagner, entered into a contract with the said Johanna Wagner to perform and sing during the said three months for which she was engaged to the plaintiff, by which the said Johanna Wagner was prevented from performing, and did not perform her said contract with the plaintiff; and that the defendant further undertook to hold the said Johanna Wagner harmless for such her breach of contract with the plaintiff, &c. whereby the plaintiff lost her services, to the plaintiff's damage of 30,000*l.* The pleas proposed to be pleaded were—1. Not guilty. 2. A traverse of the contract with the said Johanna Wagner being in force at the time of her contracting with the defendant. 3. A traverse of the defendant's knowledge of the contract between the said plaintiff and the said Johanna Wagner being in force. 4. A traverse that in consequence of the alleged acts of the defendant, said Wagner did not perform her said contract with the plaintiff. The affidavits of the defendant and his attorney stated that they were advised and believed (following the words of the Act) that the defendant had just ground to traverse the said allegations in the declaration. [ALDERSON, B.—Do the deponents swear that the allegations proposed to be traversed are not true? PLATT, B.—Surely the only ground for denying an allegation is that it is not true.] The 80th section of the statute enacts that "Either party may, by leave of the Court or a judge, plead and demur to the same pleading at the same time upon an affidavit by the said party or his attorney, if required by the Court or judge, to the effect that he is advised and believes that he has just grounds to traverse the several matters proposed to be traversed by him, and that the several matters sought to be pleaded as aforesaid by way of confession and avoidance are respectively true in substance and in fact," &c. These are not pleas in confession and avoidance, which, by this section, must be sworn to as true; they are traverses, and it is sufficient if the affidavit follow the words of the Act and state that the defendant is advised and believes that he has just ground to traverse the several matters; and moreover it is impossible that many of these things should be within the knowledge of the defendant. [PARKE, B.—Some of these matters are peculiarly within the knowledge of this defendant; for instance, his knowledge of the contract between the plaintiff and said Johanna Wagner being in force. The matters within the knowledge of the defendant should be sworn to directly.] That would impose upon the defendant the putting a construction on the contract. [PARKE, B.—There can be no difficulty in knowing what the general issue is a traverse of.]

ALDERSON, B.—I think when a third person is involved you ought to apply to that person for an affidavit in support of your application, or shew some reason for not doing so. Why not obtain an affidavit from Miss Wagner herself?

Affidavits to be amended by swearing to facts within the knowledge of the defendant.

BUSINESS OF THE WEEK.

Friday, Nov. 5.

GLEN *v.* LEWIS.—*Karslake* moved to set aside the interlocutor judgment signed herein, and all subsequent proceedings, for irregularity; the declaration was upon a fire policy, and dated 2nd July; on the 31st July (Saturday) a summons was attended for leave to plead several matters, upon which an order was made at twenty minutes after three o'clock; it was served with a notice that the rule should be drawn up as soon as it could be obtained from the office and served. The pleas were also delivered. On Monday morning, at eleven o'clock, the plaintiff signed judgment as for want of a plea. [PLATT, B.—And he was perfectly regular in so doing, although it was very sharp practice. ALDERSON, B.—When you were before the judge upon the summons for leave to plead several matters, you should have applied for an extension of time to plead, to have enabled you to draw up the rule,—that is what is nearly always done; the plaintiff was not irregular in signing judgment, but certainly it was sharp practice.] Upon an affidavit of merits being produced,

Rule granted to shew cause why the judgment should not be set aside without costs, why the rule to plead several matters should not stand, and why the pleas authorised to be pleaded should not be redelivered without further summons or order, or rule to plead several matters.

HEMMING *v.* BURNETT.—Tried at Dorchester, before Platt, B. when a verdict on the fourth and fifth issues and new assignment was found for the defendant, with liberty reserved to the plaintiff to move to enter a verdict thereon. *Crowder*, Q.C. now moved accordingly.

Rule nisi.

COLLIER *v.* COLLIER.—Tried before Martin, B.: verdict for the defendant. *Butt*, Q.C. now moved, pursuant to leave reserved, to enter the verdict for the plaintiff.

Rule nisi.

JOHNASSON *v.* THE SPECIFIC STEAM NAVIGATION COMPANY.—*Trover* for a cargo of coal: tried before Wightman, J.: verdict for the plaintiff. *Knowles*, Q.C. moved for a new trial, on the ground of misdirection.

Rule refused.

ROBINSON and ANOTHER *v.* DYGARD.—Tried at Durham, before Wightman, J.: verdict for plaintiff. *Watson*, Q.C. moved, pursuant to leave reserved, to enter a verdict for the defendant on the fifth issue. *Rule nisi.*

DUFF *v.* GANT.—Tried at Guildhall, before Martin, B.: verdict for the defendant. *James*, Q.C. moved for a new trial, on the ground of misdirection. The action was on a bill of exchange, accepted by defendant as surety for F. C. Knight, who had borrowed a sum of money from an insurance company, of which plaintiff was a director, which sum was further secured by a policy of insurance on the life of Knight. The defendant pleaded that Knight had died since the policy was executed; and that the plaintiff had agreed, and was now enabled to deduct the amount of the bill sued on from the amount to be paid on account of the policy. *Replication*—That the policy was void, the said Knight having untruly and fraudulently answered one of the questions put to him by the office, and upon the true answering of which the validity of the policy was made dependent. The question was: "Are you aware of having any disorder tending to shorten life, or any other circumstance making the insurance more than usually hazardous?" To which Knight had answered in the negative. The policy was effected on the 22nd May, 1850; and on the 13th May, 1851, Knight committed suicide; and it was now contended that he had fraudently concealed that his mother and brother had been insane. The learned Judge had left it to the jury, "Whether the assured had suppressed these facts, knowing them to be material." POLLOCK, C.B. said he thought the direction was right, that the man was not bound to answer any questions about his mother and brother's disorders unless they were directly put to him.

Rule refused.

MORGAN *v.* THOMAS.—Tried at Carmarthen before Crompton, J.: verdict for the plaintiff for 11*l.* 2*s.* 9*d.* *Evans*, Q.C. moved, pursuant to leave reserved, to enter a verdict for the defendant. *Rule nisi.*

ROBERTSON and ANOTHER *v.* WAITE and ANOTHER.—Tried at Liverpool before Wightman, J.: verdict for the plaintiff for 1*s.* with leave to move to increase the amount to 150*l.* *Wilkins*, Serjt. now moved accordingly.

Rule nisi.

ATTWOOD *v.* HILL and ANOTHER.—Tried at Stafford before Cresswell, J.: verdict for the defendants. *Whateley*, Q.C moved pursuant to leave to enter a verdict for the plaintiff for 80*l.* *Rule refused.*

LOWTHER *v.* WILSON.—Tried before Jervis, C.J. at the Surrey Assizes: verdict for the defendant. *Shee*, Serjt. moved for a new trial, on the ground that the verdict was against the evidence and for misdirection.

Cur. adv. vult.

STEADMAN *v.* KNIGHT.—*Prendergast*, Q.C. moved for a rule to shew cause why the taxation of costs therein should not be reviewed. *Rule nisi.*

ABBOTT *v.* MATHISON.—*T. Jones* moved for a rule to shew cause why the trial had herein should not be set aside. The question was whether any notice of continuance had been served. *Rule nisi.*

Saturday, Nov. 6.

BENSON *v.* AVERY.—*Crowder*, Q.C. moved in this case, tried before the Chief Baron, in London, for a new trial, on the ground of an alleged improper rejection of evidence. *Rule refused.*

THOMPSON *v.* LETTS.—*Borrill* moved to set aside the plaintiff's verdict, on the ground of misdirection. The action was in trespass upon an alleged right to a party-wall claimed, the plaintiff having premises on the side of "George-alley," situate in Thames-street, in the City of London, and the defendant having premises opposite those of the plaintiff. The COURT thought, on considering the whole of the summing up of the learned judge, there was no misdirection. *Rule refused.*

DOE *dem.* HEWLINS *v.* POWELL.—Tried before Williams, J. at Monmouth. *Whateley*, Q.C. moved to set aside the plaintiff's verdict, and on affidavits for a new trial.

Rule nisi upon payment of costs.

PALMER *v.* THOMER (part heard on Friday).—*O'Malley*, Q.C. had moved in this case, tried at Norwich before the Lord Chief Baron, for a new trial on the ground of misdirection, and for the improper rejection of evidence. It was an action upon a note of hand for 20*l.* The note in question was, it was said, originally given for 7*l.* only, but had been subsequently altered to 20*l.*

Rule nisi (on terms).

PEARSON *v.* MENNIES.—*Horn* moved to discharge a married woman out of custody, she having been arrested upon mesne process for a debt contracted before her marriage, her husband being still alive. He referred to *Edwards v. Rourke*, 1 T. R. 486, and to 1 Chitty's Archbold's Practice, 630, where all the authorities are collected. There were also three technical objections to the affidavit.

Rule nisi.

DECLERMONT *v.* BRADBURY and COOK.—*M. Chambers* moved in this case, tried before the Chief Justice of the C. P. to set aside the plaintiff's verdict, pursuant to leave reserved, and to enter a nonsuit, or for a new trial, on the ground of misdirection, or to reduce the damages.

Rule nisi on the point only where leave was reserved to move.

Monday, Nov. 8.

CROWHURST and UX *v.* LAVERET.—Tried at York before Campbell C.J. Verdict for the plaintiff, damages 8*l.* 10*s.* on the first count, and 16*l.* 10*s.* on the second count. *Watson*, Q.C. moved for a rule to shew cause why the verdict should not be set aside and for a new trial, or that judgment should be arrested on the second count of the declaration, on the ground of misdirection.

Rule nisi granted.

HUBBERSTY and ANOTHER *v.* WOOD.—Tried at Liverpool before Wightman, J. Verdict for the plaintiff. *Watson*, Q.C. moved for a new trial on the ground of misdirection.

Rule nisi granted.

CHRISTIE and ANOTHER *v.* SIR THOMAS WILLINGTON.—Tried at Worcester before Williams, J. Verdict for the defendant. *Alexander*, Q C. moved to enter the verdict for the plaintiff. *Cur. adv. vult.*

ORMOND *v.* THE GREAT NORTHERN RAILWAY COMPANY.—Tried at Lincoln before Alderson, B. when the plaintiff was nonsuited. *Mellor*, Q.C. now moved, pursuant to leave reserved, to enter a verdict for the plaintiff for 37*l.* 16*s.* or 17*l.* 11*s.* 6*d.* *Rule refused.*

JUNTAN *v.* YATES.—Tried at Stafford before Cresswell, J. Verdict for the plaintiff for 63*l.* 6*s.* *Gray* moved to enter a nonsuit pursuant to leave, or for a new trial, on the ground of misdirection. This was an action on an agreement to erect a house, by which the plaintiff agreed to complete the said house according to a specification, in consideration of 132*l.* to be paid by the defendant to the plaintiff, and to finish the work in a good and workmanlike manner to the satisfaction of the defendant; and in case of delay, or the plaintiff entering into any sub-contract without the consent of the defendant, the defendant might, after four days' notice, employ other workmen, and pay them out of the moneys then remaining unpaid to the plaintiff, and in that case the plaintiff was not to interfere with the defendant in the completion of the works. At the trial the specification referred to was not produced. *Gray* then objected that the agreement was not complete without it, and that it was necessary to omit the specification to see what stamp ought to be affixed to the agreement. The judge thought the agreement could not be admitted without the specification, but admitted it, reserving leave to move, and the agreement was then read, subject to the objection; but when *Gray* was about to address the jury, certain papers were passed over to him as the specification, and he then commented on certain parts of it; but it was afterwards discovered that two or three sheets of it were missing. *Gray* did not afterwards object to its production, so that, in fact, the objection was not made to the specification, as being unstamped, but to the agreement as a whole. The second objection was, that the judge left it to the jury, that if there was delay in the execution of the works, the defendant might have given the four days' notice, and he omitted to leave to them the question of neglect. The COURT said that objections to stamp must be distinctly and promptly made, and that the document to which the objection was made, viz. the agreement, was well stamped, and the objection was not made to the specification separately, which by the Stamp Act was subject to a separate stamp of 10*s.*; on that point, therefore, there would be no rule, but on the other

Rule nisi granted.

THE GUARDIANS OF THE POOR OF ROMFORD UNION *v.* THE BRITISH GUARANTEE ASSOCIATION.—Tried before Pollock, C.B.; verdict for the defendants. *Bramwell*, Q.C. moved for a new trial, on the ground of misdirection, and that the verdict was against evidence.

Rule nisi granted.

STAMMERS *v.* ———.—*Bramwell*, Q.C. moved to set aside an award. *Rule refused.*

LEVERONI *v.* DRURY and ANOTHER.—Tried before Martin, B. at the sittings in Middlesex this term: verdict for the plaintiff for 36*l.* 18*s.* *Crowder*, Q.C. moved for a new trial on the ground of misdirection. *Cur. adv. vult.*

ASH *v.* DORLEY.—Tried before Lord Campbell, L.C.J. at York: verdict for plaintiff, damages 5*l.* *H. Hill*, Q.C. moved in arrest of judgment. *Rule nisi.*

MORGAN *v.* THOMAS.—*Davison* moved for a cross rule herein.

Rule nisi for a new trial, if Evans, Q.C. succeeds in his motion.

GLOVER *v.* JONES.—Tried before the Under-sheriff of Gloucester, when the plaintiff was nonsuited. *Gray* moved for a new trial. *Rule nisi.*

BRAHAM *v.* KING.—Tried at Hertford, before Jervis, C.J. *H. T. Cole* moved for a rule to shew cause why the record, verdict, and all subsequent proceedings herein should not be set aside on the ground that the record had been altered, and did not agree with the declaration or with the issue. *Rule nisi.*

WOOD *v.* BOND and WOOD *v.* CAWLEY.—*Horn* moved for a rule to shew cause why two orders of Alderson, B. and the proceedings thereon, should not be set aside.

Rule nisi, with stay of proceedings.

Wednesday, Nov. 10.

SPECIAL PAPER.

CADDY *v.* ROSKINGH. *Struck out.*

RIPLEY *v.* EARL TALBOT. *Struck out.*

JACKSON *v.* BURNHAM and WIFE, Administratrix, &c. *Cur. adv. vult.*

STEWARD *v.* WILSON. *Stand over till Wednesday.*

TAYLOR *v.* LOFT and OTHERS. *Cur. adv. vult.*

DUBLIN AND WICKLOW RAILWAY COMPANY *v.* BLACK.—Demurrer to plea.

Defendant to amend in a week, otherwise judgment for the plaintiff.

Re R. BLOXAM, Gent, &c.—*Bailey* moved to strike R. Bloxam off the roll of attorneys on his own application.

Granted.

BAIL COURT.

Reported by T. W. SAUNDERS, Esq. of the Middle Temple, Barrister-at-Law.

Tuesday, Nov. 9.

(Before CROMPTON, J.)

REG. *v.* THE MAYOR AND ASSESSORS OF HARWICH.

Municipal Corporation—Notice of objection.

A notice of objection given to a burgess to his name being retained on the list of burgesses should describe him as he is described on the burgess list. A notice, therefore, given to the burgess in the following form:—"I hereby give you notice that I object to your name being retained on the burgess list of the borough of Harwich," was held to be bad.

Lush moved for a rule calling upon the mayor and assessors of Harwich to shew cause why a mandamus should not issue commanding them to hear and adjudicate upon an objection taken to William Butcher, jun. who is now on the burgess roll of the said borough of Harwich. By the Municipal Corporation Act, 5 & 6 Will. 4, c. 76, the overseers of the poor are annually to make out a burgess list; and by sec. 17, every person whose name shall have been inserted in any burgess list, may object to any other person as not being entitled to have his name retained in the said burgess list, and he is on or before a certain day to give to the town clerk, and also to the person objected to, or leave at the premises for which he shall appear to be rated in the burgess list, notice thereof in writing according to the form No. 3, in the schedule D, or to the like effect. The form runs in these words:—

"To the town-clerk of the borough of (*or to the person objected to as the case may be.*)

"I hereby give you notice that I object to the name of Thomas Bates, of Brook's Farm, in the parish of (*describe the person objected to as described in the burgess list*) being retained on the burgess list of the borough of

"Dated the day of in the year

"(Signed) JOHN ASHTON.

(*Here state the place of abode and property for which he is said to be rated in the burgess list.*")

It appeared that one of the burgesses on the burgess-roll wishing to object to another burgess, gave a notice to the town clerk, to which no objection arose; and he also, as required by the statute, gave a notice to the burgess objected to, which he personally served, and was in the following form:—

"To Mr. William Butcher, jun.:—

"I hereby give you notice that I object to your name being retained on the burgess-list of the borough of Harwich.

"Dated the 15th day of September, in the year of our Lord, 1852.

"JOSEPH GAUP.

"Place of abode: King's Head-street, St. Nicholas Parish.

"The property for which I am said to be rated in the burgess-list: House, King's Head-street, St. Nicholas, Harwich."

On the day appointed for the revision of the burgess-lists both parties attended, when it was objected, on the part of Mr. Butcher, that the notice of objection was insufficient, inasmuch as it was not in conformity with the form in the Act, which directs that the person should be described as he is described in the burgess-list. The mayor and one of the assessors held that the objection to the notice was good; the other assessor held that it was not; the voter was, therefore, retained upon the burgess-list. (This objection applied to many other cases in which the same form of notice had been given.) It was now contended that the form of notice of objection was quite sufficient; for that, as the power given by the statute is a compendious one, intended to be modified, according as it was served upon the town clerk or the burgess, it could not be necessary, when serving the latter, to shew how he was described upon the burgess-list. [CROMPTON, J.—There is no description at all in the notice.] It was served upon the burgess himself. The statute gives no imperative form; it says, "or to the like effect." [CROMPTON, J.—Suppose there are two persons of the same name, it should be shewn who is meant.] There are in the Parliamentary Registration Act (the 6 & 7 Vict. c. 18), two forms of objection given, one to the overseers, and the other to the party objected to, and the latter runs in the form adopted in this case, without reference to the way he is described in the list, as "I hereby give you notice that I object to your name being retained on the list of persons entitled to vote in the election of members," &c. It was only necessary that the party should have a clear notice that he was objected to.

CROMPTON, J.—I do not think that the provisions of the statute have been sufficiently carried out. The effect of the Act is to give a notice describing the person as he is described upon the burgess list. There may be two persons of the same name, and it is right that it should be pointed out in the notice itself, who is really meant by it. The Act intended that the person should be described as he is on the burgess list. I cannot, therefore, say that the mayor and assessor were wrong.

Rule refused.

Wednesday, Nov. 10.

(Before Mr. Justice CROMPTON.)

Ex parte GEDYE, Gent. one, &c.

Criminal information.

Collier moved, on the behalf of Mr. Gedye, an attorney of this court, for a rule, calling upon Mr. Thomas Robert Mulcock, one of the churchwardens of the parish of St. Mary, Newington, to shew cause why a criminal information should not be filed against him for publishing and circulating a placard reflecting upon the character and conduct of Mr. Gedye. *Rule nisi.*

Thursday, Nov. 11.

Ex parte HENRY WILTON.

County Court—Criminal information.

Upon an application for a rule for a criminal information against a County Court judge, the Court refused to interfere, it not appearing or being suggested that the judge acted from any corrupt or improper motive.

On a former day (Nov. 6) *Hawkins* moved for a rule calling upon one of the judges of the County Court to shew cause why a criminal information should not be filed against him for misconduct in his office. It appeared from the affidavit upon which this motion was made, that the defendant (the present applicant) having attended upon a judgment summons, he was duly sworn and questioned by the judge as to his not having paid the amount of debt as ordered; and it was alleged, as the ground of this motion, that as he was explaining the reason for his not having done so, he was stopped by the judge who (on the application of the plaintiff) committed him for a month. There was no suggestion that the judge had acted from any corrupt or ill motive, but it was contended that this conduct of itself amounted to such a dereliction of duty as to entitle the complainant to make the present application.

Cur. adv. vult.

His LORDSHIP to-day said he had considered this subject, and as there was no imputation or suggestion of any corrupt or improper motive influencing the judge, which is usually required upon applications of this kind, he should refuse the rule.

Rule refused.

BUSINESS OF THE WEEK.

Saturday, Nov. 6.

(Before CROMPTON, J.)

Ex parte WILTON.—*Hawkins* moved for a rule calling upon the judge of a County Court to shew cause why a criminal information should not be filed against him for misconduct in his office, in refusing to hear a defendant who had been summoned upon a judgment summons, and whom he committed to prison. *Cur. adv. vult.*

REG. *v.* — MOON, Esq.—*Huddleston* moved for a rule calling upon Mr. Alderman Moon, as one of the magistrates for London, to shew cause why, under the circumstances stated in the affidavits, he should not issue his warrant to levy a poor-rate on the goods of one Ewen Green. *Rule nisi.*

Re ROBINSON.—*Atkinson* moved for a rule directing the Master to tax the costs herein. *Rule nisi.*

Re ELIZABETH HAKEWILL.—*Cooke* moved for an attachment against Elizabeth Hakewill, for disobedience to a writ of habeas corpus. *Rule nisi.*

CLERK, appellant, *v.* THE PARISH OFFICERS OF BINBROOK, respondents.—*Manisty* moved on behalf of the respondents for a rule to refer this case back to the arbitrator, or to set aside the award, on the ground that the arbitrator had not ascertained and adjudged the amount of costs to be paid by the appellants to the respondents, and, in the event of the award being set aside, that the justices should be directed to enter continuances and hear the appeal. This was an appeal against a poor-rate, which came on before the justices of Lindsey, Lincolnshire, and was referred to arbitration under the 12 & 13 Vict. c. 45, s. 13. The arbitrator made his award in favour of the respondents, and ordered the appellant to pay, within one month, the costs of the appeal and the reference, but did not, as he should have done, assess the amount of such costs. *Rule nisi.*

Monday, Nov. 8.

(Before Mr. Justice CROMPTON.)

WORRALL *v.* LOWE.—*Temple* moved for a rule calling upon the plaintiff to shew cause why the judgment should not be set aside and the defendant be admitted to plead. The application was made on affidavits disclosing reasons for the defendant having neglected to plead, and that there is a good defence upon the merits.

Rule nisi on payment of costs.

Ex parte TOCQUE.—*Phipson*, upon the behalf of a Mr. Tocque, an articled clerk, moved that he may be discharged from his present articles and be at liberty to enter into fresh ones with some other attorney, his present master having absconded, and his offices being shut up. (*Ex parte Wilkinson*, 9 Dowl. 330.) *Rule nisi.*

Tuesday, Nov. 9.

REG. *v.* THE RECORDER OF SHREWSBURY.—*Pashley*, Q.C. moved for a rule for a mandamus commanding the Recorder of Shrewsbury to enter continuances, and hear an appeal. *Rule nisi.*

Re SILL.—*Wilde* moved for a rule calling upon Mr. Richard Sill to shew cause why he should not be struck off the Roll of Attorneys of this Court, he having been convicted of obtaining money under false pretences.

Rule nisi.

Wednesday, Nov. 10.

Re AN ATTORNEY.—*Pulling* moved for a rule, calling upon an attorney to shew cause why it should not be referred to the Master to ascertain what lien he has upon a certain indenture, and why, upon payment of what shall be found due, he should not deliver over the deed.

Cur. adv. vult.

Thursday, Nov. 11.

Re AN ATTORNEY.—In this case, moved by *Pulling*, for a rule calling upon an attorney to shew cause why it should not be referred to the Master to ascertain what lien he has upon a certain indenture, and why, upon payment of what should be found due, he should not deliver over the deed, his lordship having taken time to look at the affidavits, refused the rule. *Rule refused.*

Ex parte FORD, Executor of Lord Kensington.—*Jones* moved for a rule calling upon two attorneys to deliver Mr. Ford a copy of a certain bill of costs pursuant to their undertaking. *Rule nisi.*

Nisi Prius.

COURT OF COMMON BENCH.

(Reported by MORGAN LLOYD, Esq. Barrister-at-Law.)

Tuesday, Nov. 9.

(Before CRESSWELL, J.)

WILLIAMS *v.* PARFITT.

Plea of insolvency—Sufficiency of description of creditor in schedule

The plaintiff was described in the defendant's schedule as "Mr. Williams, timber merchant, New-road, London," but his residence was in the City-road, about a mile and a half from the nearest part of the New-road:

Held, that the sufficiency of the description was a question of fact for the jury, and not a question of law.

Held, also, that the proper question for the jury was, whether the plaintiff was so described in the schedule that a letter so directed to him by the assignee would find him.

This was an action by the plaintiff, as indorsee of a bill of exchange for 30*l.* against the defendant, as drawer. Among other pleas, the defendant pleaded his discharge under the Insolvent Debtors Act; and the real issue was, whether the plaintiff was sufficiently described in the schedule as a creditor for the amount of the bill. In the schedule, the debt and the consideration for it were correctly described, but the plaintiff was described as "Mr. Williams, timber merchant, New-road," whereas his residence was in the City-road, and about a mile and a half distant from the nearest part of the New-road.

CRESSWELL, J. said the question for the jury was, whether the description in the schedule was such that a notice sent by the assignee to the creditor in pursuance thereof would reach him by post? The 71st section of 1 & 2 Vict. c. 110, provides that "the Court for the Relief of Insolvent Debtors shall cause notice of the making of every such vesting order as aforesaid, and the filing of every such schedule, and of the time and place so as aforesaid appointed for such prisoner to be brought up, to be given by such means as the said Court shall direct, to the creditor or creditors at whose suit any such prisoner shall be detained in custody, or the attorney or agent of such creditor or creditors named in the schedule of such prisoner, and resident within the United Kingdom, and whose debts shall amount to the sum of 5*l.*" The official assignee in sending these notices must necessarily be guided by the schedule, and he naturally directs his notice to the creditor's address as given in the schedule. The question therefore is, whether this description in the schedule is a sufficient direction if the notice were sent to the creditor by post in pursuance thereof.

Verdict for plaintiff.

Prentice, for plaintiff, and *Hawkins*, for defendant.

Irish Reports.

COURT OF QUEEN'S BENCH.

Reported by P. J. M'KENNA, Esq. Barrister-at-Law.

Saturday, June 12.

LYNAR *v.* FOSTER.

(Before the full Court.)

Libel—New trial—Rebutting case—Privileged communication.

Where any question of great difficulty or importance arises, especially if the Court should disagree, a new trial will be granted to give the parties an opportunity of having the question raised upon the record and taking the opinion of the Courts of Appeal:

Semble, the rule that a verdict when set aside on the ground of surprise shall be on payment of costs is not universal.

Case for libel.

Pleas—1st. Not guilty and issue thereon; 2nd. Justification.

Replication—De injuria, and issue thereon.

This case was tried before the Lord Chief Justice at the sittings after last Easter Term.

From the evidence it appeared that the libel complained of was contained in a letter addressed by the defendant (who was the rector of the parish in which the plaintiff had been officiating as curate) to another clergyman in the same diocese for the purpose of inducing him to withdraw his name from a testimonium signed by him and testifying to the good character and propriety of conduct of the defendant. The libellous words set out in the declaration, and proved to have been written and published by the defendant, were "An act of gross fraud has come under my personal knowledge. He (meaning the plaintiff) attempted to a gross fraud; he falsely represented to the primate that his horse had died, and obtained money from his Grace." It further appeared that the plaintiff had represented to the primate that he had *lost* his horse, and that he had on that representation obtained money from his Grace. It was admitted that the horse in question, which had been purchased by the plaintiff for 18*l.* for the purpose of attending his duties as curate, had fallen sick, and had been sold at a great sacrifice for a few pounds. It further appeared that the plaintiff was in very needy circumstances. The other facts of the case are not material, as the questions raised as to the proving the justification, that of privileged communication, and the right of the plaintiff to be allowed into a rebutting case, were not decided by the Court.

Joy, Q.C. (with whom was *J. T. Ball*) having obtained a conditional order to set aside the verdict, and for a new trial.

McDonagh, Q.C. (with whom was *S. B. Millar*) shewed cause.

The following authorities were cited in the course of the argument: *Dunscombe* v. *Daniel*, 8 C. & P. 226; 1 Taylor's Evidence, 276; *Rees* v. *Smith*, 2 Stark. Rep. 31; *M'Callagh* v. *Greer*, Alcock & Nap. Rep.; *Anon.* 1 Hudson & Brooke, 117; *Rex* v. *Earl of Bantry*, 2 Car. & Kir.; *Toogood* v. *Strumey*, 1 Cromp. Mee. & R.; 1 Stark. Ev. 423; *Wright* v. *Woodgate*, 2 Cromp. Mee. & Ros. 573; *Chapman* v. *Wright*, 1 Arnold, 241; *Robertson* v. *McDowell*, 12 Ad. & El.; *Ward* v. *Smith*, 6 Bing. 749; *Ashford* v. *Hardy*, 7 Car. & P. 502; *Martin* v. *Strong*, 5 Ad. & El. 535; *Blagg* v. *Sturt*, 10 Q. B. 899.

LEFROY, C.J.—In this case there were two grounds on which a new trial was asked; first, that the defence of a privileged communication was not open to the defendant, and that the facts constituting such defence should not have been left to the jury; the second was, that the plaintiff was not allowed to go into a rebutting case. As to this first point, it is one of great importance and difficulty, and one on which the Court is not agreed; but even if we were, it is one of too much importance to be decided on motion. Therefore, in order to give the parties an opportunity of putting the matter on the record, we will make the order for a new trial. As to the second point, that the plaintiff was not allowed to go into a rebutting case, it must be borne in mind that it was at a particular point of the entire case he asked to be allowed to give fresh evidence. Now, there is no doubt that if a party goes into no part of his rebutting case, he may, when the time comes, if he think proper, enter on it; but if he does go into it at first, he shall not be afterwards allowed to eke it out by giving fresh evidence. It appeared to me at the time that he had not, with respect to the particular matter, a right to do so; it was given to the jury, which ought to have saved the plaintiff from any harm. However, it is very possible that notwithstanding the caution I had given them, they were influenced very much by the consideration that the defendant stated an admission to him by the plaintiff as to his intention in writing to the primate, and if so it would be as contrary to law as to justice that the plaintiff should be prejudiced by that act, without having an opportunity to explain it. We consider there ought to be a new trial, and the more especially as the questions raised are of so much importance, and that the entire matter may appear on the record. The order will be for a new trial, and no costs. Although in every case where a new trial is granted on the ground of surprise, costs are required to be paid by the party obtaining the order, yet really in this case, in the peculiar position of the parties, I do not think defendant ought to press for costs, although he might in strictness be entitled to them.

Equity Courts.

LORD CHANCELLOR'S COURT.

Reported by C. H. KEENE, Esq. of Lincoln's-inn, Barrister-at-Law.

(Before Lord ST. LEONARDS, L.C.)

Nov. 2 and 3.

BOSTOCK *v.* SIDEBOTTOM.

Lessor and lessee—Injunction—Practice—Equity Jurisdiction Improvement Act—Covenant—Violation of—Distinction between a power "to amend and repair," and a power "to widen and enlarge"—User.

In 1800, *land and a part of the watercourse or bed of a river extending* 100 *yards in length, are demised for a term of years; the lessee being authorised to cut a goit or sluice out of the river, "at a proper and convenient distance from and above a weir" (which he had also power to make), in the most convenient line or direction through two particular closes, and to turn and divert the water of the river into the goit or sluice, and to amend and repair such goit or sluice. The lease contains a covenant on the part of the lessee to arch or cover over the goit or sluice so to be cut, so as to make the soil into good arable or mowing land. A goit is subsequently cut nine feet in width at such distance, and through such properties, &c. The lessees erect cotton mills on the demised premises, the absolute remainder in fee of which premises, with liberty to use the goit, &c. is conveyed, in* 1835, *to A. and B. the representatives of the lessees, they entering into covenants similar to those contained in the lease. In* 1850 *they proceed to open the goit, for the purpose of widening it from nine to eighteen feet, and excavate, and carry away part of the soil. On a bill filed by the representative of the lessor, who was entitled to the fee of the two particular closes, subject to the easement granted by the lease:*

The Court, affirming the decision of the Court below, restrained them by injunction from widening the goit, and ordered them to restore it to its original condition, and to replace the soil.

A lessee was empowered to make a goit, which was to be made at once:

Held, that when the power had once been exercised it was exhausted: it was not the case of a power to do a thing toties quoties, as to make roads, &c.

A power contained in a lease to "repair and amend" does not include, by implication or otherwise, a power to "widen and enlarge."

This Court will not in many instances enforce a legal right by an injunction, but will leave the parties to their remedy at law:

This Court does not assume to itself the power of compelling a party to do a thing by injunction, but it restrains him from doing it.

This was a motion by way of appeal to discharge an order made by the Vice-Chancellor Knight Bruce, and a consequent order made by the late Vice-Chancellor Parker, restraining the defendant, his agents, &c. from further widening a goit or sluice made from the river Mersey, below the Broadbottom-bridge, in the township and parish of Mottram, in Longdendale, in the county of Chester, leading from the said river Mersey through and across the Em meadow, in the said township and parish, into the dam or reservoir made near to or adjoining the cotton mills and premises of the said defendant in the said township and parish aforesaid, called the Broadbottom Mills; and also from interfering or meddling with, for purposes not contemplated by indentures of the 12th day of July, 1800, and the 15th day of September, 1835, the said goit or sluice, or the fender or shuttle bye-wash or waste-gate drain from the said bye-wash or waste-gate to the said river Mersey and weir or dam, or any or either of them, and from maintaining or using the part of the said goit or sluice which had been so widened, and from permitting or suffering the said goit or sluice, or any part thereof, save and except for the distance provided by the indentures of the 12th day of July, 1800, and the 15th day of September, 1835, or one of them, to remain any longer open or uncovered.

By indenture, dated July 12, 1800, John Bostock, the paternal grandfather of the plaintiff, demised unto William and George Sidebottom a piece of ground intended for a mill-dam or reservoir for water, and also all that part of the watercourse or bed of the river Mersey, lying, &c. and extending from thence one hundred yards in length up the same watercourse or river, with full and free liberty, privilege, power, and authority to make, build, erect, and fix a weir or dam in, through, and across the said river, and anywhere opposite to, or adjoining, &c. the Em meadow, with like liberty, &c. to cut a goit or sluice out of the said river, at a proper and convenient distance from and above the said weir, in the most convenient line or direction through the two closes called the Em meadow and the Lime-field, into the south-west side or end of the said piece of ground intended for a reservoir, and to make, erect, build, and fix a fender or shuttle at the mouth of such goit or sluice, and also to make, erect, build, and fix a bye-wash or waste-gate, and to cut a drain from such bye-wash or waste-gate into the said river, and from time to time, and at any time or times to turn and divert the water of the said river into and through the said fender and goit, or sluice, and also into and through the said bye-wash or waste-gate, with like liberty, &c. to make, and from time to time to repair such drain or slough, and to get materials for making the said weir, fender, goit, or sluice, bye-wash, or waste-gate, and drains, with full liberty, &c. from time to time, and at all times during the said term, to repair and amend the said weir or dam, and also the said goit or sluice, &c. as often as need or occasion should be and require, making reasonable satisfaction to the said John Bostock, his heirs and assigns, for all damage to be done to the grass, &c. for a term of 999 years, subject to the yearly rent and covenants therein mentioned; and in the said indenture was contained a covenant on the part of the lessees, that they would arch or otherwise cover over the goit or sluice, and drain, so to be made as aforesaid, from the said bye-wash or waste-gate to the said river, with good stone or bricks, and afterwards cover the same over with soil, so as to make the same into good arable or mowing land, and should, &c. from time to time, and at all times thereafter during the said term, keep and continue the said goit or sluice, and drains, &c. in a good and workmanlike manner. The said Messrs. Sidebottom thereupon erected a weir or dam in and across the river opposite and adjoining the Em meadow, and they constructed also a mill-dam or reservoir upon the said piece of land, and made a goit or sluice nine feet in width, and arched and covered it over as required by the said lease, and built a fender or shuttle at the mouth of the goit or sluice, and a bye-wash or waste-gate in the said Em meadow, and made a drain therefrom into the said river. They subsequently erected and built several large cotton mills, and cotton factories, and premises upon the ground comprised in the lease, and they turned, and from time to time diverted the water of the river through the fender, &c. along the goit or sluice into the said mill-dam or reservoir, as occasion required, to the said cotton mills, &c.

The father of the present plaintiff, as heir-at-law of the lessor, became entitled in fee, subject to the term, to the demised premises, and also to the Em meadow and lime-field,—the ground through which the goit or sluice was cut; and by indentures of lease and release of the 14th and 15th of September, 1835, the executors and devisees in trust of John Bostock, the son, conveyed the absolute reversion in fee of the demised premises to Messrs. George and Joe Sidebottom, who were then carrying on the business of cotton-spinners as copartners, with like powers, &c. to use, and repair, and amend the goit or sluice, and to divert the water of the river, as in the said lease mentioned.

From the date of the said lease up to the month of December 1850, the defendant, and those through whom he claimed, used the goit upon the terms and conditions contained in the said two several indentures of July 1800 and September 1835, when the goit was opened by the defendant for the purpose ostensibly of repairing it. Since that period it had remained open, and in the month of June 1851 the plaintiff, who is absolutely entitled to the land through which the goit had been cut, discovered that the defendant was enlarging it from nine to eighteen feet, and on his threatening to proceed with the works, the plaintiff filed his bill for an injunction.

These facts, with those which are stated in the Lord Chancellor's judgment, are alone necessary for the purposes of the present report.

On the motion coming on to be heard before the Vice-Chancellor Knight Bruce, his Honour ordered it to stand over, the plaintiff undertaking to bring an action for the purpose of trying the defendant's right to widen the soil.

The action was tried before Lord Campbell, and the justices of the Queen's Bench, in April last, when judgment was given for the plaintiff; Lord Campbell observing that the license given in the lease was to make a goit, and it was to be made at once, and when it had once been made and completed, there was no power to make another. It was not like the case where there was a power to do things toties quoties, as to make various roads, but it was to make a goit, and when that power had once been exercised, it was exhausted. There was a power to repair and to amend, but not a power to make another goit. That must be taken to be another goit, and not the goit originally made or set out. If it could have been shewn that the power might have been exercised from time to time, in any direction so as to suit the purposes of the lessees and their assigns, during the whole of the term, then the power

might have applied as well to the width as to the direction. The power was "to cut a goit or sluice," &c. If it could be shewn that, the goit having been cut and having been enjoyed for a number of years, and found to be inconvenient, another goit might be cut in a direction more convenient, then judgment might have been for the defendant. The license and liberty which was reserved was to make a goit, and when that goit was once made and completed, the power was exhausted, and could not be exercised in making another goit either of a greater width or in a different direction.

The defendant being dissatisfied with that judgment, brought a writ of error in the Exchequer Chamber to reverse it. The judgment was there affirmed, and the late Vice-Chancellor Parker, on the motion coming before his Honour, granted the injunction which the present appeal now sought to dissolve.

Dickinson (in the absence of *Malins*), opened the appeal, and contended that, even if the question of law were against the appellant, the case was not one for the extraordinary interposition of the Court of Chancery by injunction; in certain cases this Court was not bound to follow the decisions of the Courts of Law. (*Evans* v. *Prothero*, 19 Law T. Rep. 117.) The intention of the parties at the time of the demise was, that the lessee should have a certain benefit in the water of the river, and was to construct any goit that might be necessary for the purpose of working his mills and factories. Other mills had since been erected, as well by himself as other parties, and the power of the water was thereby diminished. To a certain extent his property was injured, inasmuch as the water of the river was directed to those mills; the injury might for the future be obviated by the widening of the goit so as to admit of a greater flush of water. The conditions of the lease bound him as to locality, but not to width; he was to have water sufficient for a particular purpose, and to build a goit accordingly. The alterations in the river had rendered a larger goit necessary, and without he was allowed to alter the former goit his power and liberty to use the water would be of no service. (*Wood* v. *Sutcliffe*, 18 Law T. Rep. 191.) The other points of argument are referred to in the Lord Chancellor's judgment. The case of *Rochdale Canal Company* v. *King*, 2 Si. N.S. 78, was cited.

J. Russell and *Hislop Clarke* appeared for the respondent, but were not required to address the Court.

The LORD CHANCELLOR.—I cannot say that this case is open to any doubt. The rules of this court are perfectly clear upon this subject, though it may be sometimes difficult to apply them to the particular case. With regard to the opinions of the learned common law judges, it is impossible they should not have great weight with any one sitting where I do; and although a late Act of Parliament has thrown upon the Court the duty of itself deciding points of law, so that it cannot send a case as heretofore to a Court of Law, yet it could not properly have deprived it of the power of having the assistance of those Judges when it should deem it necessary; and, therefore, if I had thought differently from them in this case, undoubtedly I should not have ventured to have so decided without having the assistance of some of them. As regards the question,—supposing the merits to be against the defendant upon the mere construction of these instruments and the intention of the parties,—there is no doubt that this Court will not in many instances enforce a legal right by injunction, but will leave the parties to their remedy at law. Here there is a contract which, like every other contract, can receive but one construction; it is not open to one construction in Equity and another at Law: whatever be its true construction, that must be the rule and guide of this Court. If the contract does not permit the party to cut a new or an additional goit, or to add, which is the same thing, to the present goit, it is then a case simply in which a man under a tenancy or under a grant in fee of a certain right does assume to exercise a right, which he has not, to cut into the soil of his landlord or the grantor, and carry away that soil, and usurp a right of that soil to himself. This Court could never possibly allow that. This Court will not allow one man, upon his construction of a grant, to take away and help himself to the soil of another; therefore I think this is a case in which it would be impossible for this Court to refuse to enforce an injunction if it should be of opinion, on the true meaning of the contract, that the party had no right to make that addition to the goit. During the argument it was said that, even supposing I should be of that opinion, yet that I never should do so strong a thing as to order the parties (the defendant) to fill up the place which he had already excavated; and that this was represented as an impossible performance. Now this Court does not assume to itself the power of compelling a party to do a thing; it restrains him from doing it; therefore, what the effect would have been, if the thing had been done and the party had come to the Court too late for an injunction, is another question, which I am not called upon to consider. The defendant in this case entered into the undertaking, and if the Court should think fit that the injunction should be granted, then of course he will have to fill up that portion of the ground which he had excavated. Now I take it for granted there will not be the slightest difficulty beyond the mere common labour. Of course the soil has not been removed: nobody will assert that that which formerly filled the solid ground, and which has not been taken away, cannot be thrown in again. But what I have to consider is the true construction of these instruments in regard to what has been decided at law; and I cannot say, having very attentively read them, that I entertain the slightest doubt as to their effect. There is no actual contract, but I think the fair presumption is that the parties did intend to build a mill. Here is a grant of a piece of ground for the purpose of making a reservoir, and the whole object of getting the water was to give power to the mill. Although there may be no actual covenant to erect a mill, yet there is a covenant to erect buildings on the ground of a certain yearly value: no doubt the mill was intended to form a portion of the buildings so to be erected. Taking that to be so, this is a case distinguishable from those which have been cited, particularly the case of *Blakemore* v. *The Glamorganshire Canal Company*. In this case there is no question as to the quantity of water, but of the quantity of land through which the water is to be conveyed. It is not a question of the right of the defendant to take water from the river Mersey, but a question as to whether he has the right to take the plaintiff's land in order to cut that land into an additional canal, or goit, or sluice, in order to convey the water to his mill, to give him an additional mill power. Now the way in which the parties managed it was this: If you look at the lease for 999 years you will see how very limited the grant was; that is, what a small quantity of land was granted, described by yards; yet it was sufficient for the then purpose. At the time the parties granted it I suppose there was not much water in that portion of the river. They granted what they had the right to grant, that is, half the soil of the bed of the river bounding upon the particular properties, and the right to make a weir or dam to divert the water, and the right to make a goit, without limiting in any manner whatever what the proportions of that goit should be. Therefore it is undeniable that if the defendants in the first instance had found that the water power would occupy eighteen feet in breadth, it is impossible to deny that they might have taken eighteen feet. It was left to them at that time to decide what should be the breadth. Now they were not hurried under this contract in coming to that decision; two years were allowed to them in order to complete their works, during any portion of which time they might have adopted their goit to the actual state of the river, and the probable wants of their works, so that they could not be taken by surprise. They were left to choose for themselves their own breadth, their own depth; not their own length, because that was defined: but the breadth and depth would, of course, be entirely dependent upon the bed of the river, and the alterations they might be at liberty to make in it; but the breadth is entirely left to them. But then the parties knew, without compelling the defendant, the lessee, to erect a mill, that a mill would be erected; and so they perfectly well knew, not to an inch or a foot, but what would be the probable width of that goit which would be made under the general powers granted by this lease. It was not necessary to fix the limits at that time, because the nature of the water itself, the power which was intended to be applied, would necessarily direct and define the width and depth of the goit; it contained, therefore, in itself those elements which would circumscribe and limit its actual depth and width. Accordingly, this lessee does make such a goit as will suit his purpose, and it turns out to be nine feet wide; he is bound to overarch it, and to cover it with earth, and it is again to form a part of the field. Is there anything in this contract which would have prevented the lessor, after the completion of that goit and covering it over, building directly upon its edge all along his meadow. Was not the soil his? Was he under any liability to keep it there in a state of meadow, in order to wait to see whether the lessee would choose to enlarge his goit? Was there any limitation or restriction whatever upon the power of the lessor to deal as he pleased with his land, after the lessee had exercised his right and discretion to build such a goit as he thought would answer the purpose of his works? Certainly not. Then it is said that there was power to amend. That power is "to repair and amend." There is nowhere the power to widen and enlarge; and nothing, to be sure, can be more perfectly in contradistinction the one to the other than the power to repair and amend, and the power to widen and enlarge; and therefore, where it was intended that it should be repaired and amended, the power was reserved, although it might not be necessary so to have provided, because it might have followed in point of law, but nothing was left to implication. There was an express covenant. If it had been intended that from time to time it should be varied, as science threw new light upon the mode in which water-power, like many other powers, might be rendered capable of giving greater force and greater additional assistance to the mills of the defendant, that must have been inserted in order to form part of the contract. I have looked through the lease, and I cannot find a single expression, or anything which denotes the intention to give to the lessee the slightest power to enlarge that goit after he had once completely made up his mind as to its width and shape, and had arched and covered it in. It was pressed upon me in argument, what could the Court have said, if immediately after the erection of the goit it had been found insufficient, and the party had then enlarged it? The Court would then have given a very liberal construction to this instrument. The question then would have been, whether, within the intention of this contract there had been a completion of the work. Supposing the moment it had been opened the flush of water had been so great as to have blown up the walls of the arch, and it had been found that it was insufficient for the purpose. The Court is not bound by such a straight-laced construction of this contract, to prevent it from saying it was not the true intention that the moment it was completed there it was to remain. If it did not answer the purpose for which it was intended, it might go on till it was completed; but that question does not arise. This goit has been completed for about half a century. For half a century it has answered the purpose for which it was erected; for all time to come it will and would have answered all those purposes; it has not failed to answer those purposes,—the purposes for which the contract provided; and if the lessee had left it alone, it would have still continued to answer them just as it did at the moment of its original completion. Men will naturally endeavour to turn the new lights which science has introduced to their own advantage. This lessee wants assistance on another man's ground, to which he is not entitled. Like everybody who wants to get into another man's land, to make a canal, goit, or anything else, he must condescend to bargain with him, and to pay him for the right which he desires to exercise. Therefore I do not see even that there is any hardship. He has got all he contracted for. Now what took place in 1835? There was a purchase of the land by the lessee, which had been granted in this way: it was a purchase by him of the fee-simple, with which they conveyed the lease; therefore I consider that to be a legally binding instrument. What, then, is the effect of the transaction? It was the grant in fee to a man and his heirs of those rights which had been granted, in 1800, for 999 years, of a chattel interest; that is a grant of the goit which then existed, without the slightest allusion to any right to enlarge or widen that particular goit. Well, after the experience of many years, the parties act upon things as they then stood, without having discovered any necessity to alter the goit, or without having at that time contracted to alter their rights. I must consider the parties as dealing upon what then existed, and I can see no landship. The defendant, under pretence of a right which did not exist, digs into the landlord's soil, and in a manner in which he has no right. My opinion is, that the judges came to a perfectly right construction of this instrument, and nobody can read it without coming to the same conclusion; it admits of no doubt in this court, any more than it does at law, and the construction must and ought to be the same; there is no equity and no circumstances existing here to prevent me from granting this injunction. I have seen nothing to complain of in the way in which the case was sent to law. It was a proper case to go to law, and I see nothing to complain of in what has taken place in any branch of the courts. I must, therefore, necessarily refuse this motion with costs.

ROLLS COURT.

Reported by J. MACAULAY, Esq. of the Inner Temple, Barrister-at-Law.

Wednesday, Nov. 10.

DUNCAN v. ROSS.

Will—Construction—Priority of legacy to executor.

A testator stating that his executor would have considerable trouble in the conduct and management of the affairs of his estate, for which he would otherwise have no legal claim to compensation, gave and bequeathed the executor of the trusts of his will, so long as he should act therein, an annuity or yearly sum of 100*l. to be paid half-yearly. The estate proving insufficient to pay all the debts, annuities, and legacies:*

Held, that as the annuity to the executor was given as a remuneration for services, it was in the nature of a debt, and was chargeable on the estate in priority to all other legacies and annuities.

This was a case upon the construction of a will, involving a question of priority between legacies and annuities, the estate being insufficient. The only point, however, worth reporting is as respects the priority of a legacy given to the executor of the will in these words:—"As my acting executor and trustee in England will have considerable trouble in the conduct and management of the affairs of my estate in this country, for which he would otherwise have no legal claim to compensation, I give and bequeath to such of my executors of the trusts of this my will in England, so long as he shall act therein, one annuity or yearly sum of 100*l.* of lawful money of Great Britain, to be paid half-yearly, the first payment to be made at the end of six months after my decease."

This annuity, it was contended, was in the nature of a debt, being a compensation for services to be performed, and therefore, it was urged, that it took precedence over all the legacies and annuities bequeathed by the will.

Rowpell, R. Palmer, E. Smith, and other counsel, for the various parties.

The MASTER of the ROLLS held that this legacy did take precedence over all the others, and decreed accordingly.

Wednesday, Nov. 3.

BROWN *v.* GORDON.

Debt due—Partnership—Lien of creditor on estate of deceased partner—Statute of Limitations.

A promissory note was given by a banking firm to a customer for moneys deposited. A new partner was afterwards introduced, and one of the original partners subsequently died. Other changes ensued in the partnership firm, but the successive firms continued to pay interest on the note. The firm became bankrupt, and the creditor proved his debt under the bankruptcy. The original partner who died had by his will given his real and personal estate to trustees, on trust to raise money to pay his debts. The creditor filed his bill for administration of the estate of the deceased partner, and sought to charge it with the debt due on the promissory note. The bill was dismissed with costs.

This was a suit by a creditor of Henry Baines Lott for administration of his estate, and seeking to charge it with payment of a sum of money due on a promissory note dated the 22nd February, 1827, whereby the testator and his two partners, Edward Lott and C. Flood, who carried on the business of bankers, promised to pay the plaintiff the sum of 100*l.* with interest, in consideration of a deposit in the bank of that sum. In the year 1830, C. F. Flood, a new partner, came into the firm, and in 1833 the testator died, having by his will devised and bequeathed all his real and personal estate to trustees, upon trust, in such way as to them should seem best, to raise a sufficient sum of money to pay his debts. Soon after the testator's death another partner was admitted, and in 1836, Edward Lott, one of the original partners, died; and in 1843, C. Flood, the other original partner, died, having appointed C. F. Flood, his executor. The business continued to be conducted by the partners who had come into the firm after the execution of the promissory-note till 1847, when the firm became bankrupt. Interest on the note was paid all along to the plaintiff through all the successive changes of the firm; and the plaintiff had taken no steps to get in the principal sum, either from the partnership property or the estates of the deceased partners till the bankruptcy; and he had proved the debt under the bankruptcy as a debt due from the partnership. He filed his bill for the administration of the estate of H. B. Lott. The cause now came on to be heard.

Willcock and *Giffard,* for the plaintiff, contended that the debt, though joint at law, was a several debt in equity. There was no evidence that the plaintiff had accepted the successive firms as his debtors in discharge of the parties who had originally executed the note, and the note itself had never been renewed. The debt was not barred by the Statute of Limitations, inasmuch as interest had been regularly paid by the successive firms, who must be considered agents of the original partners, one of the present partners also being executor of one of the original partners. Besides, the charge of debts contained in the testator's will was sufficient to save the statute, and prevent its operation as a bar. They cited *Winter* v. *Innes,* 4 My. & Cr. 101; *Way* v. *Bassett,* 5 Hare, 55; *Harris* v. *Fearnell,* 15 Law J. (N. S.) Ch. 185; *Lane* v. *Williams,* 2 Vern. 292; *Braithwaite* v. *Britain,* 1 Keen, 203; *Wilkinson* v. *Henderson,* 1 Myl. & K. 582.

R. Palmer, Hetherington, and *Chambers,* for the defendants, the executors and trustees of H. B. Lott, contended that the debt was merely a joint debt, but the deceased partner's estate is held liable by Courts of Equity merely to work out the equities between the partners. The Statute of Limitations was a bar to the rights of the surviving partners as well as to the plaintiff's, and therefore the rule of equity did not apply. Then as to payment of interest since the testator's death, that could not affect him even though a surviving partner was his executor, for he sustained a double character. They cited *Scott* v. *Jones,* 4 Cl. & F. 382; *Ex parte Kendall,* 17 Ves. 514; *Thompson* v. *Percival,* 5 B. & Ad. 925; *Cowell* v. *Sikes,* 2 Russ. 191.

Follett for the assignees.

The MASTER of the ROLLS said the only question was whether the plaintiff's claim still existed or was barred by lapse of time. As to the debt being kept on foot by payment of interest by the successive firms, that must depend upon the question whether the surviving partners were or not to be considered the agents of the testator. If they were it must have been by an implied authority, for no express authority was pretended to have been given. There was nothing, however, in the relation between the partners to cause such a presumption. It was urged that one of the partners was executor of the deceased, but it did not follow that because a man held two characters his acts in one of them should be considered referable to the other; and on the whole it was clear that the payments of interest were made by the surviving partners in their character as bankers, and without reference to the testator's estate. They considered themselves liable for the debt as surviving partners; and on this point *Way* v. *Bassett,* and *Henderson* v. *Wilkinson,* were express authorities. But then it was said that the testator had created a charge on his real estate in favour of the plaintiff, and it was argued that even if the remedy against the personal estate was barred, the real estate was liable under the charge in the testator's will; but he (the Master of the Rolls) was of opinion that that was not a sufficient charge. There was no debt which was binding on his estate at law, and the creditor was only entitled to stand in the place of the surviving partners. The plaintiff had not enforced his remedy against the testator's estate, but had accepted the surviving partners as his debtors, and they alone were now his debtors. It was impossible now to put the parties back into the position in which they would have stood if at the death of the testator the plaintiff had enforced his claim against his estate. The bill must, therefore, be dismissed with costs.

Wednesday, Nov. 10.

COWLEY *v.* WATTS.

Practice—Production of documents.

Bilton, in this case, moved for production of documents admitted in the defendant's answer.

The MASTER of the ROLLS took occasion to say that the practice was altered as to motions for production. Hereafter all applications must be made in chambers in the first instance. The party requiring production would issue a summons, and the party required to produce would then put in a list of documents on affidavit. Forms for the summons and affidavit had been prepared. If any dispute should arise the parties would then, and then only, come into court.

Thursday, Nov. 4.

BRIDGE *v.* BRIDGE.

Settlement—Voluntary assignment—Trustee and cestui que trust.

By a postnuptial settlement, A. B. conveyed certain property to two trustees jointly with himself, in trust for himself for life, with remainder to his children; and in default of such issue, in trust for such persons as he should appoint in his will; and in default of appointment, for his next of kin. The property consisted of a share of a residue under the will of a testator, some of which was transferred by the trustees of the will to the trustees of the settlement; but some of it still remained vested in the trustees of the will:

Held, that the part transferred was subject to the trusts of the settlement, which as to that must be enforced, but as to the part not transferred, the relation of trustee and cestui que trust was not created, and the settlement as to that part was inoperative, and that part must be transferred by the trustees of the will to the settlor.

Part of the property was freehold, in which the settlor had only an equitable interest, the legal estate being in the trustees:

Held, that no trust was created in the freehold, and the settlement as to that was also inoperative.

This was a bill filed by the plaintiff, a nephew of the late John Bridge, for an account of his estate, and to ascertain his share of the residue. The will of the testator bore date the 27th of November, 1833, and under it the plaintiff became entitled to one fifth-part of the freehold and residuary personal estate of the testator, which was to be transferred to him on his attaining the age of twenty-five years. The property to which the plaintiff thus became entitled, and which was ascertained and agreed to by him on attaining the age of twenty-one years, consisted of shares in the General Mining Company, Regent's Canal shares, Colombian bonds, a sum of 1,296*l.* Consols, and a balance of 475*l.* cash; besides a freehold estate. The will was proved in 1834. The plaintiff attained twenty-one in 1846, and twenty-five in 1850. After he came of age, and on the 9th of April, 1847, the plaintiff executed a deed, whereby, after reciting the settlement of the accounts and his marriage with the lady, who is his present wife, it proceeded to convey all his interest in his real and personal estate to two other persons jointly with himself, upon trust for himself for life, with remainder to his children, the issue of the marriage, with the usual powers of maintenance and advancement; and in default of such issue, in trust for such persons as he should appoint by will; and in default of appointment, for his next of kin. The whole of the property stood vested in the trustees of the testator's will, but the mining shares and the Regent's Canal shares were transferred to the trustees of the settlement. The Colombian Bonds pass by delivery, but no delivery had been made, and the legal estate in the freehold had never been transferred. Under these circumstances, the plaintiff contending that the settlement, which was voluntary, was altogether void, filed his bill for administration of the testator's estate, and for an account and for a transfer to him of the property by the trustees of the will. The trustees, on the other hand, asserted that the amount of the property coming to the plaintiff had been settled and agreed to by the plaintiff when he came of age. But the trustees of the settlement supported it, at least so far as concerned the property actually transferred to them. The case now came on to be heard.

Rowpell and *Southgate* for the plaintiff.

Lloyd, R. Palmer, Sandys, Southgate, Allnutt, and *Macnaghten,* for the several defendants.

Cases cited:—*Seele* v. *Law,* 15 Sim. 95; *Fortescue* v. *Barnett,* 3 Myl. & K. 36; *Ward* v. *Audland,* 8 Beav. 201; *Antrobus* v. *Smith,* 12 Ves. 39; *Beatson* v. *Beatson,* 12 Sim. 281; *Fletcher* v. *Fletcher,* 4 Hare, 67; *Ex parte Pye,* 18 Ves. 140; *Sloane* v. *Cadogan,* Sugd. V. & P. app.; *Meek* v. *Kettlewell,* 1 Hare, 464; *Ellison* v. *Ellison,* 6 Ves. 646; *Blakeley* v. *Brady,* 2 Dr. & W. 311.

The MASTER of the ROLLS stated the facts, and observed that the principle on which the Court acts in enforcing voluntary settlements was clear and well expressed by Sir William Grant in the case of *Ellison* v. *Ellison,* 6 Ves. and that rule has been followed in subsequent cases; but great difficulty sometimes arose in applying the principle to particular circumstances. He (the Master of the Rolls) purposely excluded those cases in which the settlor had executed abroad an obligation to make provision for the donee, and incurred a debt or liability; in which case the Court will always enforce it, as in the case of *Fletcher* v. *Fletcher,* 4 Hare. He confined himself to those cases in which the donor professed to assign some previously existing chose in action. If a person possessed of stock, &c. declared a trust of it in favour of volunteers, that would be perfectly good, there would be no difficulty, and the Court would execute the trust; or if he assigned his interest in a fund which was in the hands of trustees, and gave them notice of the assignment, and they acknowledged the notice, it was clear that they became trustees for the donee. But where no notice had been given to the trustees, or where they did not acknowledge the trust, the assignment constituted only an imperfect gift, and it was doubtful in what case the Court would interfere. His Honour then referred to and commented on the cases of *Sloane* v. *Cadogan, Fortescue* v. *Barnett, Meek* v. *Kettlewell, Antrobus* v. *Smith, Beatson* v. *Beatson,* and *Blakeley* v. *Brady* It was remarkable that in the present case the settlor did not profess to make the trustees of the will, in whose hands the funds were, trustees for the assignees of the settlement, but created fresh trustees; and no transfer was made to them, though there was nothing to prevent that from being done. After a consideration of all the authorities, he was of opinion that the relation of trustee and cestui que trust could not be created in the absence of any transfer; and that it must be considered to have been the settlor's intention that till a transfer took place, no such relation should arise. The only question then was, how far that transfer had in this case been made. The mining shares and Regent's canal shares it appeared had been transferred to the new trustees, and these shares, therefore, were bound by the trusts of the settlement. The Colombian Bonds, which passed by delivery, had not been delivered, and still remained in the custody of the trustees of the will. The same might be said with respect to the consols and cash balance, which still stood in the names of the trustees of the will; and they, as well as the Colombian Bonds, must be delivered to the plaintiff. He was of opinion, also, that no trust was created in the freehold estate. The settlor had only an equitable

interest in it till he attained the age of twenty-five, and the settlement therefore was inoperative as a declaration of trust.

VICE-CHANCELLOR TURNER'S COURT.

Reported by J. HENRY COOKE, Esq. Barrister-at-Law.

Friday, Nov. 12.

WILKINSON *v.* STRINGER.

Chancery Proceedings Amendment Act—15 & 16 *Vict. c.* 86, *s.* 39—*Viva voce examination.*

Where a case before the Court is not such upon the evidence that it would direct an issue on a matter of fact raised by the pleadings, the Court will not examine witnesses viva voce on the mere speculation as to what evidence might be elicited on such examination.

This was a suit by claim for the specific performance of an alleged agreement for the sale by Mr. Stringer, the defendant, to Mr. Wilkinson, the plaintiff, of a house, land of about twenty acres, and timber, at Peckham Fields, for the sum of 7,000*l.* It appeared that the transaction had been managed by agents on each side, Mr. Martin having been the agent for the plaintiff, the purchaser, while Mr. Wild was the party who acted as agent on behalf of Mr. Stringer. A deposit of 500*l.* was made. The affidavits of and on the part of the defendant made the case that Mr. Stringer never gave Mr. Wild authority to enter into the contract, and further, that it was well known to Mr. Martin, the agent of Mr. Wilkinson, that Mr. Wild had no authority; and also that both sides well knew, and mutually understood, that the whole agreement was conditional, and depended on the approbation of, and ratification by, the principal, Mr. Stringer.

Rolt and *J. W. Borill* for the plaintiff. The question now before the Court is simply one of fact, and is precisely one of the cases for which the recent statute was intended to provide. By the 39th section it is provided that upon the hearing of any cause, whether commenced by bill or by claim, the Court, if it shall see fit so to do, may require the production and oral examination before itself of any witness. Here, therefore, was a case for the interference of the Court in this manner, for the point being one of fact, it can examine into the matter by witnesses generally, and particularly by the examination of Mr. Wild, alleged by the plaintiff to be the authorised agent of Mr. Stringer.

Sir *W. P. Wood* and *Webb* opposed the application on behalf of the defendant. Here evidence has been deliberately gone into according to the established rules of the Court, and the plaintiff has failed in connecting the contract set up with the defendant. The evidence already taken may have proved Mr. Wild to have entered into the contract, but that is not enough, for it falls far short of shewing that any thing done was done by order or with the authority of the defendant. The way in which the case might have been proved, if proved it could be, was by examining Mr. Wild as a witness, and that was open to the plaintiff, and if he had failed to extract that proof from him, the Court would not have permitted the new statute to be made the means of enabling the plaintiff to re-examine his own witnesses by calling on them to give evidence orally in court. And, if so, there was no reason why now, the plaintiff having concluded his case, he should be allowed, because the Act had passed, to have the opportunity of calling evidence which he has already neglected to adduce.

The VICE-CHANCELLOR.—The true view, I apprehend, to be taken of this provision of the Act of Parliament, is to consider whether, if this case had been brought forward by bill, and the defendant had answered, and the parties had gone into evidence, the case was one on which the Court would have directed an issue on the question of fact raised by the pleadings? If there be no such sufficient evidence in support of the plaintiff's case as to lead the Court to direct an issue in the case I have supposed, the Court will not, under the recent Act of Parliament, examine witnesses viva voce, on the mere speculation as to what evidence may come out on such examination. In the present case I am of opinion that there is no sufficient evidence to establish the alleged agency or authority of Mr. Wild sufficient to induce the Court to direct an issue, and, therefore, I think the case is not one in which an oral examination of the witnesses will be required. I shall dismiss this claim without giving the plaintiff liberty to file a bill. Since the new Act of Parliament, I would, in a proper case, order the witnesses to be examined, rather than put the parties to the expense and delay of filing a bill; and if in this particular suit a case had been made, which in my judgment there has not, I would have examined them in this court, as there is but one single issue, namely, that of agency, and such an issue is a fit subject for such an examination.

Saturday, Nov. 13.

LAMBERT *v.* LOMAS.

Chancery Proceedings Amendment Act, 15 & 16 *Vict. c.* 86, *s.* 6—*17th of the New Orders—Filing of interrogatories.*

Where a bill, written, had been filed which prayed an injunction, and the defendant had appeared, the Court directed interrogatories to be received and gave the plaintiff leave to file them, although the printed bill had not been filed.

This was an application for the direction of the Court to the officers to permit interrogatories to be filed. A bill had been filed, not printed but written, as the same prayed for an injunction, such a course of proceeding being allowed by the 6th section of the Chancery Proceedings Amendment Act, which enacts, that notwithstanding the preceding directions as to the filing of a printed copy of the bill, the clerks of records and writs may receive and file a written copy of any bill of complaint praying a writ of injunction. The 16th of the General Orders requires the plaintiff to file his interrogatories within eight days after the time limited for the defendant's appearance, and as in this case the defendant had appeared, and as the before-mentioned section went on to direct that the printed copy of the bill, in such a case, must be filed within fourteen days from the time of filing the written copy, the fear was that the interrogatories, if not received by the record and writ clerk, would not be in time.

Amphlett, in support of the motion, stated, that a doubt had been expressed by the clerks of records and writs, whether in such a case they were authorised in receiving and filing the interrogatories before the printed bill was on the file.

The VICE-CHANCELLOR.—I do not think there needed any doubt upon this point. The interrogatories ought to have been received, and must now be received and filed, and I give the plaintiff leave to file them, although the printed copy of the bill is not yet on the file, but of course the requisitions of the statute in that respect will be strictly complied with.

VICE-CHANCELLOR PARKER'S COURT.

Reported by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.

February 18 *and* 20.

CRAMER *v.* CRAMER.

Trustee Act, 1850—*Infant out of jurisdiction.*

The sole trustee of a sum of stock, who was an infant out of the jurisdiction, was held not to be a "sole trustee of stock out of the jurisdiction," within the provisions of the 22nd section of the above Act.

This was a petition under the Trustee Act, 1850, for an order to vest in another person the right to transfer a sum of Consols, standing in the name of Victoria Harriet Cramer, an infant, who was resident out of the jurisdiction. On the 25th of March, 1841, Harriet Sarah Cramer, who was a widow, resident in Switzerland, invested a sum of 1,800*l.* in Consols, in the names of herself, her son, and V. H. Cramer, her granddaughter. Mrs. Cramer and her son afterwards died, leaving V. H. Cramer surviving. In the suit of *Cramer* v. *Cramer*, in which this petition was presented, it was declared that V. H. Cramer was absolutely entitled to one half of the sum of Consols, and that she was a trustee of the other half for the executrix of the son. V. H. Cramer being a minor, and out of the jurisdiction, this petition prayed an order to vest the right to transfer the stock as before mentioned.

The 22nd section of the Trustee Act, 1850, provides that, "When any sole trustee of any stock or chose in action shall be out of the jurisdiction of the said Court, or cannot be found, or it shall be uncertain whether he be living or dead, it shall be lawful for the said Court to make an order vesting the right to transfer such stock, or to receive the dividends or income thereof, or to sue for and recover such chose in action, or any interest in respect thereof, in any person or persons the said Court may appoint." It was admitted that neither the present Act, nor the 1 Wm. 4, c. 60, applied to the case of an infant sole trustee within the jurisdiction; but it was submitted that where a sole infant trustee was out of the jurisdiction, the provisions of the 22nd section of the present Act applied.

Headlam and *Hetherington* appeared in support of the petition.

Friday, Feb. 26.—The VICE-CHANCELLOR said that the question on this petition was whether an infant, who had been declared by the Court to be a sole trustee of a sum of stock, and who was out of the jurisdiction, could be dealt with as a sole trustee out of the jurisdiction under the 22nd section of the Trustee Act 1850. The Act applied to two entirely different classes or conditions of trustees; one of which consisted of those trustees who were unable to act by reason of their incapacity or lunacy. The other consisted of trustees who were out of the jurisdiction, or could not be found, or who refused to act: and these provisions were quite separate. The case of an infant trustee out of the jurisdiction would be the same as that of a lunatic trustee in the same position, but a lunatic trustee would not be under the jurisdiction of the Court of Chancery, but under that of the Lord Chancellor in lunacy. Supposing, then, that a sole trustee being a lunatic, were out of the jurisdiction, that could not enable the Court of Chancery to deal with his estate. It would be impossible to say that he was less a lunatic by reason of his being out of the jurisdiction, and therefore construe the Act as enabling this Court to deal with him; that would be to transfer, by implication, the jurisdiction of the Lord Chancellor in lunacy to this Court. So in the present case the Act did not apply to an infant sole trustee of stock, who was within the jurisdiction, and it could not be extended by implication to the case of an infant sole trustee of stock who was out of the jurisdiction of the Court. No order, therefore, could be made on the present petition. (*a*)

Wednesday, June 9.

MOATE *v.* MOATE.

Will—Construction.

"Survivors and survivor" held not to be understood as others and other.

Robert Moate, by his will dated the 10th of June, 1833, gave the dividends of 3,000*l.* stock to his wife for her life, and directed that after her decease the dividends should be applied for the maintenance of his son John for his life, and, after the decease of John, the testator bequeathed the sum to his (the testator's) four children, Mary, Joseph, Samuel, and Septimus, to be equally divided between them, share and share alike, and directed that in case of the death of either of them in the lifetime of John, the share of him, her, or them so dying should be divided among all and every the child or children of him, her, or them so dying in the lifetime of John, upon such child or children attaining the age of twenty-one years, and in case of the death of any or either of them, the said Mary, Joseph, Samuel, and Septimus, during the life of John, without leaving issue, then the testator directed that the share of him, her, or them so dying should be divided among the survivors and survivor of them the said Mary, Joseph, Samuel, and Septimus. The testator died in September 1834, and his widow died in December 1845. John died in June 1846, leaving only Joseph and Septimus him surviving, Samuel having died in May 1839, leaving nine children, and Mary having died in June 1839, leaving no issue. The question raised in this case was, whether the children of Samuel were entitled to any part of Mary's share.

Taylor, for the plaintiffs.

Campbell, for the defendants.

The following cases were referred to: *Willetts* v. *Willetts*, 7 Hare, 38; *Leeming* v. *Sherratt*, 2 Hare, 14; *Crowder* v. *Stone*, 3 Russ. 217; and *Davidson* v. *Dallas*, 14 Ves. 576.

The VICE-CHANCELLOR said that he ought not to go beyond the words of the will, which in this case were unambiguous. The stock was given to four persons and the child or children of such of them as might die in John's lifetime; and in case of the death of any or either of them in John's lifetime without leaving issue, then the share of him, her, or them so dying was to be divided among the survivors or survivor of them. Samuel, one of the four persons, died in John's lifetime, leaving children—his one-fourth share went to his children. Mary, another of the four persons, died in John's lifetime, but without issue—her share therefore went to the two survivors of the four persons named.

Tuesday, July 13.

WATERS *v.* WOOD.

Will—Construction.

A testator by his will gave to A. B. all the policies he had effected in the X. and Y. offices, and the moneys payable in respect thereof, and he gave to his wife all the other policies he had effected in other offices, and the money payable in respect thereof; and then he gave to his wife all his shares in public companies. By a codicil the testator revoked the bequest of the life insurances to his wife, and gave the said insurances and all his shares in the S. society to his wife for life, and afterwards to A. B. The testator never effected any insurance in the X. or Y. offices, but he had shares in them and in the S. society, and also two policies of insurance in the L. association:

Held, that the shares in the X. and Y. offices did not pass to A. B. under the bequest of the policies in those offices.

John Wood, the testator in this special case, by his will gave to the plaintiff "all the policies of life

(*a*) See now the 15 & 16 Vict. c. 55, s. 3.

assurance which he had effected in the Union and Law Life Assurance Offices, and the moneys payable in respect thereof," and he bequeathed to his wife "all and singular the other policies which he had effected in any other office, or offices, and the money payable in respect thereof, to and for her own absolute use and benefit." The testator then, after making several bequests, gave and bequeathed to his wife all his goods, chattels, and shares in public companies not thereinbefore specifically bequeathed. By a codicil to his will, the testator thus provided:—"Whereas I have in and by my said will given and bequeathed certain life assurances to my wife absolutely, now I do hereby revoke the said bequest to my said wife, and bequeath the said insurances and also all my shares in the life assurance society called the Sun, unto my said wife for her life, and after her decease I bequeath the same unto my said niece (the plaintiff), her executors, administrators, and assigns." The testator had not at any time during his life effected any policy of life insurance either in the Union or the Law Life Assurance Society; but at the date of his will, and thence up to the time of his death, he was a holder of twenty shares in each of these companies. The only policies of life insurance which he had effected at the date of his will were two on his own life in the London Life Assurance Association. At the same period he was also possessed of sixteen shares in the Sun Life Assurance Society, and seven shares in the Sun Fire Insurance Society. The principal question proposed to the Court in this special case was, whether the twenty shares in the Union Life Assurance Office, and the twenty shares in the Law Life Assurance Office, or either of them, passed to the plaintiff by the bequest to her of all the policies of life assurance which the testator had effected in the Union and Law Life Assurance Offices, and the moneys payable in respect thereof.

Daniel and *Speed*, for the plaintiff.

Campbell and *Kenyon*, for the testator's widow.

C. M. Roupell, for the trustees and executors.

Daniel in reply.

The following cases were cited: *Door* v. *Geary*, 1 Ves. sen. 255; *Selwood* v. *Mildmay*, 3 Ves. 306; *Dobson* v. *Waterman*, 3 Ves. 398, n.; *Pentecost* v. *Lee*, 2 J. & W. 207; *Gallini* v. *Noble*, 3 Mer. 631; *Finch* v. *Inglis*, 3 Bro. Ch. Ca. 120; *Hewson* v. *Reed*, 5 Madd. 451; *King* v. *Wright*, 14 Sim. 400; and *Evans* v. *Tripp*, 6 Madd. 91.

The VICE-CHANCELLOR said, that it was quite apparent, from the will and codicil taken together, that the testator at the time he executed the will, believed that he had policies of insurance in the Law Life and Union Insurance Companies, and that what he meant to give was those policies which he imagined he had. That being the testator's intention, the shares in those companies would not pass. The present differed from those cases where the testator intended to give what he really had, but made an error in describing it; here the testator believed he was possessed of something, which it turned out that he had not, and he meant to give that which he did not possess. In the will and codicil, the testator spoke of "shares," plainly meaning shares, and none of the authorities cited would justify the Court in deciding that the bequest of the policies would pass the shares which he had. The principle upon which his Honour decided the case was, that the testator, thinking that he had policies, intended to give such policies; and the Court could not, under such circumstances, give the shares to the legatee. When the testator intended to give shares, he so described them, and it was plain that by the term "policies" he meant policies. The question, therefore, as to the shares must be answered in the negative. The costs of all parties must come out of the estate.

VICE-CHANCELLOR STUART'S COURT.

Reported by GEO. S. ALINUTT, Esq. of the Middle Temple, Barrister-at-Law.

Thursday, Nov. 11.

MACKINTOSH v. THE GREAT WESTERN RAILWAY COMPANY.

Practice—15 & 16 *Vict. c.* 86—*Mode of taking evidence.*

Upon the application of the defendants, the Court directed that the evidence in a cause, in which issue had been joined on the 18*th of May last, and in which a witness had been examined de bene esse, should be taken in the mode prescribed by the above Act, and Orders of 7th August,* 1852.

Bacon and *T. Stevens*, on behalf of the defendants in this case, moved that the evidence to be used at the hearing of the cause might be taken in the mode prescribed by the 15 & 16 Vict. c. 86, and the General Orders of the 7th of August, 1852. They referred to the 31st Order of 7th August, 1852. Issue was joined on the 18th of May last.

Russell and *Bazalgette*, for the plaintiff, opposed the application, and said that already a portion of the evidence had been taken under the old system (one of the witnesses having been examined de bene esse on account of his great age and infirmity). It would, therefore, be extremely inconvenient to have the evidence taken partly in one way and partly in the other. The 31st Order required that the plaintiff should, within seven days after issue joined, give notice to the defendant of the mode in which he desired the evidence to be taken, and that period had long since expired. Besides this, no good ground had been shown for the application.

Bacon, in reply, referred to the 46th Order of 7th August, 1852, as enabling the Court to enlarge or abridge the time for doing any act, or taking any proceedings.

The VICE-CHANCELLOR said that the provisions of the Act of Parliament of the last session, which had been referred to in the argument, and the provisions of the General Orders of the Court for effectuating the purposes of that Act, and made under the authority of that Act, had imposed upon the Court in this case, and were likely to impose upon the Court in cases of a similar nature, a task of very great difficulty and great importance, with a view to the interests of parties engaged in litigation before the Court. Here the defendants asked that the evidence upon the matters in issue between themselves and the plaintiff in this case might be taken according to a system and practice hitherto new and untried. The plaintiff, on the other hand, resisted that application, and asked the Court to allow the evidence in this cause to proceed under the old system, he having filed his bill at a time when he had reason to expect that he would have the means of proving his case under the old system, and under no other. His Honour was, therefore, to decide upon the construction of the Act of Parliament, and these orders, and upon the facts brought before the Court to guide its discretion in this case, whether it was proper that the application should be granted. Now, in the first place, the plaintiff resisted the application upon this ground, that nothing has been shewn in support of this application that was sufficient for the Court to grant it; nay, if the Court granted the application in this case to have the evidence taken under the new system, it must be a motion of course in every other case pending before the Court; and when the cause was at issue before the Orders came into operation, it must be a motion of course to have the evidence taken under the new system. His Honour did not think that was an accurate view of the case, or of the grounds upon which the Court was applied to here. He thought that it by no means followed that if the Court in this case should grant the application, it must grant it in every other case. There were matters here brought before the Court that were not matters that must occur in every other case, which was brought before the Court, to guide its discretion, and, as the party moving asserted, which gave good ground for the Court to proceed in the case in the exercise of its discretion upon those special grounds, which might not be applicable to any other case pending before the Court. Now, it was perfectly plain that the intention of the Act of Parliament was, that the mode of taking evidence in cases before the Court should be altered, because the old mode was considered to be defective; it was also evident that it was in the contemplation of the judges of this Court, who had authority to make Orders suspending the operation of these enactments, that cases might occur in which it might be highly inconvenient, and not at all conducive to the principles of justice, to extend the new system to causes actually at issue, and in which the evidence might be taken either altogether, or to a great extent, according to the old system. Cases might occur, it was conceived, in which evidence taken according to the old system in causes already at issue, might be allowed to be used with reference to the matters in issue, in such a way as to have those matters disposed of in a perfectly satisfactory way, and it was conceived, he presumed from the terms of the General Orders, that the majority of cases were likely to be cases in which, to a great extent, the evidence had been completed under the old system. Now, the present case was not a case of that kind at all. In the present case, in the month of September last, no interrogatories had been filed; nothing had happened except that the cause was simply at issue; and in the month of September last, the plaintiff was aware that the defendants' view of the matter was, consistently with the view of the Legislature, that nothing having been done at the time towards the taking of the evidence in the cause in the one way or the other, it was desirable that the evidence should be taken according to that system which the Legislature had declared to be the best. If it was the view of the General Order of the 7th of August last, that in the majority of causes at issue, the evidence might have been taken to a considerable extent, that Order did not apply to the present case. His Honour, therefore, thought that the argument grounded upon the terms of the General Orders of the 7th of August, and that section which had been referred to, did not apply to the present case at all. He thought that here, where nothing had been done, except the cause simply being at issue, it was open to the defendants to shew the Court that, nothing having been done as to the mode of taking the evidence, from the nature of the points at issue in the cause, it was more convenient that the new mode should be resorted to. It was next suggested, on the part of the plaintiff, that he ought not to be made the victim of a new experiment; that he had begun his litigation under the old system, and ought to be permitted to proceed under it. But that was a matter on which the General Orders of the Court had authorised his Honour to exercise a discretion. The difficulty of the task was rendered more difficult by the assertion of the plaintiff of his right to proceed in the course in which he had begun; still it was his Honour's duty, looking at the matters in issue between the parties, and the way in which the evidence was proposed to be taken, to decide upon the conflicting views of the plaintiff and the defendants, in which of the two ways justice would be administered between the parties most expeditiously and most cheaply, so as to be satisfactorily administered. Now, when his Honour looked to the matters in issue in the cause, they seemed to him, if the new system was worth anything, to be such matters as were particularly within the view of the Legislature in altering the mode in which evidence should be taken. No doubt the old system of taking evidence in this Court was a defective mode, its defect was always felt; but it was to be considered, that as to the new mode he must be a very bold man who would say that, even as to the new mode, there were not defects in the mode of taking evidence by examining witnesses viva voce and by affidavit in the form contemplated. There might be proved to be defects of a very formidable kind, but if his Honour found that the Legislature in its wisdom, looking at the defects on both sides, was of opinion that the new mode was likely to be more effectual than the old, and had made it imperative, as the order had made it imperative, when the cause was not at issue before the new orders came into operation, that the new mode should be pursued; his Honour thought that in the peculiar circumstances of this case it was fit and proper, and a discreet thing on the part of the Court, to allow the evidence to proceed in the mode which the Legislature had declared to be the best. He was influenced in coming to that conclusion very much by the fact, that in point of delay and expense so far as one could speculate upon such matters, the delay and expense were likely to be much less in bringing the litigation to its ultimate result by proceeding by the examination of witnesses under the new system than under the old, if the new system were worth anything at all; and his Honour was not at liberty, sitting in that court, to say that the new system was not the better system of the two, since it was that which had received the sanction of the Legislature in consequence of the defects in the old. Upon the whole, therefore, he thought that in the exercise of his discretion, as well as he could exercise it, this was a case in which the application of the defendants ought to be granted; and in disposing of this case his Honour had felt it to be his duty, as he should in all these cases, to struggle as much as possible with any difficulties or uncertainties that might arise from the language of the Act of Parliament, and from the language of the orders of this Court, to struggle with any difficulties of that kind, in order to effectuate what was the great object of the Act of Parliament, and of the orders of the Court, to enable parties to meet on equal terms in that Court, and have the questions between them disposed of with as little delay and with as little expense as possible.

MACKINTOSH v. THE GREAT WESTERN RAILWAY COMPANY.

Practice—15 & 16 *Vict. c.* 86, *s.* 20—*Production of documents by the plaintiff.*

Upon the motion of the defendants in a suit the Court ordered the production by the plaintiff upon oath of certain documents and classes of documents specified in the notice of motion relating to the matters in question in the suit.

Bacon and *T. Stevens*, in this case on behalf of defendants, moved, under the 20th section of the 15 & 16 Vict. c. 86, for the production by the plaintiff on oath of certain documents and classes of documents specified in the notice of motion, and all other documents relating to the matters in question in the suit in his possession or power.

Russell and *Bazalgette*, for the plaintiff, opposed the motion. By an affidavit filed in opposition it appeared that the production of these documents would be attended with the greatest inconvenience to the plaintiff, who was unable from his engagements to devote the necessary time to the selection of them, &c. They referred to the 19th section of the 15 & 16 Vict. c. 86; and *Flett* v. *Mullins*, ante, p. 50.

The VICE-CHANCELLOR said, that with reference to that case it might be as well to say, that by some of those who took part in framing the Act it was intended that the Act should apply to a general production, as proposed by the motion in that case. Upon the best construction, however, it had been felt that the words of the Act entirely failed to effectuate that intention.

Bazalgette contended that the terms of the notice of motion were too general, and referred to *Attorney-General* v. *Wilson*, 9 Sim. 526.

Bacon in reply.

The VICE-CHANCELLOR said that he thought upon the whole the defendants had entitled themselves to an order against the plaintiff in this case. The application was made under the 20th section of the Act of last session, c. 86. The terms in which the enactment of that section was expressed were very large and comprehensive. It had been stated very justly that the view of the Legislature in the enactment of that section was to give to a defendant, without the more costly process of a bill of discovery, means of obtaining the production of documents in the possession of the plaintiff, which related to the matters in question in the suit; it, however, imposed upon the Court the duty of exercising a discretion in ordering such production, for very obvious reasons; because there might be many documents in the possession or power of the plaintiff relating to matters in question in the suit, the production of which might be altogether nugatory or unnecessary. What he had to consider on the present occasion was, whether it appeared from the evidence before the Court that there were in this case documents in the possession of the plaintiff, relating to the matters in question in the cause, which it was fit and proper, from the information which the Court had before it as to the nature of the litigation and the nature of these documents, that it should order the production on oath by the plaintiff. Now, his Honour found in this case that the subject-matter of the suit was the right of the plaintiff, which he asserted to recover from the defendants certain sums of money which he alleged to be due to him under certain contracts that subsisted between them. He found that, in the course of the litigation, the plaintiff thought it material for his case to compel the defendant to the most ample discovery and production of documents in the defendant's possession relating to the subject of the suit. He found, moreover, that from the evidence now before him, the defendant alleged, and the plaintiff admits, that he had in his possession documents relating to the matters in question in the cause. What his Honour had to consider was, whether, upon this general admission, it was proper that there should be a production ordered at the instance of the defendants. Now it appeared, strangely enough, from the case stated by the plaintiff in his own affidavit, that an enormous mass of documents relating to matters in question in this cause were in his possession; that he had been litigating upon the matter to which the documents related for five years, and had never for himself ascertained the contents of those documents so as to be able to state whether they did immediately relate to the matters in such a way as to enable the Court to exercise a more particular judgment upon their contents as to the matters in question in the cause. His Honour thought, upon a litigation which had been conducted under such circumstances with regard to the documents which related to the subject-matter of the litigation, in the possession of the plaintiff himself, that the case was pre-eminently one in which the Court should exercise its discretion in favour of the defendants, so as to give the most ample means of investigation as to the nature of those documents. The want of diligence, he did not say of caution, on the part of the plaintiff himself with reference to these documents was a very strong reason for the Court exercising its utmost power to give the defendants the means of investigation on their part of the contents of these documents. He therefore thought it was his duty to make an order according to the terms of the notice of motion, with some qualification with reference to the time. What the Act of Parliament authorised him to make would be an order for the production on oath by the plaintiff; that was, the plaintiff must, under the order his Honour was about to make, state more particularly on oath the nature of those documents which were in his possession. It was needless for his Honour to consider, in the present state of the matter, any question that might arise with reference to the form in which that oath would be made by the plaintiff. All that he could do was, in the terms of the Act of Parliament, to order him to produce them on oath, and to give him a reasonable time for that production. The time asked by the notice of motion was twenty-eight days, which he thought was too short. If the parties could arrange between themselves the time within which the affidavit could be made, he would make the order. His Honour was aware that the plaintiff in his affidavit had stated that great inconvenience and great loss to himself would accrue from the investigation, which would be necessary in consequence of the order that his Honour was about to make: that inconvenience and that loss had been already incurred by these defendants in reference to a similar investigation as to documents in their possession, at his instance; and his Honour did not think it rested with the plaintiff, therefore, who had commenced the litigation, to object to any degree of inconvenience and expense to himself that might arise from what was necessary, in order that complete justice might be done between the parties: but it was the duty of the Court to see that nothing unreasonable or harsh was exacted by the defendants, by the order of the Court, with reference to that expense and inconvenience to which he must necessarily be put. His Honour therefore wished the parties would agree, if possible, to some proper time, to be mentioned, in order to enable the order of the Court to fix a time.

By arrangement, the period of two months was afterwards fixed upon.

Monday, Nov. 15.

Ex parte WINTHROP, *re* THE UNIVERSAL SALVAGE COMPANY.

Joint Stock Companies Winding-up Act—Creditor. By arrangement between the directors of a company, 3,000l. was, on the 15th of August, 1845, paid by A. B. a director, into the company's account, the same being stated to be advanced in equal proportions by A. B., C. D. and seven other directors. On the 25th of August it was resolved, that each party making such advance should be allowed sixty shares as a security for the same, with liberty to retain such shares in satisfaction thereof, or to return the same, and claim the repayment of such advances out of the company's funds. C. D. and the seven others gave a joint and several bond to A. B. for the amount and interest. The sum was not paid to A. B. when due, and another security by way of a policy of assurance for 5,000l. on W.'s life, and a warrant of attorney, by C. D. and the others, to secure the payment of the premiums, was given. Default was made in payment of the premiums. An execution was issued on the warrant of attorney against C. D. and another only. C. D. subsequently paid the money. The company being in course of winding up under the above Acts, C. D. was placed on the list of contributories in respect of the sixty shares. He afterwards claimed to be a creditor in respect of the sum so paid by him, but it was

Held, that the sixty shares had been retained by him in satisfaction of the debt.

This was a motion by way of appeal from a decision of Master Farrer, disallowing certain claims of Mr. Winthrop against the Universal Salvage Company. The Company was formed in April 1844, and therefore previous to the 7 & 8 Vict. c. 110. Formal registration under that Act was, however, effected on the 30th of December, 1844; the deed of settlement was dated the 18th of August, 1845; and the company was completely registered on the 9th of January, 1846. On the 1st of August, 1845, it was resolved "That a sum not exceeding 3,000*l.* be raised as early as possible on the joint security of the directors and officers of this company, to carry out the operations of this company; the following gentlemen having consented to join in the security, viz. Captain Samuel Price, R.N.; the Hon. Capt. Lord Viscount Ingestre, R.N; the Hon. C. J. Murray; Captain Edward Norcott, R.N.; Edward G. Winthrop, esq.; Robert W. Wood, esq.; Dr. William Marshall; John Watson, jun. esq.; Thomas E. Wyche, esq. That in the event of the money being obtained as above, an agreement shall be entered into by the foregoing gentlemen to limit the liability of each and others that may consent." On the 15th of August it was resolved "that the directors, solicitors, and auditors should themselves advance the amount" (3,000*l.*); and "That all moneys received from this day should form an accumulating fund for the repayment of the said 3,000*l.*" On the 19th of August a cheque for 3,000*l.* was drawn by Mr. Murray, and paid into the company's account. A joint and several bond by Mr. Winthrop and the others was thereupon given to Mr. Murray for the repayment of 3,075*l.* and interest on the 15th of February, 1846. On the 26th of August, 1845, it was resolved by the directors, "That in conformity with the resolution of the 15th August inst. the sum of 3,300*l.* had been advanced and placed to the company's credit in equal proportions by the following directors and officers, for a period of six months from this date, namely, Col. G. Coffin, 300*l.*; Lord Ingestre, 300*l.*; Honourable C. J. Murray, 300*l.*; Dr. W. Marshall, 300*l.*; E. G. Winthrop, 300*l.*; R. W. Wood, esq. 300*l.*; John Watson, jun. esq. 300*l.*; T. E. Wyche, esq. 300*l.*; A. Prince, esq. 300*l.*—3,000*l.*;" and "That each party making such advance be allowed sixty shares as a security for the same, with liberty to retain such shares in satisfaction thereof, or to return the same, and claim the repayment of such advances out of the company's funds." Upon the bond becoming due it was not paid; and in July 1846, it was agreed that the time for payment should be enlarged, upon the terms that 2,835*l.* (being the amount and interest which would be due on the 31st July, 1846, to Mr. Murray, after deducting 300*l.* erroneously included in the original amount), should be secured by a policy of insurance for 5,000*l.* on the life of Mr. Watson, and a warrant of attorney. By the deed of arrangement then signed by the parties, it was agreed that no judgment or execution should be entered up upon the warrant of attorney, unless default was made in payment of the premiums on the policy. The second year's premium upon the policy was by accident omitted to be paid; and Mr. Murray thereupon, on the 27th July, 1847, signed separate judgments against all the parties to the warrant of attorney, but issued execution against Mr. Winthrop and Mr. Wyche only. These gentlemen, on the 14th of August, 1847, filed a bill against Mr. Murray and the remaining seven directors, to stay proceedings at law; and on the same day an injunction was granted. This injunction was dissolved on the 18th of August; and on the following day another injunction was obtained, upon the plaintiffs paying the sum in dispute into Court. On the 30th of January, 1850, the cause came on to be heard, when the bill was dismissed with costs, the sum remaining in court after taxation and payment of costs to be transferred to Mr. Murray. The company having been ordered to be wound up, Mr. Winthrop claimed to be repaid the sum which he had so paid to Mr. Murray, less some few contributions which he (Winthrop) had obtained from his co-obligors. Mr. Winthrop's name had been placed on the list of contributories in respect of sixty shares.

Baggallay appeared in support of the application.—This money had been applied for the partnership purposes of the company. By the fifth clause of the deed of settlement, all arrangements made, and engagements and contracts entered into, by the persons who had conducted or managed the affairs of the company since the projection and formation thereof, were ratified and confirmed. The 102nd clause provided that the costs and expenses attendant upon the outfit, establishment, and management, and carrying on the business of the company, &c. should be paid out of the deposits on the shares. The option given by the resolution of the 26th of August, 1845, to retain the sixty shares, had not been yet exercised by Mr. Winthrop, who had merely held them as a security.

The VICE-CHANCELLOR (without hearing *Russell* and *Selwyn* for the official manager), said that the only question was whether Mr. Winthrop, who claimed to be a creditor of the company, was a creditor, or was to be treated as a person who had been a creditor, but whose claim had been satisfied. His Honour considered that the Master came to a right conclusion in holding that Mr. Winthrop was no longer entitled to be considered as a creditor, for it appeared extremely plain that he had exercised his option with regard to the sixty shares. Assuming what was in his Honour's opinion the fact, that Mr. Winthrop was entitled to be considered a creditor of the company, it appeared by the resolution of the 26th of August, 1845, that provision was made for giving Mr. Winthrop, and the persons who stood in the same position with him, shares, which they had the power of keeping in satisfaction of their debt, or returning. There was no doubt about the terms of the resolution. In this state of things, and up to the time when Mr. Winthrop applied to prove his debt against the company, he had not returned the shares, under the liberty which he had of doing so; but he had retained them, exercising all the rights in respect of them; and his name had been placed on the list of contributories in respect of these very shares. On all questions then between Mr. Winthrop and the company, all the liabilities as well as the rights in respect of the shares were fastened upon him. Whether the result were benefit or liability was of no consequence; it was enough to say that he had not made use of his liberty to return the shares, and if he asked now to do so, it was too late, for he must be treated as having retained them in satisfaction of his debt.

Motion refused with costs.

Friday, Nov. 12.

Ex parte FENN, *re* THE PENNANT AND CRAIGWEN CONSOLIDATED LEAD MINING COMPANY.

Joint-Stock Companies' Winding-up Acts—Contributory.

A company was formed for working, on the cost-book system, a mine (of which they had a lease) in Wales, and by one of the rules a shareholder might determine his liability by giving notice to the purser of his desire to retire, and depositing with the purser the transfer of his shares, and signing a relinquishment of his claims on the company in respect of the shares. A. B. having shares in the company, signed a document, furnished to him at the company's office, relinquishing his shares. The affairs of the company being afterwards ordered to be wound up, it was

Held, that A. B. was not a contributory in respect of these shares.

This was a motion, on behalf of Mr. Joseph Fenn, to discharge an order of Master Tinney retaining Mr. Fenn's name on the list of contributories of the above-named company. By the prospectus and rules of the company, which mentioned a lease of the mines held by them, it was stated that the company was formed upon the cost-book principle. The 24th rule provided "That any shareholder may determine his or her responsibility or liability with respect to the affairs of these mines upon his or her giving notice in writing to the purser of the company for the time being of his or her desire of retiring from the company; and also, upon depositing with the said purser the transfer of the shares held by him or her, and signing a relinquishment of all claims or demands on the company in respect of such share or shares." In August 1851 Mr. Fenn signed a document, procured for that purpose from the company's office, relinquishing his shares. The affairs of the company having been ordered to be wound up, under the provisions of the Winding-up Acts, the Master placed Mr. Fenn's name on the list of contributories in respect of these shares.

Selwyn appeared in support of the application.

Roxburgh, for the official manager, contended that as the cost-book principle was applicable to Cornwall only, and these mines were in Wales, the company could not be properly formed upon that principle. Mr. Fenn was unable, according to the 24th rule, to retire from the company without doing three things, viz. give notice in writing to the purser, deposit with the purser the transfer of the shares held by him, and sign a relinquishment of all claims on the company in respect of his shares. Mr. Fenn having complied with the third only of these requisitions, he could not be held to have exonerated himself from liability in respect of his shares. In any event, Mr. Fenn would be liable for rent due at the time he relinquished his shares.

Selwyn in reply.

The VICE-CHANCELLOR said, that although the facts of this case were not so clearly before the Court as might be desired, he must assume, from the document admitted between the parties, that the company had been conducted on the cost-book principle; and that the subject-matter of the partnership was the lease of a lead mine. In the case, two questions arose. Fenn said that he relinquished his shares in the company in such a way as, according to the stipulations subsisting between the parties, absolved him from all further liability. If that were so, it would require, in order to justify the Master in placing his name on the list of contributories, that it should be shewn there was some liability antecedent to the date of the relinquishment, for which he was still responsible. As to relinquishing the shares, his Honour was of opinion, on the best construction he could put upon the words of the instrument which had been produced, that what had been done by Fenn amounted to a relinquishment of his shares within the 24th rule. If so, did there remain any liability in respect of which his name should be placed on the list of contributories? It had been suggested on behalf of the official manager that there was a liability still subsisting in respect of the lease, which was the subject-matter of the partnership, as to which Mr. Fenn might still be called upon. Keeping in view that the principle of the cost-book system was one which made a shareholder liable for no more than the sum he had paid down, unless that amount had been increased by some subsequent arrangement between the parties, and keeping in view that the subject-matter of the partnership was a lease vested in the managing partners for the benefit of the whole concern, and that the amount to be subscribed by each shareholder must have had reference to what was necessary to answer liabilities in respect to that lease, his Honour did not consider that he had enough before him, nor could he say the Master had enough before him to justify him in holding Mr. Fenn liable for arrears of rent before he relinquished his shares, or any other debt beyond the stipulations of the deed. Mr. Fenn's name, therefore, must be removed from the list.

Monday, Nov. 15.

Ex parte WOOD, *re* THE WORCESTER CORN EXCHANGE COMPANY.

Joint-stock Companies' Winding-up Acts—Contributory.

This was a motion on behalf of Mr. Joseph Wood, a builder, that the decision of Master Farrer, that Mr. Wood's name be included in the list of contributories in respect of ten shares in the above-named company, might be reversed or varied; and that Mr. Wood's name might be struck out of the said list. Mr. Wood was a builder at Worcester, and was interested in a rival company projected there for a similar object to that of the Worcester Corn Exchange Company. Upon, however, being assured that the rival company was abandoned, Mr. Wood proposed to take four shares in this company, and, as he alleged, under a misrepresention, he signed the subscriber's agreement, and to his signature the number ten, as the number of shares to be taken by him, was afterwards added. Mr. Wood, however, never made any payment in respect of the shares, nor was his name returned to the Registration Office as a shareholder. The company was formed in 1848, and was completely registered under the 7 & 8 Vict. c. 110. The deed was dated the 8th of May, 1848.

Roxburgh, in support of the application, referred to *Bird's* case, 1 Sim. N.S. 47; and *Ex parte Yelland*, 19 Law T. 30.(*a*) He contended, that upon the evidence, which was conflicting, it appeared that the blanks for the date and number of shares opposite to Mr. Wood's name, had been filled in after he had signed the subscriber's agreement. The deed became void, and the company was in fact never established, inasmuch as there were not, as he contended, the necessary number of shares taken within three months after the date of the deed.

The VICE-CHANCELLOR (without hearing *Glasse* and *Smythe* for the official manager), refused the motion, with costs.

Common Law Courts.

COURT OF QUEEN'S BENCH.

Reported by ADAM BUTLERTON and JOHN THOMPSON, Esqrs. Barristers-at-Law.

Friday, Nov. 12.

BOLCKOW *v.* THE HERNE BAY PIER COMPANY.

Bond—Right to sue, although Act excludes priority among creditors.

By a Pier Act 6 & 7 *Wm.* 4, *c.* 112 (*private*), *the company were enabled to borrow money upon bond, and it was provided that all creditors upon such securities should be equally entitled to a claim or lien on the rates, tolls, &c. in proportion to the sums secured, and without any preference by reason of priority of date or on any other account:*

Held, that the right to sue by action upon the bond was not thereby taken away.

Debt on bond for a sum certain, payable on a day certain, with interest.

The defendant, after setting out the bond and condition on oyer, demurred.

The bond was given by the Herne Bay Pier Company for money borrowed in pursuance of the 6 & 7 Wm. 4, c. 112 (local and personal), and the 9th and 11th sections thereof were cited in the argument.

Sect. 9. If the company shall think it expedient to borrow the sum of 30,000*l.* or any part thereof, by bond or bonds under their common seal, it shall be lawful for them to do so; and the money so secured shall be payable in such manner, and at such time, and at such legal or less rate of interest as the company shall think proper; and the rents, rates, tolls, and profits which shall from time to time arise in respect of the said undertaking shall be a security for the money so to be borrowed, with interest; and all persons to whom any such securities, either by way of mortgage or bond, shall be given or transferred, or in whom they shall become vested, shall be equally entitled to a claim or lien on the said rents, rates, tolls, and profits, in proportion to the respective sums thereby to be secured, and without any preference, by reason of the priority of date of any of such securities, or on any other account whatsoever.

Sect. 11. The interest of money borrowed by mortgage or bond shall be paid half-yearly, and in case any such interest, or any part thereof, shall be unpaid for thirty days after it is due and after demand, two justices may, by order, appoint a receiver of the rents, rates, tolls, and profits to the use of the person to whom such interest shall be due, but in case such power shall not be resorted to, the interest so due may be sued for and recovered, with costs, by action of debt.

Willes, in support of the demurrer. The Act of Parliament is recited in the condition of the bond, and shews that the bond was given in pursuance of the Act. Then sect. 9, placing creditors upon an equal footing, and forbidding any priority, and sect. 11, enabling the creditors to apply to have a receiver appointed, shew that it would be defeating the object of the Act to allow one bondholder to sue, and so by judgment obtain priority over the other creditors. (*Doe dem. Wyatt* v. *The St. Helen's and Runporn Gap Railway Company*, 2 Q.B. 364; *Pontet* v. *The Basingstoke Canal Company*, 3 Bing. N.C. 433; *Hart* v. *The Eastern Union Railway Company*, 7 Ex. 246; 19 Law T. Rep. 314, S.C. in error.)

Addison, contrà.—Section 11 enables a bondholder to sue by action for nonpayment of interest, and non constat, that the plaintiff is suing for more at present. The plaintiff may assign breaches of the condition in his replication, and so shew that his claim at present is confined to the nonpayment of interest. But upon section 9 there is nothing to take away the plaintiff's right to sue upon this bond, which the company had power to give; and the bond being given, the right to sue for breach of the condition follows, and there must be express words to take away that right. *Doe dem. Banks* v. *Booth*, 2 B. & P. 219, shews that a mortgagee may maintain ejectment for toll houses and gates in order to repay himself the interest due, notwithstanding by the Act all the mortgagees were to be creditors upon the tolls in an equal degree.

LORD CAMPBELL, C.J.—All that we have to decide now is, whether an action can be maintained upon the bond of the company in this form. No doubt the 6 & 7 Wm. 4, c. 112 (private), by sec. 9, in the most express terms, enables the company to enter into a bond in this form, the condition being the payment of the principal on a day certain. Well, then, primâ facie an action lies upon it for breach of the condition, and it lies on the defendant to shew something to prevent the action being maintained. Mr. Willes relies on the words in section 9, "and all persons to whom any such securities shall be given, &c. shall be equally entitled to a claim or lien on the said rents, rates, tolls, and profits in proportion, &c. and without any preference," &c. I do not know that it is necessary to refer these words to the power of suing on the securities; but at all events for the nonpayment of the interest, the breach whereof may be assigned in the replication, this action may be maintained by section 11. None of the cases cited by Mr. Willes apply to such a bond as this, and indeed *Hart* v. *The Eastern Union Railway Company*, 19 Law T. Rep. 314, is an authority against him.

COLERIDGE, J.—I confess it strikes me that the construction of section 11 is not so sure as the construction of section 9, and my judgment is pronounced on section 9 alone. If this company give a bond conditioned for the payment of the principal on a day certain, an action lies for the breach of the condition, and the onus is on the defendants to take away that right of action. The words at the end of section 9 are relied on by the defendants for that purpose, but they seem to me not to take away the right of action. It is said that they operate in this way, that if the plaintiff obtains judgment in the action, he might obtain a preference over the other creditors, which would be contrary to the provision of the Act. But I do not think that follows. However, that is not the question we have now to determine. What the consequences may be after judgment, it is not necessary to determine at present.

WIGHTMAN, J.—It seems to me that there is nothing in section 9 to prevent the plaintiff suing on this bond. The company have thought proper to make a bond for a sum of money payable on a day now passed. I find nothing to prohibit the plaintiff bringing an action for the nonpayment of the money in such a case. The plaintiff may be under a disability in issuing execution, but that is not the question.

ERLE, J. concurred.

Judgment for the plaintiff.

(*a*) Upon this case of *Ex parte Yelland* being cited from the LAW TIMES, the following observations were made:—

Roxburgh.—There is *Yelland's case*, which is reported in the LAW TIMES by Mr. Allnutt. [The VICE-CHANCELLOR intimated his unwillingness to hear it.] It is also reported in 16 Jur. 599.

The VICE-CHANCELLOR.—I believe that the reports in the LAW TIMES are extremely good, but the Lord Chancellor, feeling that every record ought not to be quoted, would not allow Sir W. Wood the other day to quote the LAW TIMES,—not from any disrespect to the authority of the reporter, as I happen to know. I objected to a case being cited from the LAW TIMES before Vice-Chancellor Kindersley, but he allowed it to be used. It is not from any feeling on the part of the Lord Chancellor of discrediting those reports that he refuses to permit them to be cited, but from the inconvenience which an endless multiplicity cannot fail to produce.

Roxburgh said that it was a very great advantage indeed to have early reports.

The VICE-CHANCELLOR.—I am an old reporter myself, and quick and ready reports I know are valuable; but I do not think that a report is worth much, unless the reporter has an opportunity of looking deliberately over all the papers. Quick and ready reports have their value, but whether they should be cited as authorities to guide the judgment of the Court, is another and totally different question.

Roxburgh said, that from personal knowledge he could bear testimony to the general accuracy of the reports in the LAW TIMES.

BUSINESS OF THE WEEK.

Thursday, Nov. 11.

WILSON *v.* SIMPSON.—Sir *F. Thesiger*, on behalf of the plaintiff, moved to set aside the verdict, and for a new trial, unless the defendant would consent to the appointment of a fresh arbitrator. *Rule nisi.*

Re E. MONEY and G. E. MONEY.—Sir *F. Kelly* moved for judgment. As the case was one involving painful family disputes, it was agreed that it should be heard in private by Erle, J. at chambers.

DUNN *v.* COCKS and OTHERS.—The plaintiff in person moved to rescind a judge's order. *Rule refused.*

HAYLOCK *v.* SPARKE.—Rule nisi to enter a verdict for the plaintiff, with 42*l.* damages, or for a new trial. *Wells* (*Byles*, Serjt. with him), shewed cause. *Part heard.*

Friday, Nov. 12.

Doe dem. PLEWS *v.* WALTERS. *Rule refused.*

THE MAYOR, &c. OF BERWICK-UPON-TWEED v. OSWALD.
SAME v. RENTON.
SAME v. DODIE and ANOTHER, Executors.
These three cases involved the same points.
Cur. adv. vult.

TALLIS v. TALLIS. *Part heard.*

Saturday, Nov. 13.

HAYLOCKE v. SPARKE.—(Argument concluded.)
Cur. adv. vult.

MELLOR v. CLOUGH and ANOTHER.—*Wilkins*, Serjt. and *Bernie* shewed cause against a rule to enter a verdict for the defendant Clough. *Edward James* and *Milward*, contrà. *Cur. adv. vult.*

Monday, Nov. 16.

STEWART v. THE ANGLO CALIFORNIAN RAILWAY COMPANY.—*Bramwell* moved to amend the judgment herein.
Rule nisi.

ROBINSON v. SHAW.—*Kemplay* moved to set aside an award. *Rule nisi.*

REG. v. THE MAYOR AND ASSESSORS OF THE BOROUGH OF HARWICH.—*O'Malley* moved for a mandamus, on the same grounds as the rule was applied in the Bail Court (See 20 Law T. Rep. 72.) *Rule nisi.*

FARQUHAR v. WILLIS.—The *Attorney-General* and *Bramwell* shewed cause; and *Bovill* in support of the rule.
Rule discharged.

EDWARDS v. LOWNDES.—*Gray* and *McMahon* shewed cause; and *Whateley* and *Whitmore* supported the rule herein. *Cur. adv. vult.*

REG. v. THE EASTERN ARCHIPELAGO COMPANY.—Sci. fa. to repeal the charter of the defendants. The *Attorney-General*, the *Solicitor-General*, *Hugh Hill*, and *Willes* shewed cause; and *Crowder* in support of the rule.
Part heard.

Tuesday, Nov. 16.

REG. v. THE YORK AND NORTH MIDLAND RAILWAY COMPANY.—ERLE, J. gave his judgment in favour of the company. Lord CAMPBELL, C.J. delivered the judgment of himself and CROMPTON, J. for the Crown, upon demurrer to return to writ of mandamus to complete railway. *Judgment for the Crown.*

REG. v. THE LANCASHIRE AND YORKSHIRE RAILWAY COMPANY. — Lord CAMPBELL, C.J. delivered the judgment of the Court. *Judgment for the Crown.*

TALLIS v. TALLIS.—Demurrer to plea; raising a question as to the legality of a covenant in restraint of the canvassing branch of the publishing trade. *Dowdeswell*, in support of demurrer. *Cole*, contrà. *Cur. adv. vult.*

LETHORICK v. MERCER.—Demurrer to the declaration: raising a question as to the right of magistrates to order payment out of the county rate of the expenses of conveying prisoners to gaol, where the offence is within the metropolitan police district. *Channell*, Serjt. in support of the demurrer. *T. F. Ellis*, contra. *Cur. adv. vult.*

COURT OF COMMON BENCH.

Reported by DANIEL THOMAS EVANS and R. VAUGHAN WILLIAMS, Esqrs. Barristers-at-Law.

HAMILTON, Appellant, *v.* BASS, Respondent.

Registration—40s. freeholder.

To ascertain the clear yearly value of premises to the landlord on a question of qualification for a county voter, the average annual amount of the cost of repairs is to be deducted from the gross rent. The cost of collecting the rent is not to be deducted.

A. with twenty-nine others, was owner in fee of premises which let for 63l. per annum: 1l. per annum was the average cost of repairs: 1l. 6s. per annum was paid to a person for collecting the rent:

Held, that the cost of collecting the rent was not to be deducted from the gross sum in order to ascertain the clear yearly value, but that the cost of repairs must be deducted, and that therefore A. was not qualified to vote as a 40s. freeholder.

Premises in East Cumberland were owned by thirty persons in fee Rent, 63*l.* per annum; paid for collecting, 1*l.* 6*s.*; cost of repairs, 4*l.* The owners claimed to vote as 40*s.* freeholders. Claim rejected by the revising barrister, on the ground that the clear yearly value was less than 40*s.*

Mellor, Q.C. appeared for the appellant, and referred to 8 Hen. 6, c. 7; 10 Hen. 6, c. 2; 18 Geo. 2, c. 18, s. 5; to *R.* v. *Framlingham*, Bur. S.C. 748; and *Colvill* v. *Wood*, 1 Lutw. 483.

S. Temple, for the respondent, cited *Copland* v. *Bartlett*, 2 Lutw. 102; *Lee* v. *Hutchinson*, 8 C. B. 16; and *Reamish* v. *Overseers of Stoke*, 2 Lutw. 189.

Mellor, Q.C. in reply, referred to *R.* v. *Ringwood*, 1 M. & S. 381.

JERVIS, C.J.—The barrister was substantially correct. The question is, whether the claimant has property of the value of 40*s.* per annum above all charges. A mere voluntary payment is not to be deducted from the gross amount. That which is paid to an agent for collecting the rent is a mere matter of convenience, and is not to be deducted. But money paid for repairs is different. It is not a charge within the meanings of the Acts, but that it is to be deducted from the rent in ascertaining the clear yearly value is virtually decided in *Lee* v. *Hutchinson*. What the property is worth is a question of fact. Now, if in this case the tenant was bound to repair, he would not give 63*l.* but 59*l.* per annum. The property, therefore, is only worth 59*l.* per annum to the landlord to spend. The barrister has found that 4*l.* is to be deducted from 63*l.* That is a question of fact, which he has decided, and I think correctly.

MAULE and TALFOURD, JJ. concurred.
Appeal dismissed with costs.

COLLINS v. THOMAS.

A house and garden held of the same landlord, but not stated to be held under the same demise, amounting together, but neither separately, to 10l. per annum in value, sixty yards distant from one another, will not give a qualification to vote as a 10l. householder,

This was an appeal from the revising barrister for the borough of Tewkesbury. The claim was in respect of a cottage and garden, held of the same landlord, amounting together to 10*l.* per annum in value, but separated from each other by about sixty yards. The case did not state that they were under the same demise.

Kerr, for the appellant, submitted that the garden was occupied "therewith" within the meaning of the 27th section of 2 Wm. 4, c. 45.

Appeal dismissed, with costs.

LAMBERT v. THE OVERSEERS OF ST. THOMAS, NEW SARUM.

A notice of objection to a vote is good if it can be commonly understood.

A notice in the following form, "Take notice, I object to your name being retained on the list of voters for the parish of St. Thomas, New Sarum, in the southern division of the county of Wilts," was sent to a person who claimed to vote for the southern division of that county:

Held, that such notice, though not strictly in form, could be commonly understood, and was therefore sufficient according to the 7th and 101st sections of 6 & 7 Vict. c. 18.

In this case the appellant claimed to vote for the southern division of the county of Wilts. The notice of objection to his vote was in this form: 'Take notice, I object to your name being retained on the list of voters for the parish of St. Thomas, New Sarum, in the southern division of the county of Wilts."

The revising barrister held the notice good.

Warren, Q.C.—The notice is not according to the form given in the Act. It ought to have been:—"In the St. Thomas, New Sarum, list of voters for the southern division of," &c. There is no such list as a list of voters for the parish of St. Thomas, New Sarum, in the southern division of the county of Wilts. "In the southern division of the county of Wilts," merely shews where the parish is situated. It might have been a vote for the borough that was objected to. It might possibly mislead, and is therefore bad. (*Allen* v. *House*, 7 M. & G. 157.)

JERVIS, C.J.—The 7th section of the statute 6 & 7 Vict. c. 18, says the notice shall be according to the form given in the schedule, *or to the like effect*. The 101st section of the Act says, no misnomer or inaccurate description of any possession, place, or thing named or described in any notice shall in anywise prevent the operation of the Act, provided such possession, place, or thing shall be so denominated in such notice as to be commonly understood. This notice could be understood by any voter.

MAULE, J.—I think the notice is within the 7th section. Would not people commonly understand that the county list was meant? An uncommon person might not understand it. There was no other list to which this notice would apply, and it takes great legal acuteness to spy out the objection.

TALFOURD, J. concurred.
Appeal dismissed without costs.

Monday, Nov. 15.

(Before JERVIS, C. J. and MAULE, WILLIAMS, and TALFOURD, J.J.)

ARNETT v. THE LONDON AND NORTH-WESTERN RAILWAY COMPANY.

A railway company built bridges over their line of railway upon land conveyed to them in fee, but with a reservation of the use of the bridges. The commissioners for paving, &c. paved the road over the bridges. There were walls on each side of the bridges:

Held, that the company were liable to be rated for the walls on each side of the bridges, under 57 Geo. 3, c. 29, s. 3, the walls of the bridge being "dead walls" within the meaning of the Act;

Held also, by Jervis, C. J. that they were liable under the words "void spaces:"

Held also, by Maule, J. that they were liable for them as "public buildings."

This action came before the court on a special case, by which it appeared that the plaintiff was clerk to commissioners for paving, lighting, &c. who sought to recover from the company the amount of several rates upon two bridges over the line of their railway, the one called Crescent-place-bridge and the other Stanhope-place-bridge. The two cases were identical. The land over and upon which the bridges were built was conveyed to the company, but there was a clause in the conveyance, "excepting and always reserved out of the conveyance hereby made, the use and enjoyment of the bridges" in question. The case did not shew whether at the time of the conveyance the bridges were public or not, but they are so now. The bridges had been paved by the commissioners, and the question for the court was whether the company were liable for the cost of paving.

Byles, Serjt. (with whom was *Barstow*) for the plaintiff.—The company are liable to be rated, either under 43 Geo. 3, c. 139, s. 26, by which the commissioners are enabled to rate every person who shall inhabit, hold, use, occupy, possess, or enjoy any premises, shop, &c. building, or tenement in any street, &c. and the rate is to be calculated upon the yearly value of the premises; or under 57 Geo. 3, c. 29, s. 3, which enables the commissioners to include in any rate "all public buildings" assessed according to the number of square yards contained in one half of the width of the street which may lie before or at the side or rear of, or abut upon such public buildings, and also to rate "churchyards, cemeteries, dead walls, and void spaces of ground." These bridges are public buildings, and for them the company are rateable; if not so, the walls of the bridges are dead walls within the terms of the Act.

Channel, Serjt. (with whom was *Bovil*).—The company are not liable under 43 Geo. 3, c. 139, s. 26. [The COURT did not require an argument upon this point.] 2ndly. They are not liable under 57 Geo. 3, c. 29, s. 3. The bridges are the street, and therefore do not lie before, &c. or abut upon it, and the walls of the bridges are not dead walls within the meaning of the Act, which only intended such walls as separated land or other property from the street, and they are not void spaces.

JERVIS, C.J.—I do not think this case comes within the first branch of the question, under which it would be necessary to shew that these bridges were public buildings such as were contemplated by the Act. I think, however, if it were necessary we might hold that there was a void space on each side, it being the object of the Act that everything on each side should contribute, each individual possessing property along the line of street being benefited. The Act first makes all private occupants liable to be assessed to the rate, then all public buildings, cemeteries, dead walls, and void spaces; and I think it was intended under "void spaces" to include everything not otherwise charged. But under the term "dead walls" they are directly within the Act. The wall is built on the ground of the company on each side of the street, and the rate is on those who occupy the ground. It satisfies the words and the intention of the Act.

MAULE, J.—This case is very clear. The Legislature in both Acts, which are public in form and matter, intends the improvement of the road for the benefit of all persons whose property abuts on either side, and that some person should be rateable for every inch of it,—some in respect of the annual value, and others in respect of the frontage. This is not directly expressed, but the intention is abundantly clear. The expression "dead wall" is literally applicable to the walls of the bridges. I think a dead wall is one which is not a portion of any house or building, but intended only to separate property from a road, and having in it no door or window, and therefore this case comes so clearly within the words of the Act, that if it were not within the object, it would be difficult not to give effect to the words. I think also they might also be considered as public buildings, being for the benefit of the public; but it is not necessary to decide that.

WILLIAMS and TALFOURD, JJ. concurred.

Tuesday, Nov 16.

MICHAELMAS TERM.

(Before JERVIS, C.J. and MAULE, WILLIAMS, and TALFOURD, JJ.)

ROBERTS v. BETHELL.

Bill of exchange—Infancy—Acceptance, time of—Presumption that acceptance was made within a reasonable time after the date of the bill.

Where a bill of exchange is produced, and the acceptance proved by proof of the handwriting of the acceptor, but no evidence is given as to the date of the acceptance, the jury may infer that it was accepted within a reasonable time after the date of the bill, and this may in some cases be taken to be within a few days after the date of the bill.

Where, therefore, to an action by an endorsee against the acceptor of a bill of exchange, payable four months after date (the defendant and the drawer both living in the same town), the defendant pleaded "non accepit," and "infancy at the time of the acceptance," and the acceptance was proved to be in the handwriting of the defendant, and it was also proved that the defendant came of age on the last day but one of grace:

Held, that the plea of infancy was sufficiently proved.

This was an action on six bills of exchange, drawn by one Miller, who resided in London, accepted by the defendant, who also resided in London, and en-

dorsed to the plaintiff, who is a bill discounter in Northumberland-court, Strand.

Pleas.—1st, "Non accesit;" 2nd, "Infancy at the time of the acceptance."

At the trial the bills were produced, when it appeared that five of them became due before the 11th of March, 1851, on which day it was proved that the defendant came of age.

The sixth bill, which was for 20*l.* was dated the 9th of November, 1850, and was payable four months after date; it therefore became due on the 12th of March, 1851, one day after the defendant came of age.

The acceptances by the defendant were proved by proving them to be in the handwriting of the defendant, and no other evidence was given as to the *time* at which the bills were accepted. It was contended on behalf of the plaintiff, that the defendant must shew that the bills were accepted before the 11th of March, 1851. The learned judge, however, left the case to the jury, who found a verdict for the defendant, leave being reserved to move to enter a verdict for the plaintiff.

A rule nisi having been obtained accordingly,

Edwin James and *Fortescue* now shewed cause.—The rule must be discharged. *Harrison* v. *Clifton*, 17 L. J. 233, Ex. was cited at the trial. In that case no bill was produced. Mr. Baron Parke there says, "Admitting the bill to have been drawn on the day on which it bore date, why may not the defendant have accepted it some time after?" The case of *Levy* v. *Bulkeley*, 14 Law T. 378, Ex. can hardly be said to overrule that case, [MAULE, J.—Suppose you shewed a document respecting the execution of which there was no evidence, then the person who had to shew *when* it was executed must fail. When the acceptance of a bill is denied, and proved by the handwriting, the acceptance is presumed to have been before maturity. JERVIS, C.J.—It is presumed to be within a reasonable time.] In the absence of evidence to the contrary, a bill of exchange must be taken to have been issued on the day of its date. (*Anderson* v. *Weston*, 6 Bing. 295, N.C.) The proposition that bills may be accepted after they are due is conceded. (Byles on Bills, 116, 6th edit. was cited.) It is for the jury to say, looking at the date of the bills, *when* they were accepted, and the inference is, that a bill was accepted within a reasonable time from its drawing, and at all events before maturity. The jury are entitled to infer that the bills were accepted within a reasonable time, and during the minority of the defendant. When a bill is accepted after it is due, the proper mode of pleading is, that it was so accepted, for then it is payable on demand. (*Jackson* v. *Pigott*, 1 Ld. Raymond, 364.) Then as to the case of *Mulford* v. *Walcot*, 1 Ld. Raymond, 574, cited by Byles, Serjt. in his work on bills, it shews that the days of grace are not part of the period during which the bill has to run. In this Court the practice has been to allege an acceptance after maturity when it was so. (*Billing* v. *Devaux*, 3 M. & G. 565.) In *Christie* v. *Peart*, 7 M. & W. 491, it was said by the Court, that after the dishonour of a bill, it is payable on request; and that a promise, therefore, by the acceptor, after the bill was due, to pay it according to the tenor and effect of his acceptance, is a promise to pay it on request. *Brown* v. *Harraden*, 4 Term Rep. 148, was also cited.

Byles, Serjt. and *Huddlestone*, in support of the rule.—Even the rule that the date of a document is evidence of when it was made is not universal. The exception is, where a bill or note is produced for the purpose of proving a petitioning creditor's debt. The declaration means "A third person drew a bill on the defendant, and the defendant, before action brought, accepted it." The defendant pleads, "I did, before *or after* it was due, accept, but I so accepted whilst I was an infant." There a distinct affirmative is taken on himself by the defendant. It involves a fraud if you suppose the bill accepted while the defendant was an infant. The defendant must shew that he accepted before he was of age. It is within his knowledge. We cannot know when he accepted it. [MAULE, J.—It is to be taken that an instrument was executed on the day of its date. On a trial for murder, on a plea of "not guilty," it would be so if the question were before the jury. The form of the issue can make no difference, provided the matter sought to be proved is a matter on the issue before the jury.] It may be that in a case of infancy the presumption does not apply. (*Israel* v. *Argent*, 1831, Ex. M. S.; and *Blyth* v. *Archbold*, Guildhall, July 9, 1835, cor. Lord Abinger, C.B. were cited (both of these cases are cited in Pearson's Chitty's Precedents, in the note, p. 330, 2nd edit.); *Dickson* v. *Evans*, 4 T. R. 57, was also cited.) You must not make a presumption in favour of a man who has the means of knowledge, especially when he has the affirmative of the issue upon him, against a man who has not the means of knowledge. The jury should have been told that they ought not to make a presumption one way or the other. There was not, in fact, any evidence to support the plea of the defendant. The only evidence was the date of his birth. Then is there any rule of law to raise the presumption that a bill is accepted on the day of its date? In 1 Starkie on Evidence, p. 420, 3rd edit. it is laid down, that "It is a general rule that the onus probandi lies upon the party who seeks to support his case by a particular fact of which he is supposed to be cognizant. It is not to be presumed that an indorsee could be cognizant of *when* the acceptance took place. There is no presumption in favour of the defendant, because he is cognizant." [MAULE, J.—The Court is by no means satisfied that there is no evidence here. On the contrary, the Court think that the production of the bill, and the proof of the handwriting, is evidence that the bill was accepted shortly after it was drawn.] The only presumption on a plea of non accepit is, that the acceptance was at some time before action brought.

JERVIS, C.J.—I think this rule ought to be discharged. It is not denied that the defendant must prove that he was an infant when he accepted the bill. The question is, was there any evidence. If there was *any*, then my learned brother was right. It is every-day practice simply to prove the handwriting on the bill. The bill must have been accepted at the time of the action brought. It is not so proved, except that by the course of business it would be accepted during its currency. The only question is, is there evidence to go to the jury? We are to presume that the bill was accepted within a reasonable time after its date, and the party accepting must be presumed to follow the ordinary course, unless the contrary is shewn.

MAULE, J.—I also think this rule must be discharged. The defendant undertook to prove that at the time of the acceptance he was an infant, and the jury found that he was. The question is, was there evidence for the jury? I do not think that this is a case of presumption. A presumption is where, without any evidence, a fact is assumed. The way the defendant proves his plea is by shewing that the bills, except one of them, became due while he was an infant, and as to that one that he came of age on one of the days of grace. Does that amount to evidence from which the jury may infer that he accepted during his infancy? It is well established that a bill is considered to issue at the time it bears date. Why is this the general rule? The reason is, that, ordinarily, bills are issued at the time they bear date. The acceptance is ordinarily not dated, and therefore there is nothing to prove the day of it. It is not, by any means, universal usage that bills should be accepted on the day of their date; but it is usual to accept at some early opportunity after the drawing: therefore, where two persons, being in the same town, draw and accept a bill, the presumption is that the bill was accepted one or two days after the drawing, therefore the acceptance is evidence that the bill was accepted a few days after the drawing, regard being had to the distance at which the persons reside from each other. Therefore, on the same principle as that by which the day of the date is to be taken as the day of the issue of a bill, you may presume the acceptance to have been made at some early opportunity after the drawing. You must prove that a bill was accepted before action brought, and this is ordinarily done by shewing the bill,—and if it be evidence in that case it is evidence in all cases, except in the one exceptional case which has been mentioned. This rule of evidence, though not founded in terms of express decisions, is on the principle on which the decisions have been come to, that the date of a document is evidence of the time of its execution.

WILLIAMS, J.—I am of the same opinion, for the reasons given by my lord and my brother Maule, and think that there was evidence for the jury.

TALFOURD, J.—I am entirely of the same opinion.

Rule discharged.

BUSINESS OF THE WEEK.

Friday, Nov. 12.

FORD *v.* SWEDLEY.—Appeal from the decision of the revising barrister for the borough of Westminster dismissed.

To be reported.

Tuesday, Nov. 16.

HARRIS *v.* THIRKELL.—*Brownell* and *Barrow* shewed cause against a rule for a new trial in this case. The other side will be heard on Saturday, the 20th November. A report will be given in our next number.

EVERETT *v.* LEVY.—*Hawkins* moved for a rule to shew cause why the plaintiff should not be at liberty to take out of court the sums of 22*l.* 10*s.* and 10*l.* which had been paid by the defendant in lieu of bail, and for costs. The defendant had not put in special bail, nor paid in the 10*l.* in lieu thereof, and had gone abroad.

A rule nisi was granted, to be served at the last known place of abode of the defendant, and notice to be given in the office.

BARRENGER *v.* HANDLEY.—*Prentice* moved, on behalf of the plaintiff, pursuant to the 17th section of the Common Law Procedure Act, 1852, for an order that the plaintiff be at liberty to proceed in the action as if personal service had been effected on the defendant. It appeared by the affidavit in support of the motion that a copy of the writ had been left at a shop which the defendant had previously given as his address, but which, on inquiry, was ascertained to be merely the place where he called for his letters. That subsequently a clerk to the defendant's attorney called on the plaintiff's attorney with the copy of the writ to offer terms, and that the defendant's residence was not known. It appeared also by the affidavit that the appearance book had been searched, and that the defendant had not appeared to the action. JERVIS, C.J. in order that the practice of the Courts might be uniform, went out and consulted the Lord Chief Baron and Mr. Baron Parke, and on returning, the Court granted the application, the order to be absolute in the first instance, and without service; but intimated that circumstances might exist in some cases which would make it expedient that the defendant should be called on to shew cause.

Wednesday, Nov. 17.

NEWELL *v.* THE TOWN CLERK OF DERBY.—Appeal struck out for want of sufficient paper-book.

BARKER *v.* PULMON.—Appeal struck out for the same reason as the last.

BESSON *v.* BURTON.—Appeal from the decision of the revising barrister for the southern division of Leicestershire. It was stated in the case that certain commonable lands, being the property of the resident freemen of the borough of Leicester, are vested in deputies for the benefit of the resident freemen. Portions of these are allotted to freemen as gardens; and the question was, whether the occupiers take a freehold interest. The deputies, with the consent of the majority of the freemen, might remove the occupiers for certain purposes. *Cox* for the appellants. *Hayes* for the respondent. Held, that this case differed from *Davies* v. *Waddington*, 7 M. & G. 37, and that the deputies, having no power to remove without the consent of the majority of the freemen, that is to say, without the consent of the occupiers themselves, as included in or represented by the majority, the estate was not one at will, but was of an uncertain extent, which might last for the life of the occupier, and therefore amounted to a freehold. *Appeal dismissed.*

MOORE *v.* THE OVERSEERS OF CARISBROOKE.—Appeal from the decision of the revising barrister. The claimant was the owner of land of the value of 5*l.* which, with other land of the value of 50*l.* was mortgaged for 300*l.* at an interest of 5*l.* per cent. *Poulden*, for the respondent. MAULE, J.—Deduct 15*l.* the mortgage interest, from 53*l.* the total value of the land, that leaves 40*l.*: the 11th part of that is more than 40*s.* *Appeal dismissed.*

FENDON *v.* SAWYERS.—Appeal from decision of the revising barrister for the city of Carlisle, holding that a notice of objection to a vote signed A. B. F. "on the list of freemen for the city of Carlisle" was bad. *S. Temple*, for appellant; *Mellor*, Q.C. for the respondent.

Cur. adv. vult.

BARROW *v.* BUCKMASTER. *Part heard.*

ROBERTS *v.* GRANT, and six other cases.—The parties to these cases had agreed to abide by the result of *Roberts* v. *Lucas*. *Channell*, Serjt. applied for leave to have another trial, on the understanding that the same point should not be raised. The Court thought that substantially the same point must be raised, and refused the application.

COURT OF EXCHEQUER.

Reported by FREDERICK BAILY and C. J. B. HERTSLET, Esqrs. Barristers-at-Law.

Saturday, Nov. 13.

GLEN *v.* LEWIS.

Rule to plead several matters—When it should be delivered.

When a rule to plead several matters is required, it should be obtained and served before the time to plead has expired, otherwise judgment may be signed.

This was a rule obtained to set aside an interlocutory judgment signed, there having been no rule to plead several matters, served before the time for pleading expired. (See it reported *ante*, p. 71.)

A judge's order had been obtained for leave to plead several matters, on Saturday, when the defendant's time to plead would expire; the pleas were delivered, and a notice also that the rule to plead the several matters as allowed by the learned judge and pleaded, should be served as soon as it could be obtained from the office: that rule, however, not having been obtained and served before Monday morning, eleven o'clock, the plaintiff, on the opening of the office at that time, signed judgment; and this rule having been obtained to set it aside.

Willes shewed cause.—Although from an *ex parte* statement of the circumstances, it might have appeared to the Court when this rule was moved for sharp practice, yet it really was not so, the defendant was as much to blame as the plaintiff. Even before the rule of Hilary Term, 2 Wm. 4, this practice was regular, but since then it is free from all doubt. The case was before Mr. Justice Erle at chambers, and neither then nor when this rule was first applied for was there any affidavit of merits. [PARKE, B.—We decided, when the rule was moved, that the judgment was regular; the defendant has an affidavit of merits, and the rule must be absolute on payment of all costs.]

Karslake, contrà. *Rule absolute accordingly.*

Monday, Nov. 15.

PINHORN *v.* SOUSTER.

Common Law Procedure Act, ss. 50, 51, and 52—Special demurrer.

These clauses only apply to future proceedings; and a special demurrer pending before the Act came into operation can therefore be heard as before the passing of the Act.

Trespass for goods.

The third plea justified, under an alleged tenancy

at will between one Quested and the defendant. An indenture was set out an oyer, which appeared to have been made between Quested and the defendant, whereby it was agreed between them that Quested should hold as tenant at will, at a rent of 150*l.* payable quarterly, which rent should be recoverable, when in arrear, by distraint, and should be applied to certain trusts contained in the indenture. By the deed it appeared that the demise came out of a term originally vested in one Muggridge. To this plea the plaintiff demurred. Demurrer dated 15th May, 1852. Joinder in demurrer, 21st May, 1852.

T. Jones, in support of the demurrer, stated the pleadings.

PARKE, B.—They ought to have begun with the seisin in fee. This may be good as between the parties to the deed, but it does not bind the plaintiff. The defendant had better amend.

Macnamara, for the defendant.—The defendant cannot amend, so as to insert the necessary allegation. This is a good objection only on special demurrer, and special demurrer is altogether taken away by 15 & 16 Vict. c. 76, s. 51. That section enacts, that "no pleading shall be deemed insufficient for any defect which heretofore could only be objected to by special demurrer." That clause has a retrospective effect, and operates on demurrers already pending; the word "deemed" means judicially decided by the Court. The words are not, "no pleading shall be specially demurred to after this Act comes into operation," but, "shall be deemed insufficient"—that is, adjudged insufficient. This point has already been mooted before the C. P. but the judges of that court did not decide it, but said they would consult with their learned brothers.(*a*) The plaintiff is not thereby deprived of his remedy, for by the 52nd section, "If any pleadings be so framed as to prejudice, embarrass, or delay the fair trial of the action, the opposite party may apply to the Court or a judge to strike out or amend such pleading, and the Court or any judge shall make such order respecting the same, and also respecting the costs of such application as such Court or judge shall see fit." Sec. 50 applies to future special demurrers; but if sec. 51 is not applicable to demurrers now pending, it is not applicable at all. [ALDERSON, B.—Sec. 52 applies to future demurrers. The wording of the Act is clear enough. Why should we go out of our way to find a difficulty?] This is a remedial Act, and is to be construed liberally. He referred to ss. 10, 12, 24, 26, 92, and 100, to shew that where it was intended by the Legislature that the provisions of the Act should only operate from the time of the Act coming into operation, it was so expressly provided, and pending proceedings were specially excepted. [ALDERSON, B.—Just consider the inconvenience and delay that the plaintiff would be put to. This demurrer is dated the 15th May last, and was put in for the purpose of curing a pleading, which would materially have embarrassed the plaintiff at the trial. The new Act takes away special demurrers, but gives a compensation. Here you desire to apply it to a case where no compensation can be given. PARKE, B.—These sections must be read as if the word "future" had been introduced before the word "pleading," and the cases now pending must be decided according to the law as it was at the time of the proceeding, and before the passing of this Act.] This question is fully considered, and all the cases collected in Mr. Wise's book on the Common Law Procedure Act, p. 3, and the author there expresses his opinion in conformity with the present argument. He also referred to the cases there collected.

PARKE, B.—This Act must be construed according to the general maxim, "Nova constitutio futuris formam imponere debet, non præteritis." That rule always prevails unless there is something in the context which clearly indicates a contrary intention; and here there is nothing. Read as a whole, it is clear to my mind that the Act only applies to future proceedings. I think the point is without the least doubt that all these clauses are prospective, and relate solely to future cases.

The rest of the Court concurred.

The case was then adjourned till Wednesday, that the defendant might consider in the mean time whether he would amend.

Tuesday, Nov. 16.

Ex parte WILLIAM STOREY.

Ecclesiastical Court—Prohibition.

A decree in the Ecclesiastical Court having been made against a party, which he had disobeyed, he applied to this Court for a prohibition to issue to the Ecclesiastical Court, on the ground that he had received no previous notice of the decree, nor had he had any opportunity of shewing cause against that decree being made:

Held, that as the Ecclesiastical Court had jurisdiction, his proper remedy would be to apply to that Court in reference to any supposed irregularity of practice, or to appeal.

(*a*) See *James* v. *Isaac and Others*, 20 Law T. Rep. 68.

Parry moved in this case for a rule to shew cause why a writ of prohibition should not issue to the Bishop of London and Dr. Lushington, the judge of the Ecclesiastical Court, restraining them from proceeding in a suit of *Storey* v. *Storey*, which was instituted by the wife for the restitution of conjugal rights; and he also asked for a rule for a certiorari to bring up certain books of the court in reference to entries therein relating to that suit. A similar motion has already been made to the Court of C. P. upon the same state of facts, and that Court refused the rule. On 26th April last a notice was served on the husband by the wife's proctor, that the judge would be moved to make an order to take her home. On the 30th, the husband appeared and called on the wife's proctor to move, and said he was ready to take his wife home; but that motion was not made. In consequence of his following the proctor, some unpleasant circumstances took place, whereby the husband was given into custody by the proctor, for which the husband brought his action, and recovered nominal damages. On the 11th May he appeared in court, and was then threatened with imprisonment for contempt in not paying alimony, and, under protest, he then paid all that was due. On the 2nd September, Storey, the husband, received notice first, to obey a decree made to take his wife home; and, secondly, to pay alimony, or he would be declared in contempt. He swears by his affidavit that until the 2nd September, he never heard of the decree in any way whatever (the decree in question, it is said, was made on the 9th June). The decree was to *take* her home. The word "take" appears now to be struck out, and the word *receive* written over it, which may make a material difference. He states that he believes the alteration was improperly made, and he also says he never had any opportunity of shewing cause against it in any way whatever. [PLATT, B.—The whole matter is within the jurisdiction of the Ecclesiastical Court; should you not have appealed? PARKE, B.—Yes; that is the question,—what is the proper remedy?—what is your gravamen?] That the decree has been made upon us to take or receive the wife home, and pay alimony, without giving us any opportunity of being heard against it before it was made. The husband had no proctor, he went to the Court on the 9th of November, and tendered an affidavit of these circumstances; the judge refused the affidavit, requested the officer not to administer the oath, and said, "If you do not pay and take her home, I shall, on the next court day (the 17th of November) pronounce you in contempt." [ALDERSON, B.—Suppose we were to make a rule absolute, without having served the opposite party, could he go into the Court of Q.B. and obtain a prohibition against us? It is clearly only an irregularity, at the utmost, in the Ecclesiastical Court, and no ground for taking away their jurisdiction altogether. PLATT, B.—It may be the practice not to serve notice at all under the circumstances.] In the County Courts it had been held, that after a party had been ordered to pay a sum of money, he ought to be summoned to shew cause why he did not pay before taking him in execution for it. (*Ex parte Kinning*, 17 L.J.) [PARKE, B.—That was under a particular Act of Parliament.] *Carmichael Smith's* case, 3 Adol. & Ellis, 719; *Capell* v. *Child*, 2 Cr. & Jer. 558; *Williams* v. *Bagot*, 3 & C. 386; and also 16 L.J. 256 Q.B. were cited.

PARKE, B.—The question is, whether the Court had jurisdiction, and it clearly had. If the facts are as you state, it would only amount to an irregularity in practice; and the remedy, perhaps, may be, to apply to that Court to have it set right, or to appeal. It is a question upon the practice of the Court, and one not at all calling for our interference by prohibition. *Rule refused.*

THE GUARDIANS OF THE POOR OF THE ROMFORD UNION *v.* THE BRITISH GUARANTEE ASSOCIATION.

Collector—Board of guardians—Fraud—Releasing collector's sureties for the due performance of his office—Substituting policy of the Guarantee Society.

This was an action brought by the plaintiffs to recover 800*l.* from the defendants upon a policy of guarantee effected in the office of the defendants by Mr. George Beadle, for the faithful discharge of the duties of his office of collector of the poor-rates for the parishes of Barking and Dagenham, in Essex. The defendants, among other things, pleaded that the loss had not accrued during the existence of the policy, and that they were induced to make and execute the said policy by the fraud, covin, and misrepresentation of the plaintiffs. The cause was tried before the Lord Chief Baron on the 29th of June last, when the jury returned a verdict for the defendants, on the plea of misrepresentation; and a rule nisi having been obtained to set aside that verdict, on the ground of misdirection, and for a new trial,

O'Malley and *Whitmore* shewed cause. The learned judge left the whole case to the jury very

fairly. This rule has been obtained on the ground that the judge, instead of leaving it to the jury, should have told them there was no evidence whatever of fraud on the part of the poor-law guardians. The collector and applicant for this insurance or guarantee had, it seems, been a collector of the poor-rates for about ten years, and had theretofore entered into a bond with two sureties for the due performance of the duties of the office. Some six months before any default on his part was discovered, which led to the present suit, Beadle suggested to the plaintiffs that they would oblige him by cancelling the bond discharging the sureties and accepting the policy of guarantee from the defendants. The plaintiffs agreed to do so. It became necessary, then, in the first instance, that Beadle (the collector and applicant), as well as the plaintiffs, should answer, in writing, the usual questions in such cases proposed by the Guarantee Society. Accordingly such questions were sent to the plaintiffs by the defendants, who referred the board of guardians in answering those questions particularly to the regulations of the Poor-law Commissioners (one of which regulations it appeared was that a collector should not be allowed to retain in his possession more than 50*l.* at a time of money belonging to the board), and one of the questions asked of the plaintiffs by the defendants was, how much money he was allowed to retain in his possession? The answer was, "Never more than 500*l.* but it may be 800*l.*; in fact, he frequently had as much as 500*l.* in his possession belonging to the board at one time." Another question was to the effect, with reference to the regulations of the Poor-law Commissioners, whether Beadle had ever been a defaulter, or neglected duly and regularly to pay over all moneys due from him, and the answer was "That his accounts had been always regularly audited by the auditor of the district." The policy by the defendant was thereupon effected, and in the course of about six months afterwards it was discovered he had been for some time past a defaulter to the amount of about 1,000*l.* The auditor, it appeared, had not discovered it, but instead of Beadle's paying over the proper checks and money as received to the proper authorities, he used to send it all to his own bankers', or at all events to pay the board of guardians, when he did pay them, by check upon his bankers, and he did not certainly comply with the regulations of the Poor-law Commissioners, to which the plaintiffs had been referred previous to their answering the question. The plaintiffs must, or at least ought, to have known this, and particularly should they, for it was their bounden duty to have most carefully examined his conduct and his previous accounts upon being asked to cancel his bond and discharge his sureties from liability; that great caution was necessary must at once have suggested itself to the minds of any body of men under such circumstances; it ought to have raised suspicion and induced inquiry, yet nothing of the kind takes place, his sureties are discharged, and the defendants induced by the answers of the plaintiffs to give this policy of guarantee, although Beadle, the collector, had been acting in this way for nearly ten years, entirely in contravention of the regulations of the commissioners. The 9th form of rules, that every such collector shall make out a statement, &c. signed by himself, &c. to be laid monthly before the board of guardians, had never been complied with once during the whole time he was employed. The answer to the 5th question was also fraudulent, and the defend- ants contend this must be within the knowledge of the plaintiffs, who, in fact, induced the defendants to enter into the policy by fraud and misrepresentation. The jury expressly so found, and this rule ought to be discharged.

Bramwell, Q.C. and *Willes*.—There was no evidence whatever produced to shew that the guardians or their clerk knew of any default whatever on the part of the collector at the time, they released his sureties and this policy was entered into. The auditor was called and examined, and he stated that he audited the accounts and did not discover, nor did he know of any irregularity, or that the collector was in arrears. The learned judge should have told the jury there was no evidence of their knowledge of fraud, and not have left it to the jury to say whether there was fraud or not. [The case was then adjourned.]

Wednesday, Nov. 17.—PARKE, B.—We do not say there was any misdirection in this case; yet under all the circumstances we incline to think it would be much the best that there should be another trial, when the whole facts may be fairly ascertained. No person can doubt that there was fraud practised by Beadle, the collector; but whether it was with and to the knowledge of the plaintiffs, the board of guardians, is another question: there must, therefore, be a new trial, the costs to abide the event. *Rule absolute.*

BUSINESS OF THE WEEK.

Thursday, Nov. 4.

SPIGER v. MAGNAN.—Tried before Maule, J. when the plaintiff obtained a verdict for 150*l*. The action was brought for diverting a stream of water that ought to have run to a mill. *E. Chambers*, Q.C. moved to reduce the damages, on the ground of their being excessive. POLLOCK, C.B. (Nov. 13), said,—In this case there will be a rule to shew cause, unless the plaintiff will consent to reduce the damages to 100*l*. We have consulted my brother Maule, before whom the case was tried, and he is of opinion that the damages are too large. At the same time we think there ought not to be a new trial granted, if the plaintiff is prepared to reduce the damages from 150*l*. to 100*l*.

The plaintiff subsequently consented to reduce the damages accordingly.

Friday, Nov. 12.

PEARSON v. MEUNIER.—*Carrington* shewed cause against a rule to shew cause why an order of Martin, B. and the cs. sa. issued should not be set aside for irregularity. *Horn*, contra.

Rule absolute; no costs, and no action to be brought.

WATERS v. HOWELLS.—*Gray* moved for a rule to shew cause why the certificate herein for a special jury should not be set aside or the Master be desired to review his taxation and to disallow certain costs. *Rule nisi granted.*

GARDNER v. SCOTT.—*Milward* moved for a rule to shew cause why the plaintiff should not take out of court 37*l*. 10*s*. deposited by defendant in lieu of bail. Defendant had gone to Australia. *Granted.*

MARKS v. THE SUN FIRE OFFICE.—*Shee*, Serjt. moved that authority be given to the arbitrator herein to administer oaths to necessary witnesses. *Granted.*

EVANS AND ATTWOOD. MCKINNON AND PENSON.—To stand over.

POULTER v. HOOPER.—*Bramwell* (*Willes* with him) shewed cause. *J. Brown*, contrà. *Rule discharged.*

Saturday, Nov. 13.

LEWIS v. ROGERS.—*Phinn* moved on behalf of the defendant to change the venue from Middlesex to Monmouth. It was an action on a bill by the indorsee against the acceptor; the defence, in fact, was payment, and all the witnesses were at Monmouth, some of them being bankers. [PARKE, B.—What do you say as to the plaintiff's witnesses?] *Rule nisi.*

SHAW v. CONINGHAM.—Tried before Martin, B. in Middlesex, when the plaintiff obtained a verdict. It was an action by a publican for refreshments, &c. to voters at the last election for Westminster. *James*, Q.C. moved to set aside the verdict and for a new trial, on the ground of misdirection, rejection of evidence, and the verdict being against evidence, or to reduce the damages to 5*l*. 10*s*. *Rule refused.*

MCKINNON v. PENSON. *Cur. adv. vult.*

LINES v. LORD CHARLES RUSSELL.—*The Attorney* and *Solicitor General*, *Andrews*, and *Welsby* appeared to shew cause against the rule obtained for a new trial. *James*, Q.C. and *Hawkins*, contra.

Rule discharged, unless plaintiff would consent to a stet processus in a week.

LUMLEY v. GYE.—(Reported ante, p. 71.) *Creasy* moved upon the amended affidavits as suggested on Friday. *Rule granted.*

SHAW v. THE BANK OF ENGLAND.—Ante, p. 76. *Hawkins* moved upon amended affidavits. *Rule nisi.*

Monday, Nov. 15.

PINHORN v. SOUSTER.—Demurrer to plea.

Adjourned till Wednesday. Defendant to consider in the meantime whether he will amend.

THE GUARDIANS OF THE POOR OF WOLSTANTON AND BURSLEM, in the county of Stafford, v. EMBURROW.—Demurrer to declaration. *Judgment for the plaintiff.*

Tuesday, Nov. 16.

REG. v. E. SALTRE.—*Watson* moved, on behalf of the Crown, that certain goods seized, and now in the hands of the sheriff, those of a perishable nature might be sold. *Rule nisi.*

LEWIS v. DANIELS.—*Bramwell*, Q.C. moved that the verdict and subsequent proceedings may be set aside for irregularity. *Rule nisi.*

WATNEY v. DENNISON.—*Bramwell*, Q.C. and *Willes* shewed cause against a rule obtained for a new trial. The action was in assumpsit for not accepting a quantity of oats. *Knowles* and *Rew*, contrà, were stopped. *Rule absolute.*

THE GUARDIANS OF THE POOR OF THE ROMFORD UNION v. THE BRITISH GUARANTEE ASSOCIATION. *Part heard, and adjourned.*

Wednesday, Nov. 17.

PINHORN v. SOUSTER.—A special demurrer to a plea. *Macnamara* appeared in support. *Jones*, contrà, not called upon. *Judgment accordingly.*

STEWART v. WILSON. *A stet processus agreed to.*

CROSSFIELD and OTHERS, Administrators, v. SUCH. *Cur. adv. vult.*

COPE v. ALDINSON.—*Cowling*, in support of the demurrer, was stopped by the Court. *Milward*, contrà, called upon. He referred to *Traverse* v. *Bank*, Sid. 57, as an authority in point. PARKE, B.—The answer to your case is that there is nothing quite agreed upon; it was a mere offer or promise to pay a composition upon certain terms, which were never completed or agreed to by both parties, and therefore no contract. *Judgment for defendant.*

STAFF v. MORRISON.—*O'Malley*, Q.C. and *Couch*, shewed cause against the rule nisi. No one appearing in support of it, *Rule discharged.*

HENNING v. BURNET.—*Slade*, Q.C and *Taprell*, shewed cause against the rule obtained herein. The cause was tried at Dorchester before Platt, B. and turned upon the construction of a deed in reference to a right of way. *Crowder*, Q.C. and *Hodges*, contrà, not called upon. *Rule absolute.*

BAIL COURT.

Reported by T. W. SAUNDERS, Esq. of the Middle Temple, Barrister-at-Law.

(Before Mr. Justice CROMPTON.)

Friday, Nov. 12.

Re CRAVEN, Gentleman, one, &c.

Attorney—Taxation of costs — Negligence.

Where upon the taxation of a bill of costs between attorney and client, the Master disallowed a certain sum on the ground of negligence, this Court directed him to review his taxation, the question of negligence being one properly for a jury and not the Master.

In this case *Ball*, on a previous day, obtained a rule nisi for the review of the Master's taxation, the Master having disallowed a certain sum, on the ground that the proceedings were abortive in consequence of the attorney's neglect. (See report, *ante*, 54.)

C. Pollock now shewed cause, and contended that the Master was right. (*Rice* v. *Rigby*, 4 B. and Ald. 202; *Matchett* v. *Parkes*, 9 M. and W. 767; *Williams* v. *Nicholas*, 1 Dowl. N. S. 810.)

Ball, contrà.

CROMPTON, J. thought that the question of negligence was one for the jury and not the Master, and therefore directed that the rule should be made absolute. *Rule absolute.*

Ex parte JOHN MATTHEWS, Gentleman, one, &c.

Attorney—Change of name.

Allen, Serjt. moved on the behalf of Mr. John Matthews, who is an attorney of this Court, that he may be permitted (under the peculiar circumstances stated in his affidavit), to take and use the name of Chamberlaine (his mother's maiden name), instead of his present name, and he cited *ex parte Moses*, 15 Law T. 70; 19 Law J.; and *Re Dearden*, 20 Law J. 80, Ex.

CROMPTON, J. upon referring to those cases, granted the application, directing the rule to be drawn up as in the case of *Re Dearden*. *Application granted.*

BUSINESS OF THE WEEK.

Friday, Nov. 12.

Hayes moved for a rule, calling upon a Mr. Thomas Potts to shew cause why a criminal information should not be filed against him for a libel upon two gentlemen who are magistrates of Daventry. *Rule nisi.*

On Monday, Tuesday, and Wednesday, the Court held its second sitting at Nisi Prius.

INSOLVENCY COURT.

Saturday, Nov. 13.

(Before Mr. Commissioner LAW.)

Re WHITE.

A person committed by the Clerkenwell County Court—Discharged.

Sargood (instructed by Mr. Clarke) applied to his Honour for the release of ——— White, who had been yesterday committed to the debtor's prison for twenty-one days, by the judge of the Clerkenwell County Court, for non-payment of a debt, from which debt the defendant had been discharged by this Court in January last.

His HONOUR inspected the defendant's schedule, and finding the fact was as stated by the learned counsel, ordered his discharge from prison forthwith.

NOTE.—It appears from the discharge of Mr. Commissioner Law, that it is doubtful whether the judge of the County Court had jurisdiction to commit the defendant to prison; and it is said actions will be brought against all parties to try the validity of these now frequent committals.

Ecclesiastical Courts.

PREROGATIVE COURT.

Reported by Dr. WADDILOVE, of Doctors' Commons.

August 5, 6, *and* 10.

CLARKE v. SCRIPPS.

Revocation of will by tearing—1 *Vict. c.* 26, *s.* 20.

The signature of the testator had been torn off all the sheets of a will save the last one, where it appeared, as did also the names of the attesting witnesses; part of one page of the will had also been torn. There was no evidence when or why this was done. The will had remained exclusively in the testator's possession. The part torn off was preserved with the will:

Held, that the will was neither wholly nor partially revoked.

Sir *J. D. Harding*, Q.A. and *Bayford*, appeared in support of the will.

R. Phillimore and *Twiss*, contrà.

Sir JOHN DODSON.—This case arises upon the will of the late William Armitage Scripps, of South Molton-street, in this town, and of Niton, in the Isle of Wight. He died on the 26th of August, 1851, at the age of eighty years or thereabouts. He was a widower, and he left behind him three sons and three daughters, his only next of kin, and he also left a grandchild, the daughter of a deceased son, who, together with the next of kin, would be the parties entitled in distribution in case he is dead intestate. Now, these parties, the sons, are Mr. William Washington Scripps, Mr. James Mogg Scripps, and Mr. Thomas Scripps, who is the party in the cause. The daughters are a Mrs. Tudor, a married woman, the wife of Mr. Tudor, one of the parties in the cause, Mrs. Deacon, also a married woman, and Anne Eliza or Elizabeth Scripps, the youngest daughter, who is a spinster. She was unmarried at the time, the other two being married, and there is the grandchild also, Mary Emma Scripps, who is likewise a spinster. The deceased left behind him real property consisting of a cottage at Niton, in the Isle of Wight, of the value of about 600*l*. and he left personal property of the value of about 9,000*l*. By his will, which he appears to have made and duly executed upon the 16th of May, 1843, he appoints Mr. Thomas Clarke, Mr. Samuel Tudor, his son-in-law, and Mr. William Hookham Carpenter, his executors. He leaves certain legacies as a provision for Mrs. Tudor and Mrs. Deacon by the will as it originally stood, and after some other legacies, he gives the residue of his property to his youngest daughter. After his death, which event occurred very suddenly whilst walking out, apparently in good health, with a friend at the Isle of Wight, search was made amongst his papers for a will, and in his depositories was found the paper that is now before the Court, it was found by Mr. Thomas Scripps, the son,; whether it was locked up in a place where the deceased kept papers of moment and concern, whether it was kept with merely loose waste papers, does not appear. And the Court has some little ground of complaint that it has not been furnished with the requisite information in that respect. However, I presume that it was amongst papers of moment and concern, and that it was locked up, because I now find it stated to have been in a tin box, and I find it stated in one part of the evidence, that the deceased was very particular as to his keys being left about, because he did not wish any one to see what disposition of his property he had made by will. Therefore, in all probability, this paper was found locked up, but of that I have no certain evidence. When this paper was found it was in a mutilated state; it was both cut and torn, but by whom that was done does not at all appear, that is, there is no evidence as to whom it was cut or torn by, but having been in the possession of the deceased himself, being in his custody, the usual presumption of law must prevail, and it must be taken that he himself did the act. Out of this state of mutilation, then, arises the present question, which is one not very easy of solution, namely, whether the will is to be considered revoked in toto, or in part only. In discussing this matter, the counsel have very properly called the attention of the Court to certain sections of the Wills Act (1 & 2 Vict. *c.* 26), and more especially to the 20th, which has a direct bearing upon the present case, and by which it must in a great measure be determined. That section is to this effect. It is enacted, "That no will or codicil, or any part thereof, shall be revoked otherwise than aforesaid"- that is, "by marriage," and so forth; but that has nothing to do with the present question; "or by another will duly executed," that is, duly executed according to the form of the statute; that again has no application to the present suit. Then it goes on, "or by the burning, tearing, or otherwise destroying the same by the testator, or by some other person by his direction, with the intention of revoking the same." Therefore it may be burned, torn, or destroyed, by the testato. himself, or by his direction, with the intention of revoking the whole, or any part of it. I say the whole or any part of the will, because under this enactment it is quite obvious that a part only of a will may be revoked, by burning, tearing, or otherwise destroying such part; or, in other words, that the whole will is not necessarily revoked by the destruction of a part. I do not, however, by any means, intend to assert that the destruction of the part of a will may not, under certain circumstances, operate as a revocation of the whole will; it has been held so to do. Secondly, it is to be observed that the burning, tearing, or other destruction of the instrument, must be done with the intention to revoke. It is not the mere manual operation of tearing or cutting the instrument, or the act of throwing it into the fire, or of destroying it by other means that will satisfy the requisites of the law; but the Act must be accompanied with the intention of revoking. There must be the animus as well as the act; both must concur to constitute a valid legal revocation. It is the animus, also, which must govern the measure and extent of operation to be attributed to the Act, which must determine whether it shall affect the revocation of the whole instrument, or only of some and

what portion thereof. Now the intention of the testator to revoke wholly or in part may, as I conceive, be proved in several ways. First, it may be proved by evidence of the expressed declarations of the testator, especially if such declaration was contemporaneous with the act which he was doing. If in doing the act, tearing, burning, or destroying the whole, or tearing, burning, or destroying a part, he should declare that it is his intention to revoke it, that would be the two acts taken together. To whatever extent it was torn, or burned, or destroyed, however much or however little, if he declared that it was his intention thereby to destroy it, that declaration, I apprehend, coupled with the act, would be sufficient. Now, secondly, the intention may, in the absence of any express declaration, be inferred from the nature and extent of the act done by the testator, that is, it may be inferred from the state and condition in which he has left the paper, to which he has reduced it. From the state in which it is found, it may be inferred either that he did intend to destroy it altogether or did not; that may be inferred from the face of the paper itself, where there are no declarations coming from him. Lastly, the intention may in some degree, at least, be inferred from other extrinsic circumstances; something dehors the instrument, and something not depending on the declarations of the deceased. There may be extrinsic circumstances; there may be declarations not wholly direct as to the revocation of the will, but which lead to be inferred one way or other, whether he did intend to destroy the will or did not. Now the case of *Bibb* v. *Thomas* was adverted to; a case that is repeated in the second volume of Sir Wm. Blackstone's Reports, p. 1043, a case which occurred under the Statute of Frauds, and arose under the Statute of Frauds. Though the words of the Statute of Frauds are somewhat different from those of the present statute, still I think that there are no circumstances to make any distinction between the case of *Bibb* v. *Thomas* and the present case in that respect. The words of the Statute of Frauds are "burning, tearing, cancelling, or obliterating;" whereas here we have, "burning, tearing, or otherwise destroying." Now the case of *Bibb* v. *Thomas* rested principally on the declarations used. The testator in that case took his will, gave it a rip, and threw it on the fire, but it fell off the fire. It was then seized by a person present, a female, who put it into her pocket and preserved it. The testator had his suspicion that she had got possession of the will and he demanded it. She gave an evasive answer to his application, and he was led to believe, and did believe, it was actually destroyed, and he afterwards declared that he had left no will, that his property would go to his brother. Now upon that state of facts the jury held, with the concurrence of the judge, I think, that this was a sufficient revocation. I apprehend it was upon the ground that there was an actual tearing; he gave it a rip and there was the declaration of his intention; a declaration that he had no will, and that his brother would inherit the property. The will had been only slightly torn, but there was this declaration, for us to throwing it on the fire, as it was not burned, but only singed, that, I apprehend, would have no effect whatever. Indeed, from the next case cited by the learned counsel it is pretty clear they would not have held the mere singeing the side of the will a sufficient act of revocation, even if accompanied with the declaration. Now the next case mentioned was that of *Doe* v. *Harris*, 6 Adol. & E. 209. That was also under the Statute of Frauds. In that case the will was thrown into the fire and pulled off by the devisee. The corner of the envelope was burned, and that was all that was burned. No part of the will itself was affected by the fire; the testator insisted on its being again thrown on the fire, but that was not done, though he insisted upon it. It was held to be no revocation at all. The will not having been mutilated at all, there being no rip or tear, or burn on any part, for it was only the corner of the envelope that was burned, that was held to be insufficient, consequently the will continued to be a valid and subsisting will, and was pronounced for. I forbear to pursue these cases further as to declarations which may have been used, because in this case the act was accompanied, as far as the Court is informed, by no declaration whatever, nobody was present, nobody knows how or when the will was torn; the question must depend consequently upon the state and condition of the instrument itself. Now the case of *Hobbs* v. *Knight*, which was also mentioned by counsel, and which is reported in 1 Curteis, 768, has more bearing on the question. That, I believe, was one of the first, if not the very first, case of the kind which occurred after the passing of the Statute of Wills. That case depended altogether upon the state and condition to which the instrument was reduced by the act of the testator, unaccompanied by any evidence of declarations at the time; therefore much more similar to the present than the two cases mentioned of *Bibb* v. *Thomas*, and *Doe* v. *Harris*. There, the testator had cut out his signature at the foot of the will, and this was held to operate as a revocation of the entire will. It was decided that the signature at the foot or end of the will was of the essence of the will, and the destruction of it by cutting was considered, and I think justly considered, as equivalent to tearing. It was stated in the first place, that tearing off the foot of the will would, under the statute, be sufficient; and then the learned judge, considering that cutting and tearing were essentially one and the same, held that the will was destroyed, since it would have had precisely the same effect whether it was cut or torn. I mention that particularly, because the will now before us is partly cut and partly torn. He also intimated that a total obliteration of the signature might have the same effect as being another mode of destruction; that is, if it was so entirely obliterated as to be perfectly illegible, that would have the same effect as if it had been torn off, or as if it had been cut off; the signature at the foot or end being of the essence of the will, and that being destroyed in any one of the ways I have mentioned, and done by the testator himself, the Court held that would be a sufficient revocation of the whole instrument. There was also another case cited, a case that came before the Court on motion only,—*The Goods of Francis Lambert*, 1 Notes of Cases, 131, and which also has a very strong bearing on the present question. It was very true, as was observed by counsel, that this was a case on motion only, and there was no contest about it, no argument of counsel on the one side or the other. The Court decided it as merely an ex parte case, but we know very well how extremely cautious my learned predecessor was in cases of this description. If he entertained any doubt whatever he always rejected the motion, and directed the instrument to be propounded, in order that he might hear both sides; therefore, it shews that he entertained a very strong impression on the subject, otherwise he would not have disposed of it in the way he seems to have done, viz. on motion. Now, in this case, Mr. Lambert, the deceased, was a goldsmith in Coventry-street, and he died on the 2nd of February, 1841, leaving a considerable personal estate. In 1835, a solicitor received instructions to prepare a will for him, and from these instructions he made a draft, and afterwards another draft; and in March 1836, a fair copy of this draft, filling nineteen sheets of paper, was left with the testator for his approval. In August 1836, he produced this draft will, which he had signed, to two clerks in his office, and informed them it was his will, requesting them to attest it, which they did. In July 1837, the deceased, having made certain alterations, had them likewise attested. The solicitor never received back the draft will, but the deceased spoke of intending to return it, telling him that he had signed it, by way of precaution, lest he should die before he had executed a regular will. After his death, the draft will was found in a box, executed, but certain parts of the first sheet were cut away, and the latter part of it was annexed to the top of it by a wafer. So that is a case which approaches very nearly to the present: part of one sheet was cut away, and afterwards re-annexed by a wafer. In the case before us we find part of a sheet has been cut away, and has been re-annexed. Whether it was actually annexed by the testator himself, and whether found in that state, there is a little discrepancy in the evidence; but, at all events, it was found replaced there according to the admission in the case, by whomsoever done, still it was placed back in that situation; therefore the two cases are very much alike in that respect. The learned judge, in *Lambert's* case, says that there was no evidence when this was done. Dr. Addams submitted that the presumption was, that it had been done before the 1st of January, 1838; that the legacies were unimportant. So that thus a question arose, whether it was done before the 1st January, 1838. This was to see whether it came within the Statute of Wills or not, because, as is well known, that statute came into operation on that particular day; however, the learned judge held that it made no difference whether it was done before or after, because he held that it came under the words of the statute if done after the 1st January, 1838, and the effect would be the same if it had been done before that time. What the learned judge says, is this, "The passages must have been cut out after July, 1837; but it is immaterial," that is really coming pretty close to 1838, "whether it was done before the 1st January, 1838, for, under the 20th section of the Act, a will may be revoked in part, as well as in the whole, by burning, tearing, or otherwise destroying with intention to revoke." He, therefore, considers it as if it were done under the Act—as if it were done after the Act had come into operation. "There can be no doubt that the testator intended to revoke the part removed, and that it was his own act; the paper is, therefore, revoked pro tanto, and good for the other parts. I am of opinion that probate should pass without the words in the first sheet removed by the testator himself." That was his opinion it was revoked pro tanto, that the parts cut out were to form no part of the will, but the remaining part of the will was to stand good, and he accordingly decreed probate of it. Now, then, as to the will of the testator in the present case. It is true the testator had executed only the draft of a will—the fair draft; but that makes no difference. He did it by way of precaution—that was, in point of fact, his will. It is quite clear that the deceased had regularly and duly executed the will itself, which was drawn by a solicitor, disposing of the whole of his property, appointing executors all in due form, signed by himself at the bottom of every page, and also by the attesting witnesses at the opposite corner; and at the foot or end of the will there is the signature of the testator, and there is also an attestation clause, with the names of the subscribing witnesses; therefore, there is no doubt in this case whatever, that the will as originally executed by the deceased was perfect and complete in form and manner. But the important part of the case is, to consider the present state and condition of the will, the state in which it was found, in order to decide whether it must be considered as revoked in the whole, or in part only. Now this will, which, as I stated before, was executed in due form, has had various alterations made in it. The first page seems to have been slightly struck through with a pencil, that of course that can have no operation whatever as to the revocation of it. The mere striking through with a pencil, even before the statute, would only have been equivocal, and since that statute it can have no operation at all if confined to this mere striking through with a pencil, or even if done with a pen, unless it had been signed again and attested by the deceased. But, however, it may have some little, though rather remote, bearing, perhaps, upon the question of intention. The other alterations made in this paper are that the bottom of every page, where the signature of the testator appears to have been—no doubt it was his signature—is cut off all the first six pages; it consists of seven pages, and his signature is cut off from every one of these sheets, but the signature at the foot or end of the will remains, as does the attestation clause, as does the signature of the witnesses, and therefore if it had rested there, this mere cutting off the name from the bottom of these seven sheets, I apprehend there would have been no difficulty at all in coming to the conclusion that the will must stand good, notwithstanding these signatures are cut off at the bottom of each page, because what the Act of Parliament requires is, the signature at the foot or end, and that attested by the witnesses. But there are other and very important matters to be considered in this instrument. In the third sheet of the will two lines seem to have been cut off from the top, less than a third of the way down,—they seem to have been cut off, and to have been replaced, but not so as to make it so perfect as it was before. Now at the beginning of it there has been the word "thousand" cut off. The will had gone on to dispose of 2,000*l.* which is given to trustees for the benefit of the two daughters of the testator, Mrs. Tudor and Mrs. Deacon. It had given this 2,000*l.* to trustees for their benefit; they were to have the dividends and interest for life, and then the principal was to go to their children. Now, thousand has been cut off, and, instead of 2,000*l.* it stands 2—*l.* followed by a blank, or gap. Now, this alteration seems to be accounted for in some measure from the circumstance of the deceased having, before he had left London and gone down to the Isle of Wight, where he died, determined whilst there to make certain alterations in his will, in order to avoid the legacy duty. It seems that many years ago he had had a legacy left to him, that he declined to accept that legacy, and consequently did not pay any legacy duty on it; but the Government officers insisted upon his paying the legacy duty in full, and not only on paying the legacy duty in full, but likewise on paying twenty-five years' interest upon it; and, in consequence of that, he determined to see whether he could not save some of the legacy duty on his own property. In consequence of this, before he left London, he transferred the sum of 1,500*l.* to trustees for the benefit of his eldest daughter, the wife of the executor in the cause, and executed a deed of trust as to that 1,500*l.* He told his other daughter, Mrs. Deacon, in a conversation with her (we have it in the evidence) that it was his intention to do the same for her—to convey to her 1,500*l.* and that she would find something more in the will. Therefore it is quite clear that the intention of the deceased was to revoke this appointment of "thousand" to the trustees, to convey it in his lifetime, as he actually did to one of the parties, and intended to do to the other, and then to follow this up with some slight legacy to the daughter, because, he says, "You'll find something more." But this is not the only alteration in this paper, because at the bottom there are several lines cut off, so as to leave it quite imperfect; it had purported to give 800*l.* for the benefit of his son, Mr. James Mogg Scripps, but the latter part is cut off, and the next page

begins "Mogg Scripps;" so that, in point of fact, there is an excision there of the legacy of 800*l.* to Mr. James Mogg Scripps. Now these are certainly very important, very awkward alterations to deal with, because the paper is left still imperfect; however the deceased replaced the torn parts. I think the evidence preponderates that he fastened the pieces together by a pin, but whether he did or did not, he so placed them that they might continue to form one instrument. But this is not quite the whole of what is to be considered in this matter. Here are certain pencil marginal notes and observations. These are not of very great importance; they would have no effect in themselves. But what is more important is, what has been relied upon, and is said to come within the statute is, the tearing one of the sheets of the will. The sixth sheet, the last sheet but one of the will is torn—that is, the margin about half way is entirely torn off, and certainly that is a "tearing," and if it was done with an intention of destroying the will, if the act accompanied the intention it would be sufficient. But there is no evidence of what the intention was, and I can only judge of the instrument itself. This seems to have been torn very carefully, so as not to destroy the will itself, or any part of it. There may be some little portions of the letters at the beginning of some of the lines destroyed, but not a whole letter anywhere, and the will is just as legible as if there were no tearing at all. It seems as if the margin were carefully torn off so as not to destroy the will, and therefore from that circumstance I think it is rather to be argued that the deceased did intend that the will should remain in operation, otherwise why should he have taken such care not to destroy any part of the writing? If he intended that it should be destroyed he would have torn it in a very different way, and not in that extremely careful manner in which it seems to have been done. It may be said there may have been some codicil or some matter of that sort written, but suppose there had, what alteration would that have made? Suppose he had written a codicil it would have had no effect unless it was duly attested, and if duly attested and torn off it would have been the destruction of that codicil, and that codicil only. The same remarks may be made with respect to the last page, because it will be observed one half of the last page is either torn or cut. I can hardly make out which, but I believe torn. The paper has been so handled now, that I cannot well distinguish, but it is a matter of no importance whether it is torn or cut; because I quite agree with what was said by the learned judge in *Lambert's* case, that cutting and tearing are equivalent acts. Here, again, it is said, there may have been a codicil on this part of the will, but if there had been, and he had torn it off, it would have been only the destruction of that codicil, as I stated before; and when he cut or tore this off, it is quite clear that this upper part of the sheet which contains the close of the will, and the signature, and the attestation clause and the names of the witnesses, must have been before the deceased at the time when he tore away this last part; therefore he must designedly, I think, have left his signature and the names of the witnesses. I think there is a strong inference to be drawn from that circumstance, that he did not intend to revoke the will in toto. It is said that he kept it, not because it was his will, not that he intended it as such, but he intended it for the draft of a new will. That may be so, he might intend it for the draft of a new will, to use it as such on some future occasion, but he might likewise intend to keep it as an operative instrument, until he had converted that draft into a more formal instrument. It might serve both purposes. I think the circumstance of preserving the name at the foot or end of the will and the attestation clause, and the names of the witnesses, shews that he did not intend to revoke it altogether. In that case I referred to, Sir Herbert Jenner Fust held that cutting or tearing was destructive of the whole will: if that be so, then the preservation of the name at the foot or end is a very important circumstance, and tends to shew that it was the intention of the deceased, though he might mean to use it as a draft for a future will, and to make certain alterations in it, which he certainly did intend to do, still to keep this by him as an operative instrument, in case he should die without completing his intention by making another formal will. I am the more inclined to think this from the age of this gentleman, from his cautious conduct in many respects, and from the circumstance that though he did die when apparently in good health, yet he had a disorder of the heart, that he had been made aware of that fact, and that it might terminate his life suddenly. Under all these circumstances, I do not think it likely that by doing what he has done, he intended to revoke the will altogether. I think he intended to revoke it pro tanto only, and keep it by him as an operative instrument, till he should make another to carry his wishes more perfectly into effect. I must, therefore, pronounce for this will as it stands. The costs to come out of the estate.

Equity Courts.

LORD CHANCELLOR'S COURT.

Reported by C. H. Kent, Esq. of Lincoln's-inn, Barrister-at-Law.

(Before Lord St. Leonards, L.C.)

July 21 and 27.

Dyke *v.* Rendall.

Dower—Equitable bar of—Contract.

Equitable bar of dower depends entirely upon the doctrine of contract.

An adult lady may agree to accept any given thing in satisfaction or in lieu of dower, and having accepted it, must take it with all its faults and defects.

The acceptance of a mere "chance" will create an equitable bar to dower.

The case of Power *v.* Shiel, 1 Moll. 296, *considered.*

By a settlement made on the marriage of A. with B. who was of age, it was recited, that "In consideration of the intended marriage, and for providing a competent jointure and provision of maintenance for B. in case she should survive and outlive A. and for securing a provision for their issue," C. the father of A. had paid to him the sum of 3,000*l.*: *and that it had been agreed that A. should give to the trustees of the settlement a bond conditioned for the payment of* 2,000*l. within six months after the marriage, to be held by them upon trust for himself for life, then for his intended wife, and then for the children of the marriage. A. gave the bond, but paid only a small portion of the* 2,000*l. During the coverture he was seised of real estate, which he sold. At his death, the remainder of the* 2,000*l. was unpaid: the wife having done no act to bar her dower, filed a bill claiming dower out of the estate sold by her husband:*

Held, affirming the decision of the Court below, that the settlement was a good equitable bar;

And held, reversing the decision of the Court below, that she was not entitled to any lien upon the estate in respect of so much of the provision as remained unpaid.

This was a suit instituted by Elizabeth Dyke, for dower. The facts were these.

By an indenture of settlement, dated 20th June, 1810, made upon the marriage of the plaintiff, then Elizabeth Skinner, with Thomas Well Dyke, her late husband, it was recited, "That in consideration of the said intended marriage, and for providing a competent jointure and provision of maintenance for the said Elizabeth Skinner, in case she should, after the said intended marriage, survive and outlive the said T. W. Dyke, and for securing a provision for their issue," William Dyke, the father of the said T. W. Dyke, had paid to the said T. W. Dyke the sum of 3,000*l.*, and that John Skinner, the father of Elizabeth Skinner, had paid to the said T. W. Dyke the sum of 851*l.* 10s. and had agreed to pay the further sum of 500*l.* at his death, "which two sums of 815*l.* 10s. and 500*l.* were intended as the marriage portion of the said Elizabeth Skinner:" and that it had been agreed that the said T. W. Dyke should give his bond to &c. (the trustees of the settlement), in the penal sum of 4,000*l.* conditioned for the payment of 2,000*l.* with interest at the rate of 5*l.* per cent. per annum, within six months after the solemnisation of the said intended marriage, to be held by them upon trust for the said T. W. Dyke for life; and after his decease, upon trust, to pay and apply the interests and profits thereof unto the said Elizabeth Skinner and her assigns for life; and after the decease of the survivor of them, upon and subject to such trusts for the benefit of the children of the said intended marriage, is therein expressed. T. W. Dyke executed a bond of even date with the settlement, by which he became bound in the payment to the trustees of the 2,000*l.*; of that sum, 484*l.* 18s. only was paid. On the death of the father of Elizabeth Skinner, the 500*l.* was paid. Subsequently to the marriage, and during the coverture of the plaintiff with the said T. W. Dyke, he became seised and entitled in fee simple in possession of certain lands and tenements known by the name of the "Bulford estate," in the county of Wilts, and which in 1831 he sold and conveyed to Richard Cox, of whose executors and devisees in trust the defendant Charles Edward Rendall in the year 1847 purchased it. At the date of the settlement the plaintiff was of age, and on the sale of the Bulford estate she had done no act to bar her dower. T. W. Dyke died in December 1846, and the plaintiff, his widow, then filed her bill, praying that she might be declared entitled to her dower out of the said Bulford estate, and that it might be assigned to her accordingly.

The defendant, by his answer, set out the deed of settlement as an equitable bar to her claim. The late Vice-Chancellor Wigram, on the cause coming on before his honour, referred it to the Master to inquire whether any settlement was made on the marriage, and whether such settlement, if any, was actually productive of any, and if any, what benefits, in favour of the plaintiff, &c.

The Master, by his report, found that the only sums received by the trustees of the settlement were the sum of 500*l.* in liquidation of the bond of J. Skinner, and the sum of 484*l.* 18s. part payment of T. W. Dyke's bond of 2,000*l.* leaving the residue, amounting to 1,515*l.* 2s. unpaid. The Vice-Chancellor Knight Bruce, on the cause coming on, on further directions (in his judgment, which is not reported), said, that but for the decree and the earlier authorities, he should probably have considered the legal title of the plaintiff—a legal title which was perfectly clear—to the dower claimed by her bill, not touched or affected in any manner by her marriage settlement, although it contained the words, "for providing," &c. He (the Vice-Chancellor) thought himself bound, perhaps, by the decree, but certainly by earlier authority, not so to construe the deed; and felt bound to deal with it as containing a contract between the plaintiff, who was of full age and unmarried when she executed the deed, and Thomas Webb Dyke, who afterwards became her husband, that in consideration of the provision made for her by him, and by the bond of 2,000*l.* she would waive and relinquish her dower. The contract was not performed on his part; it was broken, if not before he acquired, certainly before he parted with the real estate in question, which he did not do until a period subsequent to the time appointed for the payment to the trustees of the settlement of the 2,000*l.* secured by the bond. Could he then, and if he had died seised of the estate, could his heir or devisee have claimed her dower from her—that is, compelled her to release it, or resist in a court of equity a suit by her, without performing his engagement as to the 2,000*l.* to the extent at least of her life interest in that sum—and if not, could the defendant say that he stood in a better position? The defendant could not be allowed to say so; for he and every one deriving a title between him and the husband must be considered as having acquired the interest, with notice actually or constructively of the plaintiff's title. The defendant contended, first, that on the ground of the settlement, whatever might have been the husband's conduct, he or his heir or devisee would have been, and the defendant was, entitled to resist the plaintiff's demand absolutely and unconditionally; and secondly, that if not, he was entitled to require her to elect between the settlement and her dower, denying as he did that she could as against him, keep what she had under the settlement, and apply her dower so far as it would go, or a sufficient part of it, to make good the deficiency. The plaintiff insisted in effect that she had a lien upon the dower for the full performance, so far at least as her own interest extended, of the ante-nuptial contract on her husband's part; and it was on that point mainly or solely that his (the Vice-Chancellor's) judgment rested. He was of opinion that the plaintiff's view of the question was correct—her case being, if not exactly the same with that of a vendor of land who had purchase-money remaining unpaid, and had a lien for it not relinquished, and entitled to enforce that lien in equity, yet analogous to it. The settlement did not leave the husband an option after the marriage to refuse to perform his part of it as between himself and his wife, upon the terms of placing her in the same situation as if there had been no settlement, or to take or keep from her what, but for the settlement, she would have had without performing the stipulations on his part for her benefit contained in them; if those stipulations had been fulfilled, she could not have claimed any dower either on the terms of relinquishing her interest in the settlement or otherwise. She in that event would have had no right of election, no option. To say that in the contrary event she was put to her election, must have been unjust. His Honour thought the plaintiff was entitled to assert her legal right, as it was a case of dower in this court, for the purpose and to the extent, at least, of making good, so far as by such means she could, on the failure on her husband's part to perform the stipulation for her benefit contained in the marriage contract. His Honour declared that the plaintiff was entitled in respect of her dower to one-third of the rents and profits of the Bulford estate, not exceeding, for such one-third of the said rents and profits, 60*l.* 12s. per annum, being the interest at 4*l.* per cent. per annum, which would have accrued due to her on the sum of 1,515*l.* 2s. the portion of the bond remaining unpaid.

From that decree the defendant appealed. The questions raised were, whether the settlement was to be taken in bar of the plaintiff's right to dower, and whether she was entitled to any lien upon the estate in respect of that settlement.

Greene and *Vance*, for the plaintiff, argued that the deed of June 1810 was an ordinary marriage settlement, its trust being merely in favour of the husband and wife, and issue of the intended marriage. The observations of Lord Hardwicke, in *Walker* v. *Walker*, 1 Ves. Sen. 54, which case in-

fluenced the Vice-Chancellor against them on the first point, were collateral to the present case. The plaintiff was at all events entitled to have the interest of so much of the 2,000*l.* as remained unpaid made good to her out of her dower. (*Carruthers* v. *Carruthers*, 4 B. C. C. 500.) In *Power* v. *Sheil*, 1 Moll. 236, Sir Anthony Hart decided "that to create an equitable bar to dower, the provision should be forthcoming." There was no case of election. The plaintiff had contracted to part with her dower for a consideration, which had not been paid. For that consideration she had a lien on the estate, as a vendor would have on the subject of a purchase. The plaintiff's case was analogous to that of an evicted jointress entitled under the Statute of Uses. As to costs, the Vice-Chancellor would have given her her costs, had the settlement been stated substantially in the bill; it was referred to, and which they submitted, was sufficient.

Malins and *Bird*, for the defendant, the appellant, contended that a contract by an adult female, before marriage, in lieu of dower, was effectual. (*Carruthers* v. *Carruthers*, 4 Bro. C.C. 500.) Not so in the case of an infant. In *Simpson* v. *Gutteridge*, 1 Madd. 613, a rent-charge had been accepted in lieu of dower, and that was considered an equitable bar to a claim. The term "jointure" in a settlement was indicative of a provision in lieu of dower, and consequently a bar. (*Vizard* v. *Longdale*, mentioned in *Tinney* v. *Tinney*, 3 Atk. 8.) An adult female may take a mere "chance" in lieu of her dower. The plaintiff might have had recourse to the estate out of which the sum secured by the bond might have been raised. The estate was not primarily subject to the payment. The bond was given as a security for the 2,000*l.* (*Drury* v. *Drury*, 2 Eden, 38.)

Greene, in reply.—Lord King, in *Vizard* v. *Longdale*, held, that although a bond was a bar to dower, the contract could be literally enforced. The plaintiff was therefore entitled to have the interest on so much of the money secured by the bond as remained unpaid made good out of the estate.

The Lord Chancellor.—The points raised in this case involve questions of great importance. I shall not, therefore, dispose of it without further consideration. In *Vizard* v. *Longdale*, Kel. Chan. Cas. 17, Lord King said:—"Several estates that are not specified in the stat. 27 Hen. 8, c. 10, are yet within the equity of the statute, and the present is not a case within the letter of it; but whenever an estate is settled so as to fall and take effect immediately upon the death of the husband, with a covenant or other instrument declaring it to be as a jointure, or in bar of dower, and is tantamount to its being an actual settlement within the letter of the statute, what is necessarily to be done by the words of the statute? The words are expressly "for the jointure of the wife," but the statute does not say that the jointure must be, to be expressed in bar of dower. The bar of dower is only a consequence of its being a jointure; and a jointure, according to my Lord Coke, is a provision and maintenance for the wife; and sure this is expressed to be so, and therefore within the description of it. Before the statute 29 Car. 2, a parol averment of any such provision being made as a jointure was sufficient." Here, then, the settlement expressly recites that the provision thereby made is "for providing a competent jointure and provision of maintenance," and that is a declaration which in this Court would, I think, create a clear bar of dower; but whether in the event which has happened that could be considered a bar or not is a different question, and a question which I shall not now decide. This is a very peculiar contract: an adult female, for a consideration which fails, contracts to bar her dower. Such a person may of course bar her dower by any means and on any terms and conditions that she pleases; but have the term and conditions which in this case actuated the plaintiff to create the bar been complied with? I do not bear with Sir Anthony Hart in some of his observations in *Power* v. *Sheil*. He says, "I put the case of a contract agreed to by an adult female before marriage, to the effect that the wife never will claim dower, and I asked what a Court of Equity would do with such a contract as that? Undoubtedly, it would say that it only enforces contracts which may be legally entered into, but are deficient in legal form. Now, such a contract as that the Court does not tolerate in any shape." Now, in that observation I cannot agree, for I think a woman may be doing a very wise thing by enabling her husband to deal with his estates. I have no doubt but that an adult female can exercise such a right. She can enter into any such contract. The question here is, for what has the plaintiff contracted? Now, this settlement seems singularly shaped: the fathers of the intended husband and wife are parties to it; the intended husband himself provides no money, but his father furnishes him with the sum of 3,000*l.* Now, it is apparent that that was the true consideration for which the plaintiff agreed to bar her dower. Mr. Dyke intended that the property of his son should not be encumbered with her dower. That sum he agreed to pay to the trustees as a "jointure;" and he would have done so, had not the parties themselves arranged that, instead of his so doing, the husband should retain 2,000*l.* of it, and give his bond to the trustees for its payment within six months after the marriage. I am inclined to think that the moment the money was paid, and the condition of giving the bond complied with, the plaintiff could not have claimed dower against the estate of the husband, in consequence of the provision made by his father. She accepted the bond in question at her own hazard; she accepted it as a security for the 2,000*l.* At the date of the settlement the husband was seized of no real estate, so that she had no inchoate right to dower. She chose to give up her future right for the provision made by Mr. Dyke, and I do not know of any rule of law which would render such a transaction illegal, or one which could not be enforced in this Court. In *Vizard* v. *Longdale*, the wife had a present right to 14*l.* a year; and if the 1,515*l.* 2*s.* could be recovered on the bond, she would of course be entitled to a life interest in it. I am therefore of opinion that the settlement did create an equitable bar. But as to the question whether, upon the consideration for which she had created that bar having in part failed, she can fall back upon the real estate for the deficiency, this I must consider, and will decide in a few days.

Tuesday, July 27.—The Lord Chancellor.—In this case the Vice-Chancellor decided that the settlement was to be taken in bar of dower; so far, therefore, the decree is right; but there remains another and a very different question to be considered, namely, whether the plaintiff is entitled to any lien in respect of this settlement upon the real estate of which her husband was seised during the coverture, and which he sold during his lifetime. To decide this question, it becomes necessary to consider the difference, as the law stands, between a legal and an equitable bar of dower. *Vernon's* case, in 4 Term Reports, 1, explains how the Statute of Uses provided for dower. At the time that it was passed, a very great proportion of the lands of this country were vested in feoffees to uses; the consequence was, that, as to entitle a wife to dower, the husband must be seised of the land, a great portion of lands were not subject to dower prior to that statute. When, therefore, the statute passed which vested the estate in the person entitled to the use, the wife would have immediately become entitled to dower. The Act of Parliament, therefore, provided, "that where conveyances had been, or should be made of any lands, tenements, or hereditaments, to the use of the husband and wife in tail, or to the use of one of them in tail, or for their lives, or for the life of the wife for her jointure, every woman married having such jointure should not claim, nor have any title to, dower out of the residue of the lands," &c.; and it went further,—it provided that, in case the widow should be evicted from her legal jointure, then she should be at liberty to resort back to her dower. That was reasonable enough; so that when the clause of eviction operates, it does so upon the legal jointure which was made a bar under the statute: the statute creates the bar with an exception; that is, the exception of the jointress being evicted: so that the exception never could operate except where the bar was created by the statute. But how stood the case as to an equitable bar? It was very soon settled that what was not a legal bar of the dower under the statute might be made an equitable bar under the rules of this Court. There might have been some idea of proceeding by analogy to the legal bar, or on the ground of contract. Now, I am clearly of opinion that the true ground of the equitable bar depended on contract, and on contract only, and wholly independent of the statute. If we were to suppose that this Court acted by analogy to the legal bar, of course the bar could only be effectual where it would be so at law; but this court has always disregarded the Statute of Uses and the nature of the provision, and has never required any real estate to be settled, but has always considered that personal estate would do equally as well as real. In *Carruthers* v. *Carruthers*, Lord Alvanley states the rule of the Court, that an adult female may take anything, even a "chance" in bar of her dower, though that chance, as a bar of dower under the Statute of Uses, would go for nothing; but when this Court began to give effect to equitable bar of dower, it not only disregarded the nature of the property, or the quantum of it (for an interest, however slight, if accepted, was just as good as a larger provision), but it did not consider it necessary that it should be certain of coming to the widow. An equitable bar of dower, therefore, as to an adult has not the qualities necessary for creating a legal bar. Everything depends upon contract; there is no doubt you may bar any possibility; you may deal with your rights in this court, of whatever nature they may be, by contract fairly entered into. In *Birmingham* v. *Kirwan*, 2 Sch. & L. 444, Lord Redesdale thought that there was nothing peculiar in the doctrine of this court as to the equitable bar of dower—that it was a mere matter of contract. But how stands this case upon the authorities. In *Simpson* v. *Gutteridge*, Sir Thomas Plumer said that it was the uniform practice with conveyancers not to question the title of the jointure in cases of equitable bars. I have never met with an instance where it was done. It was argued that it was now the practice of conveyancers to inspect the title of the jointure estates. From my own experience (which was not small) I can say that it was not formerly the practice of conveyancers to call for the title to the jointure. If, indeed, it were a jointure purporting to create a legal bar within the statute, it would be different, and the case would stand upon the law as to eviction; but in this court the bar stands simply upon the question of contract. My opinion, therefore, is, that if an adult lady contracts to accept any given thing in satisfaction of her dower, she must take that thing with all its faults and with all its defects; we must look to the contract only, and by no analogy to the rule of law can she, in the case of eviction from what she contracted for, come against the lands out of which she might have otherwise been entitled to dower. Of course this has nothing to do with the performance of the covenant of the husband to give the bond; he must of course perform it if he desires to keep the estates free from dower. He must do the act contracted for,—that depends upon the common doctrine of this Court. The question which I have to decide is, did the plaintiff or not accept of this settlement such as it is in bar of her dower? I am of opinion that she did. Now, though in the events which have happened, the money has not been paid, yet I am inclined to think that the plaintiff has no right to resort to the lands acquired by the husband after marriage. I altogether differ from the observations of Sir Anthony Hart, in the case of *Power* v. *Sheil*, upon this question; and as the parties may have been misled by the authority of that case, I shall dismiss this bill, but without costs.

Bill dismissed without costs.

COURT OF APPEAL IN CHANCERY.

Reported by Owen Davies Tudor, Esq. of the Middle Temple, Barrister-at-Law.

Nov. 3 and 4.

MAXWELL *v.* MAXWELL.

Construction of will—Scotch heritable bonds—Election.

A testator, domiciled in England, where he had real and personal estate, and also being entitled to Scotch heritable bonds, by his will, which was inoperative to pass real estate in Scotland, devised and bequeathed all his real and personal estates, whatsoever and wheresoever, to trustees for the benefit of his children:

Held, affirming the decision of the Court below, that the eldest son and heir-at-law was not bound to elect between the Scotch heritable bonds and the benefits conferred on him by the will.

This was an appeal from the judgment of the Master of the Rolls on a special case, under the following circumstances:—

The testator, P. C. Maxwell, was, at the date of his will and down to the time of his decease, domiciled in England, and also entitled under certain Scotch heritable bonds to one-third of 5,000*l.* one-fifth of 16,000*l.* and one-fifth of 22,000*l.* charged upon real estate in Scotland. He was also during the same periods seised of real estates in England, and also possessed of personal property invested in the public funds and in other English securities to an amount exceeding 25,000*l.*; the testator being so entitled, interested, seised, and possessed, made his will, bearing date the 27th of February, 1851, which was not in his handwriting, but which was duly made, executed, and attested according to the law of England. It was as follows:—"By virtue of every right, power, or authority enabling me in this behalf, I give and bequeath unto and to the use of William Lawson, of Brough Hall, in the county of York, bart. and Edward Wright, of Richmond, gentleman, their executors, administrators, and assigns, all my real and personal estate, whatsoever and wheresoever, and whether in possession or reversion, upon trust to permit my dear wife Helena to receive and take the rents, interest, dividends, and annual profits thereof for the term of her natural life, in full confidence that she will promote, to the best of her power, the education and advancement of my children; and after her decease, in trust for all my children, their heirs, executors, administrators, and assigns, equally share and share alike, as tenants in common, and not as joint tenants; and I appoint the said William Lawson and Edward Wright executors of this my will." The testator died on the day of the date of his will, leaving the defendant, F. H. C. Maxwell, his eldest son and heir-at-law in England and Scotland, and the plaintiffs, his only other children, who, with their brother, the defendant, were then, and still

COURT OF APPEAL.

remained, all infants. In June 1851 H. C. Maxwell, the testator's widow, died.

The Scotch heritable bonds did not pass by the will to the trustees upon the trusts therein declared, for the following reasons:—First, the will did not in the terms of the devise contain the word "dispose," which in Scotland is essential to the validity of a devise of real estate. Secondly, it had no "testing clause," which is also essential to the validity of such devise, unless the will is holograph. And moreover, even if it had contained the word "dispose," and a "testing clause," the heir-at-law might have set the will aside so far as it affected heritable property in Scotland, on the ground of its having been made on the deathbed.

The question raised by the special case for the determination of the Court was one of election, the doctrine of which, in Scotland, being known by the terms "approbate" and "reprobate," is the same as in England, viz.—was the heir-at-law, F. H. C. Maxwell, bound to make his election between the shares and interests in the Scotch heritable bonds, which descended to him in consequence of the devise being invalid, and the benefits to which he was entitled under the will as one of the children of the testator, or was he entitled to the Scotch heritable bonds in addition to the benefits conferred upon him by the will? Both the plaintiffs, the younger children, and the defendant, the heir-at-law, appeared by guardians appointed by special order of the Court. The trustees also appeared as defendants.

His Honour the Master of the Rolls, upon the authority of *Johnson* v. *Telford*, 1 Russ. & M. 244, and *Allen* v. *Anderson*, 5 Hare, 163, held that the heir was not bound to elect, and the plaintiffs now appealed from that decision.

Anderson and *Fleming*, for the appellants, cited *Trotter* v. *Trotter*, 4 Bligh, N. S. 502; 3 Wils. & Sh. 407; *Brodie* v. *Barry*, 2 V. & B. 127; *Johnson* v. *Telford*, 1 Russ. & M. 244; *Churchman* v. *Ireland*, 1 Russ. & M. 250; *Allen* v. *Anderson*, 5 Hare, 163; *Ker* v. *Wauchope*, 1 Bligh, 1; *Gaunet* v. *Cunningham*, 1 Bligh, 27; *M'Call* v. *M'Call*, Dru. 283; and *Reynolds* v. *Torin*, 1 Russ. 29: and the following Scotch cases:—*Bennet* v. *Bennets*, trustees, 7 Sh. & Dunl. 817; *Dundas* v. *Dundas*, 2 Dow. & C. 347, 7 Sh. & Dunl. 241; 4 Wils. & Sh. 460; 2 Rop. Leg. 1582.

Roundell Palmer and *Bayshaw* for the defendant, the heir-at-law.

Witham for the trustees.

Anderson in reply.

The Lord Justice KNIGHT BRUCE:—In the year 1851, a gentleman connected with Scotland, resident and domiciled in England, having real estate in England, and personal estate in England, and real estate in Scotland, makes his will in the English form. The will as executed and attested, is incontestably valid according to the English law. [His lordship here read the will.] The will is incontestably invalid as to the real estate in Scotland, which accordingly descended upon one of the testator's sons as his heir, according to the law of Scotland. It is against this son, in respect of the Scotch property thus descended, that the question of election is thus raised. It is said on the part of the other children of the testator, that the heir must either give up the Scotch property for the purposes of the will, or not take under it, this claim of the younger children being founded on the generality and universality of the language of the will. Here it is argued that the testator had property, that Scotch real property formed part of his estate. I apprehend, however, that according to principle, a rule of construction which the English law applies, if not to all instruments, at least to instruments testamentary, the law is to interpret them according to the principle that the generality merely, or the universality of the gift of property, is not sufficient to demonstrate or create a ground of inference that the giver meant it to extend to property incapable, though his own, of passing by the particular Act. If the will mentioned particular property, that would not be the same case as here. If the will had mentioned Scotland in terms, or the testator had not any real estate except real estate in Scotland, this might have been a ground for putting the heir to his election. The matter, however, standing as it does, we are bound to hold that the will does not exhibit an intention to give or affect any property which it is not adapted to pass. In coming to this conclusion, I suspect we must be doing what the testator himself would disapprove of if he could be heard otherwise than through his will. I wish he could; but I am bound, however I may regret it, to act upon the principle of construction. I referred during the argument to the cases of *Harris* v. *Ingledew*, 3 P. Wms. 91; *Hazlewood* v. *Pope*, 3 P. Wms. 325; *Judd* v. *Pratt*, 13 Ves. 168; and *Wentworth* v. *Cox*, 6 Madd. 363; and many other authorities were cited at the bar, and others might be referred to, but this would be superfluous. I may be excused, however, in quoting a few words from the judgment of Tindal, C. J. in the case of *Doe d. Clarke* v. *Ludlam*, 7 Bing. 279; 5 Moo. & P. 58:—"I agree in the necessity of adhering to general rules in the construction of wills and other instruments. It is expedient that such rules should be held sacred, because they withdraw the decision from the discretion of the individual judge, and prevent him from pursuing his own views of each particular case. And there is less inconvenience in the hardship which may sometimes be occasioned by a strict adherence to the rule, than in the confusion which must follow from the departing from it."

The Lord Justice LORD CRANWORTH.—I need add nothing beyond the expression of my concurrence, both in the conclusion that has been arrived at, and in the regret at being obliged to arrive at it. I take the general rule to be that which was put distinctly by Sir John Leach in *Wentworth* v. *Cox*, that general words primâ facie import only that which the nature of the instrument is calculated to pass. An exception to the application of that general rule is, where it is apparent on the face of the will that property beyond that is intended to pass; as where other property is mentioned by name, as in *Brodie* v. *Barry*, and the other cases cited. Here nothing of the sort occurs; and we should be doing what is unwarrantable, if, acting on conjecture merely, we interpreted the will otherwise than according to the general rule.

VICE-CHANCELLOR TURNER'S COURT.

Reported by J. HENRY COOKE, Esq. Barrister-at-Law.

Friday, Nov. 19.

LAMBERT *v.* LOMAS.

Chancery Practice Amendment Act—Suitors in Chancery Relief Act—Written and printed bill—Stamp.

Where a bill was filed in writing pursuant to the 6th section of the stat. 15 & 16 *Vict. c.* 86, *and was impressed with a* 1*l. stamp, as directed by the Orders of Oct.* 25, 1852, *and then a printed copy was tendered to the record and writ clerk, who refused to receive it unless stamped, as being contrary to the* 12*th section of the stat.* 15 & 16 *Vict. c.* 87, *but*

Held, that only one stamp was necessary, and accordingly the Court ordered the bill to be received and filed.

A bill (in writing) was filed, on which, pursuant to the order of Court of the 25th of October, 1852 Schedule, Part D, a fee of 1*l.* had been paid by a stamp of that amount. In accordance with the 6th section of the Chancery Practice Amendment Act (15 & 16 Vict. c. 86), a printed copy was made and offered to the clerk of records and writs for acceptance, and to be filed; but an objection was made that the printed copy had not a stamp for 1*l.* impressed upon it. The ground for this objection was said to be the language of the 12th section of the Chancery Suitors' Relief Act (15 & 16 Vict. c. 87), by which it is enacted that no document which by any order shall be required to have a stamp impressed thereon or affixed thereto, shall be received or filed unless or until the same shall have a stamp impressed thereon or affixed thereto in the manner directed by such order.

Amphlett now brought the matters before the Court, and contended that the object of the recent statutes was that a fee of 1*l.* only should be paid in the filing of a bill, and although in form and in mere words the Chancery Suitors' Relief Act did appear to require a stamp to be affixed on every document before it should be received, still as the written bill and the printed bill were in substance but one single document, the latter being only filed in substitution for the former, it was manifestly intended that only one fee should be paid. Under these circumstances, he submitted that the Court should direct the clerk of records and writs to receive the printed bill without the stamp, and file it accordingly.

The VICE-CHANCELLOR.—The very words of the Acts in question, if strictly construed, seem to intimate the necessity of a stamp being affixed on every such document. Still it never was nor could be intended, that a plaintiff in such a case as this should be charged with a double fee. It is exceedingly desirable that the rules of the Court should be uniform, and I will, therefore, speak to the other judges on the question; but in the meantime I direct the bill to be received by the clerk of records and writs, and filed without a second stamp.

VICE-CHANCELLOR STUART'S COURT.

Reported by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.

Saturday, Nov. 6.(*a*)

Ex parte CRAMER, *re* STEWART'S Trusts.

15 & 16 *Vict. c.* 86, *s.* 44—*Practice—Purchase-money of real estate.*

Persons who had been appointed executors of a will which was not proved, ordered by the Court to represent the personal estate of the testator for the purposes of the proceeding then before the Court.

A sum of stock in court, in which the purchase-money of land sold under the compulsory powers of an Act of Parliament had been invested, was Held to be personal estate impressed with the character of real estate, and consequently passed to the heir-at-law or devisee, and not to the executor.

John Stewart, by his will dated the 19th of March, 1823, devised certain real estate at Manchester to trustees upon trust to receive the rents, and after causing the premises to be kept in substantial repair, to pay and apply the remainder of the rents for the maintenance, support, education, and advancement of Eliza, Henry, and Frederick, the children of Mary Cramer, until the youngest of them should attain the age of twenty-one years; and after the attainment by the youngest of them to the age of twenty-one years, upon trust to pay the rents, or so much as should remain undisposed of for the purposes aforesaid into the proper hands of the said Eliza Cramer for her separate use, and after her decease upon trust to stand seised of such hereditaments to the use of all the child or children of the said Eliza Craven equally, if more than one as tenants in common, his, her, and their heirs and assigns, and if but one child, then to the use of such one child, his or her heirs and assigns for ever; and in case of default of such children of the said Eliza Cramer, or such children living to be entitled, or issue of such children living to be entitled, then to the use of the said Henry Cramer and Frederick Cramer, their heirs and assigns for ever, as tenants in common. The testator died in May 1833, leaving Eliza Sarah, Henry John, and Frederick Augustus Cramer, who were the three children of Mary Cramer named in the will, him surviving. Under the Manchester Improvement Act (2 & 3 Wm. 4, c. 36) the improvement committee, appointed by the commissioners, entered into an agreement, dated the 12th of February, 1836, with the trustees of Mr. John Stewart's will, for the purchase of the real estate included in the said devise, for the sum of 2,000*l.* This sum was, according to the directions of the Act in such cases, paid into the Court of Exchequer, and by an order of that court, dated the 14th day of February, 1838, and made on the petition of the trustees and tenant for life under J. Stewart's will, the said sum of 2,000*l.* was invested in the purchase of 2,139*l.* 0*s.* 9*d.* 3 per cent Reduced Bank Annuities. Upon the abolition of the equity jurisdiction of the Court of Exchequer, this sum of stock was transferred into the name of the accountant-general of this court, the account being "Ex parte the Commissioners of the Manchester Gas and Improvement Acts.—The account of the trustees of John Stewart, deceased." Eliza Sarah Cramer, afterwards Ravenscroft, received the dividends of the stock until the 10th of October, 1849, and she died on the 23rd of December, 1849, without having had any children, and leaving William Richard Ravenscroft, her husband, her surviving. Henry John Cramer died on the 28th of June, 1844, in the lifetime of his sister, and intestate as to real estate, but having made a will disposing of his personal estate, and appointing H. Crisp and R. C. Hubbersty executors. The will, however, was not proved. Frederick Augustus Cramer now petitioned for the transfer of the stock to him, as to one moiety in his own right, and as to the other moiety, as heir-at-law of his brother H. J. Cramer.

Smythe appeared in support of the petition.

Greene objected that there was no personal representative of H. J. Cramer before the Court.

Smythe referred to the 44th section of the 15 & 16 Vict. c. 86, as authorising the Court to proceed without the representative of a deceased person, or to appoint one.

The VICE-CHANCELLOR said, that the persons named in H. J. Cramer's will might represent the estate for the purposes of the matter before the Court, and directed that any order on the petition should be prefaced by the statement that the Court had ordered that H. Crisp and R. C. Hubbersty should represent the personal estate of H. J. Cramer, for the purposes of this matter.

Smythe contended that the stock, representing as it did land which had been sold under the compulsory powers of this Act of Parliament, retained the nature of real estate. He referred to *Midland Counties Railway Company* v. *Oswin*, 1 Coll. 80; and *Re Cross's Estate*, 1 Sim. N. S. 260.

(*a*) *Tuesday, Nov.* 23.—In the course of the argument in *James* v. *Lord Wynford*, *Collins* proposed to cite a case from the LAW TIMES, at the same time stating that he believed it was not an accredited report. *Malins* said, that the reports in the LAW TIMES were by barristers whose names were prefixed to the cases, and upon the authority of those gentlemen the reports were always received. So recently as last Saturday, the Lord Chancellor permitted a report to be cited from the LAW TIMES. The VICE-CHANCELLOR said that he had only felt with the Lord Chancellor that there must be a limit somewhere; he had only acted upon what the Lord Chancellor had done. His Honour then desired Mr. Collins to state the case from the LAW TIMES report.

W. D. Lewis (amicus curiæ) mentioned the case of *Re Taylor's Settlement*, 9 Hare, 596.

Greene contended that the long acquiescence of H. J. Cramer in the property remaining in stock, and the fact of his will relating to personalty only, evinced an intention on his part, that the property should be considered as personalty. He referred to *Cookson* v. *Cookson*, 12 Cl. & Fin. 121.

Smythe, in reply, cited *Re Horner's Estate*, before Vice-Chancellor Parker. (See 19 Law T. Rep. 199,)

The VICE-CHANCELLOR said, that in this case H. J. Cramer was entitled to an estate in fee simple in remainder, in certain real estates in Manchester. That estate had been devised to a lady for life, and H. J. Cramer's interest in remainder was defeasible in the event of the birth of children of that lady. This real estate was taken by the Manchester Improvement Commissioners for the purposes, and under the compulsory powers, of their Act. The purchase-money, which represented the value of this real estate, was paid into Court under the provisions of the Act, and invested in stock, and the dividends of that stock were ordered to be paid to the tenant for life. No application was ever made to the Court for re-investment of the stock in real estate, but the money remained in Court, as representing real estate, and the parties entitled to the stock were those who were entitled to the real estate, and, but for the operation of the Act, in the events which had happened, the heir or devisee of H. J. Cramer would be entitled to one moiety of the real estate, and the possession and enjoyment of it. It was contended, however, on the part of the personal representatives of H. J. Cramer, and of those interested in his personal estate, that the effect of the transactions under the Act was to convert the quality of the estate of H. J. Cramer in this property into personal estate, or if it had not been so converted, they contended that at least, from the nature of the interest which he had, he had a right to elect that the property should be his property as personal, and not real, estate. The questions which his Honour had to consider were, first, whether, by the operation of the Act, this real estate had been converted absolutely into personal estate, and was to pass to the representatives of Cramer as personal estate; and 2ndly, if not, whether it was so converted by reason that Cramer having a right to elect to enjoy it as personal estate, some act to testify such election was done by H. J. Cramer in his lifetime. In support of the argument that the property had been converted into personal estate, *Cross's* case, decided by Lord Cranworth, had been cited; and his Honour must say that that case did countenance the argument that this fund would be personal estate. It did not go to the whole extent of the principle contended for in the present case, but it countenanced the principle. Against that authority three cases had been cited, one before the Lord Justice Knight Bruce, when Vice-Chancellor, another before Vice-Chancellor Turner, and another before the late Vice-Chancellor Parker. To the principle of these decisions his Honour entirely acceded. His Honour thought that in a case of this kind, where money was paid into court, where real estate was converted by the compulsory powers of these acts into personal estate, and remained in court subject to the rights of the parties interested in it, to have it re-invested in land, it was to be considered as money or personal estate in the hands of this Court, impressed with the trusts of real estate. That was a sound principle, and there must be strong words in the Act to induce the Court to act on the assumption that it was personalty. Therefore, it seemed to his Honour clear, upon authority and principle, that, independently of any act on the part of Cramer, his interest in the money in court in this case was to be considered, for the purpose of the question who was entitled to it on his death, as real estate. A doubt had been suggested whether he had a right to elect. His Honour was of opinion that, it he had, no act of election, such as to have any weight with the Court, appeared in this case. If so, it was needless for his Honour to consider whether Cramer had the power, and he did not touch that question. It was enough for him to find that there were no facts to shew an election with regard to Cramer's interest in this property, which was personal property in this court impressed with the character of real estate. No act of election appeared, and therefore his Honour was of opinion that there had been no election on Cramer's part, and that the claim of this petitioner was plain.

Monday, Nov. 15.

Re parte JOHN SCOTT'S EXECUTORS, *re* THE NORTH OF ENGLAND JOINT-STOCK BANKING COMPANY.

Joint-Stock Companies' Winding-up Acts—Contributory Call.

Executors of a deceased shareholder in a company, whose names had been placed on the list of contributories, they having received dividends on the shares, sought to reverse or vary the Master's order for payment of a call by them, on the ground of their not being liable to the debts of the company. There had been no classification of the contributories, and the Court, considering that some classification was necessary in order to meet the equity suggested, refused the motion with costs.

This was a motion to discharge or vary an order of Master Farrer, whereby he directed that a call of 50*l.* per share should be made upon Alexander Bartram and Michael Allan, as contributories for sixty shares, in the character of personal representatives of John Scott. From 1812, when John Scott, the owner of the shares, died, until March 1847, when the bank stopped payment, Mr. Bartram and Mr. Allan received dividends on the shares, but they took no steps for constituting themselves shareholders, according to the provisions of the 29th and 30th sections (*a*) of the company's deed of settlement. Messrs. Bartram and Allan received the dividends under the description of representatives of John Scott, without being named.

Malins and *Terrell*, in support of the application, contended that Messrs. Bartram and Allan were not liable to any call at all; but that, if they were, it should not be until all the other contributories had paid. They were not liable to any debts, and although they might be properly on the list of contributories, they ought to be exempt from the payment of any call. They referred to *Ex parte Gay*, 16 Jur. 51.

The VICE-CHANCELLOR (without hearing *Bacon* and *J. L. Prior*, for the official manager) said, that the Court should proceed on some classification of the contributories, in order to meet the equity upon which the appellants sought by this motion to be relieved from payment of the call. This classification had not been sought before the Master. If his Honour, by making an order simply refusing this motion, should prejudice any right to assert the equity which had been suggested, he did not intend it, nor did he consider that the appellants would be prejudiced. The right to ask the Master to make that classification was not gone by,—at least, that was his Honour's impression: but he did not wish to influence the Master in the matter. He considered that these contributories had made no case for exempting them from liability to the call, and he should refuse the motion with costs.

Tuesday, Nov. 23.

SMITH *v.* BOUCHER.

Practice—Trustee Act, 1850.

To an order of course to render a foreclosure absolute, the Court refused to add a declaration that the mortgagor was a trustee within the Trustee Act.

In this case, which was a foreclosure suit by an equitable mortgagee, a decree had been made that the defendant, the mortgagor, should pay, or in default be foreclosed, and convey to the mortgagee. On the Master's certificate that default in payment was made,

Shapter moved for an order to render the foreclosure absolute, and asked that the Court would, under the 30th section of the Trustee Act, 1850, declare the mortgagor a trustee, in order that the mortgagor being out of the jurisdiction a vesting order might hereafter be obtained under the 9th section of the Trustee Act. He referred to *Bowra* v. *Wright*, 15 Jur. 981; and *Rowley* v. *Adams*, 15 Jur. 1001.

The VICE-CHANCELLOR said, that to this order, which was granted upon a motion of course, it was sought to tack a very special addition, and he could not do it.

Wednesday, Nov. 24.

LANGDALL *v.* GILL.

Practice—11th Order of 7th August, 1852.

It is not necessary to obtain the leave of the Court previous to filing a statement of new facts or circumstances in the Record and Writ Clerks' Office, under the above Order.

This was a petition by Cora Eliza Wood, one of the defendants (who had recently married), her husband, and the trustees of the settlement made upon her marriage. In the suit an amount of stock had been brought into Court, and the dividends directed to be paid to Cora Eliza Wood, then Cora Eliza Langdall. The petition, after stating the said order, the marriage, and the settlement, prayed that the dividends might be paid to Mrs. Wood for her separate use, "and that the said infant plaintiff might be directed to enter upon record in this cause such statement as might be necessary to record the said marriage of your petitioners, Cora Eliza Wood and Henry Thomas Wood, and the nature and effect of the said settlement of the 29th of October, 1852."

Baxill appeared in support of the petition, and referred to the 14th Order of 7th August, 1852.

Osborne, for the plaintiff, opposed the latter portion of the prayer of the petition as unnecessary.

The VICE-CHANCELLOR said, that he did not understand why an order was wanted previous to filing such a statement, under the 11th Order. It certainly would be a novelty to allow the defendant to amend the plaintiff's bill. He would make no order upon the latter part of the prayer of the petition: the rest was almost of course.

(*a*) See these sections in *Armstrong's* case, 1 De G. & Sma. 567.

Thursday, Nov. 25.

BLACKBOROUGH *v.* RAVENHILL.

Practice—Receiver.

Application for the appointment of a receiver should be by summons at chambers.

Terrell moved for the usual order of reference for the appointment of a receiver of the testator's estate, the executors having abandoned their trust.

The motion was not opposed.

The VICE-CHANCELLOR said that the appointment of a receiver might be made upon summons at chambers. The orders permitted the Court to send such matters as were thought fit to chambers, and this appeared to be such a matter. In this case, however, he would, upon the production of affidavits as to the fitness of the proposed receiver, appoint him at once upon this motion without putting the parties to the expense of a summons.

VICE-CHANCELLOR KINDERSLEY'S COURT.

Reported by W. H. BENNET, Esq. of Lincoln's-inn, Barrister-at-Law.

Saturday, Nov. 6.

STAINS *v.* RUDLIN.

New practice—Foreclosure - Sale.

This was the usual claim filed for the foreclosure of a mortgage. The 48th section of the 15 & 16 Vict. c. 86, enables the Court "in any suit for the foreclosure of the equity of redemption in any mortgaged property, upon the request of the mortgagee, or of any subsequent incumbrancer, or of the mortgagor, or any person claiming under them respectively, to direct a sale of such property instead of a foreclosure of such equity of redemption, *on such terms as the Court may think fit to direct*; and if the Court shall so think fit without previously determining the priority of incumbrances, or giving the usual or any time to redeem; provided that if such request shall be made by any such subsequent incumbrancer, or by the mortgagor, or by any person claiming under them respectively, the Court shall not direct any such sale without the consent of the mortgagee, or the persons claiming under him, unless the party making such request shall deposit in court a reasonable sum of money, to be fixed by the Court, for the purpose of securing the performance of such terms as the Court may think fit to impose on the party making such request."

Drewry, for the mortgagee, now asked, on the claim coming on to be heard, that a sale might be directed under the above section of the Chancery Practice Amendment Act, 15 & 16 Vict. c. 86.

Shebbeare, for some of the defendants.

The VICE-CHANCELLOR made a decretal order on the claim to the following effect:—That an account should be taken before his clerk of the principal and interest due on the mortgage, and to tax the costs of all parties except the mortgagor; and should the principal, interest, and costs not be paid by the mortgagor within one month after the date of the clerk's certificate of this amount, the estate to be sold, and the proceeds paid into court, with the usual and necessary directions.

Tuesday, Nov. 23.

CLARKE *v.* CLARKE.

New Practice - Service of infant defendant with notice of decree.

The 8th rule of the 42nd section of the 15 & 16 Vict. c. 86, provides, in the cases thereinbefore mentioned, that "the persons who, according to the practice of the Court, would be necessary parties to the suit, shall be served with notice of the decree, and after such notice they shall be bound by the proceedings in the same manner as if they had been originally made parties to the suit, and they may, by an order of course, have liberty to attend the proceedings under the decree; and any party so served may, within such time as shall in that behalf be prescribed by the general order of the Lord Chancellor, apply to the Court to add to the decree."

A claim had been filed by residuary legatees for the usual accounts. One of the parties to it was an infant.

Bazalgette, for the claim, asked the opinion of the Court as to whether this infant party should be served with notice of the decree.

Buske, for defendants.

The VICE-CHANCELLOR was of opinion that under the new practice an infant must be served with notice of the decree in the same way as any other party; and should any difficulty thereafter arise, any question arising upon the propriety of the service might then be decided.

Common Law Courts.

COURT OF QUEEN'S BENCH.

Reported by ADAM BITTLESTON and JOHN THOMPSON, Esqrs. Barristers-at-Law.

Thursday, Nov. 11.

REG. *v.* NORTH AND SOUTH SHIELDS FERRY COMPANY.

Poor-rate—Rateability of tolls—Ferry—Landing-places.

A company, incorporated by Act of Parliament, and authorised to establish a ferry for the conveyance of passengers, &c. across the Tyne, between North and South Shields, was rated to the relief of the poor of North Shields in respect of their ferry, landing, and tolls. The bed of the river Tyne, between the townships of North and South Shields, is situate in a third parish, and the boats of the company, when afloat for the purpose of carrying passengers, &c. were in that third parish; but it was found that the ferry would be of no value without the landing-places on each side, and that no tolls would be paid by any one for coming on the landing-place unless they were also conveyed across the river. The rate was imposed upon one-half of the entire net profits of the company, as being the rateable value of the property occupied by the company in North Shields:

Held, that the rate so laid was wrong, inasmuch as the tolls earned by the ferry could not be rated either directly as land or indirectly as the profits arising from the occupation of the landing-place: but that, though the amount of tolls was not the measure of value, the land should nevertheless be rated at the increased value given to it by its being available for the purposes of the ferry.

Held also, that as the tolls were principally earned, not by the use of the landing-places, but by a voyage across a tidal estuary not performed in any particular course, a mileage apportionment of the profits was inapplicable to the case.

Upon appeal against a rate the rate was confirmed, subject to the following

CASE.

The parish of Tynemouth is situated wholly in the county of Northumberland, and is bounded on the south by the river Tyne, and extends from the mouth of that river about four miles westward, for the whole of which distance, and beyond, the said river, is public tidal, and navigable. The said parish contains eight townships, each maintaining its own poor; North Shields is one of these townships, and is bounded on the south by the said river, along which it extends about one mile and three-quarters. The township of South Shields, in the county of Durham, also maintains its own poor, and is situate on the opposite side of the said river, by which it is bounded on the north, and along which it extends about two miles. All the part of the said river which flows between the said two townships, that is, the water of the same river and the bed and soil thereof below low water-mark, is within the ancient parish of St. Nicholas, in the borough and county of Newcastle-upon-Tyne. The shore of the river adjoining North Shields is, when left dry by the receding of the tide, in that township, and in the like manner the shore on the south side adjoining South Shields is, when so left dry, in the said township of South Shields; but all vessels and things afloat are in the said parish of St. Nicholas.

The appellants were incorporated by the statute 10 Geo. 4. c. 98 (local, personal, and public), and were thereby authorised (section 2) to establish, keep, and maintain, a ferry, consisting of steam boats, barges, floats, rafts, or other vessels, for the conveyance and passage of horses, carriages, and foot passengers over and across the river Tyne, between North Shields, in the county of Northumberland, and South Shields, in the county of Durham; and to build ferry-houses on each side of the river, and to make and keep in repair causeways at the landing-places of the said ferry. And it was thereby declared that all persons with carriages, horses, &c. should have free liberty to pass over the said ferry so to be established, upon payment of the tolls thereby granted.

By section 4, the company were empowered to make and purchase a road or passage from the said ferry, on the north side of the said river, into the main street of the low town of North Shields, and another road from the said ferry, on the south side of the said river, into a public street in South Shields, called Dean-street, and the same roads or passages were to be made, and at all times thereafter, maintained and repaired at the proper costs and charges of the said company, by and out of the tolls by the said Act granted.

By sections 5 to 7, the company are prohibited in making such roads from deviating from the lines marked in the plans deposited with the clerks of the peace of the counties of Northumberland and Durham, and of the town and county of Newcastle-upon-Tyne aforesaid, without the written consent of the owners of the lands through which any deviation is made, or through any house, garden, or yard, except such as are mentioned in the schedule of the Act.

By section 8, the company are enabled at any time thereafter to widen, turn, or alter any part or parts of the said roads, for rendering the same more commodious, or to make a new and more commodious road through any private lands, with the written consent of the owners thereof.

By section 10, the company are empowered to contract with the owners of lands and hereditaments necessary for the purposes of the Act, or of any ferries across the said river, for the purchase of the same, or for compensation for any damage such owners may sustain by the execution of the said Act.

The Act contains the usual clauses enabling corporations and persons under disabilities to sell, and for assessing the price in case of disagreement.

By sec. 27, the company's power to purchase lands and hereditaments without the consent of the owners expires in five years from the passing of the Act, but such purchases are allowed after five years with such consent; and by sec. 28, the company may resell lands and hereditaments not wanted. Sec. 30 requires a capital of 9,950*l.* to be raised before the powers of the Act be put in force. Sec. 31 declares the shares to be personal property. Sec. 70 enacts that as soon as the said ferry shall be made fit for the passage of carriages, horses, and passengers, it shall be lawful for the said company to collect and receive, before any carriages, horses, or foot passengers, or portable articles, shall be permitted to pass over the said ferry, or through any gate to be erected by virtue of the said Act across the approaches to the said ferry, certain tolls there specified, all which tolls shall be paid every time of passing and repassing. Under and in pursuance of the said Act, the company having raised the required capital, purchased a piece of land, about fifty yards long, and five or six wide, in the township of North Shields, and made the same into a landing-place, or approach, communicating with and leading into the main street of North Shields; and they also purchased a similar piece of land, and have converted it to the like purpose, at South Shields; on each of these landing-places a toll-house and gate have been erected. These landing places are not immediately opposite each other; that on the South Shields being a quarter of a mile higher up the river than the other. The company out of their capital also purchased three or four steam ferry-boats at a cost of about 5,000*l.* and have since kept up the same number of ferry-boats, which, with their stores, &c. are now worth about the same sums. They also purchased of the Dean and Chapter of Durham an ancient ferry, or right of ferry, between North and South Shields aforesaid, which that body possessed by charter or prescription, and had, up to the passing of the said Act, exercised and worked, the consideration for such purchase being the annual payment of a certain portion of the net profits of the ferry belonging to and worked by the appellants, which has been ever since and still is paid to the said dean and chapter. In 1830 the company began, and have ever since continued, to work and exercise their ferry between the said two landing-places, and have received certain tolls as allowed by the said Act. At each of the said landing places some timbers with iron rails thereon have been with the consent of the corporation of Newcastle-upon-Tyne aforesaid, then conservators of the said river, erected in an inclined position, up and down which a moveable platform is moved on wheels, so as to reach the ferry-boats while afloat, according as the tide rises or falls, and enable cattle, carts, and passengers to embark therein and land therefrom. The ferry-boats, when working, are necessarily always afloat, and consequently in the said parish of St. Nicholas. They ply between these two landing-places, not pursuing exactly the same track each passage across the river, but varying the same according to the tide, and according as it is necessary to avoid collision with other vessels navigating the river. For the first seven years the tolls were collected on the North Shields landing-place; but when the present rate was made, and for some years previous, at South Shields landing-place.

For a short time the tolls were collected on board the ferry-boats. Neither of the townships of North or South Shields has, from the establishment of the ferry until October last, attempted to rate the ferry tolls, but has rated each landing-place, with the toll-house thereon, at 70*l.* without taking into account the value or amount of the tolls.

The landing-place, and toll-house thereon, at South Shields, is still rated at 70*l.*

In the year 1851, the overseers of North Shields caused a fresh valuation to be made of the rateable property in that township, and caused the appellants to be rated in a rate made 19th October last, for the relief of the poor, at 2*s.* 3*d.* in the pound, from 25th September to 25th December last, as follows:—

Name of Occupier	Name of Owner	Description of Property.	Situation.	Gross estimated Rental.	Rateable Value.
Company of Proprietors of the North and South Shields Ferry.	Ditto.	Ferry Landing and toll.	Duke street.	£ 531	£ 531

Against this rate the appellants appealed, on the following grounds:—1st, having in consequence of an amendment by the Sessions become immaterial, is here omitted; 2ndly, that the said ferry landing and tolls are rated at too high a value; 3rdly, that the said ferry landing is rated at too high a value; 4thly, that the said tolls are not liable by law to be rated; 5thly, that the said tolls do not arise from any land, house, tithes impropriate, propriations of tithes, coal-mines, or saleable underwood in the said township; 6thly, that the said tolls do not arise from any local visible property within the said township, nor are they received or paid within the same; 7thly, that tolls being incorporeal hereditaments, and not rateable, the rate does not specify and distinguish the respective value of the said ferry landing and of the tolls; 8thly, that the said rate on the said Ferry Company is unfair; 9thly, that the said rate is laid upon the face thereof, the requirements of the statute 6 & 7 Wm. 4, c. 96, entitled "An Act to regulate Parochial Assessments," not having been complied with, and in other respects not being made according to law.

The appeal came on to be heard at the Epiphany Northumberland Sessions, on the 8th January, 1852, when in addition to the foregoing facts, the respondents proved by inspection of the company's books, and the Sessions found, that the net annual profit of the said tolls and landing-places, was 1,062*l.* upon the following calculation:—

The said books shewed the gross yearly amount of tolls received to be		£3,570
From which, deducting the working expenses, as wages, stores, &c. for one year	£1,637	
Average repairs for one year taken on an average of six years	757	
Contingent or casual average annual expenses	114	
		2,508
There remained		£1,062

Besides the said tolls, the appellants derive no profits whatever from the said ferry or landing-place, or either of them.

The Sessions found that the net annual rateable value of the said landing-place in North Shields was without taking the said tolls into account, 7*l.*

That no tolls would be paid by persons for coming either by themselves, or with their cattle and goods on to the landing-places, unless they were also conveyed across the said river; and, on the other hand, that no person, either alone or with his carriages, &c. would or could use the ferry-boats, without the convenience of landing-places for embarking and disembarking.

The respondents then contended that each of the said landing places being equally advantageous and necessary to the company, and conducive to the earning of the tolls, 531*l.* being a moiety of the above net amount of tolls calculated as aforesaid, was the rateable value of the said landing-place in North Shields, as enhanced by the tolls, and that the tolls were taken as well for the passage over the landing-places as for the passage over the river.

On the other hand, the appellants contended that tolls not arising from the use of corporeal hereditaments are not rateable. That a ferry is an incorporeal hereditament. That these are ferry tolls, and do not arise out of the use of the landing-place, but are substantially, and in fact, paid for the passage and conveyance of passengers, carriages, and cattle across the river. The exclusive occupation of a landing-place is not a necessary part of a ferry. That the accident of the appellants' being the owners and occupiers of these landing-places does not alter the nature of the ferry-tolls so as to make these tolls rateable, and that they are earned in the parish of St. Nicholas, and become payable by the exercise within that parish of a franchise, and that, it rateable at all, they ought to be rated there, and not elsewhere.

No evidence was given by the appellants to shew that the amounts in the above calculation of the rateable value of the tolls were untrue, nor was any argument adduced to shew that any further deductions ought to be allowed.

The sessions found that the said ferry was of no value without landing-places or approaches, which were in this case in the occupation of the appellants.

That without taking into account the tolls, the

rateable value of the said landing-place or approach in the said township of North Shields was 72*l.*

That the rateable value of the said landing-place, as enhanced by the tolls, was 531*l.* if the said tolls are to be taken into account.

They therefore confirmed the rate subject to the foregoing case, of which the said Act of Parliament (a public one) is to form part. If the Court of Q. B. are of opinion that the said landing-place and tolls ought to be rated at 531*l.* then the order of the sessions and rate are to be confirmed; but if the said Court are of opinion that the said landing-place and tolls ought to be rated at 72*l.* then the said order of sessions and rate are to be amended by striking out the words "and tolls," and reducing the rateable value of the said landing-place from 531*l.* to 72*l.*

The case was argued on Saturday, June 5, before Lord Campbell, C.J. and Coleridge, Erle, and Crompton, J.J. by *Pashley* and *Otter*, in support of the order of Sessions.

S. Temple and *Heath*, contrà.

The following authorities were cited: *R.* v. *Macdonald*, 12 East, 324; *R.* v. *Nicholson*, 12 East, 330; *R.* v. *Leith*, 21 L. J. 119, M.C.; *R.* v. *Barnes*, 1 B. & Ad. 113; *R.* v. *The Hammersmith Bridge Company*, 15 Q. B. 369; *R.* v. *The Marquis of Salisbury*, 8 Ad. & Ell. 716; *R.* v. *Cole*, 5 B. & C. 797; *R.* v. *Liverpool Exchange Proprietors*, 1 Ad. & Ell. 465; *Williams* v. *Jones*, 12 East, 346; *R.* v. *Snowdon*, 1 B. & Ad. 713; *Peter* v. *Kendall*, 6 B. & C. 703; *R.* v. *Mersey and Irwell Navigation Company*, 9 B. & C. 95; *R.* v. *The New River Company*, 1 M. & S. 565; *R.* v. *The Corporation of Bath*, 14 East, 609; *R.* v. *Ellis*, 1 M. & S. 652; *R.* v. *The Aire and Calder Navigation Company*, 9 B. & C. 820; *R.* v. *Milton*, 3 B. & Ald. 112; *R.* v. *Wokiug*, 4 Ad. & Ell. 10; *R.* v. *The London and South-Western Railway Company*, 1 Q. B. Rep. 558; *R.* v. *The Hull Dock Company*, 21 L. J. 153, M.C.; *R.* v. *Same*, 7 Q. B. Rep. 2; *R.* v. *Leeds and Liverpool Canal Company*, 5 East, 325; *R.* v. *The Grand Junction Railway Company*, 4 Q. B. 18; *R.* v. *The Great Western Railway Company*, 6 Q. B. 179; *R.* v. *Rebowe*, 1 Bott, 142; *R.* v. *Tynemouth*, 12 East, 46; *The Attorney-General* v. *Jones*, 1 M'N. & G. 592; Termes de la Ley, "Ferry." *Cur. adv. vult.*

JUDGMENT.

Lord CAMPBELL, C.J. now delivered the judgment of the Court. In this case the appellants were rated to the relief of the poor of the township of North Shields, in the parish of Tynemouth, as occupiers of a ferry, landing, and tolls, and the Quarter Sessions for the county of Northumberland confirmed the rate, subject to a case for the opinion of this Court. It appeared by the statute 10 Geo. 4, c. 19, the appellants were incorporated, and authorised to establish and maintain a ferry, consisting of one or more steamers, or other boat or boats, barge or barges, float or floats, raft or rafts, or other vessels, for the conveyance and passage across of carriages, foot passengers, goods, &c. over and across the river Tyne, between North Shields, in the county of Northumberland, and South Shields, in the same county, and to erect ferry houses and proper offices on each side of the said river, for the habitation and use of the ferryman there, for the use of the ferry, and for the convenience of persons using the same, and to make and keep in repair proper causeways at the landing-places of the said ferry-house to be established on each side of the said river, and all persons were to be at liberty to pass the said ferry on payment of certain tolls granted by the Act. By sec. 4, the company were empowered to make a road on the north of the river Tyne from the new ferry, to be established to the main street of North Shields, and another road on the south from the same ferry to the main street of South Shields. The company are restrained from deviating from the line of the road in the plan of reference without consent of the owners. By sec. 8 the company are empowered, with the consent of the owners at any time thereafter, to alter or widen the road, or make new roads, with the consent of the owner of the land. By subsequent sections the company are empowered to purchase and take any land necessary for the purposes of the Act, or any ferry or ferries across the river Tyne. A capital of 9,950*l.* was to be raised before the powers of the Act were to be put in force. By the 17th section the company are empowered, as soon as the ferry should be made fit for the carriage of passengers, &c. to collect and receive, before any carriages or passengers should be permitted to pass over the ferry, or through any gate to be erected across the approaches to the said ferry, certain tolls specified in the Act, and which were to be paid every time of the passing or repassing. The river Tyne, between the two townships of North and South Shields, is a public tidal and navigable river. All the bed of the river below low-water mark is in the parish of St. Nicholas, in the borough or county of Newcastle-upon-Tyne, the shore on each side when left dry is in the townships of North and South Shields respectively, but all vessels afloat anywhere on the river are in the parish of St. Nicholas. There is a great peculiarity in this, and I suppose there is nothing like it to be found anywhere else. The company under the powers of the Act raised the required capital, and purchased a piece of land about fifty yards long and five or six wide in the township of North Shields, and made the same into a landing-place or approach communicating with and leading into the main street of North Shields, and also purchased a similar piece of land in South Shields, of which they made similar use, and on each of these landing-places they erected a toll-house and gate; they purchased three or four steamboats at a cost of 5,000*l.* and have kept the same ever since; they also bought from the dean and chapter of Durham an ancient ferry over the Tyne, and began, in 1837, to work the ferry with a steamboat, and have since that time worked it, and taken tolls according to the Act of Parliament. The ferryboats, when working, are always afloat and in the parish of St. Nicholas. The company, by the consent of the corporation of Newcastle, have erected on each of the landing-places moveable platforms, so arranged as to enable passengers and cattle, &c. to embark in the steamboats in all states of the tide. The boats do not assume a fixed position or pursue the same track, but vary in their course according to the state of the tide and other circumstances. For the first two years the tolls were collected on the North Shields landing-place; they were afterwards collected for a short time on board the boats; but at the time of the rate in question being made, and for several years previously, they were collected at the South Shields side. The ferry landing and tolls were rated in the rate in question at 531*l.* the Sessions finding that the net annual profits of the tolls was 1,062*l.* The gross yearly amount of the tolls appeard to be 3,570*l.* from which the Sessions deducted, for working expenses, wages, storing, &c. 1,637*l.*; for average repairs, 757*l.*; and for contingent annual average expenses, 114*l.* The balance, 1,062*l.* they found to be the net annual profit of the tolls, and they assessed one-half of that sum on the appellant parish, as being the rateable value of the ferry landing and tolls; the appellants derived no profit from the ferry or landing-place except the said tolls. The Sessions found that the net annual rateable value of the landing-place in North Shields, without taking the tolls into account, was 72*l.* odd. These being the facts, the questions raised before us in the argument were, first, whether the principle on which the rate is laid at 531*l.* is correct; secondly, whether the rate ought to be made on the landing-place only, and be reduced to 72*l.* It was contended on behalf of the respondents that the occupation by the company of the landing-place made the tolls rateable; and secondly, that at all events the landing-places are not merely rateable upon their net rateable value, independently and unconnected with the value insisted upon as being enhanced by their being available for the purposes of the ferry and the earning of the tolls. On the first point it was contended, that though tolls are not rateable per se, yet that they become so in the present instance by being connected with the real property occupied in the township for the purpose of earning such tolls. To support this rate on the half of the entire net profits it must be made out, either that the tolls can be directly rated as ceasing to be incorporeal, and becoming landed property, on account of their connection with the landing-places occupied by the appellants, or that they can indirectly, by the rate being put on the landing-places as land enhanced in value by the amount of the entire net profit. When tolls are attached, and appurtenant in a manner to land, they are rateable as land, and when they really arise from the use of land, as in the case of canals or railways, or the pipes of water companies, though not rateable per se, they may, after a proper deduction, be treated as the direct profits of the lands which are used, and are the real cause of earning the tolls. We do not think that in the present case the ferry and tolls can be treated as appurtenant to the landing-places so as to become part of the land. By the Act of Parliament, the company is incorporated for the purpose of setting-up a ferry across the Tyne, which is to consist of one or more steamers or boats, which were bought and kept up at great expense; and the powers of taking land for the approaches to the main street of the town, for houses for the accommodation of the ferrymen and landing-places, seem by the Act to be given as convenient and necessary for the ferry, and as incident and accessory thereto. I find nothing in the Act to make the ferry or the tolls appurtenant to, or annexed to, the landing-place in the one township or the other so as to make them accessories to the landing-places; which seem rather to be accessory and incidental to the incorporeal franchise, which it was the object of the statute to create; nor do we think the tolls can be indirectly rated by laying the rate upon the landing-place, and treating the half of the entire net procee ls of the tolls as the direct profit earned by the use of such land. The tolls are not the direct profits arising from the landing-places, as in the case of canals, bridges, railways, or the mains and pipes of water companies; but they arise principally from the large capital employed in the boats, and from the transit of the boats, not over the land in question, but over a tidal river entirely situated in another township. We do not think the authorities establish that the tolls become rateable directly or indirectly, by reason of some portion of land being used, — although necessarily used, in the earning of the tolls. When the use of the land is so small a part of the consideration for the tolls, it would manifestly be unfair to throw the whole burthen on the small portion of land. In the case of canals, the profit may be said to arise from the occupation of the land covered by water occupied by the canal company, and along which the transit takes place, and this is said by Mr. Justice Bayley, in *Rex* v. *Nicholson*, to be the ground of rating canals in respect of their tolls. So in the case of bridges, the whole profit arises from the bridges attached to the freehold and part of the freehold. The same observation applies to the mains and pipes of water companies; and the principle has been applied to lines of railways, though great difficulty has arisen in so applying this principle, railway companies conducting their business as carriers, and not merely as persons entitled to take tolls on a public highway. Still, however, in the case of railways, the profits may be said to arise mainly from the use of the line occupied by the companies as real property. If the mere use of any land conducive to the earning of tolls would make the tolls rateable, either directly or indirectly, as contended for by the respondents, it is difficult to see why they were not rateable in the case against the Mersey and Irwell Navigation Company, by reason of the use of the cuts, wears, locks, and dams, which were absolutely necessary for the purpose of the navigation; and so in the case of *Rex* v. *Tynemouth*, though the lighthouse was rateable property, the tolls did not therefore become rateable. We agree with what is said by Mr. Justice Bayley in *Rex* v. *Tynemouth*, where, in answer to a case put of toll for the use of a mooring-post affixed to the freehold, he says, "There the rate will be upon the post, not upon the tolls." Assuming, then, that the rate is really in the present instance to be made on the landing-place as land, just as it is intimated, in the case of *Rex* v. *Tynemouth*, that the rate ought to have been made on the lighthouse, or on the post; it remains to be considered on what principle the amount of such rate is to be fixed. In the case of the mooring-post, it would not seem unfair in such a case to take all the net profits of the tolls, as they directly arise from the use of a corporeal hereditament, and there would be much more reason for taking the profit of the tolls into calculation in the case of a light-house, where the whole meritorious consideration for the toll arises from the use of a corporeal hereditament, and arises within the parish. We think that in the present case, in rating the landing-place, the profits of the tolls cannot be properly brought into the calculation as the profits of the occupation of the landing-place, which is in effect done by the rate. On the other hand, the consideration of the toll cannot be wholly excluded, but the land should be rated, not, according to the view of the counsel for the appellants, as land in that situation, without reference to the toll at all, but according to the principle relied on by the counsel for the respondents in the second branch of the argument; and the value should be taken not as the value of the land merely, but as the value of land enhanced by being available for the purpose of earning the tolls. This appears to be the true principle according to the test laid down in the Parochial Assessment Act, as it would be the rent which the company could obtain, and which they would have to pay for the land for the purpose for which it is available under the Act. We think, therefore, that the order of sessions should be quashed, and that the landing-place should be rated as land rendered more valuable by being available for the purpose of earning tolls. It has been suggested that the mileage principle might be applied in calculating the rateable value of the land, and that the proportion of profit might be assessed on the two landing-places according to the proportion which their dimensions bear to the length of the transit over the river. This principle may be fair in the case of profits arising from the use of land in the case of canals or railways running through different parishes, but we do not think it at all applicable to a case where the profit is principally earned, not by the use of land, but by a voyage over a tidal estuary, not performed in any particular course, and where it is not pretended that the parish in which the tidal river is situated could say that there was any use or occupation of land within that parish. Therefore the order will be quashed, and the rate amended according to the judgment. *Rate to be amended.*

Wednesday, Nov. 17.

REG. *v.* MORRISON and ANOTHER.

Poor-rate—Rateability of a floating-dock moored to a building-yard.

A shipwright, occupying a building-yard on the

banks of a public tidal and navigable river, constructed a wooden vessel or cradle, called a floating-dock, for the purpose of repairing ships therein, and moored the same by several chains to his building-yard. The harbour-master had power to remove the floating-dock, when the convenience of the harbour required it, and occasionally had done so. In order to remove it, it was only necessary to slacken or cast off the mooring-chains, which could be done by the hand. At low water the dock grounded, and was then in the same parish as the building-yard, but at high water, and when afloat, it was in another parish—the water-line forming a shifting boundary between the two. The overseers of the parish in which the building-yard was situate rated the building-yard in an amount increased by the value of the floating-dock:

Held, that the rate was wrong, inasmuch as the floating-dock was neither rateable per se; nor was it so connected with the building-yard that it could properly be taken into account in estimating the rateable value thereof.

This was an appeal against a rate for the relief of the poor of the township of North Shields, in the county of Northumberland. The appeal was tried at the Epiphany Quarter Sessions for the county of Northumberland, Jan. 7, 1852, when that Court confirmed the said rate, subject to the opinion of the Court of Q.B. on the following

CASE.

The appellants are co-partners as shipwrights, and are and have been, since May, 1850, the sub-tenants from year to year, and occupiers at the annual rent of 50*l.* (under Messrs. John and Charles Carr, the lessees of Mr. Collingwood) of a ship-building yard and piece of ground adjoining the river Tyne where public tidal and navigable, and situate in the above township. The whole of this yard is above the high-water mark, is separated from the shore of the river, and bounded by a quay or wall about thirteen feet high, and extends in breadth parallel to the river about forty-nine yards, and in depth at right angles from the river about thirty-two yards; at high tide the water rises to within a few feet of the top of this quay or wall, and at low tide recedes so as to leave dry the whole of the quay or wall, and also the ground or shore below the quay, to a distance of from twenty to thirty yards, according as tides are neap or spring. The property in the ground, or shore, between high and low water mark in the river Tyne, at this part of the river, is a subject of doubt, and though occasionally used by the occupier of the land in front of which it is situate, an acknowledgment is usually paid to the conservators of the Tyne, who were till lately the corporation of Newcastle-upon-Tyne, which corporation hold the river Tyne, and port of Newcastle-upon-Tyne, in fee farm, by a charter or grant from the Crown. The conservatorship of the river Tyne has, however, been removed by the river Tyne Improvement Act, 1850, from the corporation to commissioners chosen from the boroughs of Newcastle-on-Tyne, Gateshead, Tynemouth, and South Shields, and the foreshore is claimed by the owner of the adjoining property; but is also claimed by the mayor and burgesses of Newcastle-on-Tyne, and whether it belongs to either of the above parties, or to the Crown, or to the commissioners for the conservancy of the river, appointed under the said Act of Parliament, is not decided. The bed of the river, that is, the soil below low-water mark, and also the river itself, are from a point called Hedwin Streams, seven miles above Newcastle, down to another point, about ten miles below Newcastle, and called the Spar Hawk, situate in the sea, just at the mouth of the said river, within the parish of St. Nicholas, Newcastle. A part of the river, in length about two miles, between these two points, forms the southern boundary of the township of North Shields. The shore of that part of the river is, when dry, within that township, the water being the boundary; but as the tide rises, every thing floating in that part of the river, and whether within or below low-water mark, is in the said parish of St. Nicholas. In the year 1850, the appellants constructed a wooden vessel, or cradle, called a floating dock, at a place called Howdon, two miles distant from the building yard, and towed the same down the river opposite to their said yard, and have ever since used the same for repairing ships in their business of shipwrights. The mode of using it is as follows: — When a vessel requiring repair is to be put into the dock, the dock is hauled a little further into the river, where the water is deeper, and certain plugs are taken out, whereby the water is admitted, and the dock, sinks, and grounds on the shore adjacent to the building-yard, or partly on the shore and partly on the bed of the river below low-water mark. The gates of the dock are then opened, and whilst it remains sunk and aground, the vessel to be repaired is, at high tide, hauled immediately into the dock, and allowed to settle down in the same as the tide falls; at low tide the dock-gates are closed and the plugs replaced, and any water which has not run out is pumped out; with the next tide, the dock containing the vessel, rises and floats, and is hauled in again towards the shore, and, as the tide falls, again grounds; but the interior being kept clear of the water, the repairs of the ship inside go forwards, whether the dock is aground or afloat, and rather more conveniently when afloat than when aground. When the repairs are finished, the plugs are taken out again, which has the effect of sinking the dock, and where there is a sufficient depth of water, the gates are opened, and the dock remaining sunk, the vessel is hauled out; when a vessel is in the dock, the latter is usually moored about 13 feet from the said quay or wall, and a boat can pass between the dock and the yard at high tide. To enable the workmen to get to their work, a plank or gangway goes from the quay or yard to the floating dock, such gangway or plank merely resting at each end respectively on the building-yard and floating dock, and a rope passes through a staple at that end of such plank which rests on the floating dock, which rope is tied to the floating dock, to prevent the plank falling if it should happen to be accidentally pushed off the dock, and such plank or gangway is moved to any part of the yard or dock, as convenience may require. The floating dock is moored by several chains; three of these chains are attached to anchors or posts in the bed of the river, and two of them are put round posts standing in the said building-yard, the other ends being on board the floating dock; each of these chains can be easily slackened, or altogether cast off by the hand, as readily, indeed, as a ship is loosed from her moorings, and this is done every time a vessel is docked or undocked, in order that the dock may be hauled off a little farther into the river, which is done to facilitate the operation, by getting into deeper water. The time that vessels remain in the dock varies from two days to three weeks, according to the extent of the repairs required. In order to use the floating dock in the way described, the license of the said Conservancy Commissioners is necessary, and their officer (the harbour-master) has power to remove the said floating dock for a time, when the convenience of the harbour so requires. He once (but not since the making of this rate) caused the dock to be removed and kept away for two tides, in order that a steamer which had foundered near might be raised. Thus the dock, when moored, is alternately in the parish of St. Nicholas and the respondent township, according as it is afloat or aground, in each of which states it is for about an equal time each day; but occasionally, when hauled off below low-water mark, and when removed to another part of the river, it is altogether out of the respondent township. From the time the appellants first became occupiers of the building-yard down to October last, when the present rate was made, and during a year and a half of which period they had possessed and used the said floating dock in the manner before described, they were rated to the relief of the poor of the township of North Shields, in respect of the building-yard, as follows:—

Name of Occupier.	Name of Owner.	Description of Property.	Situation.	Gross estimated Rental.	Rateable Value
George Wilson Morrison and George Fawcus.	E. T. Collingwood.	Building-yard.	Limekiln Shore.	£ 52	£ 46

It being customary in this township to deduct about ten per cent. for outgoings and repairs, from the gross rental of property in the township, to give the rateable value. A new valuation of the property in the said township having been recently made, the overseers, by a rate made the 14th of October, 1851, for the relief of the poor, at 2s. 3d. in the pound, from the 25th of September to the 25th of December, 1851, rated the appellants in respect of the same premises as follows:—

Name of Occupier.	Name of Owner.	Description of Property.	Situation.	Gross estimated Rental.	Rateable Value.
George Wilson Morrison and George Fawcus.	E. T. Collingwood.	160 feet of river frontage with floating dock attached.	Limekiln Shore	£ 104	£ 147

Against this latter rate the appellants appealed, on the following grounds:—

1st. That the said floating dock is not liable by law to be rated.

2nd. That the said 160 feet river frontage, with floating dock attached, is rated at too high a value.

3rd. That the said 160 feet river frontage is rated at too high a value.

4th. That the said 160 feet river frontage cannot be rated at a higher rate than it otherwise would be on account of the said floating dock alleged to be attached thereto.

5th. That the words and figures, "160 feet river frontage, with floating dock attached," is not a sufficient description of the property intended to be comprised in the said rate or assessment as occupied by us, the said George Wilson Morrison and George Fawcus, so as to enable us to ascertain upon what property we are intended to be thereby rated in the said townships.

6th. That the said floating dock is not, either any land, house, tithes impropriate, propriations of tithes, coal mines, or saleable underwood, in the said township.

7th. That the said floating dock is not situate within the said township.

8th. That the said floating dock is only occasionally situate within the said township.

9th. That the said floating dock is occasionally within the parish of St. Nicholas, in the borough and county of Newcastle-upon-Tyne.

10th. That the said floating dock being personal property, and not rateable, the rate does not specify and distinguish the respective values of the said floating dock and of the said 160 feet river frontage.

11th. That the words and figures, "160 feet river frontage," do not describe any rateable property in the said township.

12th. That the said floating dock is not an erection made upon any land, or fixed to the freehold of any land in the said township, and cannot, therefore, add to the value of any land within the said township.

13th. That the said rate on the said 160 feet river frontage and floating dock is unfair.

14th. That the said rate on the said 160 feet river frontage is unfair.

15th. That the said 160 feet river frontage is not liable by law to be rated.

16th. That the said rate is bad on the face thereof, the requirements of the statute 6 & 7 Wm. 4, c. 96, intituled "An Act to Regulate Parochial Assessments," not having been complied with, and in other respects not being made according to law.

At the hearing of the appeal the foregoing facts were proved, and the Sessions found that the rateable value of the building-yard was 57*l.* and of the floating dock, if rateable, 90*l.* a year. It was agreed that the words "river frontage" in the rate meant the said building-yard. On these facts it was contended by the appellants that admitting the principle that lands and houses are rateable according to their actual value as combined with the machinery attached to them without considering whether that machinery be real or personal property, whether it would go to the heir or executor, or whether at the expiration of the lease it would go to the landlord or lessee, still such machinery must, in the first place, for its ordinary use, be actually attached to the soil or the walls, so as for the time at least to form part of the soil or building, or in other words to be a fixture; and, secondly, the machinery must be and remain, permanently and continually, that is to say, during the time of its use and the period for which it is rated within the rating parish or township, and that the said floating dock was not a fixture, nor so actually attached to the soil or walls of the said building-yard as to form part thereof, nor permanently or continually during the time of its use and the time for which the rate was made situate within the rating township, inasmuch as the said dock was about twelve hours out of every twenty-four within the parish of St. Nicholas. The Sessions, however, held, that though the floating dock was not rateable per se, it was, by means of the said mooring-chains passing from the same to the said posts in the said building-yard so connected with the said building-yard (although not permanently and continually, but only occasionally attached) as to enhance the value thereof, and that the rateable value of the said building-yard was thereby enhanced to 147*l.* being the aggregate of the above-mentioned sums of 57*l.* and 90*l.* They therefore affirmed the rate subject to the opinion of the Court of Q. B. whether, upon the facts above stated, the value of the said building-yard can, according to law, be so enhanced by such attachment or connection of the said floating-dock thereto as to increase the rateable value of the said building-yard to the amount above stated.

If the Court of Q. B. are of opinion that this question must be answered in the affirmative the said rate is to stand affirmed; but if the said Court are of opinion that the said question must be answered in the negative, then the said rate is to be amended by reducing the rateable value of the said premises of the appellants to 57*l.*

The case was argued Saturday, Nov. 6, before Lord Campbell, C.J. Coleridge, J. Wightman, J.

and Erle, J. by *Otter*, in support of the order of sessions, and *Heath* contrà.

The following authorities were cited:—*R.* v. *The Southampton Dock Company*, 20 L. J. M. C. 155; *R.* v. *Leith*, 21 L. J. M. C. 119; *R.* v. *Bradford*, 4 M. & S. 317; *R.* v. *St. Nicholas, Gloucester*, Cald. 262; *R.* v. *Hogg*, 1 T. R. 721; *R.* v. *Lord Granville*, 9 B. & C. 188; *R.* v. *The Birmingham and Staffordshire Gas Company*, 6 A. & E. 634; *R.* v. *Haslam*, 17 Law T. Rep. 182; Mag. Sept. 1851, 124; *Buzzard* v. *Capel*, 6 Bing. 150; *R.* v. *The Liverpool Exchange Proprietors*, 1 A. & E. 465; *Robinson* v. *Learoyd*, 7 M. & W. 48; *R.* v. *Churchill*, 4 B. & C. 750; *R.* v. *Kentmere*, 21 L. J. M. C. 13; *Kemp* v. *Spence*, 2 W. Bl. 1215; *R.* v. *The Cambridge Gas Company*, 8 A. & E. 73.

Cur. adv. vult.

JUDGMENT.

Lord CAMPBELL, C.J. now delivered the judgment of the Court.—In this case, respecting the rateability of a ship-yard and a floating dock, we are of opinion that the rate, as laid, cannot be supported. The Sessions very properly have found that the floating dock per se was not properly rateable under the 43 Eliz. and the only question is whether the rateable value of the ship building yard is to be considered as enhanced by reason of the floating dock. Looking to the manner in which the floating dock is constructed and used, we think the Sessions have come to an erroneous conclusion in point of law on this question. This floating dock exactly resembles a ship at anchor, which occasionally grounds when the tide ebbs; it may be approached either by a boat or by a float, and it has no necessary connection with the yard: the two might easily be in the separate occupation of different shipwrights carrying on business separately, and the accidental proximity of the one to the other is for this purpose immaterial. If words had been introduced into the 43 Eliz. making the floating dock rateable, the floating dock and the yard being in different parishes, there would have been as much reason for contending that the yard was an accessory to the floating dock, as that the floating dock was an accessory to the yard. This does not appear to us to come within the cases in which it has been held that the rateable value of real property may be enhanced by circumstances which increase its profitable value. The decisions respecting machinery and other fixtures of course can have no application. The steam-tug in the Southampton case, was not made the subject of the rate, and the only question there was, whether the appellants, the dock company, had, in estimating the profits, been properly allowed a deduction in respect of the steam-tug, which was necessary for carrying on the business. *Reg.* v. *Leith* comes much nearer the present case; and some expressions there used by the Court would, in their generality, countenance the doctrine for which the respondents now contend; but those expressions must be taken with reference to the facts of that case, which was materially different from the present. The pier there was permanently fixed as a landing-place, and the one could not be used without the other. Besides, that case did not turn upon the construction of the 43 Eliz. but on a recent local Act which contains words more extensive with respect to property of this description. This being our opinion, it is unnecessary for us to consider the effect of the floating dock being sometimes in one parish and sometimes in another, and we have only to direct that the rate be amended by reducing the rateable value of the appellant's premises to the sum of 57*l.* and therefore the order of Sessions will be quashed.

Rate amended.

REG. *v.* THE INHABITANTS OF SAFFRON-HILL, HATTON-GARDEN, AND ELY-RENTS.

Settlement appeal Search for agreement—Secondary evidence.

The appellants relied on a settlement by renting a tenement in parish M. The pauper's husband proved that the holding was under an agreement in writing, drawn up by P.'s clerk, and which remained with P. the landlord. A witness then deposed, "I went to P. asked him whether there was any agreement between himself and Gillott respecting the house in question. He said, 'I cannot say for a certainty, I will search.' He then told his clerk to search, and the clerk and I searched together amongst the papers of the office, and also amongst day-books and ledgers, and we could find no agreement."

The Court of Quarter Sessions held the proof of search insufficient to let in secondary evidence of the agreement:

Held, on appeal, that the above ruling was correct.

On the hearing of the appeal, at the Middlesex Quarter Sessions, an objection was made to the admissibility of evidence tendered by the appellants, which objection arose as follows:—

The appellants, by way of answer to the primâ facie case of the respondents, relied on a settlement alleged to have been acquired by renting a tenement in the parish of St. Marylebone, and it appeared on the evidence of the pauper's husband that the tenement in question had been rented by him under an agreement in writing, which was drawn up by a clerk of Mr. Ponsford's, and read over by him to the witness, and which had remained with Mr. Ponsford, his landlord.

A witness was then called, who gave the following evidence:—"I went last week to Mr. Ponsford, and asked him whether there was any agreement between himself and Mr. Gillott respecting the house in question. He said, 'I cannot say for a certainty, I will search.' He then told his clerk to search, and the clerk and I searched together amongst the papers of the office, and also amongst day-books and ledgers, and we could find no agreement.

The Court of Quarter Sessions was of opinion that the proof of search for the agreement was insufficient, to warrant the reception of secondary evidence of its contents, and that Mr. Ponsford ought to have been called as a witness.

If this Court should be of opinion that the view of the Sessions was incorrect, the order appealed against and the order of sessions are to be severally quashed otherwise they are to stand confirmed.

Huddleston, in support of the order of sessions.—Where the sessions have found a fact on which there was evidence before them, this Court will not interfere. [Lord CAMPBELL, C.J.—This was rather a question of law for the opinion of the judge than of fact.] It is submitted then that the judge's decision was satisfactory. The agreement was traced to the possession of Ponsford. [Lord CAMPBELL, C.J.—And the defect you say was, that without Ponsford being called, it did not appear where the search ought to have been.] Yes. The evidence does not say that all Ponsford's papers were searched, and it does not appear that the document was placed among those that were searched. The judgment of Lord Denman, C.J. in *Reg.* v. *Kenilworth*, 7 Q.B. 649, is pertinent to the present case. *Reg.* v. *Denis*, 7 B. & C. 620; *Rex* v. *Castleton*, 6 T. R. 236; *R.* v. *North Bedburn*, Caldecot, 452, were then referred to. *Rex* v. *Morton*, 1 M. & S. 48, may be relied on by the other side; but in Taylor on Evidence, 305, it is said that "The decision in that case appears to have proceeded on the somewhat dubious ground, that if the statement of the apprentice was admissible, the indenture was not traced into his hands, and being functus officio, there was no particular reason why it should be in his custody, while if the statement could be received so as to shew a possession of the deed by him, it shewed also that further search or inquiry was unnecessary. The second branch of this dilemma is unanswerable, but the first is subject to much doubt, for even if the fact of the deed not being traced into the hands of the apprentice could preclude the necessity of searching in that quarter, it could not discharge the parties of laches in having neither called the personal representative of the master, nor even examined his papers."

Pashley, contrà.—It is manifest that the search was made under the directions of Ponsford, by the witness and Ponsford's clerk, among Ponsford's papers. It is as if Ponsford had made the search himself in the witness's presence. Enough appears in the case to shew that a search was fairly made in the place where the document was likely to be. *Rex* v. *Stourbridge*, 8 B. & C. 96; and *Rex* v. *East Farleigh*, 6 D. & R. 153, were then quoted.

Lord CAMPBELL, C.J.—I am of opinion that we cannot say, that the Sessions were wrong in holding that the evidence of the search, was insufficient to let in secondary evidence of the agreement. There was proof of the existence of such an agreement, whereby Ponsford agreed to let the premises, and the agreement is traced to his custody. A witness is then called, who says, "I went last week to Mr. Ponsford;" he does not say where; it might have been in Covent-garden-market, or the Royal Exchange, for all we know. "And I asked him whether there was any agreement between himself and Mr. Gillott. He said, I cannot say for a certainty, I will search. He then told his clerk to search, and the clerk and I searched together among the papers of the office, and amongst day-books and ledgers, and we could find no agreement." And this is all. The question does not arise whether the declaration of a person, made at the time when the search took place, is admissible to obviate the necessity to prove a search in the proper place of deposit; because the witness does not say that this took place at the house of Ponsford. It is consistent with all that he says, that Ponsford might have had the agreement at another place, which was not searched. There was, therefore, no evidence before the Court of Quarter Sessions of a search at the proper place of possession, in which the document might have been expected to be found.

COLERIDGE, J.—I am of the same opinion; and I wish to express the conclusion of my mind, that there is not sufficient in the case to satisfy us that the Court of Quarter Sessions was wrong. Though unquestionably the decision of the Court of Quarter Sessions is subject to our review, this is just one of those cases in which this Court ought to be cautious not to interfere. The burthen is cast on the appellants to shew that the search is sufficient to let in secondary evidence of the agreement, for they raise a preliminary inquiry of a matter of fact, and from which the Court of Quarter Sessions is to draw a conclusion of law. I may put an extreme case, where for very good reasons, you may disbelieve every word which the witness to prove the search says. Now, if the judge were to hold, on such testimony, that the document was useless, and that the probability was, that it was destroyed, that might be wrong. But from the mixed nature of the inquiry, there is not enough in the case to make out that this decision was wrong. There is nothing to satisfy us that this was either a useless document, or that the right place was searched. We need not decide as to the reception of Ponsford's declaration, because that was received, and yet it was held, that it did not shew enough to let in the secondary evidence. If it had been shewn that the agreement had expired, it would have been a useless document, and the presumption would have been that it was destroyed. Again, we do not know where Ponsford was seen by the witness.

WIGHTMAN, J.—The Court of Quarter Sessions has come to the conclusion that the evidence of search was not sufficient to warrant the reception of secondary evidence of the agreement, and unless we are perfectly satisfied that that was wrong, we ought not to overrule the decision. Ponsford has made no declaration at all which is important in this case, for he does not know whether there was any agreement or not.

ERLE, J.—It is difficult to lay down a definite rule of law, settling what is sufficient evidence of a search. In Phillips on Evidence, it is said to depend on the particular circumstances of each case. I am of opinion that sufficient facts are not here stated to compel us to say that the Court of Quarter Sessions was wrong in excluding secondary evidence of the agreement.

Order of Sessions affirmed.

Friday, Nov. 19.

RUST v. NOTTIDGE.

Agreement—Construction—Plea.

It was agreed that the plaintiff should serve the defendant for seven years, at 100l a year, and if defendant, from any cause, should give up business or not require plaintiff's services, then that he would use his best endeavours to procure the plaintiff employment in some similar business, of not less than 100l. a year, or in case he should be unable to do so, then the defendant should pay the plaintiff 100l. a year during the residue of the seven years.

Breach in the declaration that the defendant wrongfully discharged the plaintiff during the term, and did not use his endeavours to procure the plaintiff employment, and by means of the premises the plaintiff lost the wages which he otherwise would have obtained, and which the plaintiff refused to pay.

Plea, that the defendant was unable to procure the plaintiff such employment.

Held, that the breach was well assigned, there being an absolute undertaking by the defendant to use his best endeavours, and that the plea was bad on general demurrer, as tendering a different issue to that proposed by the breach.

Assumpsit.—The declaration stated, that the defendant was about to enter into business as a manufacturer of chemicals, and had requested the plaintiff to enter into his employment as a manufacturer and assistant, which the plaintiff had consented to do, and leave his then employment; that it was mutually agreed that the plaintiff would serve the defendant as such manufacturer and assistant for seven years, to be computed, &c. at 100*l.* per annum, and that the defendant would pay to the plaintiff 100*l.* per annum by monthly payments, "and if the said defendant should from any cause give up the said business or not require the plaintiffs services, then that he would use his best endeavours to procure for the plaintiff employment in some similar business, and for which he should receive a salary of not less than 100*l.* per annum, or in case he should be unable to do so, then the said defendant would pay to the said plaintiff the yearly sum of 100*l.* during the residue of said term of seven years." Averment of performance on plaintiff's part, and that he did enter into the defendant's employ. Breach, that during the seven years the defendant wrongfully discharged plaintiff, and would not continue the plaintiff in his employ during the residue of the said term; that the defendant did not use his best or any endeavour to procure, nor did he procure the plaintiff employment in some similar business, and for which he should receive a salary of not less than 100*l.* a year, and by means of the premises, the plaintiff hath lost all the wages, profits, and advantages which he might and would have derived from being so employed as aforesaid, and which the defendant hath wholly refused to pay or allow to the plaintiff.

Plea.—That at the time when the plaintiff was discharged, the defendant was and thence hath been wholly unable to procure for the plaintiff any such employment as in the agreement mentioned.

Demurrer to the plea.

Udall in support of the demurrer.—There is but one breach in the declaration, and the fallacy of the defendant consists in treating the contract as an alternative one, but it is not so. The defendant objects that it is not averred that a reasonable time has elapsed for procuring the plaintiff employment. That is unnecessary. The agreement is for the defendant to use his best endeavours, according to the circumstances. If no time has expired, the defendant has not broken the contract. The defendant further objects, that the plaintiff does not aver that he was willing to accept such other employment, but no offer of other employment was ever made, which the plaintiff could be willing to accept.

Bovill contrà.—The contract is not a contract to employ the plaintiff, though he is bound to pay 100*l.* a year, during the seven years, like that in *Aspdin* v. *Austen*, 5 Q. B. 671. The breach is framed as if it were a contract to pay, and it is therefore bad. (*Dunn* v. *Sayles*, 5 Q. B. 685.) [Coleridge, J.—If on the declaration there is a good breach for the nonpayment of the 100*l.* you are answered.] The judgment in *Elderton* v. *Emmens*, 6 C. B. 160, proceeded on the words in the contract there, "it was agreed." The meaning of the present contract is, the defendant will pay the plaintiff 100*l.* a year, if he employs him, and if he does not require the defendant's services, that he will find him other employment, or pay him 100*l.* a year. [Coleridge, J.—You introduce another element, if he should be unable "or unwilling" to do so.] The case of *Anon.* Hardres, 120, was then referred to. An averment of readiness and willingness to accept another situation was necessary (*Doogood* v. *Rose*, 9 C. B. 132); and also an averment that a reasonable time had elapsed for procuring the plaintiff other employment. (*Stavart* v. *Eastwood*, 11 M. & W. 197.) Then, it is submitted, the plea is good on general demurrer.

Udall.—The plea is bad. The allegation in the breach is, that the defendant did not use any endeavours to procure employment for the plaintiff. The plea does not traverse that, but says that he was unable to do so. This does not touch the question to be tried. He may have been unable for many causes that are consistent with his not using any endeavours. The plaintiff ought not to be compelled to traverse the plea.

Lord Campbell, C. J.—I am of opinion that our judgment must be for the plaintiff. I give no opinion as to whether there was any undertaking to employ the plaintiff, although I have a strong inclination on my mind that there is. At all events there is a breach well assigned, on the undertaking of the defendant that he would use his best endeavours to procure for the plaintiff another situation. The words are "that if the defendant should from any cause give up the said business, or not require the plaintiff's services, then, that he would use his best endeavours to procure for the plaintiff employment in some similar business, and for which he should receive a salary of not less than 100*l.* per annum, or in case he should be unable to do so, then the defendant would pay the plaintiff the yearly sum of 100*l.* during the residue of the said term of seven years." This is an absolute undertaking to do a certain thing, and in case the defendant is unable to do it, having used his best endeavours to do it, then that he would pay the plaintiff 100*l.* a year during the residue of the term of seven years. That is clearly an absolute undertaking that the defendant would use his best endeavours. Then the breach assigned is that the defendant discharged the plaintiff from his service, and that the defendant did not use his best or any endeavours to procure the plaintiff a situation, and for which he should receive a salary of not less than 100*l.* a year, and by means of the premises the plaintiff hath lost all the wages, &c. which he would have acquired from being so employed as aforesaid, and which the defendant hath wholly refused to pay. My opinion is, that it does not leave to the defendant the alternative to pay the plaintiff 100*l.*; but that the defendant is bound to use his best endeavours to procure a situation for the defendant, and that this breach is well assigned. Then as to the special objections, none of them seem to be entitled to our sanction. The allegation that the defendant wrongfully discharged the plaintiff supposes a wrong. Then it was objected that there was no request on the plaintiff's part alleged, but the agreement is not that the defendant would use his best endeavours on request, but that he would ex mero motu use his best endeavours. Then it is said there is no averment of readiness and willingness on the plaintiff's part to accept another employment. That is wholly unnecessary, and indeed there is a general allegation of performance. The only other objection is, that it is not stated that a reasonable time had elapsed for the defendant to use his best endeavours; but from the manner in which the breach is assigned, it is sufficient, being in the words of the undertaking. Then as to the plea. No doubt it is bad on special demurrer; and as being tricky, might have been set aside. And as it tenders a different issue from that assigned in the breach, I think it is bad on general demurrer.

Coleridge, J.—I have had no doubt as to the construction of this agreement, that during the continuance of the plaintiff in defendant's employ, the defendant is to pay him a salary of 100*l.* a year; that if during that time the defendant should give up business, or not require the plaintiff's services, then that the defendant would use his best endeavours to procure for the plaintiff other employment of not less than 100*l.* a year; and I see no reason for saying that this is not what the parties intended. Then further, in case of the defendant being unable to do so, and then only, that the defendant would pay to the plaintiff 100*l.* per year during the residue of the said term of seven years. Mr. Bovill contends that the words of the contract are to be inverted, and that they are not to be taken in their natural sense. I did not entertain more doubt about the plea; and having heard the argument, I see no ground for holding it to be good.

Wightman, J. concurred.

Erle, J.—This is not an alternative contract, but one which imposes a series of duties on the defendant; and in case of defendant's failing as prescribed, then that he would pay the plaintiff 100*l.* a year during the residue of the term. And as to the plea, that is bad, as tendering a totally different issue from that proposed by the declaration. Does it follow from the defendant's being unable to procure other employment for the plaintiff that he has used his best endeavours to do so? There might have been no similar manufactory of chemicals, and then the defendant would be unable; but that is no defence. The plea is therefore bad on general demurrer.

Judgment for the plaintiff.

Saturday, November 20.

Reg *v.* The Great-Western Railway Company.

Railway company—Lands Clauses Act—Subscription contract—Obligation to complete branch line.

Under ordinary circumstances, an Act of Parliament authorising a company to make a railway, and conferring upon them the usual powers for that purpose, imposes upon them an obligation to complete the line: which this Court will enforce by mandamus.

Where the special Act authorised an existing railway company to make an extension line, and to apply the funds of the existing company to that undertaking, and to raise the required capital of the new line by the creation from time to time of new shares, to form part of the capital stock of the old company:

Held, that it was no answer to a mandamus to complete, that no subscription contract had been executed pursuant to section 16 of the Lands Clauses Act inasmuch as that section applied only to a case where the funds are by the special Act directed to be raised by a subscription contract to be signed by the promoters.

It is no objection to the issuing of a peremptory mandamus, that since the issuing of the first writ the compulsory powers have expired.

Mandamus to the defendants to make and complete a branch railway from Twirton to Radstock, which the defendants were authorised to make by stat. 10 & 11 Vict. c. ccxxvi.

Return, setting up, amongst other things, that no contract binding the parties to pay the required capital had been signed by the promoters of the undertaking pursuant to sec. 16 of the Lands Clauses Act (8 Vict. c. 18), which enacts that, "Where the undertaking is intended to be carried into effect by means of a capital, to be subscribed by the promoters of the undertaking, the whole of the capital shall be subscribed under a contract, binding the parties thereto, their heirs, executors, and administrators, for the payment of the several sums by them respectively subscribed, before it shall be lawful to put in force any of the powers of this or the Special Act, in relation to the compulsory taking of land."

Demurrer thereto.

Fitzherbert in support of the demurrer. 1. The facts stated in the writ shew a primâ facie case. This has been settled by the recent judgment of the Court in *R.* v. *The York and North-Midland Railway Company*, and *R.* v. *The Lancashire and Yorkshire Railway Company* (not yet reported). [Wightman, J.—I was not present during the argument of those cases; but I may say that I have read the judgments, and that I entirely concur in those of Lord Campbell and my brother Crompton.] 2. The return in this case shews no answer. Section 16 of the Lands Clauses Act has no application to this case; because this is not a case where the funds are to be raised by a subscription contract signed by the promoters, and binding their "heirs executors, and administrators." By sec. 4 of the special Act, it is provided that the funds for carrying out this undertaking are to be provided by the Great-Western Railway Company, who are authorised from time to time, as may be necessary, to create new shares for the purpose, which new shares are to form part of the capital stock of the Great-Western Company. Besides, the return does not state that the company cannot now obtain the subscription contract. Lastly, the application is not too late. The writ of mandamus was issued on the 8th May, and the compulsory powers did not expire till the month of July.

The *Solicitor-General*, contrà.—In this case nothing whatever had been done towards making this branch line, except surveying the land; but after the decisions in the cases mentioned, it must be assumed for the present that a primâ facie case of obligation appears by the writ. But, assuming that the return is an answer, by sec. 16 of the Lands Clauses Consolidation Act, the company cannot exercise the compulsory powers of taking land until a contract has been signed by the promoters, binding them to pay the capital. The object of that provision was to prevent the interference with property, unless there was some security to the owners that the necessary funds should be forthcoming; and although the special Act provides for the creation of new shares by the Great Western Company, it does not dispense with the necessity for a subscription contract. [Coleridge, J.—The Great Western Company may apply its funds in hand to the purpose of making this line. Lord Campbell, C.J.—Sec. 16 certainly seems confined to cases in which the funds were to be raised after the passing of the Act.] The material point is, not how the money is to be raised; but that the parties interested should have a binding contract for the payment in some manner of the whole capital. 3. As the compulsory powers have now expired, a peremptory writ of mandamus, which cannot be obeyed, ought not to be awarded.

Fitzherbert, in reply.—The special Act gives the company no power to execute a subscriber's contract (*Colman* v. *The Eastern Counties Railway*, 10 Beav. 1; 16 L. J. 73, Ch.; *Cohen* v. *Wilkinson*, 18 L. J. 411, Ch.); and as to the last point, the case of *R.* v. *York and North Berwick Railway*, 6 Rail. Cas. 652, disposes of it.

Lord Campbell, C.J.—I am of opinion that the prosecutors are entitled to our judgment. As to the general question, we have already expressed our desire that it should be carried before a superior tribunal as speedily as possible; but in the meantime I must adhere to my opinion, that as soon as the Act of Parliament is passed, it imposes upon the company the obligation of making the railway. We must assume, therefore, that the writ in this case is good. Then what is the return? It is founded on the 16th section of the Lands Clauses Act; but in the first place, I am of opinion that that section does not apply to such an undertaking as this. [His lordship read the words of the section.] Now, is this an undertaking intended to be carried into effect by means of a capital to be subscribed for and raised under a contract signed by the promoters, and binding them, their heirs, executors, and administrators, for the payment of the subscribed capital? I think it is not. It is only necessary to refer to sec. 4 of the special Act, which shews that funds already in the hands of the Great Western company may be applied to this undertaking, and that the capital of the branch line is to be raised by the old Company by the creation of new shares from time to time. This is a totally different mode of proceeding from that contemplated by sec. 16, which supposes a raising of the funds prospectively by subscription. But even if this case fell within sec. 16, my present opinion is that this return would be bad, because it does not shew that the company ever have been or now are unable to obtain a subscription, which would satisfy the terms of sec. 16. The return merely states that the whole capital has not been subscribed for under any contract binding the parties thereto, their heirs, &c.; and, therefore, that it is not lawful for the company to put their compulsory powers in force. They do not shew any incapacity to put those powers in force. We now come to the last point. If, when the mandamus nisi issued, there was not then time to obey the writ before the compulsory powers would expire, that might be a good return. Such returns have frequently been made, and the truth of them tried, at Nisi Prius; but in this return there is no such allegation; and now the Solicitor-General relies upon the circumstance that the compulsory powers have expired as a reason for not issuing the peremptory mandamus. But if there was time, the company ought to have obeyed the writ; and they cannot now be permitted to take advantage of their own wrong in disobeying it.

Coleridge, J.—I am of the same opinion. I think that the 16th section does not apply to this case; and I may remark, that the special Act only incorporates such provisions of the Lands Clauses Act as are not inconsistent with it. It seems to me

that the Great Western Company would have no authority to execute a subscription contract; and that if they executed one, it would not be binding, because the special Act points out another mode by which they are to raise the capital.

WIGHTMAN, J. concurred.

ERLE, J.—As to the general question, I adhere to the opinion which I expressed in the former case; but I concur in the opinion that the prohibition in sec. 16 of the general Act does not apply to the powers conferred by this special Act.

Judgment for the Crown.

Monday Nov. 22.

REG. *v.* NEWMAN.

Criminal Information—New trial—Time for moving—Evidence.

In future, when it is intended to apply for a new trial after verdict on a criminal information, an intimation of such intention must be given to the Court within the first four days of Term.

A review published some time before the libel in a criminal information, and containing charges against the prosecutor, alleged to be identical with those in the information, is not admissible on the part of the defendant to shew that the prosecutor had silently submitted to them, even when the evidence as to the truth or falsehood of the charges strongly conflicts.

Where a judgment of the Court of Inquisition at Rome was put in evidence, and it consisted of two parts, first the grounds of the statement, which appeared to be the work of a notary, and then the decree of the Court, and the judge directed the jury that it was not to be taken as conclusive evidence of the truth of the facts stated therein: Held, that the direction was right.

Criminal information against Dr. Newman for the publication of a libel on Dr. Achilli.

Pleas.—1. Not guilty; 2. Justification.

The verdict, which was for the prosecutor, on the plea of not guilty, and on the justification, except as to the 19th charge in the justification, which alleged that on the 16th of June, 1841, Dr. Achilli was suspended by the Court of Inquisition from the celebration of mass and from the cure of souls, and from the preaching and hearing of confessions, and from exercising the sacerdotal office. That allegation in the justification the jury pronounced to be proved.

The *Attorney-General* (with whom were the *Solicitor-General* and *T. F. Ellis*) now moved that the defendant be brought up for judgment.

Dr. Newman accordingly appeared.

Sir A. Cockburn said that he now, if he might be permitted to do so, moved for a new trial.

Lord CAMPBELL, C.J.—In my mind, it is never too late to move to set right a verdict, if it has been erroneously given.

The *Attorney-General* said that the application for a new trial was contrary to the usual and uniform course of things. It was always the practice, where a new trial was intended to be moved for, that the notice of that intention should be given by mentioning the case in the first four days of term, when the Court generally directed that the application should be postponed till the party was brought up for judgment.

Lord CAMPBELL, C. J.—That certainly has been the usual course, and the party has always been supposed to be ready to move on one of the first four days of term.

Sir *A. Cockburn* could not say that he had been ready then, but he submitted that he ought now to be allowed to move. It was not long since his lordship had himself said that it was a mere matter of form, and could not be of use to any party. The reason on which the practice rested in civil cases did not apply here.

Lord CAMPBELL, C. J.—So far as my opinion goes, it is not too late now to point out where the party thinks that injustice has been done.

COLERIDGE, J.—There is nothing done in such a case till the defendant is brought up for judgment. I recollect a case on the Western Circuit where the defendant was out, and a process of outlawry was sued out against him, and he was brought in under that process. My brother Wilde appeared for him, and obtained a rule for a new trial when the party was brought, and ultimately that rule was made absolute.

Sir *A. Cockburn* remarked again on the difference between crown and civil cases in this respect. There was no necessity here for the party signing judgment after the first four days, as in civil cases.

Lord CAMPBELL, C.J.—What is it that you intend to move?

Sir *A. Cockburn* had now to move for a rule to shew cause why there should not be a new trial on the grounds of, first, the improper rejection of evidence; next, misdirection; and, thirdly, that the verdict was against the evidence.

Lord CAMPBELL, C. J. said the Court seeing the great inconvenience which might arise if the practice now asked to be permitted should be established, but, at the same time, not seeing any general rule in which it was laid down that this motion could not be permitted, would not shut out the defendant from the benefit of making the present application; but, in future, it must be understood that an intimation of an intention to apply for a new trial must be made to the Court within the first four days of term, and that the party must be then prepared to make the application, otherwise the application could not be made.

Sir *A. Cockburn* then moved, with respect to the rejection of evidence. There were two matters on which the defendant's counsel were not allowed to put questions to the witness. One matter was as to the question addressed to Achilli on the subject of acts of incontinence committed by him with particular women subsequent to the plea.

Lord CAMPBELL, C.J.—I said I must interpose here, and you assented to my interposition. You asked as to acts of incontinence with particular women not named in the plea. I said that I thought such a question was inadmissible—that it would be most unfair to the prosecutor—and you assented to my observation and forebore to press the question. That matter cannot, therefore, be discussed again now.

Sir *A. Cockburn* said that he would not utter another word on that subject; but would go to the other question, though as to the justice of the question he had wished to put, he had no doubt, for Dr. Achilli came as any other witness might do, subject to examination as to his credit. The other question related to the admissibility of the *Dublin Review*.

Lord CAMPBELL, C.J.—You will bear in mind that it was admitted on the other side, that if the charges were true, it must be taken that they were made for the good of the public. When the issue was to prove the truth of the charge it would have been unfair to allow evidence that that charge had been made by some one else at a prior time; for if it was in the *Dublin Review* it might have been in any other publication.

Sir *A. Cockburn* said that the ground on which he was prepared to contend that the *Dublin Review* was admissible was this:—There was a conflict of evidence between the witnesses, who came to support specific charges, and Achilli, who appeared on his own behalf to deny the truth of them. Morally and legally it was well worth consideration, when the weight of probability and of truth was to be found on one side or the other, to see whether the accusing party had silently submitted for a long period of time to the charges which had been made against him, and with the existence of which he was acquainted. In that point of view, if a man was charged with anything, and he denied it, the question was whether it would not be proper to ask him if he had not submitted to have that accusation existing for months and years without making an attempt to answer it. So considered, the publication of the *Dublin Review*, or of any other book containing the accusation, might be brought to his knowledge, to see whether the charge of which he did complain and that which he had left so long unanswered, were not identical.

Lord CAMPBELL, C.J.—I entertain the opinion which I did at the trial, that it is inadmissible; but when Sir A. Cockburn stated, as he did again and again, that the charges had already appeared in the *Dublin Review*, I did not interpose.

Sir *A. Cockburn* wished that his lordship had interposed, for then he should clearly have understood his own position. He pressed the admissibility of the evidence, for there was an admission in Achilli's own book that charges of this sort did exist against him in the *Dublin Review*; but what he wanted to prove was, that these were the identical charges with the names of the same women mentioned in them. If he could have established that, he could have gone strongly, and he believed effectually, to the jury on that point, and where the question was whether certain alleged facts were true if Achilli submitted in silence to have those facts stated of him, it would have gone far to shew the truth of them.

ERLE, J.—Your argument is, that the production of another libeller is a justification of the libel under discussion. With what limitation do you put such an argument?

Sir *A. Cockburn* said it was so where it became material with a view to enable the jury to see on which side the truth lay. There the submission to one libel was itself something which tended to shew the truth of the charges contained in it.

ERLE, J.—That would apply to every case of an anterior publication.

COLERIDGE, J.—I am of the same opinion with my lord and my brother Erle. The question here was the truth or falsehood of a charge. Evidence of the fact, that the statement has been made by many persons, is no proof of the truth of it. This book was sought to be put in evidence with relation to the conduct of the party, and to shew his knowledge of the charge and his submission to it. But in the first place it must be observed that it is not everything that would strike a person out of doors, that can be received as evidence in a court of justice, and the strong proof of that is to be found in the extreme extent to which my brother Erle has shewn the doctrine, if admitted in this case, must be carried. If it is said on the one hand, that it is probable that the charge is true, because in another publication the charge has already been made and has not been noticed; the answer is, that that is far too vague to constitute evidence which could be admitted in a court of justice. It is said that the truth of one statement may be established by the production of another of the same kind or identical with it, because when the same facts, persons, and things are mentioned in both, the submission to one is the admission of the other. The fallacy is in the use of the term "submission," when it ought simply to be said that the party accused did not prosecute the accuser; but he might not have done so for many other reasons besides those of submission to the accusation or admission of the truth of the statement. The article might have been anonymous, the author unknown, the person against whom it was directed unable to fix on any particular person as the author; he might not know whether the charge was made by a man of character or of no character, or whether he was in such a state of poverty as to render a prosecution very undesirable. It is not always the first charge that a man finds it expedient to prosecute; it may be the result of passion or malice, and may die away, or it may be utterly false and be deemed to demand only contempt. But the repetition of the charge may force the person against whom it is directed to notice it. I cannot think that this earlier publication is admissible in evidence here.

WIGHTMAN, J.—I am entirely of the same opinion. Sir A. Cockburn contends that to prove the truth of the plea he was at liberty to shew that there was a similar libel in similar terms, or rather, as he says, they were identical, the one being published in a work antecedent to the libel in question, and for which no proceeding was had with a view to prove that it was false. On this ground it was proposed to be admitted in evidence. It seems to me infinitely too vague a species of evidence to be admissible in a court of justice for such a purpose, and it would render necessary another inquiry which could never be satisfactorily answered—namely, what was the reason why it had not been prosecuted?

ERLE, J.—I do not think that there is any principle whatever in favour of the admission of this evidence.

Sir *A. Cockburn* said the next point was that the Lord Chief Justice had not properly directed the jury on the subject of the judgment of the Inquisition. There were two parts of that document—the decree and the grounds of the statement. The grounds were set forth in the first part, and they appeared to be the work of the notary of the court:—

Testor ego Infrascriptus Notarius S. Congregationis Romanæ, et Universalis Inquisitionis, quod perquisitis actis assumptis in S. Officio contra sacerdotem P. Hyacinthum Achilli religiosum professum ordinis prædicatorum, constat ex eisdem actis, ipsum Achilli, constitutis judicialibus excussum, fuisse Reum confessum de carnali copula, dum in cœnobio Viterbiensi moraretur, cum pluribus fœminis habita, item de defloratione alterius virginis in civitate Montis Falisci, aliasque duas mulieres Capuæ carnaliter cognovisse. Eruitur quoque, aliam puellam Neapoli matrem reddidisse; ac superiorem ordinis prædicatorum scutata quinquaginta alteri fœminæ ab eodem Achilli corruptæ pependisse ad damna illata sarcienda.

Denique fidem facio, quod ob memorata crimina, et alia de quibus in actis maturo prius discusso examine gravaminum ex actis resultantium; perpensis defensionibus aliisque ex more consideratis, necnon benigne excepta Ipsius Inquisiti Confessione, ejusdem declarationes sequentis tenoris. Non chiedo di non esser castigato, anzi amo che si proceda severamente sul conto mio in quel modo che la Justizia esige. Ricevero con rassegnazione qualunque disposizione venga emanata, ed ove mancasse qualche ragione a procedere con piu rigore la mia confessione sia bastante a punirmi come meglio orderà il S. Tribunale. Eminentissimi Inquisitores Generales Fer. IV. die 16 Junii, 1841, in Conventu S. Mariæ, supra Minervam decreverunt Inquisitus P. Hyacinthus Achilli, prævia suspensione perpetua a celebrando sacrificio missæ, inhabilitatione perpetua ad quam cumque directionem animarum, et ad verba Dei prædicationem, necnon privationis vocis activæ, ac passivæ, et impositis pœnitentiis salutaribus, damnetur ad manendum per triennium in aliqua domo religiosa sui ordinis strictioris observantiæ.

In quorum fidem datum ex cancellaria S. Officii hac die 22 Septembris, 1851. ANGELUS ARGENTI,
S. Romæ et Univ. Inq. Notus.

Testis fr. Vincentius Leo Sallua, P. Præd, I Socius, S. R. Inq.

John Gordon, Cong. Orat. Presb. Birmingham, } Witness.
Nicholas Darnell, Cong. Orat. Presb. Birmingham, } Witness.

Sworn before me at Rome, this 17th day of Nov. 1851,
JOHN FREDBORN,
British Consular Agent, Rome.

I, the undersigned, notary of the Holy Roman and Universal Congregation of the Inquisition, do testify that, after a complete investigation of the proceedings instituted in the holy office against Father Hyacinth Achilli, priest, religious professor of the order of preachers, it is proved from the same acts that the said Achilli, having been examined by the established authorities, confessed himself guilty of having held carnal intercourse whilst he was living at the monastery of Viterbo with many women;

also of having deflowered another, who was a virgin, in the city of Mount Falisque; and of having carnally known two other women at Capua. Moreover, it is discovered that he made another girl at Naples a mother; and that the superior of the order of preachers paid fifty scudi to another woman who had been corrupted by the same Achilli, in order to make amends for the injuries done. Lastly, I attest that, on account of the crimes of the above-named and of the crimes of which mention is made in the acts, after mature and deliberate examination of the heavy charges resulting from the acts, after having weighed the charges put forth, and considered other matters according to custom, and after having mercifully accepted the confession of the accused himself, and his own declaration, of the following tenor:—"I do not ask not to be chastised; nay, rather, I desire to be severely dealt with on my own shewing, according as justice demands. I will receive with resignation whatever punishment may be determined upon, and supposing there were wanting sufficient reason for proceeding with greater rigour, I desire that my confession be considered sufficient grounds for punishing me as the said tribunal shall think best." Their eminences, the Inquisitors-General, on Wednesday, June 16, 1841, in the convent of Santa Maria Super Minervam, decreed that the accused Father Hyacinth Achilli, after having been for ever suspended from the celebration of the sacrifice of the mass, and for ever disabled from any sort of direction of souls, and preaching the word of God, and deprived of active and passive voice in the government of his order, and after having salutary penances imposed upon him, be condemned to remain for three years in some religious house of his order of the more strict observance.

Given in testimony of all these facts for the Chancellor's office of the holy office, on this day, Sept. 22, 1851.

Lord CAMPBELL, C.J. said that the decree could not be considered as a judgment in rem pronounced by a competent Court, and binding upon all the world.

Sir *A. Cockburn* said that the distinction he took was this,—that while he did not say that this was a judgment which would be conclusive against all the world, what he did say was, that this being one entire document, coming from an office which must be taken to be the proper office for framing and issuing such documents, it must be taken to be the truth, and though it was not conclusive, was entitled to carry faith with it as an authoritative declaration under the seal of a Court. The whole of the document had been received in evidence and read, but the Lord Chief Justice had made a distinction between that which was the decree and that which was the rest of the document.

Lord CAMPBELL, C.J.—I said that the statement must not be taken as conclusive evidence of the facts stated in it.

Sir *A. Cockburn* thought that his lordship had gone further than that—that he had said that it was a statement which might be taken for what it was worth, but that it was not clothed with any authority. The decree here given must be taken to be the usual form of judgment, drawn up in the proper office, and sealed with the proper seal. The judgment was pronounced on the grounds stated by the Court, and which were introductory to the judgment itself. That being so, the grounds and the judgment must be taken as essentially constituting one document.

Lord CAMPBELL, C.J.—If I said that that document did not primâ facie prove the issue that there had been a judgment of that Court against Achilli, I was wrong; but I think that what I said was that the statement of the facts must not be taken conclusively to prove that what was there stated was true.

Sir *A. Cockburn* said that that was the principle on which his objection rested. This Court, as a rule, gave credit to the documents of other courts, and ought to do so here.

Lord CAMPBELL, C.J.—But this statement is not the statement of the Court, but of a notary.

COLERIDGE, J.—All the statement is antecedent to the judgment of the Court. The notary says, "I attest so and so," and then the Court gives judgment.

Lord CAMPBELL, C.J.—It is clearly not a proceeding in rem.

Sir *A. Cockburn* admitted that it was not, but said that it was a proceeding in personam, which was admissible in this case.

Lord CAMPBELL, C.J.—You must contend that we are bound to presume the whole of the allegations in it to be true.

COLERIDGE, J.—Suppose there was no other evidence than that, what would be the case then?

Sir *A. Cockburn* should say that it was primâ facie evidence of the matter.

COLERIDGE, J.—Or suppose that the only issue was not guilty?

Sir *A. Cockburn*.—Then he should say that he might put this document in proof as a primâ facie proof of the guilt of the person to whom it related. This Court seemed to put the recital as having no higher authority than Achilli's own statement; but he said, that whenever there was a Court of competent jurisdiction, and that Court made a statement on which it founded its judgment, that judgment must primâ facie be taken as shewing the real facts of the case, unless there was reason to believe that there was no common form in which the judgments of that Court were drawn up, or that the officer had departed from that form, and had violated his duty.

Lord CAMPBELL, C.J.—There are two classes of judgments: one to which entire confidence is given; the other which is only admissible, subject to all just observations.

Sir *A. Cockburn* admitted that this was not in the first class, but still it was clothed with great authority, and was entitled to more weight than that of an ordinary statement by an individual who looked on and stated what was the result of his observations. Yet the Lord Chief Justice had merely treated it in that manner. It was not conclusive evidence of the facts stated in it, but it was conclusive evidence that the Court had proceeded on the facts there stated; yet the Chief Justice had said that it was more probable that Achilli was deprived for heresy than for the things stated in this document. Now this was one of the great questions between the parties, for Achilli had obtained the rule on an affidavit in which he stated on oath that he had never been accused of crimes before the tribunal of the Inquisition. It was most material, therefore, to shew that he had stated an untruth; that he was not a person to be believed; and the document was admissible, not to prove the charges against him, but to prove that there had been such charges, and that he was guilty of untruth in denying that fact. The document ought, therefore, to have been left to the jury, not for the jury to find the facts as there stated, but to find that the deprivation of office had arisen from facts such as were there stated. The learned counsel then argued as to the verdict being against the evidence.

Lord CAMPBELL, C.J.—You may take a rule on the ground that the verdict is against the evidence, and on that ground only. *Rule nisi.*

Tuesday, Nov. 23.

KERNOT v. CURTIS.

Amending plea after verdict—15 & 16 Vict. c. 76, s. 222—New Procedure Act.

This was an action on a bill of exchange for 50*l.* tried in Term before Crompton, J. and verdict for the plaintiff. The defendant pleaded that the bill was given on account of two other bills, and that the consideration for the present bill had failed. Upon the evidence it appeared that the bill was given to enable the drawer to get furniture for the acceptor, which he had failed to do.

At the trial the learned judge was asked to amend, but thinking he had no power to do so under 3 & 4 Wm. 4, c. 42, s. 33, he refused.

Udall now moved for a new trial, and for leave to amend the plea under sec. 222 of the Common Law Procedure Act. The final words, "and all such amendments as may be necessary for the purpose of determining in the existing suit the real question in controversy between the parties shall be so made," were relied on in support of the application.

Rule nisi, &c. on payment of costs.

PIGGOTT v. JACKSON.

Practice—New Procedure Act.

A writ of summons was issued, and appearance entered for defendant sec stat. before the Common Law Procedure Act came into force; then a declaration was filed, with notice to plead in eight days endorsed, but no notice of its being so filed was given to the defendant, and the plaintiff subsequently signed judgment for want of a plea, and then issued execution:

Held, that the judgment and subsequent proceedings were irregular, and that the defendant was entitled to notice of the declaration being filed.

Macnamara shewed cause against a rule nisi to rescind an order of Crompton, J. setting aside the judgment, execution, and subsequent proceedings, for irregularity. It appeared that the writ of summons was issued on the 23rd of September (before the Common Law Procedure Act came into operation); that the plaintiff entered an appearance for the defendant sec stat. on the 2nd of October; that the declaration was filed with eight days' notice to plead endorsed, but no notice of its being so filed was given to the defendant; that judgment was then signed for want of a plea, and execution issued on the 6th November. It was now submitted that notice of the filing of the declaration ought to have been given. Entering an appearance for the defendant sec stat. is now abolished (15 & 16 Vict. c. 76, s. 26); and the writ having been issued before the Common Law Procedure Act came into force, could not have been specially under sec. 26. Then sec. 28 does not entitle the plaintiff to judgment for non-appearance, as that provision is prospective only. (*Goodliffe* v. *Neaves*, see p. 101.)

Streeten, contrà.—There is great difference between an appearance by the defendant, and an appearance entered by the plaintiff for him. The word "non-appearance" in the Act means non-appearance by the defendant; and here the defendant did not personally enter an appearance, but it was done by the plaintiff for him. Sec. 62 was not brought to the notice of the Court of Ex. in the case referred to. [Lord CAMPBELL, C.J.—Sec. 62 only dispenses with a rule to plead, or demand of plea, but leaves everything else the same as it was before.]

By the COURT.—The rule must be discharged.

Wednesday, Nov. 24.

CORNISH v. HAWKINS.

New Procedure Act—Amendment of copy of writ served—Statute of Limitations.

Quære, whether, under sec. 222 of the New Procedure Act, the Court has power to amend a mistake in the endorsement upon a copy of a writ served upon a defendant.

M. Chambers moved for a rule calling upon the defendant to shew cause why the plaintiff should not be at liberty to amend an endorsement on the last writ of summons in this action, issued on the 28th May, 1851, and also on the copy of the same served on the defendant, by altering the date of the first writ from the 22nd October, 1849, to the 13th October, 1849, the former having been inserted by mistake; and why the defendant should not produce the copy of the writ for that purpose. This application was made to Mr. Justice Crompton at chambers, and was by him referred to the Court. The action was on a promissory note for 200*l.* which became due the 22nd October, 1843, by the indorsee against the maker. The first writ against the defendant was in fact issued on the 13th October, 1849; and another writ against another party to the note on the 22nd. The present action was kept alive by subsequent writs, the last of which was on the 28th May, 1851; but on that writ, and in the copy of it served upon the defendant, the endorsement by mistake gave a wrong date to the first writ; viz. the 22nd October, 1849, instead of the 13th October, 1849. In consequence of that mistake, leave to amend the endorsement on the writ and on the copy is now sought; but it was contended before Mr. Justice Crompton, that sec. 222 of the New Procedure Act(*a*) gave no power to amend the copy served; and that even if it did in any case, it did not in this, because that statute was not retroactive in its operation; and this copy-writ was served before the 24th October. But it is submitted that this case is within the mischief intended to be remedied; and that the words are large enough to include this case. [Lord CAMPBELL, C.J.—You do not ask that the power should be exercised retrospectively.] As soon as the statute came into operation, this power of amendment became applicable to all existing proceedings. [ERLE, J.—According to the Uniformity of Process Act, the Statute of Limitations had barred this action previously to the 24th October, 1852, because the copy of the writ served did not comply with the requirements of that statute; and you seek now to amend the copy by virtue of an Act, which became law after the copy had been served. Surely, that is giving it a retrospective operation?] It can hardly be said that the statute had barred the debt, because the copy of the writ is not the continuance of the process; and even before the recent statute, there was the power of keeping the process alive in such a case by amending the writ, though the Courts would not amend the copy served. (*Campbell* v. *Smart*, 5 C. B. 196; *Medlicott* v. *Hunter*, 5 Ex. 34.) *Rule nisi.*

REG. v. THE JUSTICES OF LANCASHIRE.

Notice of grounds of appeal against order of removal—Service on Sunday—Sending by post.

Service of notice of grounds of appeal against an order of removal on a Sunday is void; and it makes no difference in this respect that the notice is sent through the Post Office. Where, therefore, the time for serving grounds of appeal expired on a Sunday, and the notice was posted on Saturday, and delivered in the usual course on Sunday morning,

Held, that the notice was a nullity; and the Sessions right in refusing to hear the appeal.

Whigham moved for a rule for a mandamus to the Justices of Lancashire to enter continuances and hear an appeal against an order of removal. When the appeal came on to be heard, it was objected that the appellants had not given due notice of the grounds of appeal fourteen days at least before the Sessions. The Lancashire Sessions commenced on Monday, Oct. 18; and it appeared that the appellants had posted their notice on Saturday, the 2nd Oct.; and that it was delivered in the usual course of the post on Sunday morning. The Sessions held that the service on the Sunday was a

(*a*) Section 222 of 15 & 16 Vict. c. 76, after reciting that the power of amendment now vested in the courts, and judges thereof, is insufficient to enable them to prevent the failure of justice, by reason of mistakes and objections of form, enacts, "that it shall be lawful for the Superior Courts of Common Law, &c. at all times to amend all defects and errors in any proceeding in civil causes, whether there is anything in writing to amend by or not, and whether the defect or error be that of the party applying to amend or not," &c.

nullity, and dismissed the appeal. They were wrong in so doing. The appellants having posted the notice on Saturday, and everything subsequent to that being done under the Act of Parliament and by officers of the Government, the service on Sunday was sufficient.

Lord CAMPBELL, C. J.—We have held that the service is supposed to be at the moment when in the ordinary course of the post the notice would be put into the hands of the party to whom it was addressed (*R.* v. *Stawstone*, 21 L. J. M. C. 145); but if a service by the overseers on a Sunday would not be valid, how can a service through the post be valid?

Whigham.—It may be taken as a service at the first moment of Monday.

Lord CAMPBELL, C. J.—Service on the Monday is too late.

ERLE, J.—The notice must be given fourteen days at least before the Sessions; and the rule of practice is to reckon one day exclusive.

Lord CAMPBELL, C. J.—To grant this rule, we must repeal the statute of Charles, which renders invalid the service of all process on a Sunday.

Rule refused.

BUSINESS OF THE WEEK.

Wednesday, Nov. 17.

REG. v. THE EASTERN ARCHIPELAGO COMPANY.—Argument concluded. *W. H. Watson* and *M. Smith* were heard in support of the rule. *Cur. adv. vult.*

POSTLE v. MAGNAY.—*Shee*, Serjt. and *Lush* shewed cause, and *M. Chambers* and *J. Brown* supported the rule. *Rule discharged.*

BOURGEAUX v. SWAYNE.—*Bull*, *M. Smith*, and *Bovill* shewed cause. *Part heard.*

Friday, Nov. 19.

LEVERICK v. MERCER.—*Channell*, Serjt. was heard in reply. *Cur. adv. vult.*

CATCHPOLE v. THE AMBERGATE, NOTTINGHAM, BOSTON, AND EASTERN COUNTIES RAILWAY COMPANY.—Demurrer to declaration. To be reported. *Judgment for the plaintiff.*

PHELPS v. WARREN.—Special case. *Welsby* for the plaintiff, and *Willes* for the defendant. *Cur. adv. vult.*

BOURGEAUX v. SWAYNE.—Argument continued. *Part heard.*

Saturday, Nov. 20.

COBBETT v. HUDSON. *Rule absolute.*

HENNICKER v. HENNICKER. *Judgment for the plaintiff.*

REG. v. THE AMBERGATE RAILWAY COMPANY. Mandamus to complete a railway. Demurrer to pleas to a return. *Willes* in support of the demurrer. *The Solicitor-General* (*Knowles* with him) contrà. *Cur. adv. vult.*

Monday, Nov. 22.

STEINBANK v. DAVIS.—*Willes* moved for particulars of set off. *Rule refused.*

Wednesday, Nov. 24.

COOK v. GILLARD. *Rule absolute.*

REG. v. THE ECCLESIASTICAL COMMISSIONERS. *Rule enlarged.*

Re BARTHELEMY. *Rule refused*

REG. v. SWINBURNE.—Sci. Fa. to repeal a patent. *Crowder* and *Hindmarsh* shewed cause against a rule to set aside a replication as frivolous. *Webster* contrà. *Rule discharged.*

REG. v. THE STEWARD OF THE MANOR OF THORPE-HALL.—*Bramwell* and *R. Rouse* shewed cause against a rule for a mandamus to admit the vendee of a copyhold estate without payment of a further fine. *O'Malley* and *Bovill* contra.

Rule absolute, that the question may be raised on a return

Re An Arbitration between RAINES and CATLIN.—*The Solicitor-General* moved to set aside an award, on the ground that Catlin had had no opportunity of going into his case. *Rule nisi.*

REG. v. THE SOUTH WALES RAILWAY COMPANY.—*The Solicitor-General*, *Phipson*, and *Karslake* shewed cause against a rule for a mandamus to make a branch railway. The *Attorney-General*, *Watson*, and *Kingdon*, contrà.

Rule absolute, that the question may be raised on a return.

Tuesday, Nov. 23.

Ex parte SIR C. NAPIER.—*M. Chambers* (*A. Stephens* and *Alcock* with him) moved for a criminal information against the publisher of the *Quarterly Review*. *Rule refused.*

REG. v. DUFFIELD.—The *Attorney-General*, *Huggins*, and *Ivy* shewed cause, and *E. James* and *Malcolm* supported a rule for a criminal information. *Rule discharged.*

REG. v. DAVIES.—*Willes* shewed cause, and SIR *A. Cockburn* supported a rule for a criminal information *Rule discharged: the defendant apologising and paying costs.*

ADEY v. THE DEPUTY MASTER OF THE TRINITY-HOUSE.—*Barstow* shewed cause, and *Bramwell* and *Willes* supported a rule for a prohibition. To be reported *Rule absolute.*

REG. v. THE GREAT WESTERN RAILWAY COMPANY.—*Butt* and *Douglas* shewed cause, and *Crowder* and *Prideaux* supported a rule for a mandamus to the company to make a branch from Bradford (Wilts) to Bath *Rule absolute.*

MALLALIEU v. THE ANGLO-CALIFORNIAN RAILWAY COMPANY.—*Bramwell* and *Willes* shewed cause, and *Paterson* supported the rule herein. *Rule absolute on payment of costs.*

KERNOT v. CURTIS.—*Udall* moved for a new trial herein and leave to amend the pleas. *Rule nisi.*

Ex parte BARTHELEMY and MORNAY. — *Huddleston* moved for a habeas corpus to bail the defendants. *Cur. adv. vult.*

DOE *dem.* CHILD v. ROE.—*Stammers* moved to set aside a judge's order requiring production of a lease. *Rule refused.*

Re An Arbitration between Lord CANNING and BERRIDGE.—*Bittleston* moved to set aside an umpirage, on the ground that the umpire had acted without jurisdiction, the arbitrators not having disagreed. *Rule nisi.*

REG. v. DAY.—*Campbell Foster* moved for a rule for a quo warranto to try the validity of the election of MR. DAY as coroner for the Hemel Hempstead district of Hertfordshire. The question was whether the votes of 131 persons, who had claimed to vote as equitable freeholders in respect of their right of pasturage over Boxmore, were properly received. *Rule nisi.*

BOURGEAUX v. SWAYNE. *Part heard.*

REG. v. TWO JUSTICES OF SALOP.—*Keating* moved for a rule nisi for a mandamus to two justices of Salop, to issue a distress warrant to levy upon the goods of one Augemont, a sum of 5*l.* for road rates. Augemont disputed his liability, but had not appealed against the rates. *Rule nisi.*

COURT OF COMMON BENCH.

Reported by DANIEL THOMAS EVANS and R. VAUGHAN WILLIAMS, Esqrs. Barristers-at-Law.

Friday, Nov. 12.

(Before JERVIS, C. J. and MAULE, WILLIAMS, and TALFOURD, JJ.)

FORD v. SMEDLEY.

Right to vote—Non-payment of assessed taxes. By 11 & 12 *Vict. c.* 90, *no person shall be entitled to be registered on the list of voters, unless on the* 20*th of July he shall have paid all assessed taxes which shall have become payable by him previous to the* 5*th of January preceding. By* 43 *Geo.* 3, *c.* 161, *s.* 23, *the assessed taxes are made payable, and are to be paid quarterly on the* 20*th of July, September, December, and March.* 48 *Geo.* 3, *c.* 141, *s.* 1, *rule* 3*rd of class* 3*rd, directs the collectors to collect the assessed taxes in equal moieties, within twenty-one days after the* 10*th of October and the* 5*th of April, but with a proviso that nothing in that Act should be construed to alter the times when the duties were payable according to the previous Acts.*

A. did not pay previous to the 20*th of July, the assessed taxes due from him on the* 20*th of December preceding. They were not demanded till April:*

Held, that to entitle him to a vote he ought to have tendered payment, the duties being payable without a demand having been made, and that not having done so he had no right to a vote.

This was an appeal from the decision of Mr. Macqueen, the revising barrister, for the borough of Westminster. The appellant claimed to vote in the election of members for the city of Westminster, in respect of property occupied by him in the parish of St. Clement Danes. His vote was objected to on the ground that he had not paid the assessed taxes, "payable" previously to the 5th of January last. By 2 Wm. 4, c. 15, s. 27, no person is entitled to be registered unless he has paid on or before the 20th of July, all assessed taxes which should have become payable from him previously to the 5th of April preceding. By the 11 & 12 Vict. c. 90, it is only necessary to have paid the assessed taxes which had become payable previously to the 5th of January. The appellant was returned a defaulter under the Registration Act, 6 Vict. c. 18, s. 12, for not having paid on or before the 20th of July, 1852, the quarterly house-tax of the 20th of December, 1851. The barrister held the objection fatal.

Kinglake, Serjt. (with whom was *Keene*), argued that the tax was not payable within the meaning of the Acts, for the purpose of disfranchisement, until it had been demanded. That it was in fact the practice to collect the tax by half-yearly instalments, and no one ever thought of paying it, or was expected to pay it, except half-yearly. 43 Geo. 3, c. 99, ss. 1, 3, and 12, regulate the collection of taxes; 43 Geo. 3, c. 161, s. 23, made the taxes payable quarterly; 48 Geo. 3, c. 141, s. 1, rule 3, class 3, directed these taxes to be collected in equal moieties, within twenty-one days after the 10th of October and the 5th of April in each year; but the collectors were directed in some cases, as when an execution was in the house, to collect the duties quarterly. This, however, was to prevent loss, and for all common purposes they were to be collected in moieties. Before any levy could be made, it was necessary that demand should have been made, and payment refused. The claim, therefore, should have been admitted, on the ground, first, that the taxes for the purposes of disfranchisement were payable half-yearly, on the 10th of October and 5th of April; and, secondly, that they were not payable until after demand made.

JUDGMENT.

JERVIS, C.J.—It seems to me in this case the revising barrister put the proper construction on the statutes which are applicable to the collection of these taxes, and that, accordingly, he properly rejected the vote; therefore, we must affirm the decision. This case is one of great importance, because, perhaps, in the present state of opinion, or want of information, as to the general bearing of the Acts, if they had been rigidly enforced, they might have disfranchised a great number of household voters of this country, because a person's attention is not drawn to the payment of taxes of this sort until they are demanded; and they do not go as, in my opinion, under the construction of the Act, they are bound to go, to pay the tax quarterly. The difficulty of the case has arisen from the framers of the recent statute (11 & 12 Vict. c. 90) intending to confer, as they undoubtedly wished to confer, a longer time for the payment of the taxes, without practically bearing in mind the period when they became payable. My talented friend General Evans, the member for Westminster, who, I believe, brought in the Bill, has thus not done that which he intended. Now, the Reform Bill was framed with a different view, and it was directed to the practical collection of taxes. The taxes, though payable quarterly, are demanded half-yearly, in September and in March; accordingly, the day selected by the Reform Bill was a day applicable to the real state of things, because it says, "you shall not be entitled to your household franchise unless you have paid on or before the 20th of July the taxes payable previously to the 5th of April;" that is, which are due on the 20th of March, of which you will have a demand; because the taxes which are due in the March quarter, with those due in the quarter before, are demanded half-yearly, between March and April, and are payable, by the Reform Bill, between March and the 20th of July. The framer of the Reform Act bore these minute matters in mind; not so, unhappily, the framer of the other Act, because, supposing you can extend back the time of the amounts payable from March to January, you either include in another quarter that due in December, or you are preventing the party having notice by the demand. But the effect of it is this, that you are still only to pay on the 20th of July. If before the 20th of July, you pay the taxes demanded between March and April, you in truth do pay the tax which was due in January. If you choose to wait for notice you must pay the tax due for the quarter ending on the 20th of March, as you did under the old Act; but if you choose to avail yourself of the recent Act, you must not wait for notice, but must go to pay to the collector the tax due in January. That is the practical bearing of the two Acts. The real question is, is the tax payable on the 20th of September, or is it payable only on the 20th of March? Or, further, is it only payable on demand? And when you come to look to the Acts of Parliament, there is no difficulty in it whatever. Even the words of the statutes explain their meaning. The assessment is made by the year. Under the original Act it was to be demanded within ten days after the receipt of the warrant. The second Act fixes the periods specifically when it is to be payable, and expressly says it shall be paid by quarterly instalments, on the 20th of July, the 20th of September, the 20th of December, and the 20th of March, and then, in order to avoid what might appear to be a hardship, by enabling the collector instantly to pounce on the tax payer and put his powers in force without further notice, the subsequent statute of 48 Geo. 3 says, there shall be a certain demand in a certain time after the debt becomes due, before the levy or execution by seizing the goods; and in order that there may be no difficulty and (if there had been there scarcely would have been a word necessary to be said upon the subject,—in order to make it plain), there is an express provision that the compulsory power of making the distress shall not interfere with the liability of the tax-payer. It is said that there are words in the Act which deal with the levy and payments, and that the time of payment can only be after the half-year has expired. What was said by my brother Maule, in the course of the argument, answers that: he said, if you levy, that means you compel payment by compulsory means, and payment so enforced necessarily involves a previous notice of demand, because it is used in reference to the form of proceeding in the Act of Parliament, by which there can be no levy without a demand. As to there being a previous demand, that question follows the other. If the tax is payable quarterly, as the Act says it is, you can enforce it; if it is payable without demand, the voter has not paid the taxes in due time, and is not entitled to vote. Therefore, the revising barrister was right in rejecting the claim.

MAULE, J.—I entirely agree with the Lord Chief Justice. I think he has pointed out how it is that the Act of Victoria is so worded, as perhaps not to have given to the voter all the relief that may have been intended. That, however (though very probably of a serious nature), could only be taken into consideration in considering this Act, if the words were obscure, or the meaning of them, on a mere inspection of them, would be doubtful, or there was a manifest contradiction, and great inconveniences arose from the words construed in their natural sense, such as to induce the mind to believe that the words must have been used in some different sense. I do

not think that there is any inconvenience of that kind here. The words are, that the voter must have paid, before the 20th of July, all the taxes which have become due from him before the 5th of January; and then the question is, what tax is payable then? That depends upon the Act of Parliament imposing the tax; and that Act, in express terms, provides that the tax "shall be paid," and "shall be payable" quarterly. Then, there are some provisions in another part of the Act with respect to calling upon the collector to collect them half-yearly; that is, not to let them go over the half-year. Now, there is nothing to hinder him collecting them quarterly, if he pleases. Whenever it is that they are to be collected, they may be paid, and would be received if they were offered at the time when, according to the Act which imposes them, they are directed to be paid and described as being payable. Now these are the words, which have a clear, simple, and plain sense, which ought to be given to them in construing the Act, unless you could not possibly understand them in that sense without some such inconvenience as would justify you in departing from the ordinary sense of the words and introducing an extraordinary meaning for them. I doubt whether anything could justify this, without saying that by "paid" and "payable," something different was meant. There are some words in the Act so plain in themselves that you cannot give them any different meaning without doing violence to the language used. If the Act of Parliament says there shall be so many things, viz. three or four, you cannot contend that it means thirty or forty. If the Act of Parliament says twenty shillings are to be paid, you cannot call it twenty-five shillings, or fifteen shillings, without doing violence to the language of the Act itself. If one Act of Parliament says that the taxes shall be payable in December, and another says, that all taxes payable before the 5th of January shall be paid, you must use those simple words, and understand them in the same sense in both Acts of Parliament. The consequence is, the voter has not complied with the condition which the Act of Parliament imposes on the right to vote, and therefore he is not entitled to exercise it.

TALFOURD, J.—I am entirely of the same opinion. It seems that the words are plain and clear, and no inconvenience can ever arise from them.

Decision affirmed with costs.

Monday, Nov. 15.

REGISTRATION APPEAL.

COLLINS v. THOMAS.(a)

Borough franchise—Meaning of the word "therewith."

The word "therewith," in the 27th section of the Reform Act refers to time, and not to locality.

Therefore, where the claimant occupied a house and garden of the same landlord, at one rent, but the garden was separated from the house by a public road, it was

Held, to be a good qualification.

This was an appeal from the decision of the revising barrister of the borough of Tewkesbury. The facts were as follow:—The respondent occupied a house and garden, which he held of the same landlord, at a rent of 10*l.* a year. The garden did not, however, adjoin the house, but was situate at some distance, and separated from it by a public road. The revising barrister held it to be a sufficient qualification.

Kerr, for the appellant, said, that for the first time the Court was now called upon to put a construction upon the meaning of the word "therewith," in the 27th section of the Reform Act. The doubt had been suggested both by Mr. Rogers and by Mr. Elliot, in their treatises on the statute. [MAULE, J.—The question is, Does it refer to time or to place?] Precisely so, and he submitted that it referred to locality. It was a rule of construction of a statute, that every word should have a meaning and value, if possible. Now, if the word "therewith" were construed to mean a holding of the land contemporaneously with the building, it was surplusage, for the same meaning would have been conveyed without it by the other words, "occupied by him as tenant under the same landlord." Again, if it be construed as referring to time, and not to locality, this absurdity follows; that if there were a building upon the land, it would not confer the franchise, and thus the better qualified the claimant became in point of fact, the less would he be qualified in point of law. Thus, the house and garden together in this case are just worth 10*l.* per year, but neither is worth that alone. But if the respondent were to put an inclosed shed upon the garden, although he would in fact make the whole more valuable, he would disqualify himself; for he could not join the buildings, although he can join the land. These difficulties would be removed by putting upon the word "therewith" that which appears to be its common sense and obvious meaning, a connection with the building in point of locality, as part of the same premises.

The respondent was not called upon.

The COURT, without assigning reasons, expressed themselves to be unanimously of opinion that "therewith" meant an occupation in point of time, and not of locality.

Decision of the revising barrister affirmed.

(a) This case was briefly and erroneously reported last week owing to the confusion which prevailed in the court during the discussion. A full and correct statement of it is now given.

Saturday, Nov. 13.

(Before MAULE and TALFOURD, JJ.)

Ex parte STORY.

Prohibition.

On application for a writ of prohibition on the ground that defendant had no notice of a decree which had been made against him, the Court will not grant the writ if it appears that the defendant has had notice of and appeared in the suit.

In this case *Parry* moved for a writ of prohibition on an affidavit, stating that the suit was one promoted by his wife for restitution of conjugal rights, that a decree had been made pendente lite for alimony, and that a considerable time afterwards, on receiving notice of motion, he attended before Dr. Lushington, and found to his surprise that a decree had been made ordering him to take his wife home, and that he was now about to be pronounced in contempt for not obeying that decree. He, defendant, protested against this proceeding as not having had notice of the decree nor summons to attend when it was pronounced, and of this he offered to make affidavit. The judge, however, refused to have him sworn, but allowed him till next court day to comply. He stated that in the event of his not so complying he should pronounce him in contempt, and report him to the Lord Chancellor, and this (the affidavit proceeded to say) he verily believes will be done unless this Court shall interfere by granting the prohibition.

Parry argued that a writ of prohibition would lie for want of jurisdiction to make a decree in the absence of the party interested, and that such a proceeding was contrary to the general law of the land. [MAULE, J.—How are we to know that it is not the business of the defendant, according to the practice of those courts, to be present on all judicial days without special notice?] It such be the practice of the courts that might be an answer, but your lordships will not affirm that to be so at once. Even in that case I am prepared to argue that such a practice is unconstitutional. [MAULE, J.—If a person has once appeared by his proctor (who seems to represent his clients more fully than an attorney) it may be that no special notice of future proceedings would be required by the course of the court.] The case of *Capel* v. *Child*, 2 Cr. & Jer. 558, is an authority in this matter. [MAULE, J.—In that case the suit seems to have gone on without any notice or knowledge on the part of Capel, the present case is only one of a further step in a suit.] The decree for alimony was made pendente lite; the decree to take his wife home must be looked upon as something quite fresh, and he ought to have had an opportunity of opposing. The cases of *Harper* v. *Carr*, 7 T.R. 270, and *Ex parte Smyth*, 719, were referred to in the course of the argument.

MAULE, J.—I am of opinion that there should be no rule in this case. The suit appears to have been duly instituted, and the judgment properly pronounced, the defendant's complaint being that he had no notice of such judgment. There is no case where a Court has interfered with a suit so circumstanced. Where, as in *Capel's* case, a person has never been called into court at all, this is against natural justice, and the Court will interfere; but in this case, Story was regularly summoned, which he does not deny, nor does he object to the competency of the tribunal. He must shew, in the first instance, that the Ecclesiastical Court was proceeding in a way liable to a prohibition, and this he has not done.

TALFOURD, J.—I think there is not sufficient ground for a prohibition in this case. Unless that Court were going against the fundamental principles of the Common Law, the writ could not be issued. The defendant having been once properly before the court, might take that as a sufficient notice in subsequent proceedings.

Rule refused.

Wednesday, Nov. 17.

(Before JERVIS, C.J. and MAULE, WILLIAMS, and TALFOURD, JJ.)

MOORE v. THE OVERSEERS OF CARISBROOKE.

*A. claims to be registered on the list of county voters in respect of land of the value of 5*l.* per annum, which, together with other land of the value of 50*l.* per annum, is mortgaged for 300*l.* at the rate of 5 per cent.:*

Held, that the mortgage is to be apportioned, and that, therefore, the land is worth more than 40s. a year, and the claim valid.

In this case it appeared that a vote was claimed in respect of land of the claimant of the value of 5*l.* per annum, subject, together with other land of the value of 50*l.* per annum, to a mortgage of 300*l.* The revising barrister retained the vote.

Poulden, for the appellant. The barrister went into the value of other lands, which he had no jurisdiction to do.

MAULE, J.—If a man has two plots of land in two adjoining counties worth each 4*l.* per annum, and has mortgaged the two together for a sum of money, the interest of which amounts to 3*l.* per annum, according to your doctrine he would have a vote for neither. Deduct in this case 15*l.* the mortgage interest, from the total value of 55*l.* that leaves 40*l.*—the eleventh part of that is more than 10s. per annum.

Decision affirmed.

Friday, Nov. 19.

(Before JERVIS, C.J. and MAULE, WILLIAMS, and TALFOURD, JJ.

HORRIDGE *v.* WILLOUGHBY and OTHERS.

Appeal from a County Court—Ferry—Liability of ferryman.

A lessee of a ferry receives on board of his ferry-boat a mare of B.'s, who keeps charge of her on board. Slips for landing are provided by the owner of the ferry; one of these has a damaged handrail, known to the ferryman, which injures the mare:

Held, that the ferryman was bound to provide the means of landing, and having negligently provided a slip with a broken handrail, by reason of which the mare was injured, he was liable for the loss;

Held also, that where an objection is raised on the argument of the appeal, but was not urged at the trial, the Court will not send the case back to the judge to be amended, so as to give the means of deciding upon such objection.

This was an appeal from the decision of the judge of the County Court of Birkenhead. The case stated that the defendants were lessees of a steam-boat ferry for the carriage of passengers and goods between Birkenhead and Liverpool, and that it was part of their duty to find accommodation for embarking and landing; that it was not their custom to take charge of live cattle on board their boat; that the plaintiff brought a mare on board of the ferry-boat, and himself kept charge of her; that the defendants did not by themselves or their servants interfere with her; that the landing-pier being some feet higher than the boat, slips with handles were used for landing passengers, and also for cattle; that on the day in question the handrail of the slip used for landing the mare,—having been some days previously broken,—was fastened with a piece of cord; that it was again broken that morning, and, although the defendants were cautioned by a policeman against using it, it was fastened together again and used for landing the plaintiff's mare; that the mare pressing against the damaged handrail, it was again broken, and a piece of iron of which it was formed entered into the side of the mare, and injured her so much that she was obliged to be put to death. By the plaint, the plaintiff sought to recover the sum of 31*l.* 10s. the value of the mare, for that the defendants as carriers were entrusted with the mare of the plaintiff to carry from Birkenhead to Liverpool, and that they, by their negligence, caused an injury to the mare, &c. The defence urged at the trial was, that the defendants had not the care of the mare, but only contracted to find steam-boat carriage. The judge held them liable.

James, for the appellants.—The judge has found that the mare was not entrusted to the defendants, i. e. that they were not carriers. But this plaint is against them as carriers, and therefore the decision must be reversed, for by 9 & 10 Vict. c. 95, s. 59, the substance of the action is to be contained in the summons and plaint, and by the 75th section no evidence shall be given of any demand or cause of action except such as is contained in the summons. [MAULE, J.—The case does not shew the summons. JERVIS, C.J.—No; and the substance of the summons may be the negligence of the defendants.] The judge drew the case, and we could not interfere. But the defendants are not liable at all. The ferry is for the conveyance of passengers and goods, and it is not a part of their duty to provide accommodation for embarking and landing. But even if it is, the plaintiff having the care of his mare should have looked to the sufficiency of the slip; and the defendants are not liable.

Tomlinson for the defendants, was not called upon.

JERVIS, C.J.—I am of opinion that the judge of the County Court was correct. I do not think he is subject to the observations which were made upon him for not setting out the summons. At the trial the objection now sought to be raised, that the defendants were not liable as carriers, was not taken; the objection then urged was that they were not liable, because they had not the personal care of the mare. It does not appear from the particulars that the action was brought against them merely as carriers, it might have been for actual and aggressive negligence; it might mean that the defendants for

hire took a mare, and by their negligence it was staked. If that is so, it will do. It is their duty to provide everything necessary for the conveyance of passengers and goods from the one side to the other. If they stop six feet from the shore, they might as well stop in the middle of the Mersey,—the horses cannot jump from the boat on to the pier, and it is their duty to provide the means of their being landed. The slip had an iron spike disguised as a handrail; on the slightest pressure it gave way, and the spike entered into the mare. If the plaintiff could have seen it, perhaps he would have demanded another rail. I think for this injury the defendants are liable.

MAULE, J.—I am of the same opinion. As to the point of form, if it had been raised at the trial, and the case did not give us the means of deciding it, we might perhaps send it back to be amended, but, not having been raised at the trial, it ought not to be raised here. As to the second point, if the plaintiff had himself been guilty of negligence, he might not perhaps have been entitled to recover, as having contributed to the injury; but there is nothing of the kind here.

WILLIAMS and TALFOURD, JJ. concurred.

Nov. 16 *and* 20.

(Before JERVIS, C.J. and MAULE, WILLIAMS, and TALFOURD, JJ.)

HARRIS v. THIRKELL.

Distress—Pound breach—Stats. 2 *Wm. & M. sess.* 1, *c.* 5, *s.* 4; 11 *Geo.* 2, *c.* 19 - *Verdict against evidence—Penal action—New trial.*

Where goods fraudulently removed by a tenant, from his premises, to avoid a distress for rent in arrear, are followed and distrained, within thirty days, on the premises of a third party, by virtue of the 11 *Geo.* 2, *c.* 19, *s.* 1, *and are rescued by such third party:*

Quære, whether an action for treble damages, on the 4th section of 2 *Wm. & M. sess.* 1, *c.* 5, *will lie against such third party.*

Semble, per Jervis, C.J. that the Court ought to be guided by the same rules in considering whether they will grant a new trial in a penal, as they would in a remedial action.

The declaration stated that one John Goodman held certain premises, with the appurtenances, as tenant to the plaintiff from year to year, at a yearly rent of 50*l.* payable on the 1st October, 1st January, 1st April, and 1st July; of which rent 37*l.* 10s. became due on the 1st April, 1852. That the plaintiff, on the 10th April, 1852, by William Tompsett, her bailiff, had, according to the form of the statutes in such case made and provided, seized and taken as a distress for the said rent in arrear, a horse and cart and certain harness, which had been theretofore, and within thirty days next before the seizure and distress, fraudulently removed by the said John Goodman from the said premises, to avoid a distress for rent, and then were in and upon the premises of the defendant, and in the lawful custody and possession of the said William Tompsett, as such bailiff as aforesaid, in order that he might appraise and sell and dispose thereof, according to the form of the statute in such case made and provided, whereupon the defendant, with force and arms, &c. rescued, seized, took, and drove away, the said horse and cart, and harness, contrary to the form of the statute in such case made and provided; whereby the plaintiff, &c. hath been put to great expense, to wit, amounting to 10*l.* &c.

1st plea.—Not guilty.

2nd plea.—That Goodman was not tenant.

3rd plea.—That the goods had not been fraudulently removed.

4th plea.—That the said rent was not in arrear at the time of the removal of the goods.

5th plea.—That Goodman was indebted to the defendant, and sold the said horse, cart, and harness to the defendant bonâ fide, and for valuable consideration, and that at the time of the sale, the defendant was not privy to any fraud in the removal of the goods from the premises held by Goodman. Verification.

Issue was taken on all the pleas except the 5th, to which de injuriâ was replied, and issue taken thereon.

At the trial, which took place before Jervis, C.J., at the last Kent Summer Assizes, the jury found a general verdict for the defendant. It was agreed that the value of the goods was 16*l.* A rule nisi having been obtained to set aside the verdict, and for a new trial,—on the ground that the verdict was against the evidence,

Bramwell and *Barrow* now shewed cause.—[The point to which the argument was first directed was whether, on the facts stated in the declaration, an action would lie on the statute 2 Wm. & M. sess. 1, c. 5, s. 4, which enacts, that "upon any pound breach or rescous of goods or chattels distrained for rent, the person grieved thereby shall, in a special action upon the case, for the wrong thereby sustained, recover *treble* damages and costs against the offenders," as if no such action would lie then, the damages being under 20*l.* the Court would not in their discretion grant a new trial.] The statute 2 Wm. & M. sess. 1, c. 5, s. 4, does not apply to the case of goods followed and distrained off the premises. Sec. 4 might be read thus: that "upon any pound breach, &c. of goods or chattels distrained *on the premises* for rent due, &c." Then comes the statute 11 Geo. 2, c. 19, the first section of which enacts, that "in case any tenant shall fraudulently or clandestinely convey away, or carry off or from such premises his goods or chattels, to prevent the landlord or lessor from distraining the same for arrears of rent, it shall and may be lawful for every landlord or lessor, &c. within the space of thirty days next ensuing such conveying away, &c. to take and seize such goods and chattels wherever the same shall be found, as a distress for the said arrears of rent; and the same to sell or otherwise dispose of in such manner as if the said goods and chattels had actually been distrained by such lessor or landlord in and upon such premises, for such arrears of rent." What would be the consequences of extending this first section of 11 Geo. 2, c. 19, to the former Act of William and Mary? A person may bonâ fide have goods deposited with him. Another person distrains them; the first has no notice that the distrainor has a right to distrain. The argument on the other side is, you shall be punished, if you rescue the goods, for what is primâ facie the wrong of the man distraining. It is said that, if I resist, the distrainor shall not only recover for damage, but for treble value. The reason for the application of the penal statute does not extend to the case of goods removed. (Sec. 10 was referred to, which enacts, that "it shall be lawful for any person lawfully taking any distress for any kind of rent to impound or *otherwise secure* the distress, in such place, or on such part of the premises chargeable with the rent, as shall be most fit and convenient for the impounding and securing such distress; and to appraise, sell, &c. upon the premises, in like manner, &c. as any person taking a distress for rent may now do off the premises; and that if any pound breach or rescous shall be made of any goods and chattels, or stock distrained for rent, and impounded or otherwise secured by virtue of this Act, the person aggrieved thereby shall have the like remedy as is given by the said statute (2 Wm. & Mary, sess. 1, c. 5.)" [MAULE, J.—By sec. 1, the distrainor might seize wherever he found the goods; that section does not say that he may impound or otherwise secure. JERVIS, C.J.—What is done with goods followed and distrained?] [*Needham.*—I believe they are always taken back to the demised premises.] [MAULE, J.—It is hard to say that a tenant fraudulently removing his goods shall not be liable to all he would have been liable to if they had not been removed.] He is already sufficiently punished by sec. 3 of 11 Geo. 4, c. 19. The tenant would be sufficiently punished by the penalty of double value. [JERVIS, C.J.—At common law there was an indictment for breaking pound.] [*Needham* referred to *Piggott* v. *Birtles* (1 M. & W. 441).] [MAULE, J.—The defendant here rescues some goods which are not his.] They cited *R.* v. *Handy*, 6 T.R. 286. [MAULE, J. referred to *Thomas* v. *Harries*, 1 Scott N.R. 521.] (Com. Dig. "Distress," D. 1, was cited.) Before the passing of 11 Geo. 2, c. 19, the goods must have been taken on the premises, and driven to some pound off the premises. Previous to the passing of 2 Wm. & M. sess. 1, c. 5, the landlord could only deprive the tenant of the use of the goods distrained until he paid the rent. Then the statute of Wm. & M. entitled him to sell, and then came the penalty for rescue from the bailiff driving them to pound off the premises. Then came the statute of Anne, allowing a following, which was repealed, and the 11 Geo. 2, c. 19, allowed a following within thirty days. The penalty imposed by the statute of Wm. & M. was such as applied to the then state of the law, viz. to the case of when the goods distrained were on the way to the pound from the premises, or in the pound. Independently of *R.* v. *Hardy*, on looking at the statutes of Wm. & M. and 11 Geo. 2, c. 19, it may be seen that the penalty in the first does not apply to the latter. If it applied, there would be no use in the reservation of remedy in the 10th section of the latter. If the Legislature had meant that it should apply to the 1st section, they would have seen that it applied to the 10th section also. The facts of this case do not bring it within sec. 10.—The Court intimated their opinion that the question whether the action for treble damages would lie, was at all events so doubtful, that they would not determine it in the negative as a preliminary objection. The question was then argued, whether the verdict was against the evidence. [MAULE, J.—In *Oppermann* v. *Smith*, 4 Dow. & Ry. 33, it is laid down, on the authority of Best, J. that the 11 Geo. 2, c. 19, applies to all cases where the landlord is, by the conduct of his tenant, in removing his goods, turned over to the barren right of bringing an action for his rent; and that, where a tenant openly, and in the face of day, and with notice to his landlord, removed his goods without leaving sufficient on the premises to satisfy the rent then due, and the landlord followed and distrained the goods: that, although the removal might not be *clandestine*, yet, as it was *fraudulent* (which was a question for the jury), the landlord was justified under the statute. He also referred to *Furneaux* v. *Fotherby*, 4 Campb. 136. JERVIS, C.J.—In *John* v. *Jenkins*, 1 C. & M. 227, the Court held that it is a question for the jury, whether a removal was fraudulent within 11 Geo. 2, c. 19, although it be admitted at the trial by the tenant that the removal was to avoid a distress.] They cited *Williams* v. *Burgess*, 10 A. & E. 499. If this case is within the statute of Wm. & Mary, it is a penal action, and your lordships ought not to grant a new trial. [JERVIS, C.J.—If the law gives a man a right to recover the penalty, he ought to recover it by law; and I never could understand the reason why a different practice should prevail in a penal from that in a remedial action.] Such is the law. [JERVIS, C.J.—No. Such is the practice.] This must be considered a penal action. It was formerly considered remedial. (*Stanley* v. *Wharton*, 9 Price, 301.) But this was first shaken by a case of *The Earl of Spencer* v. *Swannell*, 3 M. & W. 154: that was an action of debt for treble value of tithes not set out. Parke, B. there says, "A penal law is a statute which imposes a penalty; and the statute of Edward 6 does impose a penalty, for it trebles the original duty by way of punishment, thus making the defaulting party liable to a forfeiture beyond the amount of the duty withheld. It is true that it is an action not *barely penal*, for, on the principle that it is for a duty also, such action lies by executors within the equity of the statute de bonis asportatis in vita testatoris; and after a recovery in this action, the plaintiff cannot recover the tithe in any other suit; nor is it purely penal within the rule adopted by the Courts as to granting new trials after a verdict for the defendant." In this case, if treble damages are recovered, the single damages are the remedy, and according to Parke, B. the rest are penal, and if the rest are not recovered; then the damages are under 20*l.* and no new trial will be granted. In *Jones* v. *Williams*, 4 M. & W. 375, an action of debt on the 11 Geo. 2, c. 19, for the double value of goods fraudulently removed from the premises of a tenant was held to be a penal action. So in *Robinson* v. *Learoyd*, 7 M. & W. 48, where Parke, B. says that an action of debt on the statute 4 Geo. 2, c. 28, for the recovery of double value against a tenant holding over, is penal, and is to be construed strictly. In support of the proposition, that where a new trial is moved for in a penal action, on the ground of the verdict for the defendant being against evidence, the Court will not grant it, see *Fouereau* v. ——, 3 Wilson, 59; *Brook* v. *Middleton*, 10 East, 268; and *Gregory* v. *Tuffs*, 1 C. M. & R. 310.—*Parry* v. *Duncan*, 7 Bing. 243, and *Bach* v. *Meats*, 5 Mau. & S. 200, were also cited.

Montague Chambers and *Needham* were heard in support of the rule. *Lord Selsea* v. *Powell*, 6 Taun. 297, was cited.

MAULE, J.—The evidence of fraud was greatly preponderant, and the jury probably made some mistake; therefore we think there ought to be a new trial.

By the COURT.—If the plaintiff get a verdict, he must not remit the treble damages, except by consent of the defendant, in order to raise the point as to whether the action for treble damages will lie.

Rule absolute on payment of costs.

APPEAL FROM REVISING BARRISTER'S COURT.

Nov. 17 *and* 20.

(Before JERVIS, C.J. and MAULE, WILLIAMS, and TALFOURD, JJ.)

BARROW and OTHERS, Appellants; and BUCKMASTER, Respondent.

Where two pieces of freehold land, A. and B. are both overridden by the same rent-charge, and the owner of A. has a remedy against the owner of B. to indemnify himself for any part of the rent which he may be obliged to pay over and above an apportioned part of it, then, in order to ascertain the value of A. for the purpose of conferring a county vote, such apportioned part only of the rent is to be deducted from the annual value of A.

This was an appeal from the decision of the revising barrister for the Southern Division of county of Lancashire. The appellant (Barrow) and seven other persons whose appeals were consolidated, claimed to be entitled to a county vote in respect of a piece of freehold land which was part of a plot of land which was charged with a perpetual yearly rent of 14*l.* 1s. 7d. The owners of the whole plot of land, who held it in fee-simple, subject to the above-mentioned rent-charge, by the terms of the deed of conveyance of that part of it in respect of which the votes were claimed, conveyed that part subject only to a proportion, viz. 4*l.* 5s. of the said yearly rent, and covenanted to pay the remainder, viz. 9*l.* 16s. 7d. and indemnify the grantees for all loss which might arise by reason of the nonpayment of the 9*l.* 16s. 7d.

They further covenanted that if default should be made in payment of that sum, and the grantees should be required to pay the same or any part thereof, that, thereupon it should be lawful for the grantees to enter and distrain, for so much as should have been required to be paid, upon the remainder of the said plot of land. The grantees covenanted to pay the 4*l.* 5s. and gave a similar indemnity and power of distress. [It was admitted on the argument that the residue of the land which was given as a security was sufficient to produce the sum secured upon it.] It was found by the case that if no more than 4*l.* 5s. was to be deducted from the yearly value of the land, it would be sufficient to confer a vote.

The barrister disallowed the claim.

Byles, Serjt. with whom was *Aspland*, for the appellant. The question in this case depends on the old statutes. 8 Hen. 6, c. 7, limits the right of voting to persons, "whereof every one shall have free land or tenement to the value of 40s. by the year above all charges," and describes them subsequently as persons "that may expend 10s. by the year." 18 Geo. 2, c. 18, s. 5, contains the words "of the clear yearly value of 40s." The revising barrister held that in ascertaining the clear yearly value of that for which the vote is claimed, the charges *primarily* imposed must be looked to. But that is not so, it is sufficient if it be of the clear yearly value of 40s. *after all legal remedies have been worked out.* Between these terre-tenants there would be contribution certainly in equity, and it is submitted also at law. In the case of rent-service, if a lessor lets to a lessee, and he divides the land among several, the rent-service would be apportioned. (Vide the dictum of the Chief-Justice, in *Curtis* v. *Spilly*, 1 Bing. N.C. 756.) A jury at Common Law or a Court of Equity would apportion it. (Story's Equity Jur. s. 475; Cary's Reports, 3, anon.) If a man were worth 500*l.* a year, and devised the whole to five persons in equal moieties, but subject to a rent-charge of 100*l.* they would, according to the decision of the barrister, be all disfranchised. If it had been a mortgage, the Court has to-day decided, in the case of *Moore* v. *The Overseers of Carisbrooke*, that it would be apportionable.

Cowling, for the respondents.—The decision of the revising barrister was correct. Before the passing of the 8 Hen. 6, c. 7, the qualification was in respect of freehold property, however it might be charged. That statute introduced a general rule. The statute must be construed as it would have been construed in the time of Hen. 6. Real property was then considered as the chief source of income; and the words of the Act are, that every voter "shall have free land or tenement to the value of 40s. by the year at the least, above all charges." It is said, on the other side, that this means, "free of all charges after all legal remedies have operated;" but that is not so. The statute applies to cases where the rent-charge overrides other land. The sheriff was, by the statute, merely to inquire if there was a charge issuing out of the land. What is the sheriff to do? It may be, that there is no arrangement between the voter and the person holding the other land by which the rent-charge is overridden. The sheriff would have to inquire the value of the other land, and would have to examine other witnesses; but the Act of Parliament only says he shall examine the voter. The power of distress given to the voter to indemnify himself only applies to the other land out of which the rent-charge issues. All these complicated inquiries it never could have been contemplated that the sheriff should go into. What is the meaning of the words "that may expend?" In the present case, the sum which the claimant may expend is found after deducting 14*l.* 1s. 7d.; and then he cannot expend 40s. The 18 Geo. 2, c. 18, s. 5, enacts that "No person shall vote in any such election without having a freehold estate in the county of the clear yearly value of forty shillings over and above all rents and charges payable out of or in respect of the same, or without having been in the actual possession or in receipt of the rents and profits thereof, for his own use, above twelve calendar months." In Gilbert on Rents, 154, it is said, "But when a rent-charge is granted out of land, the rent issues out of every part of the land, and consequently every part of the land is subject to a distress for the whole rent." The construction of the statute of Hen. 6, which has been adopted up to the present time, is, that the voter must have the legal estate. (See Heywood on County Elections, 62, 63.) The judges extended this law. Then, how stood the law as to a mortgage after the passing of 8 Hen. 6, and up to the passing of 7 & 8 Wm. 3, c. 25? Why, if a person had a mortgage on his land, he could not vote; therefore the question is, what has the party *legally* a right to expend? A mortgagor's right to vote depends altogether on 7 & 8 Wm. 3, c. 25, s. 7. What Heywood says with regard to the construction of 8 Hen. 6, is to be found in all the text-writers. It is immaterial to what extent the property is mortgaged. (He cited the Middlesex Cases, 2 Peckwell's Election Cases, 103.) In the case of an equitable right, equity would say, You shall only execute your right over a particular part of the land, for a proportional part of the rent. [Jervis, C.J.—What is the voter to be examined about? Maule, J.—The sheriff is to examine the voter as to how much he expends by the year. Jervis, C.J.—Suppose that before the statute of Wm. 3 there was a mortgage on the land *not in fee*, who would have the vote?] Probably then the sheriff would have to inquire.

Byles, Serjt. (*Aspland* with him), in reply.—The true meaning of the 8 Hen. 6 was, "Satisfy the sheriff that you, on taking the proper account, have 10s. a year, all legal remedies having operated." (*Lee* v. *Hutchinson*, 2 Lutwyche's Reg. Cas. 159, was cited.) The sheriff will have no difficulty here, because by the title-deeds the rent is apportioned.

Jervis, C.J.—I think the revising barrister's decision was incorrect, and that the voter's names ought to be placed upon the register. The case does not state, but it is admitted that the residue of the land is sufficient to answer the balance of the charge beyond the 4*l.* 5s. It seems to me that the value to be deducted from the annual value of the land, in respect of which the vote is claimed, is 4*l.* 5s. and not 14*l.* 1s. 7d.; which latter sum is no doubt distrainable for out of every inch of the land. The voter, by the original statute, must have 40s. above all charges. The proper view of the statute is, as taken by my brother Byles, that there must be a sufficient sum to qualify *after exhausting all legal remedies*. If the rent-charge were apportioned, the voter would be able to expend 40s.; but it is said he cannot expend that, because his land is charged with 14*l.* 1s. 7d. But when he comes to take account with the other owners over whose land the rent-charge extends, he would be able to expend 40s. When you take the equitable estate of the statute of Wm. 3, instead of the legal one of the statute of Hen. 6, the same rule attaches. In *Lee* v. *Hutchinson* the Court looked to the substantial value, after all legal remedies were exhausted.

Maule, J.—I am of the same of opinion. I think this voter is in a position where he may expend 10s. by the year. It was pointed out by my brother Byles, and not disputed by Mr. Cowling, that although he might be distrained upon for 14*l.* 1s. 7d. yet the claimant may, by virtue of certain rights, which he has, and which he may put in force, expend 40s. out of the land. This appears to satisfy the statute of Hen. 6. Mr. Cowling says he must have 10s. beyond what may be *primarily* charged on the land; but he has not shewn why that should be the meaning of the statute. The words of the statute are not of a technical description, but of a popular nature. They are: "that may expend 10s.;" words less technical I cannot imagine. The statute, therefore, seems to me to be properly expounded by my brother Byles. Mr. Cowling's argument goes on the statute of Wm. 3; but the scope of that argument is an analogy between this case and a case of a mortgagor. *Lee* v. *Hutchinson* bears a strong analogy to this case.

Williams, J.—I am of the same opinion. I think we ought not to look further than the amount of charge which can *ultimately* fall on the terre-tenant.

Talfourd, J.—I am of the same opinion. *Lee* v. *Hutchinson* is a case the exact converse of, and in harmony with, this.

Decision reversed without costs.

Monday, Nov. 22.

(Before Jervis, C.J. and Maule, Williams, and Talfourd, JJ.)

Harris *v.* Thompson.

Slander—Privileged communication—Absence of malice.

A director of a company having learned, in his capacity of director of another company, that the plaintiff had been dismissed from the office of secretary of the said company, on the ground of gross misconduct, states this at the board of the first-mentioned company: and in answer to a question from the chair, said that the charges were for obtaining money under false pretences, and for giving an I O U for a petty cash debt. At a subsequent meeting, held for the purpose of investigating the conduct of the plaintiff, he refuses, in the presence of the plaintiff and his attorney, to state the charges against him. An action had been commenced against the other company, of which he was a director, by the plaintiff:

Held, that the communication was privileged; and that the conduct of the defendant being consistent with bona fides, that must be presumed; and that the case ought to have been withdrawn from the jury.

The declaration in this case alleged that the plaintiff had been secretary of the Brewers', &c. Company, and that the plaintiff, at the time of the grievances complained of, was auditor, and the defendant was a director, of the London Necropolis, &c. Company; that at a board meeting of the last-mentioned company, the defendant moved a resolution, that the plaintiff having been dismissed from the office of secretary to the Brewers', &c. Company for gross misconduct, was no longer fit to be an auditor of the said London Necropolis, &c. Company; that the defendant, maliciously intending to injure the plaintiff, and to cause him to be dismissed from his said office, and to cause it to be believed that the plaintiff had been guilty of obtaining money under false pretences, in answer to a certain question then and immediately after the defendant had moved the said resolution, put by the chairman of the meeting, and maliciously spoke of and concerning the plaintiff, the defamatory words following: that is to say, "Mr. Harris (thereby meaning the plaintiff) has been dismissed from the Brewers' Company (thereby meaning, &c.) for gross misconduct. The charge was obtaining money under false pretences from the solicitors (thereby meaning, &c.) and taking up a bill of his own," by means whereof, &c. the plaintiff was damaged.

Plea—Not guilty.

It appeared that the defendant was a director of the two companies mentioned in the declaration, and that the plaintiff was secretary of the one and auditor of the other. He remained secretary of the Brewers', &c. Company up to the 9th of February, 1852; on the 28th of January preceding, a vote of thanks to the plaintiff was carried at the meeting. On the 29th there was a private meeting of the directors, from which the plaintiff was excluded. At this meeting there were various charges made against the plaintiff. On the 4th of February they were gone into, and the board by their minutes acknowledged that they were satisfactorily answered. On the 9th of February these minutes were confirmed, the defendant signing them as chairman. The plaintiff was then requested to leave the room, and was afterwards informed that he was suspended. On the 11th the plaintiff received notice of a meeting to be held on the 12th, to consider his case. He did not attend, and was dismissed. On the 23rd of February there was a meeting of the London Necropolis, &c. Company, at which the alleged slander was uttered.

The defendant having said, in answer to a question from the chairman, that the charges were obtaining money under false pretences from the solicitors, and giving an I O U for a petty cash debt, the chairman said he thought the plaintiff should have an opportunity of vindicating himself, and it was resolved that an inquiry should take place.

On the 8th of March, the plaintiff, accompanied by his attorney, attended a meeting held to investigate the charges, and they asked the defendant to state the charges that he made. He answered that he did not come there as an accuser, but as a judge in the matter, and refused to make any charge in the presence of the plaintiff's attorney, saying that an action had been commenced by the plaintiff against the Brewers', &c. Company.

At the trial it was objected, on the part of the defendant, that the communication was privileged, and there was no evidence of malice to go to the jury. Jervis, C.J. however, held that there was evidence of malice, and the jury found a verdict for the plaintiff, leave being reserved to the plaintiff to have it set aside and entered for him. A rule had been obtained by *Byles*, Serjt. and

Wilkins, Serjt. and *R. J. Browne* now shewed cause.—There was abundant evidence of malice. The defendant knew all the circumstances, and that the charges had been refuted. As to the meaning of the words used, "he was discharged for gross misconduct," that meant that he had been guilty of gross misconduct, and the jury have found that he meant to say that the plaintiff was guilty of obtaining money under false pretences.

Byles, Serjt. and *Willes*, contrà.—The comunication was privileged, and the evidence of malice must be clear, there being a presumption that it was bonâ fide. The only evidence was that defendant declined to go into the charge. [Maule, J.—The second question is, whether the words are capable of the meaning imputed to them, and if so, whether there was evidence of their being used in that meaning.] What the defendant said is consistent with malice and with bonâ fides, and that is for the defendant. (*Somerville* v. *Hawkins*, 10 C. B. 582.)

Jervis, C.J.—I am satisfied I was wrong in not withdrawing the case from the jury, there being no evidence of express malice. (His lordship stated the circumstances as above.) The circumstance of a man being dismissed for misconduct justifies a director in acting as the defendant did. In answer to a question, he tells what the charges were. Whether he meant that they were true or not, it is not necessary to inquire, for whether he meant so or not, it would be a privileged communication. Even if he had said, "and I believe them to be true," it would still be privileged. The question was, whether there was any evidence of express malice. The only evidence I saw at the trial was, that the defendant refused to enter into a detailed statement of the charges on the 29th of February. I think the circumstance of actions having been commenced and

threatened, was sufficient to account for that. He says, it is enough for me to have brought under the notice of the board the fact of the plaintiff's dismissal. There must be something inconsistent with innocence, or more consistent with guilt than innocence. Here his conduct was quite consistent with good faith.

MAULE, J.—I am of the same opinion. That the defendant might make the communication there can be no doubt, it being for the purpose of protecting the interest of himself and the company. Taking it to impute the commission of an offence, or that he believes it to be true, he might reasonably believe so, and it is still privileged. The plaintiff must shew malice, i. e. that the defendant was actuated not only by what he thought right and fit, but also by some evil intention towards the plaintiff to injure him. It must be presumed, in the absence of evidence of the opposite intention, that he was actuated by a proper sense of duty. I don't think there was evidence of his being actuated by anything else. There was good ground for his believing that he was saying what was true. When called on to go over the proofs he declined to do so. He might decline to do so on many grounds. He might have said, I believed him guilty, but I am not called upon to shew the grounds of my belief further than what I have shewn, viz. that a charge was made, on which he was dismissed. He also relied on the fact of an action having been brought against him. That was a good reason for his acting as he did. And all this is consistent with his having no malice at all. On the principle, therefore, laid down in the cases, I think there is no evidence to turn the scale on the presumption of the absence of malice.

WILLIAMS, J. referred to *Blagg* v. *Sturt*, 10 Q. B. 905 (cited by *Brown*), and said, that falsehood, in fact, is no proof of malice, unless the party knew of the falsehood.

TALFOURD, J. concurred.

Tuesday, Nov. 23.

(Before JERVIS, C.J. and MAULE, TALFOURD, and WILLIAMS, JJ.)

FISHER *v.* RONALDS.

Questions tending to self-crimination of witness—Propriety of judge's interference.

In an action on a bill of exchange, the defence was that the money for which the bill was given had been lost in a gambling transaction. The person who let the room in which the gambling took place was asked a question tending, if answered, to render him liable to an indictment under stat. 8 & 9 *Vict. c.* 109, *when the judge interposed. The Court, on a motion for a new trial on the ground of a misdirection, held the judge to have been right, and the rule was refused.*

This case, tried before Cresswell, J. in London, was an action by the indorsee against the acceptor of a bill of exchange. The material pleas were, that the bill was given for money lost in gambling, and for money lent to gamble with.

At the trial, John Hicks, a livery stable-keeper, was called, who stated that he knew a set of persons called the Bath and Bristol Club, that they came to Plymouth races, that he let a room to some of the officers at Plymouth, and to that room came some of the club. He was then asked by *Collier*, (who with *M. Chambers*, Q.C. was for the defendant), whether he saw any gaming in that room? He replied that he did not. He was next asked whether there was a roulette table in the room, whereupon,—*Byles*, Serjt. for the plaintiff, suggested that the judge ought to interfere, on the ground that these were questions tending to render the witness indictable under 8 & 9 Vict. c. 109, for keeping, or conspiring with others to keep, a gaming-house. The judge interposed accordingly, and the jury found a verdict for the plaintiff.

Chambers now moved for a new trial on account of this interposition of the judge, and contended that after the witness had said he saw no gaming, his answering the next question in the affirmative would not prove that he kept a common gaming-house.

JERVIS, C.J.—He might not know what gaming was, and so might be led on, question after question, until the gaming was established.

Chambers.—At all events the interposition was too early.

MAULE, J.—If the judge had decided that the answer would not criminate the witness, and he, the witness, afterwards got a severe punishment, it would be very awkward. If a man believed that answering would render him liable to a prosecution, would the judge be justified in forcing him to answer?

Chambers.—Supposing the judge incorrect in holding that the question would criminate the witness, there is no remedy for us.

MAULE, J.—The judge never decides whether a question will criminate or not, he only tells the witness, as in Lord Cardigan's case,—"Do not answer any question which you think may tend to criminate you."

Chambers.—What I say is, it is impossible that this question can have any tendency to criminate the witness.

MAULE, J.—Then on that ground you can have no rule.

Chambers.—Taking that the witness refused to answer the question as tending to criminate him, was it not the duty of the judge to say—It has no tendency that way? *Garbett's* case, 1 Davison, Cr. C. Res. p. 236, was referred to in the argument.

JERVIS, C. J.—I think my brother Cresswell was right in his interposition, and that there should be no rule. A judge, seeing the tendency of a question, is right in warning the witness at once, otherwise question after question might be put, having a tendency to criminate.

MAULE, J.—The rule laid down in Phillips on Evidence is correct. If it were otherwise, a witness might be asked how many persons were in a room where a murder was committed, and then by an exhaustive process of questioning, brought to criminate himself. It would be difficult to put a case in which an application for the interposition of the judge would be more proper than in the present.

WILLIAMS and TALFOURD, JJ. concurred.

Rule refused.

ERRATUM.—By a typical error, the name of the case upon construction of the 4th section of the Statute of Frauds, reported in our number of November the 13th, page 68, was not stated. As it is an important case, deciding that a foreign parol contract not to be performed within a year, although good according to the lex loci, cannot be enforced in this country, readers are requested to insert the name "*Leroux* v. *Browne*," at the head of the report.

BUSINESS OF THE WEEK.

Saturday, Nov. 13.

MITCHELL *v.* READ.—*Needham* moved to enter appearance after distringas, according to the reservation in the 24th section of the Common Law Procedure Act, in the case of pending proceedings. *Rule granted.*

BLACKMAN *v.* ASPLIN.—*Horn* shewed cause against a rule to set aside judgment as in case of a nonsuit. The action was one of trover for mere nominal damages, and a rule had been obtained for judgment as in case of a nonsuit, which was discharged on a peremptory undertaking to try. It appeared, however, that plaintiff's attorney, ignorant of the practice, did not have the rule drawn up, hence the suit was not proceeded with. A rule for judgment as in case of a nonsuit was again obtained, to set aside which *Prentice* had obtained a rule nisi. After *Prentice* had been heard in support of his rule, MAULE, J. said that as the practice in drawing up the rule was what plaintiff's attorney might not have been aware of, the rule for setting aside the judgment as in case of a nonsuit might be made absolute, &c. on a peremptory undertaking being given, and the payment of costs within four days.

Doe dem. BOLTON and OTHERS *v.* ROE.—*Combe* moved for judgment against the casual ejectors. *Granted.*

The new trial paper was not taken, in consequence of the absence of JERVIS, C.J. and CRESSWELL and WILLIAMS, JJ.

Friday, Nov. 19.

Doe dem. LAW and OTHERS *v.* ———.—*Skinner* applied to have an order of reference made a rule of court. The order of reference had been lost by the arbitrator, and the plaintiffs had now only a copy of it made at the judge's chambers, and not having the signature of the judge. The defendants had a duplicate of the order, but on application to their attorney it was said to have been mislaid. The parties had attended upon it. [JERVIS, C.J.—It would stand then as an agreement sanctioned by the parties submitting to it. But then it will be objected that you have proceeded partly on one submission and partly on another.] But it is to be a rule of this Court, and they will have proceeded upon it as such. JERVIS, C.J.—They will say there is no enlargement. There are many difficulties in your way, but you may take a rule.

Re JOHN MATHEWS, an Attorney.—*Taylor* applied for a rule to have the name Chamberlain attached to the name of Mathews on the roll of the court.

Rule granted.

Saturday, Nov. 20.

PARKER *v.* THE GREAT WESTERN RAILWAY COMPANY.—*Channell*, Serjt. moved on behalf of the defendants for a rule calling on the plaintiff to shew cause why the Master's taxation of costs in this cause should not be reviewed, on the ground that the Master had allowed certain charges to the plaintiff which he ought not, the fact being that a great portion of the work in the cause was done by the plaintiff himself, and not by his attorney, and that this was not known to the Master, or to the defendants, at the time of taxation. *Rule nisi.*

This is not the case of *Parker* v. *The Great Western Railway Company*, in which cross rules were moved for in the last Term.

Monday, Nov. 22.

HOLMES *v.* LONDON AND NORTH-WESTERN RAILWAY COMPANY.—In this case, which was argued on Monday, Tuesday, and Wednesday, the verdict which had been found for the plaintiff was set aside, and entered for the defendants on the material issues. *To be reported.*

WHITE *v.* BINSTEAD.—*Watson* moved for a rule to shew cause why an order made by Cresswell, J. for the payment of 25*l.* should not be set aside. In this case, an interpleader had been directed to be tried on an execution by the sheriff of London, who was ordered to sell the goods and pay the money into court, which he did. After the interpleader order had been made, but before the goods were sold, the sheriff received a notice from the landlord that 25*l.* was due for rent, and this he paid. At the trial of the issue, the jury found for the claimant, and the judge, considering that the sheriff could not keep back the money, ordered the 25*l.* to be paid up. The question was as to the right of the landlord in the case where the goods were those of a third party. (*Forster* v. *Cookson*, 1 Q. B. 419.) *Rule nisi granted.*

Re LIVERPOOL LIFE INSURANCE COMPANY *v.* PRITCHARD.—*Dowdeswell* moved for a rule to shew cause why an award made in an arbitration between these parties should not be set aside. It appeared that Pritchard had for some time been in partnership with one Forsyth, during which time the firm had contracted loans with the company, and that afterwards a dissolution took place, and Pritchard carried on the business by himself, and contracted other loans. Two separate accounts were delivered, and on those arose the dispute referred to arbitration. The grounds of the motion were, that an important item in the accounts had not been investigated,—that a wrong construction had been put upon a letter,—and that certain resolutions had been altered by two of the arbitrators without consulting the third. After a long discussion, during which the cases of *Re Perring* v. *Haymer*, 8 A. & E. 215; *Little* v. *Newton*, 2 M. & G. 351; and *Stalworth* v. *Inns*, 13 M. & W. 466, were referred to, the COURT granted a rule nisi, in order that they might more clearly see how the matter was.

HOLMES *v.* LONDON AND NORTH-WESTERN RAILWAY COMPANY.—In this case, which was an action for the infringement of a patent, *Watson*, who shewed cause, resumed and concluded his argument, and was followed by *Hindmarch*, on the same side.

ROWE *v.* TIPPER.—In this case *Hawkins* moved for a rule to shew cause why a verdict for the defendant on the sixth issue should not be set aside and entered for the plaintiff. The action was on a bill of exchange at four months' date, drawn by Green on Knight and Co. endorsed by Green to the defendant, by him to Abley, and by Abley to the plaintiff. The bill became due on Saturday, the 15th December, 1851. The other plea was a traverse of the notice of dishonour, and on this plea arose the issue on which the present motion was made. The plaintiff, being called, proved that he had the bill in his possession till maturity; that it was presented and dishonoured; that notice of this was at once given to Abley, who neglected to give notice to defendant, his immediate indorsee, whereupon plaintiff sent defendant notice on the 18th. The case of *Turner* v. *Leech*, 4 B. & A. 451, was referred to and distinguished. The learned judge thought that this was not sufficient notice of dishonour, and directed the jury to find for the defendant. MAULE, J.—Supposing plaintiff had given immediate notice to the defendant, thinking Abley not worth taking any trouble about, would the defendant have been damnified? He was not bound to have recourse to Abley, though he had a right to; he might have gone at once to the defendant.

Rule nisi granted.

SAME *v.* SAME.—*Shee*, Serjt. moved for a rule to shew cause why a verdict for the plaintiff should not be set aside, and a verdict for the defendant entered on the third issue: that issue being, that defendant did not endorse. The COURT, after hearing a short statement of the facts, said that they would consider it with the other motion.

Shee took another point as to a refusal to admit a certified copy of the schedule of an insolvent (Knight), but the Court at once dismissed it. *Rule on the first point.*

Wednesday, Nov. 24.

COLE *v.* STACEY.—*M. Lloyd* moved for a rule calling on the judge of the County Court of Wiltshire, holden at Bradford, to shew cause why he should not be prohibited from proceeding in the action, on the ground that in order to reduce the debt below 50*l.* an allowance by way of set-off for goods supplied was made in the particulars, contrary to the rule laid down in *Berwick* v. *Copper*, 7 C.B. 669. There was an affidavit shewing that no balance had been struck, and that the sum sought to be set-off had never been agreed upon. *Rule nisi.*

ALEXANDER *v.* ———.—In this case a verdict had been taken subject to a reference. The arbitrator had died. *Channell*, Serjt. had obtained a rule calling on the other side to shew cause why the verdict should not be set aside, and why the costs of the trial should not abide the event of the cause. *Byles*, Serjt. appeared to shew cause, but on the recommendation of the Court it was agreed that another arbitrator should be named, and that the costs of the reference before the deceased arbitrator should be paid by the parties.

Re JOHN HAWK.—*Wordsworth* moved for a rule to shew cause why John Hawk, an attorney's clerk, should not be discharged from his articles of clerkship with an attorney, who was stated to have absconded in insolvent circumstances, and to have left no one at his office to instruct the applicant. The attorney himself was desirous that the applicant should be discharged. The attorney's letters were to be sent to Copthorn-court, and the Court was asked to make it part of the rule that service of the rule should be made there. *Rule nisi.*

GAPP *v.* ELWES.—*Lush* shewed cause against a rule obtained by *Pearson* for setting aside an award on the ground that the arbitrator had awarded more than the amount of the verdict, or why the amount of the award should not be reduced to that sum. The action was for debt for 100*l.* Damages 20*l.* The associate, by mistake, took the verdict for 20*l.* debt, damages 1*s.* subject to the award of the arbitrator. Verdict to be entered as he should think proper. All matters in difference were referred to the arbitrator. The defendant attended the reference, and the arbitrator made his award, by which a verdict was to be entered for the plaintiff for 39*l.* 12*s.* damages 1*s.* to be paid by the defendant on the 1st of October, and the plaintiff was ordered on the same day to return a certain watch to the defendant. This was done at the defendant's own instance, and the defendant also paid half the arbitrator's costs. The COURT said that the defendant having voluntarily paid the money and received [illegible] watch under an award which he at the time must have known to be bad, could not now be heard to say that the award was bad, when he had acted upon it, and as it appeared himself insisted upon acting upon it.

Rule discharged with costs.

WORCESTER COLLEGE *v.* REEVE.—*Willes* moved for a rule for a prohibition to the judge of the County Court holden at Brackly, on the ground that the title to a tenement came in question. The action was for five years' rent. The defence was that the defendant's father had occupied the cottage forty years ago without paying any rent, and defendant himself had lived in it for twenty-three years without paying rent. *Rule nisi.*

Thursday, Nov. 25.

(Before JERVIS, C.J. and MAULE, WILLIAMS, and TALFOURD, JJ.)

FREDDON v. SAWYER.—In this case, which was an appeal from the decision of the revising barrister at Carlisle, judgment was given; but the judges differing, delivered their opinions seriatim.—MAULE, J. holding that the decision of the revising barrister was wrong; JERVIS, C.J. and TALFOURD and WILLIAMS, JJ. that it was correct.

To be reported.

HARRIS v. THIRKILL.—*Needham* mentioned this case decided on the 20th. The costs of a count in trover, which the Court had recommended to be struck out, were charged in the rule to the plaintiff. [The COURT.—We made no such order.] Also the costs of the rule were charged without having been mentioned by this Court. By the COURT.—The practice in this Court is, that the costs of the rule shall be costs of the day.

DALY v. HARDING.—*Hemming* moved for a rule to shew cause why a writ of trial should not be issued to the sheriff in this case. They had been before the Chief Baron, who had refused the rule, on the ground of an affidavit that the case had been tried in the County Court. This was now denied on affidavit. *Rule nisi granted.*

Tomlinson moved to enter up judgment in a case of ejectment under sec. 210 Common Law Procedure Act. The affidavit stated the demise and provision for re-entry, that search had been made, that no sufficient distress had been found, and that half a year's rent was due. The COURT granted the order.

DOE *dem.* EVANS v. EDWARDS and WIFE.—*Grove* moved to enter a suggestion on the record of the death of Edwards, the husband; but an affidavit being headed as above, the COURT held it wrong, and directed it to be amended.

Re PARKER v. THE GREAT WESTERN RAILWAY COMPANY.—Mr. Parker appeared in Court, and took an objection to the motion for the review of taxation; that there had been no allocatur by the Master, and, therefore, there could be no review. *Channell*, Serjt. endeavoured to shew that there had been an allocatur in substance; but the COURT discharged the rule.

DUNNETT v. HOWARD.—*Couch* moved to enlarge the time for giving an award in this case, the arbitrator having neglected to do so. He referred to *Leslie* v. *Richardson*, 6 C.B. 378; and *Browne* v. *Collyer*, 2 Lowndes, M. & P. 470. *Honeyman* consented. *Rule granted.*

LIDDELL v. NEWPORT, HEREFORD, and ABERGAVENNY RAILWAY COMPANY.—In this case a rule nisi had been obtained to shew cause why a verdict which had been given for the plaintiff on the second count of the declaration should not be set aside and a verdict entered for the defendants. *Crowder*, Q.C. *Byles*, Serjt. *Barstow*, and *Shee*, of the Equity Bar, now shewed cause. The COURT, without hearing the other side, made the rule absolute. This case will be reported in the next number.

COURT OF EXCHEQUER.

Reported by FREDERICK BAILEY and C. J. B. HARTSLEY, Esqrs. Barristers-at-Law.

Thursday, Nov. 4.

TODD v. KELLAGE.

Governess—Domestic servant—General hiring.

Governesses are not within the rule applicable to menial or domestic servants, viz. that upon a general hiring the service may be determined by a month's warning or by payment of a month's wages. (a)

This was an action brought by the plaintiff, a governess, for that part of a year's salary alleged to be due up to the time of action brought from the defendant on an engagement entered into between the parties. The declaration was framed as upon a general hiring for a year. The facts were stated to be, that the plaintiff and defendant had agreed upon the 15th June, 1851, that the plaintiff should enter into the defendant's service as a governess, the salary to be 60*l.* a year, the plaintiff upon her cross-examination stating that she understood her engagement would continue up to the month of March following; the defendant, on the other hand, proving that the engagement with the plaintiff was monthly only, payable at or after the rate of 60*l.* a year. The sort of instruction by the plaintiff to the defendant's children not being quite approved of on the part of the defendant's family, and for that alone, the plaintiff was dismissed at a month's notice, receiving the month's salary. Subsequently this action was brought for the remainder as for a yearly hiring, and was tried at Guildford, before Jervis, C. J. when the jury returned a verdict for the plaintiff for 35*l.*

James, Q.C. now moved, pursuant to leave reserved, to set aside that verdict and enter a nonsuit, and also on the ground that the verdict was against the evidence. [PARKE, B.—Is not this a question of fact, whether there was a hiring for a year or any less period?] The declaration was drawn as upon a general hiring for a year, and it would be no doubt contended, on behalf of the plaintiff, that the plaintiff could not be dismissed at a month's notice with a month's wages; if a governess is to be considered as within the rule applicable to menial or domestic servants, the custom is that menial or domestic servants may be discharged at a month's notice or with a month's wages, so therefore may a governess. The defendant had no character with the plaintiff, and it would be hard indeed in principle if a family were to be obliged to retain a person as governess in their house, or pay such a person for a twelvemonth who may be found, after a very short interval, in no respect to suit the situation or expectation of the parties engaging her. The plaintiff lived in the house in this case, but it was due to her to say there was no fault whatever found with her, except as to the tuition. The verdict here was clearly against the evidence; in fact, there was no evidence of a hiring for a year, as the plaintiff herself stated that she understood the engagement was from June, when the arrangement, whatever it was, was entered into until the following month of March; and the defendant contradicted that, and said it was from month to month only. *Nowlan* v. *Ablett*, 2 C. M. & R. 54; and *Beeston* v. *Collyer*, 4 Bing. 309, were cited. *Cur. adv. vult.*

Nov. 13.—POLLOCK, C.B. delivered judgment.—In this case, which was tried before Jervis, C. J. we think there ought to be no rule. We are of opinion that the question which was intended to be presented by the learned judge himself was, whether the agreement with a governess was within the meaning of the rule as to menial or domestic servants, and liable to be discharged at a month's notice, with a month's wages. We are of opinion that a governess is not within the meaning of the rule, or subject to the terms to be placed on "menial or domestic servants." The position in which a governess is placed, the station she occupies in the family, usually speaking, a person of respectable means and situation in society, is a very different situation from that of a menial or domestic servant. Looking, however, to the point reserved, as far as it is a matter of law, we are of opinion that a governess is not within the rule as to menial and domestic servants. Treating the application as a verdict against evidence, the learned judge before whom the case was tried is not dissatisfied with the verdict, and we, who have read through the notes he has furnished to us, are not dissatisfied with it; therefore there will be no rule. *Rule refused.*

(a) See *ante*, p. 58.—The Court intimated that would see Mr. Justice Maule, and consider the question before granting the rule.

Friday, Nov. 19.

GODDLIFFE v. NEAVES.

Common Law Procedure Act—Notice of declaration being filed—Irregularity.

Where the plaintiff had entered an appearance, see stat. before the Common Law Procedure Act came into operation, and afterwards filed a declaration, endorsed with a notice to plead within eight days, and in default signed judgment without serving any notice on the defendant, the Court set aside the judgment, and all subsequent proceedings, for irregularity.

T. Jones shewed cause against a rule, calling on the plaintiff to shew cause why the judgment signed by him, and all subsequent proceedings, should not be set aside, and why the sum of 21*l.* 12*s.* 2*d.* paid by the defendant to the Sheriff of Middlesex in respect of a levy made by him on the defendant's goods under a fi. fa. issued by the plaintiff, should not be repaid to the defendant, together with the costs of this application. The writ was served on the 30th of September, and an appearance entered sec stat. on the 8th of October. The declaration was filed on the 27th of October, and judgment signed on the 5th of November. The declaration was endorsed with the usual notice to plead in eight days, and the question was whether there should have been any further notice than that endorsed on the declaration. The plaintiff in this case has complied with all that is required by the 62nd section of the Common Law Procedure Act; that section says, that "no rule to plead or demand of plea shall be necessary, and the notice to plead endorsed on the declaration, or delivered separately, shall be sufficient." It is said on the other side, that the case comes within the provisions of the 28th section, but that section the plaintiff has also complied with. That section provides for judgment for nonappearance, where the writ is not endorsed specially, which is the case here; by it the plaintiff on nonappearance may, on filing an affidavit of personal service of the writ, or a judge's order for leave to proceed under the provisions of that Act, and a copy of the writ of summons, file a declaration endorsed with a notice to plead in eight days, and sign judgment by default at the expiration of the time so endorsed; and the only question therefore is, whether the copy writ of summons is to be filed when there is an affidavit of service, or only when there is an order of a judge. Here no copy was filed with the affidavit of service, and it is true, if that is necessary, the plaintiff is irregular, but no purpose is served by filing a copy of the writ when the writ has reached the defendant; but when a judge's order is obtained there is good reason why a copy of the writ should be filed. [PARKE, B.—We must consider the proceedings after an appearance, not in the case of a non-appearance; here there has been a perfectly good appearance under the old law. *J. Brown.*—I contend, on behalf of the defendant, that they ought to have given us notice of having filed this declaration, otherwise we have no notice.] If, under the old law the plaintiff gave notice to plead, demand of plea, and rule to plead, that was all that was necessary, and judgment would be perfectly regular without any further notice of having filed the declaration, except inasmuch as the notice to plead was also a notice of the declaration having been filed. [PARKE, B.—I think the 28th section of the new Act only applies to future cases when there is no appearance, and that the 62nd only applies to cases when the notice mentioned in the 28th section has been given: look at the inconvenience,—the defendant in this case would never get any notice.] Under this Act the plaintiff may proceed to judgment without an appearance, *à fortiori* he may when, as in this case, an appearance has been entered. [ALDERSON, B.—But when he does appear, he is to have notice by the service of the proceedings, and you ought to give him something substantially the same as if he had appeared, for in this case he is in court. [PARKE, B.—I think you will find that this Act does not provide for appearance according to the old law, and therefore it seems to me that you should have proceeded without reference to this Act.] The policy of this Act is to give plaintiffs further facilities to obtain their rights; and the meaning of it is, that when the defendant does not come into court, and by so doing facilitate the proceedings against him, the plaintiff shall have a more speedy and simple means of proceeding.

P. Brown, contrà, was not called on.

POLLOCK, C.B.—We are of opinion that this rule should be absolute. It appears to me that the new Act does not apply to the state of things as presented by this case: what should have been done is another question, and I should be unwilling to give any opinion unless the question was raised; as it is, I think we must deal with this case as if the Act had not passed.

PARKE, B.—I am of the same opinion; and I think this new Act does not apply. The 26th section abolishes appearance according to the provisions of the 12 Geo. 1, c. 29, and 2 Wm. 4, c. 39, "except so far as may be necessary to support proceedings heretofore taken;" but this being a proceeding heretofore taken it is valid, and there is a good and regular appearance, but the sections of the statute cited apply to where there has been no notice. The effect would be that the defendant in this case would be without notice; I think the judgment is, therefore, irregular.

ALDERSON, B.—It is clear that either the defendant has appeared or he has not; well then, he has not appeared himself, but by Act of Parliament the plaintiff has placed him in the same position as if he had. Then, what is there in this new Act to say he shall be treated as if he had not appeared? The plaintiff's course, therefore, is clearly irregular,—whether he ought to have proceeded according to the old or new law, I give no opinion; he clearly ought to have brought himself within one or the other.

PLATT, B. concurred. *Rule absolute.*

TAYLOR v. ROGERS.

Common Law Procedure Act, 15 & 16 *Vict. c.* 76, *s.* 17—*Substitute for distringas to compel appearance—Affidavit.*

Hodgson moved for leave to proceed as if the service of the writ had been effected. The affidavit stated that various calls had been made, and that the answers were that defendant was out of town, and his return uncertain. That on the 21st October a copy of the writ of summons was left with defendant's wife at his dwelling-house, and that on the 25th of the same month another copy was left with the servant. That on the 3rd November the person who left the copies called and asked the servant if she had given the defendant the copy, and she replied that she had; and that subsequently the party applied at the house and saw the servant again, who said that her master had left town on the Wednesday previous.

The COURT thought this sufficient to shew that the writ had come to the knowledge of the defendant, and granted the application. *Granted.*

Saturday, Nov. 20.

YOUNG and OTHERS, assignees, v. WAUD.

Bankruptcy—Assignment of goods to defeat creditors.

A trader sold goods, and being unable to get cash for them, took bills, which he procured to be discounted, giving a mortgage upon his machinery to secure the amount; the mortgage was upon not half of the trader's effects:

Held, to be no evidence to go to a jury that the mortgage, under the circumstances, was an act of bankruptcy.

This was an action of trover brought by the plaintiffs as assignees of one Normanton, a bankrupt, to recover from the defendant the value of certain machinery and other property, assigned to him by the bankrupt before his bankruptcy, for securing a debt due from the bankrupt to the defendant, the plaintiffs contending that the assignment in question was itself an act of bankruptcy, and that the value of the goods belonged to them as

such assignees. The cause was tried at York before Campbell, C.J. when a verdict was found for the plaintiffs for 756*l.* 17s. 9d. with liberty to the defendant to move to enter a verdict for him. It appeared that Normanton, the bankrupt, was a manufacturer in Bradford, and having supplied certain goods to one Brookes, whose bills he took in payment, and being in want of ready money to carry on his trade, he discounted the bills with the defendant at twenty-five per cent. and gave him an assignment dated 2nd of July, 1851, by way of mortgage of his machinery and implements of manfacture, as a collateral security, with power to defendant, in default of payment of the bills, to sell and dispose of all the property so assigned. At this time the bankrupt, besides the machinery, &c. thereby assigned, was possessed of other property, about equal in value to that so mortgaged. Lord Campbell directed the jury, that as the effect of the deed was that the defendant might, in case default was made in payment at the time specified, seize the property assigned and put a stop to the trade of the bankrupt, the deed was an act of bankruptcy, and the property assigned thereby vested in his assignees by relation, his bankruptcy having subsequently occurred. A rule nisi having been obtained to set aside the plaintiff's verdict and enter it for the defendant, or for a new trial,—

Hugh Hill, Q.C. (*Hall* and *West* with him), shewed cause.—The verdict in this case was warranted by the evidence. The question now is, whether there was any evidence of an act of bankruptcy, and evidence to go to the jury. The deed of assignment by the bankrupt to the defendant was sufficient. There was no one provision in that deed binding him to advance 1s.; and the deed was made in secret. The 67th section of the Bankrupt Act (12 & 13 Vict. c. 106) provides, that if any trader liable to become bankrupt shall make, or cause to be made, either within this realm or elsewhere, any fraudulent grant or conveyance of any of his lands, tenements, goods, or chattels, or make, or cause to be made, any fraudulent gift, delivery, or transfer of any of his goods or chattels, every such trader doing, suffering, procuring, executing, permitting, making, or causing to be made, any of the acts, deeds, or matters aforesaid, with *intent* to defeat or delay his creditors, shall be deemed to have thereby committed an act of bankruptcy. *Graham and Others* v. *Chapman*, 21 L.J. 173, C.P. where all the previous authorities are collected, and was a considered judgment of that Court, is in the plaintiff's favour; as also *Wedge* v. *Newlyn*, 4 B. & Adol. 831, where it was held that a trader conveying away property to such an extent as will prevent him from continuing his business, and render him insolvent, commits an act of bankruptcy (those who rely upon such act of bankruptcy, on a trial, shewing that it was calculated to have the alleged effect, by evidence of the general state of the party's affairs at the time of such conveyance); and it is not sufficient to prove that the trader, under pecuniary pressure, disposed of some article essential to the carrying on of his business; as that a miller, by bill of sale, transferred his waggon and horses to a creditor who had arrested him. Here the seizure of the machinery, &c. so assigned by the bankrupt to the defendant, would have stopped his trade, and prevented him from continuing his business; and the jury so found.

Watson, Q.C. (*Tomlinson* and *Hamerton* with him), contrà.—Even admitting that the deed in question might have had the effect of preventing the bankrupt from continuing his business, yet that which was assigned was scarcely half of his property. He had as much again in value as that which was mortgaged; so that he did not thereby become insolvent, nor was the deed made with intent to defeat or delay his creditors, but on the contrary; and although his trade might be put an end to, in the event specified, for a short period, yet he might have been enabled to resume and carry it on again out of his other resources, and meet all demands upon him. In the case relied upon, *Graham and Others* v. *Chapman*, the whole appeared to have been assigned; here it was about one-half only, and with no intent to defeat creditors; the deed was made to secure payment of the bills then running, and there was no evidence of any act of bankruptcy to be left to the jury. There are two distinct classes of cases in reference to acts of bankruptcy: 1st, where there is an assignment of the whole, with a mere colourable exception only of part; and 2nd, an assignment of part with an intention to delay or to defeat creditors. Neither of these cases occurred here. *Gibbord* v. *Phillips*, 7 B. & C. 534, was cited.

Pollock, C.B.—The question before us is, whether the verdict found for the plaintiff should be set aside and entered for the defendant instead. On reference to the notes, it is "verdict for the plaintiff for 756*l.* 17s. 9d. with liberty reserved to the defendant to enter it for him, if the Court should think there was no evidence to go to the jury of any act of bankruptcy." If the learned judge had thought there was no evidence to go to the jury, he would have directed a nonsuit; but the plaintiff got the verdict, and we think he ought not to be in a worse position now than if he had been nonsuited at the trial. The deed assigned, by way of mortgage, about half the assignor's personal property, to secure the sums that would become due upon bills then running, and the deed was to become absolute three days after demand of the amount due thereon. We all think this would not amount to an act of bankruptcy. The question put to the jury appears to have been whether, if the deed had been put in force, it would have prevented the business going on. They determined that it would; and it was then held to be an act of bankruptcy. I think this is not correct in point of law, to say, under the circumstances, that it was an act of bankruptcy; nor, from the evidence before us, does there appear to be any other proved or shewn. I think the rule ought to be absolute to set aside the plaintiff's verdict, and enter a nonsuit.

Parke, B.—I am of the same opinion. We are to take it that the property assigned by the bankrupt, under the deed in question, did not constitute above one-half of his effects, and I agree with Lord Campbell as to his construction of the deed. It is to secure future advances, when a trader therefore assigns over to a creditor less than half of his property, does that constitute it an act of bankruptcy? I am clearly of opinion there is no case to be found that goes to that extent in the absence of all fraudulent intent. Neither *Wedge* v. *Newlyn*, nor any other of the cases, decide it to be so. It is not by disabling a trader from carrying on his business for a short time that creates an act of bankruptcy; and a conveyance of less than one-half of his effects without any fraudulent intent is not, in my opinion, an act of bankruptcy. The question whether such a state of things would or would not produce insolvency, is not a question which requires to be left to a jury. A fraudulent transfer of property by a trader, with the intent to delay or defeat his creditors, or the whole, with a mere colourable exception, is an act of bankruptcy. *Graham* v. *Chapman* is one of the last description (the learned judge stated that case); but this is not the present case, or anything like it; and I think a nonsuit ought to be entered.

Alderson, B.—I am of the same opinion. The bankrupt in this case sold his goods to Brookes, and wished to have cash for them, but not being able to get it, took bills; the bankrupt then puts his name on the bills, and gets them discounted, whereupon this mortgage of the machinery was then given as a further security, for the satisfaction of the person who discounted the bills. The only question, therefore, is, whether such a security, so given, being for less than half of the mortgagor's effects, amounts to an act of bankruptcy; and I think it does not.

Platt, B.—I agree with the observations of my brother Alderson as to the deed. If the bankrupt had had any distrust in Brookes, he would not probably have given the mortgage security; but he evidently expected Brookes would pay the bills when due. If this be so, how can it be said that he really intended to defeat or delay his creditors? or how is it an act of bankruptcy? He had it appears property to the amount of 3,200*l.* and pledged 1,500*l.* worth of his machinery, to remain as a security for the payment of these bills. Had it been an assignment of his whole property, with a colourable exception, which in fact would be no exception, the case may have been different; but this is not so here: this was rather to meet, as it seems to me, the demand of his creditors.

Rule absolute to enter a nonsuit.

Saturday, November 20.

Hancock *v.* Moulton.

Patent Law Amendment Act (15 & 16 *Vict. c.* 83) *—Sufficiency of particulars required to be delivered with pleas.*

Webster moved in this case for a rule to shew cause why the particulars of objections required by the Patent Law Amendment Act, 15 & 16 Vict. c. 83, s. 41,* should not be set aside or amended. That section required, in actions for infringement of letters patent, certain particulars to be delivered, and no evidence is to be allowed of matters not mentioned therein. There are a great number of pleas here, and the Court will have now to determine what degree of particularity is necessary under the Act before mentioned. To the fourth and fifth no objection is offered, as those appear to be a compliance with the object of the statute; but all the others are too vague and indefinite. [Platt, B.—By setting aside these particulars, you will in fact set aside the pleas delivered.] Yes, that would be the effect. [Pollock, C. B.—You may take a rule to shew cause why the particulars you object to may not be amended.]

Rule nisi.

Monday, Nov. 22.

Crowhurst and Ux. *v.* Laverach.

Agreement—Bastard child—Consideration.

A. the father of an illegitimate child, agreed in writing to pay to her 45*l. by certain instalments. The first instalment was paid; but the mother having obtained an affiliation order from the justices, the future payments were not made:*

Held, that no action would lie on the agreement, there being no sufficient consideration.

Tried at York, before Lord Campbell, C.J. when a verdict was returned for the plaintiff. The first count of the declaration was for meat, drink, washing, and lodging supplied by the female plaintiff, before her marriage, to a female child; and the second count was for meat, drink, washing, and lodging supplied by the plaintiffs to the said child, after their marriage. The defendant pleaded non assumpsit and payment; and the jury had assessed the damages at 8*l.* 10s. on the first count, and 16*l.* 10s. on the second count.

It appeared at the trial that, in 1846, the female plaintiff, then being unmarried, gave birth to an illegitimate child, and the defendant, who was the father, entered into a written agreement with her on the 14th of March, 1846, by which he undertook to pay her 45*l.* in the following sums: 12*l.* to be paid down, and the residue in three equal yearly instalments. The 12*l.* were paid down; but the female plaintiff, hearing that the defendant had got possession of the agreement, and had refused to give it up, applied in December of the same year to the magistrates for an order of affiliation, which was duly made, and the defendant was ordered to pay 2s. 6d. per week. With this order the defendant complied till the mother of the child married, when he discontinued the weekly payment; and this action was commenced by the mother and her husband. At the trial the agreement was put in; and it was objected by the defendant that it was not binding, either because no consideration was expressed on the face of it, or, if there was any, that which did appear was insufficient in law. His lordship overruled the objection, and the case went to the jury on the question, whether the mother had not abandoned the agreement when she resorted to the magistrates for an order.

A rule having been obtained for a new trial, on the ground of misdirection or in arrest of judgment on the second count,

Pearce now shewed cause, and contended that the agreement bore on its face, in connection with the admitted facts, a sufficient consideration; and also, that if it did not, it did not require any, as it need not necessarily have exceeded a year before it was carried into completion, for the death of the child might have put an end to it altogether. Next, as to the second count, he argued that the mother was properly joined with the husband, as she was the meritorious cause of action, and might be joined or not, as the husband chose. He cited Bull, N. P. 136; Com. Dig. tit. Baron and Femme, X.; 1 Chit. on Plead. 705, and contended that even if this were a defect, it was aided by the verdict. (Ashton's Entries, 61; *Prance* v. *White*, 1 M. & G. 731.) The payments under the order were deducted by the jury from the damages given on the first count.

Watson, in support, contended that the agreement required that a consideration should be expressed on the face of it; and that the consideration which was expressed was insufficient in law. If there was any consideration, it was, that the mother should support the child. Now, this she was bound to do by the new Poor Law Act (4 & 5 Wm. 4, c. 76, s. 71; and 7 & 8 Vict. c. 101, ss. 1, 2); so that that was not a sufficient consideration for the agreement of the defendant to pay this money. But the real consideration was, doubtless, the undertaking of the mother not to affiliate her child on the defendant; and that was not expressed on the face of the agreement. Now, if the Court should think that the agreement imported that consideration, then it was clear that the Chief Justice ought to have nonsuited the plaintiffs, for the mother had broken the agreement.

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* The 41th section of the 15 & 16 Vict. c. 83, enacts that "In any action in any of her Majesty's Superior Courts of Record, at Westminster or in Dublin, for the infringment of letters patent, the plaintiff shall deliver with his declaration particulars of the breaches complained of in the said action, and the defendant on pleading thereto, shall deliver with his pleas, and the prosecutor in any proceedings by scire facias to repeal letters patent shall deliver with his declaration particulars of any objections on which he means to rely at the trial, in support of the pleas in the said action, or of the suggestions of the said declarations in the proceedings by scire facias respectively, and at the trial of such action or proceeding by scire facias, no evidence shall be allowed to be given in support of any alleged infringment, or of any objection impeaching the validity of such letters patent, which shall not be contained in the particulars delivered as aforesaid: Provided always, that the place or places at or in which and in what manner the invention is alleged to have been used or published prior to the date of the letters patent, shall be stated in such particulars: Provided also, that it shall and may be lawful for any judge at chambers to allow such plaintiff, or defendant, or prosecutor respectively, to amend the particulars delivered as aforesaid, upon such terms as to such judge shall seem fit: Provided also, that at the trial of any proceeding by scire facias to repeal letters patent, the defendant shall be entitled to begin and to give evidence in support of such letters patent; and in case evidence shall be adduced on the part of the prosecutor, impeaching the validity of such letters patent, the defendant shall be entitled to the reply."

When once she applied for an affiliation order, there was an end of the agreement, and this verdict could not be sustained.

PARKE, B.—According to the literal construction of this agreement, the female plaintiff is only to maintain the child; and in that case there is no consideration, as she is bound by law to do that. Then if it be said that she was also to abstain from affiliating the child, then, although that would be a good consideration, still she has not adhered to that condition, and the defendant is therefore entitled to a rule absolute for a new trial. But probably the justice of the case will be best met by the plaintiffs consenting to enter a stet processus; for although they have got a verdict this time, it is not likely they will be so fortunate again.

Rule absolute, unless a stet processus is entered in a month.

Tuesday, Nov. 23.

ASH v. DAWNAY.

Sheriff—Remaining in possession an unreasonable time—Trespass.

A sheriff taking possession under a writ of fi. fa. and remaining in possession an unreasonable time, is liable to an action of trespass.

This was an action of trespass for breaking and entering the dwelling-house of the plaintiff, and staying therein, &c. The defendant pleaded a justification for entering, &c. as sheriff under a writ of fi. fa. to him directed, issued out of the Court of Ex. &c. The plaintiff new assigned that the trespass complained of was other and different to that justified, for that (in substance) after the alleged seizure, he remained in possession more than a reasonable time in that behalf requisite or necessary. Plea to the new assignment, justifying under the warrant, and that the fi. fa. &c. was running all the time. The cause was tried before Lord Campbell, at the last assizes at York, when a verdict was returned for the plaintiff, and a rule nisi having been obtained to arrest the judgment,

Watson, Q.C. (*Kemplay* with him), shewed cause. The jury have found the fact that the sheriff did remain in possession for a longer period than was reasonable. The question, then, is, whether that is not a trespass. *Winterbourne* v. *Morgan*, 11 East, 395, is a leading case upon the subject. There it was held that where a person entered under a warrant of distress for rent in arrear, continued in possession of the goods upon the premises for fifteen days, during the last four of which he was removing the goods, which were afterwards sold under the distress, he was at any rate liable in trespass, quare clausum fregit, for continuing on the premises and disturbing the plaintiff in the possession of his house after the time allowed by law. *Playfair* v. *Musgrave*, 14 M. & W. 239, is directly in point. That was an action of trespass against the sheriff for breaking and entering the plaintiff's dwelling-house. Plea, that the defendant entered under a fi. fa. and seized and took in execution a lease of the plaintiff's of the said dwelling-house under which the plaintiff held and was possessed of the same, and before the return of the writ *sold* the term, and continued in possession of the house for the further execution of the writ. The plaintiff new assigned that the defendant continued in possession an unreasonable time after he had seized and taken in execution and sold the lease. To this new assignment the defendant pleaded that the dwelling-house in the new assignment mentioned was not, at the time of the committing of the trespass newly assigned, the dwelling-house of the plaintiff. At the trial it appeared that the sheriff had sold the lease by auction, but that no assignment had been executed by him to the vendee. It was held that the seizure did not vest the term in the sheriff, but that it remained in the debtor until the sheriff executed an assignment to the purchaser, and that whether the word "sold" imported an actual assignment or not the sheriff could not justify remaining an unreasonable time in the house, and therefore that the plaintiff was entitled to have the verdict entered for him on the plea to the new assignment. (*Peppercorn* v. *Hofman*, 9 M. & W. 618; *Aldred* v. *Constable*, 6 Q. B. 370; Cro. Chas. 196; *Shorland* v. *Govett*, 5 B. & C. 485; *Barker* v. *St. Quintin*, 14 M. & W. 441; and *Ladd* v. *Thomas*, 12 A. & E. 117, were also cited.)

Hugh Hill, Q.C. (*Crowe* with him) in support of the rule. The plea in this case is an answer to the action. The sheriff cannot be a trespasser in a case like this, where he justifies the original entry under a writ of fi. fa.; unless he does something inconsistent with the writ, the sheriff ought not to have the responsibility thrown upon him of determining on the moment, as it may be, whether he has remained too long or not. [PARKE, B.—He must take care of himself and see that he does not exceed a reasonable time.] The original taking was lawful, as is admitted. The question is, whether the mere continuing in possession a longer time than he ought or is reasonable, *trespass* can be maintained. [PARKE, B. It is a direct wrong without any justification.] This case is analogous to those where a sheriff arrests a party, whilst the party arrested is privileged from arrest; the sheriff, in such a case, is not liable to an action, or it may be likened to that of an excessive distress. (*Lyne* v. *Moody*, 2 Strange, 851; 5 Taunt. 198; *Whitworth* v. ———, 1 M. & Rob. 531; *Yearsley* v. *Heane*, 14 M. & W. 322; *Ewart* v. *Jones*, ibid. 774; 2 Doug. 677, were referred to.)

POLLOCK, C.B.—I am of opinion this rule should be discharged. The case has undergone much discussion, but the only point which it is necessary for the Court to determine has been already decided by this Court in the case of *Playfair* v. *Musgrove*, reported in 14 M. & W. 239. If that case had been called to our attention when this rule was moved for I do not think we should have granted it. That case appears to me to decide this.

PARKE, B.—I am of the same opinion. The writ of fi. fa. authorises the sheriff to go into possession, and stay a reasonable time for the purposes required to discharge the duty devolving upon him; if he stays longer than a reasonable time for that purpose (and the jury have found that the defendant in this case did), the writ does not justify his doing so, and he is afterwards a trespasser. If sheriffs act fairly and promptly, perhaps juries would not say that they did remain an unreasonable time. *Davis* v. *Copper*, in 10 B. & C. 28, was a case where it was held trespass would lie against a magistrate for committing a party, charged with felony, for re-examination for an unreasonable time, but without any improper motive; and the warrant of commitment for an unreasonable time, if not wholly void, was clearly so as to the excess. The analogy of this case to those for excessive distress does not exist, as those actions are upon the statute. On principle the present case is a very clear one, and the sheriff is liable in trespass for remaining in possession longer than a reasonable time. I think, therefore, this rule should be discharged.

ALDERSON, B.—I am of the same opinion.

PLATT, B.—Under a fi. fa. a sheriff is justified in entering and taking possession, but not of remaining there longer than is reasonable to discharge the duty cast upon him. Now what are the pleadings here? [The learned judge then stated them and their effect.] The jury having found by their verdict that the defendant did remain in the plaintiff's house an unreasonable time, can any one doubt that the sheriff was a wrong-doer and a trespasser?

Rule discharged.

Wednesday, Nov. 24.

LUMLEY v. GYE.

Common Law Procedure Act.

Leave to demur and plead several matters under sec. 80 of 15 & 16 Vict. c. 76.

In this case a rule nisi had been obtained for leave to plead and demur together, under the 80th section of the Common Law Procedure Act. (See 20 Law T. Rep. 71—83.)

Hoggins (with him *Bayley*) now shewed cause.—The declaration alleged, that after the plaintiff had entered into a contract with Johanna Wagner to sing and perform for three months at Her Majesty's Theatre, the defendant wrongfully, with notice of the premises, entered into another contract with the said Johanna Wagner to perform and sing during two of the said three months for which she had so contracted with the plaintiff, at the Royal Italian Opera, by which the said Johanna Wagner was prevented from performing, and did not perform, her said contract with the plaintiff; and that he, the defendant, afterwards aided and enticed the said Johanna Wagner not to sing at the plaintiff's house, though he, the plaintiff, was willing that she should do so; and that the defendant further undertook to hold the said Johanna Wagner harmless for such her breach of contract; whereby the plaintiff lost her services, to the plaintiff's damage of 30,000*l.* To this the defendant proposed to demur, and also to plead, first, not guilty; secondly, a traverse of the plaintiff's contract being in force when the defendant's contract was made; thirdly, a traverse of the defendant's knowledge that the plaintiff's contract was then in force; and fourthly, a traverse of the allegation that the said J. Wagner was hindered from singing for the plaintiff by the acts of the defendant. It was now submitted that the defendant ought not to be allowed to take the course proposed by this rule. It was contended that the question of the existence and validity of the plaintiff's contract with Miss Wagner had been discussed in the proceedings in Chancery, where it was finally decided in favour of the plaintiff, and a decree pronounced, to which the defendant submitted. The traverses to be raised by these pleas were substantially gone into on that occasion, and the defendant ought not now to be allowed to dispute them again. [PLATT, B.—Can the decree of a Court of Equity deprive the defendant of his right to take the opinion of a jury on the fact, or of a Court of Error?] The defendant elected to be bound by that decision, as appears by the decree itself, which establishes the validity of the plaintiff's contract. [POLLOCK, C.B.—That is, it proceeds on that assumption; but we may go further, and assume an appeal to the House of Lords, and judgment thereon for the plaintiff; and still that would not affect the defendant's right to traverse the allegations in this declaration, and to demur to it. PARKE, B.—This is an action for damages for a bygone time: the defendant cannot be prevented by that decree from disputing this action.] The action is double. We say he wrongfully entered into the contract, and that he afterwards, that is, after the decree affirming our contract and annulling his, aided and enticed the said Joahanna Wagner not to sing at our house. [PARKE, B.—Then it is an action in part for disobeying the injunction: that is no reason for refusing the rule as far as the demurrer goes. POLLOCK, C.B.—I am not sure whether this is not the very sort of case which the recent Act was meant to meet.] Then as to the right of the defendant to plead as proposed concurrently with his demurrer. [PLATT, B.—Does the defendant pledge himself to the truth of this denial in those pleas?] As to the plea of not guilty, the affidavit of the defendant does not venture to swear that that plea is true, but says he can so swear, because he is advised that it is uncertain how much of the declaration is put in issue by it, and adds that he can swear he was not guilty of having wronged the plaintiff or any one in his negotiation with Miss Wagner. Then, as to the second plea, he swears he did not know the plaintiff's contract was in force when he entered into his; but we swear that when we entered into our contract, in November, we informed him of it, and that he afterwards made his contract with Miss Wagner in April. [PARKE, B.—If that be so, you will have a good answer to that plea, no doubt; but the plea is bad, as professing to answer the whole declaration, while it only, in fact, answers part. MARTIN, B.—It is quite new practice to me to discuss on such a rule the goodness in law of the proposed pleas.] At all events, the fourth plea ought to be rejected, as being the general issue over again.

Creasy (with him *Willes*) was called on to support this plea, and said that it was necessary, because the effect of the plea of the general issue was not clear, and the defendant did not wish to be made answerable for the conduct of Miss Wagner; and yet he might be told, if he sought at the trial to prove that she of her own accord refused to perform her contract with the plaintiff, because, as she had already sworn, she believed he had not paid his engagements of the last season, the plaintiff might turn round and say that defence did not arise under the plea of not guilty. He would however consent to the rejection of that fourth plea, on the understanding that the plaintiff would not raise any such objection at the trial. [PARKE, B.—You propose to cover the allegation that you indemnified Miss Wagner by your plea of not guilty. Well, I think the plea of not guilty covers the fourth plea also. POLLOCK, C.B.—Mr. Hoggins, don't you think you had better consent to the proposal of the defendant? We are all agreed, I believe, that the rule must be made absolute. PARKE, B.—All the four pleas will be allowed, unless the plaintiff will consent to Mr. Creasy's proposal. I think the defendant has a right to put on the record all the pleas. POLLOCK, C.B.—The object of the new Act being to put an end to unnecessary expense, the demurrer ought to be argued before the pleas are delivered.]

Hoggins suggested, that though the demurrer might be argued early next Term, he should not be prepared to go to trial at the sittings after, unless the pleas were delivered at once.

PARKE, B.—If you are beaten on the demurrer, the pleas cannot be tried, and need not be delivered, and so the costs of joining issue would be saved.

Rule absolute.

NOTE.—We beg to call the attention of our readers to an omission that occurred in our last number. In the report of the case of *Pinhorn* v. *Souster*, p. 82, Mr. Macnamara, in citing Mr. Wise's book on the Common Law Procedure Act, also referred to p. 87 of that work, in which the author states that the Act does not apply to cases in which a special demurrer has been delivered, and there has been a joinder on such demurrer prior to the 24th October, 1852, and suggests that there may be a power of amendment under the 222nd section.

BUSINESS OF THE WEEK.

Friday, Nov. 19.

LEWIN v. ROGERS.—*Barlow* shewed cause against a rule to change the venue in this cause. *Phlan*, in support.

Rule absolute; venue to be changed to London.

MORGAN v. CLIFTON.—To stand over, and come on as a motion.

HENSHAW v. BRICE. *Cur. adv. vult.*

YOUNG and OTHERS, assignees, v. WAUD. *Part heard.*

Saturday, Nov. 20.

ROBINSON v. SCARBOROUGH.—*Hayes* moved to set aside a warrant of attorney for illegality, on the ground that it was given for compounding a felony. *Rule nisi.*

ABBOTT v. MATHESON.—*Crowder*, Q.C. (*Joyce* with him), shewed cause against a rule obtained to set aside a verdict

and subsequent proceedings, on the ground that no proper notice of trial had been served. The question turned entirely upon the service of the notice, the plaintiff's witness stating that he left it with a female at defendant's attorney's office, and that female contradicting it. *Jones*, contrà. An affidavit of merits being produced.

Rule absolute; costs to abide the event.

DICKENSON v. ROOKE.—*Kingdon* moved, on behalf of the defendant, that the matter may be referred back to the arbitrator to be reconsidered, on the ground that the arbitrator proceeded in such a way that a third party, named Tanner, who could have shewn matter very material to be considered, had not sufficient time to instruct counsel properly to appear before him. *Rule nisi.*

CROWHURST and WIFE v. LAVERACK.
Part heard, and adjourned.

Monday, Nov. 23.

BATES v. ROTHERHAM.—*J. Wilde* moved for a rule to shew cause why an order of Martin, B. should not be rescinded. The action was on a marine policy of insurance, and the defendants had not yet pleaded. They had obtained the usual order for the production of all books, papers, and documents, and Martin, B. had now granted another order for the production of the log-book. The vessel was under American colours, and, as was customary in such cases, the log-book was left with the consul at the port into which the vessel put. The log had been written for, but it could not possibly arrive for some time, and in the mean time the cause was at a standstill. *Rule nisi granted.*

JONES v. MOSS.—*Joyce* moved to make an order of Platt, B. a rule of Court; *Granted.*

CROWHURST v. LAVERACK. *Rule absolute.*

MULHALL v. NEVILLE. *Cur. adv. vult.*

STRADMAN v. KNIGHT.—*Crowder*, Q.C. (*G. Denman* with him) shewed cause; *Prendergast*, Q.C. (*Thomas*, Serjt. with him) contrà.

Rule absolute, with costs; the bill of costs to be referred to the Master to be retaxed, with liberty to take evidence, and report to the Court.

WATSON v. WARD. *Part heard.*

PRICE v. HEWITT.—*Field* moved for leave to plead and demur. The declaration stated that the defendant requested the plaintiff to lend and advance him a certain sum of money, and falsely and fraudulently represented that he was of full age, &c. Parke, B.—Take your rule, only let the demurrer be argued first. *Rule nisi granted.*

Tuesday, Nov. 21.

GOLDSMID v. MUSPRATT.—*Clousby* shewed cause against a rule obtained that the Master review his taxation of the plaintiff's costs, referring to Dax's Book of Practice, 298. (*Peppercorn* v. *Johnson.*) *Milward*, contrà.

Referred back to the Master.

WATSON v. WARD. *Cur. adv. vult.*

ROBINSON and OTHERS v. DUGARD.—Tried at Durham, before Wightman, J. and a rule nisi having been obtained to set aside the plaintiff's verdict on the issue raised on the 5th plea, and to enter the verdict therein for the defendant, *Knowles* Q.C. and *D. Seymour*, shewed cause.—The plaintiffs were timber merchants; the defendant was a clergyman; and as one Matheson was building a parsonage-house for the defendant, the plaintiffs declined to continue supplying timber to Matheson without a guarantee for payment was given to them by the defendant; accordingly, a guarantee was given by the defendant to pay the plaintiffs out of moneys due to Matheson, upon certain terms and conditions in the guarantee specified, the proper construction of which was now to be determined by the Court. *Hamilton* v. *Spottiswood*, 4 Ex. 200, was cited on behalf of the plaintiffs. *Watson*, Q.C. and *Jos. Addison*, in support of the rule, referred to 9 Bing. 372.

Rule absolute.

TANNER v. WOOLMER and OTHERS.—Sir *A. Cockburn* moved to set aside a nonsuit and enter a verdict for 300*l.* pursuant to leave reserved by Martin, B. on the trial of this cause on the 19th inst. It appeared that the plaintiff, who was liable jointly with the defendants, in respect of a certain abortive railway scheme, paid to them 225*l.* to be entirely free from the concern, and took from them an indemnity. Subsequently, proceedings were taken by a claimant to bring the company within the operation of the Winding-up Act, and much litigation ensued, which resulted in an order that each of the managing directors, of whom the plaintiff was one, should pay 496*l.* The original debts sought to be wound up were 1,700*l.* but the costs of the litigation amounted to 3,019*l.* Under these circumstances, this action was brought, and 100*l.* being paid into court, Martin, B. nonsuited the plaintiff, it being his opinion that the indemnity did not provide against these costs, but merely against existing debts and claims on the directors, as set forth in two schedules attached to the indemnity. It was now contended that this ruling was erroneous, and that the plaintiff was entitled to a full and perfect indemnity at the hands of the defendants from these costs, to which he had not been a party.

Rule nisi granted.

BRANDEN v. SEWELL.—*James*, Q.C. moved for a rule to review the taxation of costs herein. *To stand over.*

SCOTTSHAUBE v. THE SOUTH STAFFORDSHIRE RAILWAY COMPANY. *Cur. adv. vult.*

STARKE v. MORRISON.—*Hawkins* moved to set aside the award herein. *Rule nisi granted.*

WILEY v. VARNISH.—*Lush* moved for a rule to inspect and take copies of certain books in the possession of the defendant. *Rule nisi granted.*

Wednesday, Nov. 24.

LUMLEY v. GYE. *Rule absolute.*

DOE dem. ULM v. POWELL.

Rule enlarged till first day of next Term, that the parties may have an opportunity of coming to an arrangement.

BAIL COURT.

Reported by T. W. SAUNDERS, Esq. of the Middle Temple, Barrister-at-Law.

Friday, Nov. 19.

(Before Mr. Justice CROMPTON.)

Re ROBINSON AND ANOTHER.

Highways—Surveyors of—Accounts—Lapse of time.

The surveyors of highways went out of office in March 1850, having, as it was alleged, a balance in their hands, which they should have paid over to their successors. Subsequently an information was laid against them under the 5 & 6 Wm. 4, c. 50, s. 42, which the justices dismissed, and afterwards two separate actions were brought in the County Court to recover such balance, in each of which cases the plaintiff was nonsuited. In the present Term (Michaelmas 1852) a rule was moved for a mandamus commanding them to pass their accounts and pay over the balance:

Held, that under the circumstances, and after so long a lapse of time, the Court would not interfere.

Pashley, Q.C. moved for a rule calling upon Thomas Robinson and William Peel to shew cause why a mandamus should not issue commanding them to pass their accounts as surveyors of the highways of the parish of Bushey, in the county of Hertford, and to pay over the balance of money in their hands as such surveyors, to their successors in office.

It appeared that the above parties served the office of surveyors from the 25th of March, 1849, to the 25th of March, 1850, during which time they received as such surveyors a sum of 442*l.* 9s. 6d. the proceeds of some gravel-pits, 300*l.* of which they had duly accounted for. On going out of office in March 1850, they rendered no detailed account of the balance, and after several vestry meetings upon the subject, an information before justices was laid against them under section 42 of the 5 & 6 Wm. 4, c. 50 (the General Highway Act). At the hearing, the justices declined to make any order. In March 1851 an action was brought in the County Court against the surveyors for the amount claimed, when the plaintiff was nonsuited. In March 1852 another action was brought in the County Court and tried by a jury, when the plaintiff obtained a verdict, with leave reserved to the defendants to move to enter a nonsuit; and upon motion for that purpose, a nonsuit was entered, on the ground that the remedy against the defendants was under section 103 of the above Act.

CROMPTON, J.—Here is a delay of more than two years. I do not say that an action for money had and received may not be supported; but can you at this period ask this Court to interfere by mandamus? You go before the justices, you bring two actions, and then having failed in each instance, you come for the assistance of this court. I think this delay has not been sufficiently accounted for. You should have adopted this course immediately upon their going out of office. *Rule refused.*

REG. *v.* FOXHALL.

Coroner's inquisition—Service of rule for certiorari—Next of kin.

In this case, which was a rule to bring up a coroner's inquisition, in order that it may be quashed (reported *suprà*, p. 54),

Huddleston now moved to make the rule absolute, upon an affidavit of service, which stated that a copy of the rule had been formally served upon the coroner and one Herbert, who was bound over to prosecute; and that diligent inquiries had been made in the neighbourhood as to the next of kin of the deceased, and that the result of such was that he had left none; that his master had informed deponent, that the deceased had been many years in his employment, that his wife had died many years ago, and that deceased had not married again.

His LORDSHIP, thinking this service sufficient, directed the rule to be made absolute.

Rule absolute.

BUSINESS OF THE WEEK.

Friday, Nov. 19.

REG. v. THE TOWN COUNCIL OF POOLE.—*Hodges* moved for a rule for a mandamus directing the town council of Poole to elect a sheriff, pursuant to the provisions of the Municipal Corporation Act (5 & 6 Wm. 4, c. 76). It appeared that, on the 9th of November instant, the town council elected a Mr. Durant, who is a practising attorney, and who on that ground claimed to be exempt. (*The Mayor of Norwich* v. *Berry*, 4 Burr. 2109.) *Rule nisi.*

AMIES v. KELSEY.—*Webster* moved for a rule in this case, which was an action for the infringement of a patent, for an inspection of the defendant's machinery. *Rule nisi.*

THE EARL OF CARDIGAN v. HENDERSON.—*Keane* shewed cause against a rule for an attachment, for not paying three sums of money, pursuant to an award. *Unthank*, contrà. *Rule absolute as to two of the sums.*

REG. v. HEMP and OTHERS.—*Wilkins*, Serjt. and *Huddleston* shewed cause against a rule for a procedendo to the Central Criminal Court in this case. *Parry* and *Metcalf*, contrà. *Rule discharged on terms.*

SAME v. SAME.—*Huddleston* moved for a rule for particulars of the offences intended to be relied upon in the general counts of this indictment. *Rule nisi.*

Monday, Nov. 22.

(Before Mr. Justice CROMPTON.)

Ex parte THE POOR-LAW BOARD.—*Tomlinson* moved for a rule for a mandamus commanding the guardians of the poor of the united parish of Farnborough and tithings of Gaitley and Hawley, in the county of Southampton, to appoint a medical officer for the out-door poor, pursuant to an order of the 18th June, 1852. *Rule nisi.*

Ex parte NUTTING.—*Lush* moved for a rule for a mandamus commanding the judge of the County Court of Kent, holden at Margate, to try a certain plaint of *Nutting* v. *Nutting* by a jury. This case had been already tried without a jury, when he gave judgment for the plaintiff. Subsequently a new trial was granted, and then the plaintiff gave notice of his intention to have the plaint tried by a jury. The jury were accordingly summoned, and duly appeared on the day of trial, no objection being offered on the part of the defendant. The judge, however, refused to allow the cause to be tried by a jury, as he had given no leave for the purpose, and directed the cause to be struck out. It was now insisted that the judge was wrong, and that the plaintiff had an absolute right to have his cause tried by a jury. *Rule nisi.*

Ex parte BURKE.—*Willis* moved for a rule for a mandamus to the Lords of the Treasury, commanding them to pay to Mr. Burke his salary, after the rate of 1,000*l.* a year, as Master of the Common Pleas in Ireland.

Rule nisi.

WARREN v. THOMAS and ANOTHER.—*Gray* moved for a rule for a procedendo in this case, and for the plaintiff to pay the costs of this application. This was a replevin in the County Court of Gloucestershire, which had been removed by certiorari by the plaintiff into this court. It was now objected that the removal was bad, inasmuch as the plaintiff had not entered into any bond, as required by the 9 & 10 Vict. c. 95, s. 121. *Rule nisi.*

THE QUEEN v. THE JUSTICES OF DERBYSHIRE.—*Boden* shewed cause against a rule for a mandamus to the above justices, to receive and hear an appeal. *Huddleston*, contrà. *Cur. adv. vult.*

THE QUEEN v. THE MAYOR OF NORWICH.—*Chandler* moved for a rule calling on the Mayor of Norwich to shew cause why a quo warranto information should not be filed against him for exercising the said office of mayor.

Rule nisi.

STOCKER v. WILSON.—*Manisty* shewed cause against a rule for setting aside the award herein. *Hawkins*, contrà.

Rule on terms.

Tuesday, Nov. 23.

WAITE v. MOSS and ANOTHER.—*H. Hill*, Q.C. shewed cause against a rule herein, for quashing the certiorari to remove this cause from the Wakefield County Court into this court. *Sykes*, contrà, was not called on.

Rule absolute.

Ex parte ROBINSON.—*Price* shewed cause herein. *Atkinson*, contrà. *Rule absolute.*

GOODWIN v. FULLER.—*Duncan* moved that the plaintiff, who had been in gaol for more than a year for a sum under 20*l.* as the costs upon a judgment of non pros. should now be discharged, pursuant to the 48 Geo. 3, c. 123, s. 1.

Rule absolute.

Wednesday, Nov. 24.

(Before Mr. Justice CROMPTON.)

Ex parte RAPER.—*Bliss*, Q.C. moved for a rule calling upon the town council of York to shew cause why they should not confirm an order of justices, fixing the salary of the gaoler of that city. *Rule nisi.*

Re EARNSHAW.—The *Attorney-General* moved for a rule calling upon a Mr. Earnshaw to shew cause why a quo warranto should not be filed against him for exercising the office of town-councillor of the borough of Oldham.

Rule nisi.

REG. v. POTTS.—In this case, which was a rule for a criminal information against Mr. Thomas Potts for printing a libel against two magistrates, *Miller*, Serjt appeared on behalf of the defendant, and having explained that he was merely the printer of the libel, the author of which he was ready to give up, and having also expressed his regret at the libel, and his belief of its untruth, it was arranged (*Hayes*, for the prosecution, consenting) that the rule should be discharged upon payment of costs.

Rule discharged upon payment of costs.

Ex parte DOWNES and ANOTHER.—*Garth* moved for a rule calling upon the Metropolitan Commissioners of Sewers to shew cause why compensation should not be awarded to Edward Downes and Edwin Collins for certain injuries done to their premises in carrying out the 11 & 12 Vict. c. 112. *Rule nisi.*

DOE *dem.* HAYNES and ANOTHER *v.* ROE.—*Ogle* moved for a rule to strike out the first count in the declaration.

Rule nisi.

Ex parte PAULL.—*M. Smith* moved for a rule, calling upon the churchwardens of Kingsbury Episcopi, Somerset, to shew cause why a mandamus should not issue, commanding them to raise, by a church-rate, a sum sufficient to satisfy Mr. Psull for money advanced by him, and interest amounting to 95*l.* under the provisions of the 59 Geo. 3, c. 134, s. 14. *Rule nisi.*

REG. v. THE TOWN COUNCIL OF SALISBURY.—*Smirke* (*Swayne* with him) moved for a rule calling upon the Town Council of Salisbury to shew cause why a mandamus should not issue, commanding them to pay the sums of 231*l.* and 329*l.* 18s. 8d. to a person appointed to receive the same by the justices of Wiltshire, in respect of the keep, &c. of certain prisons, and expenses of the gaol. *Rule nisi.*

CONDON v. COX.—*Udall* appeared to shew cause in this case (see LAW TIMES, Nov. 6, inst. p. 54), and admitted that he could not successfully oppose the rule. *Duncan* in support. *Rule absolute for a new trial.*

REG. v. THE TOWN COUNCIL OF POOLE.—*Hodges* moved to make this rule absolute, no cause being shewn.

Rule absolute.

Ex parte DAWSON.—*Cowling* shewed cause herein. *Pearce* contrà. *Cur. adv. vult.*

ANNAS and ANOTHER v. KELSEY.—*Hindmarch* shewed cause against a rule for an inspection of the defendant's machinery. *Webster* in support of the rule.

Cur. adv. vult.

Ex parte PHILLIPS.—*Cowling* moved for a rule calling upon Mr. Thomas Gregory to shew cause why a quo warranto should not be filed for exercising the office of town councillor of Reading. *Rule nisi.*

Reported by C. E. Ridley, Esq., of Lincoln's-inn, Barrister-at-Law.

Saturday, Nov. 20.

Re The Ipswich Charities.

Practice—Filing of affidavits.

On this petition, which had been several times in the paper, being called on, counsel asked that it might stand over, affidavits having been filed which required answering.

The Lord Chancellor.—This petition has already stood over several times for that purpose. I will put an end to the practice, which of late has become very general, of allowing parties to file affidavits over an unlimited period of time. The business of the court is thereby delayed, and costs unnecessarily increased. Under the circumstances I will allow this petition to stand over, but it is the last time I will accede to such a request.

IN LUNACY.

Re Wilson.

Practice—Committee of the estate and person of a lunatic—Solicitor having funds in hand belonging to a lunatic—Costs.

Taylor applied in this case for the confirmation of the Master's report, finding certain persons fit to be appointed committees of the person and estate of the lunatic.

The Lord Chancellor.—I shall at present make no order on this petition. I am not at all satisfied with the manner in which the estate of this lunatic has been dealt with; his son has, without any sanction of the Court, been dealing with it as if it were his own. I am not at all satisfied either with the conduct of the solicitors. They appear to have had a large sum of money in their hands lying idle at their bankers. I shall direct that all money in their hands be paid into court within three days, and an account be taken of the sums they have received and what they have done with it. I shall make the solicitors pay their own costs, and for the present, at least, will not allow the committee to further interfere with the estate. This is the only order I shall make at present. I will inquire into the matter, and it may again be mentioned. While I sit here, the representative of the Crown, I will teach persons that they shall not with impunity so deal with the property of those who are labouring under so severe a visitation of Providence, and whose interests they are bound to protect.

SMITHSON v. POWELL.

POWELL v. SMITHSON.

Vendor and purchaser—Specific performance—Compensation.

Advertisement of an estate for sale by auction described as containing "coal which was then in the course of working in the adjoining estate" the vendor having no right to the coal and minerals under the surface, the conditions of sale (which did not allude to the vendor having such a right, and which at the sale was stated by the auctioneer to be in another party), stipulated that the vendor's title should be deemed accepted unless the purchaser declared within one month after the delivery of the abstract of title his dissatisfaction, and that if any error, misstatement, or omission should be discovered in the description of the property, the same should not vitiate the sale, but should be the subject for compensation. On the face of the abstract, which was duly delivered, the right to dig coals, &c. appeared not to be in the vendors. A purchaser made no objection to the vendors' title within the stipulated time. On a claim filed by the vendors for specific performance, and a cross claim by the purchaser for compensation, the Vice-Chancellor dismissed them both without costs. An appeal from that decree by the purchaser was dismissed, and, by consent, a decree was made for specific performance.

An agreement for the purchase of an estate may be specifically enforced, although an error of a trifling nature in the character of the property shall have appeared in the advertisement for sale.

This was an appeal from a decision of the Vice-Chancellor Knight Bruce. The facts were briefly these:—

In the month of July, 1850, a small freehold estate, called the Heights, in the parish of Bingley, in the county of York, was advertised for sale. The land consisted of about 36 acres, and, as the advertisement put forth, "contained coal, which was then in the course of working in the adjoining estate." The land was sold by public auction, subject to certain conditions of sale, and knocked down to the defendant for the sum of 1,620*l*. The tenth condition of sale declared that the purchaser of each lot should, within one month after the delivery of the abstract of title, declare whether the title was satisfactory or not; and in case he should consider the title should be deemed accepted. In case he should, within the time aforesaid, declare himself dissatisfied therewith, the vendors should be at liberty to return the deposit-money, and to resell the premises, &c.; and the fifteenth, that if any error, misstatement, or omission, should be discovered in the description there stated or produced of the premises, the same should not vitiate the sale thereof, but the respective purchasers or vendors, as the case might be, should pay or allow a compensation or equivalent, which should, if necessary, be ascertained by two arbitrators, in the usual way.

An abstract of the plaintiff's title was delivered to the purchaser's solicitor on the 31st of July, and by it it appeared that, by indentures of lease and release, dated, &c. (being the conveyance of the property from the grantor to the persons under whom the plaintiffs claimed), the coals and minerals under the property were expressly reserved to the grantor. The purchaser, notwithstanding this reservation, took possession of the land, erected new outhouses, and made no objection to the title within the stipulated month, but in the following December he commenced a correspondence with reference to the vendor's title to the right to dig coal, &c. He refused to complete the purchase, unless he received compensation for the coal.

The vendors then filed a claim for specific performance, and the purchaser also filed a claim for compensation, and on receiving it offered to complete.

The Vice-Chancellor Knight Bruce at the hearing, on the authority of *Townshend* v. *Stangroom*, 6 Ves. 328, dismissed both claims without costs, and left the parties to their legal rights, holding that the plaintiffs had been guilty of culpable negligence in not stating, as they ought to have done in their advertisement, that the right to the coal under the surface was reserved, and that the defendant had been guilty of neglect and delay, which shut him out of relief.

From this decree the purchaser appealed.

Malins and *E. Webster* appeared for the purchaser, and urged as an excuse for the delay in objecting to the vendor's title, the indisposition of his solicitor. They cited *Burrough* v. *Oakley*, 3 Swanst. 159, as an authority that the taking of possession by a purchaser and that acts of ownership incident to that possession did not prevent his investigating the vendor's title. The right to dig coal was the inducement for the purchase. It was not a trifling error in the description. *Calcraft* v. *Roebuck*, 1 Ves. 221.

James Russell and *Daniel*, for the vendors, excused the announcement in the advertisement by asserting that the title-deeds were in the hands of a mortgagee at the time it was issued. The error was mentioned by the auctioneer at the time of sale and in the hearing of the purchaser. The announcement was not made *mala fide*. He was bound by his purchase. His acts of ownership had waived any objection to the vendors' title. The right of digging coal was apparent on the face of the abstract not to be in the vendor, but in the person under whom they immediately derived their title, and the deed by which that right was expressly reserved was recited. Having waived the objection, he had no claim for compensation. *Burnell* v. *Brown*, 1 J. & W. 168.

Malins in reply.

The Lord Chancellor.—The sole question in this case is, did the vendors represent themselves as having the right to dispose of the coal, and the mines under the surface? The advertisement did represent that there was coal under the surface, and looking at the terms of that advertisement, I should say that the vendors thought they had a right to the coal, and that they intended to sell it. Now their solicitor at the very outset of the purchase discovered that his clients had no such right, and so the purchaser was informed. Yet he insists that under the terms of that advertisement he is entitled to compensation. The vendors insist on the purchaser's liability to specifically perform his agreement, and the purchaser, on the other hand, insists that if he is bound to perform his agreement he is entitled to compensation for the loss of the coal, as being part of that which he had agreed to purchase. Then each of the parties file a claim. This case, then, is very like that of the *Marquis of Townshend* v. *Stangroom*. There Lord Eldon dismissed both bills, holding it impossible to execute an agreement which was so perfectly different from that which the purchaser had signed. The whole agreement was to be taken together, and the whole must be executed or abandoned. He dismissed both bills on the ground of the inaccuracy in all the transactions; and the Vice-Chancellor, in dealing with this case, appears to have followed the same course, and I agree with him. That case certainly applies. Now it may be stated as a general proposition, that where a man buys that which is not the vendor's to sell, the purchaser is entitled to compensation. It is difficult to say this is altogether a question of title; it is rather the withholding of information. [illegible] coal [illegible] of the purchaser did not [illegible] coal, had he done so, it would [illegible] case upon him. The evidence on that [illegible] ful. An estate, though of itself very [illegible] chaser might consider worth nothing [illegible] exercise any privilege, or enjoy any rights [illegible] that is not the only feature in this case. It [illegible] that the conditions expressly stipulate as to [illegible] acceptance of the title. The abstract was [illegible] in the stipulated time, and on the first page [illegible] abstract it is apparent that the right to [illegible] was excepted. There was no contract for the [illegible] of the coal by any particular description. The [illegible] was to be sold; and there was coal which was [illegible] working in the adjoining lands. Had the coal [illegible] the subject of, or the inducement for, the [illegible] the purchaser would doubtless have made [illegible] as to the coal, and would have then been, [illegible] afterwards, informed of the error in the [illegible] ment. This error was confined to the advertisement. There is no mention of the sale of coal in the conditions, and this very omission was of itself sufficient to put him to his inquiry. He takes no objection; but enters into possession, and commits a species of waste by pulling down buildings and erecting others more suitable to the tenant. The estate is occupied by an old tenant, who states that nothing was said to him about the coal. Now, if this purchaser had not intended to take the estate without the coal, would he not have resisted the contract? Would he have acted as owner of the estate, and laid out his money as owner? What he says is, that his solicitor was ill, and could not examine the abstract, but surely another solicitor might have been found when the time for acceptance was so limited. This case is similar to that of *Burnell* v. *Brown*. Whether the Court could grant compensation, even if it were of opinion that the case required it, is a question of some doubt. I am of opinion that it would not grant compensation for the right to take coal. It was said the coal was not worth the digging for, but it might be worth three or four thousand pounds. How then was the Court to ascertain its value? Can it be said that the purchaser ought to have two-thirds more than the whole purchase-money, as a compensation for the loss of the right to take coal under the surface of his purchase? He has chosen to enter into possession, he must take it as owner; he must take the subject of his purchase as it is. The purchaser has no right to complain. I agree with the Vice-Chancellor in thinking that the vendors ought to have been more particular in their statements as to what they had to sell. The seller has no right to fix the purchaser with the contract, neither has the purchaser any right to compensation. I shall dismiss this appeal with costs, and I advise the purchaser to complete his purchase without further litigation.

A decree was taken by consent for specific performance the purchaser paying interest according to his contract, and the vendor accounting for the [illegible] received.

Monday, Nov. 22.

DUKE OF BUCCLEUGH v. COMBES.

SAMUEL BERREY.

Release of prisoners for contempt—Appearance.

Browne applied for the discharge of two prisoners out of the custody of the keeper of the Queen's prison. They had been committed for contempt.

Freeling, who appeared for the plaintiff (who had been served), did not oppose.

The Lord Chancellor.—There is no necessity for your appearing. It is by my order that these prisoners are discharged. I wish it to be understood that in the cases of persons who are committed for the nonpayment of costs, which have been vexatiously incurred, I will give no relief.

COURT OF APPEAL IN CHANCERY.

Reported by Owen Davies Tudor, Esq., of the Middle Temple, Barrister-at-Law.

(Before the Lords Justices.)

Friday, Nov. 12.

CATOR v. REEVES.

Practice—Equity Jurisdiction Improvement Act, s. 48.

There being several incumbrancers, a decree was made for the sale of the mortgaged property under the 48th section of the statute 15 & 16 Vict. c. 86, on a claim filed for a foreclosure.

In the year 1844, J. F. Reeves and [illegible] who were tenants in common of [illegible] and copyhold hereditaments, [illegible] plaintiff; and in the year 1850, [illegible]

with the plaintiff a policy of assurance on his life as a further security. In 1850, J. F. Reeves mortgaged his moiety of the freehold and copyhold hereditaments and the policy of assurance to J. R. Wilkinson. In 1851, a joint judgment was entered up against J. F. Reeves and O. Reeves, and in 1852, a judgment was entered up against O. Reeves alone. J. F. Reeves became a bankrupt in February 1852, and O. Reeves, in June 1852. The plaintiff filed a claim against the incumbrancers and the assignees of the two bankrupts for foreclosure of the freeholds and copyholds, and of the policy of assurance. The claim came on to be heard before the Lords Justices, who took it for the Vice-Chancellor Stuart, to whose Court it was attached, and the plaintiff applied to the Court to direct a sale of the property comprised in the mortgage under the 48th section of the statute, 15 & 16 Vict. c. 86.

The COURT thereupon made a decree as follows:—Declare, that the mortgaged property ought to be sold, and let the same be sold accordingly. Let the proceeds of the sale be paid into court, distinguishing the proceeds of the freehold and copyhold property from those of the policy. Let accounts be taken of what is due to the plaintiff and other incumbrancers, according to their several and respective priorities. Reserve further directions and costs. Liberty to all parties to apply to Vice-Chancellor Stuart.

Dauney appeared for the plaintiff.

Kaylake, for the subsequent incumbrancers.

Murray for the assignees of the bankrupt mortgagors.

Saturday, Nov. 20.

YEATMAN v. MOULSEY.

Practice—Equity Jurisdiction Improvement Act, sec. 1.

A slight alteration in writing, being only the transposition of the order of the Christian names of one of the parties, was made in a bill printed according to the provision of stat. 15 & 16 *Vict.* c. 86:

Held, that it did not constitute a sufficient ground for refusing to file the bill.

Schomberg, on behalf of the plaintiff in this case, moved that the Clerk of Records and Writs should be directed to receive and file the bill, although it had been slightly altered by writing. It appeared that Vice-Chancellor Kinderaley, upon the application being made to him in the first instance, conceiving that he had no jurisdiction, refused to make any order, observing that he considered the proper course for the parties to adopt was to apply to the Lord Chancellor or to the Court of Appeal. The alteration, in writing, was of the following character:—A party to the suit, whose Christian names were Constantia Maria, was in the printed bill by mistake described as Maria Constantia, whereupon the plaintiff's solicitor altered the bill, in writing, by striking out the printed word Maria, and inserting the same word, in writing, after the word Constantia. In consequence of the alteration, in writing, the Clerk of Records and Writs refused to receive and file the bill, as he did not consider that it sufficiently complied with the requirements of the 1st section of the Equity Jurisdiction Improvement Act. It was urged, on behalf of the plaintiff, that a liberal construction ought to be put upon this, as upon other sections of the Act; and although it is enacted by the 1st section that the practice of engrossing on parchment bills of complaint to be filed in the court, and of filing such engrossment, is to be discontinued, and that the clerk of records and writs of the court is to receive and file a printed bill of complaint in lieu of an engrossment thereof, it was not the intention of the Legislature to prevent the filing of a printed bill, with trifling written corrections or alterations. It was clear, moreover, that under the 8th section of the Act, a printed bill might be amended by writing.

Lord Justice KNIGHT BRUCE.—We think we shall not be departing from the spirit of the Act of Parliament by allowing the bill in its present state to be filed. We must not be understood, however, as intending to sanction the filing of a bill of this kind where the alteration is at all extensive or important, or where it is such as to interfere with the legibility of the bill. The alteration here being so trifling, and amounting to a mere change in the order of the names, we think we may treat the bill in its present state as a printed bill within the spirit of the statute. On certain particular occasions the Book of Common Prayer have been directed to be altered with a pen, but they remained, nevertheless, printed books.

The COURT thereupon made an order directing the Clerk of Records and Writs to receive and file the bill so altered by the writing.

Saturday, Nov. 20.

ATKINSON v. PARKER.

Practice—Equity Jurisdiction Improvement Act—Supplemental Order under 52nd section.

A female ward of the Court, prior to the passing of statute 15 & 16 *Vict. c.* 86, *married without leave of the Court. The suit was revived against the husband, and her share of the property which was in question in the cause was vested in trustees for the benefit of the female plaintiff and her issue:*

Held, reversing the decision of the Court below, that such a change or transmission of the interest of the plaintiff had taken place as justified an order under the 52nd section, to the effect of the usual supplemental decree, and that it was not necessary to exhibit any bill of revivor or supplement.

In this case, a bill had been filed in behalf of a female ward of the Court, for the administration of the real and personal estate of a testator, to one-seventh part of which she was absolutely entitled under his will. During the progress of the suit, the plaintiff being still an infant, married without leave of the Court, and the suit was thereupon revived against her husband. A settlement was afterwards made of the lady's property under the testator's will, which was vested in trustees for the benefit of herself and her issue. Afterwards her husband died. An application was made to Vice-Chancellor Stuart, under the 52nd section of 15 & 16 Vict. c. 86, for an order to the effect of the usual supplemental order, for the purpose of carrying on the suit against the trustees of the marriage settlement, upon an allegation of the before-mentioned change or transmission of interests, by the vesting of the property of the female plaintiff under the testator's will in such trustees. His Honour, however, refused to make the order, considering that the case did not come within the meaning of the statute, and suggested that an application should be made to the Court of Appeal. The application was accordingly renewed before their lordships.

Hardy, for the plaintiff, contended that the statute was to be construed liberally, in order to carry its intent into effect, and that even if it did not come within the strict letter of the statute, it clearly came within its meaning, that it was evident that when the property of the plaintiff was by the conveyance, transfer, assignment, or otherwise of herself and her late husband vested in the trustees upon the trusts of her settlement, a change and transmission of interest had taken place within the meaning of the statute.

Lord Justice KNIGHT BRUCE said that both he and Lord Cranworth thought that they would be acting in accordance with the spirit of the Act of Parliament in applying it to the case then before them, especially as the new defendants, if they objected to the order, were enabled by the action of the statute to move to discharge it.

The order was accordingly made.

ROLLS COURT.

Reported by J. MACAULAY, Esq. of the Inner Temple, Barrister-at-Law.

Saturday, Nov. 20.

MARSHALL v. FOWLER.

Husband and wife—Husband's insolvency—Mortgage of wife's legacy by husband and wife—Wife's equity to a settlement.

A married woman was entitled to a share of the residuary personal estate of a testator, subject to a life interest therein. She and her husband mortgaged this share by way of collateral security for a sum of money exceeding in amount the share of the residue. The tenant for life having died, the married woman filed a claim to have the whole of her share with residue, amounting to about 2,200*l. secured for her benefit, and to have a settlement thereof, her husband being insolvent and without any means of supporting her, and there being six children, of whom three were infants, and two of these wholly dependant upon their parents for support. The Court made a decree as prayed.*

This was a claim filed by Mrs. Ann Marshall, wife of John Marshall, by Charles Tipple, her next friend, seeking to have a share to which she was entitled in the residuary personal estate of the late Lawrance Trustram, of Baldock, in the county of Herts, secured for her benefit, and a settlement thereof duly executed under the direction of the Court. It appeared that Mr. Trustram by his will, bearing date the 14th of January, 1832, after bequeathing certain specific and pecuniary legacies and annuities which have since ceased, appointed William Fowler and Mary Ann his wife, and William Hanscombe, executors of his will, and bequeathed to them the residue of his personal estate, subject to the payment of debts, legacies, and annuities, upon trust to invest the same, and pay the dividends to the said Mary Ann Fowler for life, and after her decease the testator bequeathed all the residuary personal estate to six persons (of whom Mrs. Ann Marshall, the plaintiff, was one), together with the children and grandchildren of testator's cousin Elizabeth Wand, who should be living at the time of the decease of Mary Ann Fowler, the tenant for life. The testator died in March 1837, and his will was duly proved on the 26th of April, 1837. The tenant for life, Mrs. Mary Ann Fowler, died on the 21st of October, 1851, when the interest of Mrs. Marshall fell into possession, and there were then living nine grandchildren, but no children of Elizabeth Wand, who had also departed this life. The plaintiff, Mrs. Marshall, was therefore entitled to one-fifth part or share of the testator's residuary personal estate. This, after payment of legacy duty, consists of the sum of 468*l.* 13*s.* 5*d.* Consols, 550*l.* Three and a Quarter per Cent. Annuities, and 1,213*l.* 17*s.* 2*d.* Three per Cent. Reduced Annuities, together with one-fifteenth part of 4,000*l.* in reversion expectant on the decease of William Marshall. By indenture of the 21st of November, 1838, the plaintiff and her husband assigned her share in the testator's residuary estate to Henry Francis and Henry Dunkin Francis, by way of mortgage, as a collateral security for the sum of 4,000*l.* and interest, secured by another indenture of mortgage of even date. The mortgage executed by Mr. and Mrs. Marshall was assigned on the 24th of March, 1843, to John Bridges, and Joseph Margetts Pierson, having since paid the sum of 4,000*l.* to John Bridges in respect thereof, Mr. Bridges became a trustee for him. Mr. Pierson having died, J. M. Pierson has taken out administration to his estate, and claims the benefit of the security. It was alleged by the plaintiff, however, that the 4,000*l.* had been realised by means of the other security, and that nothing remained due in respect thereof. It appeared that no settlement had been made on the plaintiff; that her husband had formerly carried on a large brewery business in partnership with J. M. Pierson, deceased; that he had become embarrassed, and was now in utterly insolvent circumstances; that he had no certain means of supporting himself and family; that the plaintiff had six children, of whom three were infants; and that two of those, of the ages respectively of twelve and thirteen were wholly dependent upon their parents for support. Mrs. Marshall, therefore, claimed to have the whole of the share of the residue settled upon her.

R. Palmer and *W. Morris* for the plaintiff.

J. Pearson for Pierson the assignee.

R. Pryor for the trustees.

The following cases were cited: *Scott* v. *Spashett*, 21 L. J. 349 (N.S.) Ch.; *Dunkley* v. *Dunkley*, 16 Jur. 767; *Re Cutler*, 14 Beav. 220; *Brett* v. *Greenwell*, 3 Y. & C. Ex. 230; *Napier* v. *Napier*, 1 Dr. & W. 410.

The MASTER of the ROLLS made the order as claimed, and declared the plaintiff entitled to the whole of the fund now payable, to be settled on her as follows: to herself, for life, to her separate use, without power of appointment, remainder to the children as the husband and wife shall jointly appoint, and in default of appointment to the children equally on attaining the age of twenty-one years. The fund to be carried to the account of the wife and children. Liberty to apply generally; liberty to apply as to the reversionary interest in the 4,000*l.* The fund to be brought into court. The costs of all parties as between solicitor and client, to be taxed and paid out of the fund in court.

Thursday, Nov. 11.

BALL v. CARTER.

Practice—Proof of deed.

Pryor, in this case, moved for leave to take evidence by affidavit instead of viva voce, to prove a deed.

The MASTER of the ROLLS said the proper way was to move to prove the execution of the deed by affidavit, and granted the motion.

Nov. 6 *and* 13.

STANSFIELD v. HOBSON.

Mortgagee in possession—Acknowledgment taking case out of Statute of Limitations.

A mortgagee of lands entered into possession in 1825, *and made no acknowledgment afterwards except that on the 5th of February,* 1850, *he wrote a letter to the solicitor of the plaintiff in these words, "I have received yours of the 2nd inst. I do not see the use of meeting either here or at M. unless some one is ready with the money to pay me off."*

Held, on the authority of Trulock v. Robey, *that this was a sufficient acknowledgment to take the case out of the statute.*

This was a claim by James Stansfield against John Hobson and others to redeem certain lands at Oldham, Lancashire, belonging to the subscribers in an amicable building society, called the Union Building Club, and consisting of about 7,840 square yards. This property was vested in Stansfield and others, in trust, and in November, 1824, they mortgaged it to Hobson for 1,000*l.* and afterwards charged it with a further sum of 1,000*l.* It was alleged that Hobson, who had entered into possession of the premises in 1825, rendered an account in 1836, and that he was then repaid; but these matters [illegible] could be settled upon [illegible] to

the following day, the 6th February, 1850, in which there words occur:—"I have received yours of the 2nd inst. I do not see the use of meeting either here or at Manchester, unless some one is ready with the money to pay me off." This was supposed to be in reply to a letter from the solicitor, but no such letter is to be found. There were various other letters written by the defendant, and produced by the plaintiffs, but none of them were considered by the Court to be of any importance. The mortgagee had gone into possession in 1837, and had so remained and in receipt of the rents and profits ever since; and he now insisted on the benefit of the Statute of Limitations, 3 & 4 Wm. 4, c. 27, s. 28. The plaintiffs, on the other hand, endeavoured to avoid the bar of the statute by setting up the alleged acknowledgment contained in the letter of the 5th of February, 1850.

Bisley and *Osborne*, for the plaintiffs, relied on the case of *Trulock* v. *Robey*, 12 Sim. 402.

R. Palmer and *Humphreys* contrà. The following cases were cited:—*Holdin* v. *Hale*, 6 Madd. 180; *Batchelor* v. *Middleton*, 6 Hare, 75; *Hyde* v. *Johnson*, 2 Bingh. N.C. 677.

Saturday, Nov. 13.—The MASTER of the ROLLS.—This was a suit for the redemption of an estate mortgaged to John Hobson, and the only question now reserved for consideration is, whether the letter of the 5th February, 1850, written by the defendant to the solicitor of the plaintiffs, is such an acknowledgment as takes the case out of the Statute of Limitations. It was said at the hearing, and properly said, that if this letter has not that effect, no other can have. The words are:—"I do not see the use of meeting, either here or at Manchester, unless some one is ready with the money to pay me off." The statute only says that where formerly parol declarations were admitted, they must now be written; but what amounts to an acknowledgment is to be determined as before. Some of the cases on this subject involve very nice distinctions, but the case of *Trulock* v. *Robey*, 12 Sim. is so like the present, that it is not distinguishable from it. In both cases there is an acknowledgment of title of the mortgagor, or that the relation of mortgagor and mortgagee exists. I cannot hold this acknowledgment not to be good without overruling *Trulock* v. *Robey*; and therefore I must hold that this letter was a sufficient acknowledgment under the 28th section of the statute.

Saturday, Nov. 13.

OVERBURY v. TEALE.

Partnership transactions — Account — Misrepresentations, liability of party making.

The plaintiffs were, jointly with the defendant, the solicitors of an abortive railway scheme under an arrangement to divide the profits between them in moieties: on the failure of the project certain of the directors subscribed 680*l. and deposited it with the defendant to meet the liabilities of the company. Large sums being due to plaintiffs in respect of costs, they requested the defendant to apply the* 680*l. for that purpose, but he refused, stating that the money was deposited with him conditionally. The plaintiffs then resolved to bring actions against the directors who would not contribute; the defendant, who refused to take any part therein abandoning to the plaintiffs all claims on the costs to be recovered, and being indemnified against all risk. Actions were successfully brought, and a large sum recovered, but was reduced on taxation to a small sum, the directors declaring that the* 680*l. were applicable to the payment of costs. The plaintiffs filed their claims for an account of partnership transactions, and to recover the* 680*l. from the defendant, which he had represented as not applicable to the costs. The claim was dismissed as to the* 680*l. and the usual accounts were ordered.*

This was a claim filed by the plaintiffs for the purpose of obtaining an account of partnership transactions, and to recover a sum of 680*l.* from the defendant Teale, to which he considered himself entitled under the following circumstances. In October 1845 the plaintiff Overbury, and his partner Dixon, who were London solicitors, were employed jointly with the defendant Teale as solicitors of the Newcastle and Leeds Direct Railway Company then projected, the arrangement between the parties being that Messrs. Overbury and Dixon should transact the London business, including the soliciting the Bill in Parliament, and the defendant should do the country business, and that the profits should be divided equally between the defendant and the London firm. The company did not succeed in obtaining an Act of incorporation, and the project was of course abandoned. In November 1846, an arrangement was come to between the directors to subscribe 1700*l.* more to meet the liabilities of the company if no available purchaser, and it was agreed that the London directors should deposit their subscriptions with [illegible] and Dixon, and the Newcastle directors with Mr. Ashurst, a solicitor in Newcastle. The defendant accordingly received the sum of 680*l.* from the four Leeds directors, and Messrs. Overbury and Dixon received the London subscription, but the Newcastle directors failed to perform their share of the agreement. A considerable sum being due to the London firm, they applied to the defendant to have the 680*l.* in his hand applied in liquidation thereof, but the defendant refused to do so on the ground that the money was not applicable to the purpose, being placed in his hands conditionally, and until the Newcastle directors should come into the arrangement, was to remain in his hands. The London firm then resolved to bring actions against the Newcastle directors for the amount due on the bills of costs, but the defendant declined to allow his name to be used in the actions, or to sign the bills of costs, unless the London firm would indemnify him against the expenses of the proceedings, which he expected would be very hazardous and expensive. The London firm accordingly agreed to give the indemnity on the terms of the defendant, releasing to them all his interest in the money which might be recovered. The defendant thereupon wrote a letter to the London firm, of which these words formed a part:—"I of course abandon in your favour all claims which I may have on the costs to be recovered." The London firm accordingly brought the actions against the directors, and obtained a verdict by consent for 4,000*l.* subject to be reduced by the Master of the Q.B. to the sum really due. The matter having come before the Master, the defendant stated, in conformity with his previous statement, that the 680*l.* in his hands was not applicable to the payment of the bills of costs; but the Leeds directors themselves, in their examination, admitted that the fact was otherwise, and that the money deposited by them was applicable to that purpose, and in consequence of this evidence the verdict was reduced to about 190*l.* Mr. Dixon having sold all his interest to Mr. Overbury, the latter, as plaintiff, now claimed to have the 680*l.* from the defendant, as being part of the fruits of the actions brought by him against the Newcastle directors, to which, therefore, he was entitled.

R. Palmer and *Lewin*, for the plaintiff, insisted that the defendant had been guilty of misrepresentation, in consequence of which the plaintiff had been misled in bringing the actions, and had lost the fruits of his proceedings against the defaulters, in which he would not have embarked had he been informed of the truth.

Selwyn, for the defendant, contended that the representations made by him were perfectly correct; that the money had been deposited conditionally; that it was only after they were satisfied that all danger was past that they took off the restriction and consented to the money being applied in payment of the costs. The defendant was ready, however, to bring the 680*l.* in to the account of the partnership transactions.

The MASTER of the ROLLS was of opinion that the taking of the accounts was a matter of course, the only question being whether the 680*l.* were to be paid to the plaintiff, or included in the accounts. The sum must be claimed by the plaintiff either under an agreement or some special equity. There was clearly, however, no contract to that effect between the parties. The arrangement was that the defendant should abandon all claim upon anything that might be recovered in the actions, but nothing was agreed upon as to the sum in hand. Nor was there any special equity upon which the plaintiff could rest his claim to recover. Where one party, indeed, leads another by misrepresentation to act so as to incur loss, then the party so misrepresenting must make good his allegations. But the evidence did not prove that the defendant led the plaintiff to believe that he would recover the 680*l.* in the actions, but, on the contrary, he had always asserted the probability of his recovering nothing. The claim must be dismissed, so far as it sought the payment of the 680*l.* to the plaintiff, but the usual account must be decreed.

VICE-CHANCELLOR TURNER'S COURT.

Reported by J. HENRY COOKE, Esq. Barrister-at-Law.

Thursday, July 22.

COLE v. MUDDLE.

Purchase from one executor—Lien—Title-deeds.

A testatrix bequeathed leasehold estates to three trustees, A. B. and C. for sale, and gave one-fourth of the produce to C. She appointed her trustees executors. A bill was filed for the administration of the estate, and afterwards C. assigned the leaseholds to M. for securing a sum of money, and at that time C. was indebted to the testatrix's estate. C. went out of the jurisdiction. A. and B. then filed a bill against M. to establish their lien on the leaseholds in preference to his mortgage, and for the delivery up of the title-deeds:

Held, that the lien was established by the mortgage, and that the bill must be dismissed, but the defendant must pay the costs of the suit.

A testatrix bequeathed to her will twelve leasehold houses to Mr. Cole, Mr. Martin, and Mr. Chevaux, their executors, administrators, and assigns, upon trust to sell the same, and as to one-fourth of the proceeds upon trust for certain persons therein named, and as to the remaining three-fourths of the proceeds upon trusts for the benefit of John Townsend. The three trustees were appointed executors, and the testatrix directed that John Townsend, when he should attain the age of twenty-five years, should also be an executor, and be also a trustee, and the will bequeathed accordingly. John Townsend attained twenty-five before the death of the testatrix, and after her death Mr. Cole, Mr. Martin, and John Townsend proved the will. In 1844 a suit was instituted (*Townsend* v. *Townsend*) by the administrator of the testatrix's estate, and a decree was made, and the Master, by his report, found that John Townsend, who was a defendant, had in his hands belonging to the estate 2,060*l.* and was, therefore, indebted to it in that amount. John Townsend alone mortgaged the twelve leasehold houses and other property to Mr. Arnold, who had notice of the will under which the mortgagor claimed, for securing 300*l.* and interest, and this security became vested in Mr. Muddle. John Townsend went and remained out of the jurisdiction of the Court. The title-deeds were delivered to the mortgagee, and the present suit was instituted by Mr. Cole and Mr. Martin against Mr. Muddle (not to establish their lien as executors against the mortgage, but) simply for the delivery up of the title-deeds. At the hearing a reference was sent to the Master who reported against the validity of the mortgage, and the defendant excepted to the report, but the exceptions were overruled. The case now came on upon further directions.

C. P. Cooper, *Kenyon Parker*, *Towry White*, and *J. S. Moore* appeared for the parties.

The following cases were cited:—*Taylor* v. *Hawkins*, 8 Ves. 209; *Forbes* v. *Peacock*, 1 Phill. 717; and *Jones* v. *Smith*, 1 Hare, 55.

The VICE-CHANCELLOR.—This is a clear case, although the position in which it comes before me is somewhat singular. The bill is filed by two executors for the recovery of the possession of title-deeds now in the possession of Mr. Muddle, claiming as mortgagee. The Master's report finds in effect that there was no mortgage. That finding has been appealed from, and the Court has agreed with the Master, and decided that there is no mortgage; and yet this bill, filed for the purpose of obtaining the deed, takes no notice of the fact that there is no mortgage. John Townsend, in 1845, mortgaged the property in question, together with other property, to one Arnold, for securing 300*l.* and interest, and Muddle represents him. Arnold had at the time notice of the will under which John Townsend claimed, by which will it appeared that the property in question was not bequeathed to Townsend absolutely, but jointly with two others, and that Townsend took a beneficial interest in one-fourth part only, and that in the other three-fourths other parties were beneficially interested. The effect of Townsend's assent to the bequest in the will can only extend to one-third, he being one of three executors. The other two executors file a bill to have the title-deeds given up by the mortgagee of their co-executor and co-trustee, who was himself also beneficially interested to the extent of one-fourth in the premises mortgaged. I will try the question as if it were a bill filed by the two plaintiffs against John Townsend for these title-deeds, setting the circumstance of the mortgage at one side for the present. This way of trying it is the most favourable for Muddle. Could Townsend hold the deeds against the two other executors? First, could he hold possession of the estate? The answer to his claim to be entitled to do so would be, "We are executors equally with yourself; we have never conveyed to you; we must have a receiver." And I think it clear that on a bill filed by the present plaintiffs, stating that Townsend was a debtor to the estate and to them as executors, a receiver would be appointed. On what ground? Evidently, because of the lien on the property vested in them concurrently with Townsend in their character of joint trustees. And must it not equally follow that Townsend could not retain possession of the title-deeds, if he could not retain possession of the land? Then, supposing the title-deeds to be recovered against Townsend, in whom is the better custody, in the executors representing the estate to which Townsend is indebted, or in Muddle, to whom Townsend has conveyed with notice of the will? *Priddy* v. *Rose*, 3 Mer. 86, has decided that the equity of the estate to which the alienor is indebted will prevail over the equity of the alienee. Some of the cases may have gone to a considerable length; but this is going no further than a Court of Equity properly ought to do. The lien must prevail over Muddle's interest, which is created by a mortgage of J. Townsend to him.

...ed that Jno. Townsend executed the mortgage in his character of executor, and that one executor alone may deal with leaseholds. He certainly took for the benefit of his testator's estate; but this mortgage was given for securing an antecedent debt previously due to Muddle by Townsend; and the equity of the general estate of the testator, must prevail over the private debt of an executor. The deeds, therefore, must be brought into court with a declaration that they belong to all the three trustees, and that the estate of the testator has a lien on them in priority to Muddle, for securing the amount due by Jno. Townsend to the estate. This decree will be with costs against Muddle.

VICE-CHANCELLOR STUART'S COURT.

Reported by Geo. S. Allnutt, Esq. of the Middle Temple, Barrister-at-Law.

Thursday, Nov. 25.

Ex parte S. T. Wood, *re* The Vale of Neath and South Wales Brewery Company.

Joint-Stock Companies' Winding-up Acts—Contributory—Executor.

The liability of an executor as a contributory was directed to be limited to the death of the testatrix, there being sufficient evidence of an assent by the executors to a specific bequest of the shares, an acceptance of them by the legatee, and of these things being done with the approbation of the directors of the company.

This was a motion on behalf of Samuel Thomas Wood, the surviving executor of Lydia Keene, deceased, that the decision of William Brougham, esq. the Master charged with the winding-up of the above-named company, made on the thirteenth day of July last, whereby the name of the said Samuel Thomas Wood had been included in the list of contributories of the said company, as executor of Lydia Keene, spinster, deceased, in respect of five shares in the said company, without qualification, might be reversed; and that the name of the said Samuel Thomas Wood might be struck out of the said list of contributories of the said company; or if the Court should not make that order, then that the name of the said Samuel Thomas Wood might be included in the said list of contributories of the said company, as such executor as aforesaid, in respect of the said five shares in the said company, with the following qualification, that the said Samuel Thomas Wood, as such executor of the said Lydia Keene, was liable only in respect of debts and losses (if any) up to the 8th day of July, 1842, the day of the death of the said Lydia Keene. In December 1841 Lydia Keene purchased of Joseph Rusher five shares in this company; and by an indenture dated the 14th day of December, 1841, and purporting to be made between Joseph Rusher, of the first part, Lydia Keene of the second part, and ... of the trustees of the company of the third part, the shares were transferred by Rusher to Lydia Keene. In the indenture was contained the following covenant:—"And the said Lydia Keene doth hereby for herself, her heirs, executors, and administrators, covenant, promise, and agree to and with the said Joseph Rusher, and also separately with the said ... that she, the said Lydia Keene, her executors, administrators, and assigns, shall and will in all respects, whilst she shall continue a holder of any shares of the said company, well and truly observe, perform, and fulfil and keep all the covenants, articles, stipulations, and agreements which are or ought to be observed, performed, fulfilled, and kept by her, her executors and administrators respectively, in respect thereof, or in relation to such shares for the time being remaining in her name in the books of the said company, according to the true intent and meaning of the same covenants, articles, stipulations, and agreements respectively." Miss Lydia Keene did not execute the company's deed of settlement. By her will dated the 6th of July, 1842, she specifically bequeathed the said shares to her sister Mary Cadby Keene, and appointed William Keene and Samuel Thomas Wood executors of her will. Miss Lydia Keene died on the 8th of July, 1842, and shortly afterwards a dividend on the shares was declared in respect of profits up to the Midsummer of that year, and was to be payable in September. Mr. William Keene, who had shares of his own, and who had acted as Miss M. C. Keene's agent with reference to other shares of hers in the brewery, in August 1842 wrote to the secretary of the company the following letter:—

"Trowbridge, Aug. 13, 1842.

"Dear Sir,—I duly received the notice from the directors respecting the dividend to be paid on the ... inst. and beg to inform you that my sister ... C. Keene is and will be at my house, so ... she will thank you to forward her dividend here. ... also to request that you will send the amount due to Miss L. Keene, deceased, to me as the executor under her will, to which I have just administered.

"Her shares will have shortly to be transferred to my sister M. C. Keene."

In Nov. 1842 Miss M. C. Keene was married to Mr. Kluht, and in January 1843 Mr. Keene wrote to the secretary of the company the following letter:—

"Trowbridge, Jan. 27, 1843.

"Dear Sir,—I beg to inform you that my sister (in your books Miss Mary Cadby Keene) is now Mrs. Kluht. Her address is, however, the same as before, Wall-cottage, Twickenham, near Hounslow, Middlesex. Her shares, as well as those of my deceased sister Lydia, will be transferred, I believe, when the legacy duty is paid, to Mrs. Kluht's husband, the Rev. H. B. Kluht, of which I will forward positive instructions as soon as I have paid the duty at Somerset-house.

"I am, dear Sir, yours very truly,

"Mr. W. Lowther." "W. Keene."

In consequence of this communication, the secretary wrote in pencil against the shares in the share-ledger the name "Kluht." The circulars in respect of these shares were afterwards sent to Mr. Kluht.

Mr. Keene, on his own account, and acting as agent for Mr. Kluht, accepted a bill drawn on behalf of the company in respect of the amount of calls made upon the shares of Mr. Keene and Mr. and Mrs. Kluht. In March 1845 Mrs. Kluht died. The company having been ordered to be wound up, it was sought to place Kluht in the list of contributories in respect of the shares originally held by his wife. See *Ex parte Kluht*, 3 D. & S. 210; 15 Law T. 84; where the clauses of the deed of settlement of the company are set out. Mr. Keene having died, the Master had placed on the list, in respect of Lydia Keene's shares, Mr. Wood, the present appellant. No claim had been made against Lydia Keene's estate in respect of these shares, from her death until January 1849.

Baron and *Roxburgh* appeared in support of the application.

Russell and *Terrell*, for the official manager *Roxburgh*, in reply.

The cases of *Ex parte Gouthwaite*, 3 Mac. & Gord. 187; *Ex parte Kluht*, 3 De G. & Sma. 210; *Ex parte Crossfie'd*, 17 Law T. Rep. 47; *Ex parte Morgan*, 1 Mac. & Gord. 225, were referred to.

The Vice-Chancellor, after fully stating the facts of the case, said, that in this state of things the Master had placed on the list of contributories in respect of these shares, not Mr. Kluht's name, but that of Mr. Wood, the surviving executor of Lydia Keene, and without limiting his liability. In support of this it was alleged that there was no evidence of assent on the part of the executors to the legacy to the sister of the testatrix, or of their having been accepted by Mr. Kluht or his wife. His Honour, however, considered that there was sufficient evidence of such assent and acceptance. It was then contended that the approbation of the directors of the company was necessary under the 38th and 44th sections of the deed of settlement. On referring to the 41st section it would be found that "In all cases of husbands, executors, administrators, or legatees applying to become proprietors of shares belonging to or claimed by them in those characters, and being approved of by the directors, such alterations should be made in the share register book," &c. Now in the present case all the circulars had been sent to Mr. Kluht, the name had been entered in the share register book, and, by an arrangement with Mr. Kluht, a bill of exchange had been drawn by the company upon Mr. Keene for a sum, which included the sum due from Mr. Kluht to the company in respect of a call upon the shares in question: and his Honour could not hold that the transfer of the shares had been made without the approbation of the directors. He should therefore direct that the name of Mr. Wood should remain on the list as liable only up to the death of Lydia Keene.

VICE-CHANCELLOR KINDERSLEY'S COURT.

Reported by W. H. Bennet, Esq. of Lincoln's-inn, Barrister-at-Law.

Monday, Nov. 22.

Winch *v.* The Birkenhead, Lancashire, and Cheshire Railway Company.

Injunction—Railway Clauses Consolidation Act.

The Court will restrain a railway company, the directors of which had contracted to transfer to another railway company a portion of its line, plant, and other property, from completing such transfer, so far as the same may be inconsistent with the provisions of the Railway Clauses Consolidation Act, 8 Vict. c. 20, s. 87.

This was a motion to discharge an order, dated the 7th of October last, made by the Vice-Chancellor, to restrain the defendants, their officers, and agents from making over or transferring to the London and North-Western Railway Company the defendants' lines of railway, plant, and other property, or any part or parts thereof, until the defendants should have fully answered the plaintiff's bill. It appeared that the defendants' line was the link wanting to complete the line of traffic with Liverpool, in conjunction with the lines belonging to the London and North-Western Railway Company, and an independent line from Shrewsbury to Birkenhead was therefore contemplated; and, simultaneously, the Great Western Railway Company, the Shrewsbury and Birmingham, and Shrewsbury and Chester Railway Company, agreed conditionally to amalgamate and to purchase the Birkenhead line; but the defendants objecting to their agreement being conditional on the amalgamation, disputes arose, and the result was, that certain bills then before Parliament, both for the amalgamation and for the independent line by the London and North-Western, were withdrawn. The terms offered by the Great Western were 3½ per cent. guarantee, and the London and North-Western now offered 4 per cent. guarantee, upon the terms of an agreement which was drawn up, and a meeting called to consider the question. Among others, the plaintiff had notice of that meeting, and two days previously the injunction now sought to be dissolved was obtained, on the ground that the agreement, the terms of which did not appear, was a contemplated breach of an injunction still in force, which had been granted in this suit by the late Vice-Chancellor Sir James Parker, on the 3rd of May last, to restrain the defendants from proceeding on the footing of an agreement which was believed to be the same as that now in course of adoption.

Daniell and *Selwyn*, for the defendants, argued that this was nothing more than a contention between the Great Western and North-Western Companies, and as those parties were not before the Court it would not now interfere to restrain them from doing that which they might lawfully do. The injunction granted by Sir James Parker did not restrain them from doing anything but what they might legitimately do under the 87th section of the Railway Clauses Act. (*a*) The object was to lease their line to the London and North-Western Company, with the sanction of Parliament, the terms offered by them being better than those of the Great Western, and the supply of coke, coal, &c. necessary to work the increased traffic, being of great advantage to the defendant's line, but it never was their intention to give any control, by transfer, &c. to the London and North-Western. Under these circumstances, they urged that the Court would either dissolve the injunction, or so modify it that the defendants might be free to do what they might lawfully do. The plaintiff and another shareholder in the defendant's company were the only dissentients to the agreement, and were, it was suspected, in the interest of the Great Western Railway Company.

Malins, *Stevens*, and *Giffard*, for the plaintiff.—There was a total concealment of what was intended to be done, and the secretary of the defendants had refused to give any information upon the subject. If the defendants only intended to proceed under the 87th section of the Railway Clauses Act, or proceed to Parliament for a lease, there was no question between the parties; but the object being in fact to hand over the whole company to the North-Western, that was a thing to be restrained, and it was the consciousness of the intention of being about to do a thing which was a violation of the Act and injunction that caused the concealment. The meeting took place after the injunction was granted, but there was a total absence of any details being afforded to the meeting, the whole subject being left to the board of directors.

The Vice-Chancellor, after stating the circumstances under which this injunction was granted, and remarking that it was the pressure of time which induced him originally to grant it, in connection with the case made by the affidavits, said that although there appeared to have been no defined arrangement made as to what were to be ultimately the actual terms of the agreement to be discussed at the meeting, yet such terms as were proposed might have been more specifically set forth. The defendants said that the only intention they had was to lease to the North-Western Company, and to proceed to Parliament for that purpose under the powers given them by the 87th section. It appeared to him (the Vice-Chancellor) that any agreement, having for its object the allowing another company to work with

(*a*) Sec. 87. It shall be lawful for the company from time to time to enter into any contract with any other company being the owners or lessees, or in possession, of any other railway, for the passage over or along the railway, by the special Act authorised to be made, of any engines, coaches, waggons, or other carriages of any other company, or which shall pass over any other line of railway, or for the passage over any other line of railway of any engines, coaches, waggons, or other carriages of the company, or which shall pass over their line of railway, upon the payment of such tolls, and under such conditions and restrictions as may be mutually agreed upon; and for the purpose aforesaid, it shall be lawful for the respective parties to enter into any contract for the ... and for the apportionment of the tolls to be taken ... railways.

the line, in the terms of that motion, could not be the subject of an injunction; but inasmuch as sufficient publicity had not been given to the terms of the agreement which they intended to enter into, the injunction must be continued; but, as the Court had no power to do anything to prevent a company from proceeding to Parliament, which might, however, take notice of what this Court had done, the terms of it might be modified and confined to any act inconsistent with the 87th section of the Railway Clauses Act. *Order accordingly.*

Common Law Courts.

COURT OF QUEEN'S BENCH.

Reported by ADAM BITTLESTON and JOHN THOMPSON, Esqrs. Barristers-at-Law.

Friday, Nov. 19.

CATCHPOLE *v.* THE AMBERGATE, NOTTINGHAM, BOSTON, AND EASTERN COUNTIES RAILWAY COMPANY.

Joint-stock company—Neglect to enter memorial of transfer of shares—Sale upon forfeiture—8 Vict. c. 16, *s.* 33.

A company omitting to enter a memorial of transfer of shares on the register of transfers after due notice and delivery of the deed of transfer, and then proceeding to declare the shares forfeited, and selling them to other persons, in consequence of the non-payment by the vendor of calls made after such delivery of the transfer, is liable to an action at the suit of the purchaser.

It is unnecessary to aver in the declaration in such action that a reasonable time had elapsed for the company to enter a memorial of such transfer on the register.

Case.—The first count of the declaration stated, that one W. L. Nutter appeared by a book of the defendants', kept in pursuance of the "Companies' Clauses Consolidation Act, 1845," and called the "Register of Shareholders," to be the lawful holder and proprietor of, to wit, 300 shares in the undertaking of the defendants, and was lawfully entitled to sell and transfer the same; that he agreed with the plaintiff to sell and transfer the said shares to him, and then sold to the plaintiff, and the plaintiff then bought of W. L. Nutter the same, at the price, &c. And thereupon, by a certain deed between W. L. Nutter and the plaintiff, W. L. Nutter did transfer the said shares to the plaintiff. That the plaintiff caused the deed to be delivered to the defendants, to be kept by them, and in order that the defendants might enter a memorial in the book kept by them under the last-mentioned Act, called "The Register of Transfers," and indorse such entry on the deed of transfer, and might on demand deliver a new certificate to the plaintiff, as the purchaser of the said shares, according to the last-mentioned Act. And it then became and was the duty of the defendants, and they were then required, to wit, by the plaintiff, to make and endorse such entry. Nevertheless, the defendants did not enter any memorial in the "Register of Transfers," or endorse any entry on the deed of transfer, but neglected so to do, whereby the plaintiff has been deprived of his right and title to appear in the books of the defendants as the holder and proprietor of the said shares, and whereby, and by reason of W. L. Nutter, after such delivery of the said deed of transfer still appearing by the said book of the defendants, called "The Register of Shareholders," to be the holder and proprietor of the said shares, and of calls having been made by the defendants after the committing of the said grievances upon divers persons so appearing by the last-mentioned book to be the holders and proprietors of shares in the said undertaking, and amongst others upon W. L. Nutter, and by reason of the failure of W. L. Nutter to pay the said calls (the plaintiff having received no such notice of forfeiture, as in the last-mentioned Act mentioned), the defendants, to wit, by the directors of the said company lawfully appointed, did, after the committing of the said grievances, and according to the last-mentioned Act, proceed to declare, and did declare, the said shares so standing in the last-mentioned book, in the name of W. L. Nutter, forfeited, which forfeiture having been confirmed at a general meeting of the said company, and the said shares so forfeited directed to be sold according to the provisions of the last-mentioned Act, the said shares so forfeited were afterwards sold by the defendants, to wit, by the directors, by public auction, according to the last-mentioned Act; that the plaintiff has thereby been deprived of his right to compel the defendants to make such entry and indorsement as aforesaid, and to deliver to the plaintiff, as the purchaser of such shares, such certificate; and has also been deprived of the said shares, and all benefit thereof, and all the dividends and other profits [illegible] of the benefit of selling the said shares [illegible] premium, the said shares having [illegible] of the said grievances, [illegible] to wit, to 50*l.* per share.

Second Count.—That the plaintiff was the lawful holder of, and well entitled to, to wit, 300 shares in the undertaking of the defendants, of great value. Nevertheless, the defendants, well knowing the premises, but contriving, &c. whilst the plaintiff continued the lawful holder, wrongfully, and without any lawful cause or excuse, and in pretended exercise of the powers given by the Companies Clauses Consolidation Act, 1845, to wit, by the directors of the said company lawfully appointed, proceeded to declare, and did declare, the last-mentioned shares forfeited, and afterwards, at a general meeting of the said company, proceeded to confirm, and did confirm, the said forfeiture, and afterwards, by the said directors, proceeded to sell, and did sell, the said shares to divers persons, whereby the plaintiff has been deprived of the said shares, and the benefits thereof, and all the dividends and other profits therefrom, and also of the benefit of selling the said shares at an increased premium, the said shares having, since the committing, &c. greatly risen in value, to wit, to 50*l.* per share.

Special Demurrer to both counts. The only grounds which it is necessary to notice are the following: that the second count shows no cause of action, nor how the plaintiff was owner of the shares, nor how nor why the alleged forfeiture and sale were wrongful, nor if wrongful that they were done by a body competent to bind the plaintiff or the defendants, nor how the wrongful act of the directors can make the company liable, nor how the plaintiff's title has been affected.

Willes in support of the demurrer. First, as to the second count, which is the simplest, that shows no cause of action. By the 8 Vic. c. 16 (Companies Clauses Consolidation Act, 1845), sec. 14, the transfer of shares is to be by deed, and by sec. 15, when executed, the deed is to be delivered to the secretary, who is to enter a memorial in the register of transfers and indorse such entry on the deed, and until such transfer has been so delivered the vendor of the share is to continue liable for calls, and the purchaser is not to be entitled to any profits or to vote in respect of such share. Shares in a company are not chattels or land, but only give a right to a share in the profits of the undertaking and to vote at the meetings. The purchaser has no right to complain of the company for irregularity with regard to entering the memorial of the transfer, though the vendor may. The clauses relative to forfeiture of shares are those from sec. 29 to 35 inclusive. This is like the case of the sale of growing crops before they are ripe, which is wholly void. *Owen* v. *Legh*, 3 B. & Ald. 470; or it may be that the acts of the defendants amount only to slander of title, in wrongly asserting that they had a title to sell these shares, in which case no action lies. The plaintiff has his remedy to recover the price he paid for the shares. Besides it is not averred that the defendants had any reasonable opportunity of registering the transfer. These objections apply also to the first count.

Bramwell, contrà. The forfeiture is put on the other side as if it amounted to nothing at all; but the plaintiff has actually lost his shares. The title of his vendor is erased from the register of shareholders, and it is similar to the destruction of the plaintiff's title-deeds. Here the plaintiff had no notice of the intended forfeiture, and upon sec. 33 it may be a very grave question, whether the title of the vendee after the forfeiture is not complete. To what do the words "nor shall his title be affected by any irregularity in the proceedings" apply, if not to a case like this? These specific shares are gone, and the company deprive themselves of the power of giving the plaintiff notice of calls, &c. and the plaintiff of the right to receive dividends, attend meetings, &c. As to the objection that a reasonable time for entering the memorial of the transfer had not elapsed, that is unnecessary. *Beer* v. *Beer*, 21 L. J. 134, C. P. Besides, if that had not elapsed, the defendants had no right to make calls on Nutter.

LORD CAMPBELL, C.J.—I am of opinion that both counts are good.—As to the second, which may be supposed to be the more defective of the two, that alleges that the plaintiff was the holder of 300 specific shares in the company—that is, as if they were numbered and earmarked; yet that the defendants, well knowing, &c. and contriving, &c. without lawful cause, and in pretended exercise of the power of the Act, proceeded to declare, and did declare, the said shares to be forfeited; and at a general meeting of the company proceeded to confirm, and did confirm the said forfeiture, and afterwards proceeded to sell, and did sell, the said shares to other persons, whereby the plaintiff has been deprived of the said shares and dividends, and of the sale thereof. Here is both injuria and damnum, for it was a wrong to declare the shares forfeited, and a wrong to sell them, and the plaintiff is deprived of the rights of a shareholder, and of having his name placed upon the register of shareholders. There is, therefore, a sufficient ground of action. It is said that all that has been done is a mere nonentity, and that it is like the case of a sale of growing crops before they are ripe, where nothing can be done by the purchaser. But that is not so, for here it is alleged that the plaintiff was deprived of his shares, and prevented making a title to them, and how can the directors say that they wrongly forfeited the shares, and that the plaintiff is still entitled to them. If, then, the second count is good, à fortiori, the first count is good. That count alleges in detail what the transaction was, and then states the forfeiture and the confirmation at a general meeting, and the sale by the defendants, and the same objections are made to it as to the second count. The judgment must, therefore, be for the plaintiff.

COLERIDGE, J.—I am of the same opinion. The defendants, by their own default, have treated a third person as the shareholder, and have made calls on such third person; and by their own default have forfeited and sold these shares. The answer of the defendants is, that this is merely nothing, and that the plaintiff shews that the defendants have been doing wrong, and that what they have done is of no effect. And it is likened to the case of *Owen* v. *Legh*, 3 B. & Ald. 470; where the sale under a distress of growing crops before they were ripe was held to be wholly void. I am not sure that that is applicable to these shares if they were sold in market overt. For sec. 33, of 8 Vict. c. 16, is very material and although it is not averred that a declaration in writing was made that the call upon the shares was made and notice thereof given, and that default on payment of the call was made, and that the forfeitures of the shares was declared and confirmed, neither does it appear that they have not completed the title of the vendee of these shares; and when such a declaration has been made, and the receipt of the treasurer of the company given for the price of the shares, the vendee has a good title to the shares by the above section, and is entitled to a certificate of proprietorship, and is to be deemed the holder of such shares, nor shall his title to such shares be affected by any irregularity in the proceedings in reference to such sale. The defendants in this case have done every thing on their part necessary to complete the title of the vendee, and to hold that what they have done is a complete nullity would be most dangerous, and render it necessary for a purchaser of such forfeited shares to look into the legality of the whole of the company's proceedings.

ERLE, J.—The plaintiff is entitled to our judgment. In the first count the plaintiff shews a breach of duty by acts of omission and commission. There is an act of omission when the deed of transfer from Nutter to the plaintiff was delivered to the secretary, in omitting to enter a memorial of it in the register of transfers, and there is an act of commission in the forfeiture and sale of the shares. There is also a clear damage to the rights of the plaintiff. A man has a right of action in respect of any disturbance to a flow of water past his lands, though he may never have made use of it. So here a party on the register of shareholders has certain rights, to attend the meetings, receive dividends, and others, and in respect of those rights the plaintiff is injured. With respect to the second count, that discloses a breach of duty, and it follows from what I have said that it contains a good cause of action. There was no need to allege that a sufficient time had elapsed for registering the deed of transfer.

Judgment for the plaintiff.

MATHESON *v.* MATHESON.

Practice—Common Law Procedure Act. Entering suggestion of death of plaintiff, and to revive a judgment—15 & 16 *Vict. c.* 76, *s.* 129.

H. Lloyd moved for a rule to enter a suggestion, pursuant to 15 & 16 Vict. c. 76, s. 129, of the death of the plaintiff, and to enable the administrator to revive a judgment entered up on a warrant of attorney in 1835.

COLERIDGE, J.—Does it appear from your affidavit whether the defendant is alive?

H. Lloyd.—It does not. *Rule nisi.*

Nov. 3 *and* 20.

COBBETT (a Pauper) *v.* HUDSON.

Party—Advocate and witness.

There is no rule of law by which a party to an action is prevented stating his case to the jury and afterwards being examined on oath as a witness in support thereof; and where the judge at the trial refused to permit a party who had so stated his case to the jury to give evidence on oath in support thereof, and nonsuited him, the Court granted a new trial.

Action on the case for a false return to a writ of habeas corpus.

At the trial before Lord Campbell, C.J. the plaintiff presented himself, as his own advocate, to state the case, and intimated that he would afterwards give evidence in support of it, and he was told that he could not do both. He then proceeded to state the case to the jury, and at the close of it tendered himself as a witness, to be examined on oath. The learned judge refused to allow him to be sworn, and the plaintiff was then nonsuited.

The plaintiff in person having obtained a rule nisi

for a new trial, on the ground that he was improperly excluded from giving evidence at the trial,

W. H. Watson and *Unthank* showed cause.—To allow a party to act as advocate, and to be examined as witness in his own case, would introduce the most mischievous consequences. [Lord CAMPBELL, C.J.—The question is, whether a judge at Nisi Prius has any power without a rule of Court to reject a party as a witness under such circumstances.] It is for the judge to regulate the mode in which the cause is to be conducted, and the rule of practice adopted at the trial is one of great convenience, and has often been acted on. (*Parker* v. *McWilliam*, 6 Bing. 683; *Stones* v. *Byron*, 4 D. & L. 393.)

The plaintiff in person supported the rule.

Cur. adv. vult.

JUDGMENT.

Saturday, Nov. 20.—Lord CAMPBELL, C.J.—In the case of *Cobbett* v. *Hudson*, a question arose whether a party to the suit has a right to address the jury, and to be examined himself as his own witness. We are of opinion that this rule for a new trial should be made absolute, on the ground that the plaintiff was improperly told that he could not address the jury as his own advocate without agreeing to waive his right to be examined as a witness in his own case. We are fully aware of the inconvenient consequences that must follow from a party to a suit being alternately, during the trial, advocate and witness—and we express our strong disapprobation of such a practice; but we cannot say that the judge at Nisi Prius has sufficient authority to prevent it. Before the recent statute, the party had a right to conduct his own case in person, though he could not be his own witness; and by that statute he is rendered competent and compellable to give evidence as a witness without any abridgment of his former right to act as his own advocate. We must be careful that we do not abridge the rights conferred by the common and statute law, while we are acting merely on views of policy and expediency, with respect to which the judges may form different opinions. It was stated at the trial that verdicts had several times been set aside on the sole ground that the same person had been permitted to act as advocate, and to be examined as a witness; but when the cases alluded to are examined, it will be found that the rigid rule contended for was not laid down in them. In *Stones* v. *Byron*, 4 D. & L. 393, on the trial before the sheriff, an attorney having addressed the jury as advocate for the plaintiff, and been examined as a witness for him, Mr. Justice Patteson, who was sitting in the Bail Court by himself, on the application to set aside the verdict, said, "I must say I do not think that such a course of proceeding is proper, or consistent with the due administration of justice. It seems to me, therefore, that his evidence ought not to have been received, and having been received, that there ought to be a new trial." But there the evidence had been received after the defendant's case was closed, and after the plaintiff's advocate had replied, and this irregularity appears to have been the ground of the decision in *Deane* v. *Backwood*, very shortly reported, in a note, 4 D. & L. 395, which was likewise a trial before the sheriff. The plaintiff's attorney, after addressing the jury as advocate, was examined as a witness, and Erle, J. granted a new trial on this ground, without laying down any certain rule upon the subject, or proposing to extend the authority of *Stones* v. *Byron*. In *King* v. *Brice*, 2 B. & Ald. 606, it is laid down that on the trial of an indictment for perjury, the prosecutor shall not be permitted to address the jury, the Court observing that the prosecutor may be and certainly is a witness, and it is very unfit that he should be permitted to state, not upon oath, facts to the jury, which he is afterwards to state to them upon oath, but there the king was to be considered a party, and the private prosecutor had no right to address the jury, even if he waived his right to be examined as a witness. It was said at the trial of the present case, that it had been decided before the Chief Justice of the C. P. and the Chief Baron of the Ex. that a party cannot be permitted to act as his own advocate, and to be examined as his own witness; but after diligent inquiry, no such decision can be discovered. The validity of the rule contended for is rested on the authority of the judge at Nisi Prius to regulate the proceedings in a way that may be most conducive to the investigation of the truth of the matter. An instance was referred to of an order for witnesses to leave the court, with an intimation that no witness who remains in court or returns into court before he is called, shall be examined. But the judge must be guided by the established practice and general rules of law. With respect to the ordering of witnesses out of court, though this is clearly within the power of the judge, as he may fine a witness for disobeying that order, the prevalent opinion seems to be that this power as a power of the judge is limited to the infliction of a fine, and that he cannot lawfully refuse to permit the examination of witnesses. (*Rex* v. *Nethercote*, 6 Car. & P. 741; *Thomas* v. *David*, 7 Car. & P. 350; *Rex* v. *Colley*, M. & M. 329.) We may hope, that without any positive rule against any party addressing the jury and being examined as a witness on oath in his own case, a practice so objectionable is not likely to prevail, for it is not only contrary to good taste and good feeling, but as it must be revolting to the minds of the jury, it would generally be injurious to the party who does it. In such a case as the present, there is not the smallest colour for resorting to it, for the plaintiff, suing in formâ pauperis, had counsel assigned to him, who must be supposed to have been ready to support at the trial, the certificate he had given that the plaintiff had a good cause of action, and an offer was freely made by the defendant to postpone the trial till the attendance of this gentleman could be procured. If the practice does gain ground to a degree seriously injurious to the due administration of justice, the Legislature may interfere, or the judges, under the authority vested in them, may make a general order, whereby it may be prevented in future. But, as the law now stands, we make a judge at Nisi Prius exceed his authority in refusing to allow the plaintiff to be examined as a witness on oath after addressing the jury in his own behalf, though on a new trial he must be permitted to do both if he shall be so inclined.

Rule absolute.

Thursday, Nov. 25.

REG. v. THE SOUTH-WESTERN RAILWAY COMPANY.

Arbitration—Award—Setting aside for error in law—Statement of arbitrator's reasons in a separate paper.

For the purpose of setting aside an award, on the ground that the arbitrator has mistaken the law, the Court will not look at a written statement of the grounds of his decision delivered by him to the parties, and of the same date with the award, unless it be made out that the arbitrator intended the reasons to form part of his award.

A rule nisi had been obtained to set aside an award, on the ground that the arbitrator had decided contrary to law. It appeared that the South-Western Railway Company had appealed to the Sessions against several rates, imposed upon the company by parishes in Surrey and Berks, through which one of their branches passed; that those appeals had been referred, and that the arbitrator had made his award; but on the same day on which he made his award, he delivered to the parties separate written statements of the grounds on which he made it, accompanied with a letter, in which he expressed himself dissatisfied with the award, and recommended the parties as speedily as possible to lay a special case before the Court of Q. B. Previously to the submission, there had been an appeal against a former rate, and in that appeal power to state a case had been reserved. The application to set aside the award was grounded upon the alleged illegality of the reasons given by the arbitrator in the separate statement; but the arbitrator had made an affidavit, in which he denied that that statement was ever intended to form any part of his award. It was merely given for the guidance of the parish officers in stating a case for the opinion of the Court of Q.B.

Pashley and *Corner*, for the Surrey parishes, and *Keating* and *Smirke*, for the Berkshire parishes, shewed cause against the rule.

Watson, *Bodkin*, and *Willes* supported.

Kent v. *Elstob*, 3 East, 18; *Young* v. *Walter*, 9 Ves. 364; *Sharman* v. *Bell*, 5 M. & S. 504; *Holmes* v. *Higgins*, 1 B. & C. 74; *Pratt* v. *Hillman*, 4 B. & C. 269; *Toby* v. *Lovibond*, 17 L.J. C.P. 201, per Wilde, C.J.; *Fuller* v. *Fennick*, 3 C.B. 705, were referred to.

Lord CAMPBELL, C.J.—It is quite clear that we cannot look at the statement of the arbitrator's reasons as a ground for impeaching his award, unless he delivered them as parcel of his award. If he does so, then the Court will look at the two as one document, and will suppose that he has reserved the matter of law for the consideration of the Court; but if he has absolutely decided the question of law submitted to him, we cannot inquire into the legality of his decision. In the present case it is perfectly clear, not only from the affidavit of the arbitrator, but from all the circumstances of the case, that he never meant the separate statement of his reasons to be any part of his award. It was designed for the guidance of the parish officers in settling a special case, so that his award should not be the permanent basis of rating in the parishes to which it applied; and when he expresses himself dissatisfied with his award, he only means that he is dissatisfied with the state of the law then existing; but as to the particular rates embraced in the award, there can be no doubt that the award was intended to be and is final.

COLERIDGE, WIGHTMAN, and ERLE, JJ. concurred. *Rule discharged.*

REG. v. ASHTON.

Conviction—Licensing Act—Gaming—Unlawful games—Dominoes.

A conviction of a publican for knowingly suffering an unlawful game, to wit, the game of dominoes, to be played in his house, contrary to the tenor of his license, is bad,—dominoes not being an unlawful game, and there being no allegation that he suffered "gaming," that is, playing for money, in his house.

Archbold, in last Term, obtained a rule nisi for a certiorari to bring up a conviction, whereby the defendant, a publican, was convicted under the Licensing Act, 9 Geo. 4, of knowingly suffering and permitting an unlawful game, to wit, the game of dominoes, to be played in his house, contrary to the tenor of his license and the statute, &c.

Whately now shewed cause.—Upon reference to the statutes of 33 Hen. 8, c. 9; 2 Geo. 3, c. 28, s. 9; and 8 & 9 Vict. c. 109, s. 1, it is does not appear that dominoes is an unlawful game; but that is immaterial in this case, because this is a conviction under the Licensing Act, 9 Geo. 4, c. 61, which prohibits in public-houses not only the playing of unlawful games, but "any gaming whatsoever;" and that means any games whatsoever. [Lord CAMPBELL, C.J.—Is it "gaming" to play at draughts for love? If so, all the community are gamesters.] It is, in a public-house. The statute was intended to prevent the playing of all games in such places.

Lord CAMPBELL, C.J.—I am of opinion that this conviction is bad. It alleges that the defendant knowingly suffered an unlawful game, to wit, the game of dominoes, to be played in his house. Now Mr. Whately admits that dominoes is not an unlawful game; and he is therefore driven to contend that this amounts to an allegation that the defendant permitted "gaming" in his house; but I think that it does not. The defendant might suffer people to play at a lawful game in his house if no money was staked, because that would not amount to "gaming" within the meaning of the Licensing Act. The other construction would make all classes of the community gamesters; but if dominoes were played at a public-house, and money staked upon the game, that would be gaming, and the publican might then be convicted.

COLERIDGE, WIGHTMAN, and ERLE, JJ. concurred. *Rule absolute.*

Tuesday, Nov. 27.

ADEY v. THE DEPUTY-MASTER OF THE TRINITY HOUSE.

County Court—Prohibition—Toll.

Dues payable to the trustees of a harbour by vessels passing within certain limits are tolls, and the question whether dues are payable both on the outward and homeward voyages, is a question of title within sec. 58 *of* 9 & 10 *Vict. c.* 95 (*County Courts Act*), *and one not within the cognisance of County Courts.*

The plaintiff was the owner of a vessel, that on her voyages out from Goole to Memel and back, had passed within the limits within which vessels passing became liable to pay dues to the trustees of Ramsgate Harbour. The trustees claimed the dues as payable on both the voyage out and home; the plaintiff paid the dues on both, but the dues, 1*l.* 4*s.* on the homeward voyage, were paid under protest; and the plaintiff now sued in the Dorsetshire County Court to recover back the 1*l.* 4*s.* paid on the homeward voyage.

Willes, having obtained a rule nisi for a prohibition, on the ground that a question of title came in issue within the meaning of the proviso in 9 & 10 Vict. c. 95, s. 28,

Barstow shewed cause.—The word "toll" in the proviso is not applicable to anything of this description. Besides, here the right as to who was to receive the toll, was not in dispute; it is admitted that the trustees are the parties to receive it. The quantum only is in dispute. Where a claim was set up for dues in respect of empty waggons passing along the line by a railway company, it was held that they were not within the proviso of sec. 58. (*Hunt* v. *Great Northern Railway*, 10 C.B. 900.) That was something like the present case.

Bramwell and *Willes*, contrà.—As the title to take the particular dues may come in question, this would seem to be a case within the proviso. [COLERIDGE, J.—The dues payable in respect of light-houses have always been considered tolls.] *Hunt* v. *The Great Northern Railway Company* was not the case of tolls, but of charges payable in respect of the use of locomotive power. The question of title involves two things, the existence of the toll and the right of the party claiming to receive it.

Lord CAMPBELL, C.J.—The rule must be made absolute. Looking at the Act of Parliament, the proviso in sec. 58 expressly extends to cases of this sort where the existence of the toll is denied. If the proviso had been confined to cases of dispute between A. & B. as to the right to receive the toll, it would not have applied to this case; but the words here must be applied to cases where both the existence of the toll and the party to whom it is to be paid are in dispute.

COLERIDGE, J.—We ought not to adopt a refined construction to this Act of Parliament. The word title may either import the right of the party to the

thing in question, or whether the thing itself exists. In common parlance, it includes both.

WIGHTMAN and ERLE, JJ. concurred.

Rule absolute.

BUSINESS OF THE WEEK.

Thursday, Nov. 25.

Reg. v. Mulcock.—*M. Chambers* and *Willes* shewed cause against a rule for a criminal information for libel. The applicant, who was the attorney for the parish of St. Mary Newington, complained of a placard published by the defendant relating to certain litigation in which the parish had been involved respecting one of its charities, and which, after speaking of cormorant lawyers, called upon the parishioners, at an approaching vestry meeting, to take care that the poor were not robbed. The answer to the application was, that the applicant had attended the vestry meeting, and openly defended himself from the imputation contained in the alleged libel. *Collier* and *Hawkins*, contrà. By the COURT.—The party has chosen his own tribunal, and vindicated himself before the assembled parish. He cannot after that claim the special interference of the Court by way of criminal information.

Rule discharged without costs.

Ex parte **Ford.**—The *Attorney-General* and *Ogle* shewed cause against a rule obtained by Mr. Ford, as executor of Lord Kensington, and calling upon Messrs. Harrison and Tennant to shew cause why they should not deliver up to him a duplicate bill of costs relating to a mortgage transaction in which Lord Kensington had been mortgagor, and clients of Messrs. Harrison and Tennant, the mortgagees. It appeared from the affidavits, that Messrs. H. and T. had delivered a bill of their costs to Lord K. for his examination, as he, being the mortgagor, would be the ultimate paymaster; but at their request, that bill had been returned, and they had given an undertaking to supply Lord K. with a copy, if at any future time he should require it. They were now willing to furnish a copy, upon payment of a sum of 17*l.* as the expense of making it out. *Chambers*, contrà. By the COURT.—The undertaking of Messrs. H. and T. must be construed according to the relation of the parties; and as they were not the solicitors of Lord K. and he was not primarily liable for the costs, though he was ultimately liable for them, he was only entitled to a copy of the bill upon payment of the costs of making it out. (Sec. 10 of the Attorneys' Act, 6 & 7 Vict. c. 73.)

Rule discharged with costs.

Jones v. Evans.—This was a rule to review the Master's taxation, he having disallowed the plaintiff the costs of a rule for a new trial, which had been discharged upon terms, and having allowed the defendant the costs of certain witnesses called to prove a right of horseway. This was an action of trespass on foot, and with horses and carriages. *Plea*—Justifying under a right of way for carriages and horses, as well as on foot. At the trial, a footway was admitted; but as a trespass was proved which could only be justified by a right of way for carriages, the substantial question at the trial was as to the carriageway. A verdict was found for the plaintiff on the plea of justification as well as not guilty. A rule having been obtained for a new trial, that rule was discharged, the plaintiff undertaking to enter the verdict distributively upon not guilty. That had been done; but upon the plea of justification the verdict stood generally for the plaintiff. *Morgan Lloyd* shewed cause. *Welsby* and *Bevan*, contrà. By the COURT.—As the verdict stands absolutely for the plaintiff upon the plea of right, the defendant cannot have the costs of any witnesses upon that issue; but there seems to be reason for regretting that the rule for a new trial was not disposed of differently, and that a new trial was not granted unless the plaintiff would consent to enter the verdict distributively on the plea of right. As to the costs of the rule, it was discharged upon terms, and we think there ought to be no costs on either side.

Rule absolute as to the costs of the witnesses; rule discharged as to the costs of the rule.

Langley v. Burdett.—*Pearson* applied to the Court to direct the officer to file a writ under the New Procedure Act; but the Court suggested that if any application was necessary, it would be better to make it at chambers.

No order.

Warren v. Thomas. *Rule enlarged.*

Keane v. Stewart.

Rule enlarged to the first day of next Term.

***Re* Cowgan.**—*Atherton* moved to rescind a rule for an attachment for disobeying a judge's order.

The attachment to lie in the office for a month, and cause to be shewn at chambers in the meantime.

Metcalfe v. Brown.—*Edward James* moved for a prohibition to the judge of the Westmoreland County Court to prevent a rehearing of a case in which judgment was given for the defendant on the 18th of May last, with, however, a reservation of the question of costs. Litigation had been going on between the same parties during the interval; but the lapse of time deprived the judge of jurisdiction to grant a rehearing. (9 & 10 Vict. c. 95, s. 89; and 14th Rule of Practice; *Re Jones*, 17 L. J. 170, Q.B. *Rule nisi.*

Stewart v. The Anglo-Californian mining Company.—*Paterson* (*James* with him) shewed cause against a rule to enter the verdict for the defendant on the third as well as on the second issue, in accordance with the effect of the judgment pronounced by this Court. (Sec 19 Law T. Rep. 272.) *Bramwell* and *Gray*, contrà.

Rule absolute, without costs on either side.

***Re* Samuel Priere.**—*Gray* moved, on behalf of an attorney, for permission to take out his certificate.

Permission granted, on payment of the arrears of duty, and a penalty of 5l.

***Re* Q. S. King.**—*Prendergast* made a similar application to the last, but the proper notice had not been given.

To be renewed at chambers.

Edwards v. Lowndes.—Lord CAMPBELL, C.J., delivered the judgment of the Court. *Rule discharged.*

COURT OF COMMON BENCH.

Reported by DANIEL THOMAS EVANS and R. VAUGHAN WILLIAMS, Esqrs. Barristers-at-Law.

Wednesday, Nov. 17.

REGISTRATION APPEAL.

SOUTHERN DIVISION OF LEICESTERSHIRE.

BERESON, App. *v.* BURTON, Resp.

Freehold interest.

An Act of Parliament vested certain lands in elected deputies to allot them in parcels to certain freemen of a borough, to hold at a rent, observing rules, &c. so long as they (the tenants) should be willing. A subsequent section of the Act empowered the deputies, with the consent of a majority of the freemen at a meeting, to remove any tenant, and make void the uses, and sell or exchange the land:

Held, that the tenants had a freehold interest in their allotments, not being removable at the mere will of the deputies alone.

This was a consolidated appeal from the decision of Mr. Flower, the revising barrister for the southern division of Leicestershire, who had placed the respondent and twenty-eight others upon the register of voters in respect of a freehold interest in certain land claimed by them, under the following circumstances.

The resident freemen of the borough of Leicester were entitled to certain rights of common. By a series of statutes, of which the latest was the 8 & 9 Vict. c. vi. certain lands were vested in deputies (to be elected by the freemen), and by them to be apportioned into allotments, which were to be let at a rent to freemen not choosing to claim their right of common, to hold so long as they pleased, on payment of rent and observing the rules and regulations. The claimants were tenants of these allotments. The revising barrister decided that they had a freehold interest in the tenements, under the above statute, and placed their names upon the register, and the present appeal was against that decision.

E. W. Cox, for the appellant, stated the case, reading all the portions of the Act of Parliament that related to the interest of the tenants; but, as the decision ultimately turned upon a few sections only, we deem it sufficient to refer to them alone. Sec. 2 directed that deputies should be elected by the freemen to be trustees of the property, to hold it as a corporation. By sec. 8, they are directed to allot the land into parcels, in such manner that every freeman and freeman's widow who should require one might "have and be entitled to the same, of such size or extent, at such yearly rent, in such situation, and upon such terms and conditions as the said deputies, in their discretion, think fit and determine, but so that no such allotment or parcel shall contain a greater quantity than five hundred square yards, and every such allotment or parcel shall be let *at an annual rent*, to be fixed at the discretion of the said deputies, but not exceeding one farthing for every square yard, nor less than 1s. for every 100 square yards, and the *same allotments or parcels shall* be respectively held by each freeman and freeman's widow so desiring to become the occupier and obtaining the possession thereof, *so long as he or she shall be willing to hold the same*, and shall pay the annual rent to be fixed or reserved for the same, and shall conform to and observe the orders, rules, and regulations from time to time to be made by the said deputies." Sec. 15 vests the said lands in the deputies for the time being, and their successors for ever, "in trust for the said resident freemen and freemen's widows of the said borough, according to, and under and subject to the process and authorities, rules and regulations in this Act contained or authorised to be made." The other material section, and that upon which the question mainly turned, was the 17th, which provided that "it should be lawful for the deputies for the time being, with such consent as hereinafter mentioned," *i. e.* of a majority of the freemen at a meeting to be held for the purpose (sec. 22), "at any time or times after the commencement of this Act, and when and so often as may be thought expedient, to dispose of and convey, by way of absolute sale, *all* or *any part of the said allotments*, &c. and the inheritance thereof in fee simple (freed and discharged from all right, claim, and interest whatsoever of the said resident freemen and freemen's widows for the time being, and of every person and persons claiming under or in trust for them) unto any person or persons whomsoever, for such price or prices in money as to them the said deputies shall seem reasonable, &c.; and for the purpose of effectuating such sales, &c. it shall be lawful for the said deputies for the time being, by any deed or deeds, &c. *to annul*, determine, and make void, all and every the uses, trusts, estates, powers, provisions, rights, interests, rules, and regulations, to, for, upon, with, under, or subject to which the lands, hereditaments, and premises, which shall be so sold or agreed to be sold, as aforesaid, or any part thereof, shall then stand limited and settled, or be subject or liable to." These were the material sections of the Act under which the respondents claim a freehold interest entitling them to vote. He cited *Davis* v. *Waddington*, 7 M. & G. 37, in which it had been held that where the appointors to a charity had the power to revoke the appointment, there was no freehold. He admitted that if the 8th section stood alone, there would be considerable doubt whether it was not a freehold, for it would be agreed on all hands that land given to a man to hold so long as he should be willing, would be a freehold, even although a rent and conditions were imposed. But the statute here, by the 17th section expressly empowered the deputies to remove the tenants at their discretion whenever they desired to sell or exchange, and that brought it precisely within the law laid down in *Davis* v. *Waddington*. [MAULE, J.—Not so. Here the deputies cannot remove at their own will; they must have the consent of the freeholders, and consequently of the tenant.] No; a consent only of a majority: consequently, even if the particular tenant were to object, he would still be removeable against his will, which seems quite inconsistent with a freehold tenure. [JERVIS, C.J.—According to some early cases, I think it would still be a freehold, even although it depended upon the mere will of another. He also cited *Simpson* v. *Wilkinson*, 7 M. & G. 50.]

Hayes, for the respondents, contended that the 8th section, which entitled the tenants to hold "so long as he or she should be willing," gave them a good freehold, which was not affected by the various conditions imposed by the statute. In fact, the only question was that put by Mr. Cox, whether the power to remove given by the 17th section was inconsistent with a freehold interest. He contended, it was not because the deputies could not do it of their own mere will, which was necessary to bring it within the decision in *Davis* v. *Waddington*, but they must be set in motion and sanctioned by the freemen of whom the tenants were a portion. He cited also *Ashmore* v. *Lees*, 2 C.B. 31.

JUDGMENT.

JERVIS, C.J.—It seems to me, that the view taken by the revising barrister of the claim in the case now under consideration was correct, and that his decision must be affirmed, the claimant having a freehold interest, which entitled him to vote. It is admitted by Mr. Cox, that generally the possession of an estate of an uncertain interest would, without more, be sufficient to confer a freehold, and give a vote; but he says in this case the interest is not uncertain, because it is determinable, as he contends, upon the principle of *Davis* v. *Waddington*, at the will of persons who are trustees in the terms of the Act of Parliament. Now, in looking at the Act, by the 8th section, the allottees are to hold so long as he or she shall be willing to hold the property and pay a certain rent fixed and reserved, and conform to the rules and regulations made upon them. It is admitted, and there can be no question, that this, if there was nothing else in the Act, would give to the allottees a freehold. But it is said there are words in the subsequent sections which alter the nature of the estate. Now what Mr. Hayes has said with reference to the estate, that it is difficult to say, if this is not a freehold, what is the estate conferred, is very strong. It is plain it is not an estate for years; it is not an estate at will, because it is not contended that it is held and controlled at the absolute will of the deputies. Mr. Cox says, that it is a sort of parliamentary estate, floating between an estate at will and a freehold, but not sufficient to confer a freehold franchise. But it seems to me it would be highly inconvenient so to hold, and we cannot, consistently with the well-known and admitted rules of law, consider this as otherwise than an estate of freehold. It is plain, according to the authority of *Davis* v. *Waddington*, if the deputies had an absolute power to turn out, and they only confer an interest subject to that power, it would be an estate at will, and would not then confer a vote. But this land is not held at the uncontrolled will of the deputies: it is held at the will or concurrent will of others also, who, for this purpose, are strangers, or the body, of whom the allottee is one, and whose consent by the majority represents his consent. But I do not consider it necessary to enter upon this latter proposition. It may be possible to raise it by a refinement in the construction of the Act of Parliament, if the allottee is not a consenting party, if there is the contingency of turning him out by sale or exchange, and if the other freemen are strangers to the transaction. But if the estate is held at the will of a stranger, not under the control of the deputies and lessors or of the allottees, it is held on an uncertain event, because it is uncertain whether they will or will not consent to sell or exchange, and he therefore holds the estate, as described by Coke Lyttleton, in 42 A, upon an uncertain event, and for an uncertain time, and he has therefore by judgment of law an estate for life. In that view of the case the revising barrister is correct in his

decision. The claimant had a freehold necessary to confer the franchise, and his name ought to be admitted.

MAULE, J.—This claimant has been rightly held by the revising barrister to be entitled to the franchise, if he is the holder of a freehold for an equitable or legal estate. The question is as to the quantity of the estate. Now, it is well established that an estate which may last for a man's life will be a freehold; properly speaking, an estate limited to a man for life, or given to him for life, determinable on an event which is not in the power of the lord from whom he holds the land, is an estate of freehold;—an estate determinable on a condition, which condition cannot arise from the arbitrary will of the lord, is an estate of freehold. Now, in this case, the estate is determinable upon a certain event depending upon the will of the tenant; of course, it does not interfere with the estate for life that he must observe the rules and pay the rent; it is not contended that this prevents the estate from having the character of a freehold; but the estate is capable of being determined upon an event of a very special kind, that of the deputies choosing to sell with the concurrence of a majority of a meeting of the occupiers, the allottees for the time being. Now that is an event which clearly is not dependent upon the arbitrary will of the lord, or one for which the mere will, however influenced, of the lord is sufficient. The character and the power of an arbitrary removal takes away the freehold character of the property. Now are not the events as much out of the power of the lord of whom the property is held, or in whom the legal estate may be considered as vested, as if he had no power to exercise his will? because, if there is anybody besides whose concurrence is necessary, the circumstance of that concurrence being also necessary does not make the concurrence of the other less necessary to the power of determining the estate; it does not make the tenure less independent of him, or the less confer an estate which may last for life, and which cannot be determined by anybody's arbitrary removal. It may not be brought about by any individual person, and such an estate as that is clearly, according to the well-known cases and principles of law, an estate of freehold. With respect to *Davis* v. *Waddington*, it appears to have been perfectly well decided. In that case, the person enjoying the property and claiming to vote was a person who was appointed by those who under the instrument constituting the local law in that case had the power of appointment; he was appointed to continue so long as they should think fit to allow him to continue, and that was held not to be an estate of freehold. That was quite in conformity with the current of authorities, and the common sense and ordinary understanding of mankind upon the subject. It appears clear that there was no freehold. It is equally clear that there is one here, and therefore the revising barrister is quite right.

WILLIAMS, J.—I am of the same opinion. I think that the estate of those who claimed the franchise in this case was a freehold, inasmuch as it was an estate for an uncertain interest, which may last the life of the tenant, and is not referred to the mere will of the tenant and the person next in succession. The case seems to me mainly to belong to that class of estates for life of which the well-known examples are of an estate to be limited to a person as long as particular trees shall stand; or as long as A. and B. continue to be justices of the peace.

TALFOURD, J.—I am of the same opinion, for the reasons that have been so fully given.

Decision affirmed with costs.

Nov. 22, 23, and 24.

HOLMES v. THE LONDON AND NORTH WESTERN RAILWAY COMPANY.

(Before JERVIS, C.J. and MAULE, WILLIAMS, and TALFOURD, JJ.)

Letters patent—Insufficiency of specification—Combination of old parts of a machine with new.

Where a patent is obtained for the improvement of a machine by the combination of old parts with new, the specification must distinguish the old from the new, so that a person possessed of ordinary skill in the matter may know which is old and which is new.

A. invents "an improved turning-table for railway purposes," and obtains a patent for it. In his specification he describes the manner in which the turning-table is formed, and its constituent parts, not saying what was old or what was new. A few weeks previous to the date of his patent B. had, unknown to A. obtained a patent for a turning-table similar in all but one part (which, however, was of great importance and utility):

Held, that the specification was bad for not distinguishing the old parts from the new.

Quære, whether a person who buys a patented article from one who is not licensed to sell it, has it put up by workmen on his premises, and uses it, infringes the patent.

This was an action for the infringement of a patent granted to one Wm. C. Harrison (whom the plaintiff represented), for "an improved turning-table for railway purposes." The specification thus described the invention:—"I do hereby declare the nature of my said invention to consist in supporting the revolving plate or upper platform of the turning-table, as also its stays, braces, arms, and supports on the top of a fixed post, well braced, and resting on or planted in the ground, the top of which post forms a pivot for the table to turn on, while support arms, radiating from a frame work (the weight of which is also sustained on the post), moving round the bottom part of the post with friction rollers, and fastened to the outer edges of the plate, stay the plate at all sides, and keep it steady to receive the superincumbent weight of carriages, or whatever is to be turned upon it."

In the declaration, four breaches were assigned,—first, that the defendants made and manufactured turning-tables protected by the patent; secondly, that they caused them to be made and manufactured; thirdly, that they did vend and put off such tables; fourthly, that they did work and use turning-tables which had been made without license, and in breach of the patent.

The turning-tables in question are those which are seen at railway stations, and are used for the purpose of turning engines and carriages. It appeared that the circumferance of the turning-tables formerly in use rested upon rollers which were themselves supported by a framework. It was found that when a heavy weight was placed upon these tables, the pressure of the circumference upon the rollers, caused the friction to be very great, and the table to be difficult to move. Harrison, therefore, sought to remedy this by the invention which he patented. In his turning-table, the support, instead of being at the circumference, was at the centre. The model of the machine was in appearance something like a basin with a rod passing through the centre, and covered with a plate. Suppose the rod fixed, and the basin turning loose round it, and you have some notion of an improved turning-table. It was a great desideratum to discover some means of preventing the table from being pressed down on one side, and thereby causing a greater and unequal friction at the centre; and Harrison succeeded in doing this by having arms or stays converging from the circumference of the table or plate, to what was called a jacket turning on friction rollers round the bottom of the post. If this had been all, the whole weight of the table, would, through the arms, have rested on the jacket, and the bottom of the post which supported it, and when there was an unequal weight upon the table, that acting through the arms unequally upon the jacket, would have caused it also to press unequally against one side of the post, and so prevent the table from turning easily. This was remedied in Harrison's turning-table by having suspending rods, fastened at the one end to the jacket, and passing perpendicularly upwards through the table, and fastened at the other end to a cap turning loosely on the top of the post. Thus the whole weight was, in the first instance, concentrated by means of the arms upon the jacket, and then through the suspending rods upon the cap and top of the post. For this very useful and ingenious invention the patent in question was granted. It appears, however, that only a few weeks before the date of his patent, a patent had been granted to one Hancock, for a turning-table precisely similar to Harrison's, with the important exception of the suspending rods. Harrison was not aware of this when he obtained his patent, and appears in consequence to have claimed as his invention, not only the suspending rods, but also the arms, stays, &c. It was proved at the trial that the defendants had ordered a turning-table with the suspending rods from a person not licensed to sell them, and had employed workmen to put it up. The material issues were, 1st, upon the plea of not guilty; 2nd and 3rd, on pleas denying the novelty of the invention; and, 4th, upon the sufficiency of the specification at the trial. The jury found everything in the patented article was old except the suspension-rods, and a verdict was entered generally for the plaintiff, with leave to the defendants to move to have it set aside and entered for them. And a rule having previously been obtained,

Watson, Q.C. *Hindmarsh*, and *Price* now shewed cause. There are two points raised by the other side: 1st, that although the machine may be new and useful, yet the plaintiff is not entitled to recover by reason of the specification not distinguishing what is new from what is old. But the specification does not claim the patented article as new in all its parts, but as new in the combination of its parts; in fact, it is a claim for a new arrangement of machinery constituting the present turning-table. There may be a patent for a combination of machinery where all the parts are new, or where only one part is new, and the latter is the case in the plaintiff's patent. The specification is not to be read as something specially demurred to, but it is to be read as an ordinary man skilled in the matter would read it; and so read, this specification shews that what is claimed is a combination of the old parts, that is, the horizontal plate, the stays, arms, braces, and post, with the new parts, that is, the suspending-rods; and it is a claim, not for any particular part or parts, but for the whole as a new combination; and in such a case it is not necessary to shew what parts are old and what new. If it were a claim for an improvement, then it would be necessary to shew in what the improvement consists, according to the rule laid down by Lord Eldon in *Hill* v. *Thompson*, 3 Meriv. 629. [JERVIS, C.J.—There must be a novelty, and it must be specified, that the public may avoid an infringement, and that after the time of the patent has elapsed, the secret may be known. Here a workman might think he must not make a turning-table with the arms mentioned in your specification.] The result of the invention patented is the suspension of the weight in the centre of the table, or the top of the post, and the workman would know that that would not be effected by the arms alone, and that he might therefore use them without infringing the patent. If I claim A B C and D, and A B C are old, I must state that; but if I claim the combination A B C D, it is not necessary for me to shew that A B C are old. As to the second point raised, that there was no proof of an infringement, there was evidence of the turning-table being on the defendant's premises, and that it was put up there by workmen by the order of the defendants, and user is an infringement.

They cited *Cornish* v. *Reeve*, Webs. 501; *Propeller Patent*, Webs. 656; *Haworth* v. *Hardcastle*, 1 Bing. N. C. 182; *Sellers* v. *Dickenson*, 5 Ex. 312; *Newton* v. *Grand Junction Railway Company*, 5 Ex. 317; *Gibson and another* v. *Brand*, Webst. 631; and *Novello* v. *Sudlow* (reported under the name of *Novello* v. *Ludlow*) 21 L. J. C. P. 161.

Knowles, Q.C. and *Webster*, in support of the rule.—The specification is bad, according to the rule laid down in many cases. There is nothing new but the suspending rods. The claim, therefore, is not for a new combination of old parts, but for a combination of old parts with one new one; and the question is, whether it is necessary so to describe the machinery that it may be seen that some of the parts are not claimed. We submit that it is. *Borill* v. *Moor*, 2 Marsh, 211, per Gibbs, C.J.; *Palmer* v. *Playne*, 11 East, ; where the specification was held to be good, because it referred to the former patent, so that the old could be distinguished from the new. *Jessop's* case, Dav. P. C. 203; where a patent was held to be void, because it extended to the whole watch, and the invention was of a particular movement only. Harrison has not sufficiently specified what his improvement was. He claims for an improved turning table, and the improvement is the suspending rods. He has not described the parts which existed in Hancock's. He claims all but the surface. In truth, he thought he had discovered a way for dispensing with the rollers at the circumference, and he meant to claim this, not being aware of Hancock's improvement. As to the infringement, the purchasing of a patented article from a person not licensed to sell it, is not an infringement, and the defendants in this case have done no more. (*Chanter* v. *Dewhurst*, 12 M. & W. 823.) [MAULE, J.—The plaintiff complains of his right of sole making and manufacturing being infringed, and of his monopoly being thereby interfered with. If a defendant does something which is neither working nor making, but still interferes with his monopoly, that is an infringement, though it is practically perhaps somewhat difficult to separate it from working and making. JERVIS, C.J.—The interference, however, must be direct. MAULE, J.—A man may so sell as to interfere with the monopoly. JERVIS, C.J.—Yes, and to sell once would legally be as much an infringement as an extensive sale.] This is a point which has never yet been decided. The case of *Gibson and Another* v. *Brand* is the nearest to it. Tindal, C.J. p. 631 of Webster's report of that case, says, "he that causes and procures articles to be made, may be well said to have made them himself."

JERVIS, C.J.—It is unnecessary for us to give an opinion upon the difficult point which has been raised upon the question of infringement. On the other point the rule must be made absolute. No question has been raised with reference to the rule of law which must govern our decision. Every patentee in his specification must describe his invention so that an ordinarily skilled workman may read and understand what part is old and what new. It is also free from doubt that there may be a patent for a combination of old parts with new. The rule which I have stated is not interfered with by the cases cited. It will be found to be adhered to in *Russell* v. *Cowley and Another*, Web. P. C. 465; *Haworth* v. *Hardcastle*, 1 Bing. N. C. 182; *Sellers* v. *Dickenson*, and *Newton* v. *Grand Junction Railway Company*; in all which cases the specification either distinguished, or by reference to former patents, gave the means of distinguishing what was old from what was new. It was contended by Mr. Hindmarsh that at the time of the patent Harrison did not know of Hancock's patent. How

then could he point out what was old? In fact, he intended to claim what was old; and what is the meaning of what he says in his specification? [His Lordship read the specification.] None of these parts which he mentions are said to be old, and the jury have found everything was old but the suspending rods. He ought to have said he took Hancock's patent and added the rods, so as to avoid the necessity of surrounding rollers. He does not clearly distinguish the old from the new, and therefore he does not comply with the rule of law.

MAULE, J.—I am of the same opinion. The construction of the specification does not present any difficulty. It has been attempted to shew a different construction of the specification from that which, to one reading it with the desire of knowing what it means, it presents. It clearly claims an improvement of the turning-table, consisting of that part of the table which lies below the superficial part. Those lower parts are to afford support, and distribute the weight to fixed points. Those parts are all described together without any distinction between one part and another part. The whole of them, according to the plain sense of the specification, form his improvement. There is nothing to distinguish one from the other, and, therefore, what is said of the rods, that they are new, is impliedly said of the other parts. It would be wonderful if it were not so on the plaintiff's own hypothesis, because he says I never heard of Hancock's patent. I supposed the whole apparatus equally my invention. It is possible a man in that state of mind intending to take out a patent for the whole might nevertheless so describe his invention as to make a distinction between the parts, so that the true sense of what he said might only claim for one part. He might make the distinction without intending it. But though possible, it is not probable. It is manifest that he claims one part as much as another. It turned out upon testimony that the whole was not his invention. The specification would apply as much to the old parts as the new. The suspension rods are new, and it is said that that is what is described in the specification. I am of opinion that it is not. It is practically impossible that he should have meant to claim the rods alone. Therefore there is no difficulty. The paintiff has described one thing, and the evidence is about another.

WILLIAMS and TALFOURD, JJ. concurred.

JERVIS, C.J.—On the issues denying the novelty, the verdict will be for the plaintiff.

Rule absolute, to enter the verdict for the defendant on the first and fourth issues.

COURT OF EXCHEQUER.

Reported by FREDERICK BAILEY and C. J. B. HERTSLET, Esqrs. Barristers-at-Law.

Saturday, Nov. 13.

LOWTHER *v.* WILSON.

In this case, in which it will be observed by the judgment of the Court that no point of law arose, the Court had taken time to consider whether or no they would grant a rule.

JUDGMENT.

POLLOCK, C.B. now said.—In this case, which was tried before the Lord Chief Justice of the C. P. we think there ought to be no rule. The ground of the application was, that there were two contracts apparently opposed to each other; but, in truth, when we come to have the matter explained to us, the second contract is absolutely necessary to be performed before the first could be carried into effect; so that, in fact, they make but one contract. For that there is very good reason, which the Lord Chief Justice has fully explained to us, and therefore we think there ought to be no rule.

ALDERSON, B.—The issue was, whether or not the act of the plaintiff prevented the defendant from performing his contract. The point contended for was, that the party had not furnished proper plans; he had furnished plans of the first, but none of the second. If you could separate one from another, the ruling would be wrong; but as the first contract could not be performed till the second was completed, the non-furnishing of plans for the second was, in truth, an obstacle to the first.

Rule refused.

Tuesday, Nov. 23.

HENSHAW *v.* BRICE.

In this case the Court had taken time to consult the learned judge who tried the cause, and it will be seen that the rule nisi was granted in consequence of a misconception of the summing up.

JUDGMENT.

POLLOCK, C.B. said, in this case, which was tried before my brother Coleridge, at Northampton, and in which a rule for a new trial was obtained, on the ground of misdirection, we are of opinion that the rule ought to be discharged. The case was substantially this:—An action was brought (rejecting those matters of complaint that were abandoned at the trial), about some windows, or some other nuisance, and the only remaining matter that was the subject of discussion was the right of the defendant, who occupied the lower premises, to repair them, they being out of repair, doing as little mischief as possible to the superincumbent building which belonged to the plaintiff. The learned judge who tried the case told the jury, as reported by him to us, that the defendant, who occupied the lower apartment or portion of the building, had a right to repair the lower part if it was out of repair, taking all proper and reasonable caution that he should thereby do no mischief to the superincumbent building belonging to the plaintiff, but that if the plaintiff had by his own negligence permitted the building, his upper portion, to get into such a state of ruin, or defect, or damage, as that it was impossible for the defendant to do what he had a right to do, taking all proper caution without doing some injury to the plaintiff's building above, that then the defendant was not responsible for that. A new trial was moved for by Mr. Mellor, on the ground of misdirection, and misdirection only, no other point was made but this, and it was insisted that the learned judge had laid down that the defendant, under these circumstances, had a right to make alteration: we thought that he had not, and accordingly we granted the rule. When the report came in, and we received the learned judge's account of his own summing up, and when cause was shewn, and the whole of the evidence was gone through, it appeared to us perfectly clear either that the learned judge had never used the word "alteration" at all, or if he had, that it was used with reference to the evidence and the acts before the jury as applicable only to the repairs; that appears to be the way in which we think the jury must have understood him, and that was certainly the way in which, from the evidence, it appeared probable it was used, and it being quite clear, we have the learned judge's own report, that he expressed himself merely with reference to the repairs, and probably used no expressions which would mislead the jury that he intended to intimate that the party had any right to make alterations irrespective of repairs. This was the only point made before us either on the motion for a new trial, or during the course of the argument, which occupied one day and a portion of another, but no other point was made. We are of opinion that the learned judge's direction was perfectly correct, and that therefore there is no ground for disturbing the verdict; therefore we think the rule ought to be discharged.

Rule discharged.

Nov. 22 *and* 23.

MULHALL *v.* NEVILLE.

Bill of exchange—Evidence—Delivery—Filling in date—Authority.

This was an action on a bill of exchange by the holder and endorsee, for value, against the drawer. The defendant pleaded non fecit. At the trial before the Chief Baron, the defendant offered evidence to shew that the bill being drawn and accepted in blank in 1846, had been handed over to one Cannon, for the purpose of raising money for the accommodation of the acceptor, named Page. Cannon kept the bill till 1849, when he took it to the plaintiff, who filled it up as of 1847, and discounted it. This evidence was rejected, whereupon this rule was obtained for a new trial, on the ground of its rejection.

M. Chambers now appeared for the plaintiff, and argued that there was no limit in point of time to the authority acquired by Cannon when he received the blank bill from the defendant and Page, and that he was at liberty to exercise it at any time within the Statute of Limitations.

Knowles and *Bovill*, contrà, contended, that as to the Statute of Limitations, it was difficult to say when it would run, whether from the date of the delivery or of the filling up. On the main point, they argued that the authority was limited to a reasonable time, to be judged of by the surrounding circumstances of the case; that, therefore, the evidence was admissible. *Cur. adv. vult.*

JUDGMENT.

POLLOCK, C.B.—In the case of *Mulhall* v. *Neville*, which was tried before me in Middlesex, Mr. Knowles moved for a new trial, and cause was shewn by Mr. Chambers, we are of opinion that the point is of sufficient importance to be considered, and that there ought to be a new trial for that purpose. It is not necessary to say more than that there ought to be an opportunity of seeing whether there was any such circumstance as would justify either the Court or a jury in laying down a rule that there may be some reasonable limitation under such circumstances. The case certainly, and the evidence tendered, might have given rise to a question, and I concur with the rest of the Court in thinking that there ought to be a new trial, when an opportunity will be offered of considering the matter more fully.

Rule absolute.

Thursday, Nov. 25.

CREW *v.* HOLROYD and ANOTHER.

County Court—Prohibition—Title to land.

Plaintiff being the owner of a cottage, underlet to one of the defendants the whole except (as he alleged) two rooms reserved thereout for himself. Defendant alleged that the plaintiff had let him the whole cottage, and he accordingly, with the other defendant, entered those two other rooms and removed plaintiff's furniture. Plaintiff brought an action against them in the County Court for doing so. The defendants contended the County Court judge had no jurisdiction, as the title to a corporeal hereditament came in question. The County Court judge decided he had jurisdiction, and gave a verdict for the plaintiff for 25l.

Held, that the County Court judge had not, in this case, jurisdiction, as title to land was in dispute, and that a writ of prohibition must issue.

A plaint had been entered in the County Court of Cheshire by the plaintiff against the defendants to recover damages from them for breaking and entering his apartments and carrying away his goods. It appeared that the plaintiff, being owner of a cottage, had underlet, as he alleged, all of it, except two rooms, which he had reserved for his own use, the defendants contending he had underlet the whole to the defendant Holroyd without any exception or reservation, and Holroyd justified entering himself, and authorising the other defendant's doing so, and removing the furniture therefrom. Under these circumstances, the defendants contended, as title to land came in question, the jurisdiction of the County Court was taken away; but the learned judge thought otherwise, and determined it to be a question of fact only, he accordingly proceeded with the case, and gave a verdict for the plaintiff for 25*l.* damages. A rule nisi for a prohibition having been obtained,

H. Hill, Q.C. (*Wheeler* with him) shewed cause.—The question is, whether, under the circumstances, title to land here is in question, according to the 9 & 10 Vict. c. 95, s. 58, and the decisions pronounced upon its construction. The words of that Act are, "that the [County] Court shall not have cognisance of any action of ejectment, or in which the title to any corporeal or incorporeal hereditaments, or to any toll, fair, market, or franchise, shall be in question." A mere question of occupation is not enough; it must be something of a nature which is capable of being inherited. [PARKE, B.—The plain question is, whether title to corporeal hereditaments is in question. You will not contend that it must be a fee simple or fee tail. Can a County Court judge dispose of a question of title depending upon a valuable lease for a long term of years?] In *Lloyd* v. *Jones*, 6 C. B. 81, it was held that, to oust the jurisdiction of the County Court by reason of the proviso now in question, the claim set up must be a bonâ fide one, and the right one that can exist in point of law; and there Wilde, C.J. in delivering the considered judgment of the Court said, "Hereditament is defined in the text-books of authority to signify all such things, whether corporeal or incorporeal, which a man may have to him and his heirs by way of inheritance, and which, if they be not otherwise bequeathed, come to him who is next of blood, and not to the executors or administrators as chattels do." In *Fearon* v. *Norvall*, 5 D. & L. 439, it was held that a judge of a County Court had jurisdiction to inquire whether the tenancy was determined by a legal notice to quit, and that his decision on the fact was conclusive and could not be questioned. On a motion for a prohibition in *Thompson* v. *Ingham*, 15 Law T. 23; 19 L. J. 189, Q.B.; and 14 Jurist, 429, it was determined where a question is raised incidentally before the judge of a County Court on the trial of an action over which he had original jurisdiction under the 9 & 10 Vict. c. 95, s. 58, whether title to land is in dispute between the parties, the judge has jurisdiction to inquire and decide whether title really is in dispute, but his decision is not final; and if he decides that title did not come in dispute, and the Superior Court is satisfied that title did come in dispute, a prohibition will issue against him. Should the Court think that title to land in this case did really come in question, and if title to any hereditaments be held to mean title *in* any hereditaments, I must say I cannot see, at present, that I have a sufficient answer to this rule.

Cowling, in support of the rule, not called upon.

Rule absolute, with costs only of this rule.

GLOVER *v.* JONES.

Money had and received—Privity of contract—Servant's liability.

Plaintiff and defendant were servants to Dangerfield and Co. plaintiff as a stage-coach driver, defendant as clerk and book-keeper. Defendant usually paid plaintiff his wages and made up all the accounts, entering the plaintiff's moneys in the books as being settled weekly; defendant and Dangerfield and Co. settled monthly. Plaintiff having, as he alleged, 38l. due, applied to defendant for it, admitting he had retained of Dangerfield and Co.'s eleven journeys of 40 miles each money and parcels: defendant sent him 20s. on account, and promised to pay the balance on plaintiff's calling to adjust accounts. Plaintiff afterwards wrote to Dangerfield for the balance stating he should look to Dangerfield for pay-

EXCHEQUER.

The plaintiff subsequently brought this action for it against the defendant:

Held, that the action for money had and received by the coachman against the clerk could not be maintained.

Debt.—The declaration contained counts for money had and received. Money paid and account stated.

Plea.—The general issue.

Plaintiff and defendant were both servants to the same masters (Messrs. Dangerfield and Co.), who were large coach proprietors. The plaintiff was engaged as a coachman by Dangerfield and Co. to drive one of their coaches from Gloucester to Chepstow, and back. Defendant was a clerk and book-keeper to Dangerfield and Co. at their office at Gloucester; it was the defendant's duty, as such clerk and book-keeper, to keep the accounts between the plaintiff and Dangerfield and Co. which he did, and pay the plaintiff from time to time for Dangerfield and Co. the wages due to the plaintiff, as also the money paid by him for tolls, horse-keepers, &c. The plaintiff's services terminated in April 1851, and in September 1851, he wrote to the defendant, stating that the sum due to him for wages, tolls, &c. amounted to 38*l.* but that he had received the up-road money and for parcels from the 7th March to the 29th March, besides two down journeys. Defendant, January 4, 1852, sent him 20*l.* on account by a messenger, with a letter stating that he would pay him the balance if he would call at the office to examine and see how the accounts stood. Plaintiff, 10th February, 1852, wrote to Mr. Dangerfield requesting payment of his account, and stating that he should look to him, Dangerfield, for it. Some time afterwards this action was brought for 19*l.* odd, against the present defendant; the cause was tried before the under-sheriff of Gloucester, when the above-mentioned facts and letters were proved, and also by Mr. Dangerfield, that the defendant regularly entered in his books the plaintiff's wages, &c. as paid weekly, which he (Dangerfield) allowed to him; that defendant made up his accounts with Dangerfield and Co. monthly; that plaintiff applied to him for payment, and he referred him to Jones (the defendant). The under-sheriff nonsuited the plaintiff, giving him leave to move to set the same aside; a rule nisi having been obtained for that purpose, and to enter a verdict for the plaintiff for the amount claimed, or for a new trial.

F. Bailey shewed cause.—The plaintiff and defendant both live at Gloucester, and the action being for only 19*l.* odd, should have been brought, if at all, in the County Court; but the action is clearly not maintainable. It should have been brought against Dangerfield and Co. and not against the defendant; there is no privity of contract between the defendant and the plaintiff, nor any consideration moving from the one to the other. A privity of contract may be sometimes inferred, though not directly established, to support an action for money had and received, which was at one time considered a kind of equitable action, but the equity here would depend on the state of the accounts between the plaintiff and Dangerfield and Co. and upon the evidence as given at the trial: it would appear the plaintiff's demand had been satisfied before action brought. The plaintiff, by his letter in September, says, there is due to him for tolls, wages, &c. 38*l.* and admits therein that he has received the up-road money and parcels three days a week for upwards of three weeks, besides two down journeys; there would therefore be eleven journeys, at least, of about forty miles, from Gloucester to Chepstow, the whole receipts of which the plaintiff admits he has taken and retained; this must amount to more than 18*l.*: the defendant after receiving that letter sent him 20*l.* on account, and asked him to call to settle the difference. the defendant says, therefore, the plaintiff is rather over than under paid; the receipt for the 20*l.* is given to the defendant "on account of the railway Chepstow coach." The defendant's conduct throughout is only as the mere clerk or servant (for he cannot be considered an agent) of Dangerfield and Co. and if he had paid over the whole 38*l.* seeing the plaintiff had received his master's money for eleven journeys on account and retained it, he would have violated his duty. The defendant was always willing to examine the accounts, and either pay or receive any balance, but he had not, nor was there any evidence that he had entered into any binding engagement to hold the money given him by Dangerfield and Co. for the plaintiff's use, and he is not therefore liable. In *Howell* v. *Batt*, 5 B. & Adol. 504, the defendant was office-keeper of an Exeter and London coach, and servant to C. a proprietor at Exeter, where the office kept by defendant was. Defendant from time to time made up accounts of the shares of profits due to the several proprietors and sent them to the proprietors, taking the money from a balance of C.'s, which he had in hand. On one occasion defendant sent to plaintiff, a proprietor, a packet purporting to contain 23*l.* which was due to him, but in reality containing 20*l.* only. Plaintiff sued defendant for money had and received to his use: it was held that defendant was not liable, there being no privity of contract between him and the plaintiff; and that he was not precluded from this defence by having told the plaintiff (after action brought) that the defendant had had the 23*l.* of C. and sent it to the plaintiff, and debited C. with it. [PARKE, B.—You say that the defendant to become liable should, as it were, have attorned to the plaintiff, entered into a binding contract to hold the money for him, and so induced him to have given up all claim on Dangerfield and Co. and looked solely to the defendant?] Certainly, that is the effect of your lordship's judgment in *Howell* v. *Batt*, but after the defendant here had written to the plaintiff the letter of January 4th (upon which the other side relies), the plaintiff writes, on the 10th February, 1852, to Mr. Dangerfield for payment, and gives him notice expressly that he shall look to him (Dangerfield) for payment. [PLATT, B.—If the plaintiff had sued Dangerfield and Co. they might have had an answer to it?] Yes; they would plead payment and set-off, and be enabled to prove it to defeat the action. *Baron* v. *Husband*, 4 B. & Adol. 611; *Wharton* v. *Walker*, 4 B. & C. 163; and *Barlow* v. *Bourne*, 16 M. & W. 128, are cases upon the same principle. (He was then stopped by the Court.)

Gray, contrà, called upon to support the rule.—It is clear, upon the evidence given at the trial, that the defendant had actually received the whole amount due to the plaintiff, because Mr. Dangerfield was called and examined, and he stated that the defendant regularly every week entered in his book as paid, the wages and tolls, &c. due to the plaintiff, and that he, Dangerfield, allowed it to the defendant; he therefore had received the plaintiff's money for him. The plaintiff then applies to him for it, and on January 4th, 1852, he sends him 20*l.* on account, with the letter which has been read, in which he promises the plaintiff to pay him the balance; which he has never done. That is, therefore, money had and received by him to the plaintiff's use. The receipt, too, which had been given for the 20*l.* was in form:—"Received of Mr. Joseph Jones the sum of 20*l.* on account," &c. shewing the money was received of the defendant and taking credit to himself for the payment. This receipt was drawn by the defendant. When the plaintiff found the defendant would not pay him as usual, and as he had promised, he then applied to Dangerfield, whose answer was—"I have nothing to do with it; go to Jones;" which also shews that the defendant had received or been allowed the money due to the plaintiff by Dangerfield. [MARTIN, B.—What is there to prove that Dangerfield and Co. might not, previous to the action, have countermanded their order to the defendant, who was only their servant, and requested him not to pay the money to the plaintiff for some reasons known to themselves, would they not have a perfect right to do so?] As they paid the amount owing to the plaintiff to the defendant for him which was proved, the defendant having paid a part of it to the plaintiff, with a written promise to pay him the remainder, and on application by him to Messrs. Dangerfield and Co. for payment, after he finds that he cannot get it from the defendant, they refer him to the defendant for payment; this would shew there was no such supposed countermand on their part. The plaintiff in this case had leave reserved to move, and the rule is to set aside the nonsuit and enter a verdict for the plaintiff, or for a new trial. The question then is, whether there was *any* evidence to go to the jury. The defendant's letter to the plaintiff of the 4th January, 1852, the form of the receipt of that date for the 20*l.* drawn by the defendant and given him by the plaintiff, with the testimony of Mr. Dangerfield and the plaintiff as given, was some evidence for the jury to support this action.

POLLOCK, C.B.—That certainly does not appear to me to be the effect of the "leave to move" written upon the undersheriff's notes before us. I think the only question intended to be reserved to the plaintiff to move was whether the under-sheriff was correct in directing a nonsuit, and I must say I think he was.

PARKE, B.—Yes; that was all that was intended. The nonsuit was quite right; besides which there was no evidence under the circumstances in this case I think that should have been left to the jury.

PLATT and MARTIN, BB. concurred.

Rule discharged with costs.

WALTERS *v.* HOWELLS.

Special jury—Costs of.

A declaration in trespass contained five counts. Defendant traversed the whole. A special jury was then obtained. Defendant subsequently amended his pleas, and suffered judgment by default as to the two last counts in the declaration. On the trial the plaintiff succeeded on the first issue of not guilty, but failed as to the remainder; and the jury assessed the damages at 40s. upon that which judgment went by default. The judge certified for the special jury: Held, that the plaintiff was not entitled to the costs of the special jury.

This was an action of trespass. The declaration contained five counts. As to two of them, judgment was suffered to go by default, and the three others were traversed. The cause was tried by a special jury before Martin, B. The plaintiff obtained a verdict on the first issue of "not guilty," and the defendant had the verdict returned for him on the remaining issues. As to the two counts upon which judgment was suffered by default, the jury assessed the damages thereon at 40s. The learned judge certified for the special jury, and the Master allowed plaintiff the costs thereof. A rule having been obtained for the Master to review his taxation,

Field shewed cause.—The judge has given his certificate for the special jury, and the plaintiff is entitled to the costs. When the special jury was first applied for, the defendant denied the whole of the plaintiff's case; but he subsequently amended his pleas by striking out those applicable to the two last counts of the declaration. [PARKE, B.—The defendant has substantially the whole verdict. POLLOCK, C.B.—You lost the cause, and the judge's certificate, therefore, does not help you.] But the plaintiff obtained 40*s.* on the assessment of damages upon the judgment by default. [POLLOCK, C.B.—No issue was joined there upon the assessment of damages by default.] The plaintiff would, under the circumstances of this case, be entitled to the costs of the special jury, unless there be some Act of Parliament to deprive him of them. He referred to *Vickers* v. *Gallimore*, 5 Bing. 196; *Haldane* v. *Beauclerk*, 3 Ex. 658; and see also *Sharland* v. *Loring*, 1 Ex. 375.

Gray, contrà (not called upon).

Rule absolute.

BUSINESS OF THE WEEK.

Thursday, Nov. 25.

THE ATTORNEY-GENERAL *v.* MORGAN.—*Garth* moved to enlarge the rule herein. *Granted.*

BRAHAM *v.* KING.—*Petersdorff* shewed cause against a rule obtained herein to set aside the trial, plaintiff's verdict, and all subsequent proceedings, on the ground that the record upon which the trial took place did not correspond or agree either with the issue or the declaration. The defendant was sued as acceptor of a bill of exchange for 49*l.* which one Jay had drawn upon the defendant; but in the declaration, and in the issue, it was by mistake described as payable to the order of the acceptor, instead of the drawer,—in the record it was put right, that is, the bill was described properly as payable to the order of the drawer. [PARKE, B.—The record did not agree with the issue and declaration, and the alteration it appears was made without authority, it is clearly an irregularity.] He admitted it was an irregularity, but under the circumstances, seeing that it was a mistake purely technical, quite a technical error, what terms would the Court impose? PARKE, B.—The proceedings must be set aside, and you must pay the costs. [*H. T. Cole*, in support of the rule, was not called upon.]

Rule absolute accordingly; venue to be changed.

STEARMAN *v.* KNIGHT.—*Crowder*, Q.C. and *Dowman*, shewed cause in this case, which had been referred to the Master. The Master's report was read. *Prendergast*, Q.C. contrà. *The attorney to pay all the costs.*

MARKS *v.* HAMILTON.—Sir *J. Cockburn* shewed cause against the rule herein *Creasy*, contrà.

Rule absolute; costs of award to be referred back to the arbitrator.

WOOD *v.* BONE.—SAME *v.* CAWLEY.—*Horn* shewed cause herein. *Hawkins*, contrà, not called upon.

Rule absolute.

HANCOCK *v.* MOULTON.—Referred to Parke, B. at chambers.

BATES *v.* ROTHERHAM.—*M. Smith* shewed cause against a rule obtained to rescind an order of Martin, B. which directed the plaintiff to produce a log-book, and in the meantime proceedings to be stayed. The action was upon a policy against the defendant as underwriter. The defendant could not safely plead until he had seen the log-book. The venue is in London, and the cause cannot be tried until February. *Jas. Wylde*, contra.—The log-book is in the custody of the American consul; the plaintiff will do all he can to produce it; but the object of the defendant is to delay the cause. He can certainly plead first, and if it should be necessary to amend the pleas after seeing the log-book, he may then amend. He cited *Goldschmidt* v. *Marryat*, 1 Campb. 559, and notes to that case.

To stand over until 20th January, plaintiff undertaking to do all in his power to produce the log-book; if not produced then, defendant to plead.

ASTON and ANOTHER *v.* LEDGER and TWO OTHERS.—Tried before Martin, B. Verdict for the plaintiffs. The action was for goods sold and delivered to defendants, for the repairs of a ship, of which they were registered owners. *H. Hill* moved, pursuant to leave to set aside the verdict, and enter a nonsuit. He cited *Wyatt* v. *Marquis of Hertford*, 3 East, 147; and *Robinson* v. *Read*, 9 B. & C. 449. *Rule refused.*

LEWIS *v.* DANIELS.—*James*, Q.C. and *Pearson*, showed cause against a rule obtained to set aside the trial, verdict, and subsequent proceedings, on the ground that the cause had been tried in Term, as a common jury cause, notwithstanding the defendant had obtained a rule for a special jury. Although defendant had obtained his rule for a special jury, yet no jury was struck, nor any notice given even to strike it until the day after the cause had been actually tried in its turn, and disposed of by a common jury; the defendant had given no notice to the sheriff, that the cause was to be tried by a special jury, pursuant to the 15 & 16 Vict. c. 76 (the Common Law Procedure Act), s. 112, nor had the cause been marked in the marshal's book as a special jury cause, which was necessary according to *Dawson* v. *Shiels*, 1 L. M. & P. 161. [PARKE, B.—The 113th section of the Act you refer to, appears to me to relate only to causes to be tried after Term, not to those intended to be tried in Term.] Then according to the old practice, the defendant should have struck his special jury, and have taken his original rule to

the marshal, that it might have been properly marked in the marshal's book as a special jury cause; this was not done, and the sittings had been perfectly regular. *Brunwell*, Q.C. replied. The Common Law Procedure Act, as has been suggested, does not apply, and the practice of the Court previously was, that whenever a rule for a special jury had been obtained, the cause was not triable in town, it went over as a matter of course until after Term, in the absence of any special motion upon the subject from the other side; if a motion were made in reference to it, then the Court imposed such terms upon the parties as the justice of the case required,—there is an affidavit of merits. PARKE, B.—Under all the circumstances of the case, I think the rule ought to be made absolute, the costs to abide the event. *Consented to.*

Monday, Nov. 29.

EDWARDS and OTHERS, Overseers, &c. *v.* ROBERTS and OTHERS.—Appeal from the County Court of Shropshire, holden at Oswestry. The COURT, without calling on the respondent,

Affirmed the decision of the Court below with costs.

EBERHARD *v.* BUSCHEK.—This was a demurrer to a declaration, which was heard to-day by consent and special appointment. The question turned on the construction of an agreement, and ultimately was arranged thus,—

The plaintiff to amend without costs, defendant to have leave to add a plea in the course of the following day.

EXCHEQUER CHAMBER.

BUSINESS OF THE WEEK.

Tuesday, Nov. 30.

ERRORS FROM THE EXCHEQUER.

(Before COLERIDGE, MAULE, WIGHTMAN, WILLIAMS, ERLE, TALFOURD, and CROMPTON, JJ.)

THE LANCASHIRE AND YORKSHIRE RAILWAY COMPANY *v.* THE EAST LANCASHIRE RAILWAY COMPANY.—In this case a special verdict had been taken, and ultimately the case was ordered to stand over that the special verdict might be amended.

WESSON *v.* ALLCARD. *Judgment affirmed.*

BAIL COURT.

Reported by T. W. SAUNDERS, Esq. of the Middle Temple, Barrister-at-Law.

Tuesday, Nov. 23.

(Before Mr. Justice CROMPTON.)

CLERK, Appellant, *v.* THE PARISH OFFICERS OF BINBROOK, Respondents.

Appeal—Arbitration—Costs—12 & 13 *Vict. c.* 45.

An appeal against a poor-rate was, under the provisions of the 12 & 13 *Vict. c.* 45, *s.* 13, *referred to arbitration, the arbitrator to have the same discretion and powers as to costs as the Court of Quarter Sessions possessed. The arbitrator made his award, and ordered that the appellant should, within one month, pay the respondents their costs of the appeal and the reference:*

Held, that the arbitrator should himself have ascertained the amount of costs, and that the award was bad for this reason, and was referred back to the arbitrator.

This was an appeal at the Quarter Sessions for Lindsey, Lincolnshire, against a poor-rate; and at the trial it was agreed between the parties that the matter of the appeal should be referred to arbitration, under the provisions of the 12 & 13 Vict. c. 45, s. 13, and the arbitrator was to have the same discretion and powers as to costs as the Court of Quarter Sessions possessed. The arbitrator duly made his award in favour of the respondents, and he ordered that the appellant should, within one month, pay the respondents their costs of the appeal and the reference; but he did not himself ascertain the amount of such costs.

Manisty upon this applied, on the behalf of the respondents, for a rule calling upon the appellant to shew cause why the award should not be referred back to the arbitrator, or why it should not be set aside, on the ground that the arbitrator had not ascertained and adjudged the amount of costs to be paid by the appellant to the respondents; and in the event of the award being set aside, why the justices should not be directed to enter continuances and hear the appeal.

Boden now showed cause, and admitted that the arbitrator was wrong in not assessing the costs himself, which was a power delegated to him by the reference; and whilst he was ready to consent to the award being set aside, and the case going again to the Sessions, he objected to its being again sent to the arbitrator, unless the whole question were again open for discussion before him; and he contended that the Court has no power to send back the award merely to be amended as to a part. (*Nicholls* v. *Warren*, 2 Dowl. & L. 550; *Morgan* v. *Smith*, 1 Dowl. 617, N.S.; *Webber* v. *Lee*, 1 Dowl. & L. N.S.)

Hayes, who appeared for one of the parties, and *Manisty*, who appeared in support of the rule, were not called on.

CROMPTON, J. thought that the award ought to be sent back to the arbitrator, who had made a slip in awarding the costs in the wrong way. He would give no opinion as to what the arbitrator ought to do, though he should not apprehend that he would think it necessary to go into the case again, but merely to correct the mistake he had committed with reference to this one matter.

Rule absolute to refer back to the arbitrator.

REG. *v.* THE RECORDER OF SHREWSBURY.

Appeal—Order of removal—Notice of chargeability.

An order of removal having been made, the same was duly served, but no notice of chargeability was ever given. The appellants thereupon appealed, and one of their grounds of appeal was, that no notice of chargeability had been sent to them. At the trial of the appeal, the respondents admitted that this ground of appeal was true, but contended that, in the absence of any notice of chargeability, there was no grievance against which the appellants had a right to appeal, and that the Court had no jurisdiction, therefore, to hear the appeal. Upon this the Sessions refused to hear the appeal, and upon an application to this Court for a mandamus,

Held, that the Sessions were wrong: for that the omission to send notice of chargeability was a good ground of appeal, and that the appeal ought to have been heard.

In this case an order of removal had been made from the parish of St. Chad, Shrewsbury, to the parish of Shawbury, Salop. The respondents served the order of removal, but omitted to send any notice of chargeability or grounds of removal. The appellants in due time served a notice and grounds of appeal, and amongst the latter were, that no notice of chargeability or grounds of removal had been sent to the appellants. On the appeal coming on for trial at the Shrewsbury Sessions in July last, the appellants relied upon the foregoing omission on the part of the respondents, who at once admitted the truth of the objection, but insisted that as no notice of chargeability had been sent, no grievance had arisen against which the appellants had any right to appeal, and that the Court had no jurisdiction to hear the case. The recorder being of opinion that this was a sound objection, dismissed the appeal.

Pashley, Q.C. therefore, in this Term obtained a rule calling upon the recorder (and the respondents) to shew cause why he should not enter continuances and hear the appeal; and in support of his motion he cited *Reg.* v. *Brixham*, 8 A. & E. 375; and *Reg.* v. *Mylor*, 11 Q. B. 55; 17 L. J. 6, M.C.

Scotland now shewed cause, and contended that until the service of the notice of chargeability no grievance had arisen against which the appellants had a right to appeal, and that as no such notice had been served in this case, there was nothing against which the appellants had a right to appeal, and that their appeal was therefore properly dismissed; and that although it was held in *Reg.* v. *Brixham*, 8 A. & E. 375, that where an order of removal was served without notice of chargeability, the parish might take advantage of such omission as a ground of appeal against the order, yet that case is not an authority against the respondents, inasmuch as in that case it was assumed all through that the right of appeal had accrued, and that the non-sending of the notice of chargeability was therefore a good ground, and it was never contended that no right of appeal whatever had accrued, which, had it been, may have altered the judgment of the Court. [CROMPTON, J.—You say that the counsel in that case should have adopted a different line of argument, and then the decision of the Court would have been otherwise. I shall have to go very far to say that these cases were badly decided. I am not likely to overrule a decision of the full Court, merely because a particular line of argument was not adopted.] The point was never taken. This case may well be decided a different way without affecting *Reg.* v. *Brixham*. (He cited also *R.* v. *The Justices of Salop*, 6 Dowl. 28; 4 & 5 Wm. 4, c. 76, ss. 79, 84; *R.* v. *The Justices of the West Riding*, 2 Dowl. & L. 488, 14 Law J. 11, M. C.; 11 & 12 Vict. c. 31, s. 9; *R.* v. *Mylor*, 11 Q.B. 55; 13 & 14 Car. 2, c. 12.)

Pashley, Q.C. (with him *Archbold*), contended that the appellants were right in appealing; that the real grievance was the making of the order of removal, and that *Reg.* v. *Brixham* was an authority conclusively in his favour. (He cited *Reg.* v. *Brixham*; *Reg.* v. *Mylor*, 19 Vin. Ab. tit. "Sessions of the Peace;" and *R.* v. *St. Mary, Whitechapel*, 12 Q.B. 126.)

CROMPTON, J.—I must be guided in this case by *Reg.* v. *Brixham*, which is a distinct authority in favour of the appellants. I cannot take upon myself to overrule it. When the full Court has decided that this is a good ground of appeal (however strongly it may be put that the point now taken was not taken then),—I cannot think of overruling it. *Rule absolute.*

Ex parte EDWARD THOMAS ROE, M.D.

A rule for a criminal information for a libel was refused, where it appeared that the applicant had himself resorted to the press upon the subject respecting which his complaint arose.

Crowder, Q.C. (*Phinn* with him), on the 22nd instant moved for a rule calling upon Charles Jackson to shew cause why a criminal information should not be filed against him for having written and published in September last a libellous pamphlet reflecting upon his character. It appeared that at the last Exeter assizes, a cause was tried, in which the said Charles Jackson and Louisa his wife were plaintiffs, and Dr. Roe the defendant, the action being to recover damages for the surgical mistreatment, by the defendant, of the female plaintiff. At the trial, the defendant obtained a verdict. Afterwards, Dr. Roe published an account of the trial, in which he himself made some comments on the facts and evidence. Subsequently, the male plaintiff also published an account of the trial, and introduced it with observations very derogatory to the defendant's moral character. It was in respect of these observations that the present application was made.

CROMPTON, J. said he would look at the two pamphlets, and form his opinion from them.

Cur. adv. vult.

To-day CROMPTON, J. said he had carefully considered the application, and having read the two pamphlets, and finding that Dr. Roe had, in his publication, made comments upon the case, he thought that, having thus resorted to the press, he could not now ask for the interposition of this Court, but must be left to his ordinary remedies.

Rule refused.

Saturday, Nov. 20.

(Before Mr. Justice CROMPTON.)

Ex parte SHERRING.

County Court—Prohibition.

Upon an application for a prohibition to restrain a County Court (after trial) from proceeding with a plaint, on the ground that it involved a title to land, this Court refused the rule, it appearing that no objection of the kind was taken in the court below.

Hawkins moved for a rule calling upon the judge of the Surrey County Court, holden at Farnham, to shew cause why a writ of prohibition should not issue to restrain him from further proceeding in a certain plaint, in which Sarah Robinson was the plaintiff, and the present applicant the defendant. From the affidavit used for this motion it appeared that this was an action brought to recover the sum of 5*l.* for the use and occupation of certain premises; and that on the trial the plaintiff obtained judgment. It further appeared that the question at the trial involved a title to land; but no objection on that account was then raised before the judge of the County Court.

His LORDSHIP thought upon this, that the rule should be refused, it being quite immaterial, as far as the present application was concerned, what was the real state of the facts, if no point with reference to them was made before the County Court judge; for that the judgments of these Courts were not to be impeached without good and sufficient cause, and it could never be permitted to a party to make one case before the judge below, and failing there, to come to this court on an entirely new state of facts, and so seek to obtain a prohibition. He also thought, that if the same facts now stated in the affidavits had been brought before the Court below, the judge would have decided differently; but that on the ground that they were not, and the question was not raised, this rule should be refused. *Rule refused.*

Thursday, Nov. 25.

(Before Mr. Justice CROMPTON.)

AMIES *v.* KELSEY.

Patent—Infringement—Application for an inspection.

Under the 15 & 16 *Vict. c.* 83, *s.* 42 (*The Patent Law Amendment Act*), *an application for an inspection may be made at any time after action brought, even before declaration. The affidavit, however, upon which the application is made, should shew that such inspection is necessary, and how.*

On a former day, *Webster* obtained a rule, calling upon the defendant to allow the plaintiff and his witnesses to have an inspection of his machinery for the manufacture of braid, which machinery the plaintiff alleges is an infringement of his patent, and for which infringement this action is brought.

By the 15 & 16 Vict. c. 83, s. 42 (Patent Law Amendment Act), it is enacted, that "In any action in any of her Majesty's Superior Courts at Westminster, and in Dublin, for the infringement of letters patent, it shall be lawful for the court in which such action is pending, if the Court be then sitting, or if the Court be not sitting, then for a judge of such court, on the application of the plaintiff or defendant respectively to make such order for an injunction, inspection, or account, and to give such direction respecting such action, injunction, inspection, and account, and the proceedings therein, respectively, as to such Court or judge may seem fit."

In the present case the plaintiff had not declared.

Wednesday, Nov. 24.—Hindmarch shewed cause,

dismissed, first, that the application was premature, having been made before declaration, since, until the plaintiff declared, there could be no proof of what his action was really brought for, and that, according to the practice of a Court of Equity, before an inspection would be granted, the plaintiff must have his bill upon the file. [CROMPTON, J.—If the plaintiff waited until after declaration, they might have to amend.] Secondly, it is not shewn on the part of the plaintiffs that this inspection is at all necessary, or that they in any way stand in need of it for the purpose of sustaining their case.

Webster, in support of the rule, contended that the application was not premature, and that it sufficiently appeared upon the affidavits that an inspection was necessary. *Cur. adv vult*

CROMPTON, J. (to-day), after stating the facts, said that on the argument, two objections were taken first, that the application was premature As regards this objection, I see no reason for limiting the application to a period after the delivery of the declaration. I think it may be made as well before as after. Then it was objected, secondly, that no case for an inspection had been made out and it was agreed on both sides, that the object of the Act was to give the parties the same rights as they would have had in a suit in Equity However it is not necessary to decide what a Court of Equity would do, nor to consider in what case it would grant an inspection, because I am of opinion that upon the affidavits there is no suggestion of what really is the information that is required from the inspection I think, therefore, that I ought to discharge this rule, but without prejudice to the plaintiff's coming again with better materials at a future time

Rule discharged without costs

REG v. THE JUSTICES OF DERBYSHIRE, *ex parte* JAMES GRIFFIN

Appeal—Entering at Sessions—Discretion of justices

Where justices at Sessions have a discretion and they exercise it, this Court will not interfere even though the parties have exercised it unwisely But in a case where it was alleged there was a rule of Sessions which had not been complied with by the appellant and, in the exercise of their discretion, the justices refused to hear the appeal this Court, on an application for a mandamus to compel the justices to hear the appeal made such rule absolute, as it was left in considerable doubt what, in fact, was the rule of Sessions with which it was alleged the appellant had not complied

In this case, one James Green had been convicted by certain justices in Derbyshire, under the Vagrant Act (5 Geo 4, c 83), and was ordered to be imprisoned and kept to hard labour for three calendar months Against this conviction he gave due notice of appeal, &c The ensuing Quarter Sessions for the county of Derby were held on Tuesday the 19th of October last, the first day being entirely devoted to the general business of the county, and no trials taking place until the following day The witnesses had been bound over to attend on Wednesday the 20th. The attorney of the appellant (who was from London), early on the morning of the 20th before the sitting of the court, applied at the office of the clerk of the peace to enter the appeal, when he was told that he was too late for that it should have been entered the day before Upon this he applied at the sitting of the Court for leave then to enter it, but was refused, on the alleged ground that by the practice of the Sessions it should have been entered the day before By the affidavits used in shewing cause it was stated, that by a rule of the Sessions (made in 1830), appellants were to enter their appeals by twelve o'clock on the first day of the Sessions But in the advertisements in the public papers of the holding of the Sessions, appellants were required to enter their appeals before eleven o'clock on that day, and there was some vagueness as to whether or not appellants might not enter appeals at any time on that day

Upon these facts, *Huddleston* moved this Court for a rule for a mandamus, commanding the Sessions to receive and enter the appeal, and he relied upon *Rex v. The Justices of Wiltshire*, 10 East 404 *Rex v. The Justices of Lancashire* 7 B & C 691 and *Reg. v. The Justices of Staffordshire*, 4 A & E 849.

Boden shewed cause (22nd Nov.), and contended that as the appellant had not complied with the rule of Sessions, and had entered his appeal too late, he was not entitled as of right, to have it heard, and although the Sessions, in their discretion, may have received the appeal, yet as an application was made to them for that purpose, and they had exercised their discretion and refused the application, this Court would not interfere. He also contended that the case of *R. v. The Justices of Wiltshire*, 10 East, 404, had been so broken in upon by subsequent cases, that it could not now be considered as an authority. He further argued, that unless a rule of Sessions were manifestly unreasonable, or contrary to law, this Court would never interpose upon the subject. (*Reg v The Justices of Montgomeryshire*, 3 New Sess. Cas 78; *Reg. v. The Justices of Surrey*, 3 New Sess. Cas 531; *R. v. Monmouthshire*, 3 Dowl. 306, *R v The Justices of the West Riding of Yorkshire*, 5 B & Ad. 667, Parke's, J Judgment.

Huddleston, in support of the rule, argued that this Court has a kind of visitatorial power over the Sessions, and will interfere with their discretion when it has been unfairly exercised, that *R v The Justices of Wiltshire* 10 East, 404, is still a ruling case and is supported by the subsequent one of *R v The Justices of Lancashire*, 7 B & C 691, that, looking at all the circumstances of the present case, it must be admitted that the appellant had been hardly dealt by and this Court might properly say that the Sessions had not properly exercised their discretion and that the appeal ought to be heard (*Reg v The Justices of the West Riding* 2 Q B 705, *Reg v The Justices of Merionethshire*, 1 New Sess Cas 277 *Cur. adv vult*

CROMPTON J to day gave judgment as follows —After stating the facts and remarking that it was a case in itself of considerable hardship he said —It appears that the usage of the Sessions was for the justices to meet on the Tuesday and for the trial of matters to commence on the Wednesday and that in this case the witnesses were bound over to attend on the Wednesday On applying however to enter his appeal early on the Wednesday morning the appellant's attorney was informed that he was too late, for that it should have been entered the day before but that he might make a special application to the Court which he accordingly did and if made to the discretion of the Court there could hardly appear to be a case more strongly calling for a relaxation of the rule and I cannot but think that the discretion of the Court was improperly exercised Still I must be guided by general rules It has been argued that this Court has a kind of visitatorial power over the discretion of the Sessions and two cases were cited in support of this proposition, one *Rex v The Justices of Wiltshire* 10 East 404 where Lord Ellenborough says —'The magistrates certainly had a discretion to exercise with respect to what was reasonable time for giving notice of appeal but we have also a kind of visitatorial jurisdiction over them in the exercise of such a discretionary power and we think that in this case they have not exercised that discretion in a way that we ought to give effect to, but that we ought to interfere and correct it' The other case was *Rex v The Justices of Lancashire* 7 B & C 691 which proceeded on *Rex v The Justices of Wiltshire* But in shewing cause very considerable doubt was established as to whether or not this Court will interfere with the discretion of the justices and from the cases cited I take it that the old law is very much modified In *Rex v The Justices of the West Riding* 5 B & Ad 667 I find Mr Justice Parke stating distinctly 'We have no right to interfere with the discretionary power of the Sessions where they have that power their discretion is to be confided in,' and I perfectly concur in the law as laid down by Mr Justice Parke and if this were a question whether or not we are to set our discretion against the discretion of the justices I should not grant this rule, but should say I cannot act upon the old cases and where there is a distinct rule of the Sessions which is not unreasonable in itself I should not interfere But in this case I have looked at the affidavits and I have considerable doubts as to whether the rule of practice acted upon is clearly made out It ought to appear that there is a distinct rule of practice, and that the justices have acted upon it But I really cannot say myself what the exact practice is The clerk of the peace says that the appeal must be entered before twelve o'clock on the Tuesday but it does not appear that that has always been acted upon, for it appears that appeals have been allowed to be entered all that day Then is there a rule that the appeal must be entered before eleven o'clock or twelve o'clock on that day? And may it be entered after that day on a special application? A special application was made to the justices in this case, which was refused, not on the particular merits of the application but because the appeal had not been entered the day before I think, therefore that the rule upon the subject is so indistinct that the writ ought to go, and if the justices choose to return that there is a distinct rule of Sessions upon the subject, and that they acted in conformity with such rule they can so return it Therefore not on the ground that we will interfere with the discretion of the justices which is a very dangerous doctrine, and which I repudiate, but for the reason that sufficient doubt exists upon the affidavits to warrant the writ in going, I think this rule should be made absolute.

Rule absolute

BUSINESS OF THE WEEK.

In re SILL —*Hodgson* moved on behalf of Mr Sill, against whom a rule is pending to strike him off the roll, to enlarge such rule until next Term *Rule enlarged.*

BROOK v BROOK —*Hawkins* shewed cause against a rule for the paying over to the defendant's attorney by him into the hands of the sheriff in first instance, *Whitmore*, in support *Rule discharged.*

REG v TRAWERN.—*Lush* shewed cause against a rule for a mandamus to be directed to the Treasurer, one of the metropolitan police magistrates, directing him to issue his distress warrant to levy £37 16s 1d *Pashley*, Q C. contra *Rule discharged.*

CALE v STEPHENS —*Keating*, Q C and *Bramwell* shewed cause herein for enlarging a peremptory undertaking *Bramwell*, Q C. and *Lucas* in support *Rule discharged.*

Ex parte BURBIDGE —The *Attorney-General* (*Macaulay*, Q C with him) moved for a rule calling upon the town council of Leicester to shew cause why a mandamus should not issue, commanding them to execute and deliver to Mr. Thomas Burbidge an annuity bond for £221 3s 6d. per annum and also the arrears of annuity due to him from the year 1836 in respect of compensation for his loss of his office of town clerk of Leicester and other offices connected therewith *Rule nisi*

REG v TALLIS —In this case, which was an application for a criminal information against Mr Tallis, at the instance of Mr Croll one of the sheriffs of London, for a libel Shee Serjt appeared, and having expressed, on the part of his client his deep regret for the libel, and his full belief in its entire falsehood the *Attorney General*, on behalf of Mr Croll expressed himself as satisfied, and it was arranged that the rule should be discharged upon payment of costs *Rule discharged upon payment of costs*

Ex parte DIMSDALE —*James* Q C shewed cause against a rule for a mandamus to the Saddlers Company, commanding them to restore Mr Dimsdale to his office of assistant in that company The *Attorney General* and *Field* in support of the rule *Rule absolute*

REG v THE JUSTICES OF NEW SARUM —*Archbold* moved for a rule calling upon the justices of New Sarum to issue their warrant of commitment to enforce a poor rate in default of distress pursuant to the 13 & 14 Vict c 14, s 2 *Rule nisi*

REG v GEORGE BRIGGS —*Boden* moved for a rule calling upon Mr Briggs to shew cause why a quo warranto should not be filed against him for exercising the office of town councillor of the borough of Blackburn *Rule nisi*

REG on the Prosecution of WAGHORN —*Horn* moved to quash the conviction herein *Rule nisi*

CROWN CASES RESERVED.

Reported by A BITTLESTON Esq of the Inner Temple, Barrister at Law

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Saturday, November 13

REG v MANNING and SMITH

Larceny—Removal by a servant of his master's goods for the purpose of offering them again to the master for sale

If a servant removes his master's goods from one part of the premises to another for the purpose of enabling another person to offer them to the master for sale as the goods of that third person, and if this be done in pursuance of previous concert and arrangement between them, both may be convicted of larceny

Michael Manning and John Smith were tried at the Manchester Borough Sessions, on the 5th of August 1852 for stealing, on the 17th of July, twenty four bags the property of John Sheridan. The prosecutor was a potatoe dealer, and used bags in that trade and he also dealt largely in bags, which he bought and sold The prisoner Manning had been for several years in the prosecutor's service, and had the care of his warehouse, in which the bags were kept The prisoner Smith had for five years regularly supplied the prosecutor with bags, which he made and from time to time, when he had finished a lot his custom was to take them and put them down at the warehouse door of the prosecutor, outside the warehouse and very shortly after any bags had been so left, either he or his wife, but generally his wife used to come to receive payment for them from the prosecutor On the night of the 16th of July the prosecutor had a quantity of bags in his warehouse "marked" On the morning of the 17th of July the prisoner Manning went into his master's warehouse and brought out twenty-four of the bags which had been so marked by his master on the previous night and put them down outside the warehouse, by the door, at the place where Smith used to deposit the bags he brought for the prosecutor, and for which he had to be paid Shortly after Manning had brought the prosecutor's bags out of his warehouse, and so placed them at the door, Smith's wife came and asked for payment for them as for bags that her husband had brought that morning. Upon this Smith was sent for, and was told what his wife had said, and the bags, which were then lying where Manning had placed them, were pointed out to him, and he was asked whether he had brought those bags there, he said yes, he had brought them there an hour before, and that his wife had been working at them till twelve o'clock the night before, in order to finish them "Nay," said the prosecutor, "those bags are mine" "Yes," replied Smith, "they will be yours when you have paid for them." Upon this the prosecutor pointed out to the two prisoners, Manning being then also present, the mark that had been put upon the bags the night before, when they both turned the colour of this (holding up a piece of red blotting paper), and they were given into custody.

The recorder told the jury that if they were satisfied that Manning brought his master's bags out of the warehouse, and placed them outside by the door in the manner stated, for the purpose of enabling Smith to receive payment for them from his master, and with the intent that he should do so as if they had been new bags just then finished by Smith, and for which he would be entitled to be paid, that that would be larceny; and that if they were satisfied that this had been so done by Manning, in pursuance of previous concert and arrangement between him and Smith, that Smith, though absent when the bags were so removed out of the warehouse, would be accessory before the fact to the felony. The jury said that they were satisfied that the bags had been so removed out of the warehouse by Manning, for the purpose and with the intention aforesaid, and that the same had been done in pursuance of a previous arrangement between him and Smith, and they found both the prisoners guilty, and the recorder sentenced the prisoners to be imprisoned in the borough gaol, and to be there kept to hard labour for six months. The question for the opinion of this Court is, whether the facts stated and found amounted to larceny?

This case came on for argument before Jervis, C. J. Alderson, B. Coleridge, J. Cresswell, J. and Platt, B.

Cross appeared in support of the conviction, but was not called upon.

No counsel appeared for the prisoners.

JERVIS, C.J.—This is a clear case. The direction was quite right; and *R.* v. *Hall*, 1 Den. C. C. 381, is expressly in point.

ALDERSON, B.—Smith, though not present when the sacks were removed, was an accessary before the fact. *Conviction affirmed.*

Equity Courts.

LORD CHANCELLOR'S COURT.

Reported by C. H. KERR, Esq. of Lincoln's-inn, Barrister-at-Law.

Nov. 6, 8, *and* 15.

HAWKES v. EASTERN COUNTIES RAILWAY COMPANY.

Railway company—Contract for the purchase of land by a railway company during the pendency of a Bill in Parliament—Illegality of mutuality—Lapse of time—Specific performance—Abandonment of scheme.

The performance of agreements entered into by railway companies, considered—Observations of the Court on such.

The specific performance of an agreement entered into by a railway company with a landowner on the line of a projected railway for the purchase of his property, during the progress of the Bill in Parliament, enforced.

Specific performance will be decreed in such a case, although the company should fail to obtain its Act, or having obtained it should refuse or be unable to make or complete the line, or allow the time given to it by the Act to elapse.

Such a company will not be allowed to say that the powers introduced into an Act of Parliament enabling it to purchase property which it could not otherwise have acquired, are illegal.

The consideration for not opposing a Bill in Parliament is a good consideration to support an agreement for specific performance; although the land may not be wanted, yet the consideration being not to oppose, the agreement will be enforced.

If a contract by a company for the purchase of land on the line of a projected railway should be so worded as to make it appear that the company were not to pay unless they required the land, or to pay when they took possession, the Court would consider such a conditional contract.

In the case of a sale of land to a railway company, the Court will disregard the amount of consideration agreed to be paid. It may be of the greatest importance to such a company that it should be enabled to make purchases during the pendency of the Bill.

The projectors of a company who agree to purchase land will be bound by their contract, although they abandon the line.

A peer of Parliament has as much right to enter into a contract with the projector of a railway company for the sale of his property as any other person.

A corporation will be bound by the Act of its agent who introduces into an agreement clauses restricting the powers of the company, although such respective clauses may not be not introduced into the Act of Parliament.

The Court cannot recognize the rights of individuals interested in a corporation, apart from the rights and liabilities of the corporation itself.

The question in this case was, whether this Court will or not enforce the specific performance of an agreement entered into by a landowner on the line of a projected railway, for the sale of part of his property, during the progress of the Bill in Parliament. In the year 1847 the defendants proposed to construct a railway from Wisbeach to Spalding, and to make a diverging line to join the Ambergate, Nottingham, and Boston Railway. Plans were deposited with reference to both lines, and as the latter was intended to be rejected by Parliament, it was, after reciting that on the plans deposited a line of railway was delineated diverging out of the said intended railway, and terminating by a junction with the Spalding Branch of the Ambergate, Nottingham, and Boston Railway, enacted, "That nothing contained in the Act should be held or construed to authorise the Eastern Counties Railway Company to make the said railway, or any part thereof, between the point of divergence from the railway by this Act authorised, and the termination thereof, at the said Spalding Branch of the Ambergate, Nottingham, and Boston Railway." There was authority to buy land not exceeding thirty acres for extraordinary purposes. The compulsory powers of the Act were to continue for three years, and five years were allowed for the completion of the works.

Whilst the Bill was in Parliament, and before the diverging line had been rejected, an agreement was entered into between the company and Mr. Hawkes, by which, after reciting that the proposed railway was intended to pass near to and at his residence in Spalding, and would most seriously damage the same and render it unfit for habitation, and that he had hitherto opposed the Bill, but consented to withdraw his opposition; the company agreed, "That in the event of the said Bill in its present or in any amended modification or altered form, or the like objects or any or either of them, and to which the said Eastern Counties Railway Company should be parties or promoters, passing into a law, the said Eastern Counties Railway Company, their successors and assigns, should and would purchase, and they did thereby in such case agree to purchase, of and from the said Henry Hawkes and his heirs, and the said Henry Hawkes and his heirs should and would sell, and he did thereby accordingly agree to sell to the said company, their successors or assigns," for the sum of 8,000*l.* and the further sum of 5,000*l.* as a compensation for the damage which had been done to him, and the inconvenience from removing his business. Mr. Hawkes carried on business on part of the property, and was the owner of a mill adjoining the proposed station of the Ambergate, Nottingham, and Boston, and Eastern Junction Railway at Spalding; it was, therefore, arranged as part of the terms of the agreement, that the company should enter into another agreement (which they in fact did), that they would, before they opened the other line to the public, make a siding from his mill to the intended station. The main line went through a small part of Mr. Hawkes's property, and the diverging line, as delineated, would also have gone through so as to take in within its deviation a still larger portion. The property was, therefore, within the powers of the Act, and might be affected by the exercise of its powers. Parliament rejected so much of the diverging line as would have enabled the Eastern Counties Company to cross the Great Northern Railway, but by continuing the proposed line of the Ambergate Railway (which would then have come to a certain point) on to another point, the Eastern Counties Railway Company would have been enabled, by passing through Mr. Hawkes's property, to get to the point they wished, so that the purchase of the whole of Mr. Hawkes's property enabled it indirectly to do that which the Act of Parliament intended to prevent it from doing.

A correspondence ensued between the solicitors of Mr. Hawkes and the solicitors of the company, by which it appeared that the company's solicitors had had notice that Mr. Hawkes, on the 18th of January, 1849, had vacated the premises, the subject of the contract, and that the company had full liberty to enter upon the property. The abstracts were forwarded; and on the 20th of the same month, the solicitors of the company, in a letter of that date, said "that a gentleman from their office would go down to Spalding on the following Tuesday, for the purpose of examining the abstracts with the title-deeds in his possession, and asking whether it would be convenient to produce them on that day." The answer to which was, that it would. They failed to keep their appointment, and on the 22nd of February, instead of attending as they had afterwards engaged to do for the examination of the abstracts with the deeds, they sent a copy of a notice, in which, reciting the Act of Parliament and the provisions of it, the secretary gave notice, on behalf of the company, to the plaintiff, that the company did not require to take and use, and would not take and use, the whole or any part or portion of the estate under their powers; they required him to remain in the undisturbed possession and enjoyment of it, but of which they were aware he was no longer in possession. They gave him notice that the company were advised they were not compellable to complete the contract, or to pay him 8,000*l.*; and that they abandoned the contract, and desired to know what sum of money he would receive by way of compensation. He informed them that he had been compelled to leave the neighbourhood, and that he had provided himself with other property. He subsequently filed his bill for a specific performance of the agreement.

The Vice-Chancellor Knight Bruce made a decree in the terms of the prayer of the bill (17 Law T. Rep. 301). From that decree the defendants appealed to Lord Chancellor Truro; but the appellants, having refused to receive his judgment after he had resigned the seals, the appeal was now re-argued.

The *Solicitor-General*, *Wigram*, and *Follett*, for the plaintiff, who opened the appeal.

Bethell, *Russell*, *Malins*, and *Grove*, for the defendants, the appellants.

The *Solicitor-General*, in reply.

The arguments of counsel, and the cases cited, are mentioned and commented on in the judgment.

THE LORD CHANCELLOR.—The question in this case is, is or not this gentleman entitled to a specific performance? This is a case in which there is a company formed, competent to bind itself within its powers: a corporation capable of entering into a binding contract. The property which was to be disposed of by Mr. Hawkes was property directly to be affected by the Bill as it stood at the time the agreement was entered into. As the Bill passed, the property—at least a sufficient portion of it to give jurisdiction to this Court—was made liable and remained liable to the powers of the Act. And those powers might have been executed so as to affect generally the property. It cannot, therefore, be said that if a party capable of entering into a contract with reference to a subject before Parliament does enter into that contract, and Parliament gives powers which would enable the party to enforce the contract—to call for the benefit of the contract—that that party can, by himself neglecting to exercise his powers, say that he will not perform the agreement which he has entered into, because either he has allowed his powers to lapse, and he can no longer exercise them, or because he will do an act which he now thinks proper to say, or thinks fit to say he deems illegal. On principle, I should say, that such would be a case for specific performance; and the authorities admit of no doubt. In the case of *Stanley* v. *The Chester and Birkenhead Railway Company* 1 Railway Cases, 58, the agreement was held to be good; and the consideration for not opposing the Bill was held to be a good consideration; it is, I think, a good consideration, and in that case the land was not wanted. Although the land is not wanted, yet the agreement being not to oppose, and the man being fairly in the situation of landowner, that was considered to be a contract that would probably be enforced. In *Edwards* v. *The Grand Junction Railway*, page 173 of the same book, clauses restricting the powers of the company were left to operate under the agreement, although they were not introduced into the Act of Parliament; yet that was held to be valid, and the corporation was held to be bound by the act of the agent of the projectors: with that difficulty we have not now to contend, because here the company itself has executed this agreement under its seal. In *Simpson* v. *Lord Howden*, page 326, there was an agreement by the projectors; the line was abandoned, yet the contract was enforced. There this great question was raised, as it also was in the subsequent case of *Lord Petre*, whether Lord Howden, who was a peer of Parliament, could properly enter into an agreement out of the House, by which he agreed to give up his opposition to the measure. It was held, as there was no pretence for imputing any attempt at improper conduct on the part of that noble lord, that a peer had as much right to enter into a contract, with reference to his property, as if he had not been a member of that House. Now, *Lord Petre's* case, page 462, was perhaps a still stronger one; not only was he a member of the House, but the agreement was by a committee, and that was held binding upon the corporation. The consideration paid was enormous; 120,000*l.* were to be paid for the property which the company intended to take, and for the supposed damage which had been done to the grounds, and to the view from the house of that noble lord. That has been always quoted as a case in which the consideration was enormous; but it was held not to be illegal—no hardship was held from the fact of the time which they had permitted having expired. Upon the whole, therefore, the cases establish that a bonâ fide agreement of this sort, not evading the Act of Parliament, but enabling the company to assist its views and carry its operations into effect, is perfectly valid. The amount paid, as the value of the property, is unimportant. That was not mentioned, as it was, I suppose, thought unnecessary. It is of the greatest importance to the company, that they should be enabled to make purchases during the pendency of

the Bill, and before the Bill passes, because it clears the ground for them, they take that which they want, and they pay a little more for it. It is not for this Court to inquire into the amount of the consideration; there is no extortion, and, therefore, I consider it to be perfectly clear. Now several grounds were raised even upon these authorities. First of all, it was said that there was a great hardship upon the shareholders. Now in page 199 of 1 Railway Cases, that subject was dealt with. The Court said—"You cannot sever the shareholders from the general body; they must share the fate of a part of the body. The Court cannot recognise the rights of individuals interested in the corporation; but must look to the rights and liabilities of the corporation itself." That is a point which I think a very sufficient one. Then it was said that there was illegality in the concealment of this from Parliament; the answer to which will be found in *Lord Howden's* case:—"The same observation," the Court says, "disposes altogether of the objections which may be taken." There is this passage:—"It is alleged that the agreement was secret, and was kept secret; but both parties might be innocent of any original fraudulent understanding that the transaction should be kept secret at the time the deed was executed. As the instrument is not upon the face of it fraudulent—as no intention of making any false representation, or of concealing anything, can be collected from any part of it, the facts which make it fraudulent ought to be distinctly alleged; and no such facts are alleged. The subsequent concealment from the Legislature might indeed have been used as evidence to the jury of the prior intent to conceal, if that intent had been averred; but such subsequent concealment would be evidence only, and would by no means be conclusive evidence; it cannot be used to supply the want of such distinct averment." Now, here there is no such statement of any sort or kind. There is nothing here upon the face of the pleadings to shew that there was any intention whatever to conceal from Parliament the transaction between the company and this party. Then it was said, that there was great hardship where the time had expired. Now, that does not properly apply to this case, because at the time this bill was filed, the time had not expired, and sufficient time did remain to complete the works, even after the time when the bill was filed. The whole fault here lies upon the part of the company. Mr. Hawkes has never been guilty of any neglect—he never swerved from his readiness to perform his contract; but this company has acted with much bad faith in regard to this transaction. Now, with respect to the question of hardship from the time having expired, the Lord Chancellor, in the case of *Lord Petre*, says,—"The hardship complained of is, the expiration of the parliamentary time; but the company have brought that hardship upon themselves." That is exactly the same observation which I should make in this case: therefore, I think all these difficulties are removed. Now, a part of this agreement consisted of an obligation on the part of the company that they would try to obtain power in order to carry the contract into effect, inasmuch as Mr. Hawkes was entitled for life only to a portion of the property; and it was said in argument that that was a fatal objection, because you could not enforce an agreement which was to depend upon a future application to Parliament. Now, in the *Great Western Railway Company* v. *The Birmingham and Oxford Junction Railway Company*, 2 Phil. 604, 605, Lord Cottenham says—"By the appeal I am asked to treat this contract as a nullity; that is, to hold all contracts which parties enter into not having themselves the power to carry them into effect, and they therefore apply to Parliament to give them such power, are so utterly void, that this Court will not even protect the property until an opportunity shall have been afforded for an application to Parliament. The effect of such a decision would be to nullify very many family arrangements entered into, and many with the sanction of this Court, but to give effect to which the powers of Parliament are indispensable. It would also nullify all contracts by projectors of companies before an Act was obtained; but it is now nearly twelve years since, in *Edwards* v. *The Grand Junction Railway Company*, I gave effect against an incorporated company to a contract entered into by the projectors of it before the Act was passed, but in contemplation of its passing—that is, a contract with the parties at the time they had no power to carry into effect, but proposed to do so by the authority of Parliament; and there are now many cases to the same effect." That therefore disposes, to my mind perfectly satisfactorily, of the other objections. It was then insisted that subsequently to the decision in the Court below, that the cases upon which this Court had acted had been reversed. In the case of *Webb* v. *The Direct London and Portsmouth Railway Company*, 9 Hare, 129; and 19 Law T. Rep. 2; there was originally a decree for specific performance, and after the decision in this case was made—the Court having relied on that case—the decision was reversed. Now, that case was reversed upon the uncertainty of the contract; and if it were reversed upon any other ground, I should have required further time before I could accede to the doctrine that a company entering into such a contract as this is, could, upon any grounds of supposed illegality, get rid of the contract. If, as in some of the cases which have been cited, the contract had been so worded as to make it appear that the company were not to pay unless they required the land; that is, they were to pay when they took the land, the assumption would be that they were not to pay unless they took it,—that may fairly be considered a conditional contract. I have nothing to say to such cases; but where, as in this case, it is an absolute and unqualified contract to take the land, I should certainly hold that no subsequent accident, certainly no subsequent conduct on the part of the company, could relieve them from the obligation they were bound by at the time they entered into it. The Act of Parliament passing on, it was as good a contract as a man ever entered into. I must look at it at the time when it was executed—at all events at the time the Act passed. It contemplated the Act passing, and the Act did pass. The Act passed exactly in the terms pointed out in the agreement. It is, then, a valid contract. Suppose this agreement had been entered into after the passing of the Act, would any man at the Bar say that that was a contract not to be executed? If it were to be executed, why should it not be valid before the Act passed? Looking at the authorities which have concluded that question, why should it not be as binding, being entered into before, as it must be admitted it would have been if executed immediately after the Act passed? There is no magic in these things. The good faith, the truth, and the honesty of the transaction is to be looked at—there is no rule of law in it. If, therefore, *Webb* v. *The Direct London and Portsmouth Railway Company* is considered to decide anything adverse to the decision in this case, I should support the decision of this case, as far as my authority went. In *Lord James Stuart* v. *The North-Western Company*, 450, the Master of the Rolls decreed a specific performance upon the authority of *Webb* v. *The Direct London and Portsmouth* before it was reversed. It was said that the reversal of that therefore displaced his authority. That also was reversed: but there again there were two questions; first, a question whether there was any concluded agreement—any binding agreement—anything amounting to a positive contract; and next, there was great delay. Those cases were relied upon—and I can only say that if they are to be considered in opposition to a specific performance in a case like that before me, that I should totally disagree with them. Then it was argued that this contract was illegal, because the company was applying its funds to purposes not authorised by the Act of Parliament, and in support of that argument *McGregor* v. *The Dover and Deal Railway Company*, 19 Law T. 125, 316; *East Anglian Railway* v. *Eastern Counties Railway*, 18 Law T. Rep. 138; and the case of *Baynhaw* v. *The Eastern Union Railway Company*, 2 M. & G. 389, were quoted. Those were all cases in which the company were really going beyond their powers, and the parties contracting with them must be supposed to have known it. It has been decided they cannot be enforced, but this case does not fall within those decisions. There is nothing that has been stated to me of any sort or kind approaching to fraud. There is no such thing in the contract. I believe that the company thought that they might, by this short cut through Mr. Hawkes's property, get to a certain point; but Mr. Hawkes had nothing to do with that. The Act provided for taking this property for the very purpose authorised by the Act of Parliament itself. The cases, therefore, do not touch this question at all, and consequently I am not embarrassed by their authority. It has been said there was no mutuality; and that the company could not enforce it, because they had not the means of carrying it on; that involves the question of the expiration of the time. I have already referred to authority to shew that expiration of time in a case of this sort amounts to nothing, where, as in this case, it is the fault of the company itself that the time has been allowed to expire. They have thought proper to allow the time to expire. Their conduct, upon the correspondence, admits of no excuse. With full knowledge of all they intended to do, they are told the deeds are ready to be examined with the abstracts; they make an appointment to go down, without raising a word of complaint, to examine the abstract with the deeds. They break that appointment. They make no other appointment. They are told the vendor has vacated the possession of the property, and that it is at their disposal, and that he has sought another residence; they serve a formal notice, telling him they will have nothing to do with the contract; that they do not want the property, and do not mean to make the line. What has mutuality to do with it? There are many cases where the Court has not looked to the doctrine of mutuality as it ought to have done, but has inforced a contract against a party where that party could not have sufficiently enforced a contract against any one else. But here I must look at this contract at the time the Act of Parliament was passed, and at the time it was entered into. Where then is there any want of mutuality? Could not the company, within an hour after the Act had passed, have enforced the contract against Mr. Hawkes. It is not because a man, subsequently to his contract, chooses to introduce impediments to its performance on his own part, that there is to be a want of mutuality; but the question of mutuality arises where it is impossible to do that which he had contracted for; he cannot, therefore, turn round against the man with whom he has contracted, and throw upon that man the loss. Who is to bear the loss in this case? Who is to blame? The company; not Mr. Hawkes. The company desire to throw up the line, and endeavour to repudiate their solemn contract, and to throw the whole loss and burden on the party who is not to blame. But cases were cited, as shewing I ought not to interfere to enforce performance of the contract; *Gage* v. *The Newmarket Railway Company*, 19 L. J. 155, was one. That turns on the conditional agreement; the agreement there was, that the company, before they entered on the land which they might require, should pay, and that was not considered as an absolute agreement to pay. No doubt, the Lord Chief Justice said, if there had been a covenant to pay, or a covenant to pay a sum as a sum in gross, that the Court would have treated as void. In the other case, of *Goodhay* v. *The Colchester and Stour Valley Railway Company*, 19 Law T. Rep. 334, there was no agreement binding upon the company. I have taken the opportunity of looking into every authority upon the subject, and I can find nothing to shake the opinion I entertained when the argument was closed, that this is a very clear case for specific performance. I am very glad that the law turns out to be consistent with the equity of the case. I cannot but lament that these great companies, with an attorney always at their elbows, and every means of consulting counsel daily if they think proper, and which they resort to sufficiently, with enormous capital, should, with a full knowledge of all their powers, and with legal advice constantly at command, enter into a contract, and then turn round upon the party with whom they have contracted, and endeavour to evade it upon the ground that it is beyond their powers, and absolutely illegal on the face of it. The defence is unseemly in courts of justice. I trust we shall not hear of many more of these cases; but that these companies will take care that in entering into contracts with individuals who are not so well protected, that they do not go beyond their powers; they do not enter into a contract of this sort if it be illegal, without being perfectly aware of its illegality. Nothing can be more unseemly than for a great company to come into a court of justice, and to say that the contract—a solemn contract which they have entered into—is void on the ground of its not being within their powers, not from any subsequent accident, not from any mistake or misapprehension, but because they thought fit to enter into it, and meant to have the benefit of it, if it turned out for their benefit, and to take advantage of the illegality in case the contract should prove onerous, and they should desire to get rid of it. Such dishonourable conduct, I trust, we shall not often see in courts of justice. Fortunately, the law, justice, and equity of this case are agreed; and there is nothing to prevent my enforcing this contract. I therefore dismiss this appeal, and with costs.

Friday, Nov. 12.

HARRISON v. ROUND.

Settlement—Recovery—Tenant in tail—Shifting use—Perpetuity—Intention—Lien on an estate on account of redemption of land-tax.

Estate A. in settled (after the life estates of the father and mother) upon a first and other sons in tail male in the ordinary way; and estate B. on the second and other sons in tail male, proviso "that in case it shall happen that the second, third, or any other younger son or sons of, &c. or their issue, shall become an eldest or only son, and as such shall become entitled to the actual possession or the receipt of the rents and profits of estate A. then and in such case the use and estate of estate B. hereby limited unto and for the benefit of such of them, the said second, third, or other the younger son or sons of, &c. and their issue, who shall become entitled to estate A. shall from thenceforth cease, determine, and be void to all intents and purposes, as if the said second, third, or such other younger son or sons, or their issue, was or were respectively dead without issue, and in such case, and so often as the same shall happen, estate B. shall go over and remain unto and for the benefit of the person or persons who would be

next entitled to take and enjoy estate B. in case the said second, third, or such other younger son or sons, or their respective issue, becoming entitled to estate A. was or were respectively dead without issue." The second son, by the death of his elder brother, becomes the first son, and being entitled as tenant in tail male in remainder expectant upon his father's death, not only to estate A. originally limited to the first son, but to estate B. which was originally limited to himself as the second son, he joins with his father in suffering a recovery of estate A.; the uses of which deed were declared to the joint appointment of the father and the son, and until such appointment to the uses upon and for the trusts, intents, and purposes, and with and under, and subject to the powers, provisions, agreements, and declarations, to, for, upon, with, under, and subject to which the same premises were and stood limited and settled immediately before the sealing and delivery thereof. They jointly convey, subject to the charges existing on the estate, to a mortgagee in fee for 5,560l. with a proviso for redemption and reconveyance, to the uses to which the estate then stood limited. The mortgage-money is divided between the father and the son, according to their respected estates. On the death of the father, the son pays off the mortgage: on a bill filed by the son, claiming to be entitled to both estates, alleging that under the circumstances the shifting clause had not operated:

Held, affirming the decision of the Court below, that the recovery had not the effect of preventing the operation of the shifting clause, and that estate B. was then vested in the third son of the marriage.

A tenant in tail of two estates redeems the land-tax on both with the money produced by the sale of part of one. One of the estates, under a shifting use, goes over:

Held, that on redemption, the land-tax merged with the ownership, and that the owner of the one estate had no right, as against the owner of the other, for an apportionment.

Where an estate has actually gone out of a settlement, although it comes back to the party to whom it was given, yet if it does not come to him in the manner in which it was intended, a proviso containing a shifting clause will not operate.

When an estate is fairly taken out of a settlement, there is an end of it. The question is not whether it does or not come back, but whether it comes back according to the mode in which it was intended according to the proviso in the settlement.

Equity considers a mortgage only as a charge, and not as a disposition of the inheritance of the estate beyond the charge, unless by the deed itself ulterior estates are created.

By indentures of lease and release, dated the 9th and 10th of December, 1783, being the settlement made on the marriage of Mr. John Haynes Harrison and Sarah Thomas Fiske (the late father and mother of the plaintiff), the Rev. John Harrison, the father of the said J. H. Harrison, in consideration of the said marriage, conveyed and assured the manor or lordship of Copford, in Essex, and other lands therein particularly mentioned, of which he was then seised in fee, unto John Cullum and James Round, and their heirs; and the said S. T. Fiske conveyed and assured to the same trustees certain estates, of which she was seised in fee, situate, &c. and also the manors or lordships of Overhall and Netherhall, and certain other estates therein mentioned; to hold all the said estates conveyed as well by the said J. Harrison as by the said S. T. Fiske, unto the said J. Cullum and J. Round, and their heirs, upon trust, for the benefit of Mr. and Mrs. Harrison, for life, and for other purposes (all of which have long since determined), and then as to all the estates to the use of H. G. Harrison and T. Ruggles, their executors, administrators, and assigns, for the term of 500 years, to be computed from the death of the said J. H. Harrison, upon the trusts therein mentioned, with remainder after the expiration of the said term of 500 years as to all the said estates, except the hereditaments conveyed by the said S. T. Fiske as aforesaid (being the Overhall and Netherhall estates), to the use of the first son of the body of the said J. H. Harrison on the body of the said S. T. Fiske to be begotten, and the heirs male of the body of such first son lawfully issuing; and, in default of such issue, to the use of the second, third, fourth, fifth, sixth, seventh, eighth, ninth, and all and every other son and sons of the body of the said J. H. Harrison, on the body of the said S. T. Fiske to be begotten in tail male. And so as to, for, and concerning all the hereditaments excepted out of the limitation to the first and other sons of said marriage, after the decease of the survivor of Mr. and Mrs. Harrison and determination of the uses and estates thereinbefore limited (all which have happened), in case there should be an eldest and one or more other son or sons of the body of the said J. H. Harrison on the body of the said Sarah Thomas Fiske to be begotten; to the use of the second son of the body of the said J. H. Harrison, on the body of said S. T. Fiske to be begotten, and the heirs of the body of such second son lawfully issuing, with remainder to the use of the third and other sons of the body of the said J. H. Harrison, on the body of the said S. T. Fiske to be begotten (other than an eldest son) in tail male; proviso:—"In case it shall happen that the second, third, or any other younger son or sons of the body of the said J. H. Harrison, on the body of the said S. T. Fiske to be begotten, shall become an eldest or only son, and as such shall become entitled to the actual possession, or the receipt of the rents and profits, of the Copford Hall estates, and the several other hereditaments first hereinbefore limited therewith to the first son of the body of said J. H. Harrison on the body of said S. T. Fiske to be begotten, by and under the limitations and provisions hereinbefore contained; or there shall be any issue of the said second, third, or such other younger son or sons of the body, &c. who shall become entitled to the Copford Hall estate, and the several other hereditaments so limited therewith; then, and in such case the use and estate of and in the said Overhall and Netherhall estates hereby limited unto and for the benefit of such of them the said second, third, and other the younger son and sons of the body, &c. and their respective issue who shall or may so respectively happen to become entitled to the Copford Hall estate and the said several other hereditaments so limited therewith, shall from henceforth cease, determine, and be void, to all intents and purposes, as if the said second, third, or such other younger son or sons or their issue as aforesaid was or were respectively dead without issue of his or their body or respective bodies, and then and in such case, and so often as the same shall happen, the Overhall and Netherhall estates shall go over and remain unto and for the benefit of the person or persons who by virtue of these presents, and according to the true intent and meaning thereof, would be next entitled to take and enjoy the said hereditaments last mentioned, in case the said second, third, or such other younger son or sons, or their respective issue, so as aforesaid becoming entitled to the Copford Hall estate and the said hereditaments so limited therewith, was or were respectively dead without issue of his or their respective body or bodies, anything hereinbefore contained to the contrary thereof in any wise notwithstanding." The trusts of the term of 500 years were to raise either by mortgage or other disposition of all or any part of the hereditaments compressed in the settlement, in manner therein mentioned, 10,000*l.* as portions for younger children.

There were ten children of the marriage; the first son died in 1811, an infant, and without having been married in the lifetime of his parents.

Fiske Goodeve Fiske Harrison (the plaintiff) was the second son of the marriage, and by the death of his brother, became the eldest surviving son. In 1821 he joined with his father in executing a recovery deed, and suffering a recovery of a considerable portion of the estates limited by the settlement to the first and other sons of the marriage, for the purpose of barring his estate tail male, and the estates limited in remainder thereupon, subject to the life estates of his father and mother, and the 10,000*l.* charge. The recovery deed declared that the recovery should enure to such uses as the father and the plaintiff should, during their joint lives, by deed or instrument in writing, executed as therein mentioned, appoint; and "in default of and until, and subject to such appointment, to the uses upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations to, for, upon, with, under, and subject to which the same premises were and stood limited and settled immediately before the execution" of that (the recovery) deed; the same indenture contained a clause for avoidance on nonpayment of a certain sum therein mentioned to the father on the 3rd of January then next. In 1825, the plaintiff joined with his father and mother in a mortgage of the same estates for raising the sum of 5,560*l.* which sum was divided between the plaintiff and his father, and which mortgage continued a charge on the uses comprised therein, up to and after the decease of the father, when the plaintiff became entitled in possession under the settlement.

Mrs. Harrison died in 1825, and Mr. Harrison in 1839, when Thomas Thomas Harrison as the then second son of the marriage, entered into the possession of the Overhall and Netherhall estates, which were limited originally to the second son as being entitled thereto under the shifting clause in the settlement.

Various sales were made by the trustees under a power contained in the settlement of portions of the estates limited as well immediately to the first and other sons as of those limited immediately to the second and other sons. The proceeds were invested partly in the purchase of other estates, which were settled to the same uses as the estates so sold, and in the redemption of the land-tax of the estates of both sons, as well of those originally settled as of those subsequently purchased; the residue of the money was received by the trustees and invested in the purchase of South Sea Annuities, which were then standing in the name of the Accountant-General in trust in this cause; 2,566*l.* 8s. 7d. of which were the proceeds of the sale of the estates originally limited to the first and other sons, and 2,065*l.* 6s. 6d. from originally limited to the second and other sons.

In 1843 considerable discussion took place as to the proportions in which the plaintiff and Thomas Thomas Harrison should pay the 10,000*l.* charged on all the estates under the settlement for the younger children, and during the arrangement the former was advised that he was entitled to the whole of the estates comprised in that deed on the supposition that the shifting clause had not, under the circumstances above mentioned, operated; he, therefore, filed his bill to ascertain his rights under the settlement, alleging that, by reason of the recovery suffered during his father's lifetime, the estates originally limited to the first and other sons had not descended to him in the manner intended by the settlors, and consequently that the shifting clause had not operated. In the event of the Court deciding against him on that point, the bill prayed an apportionment of the 10,000*l.* and a partition of the funds in court.

The Vice-Chancellor Knight Bruce sent a case to the Court of C.P. for the purpose of ascertaining whether at law the shifting clause in the settlement had come into operation.

The Court of C.P. certified that it had, and that the Overhall and Netherhall estates had become vested in the third son.

That certificate was subsequently confirmed by the late Vice-Chancellor Parker; and this was an appeal from that decision.

Bethell and *Rogers* appeared for the appellant.

Sir W. Page Wood and *J. V. Prior* for the respondents.

Bethell in reply.

The following cases were cited:—*Fazakerley* v. *Ford*, 4 Sim. 390; *Stackpoole* v. *Stackpoole*, 4 Dr. & W. 320; *Taylor* v. *Lord Harewood*, 3 Hare, 372; *Burrell* v. *Lord Egremont*, 7 Bea. 205, 251. The material points in the arguments are alluded to in the Lord Chancellor's

JUDGMENT.

The Lord Chancellor.—This is a very difficult case; and it differs undoubtedly from any that has hitherto come before the Court. [His Lordship here stated the facts of the case.] The main question depends on the recovery deed of 1821. By that deed the father and son convey in the ordinary way to the tenant of the præcipe during the joint lives of the father and of the person to whom he conveys, so as to leave in the father a reversion of his life estate; and then there was a clause for raising 10,000*l.* for the purpose of avoiding the conveyance, so as to restore, as far as the law would allow, the father's life estate, notwithstanding the son had incumbered it; it shews that to that extent the parties intended to leave it unaffected by the operation and the uses of the recovery deed. Now, the effect of that deed was, that in this court the estate remained subject to the exercise of the power of appointment by the father and the son precisely in the same way as if no recovery had been suffered; so that, if no mortgage had been created, it is impossible to say that the strict terms of the proviso in question would not have been complied with by the son, after the death of the father, taking the estate, notwithstanding the recovery. The recovery, therefore, did not so alter the estate as to prevent the operation of the proviso. There is nothing in law which calls upon the Court to put so strict a construction upon the proviso as to prevent, where it impeaches no rule of law, the intention of the parties from having its full effect and operation. It is quite clear that, by force of that power of appointment, which would enable the father and the son to dispose of the fee, they might have disposed of it in a way that would altogether have defeated the uses of the settlement so restored, or in effect restored, by the declaration of uses subject to that power; and the question is, what is the effect of the act which they actually did perform? Now, the act which they performed was this,—they conveyed jointly to a mortgagee to raise a sum of 5,560*l.* which, upon the face of the instrument, is represented to have been paid to the father, who was tenant for life, and to the son, who was tenant in tail; both having power to defeat those limitations by the operation of the power of appointment,—they conveyed it to a mortgagee in fee with a proviso for redemption, and reconveyance upon redemption to the uses to which the estate then stood settled; so that there were no new estates created by the recovery deed. There was a charge created upon the estates which overreached and bound all the estates that could arise by way of severance; but as far as the deed operated to bind the inheritance, the uses limited by the original settlement remained just as operative, subject to the charge after, as they could have

done independently of the charge before the execution of the mortgage. The question, therefore, simply is, does the charge prevent the operation of the proviso in question. Now, it was hinted that the operation of this proviso might be considered as creating a perpetuity, but no substantial objection has been attempted to be raised, or, as I think, could be raised on that ground. It was a shifting use; it would come in regularly when the event took place. It could not take place as a shifting use, and not as a remainder; but when the event happened, it did, in point of fact, operate as a remainder; that which it shifted or displaced is not material: as to time: the shifting or displacing was to take place after an estate tail, and, therefore, if capable of being barred, was clearly not within the line of perpetuity. It was then said that the terms of the proviso were such as to require a very strict construction. I agree that provisoes of this sort, which are to defeat an estate, are not to have an unnatural construction—an unnecessarily large construction—but the party who creates the estate has the same right to limit it over, or to defeat it, as he has to create it. It is part of the settlement, and, therefore, a fair construction ought to be given to the words which are used. Now, the words in effect are, "that if it shall so happen that the second son shall become an eldest or only son, and as such shall become entitled to the actual possession or to the receipt of the rents and profits of the estate," &c. Now, no doubt, independently of the mortgage he has as such become entitled to the possession of the estate, and to the receipt of the rents and profits, subject to the mortgage, for it is only as second son that he acquired the estate at all; and no act has been done which prevents him from taking, and he has actually taken the estate as tenant in tail; and certainly under the settlement, for the estate was restored by the recovery deed, it is not affected by the mortgage-deed, but in the view of this Court the estates created by the equity of redemption are precisely the same estates as would operate at law under the settlement itself. Equity follows the law. Equity considers a mortgage only as a charge, and not as a disposition of the inheritance of the estate beyond the charge, unless by the deed itself estates are created beyond the charge. No doubt, therefore, he takes the estate subject to the charge; but he takes it, in actual possession under the limitations of the settlement; for the settlement gave it to him, the recovery deed restored it to him, the mortgage-deed kept it still in him, and no act has been executed to take it from him, and, as far as my opinion goes, he is at this moment tenant in tail of the estate under that settlement. It was then argued that if these estates had been sold, I must consider the purchase-money as if the estate had come to the father. On that I need give no opinion; but I much doubt whether the argument could be maintained. I entirely agree with the appellant to this extent, that I have no authority to prevent the persons entitled to the Copford Hall estate before the event happens, disposing of it just exactly as they think proper; and if they do an act which, according to law, will prevent the operation of this clause, an Act by which the Copford Hall estate never could come into the actual possession of the second son under the limitations of this deed, then I agree with the argument, that they have the right to do so, and that the Court could not cut down the effect of that act; but that argument with regard to mortgagees is carried too far. What the effect of this mortgage is, is a question which I am about to consider. It is impossible to say that every mortgage is to be put out of the question; that would be entirely to set aside *Fazakerly* v. *Ford*—to overrule it. I take the law to be settled, that generally speaking, as in *Fazakerley* v. *Ford*, the limitations of the one estate are extrinsic to the settlement in which you find the proviso; and if a charge is created, the charge is just as much taken from the estate as if a portion of the estate itself were taken. There is no magic in it. If you charge 6,000*l.* on an estate, and that estate comes to another person with that charge, the charge representing so much of the estate reduces its value in the hands of the party to whom it comes to the extent of so much as would be required to be sold or appropriated to the extinction of the debt; although, on technical points of law, a mortgagee may not be entitled to the actual receipts of the rents until he gives notice, yet those considerations have nothing to do with this case. The question here is, does the estate come to the party under the settlement in the way in which the proviso itself intended? That is the question which I have to decide, and a very important one it is. The father and son, I quite admit, might have done precisely what they pleased with the Copford Hall estate; they might have given it away to a third person, and if that third person had afterwards given it to the second son, that would not have been within the proviso; they might have settled it upon the third son; they might have sold it and disposed of the money as they thought proper. Now, without questioning the unlimited power of the persons entitled to the Copford Hall estate, and without meaning to diminish or take away their power to dispose of it, the second son (being at the time entitled in remainder to the Overhall estate, and being at the same time also entitled in remainder to the Copford Hall estate, on the death of his elder brother without issue expectant upon the death of his father) and the father enter into the covenants which I have mentioned. Now, can it be predicated that, because the son has anticipated a portion of his revenue—a portion of his estate which has descended to him, and which is vested in him,—that the estate itself has not come to him under the limitations of the deed, within the rule of this proviso? Supposing, that without the assistance of his father, he, as tenant, in tail in remainder, during the lifetime of his father, had executed this very mortgage deed, could any body have said that that anticipation of his revenue, in exercise of his right, would have prevented the operation of this proviso? Could he not, consistently with the proviso and the whole of this settlement, have exercised his right for his own benefit over his own, the Copford Hall estate, and yet not have prevented the operation of this proviso? It was on his father's death only that he would have become entitled to the Copford Hall estate; so that although this disposition might have been made while his father was living, yet, in the sense in which the words are used in this proviso, had he died without issue male in the lifetime of his father, the estate would have gone over, and therefore he would not have become entitled to it. If that would be so, which I apprehend it would, what is the effect of the father and son doing it? Now, when the father and the son, the tenant for life and the tenant in remainder, enter into the mortgage, they receive the money jointly; and as there is no evidence of the manner in which that money was appropriated, the law will consider that it was received by them in respect of their different interests; and when the estate comes into possession it cannot be asserted in a court of justice that the estate has been burthened beyond the benefit which the son himself had received from the charge. The charge was created by himself. He had had the full benefit of it. It was a charge which he had created upon his own estate. If, in a settlement, I give estate A. to the first son, and estate B. to the second son, with a proviso that if estate A. shall come to the second son, then that estate B. shall go over to the third son; if the second son, having become entitled to the first estate, living the father, chooses to anticipate part of his revenue, can it be said that, according to the intention (an intention being collected by the words), the rule of law is perfectly clear, that the son has not come into the actual possession of the property in the way in which the testator intended to apply those words? It cannot be that anticipation will prevent the operation of the right. By the concurrence and indulgence of his father the son may have got a benefit not within the exact terms of the settlement— he may have got something more, because he has been able to anticipate; he cannot now be heard to say that he had less. The charge is not thrown upon the property against the son; but in pursuance of the settlement, consistently with the settlement, the son, by anticipation, has acquired a right which, without the concurrence of his father, he never would have obtained; no charge has been thrown upon this estate which the son himself did not create, and which, if he had created the moment after he had come into possession after his father's death, would not have affected the proviso, because the estate would have gone over, and the not creating it in his father's lifetime would have been no hindrance to its operation. I am of opinion that no act has been done to take the estate out of the settlement; the son has anticipated part of that which he ought regularly to have waited for until his father's death; he has received every benefit which ever was intended for him by the author of his proviso. There is, though, another question to be decided as regards this instrument. What was the intention of the parties? Did the father and son intend to take this estate out of settlement and to defeat this limitation? Now, had they so intended, the father and the second son would have suffered a recovery of the Overhall estate; and in that way they might have defeated the operation of this shifting use. They did no such thing. But by the recovery deed, an anxious intention is exhibited to prevent the operation of the deed of recovery beyond the father's life estate; he never meant the settlement to be disturbed beyond his life estate; he took care to convey in such a manner, and to insert such a clause, as even to defeat that recovery, and to restore his own life estate. The father believed that the estate had already shifted, and accordingly, in error, no doubt, joined with a third son in suffering a recovery of the Overhall estate, and resettling that estate to other uses. The father, therefore, clearly never would have joined in any act as regards the Copford Hall estate, which would have prevented the operation of this proviso; he intended to leave, and he believed to the moment of his death that this proviso was operative. If, therefore, the rule of law compelled me, as I might have been compelled, to decide with the appellant, I must necessarily have subverted every intention which the testator himself ever had with regard to this property. They might have done, if they had wished so to do, that which it is insisted they have done. I am clearly of opinion, looking at these acts, that the father never did any act knowingly to effect that to which it is insisted his acts amount. Now, so far as the cases have gone, I think there is no difficulty. I do not entertain any opinion adverse to *Fazakerley* v. *Ford*. On the contrary, I think it was rightly decided. I think the case before Vice-Chancellor Wigram was rightly decided: where an estate has actually gone out of a settlement, although it comes back to the party to whom it was given, it does not come in the manner in which it was intended; there must be a limitation to these provisoes, and when the estate is fairly taken out of the settlement, there is an end of it. Whether it comes back or not is not the question; the question is, whether it comes according to the mode in which it was to go according to the proviso in the settlement. I am of opinion that this is a point that cannot be entertained, and that therefore I must, upon this ground, disallow the appeal; but notwithstanding the decision of the Court below and the Court of C P. I think it a point of so much nicety and so much difficulty that I shall not give costs.

Bethell.—The plaintiff, who was tenant in tail of both estates, applied the proceeds of a sale of part of one in carrying into effect two contracts—contracts for the redemption of the land-tax on both—he is entitled to an apportionment, although one of the estates goes over.

The Lord Chancellor.—At one time the same person was tenant in tail of two estates, the land-tax upon which was redeemed with the money produced by the sale of one. The question is, should there be any apportionment of that money on the shifting of one of the estates? If the effect were redemption, which I apprehend it would be, I should think it quite clear there could be no equity: I do not see how there could. A man being a tenant in tail of two estates is entitled to hold them as they were, discharged from the money. One estate afterwards goes over in a different way. I do not apprehend there could be any equity to follow that money so as to bring it back into settlement after the estate tail had determined. On the ground, then, that the same man was tenant in tail of both estates, and assuming that the land-tax had merged—that is, united with the ownership,—there would be no right afterwards to separate that, so as to give one estate a right over against the other.

The petition of appeal dismissed, without costs.

COURT OF APPEAL IN CHANCERY.

Reported by Owen Davies Tudor, Esq. of the Middle Temple, Barrister-at-Law.

July 3 and 5.

Walker v. Bentley.

Tithe Commutation Acts—Merger of tithe—Effect of parochial agreement—Apportionment and confirmation by commissioners—Title—Specific performance.

The great tithes of certain lands were merged therein by a person having no title to the tithes, the merger was confirmed by the commissioners, and the tithes were stated to be so merged, both in the agreement for the commutation of the tithes of the parish, and also in the tithe apportionment of the parish. The lands were afterwards contracted to be sold as free from great tithes:

Held, affirming the decision of the Court below, that the lands were shewn to be tithe free, and that no objection could be taken by the purchaser on the ground that the person by whom the tithes were merged had no title to them.

The intention of the Legislature was to preclude questions being raised as to the title to tithes after confirmation of merger by the commissioners.

This was an appeal from the decision of Vice-Chancellor Turner overruling exceptions to the Master's report, finding that certain freehold hereditaments, situated in the parish of Thornton, in Lonsdale, were free from great tithes. It appeared that by indentures of lease and release, dated respectively the 27th and 28th of February, 1818, the premises in question, together with all and singular the tithes of corn, grain, and sheaves, arising, growing, accruing, or renewing upon or from the same were conveyed to Robert Burrows in fee. By his will, dated the 17th of January, 1825, Robert Burrows devised the freehold hereditaments to certain uses under which Alice Walker, the wife of George Walker, became entitled to the fee, and he devised the tithes to Edward Burrows. On the 1st of June, 1838, George Walker, by an instrument of that date, under his hand and seal, stating that Alice Walker

was lawfully seised of an estate in possession in fee simple in the great tithes issuing from the premises, declared it to be his will and intent that the said great tithes should be absolutely merged and extinguished in the freehold and inheritance of the premises, according to the provision of the Tithe Commutation Act, 6 & 7 Wm. 4, c. 71. On the 12th of September, 1839, the Tithe Commissioners confirmed this declaration. It appeared, moreover, that the agreement for the commutation of the tithes of the parish of Thornton, in Lonsdale, which was dated the 11th of September, 1840, stated (amongst other things) that the great tithes of the premises had been declared to be merged by the owner thereof, and that the merger had been duly confirmed by the Tithe Commissioners; it also appeared in the tithe apportionment of the parish, which was confirmed by the Tithe Commissioners, on the 30th of September, 1842, that the great tithes of the premises were stated to be merged. In October 1848, Alice Walker contracted to sell the premises to the defendant, *free from the great tithe*. A bill being filed by the vendor for specific performance of the contract, the Master, on a reference, made his report, finding that the premises were free from the great tithes. On exceptions being taken to the Master's report, they were overruled by Sir George Turner (V.C.) from whose decision the defendant now appealed.

Russell and *Berkeley*, for the appellant, in support of the exceptions, argued that the declaration of merger by George Walker, the husband of the plaintiff, was null and void; and his wife, moreover, had no title whatever to the tithes. That there having been no valid merger of the tithes, no proceedings under the statute by Alice Walker or her husband, nor the parochial agreement, nor the apportionment or confirmation, would have any effect, as they were all founded upon a mere nullity, viz. an invalid and ineffectual merger. That the commissioners had no power to render such an attempted merger valid. (*Clarke* v. *Younge*, 5 Beav. 523). But supposing a merger to have taken place, the owner of the tithes would be entitled to claim the payment of an equivalent sum out of the land. (*Ware* v. *Polhill*, 11 Ves. 257.) That a purchaser ought not, therefore, to be compelled by a Court of Equity to take a title, when he might eventually be held subject to such a liability.

Elmsley and *C. Hall*, for the plaintiff, insisted that the appellant was precluded from going into the question, as to whether the premises were or not tithe-free, by the Tithe Commutation Acts; and the declaration of merger, and other proceedings in the apportionment, and the confirmation of the commissioners made pursuant to these Acts. (*Barker* v. *The Tithe Commissioners*, 9 M. & W. 129, S. C. 11 M. & W. 320; *Edwards* v. *Bunbury*, 3 Q. B. 885; *Rey.* v. *The Tithe Commissioners*, 15 Q. B. 620; Sugd. V. & P. last ed. 227, 267.)

Lord Justice Lord CRANWORTH said, that the only question in the case was, whether the land was free from the great tithes. The Master, in his report, found that the land was free from great tithes, and that such was shewn to be the case on the 8th January, and that a good title was then shewn. It was clearly the intention of the Legislature, as appeared by the various Acts passed for the commutation of the tithes, that questions like the present should not be raised. Those Acts provided for the attendance of tithe-owners, land-owners, patron, parson, and all other, if any, necessary parties; and times and places were appointed for carrying into effect the machinery of the Act, so that all parties interested might have full notice of the proceedings and protect their rights, if they had any and thought them worth while protecting. The commissioners, after all this, were directed to say what lands in the parish were free from tithes altogether, and what were subject to the rent charge, which they had authority to apportion as due in respect of each parcel of land specified on the plan or map. In this case the owner had an opportunity of attending before the commissioners, and did not attend, and it was clear therefore that the land had become absolutely free from the great tithes, those tithes being alone in question. The objection of the purchaser was wholly futile. The commissioners found the land to be tithe free, whether by the operation of merger (a mode of dealing with such hereditaments created by the Act), or otherwise. The Tithe Commutation Acts, were pre-eminently laws made for those who kept their eyes open, and not for those who went to sleep on their rights. Everything in the present case had been done pursuant to the Act, proper notices had been given, and meetings held, and the merger of the tithes in question, and the apportionment of the tithes of the parish duly received the confirmation of the commissioners, and on the 1st of January following, by the operation of the 67th section of 6 & 7 Wm. 4, c. 71, the land in question became absolutely free from the great tithes. The vendor had shewn a good title, and that the land was tithe free, and as this was clear before the bill was filed, the appeal ought clearly to be dismissed with costs.

Lord Justice KNIGHT BRUCE concurred.

BANKRUPTCY.

July 17, 21, *and* 22.

Ex parte CURTIES, *re* CURTIES.

Bankrupt Law Consolidation Act 1849—*Conduct as a trader—Refusal of certificate.*

A trader having on two previous occasions compounded with his creditors, failing to effect a third composition by offering to pay 11*s. in the pound, was made bankrupt, having assets which would enable him to pay* 12*s. in the pound:*

Held, affirming the decision of the commissioner that as the bankrupt had made the former compositions, and attempted to make the third by imposing on his creditors as to the amount of his assets, and as he had made false and fraudulent entries in his books, consisting of fictitious accounts in the names of other persons his conduct as a trader was such as under the 198*th section of the Bankrupt Act disentitled him to a certificate, or to any protection.*

In this case, the bankrupt, Thomas Stephen Curties, of York-street, Westminster, a wholesale cheesemonger, presented a petition, praying the reversal of the decision of Mr. Commissioner Evans, who had refused him a certificate, and granted him protection for twenty-one days only. The facts of the case are sufficiently set forth in the judgment of Lord Justice Knight Bruce; it may, however, be here briefly stated, that the bankrupt had on two occasions made very profitable compositions with his creditors, and attempted to make a third previous to the issuing of the fiat. The grounds, however, upon which the commissioner proceeded in refusing him his certificate were, first, that he had made false and fraudulent entries in his books, with intent to defraud his creditors within the meaning of the 201st section of the Bankrupt Law Consolidation Act; secondly, that he had fraudulently contracted debts within the meaning of the 256th section of the same statute; and, thirdly, that after the adjudication, he had withheld the production of books and papers relating to his trade, dealings, and estate.

Swanston and *Roxburgh*, in support of the petition of appeal, stated that at the time of his failure, the bankrupt had assets sufficient to pay at least 12s. in the pound, and that 10s. in the pound had been already paid, and that the official assignee had 263*l.* still in hand for payment of costs, and for a future dividend.

Malins and *Bagley*, for the creditors' assignees, insisted that the petition ought to be dismissed with costs.

Bury, for the official assignee, opposed the petition of appeal.

Swanston, in reply.

Lord Justice KNIGHT BRUCE.—This is a case of certificate arising necessarily on one or more of the sections of the Act consolidating the law of bankruptcy, of which, without entering into the 201st and 256th sections, it will be sufficient to refer to the 198th section, which directs that the court, "having regard to the conformity of the bankrupt to the law of bankruptcy, and to his conduct as a trader before as well as after his bankruptcy, and whether the allowance of such certificate be opposed by any creditor or not, shall judge of any objection against allowing such certificate, and either find the bankrupt entitled thereto, and allow the same, or refuse or suspend the allowance thereof, or annex such conditions thereto, as the justice of the case may require." The discretion here reposed in the Court is, as Mr. Swanston truly says, not an unlimited discretion: it is to be discreetly exercised on judicial grounds, with reference to the particular nature of the case in general, and also on its particular circumstances; but, before all, is to have regard, if not to be restricted to the conduct of the bankrupt as a trader, and as a trader before as well as after his bankruptcy. The question before us is, whether, having regard to the conduct of the bankrupt as a trader, before as well as after his bankruptcy, it is or is not fit that he should receive a passport (so to speak) in the world of commerce to recommence operations as a trader before paying in full the debts now due from him. The conduct of the bankrupt has been impeached on several grounds: first, that suspending his payments, intending a stoppage and a composition with his creditors, on the morning of the 27th of October, he had, on the preceding Saturday, purchased goods of tradesmen, for which he did not pay and has never paid; and it is contended that his purchase of goods on the Saturday, followed by the almost immediate stoppage in the forenoon of the Monday, was conduct unfair, untradesmanlike, and disreputable. Primâ facie it was so; and it lies on the bankrupt to explain such a state of things: and it has been said on his behalf, that it was not unfair, untradesmanlike, nor dishonest, under the circumstances in which he was placed, to buy goods, and within less than twenty-four hours, in one sense, and forty-eight hours in every sense, to proceed to effect a composition. He says he intended nothing of the kind attributed to him; that he bought the goods in the ordinary course of business; and that he intended to continue his trade: but that on the Monday morning, so early as nine o'clock, he received an invoice of one parcel of the goods from one of the tradesmen thus used, by the deduction of discount, on which it was shewn that he expected immediate payment of the amount. The invoice appears not to have been accompanied by a letter, but the bankrupt inferred, as he says, that no further supplies were to be expected from that quarter without immediate payment. In this instance there was no demand or pressure, either for that or a much larger sum due from him to the same creditor. The amount of this invoice was under 28*l.* but he says it had such an effect upon him, as shewing an intention of no longer dealing with him on credit, but to make their dealings together ready-money dealings, he being so short of supplies, his trade so much depending on this man, that the receipt of the invoice induced him to determine at once to come to a stoppage. Now certainly, this is a most extraordinary state of circumstances, and one which, although not absolutely impossible, yet is so improbable, that it requires a very great stretch of credulity to believe. It is curious, too, that in his position he should have at all desired to have stopped payment or compounded with his creditors, for it is plain he had the means of paying 12s. in the pound; indeed, he shortly afterwards offered to pay 11s. in the pound. The whole affair, therefore, wears a most mysterious aspect, as to which it is impossible to account to the mind, before we resort to the early history of the man. It appears that in December 1831, being then a linendraper, or recently an apprentice to a linendraper at Worthing, and just out of his time, he married a lady of some fortune in his own rank of life. The fortune she had appears to have been short of 1,000*l.*—about 800*l.*; a very good fortune for his rank of life. Of this sum 500*l.* were settled strictly, and are not now in question. There was no other settlement, and the fortune came into the possession of the husband; but he says, though there was a formal deed as to the 500*l.* there was an understanding (or an agreement of some kind) that he was to be a debtor for the rest of the fortune, and whether that is to be believed depends on the circumstances taken together. He appears on this occasion, with the aid of his wife's fortune, to have changed his line of business, and to have taken to the bacon and cheese trade, in which he was not long outwardly prosperous, for in 1836 he stopped payment, and paid 10s. in the pound. That was the conclusion of the first cycle of his business. Afterwards, he went on for some years without entering into any composition. But in 1847 he came to a second composition, and in that he paid 9s. in the pound. The ensuing period of trade is not so long, because the time for the third composition appears to have arrived in 1851. Looking back to these circumstances, to which others may be added, some light dawns upon the otherwise mysterious circumstances in which a man, such as he was with regard to property, should desire to stop business and compound with his creditors. I have endeavoured to account satisfactorily to my own mind for his conduct with respect to this third transaction, and I have failed in the attempt; and I regret to say that I am unable to give credit to the reasons he assigns for his stoppage,—for his last act, the attempt at composition I am unable to assign it to any motive consistent with credit to him. This is not all. He did not at this stage contemplate bankruptcy,—he intended a composition; but against his will, his creditors not wishing to accept 11s. in the pound, he was made a bankrupt, and his books and documents have undergone an adverse inspection. From the ledger he seems to have abstracted four pages, or two leaves; these, he says, were taken out by himself. The knife, also, has been in use in more than one place in the books, and must be taken to have been so used by himself; but what makes the matter the subject of graver consideration is, that the abstracted leaves and the erasures are all accompanied by suspicious accounts in the same books, and to which I must now refer. The book contains, at least, four fictitious accounts, that is they are accounts ascribed to persons with whom he had no dealing. The allegation, however, on his part is, that the transaction was fair, and this form of account was merely adopted because he did not wish his clerks and servants to know to what they really related. One of the accounts is ascribable to a man of the name of Payne, making Payne a creditor to the extent of 200*l.* That is admitted to be fictitious in every sense, but the bankrupt explains it thus: "I say, that previously to the 10th of January, 1848, I had saved 200*l.* from the sale of bacon wrappers, empty hogsheads, and preferences on compositions with my creditors, which I had kept apart from my business as a private fund; but then wanting the amount in my business, I entered the same in my books under the head of John Payne." The phrase "preferences on compositions," is one of which I never before heard. Of the other three accounts, one is a closed account, entered in the name of Maria Curties, the mother of the bankrupt. Of the other two, being open accounts, one is with

Mr. Webberley, the brother-in-law of the bankrupt; the other with Mr. Pointon, his cousin; they are all of them fictitious in point of names; but then he says they were honest accounts, merely intended for the purpose of concealment from his clerks; and he says the money all belonged to his wife. There is no pretence for saying that it belonged to his wife for her separate use; but it is said by Mr. Swanston, and said truly, that the bankrupt and his wife might so have treated the money, and this would remove any dishonest intention. I have stated the settlement on the marriage of the 500*l*. I have stated the closed account with Maria Curties. The two accounts with Webberley and Payne amount to 1,100*l*. Now that certainly is a great amount of accumulation on 300*l*. the remainder of her fortune not in settlement. This is accounted for by the interest on the 500*l*. and on other money accrued due in her right, and by her saving from the expenses of the household, which appears to have been conducted with economy. It is, however, impossible that all this should be presented to the mind of any reasonable being without exciting an exclamation of surprise. I agree that the improbable is not always the untrue; and I agree that innocent men have been convicted on circumstantial evidence, apparently most satisfactory, but which has afterwards turned out to be untrue. Those, however, who have to determine on questions of doubtful facts, must do their best to come to a conclusion, and must not avoid doing so merely on the ground of that liability to error which is incident to all. In viewing the matter in that way, I am obliged to say I cannot come to the conclusion that the history of this account is credible. I do not believe it. The matter does not rest here, for this tradesman employed an accountant, Mr. Glover In the course of the communications which passed between Mr. Glover and himself, it appears that these accounts struck Mr. Glover as seeming remarkable; but it does not appear that the bankrupt then explained to him that these accounts, as to Webberley and Payne, were accounts relating to property of his wife; but he led Mr. Glover to believe that they were true and honest accounts with persons described. The matter does not even thus end. There appears in the account under the name of Webberley, on the 27th of October, 1851, a cheque debited to Webberley, in part payment of the apparent debt due to him. This struck the accountant as being on the day of the stoppage of payment, and he remonstrated. The bankrupt, however, at first insisted on its propriety, and that it ought to stand, but at last he gave way, and withdrew it. Though there are other circumstances to which I might allude, I lay no stress on them. I find the facts already mentioned before me, and I am asked, in the exercise of a judicial discretion, and on a tribunal having, to a certain extent, to arrange the affairs of commerce. I am asked to give the passport of the tribunal to this man to enable him to enter again into trade. I am surprised that such an application should have been made with the sanction of any disinterested adviser. It is a demand without pretext, it is a demand without colour, and I do not recollect a case where a certificate has been asked, in which there were such plain, palpable, and irresistible grounds for refusal. For my part, and so far as I am concerned, I dismiss the petition; I refuse the petitioner his certificate, and I also refuse him any protection whatever.

Lord Justice Lord Cranworth said that he entirely concurred in the conclusion arrived at by his learned brother. That it would be a waste of time to point out all the various and conclusive evidence in the case shewing that the whole of the history as to the wife's fortune was utterly incredible. In his former compositions and his attempted composition with his creditors, the bankrupt had clearly acted most improperly. His conduct, moreover, as a trader had altogether been such that the Court ought not to sanction his entering into business again before the payment of his debts in full. His lordship concluded by saying, that in his opinion the petition ought to be dismissed with costs, and all protection refused.

Tuesday, Nov. 9.

EGREMONT *v.* EGREMONT.

Practice—Equity Jurisdiction Improvement Act—Assignment of guardian without commission.

A guardian ad litem was, on the application of the plaintiff, appointed for an infant defendant, within the jurisdiction, without a commission, on an affidavit of the fitness of the proposed guardian.

Nalder, in this case, made an application on behalf of the plaintiff, at the request of Vice-Chancellor Kindersley, to whom it was originally made, for the appointment of a guardian ad litem of an infant defendant, who is within the jurisdiction of the Court, without the issuing of a commission for that purpose. In support of the application it was urged, that as, according to the 21st section of the Act for the Improvement of the Jurisdiction of Equity, 15 & 16 Vict. c. 86, the practice of issuing commissions to take answers within the jurisdiction is abolished, it was very desirable to save the expense of the commission for the assignment of the guardian, which formerly used to take the answer. *Drant* v. *Vause*, 2 Y. & C. C. C. 524, before Lord Justice Knight Bruce when Vice-Chancellor, was cited, in which a similar order was made even under the old practice.

Archibald Smith, as amicus curiæ, said that the late Vice-Chancellor Parker had, after consulting with the officers of the Court, also made a similar order under the old practice.

Their Lordships considered the application might be granted, an affidavit having been made to this effect that the proposed guardian was a fit and proper person for the office and had no interest in the matter in the suit adverse to that of the infant, and they accordingly made the order sought.

Wednesday, Dec. 8.

JONES *v.* BATTEN.

Practice—Act for the Improvement of the Jurisdiction of Equity—15 & 16 *Vict. c.* 86, *s.* 6—*Sections in Chancery Relief Act*, 15 & 16 *Vict. c.* 87, *s.* 12—*6th Order of 25th Oct.* 1852.

A written bill was stamped and filed under the 6th section of the Equity Jurisdiction Improvement Act, and afterwards a printed copy was filed as required by the same section:

Held, that as the written copy was stamped, the printed copy did not require a second stamp, under the 12th section of the Suitors in Chancery Relief Act, and the 6th of the Orders of the 25th October, 1852, and the schedule thereto.

Freeling, in this case, at the request of Vice-Chancellor Turner, made an application to their lordships with respect to a point on which, it was stated, some difference of opinion existed among the equity judges of the courts below. The question was whether, as a written bill had been stamped and filed under the 6th section of 15 & 16 Vict. c. 86, a second stamp was necessary under the 12th section of 15 & 16 Vict. c. 87, and the 6th of the Orders of the 25th October, 1852. The case of *Lambert* v. *Lomax*, Jur. 1008, was cited, in which Vice-Chancellor Turner, under similar circumstances, held one stamp only to be necessary.

Lord Justice Knight Bruce said that the preliminary written bill and the printed bill formed together only one bill, and not two bills, and the stamp might as well be on the first as on the second, as his lordship presumed that the written copy would be retained on the file. [*Berry*, in answer to his lordship, stated that it was the practice in the Office of the Record and Writ Clerks to retain the written copy on the file.] The written copy ought to be retained on the file, and one stamp ought to suffice.

Lord Justice Lord Cranworth concurred.

ROLLS COURT.

Reported by J. Macaulay, Esq. of the Inner Temple, Barrister-at-Law.

Thursday, Nov. 11.

SANDERS *v.* RODWAY.

Husband and wife—Deed of separation—Covenant—Injunction.

A separation having taken place between a husband and wife, the wife's father undertook to support her, and to indemnify the husband against all debts she might thereafter incur; and he also released the husband from a debt then due from him. The husband, on his part, consented to permit his wife to live separate from him, and not to molest her for so doing, and not to visit her or send letters or messages to her without her consent. The husband afterwards, in violation of this covenant, commenced writing letters to the wife and attempted to visit her against her will, and threatened to endeavour to obtain possession of her.

The Court granted an injunction, restraining him from infringing the covenant, without, however, throwing any impediment in his way if he chose to proceed in the Ecclesiastical Court for restitution of conjugal rights.

This was a motion for an injunction to restrain the defendant, John Rodway, from compelling his wife, Mrs. Elizabeth Rodway, from whom he is living separate, to cohabit with him, and from molesting, disturbing, or troubling her for living separate and apart from him; and also from molesting, disturbing, or troubling any other person or persons for receiving, harbouring, or entertaining his said wife, and from, without her consent, visiting her, or knowingly going into any house or place where she might reside or be, or sending or causing to be sent any letter or message to her, and from endeavouring or making any attempt to get possession of the person of his said wife, and from in any manner molesting or annoying her. The marriage between the defendant and his wife took place in the year 1828, but differences having afterwards arisen between them, they separated by mutual consent in the year 1834. At the time of the separation a separation deed was executed, dated 19th February, 1834, and made between the defendant of the one part, and Mrs. Rodway, Benjamin Sanders her father, and Benjamin Sanders her brother, of the other part, wherein the defendant covenanted thenceforth to permit and suffer Mrs. Rodway during her natural life to live apart from him, and to reside, be, and remain in such places and families, and with such relations, friends, and other persons, and to follow, carry on, and pursue such trade or business as she should notwithstanding her coverture, think fit; and he also covenanted that he would not, at any time thereafter, sue her in the Ecclesiastical Court, or any other court, for living separate and apart from him, or to compel her to cohabit with him, or sue, molest, disturb, or trouble her for such living separate and apart from him or any other person or persons for receiving, harbouring, or entertaining her, nor would, without the consent of his said wife, visit her, or knowingly come into any house or place where she might reside, or be, or send, or cause to be sent, any letter or message to her; and he also covenanted that he would not in any way claim or interfere with any property which his wife then had or might subsequently acquire. By the same deed Benjamin Sanders, the father, covenanted that he would, during the remainder of his daughter's life, clothe, maintain, and keep her, and would indemnify the defendant from any debts which she might thereafter incur, and he thereby also released the defendant from a debt of 300*l*. which was then due from him. Mr. B. Sanders, the elder, died in March 1852, his son Benjamin Sanders having died previously. Mr. Sanders, the elder, by his will, dated in 1845, appointed his three surviving sons his executors, and thereby bequeathed to them a considerable sum of money upon trust to pay the income to his daughter for her life for her separate use. Mrs. Rodway had resided with her father till his death, and she then continued to live with one of her brothers in the same house, to the possession of which her brother had succeeded. During her father's life she was not in any way interfered with by her husband, but some time subsequently Mr. Rodway called at the house and wrote a letter to the family and openly expressed his determination to use every means in his power to obtain possession of Mrs. Rodway's person. Mrs. Rodway's three brothers accordingly joined with her in filing a bill on the 29th October last, in which they prayed for an injunction, and now moved as already stated.

R. Palmer and *Renshaw*, for the plaintiffs, contended that this case came within the principle upon which the Court acts in such cases. The bill did not seek to restrain the husband from applying to the Ecclesiastical Court for restitution of conjugal rights, but merely to restrain him from violating the covenant entered into by him in the separation deed. The principle was the same in this as in other contracts; that is, they will be supported in favour of those who give a valuable consideration for them. Now, the deed of the 19th of February, 1834, was a perfect deed of separation, for it was a covenant by the father of Elizabeth Rodway to support her, and to indemnify her husband against her debts; and, moreover, the deed has for its object a separation then existing, and not a separation thereafter to take effect. In *Wilson* v. *Wilson*, 14 Sim. 405; S. C. 1 H. L. Cas. 538, the consideration in part was the staying proceedings in the Ecclesiastical Court by the wife for nullity of marriage, and the husband was held to be bound. Negative stipulations were frequently carried into effect, though the rest of a contract might not be. The object of the husband was more to annoy the wife, and get her money, than to effect a reconciliation. The case came within that of *Lumley* v. *Wagner*, 1 Dea. Main. & G. 606, as to a negative covenant. There was no property at the time of the execution of the deed, and therefore no trusts to be carried out. All that is wanted is an injunction, not a decree, to carry out the trusts. The motion is in the very terms of the portion of the covenant by Mr. Rodway which is infringed, and the suit is by the party who gave the consideration. (They cited *Jones* v. *Waite*, 9 Cl. & F. 101.)

Rogers, contrà.—The question was, simply, had there ever been an instance in which the Court has interfered to prevent the husband from seeking restitution of conjugal rights? The law says, if there be a consideration the covenant is good, and you may go to law and get damages for its breach. The case of *Wilson* v. *Wilson* went upon the principle of a settlement of the wife's property on the husband, and the Court restrained her from proceeding in a suit to show that the marriage was void ab initio; but did not restrain the husband from suing in the Ecclesiastical Court for restitution of conjugal rights.

The Master of the Rolls said he would not interfere with any proceedings which might be taken in the Ecclesiastical Court, nor would he restrain the husband in the exercise of his rights in that respect; but the suit was in the nature of a suit for specific performance of the covenants of the deed of separation, and was a suit which it was competent

for the representatives of one of the covenanting parties to institute. The plaintiffs were not seeking by the motion to restrain the defendant from proceeding in the Ecclesiastical Court, but merely to restrain a breach of contract. The only question was, whether the defendant had entered into the covenant; for if he had, the Court was bound to prevent him from infringing it. The injunction, therefore, must be granted in the terms of the notice of motion, that is, in the terms of the covenant in the deed of separation.

Monday, Nov. 24.

Re HARRISON'S Trust.

Trustees, appointment of—Breach of trust—Power to appoint, construction of.

A will contained a power to appoint new trustees in the place of those "who should at any time after the testator's decease, die or become unwilling or unable to act in the aforesaid trusts:" Held, that this did not apply to the case of a trustee going out of the jurisdiction, and therefore in such a case a trustee being abroad, and his address unknown, it was necessary to come to the Court for its assistance.

The Court will not, however, order a transfer to the new trustees of shares in a joint-stock company purchased with the trust-funds without authority by the original trustees, as by so doing it would be sanctioning a breach of trust.

This was an application to the Court for the appointment of new trustees, and a transfer to them of shares in the Leeds and Bradford Railway Company purchased by the original trustees with the trust-moneys. It appeared that James Harrison, by his will, bearing date the 29th of April, 1846, gave all his personal estate to certain trustees, of whom the petitioners and Henry Harrison were the survivors, upon trust to convert it into money and invest the proceeds in the public stocks or funds, or on real securities, in England, and stand possessed thereof upon certain trusts. The testator gave power to appoint new trustees in the place of any "trustee who shall at any time after my decease die or become unwilling or unable to act in the aforesaid trusts." After the death of the testator, the trustees invested part of the proceeds of the personal estate in the purchase of twenty guaranteed shares in the Leeds and Bradford Railway Company. This railway was subsequently purchased by the Midland Railway Company, and the shareholders in the former company were allowed the option of taking shares in the latter company in lieu of their shares in the former upon the terms mentioned in the agreement. The petitioners conceiving this arrangement advantageous to their cestuis que trust, were anxious to take advantage of the option, but were unable to do so in consequence of Henry Harrison, third co-trustee, having gone out of the jurisdiction, and it not being known where he was to be found. The present petition therefore was presented, praying that the petitioner might be empowered to transfer the Leeds and Bradford Railway shares, and to take a transfer of the Midland Railway shares, and that a new trustee might be appointed in place of Henry Harrison.

S. Smith, for the petitioners, admitted that a breach of trust had, in the first instance, been committed by investing the trust money in railway shares, for which the will gave no power; but contended that the Court would enable the parties to carry out the arrangement made with the Midland Company, inasmuch as it was advantageous for the cestuis que trust. With regard to the other part of the petition, the appointment of a new trustee in the place of Harrison, he submitted that the words of the power did not apply to the case of a trustee out of the jurisdiction, and that therefore it was necessary to invoke the aid of the Court. He cited *Re Watts*, 15 Jur. 459.

The MASTER of the ROLLS would make the order for the appointment of a new trustee on the authority of the case in the Jurist; but he would not consent to make any order as to the transfer of the shares, as by so doing he would be sanctioning a breach of trust.

VICE-CHANCELLOR STUART'S COURT.

Reported by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.

Thursday, Dec. 2.

LOW *v.* NASH.

Statute of Limitations—Trust.

A testator, who died in December 1826, by his will directed a leasehold estate to be sold, and that out of the proceeds a sum of 50l. should be paid to A. B. Both the executors afterwards died: and in 1852 A. B. filed a claim against the executors of the surviving executor, for payment of the 50l. and interest:

Held, that A. B.'s claim was not barred by the Statute of Limitations.

John Leeson, by his will dated the 1st of December, 1826, with respect to his leasehold in house Tottenham-court-road, in which he then dwelt, directed the same to be sold by public auction, together with everything that might be upon the same premises at the time of his decease, except certain specified furniture and effects; and out of the proceeds arising from such sale the testator, after directing payment of his debts, directed, among other things, that a sum of 50*l.* should be paid to his daughter, Mary Leeson; and the testator thereby appointed Henry Leeson and William Nash executors of his will. The testator died on the 10th of December, 1826, and his will was proved on the 13th of the same month by both the executors, the property being sworn to be under 4,000*l.* Henry Leeson afterwards died, leaving William Nash, his executor, him surviving. William Nash died on the 11th of September, 1846, having by his will appointed the defendants in this case his executors. The claim was filed by Mary Low, widow, formerly Mary Leeson, the daughter of John Leeson, the testator, and sought payment of the said legacy of 50*l.* and interest at 5*l.* per cent. from the 10th of December, 1827, and in default thereof to have the personal estate of the testator, John Leeson, administered on behalf of herself and all other the legatees of John Leeson; and that for that purpose all proper directions might be given, and accounts taken.

Welford appeared for the plaintiff.

Bevir, for the defendants, said that they had filed no affidavit; they knew nothing of the matters stated by the plaintiff, and relied upon the 3 & 4 Wm. 4, c. 27, s. 40, as barring the claim.

Welford, in reply, contended that there was a trust for sale, and the Statute of Limitations did not apply.

The VICE-CHANCELLOR said that he would make a decree for an account of the leasehold estate and its contents, which by the will were charged with the 50*l.* and for an account of the proceeds of the sale, and he should reserve the costs and further directions.

Monday, Dec. 6.

SERGISON *v.* BEAVAN.

Practice—Injunction—Substituted service of bill.

An affidavit of merits is not now necessary upon an application for leave to serve upon the attorney for the plaintiff-at-law a bill to restrain proceedings in the action.

This suit was instituted by Mr. Sergison to restrain Mr. Beavan, the defendant, from prosecuting an action-at-law against him.

Prior applied for leave to serve the attorney of Beavan, the plaintiff-at-law, with the bill, Beavan himself being out of the jurisdiction. There were affidavits to prove that Mr. Beavan was out of the jurisdiction, and that the person upon whom substituted service was proposed to be made, was the attorney for the plaintiff in the action. There was, however, no affidavit of the merits upon which the injunction was sought.

The VICE-CHANCELLOR considered that, as the common injunction could not, under the present practice, be obtained, it would be sufficient to produce an affidavit of merits when the injunction was applied for. He would, therefore, upon the affidavits which had been produced, make the order for substituted service.

HOLLAND *v.* KING.

Practice—Costs of reference of title.

A purchaser under a decree, being also a defendant in the cause, took a reference to the Master upon the title to the property purchased. The title was reported good:

Held, that the purchaser was not to pay the costs of the reference.

By the Master's report (dated the 5th May, 1852), the Master found that it would be fit and proper that Mr. King, one of the defendants, should be the purchaser of the partnership estate and effects, the subject of the suit, at the price or sum of 800*l.* By an order of Vice-Chancellor Parker, dated the 10th of July, 1852, this report was confirmed, and a reference to the Master was directed as to the title. By his report, dated the 22nd of November, 1852, the Master reported in favour of the title, and the present petition was presented for the confirmation of the report and consequent directions.

Prior appeared for the petitioner, and stated that he believed the only objection was, as to the expense of the reference of title, and upon this point he referred to *Flower* v. *Hartopp*, 8 Beav. 199; *Thorpe* v. *Freer*, 4 Madd.; and *Camden* v. *Benson*, 1 Keen, 671.

The VICE-CHANCELLOR mentioned also the cases of *Friswell* v. *Moore* (V.C. of Eng. 30 May, 1833); and *Dallas* v. *Powell* (V.C. of Eng. 11 Aug. 1833); and referred to 1 Sugd. Vend. & Pur. 112.

Morris, for the plaintiff, said that the reference as to the title was taken needlessly, as the purchaser was a party to the suit, and was well acquainted with the title; he should therefore pay the costs of the reference, the Master having reported in favour of the title.

Prior in reply.

The VICE-CHANCELLOR did not think this case could be taken out of the general rule. The petitioner was entitled to the reference of the title upon the usual terms, which were, that he should not pay costs.

Wednesday, Dec. 8.

Ex parte PEARSON'S EXECUTORS, *re* THE MIDLAND UNION, BURTON-UPON-TRENT, ASHBY-DE-LA-ZOUCH, AND LEICESTER RAILWAY COMPANY.

Joint-Stock Companies Winding-up Acts—Provisional director—Contributory.

A. B. a member of the provisional committee of a railway company, attended certain meetings of the company. After the project had been abandoned, at a meeting of the committee of management, at which A. B. was not present, it was resolved that each of the directors should be applied to for payment of 160l. and in the letter of application it was stated that on payment of this sum he would be released from all further liability. A. B. paid the sum of 160l. accordingly. The company being ordered to be wound up, the Master placed A. B.'s executors on the list of contributories; but, on appeal, the Court directed the names to be struck off the list, and that their costs should be paid by the official manager.

This was a motion on behalf of Henry Cox and the Rev. Henry Jennings, executors of Sir William Hyde Pearson, knight, deceased, that Master Tinney might be ordered to strike the names of the said Henry Cox and Henry Jennings, executors as aforesaid, off the list of contributories of the above-mentioned company; and that the official manager of the said company might be ordered to pay to the said Henry Cox and Henry Jennings their costs of the proceedings before the said Master Tinney, and of the present application, and consequent thereon. Sir W. H. Pearson was one of the provisional directors of this company, and also a member of the committee of management. The circumstances of the company have already been stated in the case of *Ex parte Hill*, 19 Law T. Rep. 57. Sir W. H. Pearson was present at the meetings of the 17th, 28th, and 29th of October, 1845, the resolutions adopted at which meetings are given in *Ex parte Hill*. On the 22nd of December, 1845, at a meeting of the committee, at which Sir W. H. Pearson was present, it was resolved, "That in consequence of the secretary's report of the small amount of deposits the Midland Union Railway project be postponed until the next Session of Parliament, and that all further expenditure on account of this company cease from this day, except such as may be specially ordered by the Board:" "that the secretary obtain forthwith an account of all outstanding debts and liabilities of this company." Several other meetings of the committee were afterwards held, at which Sir W. H. Pearson was present. At a meeting held on the 1st of July, 1846, but at which Sir W. H. Pearson was not present, it was resolved, "That the secretary having ascertained that the present outstanding claims of this company amount to 5,763*l.* 10s. 7d. after deducting the assets; that the same be equally divided between the following provisional directors, and payment requested within fourteen days from the present date." [Then followed a list of thirty-six names.] "That the following draft of a letter which has been submitted to this meeting be adopted, and that the secretary forward a copy of the same to each of the above shareholders:—

'Midland Union Railway.

'Sir,—The total liabilities of this company having been at length ascertained, I am instructed to inform you that the amount due to creditors, after deducting sundry small sums obtained from shareholders, is 5,760*l.* and that your share of the same, as one of the provisional directors is 160*l.* On payment of the above sum you will be released from all further liability, and the balance, if any, which may accrue after the settlement of the claims upon the company, will be returned to you. As the creditors can no longer be put off, and legal proceedings against individual members of the committee may be expected, I am instructed to request that you will without delay—say within ten days—pay the above amount to the bankers of the company, Messrs. Glyn, Halifax, and Co. Lombard-street, London.

'It will be satisfactory to you to learn that the solicitor of the company has very handsomely withdrawn all claim for professional services: the aggregate amount therefore includes only his actual expenses out of pocket.

'I am, &c.

'WM. KNIGHT, Secretary.'"

A copy of this letter having been received by Sir W. H. Pearson, he paid the 160*l.* required of him. No shares had been allotted in the company, and no debt had been proved, but a claim had been made by Mr. Baxter, the solicitor, in respect of 1,300*l.* paid by him to Mr. Vignoles, the engineer of the company.

Daniel and *Selwyn* appeared in support of the motion, and referred to *Carrick's* case, 1 Sim. N.S. 505.

Roxburgh and *Morris*, for the official manager, cited *Ex parte Hill*, 19 Law T. Rep. 57; and *Capt. Turner's* case, 5 De G. and Sma. 182.

Daniel, in reply.

The VICE-CHANCELLOR said, that after that letter had been received and acted upon by Sir W. H. Pearson, he did not think the persons at the meeting at which it was adopted, could call upon him for further payments. He should, therefore, grant the motion according to the terms of the notice.

Thursday, Dec. 9.

RAWLINS *v.* DAGLISH.

Practice—Proceedings by claim.

This was a claim for the specific performance of an agreement for a lease of mines. The case was very complicated.

Daniel and *Bird* appeared for the plaintiff.

Follett and *W. M. James* appeared for the defendant.

In the course of the argument, the Vice-Chancellor expressed his opinion to be decidedly against proceeding by claim, and that there should be but one mode of bringing a complaint before the Court. His Honour said, with reference to the present case, that he was placed in a most unfortunate and grievous situation, for he found it almost impossible to do justice. He could not decide the case properly on claim, and he could not deal fairly by the plaintiff, who himself had, in accordance with the practice of the Court, come in at a door which was intended to open a short cut. Nothing could be more distressing to a judge. His Honour added, that what he intended to do was this: he should, upon the facts and evidence before him, endeavour to do justice as well as he could, with a sense of the almost impossibility of his doing justice, and he should leave the parties to appeal to the Lord Chancellor, who would have the opportunity of seeing the situation in which litigants were placed who pursued their remedies according to the practice of the Court.

At the rising of the Court, this case, which had occupied the greater part of the day, was not concluded.

Russell and *Malins* complained of these claims having precedence of causes. They stated, that it had become the practice to bring causes before the Court by claim rather than by bill, although not properly the subjects of claim, merely for the purpose of obtaining a more speedy hearing.

The VICE-CHANCELLOR said that he considered that special claims should be distinguished from ordinary claims, and he should therefore direct, that on a short cause day no claims were to be taken, except such as were certified by counsel to be short claims. All other claims would take their place in the general paper to be heard with other causes.

GROTE *v.* BING.

Practice—Appointment of receiver.

Bagshawe applied as to the appointment of a receiver, and stated that a doubt existed whether the application for such appointment should be made in court or at chambers.

The VICE-CHANCELLOR said that where a receiver was in the first instance sought to be appointed in the place of some person already in possession of the property, the motion should be made in open court. But in cases where a receiver had been already appointed and a vacancy occurred by death or otherwise, or where, as upon the death of the owner of the property, no person was in possession, the application should be made at chambers.

Common Law Courts.

COURT OF QUEEN'S BENCH.

Reported by ADAM BITTLESTON and JOHN THOMPSON, Esqrs. Barristers-at-Law.

Tuesday, Nov. 9.

KIPLING *v.* INGRAM.

Construction of local Acts for lighting and paving—Liability to a paving rate.

This was an action of debt by the clerk to the trustees for paving and lighting the parish of St. Luke, Middlesex, to recover the amount of a paving rate, to which the defendant had been assessed; and the case came before the Court upon a special case, raising the question whether the defendant, as the occupier of a house in the City-road, situate within the said parish of St. Luke, was liable to be rated to a paving rate, under sect. 6 of 2 Wm. 4, c. xiii. "An Act to alter and enlarge the Powers of an Act of the Fiftieth Year of his Majesty King George the Third, for Lighting and otherwise Improving the Streets and other public Places in the Parish of St. Luke, in the County of Middlesex; and for placing under the Care of the Trustees certain Roads in the Parish, which were lately Turnpike Roads."

The following is the preamble of that Act:—"Whereas an Act was passed in the fiftieth year of the reign of his Majesty, King George the Third, intituled 'An Act for making more effectual Provision for Lighting, Watching, Paving, Cleansing, Regulating, and Improving the Streets and other public Places in the Parish of St. Luke, in the County of Middlesex," by which Act all the highways and other public places within the said parish, not being turnpike roads, were placed under the care and management of trustees appointed and to be appointed as therein mentioned, with certain powers for lighting, watching, paving, and otherwise regulating and improving the same, as in the said Act are mentioned and contained:

And whereas another Act was passed in the tenth year of the reign of his late Majesty King George the Fourth, intituled "An Act to amend an Act of the Seventh Year of his present Majesty, for consolidating the Trusts of the several Turnpike Roads in the Neighbourhood of the Metropolis north of the River Thames, and to make and maintain two new or branch Roads, to communicate with the said Metropolis Roads," by which said Act of the tenth year of his late Majesty it is provided that from and after the first day of January next after the passing of the said Act, the roads therein mentioned shall cease to be maintained, repaired, lighted, watched, or watered by the commissioners acting in the execution of the said Act of the seventh year of his said late Majesty, with the exceptions therein mentioned; and that the same roads and parts of roads which, under the said last-mentioned provision, shall cease to be maintained and repaired by the said commissioners, shall from thenceforth be deemed and considered to be common highways, and shall be maintained, repaired, watched, watered, and lighted by the parishes in which the same are respectively situate, by the respective surveyors or persons appointed, or to be appointed under and by virtue of an Act passed in the thirteenth year of the reign of his majesty king George the Third, intituled, "An Act to explain, amend, and reduce into one Act of Parliament the Statutes now in being for the Amendment and Preservation of the public Highways in that Part of Great Britain, called England, and for other Purposes;" and that the expenses thereof shall be assessed, and levied under the provisions of the said Act, upon the whole of such parish or parishes:

And whereas in consequence of the provisions contained in the said recited Act, of the tenth year of king George the Fourth, a considerable line of road, within the said parish of St. Luke, which was formerly turnpike road, under the care and management of the said commissioners, and comprising the whole of Old-street, part of Old-street-road, part of Providence-row, and part of Goswell-road, hath been thrown upon the said parish of St. Luke, and the expenses attending the maintaining and repairing of which line of road will, if effected under the direction of the said recited Act, of the thirteenth year of king George the Third, add considerably to the parochial burdens:

And whereas no surveyor of the highways within the said parish of St. Luke, hath been appointed under or by virtue of the said Act passed in the thirteenth year of the reign of his said Majesty King George the Third; and inasmuch as a very considerable saving of expense will be effected by placing the entire care and management of the said roads and parts of roads which have been so thrown upon the said parish as aforesaid, in the trustees for the time being acting under the said recited Act of the fiftieth year of King George the Third; and as thereby an effectual check and control will be given to the said parish at large over the expenditure and application of the money required for the repairs of the same, it is expedient that such roads and parts of roads hereinbefore mentioned should be placed under the care and management of the said trustees, with such and the same powers for lighting, paving, cleansing, regulating, maintaining, and improving the same as are contained in the last-mentioned Act with respect to the other highways within the said parish, and with such further powers as are hereinafter contained; and it is also expedient that the powers and provisions of the same Act should in some other respects be altered, amended, and enlarged, &c.

Sec. 1 then enacts, that the said recited Act (50 Geo. 3), and all and every the powers, provisions, &c. therein contained (save and except such parts thereof as are hereby varied, altered, or repealed), shall be as good, valid, and effectual for carrying this Act, and the several purposes thereof, into execution, as if the same had been repeated and re-enacted in this Act.

Sec. 2 that from and immediately after the passing of this Act, all and singular the said several roads, and parts of roads, hereinbefore mentioned to have been heretofore turnpike-roads, under the care of the commissioners acting under the said Act of 7 Geo. 4, but abandoned by them in consequence of the provisions of the said Act, the 10 Geo. 4, and which comprise the whole of Old-street, part of Old-street-road, part of Providence-row, and part of Goswell-road, severally situate in the said parish of St. Luke, shall be, and they are, hereby accordingly placed under the care and management of the trustees for the time being acting in the execution of the said Act of 50 Geo. 3, with such and the like powers and authorities for lighting, paving, cleansing, regulating, and improving the same, and every part thereof, as mentioned and provided for in and by the said last-mentioned Act, with respect to the other streets and public places within the said parish of St. Luke, not being turnpike roads, and with such further powers and authorities as are contained in this Act; and such said several roads and parts of roads hereinbefore described are hereby declared to be comprised within and subject to the powers and provisions of the said recited Act of the 50 Geo. 3, and shall for ever hereafter be deemed and taken to be part or parts of the streets or other public places directed or authorised to be lighted, watched, paved, cleansed, regulated, and improved by the said trustees under the authority of the same Act.

Sec. 6. That all and every the costs, charges, and expenses for and attending the lighting, watering, paving, gravelling, ballasting, draining, cleansing, regulating, and improving as well the said several roads and parts of roads hereinbefore described, as also all and every the streets, squares, lanes, alleys, courts, yards, and other public places within the said parish of St. Luke comprised in the said recited Act of the fiftieth year of King George the Third, shall from time to time, when settled and ascertained in manner directed by the said last-mentioned Act and this Act, be levied and raised by a just and equal pound rate, to be laid *upon all and every person or persons who do and shall inhabit, hold, occupy, be in possession of or enjoy any messuage, tenement, land, house, shop, warehouse, or other building or hereditament within the said parish of St. Luke already lighted, watered, paved, repaired, regulated, or improved under the authority of the last-mentioned Act, or to be lighted, watered, ballasted, gravelled, drained, paved, repaired, regulated, or improved under the authority of this Act, and whether any such messuage, tenement, land, house, shop, warehouse, or other building or hereditaments, shall or shall not be situate or being within or abutting or adjoining to any of the streets, squares, lanes, alleys, courts, yards, or other open passages, ways, and places already paved under the said recited Act, or directed to be paved or repaired by this Act.*

By the 50 Geo. 3, c. cxlix. s. 27, it was enacted that the vestrymen of the said parish shall yearly, and every year, assemble, &c. and make and sign two several rates or assessments, &c. one of which rates being for the lighting, cleansing, and watching the said parish, shall be laid upon all and every person or persons who do and shall inhabit, hold, occupy, or be in possession of or enjoy any messuages, tenements, lands, grounds, house, shop, coach-house, stable, cellar, vault, warehouse, or other building or hereditament within the said parish, and not exceeding, &c.; and the other or second of the said rates shall be laid upon all and every person or persons who do and shall inhabit, hold, occupy, be in possession of, or enjoy, any messuages, tenements, lands, grounds, coach-house, stable, cellar, vault, house, shop, warehouse, or other building or hereditament, *situate or being within any of the streets, squares, lanes, alleys, courts, yards, or other open passages, ways, and places within the said parish, already paved under the said recited Acts, or which shall or may be hereafter paved or repaired by the said trustees, to be appointed under and by virtue of this Act,* and not exceeding in any year, &c.

Sec. 66. That the said trustees shall and may order lamps, with proper furniture and burners, to be set up under the authority of the said former Acts, or any of them, *to be used for better lighting the open places, squares, streets, lanes, alleys, passages, and courts within and throughout the said parish.*

Sec. 77 empowered the trustees to pave "all or any part or parts of the said squares, streets, lanes, courts, yards, alleys, passages, and places, whether foot or carriage ways," comprised in or paved under a previous Act of the 11 Geo. 3, c. 46.

Sec. 81 empowered them to pave or repair, and to bring under the general provisions of the Act, such parts of the parish as were not comprised in the stat. 11 Geo. 3, except the foot pavements in Providence-row and in the City-road.

Sec. 177 provided that that Act should not be construed to invest the trustees with any powers "to encroach upon, damage, pave, dig, water, widen, turn, extend, alter, or interfere with, any turnpike-roads within the said parish, made," &c. by virtue of several Acts there mentioned, one of which (1 Geo. 3) related to the City-road.

Stat. 11 Geo. 3, c. 46, was an Act for paving and keeping in repair "the streets, lanes, and passages" in the parish of St. Luke, &c.

Stat. 33 Geo. 3, c. 83, was an Act for "the better lighting, cleansing, watching, and regulating the

Squares, Streets, Lanes, Alleys, Passages, and Places within the parish of St. Luke."

Both these statutes were repealed by 50 Geo. 3, c. cxlix.

By statutes passed in 1 Geo. 3, 23 Geo. 3, 40 Geo. 3, 5 Geo. 4, c. 61, the City-road was made a turnpike-road and placed under the care of commissioners, and by 7 Geo. 4, c. cxliii. "An Act for consolidating the Trusts of the several Turnpike-roads in the Neighbourhood of the Metropolis, North of the River Thames," the City-road and many other turnpike-roads were placed under the commissioners appointed by that Act.

By sec. 71, power is given to the commissioners to light certain roads therein specified, which the trustees, under the repealed Acts relating thereto, had been authorised to light; but the City-road is not included in that section.

It appeared that, in point of fact, the trustees of St. Luke's, and not the City-road Commissioners, had lighted that part of the City-road to which the defendant's house fronted; and under the 50 Geo. 3, they had assessed the defendant's house to the lighting rate, but not to the paving rate, the City-road having been, and still continuing to be, paved by the Turnpike Commissioners. And since the passing of 2 Wm. 4, c. xiii. the same course had been pursued until recently, when the rate in question was made.

Crowder for the plaintiff.

Watson for the defendant.

Lord CAMPBELL, C.J.—I am of opinion that this rate is bad. All principle is certainly very strongly against it, because this is a paving rate imposed upon the inhabitants of the City-road, who derive no benefit from the paving, to the expenses of which the rate is to be applied. It is admitted that previously to the Act of the 2 Wm. 4, the inhabitants of the City-road were not liable to a paving rate imposed by the trustees; and the 2 Wm. 4, upon which reliance is placed to confer an additional burden, confers no additional advantage. Qui sentit commodum sentire debet onus; and until lately the trustees themselves do not appear to have considered that the Act 2 Wm. 4, gave them any right to impose a paving rate upon the City-road. Under these circumstances, we ought to find in that statute a very clear and unequivocal expression of the intention of the Legislature before we sanction a rate so imposed. Looking at the title of that Act and the preamble, I see no evidence of any such intention, no allegation of any inequality to be remedied, but a recital of other objects which are attained by the Act. It is clear, looking at the preamble and the course of legislation as to the paving and lighting of St. Luke's, that a distinction has been kept up between turnpike-roads and streets, or open places in the parish; and that the latter only have been contemplated as coming under the authority of the trustees. But sect. 6 of 2 Wm. 4, is the foundation of this rate [his lordship read it]. In order, therefore, to support the rate, it is essential to shew that the defendant's house is in a place which has been already lighted, watered, paved, &c. under the authority of the 50 Geo. 3, or that it is to be lighted, &c. under this Act of 2 Wm. 4. Mr. Crowder admits that the trustees did not pave the City-road, which was under the management of the Turnpike Commissioners; but he contends that they did light it. I can, however, find no authority in any of the Acts for the trustees to light or interfere with the City-road; and the result at which I have arrived is, that those who have to support the rate have failed in making out the liability of the inhabitants of the City-road.

COLERIDGE, J.—The only words of the 6th section which appear to be relied upon in support of the rate are these:—"Already lighted under the authority of the last-mentioned Act." Then, was the place in question lighted under the authority of the 50 Geo. 3.? It appears that, in fact, the trustees lighted it; but upon looking at the 50 Geo. 3, a distinction is clearly made between "streets, squares, lanes, or open places," and "roads," within the parish. In all the material parts of that Act the word "roads" is wanting; and although the expression "open places" is used, that will not bring "roads" under the operation of the Act.

WIGHTMAN, J.—Before the statute 2 Wm. 4, the trustees levied two rates in St. Luke's parish,—one for lighting, the other for paving; and to the latter the inhabitants of the City-road were not liable. But, under the 2 Wm. 4, there is to be one rate upon all messuages,—"in any street" must be understood—already lighted, &c. under the authority of the former Act. If it could be shewn that the City-road was lighted under the former Act, the inhabitants might be liable to this rate; but that has not been shewn, for no words in that Act have been brought under our notice which would include the City-road.

ERLE, J.—Even if it was doubtful whether the City-road was or was not lighted under 50 Geo. 3, I should still think the defendant entitled to our judgment; because I see in the 50 Geo. 3 an elaborate process of rating, whereby the lighting-rate was to be imposed universally throughout the parish, and the paving-rate only on that portion of it which derived benefit from the Act. If that mode of rating was to be altogether altered by the 2 Wm. 4, I should have expected some announcement of that intention in the preamble, and a clear expression of it in the enacting section; but the Act is altogether silent as to any such object. Whatever doubt there may be as to the fact, it is clear that the Legislature, when it passed the 2 Wm. 4, considered that the turnpike roads in St. Luke's were not to be lighted by the trustees, but by the road commissioners. The preamble recites the abandonment by the commissioners of certain turnpike-roads, and the second section vests the management of those roads in the trustees for the purposes of lighting, paving, cleansing, and the like; and sect. 4 expressly provides that the said roads so placed under the care of the trustees should thereafter be deemed to be included "under the general description of streets and other public places within the said parish of St. Luke, not being turnpike-roads, as mentioned in the same Act; and shall be deemed and taken to be such streets or public places, and lighted, watered, paved, &c. accordingly." It seems to me, therefore, that all the turnpike-roads were originally out of the jurisdiction of the trustees; that by the 2 Wm. 4, certain of those roads (the City-road not being one), which had ceased to be turnpike-roads, were brought under the management of the trustees; but that the Legislature regarded the turnpike-roads as places not previously lighted by the trustees. According to that view, sec. 6 will bear an intelligible construction, and will not reach the City-road; because it must be read as applying only to tenements situate in streets or public places, not being turnpike-roads, already lighted under the authority of the former Act, or situate in the roads thereinbefore described, as well as the streets and public places of the parish, and to be lighted under that Act.

Judgment for the defendant.

Saturday, Nov. 20.

HENNICKER *v.* HENNICKER.

Stamp Act — Partition-deed — Consideration for equality of partition not expressed—Bond to secure the consideration.

The stat. 48 *Geo.* 3, *c.* 149, *s.* 22, *which requires that on the sale of property the full purchase or consideration-money shall be truly expressed upon the conveyance, does not apply to the case of a partition, so as to render it necessary to express in the deed the consideration-money agreed to be paid for equality of partition.*

Where a money bond was given to secure the payment of the true consideration for equality of partition:

Held, that though the deed of partition was not properly stamped, and did not express the true consideration, neither the bond nor the deed were void on that account.

Debt on a money bond, conditioned to be void on payment of 800*l.* and interest, at a time specified.

Plea—That the bond was given to secure the payment of a sum of 660*l.* with interest, which the plaintiff had agreed to receive as the consideration for equality of partition, upon the partition of real property between the plaintiff, the defendant, and other persons; and that the deed of partition (which was set out) expressed only a nominal consideration, whereas it ought to have expressed the true consideration, which had been agreed to be paid to the plaintiff.

Demurrer thereto.

Wednesday, Nov. 10.(*a*)—*Unthank*, in support of the demurrer.

Willes contrà.

The provisions of the statutes and the authorities upon the point decided are sufficiently stated in the judgment of the Court; but see in addition *Blandy* v. *Herbert*, 9 B. & C. 396; *Coutes* v. *Perry*, 6 B. Moore, 188; *Warren* v. *Howe*, 2 B. & C. 281; *Doe* v. *Preston*, 7 B. & C. 392; *Roone* v. *Mitchell*, 1 B. & C. 18; and *Belcher* v. *Sikes*, 6 B. & C. 234.

Cur. adv. vult.

JUDGMENT.

Lord CAMPBELL, C.J. now delivered the judgment of the Court.—This was an action on a bond which, in form, was a common money bond, with a condition that it should be void on payment of 800*l.* and interest at the time specified. The defendant by his plea set out a deed of partition of certain real property between the plaintiff and the defendant and other persons, by which their several shares were ascertained and divided, and upon the face of which deed a nominal consideration which was paid for the plaintiff's becoming a party to it, was stated; and the defendants alleged that the plaintiff, in fact, was to receive 660*l.* for equality of partition, which, with an arrear of interest, made up the sum of 800*l.* and that the real consideration of the plaintiff agreeing to the partition was the sum of 660*l.* which ought to have been stated as the consideration in the deed, and that the bond was given to secure the payment of that sum and interest under the statute. To this plea the plaintiff demurred, and upon the argument two points were raised upon the part of the defendant,—first, that the deed of partition was an instrument in which, under the 48 Geo. 3, c. 149, incorporated for this purpose with the 55 Geo. 3, c. 184, the true consideration ought to have been expressed; and, secondly, that if that were so, the plaintiff could not recover on the bond, which was given to secure the payment of the due consideration, inasmuch as if it were paid it might be recovered back under the 24th section of the 48 Geo. 3, c. 149. Upon this second point, however, it is unnecessary to give any opinion, as we do not think that the provisions of the 48 Geo. 3, c. 149, are applicable to the transaction in question, which was a partition and not a sale. By the 22nd section of that statute it is enacted, "That from and after the 10th day of October, 1808, in all cases of the sale of any lands, tenements, rents, and annuities, or other property, real or personal, heritable or movable, or of any right, title, interest, or claim in, to, out of, or upon any lands, tenements, rents, annuities, or other property, where a duty is imposed on the conveyance thereof in the schedule to the Act annexed in proportion to the amount of the purchase or consideration money therein expressed, the full purchase or consideration money, which shall be directly or indirectly paid or secured or agreed to be paid for the same, shall be truly expressed in or upon the principal or only deed or instrument, whereby the land or other thing sold shall be granted, &c. or otherwise conveyed to or vested in the purchaser or any other person by his direction." By the 55th Geo. 3, c. 184, the former duties are repealed and new duties are granted; and by the 8th section all the powers and provisions of the former Act are extended to this Act. In the schedule to the 55 Geo. 3, an ad valorem duty is imposed upon the sale of land and other property; and in the same schedule an ad valorem duty is also imposed upon a deed of partition when any sum amounting to 300*l.* or upwards is paid for equality of partition; and the statute expressly distinguishes between a sale and a partition. In the case of a sale, an ad valorem duty is to be paid, whatever the price may be, according to the scale in the schedule; but in the case of a partition, the ad valorem duty is only payable where the sum paid for equality of partition is 300*l.* and upwards. An obligation to express the consideration is by the statute imposed in cases of the sale of property and not of partition, and such obligation could only be extended by necessary intendment, for which we find no reason in the present case. In *Doe dem. Manifold* v. *Diamond*, 4 B. &. C. 243, it was decided that a conveyance of an estate by a father to a son, in consideration of natural love and affection, and also of a bond to augment the sister's portions, not being a sale by the father to the son, did not require an ad valorem stamp. In the present case an ad valorem duty would be payable on the deed of partition; but the case of *Doe* v. *Diamond* is an authority for confining the provisions of the statute relating to the imposition of duties to sales properly so called. It appears to us that the transaction in question cannot be considered a sale, and if not a sale the provisions of the 22nd section of the 48 Geo. 3, do not apply, and it was not necessary to express the consideration for equality of partition in the deed. In this view of the case we see no real objection to the right of the plaintiff; neither the partition deed nor the bond is void by reason of an improper stamp, which may be even now corrected. *Mann* v. *Lent*, 10 B. & C. 877, is a case in point, to shew that in such a case as the present the security for the consideration is valid, and may be enforced. Our judgment, therefore, is for the plaintiff.

Judgment for the plaintiff.

Nov. 23 *and* 24.

REG. *v.* BARTHELEMY AND MORNAT.

Bail—Murder—Duel.

Where there is a verdict of a coroner's jury of guilty of wilful murder against parties, and there is evidence upon the depositions to support that finding, this Court will not admit them to bail, though the murder appears to have been committed in a duel, and though the evidence may not be conclusive of guilt.

Huddleston moved for a rule to shew cause why a writ of habeas corpus should not issue to bring up the prisoners, and also why a certiorari should not issue to bring up the depositions taken before the coroner and also before the magistrates for the purpose of the prisoners being admitted to bail. It appeared that the two prisoners were inculpated with two others (see *Reg.* v. *Barbonnet and Another*, *ante*) in a fatal duel at Egham in Surrey, and that the coroner's jury had pronounced a verdict of wilful murder against all the four prisoners, and that they had also been committed by the magistrates to take their trial at the next Assizes upon the charge of wilful murder. The principles on which bail is taken, as laid down in *Reg.* v. *Baron-*

(*a*) Before Lord Campbell, C.J. Coleridge, Wightman, and Erle, JJ.

net, viz. that the Court is to consider the nature of the charge, the evidence in support of it, and the punishment imposed by law, are not disputed; but it is submitted that the case against these two prisoners differs very materially from that against the other two. There is no confession to having been present at, or acting in the duel as seconds by these two, as in the case of the other two prisoners. That bail will not be allowed where the charge is murder, and there is a confession before the committing magistrates, is supported by very old authorities. (4 Inst. c. 31, p. 177; *Rex* v. *Poynes*, 3 Buls. 113, Houghton, J.) But the evidence against these two prisoners is materially short of a confession. [Lord CAMPBELL, C.J.—Have you any affidavit denying the guilt of the prisoners?] No, it is not necessary, as the Court upon this application does not enter into the merits. (*Rex* v. *Lord Baltimore*, 1 W. Black. 649.) [Lord CAMPBELL, C. J.—Here there is the verdict of guilty of wilful murder by the coroner's jury, and it is indispensable to shew that the evidence of guilt on the depositions is insufficient.] In the case of *Reg.* v. *Munro*, there was a verdict of guilty of wilful murder against Munro and two others as principals in the first degree, and against Gulliver as principal in the second degree; and Captain Cuddy, one of the principals in the first degree, was held to bail, but afterwards, on the trial (Aug. 25, 1843), he was acquitted. Again, in *Lord Cardigan's* case, against whom and Captain Douglas a true bill was found for shooting with intent to kill, both Lord Cardigan and Captain Douglas were admitted to bail. The following authorities were also referred to. (1 Buls. 69; and *Reg.* v. *Chapman*, 8 C. & P. 556.) The learned counsel then recapitulated the evidence in the depositions affecting the two prisoners.

Lord CAMPBELL, C.J.—In this case there is a finding tantamount to the finding of a grand jury; from the coroner's inquisition, the prisoners may be put on their trial. If the evidence justifies that finding, we cannot interfere. We will look into the depositions. *Cur. adv. vult.*

JUDGMENT.

Wednesday, Nov. 24.—Lord CAMPBELL, C.J.—In this case, in which Mr. Huddleston made an application yesterday that the prisoners should be brought up to be bailed, we have carefully looked at the depositions before the magistrates and the depositions before the coroner, and having done so, we are of opinion that we should not be justified in yielding to the application. It appears that there is an inquisition which upon the face of it finds that these two prisoners are guilty of wilful murder. Looking at the depositions, it appears that the alleged murder took place in a duel, and we think there is evidence to support the finding of the coroner's inquest. We give no opinion that it is conclusive evidence. I merely say, as I said with regard to the two other defendants who are implicated in the transaction, "God send them a good deliverance;" but at present they are in the situation of persons against whom the grand jury have found a bill for wilful murder. Whether we can interfere where there is no evidence whatever to support the finding of the grand jury, in such a case we need not now consider; because, looking at the depositions, we must say, there is evidence on which we cannot say the grand jury were wrong in supposing there was a primâ facie case, shewing that the parties were implicated in the death of the deceased. It would, therefore, be contrary to the principles upon which the courts uniformly act, if we were now to grant a writ of habeas corpus. It would be calling upon us now to make a distinction between the case of murder committed in a duel and murder committed in any other way. That, it would be most inexpedient for us to do. Time was when public feeling was contrary to the law of the land upon this subject. I am happy to think public feeling now has taken a different turn, in correspondence with the law of the land, and I hope that the time is not distant when the practice of duelling may be considered not only as illegal, but absurd and ridiculous. I will say, that to grant this rule, it really seems to me, would be clashing with the decision of our learned brothers in the Court of Q. B. in Dublin, in which I entirely concur in the Six-mile-bridge case. They, looking to the inquisition and the depositions, finding certain persons guilty of murder, have refused to interfere with the inquisition upon the ground that it was contrary to the weight of evidence; and I think that that was a sound decision according to the principles of common law. If there had been anything to shew want of jurisdiction in the coroner, then the Court of Q.B. might well have quashed the inquisition; but if there was jurisdiction, and evidence to go to the jury to support the finding, I think this Court has no power whatever to interfere.

Rule refused.

Wednesday, Nov. 24.

DOE *dem.* CHILD v. ROE.

Inspection of documents—Ejectment by landlord for a forfeiture by breach of covenant—Right of tenant in possession to inspect lease.

Where ejectment is brought by the original lessor for a forfeiture by breach of covenant, and the lease is in the plaintiff's possession, the defendant, being the tenant in possession of the premises, is entitled to an inspection of the lease.

Stammers moved for a rule to shew cause why an order of Erle, J. whereby the plaintiff was ordered to allow the defendant to inspect the original lease of the premises, a portion of which was sought to be recovered in the present action, should not be rescinded. All that appeared before the learned judge was, that the defendant was tenant in possession of a house at St. John's Wood, which the plaintiff had originally leased, together with other property, to a third person, and that the ejectment was brought upon a forfeiture by breach of a covenant to repair; the lease containing the usual covenants, and a proviso for re-entry. Upon those facts the judge had no authority to make this order, either at Common Law or under the recent Evidence Act, 14 & 15 Vict. c. 99, s. 6. Before the recent Act, the rule was to allow inspection where it was necessary for the conduct of the party's own case, or where the one party held the document as trustee for the other; but here there is no affidavit that the production of the deeds is necessary for the defence, or that the defendant claims under them. This order in fact requires the plaintiff to produce the evidence of his title; and for that there is no authority. (Lush's Pr. 747.) Under the new Act, the Court can only grant inspection when Equity would grant a discovery; and a bill of discovery would not lie in this case. The doctrine laid down by Lord Chancellor Hardwicke in *Metcalf* v. *Hervey*, 1 Ves. Sen. 249, has been overruled by subsequent decisions. (*Bowman* v. *Lygon*, 1 Anst. 1; *Bellwood* v. *Welherell*, 1 You. & Coll. 211.) The latter case shews that in general the defendant has no right to a discovery of the plaintiff's title; and that even in the exceptional cases, in which on the ground of surprise or the like he may be entitled to some disclosure, it is to be confined to a disclosure of the nature only of his title, and cannot be extended to the evidence of his title. At all events, therefore, the present order is too large. (He referred also to 2 Story, Eq. Jur. 1490; Hare on Discovery, 194; *Hunt* v. *Hewitt*, 18 Law T. Rep. 210; 21 L. J. 210, Ex.; *Pepper* v. *Chambers*, 18 Law T. Rep. 210; 21 L. J. 81, Ex.; *Rayner* v. *Allhusen*, 15 Jur. 1060; 21 L. J. 68, Q. B.; *Galsworthy* v. *Norman*, 21 L. J. 70, Q.B.) In *Hunt* v. *Hewitt*, the Court of Ex. expressly decides that it is for the applicant to shew clearly what is the nature of the question to be tried, and that the documents are desired to enable the party to support his own case, and not to find a flaw in the case of his opponent. There is no affidavit in the present case, nor were any admissions made at chambers which satisfy these requirements.

Lord CAMPBELL, C.J.—I think that this order was properly made, and ought to be supported. We must look to the facts in the case which we take from the affidavits; and from them it appears that such an order lawfully might and ought to have been made. The lessor of the plaintiff brings an ejectment on the forfeiture of two leases, by reason of an alleged breach of covenant, and the proviso for re-entry contained in the lease; and the defendant, against whom this action of ejectment is commenced, in effect claims under the lease which contains the clause of re-entry. This is therefore substantially an action on those documents, against the defendant as assignee of a lease, and it is only fair that the party against whom the action is brought, and who may know nothing of the original lessor, should have an opportunity of inspecting these documents, in order to see whether he has any real defence to the action. Without, therefore, taking into consideration the Act 14 & 15 Vict. c. 99, this order was a perfectly valid exercise of the common law jurisdiction of a judge at chambers.

WIGHTMAN, J.—In this case we need not consider the Evidence Act at all. The action is an ejectment by the lessor of the plaintiff upon a breach of covenant. The defendant sought to inspect the document in order to satisfy himself whether there was any defence to the action or not, that is, whether there really were any such clause of forfeiture in the lease as the lessor of the plaintiff relied upon.

ERLE, J.—Where there is only one copy of an instrument existing, and each party takes an interest in it, the rule has always been considered to be that the other may inspect and take a copy of the original. The defendant here was in actual occupation, not knowing who was originally entitled to the reversion. If ever there was a case in which this power should be exercised, this is one of them. All that was done was to allow the defendant to see the documents, and ascertain how the forfeiture occurred. Extracts from the deed, it is true, were offered, but I thought that insufficient, and that the defendant was fully entitled to see the documents themselves.

Lord CAMPBELL, C.J.—Over being now, by 15 & 16 Vict. c. 76, abolished, this doctrine becomes of more importance, and it is of consequence that we should uphold the authority of the judge, to order inspection of documents in such cases.

Rule refused.

Wednesday, Dec. 1.

APPEALS FROM THE COUNTY COURT.

(Before COLERIDGE and ERLE, JJ.)

PAULING v. PONTIFEX and OTHERS.

Usage of trade.

The plaintiff, a builder, sent in a tender; on application of defendant's surveyor to him among others, the tenders were all opened, and the plaintiff's turned out to be the lowest:

Held, that the judge was right, on evidence before him, in concluding that, according to the custom in the trade, and the conduct of the parties, the plaintiff's, being the lowest tender, had been accepted, although N. had no absolute authority to accept the lowest.

This was an appeal from the County Court at Bow. The plaintiff was a builder, and the defendants were white-lead manufacturers at Millwall. The particulars of demand annexed to the summons consisted of items amounting to 64*l.* as due to the plaintiff from the defendants for work, materials, &c. but the claim was limited to 45*l.* The judge, after disallowing certain items, ordered the judgment to be entered for 20*l.* It appeared that a person named Northcroft, acting as the surveyor and agent of the defendants, had forwarded to certain builders, and among them to the plaintiff, plans of certain buildings to be erected at the defendants' premises, the tenders to be sent in to him at a certain day. That the plaintiff sent in his tender, which on the day mentioned was opened in presence of the other parties who had sent in tenders, when Northcroft, and the other builders present who had sent in plans, conceived, acording to the custom of the trade in such matters, that his tender, being the lowest, was accepted; and, acting on that assumption, the unfortunate parties partook of the customary refreshment at the plaintiff's expense, as the fortunate party whose tender they conceived to be accepted. The defendants denied that they had ever accepted the plaintiff's tender, or that Northcroft, on their behalf, had any absolute authority to accept the lowest tender; they also denied the existence of the custom or usage above referred to.

The Court found as a fact that the conduct of the defendants amounted to an acceptance. The questions for the Court were—1st. Did the Court below decide rightly upon the facts and the law as to the defendants' acceptance of the lowest tender? 2ndly. Were the particulars sufficient to answer the objections which had been taken to the form of pleading? 3rdly. Whether the charges were incidental?

Bramwell (*Prentice* with him), for the appellants. The question here is, was there any such agreement to employ the plaintiff, i. e. was there any acceptance of his tender? The only ground is, that Northcroft conceived the plaintiff's tender to be accepted. But the case finds that Northcroft had no authority to accept the lowest tender. Was the understanding of those present that such a tender, under the circumstances, was accepted, such as to make it an absolute contract to accept the lowest tender? That would be most unreasonable, for it might be that the plaintiff's tender, although the lowest sent in, was double the amount for which the work could have been done. As to the second point, the plaintiff should have sued as upon a contract, and the complaint ought to have been that the defendants refused to allow the plaintiff to do certain work.

J. Brown, contrà, was directed by the Court to apply himself to the first point only.

COLERIDGE, J.—We are both of opinion that the judgment ought to be affirmed, subject to the reduction of damages. The question is, whether there was any evidence to warrant the finding of the judge as to the acceptance by the defendants of the plaintiff's tender. There was the evidence of the conduct of the parties, with other direct evidence of usage in the trade, such as must have gone to a jury. It must be taken that the surveyor was duly appointed, and that he was chosen as a competent judge. It does not appear that any objection was made to the plaintiff's tender, and in addition there was the opinion of all the persons in the trade then present, that there had been an acceptance of the plaintiff's tender. There was direct evidence of persons in the trade, that it was the practice or custom to accept the lowest tender, although there was certainly evidence the other way. The only matter we have to consider is, whether there was anything to go to the jury as evidence of the acceptance of the tender. There was the request to the plaintiff to send in a tender, the appointment of the parties tendering to meet for the purpose of having their tenders opened, the understanding of the parties

present; and there was also direct evidence of usage in the trade, and if so, the judgment must be affirmed.

Earle, J.—No doubt there were no words or writing in this case constituting any distinct contract, but parties are often understood to make a contract, and to import terms into an express contract, according to the known usage of a particular trade. There was evidence here, that among persons conversant with this business, there was an understanding to accept the lowest tender under circumstances like these.

Judgment affirmed subject to a reduction of damages, there being an admitted error in the calculation of the judge as to the amount.

COURT OF COMMON BENCH.

Reported by Daniel Thomas Evans and R. Vaughan Williams, Esqrs. Barristers-at-Law.

Wednesday, Nov. 17.

(Before Jervis and Maule, Williams and Talfourd, JJ.)

Feddon v. Sawyers.

Registration appeal—Sufficiency of notice of objection.

A. sends to B. a notice of objection to his vote, and in his notice describes himself as being "on the list of freemen for the city of Carlisle."

By 6 Vict. c. 18, *s.* 17, *no person could object to B.'s vote, but those whose names have been inserted in some list of voters for the borough or city; and it is required that the notice to be given shall be according to the form No.* 10, *in schedule B, or to the like effect. The description in the form given is, A. B. of such and such a place of abode, "on the list of voters for the parish of ——;"*

Held (dissentiente Maule, J.) that looking at the notice in reference to the occasion on which the notice was given, and the object of it, a man of ordinary intelligence would understand the words "on the list of freemen for the city of Carlisle," to mean, on the list of freemen entitled to vote for a member of Parliament for the city of Carlisle; and that, therefore, the notice was good:

Held, by Maule, J. that in ascertaining the meaning of the words, you must not regard the occasion on which they are used, and that the words are in themselves insufficient, and that the notice was bad.

In this case *S. Temple* appeared for the appellant, and *Warren*, Q.C. for the respondent. All the necessary facts and arguments fully appear in the respective judgments of their lordships, which were delivered after time taken to consider.

Thursday, Nov. 25.—Jervis, C.J.—In the case of *Feddon* v. *Sawyers*, which was an appeal from the decision of the revising barrister for the revision of the lists for the city of Carlisle, in which the Court took time to consider, in consequence of a difference of opinion that existed between the judges who heard the argument, we have considered the case again, and I am sorry to state that we are still not unanimous in opinion upon the subject, and I proceed to state the reasons which induce me to think that the revising barrister is right in his view of the case that the notice of objection is sufficient. The question arose in this case upon the sufficiency of a notice of objection, and the objection is to the description of the objector, who, in the notice, states himself to be "on the list of freemen for the city of Carlisle;" and it is said that in compliance with the statute he should have described himself to be on the list of freemen entitled to vote in the election of a member of Parliament for the city of Carlisle, and that unless he shews himself to be a voter for the city in his description, the notice of objection is insufficient. On the other hand it is contended that he has sufficiently described himself to be a voter and complied with the requirements of the statute; it was contended or suggested during the argument, and not disputed, that by the 17th section of the 6 Vict. c. 18, no person can object, but those whose names shall have been inserted in any list of voters for the city or borough, and the party to be entitled to object must bring himself within that description, and a form is given, No. 10 in the schedule B, and it is required that the notice shall be given "according to the form or to the like effect," shewing to a certain extent what is required on the part of the objector. That notice is applied, not to the objector, who is a freeman, but to an objector who is on the list of householders or other persons entitled to vote. He must describe himself as A. B. of such and such a place of abode, on the list of voters for the parish of ——. Now the question is, what is the construction that we ought to put on the Act with reference to this subject; and in turning to the 101st section, I think a key is given to the construction to be put on it. That section says in substance, "no notice of objection shall be void in respect of the description of any party objecting, or any other matter or thing, if the matter is so stated as to be commonly understood." And I think the fair meaning of the section is, that in construing the Act of Parliament with reference to the notice of objection and other matters mentioned in that section, we are not to put a mere technical construction on the instrument referred to, but to look at it as a man of ordinary common sense would look at it; and if, on looking at the notice of objection as a man of plain and ordinary intelligence, having reference to the subject-matter, would look at it, we see that the objector does sufficiently describe himself so as to be commonly understood as a man coming within the provisions of the 17th section, that he has complied with the provisions, and the notice of objection is good. Now, there are two classes or lists of voters; one a list of freemen, who are entitled to vote for a member of Parliament for Carlisle; another, the list of householders who are entitled to vote; and it may be in some cases there is another list to be made up of scot and lot and other franchise by the Reform Act. The second branch consists of several lists of householders, made out by the different overseers of the different parishes, and therefore I can well understand that in the notice of objection it is required that the objector should state, not only that he, as a householder, has a vote, but he should state on what list and in what parish he is a householder, in order that the party objected to should not be required to go to the various lists, but should be at once referred to the particular list made by the particular overseers to see that the objector is qualified. That does not apply to the freemen,—there is but one list made out by the town-clerk, and that is a list of all those freemen who are entitled to vote in the election of a member of Parliament, and having reference to the subject-matter of the notice, which applies only to the exercise of the parliamentary franchise, in respect of which only a notice could be given for the purpose of objecting to the exercise of the parliamentary franchise, I think, in reading this as it is to be understood by persons of ordinary intelligence, having reference to the subject-matter of the inquiry, that when you say the objection is made to a person's exercising the franchise by a person on the list of freemen for the city of Carlisle, it cannot be otherwise understood than that he is a freeman voter in respect of the parliamentary franchise. On that short ground it seems to me, taking this as the construction of the 101st section, and a liberal view of the notices and documents referred to, that this is so expressed as to be commonly understood as a notice of objection by a voter for the city of Carlisle. I quite agree that, looking at it critically and technically, we are bound, and ought to draw inferences against the objector, so that he may be bound to state with certainty everything that may be taken against himself. If the argument I have used does not apply, then he may be taken as a freeman, though not entitled to vote with parliamentary rights, but merely in the enjoyment of the municipal rights. When we look at this with respect to the parliamentary franchise, if a party says he is on the freemen's list for the city, it can only be understood that he is on the list of freemen entitled to parliamentary franchise. Mr. Temple objected that this notice required the party to do something that he was not bound to do, before he put himself in motion to establish his right to vote or resist the objection. I do not think that is a sufficient answer. It was strongly pressed, that in Quigley's case it was said to be a fatal objection, because it was not pointed out whether the voter had made inquiry to ascertain on what list the party was. The Court said it was not unreasonable that he himself, or some other parties, should inquire or ascertain to what list the notice of objection referred. In this case, if there were any ambiguity he might be required to ascertain whether the objector's name was on the list of freemen for the parliamentary franchise, and he would be put to unnecessary trouble if he had not the proper means of doing so. It seems to me that inquiry would not be necessary in this case, for having looked to the subject-matter of the notice, no man of ordinary intelligence, reading it in a fair and liberal spirit, having reference to the subject-matter of the notice, could doubt that the party giving it was a voter upon the parliamentary list for the city of Carlisle, and therefore I am of opinion that the notice of objection was sufficient.

Maule, J.—It appears to me that this notice is not sufficient. The 17th section of the Act of Parliament, which was referred to by my Lord Chief Justice, confers the power of objecting on persons whose names are on the list of voters, and such persons alone have conferred upon them the right, under this Act, if they proceed in the manner pointed out in the Act,—they have the right of putting a person whose name is on the list of voters to the proof of his title to vote. This right is annexed, by the force of the words of the statute, not to any person to whom it is naturally incident, but to the person to whom the statute thinks fit to give it—a person whose name is on any list of voters; and such a person is required by the subsequent section of the Act to give a notice in the form or to the effect pointed out by the schedule, and the latter words of the form in the schedule are, "A. B. on the list of voters for the parish of ——." The section directs that the notice shall be in the form prescribed, or to the like effect. I believe there is no difference of opinion that "the like effect" is meant mainly to point out that the form is given mainly by way of example; and inasmuch as there are those who were not on the list of any *parish*, but on *lists*, but assumed, they are to point out if they are on a list of voters, and what list of voters they are upon, if they are upon *a* list. There is no controversy that the form, as pointed out by the words of the statute, is applicable to the case of a person objecting not in respect of being on any list of voters for a parish only, but of a person voting in respect of the right reserved to freemen, and that the objector in effect ought to describe himself as on the list of persons entitled to vote as freemen for the borough; that, it is agreed, is the effect which the notice ought to have in this case, agreeing as the judges do upon the result of the case, as far as I understand, that the notice, in order to be a good one, should be construed in this way, that it should give information to the person objected to that the voter objecting is upon the list of freemen entitled as such to vote. Now what he does say is, that he is "upon the list of freemen;" he does not say, in terms, that he is entitled as such to vote. It is conceded that he must say that in effect, and the question is whether this notice does in effect inform the person to whom it is addressed that the objector is on the list of freemen entitled to vote. Now what he does say is, that he is "upon the list of freemen for the borough." Those words of themselves, standing alone, without reference to some circumstances, or some occasion on which they are used, convey no assertion of the right to vote, or of being on the list of persons entitled to vote; but, taken alone, without reference to any context or conclusion, a person using those words and speaking of the "list of freemen," is not to be understood as speaking of the "list of freemen entitled to vote;" that is a matter that cannot be disputed. But then it is said, taking the surrounding circumstances of this case, and taking into consideration the rule which it is said is afforded by the 101st section of the statute,—taking those circumstances into consideration,—the language here used, "on the list of freemen for the borough," contains implicitly an assertion that the person is on the list of freemen entitled to vote for the borough. That there may be, and that there is, in the nature of circumstances, a list of freemen for the borough which is not a list of freemen entitled to vote, as such, nobody denies, and it is in evidence that there is such a thing. But then it is said, that although it must be conceded that a person asking for the list of freemen, or saying that there was a list to be found in such a place, or directing a list of freemen to be made out, would not be understood to affirm the existence of a list of freemen entitled to vote, or direct the making of such a list, yet that here the words "entitled to vote" must be implied. Then the real question is, are we justified in putting upon these words a construction which really does not belong to them, or rather founded upon something extrinsic from the words themselves, inconsistent with the ordinary rules of construction that ought to be maintained? Is there any reason for putting that construction upon these words. The revising barrister has relied on what I do not think has been so much relied on in the argument before us, and which my Lord Chief Justice, in his judgment, does not expressly rely on, certain particular circumstances of fact relating to the borough that the barrister has set out, and which appear to have led him to the conclusion to which he has arrived as to the sufficiency of the notice of objection in this case; I mean, that there are certain lists made out in different titles to those in which they are described; that there does exist a list of freemen (whether entitled to vote or not), properly called the "roll of freemen." Now this list I do not think can legitimately or properly be taken into consideration by us; I do not think it ought to lead to the conclusion that the barrister has drawn. There is nothing at all equivocal in speaking of a list of freemen, as the title of all those persons who constitute the class of freemen. If there be a list, whatever it may be commonly called, whatever may be the title of the persons themselves, the notice is perfectly intelligible, and contains,—coupled with the names of the objector and the party objected to,—an assertion that the person is upon the list of freemen for the borough; that he is one of those who constitute the freemen, and are described in the list as such persons. That is all it imports. Now, I do not think that those equivocal words can be at all construed so as to mean that they signify the objector is upon the list of freemen entitled to vote. I do not think they can be construed by an extrinsic fact, which is quite con-

sistent with their having a meaning that belongs to them independent of that fact, as there does exist a list containing not *all* the freemen, but *some* of the freemen only. You can no more restrain it than you can the list of residents within the borough or within seven miles of the borough. Supposing there were rights and duties belonging to or incumbent upon persons of those narrow classes, it seems to me it would be a very inaccurate mode of construction to say that because a person describes himself as one of those narrow classes that he describes himself as belonging to the class at large; and if you say that, you impose on the words I choose to use a meaning they have not; and if that is carried out to the proper length to which it tends, and short of which you cannot properly stop, it would restrain the words to a particularity suiting the occasion for which they were used. It seems to me that the occasion on which these words are used cannot be called in aid to restrict the plain meaning belonging to the words, when they are read by a person well conversant with the English language, and who has no desire to put any construction on them but that construction that belongs to them of themselves. If they are so read, which I consider to be the common-sense view of reading them, nobody for a moment would doubt that this person does not affirm himself to be on any list of voters: he affirms himself to be on a list which may comprehend persons who are voters and who are not voters. It seems to me, therefore, that, on looking at the words themselves—and it is not suggested that there is any doubt as to their meaning—you cannot give them any other meaning than that which is inconsistent with the revising barrister's decision. But it is said this construction is aided by the 101st section, and that the only meaning of that is, that you are to look at the thing as a man of plain common sense would look at it; that you are bound to look at these words not technically or critically. Now nobody looks at them critically; there is nothing technical or belonging to any particular art or science, that has been suggested, as affording a rule of construction upon this occasion. I think you are to look at these words, not as words of art, or words belonging to the art of law, or any other art, but to look at them at large, without any other rule than that which a person with an untechnical knowledge of the English language, without knowing any rules of law or other art, would adopt. When it is said you are to deal with them critically, I also think that they must be dealt with critically; for to deal with words critically is to deal with them with a power of judging what their sense is; and in the argument of my Lord Chief Justice, in which he is protesting against critical construction, he is using, as he always does when the occasion requires it, a very critical power himself; he is exercising a power of constructive criticism, and applying all the rules of such an art to the matter to be judged of. It is verbal criticism, too, as here are some words, "on the list of freemen," and the question is, what is the sense of those words. It is said a certain section of the same Act of Parliament enables me to impose upon them a sense different from what, without the use of that section, I have given them. Now I do not believe myself that that section does afford that rule of verbal criticism which has been extracted from it. It seems to me that the meaning of that is, that where the sense is applied to a document of this kind, if the document contains a substantial allegation of everything which it is required to contain, then the circumstance of the language which is used not being perfectly accurate, is one in which the inaccuracy may be got over. Now does this apply to this very case? It certainly does not, for there is no inaccuracy in the language used here. The person affirms of himself that he is on the list of freemen: there is nothing inaccurate in that. There is, what may be quite enough for the purpose, such a thing as a list of freemen; he affirms that he is on that list. He may have some purpose in affirming that; he may choose to affirm it; he may be desirous of trying whether it is sufficient to affirm that he is on the list; but whatever his object may be, that is what he says of himself: he says, "I am on the list of freemen," a perfectly intelligible proposition. And if it were used upon an occasion on which it would be sufficient to aver himself to be on the list of freemen, and it would not do if he averred himself to be on the list of persons entitled to vote as freemen, nobody would doubt for a moment that he must be taken to have been on the list of freemen exclusively, and not on the list of voters. Suppose an occasion arose on which it was necessary that he should state himself to be on the list of all freemen, it would not be sufficient to state that he was on the list of freemen. It would be perfectly hopeless for any one, without the assistance of rules of criticism, to say, on reading this, he was on the list of freemen entitled to vote. If you construe these words relatively to the occasion on which they are used, I do not know where you are to stop. The rule seems to me to be this, that this is a notice given to a person who is on the voters' list for the city of Carlisle. It states the intention of the party sending it to dispute his right to be on the list of voters on which he is: then the people are to be taken, to know that the right to so object belongs to persons on the list of freemen entitled to vote; it does not belong to persons on the list of freemen, and therefore you are to restrain the meaning of the words used, and impose on them a meaning that does not belong to them. I cannot think that that is a proper way of dealing with the subject. I think that the document should be looked at in the words in which the Act requires the notice to be given. Now, the Act evidently means that the power to object should belong to a certain class of persons, and it directs that the person should affirm that he belongs to it. It is false criticism to say that you must restrain the words that actually are employed (and which are unequivocal), by the occasion on which they are used. If it were otherwise, I do not see why saying "on the list," without saying on what list, would not do, because it may be said, "I object to a voter on the list," must mean "on the list of freemen," or on the list of some persons entitled to vote. Perhaps it may be said (I do not know why the principle in section 101, would help you through it), that it would not point out in any way what particular list it was; but, at any rate, it would be sufficient, I suppose, if you were to say "on the list for the parish of so and so," or "on the list for the parish," or "in the parish of so and so." Would that be sufficient? I think it would not. By section 101, coupled with the others, you might afford such a meaning to the words; and by the looseness with which they are used here, they do away altogether with what was the reason of the Legislature for enacting that the person giving notice should shew on the face of it what his title is. If words are used on an occasion on which they cannot have any meaning at all, unless you restrict them to some meaning, then it may be that the words may be restrained by the occasion. But that is not by any means the case here. There is no reason why a person who gives the notice may not describe himself in any way in which he pleases; and here he has thought fit to describe himself as on the list of freemen. Suppose he had said "I am an inhabitant of the borough," that would not mean it was anything more or less. Of course, "an inhabitant of the borough" is a thing that has a plain meaning; it involves no contradiction, no inconvenience, no inconsistency in giving those words their true construction, the possible construction that such words will bear. Then you are to reject that which is not the natural one, such as you must give it in order to make the document operative in a particular way, and to enable you to go further than the rules of construction enable you to go. There is no difficulty or inconvenience that arises from giving to these words the plain, natural, common-sense meaning that belongs to them. Looked upon in themselves, and with no reference to any set of circumstances that are given here, because they do not control the sense of the words used—but giving to the words the natural, plain, common sense meaning that belongs to them, they affirm of the objector, that he is on *a* list of freemen—they do not affirm that he is on the list of freemen entitled to vote, and therefore do not make the affirmation which is (as it is conceded) of the essence of the notice that ought to be given.

WILLIAMS, J.—I agree with the Lord Chief Justice, and I think that the revising barrister was right in holding the notice of objection to be sufficient. Having looked, not only to the terms of that notice, but as we are bound to look, to the subject-matter of it, and the occasion of it, I confess I think that no person of ordinary intelligence could fail to understand that the phrase in the notice, "On the list of freemen for the city of Carlisle," referred to the list of freemen entitled to vote, and not to the freemen's roll, which is kept in pursuance of the Municipal Corporation Act. Therefore, in my opinion, there is no inaccuracy of description; but if there be, that inaccuracy is cured by the 101st section of the 6 Vict. for, in my judgment, the question is to be determined upon whether the notice of objection is given in such a way as to be commonly understood.

TALFOURD, J.—I am of opinion, with the Lord Chief Justice, for the reasons he has given, that the revising barrister is right, and that the notice is sufficient. We ought not to forget that the section requires that the objector should state his title, and we should see that he truly does so with reference to the section. The 17th section requires that the objector shall have the title of being on the list of voters, or on one of the lists of voters in respect of the right to which it applies, and that the objection shall be in the form given by the section. I apprehend, by the notice itself, it affirms that he is a person entitled to give the notice—that he is a person who is on the list of voters—and that the object of the schedule is not so much that he is to state his title (which is not required for any other purpose), but that he should point out to the person to whose vote he objects on what particular list he is in the city, and where his name is to be found, that the party may go to that list and see whether he has the title he says he has. Now, for that purpose in the schedule a form is given, and that is applicable in terms to the present case,—it is, that the objector should give his name and place of abode; and further, he is to describe himself as being upon the list of voters for such a parish. Now that is clearly inapplicable to the list of freemen. I take it that the man taking upon himself to give the notice is a person qualified to do so—he may say, "I cannot comply with the form because I am not on the list;" or he may say, "I am on the freeman's list;" and if he does he means such a list of freemen as entitles him to maintain the objection. Now then if there were no other list of freemen in the city of Carlisle except the list of freemen voters, this notice would be sufficient, and the ambiguity is produced entirely by the extrinsic fact of their being another list of voters to which the objector is supposed to allude, that is the roll of freemen for the city of Carlisle. But the voter being on the list of freemen for the city of Carlisle, is pointed in the terms of the notice more to the list of persons voters than to those not voters. I think that he purports to give a notice of objection, by a person who has a title to do so in a way that would be commonly understood by the person who receives such a notice as indicating that he would be found on the freeman's list of voters; and therefore this is a case—even supposing we take into consideration those terms under the 101st section—in which, the notice being sufficient in form, we may take notice also of the other extrinsic circumstances, and balancing the one against the other, we may conclude that the person receiving the notice would perfectly well understand it, as it would be idle to describe himself to be on the municipal list alone if he did not mean to retain the title to vote. For these reasons I think that the revising barrister was right.

Thursday, Nov. 25.

(Before JERVIS, C.J. and MAULE, WILLIAMS, and TALFOURD, JJ.)

LITTLE *v.* NEWPORT, ABERGAVENNY, AND HEREFORD RAILWAY COMPANY.

Right of railway company to deviate under Consolidation Act, 8 & 9 *Vict. c.* 20.

Where a railway company had marked a tunnel on their plan and afterwards deviated their line at that spot, the question arose, whether they were bound to make a corresponding tunnel on the deviated line? The Court decided against the company on the ground that they had, under the general Act no power to deviate; but (per Maule, J.) having deviated, no duty was imposed upon them of making a tunnel.

This was an action brought by the order of the Lords Justices of Appeal in Chancery, to try the question whether, under the 8 & 9 Vict. c. 20, the company were bound under certain circumstances to make a tunnel or not.

The facts of the case were as follow:—In order to overcome the opposition of the plaintiff to their railway, the company consented to make a tunnel at a certain part in the line running through his grounds.

They accordingly laid down on their deposited plans the line within the limits of deviation, and marked the spot where the tunnel was to be made. In making the line the company thought it necessary to deviate at that part of the line, and did not therefore make the tunnel as laid down. The plaintiff insisted that they were bound to make a tunnel in the deviated line. The case went into Chancery, and after having been heard before Vice-Chancellor Parker, and the Lords Justices, was, as above stated, sent into the Common Law Courts.

The form of the material issue in this case is peculiar.

The 1st count of the declaration states an agreement by the provisional committee, before the passing of the private Act, to make a tunnel, and a deed of covenant by the company after the passing of the Act, that they would perform the agreements made by the provisional committee. Breach—that they did not make a tunnel.

The 2nd count, which is the material one in this case, set forth the deposit by the provisional committee of a plan containing the line of railway, with the proposed limits of deviation and the site of the intended tunnel; and stated also that the plaintiff was owner and occupier of the land whereon the tunnel was to be made. It then proceeded to aver, that "after the passing of the said first-mentioned Act of Parliament, by a certain indenture made between the plaintiff of the one part and the defendants of the other part, and sealed with the seal of the defendants, they the defendants covenanted with the plaintiff that if the defendants in making the said railway should cause the same to deviate from the said line so marked and delineated on the said plan by the said centre line, and should make their said

railway otherwise than in the said last-mentioned line, but within the said limits of deviation, and if at the time of the making of the said railway in the said deviated line the defendants should be bound to carry the said railway through so much of the said deviated line as should pass between the dotted lines C D and E F, marked on the said plan opposite the spot indicated on the said plan by the words and figures 'Tunnel 374 yards,' by means of a tunnel, then the defendants would carry so much of the said deviating line between the said dotted lines by means of a tunnel." It then proceeded to state a deviation, and that the defendants were bound to carry so much of the said deviated line, &c. by means of a tunnel. Breach,—that they did so otherwise than by a tunnel.

Plea to the 1st count.—That there was no agreement as alleged.

(N.B. It may be as well to observe that there was of course no deed or covenant as alleged, this being a mere fiction agreed upon for the purpose of raising an issue.)

The case was tried at Nisi Prius before Jervis, C. J. and a special jury, July 1st, 1852, and a verdict found for the plaintiff on the first issue, and for the defendant on the second, with leave to move to enter the verdict for the plaintiff on that issue also. Accordingly, on the 4th Nov. *Bramwell*, Q.C. obtained a rule nisi, against which *Crowder*, Q.C. *Byles*, Serjt. *Barstow*, and *Shee* (of the Equity Bar), now shewed cause. They urged that for the purpose of this argument it must be taken that the company had a right to deviate, that they had deviated at the point where the tunnel was marked, and in consequence of such deviation it was impossible to make a tunnel at the corresponding spot, unless one by cut and cover, and that it was hard the company should be forced to make a tunnel where there was no necessity for one. The defendants' point was, that if they deviated they were not bound to make a tunnel; the plaintiff's, that under the same circumstances they were bound.

The Court took a middle view, holding that the company had no right under the General Act, to deviate where a tunnel had been marked, and intimated to *Bramwell*, for the plaintiff, that they were prepared to give judgment in his favour on that point, subject to any observations he might choose to make.

Bramwell, under these circumstances, declined to address the Court.

Jervis, C.J.—The question is twofold, whether a company can deviate a railway where they have marked a tunnel on their plan, and whether, having deviated, they are bound to make a tunnel. I think that the rule must be made absolute on the first point. Tunnels, viaducts, and the like, are matters of great importance to the public and to proprietors, and cannot be expected to be made the subject of a general Act—they must be provided for as to deviation in the special Act. There is nothing which calls upon us to put a construction on the general Act other than the exact meaning of the word,—nor is there any hardship in this, as that Act is a mere basis for special legislation. The Act says (sec. 13) that where a tunnel is marked on the plan as intended to be made, it shall be made accordingly, that is, at that very place, and not within the limits of deviation. That being so, the 15th section, which gives the power to deviate, must be read in conjunction with the 13th, "except as before provided;" the 13th, 14th, and 15th sections together make one comprehensive rule, that, subject to exceptions, the company may deviate. These exceptions are not a hardship, as, if necessary, the power to do more than this Act allows may be obtained by the private Act.

Maule, J.—I am of the same opinion. We are not under the necessity of straining the words of the Act, and to decide on the strict meaning will be, not to interfere with, but to promote its intention. Local provisions must be regulated by local peculiarities, yet there are many things common to almost all railways. This Act, which applies to those parts of general agreement, is salutary in two respects,—it diminishes the length of the local Acts, and enables companies to adopt on this Act many wholesome provisions, and also it produces uniformity in the local Acts; whereas otherwise questions of construction would perpetually arise on the particular words in each Act, and on one Act compared with another. Tunnels, and works of a like nature, are eminently fit to be made the subjects of local Acts. The general Act (sec. 13) means that where there is a tunnel, there there must be no deviation, unless the company choose to provide for it by their private Act. Supposing, however, that the company deviate without having the power, have they the duty imposed upon them of making the tunnel? I think not. They have done a wrong by deviating, but that does not impose on them the obligation of making a tunnel. It is very clear that under the Act construed according to the words, the company have no power to deviate so as not to pass through a tunnel laid down on their plan—that being so, their deviating does not impose on them a duty.

Williams and Talfourd, JJ. concurred.

Rule absolute.

COURT OF EXCHEQUER.

Reported by Frederick Bailey and C. J. B. Hertslet Esqrs. Barristers-at-Law.

Nov. 10 *and* 25.

Jackson *v.* Burnham and Uxor, Administratrix, &c.

Insolvent Act, 1 & 2 *Vict. c.* 110—*Plea of plaintiff's Insolvency.*

To an action of debt, the defendants pleaded, that before the action, the plaintiff being a prisoner, duly petitioned the Insolvent Court, and the Court made an order vesting the plaintiff's real and personal estate and effects before his discharge in the provisional assignee. The plea then alleged that the debt had accrued after the order, and before the discharge:

Held bad on special demurrer, for not alleging that the provisional assignee had interfered to recover the debt.

The same construction should be put on similar provisions in the Bankrupt and Insolvent Acts, and the express words of a statute may be contracted and confined to meet the mischief contemplated by the Act. Per Pollock, C.B. Alderson, and Platt, BB. Martin, dubitante.

Demurrer to plea.

The declaration contained the common counts for work and labour done, &c. 3rd *Plea*. That before the commencement of the suit, to wit, &c. the plaintiff then being a prisoner in actual custody within the walls of a certain prison, to wit, &c. upon process at the suit of one G. G. L. for the recovery of a certain debt then due from the now plaintiff to the said G. G. L. did within fourteen days next after the commencement of the said actual custody of the now plaintiff, to wit, on the day and year last aforesaid, duly and according to the directions and provisions of the 1 & 2 Vict. c. 110, apply by petition in a summary way to the Court for the Relief of Insolvent Debtors in the said Act mentioned, for his discharge from such custody as aforesaid, according to the provisions of the said Act, in which petition the now plaintiff stated that he was willing that all his real and personal estate should be vested in the official assignee for the time being of the estate and effects of insolvent debtors in England, according to the provisions of the said Act, and prayed to be discharged from custody, and to have future liberty of his person against the demands for which the now plaintiff was then in custody, and against the demands of all other persons who should be, or claim to be creditors of the now plaintiff, at the time of the presenting of the said petition, and which said petition was then duly subscribed by the now plaintiff, and was forthwith, to wit, &c. filed of record, &c. And the defendants further say, that on the said filing of the said petition, and before, &c. the said Court, in pursuance of the said statute, ordered that all the real and personal estate and effects of the now plaintiff, both within this realm and abroad (except the wearing apparel, bedding, and other such necessaries of the plaintiff and his family, and the working tools and implements of the plaintiff not exceeding in the whole the value of 20*l.*), and also all the future estate, right, title, interest, and trust of the now plaintiff in or to any real or personal estate and effects within the realm or abroad, which the now plaintiff might purchase, or which might revert, descend, or be devised or bequeathed, or come to him, before he should be entitled to his final discharge in pursuance of the said Act, according to the adjudication made in that behalf, or in case the now plaintiff should obtain his full discharge from custody, without any adjudication being made by the said Court, then, before the now plaintiff should be fully discharged from custody; and all debts due or growing due to the now plaintiff, or to be due to him before such discharge as aforesaid, should be vested in Samuel Sturgis, then and still being the provisional assignee of the estate and effects of insolvent debtors in England, his successors and assigns, which said order was then duly entered of record in the said Court. And the defendants further say, that afterwards and before, &c. the plaintiff became and was entitled to be finally discharged, and was, by an adjudication and order of the said Insolvent Debtors' Court in that behalf, then duly made upon the said plaintiff in pursuance of the said statute, then finally discharged from custody as such insolvent debtor; and the defendants further say that the said debt in the declaration mentioned was, and every part thereof was contracted, and the cause of action in respect thereof, and every part thereof, accrued after the said order in this plea first mentioned, and before the plaintiff so became entitled to his final discharge, and was discharged as aforesaid, and the said moneys became and were payable before such final discharge; and thereupon, by virtue of the said first-mentioned order and of the said statute, the said debt, money, and cause of action in the said declaration mentioned, and all the right, title, and interest of the plaintiff of, in, or to the same, did then become and were and are vested in the said S. Sturgis, as such provisional assignee as aforesaid. Verification.

Hawkins, for the plaintiff, contended that this plea was bad upon the following grounds:—1st. That an insolvent debtor can sue for and recover a debt contracted with him subsequently to the vesting order (although previously to his obtaining or becoming entitled to his final discharge), unless the provisional or other assignee interfere. 1 & 2 Vict. c. 110, s. 42; *Ford* v. *Dabbs*, 3 M. & G. 309; *Herberts* v. *Sayer*, 5 Q. B. 965, 975. The judgment of Tindal, C.J. in that case, on the writ of error, is expressly in point. 2nd. That the vesting order does not of itself vest the right of action for such a debt absolutely and exclusively in the provisional assignee. 3rd. That the plea does not allege that the provisional assignee has interfered or claimed or released the debt, or that the action is brought without his consent, or the like. 4th. That the plea does not sufficiently shew that the petitioner (the plaintiff) was a prisoner within the walls of a prison in England. 5th. That the plea does not shew upon what process he was in custody. 6th. That the plea does not shew that the petition contained the statements required by law. 7th. That the plea does not shew that the debt pleaded to did not arise in respect of the prisoner's wearing apparel or other excepted articles. 8th. That the plea does not shew that the debt arose before plaintiff became entitled to his final discharge. Lastly. That the plea does not shew by what means the debt became vested in the provisional assignee.

M. Smith, in support of the plea, contended that the order of the Court for the Relief of Insolvent Debtors, set out in the plea, vested the debt in the introductory part of the plea mentioned (which was contracted before the plaintiff was entitled to his final discharge), in the provisional assignee of the Court, and that it had so vested notwithstanding that such assignee might not have hitherto demanded the debt or sued for it. Also that the third plea is not open now to the special grounds of debt assigned. He referred to 1 & 2 Vict. c. 110, ss. 35, 37, 38, 69, 72. The concluding observations in the case of *Herbert* v. *Sayer*, particularly referred to uncertificated bankrupts; that case does not conclude the Court, and the Court will not interpolate words the Act does not contain. He cited *Sayer* v. *Dufain*, 11 Q. B. 325; *Young* v. *Rishworth*, 8 A. & E. 470.

Hawkins, in reply.—The words are clear and express, and the last case cited is overruled by *Herbert* v. *Sayer*. *Cur. adv. vult.*

JUDGMENT.

Pollock, C.B. after stating the pleadings,—The question argued before us, which we are now to decide, is substantially whether an insolvent can sue for a debt arising after the vesting order and before his final discharge, which his provisional assignee does not interfere to recover. The terms of the statute 1 & 2 Vict. c. 110, are no doubt very strong and clear. I do not think it necessary now to read the whole of the sections. There is no doubt they do very clearly and unequivocally vest in the provisional assignee all the personal estate, both present and accruing due and hereafter to become due. They establish the right of the provisional assignee as against the insolvent and every other person. But the question is, whether the defendant can set up this defence without any interference by, or authority from the provisional assignee. There has not been any decision upon this point with reference to the Insolvent Debtors' Act. It has been decided that debts accruing before the discharge vest in the provisional assignee, as no doubt they do, but in the case in which that was decided the precise question before us did not arise. There is a recent decision in the Court of Error upon a similar enactment in the Bankrupt Law, by which we are of opinion that we are bound. The case is *Herbert* v. *Sayer*, 5 Q. B. Rep. 965. The seventh plea in that case was that the plaintiff was a bankrupt, and therefore the debt in question belonged to the assignees. To this there was a special demurrer, assigning for cause, as in this case, that it did not appear that the assignees had interfered. Upon the argument in the Q. B. that Court gave judgment for the defendant on the seventh plea. This judgment was reviewed in the Court of Ex. Chamber, and after taking time to consider, that Court reversed the judgment of the Court of Q. B. and gave judgment for the plaintiff. The statute on which the question depended was the 6 Geo. 4, c. 16, ss. 63 and 127; and in the 63rd section it is expressly enacted, not only that the property shall vest in the assignees, but that neither the bankrupt nor any one claiming under him, shall have power to recover the debts: yet the Court held that the bankrupt had a good right to sue, except as against the assignees, and as the plea did not allege their interference, it did not

contain a complete defence. All the previous cases were adverted to in the judgment, which is binding on us as the decision of a Court of Error, and it is entitled to great respect as a very elaborate and deliberate judgment. It is contended that the words in the Insolvent Act are not precisely the same as those of this Act. In the first place, we think the words are quite as strong, if not stronger; but even if this were not so, we think it very unadvisable, in considering the construction of statutes like these, which relate to simple matters, to draw fine and minute distinctions, rendering it very difficult for suitors to know by what rule such cases are governed. We think, therefore, the same construction ought to be put upon similar provisions in insolvency as in bankruptcy. We have given as the foundation of our judgment the authority of a decision by a Superior Court, but we would add that the doctrine is by no means new that the express words of a statute may be controlled and confined to meet the mischief contemplated by the Act. In Mr. Justice Holroyd's judgment in *Edwards* v. *Dick*, 4 B. & Ald. 212, where it was held that, although the statute 9 Anne, c. 14, s. 1, makes "bills of exchange given for money won at play utterly void, frustrate, and of non effect, to all intents and purposes whatsoever, any law, usage, or custom to the contrary in anywise notwithstanding," an innocent endorsee of such a bill was held entitled to recover against the drawer, the winner of the money who had procured an acceptance from the loser of the money, and had endorsed it to the plaintiff. Mr. Justice Holroyd referred to the cases of Ecclesiastical Leases under the 13 Eliz. c. 10, s. 3, which, although declared to be utterly void in the same language, to all intents and purposes whatsoever, have always been held good as between the parties themselves, the object of the statute being merely to prevent any injury to the succession, not being intended to create any obligation on the parties to the instrument themselves. The judgment, therefore, will be for the plaintiff. I should, however, add that my brother Martin, who heard the case argued, along with my brothers Alderson and Platt, though he does not think it necessary to differ, yet I cannot express his entire concurrence with this judgment, as he entertains some doubt whether, although there be a decision in bankruptcy, we are not bound to take the very express language of another Act, upon which there has not been actually a positive decision, and administer the law in that way in which we should do if we merely looked at the express language of the statute. Entertaining that doubt, I am not authorised in saying this is also the judgment of my brother Martin; but he does not think it necessary to differ from us by giving a separate judgment, but merely requested me to express that he did entertain that doubt which I have adverted to.

Judgment for the plaintiff.

EXCHEQUER CHAMBER.

Reported by FREDERICK BAILEY, Esq. Barrister-at-Law.

(Before COLERIDGE, MAULE, CRESSWELL, WIGHTMAN, ERLE, WILLIAMS, and TALFOURD, JJ.)

APPEAL FROM THE EXCHEQUER.

LORD HENNIKER v. THE ATTORNEY-GENERAL.

Legacy duty—Power of appointment—Appointment with a condition.

A. B. by his will gives a power to C. D. to appoint to his wife an annuity chargeable upon the land of A. B. if C. D. thinks fit. C. D. exercises that power, and in the same instrument by which he appoints, he imposes on his wife the condition of relinquishing her dower:

Held, that legacy duty is payable upon such annuity, under the 45 Geo. 3, c. 28, s. 4; that it is nothing more than an appointment of the annuity or legacy upon a condition; and that if the wife takes it she does so as a gift under the power in the will of A. B. and not by purchase.

The decision of the Court below (see 19 Law T. Rep. 144) affirmed.

This was an information against the plaintiff in error, the third Lord Henniker, for the non-payment of legacy duty upon the sum of 12,578*l.* that sum being the estimated value of an annuity of 1,116*l.* 13s. 4d. in respect of which it was alleged that legacy duty was payable. The plaintiff in error having pleaded the general issue, a special verdict was taken by consent, which stated in substance that John Henniker Major, Baron Henniker, made his will on the 26th of May, 1821, and thereby appointed John Minet Henniker, Thomas Smith, and Evan Foulkes, his executors, and bequeathed the residue of his personal estate and effects, except leasehold estates, unto them, their executors, administrators, and assigns, in trust for certain purposes; and the said testator, by his will, devised his real estates at Stratford-upon-Slaney, in Ireland, and in the counties of Essex and Kent, to his said trustees, upon trust to dispose of the same by sale, and to purchase with the proceeds thereof estates in the county of Suffolk, with directions that a deed of settlement should be made of his estates, and that by such conveyance they should be limited in strict settlement, so that they might accompany the title of the barony of Henniker. "And the said testator did thereby direct, that in the said settlement there should be contained the usual power enabling the person who should for the time being be tenant for life, and entitled to the rents and profits of the estates so to be settled by deed or will duly executed, to charge by effectual ways and means all or any part of such estates, with any annual sum or sums of money not exceeding one-third part of the annual value thereof, unto or for the benefit of any woman or women with whom he or they might respectively happen to intermarry, or with whom he or they might have intermarried, as and for and in the nature of a jointure." The special verdict then proceeded to state the death of John Henniker Major, leaving the said trustees surviving him, and that they took upon themselves the execution of the will, and that the estates were sold and the proceeds were laid out in the purchase of other estates, in pursuance of the directions of the will, and that John Minet Henniker Major succeeded to the estates, and became the second Lord Henniker; that Thomas Smith and Evan Foulkes died in the lifetime of the second Lord Henniker, and that he, by his will, made on the 21st February, 1829, after appointing his eldest son and heir-at-law, John Henniker Major (the defendant), and John Lake, his executors, in pursuance of the power given by the will of Lord Henniker, the first testator, and of all other powers given, charged all the estates which he had power to charge "with the payment of the annual sum of 2,000*l.* of lawful money of Great Britain, free and clear from taxes, and without any other deduction whatsoever, unto and for the benefit of his said wife Mary Lady Henniker, during the term of her natural life, the said yearly rent or annual sum to be in the nature of and in full for the jointure of his said wife, and to be in lieu, bar, and satisfaction of and for her dower or thirds at common law, or by or on account of custom, freebench, or widow's part, which she could, should, or otherwise might have or claim of or in or out of the freehold, copyhold, or customary manors," &c. of the second Lord Henniker. And in case the said Lord Henniker "was not authorised and empowered by the said will of the said (first) testator to charge the estates thereby devised and directed to be purchased and settled respectively as aforesaid, with the payment of so large an annual sum as 2,000*l.* by way of jointure, the deficiency, if any, should be a charge upon; and the said John Minet Henniker Major, Lord Henniker, thereby expressly charged and made liable such part and parts of certain of his real estates and hereditaments in and by his said will devised, as should not be sold under the trusts in his said will contained as hereinafter mentioned, with and to the payment of such deficiency." The special verdict then proceeded to state the death of the second Lord Henniker on the 1st of July, 1832, leaving Lady Henniker, John Henniker Major (the defendant), and John Lake surviving him, and that the defendant and Lake took upon themselves the execution of the will, that the defendant succeeded to the estates, and that he entered into possession thereof, and of the receipt of the rents and profits, subject to the charge created by the will of the second testator in favour of Lady Mary Henniker, and that Lady Mary Henniker was a stranger in blood to the first testator. The special verdict then proceeded to state, that the second Lord Henniker, in his lifetime, by deeds dated the 11th and 13th May, 1822, the 7th and 8th of May, 1828, and the 7th and 9th of February, 1829, respectively, and recoveries suffered in pursuance thereof respectively, barred the entail of certain estates of which he was tenant in tail, and that Lady Mary Henniker joined in the recovery deeds and extinguished her dower in those estates, and that afterwards the defendant paid to Lady Mary Henniker four annual payments of the said annuity of 2,000*l.* without having paid legacy duty thereon. The special verdict then proceeded to set forth certain calculations in case the Court should be of opinion that there should be a deduction for the value of the dower, or thirds, or free-bench of Lady Henniker. The special verdict was argued in the Court below on February 6th, before Parke, Alderson, and Platt, BB. (reported 7 Ex. 331; 21 L. J. Ex. 293; and 19 Law T. 144).(*a*)

On the 7th February, 1852, the Court gave judgment, and decided that it fell within the principal of the decision of *The Attorney-General* v. *Pickard*, 3 M. & W. 552, afterwards affirmed on error, 6 M. & W. 348. That the present Lord Henniker, either as the heir of his father, who was the surviving trustee, or as the tenant for life in possession, was the person who by the Act of Parliament was bound to pay any duty either as trustee or as person in possession. That after the decision of *The Attorney-General* v. *Pickard*, this case would be considered precisely in the same view as if, instead of an annuity chargeable upon land, it had been a bequest of a sum in gross, say 1,000*l.* to be appointed, if the second Lord Henniker thought fit, to his wife. Then the only question was whether there had been such an appointment to the wife and such a taking by the wife by virtue of that appointment as to make her the recipient of a *legacy*. The case becomes this: A power is given by the will of the first Lord Henniker to the second Lord Henniker to appoint the 2,000*l.* to his wife if he thinks fit. He appoints it to the wife, and by the same instrument by which he appoints it he imposes upon her the condition of relinquishing her dower and thirds, and her free-bench upon all the copyhold estates. The question was, whether that was to be considered and treated as a purchase of the dower and thirds and free-bench, or whether it was merely a condition annexed to the receipt of the legacy; for that condition, if she accepted the legacy, made no difference,—she was still the recipient of the legacy. The Court were of opinion that this was nothing more than the appointment of a legacy upon a condition. She knew by the instrument by which the legacy was appointed that it was a legacy, and if she took it, she took it as a gift of the original testator; and whether the person exercising the power of appointment annexes a condition to that gift or not, did not affect the question; for it was still a gift of the testator, and was taken under the will of the testator, and as such it became liable to legacy duty. There might have been some question, if it had been a condition annexed to the legacy by the testator himself, whether the whole of the money so received by the legatee was a legacy, or whether a part of it was not a purchase of some interest, which might possibly reduce the duty to be paid upon the legacy to the extent of the difference in value between the legacy and the estate given up in consideration of it. That question did not now arise. The Court was of opinion that the person taking the legacy took the whole of it by the gift of the testator, and consequently, that legacy duty must be paid upon the whole.

This was an appeal from that decision.

Hoggins, Q.C. in support of the appeal, stated the facts before given. The question for the opinion of this Court then is, whether this is a gift within the 45 Geo. 3, c. 28, s. 4, (*b*) so as to make legacy duty

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(*a*) The following were the points for argument on each side:—

It will be argued, *on the part of the Crown*, that the annuity charged and appointed by the will of John Minet Henniker Major, Baron Henniker, for the benefit of his wife, Lady Mary Henniker, under the power given by the will of John Henniker Major, Baron Henniker, so far as the same was payable out of the property charged therewith by the last-mentioned will, was a legacy by way of annuity under the said last-mentioned will, within the Acts 36 Geo. 3, c. 52, the 45 Geo. 3, c. 28, and 55 Geo. 3, c. 184, or some of them, and that the same is chargeable with legacy duty accordingly.

And if the Court shall be of opinion that in estimating the value of such legacy for the purpose of legacy-duty, any deduction is to be made therefrom in respect of dower, thirds, or free-bench, then that a part only of the value of such dower, thirds, or free-bench, in proportion to so much of the said annuity as is charged upon the property charged therewith, by virtue of the power contained in the will of John Henniker Major, Baron Henniker, is to be deducted from the value of the said part of the said annuity so charged upon the said property.

The points of law intended to be argued *on the part of Lord Henniker*, will be (amongst others) the following:—

That no legacy duty was chargeable on the annuity, because the first-mentioned testator gave the property in fee to trustees, and directed them to make a settlement which was to contain a power of jointure, so that the interest of the annuitant would have been derived from the deed containing such powers, and not from the will, and that no such deed having been executed, the annuity was not properly payable under the will.

Because the power contained in the will of the first testator was not properly exercised, more than one-third of the annual value having been charged, and a condition having been annexed to the charge, videlicet that it should be taken in lieu of dower.

Because other property besides that directed by the will of the first testator to be settled, was and is charged by the second testator with the payment of the annuity.

And because the widow could not take the annuity under the will of the second testator, without giving up her dower as a consideration for so doing; and if she did give up her dower, then she took the annuity as a purchaser, and not as a gift from the first testator, and consequently could not be liable to pay legacy duty for it.

That if legacy duty be payable at all, it can only be payable in respect of the value of the interest derived by the widow under the will of the first testator, and which must be considered as reduced by the value of the dower given up for it.

That the defendant is not the party liable to be sued for the legacy duty; or, if liable, that duty is payable according to the relationship of the second testator to the first.

That the facts stated in the special verdict, imposed by law no liability to the legacy duty, and affix none upon the defendant to pay any.

(*b*) Section 4 enacts, that "Every gift by any will, &c. of any person dying after the passing of this Act, which, by virtue of any such will, &c. shall have effect or be satisfied out of the personal estate of such person, or out of any personal estate which such person shall have power to dispose of

payable. *Blower* v. *Morret*, 2 Ves. sen. 420, is an authority in the plaintiff's favour to shew that, under such circumstances, legacy duty is not payable, and that where a legacy is given to a wife in lieu or satisfaction of dower, she is not, in case the assets should prove deficient, to abate in proportion with the other legatees. Lord Hardwicke there says, referring to *Burridge* v. *Bradyl*, 1 P. Wms. 127,—"The strong ground was, that it was a purchase of the wife's dower by giving her a sum of money in lieu and satisfaction of and upon her releasing it, and the wife may lay hold of that if she will. It is the same as if the testator says:—'I give A. 500*l.* on consideration that he conveys such an estate to my devisee or trustee.' A. has then an option to say, 'That is a contract;' he closes therewith, and makes it absolute, and will part with that estate for that money, and is not bound to abate in proportion with other legatees. So is this a purchase from the wife, and the price fixed by the husband, provided there was anything to purchase, which depends on a fact whether the wife would be entitled to dower, and had a title inchoate to dower out of his real estate." In the present case Lady Henniker took as a purchaser, for she would have taken dower out of the very estate which was charged with the legacy. She took as a purchaser for a valuable consideration. In *The Attorney-General* v. *Pickard*, relied upon by the Crown, there was the power of making the gift to any one; here the power is confined to making a gift to the wife of the donee, and the party executing the power does so upon the express terms that it is to be in bar of dower. In that case it was decided, in the case of a power created by will to charge land with an annuity, the appointee takes under the will creating the power, and not under the will that executes the power. But that case cannot decide this. The annuity is taken not only with the benefits attached to it, but with all its disadvantages,—one being, that the annuitant has to give up her dower. She takes by purchase, and if there were other legatees, and the assets were found insufficient to satisfy all the legatees, she would take priority of the others. *Blower* v. *Morret*, *Burridge* v. *Bradyl*, and other cases decide this. The word "gift," in the 4th section of the Act, must be construed as a gift without value; here a valuable consideration is given for that which is to be received. Where a party gets a benefit, then the Act no doubt applies, and imposes a duty; but not in such a case as this, where it comes, as the plaintiff in error contends, by way of purchase.

Sir *W. P. Wood* (*Phinn* with him), contrà, not called upon.

COLERIDGE, J.—We are of opinion that the legacy duty in this case is payable to the Crown, and the judgment of the Court below must be affirmed. The principle upon which *The Attorney-General* v. *Pickard* proceeded I do not understand to be disputed. It is perfectly clear, then, that where a testator by his will creates a power to enable a tenant for life in possession to appoint to any woman he might marry an annuity for her jointure, and the tenant for life afterwards by his will exercises the power so conferred upon him, that the annuity would be a legacy given by the first testator,—a gift under the 4th section of the statute; but then it is said that there must be engrafted on the first will the condition, which is, by a subsequent instrument, imposed by the party who has the privilege given him to exercise the power of relinquishing dower; and thus reading it, it is like the case of *Blower* v. *Morret*, and so turned into, or to be considered and treated as a purchase, not a mere condition annexed to the receipt of the legacy. Several members of the Court are of opinion, that, supposing this were so, it could not be held as a purchase; but looking at it as the Court below did, we all agree and think this is nothing more than the appointment of a legacy upon a condition. The original power in the will of the first Lord Henniker is that from which the donee derives the gift; that was the opinion of the Court below, and I think the case is free from doubt.

Judgment affirmed.

as he or she shall think fit, or which shall have been charged upon or made payable out of any real estate, or be directed to be satisfied out of any moneys to arise by the sale of any real estate of the person so dying, or which such person may have the power to dispose of, whether the same shall be given by way of annuity or in any other form, shall be deemed and taken to be a legacy within the true intent and meaning of this Act. Provided always, that nothing herein contained shall be construed to extend to the charging with the duties by this Act granted any specific sum or sums of money, or any share or proportion thereof, charged by any marriage settlement, or deed or deeds, upon any real estate, in any case in which any such sum or sums, or share or proportion thereof, shall be appointed or apportioned by any will or testamentary instrument, under any power for that purpose given by any such marriage settlement, deed or deeds." Sec. 5 enacts, "That the duties thereby granted on legacies or charged upon or made payable out of any real estate, or out of any moneys to arise by the sale of any real estate, &c. shall be accounted for, answered, and paid by the trustee or trustees to whom the real estate shall be devised out of which the legacy or legacies shall be to be paid or satisfied, or, if there shall be no trustee, then by the person or persons entitled to such real estate, subject to any such legacy, or by the person or persons empowered or required to pay or satisfy any such legacy."

(Before COLERIDGE, MAULE, CRESSWELL, WIGHTMAN, ERLE, WILLIAMS, TALFOURD, and CROMPTON, JJ.)

CLARKE *v.* GANT.

Churchwarden is overseer—Burgess-list—Signing burgess-list by churchwarden as an overseer—penalty for neglect—Municipal Corporation Act. In a parish where there were two churchwardens and two overseers, the two overseers made out and signed an alphabetical list of burgesses, pursuant to the 5 & 6 *Wm.* 4, *c.* 76, *s.* 15 (*the Municipal Corporation Act*). *The two churchwardens did not, nor did either of them, sign the burgess-list. In an action for the penalty of* 50*l. under sec.* 48, *against the churchwardens for not having, as overseers, made out and signed the list:*

Held, that the churchwardens were overseers within the meaning of the Act; that all the overseers should sign the burgess-list; and that this action for the penalty could be supported.

This was an action brought by the above-named defendant in error, to recover from the plaintiff the penalty of 50*l.* in pursuance of the Municipal Corporation Act (5 & 6 Wm. 4, c. 76, sec. 48); the plaintiff was one of the churchwardens of a parish in the borough of Harwich, and had neglected to sign the burgess-lists, it was alleged that he, being a churchwarden, was, as such churchwarden, an overseer within the meaning of that Act, and bound to sign such burgess-list, and liable to the penalty thereby imposed for not doing so. The cause was tried at Chelmsford, before Coleridge, J. who directed the jury that the defendant there being a churchwarden, was an overseer within the meaning of the Act. A verdict was returned for the plaintiff at the trial for 50*l.* and a bill of exceptions was tendered to the direction of the learned judge.

A another case precisely similar against the other churchwarden was then also tried with the same result in both cases. A new trial was moved for on the 19th of April, in the Court of Ex. on the ground of misdirection, when it was arranged that it should stand over until after judgment had been given in the Court of Ex. Chamber in the present case.

Shee, Serjt. for the plaintiff in error.—The plaintiff is one of the churchwardens of Harwich, but not an overseer, unless held constructively to be one; he being one of such churchwardens, did not sign the burgess-list for that borough as an overseer, and the present action was brought against him under the Municipal Corporation Act (5 & 6 Wm. 4, c. 76), to recover the penalty of 50*l.* by that Act imposed on overseers refusing or neglecting to sign such list. The burgess-list was signed by the two overseers, but not by the churchwardens; and the question now is, whether churchwardens are overseers for this purpose within the meaning of this Act of Parliament, and liable to the penalty of 50*l.* sought to be recovered by the present action for neglecting to sign the burgess-list; it was admitted there was no corrupt or improper motive in the transaction on the part of the churchwardens. By the 15th section, (*a*) overseers are directed to make lists of all persons entitled to be burgesses in their respective parishes. The list is to be called "The Burgess List," and to be according to the form No. 1 in the schedule (D) to that Act annexed. On reference to that form, which is thus required, it is

(Signed) A. B. C. D. } Overseers of the said parish [or township],

teereby shewing that it was intended the two persons only who were actually the overseers should sign, otherwise it would have been very easy to have given four names indicating as many persons, or to have specifically named churchwardens as well as the overseers, had it been intended that the churchwardens should have signed the list. There are several instances in the Act of Parliament where matters are required to be done, sometimes by churchwardens or by overseers, sometimes by both, and sometimes by the one or the other only. The Legislature kept in view the distinction between them. Sec. 48 (*a*) imposes the penalty for neglecting to sign the list, and the 142nd section is the interpretation clause, which says:—"Overseers of the poor" shall be construed to mean all persons who execute the duties of overseers of the poor. [CRESSWELL, J.—In some places there are four persons appointed. Suppose there were two schedules sent in, one signed by A. and B. and the other by C. and D.: which would be the right one?] In either case, perhaps, some difficulty could be suggested. The other side rely upon the 43 Eliz. c. 2, s. 1, by which it is provided that the churchwardens of every parish are to be called overseers of the poor of the same parish—13 & 14 Car. 2, c. 12, and 8 & 9 Wm. 3, c. 30, s. 1. The declaration here is bad: it contains no allegation that the list was necessary to be signed by the churchwardens, or that there were in fact any burgesses qualified to be put upon the list: there does not appear, therefore, to be any default. As the action is for a penalty, it should be made to appear clearly that he has the right to claim it.

Lush, contrà.—As to the last point, this is an objection raised, not by way of special demurrer, but is taken now for the first time after verdict; the verdict, therefore, cures it. It will be presumed that all the material facts were proved in evidence before the jury at the trial, or they would not have returned their verdict for the plaintiff to recover the penalty. As to the churchwardens being overseers, this case is almost the same as *King* v. *Burrell*, 12 Adol. & E. 460, which was an action for a similar penalty against an overseer for neglecting to sign the burgess-list, under the 48th section of the same Act. That section enacts, that if any overseer "shall neglect or refuse to make out, sign, and deliver such list as aforesaid," every such overseer, "for every such offence, shall forfeit and pay the sum of 50*l.*" to be recovered by any person who will sue for the same. Here the defendant "neglected to make out and sign" such list; he has therefore committed the offence and incurred the penalty. *King* v. *Burrell* decided an overseer would incur the penalty, although his neglect was neither wilful nor corrupt; and the Court, it would seem, was of opinion that all the overseers must sign the burgess-list. Patteson, J. there says, "In this parish, as in others, the overseers should deliver a single list, which all of them should sign. It is true that we have held the act of the majority to be the act of all in the construction of the statutes relating to the poor, and other Acts; but the language of section 48 is remarkable. It enacts that 'if *any* overseer' shall neglect to sign such list, then '*every* such overseer' shall forfeit 50*l.* This shews that all must sign." The only question then is, whether the plaintiff in error, being a churchwarden, is not an overseer? He clearly is so, unless the schedule (D) in the Act be held to control the enactment. The 43 Eliz. c. 2, s. 1, expressly declares that churchwardens are to be overseers, and the interpretation clause (142nd) of the Municipal

(*a*) Sec. 15 enacts, "That on the fifth day of September in every year the overseers of the poor of every parish wholly or in part within any borough shall make out an alphabetical list, to be called 'The Burgess List,' according to the form No. 1 in the schedule (D) to this Act annexed, of all persons who shall be entitled to be enrolled in the burgess-roll of that year, according to the provisions of this Act in respect of property within such parish, and the overseers shall sign such burgess-lists, and shall deliver the same to the town-clerk of the borough on the said fifth day of September in every year, and shall keep a true copy of such lists, to be perused by any person, without payment of any fee, at all reasonable hours between the fifth and fifteenth days of September in every year; and the town-clerk shall forthwith cause copies to be printed of all overseers' lists delivered to him, and shall deliver a copy of all such lists to any person requiring the same on payment of a reasonable price for each copy, and shall cause a copy of all such lists to be fixed on or near the outer door of the town-hall, or in some public and conspicuous situation within the borough, on every day during the week next preceding the fifteenth day of September in every year.

Schedule (D.)—No. 1.

The list of burgesses of the borough of , in the parish (or township) of .

Christian Name and Surname of each person at full length	Nature of the Property rated.	Street, lane, or other place in this parish (or township) where the property is situated for which he is now rated.
Ashton, John	Shop	No. 23, Church-street
Bates, Thomas.....	House	Brook's Farm

(Signed) A. B. C. D. } Overseers of the said parish (or township).

(*a*) Section 48 enacts, "That if any mayor, alderman, or assessor of any borough who shall be in office at the time herein appointed for the revision by them of the burgess-list under this Act, or for any election of councillors, assessors, or auditors which he is required to conduct or declare, shall neglect or refuse to revise such burgess-list, or to conduct or declare such election as aforesaid, every such mayor, alderman, and assessor shall for every such offence forfeit and pay the sum of one hundred pounds; and if any overseer of any parish wholly or in part within any borough shall neglect or refuse to make out, sign, and deliver such list as aforesaid, or if the town-clerk of any borough shall neglect or refuse to receive, print, and publish such lists as aforesaid, or if any such overseer or town-clerk shall refuse to allow any such list to be perused by any person having right thereunto, every such overseer and town-clerk respectively for every such offence shall forfeit and pay the sum of fifty pounds; and the said penalties hereby in such case imposed shall be recovered with full costs of suit by any person who will sue for the same within three calendar months after the commission of such offence, by action of debt or on the case in any of his Majesty's Superior Courts of Record, and the money so to be recovered shall, after payment of the costs and expenses attending the recovery thereof, be paid and apportioned as follows (that is to say), one moiety thereof to the person so suing, and the other moiety thereof to the treasurer to be appointed by virtue of this Act, to be by him applied in aid of the borough fund hereinafter mentioned."

Corporation Act assists that view. The churchwardens are overseers, they are to make borough rates, and must see them from time to time for the purpose of putting on proper names upon the lists. In *Reg.* v. *The Justices of Cambridgeshire*, 7 A. & E. 480, it was held, that a notice of application for an order of maintenance on the putative father of a bastard under the 4 & 5 Wm. 4, c. 76, s. 73, must be signed by a majority of the aggregate body of churchwardens and overseers, and therefore such a notice signed by only two overseers of a parish, which had also two churchwardens, was bad, (See *R.* v. *The Mayor, &c. of Harwich*, 18 Law T. 261.) The direction of the learned judge at the trial was therefore correct, and the defendant in error is entitled to judgment.

Shee, Serjt. in reply.

MAULE, J.—We are of opinion that the exceptions taken in this case cannot be sustained; we are bound by the words of the Act, and think it is necessary that all should sign. As to the objection taken to the declaration, we think with Mr. Lush it certainly comes too late after verdict; we must assume there were burgesses qualified to be placed upon a list, or there would not have been a verdict for the plaintiff; and I think we may also take it, that in fact there was a list signed by two of the overseers. Certainly, after verdict the objection to the declaration is too late. The judgment will be for the plaintiff below to recover the penalty for which the action was brought.

Judgment for defendant in error.

Reported by C. J. B. HERTSLET, Esq. of the Middle Temple, Barrister-at-Law.

ERROR FROM THE COURT OF EXCHEQUER.

(Before COLERIDGE, MAULE, WIGHTMAN, WILLIAMS, ERLE, TALFOURD, and CROMPTON, JJ.)

Tuesday, Nov. 30.

WESSON *v.* ALLCARD.

Bankruptcy Consolidation Act—Arrangement Clauses.

Action on a bill of exchange by the endorsee of A. B. the drawer against the acceptor. Plea, puis darrein continuance, that the defendant was a trader; that being indebted, &c. he presented a petition to the Court of Bankruptcy, &c. (setting out the proceedings); that a day was appointed for a private sitting; that prior to that day fourteen days' notice in writing was given to every one whom the defendant knew to be a creditor, and amongst others to A. B.; and that defendant did not know, nor did the Court of Bankruptcy know, nor did the assignee know, that the said A. B. had endorsed the said bill, or that any other person was entitled in respect thereof. It then alleged that defendant filed a full account of his debts, and of the debt in question, and set forth a proposal for payment of a composition of 7s. 6d. in the pound, and the appointment of a day for the confirmation of such proposal; and that after the first, and before the second sitting, the defendant received an intimation from the plaintiff's attorney that the bill had been endorsed to plaintiff, and that a demand of payment was then made. The plea then averred that after the first and before the second sitting a notice was served at plaintiff's residence of such second sitting; that at such second sitting three-fifths in number and value of the creditors whose debts amounted to 10l. and upwards agreed to the proposal; and that after the bill became due, and after the commencement of this action, and within eight days now last past, the Court of Bankruptcy gave the defendant a certificate, &c. in the form in schedule A. &c.:

Held, bad, for not averring notice to the plaintiff of the first sitting.

A certificate under the arrangement clauses is no defence against a creditor without notice of the several meetings.

This was an action of assumpsit upon a bill of exchange, drawn by one J. Plews upon, and accepted by, the defendant, and endorsed to the plaintiff. The defendant pleaded puis darrein continuance, that he, the defendant, was a trader, and being indebted to divers persons, presented his petition to the Bankruptcy Court, in the form contained in Schedule Aa. to the 12 & 13 Vict. c. 106 (the Bankrupt Law Consolidation Act, 1849), annexed. The plea then set out the other proceedings under the Bankrupt Act, and stated that the Court of Bankruptcy appointed a private sitting to be held, and that fourteen days before such sitting, written notice was given to every person whom the defendant then knew to be his creditor, or whom he had any means of knowing to be his creditor, and, amongst others, to J. Plews, the drawer of the bill in question, and that the defendant did not at the time when such notices were given or sent, nor did the Bankruptcy Court, nor the official assignee, know that J. Plews had endorsed the bill, or was not the holder, or who was the holder and entitled to the proceeds, except the said J. Plews, or the address, description, or locality of such holder. The plea then stated that the defendant filed a full account of his debts, and of the debt in question, and did set forth a proposal to the effect that he would pay his creditors a composition of 7s. 6d. in the pound, and that at the private sitting of the Bankruptcy Court the creditors of the defendant to the amount of 10l. and upwards, proved their debts, and that three-fifths in number and value of the creditors who had so proved, did assent to the proposal of the defendant; that the Court of Bankruptcy did then propose another sitting; that after the first, and before such second sitting, the plaintiff's attorney applied to the defendant for payment of the said bill, and that such application was the first intimation that the defendant had that the plaintiff, and not the said J. Plews, was the holder of the bill, and that the plaintiff was a creditor of the defendant; that the Bankruptcy Court made a special order that service of the notice of the second sitting at the last known place of abode of the plaintiff should be deemed sufficient, and that notice was served accordingly; that such second meeting was duly held, and that four other creditors of the defendant there proved their debts, and that three-fifths in number and value of all those creditors who had proved debts to the amount of 10l. at either of those sittings, agreed to accept the proposal of the defendant, which was assented to at the first sitting; that the Court of Bankruptcy then confirmed the said proposal and agreement, and caused it to be filed of record; that after the bill became due, and after the commencement of his suit, and within eight days now last past, the Court of Bankruptcy gave the defendant a certificate under the seal of the Bankruptcy Court in the form in schedule Ac. which set out, amongst other things, that the resolution or agreement had been duly carried into effect. The plea then stated that the debt in question had not been contracted by fraud or breach of trust, or without reasonable probability at the time of contract of being able to pay the same, or by reason of any judgment in any prosecution for breach of the revenue laws, or in any action for breach of promise of marrage, seduction, criminal conversation, libel, slander, assault, battery, malicious arrest, malicious trespass, maliciously suing out a fiat in bankruptcy, or maliciously filing or prosecuting a petition for adjudication in bankruptcy. To this plea the plaintiff demurred specially, and the Court below, after consideration, gave judgment for the plaintiff. The defendant below then brought his writ of error.

Watson, for the plaintiff in error (the defendant below).—The plea is good. There are three modes of procedure under this Act. 1st. By a petition for adjudication ending in a certificate of conformity, which certificate, when obtained, discharges the bankrupt from all debts that might have been proved; and when once this certificate has been granted, the previous steps are not disputable. 2nd. There is a petition for composition with creditors, and in that case when a certificate is granted it is to have the same effect as a certificate of conformity (sec. 221); and if the commissioner shall find that the proper steps have not been taken, he has power to declare the petitioner bankrupt (sec. 223). 3rd. There are clauses providing for arrangements with creditors, and assignments of the trader's property; but under these last-mentioned clauses it is specially provided that no debt shall be discharged unless the debtor has received notice, but that is not so in the other cases referred to. It is contended that this certificate of the Court of Bankruptcy is a sufficient discharge. The effect of the 221st section is to render the certificate a bar to the plaintiff's claim, although he may not have received the notices mentioned in the 213th and 215th sections. If such had not been the intention, the want of such notices would have been mentioned in the exceptions in the Act, as a matter that would invalidate the certificate; and if that position be correct, the only question is, is the certificate properly set out. The 221st section is explicit, it says, "That so soon as the said resolution or agreement shall have been carried into effect, and the creditors of such petitioning trader shall have been satisfied, according to the tenor thereof, the Court shall give to such petitioner a certificate under the hand and seal of the commissioner, in the form," &c. "And such certificate shall henceforth operate to all intents and purposes as fully as if the same were a certificate of conformity under a bankruptcy, except—" Then come the exceptions of debts which shall not be barred by the certificate, which are set out in this plea, and within which the defendant states this debt does not come, such as a debt contracted by fraud, or a judgment for the breach of the Revenue Laws, &c.; and amongst those exceptions nothing is said of the want of notice being sufficient to exclude a debt from the operation of the certificate. In the case of outstanding bills of exchange, it is scarcely possible to give notice,—how can the trader know in whose hands the bill may be? The certificate having the effect of a certificate of conformity, discharges the debtor from all debts of creditors, whether they have come in under the arrangement or not, and a creditor cannot afterwards dispute whether or no the antecedent steps have been properly taken. The 222nd section provides, that the Court being satisfied that the official assignee has performed his duty, may give him a certificate thereof; that shews that it was intended that the certificate to the trader was intended to be final and conclusive. By the 6th section of the Act the Court of Bankruptcy is a Court of Record; and by the 12th section an appeal is given to the Vice-Chancellor; and in all cases when it is supposed that the commissioner has improperly granted a certificate on insufficient grounds, the proper course is to appeal to the Vice-Chancellor, and afterwards to the Lord Chancellor, or Court of Appeal, if it be necessary. When the certificate was granted before action you might, under the old Acts, plead that after the accruing of the cause of action and before suit the defendant became bankrupt, &c. and it is true that in pleading puis darrein continuance, it was customary to set out the whole of the proceedings, but it is submitted that it is not necessary. [CROMPTON, J.—Then why should the Act make the certificate evidence of the Act of Bankruptcy, trading and petitioning creditor's debt, if it was not necessary to allege, and to prove those facts.] The certificate being a bar to all debts, except those excepted, it is not necessary to show more than that such a certificate was obtained. It is sufficient, having once shown the initiation of a jurisdiction, to go on to state that the certificate was granted, without referrin g to the intermediate steps. [COLERIDGE, J.—It may be a question whether it is not a condition precedent to jurisdiction, that the terms of the agreement should have been carried into effect.] The commissioner may proceed *inverso ordine*, and still the certificate is good. He cited *Levy* v. *Horne*, 5 Ex. Rep. 257; *Thomas* v. *Hudson*, 14 M. & W. 353. In Error, 16 M. & W. 885; *Heslop* v. *Baker*, 6 Ex. Rep. 751; *Reg.* v. *Little Bolton*, Cald. 367.

H. Hill, for the defendant in error (the plaintiff below).—This plea should have set out all the proceedings, that the creditors were satisfied, and that the notices had been duly given. According to the argument on the other side, the greater part of this plea might have been dispensed with. The effect of these arrangement clauses is, that no creditors are barred by the certificate of the Court, unless they have had due notice of the private sittings. The 221st section does not apply so as to make the certificate sufficient in itself. It is always customary, in pleading puis darrein continuance, to state every particular fact; when pleading a statutable authority, every fact must be stated in its order. In this case, the defendant made an offer to his creditors of 7s. 6d. in the pound, to be paid by three instalments at three, six, and nine months; and these were not all due at the time this plea was pleaded, and until all were paid, the commissioner had no jurisdiction. The section is as express and imperative as words can make it, that notice in writing shall be given to every creditor; here no such notice was given to the plaintiff, but they say that notice was given to the drawer, because they did not know that the plaintiff was the holder. It is most important that these notices should be given to all creditors, when it is considered that the attendance of a portion may bind the whole. The 216th section provides for the second sitting, and that the agreement then come to shall be binding against all creditors who at the time of the sitting had notice, and binding against such only; and the 221st section must be read in connection with the 216th. If that were not so, a man might have one large creditor, and he might make such an arrangement with his several small creditors as should entirely exclude the man to whom he owed most from all voice in the matter, by omitting to give him notice. It is making a new law to allege what is here stated, and asking this Court to administer it. To support the argument of the other side, a clear enactment must be produced. Nothing less will suffice; and if there be any doubt, the Court will put such a construction on the Act as shall not interfere with existing rights. A man has every facility under the Act to make himself bankrupt, and a forced construction will not be put upon it. He cited *Tetley* v. *Taylor*, 21 Law J. 346, Q.B.; *Christie* v. *Unwin*, 3 Por. & D. 204; *Bonneker* v. *Mollineux*, 4 M. & G. 286; and *Fletcher* v. *Manning*, 12 M. & W. 571.

Watson, in reply.—If the arguments of the defendant in error are to prevail, these clauses could not work; and, moreover, in such cases as these, where bills of exchange are passed from one to another, it is impossible that a man should know to whom he is to give notice. *Tetley* v. *Taylor* turns upon another clause of the Act, and is not applicable to this case. The Act says distinctly that this certificate is to act to all intents and purposes as a certificate of conformity; but according to the argument on the other side, "all intents and purposes" is to be read with so many exceptions, that it would, in a majority of instances, be inoperative. These clauses

do not make this certificate without these additional clauses who knew that [illegible] ; then in this case there was a [illegible] Exhibited Bamford v. Baxter, 1 S. & S. [illegible] ; and Rotheram v. Berry, 1 B. & C. 15, an analogous case.

Sir L. SHADWELL, J.—We are all of opinion that the judgment of the Court below ought to be affirmed. When this case was argued in the Court below two distinct points were relied on; the first, that there had been no sufficient notice, and the second, that it was necessary to show either that the resolution or agreement had been carried into effect or that the creditors had been satisfied, and both these points are referred to in the judgment below. It is not necessary, however, for us to refer to both, it is sufficient if we confine our judgment to the first of these points, and on the last, therefore, we say nothing, the ground of our decision being the want of notice. It seems that at the time the defendant gave the notice he did not know who was the holder of the bill for which this action was brought, and that after the plaintiff applied to him for payment he gave him notice of the second meeting. We must look to the statute itself if the language of it satisfies the language of the Act. The language of the Act is special, and the only persons to be bound by the certificate are those who were creditors at the time, and who had notice. Now the argument has been that this certificate is to have the same operation as a certificate of insolvency, and is to be a discharge to all debts, as under a commission; and the question is, is it to extend to all cases, or only those in which notice has been given? In a case of this sort there is no hardship on the trader; he has other means of being relieved from his debts,—he may become a bankrupt; but on the other hand, it would lead to the greatest injustice if these arrangements could be made to bind creditors who had no notice. The statute says, that a party shall first present his petition and make a proposal, of which notice is to be given; then, at the first sitting, the proposal is to be discussed, and in the interval a second notice is given, and when the parties come before the commissioner the matter is discussed, and, if agreed to, becomes a resolution, and is then binding against persons who are creditors at the time, and who have had notice,—otherwise we should have persons bound by the certificate, but not by the proposal.

Judgment affirmed on the one point.

Equity Courts.

LORD CHANCELLOR'S COURT.

Reported by C. H. KERR, Esq. of Lincoln's-inn, Barrister-at-Law.

Nov. 15, 16, and 24.

BARRINGTON *v.* LIDDELL.

Special case—Thellusson Act—Limit of accumulation—Portions—Intention.

The family estates of Lord B. were settled to common uses, in strict settlement, and subject to the life estate of his lordship, were conveyed to trustees for 2,000 years for raising (in the events which happened) the sum of 40,000l. as portions for his younger children, but which was not to become absolutely raisable in his lordship's lifetime unless he so directed. S. B. (his great uncle) after alluding to the settled estates and intending to benefit his lordship's family, bequeathed to his executors the sum of 15,000l. upon trust, to accumulate the interest during the lifetime of his great nephew; but if his said great nephew should die within twenty years, to be computed from his (the testator's) death, then the accumulation was to be continued for so long a period, as with the time that should elapse during the lifetime of his said great nephew would make up the full term of twenty years. And upon the completion of that accumulation, the trustees were to stand possessed of the trust moneys in trust, to pay and apply the same, or a competent part thereof, in satisfaction and discharge of the portions for his younger children, when and as the same respectively should become payable, and in exoneration of the settled estates charged therewith and subject thereto, upon and for the several trusts, intents, and purposes declared of his residuary personal estate, with a proviso, that if before the expiration of the said period of accumulation the accumulated fund should be of sufficient amount or value for answering the purposes aforesaid, then the accumulation should thereupon immediately cease. S. B. died in 1826 (a small part only of the portions having been charged). In 1847, when the period of twenty-one years after his death had elapsed, the accumulated fund amounted to 35,622l. only. At the institution of the suit it amounted to 43,643l. The limited period mentioned in the first section of the Thellusson Act, proving inadequate to effect the intention of the testator:

Held (reversing the decision of the Court below), that the trust for accumulation was not within the exception of the 2nd section of the Act (39 & 40 Geo. 3, c. 98, as being a "provision for raising portions for any child or children of any person taking any interest under any such conveyance, settlement, or devise," and that the 35,622l. as soon as the 40,000l. were raised, became a fund applicable to the payment of the portions already charged, and would be applicable also to the payment of the rest of the portions as soon as they became payable.

"Any interest" given by a will to the parent for whose children portions are thereby provided, brings the case within the exception of the Act.

Although accumulations directed contrary to the Thellusson Act are by that Act declared to be null and void, yet they are only null and void pro tanto.

Whatever a "grantor, settlor, or devisor" may do with regard to his own children he may do to the children of any other person, as well as respecting past as future portions; except that the persons whose children may have portions provided for them by a "grantor, settlor, or devisor," must be persons who take an interest "under any such conveyance, settlement, or devise."

This was an appeal from a decree of the Vice-Chancellor Turner.

The facts were shortly these:—By indentures of lease and release of the 20th and 21st of April, 1823, being the settlement made on the marriage of the present Lord Barrington, the family estates of that nobleman were conveyed to the defendants Liddell and Price, for 2,000 years, and, subject thereto, to the late Lord Barrington, for his life, and then to the plaintiff, the present Lord Barrington, for his life, and, subject thereto, to the first son of the marriage in tail male, with divers remainders over. The trusts of the term of 2,000 years were declared to be in case there should be any child or children of the said intended marriage, other than an eldest son, whether born in the lifetime of the plaintiff, or after his decease, and whether there should be issue male of the said marriage or not, that then the said trustees should, after the decease of the survivor of the late Viscount and the plaintiff, or in the lifetime of them, or the survivor of them, if they or he should so direct, by any deed, &c. by demising or otherwise disposing of the hereditaments comprised in the said term of 2,000 years, or any part of such hereditaments, for the whole or any part of such term, raise for the portion or portions of such child or children, the sum or several sums of money hereinafter mentioned, viz. if there shall be only one such younger or other child, the sum of 20,000l. for the portion of such one child, to become an interest vested in and after the decease of the late Viscount, to be paid to such one child, at such age or time as the plaintiff should by deed or will, &c. appoint, and for want of such appointment, to be an interest vested in such only younger child, being a son, at his age of twenty-one years, or, being a daughter, at her age of twenty-one years, or marriage, with consent, &c. and the money to be paid to him or her, on or at the same age or day, if it should happen after the decease of the survivor of them, the said late and present Viscount; but if such day should happen in their lifetimes, or in that of the survivor of them, then to be paid within six calendar months after his decease, and if there should be two such younger or other children, and no more than the sum of 30,000l. for the portions of such children, and if three or more such younger or other children, then the sum of 40,000l. for their portion, to be divided between and among the children for whom the portions are provided in such shares, and to vest in and after the decease of the late Viscount, to be paid to them respectively on or at such ages or days, and to be subject to such limitations over for the benefit of some one or more of such children, as the plaintiff should by deed or will, &c. appoint; and for want of appointment the sums of 20,000l. or 40,000l. were to vest in such younger or other children—as to sons, at twenty-one, and as to daughters at twenty-one or marriage, with consent, &c. in equal shares, and to be paid within six months after the decease of the said plaintiff.

There were ten children of the marriage, several of whom attained twenty-one years of age; so that the sum raisable under the term was 40,000l.

The family estates being thus settled, Shute Barrington, the late Bishop of Durham, by his will, dated the 10th of December, 1825, after settling so much of the said settlement as related to the portions for younger children; and after bequeathing chattels of considerable value to go as heir-looms with the settled estates, and after directing the sum of 15,000l. to be laid out in the erection of mausoleum [illegible] upon those estates, he gave to his executors [illegible] upon the following trusts—"In trust that they or he do and shall, within three calendar months after my decease, invest the same (in Government or real securities, with power to vary, &c., such [illegible] interest, dividends, [illegible] said trust moneys, [illegible] during the lifetime of the said Wm. [illegible] Barrington; or if he shall [illegible] term of twenty years to be computed [illegible] decease, then the accumulation [illegible] for so long a period as, with [illegible] elapse during the lifetime of the [illegible] Keppel, will make up the full term of [illegible] to be computed from my decease); and [illegible] completion of the accumulation aforesaid, [illegible] trustees shall stand possessed of the [illegible] moneys and accumulations in trust to [illegible] same, or a competent part thereof, in satisfaction [illegible] discharge of the portions so intended for the [illegible] and younger sons of the said William [illegible] and as the same respectively shall become [illegible] and in exoneration of the hereditaments [illegible] with, and subject thereto, upon, and for the [illegible] trusts, intents, and purposes, and with, under, and [illegible] ject to the several powers, provisoes, and declarations hereinafter contained and concerning my residuary personal estate, or such and so many of the said [illegible] &c. as shall then be subsisting and capable of taking effect, provided that if, before the expiration of the period for accumulation, the accumulated fund shall be of sufficient amount or value for answering the purposes aforesaid, then the accumulation shall thereupon immediately cease."

The bishop died in March 1826, and the late Lord Barrington in 1829. In the years 1842 and 1843 the two several sums of 523l. and 721l. were raised with the consent of the plaintiff, for the advancement of one of his younger children.

The plaintiff and his eldest son barred the entail created by the settlement of 1823, and settled the family estates upon other uses and trusts under which all the different persons, plaintiffs in this suit, were interested.

The 15,000l. given by the testator upon trust for accumulation was duly accumulated, and attained in March 1847—twenty-one years after the death of the testator—to 35,622l. and on the institution of the suit to 43,643l.

The present question arose between the parties interested in having the estates exonerated by the settlement of 1823 exonerated, and the parties claiming under the residuary disposition in the testator's will.

On a special case being filed under the [illegible] Vict. c. 35, the following questions were submitted to the Court.

1. Whether the trust for accumulation aforesaid directed by the will of the said testator was valid for the whole of the life of the said [illegible] William Keppel Lord Barrington, or for the [illegible] only of twenty-one years from the decease of the said testator, or for any and what other [illegible] period, and to what extent is such trust for accumulation valid?

2. Whether, according to the true construction of the said will and the said indenture of settlement of the 21st of April, 1823, the said accumulated trust-fund, or any, and what part thereof, and to what amount, is now applicable, in exoneration of the estates comprised in the said term of 2,000 years, created by the said last-mentioned indenture of settlement from the said portions or sums of money or in exoneration of the said estates from the said mortgage debts, or sums of 523l. and 721l. and the interest thereof, or any other, and what part or parts of the said portion or sum of 40,000l.?

3. Whether any, and what appropriation, ought to be now made, and what part of the said accumulated trust-fund to answer, and at any and what future time, any and what part, or parts of the said portions or sum of 40,000l. so as to exonerate the residuary estate of the said testator from all further or other liability in respect of the trusts for accumulation of the said fund?

4. In what manner is the interest of the said accumulated trust-fund to be dealt with until the said estates are by means of it exonerated from the said charge of 40,000l. and who is entitled to the interest of the accumulated trust-fund since the accumulation ought to have ceased?

The Vice-Chancellor Turner, before whom the case was argued, decided,—

1st. That the accumulation of the 15,000l. was not valid beyond the period of twenty-one years from the time of the testator's death.

2nd and 3rd. That no part of the accumulated fund was then applicable to the payment either of the mortgage debts, or of any part of the portions.

4th. That the income already accrued on the fund and to accrue at the expiration of twenty-one years belonged to the residuary legatees of the testator, the death of Lord Barrington.

From this decision this suit was instituted.

Sir W. P. Wood and *G. L. Russell*, appeared for the plaintiffs.

Chandless and *Greene*, for the [illegible]

The LORD CHANCELLOR.—In the event of the accumulations being excessive, could the income arising therefrom follow that of the principal fund?

Sir *W. P. Wood* in his reply, and as bearing upon that question, cited *Crawley* v. *Crawley*, 7 Sl. 427.

The grounds on which the Vice-Chancellor's judgment was founded, the arguments of counsel, the authorities cited, and the several parts of the 39 & 40 Geo. 3, which are applicable to this case, are alluded to, and set out in his lordship's

JUDGMENT.

The LORD CHANCELLOR.—The first question which arises upon this will is, what is its true construction, irrespective and independent of the Thellusson Act? The testator meant the accumulation to go on, during the life of Lord Barrington, but he expressly provided that if the money,—not the 40,000*l.* but the 20,000*l.* the 30,000*l.* or the 40,000*l.* whichever it might be,—payable, should become raised during his life, that then the accumulation should cease; the object would be answered: he did not mean an accumulation during the whole life; he had no object in that, but an accumulation for a particular period in order to raise a particular charge. Then he says, if Lord Barrington should die before twenty years shall have expired, at all events the accumulation shall go on for twenty years, if that term shall be necessary in order to raise the money. Now, supposing that Lord Barrington had died within the twenty years after the death of the bishop, and that the money had not been raised, and that the remaining time to make up the twenty years from his death would have been insufficient to raise the whole, what would have happened? Why, that the fund, to whatever it amounted, would have been immediately available for such of the portions as could then be raised. He did not mean that 20,000*l.* 30,000*l.* or 40,000*l.* should be actually raised, but he meant that whatever sum could be raised within that period, should be a fund applicable, as far as it would go, to the payment of the portions. He then directs the portions to be paid when and as they respectively become payable; he directs this accumulation to go on during the life of Lord Barrington, unless the portions shall be sooner raised. It is a limitation, therefore, upon that period. If the portions could be sooner raised, then the accumulation was to cease. So in the case of the twenty years; supposing Lord Barrington to have died before the expiration of the term, the fund would have been accumulated for the remainder of it; but if the portions could be raised before its expiration, the proviso again fits itself, —joins itself to the second alternative, the twenty years would have ceased. In that, therefore, there is nothing to contravene or touch the Thellusson Act. It is a case not within the prohibition of the first section; it is a question simply of intention. The testator intended that whatever portions could be raised within the limit of his will, should be at once applicable to the payment of the fund. If 20,000*l.* or 30,000*l.* had become payable within the legal limit (as it has in point of fact), that sum would have been raiseable for the portions of the children. They would have taken their portions under this provision of the will, without touching the Thellusson Act. Lord Barrington has lived longer than the twenty years, and longer than the twenty-one years which brings the case as regards that into the Thellusson Act; 35,622*l.* only have been accumulated during the twenty-one years allowed by that Act; and the question is, what is to be the decision of the Court in regard to that state of circumstance? That that sum has been properly and legally raised, and is applicable to the portions, admits of no doubt; and the only question is, when it is applicable. I should say it was applicable to the portions, for the testator so says, when and as they become due and payable; therefore, as some are due and payable, and some may become due and payable, one would take for granted that that was the true construction; but the learned Vice-Chancellor says the portions cannot be payable during the life of Lord Barrington, because the intention of the testator was to accumulate during the whole of his lordship's life, and that as the 40,000*l.* cannot be raised according to the statute, and according to the will, within the life of Lord Barrington, the accumulation is stopped by the operation of the statute, and that as the event cannot happen by reason of the accumulation being so stopped, the fund must go in the direction pointed out by the statute, and cannot be applied to the payment of the portions. If that be the true construction of the will and of the statute, it defeats every intention which the testator had, and which he has clearly expressed, and expressed within the legal limit. The testator's intention was, that the lesser sum, if it could be raised within the period allowed by law, should be applicable at once. Can, therefore, the 35,622*l.* which have already been accumulated be now applied? The statute only stops the accumulation, and directs the application so long as the accumulation is directed contrary to the Act. What, therefore, we have to see is, what is the duration of time pending which the accumulation is directed contrary to the Act. It has been decided by *Griffiths* v. *Vere*, 9 Ves. 127, and by *Longdon* v. *Simson*, 12 Ves. 295, that although the directions are by the Act null and void, yet that they are only made null and void pro tanto. In the case of a life estate, it is good for twenty-one years if the life exceeds that term; if for twenty-four years, it is good for the twenty-one. There can be no doubt upon that point, because, although the statute says that it shall be null and void, it tells you that the fund shall only go over to the persons who would have been entitled, so long as the accumulation has been directed contrary to the intention of the Act. I cannot, therefore, see where the difficulty is in holding this to be at once a fund applicable, because, although the statute stops the accumulation, and directs that the interest shall go to the other parties during the time that the testator has contravened its provisions, yet it is not to go for any more time; and the contravention of the Act does not prevent you from measuring the time which is exceeded. Now what is the measure of time that is here exceeded? From the raising of the 35,622*l.* to the raising of 40,000*l.* as a measure of time, therefore, there is a perfect rule. The money has been accumulated; if it had not, I could have directed a computation, and there would have been no difficulty in ascertaining how far this Act of Parliament was contravened; it was contravened only so far as the time which elapsed between the accumulation of the 35,622*l.* and the 40,000*l.* If, then, the testator did not intend, as he clearly did not, that the accumulation should go on for the whole life of Lord Barrington if the portions could be sooner raised, and if the Act of Parliament steps in and cuts down the raising of that beyond the 35,622*l.* and if I give to the Act of Parliament its full operation, from the raising of the one to the raising of the other sum, I should just accomplish every intention which this testator had. That the law will enable me to carry into effect, and in doing so, I put a sensible, a sound, and rational construction upon the Act of Parliament. I give it its whole force without any strain or pressure. I take from it no operation which the words naturally and properly and legally give to it, and yet I give effect to the testator's intention. I am, therefore, clearly of opinion, with great deference, to a contrary authority, that as regards this first point, that the 35,622*l.* when and as soon as the 40,000*l.* were raised became a fund applicable in the first instance, to pay the portions of the children of Lord Barrington already payable, and would equally be a fund applicable for the payment of the rest of the portions when they became payable; in the meantime, of course, the interest of the fund would go according to the direction of the will to the residuary legatees. Then comes that very important question, what is the operation of the second section of the statute? Does that section or not include this particular case? Great difficulty has always been felt in putting a sound construction upon that section, and this is not the first time that I have had to consider it; it is very vaguely and very loosely expressed. The words are inaccurate, but they do not, I think, admit of very great doubt. The proviso is, "That nothing in this Act contained shall extend to any provision for payment of debts of any grantor, settlor, or devisor, or other person or persons, or to any provision for raising portions for any child or children of any grantor, settlor, or devisor, or any child or children of any person taking any interest under any such conveyance, settlement, or devise, or to any direction touching the produce of timber or wood upon any lands or tenements; but that all such provisions and directions shall and may be made and given, as if this Act had not passed." Now, in order to get at the true construction of this section, as it bears upon the present case, we must consider what the meaning of the former provision is. The Vice-Chancellor was of opinion that the words, "or other person or persons," having reference to the first section, did not mean that a testator or grantor could provide for the debts of anybody but himself, but it meant that "any other person or persons" might provide for his or their own debts; that is a conclusion to which I cannot come. I am of opinion that this is all one sentence. It is a praiseworthy thing to pay debts, but a man is not likely to provide gratuitously for the debts of any indifferent person. Sons have provided for the debts of their fathers, or, what more frequently happens, fathers for the debts of their sons. The Legislature meant that a man should, within the limit allowed by law, be able not only to provide for his own debts, but for the debts of such other persons as he should think fit; that is a power which it is not very dangerous to entrust to anybody. And, therefore, I think, upon the whole construction of the Act, as well as upon the real meaning and intention of the party, that it does relate to debts—to past debts; and as a man may, by his will, under this Act of Parliament provide generally for his debts, that must include his future debts. Now, that being so, one of the grounds upon which the learned Vice-Chancellor relied, is removed. The late Vice-Chancellor of England decided, in *Holford* v. *Staine*, 16 Sl. 488, that, by the words of the second section, only portions already charged were included. Now that it does include portions already charged is not only there decided, but nobody can doubt that a man has power to provide for portions which he has already created. What is more reasonable than that a man having settled his family estate, divided into portions for his younger children, should, if he live long enough to accumulate, by saving a considerable sum of money, provide for its release and disincumberment. As, therefore, regards "a grantor, settlor, or devisor," there is no doubt that the words include portions already created, as well as future portions; or else I should rather agree that the words, but for those "for raising portions," have regard more to future portions than to portions already created. There is no break in the clause; it is all governed by the words, "or to any provision for raising portions for any child or children of any grantor, settlor, or devisor, or any child or children," not again taking up "or any provision for raising portions" anew, but "of any person taking any interest under any such conveyance, settlement, or devise." I think, therefore, it is perfectly clear that whatever a "grantor, settlor, or devisor" may do with regard to his own children, he may do to the children of any other person as regards past or future portions. There is no distinction between them, except that the persons whose children may have portions provided for them by a "grantor, settlor, or devisor," must be persons who take an interest under "any such conveyance, settlement, or devise." Then the question arises upon which the whole depends, what is the meaning of the words "child or children of any person taking any interest under any such conveyance, settlement, or devise?" These words are very inaccurate, and it is difficult to find the antecedent to the words, "such conveyance, settlement, or devise." But as the first part of the section has spoken of a man making provision by a gift or a settlement or a devise, calling him a "grantor, settlor, or devisor," the mind of the framer must be supposed to have passed on to the instrument itself, by which "the grantor, settlor, or devisor," has made the provision. Now, taking that to be so, it was said by the learned judge in the court below, that the words "any such conveyance, settlement, or devise," make it necessary that the gift to the person who is to take an interest under the "conveyance, settlement, or devise," must be by the very clause which creates the portion. That is not, I think, a sensible construction. Only see what the effect of it would be, supposing it to be necessary under this clause that the parent should take an interest in the very property out of which portions are to be raised. If an estate for life be given to a person by the first part of the will, and then by the latter part portions are directed to be raised for his children out of that very estate; to say because the estate for life is found in one part, and a direction to raise the portions in another part of the will, that he did not take under the devise, would be a most violent construction, not warranted by the words, and clearly contrary to what must have been the intention of the Act of Parliament. Now there is no magic in the word "devise." A "devise" clearly means a disposition by will. The Act of Parliament stands as representing the instrument in which it is contained. If a man takes it under a conveyance, does it signify in what part he finds it? It cannot. If under a settlement, so long as he has an interest in that settlement? It cannot. If under a devise, can it possibly matter in what part of the instrument is found the particular interest which is created? It cannot matter. But then comes the question, what is the interest which a person whose children are to be provided for is to take under "any such conveyance, settlement, or devise?" The Vice-Chancellor has held that it must be an interest in the very property which is directed to be accumulated, or out of which that property is to spring. I can collect no such intention from the Act. Nothing could have been so easy as to have expressed the intention, if had actually existed. When Parliament intended to provide for a case of that sort, it speaks in the first section of persons "entitled to the rents and profits;" and speaking of the time which was allowed or beyond which there was a prohibition, it says it may be "during the minority or respective minorities of any person or persons who shall be living, or in ventre sa mère, at the time of the death of such grantor, devisor, or testator, or during the minority or respective minorities only of any person or persons who, under the uses or trusts of the deed, surrender, will, or other assurance directing such accumulations, would, for the time being, if of full age, be entitled unto the rents, issues, and profits, or the interest, dividends, or annual produce so directed to be accumulated." When, therefore, the Legislature meant to

provide for the case of a person being entitled to the actual fund, they knew how to express their intention. And therefore when I find in this section that it is not to prohibit any provision for "any child or children of any person taking an interest under any such conveyance, settlement, or devise," I am compelled to say that the Legislature meant what it has expressed,—that nobody's child should be provided for unless you give an interest to the parent. Is there anything irrational in that? Or does it require any emendation or addition in order to give effect to it? They were forced under this proviso to give some definition of the parents of the children, or else, as everybody is of course the child of somebody, you would have had it apply to the whole world. The Legislature said if, upon the face of your will, you make the father an object of your bounty, you may by that same will accumulate a fund within the limit allowed by law for his children; but we will not permit you to provide for anybody. It does not, and I will put the highest, exclude the case of a man having an estate for life in a property given to him by a will where the portions are directed to be raised out of that estate for his children. But does it only apply to that case? The expression is "any interest;" there is no limit as to amount; you are yourself to be the judge of the amount and of the extent of your bounty. If there be upon the face of a will an expression, an intention of bounty, and effect given to that intention by an absolute gift to a man, there you may provide for the children of that man portions by way of accumulation; that defines who are to be the children of "other persons." I think, therefore, that I do no violence to the words, and I do not carry them beyond their plain and natural import. The subjects of this country had a right by law to accumulate within the limits which are here left at large. It was considered dangerous that that limit should in all cases be allowed to remain; it was, therefore, restrained, restricted, cut down by the Act of Parliament; but the same Act of Parliament tells you the cases in which it should not apply: and then why am I to strain beyond the words of the Act of Parliament in order not to effect an intention (which I cannot collect), but in order to do something which may be considered consistent with the usual and common course of things. My opinion upon the whole of this Act of Parliament itself with reference to the settlement is, that this is a case within the exception, and therefore that these portions may be properly raiseable as being raised within the time limited by law independent of the statute. Now as to the authorities: I do not see that any of them bear very closely upon it; I have looked into the different cases that have been referred to. In the case of *Eyre* v. *Marsden*, 2 Ke. 564, the interest which the party was to take was held not to be within the proviso; the grantors children for whose benefit the accumulation was directed were not the children of any person who took an interest under the will, and Lord Langdale besides held that the accumulations were not for raising portions properly so called. Some of the children who took interests had small annuities given to them for life out of the fund. Now, independently of the reasons given there by Lord Langdale, I should have been clearly of opinion that if all the children of parents had been provided for by small annuities out of the fund, that that would have been a clear case within the proviso. In *Morgan* v. *Morgan*, in the 20th L. J. 441, Ch. before the Lord Justice Knight Bruce, there were specific legacies of considerable value given to a mother, and legacies to the daughters of 5,000*l.* each on their marriage, with all accumulations of interest thereon from the time of the testator's death, that was held not to be within the exceptions. There was a specific legacy to the mother, and general legacies to the daughters. I could not see the grounds of the learned judge's opinion in that case, but it does not, I think, at all affect the view I take of this case. Then Mr. Justice Bosanquet in the case of *Shaw* v. *Rhodes*, 1 M. & C. 135, before the Lords Commissioners, seemed to fancy that the gift was not within the exception, but I think he was looking there rather to what was a portion than to what was the nature of the interest of the father of the children. What he said in that case amounted to nothing more than an obiter dictum: I do not think he was giving any opinion as to what was a sufficient interest in the parent. Cases may arise in which, although an interest be given to the parent, and some provision afterwards made for the children, yet not be made in the way of portions, so as to bring them within the second exception: in the case before me they are clearly portions, and therefore I am relieved from troubling myself with those cases. Now, Lord Cottenham, in giving his judgment, does not even refer to the second exception. The case was undoubtedly within it; and, when it came on in the House of Lords, Lord Cottenham simply referred to what he had before said; but Lord Lyndhurst observed, that he thought "the meaning of an interest was 'any interest,' however minute." No opinion was given upon that point; but there is no doubt that the opinions of those two law lords were, that however small the sum was, if there was a gift to the parent of the children who were to have portions, that that was an interest; it did not signify so as to bring the case within the exception of the Act of Parliament. The case of *Jones* v. *Maggs*, 9 Hare, 345, was decided on the ground that the legacy was not a portion. I do not touch any of those cases, because this is a case clearly in which the sums provided are portions, and not mere legacies. Upon the whole, therefore, I think that this case is really untouched by any decisions to which I am bound to pay any real deference; independently of the opinion of the Court below. I have come certainly to the very clear conclusion that this case falls within the second exception of the Act of Parliament; that therefore the portions have been regularly and properly raised, and are therefore to be applied in the way in which the testator directed. I therefore shall declare that so much of the fund as is directed to be raised as can be properly now applied for payment of portions already directed to be raised must be paid in satisfaction of those charges, and as soon as other portions shall be directed to be raised, they must be applied in the same way; but, beyond that, the fund must take its course. It will be like a common legacy to provide for portions, not payable at the time, with a residuary gift; the interest from time to time of so much of the fund as is not required for the portions will go to the residuary legatees. I must, therefore, reverse the decision of the learned Vice-Chancellor, and make the declaration I have.

COURT OF APPEAL IN CHANCERY.

Reported by OWEN DAVIES TUDOR, Esq. of the Middle Temple, Barrister-at-Law.

MARTIN v. PYCROFT.

July 17, *Nov.* 15, 16, 25.

Specific performance—Statute of Frauds.

A. filed a claim for specific performance of a contract by B. C. and D. The claim stated that B. C. and D. had, by agreement in writing, contracted to demise a public-house to A. for a particular term, and at a certain rent. A. at the same time agreed, by parol, to pay B. C. and D. a premium of 200*l. A. by his claim, asked for a lease, offering thereby to pay the premium according to the parol agreement:*

Held, overruling the decision of the Court below, that the Statute of Frauds was no objection to specific performance being decreed.

An objection to specific performance of the agreement was also raised, on the ground of there having been fraud and misrepresentation used on the part of the plaintiff to obtain the agreement, but upon the cause standing over for the oral examination of witnesses, the allegation of fraud and misrepresentation being disproved, specific performance was decreed.

By a lease dated in November 1831, Miss Elizabeth Pycroft, in consideration of a premium of 200*l.* demised to Mr. Charles Calvert, a London brewer, two messuages adjoining to each other, situate in Chichester-rents, Chancery-lane, for the term of twenty-one years from Michaelmas 1831, if Miss Pycroft and one William West, or either of them, should so long live, at the yearly rent of 70*l.* and under certain covenants on the lessee's part; one of which was the laying out and expending within one year from November 1831, in well and substantially repairing the demised premises, and making alterations and improvements therein, the full sum of 200*l.* under and subject to the inspection, approval, and value of a surveyor to be appointed by the lessor, her heirs or assigns. The lease contained, besides, a covenant of the ordinary kind, on the lessee's part, to repair and keep in repair. The demised property, or the chief part of it, was then and has ever since been used as an ale-house or a public-house.

Mr. Calvert, in April 1832, by a deed of that date, in consideration of a premium of 200*l.* demised the whole of the property to the plaintiff, Mr. William Martin, for the term of twenty-one years, wanting two days, from Michaelmas, 1831, if Miss Pycroft and William West, or either of them, should so long live, at the yearly rent of 70*l.* and under certain covenants on the lessee's part, including covenants between the plaintiff and Mr. Calvert, substantially, though not precisely, agreeing with those between Mr. Calvert and Miss Pycroft, contained in the lease of 1831.

The plaintiff, ever since the lease of 1832, and still is, the occupying tenant of the demised property under that lease. The cause was argued, and the case treated on the basis of both leases being still on foot, and were so considered by the Court. The estate and interest of Miss Pycroft became vested, at some time previously to August 1849, in three persons, called Joseph Pycroft, James Pycroft, and John Winter Pycroft, of whom the first and the last were defendants. James Pycroft being dead, his interest was represented by the defendant, Mr. Holmes.

An agreement dated the 1st of August, 1849, and signed by Messrs. James Pycroft, J. W. Pycroft, and Joseph Pycroft, was in the following terms:—"The said James Pycroft, J. W. Pycroft, and Joseph Pycroft, severally agree with the said William Martin, at any time hereafter, at his request, costs, and charges, by a good and sufficient deed, to demise and lease the messuage or tenement known by the name of 'The Ship Ale-house,' together with the messuage or tenement adjoining thereto, formerly used as a coffee-house, both situated in Chichester-rents aforesaid, with the appurtenances thereto belonging (as the same are now in the occupation of the said William Martin, for the term of twenty-one years wanting two days), from the expiration of the said lease under which the said William Martin holds the same, viz. from the 27th of September, 1852, at the yearly rent of 70*l.* payable quarterly, and under and subject to such and the same covenants, clauses, and agreements as are contained in the lease under which the said William Martin now holds the said premises."

Mr. Martin filed a claim for a specific performance of the agreement, which, after stating the lease from Miss Pycroft to Calvert, the lease from Calvert to Martin, and the agreement, contained the following statement:—"That it was agreed between the parties that 200*l.* should be paid by W. Martin as a premium, in consideration of the lease." The claim asked, that on payment of 200*l.* by Martin, by way of premium, which payment he was ready and willing and offered to make, a lease might be granted to him according to the terms of the agreement. On the claim coming on to be heard before Vice-Chancellor Parker, his honour dismissed the claim upon the ground that a material part of the agreement, viz. to pay 200*l.* premium, had been omitted from the *written* agreement, and that he could not, without acting in contravention to the Statute of Frauds, decree specific performance.

From this decision the plaintiff now appealed. In addition to the objection arising out of the Statute of Frauds, the defendant also insisted that the agreement had been unfairly obtained.

Daniel and *Dauney*, for the appellant.

Malins and *W. R. Ellis*, for the respondent.

Daniel, in reply.

Lord Justice KNIGHT BRUCE.—The present suit is for the specific performance of this contract or contracts, to which ex facie there seems no objection, nor has any objection, but the two I am about to state, been suggested,—one being, that the plaintiff obtained the agreement unfairly, the other that the writing does not, as the defendants allege, contain all the terms to which verbally the parties to it have agreed,—a point arising or suggested in this way. The defendants contend, and the plaintiff admits, that the true and real bargain between him and the three Pycrofts was for a lease to be granted in consideration of a premium of 200*l.* which should contain, among its convenants, a covenant on the lessee's part to lay out 200*l.* besides, in a manner analogous to the covenant for laying out 200*l.* in the lease of 1832. But the defendants say, that the written agreement does not provide for these terms, a point which the plaintiff says is immaterial, because he is willing, and submits that the written agreement may be construed and shall be performed according to the true and real bargain. Now the first question that here arises seems to be whether there is a case of latent ambiguity? For patent ambiguity there is not, since the agreement on the face of it is a contract intelligible, clear, and complete in all its terms. We think that there is no latent ambiguity, for the evidence before the Court does not, in our judgment, render it impossible to construe the writing satisfactorily. The true interpretation of the writing we conceive to be that the premium is excluded, but that the covenant to lay out the 200*l.* is included. Then comes, however, the question of the true and real bargain, independent of the point which the defendants make of the mere construction of the writing, and we conceive that had the plaintiff brought an action against the three Pycrofts upon the written agreement, and they had defended themselves at law on the ground merely of the fact now in evidence, with or without the aid of any statute or statutes, the plaintiff must have recovered, at least if his case ought to be considered free from fraud. The law prohibits generally, if not universally, the introduction of parol evidence to add to a written agreement, whether respecting or not respecting land, or to vary it. How can a man say that a written contract shall be deemed bad at law for omitting a term verbally agreed upon? We exclude cases of fraud. It is said that the three Pycrofts, if plaintiffs, could not have compelled the actual plaintiff, as a defendant, to pay the premium of 200*l.* If it is so, this, we apprehend, does by no means dispose of the controversy. It happens very frequently that plaintiffs obtain decrees for specific performance of agreements, the specific performance

of which could not have been compelled against them as defendants. Here the actual plaintiff, objecting to be subjected to either sum of 200*l.* would probably have barred himself from relief in equity. But he does not so object, he has never so objected; and our opinion is, that where persons sign a written agreement upon a subject, obnoxious or not obnoxious to the statute which has been so particularly referred to, and there has been no circumvention, no fraud, nor (in the sense in which the term mistake must be considered as used for this purpose) mistake, the written agreement binds at law and in equity, according to its terms, although verbally a provision was agreed to which has not been inserted in the document, subject to this, that either of the parties sued in Equity upon it may probably be entitled in general to ask the Court to be neutral, unless the plaintiff will consent to the performance of the omitted term. The present case appears to us to come under this rule; so that, in our judgment, the only substantial dispute turns on the defendant's allegation that the agreement was obtained unfairly or under circumstances that a Court of Equity must deem unfair. On this point the case of Joseph Pycroft fails completely, and in a manner not by any means creditable to him, an opinion that we should probably have held even if the receipt of February 1851 had not existed. He can only defend himself, if at all, under such case, if any, as the other defendants, or one of them, ought to be considered as having; and with regard to this part of the controversy we are not satisfied the plaintiff is right. Supposing it to stand merely on the present evidence, we consider the balance of testimony, having regard not merely to all that the plaintiff deposes, but to what he might, if his case is unassailable, have deposed, to be in favour of the proposition, that on the occasion of the agreement being signed by James Pycroft and John Winter Pycroft, but before either of them signed it, the plaintiff made a material representation to one or both as to the approval of the substance of the bargain of Mr. Bischoff, and his participation in the matter, that went beyond—materially beyond—an exact and correct representation on that subject, and that by this James Pycroft and John Winter Pycroft might have been, and were affected and influenced in their conduct. Assuming the true state of things to have been so, we conceive the claim must be dismissed, though, under all the circumstances, as we do not impute dishonest intention to the plaintiff, without costs, if dismissed now. If, however, he shall desire an inquiry, under which the persons who have made affidavits may be orally examined before the Master, or in Michaelmas Term, before ourselves, he may have it, and the inquiry in this event must substantially be, whether the signatures or signature of James Pycroft and John Winter Pycroft, or either of them, to the agreement, were or was obtained by means of any and what untrue representation made by the plaintiff, and also under what circumstances the agreement was signed by James Pycroft and John Winter Pycroft respectively. The possession must, pending the investigation, not be disturbed by the defendants, the plaintiff undertaking to abide by and perform any order respecting that possession respecting rent, and otherwise respecting the property which the Court may make. Of course all the deponents will be expressly made orally examinable generally, and the Master will be enabled to state any circumstances specially; but liberty may be taken to apply to prosecute the inquiry before us at a time when we shall clearly, by law, be enabled to take it, and the costs will be reserved.

Nov. 15, 16, *and* 25.—The plaintiff having elected to have the witnesses orally examined before the Court, the examination took place during Michaelmas Term, and specific performance of the agreement, as asked for by the claim, was decreed.

ROLLS COURT.

Reported by J. Macaulay, Esq. of the Inner Temple, Barrister-at-Law.

Friday, Nov. 19.

Ex parte Mathews.

Practice—Change of name of attorney—Alteration of the Rolls of the Court.

Bevan moved on behalf of Mr. Mathews, a solicitor of the court, who had taken the name of Chamberlain, to have his name altered on the Rolls, and in support of the application he cited *Ex parte Moses*, 19 L. J., N. S. 345, Q.B.; and *Re Dearden*, 20 L. J., N. S. 80, Ex.

The Master of the Rolls granted the motion.

Everett *v.* Belding.

Practice—Receiver—Occupation rent—Owner of estate—Reference to Master—Attornment.

The owner of an estate subject to charges was made a defendant to the suit in respect thereof, was compelled to attorn to a receiver appointed in the cause, and a reference was directed to the Master to fix an occupation rent.

In this case the suit was instituted in reference to an estate, subject to certain charges, of which the defendant was owner, and now in possession. A receiver had been appointed in the cause, and all the tenants on the estate had attorned; but the owner, himself the occupant of part, refused to attorn or deliver up possession to the receiver.

Morris now moved that the owner, upon whom notice had been served, should deliver up possession, and that it might be referred to the Master to fix an occupation rent. He cited *Griffith* v. *Griffith*, 2 Ves. 400, in support of the first point.

The defendant was served with notice of the motion, but did not appear.

The Master of the Rolls said he would make the order that the defendant do attorn, and would refer it to the Master to fix an occupation rent.

Booth *v.* Tomlinson.

Nov. 19 *and* 22.

Evidence—Examination of defendant vivâ voce—New practice—Stats. 15 & 16 *Vict. cc.* 80, 86.

The Court has no power under the stats. 15 & 16 *Vict. c.* 80, *and* 15 & 16 *Vict. c.* 86, *to order the examination of a defendant vivâ voce in a suit already at issue.*

Lloyd and *H. Clarke* in this case applied to the Court, on behalf of the plaintiff, to examine a defendant vivâ voce before the Master. The cause was at issue before the stats. 15 and 16 Vict. c. 80, and 15 & 16 Vict. c. 86, came into operation, and a decree had been made directing a reference to the Master to examine the defendant on interrogatories. But notwithstanding this reference, it was contended, on the other side, that the stat. 15 & 16 Vict. c. 86, ss. 39 and 40, the 15 & 16 Vict. c. 80, ss. 7, 29, 30, and 36, gave the Court no power to direct an examination vivâ voce. *Cahill* v. *Cooper*, 16 Jur. 969, was cited.

Follett and *Kinglake*, for the defendant, insisted that the cause being at issue, the Acts did not apply to the case, and to grant this application would be to vary a decree upon motion.

The Master of the Rolls having consulted with the other judges, intimated that he was of opinion that the powers conferred by the Act to examine parties vivâ voce did not apply to cases where the cause was in the Master's office before the Acts came into operation, and that, therefore, he could not make the order asked.

Wednesday, Nov. 26.

Re Martin's Estate.

Practice—Certificate of conveyancing counsel under the new Acts—Investment of purchase-money under Lands Clauses Consolidation Act.

On an application to the Court to direct inquiries as to the title of lands in which it was proposed to invest purchase-money of other lands under the provisions of the Lands Clauses Consolidation Act, the Court merely approves of the purchase; and allows the rest of the petition to stand over to obtain a certificate of one of the conveyancing counsel appointed under the new Acts as to the title and an affidavit of the verification of title.

The Court makes no order as to the particular conveyancer to whom the title shall be referred.

The petition in this case was presented under the provisions of the Lands Clauses Consolidation Act for a re-investment of a sum of money which had been paid into Court by the trustees of Greenwich Hospital. The petition was presented by the tenant for life of the property taken by the Hospital under their acts, and of course was entitled to the interest of the purchase-money, and a contract having been made for the purchase of certain freehold houses on which to re-invest it. The petition prayed that proper inquiries might be made as to the title of the estate proposed to be purchased, and that upon the certificate of one of the conveyancing counsel to whom the reference should be made the purchase-money should be paid to the vendor, and the estate conveyed upon the trusts of the settlement of the lands taken by the Hospital.

Hobhouse for the petitioner.

R. Pryor for the trustees of the Hospital.

The Master of the Rolls.—The only order I can make now is to approve of the estate proposed to be purchased and settled so far as regards its value and the propriety of the purchase and investment; but the rest of the petition must stand over till the petitioner can obtain a certificate from one of the conveyancing counsel as to the title, and an affidavit of the verification of the title must also be produced. The Court can make no order as to the particular conveyancer to whom the title should be referred; but perhaps it might be such of them as had less business than others if despatch were required.

VICE-CHANCELLOR TURNER'S COURT.

Reported by J. Henry Cooke, Esq. Barrister-at-Law.

Nov. 20, 22, 24, *and Dec.* 11, 1851, *and April* 29, 1852.

Hughes *v.* Wells.

Defective execution of power—Separate use—Husband and wife—Escheat.

Money due on mortgage and in the funds, the property of a lady, was settled on her marriage for such purposes as she should, with her husband's consent, and during their joint lives, by deed attested by two witnesses, appoint, and after her death as she should by will appoint, and subject thereto to her for life, for her separate use, without power of anticipation, with certain trusts over. Very soon after the marriage, the husband, by his will, gave all his real and personal estate to his wife, and appointed her sole executrix. The trustees never acted, and the funds were never transferred to them, but remained in the lady's name. She executed powers of attorney attested, in the common form, by two witnesses, under which part of the funds were sold out, and the produce paid to the husband's bankers to his account. The mortgage money was paid in the same manner. There was thus about 8,000*l. placed in the name of the husband. All cheques for the expenses of the establishment were drawn, at the written request of the wife, by the husband on her London bankers, out of moneys standing to her separate account. The husband permitted a legacy of* 20,000*l. given to his wife to be paid to her separate account at his bankers. Eleven years after the marriage, the husband, at his wife's request, bought an estate of the tenure of ancient demesne, and the same was conveyed to him to the ordinary uses to bar dower. The husband died without leaving an heir-at-law, and the lord of the fee claimed the estate by escheat. The surviving trustee of the settlement filed a bill against the parties, claiming, under the lord, to establish a lien on the estate for the amount of the purchase money:*

Held, that the power was not well exercised by the wife by means of the powers of attorney, nor was there any such defective execution of the power which a Court of Equity could aid, so far as related to the money invested in the purchase of the estate; but that, so far as related to the money expended by the husband in keeping up the establishment, there was a defective appointment, which the Court could aid: and it was also

Held, that the estate was subject to the lien of the trustee, to the extent of the purchase money in the hands of the lord of the fee claiming by escheat.

In April 1815, in contemplation of a marriage then intended, and soon afterwards solemnised between Admiral Sir John Wells and Miss Dealtry, all her real estate was settled on herself, him, and the issue. At the same time, a settlement of her personal estate, 25,000*l.* in stock and money on mortgage, &c. &c. was assigned to three trustees, upon trust for such persons, for such estates as Lady Wells (then Miss Dealtry) should, by and with Sir John Wells's approbation, notwithstanding her coverture, during the joint lives of herself and her husband, and after his decease, as she should by any deed or deeds, writing or writings, to be sealed and delivered by her in the presence of, and attested by two or more credible witnesses, direct, limit, or appoint, and subject to such appointment upon trust for the separate use of Lady Wells for life, without power of anticipation; and after her decease, upon trust for such persons as she should appoint by will; and, in default of appointment, for her next of kin, exclusively of her husband. The deed contained powers of alteration and variation of securities, but no power to lay out the trust moneys on land. The marriage took place, but there never was any issue. The funds never were transferred into the names of the trustees, and these individuals never acted. Before the marriage Lady Wells had a separate banking account with Messrs. Smith, Payne, and Smiths; and after the marriage the same was kept open in her new name. The rents and profits of her real property, and the interest and dividends of her personal estate, were paid into their account. Sir John Wells's only income or property was his half-pay, and during the marriage he did not make any savings. The husband and wife lived at Cuckfield, in Sussex, where they opened an account in the name of Sir John with Messrs. Harley and Co. at Lewes, and the same was kept open till Sir John's death. In November 1815 Sir John made his will, by which he gave all his property to his wife, and made her sole executrix. In 1817 a legacy of 2,900*l.* Consols was bequeathed to Lady Wells, which Sir John declined to receive, and the sum was, with his sanction, transferred into her name, and the dividends were received by Messrs. Smith, Payne, and Smiths,

under a power of attorney, and carried to her separate account in their books. Lady Wells gave a written authority to them to honour Sir John's cheques out of her account, and from the date of that authority, October 1815, all the money paid to the bank of Harley and Co. was so paid by cheques drawn by Sir John on Smith, Payne, and Smiths, and all the expenses of the establishment were paid by cheques drawn by him on Harley and Co. paid out of the money so paid in. In January 1820, 500*l.* Consols, part of the 2,000*l.* legacy, was sold out, and the money was placed to her separate account with the London bankers. Soon afterwards the greater part of it was drawn out by Sir John, and lent by him, and subsequently the money was repaid to him. In January 1821 another 500*l.* Consols was sold out, and the produce was applied to the general purposes of Sir John and Lady Wells. In July 1821, a large portion of the personalty included in the settlement of 19th April, 1815, was transferred into the name of Sir John, and by this means and subsequent purchases there was, in the year 1824, standing in the name of Sir John, a sum of 7,436*l.* 19s. 7d. Consols, and 1,050*l.* Four per Cent. Bank Annuities. The dividends on these sums were always carried to the before-mentioned separate account of Lady Wells with Smith, Payne, and Smiths. In October 1825 Sir John Wells, with the concurrence of Lady Wells, contracted for the purchase of the Bolmore estate, for the sum of 5,500*l.* which purchase was ultimately completed, the deposit and whole consideration money being clearly traced to have proceeded from Lady Wells's separate estate; but the conveyance (dated 17th and 18th March, 1826) was to Sir John Wells, to the usual uses to bar dower; and the Bolmore estate, being subject to a lease, Sir John, with the concurrence of Lady Wells, bought up the tenant's interest for 1,000*l.* and his stock, &c. at 826*l.* more, and entered and commenced a series of extensive improvements on the mansion house and premises. All this expenditure was clearly proved, by means of the cheques and the bankers' books, to have been defrayed out of the principal moneys comprised in the settlement of 19th April, 1815, and other moneys derived from a sale of the real property, included in the settlement of realty of the same date.

The bill was filed by the Rev. C. W. Hughes, the surviving trustee of the settlement, against Lady Wells and the persons claiming under the lord of the fee by escheat, to establish a lien on the Bolmore estate for the amount laid out in its purchase and improvements, and for the recovery of such other part of the trust estate as had come to the hands of Sir John Wells. In January 1811 an order was made directing inquiries. Lady Wells died in April following, having by will given all her property, both real and personal, to her sister, Elizabeth Dealtry, whom she appointed sole executrix. Elizabeth Dealtry died in July following, never having proved her sister's will, but having appointed Mr. Beard, who was made a party to the suit, her executor, and who also took out letters of administration with the will annexed of Lady Wells.

Bethell and *Prior*, for the plaintiff.

Follett and *Karslake*, for the representative of Lady Wells.

Rolt, *Campbell*, and *Selwyn*, for the parties claiming the estate by escheat.

The arguments are sufficiently noticed in the judgment.

The cases cited were,—*Cocker* v. *Quayle*, 1 R. & M. 535; *Hopkins* v. *Myall*, 2 R. & M. 86; *Reith* v. *Seymour*, 4 Russ. 253; *Irwin* v. *Farrar*, 19 Ves. 86; *Rowe* v. *Rowe*, 2 De G. & S. 294; 12 Jur. 909; *Brookman* v. *Hales*, 2 Ves. & B. 45, as to the effect of the power of attorney. *Lane* v. *Dighton*, 1 Ambl. 409; *Lench* v. *Lench*, 10 Ves. 511, as to following trust moneys into land. *Lewis* v. *Maddocks*, 17 Ves. 56, as to improvements. *Viscount Downe* v. *Morris*, 3 Ha. 394; 8 Jur. 486; *Evans* v. *Brown*, 5 Beav. 114; *Rogers* v. *Maule*, 1 Y. & C. C. C. 4; Sugd. Pow. 6th edit. 438, 450; *Boughton* v. *Sandilands*, 3 Tau. 342; *Dunning* v. *Henderson*, 2 Coll. 380; *Price* v. *Price*, 15 Sim. 484.

The following cases were cited by the defendants, the parties claiming by escheat:—Sugd. Pow. 96; *Pollard* v. *Greenville*, 1 Cha. Ca. 10; *Martin* v. *Mitchell*, 2 Jac. & W. 413; *Stead* v. *Nelson*, 2 Beav. 245; *Barford* v. *Street*, 16 Ves. 135; *Nail* v. *Punter*, 5 Sim. 555; Godbolt, No. 419, *Anon.* 327; *Pawlett* v. *Delaval*, 2 Ves. sen. 663; *Caton* v. *Ridout*, 1 Macn. & Gord. 599; *Beresford* v. *Archbishop of Armagh*, 13 Sim. 643; 8 Jur. 262; *Bartlett* v. *Gillard*, 3 Russ. 149; *Earl of Kinnoul* v. *Money*, 3 Swanst. 208; *Moodie* v. *Reid*, 1 Madd. 516.

Thursday, April 29.—The VICE-CHANCELLOR.—In this case the original bill was filed in the lifetime of Lady Wells against her and the parties interested by escheat. Lady Wells died, and by her will (which was so executed and attested as to be a good execution of the power in the settlement of the 19th April, 1815), reciting the settlement and the power, and expressly in exercise and execution of that power, she gave, devised, bequeathed, directed, and appointed that all her estate, legal or equitable, in the premises at Bolmore, and all right, claim, &c. either at law or in equity in or upon the same, and all the furniture, plate, books, &c. and all the stocks, funds, and personal estate belonging to her at the time of her marriage, and comprised in the said settlement, and all securities in or upon the same, or any part thereof, might be invested at the time of her decease, should go, remain, and be to and to and for the use and behoof of her sister, Elizabeth Dealtry, her heirs, executors, administrators, and assigns *for ever*; and she also gave to her sister, Elizabeth Dealtry, all the residue of her personal estate not comprised in the said indenture of settlement of the 19th of April, 1815. She therefore, by her will, dealt with the power as if the trust funds had never been sold out, and as if they were still standing in the names of the trustees of that settlement. Lady Wells left her sister Elizabeth her heiress-at law; and her sister's interests are all represented by the defendant Beard. The plaintiff's case is supported by Beard, and opposed by the other defendants. The first objection which was taken was to the right to maintain the suit at all. It was urged that the trustees of the original settlement of the 19th of April, 1815, never acted, and that it was not competent for them, or rather for the personal representative of the survivor of them, now to sue. But the object of the bill is to recover certain trust funds which were comprised in the settlement, to recover them as against the estate of Sir John Wells, and therefore, to justify this ground of opposition, independent of the rights acquired by those claiming under the settlement against Sir Jonn and his estate, the defendant must shew that the trusts of the settlement are determined; for, if they are not determined, then this plaintiff not merely is entitled, but is bound to sue. I am of opinion that the trusts are not at an end; and it is therefore necessary to go into the case on its merits. Three points of defence were raised in the argument to defeat the claim of the trustees to come upon the estate of Sir John. First, whether Lady Wells ever made a perfect appointment of any part of the trust fund in favour of Sir John. Secondly, whether she had power to make, and did make, any effectual disposition or appointment, not being a perfect appointment in favour of Sir John. And thirdly, whether any portion of the funds not well appointed or disposed of can be recovered from the lord of the fee. On the first point it was contended by the defendants that the power of appointment was perfectly executed by the powers of attorney for the transfer of stock, and the transfers made on them, and the assignment and release of the mortgage debt due to Lady Wells. But I am of opinion that that was no perfect execution of the power. Two things are evidently necessary for the perfect execution of a power, the observance of due formalities, and the presence of an intention to exercise the power by the particular Act. This appears from the very nature of powers; unless in pursuance of the authority, the Act is no execution of the authority, and it cannot be in execution of the authority unless it be the intention of the donee of the power that it should be so. As in the case of a conveyance by a person having a power coupled with an interest, if there be no intention to exercise the power, then the deed will take effect out of the interest, but if there be an intention, and it cannot take effect out of the interest, then it will take effect under the power. Now if we look at the acts done, and alleged to be an exercise of the power, we find that the powers of attorney are under the hand and seal of Lady Wells, and with the concurrence of Sir John. But these merely amount to authorisations to the bankers to assign and transfer certain sums of stock into the name of Sir John Wells: they are "authorities," not "directions," to do what she could have done, if present, without their intervention. But it is from directions and not from a mere authority that the intention to exercise the power must flow, and therefore the formalities must apply to the instrument containing the direction, and I therefore think that for anything contained in these powers of attorney the power of appointment still subsists. The transfers do not alter the nature of the instruments. In fact, to treat these powers of attorney as executions of the power in the settlement, would be to turn instruments of substitution into instruments of alienation. The case as to the mortgage is not different. It was a mere receipt for the mortgage money upon a transfer by Sir John and Lady Wells of the security. It had no operation as between them. There is an absence of all direct evidence of intention as to whether these instruments should operate as executions of the power. We must gather the intention, if possible, from the acts and circumstances of the parties. It is said that they were living fully up to or beyond their income, and that by an exercise of this power only could they be extricated from difficulty. But, on that supposition, it is most strange that there is no formal execution of the power. The bulk of the property was transferred into the name of Sir John in 1821, and it is not alleged that there was at that time any intention to deal with it, and in fact it was not dealt with until 1825. The income of all the settled property, on the other hand, was all carried to Sir John; and then we have his declarations and statements as to its continuing his wife's separate estate, notwithstanding the management and control being placed in his hands. These were transactions between husband and wife; and in such transactions, where it is intended to set up a gift from the wife to the husband, the evidence should be clear and unmistakeable. In the present case I cannot persuade myself that these instruments either were or were intended to be an exercise of the powers in the settlement. It was next contended that the wife had power to make and did make a gift to Sir John by some other means than a perfect exercise of her power of appointment in his favour, and that was rested on two grounds; first, because, having a life estate coupled with an absolute power of appointment, and the limitation being to her absolutely in default of any exercise of that power, this was equivalent to an absolute estate, and she was therefore capable of giving, and did give, the fund to Sir John; and secondly, it was argued that there was, at all events, such a defective exercise of the power of appointment as would be aided by a Court of Equity. The defendants argued that Lady Wells had, during the joint lives of herself and husband, a power of appointment not restrained by any formalities. But on reading the words of the clause containing the power to throw out the words, "by any deed or writing signed by her, &c." from all application to the power given her during the joint lives of herself and her husband, would be a most forced construction of the settlement. The main object of marriage settlements in general, and it might be said of this settlement in particular, is to throw the protection of formalities around the wife's interest during the coverture. But this construction would leave the wife's interest exposed to alienation by even a parol appointment during the coverture, while, immediately the coverture was at an end, Lady Wells would not be able to appoint, except by a writing under hand and seal, and attested by two witnesses, imposing cumbersome formalities, precisely when they ceased to be necessary, and omitting those formalities when they would be a useful security to the wife. Besides, a construction would be very unreasonable which required the consent of Sir John, under his hand and seal, to a parol appointment of his wife. These formalities, then, in my opinion, attaching as well to an exercise of the power in the lifetime of her husband as after his decease, is it the case that her life estate, coupled with such a power, amounts to an absolute interest, and that she had power to give, and did give, the fund to Sir John? *Barford* v. *Street*, 16 Ves. 135, and the expressions of Sir Wm. Grant, there were quoted by the defendants to shew that this was so. But in that case the power had been exercised; and the only question was, whether the instrument creating the power warranted the instrument by which it was executed; and Sir Wm. Grant's observations were in answer to the argument that the directions in the codicil in that case were inconsistent with the notion of absolute property in the donee of the power. Then *Irwin* v. *Farrer*, *Holloway* v. *Clarkson*, 2 Ha. 523, and the observations of Sir John Leach in *Keith* v. *Seymour*, were cited. But in these cases no formalities whatever were required for the exercise of the power; and they do not decide that a life estate, coupled with a power, is the same thing with an absolute estate; but only that where no formality is required for the execution of the power, any act is sufficient which shews the intention; as in *Irwin* v. *Farrer*, where the mere filing of the bill by the legatee to have the fund transferred into her own name, was held a sufficient appointment in her own favour. But some act sufficiently indicative of the intention must be done. I think, therefore, that Lady Wells could not convey this fund, except by a perfect appointment under the power. Is there, however, such a defective appointment as this Court will aid? This point was almost entirely argued upon the ground of a defective execution in favour of Sir John Wells. But the husband is not one of the favoured objects in whose behalf a Court of Equity will interfere. *Moodie* v. *Reid* decided the contrary. But it was said that Sir John must be treated as a purchaser, and this was put on the consideration of the expensive establishment which he maintained, and his abstaining from appropriating the legacy of 2,000*l.* But I apprehend that in order to establish the character of purchaser, in whose favour a defective execution will be assisted in equity, two things must be clearly shewn—either proved or to be presumed—the consideration and the intention. Expenditure, however lavish, of a wife's property by her husband, does not, I think, constitute any consideration to the wife for a purchase for the benefit of the husband with her money; and though the giving up of a legacy which was given to

the wife might, under some circumstances, constitute a consideration moving from the husband, yet it could not prove any intention to purchase; nor could it lead to the presumption of any such intention, under the circumstances of the present case; and even if it could do so under any circumstances, yet in the present case, the express finding of the Master, that it was not so treated by the parties, negatives the existence of any such intention. On this ground alone, then, of a defective execution in favour of Sir John Wells, it would be difficult to maintain that Sir John took an absolute estate in the lands for his own benefit. But, independently of any appointment in favour of Sir John, I think that there is in some degree a case of a defective appointment, which a Court of Equity should aid. It cannot, I think, be said that there was any defective appointment by Lady Wells in her own favour, which the Court could aid. The powers of attorney, transfers, and assignments executed by her were not and could not be defective appointments of this description,—there was not the remotest intention on her part that they should be so. The proceeds of the funds so transferred and assigned were carried to the separate account of Lady Wells, and it was therefore to be inferred that they were considered to be affected by some trust for her separate use. But no such trust existed except the trust created by the settlement; and it cannot, therefore, be presumed that there was an intention to execute the power, and thus take the funds wholly out of the trust. And again, it is difficult to say that in the case of the exercise of the power by Lady Wells, in her own favour, there could be any such consideration as could call into action the power of this Court to aid a defective execution, there being no consideration moving to her from any other person. I think, therefore, that the proceeds of these funds, after they were placed to Lady Wells's account with Smith, Payne, and Smiths, must be considered to have remained subject to the trusts of the settlement; but these proceeds, after they had been placed to Lady Wells's account, were, in so far as they were not disposed of in the purchase of the Bolmore estate, and of the lease of that estate, and in improvements upon it, applied to other purposes; and, upon the facts found in this report, must, I think, be taken to have been applied to those purposes, and principally for the current purposes of the establishment, by the order and direction of Lady Wells, Sir John Wells being her agent in the application of them. And taking this to have been the case, I think that, as to the moneys so applied, it must be considered that there was a defective appointment, which ought to be aided by this Court. Lady Wells had the absolute power over the funds. She could not be justified in applying them to such purposes otherwise than by an exercise of her power; and she received a consideration for so applying them. For although the maintenance of the establishment by a husband would be no consideration for a purchase by him from his wife, it cannot, I think, be said, that if a wife thinks proper to keep up an expensive establishment against the wishes of her husband, by means of her separate estate, what was supplied for the establishment would be no consideration to her for payments to be made out of her estate on that account. If the trust funds had been transferred to the trustees, and Lady Wells had directed the trustees to apply them in payment of her debts, and they had been so applied, such an application of them must, I think, have been supported in equity in favour of the persons to whom the payments were made, and of the trustees, if attempted to be charged in respect of these payments; and the funds having remained in her name, subject to the trusts, the same rule must, I think, be considered to apply to them as would have applied to them if they had been transferred. The case of *Routledge* v. *Derrill*, 2 Ves. jun. 357, supports this view. In that case, some of the funds subject to the power were, by the direction of the donee, not, as it would appear accompanied by the prescribed formalities, transferred to an object of the power, and no doubt seems to have been entertained that the power was well exercised as to the funds so transferred. I am of opinion, therefore, that as to so much of the trust funds as were applied otherwise than in the purchase of the Bolmore estate, and of the lease of that estate, and of the improvements upon it, it must be held that they were well appointed and disposed of in equity, and that the plaintiff can maintain no claim in respect of them; but as to the moneys laid out in the purchases and improvements, I think the case is different. These moneys were derived from the trust; they must continue subject to it unless they were well alienated from it; they could not be so alienated otherwise than by an exercise of the power. There was no perfect execution of it, and as to these moneys, no consideration to aid a defective execution of it; and if there was a power to give them to Sir J. Wells, there was no gift of them to him. I think, therefore, that they must be held to have remained subject to the trusts of the settlement; and that the plaintiff must be held to have the right to recover them if they are at all recoverable, which depends upon the third point,—the right against the lords of the fee. Before, however, adverting to this point, it may be right that I should observe upon another most important question which was discussed in the argument of this case, viz. to what extent, if at all, the estate of Lady Wells could be affected by her acts and conduct. It was argued on the part of the defendants, that where a married woman, with a power of appointment over trust funds, has permitted those funds to be received by her husband, neither she nor her appointee could afterwards recal them; and, on the other hand, it was insisted on the part of the plaintiff that the right of the wife's appointee could be defeated only by a previous exercise of the power, modo et formâ, prescribed by the instrument creating it. I am not prepared to adopt either of these arguments to the full extent to which it was carried. The argument on the part of the plaintiff, if adopted to the full extent, would, I think, go far to contradict what was said by Lord Hardwicke in *Ryder* v. *Bickerton*, 3 Swans. 80 n.; and by Lord Eldon in *Lord Montfort* v. *Lord Cadogan*, 2 Mer. 3. Those cases, I think, shew that in the opinion of both those most eminent judges, the rights of married women might be barred, and their estates affected by active participation in breaches of trust; and if so, it would seem to follow that when their powers have been exercised, by which the trust-funds become their assets, they must be liable for those breaches of trust. But, on the other hand, to hold that the fact of a married woman having permitted her husband to receive the trust funds would preclude any right to relief by her or her appointee, would be to defeat the very purpose for which the trust was created, viz. the protection of the wife against the husband. It is not, I think, necessary to decide this question in the present case; but whenever it may become necessary so to do, I am much disposed to think the true rule to be adopted will be found to be this: the provisions of the settlement are for the protection of the wife—full effect must be given to them; and the Court, therefore, before it can hold the estate of the wife to be in any manner affected, must be fully satisfied that the husband has not in any degree influenced the acts or conduct of the wife. If, upon the most jealous investigation, the Court should be satified of this, I see no reason why the wife, having been constituted a feme sole by the terms of the settlement, her assets, including the trust funds which have become her assets by the exercise of her power, should not be bound to the same extent as the assets of any other person, not under the disability of coverture, would, under the same circumstances, be bound. The modern cases as to the liability of the estates of married women for their general engagements seem to me to favour this view, and I think it falls in very much with the opinion of the present Lord Chancellor in *Mara* v. *Manning*, 2 Jo. & Lat. 311. It is not opposed to Lord Langdale's opinion in *Kellaway* v. *Johnson*, 5 Beav. 319, which is, I think, the nearest case to the present, for in that case the acts done were for the benefit of the husband, and there was no proof of the wife's concurrence, except by a deed executed under his influence; nor is it inconsistent with Sir J. Leache's opinion in *Cocker* v. *Quayle*, 1 Russ. & Myl. 535, any further than that upon the grounds which I have suggested it might have been, though it was not argued in that case, that the dividends, when they accrued due, would have been subject to the indemnity of the trustees. But this argument, had it been advanced, might have been met by the answer, that the protection there was not against the husband merely, but against the wife herself; and that the trustees could not claim indemnity against a protection so strictly reserved to the wife,—an argument which cannot be applied to a power of appointment so long as the exercise of the power renders the fund subject to the liabilities of the appointee. I am much disposed to think that, had the trust funds been transferred to the trustees, and afterwards dealt with in the manner appearing by this report, Lady Wells's estate would, under the very peculiar circumstances of this case, have been liable to the trustees; and that upon this ground also, had it been necessary to resort to it, the plaintiff's title to recover for the benefit of her estate could not, to the extent I have mentioned, have been maintained. With respect to the last question, the right against the lords of the fee, I think it unnecessary to say much upon the subject. It is well settled that trust moneys may be followed into land; and whatever difficulty there might have been in following these moneys into land, as against the lords of the fee, is, I think, removed by the Escheat Act; and even if it were otherwise, I think that, Sir John Wells having been debtor to the trust in respect of these moneys, I should upon the authorities have been bound to hold, as in the absence of authority I should myself have decided, that the estate in the hands of the lord is liable for the debt. The decree I shall make will be to declare the lien upon the estate for the amounts which were laid out in the purchase of the Bolmore estate, and the additions and improvements upon it, and also declare the debt due from the estate of Sir J. Wells. Direct the usual accounts: there must be the usual account of the personal estate of Sir J. Wells, and also an order for the sale of the real estate for the payment of debts.

VICE-CHANCELLOR STUART'S COURT.

Reported by Geo. S. Allnutt, Esq. of the Middle Temple, Barrister-at-Law.

Nov. 16 *and Dec.* 4.

Lord Middleton *v.* Lord.

Thellusson Act (39 & 40 *Geo.* 3, *c.* 98)—*Accumulations—Portions.*

A testatrix by her will gave to trustees 50,000*l. upon trust for the maintenance of her son W. (who was a lunatic), and as to the surplus of the interest, to accumulate, and after the death of W. to dispose of the proceeds of the* 50,000*l. and the accumulations, or a competent part thereof, for the maintenance and education of the children of W. during their respective minorities, or until their portions should become payable under the will; and upon their attaining twenty-one, upon trust to call in the* 50,000*l. and all the accumulations, and pay and divide the same among all the children of W.:*

Held, that this was within the exception of the second section of the above Act, and that it was a valid trust for accumulation beyond the twenty-one years from the testatrix's death.

Mrs. Diana Beaumont, the testatrix in this cause, by her will directed that Lord Middleton, and her sons Richard Beaumont and Edward Blackett Beaumont, their executors and administrators, should stand and be possessed of a sum of 50,000*l.* and the interest thereof, for the benefit of her son William Beaumont, upon trusts for investment, with power to vary such investments, and upon further trust to pay, apply, and dispose of a competent part of the interest, dividends, and annual proceeds of such investments for the maintenance and support of her said son William, and in providing him a suitable establishment, according to his circumstances and station in life; and also to pay and discharge all the reasonable charges and expenses of the said trustees in superintending and managing the establishment and affairs of her said son William; and upon further trust from time to time to invest and place out the surplus of the interest, dividends, and annual proceeds thereof upon Government or real security, to the intent that the same might accumulate for the benefit of the persons who under her said will should become entitled thereto; and from and after the decease of her said son William, upon further trust to pay, apply, and dispose of the interest, dividends, and annual proceeds of the said sum of 50,000*l.* and the accumulations thereof, or a competent part thereof, in the maintenance, education, and establishment of all and every the child and children of her said son William, lawfully to be begotten, during their respective minorities, or until their portions should become payable under that her will; and when and so soon as the children of her said son William, if a son or sons, should attain the age of twenty-one years, or if a daughter or daughters, should attain the said age or be married, then upon trust to call in and receive the said sum of 50,000*l.* and all interest, dividends, and annual proceeds and accumulations thereof, and to pay and divide the same unto and amongst all and every the child and children of her said son William, lawfully to be begotten, if more than one equally, share and share alike, and if but one, then to such one child, his or her executors or administrators, the share or shares of such of the children of her said son William, being a son or sons, to be paid to him or them on attaining the age of twenty-one years, or being a daughter or daughters, to be paid to her or them on attaining the like age or marriage, as therein mentioned; but in case of her said son William dying without leaving issue, then the said testatrix directed that the said sum of 50,000*l.* with the accumulations thereof, should sink into the residue of her personal estate thereinafter by her disposed of for the benefit of her son Thomas Wentworth Beaumont. Diana Beaumont, the testatrix, died on the 10th of August, 1831. Thomas Wentworth Beaumont died, having by his will given the residue of his personal estate to his son W. B. Beaumont. Mr. William Beaumont was a lunatic, and the questions now discussed in this suit, which came on for further directions, were as to the accumulations of the interest of the 50,000*l.*, the period of twenty-one years since the testatrix's death having expired. It should be mentioned that the bequest by this will of the 50,000*l.* was a provision in lieu of W. Beaumont's portion under his father and mother's marriage settlement, and his father's will.

Russell and *Bates* appeared for the plaintiffs, who were the trustees of the will.

Bacon and *Nalder* for W. Beaumont, the lunatic.

Wigram, *Follett*, *Chandless*, *Hardy*, and *Brodrick* for the other next of kin of the testatrix.

Malins and *J. H. Palmer* for W. B. Beaumont.

The following cases were cited: *Skrymsher* v. *Northcote*, 1 Swanst. 566; *Jones* v. *Maggs*, 9 Hare, 605; *Bourne* v. *Buckton*, 2 Sim. N.S. 91; *Eyre* v. *Marsden*, 2 Keen, 564; *Milford* v. *Reynolds*, 1 Ph. 185; *Kampf* v. *Jones*, 2 Keen, 756; *Trickey* v. *Trickey*, 3 M. & K. 560; *Lassence* v. *Tierney*, 1 Mac. & Gord. 551; *Elborne* v. *Goode*, 14 Sim. 165; *Barrington* v. *Liddell*, 16 Jur. 984; *Morgan* v. *Morgan*, 20 L. J. 109, N.S.; *Roe* v. *Avis*, 4 Term Rep. 605; *Church* v. *Mundy*, 15 Ves. 396; *Beech* v. *Lord St. Vincent*, 19 L. J. 130, N.S.; *Haley* v. *Bannister*, 4 Madd. 275; *Webb* v. *Webb*, 2 Bea. 493; *Crawley* v. *Crawley*, 7 Sim. 427; *Miles* v. *Dyer*, 8 Sim. 330; and *O'Neill* v. *Lucas*, 2 Keen, 313.

Saturday, Dec. 4.—The Vice-Chancellor said that the questions in this case related to the construction of the Thellusson Act, as applicable to the direction in the will of Mrs. Beaumont, for the accumulation of the interest and annual proceeds of a sum of 50,000*l.* during the life of her son William Beaumont. The first question, and in his Honour's view of the case, the only question which it was necessary to consider, for the decision of the Court was, whether the trust for the accumulation was within the exception in the second section of the statute, which exempted from its operation provisions for raising portions. The first trust of the annual proceeds of the 50,000*l.* was for the maintenance and support of her son William; and as to the surplus of the annual proceeds, the trust was to accumulate them, and after the death of William to dispose of the proceeds of the 50,000*l.* and the accumulations, or a competent part thereof, for the maintenance and education of the child and children of her son William, during their respective minorities, or until their portions should become payable under that her will; and as soon as they should attain the age of twenty-one years, or if daughters, attain that age or be married, then upon trust to call in the 50,000*l.* and all the accumulations, and pay and divide the same among all the children of William, in the manner particularly directed in the will. When the testatrix spoke of the portions payable under her will to the children of William, and used the word "portion," it must refer to the gift to them of the 50,000*l.* and the accumulations. The words of the second clause in the statute, which were applicable to this case, were those which mentioned "any provision for raising portions for any child or children of any person taking any interest under such conveyance, settlement, or devise." The children provided for by Mrs. Beaumont out of these accumulations were the children of her son William, who took an interest under her will. This provision, to which the accumulations were dedicated by their grandmother, she described as their "portions," and, so far as appeared, was the only provision made for them. Therefore, if the question came to be considered without reference to decided cases upon the construction of this clause in the Act, there would seem little difficulty in holding that this was the case of a trust for accumulation on a provision for raising portions for the children of a person taking under the will which directed the accumulation; that it was within the exception in the second section, and therefore not to be restricted to the statutory period of twenty-one years from the death of the testatrix. But there were decisions recorded by judges of learning and experience which afforded countenance to the arguments urged in this case in support of the proposition, that the trust for accumulation in this will was not within the exception as to provisions for portions, and that for the excess beyond the period of twenty-one years the trust for accumulations was invalid. The decision of Lord Langdale, in *Eyre* v. *Marsden*, 2 Keen, 564; of the Vice-Chancellor Knight Bruce, in *Morgan* v. *Morgan*, 20 L.J. 109; of the Vice-Chancellor Kindersley, in *Bourne* v. *Buckton*, 2 Simons, N.S. 91; of the Vice-Chancellor Turner, in *Jones* v. *Maggs*, 9 Hare, 605, had all been quoted and relied on in the argument of the present case, to support the construction that the accumulation directed by Mrs. Beaumont's will of the 50,000*l.* was not within the exception made by the second section of the Act as to portions. And no doubt they were all authorities in support of that construction, for they had all proceeded on the principle of narrowing, on various grounds, the construction of the words in the second section as to portions. The current of decisions on these questions had set so strongly in favour of a confined and narrow construction, that in the latest case on the subject (*Barrington* v. *Liddell*, 16 Jur. 984) the Vice-Chancellor Turner, yielding to its force and pressing it to the utmost possible degree of narrowness, held, that in the meaning of the word "interest," which the parent of the portioned child must take to come within the exception in the second section, must be an interest in the same property which was directed to be accumulated. Of the cases quoted at the Bar, the decision of the Vice-Chancellor Knight Bruce in *Beech* v. *Lord St. Vincent*, 19 L.J. 130, alone proceeded on what seemed to his Honour a just view of the construction to be put on the exception as to portions. On the best opinion which his Honour was enabled to form, it seemed to him, after hearing the arguments and authorities in the present case, that the trust for accumulation was a valid trust to the full extent directed by Mrs. Beaumont's will, and that, notwithstanding the current of authorities in favour of the narrow principle of construction, the case was within the exception as to portions. This opinion his Honour expressed, but at the same time with a feeling of diffidence, considering the weight of authority on the other side. But as it was stated to him that the decision of Sir George Turner had within the last few days been argued on appeal before the Lord Chancellor, and his lordship's judgment was expected to be delivered in a few days, his Honour postponed the judgment in the present case that he might be guided by the Lord Chancellor's opinion. Having now had an opportunity of reading the note of his lordship's judgment, it was a great relief and satisfaction to him to find—and he was sure it would be a satisfaction to every sound and enlightened lawyer to find, that—upon a masterly review of these authorities, which so unfortunately confined, narrowed, and embarrassed the construction of the exception as to portions, the Lord Chancellor, if he had not restored, had at least established a just principle of construction, and had held the trust for accumulation in that case of *Lord Barrington* v. *Liddell* to be valid, and within the second section of the Thellusson Act. The trust in that case for the accumulation of 15,000*l.* was not created by a parent, and was not directly to raise portions, but was to accumulate a fund to relieve the family estates from portions provided by the marriage settlement of the great nephew of the testator. In the present case, where the provision was by an accumulation directed by a parent for the benefit of a son, and expressly as portions for his children, the son taking an interest in the same fund, and the whole being a provision in lieu of the son's portion under the marriage settlement and the father's will, his Honour was bound by the principle of the decision in *Lord Barrington* v. *Liddell*, independently of his own clear opinion, to hold that the trust for accumulation was valid, and was not restrained by the statute to the period of twenty-one years. The decree must, therefore, contain a declaration to that effect.

Friday, Dec. 3.

STANHOUSE *v.* GASKELL.

Will—Construction—Tenancy in tail.

A testator devised real estate to trustees upon trust for the maintenance of his two daughters, A. and B. until they attained twenty-one, "and then to have the estate equally betwixt them for their lives:" but in case A. and B. should die without leaving lawful issue, the testator gave the same to C. and D. A. died an infant, and unmarried. B. on her marriage, executed a settlement by lease and release, conveying the lands to trustees, &c. but no disentailing assurance was executed. E. the eldest son of B. after her death, executed a disentailing assurance, and, with his father, contracted to sell the estate:

Held, that B. could show a good title.

Matthew Gaskell, by his will, dated the 13th of September, 1817, devised his real estate in Burton's-wood to trustees upon trust for his widow during her life or widowhood, and after her decease or second marriage upon trust for the maintenance and support of his daughters, Margaret Gaskell and Catherine Gaskell, until they attained the age of twenty-one years, "and then to have the estate equally betwixt them during their lives," to their separate use; "and in case both his said daughters should die without leaving lawful issue," the testator gave his said real estate to his two brothers (both of whom died prior to 1824), equally between them, their executors, administrators, and assigns. The testator died in January 1818, leaving his widow and two daughters him surviving. Margaret Gaskell died an infant and unmarried, leaving her mother and sister her surviving. On the 4th of July, 1827, a settlement of the lands in question was executed, in contemplation of the marriage of Catherine Gaskell with Thomas Robinson. By that settlement, by lease and release, the lands were, with the approbation of Thomas Robinson, conveyed by Catherine Gaskell to trustees upon trust (subject to her mother's life interest therein) for her own separate use for life, and after her death upon trust to sell the same, and to stand possessed of the purchase-moneys to be produced thereby in trust for all and every the children and child of Catherine Gaskell, as well by the said T. Robinson as by any future husband, in equal shares. By the same deed Thomas Robinson covenanted that he and the said Catherine Gaskell would suffer a common recovery. Catherine, the wife of Thomas Robinson, having survived her mother, died in June 1842, without having suffered a recovery or executed any disentailing assurance. There were four children of the marriage, viz. two sons and two daughters. Thomas Gaskell Robinson, the eldest son of the marriage, attained the age of twenty-one years on the 16th of July, 1849, and in December of that year executed a disentailing assurance, barring the entail and all remainders in the said real estate. In March 1851 T. G. Robinson, by his father, who acted as his authorised agent in that behalf, and with the father's concurrence, contracted to sell the property to Thomas Gaskell. T. G. Robinson and Thomas Robinson afterwards conveyed the estate, subject to the said contract for sale, and assigned the benefit of the said contract, to Alexander Stanhouse. Objections to the title were raised by Thomas Gaskell, and this special case was brought before the Court for the purpose of taking the opinion of the Court upon the following questions: 1st. Whether, under the will of the testator and the events which had happened, and the subsequent dealings with the estate, T. G. Robinson did, upon the death of his mother, become tenant in tail thereof, or whether Catherine Robinson was tenant in fee simple, or what other estate and interest she had therein? 2nd. If the Court should be of opinion that T. G. Robinson did become such tenant in tail, whether the settlement did or did not take effect as a settlement of the estate during the life of the said Thomas Robinson? and 3rd. Whether in respect of the grounds of objection, the plaintiff Stanhouse could or could not make a good and marketable title to the estate in question?

Prior, for the plaintiff, contended that the two daughters of the testator were by implication tenants in common in tail with cross-remainders in tail between them; that the settlement was ineffectual to bar the entail; and that T. G. Robinson became, on the death of his mother, tenant in tail, and that he barred the entail in 1849. He referred to *Parr* v. *Swindells*, 4 Russ. 283.

Follett and *W. M. James*, for the defendant, contended that the daughters took life estates only; that there was no implied gift to their issue; and that in the events which had happened, the reversion in fee descended on Catherine Robinson, and was bound by the trusts of her settlement. If Mrs. Robinson became tenant in tail of the whole property, the husband by the settlement had relinquished his right as tenant by the curtesy in favour of his children; and it would be in the power of the children to set up the settlement against a purchaser.

The Vice-Chancellor, however, considered that the view taken by the vendors was correct, and that a good marketable title had been shewn.

Wednesday, Dec. 15.

HEXTALL *v.* CHEATLE.

Practice—Examination vivâ voce before the Master of a party to the cause under a decree made before the passing of the 15 & 16 *Vict. c.* 86.

This was a motion on behalf of the defendant, Ann Cheatle, that she might be at liberty to cross-examine the plaintiff vivâ voce before Master Tinney, to whom the causes stood referred, or that the defendant might be at liberty to cross-examine the plaintiff orally before one of the examiners of the Court in the mode prescribed by the 15 & 16 Vict. c. 86, and the General Orders of the Court, and that if necessary the plaintiff might be ordered to attend before the Master or before one of the examiners for that purpose, or that the defendant might be at liberty to exhibit interrogatories for the cross-examination of the plaintiff before the Master, and that it might be ordered either by altering the decree made in these causes dated the 10th of July, 1851, or in such other manner as the Court should think fit, that the parties to the last-mentioned cause were to be examined upon interrogatories as the Master should direct.

By the decree of the 10th of July, 1851, a reference was directed to the Master to take certain accounts, but no mention was made of the examination of the parties. A state of facts and charges was left in the Master's-office by the plaintiff on the 27th of January, 1852, and another state of facts and charges was left by the defendant on the 5th of March, 1852. At an attendance before the Master on the 10th of July, it was arranged that the plaintiff should be examined before him vivâ voce, and that a short-hand writer should be engaged to take his evidence.

On the 30th of July the plaintiff, whose affidavit had been left with the Master, came to town to be examined, and attended before the Master for that purpose, but the plaintiff's solicitor not having engaged a short-hand writer, and having declined to do so, or to bear any part of the expense, the defendant's solicitor offered to pay the expense of the short-hand writer, if the plaintiff would consent that the costs should be costs in the cause; and

this offer having been declined, the cross-examination was not proceeded with, but the Master gave leave to the defendant to exhibit interrogatories for such cross-examination of the plaintiff. The Master, however, now having a doubt whether he could, since the recent statutes, examine upon interrogatories, declined to proceed with such examination, and the present motion was accordingly made.

Wigram and *Hitchcock* appeared in support of the motion, and referred to 15 & 16 Vict. c. 86, ss. 28, 30, 35, 40, and 41; and 15 & 16 Vict. c. 80, s. 39.

Bacon and *W. M. James* appeared for the plaintiff.

The VICE-CHANCELLOR made an order, giving liberty to cross-examine the plaintiff viva voce before one of the examiners of the Court, and that the plaintiff should attend for that purpose, and also a supplemental order, that the parties to the cause were to be examined on interrogatories as the Master should direct.

Wednesday, Dec. 15.

LANCASTER v. LANCASTER.

Practice—Affidavits upon shewing cause against dissolving the common injunction.

Bacon and *Giffard* appeared for the plaintiff in this case to shew cause against dissolving the common injunction to stay proceedings at law. The bill was filed in August last, and it was now proposed to use affidavits filed on behalf of the plaintiff in opposition to the defendant's answer.

Malins and *Goodeve*, for the defendant, objected to these affidavits being read, as the new practice could not be applicable to the present case.

The VICE-CHANCELLOR said that his impression was, that if upon what the plaintiff was put to do, and had undertaken to do, he should be of opinion that the injunction could not be sustained, the plaintiff might come at the next seal, and move for a new injunction. His Honour did not consider that the affidavits could be read.

Thursday, Dec. 16.

GREGORY v. ATKINSON.

Practice—Administration suits.

In the course of hearing this case, which was a creditor's suit for the administration of a testator's personal estate,

The VICE-CHANCELLOR observed, that it appeared to him to be a matter for consideration whether some alteration in the ordinary administration decree would not be desirable. Now that a simple contract creditor was entitled to payment out of the real estate, it seemed that the Court had not kept pace with the law upon the subject in directing the mere administration of the personal estate, where there might be real estate.

Follett suggested that in such decrees there might be directed an inquiry whether there was any real estate.

The VICE-CHANCELLOR thought some such course would be desirable.

VICE-CHANCELLOR KINDERSLEY'S COURT.

Reported by W. H. BENNET, Esq. of Lincoln's-inn, Barrister-at-Law.

Thursday, Nov. 11.

Re THE DOVER AND DEAL RAILWAY COMPANY, *ex parte* BEARDSHAW.

Contributory—Conditional deposit on shares.

Where there is a special undertaking on the part of directors to return deposit, if the contemplated Act of Parliament should not pass; and on the failure of such Act passing, a circular was sent to all the allottees to attend a meeting, at which resolutions were subsequently passed reposing confidence in the directors, and A. attended such meeting by proxy:

Held, that he was not a contributory towards the preliminary expenses.

In this case Mr. Beardshaw had taken 200 shares in this project, and paid 420*l.* in deposit. A circular was sent to each allottee, containing an express undertaking from the directors, to return the whole amount of deposits in case of failure of the Act. The Act did fail, and Mr. Beardshaw, on application for his deposit, received back part. Another circular was then issued to him and other holders of shares, requesting their attendance at a meeting to express confidence in the directors, and in case of non-attendance personally, they were requested to send proxies, and the circular concluded by saying, that in order to secure the expenses which were guaranteed by the South-Eastern Railway Company, in pursuance of an arrangement, it was absolutely necessary that the directors should obtain the Act. Mr. Beardshaw forwarded a proxy, and subsequently proceeded at law for the balance of the deposits, in which he obtained a verdict, and recovered it. The Master, in whose office this company was in course of being wound up, had placed Mr. Beardshaw upon the list of contributories, and the present motion was in the nature of an appeal against such decision.

Malins and *Smale* appeared for Mr. Beardshaw.

Glasse and *Martindale* for the official manager, argued that the signing of the proxy by Mr. Beardshaw constituted a new contract, and after that the directors were not bound to return the deposits, and therefore the Master was right in his decision.

The VICE-CHANCELLOR said, that all the authorities had decided that persons taking shares in a projected company undertook to bear no expenses incurred by those who were endeavouring to form such company. The shareholders only agreed to take shares in the company when it should be formed. There was an express agreement in this case, to return the deposit in case the Act failed; and the only question turned upon the subsequent conduct of Mr. Beardshaw in signing the proxy, whereby he enabled the directors to continue an undertaking, and whether that had rendered him liable to contribute. What were the circumstances under which that was signed? Mr. Beardshaw thought that it was absolutely necessary to obtain the Act in order to secure payment of the expenses which had been guaranteed under an arrangement with the South-Eastern Railway Company. That was most important, and Mr. Beardshaw naturally supposed that what he was doing would enable the company to obtain funds, out of which he himself would be repaid. At all events it could not be said that he did anything by which the directors were discharged from the undertaking to return the deposits in case the Act was not obtained. Under these circumstances his Honour's opinion was that Mr. Beardshaw's name ought to be struck off the list of contributories, and the Master's decision reversed.

Order accordingly.

Nov. 20 *and* 23.

BARTLEY v. BARTLEY.

Practice—Inspection of documents.

Where a plaintiff had obtained the usual order to inspect by himself, his solicitors, and agents, documents in one of the defendants' possession, a co-defendant has no right to attend such inspection, if the defendant in whose possession the documents are, objects.

In the course of this cause the plaintiff had obtained an order that he might by himself, his solicitors, and agents, attend at all convenient times, and inspect at one of the defendants' counting house, certain deeds and documents in his possession. The solicitor who had obtained the order attended for that purpose, and he brought with him to assist in the inspection and explanation of these documents, a co-defendant. This was objected to on the part of the defendant in whose possession the documents were, admitting the right of the plaintiff's solicitor to inspect them, but contending that such solicitor could not constitute as his agent for this purpose the co-defendant. The plaintiff now moved, on the ground of an improper interference with the plaintiff's right to inspect, that the deeds and documents might be deposited for the usual purposes with the clerk of records and writs.

Kenyon Parker for the motion.

J. H. Palmer, contrà.

The VICE-CHANCELLOR said, there having been an order made by the Court permitting the plaintiff, his solicitors, and agents, at all convenient and reasonable times, to inspect certain deeds and documents, he now alleges that he has not had the benefit of this order, and that the defendant had failed to comply with the exigency of that order, and so had misconducted himself to the plaintiff's prejudice; for he says, that when he went to the defendant's house to inspect the documents, and having taken with him another person, the defendant said: "I will let you, the plaintiff, or your solicitors or agents, look at them and take copies, but I object to this person, who is, in fact, a defendant, whom you have brought with you. He cannot, therefore, be either the plaintiff's solicitor or agent, and he has no right to inspect them, and you cannot depute him as your agent." The plaintiff thereupon says,—"He knows more about those documents than any one else, and I constitute him my agent." Now, the question is this,—suppose the documents had been deposited in the usual way with the clerk of records and writs, with the usual leave to inspect, and on an attendance before the clerk of the records and writs, the co-defendant had attended, and was objected to by the defendant who had so deposited them, can this co-defendant, according to the practice, be allowed to inspect them? If he would be allowed there, he ought to be allowed to do so at the defendant's house. I must, therefore, direct the motion to stand over, so that some inquiry may be made of the proper officers of the court as to what the practice under such circumstances would have been.

Tuesday, Nov. 23.—The VICE-CHANCELLOR said, the question here is, whether a plaintiff who has obtained such an order has a right to constitute the defendant, Robert Bartley, his agent for the purpose of inspecting and taking copies of these documents under the order which he has obtained. It rests upon what is the practice in the office, for it was contended before me on the motion that had the papers been deposited with the Clerk of Records and Writs, the plaintiff might then have taken the other defendant to assist him in the inspection and to make extracts and copies of them. Upon inquiry I have ascertained that such a course would not have been allowed if the defendant, who had been ordered to deposit the papers, had objected to his attendance. How, then, can there be a better right for a defendant to attend and inspect his co-defendant's papers, when they are to be examined at his own house? I do not see why this should be allowed. If the plaintiff could have said—"The matter is so peculiar that it is necessary to me that I should have the assistance of a particular defendant," he should have applied to the Court for a special order on that ground. I think the defendant was justified in refusing to allow the co-defendant, Robert Bartley, to be present at the examination, and that, in truth, there has been no impediment placed to prevent the plaintiff, his solicitors or agents, from having the proper inspection. With that exception there has been the fullest permission given to the plaintiff, his solicitors or agents, to have access to the documents as directed by the order of the Court.

Motion refused with costs.

Common Law Courts.

COURT OF QUEEN'S BENCH.

Reported by ADAM BITTLESTON and JOHN THOMPSON, Esqrs. Barristers-at-Law.

COUNTY COURT APPEAL.

Wednesday, Dec. 1.

WILDES, Appellant; MORRIS, Respondent.

Clerk of the peace—Clerk of Second Court at Sessions—Roll of fines—Sheriff—59 Geo. 3, *c.* 28; 3 *Geo.* 4, *c.* 46.

The sheriff is not bound, as a mere ministerial officer, to levy all fines that may appear to be unpaid on the roll returned by the clerk of the peace, under the 3 *Geo.* 4, *c.* 46, *and he ought not to levy where he has himself received the fines.*

The clerk of the peace receiving fines in court will be liable (if he neglect to enter such fines as paid on the roll made out by him and delivered to the sheriff), to the party paying such fines, if he receives damage from such neglect.

Quære, whether the clerk of the peace will be liable where the fines are received in the Second Court by the person appointed to record the proceedings of the Second Court of Sessions, under the 59 *Geo.* 3, *c.* 28.

Semble, that his liability will depend on the fact whether such appointee is the assistant of the clerk of the peace or an original officer.

This was an appeal from the County Court of Kent, holden at Maidstone.

The respondent recovered 10*l.* damages from the appellant (the deputy clerk of the peace of Kent), under the following circumstances.

The plaintiff was tried and convicted upon two several indictments for misdemeanour at the Quarter Sessions for the county of Kent, in a second court holden under the statutes 59 Geo. 3, c. 28, s. 1; 3 Geo. 4, c. 46, ss. 2, 3; and 5 & 6 Vict. c. 38, s. 4. The plaintiff was thereupon sentenced to pay a fine to the Queen of 1*l.* upon one indictment, and another fine of 2*l.* upon the second indictment. The fines were immediately paid by the plaintiff's attorney to the person appointed by the clerk of the peace under the said statutes, to act as his deputy in recording the proceedings of the second court, and he, within five minutes after receiving the fines, handed them over, in court, to the under-sheriff.

No entry was made of the receipt and payment over the fine, and no written statement of the causes in respect of which the money was handed over to the under-sheriff appears to have been given to him. Within twenty-one days afterwards, the clerk of the peace, in obedience to the 3 Geo. 4, c. 46, s. 2, sent a roll containing a copy "of all forfeited recognisances, fines, issues, and amerciaments, and sums of money paid in satisfaction of them, set or imposed by, or lost or forfeited," to the sheriff, with writs of distringas and capias or fieri facias, and capias addressed to the sheriff for the purpose of levying the amounts.

From this roll there was omitted all mention of the money paid in satisfaction of the two fines imposed on the respondent, and, indeed, the clerk of the peace knew nothing of the matter.

The sheriff proceeded to execute the writs so sent to him by the clerk of the peace, and took the plaintiff into custody, whence, after giving security, and on the circumstances being explained, he was released. The plaintiff then brought this action.

The plaint alleged that the appellant so negligently

recorded the proceedings that he neglected to make an entry of the payment of the fines; that when the record was made up, the name of the plaintiff was entered in the roll as liable, and not in the roll of those who had paid; that the defendant sent the said list to the sheriff, who arrested and imprisoned the plaintiff, and it then alleged that his arrest arose from the negligence of the defendant's assistant or servant.

At the close of the case it was contended for the appellant that no cause of action existed against him.

1st. Because the said appointee was not in law the assistant of the appellant, and that the appellant was not liable for his acts or omissions.

2ndly. That he could not be liable, as the appointee was not authorised to receive the fines.

3rdly. That it was not the appellant's duty to make an entry of money which had not come to his hands, but had at once been paid over to the under-sheriff.

The learned judge held,

1st. That the appellant was responsible for the acts of his deputy so appointed as aforesaid.

2ndly. That if the deputy had no authority to receive the fines, still, as he had in fact received them, it was no answer to say that he ought not to have received them.

3rdly. That the roll having been made up by the appellant, and sent by him to the sheriff, with a writ and an oath indorsed in the particular form, it was for the jury to say whether the appellant had not been guilty of a breach of duty in not taking care that the roll was made out correctly in every particular, *because the sheriff was a ministerial officer, and bound to execute the writs sent with the roll.*

By the 3 Geo. 4, c. 46 (an Act for the more speedy return and levying of Fines, Penalties, and Forfeitures, and Recognizances estreated), sec. 2, all fines, issues, &c. set, imposed, &c. by any justices of the peace, shall be certified by them to the clerk of the peace, in writing, containing the names of the parties, the sum forfeited, and the cause of each forfeiture, on or before the ensuing General or Quarter Sessions; and the clerk of the peace shall copy on a roll such fines, issues, &c. together with all fines, issues, &c. imposed or forfeited at such Court of General or Quarter Sessions, and shall, within twenty-one days, send a copy of such roll, with a writ of distringas and capias, or fieri facias and capias, to the sheriff of the county, &c. which shall be the authority to such sheriff for proceeding to the immediate levying and recovering of such fines, issues, &c. on the goods and chattels of such several persons, or for taking into custody the bodies of such persons, in case sufficient goods and chattels shall not be found whereon distress can be made for the recovery thereof.

By *sec. 3*, the clerk of the peace, before he shall deliver such roll to the sheriff, shall make oath, which oath shall be indorsed on the back of the writ, or of the said roll attached thereto, such clerk of the peace stating therein all such fines, issues, &c. which shall have been paid, or otherwise accounted for, and such oath shall be in the form following:—

"I, A. B. clerk of the peace for the county of B. make oath that this roll is truly and carefully made up and examined, and that all fines, issues, amerciaments, recognisances, and forfeitures which were set, lost, imposed, or forfeited, and in right and due course of law ought to be levied and paid, are, to the best of my knowledge and understanding, inserted in the said roll, and that in the said roll are also contained and expressed all such fines as have been paid to or received by me, either in Court or otherwise, without any wilful or fraudulent discharge, omission mismomer, or defect whatever.—So help me God."

The form of the writ to the sheriff required by sec. 2, and given in the schedule to the Act, requires the sheriff "of all the goods, &c. of all and singular the persons in the several extracts of this writ annexed, to cause to be levied all and singular the debts and sums of money in the same extracts severally imposed and charged, so that the money may be ready for payment at the next General Quarter Sessions of the Peace, to be paid over in such manner as any two or more of the Lords Commissioners of her Majesty's Treasury may direct; and if any of the said several debts cannot be levied by reason of no goods or chattels being to be found belonging to the parties, then in all cases to take the bodies of the parties refusing to pay the aforesaid debts, and lodge them in the gaol, there to await the decision of the justices, &c. unless the parties shall have given sufficient security," &c.

By the 59 Geo. 3, c. 28 (an Act to empower magistrates to divide the Court of Quarter Sessions), sec. 1, Courts of Quarter Sessions or General Sessions of the Peace may appoint two or more justices to form a Court to sit apart from them.

By sec. 3, the clerk of the peace or his deputy is to appoint a fit and sufficient person to record the proceedings so had before the justices sitting apart; such proceedings to be delivered over to the clerk of the peace, and be deemed to be a part of the records of such session, as if the same had been recorded by the clerk of the peace himself; and the justices at the quarter session are to make an order upon the county treasurer to pay to the clerk of the peace such sum as they deem a fit and reasonable remuneration to the clerk of the peace for such purpose.

The 5 & 6 Vict. c. 38, s. 4, extends the power of justices at quarter sessions or adjourned quarter sessions to divide the court.

Deedes, for the appellant.—The ruling of the judge was incorrect. There is no relation of master and servant between the clerk of the peace and the person appointed to record the proceedings of the second court. The 59 Geo. 3, c. 28, authorises the clerk of the peace to appoint such person, and it is true his is the hand by which the remuneration reaches the appointee. There might be a ground of complaint against the clerk of the peace for not appointing a fit and proper person; but it is sought to make the clerk of the peace liable here for omitting to enter fines as paid, when he himself did not receive them. Nor is there the same relation here as between the sheriff and his under-sheriff or bailiffs, as in law they constitute but one person. (*Cook* v. *Palmer*, 6 B. & C. 739; *Crowder* v. *Long*, 8 B. & C. 598; *Cameron* v. *Reynolds*, Cowp. 403.) Then by the statute the appointee is to record the proceedings of the second court. The receipt of the fines, or making up the roll of fines, is no part of such duty. The fines were handed in to the appointee, who within five minutes handed them over to the sheriff, so that it is as if the fines had been paid to the sheriff in the first instance. The clerk of the peace had no knowledge of the payment when he made out the roll of fines; besides, the sheriff is the proper officer to receive fines, and it is doubtful whether the clerk of the peace can receive them at all. (Dalton's Country Justice, tit. Sessions, c. 185; Burns' Justice, "Sheriff.") The clerk of the peace only deposes to the best of his knowledge and belief as to the fines that ought to be levied; and he is to insert upon the roll the fines imposed at petty sessions as well as at the quarter sessions. And in making up the roll the proper course was to omit what the sheriff had received, because he would know of such moneys that they were in his hands, and the writ satisfied. So also of all sums which within twenty-one days the sheriff might receive of his officer. Then the 3 Geo. 4, c. 46, s. 10, imposes a penalty of 50*l.* for non-performance of the duties required by the Act, and that would seem to be the remedy that ought to have been pursued in this instance. [Coleridge, J.—That does not take away the plaintiff's common law right to damages for the false imprisonment.] Lastly, it was a clear misdirection to tell the jury that the sheriff was a mere ministerial officer, and bound to levy according to the roll.

Ribton, for the respondent.—No matter whose duty it is to receive the fines in court, the sheriff cannot proceed to levy and recover them until he is put in motion by the clerk of the peace. The clerk of the peace, therefore, is bound to make up the roll correctly, and responsible for not doing so. The oath shows that this is the duty of the clerk of the peace. It does not appear on the case that the sheriff knew that he had received the fines of the plaintiff as set out in the roll, but only that two sums of money were handed to him. [Erle, J.—The judge, by his direction, made the receipt by the sheriff wholly immaterial, as he told the jury that the sheriff was a mere ministerial officer, and bound to levy the fines according to the writ sent with the roll.]

Coleridge, J.—In this case there must be a new trial, on the ground of misdirection, for when the judge told the jury that the sheriff was a purely ministerial officer, and could exercise no discretion in the matter, he made many circumstances that were material, immaterial, and misled them. Looking at the statute 3 Geo. 4, c. 46, I think we ought not to give a strict and unreasonable construction to the language of the oath in the third section. The clerk of the peace is to make a return of the fines which have been imposed at the quarter sessions, and also those certified by the justices to have been imposed out of sessions, some of which the statute contemplates he may have received, and at a period not exceeding twenty-one days from the quarter sessions, he is to make out a roll containing an account both of the fines certified by the justices, and also of those paid or to be paid in lieu or satisfaction. He is to send a copy of this roll with a writ annexed, for levying the fines, to the sheriff, and accompanying this is the oath indorsed. The oath is positive as to all fines that have been paid to the clerk of the peace, but it is only conjectural and conditional as to those which may have been paid to the sheriff; for the words, "all fines which, in right and due course of law, ought to be levied and paid, are, to the best of my knowledge and understanding, inserted in the roll," are conjectural only; but the words, "and that in the said roll are contained and expressed all such fines as have been paid to or received by me," are absolute; and under this latter head I think the clerk of the peace has made default in not having entered these fines as paid. Some of the fines in the roll may have been paid to the sheriff between the dates of their imposition and the delivery of the roll to him. The clerk of the peace, therefore, can only say, as far as he knows, that the roll is correct as to the unpaid fines. On the receipt of this roll the sheriff's duty is not merely ministerial; he is not to act on the face of it, as that would be a very great injustice, and the words of the statute cannot be considered to go to that length; there must, therefore, be a new trial. But we may as well state now what is our opinion as to the duty of the clerk of the peace. Supposing him to have received the fine, and to have omitted to enter it as paid on the roll, and that then the sheriff, not knowing of the payment, levies, although a sheriff himself may not be quite free from negligence, particularly when, as in this case, it may be handed over, yet I think there would be a breach of duty if the fine were paid to the clerk himself. But in this case the fine was paid to the appointee and by him handed over to the sheriff; and whether any breach of duty by him constitutes negligence on the part of the clerk of the peace, depends upon the relation between the clerk and his appointee, and we have not quite sufficient facts before us to decide this point. If the case goes to a second trial, all the circumstances should be inquired into that tend to shew whether he was a servant of the defendant or not.

Erle, J.—This is an action for negligently making up the roll, and the judge considered that, although the fines had been actually levied before, yet that the sheriff was bound to levy. From that view I entirely dissent. The sheriff is supposed to be present in a criminal court, and when a prisoner is sentenced to be fined, and, in default, to be imprisoned, it is his duty, during such imprisonment, to receive the fine in order that the imprisonment may be brought to an end. The roll ought to be made up by the clerk of the peace, including all fines either paid or to be paid; but I am not clear that it is his duty to enter on the roll what he has reason to think may have been paid to the sheriff; and I by no means say it was his duty to ascertain, at his peril, the correctness of his entries on the roll. The sheriff receives this writ to enable him to have the money ready for the Commissioners of the Treasury on a certain day, and if he has obtained the money beforehand, he has nothing more to do than to pay it over at the time appointed to the commissioners. I think that, under the statute, the clerk of the peace is authorised to receive fines in court, which, if not done, and damages ensue, he is liable; but here it was paid to his deputy, and the question, therefore, is, is such an officer a statutable officer, having original authority? As far as the appointment goes it would look as if he were an original officer, but the justices at quarter sessions are to make an order on the county treasurer to pay to the clerk of the peace reasonable remuneration for such officer. If the clerk of the peace were to appoint his articled clerk to record the proceedings of the second court, that would be a strong circumstance to shew that he was merely an assistant, for whom the clerk of the peace was responsible. The facts, however, were not examined at the trial with a view to this point, and it seems to me, therefore, that there must be a new trial; and that the result will depend on the point whether the appointee was acting as an original officer, or merely as assistant to the clerk of the peace. *New trial ordered. No costs.*

COURT OF EXCHEQUER.

Reported by Frederick Bailey and C. J. B. Hertslet, Esqrs. Barristers-at-Law.

Wednesday, Nov. 17.

Crossfield and Others, Administrators, &c. v. Such.

Detinue—Pleading—Payment into court.

In detinue for goods, defendant pleaded — 1st, except as to part, non detinet; 2nd, as to that part, and as to the further maintenance of the action in respect thereof, that after the commencement of the suit he delivered that part to the plaintiff, who then accepted it from the defendant; and, 3rd, as to the damages, by reason of the detention thereof, payment into court of 1s. averring that no further damage was sustained by reason of such detention. General demurrer to the two last pleas:

Held, that both pleas were good. The first demurred to, because if all or any of the goods are delivered up after suit, the plaintiff should have no judgment to recover them, or their value, but only judgment to recover damages for their detention, if the plaintiff has sustained any, otherwise not; and for the residue the plaintiff may have the usual judgment to recover them, or their value, and damages for their detention. The last plea is good, because in all personal actions

money may be paid into court by way of compensation or amends. Detinue is a personal action in which such compensation is sought to be recovered, although the goods, or their value, is also sought to be recovered, and such a case is within the spirit of the 3 & 4 *Wm.* 4, *c.* 42.

Detinue for goods.

Plea—except as to a certain portion of those goods—non detinet; and 2nd, as to that portion, that plaintiffs ought not further to maintain their action in respect thereof, because, after the commencement of the suit, the defendant delivered the same to the plaintiffs, who then accepted and received them; and lastly, as to the damages sustained by the plaintiffs, by reason of the detention of those goods, defendant brought into court 1s. alleging that the plaintiffs had not sustained damage to a greater amount by reason of the said detention.

General demurrer to the two last pleas.

Willes for the plaintiffs, in support of the demurrer.—The pleas are bad in substance; they merely go to the damages, and do not answer the subject-matter of the action. The action of detinue is one of a peculiar nature, and does not admit of payment of money into court. The second plea cannot be supported, inasmuch as it is not necessary, in order to maintain the action, that the defendant should have returned the goods after it was commenced. What is alleged is, that the defendant, at some time before action, detained the goods. Such detainer is admitted by the plea: it admits the cause of action, and answers only one of the consequences. In the action of detinue there are three things for the consideration of the jury—the goods themselves, the value of the goods, and damages for their detention. The jury may find that the goods have been redelivered to the plaintiffs, and excuse themselves from assessing their value, as in *Williams* v. *Archer*, 5 C.B. 318. There no plea of redelivery was on the record, and none is necessary; none, therefore, can be pleaded. [Platt, B.—Suppose those pleas were the only pleas on the record, and the jury found for the plaintiffs, the judgment would be to recover the goods which have been redelivered.] The jury at the trial may take that fact into their consideration, and confine themselves to assessing their value, and damages for their detention; there would be no judgment for their redelivery, as in *Williams* v. *Archer*. The plea merely sets up a matter to be considered by the jury in connection with the other circumstances of the case. The plea should have alleged either that the defendant had always been ready and willing to deliver up the goods, or that there was an acceptance in accord and satisfaction. Had the plea shewed that the re-delivery followed the bailment, it would have been good. (Com. Dig. tit. "Pleader," 2 X, 5.) No such re-delivery is here averred; the consequence of supporting the pleas in question would be to deprive the plaintiffs of the costs of the writ; putting aside the last plea, the second plea is to the further maintenance of the suit: then they can have no costs because no judgment, their only course being to discontinue. (*Wollen* v. *Smith*, 9 A. & E. 505.) Although therefore, they were right in bringing the action, their would be deprived of costs, because the defendant chose to put them in the wrong. [Platt, B.—Suppose they go to trial upon the sufficiency of the damages paid into court, where is the harm?] It does not follow that because the jury may assess damages for the detention, the defendant should be at liberty to plead to them; then, if the last plea is bad, the second plea being to the further maintenance of the action, is also, as, should the plaintiffs proceed, they are deprived of costs, and can only obtain costs by foregoing the legal right they possess of having the question of re-delivery determined by a jury.

Lush, contrà.—The plea was put on the record before the passing of the Common Law Procedure Act, 1852; the demurrer was after the commencement of that Act; it therefore applies, and the objections must be confined to the merits. [Parke, B.—The new Act says that the plaintiff may object to the plea that it is defective in substance. It does not enable you to plead different pleas to what you could do before. It does not enable you to plead to the damages.] The pleas taken together answer the whole cause of action, and say as to the goods defendant delivered them back, as to the damages for their detention he pays money into court; unless the pleas are good the plaintiffs may go on and recover judgment for the defendant to deliver up to the plaintiffs the identical goods which the plaintiffs have already in their possession. The second plea is perfectly good. In Vin. Ab. "Detinue," D. 5, pl. 58, it is laid down that in "detinue of divers parcels of goods, tender of part of them is a good plea of them before verdict." So in Rolls, Abr. "Detinue," E. it is said that where charters were burnt the judgment was not to recover the charters, but the value of the land as damages; and in *Williams* v. *Archer*, 5 C. B. 318, it was held that where there had been a re-delivery of the goods under a judge's order after plea, the measure of damages was the difference in value between what they were worth when they were delivered and when they were redelivered. It is a mistake to say the pleas are only to the damages, they are to the goods; he delivers all he admits he ever had, and pays the money into court for the detention of them. At all events, if they do not answer the whole cause of action, they offer a defence to part of it, and are to that extent good. (*Henry* v. *Karl*, 8 M. & W. 228.) The last plea is unobjectionable; it is a payment into court "by way of compensation or amends" within 3 & 4 Wm. 4, c. 42, s. 21; no difficulty exists as to the costs, the plaintiff may accept the money which is paid into court, and the defendant will be liable to pay him full costs. He also cited *Clements* v. *Flight*, 16 M. & M. 42.

Willes in reply. *Cur. adv. vult.*

Thursday, Nov. 25.—Pollock, C.B. delivered judgment.—In this case the plaintiff declared in detinue of divers goods of the value of 500*l.* and on a bailment to be redelivered on request. As to a portion of the goods, the defendant pleaded non detinet; and as to the residue, a second plea, that the plaintiff ought not further to maintain his action to recover them or their value, because he says, that after the commencement of the suit, the defendant delivered them to the plaintiff, who then accepted them from the defendant; and the defendant pleaded separately to the damages by reason of the detaining of those goods, a plea of payment of 1s. into court, and contended that the averment of damage, by reason of the detention of the goods, did not exceed that sum. This was the last plea. To the two last pleas there was a general demurrer. It was argued upon the 17th inst. and after consideration, and upon reference to the old authorities, we are all of opinion that both pleas are good. As to the second, it was to be observed that it is pleaded in bar only of the delivery of the goods specified or their value, and it seems to be highly reasonable to hold that the object of the suit being the recovery of goods in specie or their value to be assessed by the jury, and also damage occasioned by their detention, the first object is completely answered by delivery to, and acceptance by the plaintiff, of the goods since the commencement of the suit, leaving the plaintiff to recover by verdict of the jury the damage he has sustained by the goods being improperly detained. The old authorities completely bear out this view of the case. In Brooke's Abridgment, title "Tender," placitum 39 (referred to in Viner's Abridgment, "Detinue," b. 5, placit. 58), it is said, "Detinue de divers p'cels de b'ns, tend del part de eux est bo' pie dei eux ben'at v'dict; et le contra puis v'dict, ou ienq'st taxe un forum' ingrosse pur dam' del touts les biens; et ne severa les dam'." Brooke refers to Fitzherbert, 13; and Fitzherbert refers to the Year-Book, 1 Richard 3, where the case is found at length. That case was heard before all the judges. It was an action of detinue for several goods which were connected in value at one sum in the declaration before the jury; and the question was, whether any judgment could be given upon the verdict, and the majority were of opinion it could be given for the whole value; and if all the goods were not given up, and one article was withheld, the defendant was liable for the value of all. The contention on the part of the defendant having been that the different goods should have been valued separately, so that if one chattel only was withheld, the defendant would be liable for the value of that chattel only, and, according to the Year-Books, this was generally thought right, although the majority of the judges decided otherwise. In the course of the discussion, Fairfax, J. said that in detinue for two things, the defendant might at first have given up one, and plead as to the other, which seems to have been conceded, and the inconvenience insisted on on the other side might have been avoided if it took place before verdict; after verdict it was too late, and then to pay the value of all if one article was not delivered up. This is very clear and intelligible. If there is a good defence to part of the goods, by reason that the defendant was always ready to deliver, and the jury assessed the value of the residue of the goods, and we presume damages also, but none as to the other goods actually delivered up; yet if there was no defence as to the part delivered up, then the jury will assess the value as to the residue, and damages for the prior detention of the part delivered up. In another case, however, a part of the goods was produced in court, and delivered to the plaintiff. The defendant assenting to the delivery, and no damages were assessed against him, he was simply amerced; probably because the articles sought to be recovered were deeds, and no damage shewn by their having been detained. That case was in the 38 Edw. 3, fol. 36, and it is stated, "Detinue brought for deeds; some were produced; the defendant pleaded non detinet as to the remainder. Those produced were delivered up to the plaintiff; the defendant was amerced for the detainer." And in the subsequent case, 36 Hen. 6, fol. 26 *b*, also of detinue of deeds, the Court refused the prayer of damages for detention of the deeds, as to which the defendant said nothing, because the plaintiff had not been delayed, and they gave him judgment to recover the deeds. It seems, therefore, in detinue for goods, if all or any are delivered up after suit, the plaintiff can have no judgment to recover them or their value, for it would be actè majori, but he may have judgment to recover damages for their detention, if the plaintiff has sustained any; otherwise, not; and for the residue the plaintiff may have the usual judgment to recover them or their value, and damages for their detention; and it seems to us, therefore, that the plea as to the goods delivered up is good, and that the plaintiff ought not to have judgment to recover what he has already got. The last plea is payment of money into court on account of damages for the detention. In the 3 & 4 Wm. 4, c. 42, s. 21, there is a provision, which seems to us to apply to all actions, with the exceptions mentioned, of which detinue is not one. In all personal actions, money may be paid into court by way of compensation or amends; this is a personal action, in which such compensation or amends is sought to be recovered, although the goods or their value, is also sought to be recovered. The case is within the spirit of the Act, and we think this plea is also good. There will be, therefore,

Judgment for the defendant.

Ecclesiastical Courts.

PREROGATIVE COURT.

Reported by Dr. Waddilove, of Doctors' Commons.

Monday, Nov. 8.

In the goods of E. Wilmott.

Substituted executor—Grant of probate to.

E. W. appointed C. F. W. executor of her will, but in case he should be abroad, or otherwise incapable of acting at the time of her death, then E. N. W. to act, but only during such time as C. F. W. should be abroad, or incapable of acting from any other cause. C. F. W. died in the lifetime of the testatrix. Probate was granted to E. N. W. as executor substituted.

Elizabeth Wilmott, by her will dated the 22nd day of May, 1844, after giving various legacies bequeathed the residue of her property to her nephew, Charles Foley Wilmott, and then declares as follows:—"I nominate, constitute, and appoint my said nephew, Charles Foley Wilmott, executor of this my will; but in case the said Charles F. Wilmott shall happen at the time of my decease to be abroad, or from any other cause incapable of acting as such executor, then and in such case I appoint my said nephew, Eardley Nicholas Wilmott, executor, to act only during such time as the said Charles F. Wilmott shall be resident abroad, or otherwise incapable of acting as aforesaid." Charles F. Wilmott died on the 23rd day of March, 1852, in the lifetime of the testatrix. The testatrix died in the month of September, 1852.

Pratt moved the Court to decree probate to E. N. Wilmott as substituted executor. If C. F. Wilmott had died abroad after the death of the testatrix, and probate had been granted, as it might regularly have been in that case, to E. N. Wilmott, such probate would not have been called in on the death of Charles, but E. would have continued to act; then why should he not, looking to the intention of the testatrix, and the words in which the intention is expressed, take the grant now. The case was within Swint. 5th Wills, p. 4, s. 19. "Wheresoever it is likely that tha testator would have substituted in the case not expressed, if he had remembered the same, as well as in the case expressed, there the substitution is to be admitted, as if the same case had been expressed."

Sir J. Dodson.—E. N. Wilmott is to act only during such time as Charles shall be resident abroad, or otherwise incapable of acting as expressed, that is, from any other cause. These last words are very large, and though I have some hesitation in coming to that decision, I think I may grant the motion.

BANKRUPTCY.

BRISTOL BANKRUPTCY COURT.

Wednesday, Nov. 10.

(Before Commissioner Mr. Serjt. Stephen.)

Re Addis, Onions, and Lloyd, *ex parte* Goold.

Bill of exchange—Acceptance otherwise than in usual style of firm—Proof against joint estate—Non-liability of partnership assets upon acceptance for private debt of partner, where proper style of firm not used—Rejection of proof.

There is no implied authority in law for one partner to accept or give bills in the name of the firm so as to bind the partnership assets in any other manner than in the usual and proper partnership name, according to the style of the firm known to

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the world, and with which the public have been acquainted by use and reputation:

Therefore where the form of an acceptance given by one of several partners for a private debt, purporting to be the acceptance of the firm, differed from that always used by the firm, and with which new firm the public had not become acquainted; a proof tendered against the joint estate, upon an acceptance so differing, will be rejected; and this, although there is no question as to the holder having given sufficient value for the bill.

The bankrupts had been vinegar manufacturers at Gloucester, carrying on business under the name or style of "Addis, Onions, and Co."

Lucas (Bristol) tendered a proof for 100*l.* against the joint estate of the bankrupts by Mr. William Goold, the holder of a bill of exchange for this amount stated to bear the acceptance of the firm, and which he had discounted for the drawer at an unobjectionable rate of interest.

Wilkes (Gloucester), for the assignees, objected to the admissibility of the proof, and examined the creditor, from which it appeared the proof was founded on a bill drawn by one *Henry* J. Lloyd upon the firm, and the acceptance written by Edmund Lloyd, one of the partners who signed the name of the firm as "Addis, Onions, *and Lloyd*," and not "Addis, Onions, *and Co.*" the proper style of the firm by which it was known to the world, and it was proved that the bill was given to the drawer in consideration of moneys advanced by him to Edmund Lloyd, the partner accepting for a private debt, and not for the purposes of the partnership. The bill was endorsed to Goold by the drawer for value. Before the bill arrived at maturity the firm of Addis, Onions, and Co. had become bankrupt, and it had not been presented. It appeared there had been an arrangement between the drawer and Goold, the holder, that the latter should prove on the bill against the estate of the bankrupts and receive the dividend, the drawer being responsible for any deficiency. It was now argued against the reception of the proof—1st, That the consideration for the acceptance was a private debt of the bankrupt, Edmund Lloyd, and not for a partnership liability. 2ndly, That the proof was inadmissible as against the joint estate, the acceptance being in the names of "Addis, Onions, *and Lloyd*," whereas the proper name and style under which the firm was trading and known to the world was "Addis, Onions, *and Co.*" and it was therefore contended that Edmund Lloyd had no authority to accept bills to bind the partnership otherwise than that which the law implied, viz. to do so in the proper partnership name, and that this bill being accepted in the name of "Addis, Onions, *and Lloyd*," which was inapplicable to the real name of the firm, which was "Addis, Onions, *and Co.*" the proof should be rejected. (*Kirk* v. *Blurton*, 9 Mee. & W. 284.)

Lucas, in support of the proof, shewed that by the articles of partnership "Addis, Onions, and Lloyd" was the style of the firm mutually agreed on between the partners, and that the bankrupt, Edmund Lloyd, had protested to his partners against the use of the style of "Addis, Onions, and Co."

Wilkes, in reply, contended that the bankrupt, Lloyd, had acquiesced in the adoption of Addis, Onions, and Co. as the style of the firm, and produced receipts given by him on behalf of himself and partners before and after the transaction in question, in which the latter style of the firm had been adopted by him. It was also elicited that the articles of partnership expressly stipulated by a mutual covenant between the parties that no acceptances of the firm should be given otherwise than for the purposes of the business. The acceptance in question having been given for a private liability of the bankrupt Lloyd, it was now insisted that it could not be admitted as a proof against the joint estate of the partners, and must be altogether rejected.

Mr. Commissioner STEPHEN observed that the form of this acceptance differed from that always used by the firm in their business, which was that of "Addis, Onions, and Co.;" and therefore it would appear that the public had never become acquainted with the firm of "Addis, Onions, and Lloyd." If it had not been for the case of *Kirk* v. *Blurton*, cited from the Ex. and decided in 1841, he should have been inclined to think that the present proof might have been sustained, but as that decision had not been appealed from, the Court was bound by it, and to hold that, if an acceptance by "Blurton and Co." could not bind a firm known to the world only as that of "Blurton," so an acceptance by "Addis, Onions, and Lloyd" could not bind a firm known only to the world as "Addis, Onions, and Co." It was very true that the only style recognised by the articles of partnership was that of "Addis, Onions, and Lloyd," but it appeared that this was a mere private agreement among the partners, which was never acted on so far as the public was concerned; besides which there was the covenant which deprived Lloyd and the other partners of all authority for using the name of the firm for any other than partnership purposes. The Court, however, considered the case was not free from doubt, and in rejecting the proof would give every facility for having the points involved brought before the Lords Justices, if it should be thought advisable to appeal from this decision. *Proof rejected.*

INSOLVENCY COURT.

Reported by DAVID CATO MACRAE, Esq. of the Middle Temple, Barrister-at-Law.

Saturday, Dec. 11

(Before the CHIEF COMMISSIONER.)

PROTECTION CASE.

Re WM. ROTHERY.

Petition—Residence.

If all the places where a petitioner has resided for six months previous to filing his petition are not fully seth forth, the petition will be dismissed.

This insolvent was opposed by *Cooke*, and supported by *Macrae*.

It appeared upon the examination of the opposing counsel, that the petitioner, who had resided in the Burlington Arcade, had, between the time of giving instructions to his attorney to prepare his petition, and the date of filing it, shut up his house in the Arcade, and removed with his goods to Buckingham-place, Pimlico. He was, however, indebted for the rent of the house in the Burlington Arcade up to this date, and, in fact, held the lease of it.

Cooke submitted, that as the petition required that all an insolvent's residences for six months previous to the date of filing it, should be stated, and as he had omitted to mention the new residence in Buckingham-place, the petition being incorrect and untrue, must be dismissed. There was no power to amend the petition.

Macrae submitted, that as the new residence was a mere lodging, and as the insolvent was still liable for the rent of his house in the Arcade, it might be a doubtful point whether that was still not his residence, as, in point of law, a new domicile was not acquired until the original domicile had been abandoned facto et animo. (See Macrae's Insolvent Practice, 106.)

The CHIEF COMMISSIONER thought the latter residence ought also to have been mentioned in the petition, and being omitted the petition was not in the form required by the Act of Parliament. As there was no power of amendment, the petition must be dismissed. *Petition dismissed.*

Re GEO. RICHARD DAX.

Appointment of assignee—Country case.

The Court has power to appoint an assignee under the 1 & 2 *Vict. c.* 110, *in cases heard under that statute in the County Courts.*

This insolvent, a clerk in the Exchequer-office, was heard and discharged at Dover, a short time since.

Cooke, to-day, applied for the appointment of an assignee, no person having been nominated by the County Court. The creditor nominated by the present proceedings was Mr. Tatham, a creditor for 185*l.* costs incurred as proctor for Mrs. Dax in obtaining a divorce, a mensa et thoro. Mr. Tatham was recommended by eleven creditors, whose debts amounted to 1,100*l.*

The CHIEF COMMISSIONER asked why some creditors had been asked to support the nomination and others not.

Clarke, of the firm of Nicholls and Clarke, attorneys for Mr. Tatham, said, that all the creditors whose debts had been considered bonâ fide, had been called upon.

The CHIEF COMMISSIONER said, he did not like to make the appointment behind the backs of some of the parties, and therefore the better way would be to give notice of this application by advertisement.

Monday, Nov. 22.

(Before Mr. Commissioner PHILLIPS.)

PROTECTION CASE.

Re ROBERT LOCKWOOD.

Petition—Attestation.

If the petition be not duly attested, it will be dismissed.

This petitioner came up for his examination on his interim order.

Bicker Caarten, for creditors, directed the attention of the Court to the form of attestation at the foot of the petition, which was as follows:—"Signed in the presence of G. W. for T. S. W. of ——, attorney or agent in the matter of the above petition;" and submitted that the attestation was contrary to the 4th rule, which requires that each sheet of the petition and schedule shall be signed by the petitioner in the presence of, and shall be attested by, his attorney. The petition not being duly attested must be dismissed.

The COURT held the objection fatal.

Petition dismissed.

IRISH INSOLVENT DEBTORS COURT, DUBLIN.

Reported by J. LEVY, Esq. Barrister-at-Law.

November, 1852.

Re AGNES HACKNEY.

Creditor's petition, filed by wife of creditor—Pauper declaration.

Where a debtor is arrested at the suit of a creditor who has gone to America, and the wife of the creditor files a petition and vesting order, under 3 & 4 *Vict. c.* 107. *s.* 19 [*English analogous,* 1 & 2 *Vict. c.* 110, *s.* 36], *so as to prevent the insolvent's being discharged under the Pauper Prisoners' Act, such petition and vesting order will be set aside.*

The insolvent had been dealing with a Dublin shopkeeper who had gone to America, leaving his wife after him carrying on business as usual. The account having run up to a considerable amount, partly after and partly before the shopkeeper had left Dublin, the insolvent was sued in his name, arrested, and sent to prison. There is here what is called the Pauper Prisoners' Act, 5 & 6 Vict. c. 92, s. 8, which authorises the discharge of a prisoner committed for debt who makes a declaration pursuant to the statute, that he or she is without any means of support, and not entitled to property in possession, reversion, or otherwise. The discharge takes place at the expiration of twenty-one days from the making of this declaration and its publication in the *Gazette*, unless the creditor files a petition on which a vesting order is founded, and which has the effect of preventing the discharge of the debtor until he files his schedule and comes up to be heard under the Insolvent Act. The insolvent in the present instance, having taken the pauper declaration, was upon the point of being discharged, when the wife of the shopkeeper, at whose suit she was in custody, filed a creditor's petition, pursuant to the statute, and called upon the insolvent to file a schedule and come up to be heard.

Curran now moved to have the insolvent discharged from custody, and the petition and vesting order set aside, on the ground that it was not competent for the wife of a creditor, or any other person but the creditor himself, to file such petition or obtain a vesting order thereon. The statute provided that "If any prisoner charged in execution for any debt, damages, or any costs, or sum or sums of money, or committed for, or by reason of any contempt of any Court whatsoever, for nonpayment of any sum or sums of money, or of costs taxed or untaxed, either ordered to be paid or to the payment of which such prisoner would be liable in purging such contempt, or in any manner in consequence or by reason of such contempt, shall not within twenty-one days next after the time appointed for the commencement of this Act, make satisfaction to the creditor or creditors at whose suit such prisoner shall have been so committed or charged in execution for such debt or damages, or to the person or persons entitled to the money for the nonpayment of which such prisoner shall have been in contempt, or to the payment of which such prisoner would be liable in consequence, or by reason of such contempt, or of any prisoner who after the time appointed for the commencement of this Act shall be committed to any prison or goal, and charged in execution for any debt or damages, or any costs, or sum or sums of money, or committed for or by reason of any such contempt as aforesaid, shall not within twenty-one days next after such prisoner shall be so committed or charged in execution as aforesaid, make satisfaction to the creditor or creditors at whose suit such prisoner shall have been so committed or charged in execution, or to the person or persons entitled to the money, for nonpayment of which such prisoner shall have been in contempt, or to the payment of which such prisoner would be liable in consequence or by reason of such contempt,—then, in any of the said cases, it shall be lawful for any such creditor or creditors, or *persons entitled to such money* as aforesaid, to apply by petition in a summary way to the Court for the Relief of Insolvent Debtors for an order vesting the real and personal estate and effects of such prisoner in the provisional assignee for the time being of said Court, according to the provisions of this Act." It was contended that there was nothing in the foregoing section of the Act to warrant any one but a creditor who had laid on a detainer or charged the party in execution to file such petition. An analogous statute was in force in England, but in no single instance could it be shewn that the wife of a creditor, or any other but the creditor himself, had presented such petition.

Sydney contended, that the passage in the section of the Act which said that "any such creditor or person entitled to such money as aforesaid, might apply by petition," was clearly meant to include cases like the present. The wife of the creditor was the only party entitled to the money; in point of fact, a great portion of the debt was contracted with her by the insolvent after her husband left the

country, and if the Court did not allow the petition to stand, the insolvent would escape from prison, and the debt would be lost. If the petition were allowed to stand, and the case to come before the Court, it would be found that the insolvent, although having taken the pauper declaration, had ample means to pay her debts. The Court had an equitable jurisdiction over every case that came before it, and the present was one peculiarly for its exercise.

The COURT said the case was a novel one,—the like had not previously come before them; but it was tolerably clear that the power of petitioning given by the statute was confined to the creditor, and that although to "persons entitled to such money" was given the power to petition, that passage had reference to cases where parties were in custody under money attachments, but that anything in the statute was never intended to authorise a married woman, the wife of a creditor, to present such a petition; it was idle to attempt to maintain such a proposition. The petition and vesting order should therefore be set aside.

Re MILNE.

Allocation order—Naval or military pay.

Where a naval or military officer, in receipt of retired pay, is brought before the Court on a creditor's petition, the Court can recommend an allocation of the pay for the benefit of creditors, although the insolvent refuses to swear to his schedule or take his discharge.

The insolvent was a major in the army, having a retired allowance or pay amounting to 228*l.* a year. He had been arrested, in July 1850, for a small debt, which he refused to pay, and having remained in prison for several months, a creditor's petition was filed, on which a vesting order had been obtained, which was followed by the insolvent filing his schedule, by which it appeared that the whole of his debts amounted only to about 75*l.* He was frequently brought up for hearing, but always refused to swear to his schedule or take his discharge, but continued in prison, where he spent his pay, but would not give his creditors even a portion of their debts. On being brought up this day,

M'Nally, solicitor, said the insolvent, and he believed the Court, had been previously under the impression, that if an insolvent, having pay or pension from any civil or military department which came under the allocation clause of the Act, refused to swear to his schedule or take his discharge, the Court had no power to recommend an allocation of the pay. That question, however, was decided by two cases perfectly analogous to the present,—*Re Mongay* and *Re Tolson*, 17 Law T. Rep. 304. In one of these cases, the party, a half-pay officer, refused to file any schedule, and the Court, after a vesting order under a creditor's petition, recommended an allocation under the English Act. [The 56th section, 1 & 2 Vict. c. 110, is precisely same as the 44th section of 3 & 4 Vict. c. 107, Rr.] The Court had, therefore, the power to recommend an allocation, and let the major stay in prison until his creditors were paid under it, if he thought proper to do so.

Mr. Commissioner CURRAN said, on looking at the section of the Act, he saw nothing to prevent the Court from pursuing the course suggested, but he would wish for an opportunity of looking into the cases in the LAW TIMES, which had been referred to.

The case was ordered to stand for a week, and on again coming before the Court, both commissioners stated that they had looked into the cases reported in the LAW TIMES,—one of them was an *à fortiori* case. They would therefore recommend an allocation whether the insolvent swore to his schedule or not.

The major was then examined as to the amount of his pay, and the allocation order made, though he still refused to swear to his schedule, or take his discharge.

Re CARLTON.

Allocation of pension from the Crown.

Query, does a pension or allowance from the Crown, denominated royal bounty, to a person who never belonged to any public department, come under the allocation clause of the Insolvent Act? If such pension should be regarded as future acquired property, creditors under a previous insolvency would be rateably entitled to it.

The insolvent, who is a celebrated story writer, and enjoys a pension of two hundred a year from the Crown, as a reward for merit, came up to be heard on his petition. It appeared that he had some time previously, and before he obtained the pension, taken the benefit of the Insolvent Act. He was opposed by several creditors, to whom he was indebted for goods supplied for his necessary household expenses. He stated on his schedule, that in consequence of the depressed state of the literary market, he was at present unable to earn more than about a hundred a year by his writings, and that he had a family of ten children and his wife depending on him. The opposition was with a view of obtaining an allocation order with regard to his pension. The Court observed that they could not allow a man to pass through and get a free discharge, who had a pension of two hundred a year, and could earn at least one hundred besides, unless he made a satisfactory arrangement with his creditors; they were clearly of opinion that they had the power of recommending an allocation with regard to his pension.

Levy, for the insolvent.—A fair, he would say, under the circumstances, a liberal offer had been made to the creditors, which they seemed unwilling to accept. They had been offered 7*s.* 6*d.* in the pound in cash, and if they did not take it, he would resist an allocation order; he thought the income was of that character to which such an order would not apply. It was what was called a royal bounty, proceeding direct from the Crown, not for services rendered in any civil or military department, whereas the section of the Act clearly referred to a pension payable by some branch or department of the civil or military service. [Mr. Commissioner CURRAN.—Then if it does not come under the allocation clause, it is future acquired property, and will pass to the assignee.] Suppose it were future acquired property, see what the result would be to creditors. The Court, in dealing with it, would have respect to the insolvent's large family, his condition in life, and all the surrounding circumstances of the case, and would only take from him a small portion of his income, and then, upon the authority of two well-considered cases, *Re Johns*, 1 Cox & Macrae, 13, and *Re Hooker*, ib. 55, all the creditors under all the insolvencies should come in rateably, and they would not for many years get anything like 7*s.* 6*d.* in the pound. [Mr. Commissioner BALDWIN.—If the Court has not the power to make an allocation order, they would have the power to remand, if the insolvent did not consent to allocate.] He trusted the Court would not exercise that power where an offer had been made by the insolvent beyond anything that could be reached by the creditors under an order that would apply to the whole of them under all the insolvencies.

The creditors, having consulted, said they thought it prudent to accept the offer that had been made.

The COURT concurred in the propriety of their decision, and the insolvent was discharged.

Re HASLETT.

Reputed ownership—Distress by landlord after arrest of insolvent.

Where a landlord distrains the goods of an insolvent the day after his arrest, and they are purchased by third parties, and still left in the possession of the insolvent, they will not pass to his assignee. The reputed ownership clause will not apply except at the time of the arrest; the property belongs to another, and is in possession of the insolvent by permission of the true owner.

In this case *Armstrong* shewed cause against a conditional order for an attachment obtained against the insolvent, who was a Presbyterian clergyman, for not delivering up to the assignee the possession of a certain farm and chattels, which had been returned in his schedule. The affidavits on which the application was resisted stated that the insolvent had been arrested and sent to prison on the 1st of November, 1850. There was a vesting order on the 3rd, setting forth the property of the insolvent in the usual way. On the same day, or the day previous, a distress was made for rent, and the property sold; but the parishioners of the reverend gentleman having made a subscription, purchased it, as they stated, not for himself, but for the use of his family, and left it in his possession, as it had been previously; and it was now contended that this property could not possibly pass to the assignee; that the sale by the landlord diverted it from the assignee, if it ever vested in him, and that remaining in the insolvent's possession afterwards gave the assignee no title to it. With regard to one of the denominations of land returned in the schedule, the assignee was entitled to it, and it should be given up within a reasonable time; as to the other, the insolvent had been evicted out of it, and was not at present in his possession.

M'Millan, for the assignee, contended that the sale was collusive between the landlord's agent and the insolvent. The insolvent was arrested on the 1st of November, and the distress was made the next day. The property sold never changed owners, and if it did not pass to the assignee under the 20th section of the Act 3 & 4 Vict. c. 107 [English analogous, 1 & 2 Vict. c. 110, s. 37], it should be deemed to pass under the reputed ownership clause, s. 45 [English analogous, s. 56]; or at least the 20th and the 45th sections ought to be construed together. At all events, the Court possessed an equitable jurisdiction to deal with property sought to be kept from the creditors by what was evidently a contrivance, and direct that it should be given up to the assignee. The swearing with regard to the purchase of it was very ambiguous; but at all events there it remained, in the evident ownership of the insolvent, and the assignee was plainly entitled to it.

The COURT delivered judgment.—They thought the application as regarded the personal property was wholly untenable. If had not been denied that rent was due, and a distress made, and it was equally certain that the property had been purchased and paid for by third parties; and although those parties left it there for the use of the insolvent's family, they would have a right to claim it whenever they thought proper; and if they choose to bring an action of trover for it, they would have a right to recover it in that way, and that appeared to be the true test to try it by. With regard to the reputed ownership clause, it did not apply at all. At the time of his arrest, the goods were his own, and not in his possession by the permission of the true owner; he was the owner himself, and the clause did not apply to property of another that might come into and remain in possession of an insolvent after the arrest. The cause shewn should be allowed as regarded the chattels—the farm in possession of the insolvent to be given up within two months, otherwise the attachment to issue.

Re EDWARDS.

Discharge from custody before hearing—Costs of ad interim assignee.

Though an insolvent may be out of custody when his case comes on for hearing, the Court may retain his petition, and give liberty to an ad interim assignee to apply for costs of opposition out of any fund in his hand.

The insolvent was opposed by *Kernan* and *Levy*, on the ground of having contracted debts fraudulently; but when the case was partly opened, it was announced that he was out of custody, and his attorney asked for the dismissal of his petition.

Levy applied that the petition might be retained, although the insolvent was out of custody. There had been an ad interim assignee appointed, who had realised a few pounds out of the insolvent's estate. [Mr. Commissioner CURRAN.—It may be a proper case for the assignee to get his costs of opposition.] And as the insolvent chose to get himself released from a friendly arrest after the assignee had gone to the expense of instructing counsel and attorney to oppose, the Court had the power both of retaining the petition and ordering him his costs when taxed by the proper officer.

The COURT directed the petition to be retained; the case to stand adjourned till the assignee filed his account, and that he should then be at liberty to apply for the costs of the opposition, as well as his costs of appointment.

Scotch Reports.

DIGEST OF SCOTCH CASES.

COURT OF SESSION—FIRST DIVISION.

Wednesday, Feb. 18.

M'DOUALLS *v.* M'DOUALL.

Marriage—Domicile—Legitimation.

A domiciled Scotchman having married in Edinburgh a domiciled Englishwoman, by whom he had had children born to him in England:

Held, that the doctrine of legitimation per subsequens matrimonium applied.

This was a declarator of legitimacy. The plaintiffs are the children of Colonel James M'Douall, heir of entail of the estate of Logan, in the county of Wigton, and of Bankton, in the county of Haddington. Colonel M'Douall was from his birth, and still is, domiciled in Scotland. A contract of marriage was executed between him and Mrs. M'Douall in Edinburgh in 1847. It was admitted that Mrs. M'Douall is a native of England, and never resided in Scotland till after the birth of the plaintiffs.

Defences were lodged for Colonel and Mrs. M'Douall, admitting generally the whole facts and conclusions of the summons. Defences were also lodged for Roland James M'Douall, grandson of the deceased Andrew M'Douall, formerly of Logan, and brother of Colonel M'Douall, now of Logan. These defences bore, that the mother of the plaintiffs did not reside in family with their father in England, and formed no part of his establishment, so that his domicile might be taken to be hers. It was pleaded, therefore, that the connection between the parents of the plaintiffs having been unquestionably illicit in its character originally, and with no view to marriage—their birth having taken place in England while the connection possessed that character, and their mother having been domiciled in England at and subsequent to their birth—the doctrine of legitimation per subsequens matrimonium does not apply to the case.

Proof was led by both parties, and thereafter the Lord Ordinary (Ivory), "having especial regard to the fact (admitted in the defences) that the father of the plaintiffs is a native, and has always been a

domiciled Scotchman,—finds, declares, prohibits, and discharges simpliciter, in terms of the libel; but, in the circumstances, finds no expenses due, and decerns."

In a note, his lordship remarked,—"As to the paternity of the plaintiff, the proof leaves no room for doubt, while, on the question of legitimation, again (with its correlative patrimonial results), the authority of the House of Lords' judgment in the former cases of *M'Douall* and *Munro* is absolute and conclusive."

The defendant reclaimed.

Moir and *Dean of Faculty* for the reclaimer.

T. Mackenzie and *Marshall* for the respondents.

The LORD PRESIDENT.—I cannot come to a different conclusion from the Lord Ordinary. According to the decisions we have already pronounced his judgment is correct.

Lord FULLERTON.—I am of the same opinion. The whole facts of the case here are admitted. The effect of this marriage is to make the lady a Scotchwoman; and therefore the principle of legitimation per subsequens matrimonium applies.

Lord CUNINGHAME.—So many cases of importance have occurred of late in our practice, relative to the law of marriage and legitimacy, and few points in them now remain undecided. If the plaintiff's father was a *domiciled* Scotsman, there can be no doubt that his children, though born in England, were legitimated by the contract of marriage executed between them in Scotland in 1847. The case of *Munro*, as contrasted with the *Strathmore* and *Ross* case, settled that point incontrovertibly. Some countenance was given, in the case of *Strathmore* and *Cromarty*, to the rule, that bastardy in England was *indelible*,—but that idea is exploded by the case of *Foulis*. When the father is a *domiciled* Scotsman, who subsequently marries the woman, she follows his domicile, and the marriage is, to all intents and purposes, a *Scotch* marriage. In this view, the interlocutor under review is incontrovertible.

Lord IVORY also adhered to his former opinion as Lord Ordinary.

HOUSE OF LORDS.

Reported by JAMES PATERSON, Esq. Barrister-at-Law.

Tuesday, Nov. 30.

JOHN EDWARD GEILS *v.* FRANCES GEILS.

Divorce—International law—suit for restitution of conjugal rights—Nature of a responsive allegation—Decree à mensâ et toro in England no bar to a divorce à vinculo in Scotland—Res judicata—Domicile.

A Scotsman domiciled in Scotland, married in England an English lady, and after the marriage they went to Scotland to reside there. During the marriage he committed in Scotland acts of adultery, after which the wife separated from him, and came to live in England. Thereupon the husband instituted a suit in the Arches Court of Canterbury for the restitution of conjugal rights. To this suit the wife pleaded his acts of adultery in Scotland in the form of a responsive allegation, and prayed a sentence of separation à mensâ et toro, which was pronounced. The wife thereafter commenced an action in Scotland to obtain a divorce à vinculo, the Courts there having the power to dissolve a Scotch marriage on the ground of adultery. To this action, which was founded on the same acts of adultery as the responsive allegation, the husband pleaded in bar the sentence of separation obtained in England:

Held, that this was a bad plea, because the wife's proceeding in the Arches Court in England, and her action for divorce à vinculo in Scotland, were collateral remedies, having distinct objects and totally different effects.

When a wife is sued for restitution of conjugal rights in the Arches Court in England, and sets up as a defence adultery on the part of the husband, in the usual form of a responsive allegation, and prays and obtains sentence of separation à mensâ et toro on that ground:

Held, by St. Leonards, L.C., that she is not an actor in the ordinary sense, but merely acts in self-defence, and cannot be called an institutor of the suit:

Held, by Lord Truro, that she is as much an actor or institutor of the suit, as if she had originally promoted a suit for a divorce in the first instance.

Semble, where a domiciled Scotsman marries in England an English lady with a view to return to Scotland to reside there immediately after, the marriage may be treated either as an English or a Scotch marriage.

Quære, whether a sentence of separation à mensâ et toro in England has the effect of severing the domicile of the wife from that of the husband, and giving her a domicile of her own?

This was an appeal from the Court of Session in Scotland. The appellant, John Edward Geils, was the son of Lieut.-Col. Andrew Geils, of Dumbuck, a landed proprietor in Scotland, and entered the army in 1834, from which time till 1837 he was absent in India and elsewhere, with his regiment. From 1837 to 1838 he generally resided in his father's mansion-house. In October 1838 he married in England Frances Dickinson, the respondent, an English lady, possessed of landed property in England. Immediately after the marriage the parties went to reside in Scotland, and, with the exception of occasional visits to England, remained there for several years. In 1843 the appellant's father died, and he then succeeded to the paternal estate in Scotland. In September 1845, at which time there had been born of the marriage four children, the parties were on a visit to England, when the wife withdrew herself from her husband's society. In the following month the husband instituted, in the Arches Court of Canterbury, a suit for restitution of conjugal rights. To this suit the wife pleaded cruelty, adultery, and unnatural practices on the part of the husband. This pleading was in the form of a "responsive allegation," and concluded with a prayer, that the Court would pronounce a sentence of separation on all the three grounds. In her allegation, she set forth divers acts of adultery committed by the husband in Scotland, with two maid-servants; and ultimately, after proof was taken, the Court was satisfied that the husband had been guilty of the adultery, and accordingly a sentence of separation à mensâ et toro on that ground, was pronounced in the usual form on 26th April, 1848. (*Geils* v. *Geils*, 6 Notes on Eccl. C. 109).

On 17th May, 1849, the wife then commenced an action in Scotland, for a divorce à vinculo matrimonii, it being in the power of the Scotch courts so to dissolve Scotch marriages, on the ground of the adultery of either party. The husband pleaded to this action, inter alia, these pleas. 1. No jurisdiction. 2. "The plaintiff (respondent), having instituted a suit against defendant (appellant) in the Arches Court in England, founded on the acts of adultery, which are set forth in the present summons (or declaration), and having in that suit obtained, in April 1848, a regular sentence of separation à mensâ et toro, is barred from maintaining the present action in this court." The Court of Session at once overruled the first preliminary plea, and pronounced an interlocutor accordingly; but as to the second, which was pleaded in bar of the action, inasmuch as it disclosed matter pertaining to foreign law, the Court, before disposing of it, ordered the parties to prepare a joint case for the opinion of English counsel, as to what was the legal effect of the proceedings in the Arches Court at Doctors' Commons. Accordingly, a case was submitted to Sir J. Dodson, Queen's Advocate, and J. Stuart Wortley, Q.C. containing several distinct queries, the object of which was to ascertain how far the wife acted strictly on the defensive in the Ecclesiastical Court in England, and whether she could have acted otherwise than she did. The following parts of the joint opinion of counsel are the most material. "2. The proper form for stating a ground of adultery is by an allegation, such as was pleaded in the present case, but the prayer does not always or necessarily form a part of the allegation, and it may be brought in at the hearing. 3. We are of opinion that a wife may perhaps defend herself in such a suit on the ground of adultery without praying for a divorce, but it is not a course likely to be resorted to; and we are not aware of any case in which it has been done. The wife, having succeeded in establishing the guilt of her husband, would naturally be desirous of obtaining a sentence of divorce instead of a mere dismissal from the suit, more especially as such sentence would place her in a situation to demand permanent alimony, which, in many cases of this kind, is an important consideration. 6. Assuming that the wife could have established her defence on the ground of adultery, without her allegation containing a prayer for a divorce, the judgment would probably have merely dismissed her from the suit, and pronounced against the prayer of the husband; but (as we have said before) we believe no such case has occurred, nor is such a case likely to arise." On considering the above opinion of counsel, the Court of Session held that the second plea to the action in Scotland was bad, and pronounced an interlocutor accordingly. The husband now appealed to the House of Lords against this interlocutor, but not against the interlocutor overruling the first plea as to the jurisdiction.

Bethell, Q.C. and *Anderson*, Q.C. for the appellant. (Most of the points in the argument being alluded to in the judgment, we give here merely the cases cited, and the points to which they refer.)—The Court in Scotland had no jurisdiction to dissolve an English marriage, which this was. (*Lolly* v. *Sugden*, R. & R. 237; *Macarthy* v. *De Croix*, 2 Cl. & Fin. 568; *Beazley* v. *Beazley*, 3 Hagg. 639; *Tovey* v. *Lindsay*, 1 Dow, 118.) [The LORD CHANCELLOR.—As you have not appealed against the interlocutor, finding that the Scotch Court had jurisdiction, you cannot open up that question.] Then we ask leave to amend, and to include that in our appeal. [The LORD CHANCELLOR.—Since the other side objects, it will be better for you to go on, and argue upon the assumption that the Court had jurisdiction, and if afterwards the House finds that the justice of the case requires it, perhaps the House will allow you to amend.] The plea in the Court below was one of res judicata, which is a principle of universal law. (Vinn. Com. in Inst. iv. 13, s. 6.) The wife, in giving in the responsive allegation, was as much an actor or institutor of the suit as if she had commenced it. The form only was changed, and the onus probandi was shifted to her, and she became the plaintiff. (*Best* v. *Best*, 1 Add. 411.) She made her election and took her remedy in England. The causa petendi thereby became absorbed, and the same acts of adultery could not again be made the subject of redress in a court of justice. Such a plea clearly bars a second action. (Erskine's Inst. b. 4, c. 3, s. 4; Story's Conflict, 162; *Allison* v. *Catley*, 1 Dun. B. & M. 1025.

Dr. *Addams* and *Moncreiff*, for respondent.—The Court in Scotland clearly had jurisdiction, for this was a Scotch and not an English marriage. (*Warrender* v. *Warrender*, 2 Shaw & Maclean, 154; 2 Cl. & Fin. 566; 3 Lord Brougham's Speeches, 459.) The wife was not an actor or institutor of the suit in England; she was forced into court: she had only one defence, and, having pleaded it, the Court forced her to take a decree à mensâ et toro. There is no such thing as a dismissal of the suit in such circumstances, and there is no case on record where the Court has allowed it. A dismissal of the suit has often been asked, but never granted; and the Court will not consent merely to stay its hand. (*Connelly* v. *Connelly*, 7 Notes on Eccl. C. 141.) The prayer for a divorce is a mere formal part of the pleading.

Bethell replied. *Cur. adv. vult.*

JUDGMENT.

The LORD CHANCELLOR.—My lords, this is the case of a marriage by a person who was a Scotchman domiciled in Scotland with an English lady of landed property in this country. The parties went to live in Scotland. I think, if it were now material to go into that question, there would be no difficulty in establishing that the domicile was originally on the part of the husband in Scotland, and that it remains a Scotch domicile. The residence was, in fact, in Scotland; the visits were to England. The result of the proceedings shews that after considerable time, and after several children were born of the marriage, a separation, in fact, took place between the husband and the wife. A settlement had been made. I think he had no property at that time in possession, but there seems to have been a jointure secured upon the Scotch estates for the lady; and the husband had 1,200*l.* a year secured to him on her English property, which consisted of an estate of between 3,000*l.* and 4,000*l.* a year. The husband, in consequence of the wife separating herself from him, instituted proceedings in the Arches Court in England praying for a restitution of conjugal rights. In answer to that demand the wife set up a case of adultery and cruelty. It appears that the nature of the defence in England must have been that which this lady set up. She had not a variety of defences, but a single defence, and that was the case of adultery. I need not go into the allegations of cruelty and the other matters. The consequence of the adultery being proved would, of course, be, that the husband would not succeed in his suit. But it appears clearly enough, from the case of *Best* v. *Best*, that formerly a cross suit was necessary by the wife, if she desired her defence to be followed up by a decree in her own favour, divorcing the husband and herself à mensâ et toro. That form, however, has long since been deemed unnecessary, and very properly so. A wife may frame her defence generally, and may rest upon her defence alone, without praying for a divorce à mensâ et toro. If she did not pray for it in her defence, she might pray for it at the hearing, and that would be equally good. The result is, that there is no case, I believe, to be found in which a wife has rested simply upon her defence, and has not coupled that defence with a prayer for a divorce from bed and board. Now if your lordships will consider for a moment, you will find that it could not in the nature of things be otherwise. We are now speaking of matters of substance and not of form. If the husband instituted a suit against the wife for the restitution of conjugal rights, what must be her defence, she living then, of course, separate from him (otherwise, of course, there could be no reason to institute the suit)? Her defence must be, that in consequence of his criminal conduct (and it is only that particular conduct that will enable her to do so), she ought to be absolved from her obligations to live with him, and that bed and board should be separate between them. If she were to rest simply upon the defensive, and then the husband's process were dismissed, the right would remain in the husband, although the remedy might be imperfect, but she would have

no decree absolving her liability as a wife to consort with her husband, and give him all the priviliges and rights of a husband. It is of necessity, therefore, that the defence upon this ground should be coupled with that which so naturally and necessarily follows from it, viz. the right to continue in the situation in which she is found at the moment that the proceedings were instituted, living as a wife apart from her husband, and insisting upon the right to continue to do so. If you look at the rights of a husband, and the way in which they may be exercised, and suppose there to be no decree of divorce, you will observe how defenceless the woman must be, and therefore it appears to be a necessary portion of the defence, that she should have the relief of a sentence of divorce. The question remains to be considered, what the consequence of having that relief is. That is a totally different question. But I must here, before I proceed farther, draw your lordships' attention to the nature of the case, as regards the jurisdiction of the Courts in Scotland. Their jurisdiction has been assumed to rest, independently of any general reasoning upon the fact that this lady was a Scotch spouse. She is equally an English spouse: the marriage is both an English and a Scotch marriage. As the husband was a domiciled Scotchman when he married, there is no doubt that by the marriage the wife's domicile followed that of her husband, and she became, therefore, a Scotch spouse. There is no question about that. It is said that the divorce here got rid of the husband's domicile. But supposing that to be so, upon which I would rather not give any opinion, yet that would not create any difficulty in this case as to the jurisdiction of the Scotch Courts; because, supposing in other respects the proceedings which the wife instituted there to be right, according to the law of Scotland, the husband being domiciled in Scotland, and being a Scotchman, the crime itself having been committed in Scotland, there can be no question that the lady was entitled, as far as jurisdiction goes, to take her remedy against the husband: no question could be raised upon that point. As far, therefore, as depends upon the simple question of jurisdiction, I think the case is free from all possibility of doubt. What the effect of the proceeding is, is another question. Against the suit, therefore, in Scotland for a divorce à vinculo, the husband pleaded, first, want of jurisdiction; but that plea was overruled in the Court below, and he has not appealed to this House against the interlocutor so overruling it. And I think the appellant was well advised in not including that point in his appeal, for the jurisdiction of the Scotch Court in cases like this was clearly established beyond the possibility of a doubt by the decision of this House in *Warrender's* case (*supra*). Well then, my Lords, there is this very material difference to be considered between the law of Scotland and the law of England. By the law of Scotland you may obtain a decree for separate maintenance or a decree for separation, according as circumstances may be proved; that is, in effect, you may obtain a divorce à mensâ et toro, or you may also obtain in Scotland, from the courts there, what you cannot obtain here,—a divorce à vinculo matrimonii. Here you can do no such thing. It is necessary by our law to resort to Parliament in order to obtain that latter relief. And here that very relief cannot be obtained, speaking generally (there may be exceptions to that), unless the husband has obtained a divorce à mensâ et toro in the Ecclesiastical Court, before he comes to this House for that relief. The first step, therefore, so far from being inconsistent with this claim to have the knot untied, —the first step in loosening the knot is considered to assist this House in absolutely untying it. What is done by Parliament is considered to be in aid and furtherance of that relief, which has been obtained in the Court below. In the Courts in Scotland no such remedy is to be had, and no such remedy is necessary, because the Courts there can, either as a second step or as a first step, altogether dissolve the marriage. There is one other distinction to be attended to, which is, that in England, generally speaking, a woman cannot obtain a divorce, whereas a man can. In Scotland, the woman's rights and the man's rights are equal. The woman can maintain the same action in Scotland, and avail herself of the same process for relief against the husband, as her husband could maintain against her. Keeping these distinctions in view, I think your Lordships will be able, without difficulty, to apprehend what the point of law is in this case. The point now before the House depends on the second plea, which is, "that the wife having instituted a suit against defendant in the Arches Court in England, founded on the same acts of adultery, &c. is barred from maintaining the present action." Now, in my view, in the first place, I should say this plea is founded upon a false allegation. I do not admit that the plaintiff in this case did institute a suit against the defendant in the Arches Court. The husband instituted a suit: the wife took a defence which, by the forms of the Court, amounted to a counter process, no doubt; and, as she had to prove her case, for of course she had to prove the defence she set up, she became an actor beyond all question. But that does not justify the statement in this plea, that she instituted a suit against the defendant. She instituted no suit. She entered a defence, which, by the rules of the Court, also enabled her, and of which she availed herself, to raise a counter demand. That is, not only to sustain her defence as against his immediate demand, but to sustain her defence for all time to come, till they are reconciled. The husband says, restore to me conjugal rights. The wife says, I have a perfect defence, but it will not do for me to rest upon that defence just for this hour, and for the husband to come again (as may possibly be the case, upon which I give no opinion), he not being estopped from all the rights which he would possess as her husband. She says, I mean, as far as I can, to defend myself; and how am I to defend myself? Not simply by disposing of your immediate demand for restitution of conjugal rights, but by the Court stating now, in the way in which my defence has raised the question, that you are not to have those rights restored to you at any future time, unless we become reconciled. That is a perfect defence. Why it should not be a good defence I cannot see: it is admitted sensibly enough as a defence. They say the lady is an *actor*. To be sure she is. Suppose, in any personal attack, one man strikes another. The man who was first struck knocks the other down. No doubt he is an actor, but is not that action a defence? Why did he knock the other man down? Simply because he had been assaulted. It was in defence, and therefore to say that such a man is an actor, is saying nothing, but that it is necessary to his defence that he should assume the part of an aggressor, but it is simply a defence, for he did not begin the attack. Nobody can say that it was the beginning of the attack, any more that you can say here, in my apprehension, that this was the institution of a suit by the wife. It is strictly and simply a defence, with the allegation which enables her to obtain the remedy she sought, and it cannot be considered, I think, as the institution of a suit. The appellant in his case takes care, in another passage, to represent it as if the wife were the person who had commenced this proceeding, which she certainly was not. My lords, there is another reason, why the wife should be allowed to take that defence, which is, that she gets a permanent alimony by it. Of course she would be left without provision unless she were permitted to take that defence. My lords, the objection, which is taken partly in the pleadings and partly at your lordships' bar, assumes this shape. Independently of the question, which I shall presently consider more at large, namely, the effect of this divorce à mensâ et toro, it is objected upon the pleadings, and also in the argument at the bar, that, if there had been no proceeding by the wife, as they call it, in the Arches Court in this country, still she could not have sued in Scotland as the law stands there. Now, as I understand that point, which was partly argued, though not so much at large as it is stated in the papers, it depends upon two or three authorities. One of them is the case of *McCarthy* v. *De Caix*, which was before Lord Brougham in the Court of Chancery, in which I was counsel, and the other case is *Lolly's* case, which was also in this country. In *MacCarthy* v. *De Caix*, the question arose between the representatives after the death of the wife, upon the right to certain property which had belonged to her, and that involved the question whether the marriage had or had not been properly dissolved by the authorities in Denmark. That depended upon this. The husband was a domiciled Dane. He married an English lady. They went to Denmark, and the husband there obtained an absolute divorce, dissolving the marriage; and upon certain letters which had been written, the question arose, whether he had or had not waived the right which, as husband, he might have had to a certain portion of the wife's property. I stated that I was counsel in the case only for this reason, and I think my recollection enables me to say, that the question of the effect of the divorce was not argued in that case, and I see no trace of it in the report; on the contrary, the inference is the other way, and my strong impression is, that that point was not argued in that case, but the Lord Chancellor took up the point, and upon *Lolly's* case he held, that an English marriage could not be dissolved by a Danish court—that our law would not recognise such a dissolution. Now *Lolly's* case was of this nature. An Englishman and an Englishwoman were married in England. The man married twice in England; the first wife being alive, he was tried for bigamy. His excuse was, that the first wife had committed adultery in England, and that he had obtained a divorce in Scotland. All the judges were of opinion, that the marriage was not dissolved by the law of England. He was convicted of bigamy, sentenced, and punished by imprisonment for a very considerable period, and afterwards pardoned. That has been considered, no doubt, a solemn decision by the judges of England, upon the effect of such a divorce. But, in the first place, it does not touch this case, because that was a case of English subjects with an English domicile, the crime being committed in England, with a residence of above forty days by the husband in Scotland. It was an undefended cause on the part of the wife, I believe, but whether that was so or not, the whole object there really was to evade the law of England; and I think that is proved pretty clearly by the fact that the husband seems to have married again in England, as I collect from the dates, almost immediately after the dissolution of the marriage in Scotland. Now, taking that to be so, I am not here to advise your lordships to dispute that law, nor to enter into it, but what does it lead to? It leads to that which we know does exist, namely, an actual conflict between the laws of Scotland and of England. That is very much to be deprecated, but there is at this moment an actual conflict of laws between the two countries. What then? We have, my lords, no power by the constitution, sitting here, to decide in a Scotch case against the law of Scotland, merely because there is a conflict with the law of England. Scotland has a right to her laws, and to have them administered according to the law of Scotland, just as much as England would claim to have her rights established according to the law of England. But does that conflict affect a case of this sort, where you are sitting as in a Scotch court, and have to decide what is the Scotch law? I will shew to your lordships what was the opinion of Lord Brougham in *MacCarthy* v. *De Caix*, and who relied so much upon *Lolly's* case, when the same argument was pressed upon him in *Warrender's* case. His own opinion was constantly referred to and pressed upon him, and it was said,—How can you decide in favour of the jurisdiction in Scotland, after the opinion you have expressed, that an English marriage could not be dissolved in Denmark, and after saying, that you thought *Lolly's* case could be supported? In answer to that the noble and learned lord (2 Cl. & Fin. 567) says:—"I think that this judgment does not break in on *Lolly's* case. This is a decision in reference to the law of Scotland, a judgment founded on which we now, as a Court of Appeal, confirm. *Lolly's* case refers to the law of England. The note of what I said in Chancery in *MacCarthy* v. *De Caix*, may or may not be correct. Whatever opinion I may have entertained of *Lolly's* case in the Court of Chancery, or privately, cannot affect my judicial opinion in this House, sitting as a member of a Court of Appeal on a case from Scotland." I quite concur in that opinion. I shall therefore dismiss those cases altogether from my consideration, and I shall assume, as I am entitled to do, that the jurisdiction in this case was perfect, and that the only question is,—Has the wife lost her right to go to the Court of Scotland for further relief, in consequence of the relief which she has obtained in the courts of this country? The principal case which was relied upon in support of that doctrine, was *Allison* v. *Catley*, supra. (His lordship then examined that Scotch case in detail, and showed that it did not support the doctrine referred to.) It was contended at the Bar, that the wife in this case should at once have declined the jurisdiction of the Arches Court, or, at all events, have instantly raised her action in Scotland, and pleaded that action in defence against the English suit. Now I apprehend such a defence clearly would not have been successful. The Court in this country never would have stopped its own proceeding, because proceedings had been raised in a foreign country by an adverse party. The proceedings in the Ecclesiastical Court here never would have been stopped, simply because the defendant had attempted to evade its jurisdiction, and had had recourse to another country. (His lordship then alluded to the law of Scotland as to allowing a spouse first to sue for the lesser remedy, and thereafter to sue for the higher remedy, and said:—)I think, therefore, we may safely assume it to be the law of Scotland, that the wife might first obtain in Scotland a divorce à mensâ et toro, and then afterwards maintain another suit for a divorce à vinculo matrimonii. Now, my lords, if that be so, we then come to a very important question about the analogy between the law here and the law in Scotland. But before I approach that, I will refer to an argument which was advanced at your lordships' bar on the part of the appellant, taking, by way of illustration, the case of a contract for the purchase of land in this country. It was said truly, that the party would have two remedies; one to bring an action for damages, and the other to file a bill for a specific performance; but the learned counsel asked,—Was there ever an instance of a man first bringing an action for damages, and then filing a bill for specific performance? Probably not, and for this reason, that in point of fact the two remedies are inconsistent. A man has the choice of two remedies; he may either go to law for damages, and keep his estate, or he may insist upon it, that the agreement ought to be executed *in specie*, and that he has a right to divest himself of the estate which the purchaser is bound to take, paying him the whole of the purchase-money, and not leaving him to require any measure of damages. The case, therefore, does not

apply. But observe, that even that case is not entirely free from difficulty, for supposing a purchaser in the first instance to file a bill for specific performance, and to fail, he is left at liberty, and in many instances that liberty has been exercised with very great advantage, after having attempted to obtain a specific performance, his bill having been dismissed, to resort to law for damages, and he has often recovered very ample damages. Take the case again of a vendor. A vendor files a bill for specific performance, and his bill is dismissed: he may go to law for damages, and he may recover damages. So that in point of fact the two remedies, where they are not inconsistent, may be resorted to even in the only case which has been put by way of analogy in the law of England. If the two remedies are inconsistent, a man must take his choice of one; but if they are consistent, he may try one, and though he may fail in that trial, he may resort to the other and succeed upon that. Now, my lords, let us consider how the matter stands as regards the law of England and the law of Scotland. No man can dispute that this lady, by the law of Scotland, with which the law of England could not interfere, might have resorted to Scotland in the first instance, and have obtained a decree of divorce à vinculo matrimonii. That is beyond all question. It is equally clear, I think, that she might have gone to Scotland, and have obtained in the first instance the lesser remedy of a divorce à mensâ et toro, and afterwards have maintained a suit for an absolute dissolution of the tie of marriage. It was said at the bar, in the course of the argument, that the latter remedy could not be resorted to unless for a subsequent crime. No authority was quoted for that, and I take it to be clear, that it is not the law of Scotland. Of course subsequent crime might and would entitle the aggrieved party to the remedy, but the remedy exists without subsequent crime. If the wife, by the law of Scotland, which we are bound here to administer, could obtain a release altogether from the marriage in Scotland in the first instance, or even obtain it by steps, if the husband elects to come into the courts of this country in the first instance, and asks for a restitution of conjugal rights which she had refused to him, and which, therefore, naturally would lead him to suppose she would have resort to the remedies to which I have referred, for she had ceased to act as the wife of this gentleman—she had absolved herself from the marriage-tie, and only wanted what was necessary to obtain a legal confirmation of an act which she herself had committed, namely, the act of separating herself from her husband, as it is alleged, with sufficient cause—then can the act of the husband take away from the wife the right which she has by law to the remedies to which I have referred; and if it cannot, which clearly I apprehend it cannot, the question simply is, what is the effect of the act which she herself has committed in the suit instituted in this country? She was dragged into court. She was compelled to go. Supposing she had taken the advice, which was not offered to her at the time, to decline the jurisdiction of the English Court, there would have been a decree against her in her absence, and she would have been subject in this country to have had that decree enforced against her for the restitution of conjugal rights, which she had refused him. The decree would have gone against her beyond all question. Is she to submit to that, when she has a defence open to her, which, as I have before stated, would make perpetual that separation which has already taken place in point of fact. Can it be asserted, then, that, because she has taken the remedy which she is entitled to in the suit instituted not by her but by the husband—because she has taken the only defence that was open to her, for there is no other remedy open to her (whether she was entitled to ask for a divorce à mensâ et toro I do not trouble myself at this moment with considering)—the only defence which was open to her was that of cruelty and adultery. She makes, therefore, no other defence, but upon that defence, by the course of the Court, she is entitled to the relief she obtained. Can it be insisted that, because she took that which the Court tendered to her—because she obtained that relief which the law gave to her—she is therefore to be estopped from resorting to a higher remedy, to which she was entitled before the suit was instituted, and which she has done no act to deprive herself of the benefit of? If we look to the operation of the law of England and the law of Scotland, we shall find that, by upholding this decision, we put them perfectly upon the same footing. The law of England differs from that of Scotland as to the right of the wife being co-equal with the right of the husband, but in other respects it stands precisely, as it appears to me, upon a similar footing, with this difference only—a difference which the law of each country itself introduces—namely, that in England you must have a divorce by Parliament in order to dissolve the tie, and in Scotland the Court itself can untie the knot. But in England, as I before stated, when the husband is asking for a divorce, for the exercise of the highest power which the country can exercise, so far from its being considered an objection that he has already obtained a divorce à mensâ et toro, unless he obtains that divorce in the first instance, he is not entitled to the higher remedy. Then if the wife by the same law obtain, not herself having instituted the suit, which I do not enter now upon, as it is not before the House, and as it introduces an additional difficulty; but if she obtain that same remedy which he obtains, and if she can, in the court in that country, to which she has a right to resort—a resort which your lordships cannot prevent her from having—obtain a divorce à vinculo matrimonii, do not the parties stand upon precisely the same footing? The administration of the laws of the two countries is different, but is there any difference in degree? Is there any difference in the remedy? She has a right to dissolve the marriage altogether. She has not lost that right, and I think, therefore, as far as those points go, I ought to recommend to your lordships to affirm the decision of the Court below, which is complained of.

Lord TRURO.—My lords, though I concur with my noble and learned friend in the main in the judgment which he has moved, I should desire an opportunity of stating my own reasons for the judgment which I advise your lordships to give in this case, lest I should have misunderstood the argument of my noble and learned friend. (After adverting to points connected with the state of the record, and peculiar to Scotch practice.)—My lords, the question which has been discussed, and which has become a material incident in the decision of this case is, what is the effect of the proceeding in the English Consistorial Court? It has been correctly said, that it was foreign law to the Court in Scotland, but, in my humble apprehension, a very erroneous view was taken of the effect of these proceedings. I do not think that the error ought in any degree to affect your lordship's judgment, but certainly it would be more satisfactory if it were otherwise. It is said that, according to the course of practice and of law in the Ecclesiastical Courts of England, a husband or wife, who, by a responsive allegation in a suit, charges adultery, and prays a remedy upon that charge, is not the institutor and originator of the suit. My lords, I am satisfied myself that, upon a full and correct investigation of that question, that opinion would turn out to be utterly erroneous, and that in every view in point of law the allegation, that the lady instituted the suit, is correct. The process of every Court has but one object, which is, to bring the party before the Court, to answer the matter which is to be produced against him. The complaint is to be found in the libel. If a party is engaged in a suit before a Court with a certain individual, there wants no allegation to bring that party before the Court: he is there. We have a similar proceeding in England. If a man brings an action against a debtor for one cause, and he has another cause of action which cannot in point of form be joined with that which is first brought, he needs not to begin a new action, though he cannot engraft the second complaint upon the first, but without any new process to bring his debtor into court, he having been brought into court in the first suit, the plaintiff can, what is called, declare by-the-by against him, and he may go on, and to all intents and purposes that is just as much a suit as if it had been preceded by a process to bring the party into court. And it is impossible, as it appears to me, to attend to the judgment of the Court below in this case, or I think even to go through the cases which are cited in *Best* v. *Best*, supra, without coming to the conclusion that, if the wife or the husband advances in a responsive allegation matter which may be made the foundation of a decree, that libel is in the nature of a declaration in a new cause. What said Sir H. Jenner Fust in this very case? Why, he said—"This was originally a suit for restitution of conjugal rights, promoted by Mr. Geils against his wife, on whose behalf, in answer to his libel, an allegation was brought in and admitted, the purport of which is to charge" so and so, "concluding with a prayer, that the Court would pronounce a sentence of separation on all the three grounds. The nature, therefore, of the original cause, has been altered and changed, and the shape it now assumes is that of a cause of separation brought by the wife." The correct view of the proceedings in Doctors'-commons, therefore, was, that in every legal point of view, and according to the practice of the Court, and upon principle, this lady was as much the originator of a suit, and as much a plaintiff in a suit, as if the proceeding had been the only one. My lords, I will now pass from this point to the main question in the cause. The question is, is the defence contained in the pleas, which have been brought under your lordships' consideration, a sufficient answer in point of law to the libel of this lady, in which she prays for a divorce à vinculo matrimonii? My lords, it will be necessary to consider what is the nature of this first plea. Is it a plea by way of estoppel that the party has taken a course which estops her in point of law from prosecuting the remedy which is now sought in the Scotch Courts, or is it in the nature of a plea of judgment recovered? It seems to me to partake more of the nature of a plea of judgment recovered than of any other plea. But it is essential that your lordships should bear in mind what my noble and learned friend has stated throughout, that you are sitting in a Scotch Court of Appeal, and that you are administering Scotch law. Care, therefore, must be taken as to how far you will use authorities of English law. They may be used to illustrate the argument; they may be used to shew that any principle you lay down is worthy of consideration by reason of its being adopted in the law of another country; but English decisions are not binding authorities in questions of Scotch law. Now, my lords, I am not aware precisely to what extent the law of estoppel prevails in Scotland, but all that I have been enabled to discover on the subject leads me to the conclusion, that the principle prevails there as it does here with very little difference. Every estoppel must be precise and distinct, and to the same point. This is an application in Scotland for a divorce à vinculo matrimonii. What has been done by this lady, which is inconsistent with her prayer for a divorce, so as to put the case upon the ground of estoppel, and to enable the husband to say, you, by your conduct, have said and done that which is inconsistent with the remedy which you are now pursuing? I am not adverting now to the effect of the plea of judgment recovered, which I will consider in a moment. My noble and learned friend stated, that a divorce à mensâ et toro in Scotland might be considered as ancillary to an ultimate judgment of divorce à vinculo—shewing most distinctly, therefore, that in the Scotch law the two are not inconsistent, supposing that the proceeding had been in Scotland; and in truth nothing has been urged at the Bar which at all makes the doctrine of estoppel applicable to this case, so as to lead to the conclusion that this plea presents a good bar to the proceeding. It is more in the nature of a plea of judgment recovered. My Lords, this, I apprehend, would be found pretty much to be the law of every country, that, where a man has once sought redress for a particular injury, he is not entitled to split his complaint, and in respect of the same subject-matter of complaint to ask for one species of redress, which shall be applicable to the whole subject-matter of his complaint in one court, or at one time, and a different species of redress for identically the same wrong or matter of complaint at another time. In this case I will suppose, according to the impressions which I have presumed to state to the House, that this lady, independently of any suit on the part of the husband for restitution of conjugal rights, had commenced a suit for a divorce à mensâ et toro in England. Consider what her situation is. She is exposed to the coercion of her husband. She stands under the legal duty of cohabiting with him, and he possesses, independently of the interposition of the Court, a very considerable extent of power in the way of compelling her to do so, and of restraining her free will and inclination, and it is obvious, much distress and uneasiness might be occasioned to a woman, who, having just cause of separation from her husband, should yet omit, he desiring to continue the cohabitation, to protect herself by the authority of the law and the sentence of a Court. She is in a country where marriages are indissoluble. Remarks are made in the court below now and then (I am aware that it is a mere form of expression, and that the learned judges have a perfectly correct apprehension of the true state of the facts), but Acts of Parliament for the purpose of divorce are sometimes talked of as remedies. They are not remedies,—they are new laws. Marriage is not the less indissoluble by the law of England because Parliament, in its wisdom, will now and then annul a marriage where there is a proper case for doing so. The law stands just as free from doubt or ambiguity, and it may just as correctly be pronounced to be the law of England that marriages in England are absolutely indissoluble, although it is possible that next week a new law may be enacted which may make a particular marriage dissoluble. It is, therefore, not a remedy, or at all in the nature of a remedy. Mr. Justice Story ("Conflict of Laws") says, that the annulling of a marriage is to be considered not so much in the nature of a civil remedy as of a punishment, and as a course of proceeding tending to protect the public morals, and that the public have an interest in such dissolution of marriage on public grounds. Therefore it is not inconsistency to hold that marriages are indissoluble. In the case before your lordships the woman is in England, where she has no means by any legal mode (although an Act of Parliament may be granted, but I shall throw that out of my consideration)—she has no means of protecting herself from her husband forcing her to cohabit with him. She resorts to the law for that purpose. She states her wrong, and she prays the protection of the law, and accordingly a divorce à mensâ et toro is pronounced, until the parties shall be reconciled. She has come into a court not to ask partial relief; she has not

come to divide her complaint, and to endeavour to recover by instalments the redress which she desires. She states her whole complaint, and she asks all the relief which it is in the power of the Court to give; and she has not come to the same Court to ask for any other relief, for the very valid reason, that she knows it is not in its power to afford her such relief. She goes, therefore, to Scotland, and we are dealing with a case in which the Scotch Courts have jurisdiction. She there prays for a divorce à vinculo. What authority has been cited to shew that the remedy or protection which she has obtained by the divorce granted her in the Court of Doctors' Commons is a bar to that proceeding? I am not aware that any such authority has been cited except the case of *Allison* v. *Catley*, which I will deal with presently. Has any principle been cited? Why, in England persons may have two remedies for the same complaint. It is said, can a man bring an action for damages for a breach of contract, and can he also file a bill for specific performance? I can very readily conceive that he may do both. Suppose a man has entered into a contract for the purchase of an estate. Suppose he then make a sub-contract, and that by reason of the failure of the first party, he himself not having the power of conveying the estate, which has not been conveyed to him, is subjected to an action by the other party. He may have a right to have the contract performed—he may have a right to require that he shall be placed in that situation, in which it was the object of the contract to place him, but he may also have suffered a legal injury, by which he would become entitled to a certain amount of damages. A Court of Equity may say he will not allow you to have the remedy of requiring a specific performance of the contract, but I apprehend, if it could be shewn that real injury had been sustained, the party might then proceed to recover damages for the loss of the estate. That is settled law, and is clear enough. This may be done, supposing a man covenants to pay you an annuity,—you may bring an action of debt for the annuity, or you may bring an action of damages for the nonpayment of the annuity, but you cannot split your remedy. You cannot do that which, in the case of *Lord Bagot*, was attempted to be done. (*Lord Bagot* v. *Williams*, 5 D. & R. 87 and 719; 3 B. & C. 235 and 772.) You cannot go to a court with an entire demand, and in that court limit that demand below its real amount and recover, and then go to some other court and recover the remainder. In *Lord Bagot's* case it was deemed expedient to go to a court of limited jurisdiction, the object being to obtain a judgment quickly. That court possessed jurisdiction to an amount equal to what was thought to be the amount of the defendant's property, and it was supposed, therefore, it would be of no use attempting to recover more. Lord Bagot recovered to the extent he claimed. The parties afterwards found that the defendant had more property,—then they brought an action in an English court to recover the rest. It was held that they could not do that, and so it has been held in other cases. But this is not such a case. Here the ground upon which I think in concurrence with my noble and learned friend that this is no bar is, that the two remedies are collateral—they are directed to distinct objects, and have totally different effects, and therefore the circumstance of this lady pursuing a remedy, for the purpose of obtaining protection against being compelled to cohabit with her husband either during a given time or an indefinite time, is quite consistent with the proceedings which she afterwards instituted ultimately to annul the marriage. My Lords, the question which it has been desired to raise in this case, which would be in the nature of a review of a very important case decided by the Scotch law, to the effect that an English marriage might be annulled in Scotland, will, in all probability, arise again and be brought to your lordships' Bar, because it is obvious that the legitimate object of this lady is, by annulling the marriage under the law of Scotland, to free her estates from the heavy charge of 1,200*l.* a year to her husband for his life, she at the same time having none of the comforts of marriage.

The Lord Chancellor.—That is under the settlement.

Lord Truro.—Yes, it is a settlement of 1,200*l.* Now, supposing that ultimately the Scotch Courts should pronounce a divorce, and the husband should desire to bring under the consideration of the House again the question of how far this marriage is liable to be dissolved by the Scotch Court, and he takes proceedings for that purpose under that settlement, I can readily conceive very many ways in which that question may be raised, which makes it, therefore, extremely important, not only that may be the ultimate judgment of this House, but that a correct view should be taken of the grounds of the judgment in the particular case. My lords, considering the great importance of this case, I have searched very widely, and in fact made use of all the materials that were within my reach for the purpose of seeing if I could discover any principle either in the Scotch law or in the English law, which it appeared to me this House ought to adopt as applicable to this case, but I cannot find any which would go to shew that pursuing a collateral remedy of this description is any bar to the pursuit, either in the same court or in another court, of a further remedy. The two things may well stand together, and I think that disposes of the only or the principal difficulty arising out of the case of *Allison* v. *Catley*. [His lordship then examined that case in detail, and held that it was inconsistent with the view of the House in this case, and was therefore wrong.] I therefore concur in the judgment which my noble and learned friend has recommended your lordships to pronounce in this case. *Judgment affirmed.*

Equity Courts.

LORD CHANCELLOR'S COURT.

Reported by C. H. Kenny, Esq. of Lincoln's-inn, Barrister-at-Law.

Saturday, Nov. 20.

Hawkes *v.* The Eastern Counties Railway Company.

Purchase of land required by a railway company from a tenant for life—Title—Specific performance—Taking land for "extraordinary purposes" under Railway Consolidation Act.

A. being tenant in fee-simple of one part, and tenant for life with remainder over in strict settlement of another part of an estate, contracted to sell all his interest for two several sums of 8,000l. and 5,000l. to a railway company, who stipulated to obtain powers either by a Bill which was then pending in Parliament or otherwise, which would enable a good conveyance to be executed of all the property so as to vest in them an estate in fee-simple. The Bill passed without containing such powers, but the company was empowered to purchase for extraordinary purposes connected with the railway, any quantity of land not exceeding thirty acres; although the land had not been valued in the manner pointed out by the Lands Clauses Consolidation Act, and although the purchase-money had been thrown into one fund, a decree (the plaintiff submitting to have the two sums above mentioned treated as if the same were purchase-money arising from estates devised to the uses of the will of the plaintiff's father, and the defendant declining to state any election, or to express any wish as to what account or in what manner the said moneys should be paid, and the defendants not requiring that a valuation should be made in the manner prescribed by the Lands Clauses Consolidation Act), by which the defendants, upon the plaintiff's executing and delivering to them at their expense a proper conveyance, were directed to pay the said sums into the bank to the credit of, &c. subject to the further order of the Court, was, upon appeal, affirmed.

The Lord Chancellor having affirmed the decree for specific performance in this case, 20 Law T. Rep. 117, the appeal against the decree made by his Honour the Vice-Chancellor Knight Bruce, on the cause coming on on exceptions to the Master's report and further directions, was now argued.

The facts of the case and the terms of the decree will be found 17 Law T. Rep. 301.

The same counsel as appeared on the appeal against the decree for specific performance were again heard on the question of title. Their arguments are alluded to in the Lord Chancellor's judgment.

The Lord Chancellor.—The questions of title, in the way in which they are brought before the Court, were not concluded by the decree which I affirmed for specific performance in this case. But the shape which it now takes is, that although the agreement, on the face of it, was a valid agreement, and the Court has directed it to be specifically performed, yet that when you attempt to carry it out, by giving to the company that to which they are entitled,—a conveyance of the property under the Acts of Parliament,—the powers of the Acts of Parliament are not sufficient to enable the tenant for life to bind the remainder man. The question, as a question of title, is open; the exceptions were taken which cover these points; and as those exceptions came on with the further directions, and one order was made overruling the exceptions and decreeing a specific performance in the way in which the decree now stands, the defendants are entitled to enter into the discussion. But if they are not bound by the decree from entering into these questions, then, on the other hand, they are not released from any difficulties that arise on the agreement, to be executed between the parties. Now that was an absolute agreement for the purchase of property by the company from the plaintiff, if the Bill in its then present, or in any amended, modified, or altered form, should pass. The Bill did pass then, so that there was an absolute agreement to purchase this property. There was no deception as to the state of the title, because it recited expressly that he was tenant for life of the greater part of the estates agreed to be sold with remainder over in strict settlement; and the company stipulated that they would "obtain all such powers and authorities, and do and perform all acts and things, and adopt all such measures, and pursue all such courses, either in or by such Bill as aforesaid, or otherwise, as are, is, or shall, or may be necessary or required for enabling the said Henry Hawkes, and his heirs, and all other necessary parties, to sell and convey, and the said company to purchase the said hereditaments and premises from the said Henry Hawkes and his heirs, so as the same may become vested in the said company on payment of the said several sums aforesaid, for an estate of inheritance in fee simple." The company, therefore, by their contract, themselves stipulated to obtain powers, either by that Bill or otherwise, which would enable a good conveyance to be executed to them of all the property, so as to vest a good estate of inheritance in them. Now it was insisted that the Act of Parliament, as it passed, did not enable the company to carry this contract into execution. There is no doubt that the property of which Mr. Hawkes was tenant in fee simple, was within the line of deviation, and therefore upon that there could be no question. There is no doubt that that formed part of the whole estate of which this gentleman was seised, but whether the connection of that part with the rest would have enabled Mr. Hawkes to insist upon the whole being taken, is a question that has not been entered into. But the company had power to purchase any quantity of land not exceeding thirty acres, "for extraordinary purposes connected with the said intended railway." Now, the portion which is here taken, is a very small portion as compared with that—some four or five acres, instead of thirty; and the question, irrespective of others, is, whether, under that clause, that might be taken? Now, the company agreed to obtain powers which would enable Mr. Hawkes to convey the property. As soon as this Act of Parliament had passed, and the time arrived for the completion of the contract, a correspondence was entered into with the view of examining the title, and an appointment was made in order that that title might be examined with the deeds, and that appointment was accepted by the solicitor of the company, but was not kept by him; and the consequence was, that the matter went off, and then they objected altogether to executing the contract. After the passing of this Act, the company did not say—We cannot carry this contract into execution because the powers of our Act do not enable us. I must assume, therefore, that they were at that time satisfied (their powers not having been exhausted, and the time not having expired for the exercise of those powers) that they could obtain a good vested estate in fee simple under such powers as they were themselves satisfied with, and which they themselves obtained in the Bill which was carried into a law; and there is nothing to shew that, if they had desired a more extended power as to this property, they could not have obtained it. They never attempted to obtain any more extended powers. Now, there is nothing on the face of these matters to prove that the land in question could not be taken under the Act of Parliament; because, for *extraordinary* purposes they might take thirty acres "connected with the railway." I cannot say what those purposes were. I cannot make them disclose now what they were. They thought at the time the Act passed that they were entitled to take the land, and after they have been compelled by a decree of the Court to perform the contract, they ask me to look with the greatest suspicion and jealousy at those powers, and to hold that they do not enable them to do that which they themselves undertook to do, and which I must assume they did accomplish by the Act of Parliament itself. I am inclined to think that this was land which they might take. Of the part which was within the limits of deviation, there could be no doubt. It might come within the clause which authorises a party, part of whose land is taken, which might damage the rest, to insist upon the whole being taken. The extraordinary purposes to which this land might have been applied might have authorised its being taken. It is not necessary for the company, at the time they take it, to shew there is an extraordinary purpose just then to be executed; but a company making sidings, stations, roads, &c. want and buy land, not that it is wanted at the time, but they buy it providently to enlarge their stations, and to enable them to have many conveniences. Therefore, the purchases are constantly made, and the Court would be very unwilling to preclude the bonâ fide exercise of discretion on the part of a company in making such a purchase. It would require a very strong case indeed, after a purchase so made, and after the money is paid, to induce the Court to disturb it. But then it was said that the Act of Parliament, in order to guard persons in remainder against estates in settlement being sold by a

tenant for lifeat an improper price, required that where the purchase-money was not ascertained in a particular manner pointed out by the Act of Parliament, there it should be ascertained by two valuers, and they were to ascertain, not the value, but that the price agreed upon was not less than its value. That is a sort of negative valuation. Now this has never been done, because the company did not choose to join in the act. The Act of Parliament expressly provided that one of the valuers was to be appointed by the company; and it would be a mere mockery of justice were I to hold, the company, having declined to join in that which was necessary to make a title, they were now at liberty to withdraw from making that title complete. It is not a question whether they have that power or not; they have the power, but they declined to exercise it; they say, because they have not exercised it that a good title never can be made; because this purchase-money has not been ascertained in a way that will make the purchase binding on the remainder-man, they have an insecure title. To whom will the fault be attributed? To themselves. This Court will not allow men to evade their contracts by refusing to do that which they have contracted, and to perform that which they are bound; they cannot make an objection to the title by themselves withdrawing from the exercise of those powers which they have obtained, and which they contracted to obtain. Although I agree to the argument, that in order to make a title under this Act of Parliament, the value should have been ascertained in the manner pointed out; yet as they have chosen to withdraw from that necessary act, the breach is by themselves, and I shall not permit them to take advantage of it. But it is never too late to act rightly—it is never too late to retrace a false step; and if the company now desire that the property should be valued by two persons in the way pointed out in order to make a good title, I am now ready to give them that opportunity, though it will be at their own expense. On that they will exercise their own option. Then it was said, as another objection on the Act of Parliament, that the compulsory power and the power of the tenant for life to convey were co-equal and co-existent; that if one did not arise the other could not be exercised. There, again, it is entirely owing to the company itself that it has not placed itself in a position to give effect to the powers of the tenant for life; for instead of carrying on the undertaking, they have thought fit to relinquish it, and I have already decided that they are not at liberty—by merely relinquishing that which they were bound to and ought to have performed—to withdraw, and to say that this power cannot be exercised because we have neglected to do the necessary acts. I am of opinion they are bound to do all that which is incumbent on them under these Acts of Parliament in order to enable them to obtain a good title; and if they have failed to do anything which, being done, would have rendered them competent to obtain a good title, then the fault lies at their own doors, and they cannot complain in this court. Then questions have been raised independently of these points, particularly on the decree. The plaintiff no doubt found himself in this difficulty, that he had sold the property, consisting partly of what he was entitled to in fee, and the greater part of which he was also entitled to for life and in strict settlement, for one entire sum; and if the Court had carried the contract into execution in the ordinary way, there must have been, no doubt, an apportionment, and then it would have been seen whether that apportionment would have enabled the valuers to see that it was not less than the value. The seller very wisely threw the whole sum into the settled fund, as he was at liberty to do, no doubt, and, therefore, of course, he has rendered, except for the purpose of working the machinery of the Act, a reference to surveyors a mere farce; because, of course, seeing the price which is given for the settled estate, they would instantly see it was not less, but a great deal more than the value of the land. Then it was said, that the Court was not at liberty to permit a portion of the price, which properly ought to have been attributed to the fee-simple estate to be thrown into one fund for the settled estates, for the purpose of enabling the parties to convey; no such power is given them. The money being thrown into the common fund very much increases it, but it does not increase the power of Mr. Hawkes, as tenant for life, to convey that settled property, nor does it detract from his power, it remains just as it was; therefore, I see no possible objection on that ground. I can see no difficulty in the Court accepting the sum which Mr. Hawkes thought fit to add to the settled fund, and treating that as part of the purchase money—it was part of the purchase money, and he chooses to throw his estate into the fund. Then the decree, referring to that portion of the agreement which relates to the valuation, states that the company, not requiring a valuation nor appointing a valuer, directs the contract to be executed. Now I have already offered the company the option of having the property valued. I am willing to do everything to complete the title as far as the Act of Parliament will permit, they therefore cannot escape on that ground. Then it was said, that as the money was directed to be paid into court, a title could not in that way be acquired under Acts of Parliament. It is quite clear that that is so. The money ought not to be paid under the Act of Parliament; but then the company, who ought to know something about their Acts of Parliament, have nothing to do but to desire me, which I will now accede to, to order the money to be paid into the bank or otherwise, precisely as they point out. But, although I agree with the argument of the appellant, that, generally speaking, the Court is not to go on and call on the plaintiff or defendant either to relinquish this, or to answer that, or to make this claim, or to give up the other, yet there are cases (and I think this is one) in which the Court properly addresses itself to a litigant party who has the choice of doing or not doing an act, and who objects to a thing because the act is not done. The Court says, you can do it if you please; and if you say nothing, I shall act as if you refuse. There is no hardship in that; it is a benefit. You tender the party the option, and no suitor has a right to withdraw from assisting the Court in carrying into execution its decree. He may sit silent and refuse to assist in making the decree as perfect as it might be. He may properly withhold any consent, but, generally speaking, the Court has a right to expect the assistance of the Bar, and it is the duty of the Bar to assist the Court, when the decree is pronounced, in making that decree as perfect as possible. But I deny that he can withdraw his own personal aid, where his personal aid will enable him to do an act which he contemplated to do, and which springs out of the contract, and which being done, will make the decree right and proper. I think, therefore, that the learned judge in the court below was quite right in putting that point to the parties: "Whenever they think proper, I can give to their title all the effect which a due payment into the Bank, or otherwise, can give to that contract and conveyance under the Act of Parliament." That, I think, was the meaning of the reservation which follows the direction to pay the money into court; it can have no other meaning. Therefore, they can resort to that whenever they think proper. Now, I have gone through these points cursorily to shew that there really is no great objection existing on the part of the company; my own impression of this case does not compel me to enter into them. I have gone through them for the satisfaction of the Bar and the parties; I do not feel myself driven to consider them, because, as the company did expressly contract that they would obtain powers to enable them to take a conveyance of this settled estate, as part of the property for which the whole purchase-money was to be paid; and as by the Act of Parliament they have obtained powers which, primâ facie at least, would enable them to do so, and they never objected that they had not obtained the proper powers, but they acted in regard to the contract at the time after they had obtained the Act, as if they had the power; I shall assume, therefore, that they were satisfied they had the power, and that, under the powers which they have obtained, considering them as sufficient, they were ready to perform the contract, if they could not get rid of it on general grounds. I shall hold them, therefore, to the performance of the contract on that simple ground, that they themselves were to obtain the powers, that they themselves did obtain the powers, and that after those powers were obtained, they did act towards the party with whom they contracted as if those powers enabled them to carry the contract completely into execution. If they had come early and stated, We have made a mistake; these powers are not sufficient; therefore we must go back to Parliament and wait until we get further powers,—that would have been bonâ fide and perfectly regular, and the Court would not have compelled the execution of this contract until those powers had been obtained, or would not have taken any step until it saw whether such powers could be obtained. But no such question was ever raised, and it was only as an afterthought, to get rid of this contract, that the company have raised these objections, which have been very well and elaborately argued, in order to avoid the performance of the contract. The Court has already decreed that the contract, standing by itself on the abstract view of it, ought to be performed; and I am of opinion that the objections raised cannot be sustained, and therefore I dismiss the appeal with costs.

COURT OF APPEAL IN CHANCERY.

Reported by OWEN DAVIES TUDOR, Esq. of the Middle Temple, Barrister-at-Law.

Tuesday, Dec. 7.

IN BANKRUPTCY.

Ex parte EVANS, *re* WASS.

Covenant to pay sum—Breach of contract—Right to prove.

A bankrupt covenanted to pay the trustees of his marriage settlement 3,000l. out of the first capital moneys, or real or personal estate, or capitalised income of or to which he should be or become possessed, or in any wise entitled, within six calendar months after he should have become so possessed or entitled.

The bankrupt was possessed of personal estate, consisting of his stock in trade, goods, and capital moneys, used by him in his business, and leasehold premises, of a value greatly exceeding 3,000l. and he continued so possessed six calendar months after the marriage. The Commissioner rejected proof for the 3,000l. upon the ground that a future acquisition and saving-up of property operating as a withdrawal thereof from business, was contemplated by the covenant:

Held, reversing the decision of the Commissioner, that as the terms of the covenant included property which the bankrupt had in his possession, more than sufficient to satisfy the 3,000l. six calendar months after his marriage, and a breach of covenant had taken place by non-payment of the 3,000l. at that period, the trustees were entitled to prove for the 3,000l. as a debt due to them.

This was an appeal from the decision of Mr. Commissioner Evans, who rejected the application of the appellants, F. H. Evans and C. Hawker, the trustees of the marriage settlement of the bankrupt, Charles Wentworth Wass, who carried on the business of a dealer in pictures and works of art, to prove a debt of 3,000l. alleged to be due to them by the bankrupt under the following circumstances. By the settlement made on the marriage of the bankrupt, C. W. Wass, dated the 27th May, 1851, the said C. W. Wass, amongst other things, for himself, his heirs, executors, and administrators, covenanted with the said F. H. Evans and C. Hawker, their executors, administrators, and assigns, that in case the said intended marriage should take effect, he, the said C. W. Wass, his heirs, executors, or administrators, would, *out of the first capital money, or real or capital personal estate, or capitalised income, of* or to which he should *be* or *become* possessed, or in anywise entitled after the solemnisation of the said intended marriage, pay or cause to be paid, within six calendar months after he should have become so possessed or entitled as aforesaid, unto the said F. H. Evans and C. Hawker, their executors, administrators, or assigns, the sum of 3,000l. sterling; nevertheless, upon the trusts, and with, under, and subject to the powers, provisoes, agreements, and declarations thereinafter expressed and declared of and concerning the same; that is to say, upon trust that they, the said F. H. Evans and C. Hawker, and the survivor of them, and the executors or administrators of such survivor, and their or his assigns (thereinafter called the said trustees or trustee), should, during the life of the said C. W. Wass, permit the said sum of 3,000l. to remain upon the security of his said covenant, until the said trustees or trustee should be required to call in the same by his intended wife, such request to be signified by writing under her hand, or in case of, and after her death in the lifetime of the said C. W. Wass, for and during such time as the said trustees or trustee, in their or his uncontrolled and absolute discretion, and without being accountable for the exercise of such discretion, or being considered guilty of a breach of trust for such permission, or for omitting to call in, and require payment of the same sum of 3,000l. or any part thereof, should think proper. But in case the said C. W. Wass should die whilst the said sum of 3,000l. or any part thereof should remain unpaid, or in case of such request in writing as aforesaid being made to the said trustees or trustee by the said intended wife; or in case, in the event of and after her death in the lifetime of the said C. W. Wass, the said trustees, if more than one, should unanimously, or the only trustee for the time being, should in his absolute discretion think fit, then, and in any of the said cases, upon trust that they the said trustees or trustee, should, as soon as conveniently might be after the decease of the said C. W. Wass, or after such request in writing as aforesaid should be made to the said trustees or trustee by the said intended wife, or they or he should after her death in the lifetime of the said C. W. Wass, think fit in manner aforesaid so to do (as the case might be), call in and receive, and if necessary or expedient, take and use such compulsory ways or means at law or in equity, as they should consider proper for the purpose of enforcing or compelling payment of the said sum of 3,000l. or any part thereof, which should remain unpaid by the said C. W. Wass, and should stand possessed of the same sum, and every part thereof, as and when the same should be received, upon the trusts thereinafter declared concerning the same. And it was thereby agreed and declared between and by the said parties to those presents, that the said F. H. Evans and C. Hawker, their executors, administrators, and assigns, should stand possessed of the said sum of 3,000l. secured by the covenant of the said C. W.

Wass, upon trust that they, the said F. H. Evans and C. Hawker, or the survivor of them, or the executors or administrators of such survivor, or their or his assigns, should, when and so soon as the same should have been received, invest the same as therein mentioned, and should pay the annual increase of the said moneys, stocks, funds, and securities to the said intended wife during her life, for her separate use, independently of the said C. W. Wass, and of any husband with whom she might intermarry after his death, in the event of her surviving him; so that her receipt alone should be sufficient discharge, and she should not have power to deprive herself thereof in anticipation; and after the death of the said intended wife, should hold the said trust premises, and the annual income thereof, in trust for the child, or for all or any such one or more of the children of the said intended marriage, in such manner and form in every respect as the said C. W. Wass and his intended wife should by any deed or deeds jointly appoint; and in default of such appointment, and so far as no such appointment should extend, as the survivor of the said C. W. Wass and his intended wife should by any deed or deeds appoint; and in default of any such appointment, and so far as no such appointment should extend, in trust for all the children, or any the child of the said intended marriage, who, being sons or a son, should attain the age of twenty-one years; or being daughters or a daughter, should attain that age or marry; and if more than one, in equal shares. And it was thereby declared, that after the death of the bankrupt's said intended wife, and such default or failure of issue as therein mentioned, the said trustees or trustee should hold the said trust premises and income thereof in trust for the said C. W. Wass, his executors, administrators, and assigns. The marriage took place immediately after the execution of the marriage settlement. No part of the 3,000*l.* was paid to the trustees of the marriage settlement pursuant to the covenant therein contained, at the time when the said C. W. Wass became a bankrupt under a petition for adjudication of the 15th May, 1852. It was proved by the affidavit of the bankrupt, which was uncontradicted, that after the date and execution of the settlement, he continued to carry on his business on the same footing as he had been in the habit of doing up to that time; and was and continued to be from time to time, until the time of his bankruptcy, possessed of capital personal estate, consisting of his said stock in trade for the time being, of pictures, bronzes, and other works of art, and goods, and of capital moneys used by him in his said business, and of certain leasehold premises; and that such personal estate was of a value very greatly above the value of 3,000*l.* And that for a considerable period after the 27th day of May, 1851, he was possessed of personal estate more than sufficient to pay all his debts for the time being, including the said sum of 3,000*l.* covenanted to be paid by him as aforesaid. The application of the petitioners for the proof of the debt of 3,000*l.* was rejected by Mr. Commissioner Evans, upon the ground that the expressions employed in the covenant in the said settlement to indicate the fund out of which the 3,000*l.* was to come, pointed to some future acquisition and saving up of property operating as a withdrawal of the same from business, but his Honour allowed a claim to be entered in respect of the said debt, upon the understanding that the present petitioners intended to appeal against his decision.

Follett and *Caillard*, for the appellants.

Lee, for the assignees, in support of the decision of the Commissioners, cited *Ex parte Tindal*, Mont. 375, 462; and *Ex parte Davies*, Mont. 122.

Lord Justice KNIGHT BRUCE.—Considering the very obscure language of the instrument, unlike any I ever remember, I cannot feel the least surprise that different minds should take different views of it. My impression is, that no portion of the words "be or become entitled" ought to be rejected; nor do I think that the force properly belonging to these words ought to be diminished by reason that the word "become" is used afterwards not accompanied by the word "been." Bearing that expression in mind, and the extensive range of the terms "capital moneys, or real or capital personal estate, or capital personal estate, or capitalised income," I am of opinion that there was a breach of contract six calendar months after the marriage took place before the bankruptcy. It is clear that there was property of the bankrupt to the amount of 3,000*l.* and upwards, beyond all debts, six calendar months after the marriage; and on the best construction I can put on this covenant, it appears to me, that at the end of six calendar months there was a breach of the covenant entitling the trustees to recover the 3,000*l.*

Lord Justice Lord CRANWORTH.—I am of the same opinion. The question is, whether the trustees could have maintained an action at the end of six calendar months after the marriage. Now, it would have been sufficient for them to have stated that C. W. Wass was possessed or entitled to capital moneys, or real or capital personal estate, or capitalised income, to the extent of 3,000*l.* at the end of six calendar months after the marriage. Now, as he was so entitled within that period, that averment would have been made out, and the trustees have therefore a right now to prove. Costs are to come out of the estate.

BANKRUPTCY.

Monday, Dec. 6.

Ex parte BIRD, *re* CALNE.

Bankrupt Law Consolidation Act, 1849, *s.* 243—*Affidavit—Magistrate—Notary public.*

An affidavit in bankruptcy was sworn before a magistrate at New York, whose signature was attested by a notary public, although the affidavit did not appear to have been sworn in his presence:

Held, that no objection could be taken to the reception of the affidavit, under the 243rd section of the Bankrupt Law Consolidation Act, 1849, *on the ground that the notary was not present when the affidavit was sworn.*

In this case an affidavit had been sworn before a magistrate at New York, and there was also an attestation by a notary public that the magistrate was duly authorised. An objection was taken, that under the 243rd section of the Bankrupt Law Consolidation Act, the notary ought to have been present when the oath was sworn, and that it was not sufficient that he should merely attest the magistrate's signature.

The 243rd section is as follows:—"That all affidavits to be made or used in matters in bankruptcy, or in any matter or proceeding whatever under this Act, shall and may be sworn before the Court, or any Commissioner, Registrar, or Master thereof, or before a Master in ordinary or extraordinary of the High Court of Chancery, or before any clerk of affidavits, assistant-clerk, or second assistant-clerk of affidavits of the High Court of Chancery; or in Scotland or Ireland before such Master extraordinary aforesaid, or before a magistrate of the county, city, town, or place where such affidavit shall be sworn, or elsewhere before a magistrate, and attested by a notary, or before a British minister, consul, or vice-consul."

Bacon, *Eddis*, *Hugh Hill*, and *Selwyn*, appeared for the different parties.

The Lord Justice KNIGHT BRUCE said he thought the signature of the notary public sufficient.

The Lord Justice Lord CRANWORTH said he concurred, as he thought that it was the intention of the Act for the notary, by his attestation, to shew that the magistrate was what he purported to be, and that it was not necessary that the notary should be present when the affidavit was sworn before the magistrate.

ROLLS COURT.

Reported by J. MACAULAY, Esq. of the Inner Temple, Barrister-at-Law.

Nov. 10 and 15.

LLEWELLIN *v.* PACE.

Practice—Evidence—Effect of nonsuit—Discrediting witness.

If it is sought to discredit the testimony of a witness, it must be done by bringing evidence to prove that he is a person not deserving of credit, not that the evidence he has given is false.

A nonsuit at law has the same effect as to proceedings in this Court as a verdict in the same case would have; and where the merits have been gone into at law, and the plaintiff, after hearing the defendant's case, selects to be nonsuited, the result is the same as if the case had been allowed to proceed, and a verdict had been taken.

The plaintiff and S. Partridge, one of the defendants, entered into partnership in the year 1849; but differences having arisen, the partnership was dissolved a few months after its commencement. Notwithstanding the dissolution, however, Partridge still continued to accept bills in the name of the firm, and, as alleged by the plaintiff, with a view to annoy him, because of the dissolution. In this course Partridge was assisted, as alleged, by the other defendants. There were several bills drawn by Partridge, but that which formed the subject of the present suit was dated the 16th of September, 1849, and was drawn by a person named Smith, and accepted by Partridge, in the name of the firm, for 200*l.* Smith then endorsed the bill to another person, named Wray, and Wray endorsed it to the defendant, Henry Pace. Wray was not a dealer in iron; but the contract in consideration of which the bill was given, was a contract for the sale of twenty-five tons of pig iron, which Smith alleged or pretended he had in his possession. The bill having become due, the plaintiff refused to pay it, and the result was an action in the Court of C. P. by Henry Pace, the holder of the bill. The plaintiff in equity pleaded at law the want of consideration for the bill, and went into evidence in support of his case, and examined witnesses, and amongst others Wray, who stated the circumstances under which the bill was drawn. The defendant at law (plaintiff in equity) having concluded his evidence, Pace (the plaintiff at law) elected to be nonsuited, and no verdict was taken. The proceedings, however, did not there terminate, but other actions being threatened, the plaintiff filed his bill against Partridge, Henry Pace, and his brother John Pace, who claimed an interest in the bill, to have it declared fraudulent and void as against him, and that it might be delivered up to be cancelled.

Roupel and *Southgate*, for the plaintiff, contended that the evidence in the cause was sufficient to shew that the transaction was without consideration and fraudulent, and that the defendants were estopped by the nonsuit in the same manner as if a verdict had been given. They cited *Allen* v. *Davis*, 20 L. J. (N.S.) Ch. 44.

Craig and *Lovell*, for the defendant, Henry Pace, contended that no fraud could be made out except from the evidence of Wray, who, they said, was not a credible witness. They had exhibited articles to impeach his testimony, and they tendered the evidence which had been taken in pursuance thereof for the purpose of contradicting him in points not strictly at issue in the present suit. They also put in copies of the evidence taken at the trial in contradiction of Wray. They also argued, that if the bill was to be delivered up, it would prevent them taking their remedy against the previous indorser, Wray, now a bankrupt, against whose estate it was intended to prove. They cited *Herdfall* v. *Lant*, 7 Sim. 627.

The MASTER of the ROLLS was of opinion that the same rule prevailed in equity as at law. If a party sought to discredit the testimony of a witness, he could only do so by bringing evidence to prove the witness to be a person not deserving of credit, but not that the evidence he has given is false. The only effect of the evidence adduced at the trial was to shew how far the merits had or had not been gone into at law, but it could not be read as evidence in the present suit. If the defendants sought to disprove anything stated by Wray, they ought to have cross-examined him in this suit. He, the Master of the Rolls, was of opinion, on the evidence before him, without taking into consideration that taken at law, that the bill was accepted fraudulently and without valuable consideration. Besides, there had been a trial at law in which the whole of the merits had been gone into, and the plaintiff at law, after hearing the defendant's case, had elected to be nonsuited. This his Honour thought was equivalent to a verdict. The bill, therefore, must be declared fraudulent and void against the plaintiff, and an injunction must be granted to restrain the defendant from proceeding at law against the plaintiff. The bill may be required by the defendants in any proceedings he may take against Wray, and must, therefore be impounded, with liberty to apply.

DUNCAN *v.* ROSS.

In this case, reported *suprà*, p. 74, there is an error. It ought to have been stated, that the decree was against, and not in favour of, the executor having priority over other legatees.

Dec. 4 and 6.

MACLAREN *v.* STAINTON.

Jurisdiction—Scotch courts—Injunction.

An injunction having been obtained by the creditors, in a creditors' suit in this country, to restrain a Scotch incorporate body, whose chief office and works were in Scotland, but who had offices and works in England, from proceeding in the Scotch courts to prosecute their claims against the estate of one of their agents in this country, for the balance due on his accounts with them, they moved to dissolve it, on the ground of want of jurisdiction, and that notice was not duly served, being served on the London agent:

Held, that the Court could exercise the jurisdiction by injunction, and that the notice was sufficient.

This was a motion to dissolve an injunction which had been obtained on the 15th of November last, by the plaintiffs in this suit, restraining the Carron Iron Company from prosecuting an action which they had commenced in the Scotch courts against the plaintiffs and against the defendant, Henry Tibbats Stainton (the representative of Henry Stainton, deceased, late the agent of the company in London) to recover the balance due on the accounts between the company and Henry Stainton, amounting to a very large sum. The company was established by virtue of certain deeds of partnership of the 19th of January and 9th of February, 1760, and of the 6th of May, 1771, and it was incorporated by a royal charter, granted in 1773. The chief office of the company, and their principal works, were and are still situated at Carron, near Falkirk, in the county of Stirling, the business being conducted by a resident manager at the works, and by agents in various parts of England and Scotland, and, among others, by an agent in Thames-street, London; the business of the agents being to sell the goods manufactured at Carron. Henry

Stainton had been for a considerable time the agent of the company in London, and he resided at the place of business. Previously to 1825, the remuneration for his services was paid in the form of a commission on the sales effected; but in that year a resolution of the company was passed, allowing him a fixed salary of 2,000*l.* a year, together with the house, &c. This arrangement purported to be only for a year, but it in fact continued till Mr. Stainton's death. On the 12th October, 1846, Mr. Stainton made his will, and thereby gave his whole property, both heritable and movable, to six trustees, of whom only three, viz. the plaintiffs, James Maclaren, Henry Dawson, and his son, Henry Tibbats Stainton, accepted the trusts. The testator appointed the same persons his executors; and he died in December 1851. The plaintiffs and H. T. Stainton proved the testator's will in England, and became his legal personal representatives, according to the forms prescribed by the law of Scotland. The testator had some English property, and was lately possessed of considerable real property in Scotland, and also of personal property, the greater part of which consisted of shares in the Carron Company. The Scotch property was valued at about 80,000*l.* At the testator's decease, his accounts with the company, as their agent, had not been settled for several years, and the claims of the company against his estate, on the balance of account, now amounted to nearly 70,000*l.* together with nearly 40,000*l.* for interest, in all, over 100,000*l.* This suit was accordingly instituted for the administration of the testator's estate, the bill being filed by the executors against the parties interested under the will. On the 8th of May, 1852, a decree was made, whereby the usual accounts were directed, and it was ordered that the debts should be paid in a due course of administration. Part of the testator's personalty consisting of shares of the company, they claimed a preferable lien or right of security over these under the provisions of their articles of partnership, whereby it was provided that they should have this preferable lien over the shares of a partner to secure the payment of any debt due from him to the company. On the 29th October last, the company commenced proceedings in the Scotch courts to enforce their claim against the testator's estate in Scotland. Previously to this, however, there had been some negociations between the partners with a view to the settlement of the disputed accounts by reference to judicial arbitration in Scotland, and it was alleged that the plaintiffs had acquiesced in the proceedings in the Scotch courts. In evidence of this a letter was put in on the present occasion, though it had not been used on the original motion for the injunction, which was written to the solicitor for the company by the plaintiff's solicitor. It was, as to part, in these words:—"It appears to us that as there is a suit for the administration of Mr. Stainton's estate, in which a decree has been pronounced, that the executors would not be justified in entering into any arrangement for referring to arbitration without the express sanction of the Master in Chancery; therefore, as regards this country, the question must rest till the Master again sits. But this need not delay any steps which you may think necessary in Scotland." The notice of motion for the injunction was served at the company's office, Thames-street, on the defendant, H. T. Stainton, who had succeeded his father as the London agent of the company, and the injunction itself was served on him and on the plaintiff, Henry Dawson, who was the company's agent at Liverpool, and also upon the manager at the chief office, at Carron. The company now moved to dissolve the injunction.

Willcock and *Cotton*, for the motion, insisted that the jurisdiction of the Court did not extend to this company, which was a corporate body, confined in its locality to Scotland, and having never submitted to the jurisdiction of this Court. The company were not defendants to this suit, but creditors seeking to enforce their rights under their own courts of judicature, which they preferred, and had a perfect right to do so. The inconvenience, too, of continuing the injunction would be very great: for other creditors, whose property as well as their persons was out of the jurisdiction of the Court, and, therefore, beyond its reach, would be able to proceed with their action, and give priority in respect of the assets in Scotland. The service of the notice of motion for the injunction on the agent in London was not sufficient, and the service of the injunction itself on the agent at Carron was nugatory, for before the stat. 2 & 3 Wm. 4, c. 33, extended by the 4 & 5 Wm. 4, c. 82, process could not issue against a defendant domiciled out of the jurisdiction, and that Act only authorised service of a subpœna, and not of this sort of process. They cited *Vigers* v. *Lord Audley*, 8 Sim. 333; *Smith* v. *The Earl of Effingham*, 7 Beav. 357; Story, Confl. Laws, 532; *Kennedy* v. *Earl of Cassilis*, 2 Swan. 313; *Buchanan* v. *Rucker*, 9 East, 192; *Fernandez* v. *Corbin*, 2 Sim. 344; *Robertson* v. *Ross*, 1 Atk. 543; *Jones* v. *Geddes*, 1 Phil. 725; *Wedderburn* v. *Wedderburn*, 4 Myl. & Cr. 585; *Montgomery* v. *Hyslop*, 2 Shaw, App. Cas. 63; *Green* v. *Pledger*, 3 Hare, 165; *Hill* v. *Rimel*, 2 Myl. & Cr. 641; *Paxton* v. *Douglas*, 8 Ves. 520; *Louton* v. *Kingston*, 2 Mann. & G. 139; *Evans* v. *Dublin and Drogheda Railway Company*, 3 Rail. Cas. 760; *Graham* v. *Maxwell*, 1 Mann. & G. 71; *Preston* v. *Lord Melville*, 8 Cl. & F. 1; Will. Ex. and Ad. 1414, 1630.

Anderson, *R. Palmer*, and *Lewin*, for the plaintiffs, contended that the company was not a company exclusively confined to Scotland, inasmuch as it had agents and places of business in England; they cited *Stein's* case, 1 Rose, 462; *Allen* v. *Cannon*, 4 B. & Ald. 418; *Beauchamp* v. *Huntley*, Jac. 546; *Whitmore* v. *Ryan*, 4 Hare, 612; *Bushby* v. *Munday*, 5 Madd. 297; *Harrison* v. *Gurney*, 2 Jac. & W. 563; *Lewis* v. *Baldwin*, 11 Beav. 153; *Bunbury* v. *Bunbury*, 5 Beav. 318; *Davidson* v. *The Marchioness of Hastings*, 2 Keen, 509.

Roupell, *Giffard*, *K. Parker*, and *Appack*, for other parties.

Willcock, in reply, cited *Lord Portarlington* v. *Damer*, 2 Phil. 262; *Alexander* v. *Vaughan*, 1 Cowp. 398.

The Master of the Rolls.—Three questions have been raised in the present case; first, whether the Court has jurisdiction to grant an injunction against the company; secondly, if it has such jurisdiction, whether it is proper to exercise it under the circumstances of this case, and under what conditions; and, thirdly, whether, if the parties when they applied for the injunction, had stated all the facts, the Court would have granted it, and therefore, whether, considering the manner in which they obtained it, they are entitled to retain it. As to the first question, which is one of great importance, I am of opinion, and have had no doubt from the commencement of the discussion, that the Court has jurisdiction. There has been a decree for the administration of the estate, and that is equivalent to a judgment for the benefit of all the creditors. It could not be disputed that, after such a decree, a creditor residing in this country would be restrained from bringing an action in a foreign court to recover against the assets under the foreign jurisdiction; but it was contended that this is not a similar case, and that to maintain the present injunction would be to direct an order against persons who lived out of the jurisdiction of the Court, and who had never submitted to its authority. On this point, however, I give no opinion, for I think that the creditor in this case resides within the jurisdiction of the Court. The case of *Davidson* v. *The Marchioness of Hastings* is a case very much in point, for I consider that there is a perfect analogy between those cases where the Court acts upon service of subpœna and that where the process is commenced by service of notice of motion. That case is an authority to this extent, that the fact of a person having a residence in this country is sufficient to support the jurisdiction of the Court. In this case the company has a Scotch charter, and has its head office in Scotland, but it has also offices in this country, and agents to conduct its business, and it is resident in all the offices where it carries on its business, and hence there is jurisdiction in this Court over the corporation itself. It is acknowledged that the company had notice of the decree, and it is proved that notice of the injunction was given to the company at their chief office at Carron. Now, it is not necessary to consider how the jurisdiction of the Court arose, but it is well established that it is not necessary for a creditor to be a party to the suit, in order to be bound by an injunction; and I am of opinion that the authority of the Court in this case is clear. As to the second point, viz. whether it is fit and proper to continue this injunction, I have read the affidavits as to the course of proceeding in Scotland, and it is clear that the effect of them would be that if the company were allowed to proceed, the other creditors also must either take proceedings in the Scotch courts, or else lose the benefit of the Scotch assets. If they were to take such proceedings, the consequence would be that administration would be going on between the same parties and respecting the same estates in two different and independent Courts; and this the Court would endeavour to prevent. It has been suggested that questions of Scotch law may arise which would render it desirable to bring the case before a Scotch tribunal, but such questions of fact in an English court, and besides the same difficulty would occur if the matter was left to a Scotch court. Another objection, and one of a more important nature, is that other Scotch creditors may institute proceedings in Scotland if they have no property in this country, and may set this court at defiance, and obtain priority in the Scotch courts over the company. Supposing this to happen, this Court would give the parties liberty to apply in order to prevent any mischief from arising; but that need not interfere with the present order. With respect to the third question, whether the plaintiffs had lost their right to the injunction by suppressing the fact of their having acquiesced in the proceedings in Scotland, it must be remembered that though the Court is very strict in granting ex parte injunctions as to requiring all the facts to be fairly laid before it, it is not so strict in cases where the order is made on notice. No doubt, if fraud were practised on the Court, the parties guilty of it would not be allowed to have the benefit of the order; but there is no imputation of anything of the sort in this case. On the best consideration I can give the subject, I do not think there has been any acquiescence on the part of the plaintiff in the proceedings in Scotland, or that the omission to mention the letter of the 12th October is any reason for refusing to continue the injunction.

Wednesday, Dec. 22.

Attorney-General v. The Drapers' Company.

Practice under the New Chancery Acts—Purchase of charity property—Valuation—Appointment of surveyor by the Court—Pretium fractionis—Market value.

This was an application to the Court to approve of a purchase made by the Drapers' Company of some charity property, which they required for their hall and premises. The property is situated in Throgmorton-street, adjoining the hall. The company had built upon part of the property, and under their Act required the whole for their use. Valuations had been made by surveyors of eminence on both sides, and as usual in such cases, the estimates and the evidence generally were rather conflicting. Some of the valuations put the price as high as 2,700*l.* to an ordinary purchaser, but as the property was of more value to the Drapers' Company than to any other party, they put the price to them at 3,000*l.* Under these circumstances,

Roupell, for the Company, asked the Court to appoint an independent surveyor under the provisions of the New Chancery Acts, to assist the Court in coming to a conclusion as to the proper value.

James, for the Attorney-General, asked the Court to direct the surveyor to take into consideration the circumstance that the property was worth more to the company than any one else, and to allow for that in the estimate. He also asked that Mr. Fuller, a surveyor, who had given evidence in the case, should be appointed surveyor by the Court.

The Master of the Rolls would not appoint any gentleman who had given evidence in the case before, but would appoint an independent surveyor. Nor would he look at what the property was worth to the company, but only to the market value. He would not put pretium fractionis on it.

VICE-CHANCELLOR TURNER'S COURT.

Reported by J. Henry Cooke, Esq. Barrister-at-Law.

Friday, Nov. 12.

Saunders v. Walter.

Master in Chancery Abolition Act—15 & 16 Vict. c. 80—Inquiries at chambers.

With a view to examine the evidence, and the Master's report, and therein to have the assistance of the chief clerk, the Court will in a proper case adjourn the proceedings to chambers, though the case has not to be gone into before the chief clerk as judge.

This case came before the Court on an objection to the Master's report, on the ground of its being inaccurate in stating that certain specified sums formed part of the testator's estate. The case was set down for hearing before the last long vacation. The defendants now wished the errors in the report to be set right.

The Vice-Chancellor.—Adjourn the case to chambers, in order to ascertain whether the sums mentioned in the Master's report properly constitute the residue of the testator's real and personal estate, and to ascertain how much is principal and how much is interest. The registrar will enter a note of it in his book. If we were to go into the matter now I should, no doubt, be able to see what further affidavits I should require, but this evidence can be better gained at chambers, and the public time be saved.

Dickinson.—If what your Honour directs be done, it may lead to this difficulty, that the other side may say that we are not authorised ex parte to take the accounts before the chief clerk.

The Vice-Chancellor.—I do not intend that it shall be heard before my chief clerk. It is a thing I shall consider myself in chambers, with the assistance of my chief clerk. Let the registrar address a note to the chief clerk, requesting him to ascertain whether the residue of the testator's estate consists of the particulars stated in the Master's report. Let the case stand over for a week, and I will then state to the parties what further evidence, if any, I shall require. The case is now simply adjourned to chambers at the time I have said.

Monday, Nov. 13.

WINDSOR *v.* CROSS.

Alteration of an order made by the Court and acted on, without the necessity of a supplemental order, will be made.

A testator bequeathed certain funds for the benefit of his children, and appointed his wife guardian of them, three in number, and also appointed her, in conjunction with two other persons, trustees and executors and executrix. The fund was paid into court, and an order was made that a certain part of it (the whole fund standing to the credit of the cause generally) should be applied for the maintenance of the infants, so much of the allowance as related to the two younger infants to be paid to the mother alone; but so much as was for the maintenance of the elder, who was apprenticed to a trade, to be paid to the two executors and the executrix jointly. One of the two executors removed out of the jurisdiction of the Court, and there was difficulty made in the office to payment of the allowance to the other executor and the executrix of the maintenance of the apprenticed child.

Whately moved that the order, which had been acted on for upwards of two years, might be amended, and as amended acted on, by directing the future payment of the child's allowance to be made to any two of the executors and executrix. He stated that their alteration would be very desirable, as saving the expense of obtaining a supplemental order.

THE VICE-CHANCELLOR.—I doubt whether, as the reason for this application is attributable to circumstances which have arisen since the order was made—I doubt whether any alteration can properly be made without a supplemental order. The registrar, however, appears to think that the alteration may be made, and therefore I will venture to do it.

Wednesday, Nov. 17.

COOK *v.* HALL.

Examination of witnesses de bene esse under the Chancery Practice Amendment Act.

Unless, under special circumstances which render such a course improper, witnesses to be examined de bene esse are to be examined vivâ voce under the 28th section of the statute 15 & 16 *Vict. c.* 86.

A question having been raised in the above case, whether an examination de bene esse of witnesses was within the Chancery Practice Amendment Act; and, secondly, if it were, whether, as the 31st section directed evidence to be taken in the presence of the opposite party, there must not necessarily be an immediate publication, as the opposite party would know the bearing and particulars of such evidence.

THE VICE-CHANCELLOR (after the interval of a few days) said—Having consulted with the other judges, I can now state, that we think an examination de bene esse is within the recent Act of Parliament. The 28th section declares that the mode then in force, and all the then practice of the Court in relation to the examination of witnesses, so far as the same is inconsistent with the mode and practice thereinafter described, shall be abolished, and then it is in the discretion of the Court whether the examination shall be taken vivâ voce or on written interrogatories. We think, however, that notwithstanding the evidence on an examination de bene esse is not published at the time and will still continue not to be published, yet still the object of every examination being to elicit the truth, and the Legislature having adopted the vivâ voce method prescribed in ss. 31, 32, as the best adapted to that object, the Court is bound to act upon that view as much as possible. Then it was suggested that there should be two examinations, one on each side; but we think that one examination is the best, and will best carry out the spirit of the Act. If the parties cannot agree upon an examination your proposals had better be carried in to me at chambers. The Act having laid down that the examination of witnesses is to be vivâ voce, we think that that is not to be dispensed with on light grounds. Although the 31st section directs the evidence to be taken in the presence of the other parties, and that therefore it must necessarily be known, and in a degree published immediately at the time, it will not be published in the technical sense of the word. You will know it—the parties will know it, of course—but it will not be published to the world, nor used in the cause.

VICE-CHANCELLOR PARKER'S COURT.

Reported by GEO. S. ALEXUTT, Esq. of the Middle Temple, Barrister-at-Law.

Thursday, July 22.

ALCOCK *v.* ALCOCK.

***Evidence—Husband and wife*—14 & 15 *Vict. c.* 99.**

A wife who was the plaintiff in a suit against her husband, tendered her evidence in support of her claim:

Held, that her evidence was not admissible.

In the course of the hearing of this suit, which was instituted by a married woman by her next friend against her husband and others, the evidence of the wife in support of her case was tendered. The reception of this evidence was objected to, and the case stood over for consideration on this point.

Russell and *Cole* appeared for the plaintiff.

Bacon, Anderson, G. W. Collins, and *Smythe* for the defendants.

THE VICE-CHANCELLOR said that in this case it was alleged that the husband was liable for property which belonged to the wife under her settlement, and the evidence of the wife was tendered in support of the claim. Before the late Acts there would have been two objections to the admissibility of her evidence, one that she was a party to the issue to be tried; the other that she being a feme covert was tendering her own evidence against her husband. The 6 & 7 Vict. c. 85, provided that a person offered as a witness should no longer be excluded from giving evidence by reason of any incapacity arising from having an interest in the matter in dispute; but that statute also provided that the Act should not render competent as a witness any party named upon the record, or the husband or wife of any such party. The objections, then, to the wife's evidence remained unaffected by the 6 & 7 Vict. c. 85. Then came the 14 & 15 Vict. c. 99, the first section of which repealed so much of the 6 & 7 Vict. c. 85, as provided that no party individually named in the record should be rendered competent as a witness, but it said nothing of the incapacity of the husband or wife of such party. The second section provided that upon the trial of any issue the parties thereto and the persons in whose behalf any such suit, action, or proceeding might be brought or defended, should be competent to give evidence on behalf of either or any of the parties to the suit, action, or proceeding. The question then arose, whether this Act of 14 & 15 Vict. c. 99, making a party competent as a witness, included or excluded the husband or wife of such party. It had been decided by a very high authority at common law, that the incapacity arising from the circumstance that the witness was a husband or wife of the party for or against whom the witness was tendered, remained, notwithstanding the Act. It did not, however, appear that there was any case which exactly decided the point where the witness herself was a party, and was examined in that character. The case referred to was, where the witness was not a party, but was being examined on behalf of a party. It appeared to his Honour, that Mrs. Alcock was not a competent witness in this case: so far as she was a party she was competent, but so far as she was sought to be made a witness against her husband, her incapacity remained. The construction to be put upon the 14 & 15 Vict. c. 99, was that it only removed the objections to the evidence arising from the witness being a party, but left every other objection that might have existed to the witness, untouched. It was material to consider one or two cases in which the questions might arise. Take the case of a solicitor, who being instructed for a client, had a privilege. The client had a right to say that his solicitor should not be examined as a witness against him in respect of matters which were to be treated as confidential communications. It might happen that the solicitor was suing his client, and tendered himself as a witness. But the Act, although removing the objection to his competency as a party, did not say that the objection to his evidence on the ground of his being the solicitor, was one which could not be taken by the defendant, his client. Again, the Act said that parties should be compellable to give evidence: suppose a party were to be examined upon a matter which might expose him to penalties or lead him to criminate himself, the objection would be still open to the witness, notwithstanding the Act. This was not, however, the objection taken: it was another, and remained untouched. But the same principle applied to the evidence of the wife. The 4th section of the Act had not been referred to in the argument. It provided that "nothing therein contained should apply to any action, suit, proceeding, or bill in any Court of Common Law, or in any Ecclesiastical Court, or in either House of Parliament, instituted in consequence of adultery, or to any action for breach of promise of marriage." It might be said that this section contemplated a particular class of matrimonial suits, and that excluding the husband or wife in such cases might afford ground for arguing that no more extended exclusion of the wife's evidence could have been intended by the Legislature than that provided by the 4th section. But that section was not confined to matrimonial disputes. The section was open to the same observation as had been made on the 3rd section, which provided that a husband and wife should not be competent or compellable to give evidence against each other in criminal proceedings. A learned judge had considered that this section was to receive a more extensive construction, and that it was only in criminal proceedings that these persons were not to give evidence; but the Court of Q. B. took a different view of the statute, and thought that the 3rd section was not necessary, but had been introduced from overabundant caution, and must be considered as part of and subject to the same observation as the 4th. Upon the whole, therefore, it appeared to his Honour that there was nothing in the statutes to remove the incapacity of Mrs. Alcock as a witness against her husband, and her evidence must therefore be rejected.

Friday, July 23.

WHITE *v.* BARKER.

Practice—Exceptions for insufficiency.

A defendant was required by the bill to set forth an account of certain business transactions from 1822 *to* 1843. ***In his answer he stated that the accounts could only be made out with great labour, but offered to produce the books from which the accounts would appear, and stated that he had no other means of information. To this answer the plaintiff excepted for insufficiency, but the exception was overruled.***

To the defendant's answer in this suit, the plaintiff excepted for insufficiency, and the exceptions now came on to be heard. By the bill, the defendant was charged with having carried on a certain business from the year 1822 until 1843, with the moneys of White, deceased, through whom the plaintiff claimed, and one object of the suit was to have the profits of this business brought into the estate of White, deceased. By the bill, the defendant was interrogated as to entries made in books of account, and as to sums received by him in 1822, and thence down to 1843, and the application of the same. By his answer, the defendant offered to produce all the books connected with the business for the period inquired after, and to give the plaintiff all the information he could with reference thereto, but stated that he could not, without great labour, answer the interrogatory in the terms thereof, and that the whole account inquired after would, so far as the defendant was aware, appear by the books. To this the plaintiff excepted.

Russell and *Giffard* appeared in support of the exceptions.

Malins and *Jessel,* for the defendant, cited *White* v. *Williams,* 8 Ves. 193.

THE VICE-CHANCELLOR said that he did not mean to decide that this answer was technically sufficient, but he thought that the Court had, in these matters, a certain discretion, and was bound to use it. In this case, the plaintiff required the defendant to set forth certain accounts in detail, which the defendant, upon his oath, stated that he could not do without great labour, but that the plaintiff might himself obtain the information required, for the defendant offered to produce for his inspection all the books from which the information was to be obtained, and it was not alleged that the books were fraudulent, or that there was any omission in them. His Honour therefore did not consider that any object would be gained by compelling the defendant to set out those accounts in detail; and the exception must be overruled.

July 24 *and* 26.

LOVEGROVE *v.* COOPER.

Contribution for payment of debts.

A. being entitled, as residuary legatee under a will, to one-fifteenth of a sum of stock, and of the proceeds of some real estate, assigned all his share and interest in the stock to B. and covenanted that the fund assigned was free from incumbrances. A portion of the stock was sold to pay the testator's debts: and it was

Held, that B. was not entitled to have one-fifteenth of the amount of debts paid out of the proceeds of the real estate, in exoneration of the assigned share of stock.

Under the will of William May, deceased, Cooper, as one of the residuary legatees, became entitled to one-fifteenth part of a sum of stock, and of the proceeds of some real estate. In July 1844, Cooper executed a deed, whereby, after reciting the will of May, Cooper assigned all his share and interest (without specifying that it was one-fifteenth part) in the stock to the petitioner, and covenanted that the fund assigned was free from incumbrances. In a suit (*May* v. *Grave*) instituted for the administration of May's estate, considerable portions of the stock were directed to be sold, for the payment of the testator's debts.

The present petition was presented for the transfer of 864*l.* 11*s.* 3*d.* Consols, being the clear one-fifteenth part of the stock, and the question raised was, whether or not the petitioner was entitled to this, and to throw the proportion of the testator's debts on the proceeds of the real estate.

Malins and *Mackeson,* for the petitioner, cited *Averall* v. *Wade,* Ll. & G. temp. Sugd. 252; and *Hughes* v. *Williams,* 16 Jur. 416.

Walker and *Busk, K. Parker* and *Haynes,* and *Shee,* appeared for other parties.

THE VICE-CHANCELLOR said, that if the assignment had been of one-fifteenth part of the stock, the

principle contended for by the petitioner would have applied, and the debts of the testator might have been thrown upon the property not included in the assignment. Here, however, according to the true construction of the deed, the assignment was only of what might turn out to be Cooper's share and interest in the stock, after working out the rights of all parties in the suit of *May* v. *Grane*. The petitioner, therefore, could take only so much of the stock as remained after payment of the proportion of the debts of May.

Wednesday, July 28.

LANGHORNE *v.* LANGHORNE.

Trustee Act, 1850—*Vesting order.*

A vesting order of real estate should only be made where there would be some inconvenience in obtaining a conveyance of the property.

This was a petition under the Trustee Act, 1850, and it was proposed to take a vesting order of real estate, which was the subject of the trusts.

W. D. Lewis for the petitioner.

Toller, *Spring Rice*, *Snape*, and *J. S. Cumming* for other parties.

The VICE-CHANCELLOR said, that as a general rule, in these cases, it was for the purposes of the title, much better that there should be a conveyance, and not a vesting order. The statements and prayer in a petition ought to be framed with as much care as the recitals and operative part of a conveyance; but petitions were seldom prepared so carefully as deeds, and were often drawn by persons not possessing competent skill, or who could not give the requisite time and attention to them. The rule his Honour wished to adopt was, not to make vesting orders, except in cases where there would be some inconvenience in obtaining a conveyance.

W. D. Lewis suggested that in the present case there would be an increase of expense by having a conveyance, but

The VICE-CHANCELLOR said, that he did not consider that this would bring the case within the exception.

July 28 *and* 30.

HALL *v.* NALDER.

Will - Construction - Issue.

A testator gave to trustees certain leasehold property in trust to apply the rents for the maintenance of F. until he attained twenty-one, and then to permit F. to receive the rents for his life, and after his death in trust to permit the issue of the body of F. if any such there should then be, to receive the rents for the remainder of the term; but if F. should die before attaining twenty-one, or afterwards without issue, the testator gave the same to J.

Held, that F. had a life interest in the leaseholds, with remainder to such of his issue, not meaning children, as should be living at his death.

James Hall, the elder, late of Alverscott, in the county of Oxford, yeoman, deceased, by his will, dated the 9th day of May, 1758, made the following bequest:—"Item, I give and devise to my sons, Robert Hall and Richard Hall, their executors, administrators, and assigns, all my leasehold estate situate, lying, and being in Brize Norton, in the said county of Oxford, in trust to receive the rents and profits thereof, and pay and apply the same in such manner as they shall think proper, for and towards the maintenance, education, and benefit of Francis, the natural son of my said son Francis Hall, begotten on the body of Ann Long, until he shall arrive at the age of twenty-one years, and then in trust to permit and suffer the said Francis, son of my said son Francis, to receive the rents and profits thereof during his natural life, and after his decease then in trust to permit and suffer the issue of the body of said Francis, son of my said son Francis, lawfully begotten, if any such there shall then be, to receive the rents and profits of said premises for the remainder of the term I have to come therein, but in case the said son of my said son Francis shall die before he attain the said age of twenty-one years, or if he shall die afterwards without issue, then I give and devise the same to my said son James, his executors, administrators, and assigns." The testator appointed his son James Hall his executor, and died in the year 1761, and James Hall proved the said will. Francis Hall, the tenant for life, died in 1836, leaving nine children, thirty-one grandchildren, and twelve great grandchildren living at his decease. This was a claim by the grandchildren and great grandchildren of Francis to have their shares in the leasehold estate.

Shapter for the plaintiffs.

Bayshaw for the defendants, the children of Francis Hall.

Pitman for the representatives of the testator.

Lethbridge v. *Tracy*, 3 Atk. 785; *Eno* v. *Eno*, 6 Hare, 171, and other cases were cited.

Friday, July 30.—The VICE-CHANCELLOR said that he had looked through the will, and he thought the view taken by the plaintiffs was correct, namely, that the bequest was, after a life estate given to Francis, to such of his issue, not meaning children, as should be living at his death, they taking as joint tenants.

Thursday, July 29.

MACINTOSH *v.* THE GREAT WESTERN RAILWAY COMPANY.

Evidence—Examination de bene esse.

A witness had been examined de bene esse on the part of the plaintiff. The witness being too old and infirm to be examined again in chief, the plaintiff moved that the depositions might be published when publication should pass in the cause, but the Court directed the motion to stand over; giving, however, the defendants leave to exhibit cross interrogatories to the witness.

This was a motion on behalf of the plaintiff that the depositions of William Henderson (a witness who had been examined de bene esse on the part of the plaintiff under a common order), which depositions had been returned to the clerk of records and writs, in whose division the cause was before replication was filed, might, when or after publication should have passed in the cause, be published, and might be read and used upon the hearing of the cause, and in all subsequent proceedings therein, in like manner and to the same extent as if these depositions had been taken in this cause after the filing of the replication. It appeared that Henderson was seventy-eight years of age, and it was stated that the mental excitement of being again examined would probably prove fatal to him, and that on several occasions during the previous examination it was necessary to call in a medical man, who limited the time during which the examination was from day to day to be taken.

Russell and *Bacalgette*, in support of the motion, cited *Gason* v. *Wordsworth*, 2 Ves. 366; *Brown* v. *Greenley*, 2 Dick. 501; and *Andrew* v. *Farmer*, 1 Ves. & Bea. 21.

Bacon and *T. Stevens* for the defendants, objected that if this motion were granted, they should have no opportunity of cross-examining the witness. They referred to *Forsyth* v. *Ellice*, 2 Mac. & Gord. 209.

The VICE-CHANCELLOR said that this witness was seventy-eight years of age and afflicted with disease, so that he could not now be examined as a witness without serious danger to himself. In answer to the motion, it was said that the application was premature, and that observation might be well founded. But his Honour thought that the object proposed might be obtained by an order in the following form:—It appearing to the Court that Wm. Henderson, a witness, who has been examined de bene esse, is now by reason of his age and infirmities, incapable of being examined in this cause as a witness on the part of the plaintiff, let this motion stand over, with liberty to apply, and let the defendants be at liberty to exhibit cross interrogatories for the examination of the witness, and let a commission be issued for that purpose without prejudice to any question. That would put the present application upon record. The defendants by such cross-examination were not to be deprived of the right to object to the evidence on any ground they thought proper.

Tuesday, Aug. 3.

Re CLARKE'S TRUST.

1 & 2 *Vict. c.* 110—*Mortgage.*

In a power of sale in a mortgage the trusts of the surplus proceeds were for the mortgagor, his executors, administrators, and assigns. After the mortgagor's death the mortgagee sold and paid the surplus into court under the Trustees Relief Act. A. B. a creditor of the mortgagor, recovered judgment against his administratrix, and obtained a charging order, upon which he petitioned the Court for payment of his claim out of the surplus before mentioned:

Held, that the fund was real assets, and not available for the satisfaction of the judgment obtained against the administratrix.

This was a petition by a judgment creditor of the administratrix of Mr. Clarke, presented under the following circumstances. Mr. Clarke mortgaged certain real estate to Dawson in fee, with a power of sale; and the mortgage was afterwards transferred to Severs with a like power. The trusts of the purchase-money in case of a sale, were declared by the deed to be, first, to pay the costs of the sale; afterwards the mortgage debt and interest; and to pay the surplus, if any, to Clarke, his executors, administrators, and assigns. Clarke, by his will, gave all his real and personal estate to his wife and children in certain proportions, but appointed no executor. Upon Clarke's death, his widow took out letters of administration to his estate, with the will annexed. The petitioner, a creditor of Clarke's, sued Mrs. Clarke as his administratrix, and recovered judgment against her. In February 1851 Severs sold the mortgaged estate under his power of sale, and after providing for the costs, debt, and interest, paid the surplus into Court under the Trustees Relief Act. The petitioner obtained a charging order from Mr. Justice Coleridge, and nearly a year having expired since the date of the charging order, he sought by this petition to have the fund which had been paid by Severs applied in discharge of his judgment debt.

Prendergast appeared in support of the petition, and referred to 1 & 2 Vict. c. 110, ss. 13, 14, and 15.

The other parties, although served, did not appear.

The VICE-CHANCELLOR declined making any order upon the petition, as he considered that the money was real assets, and not personalty in the hands of the administratrix, and could not therefore be made available for the satisfaction of a judgment recovered against her as administratrix.

Wednesday, August 4.

LORD TORRINGTON *v.* BOWMAN.

Will—Construction—"Effects either real or personal."

A testator, after giving certain legacies, gave "all the residue of his effects, either real or personal," to his daughters, A. and B.: he then, after providing an annuity for his daughter C. gave "all his lands in K. and elsewhere, with all his personal estate, to E. F. and G. their heirs and assigns, in trust for the purposes above mentioned:"

Held, that A. and B. took an equitable fee in the lands in K. subject to the legal estate in E. F and G.

Richard Sex, by his will, dated the 7th of July, 1795, after giving pecuniary legacies, proceeded as follows:—"All the residue of my effects, either real or personal, I give to my daughters Elizabeth and Catherine;" and then, after giving an annuity for the support of another daughter, the testator proceeded:—"I give all my lands in the county of Kent and elsewhere, with all my personal estate, to J. Bannister, J. Seabrook, and C. Funnell, their heirs and assigns, in trust for the purposes above mentioned; and I do constitute them executors of this my will." The testator died in 1795, leaving three children, the daughters named in the will. The lands in Kent having been contracted to be sold, the title was objected to on the ground that the lands were not vested in Elizabeth and Catherine in fee. This special case was, therefore, filed to take the opinion of the Court upon the question whether, under the will of Richard Sex, his daughters, Elizabeth and Catherine, took the fee-simple, either at law or in equity, in the testator's lands in Kent, or, if not, to whom did the equitable fee in the lands pass.

Bacon and *Pownall*, for the plaintiff, the vendor, cited *Challenger* v. *Shepperd*, 8 Term Rep. 527; *Knight* v. *Selby*, 3 Scott N.R. 409; *Moore* v. *Cleghorn*, 12 Jur. 591; and *Hogan* v. *Jackson*, Cowp. 299; 3 Bro. P.C. 389.

Malins and *W. D. Lewis*, for the purchaser, cited *Doe dem. Hicks* v. *Dring*, 2 Man. & Sel. 448; and *Doe* v. *Earles*, 15 Mee. & Wels. 450.

The VICE-CHANCELLOR said that he considered the real estate passed to the daughters named. *Hogan* v. *Jackson* decided that real effects meant real property. Here there was a devise of lands in Kent, and a bequest of personal estate, to trustees for certain purposes, viz. to pay the legacies and charges mentioned in the earlier part of the testator's will. What, then, was to be done with the residue, the residue of the real as of the personal estate? The testator had given it to his two daughters, who therefore took an equitable estate in fee, subject to the legal estate in the trustees.

VICE-CHANCELLOR STUART'S COURT.

Reported by GEO. S. ALLNUTT, Esq. of the Middle Temple Barrister-at-Law.

Saturday, Dec. 4.

HEWETSON *v.* TODHUNTER.

Will—Construction.

A testator by his will gave a legacy of 5,000l. to A. B. and declared that, in case A. B. should die in his lifetime, the legacy should not lapse, but should go to or devolve upon his personal representatives. A. B. died in the testator's lifetime, having by his will given all his property to his widow, and appointed her and C. D. his executors. A. B.'s widow survived the testator and afterwards died:

Held, that the legacy belonged to A. B.'s widow, who was the executrix, and the only person beneficially interested under A. B.'s will.

John Todhunter, by his will, directed his real and personal estate to be sold and converted into money, and he afterwards proceeded as follows:—"And as to the surplus of all my ready moneys, the said moneys to arise from the sale of my real estates, and from the sale, collection, and getting in of my personal estate as hereinbefore mentioned, upon trust to pay or remit to my brother-in-law, Joseph Sill, of Philadelphia, in the United States, the sum of 5,000*l.*

and also to pay or remit to my brother, William Todhunter, of Philadelphia aforesaid, the sum of 5,000*l.*; and I declare that, in case either of them, the said Joseph Sill or William Todhunter, shall depart this life in my lifetime, the share of him so dying shall not lapse, but shall go to or devolve upon his personal representatives." William Todhunter, the testator's brother, died in December 1848, at Philadelphia, in the lifetime of the testator, having by his will bequeathed all his property to his widow, and appointed her and William Thomas his executors. Mrs. Todhunter and William Thomas proved William Todhunter's will in the United States, but not in England. John Todhunter died in 1849, leaving the widow of William him surviving. The widow of William Todhunter afterwards, in 1849, made a settlement of all her interest under her husband's will in favour of herself for life, and, after her death, for her three children by William Todhunter. Mrs. Todhunter afterwards died. The question upon this petition was as to the title to the 5,000*l.* in the events which had happened.

Bacon and *C. T. Simpson*, for the children of William Todhunter, contended that the next of kin were intended by the words "personal representatives;" and that the settlement made by the widow did not include this 5,000*l.* They cited *Bridge* v. *Abbot*, 3 Bro. Ch. Ca. 224; *Holloway* v. *Holloway*, 5 Ves. 399; *Palin* v. *Hill*, 1 Myl. & Keen, 470; and *Kilner* v. *Leech*, 10 Bea. 362.

Russell for the representatives of Mrs. Todhunter.

Elmsley for the trustees of the settlement.

Wigram, for William Thomas, the surviving executor of William Todhunter, mentioned that a difficulty arose from the will of W. Todhunter not having been proved in England.

The VICE-CHANCELLOR said that the 15 & 16 Vict. c. 86, s. 44, had given large powers to the Court in such cases, and he would exercise the power in this case by appointing W. Thomas to represent the estate of W. Todhunter.

Wigram then contended that W. Thomas was entitled to the 5,000*l.* either beneficially or as part of the assets of W. Todhunter. He cited *Mackenzie* v. *Mackenzie*, 15 Jur. 1091; *Price* v. *Strange*, 6 Madd. 159; *Sanders* v. *Franks*, 2 Madd. 147; and *Wallis* v. *Taylor*, 8 Sim. 421.

The VICE-CHANCELLOR said that the point of contention here was embarrassed with numerous decisions on each side, but it was his duty to do that which it had always been held to be the duty of the Court to do, namely, to ascertain from the context and the words used, what was the intention of the testator. The words in the present case were not identical with, although they nearly approached the words which occurred in cases which had been decided. There was manifestly a very clear intention that if either of the legatees died in the testator's lifetime, his share should go to those who would have become entitled to it if he had lived. It had been contended that this legacy of 5,000*l.* should go to the legal personal representatives of William Todhunter, either beneficially or to be dealt with as part of his assets. The former contention was not pressed and could not be sustained; neither did the latter appear to be the just view. It would indeed be strange to hold that this legacy should be treated as assets of William Todhunter, because it had never become his property. Upon the death of John Todhunter the Court must look for the person entitled to the 5,000*l.* Mrs. Todhunter was then living, and was both the legal personal representative of her husband and also the person beneficially entitled under his will, and she was therefore entitled to this legacy.

By arrangement between the parties it was afterwards agreed that the money should be paid to the trustees of the settlement made by Mrs. Todhunter.

Tuesday, Dec. 21.

BRYSON v. THE WARWICK AND BIRMINGHAM CANAL COMPANY.

Practice—Lost document.

Where an agreement had been executed in two parts, one of which was lost, the Court at the instance of the plaintiff to whom the lost part had belonged, ordered the defendant to produce the part in his possession for the purpose of having the same stamped, the plaintiff paying the stamp duty, penalty, and costs.

This was a motion on behalf of the plaintiff to compel the production by the Warwick and Birmingham Canal Company of the part of an agreement in their possession, for the purpose of having the same stamped. The suit was instituted by a subscriber to a projected railway company, called the London and Birmingham Extension Railway Company, to obtain the repayment of a sum of 10,000*l.* part of the funds of the company alleged to have been improperly paid by the directors to the Warwick and Birmingham Canal Company in respect of an agreement to purchase their canal. When the money was paid an agreement was executed in two parts by the directors and the canal company. That part of the agreement which was held by the directors had been lost, and in consequence of that circumstance the present motion was made. The part of the agreement in the possession of the canal company had by an order in this suit been directed, together with other documents, to be produced before the examiner, and the plaintiff was desirous of proving the due execution of the same, and for that purpose to have it duly stamped.

De Gex, in support of the motion, cited *Neale* v. *Swind*, 2 Cro. & Jerv. 278; and *Twentyman* v. *Barnes*, 2 De G. & Sm. 225.

Malins, for the defendants, opposed the application.

The VICE-CHANCELLOR considered that upon the authority of the cases which had been cited the order should be made upon the plaintiff's paying the duty and penalty, and the costs of the application.

See also *Reid* v. *Coleman*, 2 Cr. & Mees. 456.

LEA v. SMITH.

Practice—Service of copy of bill under the 23rd Order of 26th August, 1841.

Bird, on behalf of the plaintiff, and thirteen of the defendants in this suit, these defendants being all in the same interest, applied for the leave of the Court to serve but one copy of the bill under the 23rd Order of the 26th of August, 1841, upon one of these defendants. The application was made for the purpose of avoiding the expense of service upon all these defendants.

The VICE-CHANCELLOR gave leave to effect the service as asked.

Wednesday, Dec. 22.

Re MOLE.

Practice—6 & 7 Vict. c. 73.

A trustee should not be served with a petition by a cestui que trust under the above Act, for the delivery and taxation of a solicitor's bill of costs.

This was a petition by a cestui que trust for the delivery and taxation of certain bills of costs which had been paid by the trustee.

Speed, for the petitioner.

Shapter, for the solicitor.

Freeling, for the trustee, objected to his having been served with the petition, as he was an unnecessary party.

Speed referred to the 39th section of the Attorneys and Solicitors Act (6 & 7 Vict. c. 73).

The VICE-CHANCELLOR (after consulting with the Registrar) said that it was not the practice to bring the trustee before the Court upon such a petition, and he should, therefore, dismiss the petition as against the trustee with costs.

MCNEILLIE v. ACTON.

Practice—Appointment of examiner.

Application for the appointment of an examiner by or before whom the witnesses are to be examined under the 31st section of the 15 & 16 Vict. c. 86, should be made to the Court, and not at chambers.

Osborne moved for the appointment of a person named in the notice of motion, as an examiner of witnesses in this cause. The 31st section of the 15 & 16 Vict. c. 86, provided that "All witnesses to be examined orally under the provisions of this Act shall be so examined by or before one of the examiners of the Court, or by or before an examiner to be specially appointed by the Court," &c.

Follett objected that this was a motion of course, and should not have been brought before the Court, but applied for at chambers.

The VICE-CHANCELLOR said that as the Act mentioned "an examiner to be specially appointed by the Court," he thought that the application was properly made here. His Honour made the order.

VICE-CHANCELLOR KINDERSLEY'S COURT.

Reported by P. M. LEONARD, Esq. Barrister-at-Law.

Thursday, Dec. 16.

SMITH v. SWANSEA DOCK COMPANY.

Practice—Evidence—Affidavit.

In this case there was a motion to commit for breach of injunction, and a counter motion to dissolve injunction. After motion had been opened, plaintiff filed an affidavit in reply to defendant's answer.

Russell, amicus curiæ, referred to a case before Lord Truro, in which this had been refused.

The VICE-CHANCELLOR declined to admit it. It could only be done after motion had been opened. Where the Court itself required information as to particular facts, the practice ought to be strict in such cases, or proceedings on a motion might become interminable.

Plaintiff's counsel then insisted upon calling plaintiff himself (who was in court) and examining him orally under sec. 40 of 15 & 16 Vict. c. 86, the latter part of which clause gave the Court a wide discretion.

The VICE-CHANCELLOR refused this. The clause, although it applied to proceedings on motion, required that the witness should be summoned before the examiner by subpœna duces tecum in the ordinary way, and that must be done under an application made before the motion was brought on. If the plaintiff chose to begin without being ready with his evidence, the Court would not stop proceedings in order to enable him to complete it. The same reason which applied to the non-admission of the affidavit would also apply here.

Bacon and *Bevor* for plaintiff.

Follett and *James* for defendant.

Reported by W. H. BENNET, Esq. of Lincoln's-inn, Barrister-at-Law.

Tuesday, Dec. 21.

SHARPE v. BLONDEAU.

New practice—15 & 16 Vict. c. 86, s. 3.

A printed indorsement on a bill or claim, where the defendant is residing out of the jurisdiction, may be altered in writing by inserting fourteen instead of eight days.

Prendergast had, on a former day, mentioned the circumstances of this case to the Court. It was one in which the printed indorsement on a bill had been served on a defendant residing in France, to appear thereto in eight days, the usual time. The defendant residing in France, it was impossible for him to enter an appearance within that time.

The VICE-CHANCELLOR said the point had been mentioned by him to the other Vice-Chancellors, and they agreed with him in opinion that the printed indorsement upon a bill served upon a defendant who was in France, might be altered from eight days to fourteen days, or more. The defendant being in France had been served with a copy of the printed bill, and the printed indorsement requiring him to appear in eight days, which was an impossibility. He thought that it was not necessary that in every case the indorsement should be printed. It might be a matter of discretion in certain cases.

ROBINSON v. HEWITSON.

New practice—15 & 16 Vict. c. 86, s. 53.

A petition is within the 53rd section. Where a female petitioner had married after the filing and stamping of the petition, and it thereby became necessary to amend the petition by making it the petition of husband and wife, such amended petition must be restamped.

Metcalfe, for the petitioner, asked the opinion of the Court whether a petition, as stated by the Vice-Chancellor in his judgment, should or not be restamped.

The VICE-CHANCELLOR said that he had consulted with the other judges upon the questions raised under the 53rd section of the above Act. The facts were these:—A petition had been presented by a female legatee for the payment of the amount of her legacy out of court. Subsequently to the filing and stamping of the petition the lady had married. The questions were, whether the 53rd section applied to a petition, and whether the petition ought to be restamped. The judges were all of opinion that a new stamp was necessary, and that a petition was within the meaning of the 53rd section.

Common Law Courts.

COURT OF QUEEN'S BENCH.

Reported by ADAM BITTLESTON and JOHN THOMPSON, Esqrs. Barristers-at-Law.

Nov. 15 *and* 23.

EDWARDS v. LOWNDES.

Health of Towns Act, 11 & 12 *Vict. c.* 63—*Clerk to Board of Health—Provisional order—Appropriation of funds to found right of action—Notice of action.*

By a local Market Act, the money received under its provisions, after payment of the costs of the Act, were directed to be applied at the discretion of the trustees in payment of the rents and fines due and to become due to the lord of the manor, in respect of the market-house, &c. and in the purchase of such messuages, &c. as should be necessary for the purpose of the Act, and in keeping the market-house, &c. in repair, and in paying the salary to the organist of the church, and in reducing and paying-off mortgage debts, annuities, &c.; and in the next place towards such general improvements as the trustees should think proper. By a confirmed order of the Board of Health, under the 11 & 12 Vict. c. 63, the local Act was repealed, and the property transferred to the local Board. The order directed that all contracts, debts, &c. made, &c. by the trustees of the local Act should be paid and satisfied by and recovered from the local Board, as the same might have been recovered from the trustees.

The plaintiff was appointed organist of the church by the officiating clergyman, and received his salary from the trustees of the local Act, and after its repeal he received about a quarter's salary from the Local Board of Health. On subsequently applying for a year's salary, he was informed by letter that the Board had determined to resist the demand. In an action on the case, brought to recover the amount, alleging a year's salary to be due, and that the trustees had funds in hand applicable and sufficient for the payment thereof, and that it was the duty of the Board to pay the said salary, and that they refused to pay it, contrary to their duty, the plaintiff proved that by the published statement of the Board there was, at the time of the refusal, a balance of exceeding 200l. in the hands of the trustees, but in this account a sum of upwards of 7,000l. due on mortgage of the market estates, was not included:

Held, that the action was not maintainable against the clerk to the local Board, there not having been any appropriation of the funds by the Board to the payment of the organist's salary.

Case against the clerk of the Burslem Local Board of Health, to recover 30*l.* one year's salary, alleged to be due to the plaintiff as organist of Burslem church.

The declaration alleged that the plaintiff, after the passing of the Act 6 Geo. 4, c. 131, for regulating the markets in the town of Burslem, &c. and before the passing of the Public Health Act, 1848, to wit, on the 1st January, A.D. 1845, was, and still is, organist of the parish church of the parish of Burslem, in that behalf duly appointed, at and for a certain yearly salary, to wit, the yearly salary of 30*l.* payable to the plaintiff on the 29th day of September in each and every year, and which salary was duly paid to the plaintiff by the trustees for the time being of and for the town-hall and market-place of the town of Burslem, in the county of Stafford, &c. in the first Act mentioned, &c.; as and after the same salary became due and payable to the plaintiff before and up to the 29th day of September, A.D. 1849, pursuant to the last-mentioned Act; and that the said salary which became due and payable to the plaintiff for the year ending on the 29th day of September, A.D. 1850, was paid to the plaintiff by the said Local Board of Health.

The declaration then proceeded to set out the provisional order of the General Board of Health, by which Burslem was duly brought within the operation of the Health of Towns Act, and providing for the repeal of the above-mentioned local Act, except certain clauses thereof, and directing (Order 13) that after the confirmation of the order, all bonds, mortgages, contracts, debts, moneys, and securities for money, made, given, &c. by the trustees or commissioners respectively, should be paid and satisfied by the local Board out of such parts of the said transferred property and estate as would or ought to have been charged or chargeable in respect of the same if that order had not been made, and should, as near as circumstances would permit, have the same priority, and be paid and satisfied within the same time, and be recovered from the said local Board, as the same might have been recovered from such trustee or commissioner respectively; and that if such property and estate should be insufficient for that purpose, the deficiency should be charged upon, and paid, and satisfied by the said Local Board of Health out of the general district rates levied under the said Public Health Act, in the parts and places which would or ought to have been chargeable with such deficiency if that order had not been made, &c.; and also providing (Order 17) that the order and the repeal of the parts of the local Act should not annul, defeat, lessen, or otherwise prejudicially affect any rate, assessment, imposition, composition, charge, purchase, sale, conveyance, grant, demise, lease, mortgage, annuity, assignment, bond, contract, covenant, agreement, security, matter, or thing whatsoever, before the passing of any Act of Parliament confirming that order, made, entered into, or done, under, or by virtue, or in pursuance of the said local Act with reference to the purposes of the same respectively; but notwithstanding that order, all such acts, deeds, matters, and things should be as good, valid, and effectual to all intents and purposes whatsoever, for, against, and with reference to the said Local Board of Health, as if the same had been made, entered into, or done by, to, or with reference to that Board, instead of the trustees or commissioners of that Act respectively, and might be proceeded on and enforced in the same manner in all respects as if that Board, instead of such trustees or commissioners, had been party or privy to the same, and been named or referred to therein; and further (Order 18), that that order and the repeal of the parts of the said local Act mentioned in the schedule thereto, should be subject and without prejudice to any penalties incurred under that Act, and to all estates, rights, interests, claims, and demands whatsoever, at the time of the passing of any Act of Parliament confirming that order, created, confirmed, subsisting, and capable of being recovered, enforced, and enjoyed under and by virtue or in pursuance of the said local Act, but all such penalties might be enforced and recovered by the said Local Board of Health, according to the provisions of that order; and all such estates, rights, interests, claims, and demands might be had, exercised, and enjoyed as if that order had not been made.

The declaration then averred, that after making and publishing of the said order, and after the passing of the Public Health Act, 1850, No. 3, the Local Board of Health was duly elected; and the plaintiff further saith, that at the said first election of the said Local Board of Health for the said parish of Burslem (except as aforesaid), and before the commencement of this suit, to wit, on the 29th day of September, A.D. 1851, a large sum, to wit, 30*l.* for one year of the said salary became due and payable to the plaintiff as such organist as aforesaid; and that on that day, and from thence until the commencement of this suit, there were and still are in the hands of the said Local Board of Health for the said parish of Burslem, funds and moneys applicable to and sufficient for the payment to the plaintiff of the said sum of 30*l.* so due and payable to him for his said salary on the said 29th day of September, A.D. 1851, as aforesaid, out of the moneys raised and received by the said Local Board of Health, by virtue of the said order and the statutes in that behalf made and provided, by and out of which said funds and moneys it was then the duty of the said Local Board of Health to pay to the plaintiff the amount of his said salary so due and in arrear to him as aforesaid, of all which premises the said Board of Health, and the members thereof respectively, after the said sum of 30*l.* so became due and payable to the plaintiff, and before the commencement of this suit, to wit, on, &c. had notice, and were then requested by the plaintiff to pay him the same; yet the said Board of Health and the members thereof, not regarding their duty in that behalf, but intending to injure and defraud the plaintiff in this behalf, did not nor would, when they were so requested, or at any time before or afterwards, pay to the plaintiff the same sum of money, or any part thereof, but have hitherto wholly neglected and refused so to do, contrary to their duty in that behalf, and contrary to the statutes in that behalf made and provided, to the damage of the plaintiff, &c.

To this declaration the defendant pleaded:—

First, Not guilty.

Secondly. A traverse of the allegation that the plaintiff was organist of and in the parish church of Burslem, at the salary mentioned, payable on the said 29th of September in each and every year.

Thirdly. That the provisional order did not recite or direct in manner and form as in the declaration alleged.

Fourthly. That there were not on the day when the said sum of 30*l.* so became due and payable to the plaintiff for his said salary as alleged, or at any time afterwards before the commencement in this suit in the hands of the said Local Board of Health, funds or moneys applicable to or sufficient for the payment to the plaintiff of the said sum of 30*l.* or any part thereof, out of the moneys raised or received by the said Local Board of Health by virtue of the said order, under the statutes in that behalf made and provided in manner and form, &c.

Fifthly. That the said Local Board of Health never did determine to pay to the plaintiff the money for the non-payment whereof the plaintiff has above complained, or any part thereof, and that before the commencement of this suit, and at a reasonable time in that behalf, to wit, on the 29th day of September, A.D. 1851, the said Local Board of Health did, at a meeting of the said local Board then duly holden, in the reasonable exercise of their discretion in that behalf, reasonably determine not to pay the said money, or any part thereof, to the plaintiff, and to apply the whole of the said funds and moneys in the declaration mentioned to be in their hands to the other purposes to which in and by the said local Act the said trustees were empowered at their discretion to apply the same; and the defendant further says, the said other purposes at the time of the said determination reasonably required the whole of the said funds and moneys to be applied for the last-mentioned purposes, concluding with a verification.

The plaintiff joined issue on the four first pleas, and replied de injuria to the last.

The case was tried at the last Stafford Summer Assizes, before Cresswell, J. when the plaintiff sought to establish his claim in the following manner:—by the Act 6 Geo. 4, c. 131 (local and personal), "An Act for Regulating the Markets in the Town of Burslem, in the County of Stafford, and for Lighting, Regulating the Police, and Watching the said Town of Burslem," &c. it was enacted (sec. 91), "That out of the first moneys which shall be raised or received by virtue of this Act, the said trustees shall in the first place pay and discharge all the costs, charges, and expenses relative to the procuring and passing of this Act, or so much and such part and parts thereof as the said trustees shall conclusive on all direct, with legal interest for such part sion of the 52nd shall have been advanced for that purpose," that the part- remainder thereof shall be applied, at the discre shall on of the said trustees, in payment of the rents and fine examine due and to become due to the lord of the manor for to rest the time being in respect of the said market-house ove and the waste lands in the possession of the said trustees, and in the purchase of such messuages, lands, tenements, or hereditaments as shall be necessary for the purposes aforesaid, and in keeping the said town-hall and market-house in repair, and in providing the necessary conveniences for the said market, and otherwise executing the several purposes of this Act as to the said market, *and in paying the salary to the organist of Burslem Church*, and in reducing, paying off, and discharging the principal sums of money and interest which now are owing, or which shall be borrowed upon any mortgage or mortgages, and in redeeming any annuities to be granted by virtue of this Act, and the same shall in the next place be applied for or towards such general improvements in the said parish of Burslem, or for establishing, promoting, or assisting any public works, institutions, or establishments there, as the said trustees assembled at any meeting to be held in pursuance of and according to the directions of this Act shall think proper. And if any surplus shall then remain, such surplus shall be applied in aid and diminution of the police-rates hereinafter directed to be raised."

A copy of the provisional order of the General Board of Health, by which Burslem was brought within the operation of the Health of Towns Act, and providing for the repeal of the above-mentioned Local Act, except certain clauses, was put in evidence. This order having been subsequently confirmed by the Public Health Act, 1850, No. 3, obtained the force of an Act of Parliament under the provisions of the statute.

The provisional order contained the clauses as set out in the declaration, transferring the liabilities and duties of the trustees under the local Act to the Local Board of Health.

By the statute 11 & 12 Vict. c. 63 (The Public Health Act, 1848), the clerk of the local Board was empowered to sue and be sued on behalf of the Board.

The plaintiff was examined on his own behalf. He stated that he was appointed organist of the parish church of Burslem in 1849, by the officiating clergyman. His salary was at first 20*l.* a year, but was subsequently increased on account of extra services to the sum of 30*l.* in the whole. He received this salary from the market trustees down to the year 1850. He subsequently received about a quarter's salary from the Local Board of Health. On afterwards applying by letter to the Board for the balance due, he received the following answer:—

"Burslem, Oct. 22, 1851.

"*Re* Organist's Salary.

"Sir,—I am directed by the Burslem Local Board of Health to inform you that a special meeting has been this day held for the purpose of considering your application for the payment of 30*l.* for a year's salary as organist of the parish church, when it was determined to resist the demand.

"I am, Sir, your obedient servant,

"To Mr. R. J. Edwards." "J. Lowndes."

The defendant was also called as a witness on behalf of the plaintiff, to produce the published statement of the receipts and expenditure of the Board, drawn up by the defendant, as secretary, and duly audited. This statement shewed a balance in hand on the market trust account of upwards of 200*l.* On cross-examination, it appeared that a large sum had been borrowed on mortgage of the market estates, and that the principal sum of 7,140*l.* was still due, which was not entered in the account.

Evidence was also given shewing the payment of the organist's salary by the treasurer under the original Market Act down to the establishment of the Board of Health.

At the close of the plaintiff's case, it was submitted, for the defendant, that the action would not lie on various grounds (see 20 Law T. Rep. 43); and leave being reserved to the defendant to move accordingly, the verdict was, by direction of the learned judge, entered for the plaintiff on the second, third, and fourth pleas, and for the defendant on the first and fifth.

Whately having obtained a rule nisi to set aside the verdict for the defendant on the first and fifth pleas, and to enter it thereon for the plaintiff,

Gray obtained a rule nisi to arrest the judgment on the ground that the declaration disclosed no cause of action.

Monday, Nov. 15.—*Gray* and *M'Mahon* shewed cause against the plaintiff's rule.—1. By the local Act the trustees stand in no other situation than trustees; in fact, they are barely trustees; and it is submitted that, in a case where trustees have come to a determination not to pay a sum of money, or to go further, unless they have come to the determination to pay the particular sum of money, an action

V C S——

lie against them to recover it. By and also to pull, 6 Geo 4, c. 131, a body of trustees Todhunter ...ated for regulating the market, and a dis- 5,000*l*. ; body of commissioners for regulating the police the ...rusalem. The two bodies were entirely different, ...ed required distinct qualifications, and the distinc- ...tion is kept up throughout the Act All the property connected with the market was vested in the trustees It is admitted that there was a sum of 210*l* in the hands of the trustees, which they might have appropriated to the payment of the plaintiff's salary. This does not give the plaintiff an absolute right to the payment of his salary out of that sum. The trustees might want it for other purposes within the scope of the Act. Unless they have appropriated it to the payment of the plaintiff's salary, this action does not lie. (*Roper* v. *Holland*, 3 A & E 99, *Bartlett* v *Dimond*, 14 M & W 49; *Pardoe* v. *Price*, 16 M & W. 451.) The present case is not distinguishable from *Pardoe* v. *Price*, and the judgment in that case shows that the present action will not lie at all Even in equity the trustees are not liable to the plaintiff, for they have a discretion as to which of the objects of the Act they will satisfy first and they may satisfy every other one before they choose to pay the plaintiff's salary. At what moment does the money in the defendant's hands cease to be their money as trustees?—it can only be when they appro- priate it to the payment of specific objects It fol- lows that this action is in reality one to compel the trustees to perform their trust (*Cane* v *Chapman* 5 A. & E 647) By the local Act, a particular fund ...ed by sec 91, made liable to the payment of this salary, but not the property vested in the trustees, which comprises, amongst other things, the market buildings, &c If, then, execution was to go against the trustees in this action, what is there to prevent the lease of the market being seized? This is a similar case to *Addison* v *The Mayor of Preston*, 21 L. J. 146, C P. in which an action was held not to lie It was then contended that there was evi- dence to support the fifth plea

Whately and *Whitmore* in support of the rule — The argument for the trustees goes to the length of contending that they may act capriciously and refuse to pay the plaintiff's salary But a duty arises on sec. 91 of the Act, by which the trustees are bound to pay the plaintiff, and such duty is enforceable in a court of law Every breach of a public duty work- ing wrong and loss to another, is an injury, and actionable. (*Sutton* v *Johnstone* 1 T R 509) This is not simply a trust, the trustees are rather in the light of debtors All the cases cited by the other side were actions for money had and received with the exception of *Cane* v *Chapman* That was cited in the argument of *Pardoe* v *Price*, but was not noticed in the judgment An action of tort for breach of duty was held to lie in *Cane* v *Chapman* There was no evidence of any other debts due from the trustees besides the plaintiff's salary and it is admitted that they had sufficient to pay it, if there upon became their duty to pay it, and an action lies for the breach of such duty in not paying it It was not shown that the defendants resisted paying the plaintiff on the ground of their liabilities to other creditors. It was then contended that there was no evidence to support the fifth plea

Cur adv vult

JUDGMENT

Thursday, Nov 20 — Lord CAMPBELL C J (after stating the facts)—The question under these circumstances is, whether an action on the case for a breach of duty in not paying the salary will lie This question must be determined by the applica- tion of general principles Many cases have settled that where there is a trustee and cestui que trust, an action at law cannot be maintained by the latter against the former, though the latter may have in his hands money, which, under the terms of the trust deed, he ought to pay, but which he holds in the character of trustee (*Pardoe* v *Price*, 16 M & W. 451) If he directs the appropriation of any part of the fund to the purpose of such payment, then his character is changed, and then not as a trustee but as a receiver of money to the use of the other, an action will lie against him, upon the ground of the appropriation and the consequent liability In the present case the Board of Health was in the situation of a trustee for the persons who had an interest in the distribution of the funds which were received by the board under the Act, and the board and the plaintiff stood to each other in the relation of trustee and cestui que trust. On the principle already stated, he cannot maintain an action against the board It is said that the money was paid to him once, and that this implies recognition of a contract, which would make the money legally due to him afterwards, but we think that the payment was made in execution of the trust, and not in consequence of any contract It therefore appears that money had and received, or money due for work and labour, will not lie in this case. An action on the case was therefore brought for a breach of duty, and the question is whether the action in that form is maintainable *Case* v *Chapman*, 5 A & E. was relied on by the plaintiff. There the action was held to lie, because the commissioners, though not personally liable, had a plain distinct public duty to perform That appears to be the first and only case in which it has been decided that such an action could be main- tained under such circumstances It is not alleged here that there are no other amounts payable out of their funds, or that, after discharging ordinary claims, the fund in hand was sufficient and applicable to this purpose It is not easy to reconcile the case of *Cane* v *Chapman* with the principle of law that governs remedies against trustees, and we are not disposed to consider it to be an authority in any case in which the circumstances are not precisely similar Here the money is to be applicable accord- ing to the discretion of the trustees There was money due from them to a greater amount for other purposes, and to the payment of which these funds were just as applicable as to the payment of this salary That circumstance distinguishes this case from *Cane* v *Chapman*, and on general principles we think that an action on the case is not maintain- able by a cestui que trust against trustees where the only breach is non payment of money held by them as such trustees *Judgment for the defendants*

INSOLVENCY COURT.

Reported by DAVID CARO MACRAE Esq of the Middle Temple, Barrister at Law

Monday, Nov 29

(Before Mr Commissioner PHILLIPS)

Re GEORGE VINTER HOLMES

Conflicting jurisdiction—Double proceedings under the Protection Acts and the 1 & 2 *Vict c* 110

Quære, may an insolvent get rid of proceedings against him by his creditors to enforce payment of instalments agreed upon under a protection petition, by a petition under the 1 & 2 *Vict c* 110?

Held, that the debts in the protection schedule must be inserted in the schedules under the 1 & 2 *Vict c* 110 *and that the latter proceeding may be maintained, and supersede the protection petition*

This insolvent came up for his hearing under the 1 & 2 Vict c 110 supported by *Cooke* There was no opposing counsel but a question arose as to whether his petition could be sustained under the following circumstances He was a clerk in the Post office and in 1848 he had petitioned under the Protection Acts and obtained protection he agree- ing to set aside 110*l* a year for his creditors his then salary being, 250*l* with a deduction of 20*l* to the superannuation fund in the Post office and his income tax He made one payment subsequently lost his situation and was arrested for a new debt by a new creditor The detaining creditor under the present petition 1 & 2 Vict c 110) was not a creditor at the date of the proceedings under the Protection Acts and was consequently not inserted in that schedule filed in 1848 He had obtained leave to file the present petition and the question of jurisdiction now arose for the hearing to-day

In support of the petition *Cole* referred to *Re Child* before the Chief Commissioner Nov 29 1851 (reported in the *Times* Nov 2 1851) which in its circumstances was precisely similar to the present His learned friend *Murrae* for Messrs Dean, Lecks and Redpath solicitors and creditors of the insolvent objected to the jurisdiction of the Court on this ground, and *Reed* supported the in- solvent The Chief Commissioner sustained the petition, and discharged the prisoner, after a remand for a vexatious defence of an action

Reed (amicus curiæ) briefly stated the facts of that case, and the commissioner examined the report of the case in the *Times*

Macrae (amicus curiæ), in reply to the Court, stated that he had relied upon *Re Henry Smith*, before Mr Commissioner Law 18 Law J Rep 80, and 18 Law T Rep 80 The learned Commissioner looked at the case

Mr Commissioner PHILLIPS said, he was rather inclined to adopt the Chief Commissioner's course, because it is impossible the insolvent can swear that all his debts are included and before his discharge he must swear to that fact The question is whether he is not standing on his rights now The Chief Commissioner has given a decision that this man is standing upon his strict rights, and the present insolvent is just doing what Child sought to do I think the insolvent will commit perjury if he omits inserting the debts in the protection schedule in his present schedule, under the 1 & 2 Vict c 110 It is clear that they must be taken notice of by analogy in cases in which these debts come to be considered in reference to the 300*l* clause He thought he should adopt the decision of the Chief Commissioner

The *Registrar* (Mr Ingpen).—There has been a dividend received upon the first estate under the pro- tection petition, and these creditors, if inserted in this schedule (1 & 2 Vict c 110), will have double advantages, having a double dividend.

Cooke —They cannot receive more than 20*s.* in the pound

Mr Commissioner PHILLIPS said that the Chief Commissioner seemed to have acted upon the same idea that was in his own mind. How could the insolvent swear that he had inserted all his debts if he omitted these debts in the protection schedule, which were still unpaid. He could not see his way to an adjudication adverse to that of the Chief Com- missioner He could not see how a man could disregard debts he was actually in process of paying He should therefore allow them to be inserted in this schedule, but he begged it to be understood that the ground upon which the insolvent is discharged is, that if his old debts are struck out, he cannot swear conscientiously that he does not owe these debts, and test it this way—if he came up under the Protection Acts and was a trader, he could not, by the decisions of the Court and by the law, in his opinion, have protection, if the new debts, with the debts in the protection schedule, were above 300*l*.

Petition sustained. Prisoner discharged.

Monday, Dec 6.

(Before Mr Commissioner PHILLIPS.)

Re RICHARD ELMORE

Non payment of instalments after discharge under 1 & 2 *Vict c* 110, *pursuant to rule of Court. Motion for committal*

Cooke moved for a rule nisi to commit the insol- vent for contempt for disobedience of a rule of this Court bearing date 12th day of November, 1852. Counsel made the application on behalf of Mr. Sa- muel Sturges, provisional assignee The insolvent was discharged on the 21st March, 1850, on his filing in this court certain undertakings, as follow — In the Court for Relief of Insolvent Debtors (No 61 370 1),—In the matter of the petition of Richard Elmore,—I, the undersigned Richard El- more, the above-named insolvent do hereby under- take to set aside for the benefit of the creditors men- tioned in the schedule, the sum of 40*l* per annum, to be paid to the provisional assignee by equal quarterly instalments the first instalment to be paid on the 10th day of July next out of my salary of 140*l* per annum, and I consent that this be made a rule of this honourable Court, to enforce the said payments during the time I continue to receive the said salary Dated this 12th day of March, 1850 —Richard El- more Witness, Reuben Simpson And I further consent in the event of my obtaining any more lucrative office than that which I now hold, or in the event of my present salary being enlarged, it shall be competent for this honourable Court to make such further addition to the said allowance as to the said Court may seem fit Dated this 21st day of March 1850 —Richard Elmore Reuben Simp- son witness This undertaking was made a rule of Court on the 12th of November 1852 and the rule was served on the insolvent personally on the 22nd of November last, and when application was then made for the arrears due, amounting to 60*l* the insolvent said he could not pay There had been four several sums of 10*l* each paid into Court, on the 3rd December, 1852 the last application was made for payment

Mr Commissioner PHILLIPS I think that on the first default an application ought to have been made to the Court

Cooke These applications are expensive

Mr Commissioner PHILLIPS If they had been strict they would have got the money, but from 10*l*. they let it run on to 60*l*

Rule to shew cause granted.

ELECTION PETITIONS.

Reported by WILLIAM P HAIR, Esq of the Middle Temple, Barrister at Law

Monday Dec 6

(Before G K RICKARDS, Esq Examiner of Recog- nisances to the House of Commons under the "Election Petitions Act" (11 & 12 Vict. c. 98).

Re THE CARLISLE ELECTION PETITION.

Practice Form of recognisance—Alteration therein

By the 3rd sec of the "Election Petitions Act" (11 & 12 Vict c 98) it is enacted, "that before the presentation of any election petition to the House, a recognisance shall be entered into by two, three, or four persons, as sureties for the person subscribing such petition, in certain sums for the payment of all costs and expenses which, under the provisions hereinafter contained, shall become payable by the person subscribing the petition to any witness summoned in his behalf, or to the sitting member or other the party complained in such petition, or to any party who may be admitted to defend such peti- tion as hereinafter provided," and by the 5th section, "such recognisance may be in the form or to the effect set forth in the schedule to this Act, with such

alteration as may be necessary to adapt such form to the circumstances of each case." The form of recognizance is set forth in the schedule, and the condition is stated to be the payment of "all costs and expenses in respect of the petition, which may become payable by the said petitioner (or petitioners) to any witness summoned on his (or their) behalf, or to the sitting member or other party complained of in the said petition, or any party who may be admitted to defend the same as provided by the said Act." In this case the petition being against two members, Sir J. G. and Mr. F., the agent altered the word "member" to "members," and the agent for the sitting member objected under the provisions of the 13th section of the Act to this alteration, as rendering the recognizance invalid, inasmuch as the term did not secure the payment of such costs as might be adjudged as several and separate costs to each member.

Cooper was heard in support of the objection, and cited *Kipling* v. *Turner*, 3 B. & Ald. 263; *Chapman* v. *Beckington*, 3 K. B. 708; *Lord Arlington* v. *Meyrick*, Saund. 414, *a*; *Dance* v. *Girdler*, 1 N. R. 34.

Tomlinson, in support of the recognizances, quoted *Vesey* v. *Mantell*, 9 M. & W. 328.

The EXAMINER.—The ground on which I decide in favour of the objection and against the sufficiency of the altered form of recognizance, is that the form of the bond as it stands does not give a valid security for costs to each member severally. I cannot depart from the dictum of Abbot, C. J., in *Dance* v. *Girdler*, where he says, "The liability of persons on a bond is not to be extended by implication," which would be the case were I to admit the proposed alteration, for this recognizance is an obligation on sureties of a penal nature, and is not to be extended by such implication. It has indeed been argued that all the words beginning with "to any witness," down to the end of the recognizance, might be struck out as surplusage, and that this alteration is therefore immaterial. The words may or may not be surplusage; but if you use the words which you contend you might strike out, you must be bound by the form which you use, and cannot turn round when you have inserted such words, and call them of no use for all practical purposes. With respect to the interpretation clause, which it is argued will remedy any supposed defect caused by the alteration, by making words used in the plural to import the singular, I do not think the interpretation clause applies to the form of the schedule if altered. The Act ties a person down to this form strictly if used at all: it says, You may use another form altogether if you choose; but it will not come in to help any erroneous or defective alteration introduced into this form. This view is strengthened by observing the alterations which are permitted in the form are all specified therein in brackets. Should it turn out that one sitting member may be decided to be entitled to costs from the petitioners, and the other liable for costs to the petitioners, I do not think that such separate liabilities, directly opposite as they would be, could be sued on under this recognizance.

Recognizances objectionable.

Dec. 7.

(Before the EXAMINER of RECOGNIZANCES.)

In re THE MAYO ELECTION PETITION.

The petition being, as in the Carlisle case, against two members, the agent in drawing the recognizance thereto had strictly followed the form given in the schedule to the Election Petitions Act, preserving the term "sitting member;" and it was now argued that a condition in such terms did not secure joint costs to the two members.

Kingslake, Serjt., in support of the objection, cited *Arlington* v. *Meyrick*, 3 Saund. 414, *a*.; *Dance* v. *Girdler*, 1 N. R. 34; *Wright* v. *Russell*, 3 Wils. 538; *Corporation of London Assurance Company* v. *Bold*, 6 K. B. R. 514.

W. Bovill in support of the recognizance.—*Barnes* v. *White*, 1 C. B. 208; *Rex* v. *Jeffreys*, 4 T. R. 768; *Re Boothroyd*, 15 M. & W. 10, 11; *Reg.* v. *Johnson*, 8 Q. B. 102; Shepherd's Touchstone, 88; *Ransom* v. *Dundas*, 8 B. N. C. 128.

The EXAMINER (on December 10.)—The question is whether a recognizance to a petition against the return of two members, which follows the form contained in the schedule to the Election Petitions Act, is valid. The object of a statutory form being given was to relieve parties from the difficulty which they experienced in drawing forms which should be free from risk of being set aside on technical grounds; the earlier Acts make the use of such forms imperative, the later Acts allow certain modifications in them according to the circumstances of the case. Under these acts the parties may use the forms provided, or forms to that effect: that is, the form is sufficient, if legally sufficient to keep those who use it within the warranty of safety from technical objections given by the statute. The "such alterations," mentioned in the 5th section of the Act, I consider to apply to alterations which might by circumstances become necessary, as, for example, a change in the name of the Sovereign, as in the case of *Reg.* v. *Salomons*. The whole effect of the recognizance is to be gathered from the words of the 3rd section, taken with those of the 5th section; the phrase there, "to the sitting members," includes by the interpretation clause "several sitting members." This form of recognizance strictly follows the words of the clause, and secures the exact objects contemplated by the 3rd section. I think the interpretation clause will assist the words as they stand in this recognizance, inasmuch as that clause may be held to govern the form given in the schedule, when strictly followed, as being part of "this Act." And from the case of *Parker* v. *Gill*, D. & L., I am confirmed in the opinion of an interpretation clause having power to aid all forms ordered by an Act, but not applying to forms drawn up by parties at their own discretion, as in the Carlisle case. If, as has been argued, the term "sitting member" is only to be used in cases of petitions against a single member, we have the strange anomaly of a form being given in the schedule to an Act, which is applicable only in a small minority of the cases for which that act is intended to provide. From Dwarris on Statutes, 510; *Reg.* v. *Baines*, 12 A. & E.; and *Ransom* v. *Dundas*, I see the legal authorities have always been ready to strain a point to make a statutory form given by an Act agree with the practical working of that Act, unless the language of the one be clearly repugnant from that of the other. In this case the 5th section gives the words; the recognizance agrees with the enacting part of the statute; and no point need be strained to ensure their agreement. I hold, therefore, the recognizance to be unobjectionable.

HOUSE OF LORDS.

Reported by JAMES PATERSON, Esq., Barrister-at-Law.

Friday, Dec. 3.

NORTH BRITISH BANK *v.* COLLINS.

Joint-stock bank — Deed of copartnery — Estoppel — Fraudulent abstracts of directors not binding — Balancing the books — What are losses of the company.

By the deed of copartnery of a joint-stock bank, the directors were to submit yearly abstracts of the company's affairs, showing a balance, which abstracts should be binding on the partners, who were to have no right to examine the company's books; but it was to be competent to a majority of partners at a general meeting to appoint two of themselves to examine and report on the company's affairs in general. It was also provided that, if at any time it should be found on balancing the books that the losses amounted to a certain sum, the company was to be ipso facto dissolved. A., a partner, filed his bill, alleging that the yearly abstracts were false and fraudulent; that the losses already equalled the specified amount; that the directors had misapplied the funds, and by undue influence procured a majority of partners to back them; and that the company was insolvent:

Held, that the plaintiff's allegations were sufficient to warrant a reference to an accountant to inspect the company's books, and report whether the abstracts were false, and whether the losses equalled the specified amount:

Held, further, that A. was not estopped by the deed from seeking redress in a court of equity; for the deed contemplated a case where the abstracts were bond fide, and not fraudulent:

Held, further, that the expression, "if on balancing the books a certain loss be found," being general, the court is justified in taking its own way of ascertaining the fact of the loss, though the deed may contain provisions as to a particular mode of ascertaining it:

Held, further, that "the losses of the company" include such losses as may arise through the fraud of the directors, and for which the directors may be personally liable.

This was an appeal from the Court of Session in Scotland. The respondent was a shareholder in a joint-stock company in Glasgow, called the North British Bank, and he had instituted an action of declarator, that is, filed a bill in the Court of Session, praying the court to put an end to the company on certain grounds therein stated. The bill set forth the following facts:—In 1845 the North British Bank was formed as a joint-stock company, and in the articles of copartnership it was provided, that the business of the bank should consist in banking, exchange, money-dealing or agency in all their branches, issuing and reissuing notes for money, &c.; that the capital should consist of 1,000,000*l.*, divided into 100,000 shares of 10*l.* each; that seven ordinary directors should be elected in a manner specified to conduct the business of the company; that in case of nonpayment of calls, the directors should have power either to sue, or to sell the shares on which default had been made by auction; that the directors were to set apart a portion of profits to form a reserved surplus fund, to meet contingencies, before declaring a dividend. Then the 39th article provided: "At the general meeting, to be held on the second Wednesday of February, 1847, and at every annual general meeting, the ordinary directors for the time being shall exhibit a statement or abstract of the preceding yearly balance-sheet, and such further statement or report of the affairs of the company as they may deem it expedient or proper for the interests of the company to be made public, and shall then declare the annual dividend of profits; and every such statement or abstract and report shall be binding and conclusive on all the partners, subject to the provision of the 52nd article." The 52nd article provided, "that the partners, other than the ordinary directors, shall on no account or pretence have right to see or examine the books of the company, but shall be bound to rest satisfied with the yearly statements or abstracts above provided for." It further declared, that it should be competent to a majority of the partners, at a general meeting, "to appoint, if they see cause, two partners, qualified to be directors, as auditors, to examine and report upon the said statements or abstracts, and also upon the state of the accounts and affairs of the company generally, which auditors, after binding themselves to secrecy, shall have full and free access to all the books, vouchers, writings, and other documents connected with the affairs of the company," &c. The 54th article, after providing that it should be in the power of any of the partners holding not less than three-fourths of the stock, by agreement in writing, at any general meeting to dissolve the company, proceeded thus: "It is hereby expressly provided and declared, that if it shall be found at any time, on balancing the company's books, that losses have been sustained equal to the whole of the reserved surplus fund, and also to 25*l.* per cent. on the advanced capital stock of the company, such loss shall, *ipso facto*, and without the necessity of any further procedure, dissolve and put an end to the company;" and the dissolution in either of the events above mentioned was to be advertised in *The Gazette*, &c. The plaintiff then stated that, in consequence of the favourable report submitted by the directors to the first general meeting, he had become a shareholder; that, at the second general meeting, some of the shareholders expressed their dissatisfaction with the annual statement, and alleged it was false, which the directors denied; that, at the third general meeting in 1849, the shareholders again remonstrated with the directors, alleging that their abstract was false, and that the event contemplated in the 54th article had arrived, viz., that the losses of the company already exceeded the specified amount, on reaching which the company was *ipso facto* to be dissolved; that the directors disregarded all these allegations, and having procured a number of shareholders to back them, persisted in carrying on the business of the company. The bill then alleged that the plaintiff was ready to prove from the books of the company that the losses had reached the specified amount in the 54th article; moreover, that the directors had misappropriated the funds of the company by applying them to reckless speculations, apart from their proper business as a company; that, in particular, they were guilty of malversation and fraud, with a view to their own profit, inasmuch as they had appropriated to themselves 2,100 shares of stock, at a time when they were selling at a premium, without paying any price whatever for them; and that thereafter, when these shares, on which 10*l.* had been paid up, had fallen to 40*s.* they fraudulently procured the said shares to be forfeited, on the ground that they had not signed the contract. The bill concluded with alleging that the company was now unable to meet its engagements, and ought to be dissolved. The defendants (now appellants) in their answer insisted: 1. That the plaintiff was estopped by the deed of copartnery from instituting this suit; 2. That there were no sufficient grounds for putting an end to the company.

The Court of Session, in the first instance, before disposing of the merits of the case, directed a reference to an accountant, to examine the books of the company, and to report: 1. Whether the annual reports of the directors were true and correct, or, if not, in what respect erroneous; 2. Whether it appeared from the books that, at the date mentioned, the losses sustained by the company were equal to the whole of the reserved surplus fund, and also to 25*l.* per cent. on the advanced capital stock. Against this order the defendants now appealed.

Bethell and *Anderson*, for appellants, cited the following cases:—*Palmer* v. *Mare*, 2 Dick. 489; *East India Company* v. *Hinchman*, 1 Ves. Jun. 287; *Waters* v. *Taylor*, 15 Ves. 10; *Foss* v. *Harbottle*, 2 Hare, 461; *North of England Banking Company* ex parte *Holme*, 16 Jur. 803.

The *Lord Advocate* (*Inglis*) and *Rolt*, for respondent, cited *Colman* v. *Eastern Counties Railway Company*, 10 Beav. 1.

The LORD CHANCELLOR.—I think there is here a sufficient *primâ facie* case. You must assume the facts here alleged, for the purpose of entertaining this reference. Remember that this reference decides nothing but to ascertain the fact, and the right upon the allegation is to have the fact determined. When you have the fact determined, the merits are at an end. Is it the allegation of a *primâ facie* case? What is the statement? The provision of the deed is, that if at at any time there shall be a given amount of loss of trading capital and the reserve fund, *ipso facto* there shall be an end of the partnership. The parties determine not to go on to ruin, but that, if there should be so heavy a loss as is there pointed out, then, without any declaration whatever, or interference of any one, there should at once be an end of the partnership. Now, the respondent proceeds upon a ground altogether consistent with that

provision. He says that there has been fraudulent management, and that not only has there been reckless trading, and not only have the directors diverted the assets of this copartnership from the proper purposes, and carried on business as general merchants, as speculators, and every other description of business, making charges against them in that respect, but that, by this reckless trading and by these improper speculations, a loss has accrued, which renders it impossible for the business to be carried on. If the business has so been mismanaged—if, instead of carrying on the banking concern, they have been carrying on every other concern but banking—if they have ceased, as they admit by their answer they have, to be a bank of issue,—that of itself shows a state of insolvency. They might have been very glad to have had shares in speculation in their own paper, but they have ceased to issue paper. That would be a sufficient ground of itself, and consequently there is quite allegation enough to maintain a suit of this sort, supposing that the party is not estopped by the particular deed of partnership from resorting to a court of justice. Now, there is a very singular argument advanced, which is, that if this loss has arisen from the misconduct of the directors, the appellants' counsel say that the directors are personally responsible for it, and that it is not a loss which can by any means enable a court of justice to put an end to the partnership. That does not at all follow. There may be personal relief to be had against the directors; but, the directors being the chosen body by whom all the affairs of the copartnership are to be managed, if they, by reckless conduct—if they, by improper speculation, do in point of fact reduce the capital below the amount with which it is possible to carry on the trading, why should not it be a case in which relief should be given to stop impending ruin? What matters it how it has arisen, if it has in point of fact arisen in the course of carrying on the trade? It cannot be in character to say, "Go on with this loss—with this bad bank: you are in a state of ruin—you have no capital—the capital is all absorbed; but go on and render yourselves personally liable;" because the directors have themselves brought it to that point by improperly conducting the business, or rather by conducting business not authorised by the copartnership, instead of carrying on the proper business, and that which was solely entrusted to them. It is almost ludicrous to see what the effect of that would be. My lords, if the capital be gone, and the partnership cannot be carried on, the directors, if they have misconducted themselves—of course I am not saying that they have in any measure. I have no materials before me for coming to such a conclusion—but if they have misconducted themselves to such a conclusion—but if they have misconducted themselves, they may have made themselves personally liable, and yet it may be that the consequences of their conduct have of themselves worked a dissolution of this partnership, and if not, that a court of justice would dissolve the partnership. My lords, if there be, as I apprehend there is, quite a sufficient case for the court to proceed upon, then the question is, is the right of the respondent barred by the articles of copartnership? Now those articles are very stringent, and it is fit that they should be as regards a bank of this nature, a joint-stock bank; for unless very great care is taken every shareholder, being a partner, may claim a right to look at all the accounts—and, therefore, it is very proper that they should restrain the shareholders from a general inspection of the books or the accounts, and that there should be secrecy observed. All that is very right, and all these things are provided for—they are things to be done at a regular general meeting. There may be a meeting as a general meeting, or by three-fourths of the shareholders. It is only necessary to look at the state of this company, there being a million of capital divided in the 100,000 shares—those shares going down as low as 10*l.*—to see how very difficult it is to get persons representing three-fourths of that capital to agree to a measure for the purpose of dissolving this partnership; and what is alleged upon the face of these pleadings (it may or may not be true) is this, that the greater portion of those persons are under a liability to the bank, that is, they have had accommodation from the bank, as shareholders are very apt to have, and buy shares for that very purpose, and they are consequently under the dominion of the directors, who can sue them for the liability, and therefore you cannot get those persons to come forward with this object. That may or may not be so, but that is the allegation which is here made. But there is a provision which states that the partnership may have an end put to it by the parties, and I wish carefully to guard myself in anything which falls from me on this occasion, not to have it understood, that a partner in a partnership, like this particularly, can come upon general allegations and desire to break up that company suddenly, not resorting as he ought to do to the provisions of the deed. If this case can be maintained by the respondent, it must be upon its own grounds, and not upon any supposed right of a particular shareholder to come against the sense of the majority and endeavour to break up the concern. Now the section of the deed of copartnership upon which certainly a great deal turns is the 54th. It is insisted that that means simply a balancing under the former provision, which states that the partners holding three-fourths

of the stock may, at a general meeting, by a written agreement dissolve the company; and it is not necessary to decide that it does not mean that. It may mean that, but it may mean something beyond it. It is impossible to say in a court of justice if it be true that false accounts have been made up by these directors in order to cover their own course of action, that you are to be bound by that balance, and that you are to act contrary to the fact upon the assumption that there is capital sufficient to carry on the business which already, in point of fact, has ceased for want of capital. There is nothing in this partnership deed either to point to that or to lead to the consideration in point of law. It is a case not within the partnership deed, and the deed is only referred to for this purpose (independently of another question whether it is confined or not to the preceding losses), to show that if that be the case there ought to be *ipso facto* a dissolution of the partnership. Now are the words to be so confined? They state that if on balancing the books you shall find that there has been that loss, *ipso facto* the partnership is not to stand any longer. It is alleged that on balancing the books it will be found, and this respondent takes upon himself to maintain that he can prove from those books, that there was the actual loss here pointed out, so that the partnership has in point of fact, and therefore in point of law, come to a termination. Can parties in their own wrong set up fraudulent and improper balances, and then say that you are to be bound by them under a deed which assumes that all goes on correctly? It is a certain mode of taking the account agreed upon by the parties and acted upon by the copartnership. It is not a question of going contrary to the deed, but you are going with the intention of the deed, and you are giving effect to that intention. The intention of the deed was that, if it appeared on balancing the books that there was that loss actually incurred, the copartnership should be at an end. But it is asserted that the fact does exist, and that it would have appeared upon the balances of the directors themselves, if they had truly made up the accounts. Now, it is impossible to say that a party can screen himself from an investigation in a court of law by anything which is found in this instrument; and therefore I apprehend that it is quite clear that the allegation of the respondent does make out a case for relief, notwithstanding the particular provisions of this instrument; and I think that, as the words are general as to balancing the accounts, a court of justice is justified in looking at those words in a general sense, and that if upon a balancing of the accounts, however it chooses to direct that balance to be made, the fact is ascertained, the court is justified in considering it to be an ascertainment of the fact. I think that, independently of balancing the accounts at all, if it appears that this company is incapable of carrying on its trade, and the very case has arisen which the parties have provided should be of itself a dissolution of the partnership, that is a sufficient case for dissolving this copartnership. Now certain results were pointed out, which it was alleged would flow from this view of the subject. It was said, for example, if you are to give this general sense to the provision of the deed, then at any single moment at which you establish, after a distance of time, that there has been that loss which is pointed out here, although it might not appear by the balancing of the accounts, but would appear on looking at them, there is an end of the partnership. I do not see that any such consequence follows; for, assuming that there was that supposed loss at a given moment which was not ascertained at the time, and there was no necessity for ascertaining it, but that that loss had not affected the prosperity of the company, and that they recovered the loss by going on, there need not be any inquiry into any supposed loss of that description. But if a just balance was taken of the accounts, and it did appear that upon a balancing of the accounts there was a loss, then every single shareholder in this company could set that up. It need not be done by every member of this company, but it might be done by one single shareholder, and they could not defeat its being set up as against that single shareholder. Now, my lords, I am naturally anxious, in a case of this sort (we are obliged at present, to a certain degree, to assume the merits and the demerits also), to see what the answer of the defenders is. Would they like to rely upon the accounts which they have set forth in these papers, with the view of showing what the state of a great banking concern is? They are precisely balanced here to shillings and pence, and the items are without the slightest explanation. Can it be said that, in a concern of this nature, such a document as that would give the information of the real state of this bank? If they had assets in their hands, they knew that, in point of fact, the case had not arisen which was provided for by the deed, and they might have thrown the onus on the respondent of establishing a *primâ facie* case. They do not either show the nature of their liabilities and the actual state of their assets, or produce any account which in any manner affords the slightest explanation. Then what is to prevent such an account being taken? What is it they ask? Do they ask examination into the charges against them before that account is taken? They ask no such

thing. They say it is not a proper case to direct an account; but they do not come forward and say,—"We have plenty of assets to carry on the bank; you are interfering with it; you are destroying this company; you ought not to be permitted to do so." They do not tell you what step you are to take; they desire your lordships to stop this proceeding; but they suggest no other. Their short object is to get rid of that investigation which is directed. Upon these grounds, my lords, I am clearly of opinion the court below was right. At the same time I am anxious, as I said before, to guard myself and the house against its being supposed that the decision of this house would in any manner allow any partner, contrary to the articles of the copartnership deed, to come without any cause, and endeavour to break up the concern. *Order confirmed, with costs.*

Equity Courts.

LORD CHANCELLOR'S COURT.

Reported by C. H. Kerr, Esq. of Lincoln's-Inn, Barrister-at-Law.

Monday, Nov. 15, 1852.

(Before Lord St. Leonards, L. C.)

Seagrave *v.* Pope.

Building society—Statute 6 & 7 *Will.* 4, *c.* 32—*Security—Mortgage—Redemption—Rehearing—Practice.*

The owner of shares in a building society executed a mortgage of leasehold property for securing 544*l.*, *advanced by the society on his shares—a sum considerably less than the full amount of the shares to which he would have been entitled at a future period. A monthly subscription of* 8*s.* 6*d. and of* 8*s.* 6*d.*, *also redemption money on account of his having received money by anticipation, was payable on each share. The shareholders were at liberty to redeem on notice and compliance with certain requisitions. The subscriptions had been duly paid. On a bill filed by such a shareholder against the society, alleging that the sum so received by him was advanced as a loan, which he had the liberty of repaying at his option, and praying a declaration that on the repayment thereof, subject to the deduction of his subscriptions and to an allowance of profits, he might be entitled to redeem the mortgaged premises, and to be exempted from all future payments:*

Held (reversing the decision of the court below), that the member was not entitled to redeem; that, although there was much ambiguity upon the terms of the Benefit Building Societies Act, the rules of the society, and the mortgage deed in question, the mortgage was to be considered a security, not for the repayment of the advance and interest, but for the due payment of all future monthly payments, subscriptions and fines, according to the rules of the society.

The stat. 6 & 7 *Will.* 4, *c.* 32, *contemplates no loan or advance to a member in any other sense than an advance by way of anticipatory payment of the share to which he would be entitled after having made the stipulated payments.*

The putting a party in possession presently of that to which he would become entitled at a future time upon the performance of certain conditions or payments, furnishes no reason why he should not perform those conditions or payments.

On the above bill being dismissed, an application for a rehearing was granted by a subsequent Lord Chancellor, on the alleged ground that such dismissal was a slip, and contrary to the practice of the court in suits for redemption:

Held, on the rehearing, that such dismissal was not a slip in the decree, and did not justify a rehearing.

This was an appeal from a decision of the late Vice-Chancellor Knight Bruce.

In this case, the details of which will be found in 14 Law T. R. 524, the plaintiff Fleming became entitled to certain shares, of 100*l.* each, in the Camberwell Building and Investment Society. In respect of those shares he received a sum of money from the society considerably less than the full amount to which he would have been entitled at a future period, and at the same time he executed a mortgage to the society in respect of the money so received. In respect of each of the shares he had paid a monthly subscription of 8*s.* 6*d.*, and a further sum of 8*s.* 6*d.* a month, called interest or redemption money, on account of having so received money by anticipation, instead of receiving nothing until the full shares of 100*l.* each became due; and the question was, whether the sum so received by him was to be deemed to have been advanced as a loan, which he had the liberty of repaying at his option, and by the repayment of which, subject to the deduction of the subscriptions he had paid and to an allowance of profits, he was entitled to redeem the premises mortgaged, and to be exempted from all future payments; or whether the sum so received by him was to be deemed to have been advanced by way of anticipatory payment, or in substitution of or equivalent for the full 100*l.* shares which he would be entitled to receive at a future time; and that the mortgage was to be deemed to have been only given to secure the due payment of the subscriptions of 8*s.* 6*d.* and

LORD CHANCELLOR'S COURT.

the additional payment of 3s. 6d. a month. The plaintiff Fleming and the plaintiff Seagrave, who was a purchaser from him, insisting on the first of these constructions, filed a bill against the trustees of the society, praying a declaration that the plaintiffs were entitled to redeem the mortgaged premises upon the terms of repaying the amounts advanced by the society, less the amount of subscriptions which the plaintiff Fleming had paid, and the proportion of profits in the society to which Fleming was entitled in respect of such shares.

Sir J. L. Knight Bruce, V.C., made a decree containing a declaration in conformity with the prayer of the bill.

From that decree the defendants, insisting on the second of the two constructions, appealed, on the ground that the plaintiffs ought not to have been allowed to redeem, except on the terms of paying all subscriptions and redemption moneys and other payments due or thereafter to become due in respect of the shares during the probable duration of the society, to be estimated by the Master.

Lord TRURO (L.C.) before whom this appeal was first heard, on the conclusion of the arguments of counsel, stated his opinion on the merits of the case: (*vide* 19 Law T. Rep. 173.)

After resigning the great seal, his lordship delivered judgment.

The LORD CHANCELLOR. — This society was framed under the authority, and to effect the objects, of the 6 & 7 Will. 4, c. 32; the rules are framed in reference to that act, and also the mortgage; and to arrive at the true construction, as well of the rules as of the mortgage, the statute, the rules, and the mortgage must be considered. Unfortunately, each of them is very inaccurately framed; the same words are not always used in the same sense, nor are the applicability and correctness of the expressions in reference to the subject-matter to which they refer considered. The general purpose of the Act is stated to be to raise by subscription a fund to assist the members in obtaining small freehold and leasehold property. The first remark that arises on the language of the 1st section is, that the company is stated to be for the purpose of enabling the members to receive the amount or value of their shares to purchase real or leasehold estate, to be secured by way of mortgage to the society until the amount or value of the shares shall be repaid to it, with interest, fines, &c. The immediate antecedent to the words "to be secured" is the purchasing real or leasehold estate; but I think that those words do not refer to the real or leasehold estate, but to the amount or value of the shares of the members, and the 2nd section, read in connection with it, tends to give that meaning. Now, the 1st, 2nd, and 3rd clauses, taken together, seem to import that the mortgage referred to in the 1st section is intended to secure the amount or value of the share which the society, by the 2nd section, is contemplated to advance to members, prior to the member receiving the advance having made the payments which he was bound to make before he was entitled to the share. The statute contemplates no loan or advance to the member in any other sense or view than an advance by way of anticipatory payment of the share to which he would be entitled after having made the stipulated payments; and the mortgage is described as intended to secure, not a sum in gross, by way of general loan, but the amount or value of the shares contemplated to be paid by anticipation. The expression used, "to be secured until the amount or value of the share shall have been fully repaid," does not seem very accurately to express the real intent. The member is to pay by subscriptions an amount equal, with the profit or interest which it may be anticipated would result from the use of his subscription, to 100*l.* or 150*l.*, or whatever may be the amount of the share. It then contemplates the member, after he has paid up the amount of his share by anticipation, continuing to pay his subscriptions until they shall amount to the sum which entitled him to the share; and these subsequent subscriptions are described in the statute as repaying to the society the amount or value of the shares. The 1st, 2nd, and 3rd sections having relation to the mortgage, it will be observed that the 5th section also refers to the same mortgage, and there speaks of it as a mortgage for moneys advanced by the society to a member, and speaks of the person entitled to the equity of redemption. The subscriptions were to be paid monthly, until the objects of the society were fully accomplished. The shares were 100*l.* each, and when there was sufficient to pay each share of 100*l.*, then all arrears of subscriptions, fines, &c., were to be payable immediately, and the payment enforced; and when the sum of 100*l.* for each share was fully paid, the accounts were to be audited, the securities returned to their owners, and the society dissolved, a receipt being indorsed on the mortgage securities, according to the stat. 6 & 7 Will. 4, c. 32, s. 5. When the 100*l.* per share was raised by the subscriptions, fines, &c., all the mortgages were to be receipted as satisfied, and to be given up; but there was no provision for any repayment of money previously advanced in respect of such mortgage. How far this consideration tends to the conclusion that the mortgage was a security only for the payment of the subscriptions, and not for the repayment of the money advanced except in the shape of subscriptions, I will hereafter consider. The seventh article is framed to raise the fund contemplated by the Act of Parliament under the 1st section. The ninth, eleventh, and twelfth articles seem to be divided, to effect the objects of the 2nd and 3rd sections of the statute; that is, the enabling members to receive their shares in advance prior to the same being realised, upon paying a bonus, or rather allowing a discount and interest, with the mortgage necessary to carry the purposes of the society into execution. Now, it is to be considered whether, when the articles use the expression "sale of shares," anything more is meant than that which is enacted in the 2nd section, that it shall be lawful for members to receive their shares by anticipation, and to pay a bonus or interest for such privilege. The title of the 9th article is, "Mode of advancing money by sale of shares"—a form of expression not very accurate, although by the context sufficiently intelligible; for 100*l.* was payable when the subscriptions, fines, &c. would enable that sum to be paid upon every share; and, in effect, the company propose to sell the right of presently receiving the share, upon being allowed a certain deduction from the amount, which has inaccurately been denominated a bonus, and is called a payment, it being in fact a deduction made at the time, and which only becomes a payment by the continuance of the subscriptions until the requisite amount should be raised to pay each undiscounted share in full; and the title shows that by "advance" was meant a payment of a share in advance, and not in advance in any other sense: and a sale of a share, or payment of a share by anticipation, does not seem to be consistent with a repayment of the advance, although it may be consistent with the purchaser making the payments necessary to entitle him to a share at all. The putting a party in possession presently of that to which he would become entitled at a future time, upon the performance of certain conditions or payments, furnishes no reason why he should not perform those conditions. The title to the article being what I have stated, it remains to be seen whether the substance of the article corresponds with the title, and refers to a transaction intended only to put the buyer in possession of the share to which, upon the performance of certain conditions, he would be entitled at a future period, or whether it referred to a loan of the amount advanced in any sense. The 9th article provides that, as often as the fund shall amount to the sum of 100*l.*, the same shall be awarded to the highest bidder by premium for the preference; and the 11th, evidently relating to the transaction contemplated by that article, provides, in substance, that any member having received cash for his share shall, as and towards the redemption thereof pay, in addition to the monthly subscription, 3*s.* 6*d.* during the continuance of the society, upon every monthly subscription-day. The words "as and towards the redemption thereof" must have a meaning consistent with a member having purchased a share, and received cash for such share; and the stipulation, that 3*s.* 6*d.* per month is to continue to be paid during the continuance of the society, is consistent with these words, meaning that the party is to pay 3*s.* 6*d.* per month in addition to the ordinary subscription, as a consideration, not for a loan or advance of money to be returned, but for a payment made earlier than the party would of right be entitled to receive it. The same uncertainty or inaccuracy of expression occurs in this article as in the Act of Parliament, when it speaks of security offered for the share awarded, as the security relating to a share awarded—that is, sold—and is to be given after the share has been received. The seller wants no security for the thing he sells, nor the buyer for what he receives; but the seller may require a security for the price, and the price for a share sold is the contract to pay the subscriptions until a fund shall be raised competent to pay every member his share of 100*l.*; and it is security for the performance of that contract that seems to be described here as security for the shares. The second paragraph of the 12th article authorises the trustees, not to lend, but to pay to the member the sum of money which he shall be entitled to receive, on his executing a mortgage as security for so much money as shall therein be expressed to be secured. The language of this part of the article receives some light upon the commencement of the next paragraph of the article, which speaks of the member "so entitled" to his share, which would seem to refer to members to whom a share had been awarded under the 9th article, none of the articles entitling a member to a share in any other manner until the society should terminate. The parts of the article to which I have hitherto referred seem to refer unequivocally to the transaction of a member receiving his share by anticipation, and not to a loan. There is, however, in one of the paragraphs the expression that no second mortgage shall be deemed a sufficient security for any moneys to be advanced by the society—an expression certainly not applicable to the character which the defendants ascribe to the transaction. But, considering the Act of Parliament and the articles in connection, and that there is an entire absence of any provision for advance except in the way of the payment of a share by anticipation, however inapt the expression may be, it is difficult to suppose that it refers to any other transaction than one to which the general substance of the clause is directed—that is, an advance in the sense of payment by anticipation; and that by a security for the advance was intended a security for the performance of the contract in relation to which the payment by advance was made—that is, the contract to pay the future subscriptions. The same 12th article then specifies what the mortgage deed shall contain; and, construing that part of the article in connection with the transaction to which it refers, it would be difficult to point out any part which points to a repayment of the sum paid in advance of the share bought. His Lordship, after referring to page 15 of the articles, proceeded:—The only sums which the society are authorised to retain out of the rents or proceeds of the sale are subscriptions and payments due and payable by virtue of the rules and the mortgage deed. Now, by the rules, no payments whatever are required but payments by way of subscription and fine. There is no provision whatever which points to a repayment of the mortgage paid to a member in anticipation of a share purchased by him. It is difficult to discover sufficient ground for the argument that the mortgage was to be a security for the repayment of the advance of the share. The clauses upon which the plaintiff relies in support of his claim to redeem on payment of the sum so advanced, are the 14th and 16th. By the latter a person who has not had any advance made to him may withdraw from the society, and receive back his subscriptions, subject to a certain forfeiture. But this does not afford any good reason for contending that a person who has had an advance may withdraw on repayment of such advance. The party to whom a liberty of withdrawal is given by that article has not received anything from the society, but the society have had the use of his subscriptions. But the member who, by the advance made to him, has had his share discounted, as it were, is under an obligation to pay and make the monthly payment for which that share was awarded him. The first part of the 14th article, which gives a power to sell at first sight might seem to show that the mortgage was intended to secure the repayment of the sum advanced by the society; but the words "secured the repayment thereof" mean, not only the payment of the value or price in the shape of the monthly payments, which, indeed, virtually amounts to a securing the repayment of the sum advanced, but something more, inasmuch as the monthly payments will be sure to cover and exceed the amount advanced. As to the words in the 14th article, "the full amount expressed to be secured in and by the mortgage," the meaning of these words must of course be ascertained by a reference to the mortgage. Now that deed expressly recites, that "for the security of all payments to become due in respect of the shares," he has agreed to execute the assurance thereby made; and the habendum is "upon trust from time to time, so long as Fleming should make the payments, and observe and perform the regulations and articles relating to the said shares, and perform the covenants therein, to permit him to hold the premises and receive the rents." But if he should fail "to perform the covenants, or for the space of six months to pay the subscriptions, payments, or redemption money, then upon trust to appoint a person to receive the rents. But if the rents should be insufficient to satisfy the property as aforesaid, then upon trust to sell, and out of the moneys to retain the costs, and all such principal money, subscriptions, and other payments as shall have been advanced to, or shall be due by, the the said T. B. Fleming, his executors, &c., in respect of the said shares." There is no covenant to pay the sum advanced. The mortgage deed contains no condition or stipulation that the money advanced shall ever be repaid; and although there is a power to retain it in case of default in observing the covenants and regulations, or making the payments required, that, as we have already seen, is not authorised by the 12th article, which specifies what the mortgage deed shall contain. But admitting that power to be only reasonable and necessary for the protection of the society, and supposing it to be valid, though not authorised by the articles, yet the mere fact that the society is entitled to recover the money advanced, where, owing to the default of the member, it cannot get the future monthly payments, is no reason why the member should be allowed to redeem on payment of the money advanced to him. On the whole, I have no doubt that the construction for which the defendants contend is a right one; and although the case of *Mosley* v. *Baker*, 6 Hare, 87, in which the decision of Sir J. Wigram, V.C. was affirmed by Lord Cottenham (13 Jur. 817), is certainly distinguishable in some respects from the present, and was clearly in favour of the society, yet I still think that case furnishes an authority, in a great degree, in support of the construction maintained by the defendants. The documents in the present case are very similar to those in that case, so far as relates to the

point in dispute; and they seem to me to require the same construction. The decision of the Vice-Chancellor must therefore be reversed; and I think that the bill ought to be dismissed.

Subsequently an application was made to the Lord Chancellor (Lord St. Leonard's) have this case reheard, upon the ground that therewas a slip in the decree, by reason of the bill, which was a redemption bill, having been dismissed; and upon this representation leave was given to have the case reheard.

Monday, Nov. 15.—Upon this case coming on to be reheard, and being about to be opened upon the merits by

Bacon and *Hardy*, for the plaintiff,

James Russell (*Rolt* and *T. H. Terrell* with him) objected, the only rehearing that had been granted was for the purpose of correcting an alleged slip in the decree pronounced by Lord Chancellor Truro: (*Hickling* v. *Boyer*, 20 Law T. Rep. 58.)

The Lord Chancellor.—That is so; you are not entitled to a rehearing upon the point decided by the late Lord Chancellor.

Bacon.—Lord Truro, at Mr. Russell's request, ordered the bill to be dismissed: we submit that that was an undoubted slip, and contrary to the practice of this court in suits for redemption. There is no other mode than by the means of a redemption suit whereby the plaintiff can get back his property that is in mortgage. The appeal of the society from the decision of the Vice-Chancellor was, not upon the ground that the plaintiff was not entitled to redeem at all, but upon the ground that he was not entitled to redeem in the mode allowed by the Vice-Chancellor.

The Lord Chancellor.—There is no slip whatever here. Lord Truro took this view of the case—that a member who anticipated his shares was not a mortgagor, with all the rights of an ordinary mortgagor, but is bound to continue his subscriptions up to the time of distribution among the shareholders. That is the decision: it may be right or it may be wrong, but there is no slip. Dismissing the bill was the necessary result of the decision—he repelled the right to redeem. *Application refused, with costs.*

Saturday, Dec 18.

Before Lord St. Leonards, L. C., the Lord Justice Knight Bruce, and Lord Justice Lord Cranworth.

Kerr *v.* The Middlesex Hospital.

Distinction between bequests of perpetual and life annuities—"British Funds" investment in—The case of Heron v. Stokes *considered.*

L. by his will, after leaving all his property to his executors upon trust, and after leaving to his daughter-in-law 3,000*l. sterling, to hold the same independent of her husband, &c. and after leaving to two other parties the sum of* 100*l. each, "desired that his executors should purchase for each of his two sisters E.B. and E.F.* 100*l. a year each, the said annuities to be purchased in the British Funds;" and, after leaving various other annuities and legacies, "directed his landed property at Otham to be sold by auction, and the produce to go to the carrying out of the aforesaid annuities and legacies; and should the produce of the said sale not be found sufficient for that purpose, he desired that the remainder should be made up from his personal property;" and after directing his personal property in the funds of, &c. to be sold after the above annuities and all legacies had been paid and effected, he desired "the remainder of his personal property should be laid out in the purchase of an annual income in the Three per cent. Consols, for the benefit of a cancer ward in the Middlesex Hospital of London." By a codicil he left his estate and landed property at Otham to R. L. and left one other annuity, and increased an annuity which he had left by his will:*

Held, reversing the decision of the court below, that the annuity to E. B. was perpetual.

The gift of the produce of a fund which is itself producing a perpetual income is a perpetual annuity.

The gift of an annuity to be secured upon a permanent fund is for life only; so also where an annuity is bequeathed without words of limitation, and unaccompanied by a reference to some fund for its payment.

This was an appeal from a decree of the Master of the Rolls by one of several annuitants. The point involved arose under the will of the late Sir Joseph Laffan, Bart.

The will, so far as is material, was as follows:

"I, Joseph de Courcy Laffan, Bart., of &c., leave all my property, of whatever kind it may be, in England or elsewhere, of which I shall die possessed, to Thos. Knox, Earl of Ranfurly, &c., Chas. Kerr, and Henry Houndle, Esqrs., to have and to hold the same in trust for the following purposes: I leave to my well-beloved daughter-in-law, Frances Lazier, the sum of 3,000*l.* sterling, to hold the same independent of her husband, and to be disposed of by her will, properly signed and executed. I leave to her sister, Jane Symes, and the Rev. Mr. Lazier, the sum of 1,000*l.* each. I desire that my executors shall purchase for each of my two sisters, viz. Mrs. Eliza Burns and Mrs. Ellen Fitzpatrick, 100*l.* a-year each, the said annuities to be purchased in the British Funds. I leave 50*l.* a-year to my niece, Mrs. Catherine Quialan, to hold the same independent of her husband. I leave 25*l.* a-year to each of my nieces, &c. and my nephew, the children of, &c. I leave to Charlotte, Marchioness of Anglesea, 1,000*l.* I leave to Isabella Sheldon, of, &c. 100*l.* as a mark of my affectionate esteem. I leave to Dr. Verity, physician to, &c. 100*l.* as a mark of my friendship. I direct my landed property at Otham to be sold by auction, and the produce to go to the carrying out of the aforesaid annuities and legacies; and should the produce of said sale not be found sufficient for that purpose, I desire that the remainder shall be made up from my personal property. I direct my personal property in the funds of the East India Company, the Bank of England, the Dutch Funds, the Neapolitan Funds, the French Funds, the French Lyons shares, &c. to be sold. After the above annuities and all legacies have been paid and effected, I desire the remainder of my personal property shall be laid out in the purchase of an annual income in the Three per cent. Consols. for the benefit of a cancer ward in the Middlesex Hospital of London. I leave and bequeath 300*l.* to each of my executors, and I constitute, &c. to be my executors."

The testator made a codicil to his will, which, so far as is material, was as follows:—"I leave to Captain Robert Laffan my estate and landed property at Otham. I leave and bequeath 50*l.* a year to Mrs. Catherine Quinlan. I leave and bequeath to Joseph Laffan 50*l.* a year, over and above what I left him in my will."

The testator died in 1848, and in 1849 two of his executors instituted a suit for the administration of his estate, against the President and Governor of the Middlesex Hospital, Eliza Byrne (in the will called Burns), and the other annuitants, as defendants.

By the Master's report, it appeared that all the legacies had been paid; that the annuity given to Mrs. Byrne had been paid up to the 7th of January, 1852, and those of the other annuitants up to a recent date.

The question arose whether the annuities given by the will to Mrs. Byrne and Mrs. Fitzpatrick, and to the several other parties, and by the codicil to Catherine Quinlan and Joseph Laffan, were only life or perpetual annuities.

On the cause coming on for further directions, the Master of the Rolls (in his judgment, which is not reported) said:—"I should have been very glad if I could have come to an opposite conclusion from that which appears to me to be the plain and manifest meaning of the will, but I am of opinion that the words of this will admit of no doubt or ambiguity; and that this is a clear instance of an annuity being given for life only. Now the distinction I apprehend is quite clear, which is this: where there is a fund producing a permanent income, and the produce of that fund is given, then that is a permanent annuity; but where an annuity is given to be secured upon a permanent fund, then it is only an annuity for a person's life. Now the question in this case is, what is given? The testator gives in the first place all his property to his executors, which does not in my opinion affect the question at all until you come to the words 'I desire.' He says, 'I desire that my executors shall purchase annuities for each of my two sisters of 100*l.* a year each.' Now, if it had stopped there, no question whatever could have arisen if what was given to them was an annuity; and it appears to me the more important to stop there because you must look to what the gift is. In all the cases which have been cited, there was a gift of the fund itself which was producing a perpetual sum; and therefore the important distinction between the two, if you stop at this place, is, that in the one place you are giving the produce of a fund which is a permanent and existing fund, and in the other you are giving an annuity; and the only words upon which this can be supported, if at all, are these: 'the said annuities to be purchased in the British Funds.' Well, the fund, if I have come to a right conclusion, is a sum for life; how is that then to be secured? It is to be secured by purchase 'in the British Funds;' but that is not giving the produce of a sum of money in the British Funds belonging to the testator to these persons for an indefinite period, which is a different thing; but it merely describes in what manner this annuity is to be turned into the produce of a fund which does not exist. If he had intended to have given them so much stock as would produce 100*l.* a-year, a very different set of words would have been employed, according to the ordinary acceptation of the words used by persons in ordinary parlance. If he had stated that he had certain money in the Funds, and that he had given that to his executors, to be divided into certain proportions, and to pay 100*l.* a-year to Mrs. Burns and Mrs. Fitzpatrick, another question might arise. But the question here is, whether it being in the first instance, upon the earlier authorities and upon the ordinary meaning of the words, a clear annuity for life, the fact that that annuity is to be purchased out of a permanent income enlarges that into a permanent annuity. Now, I am of opinion that it does not; and that the case of *Heron* v. *Stokes*, and no other case that I am acquainted with, or that has been cited, amounts to a decision to that effect; the will merely states how that annuity is to be secured. The fund might become permanent without the annuity itself becoming permanent. The words of the residuary gift do not affect in my opinion that conclusion. He has directed that all the residue of his property shall be turned into an annual income for a permanent corporation. No doubt that is a perpetual gift; it is an annual income to go on as long as that corporation exists, it is a gift of it entirely to that corporation. There may be a question upon that, whether he thought that the corporation would have the power of disposing of the *corpus* of the fund; that may have been the intention of the testator, and he only intended that they should have the disposal of the fund as long as the corporation lasted; and in that view the words used by the testator have a plain and intelligible meaning. I should have been very glad to have come to a different conclusion; but I entertain no doubt that this is an annuity for life, and not a permanent annuity to these ladies; and, of course, if it is so to them, it is so as to all the others." From that decision Mrs. Byrne alone appealed.

Elmsley and *Riddell* appeared for the appellant, and relied on the authority of *Heron* v. *Stokes*, 2 D. & W. 89, since confirmed by the House of Lords.

Rompell and *Cairns*, in support of the decree, contended that the words of the will only gave an annuity *simpliciter*, which by law was only for life, and that the direction to purchase it "in the British Funds" was only an indication of the mode in which it was to be secured. Every annuity must have a fund out of which it was to be paid. The only case in which the court had held that an annuity was perpetual was where the annual produce of a portion of a fund was given, and which in effect carried with it that particular part of the fund itself: (*Wilson* v. *Maddison*, 2 Y. & C. C. C. 372; *Rawlings* v. *Jennings*, 13 Ves. 19; *Innes* v. *Mitchell*, 6 Ves. 464; *Clough* v. *Wynne*, 2 Mad. 188.) All that the testator meant by the direction to invest in the British Funds was to place the annuities on a safe footing; he could not intend to give sums in gross capable of producing such annuities. The bequests of legacies in other parts of his will proved that he very well knew how to give sums in gross when he so desired. The residue of the testator's property, subject to the payment of the legacies and annuities, was by his will directed to be laid out in the purchase of an annual income for the benefit of the cancer ward in the Middlesex Hospital. The cases of *Blewitt* v. *Roberts*, 1 Cr. & Ph. 274; *Potter* v. *Baker*, 18 Law T. Rep. 115.

Lloyd and *Buck* for the executors, the plaintiffs.

Elmsley replied.

The Lord Chancellor and the Lords Justices took time to consider their judgments, which they delivered later in the day.

Lord Justice Lord Cranworth.—In this case I do not concur with the Lord Chancellor and the Lord Justice Knight Bruce; and it has been arranged between us that I, as the junior judge, should state my reasons first. The question is, whether or not a certain annuity given by the will of this testator is for life, or whether the annuitant is entitled absolutely to the fund which produces it. The Master of the Rolls has decided that she is entitled to a life annuity only. The appellant contends that it is a gift of the *corpus* of the fund in perpetuity; but is the annuity given merely for life or in perpetuity? Suppose there had been no direction to purchase in the British Funds,—how would the case have stood if the testator had said, "I desire that an annuity shall be purchased of 100*l.*"? I should have thought that in such a case the annuity would be for the life of the annuitant only. This I thought was settled by Lord Cottenham in the case of *Blewitt* v. *Roberts*. The general rule is there laid down—it is one universally received—that the gift of an annuity *simpliciter* is for life only. That being so, is the case altered by what follows—"the said annuity to be purchased in the British Funds"? That direction does not appear to me to alter the case. It appears to me that the direction might be satisfied by the purchase of a Government annuity, which is authorised by the Act of Parliament. The Act regulating the purchase of life annuities does not charge them upon any of the Funds ordinarily so called, but charges them upon the Consolidated Funds of the country. I confess that I think, in construing a will like this, we must understand the party to have used "British Funds" in the very popular sense of "British securities;" that the party was to have her annuity of 100*l.* secured to her by the British Government, as contra-distinguished from any of the other funds in which it seems he had property—in Dutch Funds, Neapolitan Funds, and so on. Although that is the interpretation which I should have put upon this will, independent of authority, I should at once have yielded that opinion, if I had felt that it was adverse to decided cases, and more particularly if it was adverse to the case which has been so much commented upon, *Heron* v. *Stokes*. I confess I do not think that case governs this. In that case the language appears to me to have been materially different; it is, "My will is, whatever I die possessed of, or in any way entitled to, together with whatever property my wife may be in any way entitled to, shall produce to my wife an annuity of 100*l.* per annum; to each

LORD CHANCELLOR'S COURT.

of my daughters 100*l.* per annum, for themselves and their children." Now with reference to the annuity of the wife, what my Lord Chancellor of Ireland decided, and the House of Lords held he rightly decided, was this—that what was given to the wife was such an amount of property as produced 100*l.* a year. But that I conceive depends upon the particular language. Now, what the House of Lords held to be the meaning of that bequest was this, that so much property was given to the wife—so much *corpus* of the property as produced 100*l.* a year. I do not say whether that would have been the construction, independent of that which I may now call supreme authority, I should have adopted. I rather believe it is. In this case you are to look to see whether what is given to the party is *corpus*, producing a particular annuity, or the particular annuity itself. The House of Lords, in the case of *Heron* v. *Stokes*, considered that the *corpus* and not merely the annuity was given. I yield to that construction, even if it is not that which I should have adopted, but I do not think it governs the present case, because the present case is to purchase an annuity, which would be only a gift of an annuity, according to the case of *Savory* v. *Dyer*, decided by Lord Hardwicke. I do not think that a direction to purchase in the "British Funds" means more than that it is to be a British security, and nothing less—not any private security, not any security of any foreign state; and that view of the case, which accurately explains my view, is somewhat confirmed to my mind by the residuary gift. The residuary gift is clearly meant not to be a life interest only—it could not be; for it is given to a corporate body, or at least to a body to have a perpetual existence, the Middlesex Hospital: and it is this: "I desire that the residue of my property shall be laid out in the purchase of an annual income in the Three per cent. Consols," not saying there, as was said before, "in the British Funds;" but it is pointing to a perpetual fund. That of itself would have been of very little weight; but it somewhat tends to confirm the view that I have taken of this case. I am of opinion that the decision of the Master of the Rolls is correct. I thought it my duty to state this, in justice to the parties. I will not say that I have no doubt,—if I had no doubt, I ought to have withdrawn my opposition; but it is very probable that my view of the case will turn out to be incorrect.

Lord Justice KNIGHT BRUCE.—I am not sure that I differ from the Master of the Rolls or from my Lord Cranworth in the view which either of those learned judges have taken of this case, excepting in a single point, namely, the applicability to it of the case of *Heron* v. *Stokes* as an authority: and I particularly wish to be understood as guarding myself from being understood to intimate how I should have been disposed to deal with the present case, if that of *Heron* v. *Stokes* had not existed. The case of *Heron* v. *Stokes* as to this point had the concurrence and decision of very high authority—of the Lord Chancellor of Ireland first, and of the House of Lords afterwards—and it was held by both. We must assume it to have been the opinion of the House of Lords, because it seems to have been so expressed by every noble and learned lord who gave an opinion upon the subject, that the wife of the testator, as she was held to take a perpetual annuity under the will and codicil, would have taken a perpetual annuity under the will alone, independent of the codicil. I feel myself unable to say (as that must be taken to have been a right decision, and probably was such) that this lady does not also take an absolutely perpetual annuity, and, therefore, upon the authority of *Heron* v. *Stokes*—repeating that I do not mean to intimate what I should have held if that case had not existed—I feel myself bound to say that this lady does take a perpetual annuity.

The LORD CHANCELLOR.—This case turns upon the true construction of this testator's will, and the question upon it is to be governed by the rules of law; I do not apprehend that the general rule of law admits of any doubt. It is perfectly settled and agreed upon that if an annuity be given *simpliciter* to one generally, a life interest only passes. It is equally, I believe, undisputed that if an annuity be directed to be provided out of the proceeds of property or out of property generally—if an annuity is to be brought into existence by the application of property, and that is given to a party generally, the party would take property appropriated to purchase the annuity, and therefore would take the annuity in perpetuity if it were purchased. In the case of *Heron* v. *Stokes*, the gift was much more difficult to manage than the gift here would be, according to the construction which I think it ought to receive. In that case what did the testator, by the gift to his wife and daughters, mean? Might it not mean one of two things—either that they should set apart so much of the property as would produce 100*l.* a year: or that they should provide for it out of the proceeds, which would be the more rational intention or construction—not to set it apart? You cannot set apart any given property just to the amount that would produce 100*l.* a year; but you may raise so much money as will purchase 100*l.*, the exact sum; and therefore the more probable and proper construction of that is, that an annuity was given to her of that amount, to be produced by the application of a portion of the property. It was upon that ground that I thought the words were sufficient to create a perpetual annuity; and I suppose upon the same ground, for no other was mentioned, the law Lords who advised the House when the case went up by way of appeal, decided the case—they all *seriatim* expressed their opinion in favour of the same construction. Now, if upon this will you could find an intention expressed, not simply to give an annuity to this lady in mere words of donation, but that an annuity should be purchased for her, and that the money with which that purchase is to be made is to come out of the *corpus* of the property, then I apprehend it is an annuity which is to exist in the way in which it is to be purchased, namely, general and perpetual: that in effect, therefore, it would cost 8,000*l.*,—that sum must be invested to produce the annuity. The party entitled might take the annuity, or he might elect to take the principal sum which would be required to be invested in order to produce it. The simple question upon the construction of this will is, what was this testator's intention? Now I wish to observe that what this Court may decide upon this question has not the slightest bearing, in point of authority, against the general decision of the Master of the Rolls. We are expressing no opinion against the decision of the Master of the Rolls upon the other annuities; our attention is directed, as it ought to be, only to that particular case which has been selected, manifestly from the whole list, as a favourable case to bring by way of appeal to this Court. We give no opinion whatever as to the decision with regard to the other annuities, some of which may very probably be considered to stand upon very different grounds. Now this testator nowhere in the course of his will adds to any of his gifts words of limitation; and it was only with reference to a married woman in the first instance, when he gives her 3,000*l.*, that she is to have it "to hold the same independent of her husband" and to be disposed of by her will properly signed and executed. That is the only instance throughout this will in which he looked to any act of the party; for in every case of landed property to be sold, he uses no words of inheritance. He says that "an annual income shall go to the cancer ward"—no words of perpetuity; in no one instance does he use words of limitation in the gift to the party, or words of perpetuity. But we have this no doubt by the common intention, which has been so often stated. To give a man your house you mean him to take it absolutely for ever, just as if you gave him your horse; and in the case of a disposition of a house, the effect of passing the inheritance, unless the gift is restrained, certainly meets the general impression of the public, and makes now a gift of a house just as operative to pass the inheritance as the gift of a horse in passing the absolute interest in it; and that authority of Parliament, in giving effect to what was the general impression of mankind, ought to have an influence in cases of this kind, where the will is fairly open to the construction that the absolute interest does pass, if (although the words were used generally) you could collect the intention. Now, how was the property disposed of? Having given the legacies in the way I have mentioned, he proceeds: "I leave to my sister Jane Symes, and the Rev. Mr. Lazier, husband of the aforesaid Frances Lazier, the sum of 1,000*l.* each." He gives to them a legacy also, and then he proceeds: "I desire that my executors shall purchase annuities for each of my two sisters, &c. of 100*l.* a year each, the said annuities to be purchased in the British Funds." Now he does not stop there, because, if you look to the subsequent part of the will, after having given other legacies and annuities, he says, "I direct my landed property at Otham to be sold by auction, and the produce thereof to go to the carrying out of the aforesaid annuities and legacies." Now, how is the produce to go to carrying out the aforesaid annuities and legacies? The annual proceeds of the landed property is not dedicated to the payment of the annuities and legacies; but the landed property, without words of inheritance, is to be sold, and the produce is "to go to the carrying out of the aforesaid annuities and legacies." What is meant by "carrying out the aforesaid annuities and legacies"? He did not mean that there was to be a continual payment of the annuities, but he meant that a certain portion of that produce should be applied to the purchase of annuities for these two ladies in the British Funds—that was his intention. He then says, "And should the produce of the same be not found sufficient for that purpose," that is, for the purpose of producing the annuities and the legacies, "I desire that the remainder," that, is the money wanted, "shall be made up from my personal property." He then directs all his personal property, which he mentions that he has abroad, to be sold, actually to be converted into money. "After the above annuities and all legacies have been paid and effected, I desire the remainder of my personal property shall be laid out in the purchase of an annual income in the Three per cent. Consols, for the benefit of a cancer ward in the Middlesex Hospital." Now, observe what the effect of that is, that should the real estate fall short of being sufficient to effect the annuities, that is, to purchase the annuities, and carry out the aforesaid annuities and legacies—carrying out the legacies is to pay them, carrying out the aforesaid annuities is to make a purchase of them—then he resorts to his personal estate, and then so much is to be taken from the personal property as will effect the annuities and pay the legacies. The words are not exactly accurate in that latter sentence; but, of course, that goes for nothing—the sense is manifest, and what words come first and what words come last in such a sentence is utterly unimportant. Then he says, "I desire the rest of my personal property shall be laid out in the purchase of an annual income." Has he not, therefore, whatever be the effect in law of particular annuities falling into the residue, expressed as clearly as a man could express an intention, that these things shall be all separated from the *corpus* of the property, and what remains after paying the legacies and effecting the annuities shall be money in hand to invest in Consols; and if that be so, then there must have been annuities to be purchased, and purchased with the produce of the estates. Without entering into the consideration of the question as to the purchase in the British Funds, it is a case in which the testator has given an annuity to be purchased out of the produce of his estate, and the rest of his estate is to be applied to another object; therefore the produce of his estate is in this view altogether cut off from the rest of the property and dedicated to this particular purpose; and if an annuity be dedicated to a particular purpose out of a man's estate, I hold it to be clear law that that individual would take the absolute interest, because it is in effect a dedication of a portion of the *corpus* of the man's property to produce the particular benefit. Then a difficulty arises, or is supposed to arise, upon the direction to purchase "in the British Funds." I do not feel that difficulty, looking at the general import of this will. In *Stokes* v. *Heron* there was more difficulty in holding upon the words that there was a general intention which would pass the annuity perpetually than there is upon the words of this will. Now then, as to the particular trust, he says, "I direct that my executor shall purchase annuities for each of my two sisters," naming them, "the annuities to be purchased in the British Funds." You will observe that there is no direct gift to the parties of an annuity; it is not a simple gift of an annuity, but it is a gift by way of direction to purchase the annuity for them,—not a word said about their lives. Now, where is the improbability in a general case, if you direct with the proceeds of your property that an annuity is to be purchased, that that is to be an annuity which the party is to take as perpetual? and it is to be supposed that when a testator "desires his executors to purchase an annuity in the British funds," that it means in the Government Funds, out of which you make a purchaseable annuity. I can see nothing upon the face of this will, and I speak with the most unfeigned respect and deference to the opinion of my Lord Justice Cranworth, to confine it to a life interest, and I have looked at every other part of the will which tends to a contrary construction. I must find something specific to compel the court to say that buying in the British Funds an annuity for these parties means, to buy a Government annuity under particular Acts of Parliament. Those Acts of Parliament are fenced round with all sorts of difficulties, and I cannot think that this testator had any such intention; if he had he would have so expressed it. Nothing would have been more easy than to have said "buy for her life," if he had meant it; then the words would have been "in the Government Funds." Now I must give (as I have always endeavoured to give in other cases) a sound and sensible construction to the words which are here used. What is the meaning of "British Funds"—can it mean that which is contended for? What is the nature of that? The Commissioners for the reduction of the National Debt are authorized to take stock from persons willing to treat with them, or to take money from such parties, which money is to be converted into British stock; and when they have got that British stock, of course it goes in satisfaction of the National Debt, and then the purchaser is to have—what?—an annuity secured upon the Consolidated Fund. You may give British Funds in exchange by the express direction of the Act of Parliament for such an annuity; but no man can predicate that a charitable annuity is payable out of British Funds in the sense that is here used. "British Funds" does not mean British money, because there is no such thing. "British Funds" of course means the public funds. This testator had got funded property in other countries, and therefore he says "British Funds," and not foreign. "The Funds" means in common parlance (I must give to the expression its national import) the Funds of England, "British Funds." Then if a man buys such an annuity of the Government, he has not bought an annuity in the British Funds, but bought an annuity that is payable out of the Consolidated Fund. Now, the Consolidated Fund is money raised by the authority of Parliament to pay the British Funds themselves. The British Funds are nothing but perpetual annuities, redeemable, and the

very money out of which these annuities had been purchased would have been payable—not out of British Funds, public property—but out of the very accumulation of the Consolidated Fund, applicable to the payment of the debts; and therefore it is so clearly contradistinguished the one from the other, that I cannot consider this gentleman by any latitude of language as applying "British Funds" to a Government annuity. Then there is this difference between "British Funds" and "Consolidated Three per cents. for the benefit of a cancer ward." He wants to produce for each of these ladies a particular annuity; he therefore says, "Buy that annuity in the British Funds." To him it is indifferent whether it is bought in the Three, Four, or Five per cents.—"buy that annuity." But when he comes to deal with the residue, which is a fund applicable, wholly so, to the particular charity, he designates the fund "the Three per cents." There he is indifferent, because it is to have that income for ever. In the other case, "I desire you will buy an annuity for each of those persons out of the produce of my property before you divide the residue of that property, and buy it in any of the British Funds." "British Funds" is used there in its ordinary and proper sense. You cannot buy a life interest in a property; you must buy the particular amount of stock which would produce, for example, 100*l.* a year; when that is bought, it is a perpetual annuity; when that is bought, that is the subject which is given to these ladies, so that he has directed that to be purchased which will endure perpetually, and he has given the subject so directed to be purchased for this lady without confining her to a life interest. That is my clear opinion—my clear and confident opinion. I cannot restrain the expression of that opinion, because I so strongly entertain it, but I need not again repeat it. I say it with the greatest possible respect and deference to the opinion entertained by my Lord Justice Cranworth, and the doubt expressed by my Lord Justice Knight Bruce. I think it may be accounted for. I should not be at all satisfied that the Master of the Rolls might not himself have agreed with the court in his construction, if this particular case alone had been brought before him. I am not at all satisfied of that.

Elmsley—Each of the cases were argued separately.

The Lord Chancellor—The Master of the Rolls was influenced by the argument on the whole will. I wish it to be distinctly understood that the opinion of the court is expressly confined to the case now before it. Reverse so much of the decree of the Master of the Rolls as regards this particular annuity, and with that declaration remit the cause back to his lordship.

COURT OF APPEAL IN CHANCERY.

Reported by Owen Davies Tudor, Esq., of the Middle Temple, Barrister-at-Law.

(Before the Lords Justices.)

Friday, Nov. 5.

Re Thomas Wylde's Estate, and *re* The Trustee Relief Act (11 & 12 Vict. c. 96).

Will—Construction—Tenancy by entirties—Bequest to husband and wife and a third person.

A bequest of 700l. having been made by a testator to A. and B. his wife, and C. a third party, and a subsequent bequest of 200l. to C. and 200l. to A. and 200l. to B.:

Held, that A. and B. his wife were entitled only to a moiety of the 700l. between them, and that C. was entitled to the other moiety.

In this case, which by their lordships' permission was transferred to them from the paper of one of the Vice-Chancellors, the testator, Thomas Wylde, by his will, dated March 1788, gave and bequeathed unto the trustees therein named, and the survivor of them, and the executors and administrators of such survivor, the sum of 700*l.* upon trust that they the said trustees, or the survivor of them, should lay out and invest the same in their names, or the name of the survivor of them, in Three per cent. Bank Annuities, and from time to time pay the interest, dividends, and produce thereof to, or otherwise permit and suffer his sister, Sally Eaton, the wife of Joseph Eaton, to receive the same for her [illegible] for her separate use, benefit, and disposal, [illegible]ent of her then present or any future husband, and his receipt and receipts alone to be sufficient discharges for the same; and from and after her decease the said testator gave and devised the said 700*l.*, or the stocks or funds in which the same should or might have been laid out and invested, unto and amongst John Collins and Catherine his wife, and William Lea, the cousin of the said testator, in equal shares and proportions; and the said testator gave and bequeathed unto his said cousin, William Lea, the sum of 200*l.* of like lawful money; and he gave and bequeathed unto the said John Collins the sum of 200*l.* of like lawful money: also he gave and bequeathed unto the said Catherine Collins, the wife of the said John Collins, the sum of 200*l.* of like lawful money. And as to all the rest, residue, and remainder of his estate and effects whatsoever and wheresoever, he gave and bequeathed the same unto the said John Collins and Catherine his wife, their executors, administrators, and assigns for ever.

In 1851 Sally Eaton, the tenant for life, died, and the 700*l.* was then paid into court by the trustees under the provisions of the Trustee Relief Act. The object of this petition was to obtain payment to the parties interested out of court of the 700*l.*; and the question for the decision of the court was, whether John Collins, and Catherine his wife, and William Lea, were each entitled to a third of that sum, or whether the two former were only entitled to one moiety, and William Lea to the other moiety.

W. W. Cooper contended that the 700*l.* ought to be divided into thirds (*Warrington* v. *Warrington*, 2 Hare, 51; *Paine* v. *Wagner*, 12 Sim. 188), as John Collins and his wife took as tenants in common: (*Lewin* v. *Cox*, Serjt. Moore, 558, pl. 759; *Attorney-General* v. *Bucchus*, 9 Price, 30; 11 Price, 517.) A different construction might be contended for by the other side upon the authority of *Bricker* v. *Whatley*, 1 Vern. 233; 4 Vin. Ab. 154, tit. "Baron and Feme," M. a. 1, pl. 9; *Gordon* v. *Whieldon*, 11 Beav. 170; but those cases were clearly distinguishable, and turned upon special circumstances.

G. W. Collins, in the same interest, cited *Lewin* v. *Cox*, Cro. Eliz. 695; 1 Vern. 32.

Follett and *Kinglake*, for William Lea, insisted that the 700*l.* was not to be divided into thirds; that the husband and wife were to be considered as one person only; and that they were therefore only to be held entitled to a moiety. The rule is thus stated by Littleton, lib. 3, c. 3, s. 291, p. 187*a*: "Also, if a joint estate be made of land to a husband, a wife, and to a third person, in this case the husband and wife have in law, in their right, but the moiety, and the third person shall have as much as the husband and wife, viz. the other moiety, &c.; and the cause is, for that the husband and wife are but one person in law, and are in like case as if an estate be made to two joint tenants, where the one hath, by force of the jointure, the one moiety in law, and the other the other moiety, &c. In the same manner it is, where an estate is made to the husband and wife, and to two other men; in this case the husband and wife have but the third part, and the other two men the other two parts, for the above cause." (*Anon.* Skin. 182; 4 Vin. Ab. 154, pl. 10; *Bricker* v. *Whatley*, 1 Vern. 233; *Back* v. *Andrew*, 2 Vern. 120; *Atcheson* v. *Atcheson*, 11 Beav. 485.) The cases of *Paine* v. *Wagner*, 12 Sim. 188, and *Warrington* v. *Warrington*, 2 Hare, 54, although they in some degree encroach upon the rule as laid down by Littleton, are clearly distinguishable from the present case; and if they are not they ought not to be followed, in contravention of the old and well-established rule.

Hallett, for the trustees.

W. W. Cooper, in reply, contended that the rule as laid down by Littleton was not of universal application, and was to be confined to matters of tenure, and not extended to bequests of personal estate. The construction ought to depend upon the intention of the testator, which may be inferred with sufficient accuracy from the fact of his afterwards giving legacies of 200*l.* each, to husband, wife, and William Lea. And moreover in the gift of the residue, where the testator meant a joint tenancy, words of distribution, as "between," or "amongst," are not used.

Lord Justice Knight Bruce.—Whatever may be the state or the rule of the civil law on questions of this description, I do not think the construction of a will of personalty in this respect is governed by it; I mean, of a will of personalty where husband and wife are concerned, the rights of husband and wife in respect of personalty standing by our law in a position so peculiar as they do. According to the rules and principles of that law, whenever a gift is made to husband and wife, the presumption is that it is given to one person, and that they take *as one person*; I say presumption, because the nature and context of the instrument may be such as to render a different interpretation necessary; but it lies on those who assert that they take as two rather than one to demonstrate that from the nature and context of the instrument. In my opinion that is not done here. The context affords a plausible argument of more or less weight either way; perhaps not of much strength either way; but not so that, in my opinion, the balance is in favour of that which would not be the ordinary construction. The consequence is that, in my opinion, the *primâ facie* interpretation must remain as the interpretation absolutely right. Nor do I see how, in this particular will, a different construction could be adopted without substantially contradicting the case of *Bricker* v. *Whatley*, 1 Vern. 233. My conclusion in this case may possibly be consistent with the cases of *Warrington* v. *Warrington*, 2 Hare, 54, and *Paine* v. *Wagner*, 12 Sim. 188. I am not sure that it is not. Viewing the state of the law as I do, and having regard to the case of *Bricker* v. *Whatley*, I am of opinion that I have no choice open to me in the matter, but that I must determine that the husband and wife take only a moiety of the fund, and must leave the other moiety to Mr. Lea.

Lord Justice Lord Cranworth.—I at first felt some difficulty as to the proper conclusion upon this question, but after some fluctuation my mind has arrived at the same conclusion as that of my learned brother, and upon nearly the same ground. Starting with a

devise of lands, we find that where a joint estate is made by will to a husband and wife, and to a third person, in that case the husband and wife have, in their right, but the moiety—that is, as to an estate in joint tenancy; but I think it follows irresistibly, from the observations of Sir James Wigram, V. C., in his judgment upon the case of *Warrington* v. *Warrington*, 2 Hare, 56, that precisely the same reasons apply where the gift creates a tenancy in common. The whole question is, what is the part or share described by the terms of the gift; and where that is once ascertained, it matters not whether the tenancy be joint or common. I take the rule to be, in all cases with regard to land, that which is laid down, as to a joint estate therein, in Littleton, s. 291, viz., that "if an estate be made of land to a husband and wife, and to a third person, in this case the husband and wife have in law, in their right, but the moiety." That being the point from which to start with regard to estates in land, all convenience is in favour of construing the same words in the same way with respect to personal property as with respect to real property. The onus of showing that a different construction should be adopted is on the side contending for that construction. Now, I do not think the parties can possibly show it. On the contrary, the case of *Bricker* v. *Whatley*, 1 Vern. 233, as far as it goes, is a distinct authority to show that the same rule of construction is to be adopted in both cases. I confess I was at first very much struck with the decision of Sir James Wigram, V. C., in the case of *Warrington* v. *Warrington*, 2 Hare, 54, and I felt a difficulty in seeing a distinction between that case and the present. The distinction is very fine between that case and *Bricker* v. *Whatley*, 1 Vern. 233, as Sir James Wigram, V. C., himself thought. I think, however, that there was a distinction between the two cases. The ground upon which the Lord Keeper relied in *Bricker* v. *Whatley* was, that the use of the two "ands" occurring in the enumeration of the legatees was not the ordinary form of expression, if it was meant that all the legatees named were to participate equally; but that, according to the ordinary construction of a sentence so framed, the "and" occurring before the names of *Stephen Whatley* and Hester his wife must be taken to mean that the persons following it were meant to take, as if they were one person only, the same interest as each of the legatees previously named; the second "and," which occurred between the names of the husband and wife, being merely a sub-copulative, showing that the two were to be treated as one person in the distribution of the benefit given, just as they would have been, according to Littleton, had the case been one of a devise of land. There being, therefore, that distinction between the cases of *Bricker* v. *Whatley* and *Warrington* v. *Warrington*, the latter case is not in the way of the application of the original doctrine laid down by Littleton. The case, indeed, of *Paine* v. *Wagner* (12 Sim. 188) is difficult to be got over; but that is a case to which one cannot look as to a binding authority, when one considers the anomalous character of the will there, and the difficulty of finding a meaning in it at all. That being so, we are thrown back upon the original rule, as stated by Littleton and the earlier decisions; and by the law as there laid down we are bound to hold that the husband and wife, whether taking as joint tenants or as tenants in common, are entitled only to one moiety between them in the bequest in question. It is by no means unlikely that the result thus stated is contrary to what the testator intended; and not the less so, possibly, from the circumstance that a legacy of 200*l.* is afterwards given *seriatim* to each of the same legatees. This, however, is mere conjecture, and is not a ground upon which to rely.

Nov. 12 and 13.

Blann *v.* Bell.

Will—Construction—Gift of dividends of stock—Life interest—Gift of residue—Conversion—Enjoyment in specie.

A. by will gave the residue of his estate and effects, whether consisting of freehold, leasehold, or copyhold estates, money in the public stocks or funds, and all other moneys or securities for money, upon trust to pay the dividends of 1,500l. Three per cent. Consols, to B. for life; and after her decease then he directed the dividends arising from the said stock to be equally divided between C. and D. and the survivor of them. In a subsequent part of his will as to all the rest, residue, and remainder of his freehold, copyhold, and leasehold estates, and all other his estate and effects, the testator declared the trust to be to pay the dividends, interest, rents, profits, and annual produce thereof to C. for life, and after her decease upon other trusts therein mentioned. The testator was at the time of his death possessed of leaseholds, shares in canal and assurance companies, and Dutch bonds. B. and D. died, leaving C. surviving them:

Held, affirming the decision of the court below, First, that C. having survived D. was only entitled to a life interest in the dividends of the 1,500l. consols. Secondly, that C. was entitled to enjoy in specie the leaseholds comprised in the gift of the residue, but that the shares and Dutch bonds were to be converted.

This was an appeal from the decision of the late

COURT OF APPEAL.

Vice-Chancellor Parker upon two questions of construction, which arose out of the will of Thomas Blann; the first was whether Edith Blann had become entitled absolutely to the capital of, or to the dividends only during her life, of 1,500*l.* Three per cent. Reduced Bank Annuities; the second question was whether Edith Blann, who was also tenant for life of the residue, consisting of leaseholds, Dutch bonds, and shares, was entitled to enjoy the income thereof in specie, or whether the residue was to be converted. The testator, Thomas Blann, made his will as follows:—"I desire that all my just debts, funeral expenses, and the charges of proving this my will, be fully paid and satisfied; and I nominate, constitute, and appoint my dear wife, Edith Blann, and my friends, John Thomas Bell, of Russell-square, in the said county of Middlesex, Esq., William Manser, of the town of Hertford, gentleman, and John Robert Bell, of Russell-square aforesaid, Esq., joint trustees and executrix and executors of this my will; and I give to each of them, my said wife, Edith Blann, and the said John Thomas Bell and William Manser, the sum of 200*l.* as an acknowledgment for their trouble; and I give to the said John Robert Bell the sum of 800*l.* as an acknowledgment for his trouble; I give and bequeath to my said wife, Edith Blann, all my household furniture, plate, linen, china, books, and wearing apparel to and for her own use and benefit absolutely; I give and bequeath to Thomas Cadmore, of Lea-bridge, Essex, lockman on the river Lea, the sum of 200*l.*; and as to all the residue of my estate and effects, whatsoever and wheresoever, *whether consisting of freehold, leasehold or copyhold estates, money in the public stocks or funds, and all other moneys or securities for money*, I give, devise, and bequeath the same to my said wife, Edith Blann, and the said John Thomas Bell, William Manser, and John Robert Bell, their heirs, executors, and administrators, and I direct them to stand and be possessed thereof upon the trusts following, that is to say, upon trust to pay the dividends of 1,500*l.* Three per cent. Reduced Bank Annuities, to Mrs. Sarah Twitchin, of Courage Farm, near Newbury, Berkshire, for her life, independently of any husband, and free from his debts or control; and at her decease *I direct the dividends arising from the said sum of* 1,500*l. Three per cent. Reduced Bank Annuities, to be equally divided between my said wife, Edith Blann, and my niece, Frances Rayner, and the survivor of them:* and upon trust to pay to Mr. Robert Green, of Shacklewell-lane, Kingsland, gentleman, the dividends of 2,000*l.* Three per cent. Reduced Bank Annuities, for his life; and at his decease I direct the dividends of the said sum of 2,000*l.* Three per cent. Reduced Bank Annuities, to be equally divided between my said wife, Edith Blann, and my said niece, Frances Rayner, and the survivor of them: and upon trust to pay to Mrs. Ash, formerly Druce, of Loughborough, Leicestershire, the dividends of 1,000*l.* Three per cent. Reduced Bank Annuities, for her life, free from the control, debts or engagements of her present or any future husband, and for which her receipts alone shall from time to time be a good and sufficient discharge; and at her decease I direct that the dividends of the said sum of 1,000*l.* Three per cent. Reduced Bank Annuities, be equally divided between my said wife, Edith Blann, and my said niece, Frances Rayner, and the survivor of them: and upon trust to pay Mr. James Cole, of Hertford, schoolmaster, the dividends of 2,000*l.* Three per cent. Reduced Bank Annuities, for his life; and at his decease I direct the dividends of the said sum of 2,000*l.* Three per cent. Reduced Bank Annuities, to be equally divided between my said wife, Edith Blann, and my said niece, Frances Rayner, and the survivor of them: and upon trust to pay to Frances Rayner, of Bayford, in the county of Hertford, spinster, my niece, the dividends of 8,000*l.* Three per cent. Consolidated Bank Annuities, for her life, free from the control, debts, or engagements of any husband, and for which her receipt alone shall from time to time be a good and sufficient discharge to my said trustees: and upon trust, in case of the death of the said Frances Rayner leaving issue lawfully begotten, to hold and stand possessed of the said sum of 8,000*l.* Three per cent. Consolidated Bank Annuities, for the benefit and advantage of all and every the child and children of the said Frances Rayner lawfully begotten, to be equally divided between them, share and share alike, on their respectively attaining the age of twenty-one years; and in the meantime, and until they shall respectively attain that age, to apply the dividends for or towards their respective maintenance, education, and support; and if but one, then in like manner for such only child: *and as to all the rest, residue, and remainder of my freehold, copyhold, and leasehold estates, and all other my estate and effects*, subject to such power of appointment as is hereby vested in my said wife, upon trust to pay the *dividends, interest, rents, profits, and annual produce thereof* to my said wife, Edith Blann, or otherwise permit and suffer her to receive, take, and enjoy the same for and during the term of her natural life, free from the control, debts, or engagements of any future husband, and for which her receipts alone shall from time to time be a good and sufficient discharge. And from and after the decease of my said wife, I give the sum of 10,000*l.* sterling, part of the said residue, to such person or persons and in such manner as she, my said wife, shall, by her last will and testament, direct and appoint: and from and after the decease of my said wife, upon trust, as to such residue of my estate and effects, subject to such power of appointment as aforesaid, to pay the interest, dividends, and annual produce thereof to my said niece, Frances Rayner, during the term of her natural life, free from the control, debts, or engagements of any husband, and for which her receipt alone shall, notwithstanding her coverture, be from time to time a good and sufficient discharge to my said trustees:" and from and after the decease of the survivor of them, the said Edith Blann and Frances Rayner, then upon trust to divide such residue amongst all and every the child and children of Frances Rayner equally, as and when they attained the age of twenty-one years, with maintenance meanwhile, as therein mentioned: and in case Frances Rayner should die without issue who should live to attain twenty-one, then upon trust, from and after the decease of the survivor of Edith Blann and Frances Rayner, to divide among any child or children of Edith Blann by any future husband the sum of 4,000*l.*, as and when they should respectively attain the age of twenty-one years, and in the meantime to stand possessed thereof for their benefit and advantage; and also to pay to Elizabeth Ann Webb the sum of 4,000*l.*, and to Henry Twitchin, of Courage Farm aforesaid, the sum of 4,000*l.*, and to John Robert Bell the further sum of 2,000*l.* "And as to the residue and remainder of my estate, in the event of my said niece Frances Rayner, dying without issue lawfully begotten who shall live to attain the age of twenty-one years, then from and after the decease of the survivor of them, the said Edith Blann and Frances Rayner," the testator gave the said residue to certain charities mentioned in his will.

The testator, Thomas Blann, died in the year 1846, and his will was proved by his executors. Afterwards Mrs. Sarah Twitchin died. Mrs. Edith Blann thereupon filed a bill for the administration of the testator's estate, insisting that she was entitled for life to the income of the testator's residuary personal estate in specie. The Master, by his report, found that the testator's personal estate undisposed of consisted of three shares in the Brecon and Abergavenny Canal, declared to be personal estate by the company's special Act; sixty similar shares in the Kennet and Avon Canal; 193 bonds for 1000 guilders each, in the Dutch Ten per cent. Stock; twenty shares of 50*l.* each in the Eagle Life Assurance Company, on which 5*l.* a share had been paid; a leasehold house and premises at Maida-hill, held for a term of years at a yearly rent of 13*l.*; and a leasehold interest in a stream of water, held for a term of years at an annual rent of 15*l.* Before any further proceedings were taken in the cause, Frances Rayner (then the wife of William Thomas Arnold) died without issue, leaving her husband her surviving. A supplemental bill was then filed, and upon the cause being heard before the late Vice-Chancellor Parker, his Honour was of opinion that Mrs. Edith Blann was only entitled to a life interest in the dividends of the 1,500*l.* Three per cent Reduced Bank Annuities; and that she was entitled to enjoy for life in specie the leaseholds of the testator, but that the canal and assurance shares, and Dutch Bonds, were to be converted, and the produce invested in the funds. From this decision the plaintiff appealed.

Malins and *W. A. Collins* for the appellant, contended in the first place, that the gift of the dividends of the 1,500*l.* Three per cent. Consols. to Edith Blann and Frances Rayner, and the survivor of them, gave an absolute interest in the stock to the former upon the death of the latter. That as the gift of the rents of that estate passed the fee, so the unqualified gift of the dividends of stock would confer an absolute interest in the stock: (*Clough* v. *Wynne*, 2 Mad. 188; *Humphrey* v. *Humphrey*, 1 Sim. 536 N. S.) [Lord Justice Knight Bruce.—A sum of Government stock is but a permanent annuity, the absolute property therein consisting only in a right to receive the dividends]. The gift of a previous life interest in the dividends to Mrs. Sarah Twitchin does not render the gift of the dividends to the appellant less indefinite or unlimited. Moreover, the stock is not directed to fall into the residue, and the intention of the testator to confer an absolute gift must be clearly inferred from the fact that whenever, in other parts of the will, it was his wish to give a life interest, he has made use of express words to carry his intention into effect. Secondly, the appellant was entitled to enjoy the residue for her life in specie. That although according to the rule laid down in *Howe* v. *The Earl of Dartmouth*, 7 Ves. 137, in the absence of any express or implied intention of the testator, perishable property given to persons in succession ought to be converted in such a way as to produce capital bearing interest, and put in such a state that the others may enjoy it after the decease of the first; nevertheless, when it can be gathered that it was the intention of the testator that the property should be enjoyed in specie, that intention must be carried into effect, and of late years the authorities showed that the courts had leant more than formerly against conversion. That in this case, in the gift of the residue, the *leaseholds* being specifically mentioned and the direction to pay rents clearly showed that with regard to them there was to be no conversion,—that they were to be enjoyed in specie; and that being so, it might be inferred that it was the intention of the testator that the other property constituting the residue was to be enjoyed by the appellant in the same manner: (*Hinves* v. *Hinves*, 3 Hare, 609; *Sutherland* v. *Cooke*, 1 Coll. 498; *Alcock* v. *Sloper*, 2 My. & K. 699; *Daniel* v. *Warren*, 2 Y. & C. 290; *Oaks* v. *Strachey*, 13 Sim. 414; *Burton* v. *Mount*, 2 De G. & S. 883.) The cases of *Mills* v. *Mills*, 7 Sim. 501; *Vaughan* v. *Buck*, 1 Ph. 75; and *Bethune* v. *Kennedy*, 1 My. & C. 114, can scarcely be considered binding on the court, as being contrary to the spirit of the recent decisions.

Lord Justice KNIGHT BRUCE.—With regard to the question of conversion, we have upon this will no difficulty whatever. Whether the cases of *Burton* v. *Mount*, *Daniell* v. *Warren*, and *Hunt* v. *Scott*, 1 De G. & S. 219, were or not correctly decided by me, this will, I think, certainly exhibits an intention of retaining the property in specie. It would be very dangerous to break down the useful general rule laid down in the case of *Howe* v. *Lord Dartmouth*, 7 Ves. 137, upon slight grounds. It would introduce great room for uncertainty and difficulty in the administration of estates. Perhaps some decisions have broken into the rule of *Howe* v. *Lord Dartmouth* upon grounds too slight; but upon this it is unnecessary to give a judicial opinion. To this will, the observation—part, if not the whole of the observation,—I made in the case of *Sutherland* v. *Cooke*, 1 Coll. 498, applies, viz., that it lies upon those who assert that any part of the property is not to be converted to show it. I am of opinion that it has not been shown here, except as to the leasehold, and as to that in a manner not leading to the inference that the same rule is therefore to apply to the other parts of the personal estate. As to this question, I concur in the view taken by the Vice-Chancellor.

Lord Justice Lord CRANWORTH.—*Primâ facie*, where the gift of residue is to a person for life, and then to others in succession, the rule laid down in *Howe* v. *Lord Dartmouth* is to prevail. There may be circumstances in the case which take it out of the general rule; but I am of opinion that no such circumstances exist here. On the contrary, if the whole will were spelt for the purpose of finding out the intention on this part of the case, I think there is that in it which might furnish an argument that the testator intended the general rule to be observed. From the circumstance that the testator directs the trustees to pay, after his wife's decease, a sum of 10,000*l.* sterling according to her appointment, it might be argued that the testator considered money to be the form in which his property would then exist. Upon that, however, it is unnecessary to rely; for I think with my learned brother that *primâ facie* the general rule is to prevail. Upon the other question in the case I feel more doubt.

Walker and *Gifford*, for a charity interested in the residue, contended that Mrs. Blann only took a life interest in the 1,500*l.* stock: (*Cooke* v. *Bowler*, 2 Kee. 56, Pemberton *arguendo*; *Innes* v. *Mitchell*, 6 Ves. 464.)

Bacon, *Willcock*, *J. Russell*, *Younge*, *E. F. Smith*, and *Little*, for other parties.

Malins, in reply, cited *Blewitt* v. *Roberts*, Cr. & Ph. 274.

Lord Justice Lord CRANWORTH.—The only question upon which the court is now to give its opinion is as to the bequest of 1,500*l.* stock. There are several other legacies upon which, perhaps, the same question arises; but this legacy is the only one under consideration. Upon this question I have come to the same conclusion as the Vice-Chancellor, and very much upon the same grounds. The point is this:—The legacy arises in this way. [His Lordship stated the facts.] The contention is, that the gift of dividends is equivalent to a gift of the capital of the stock, on the well-known rule of construction adopted generally by this and other courts, founded, I believe, on the old feudal law, that a devise of the rents and profits of real estate carries with it the property in the land, inasmuch as the whole beneficial interest in realty consists in the right to take the rents and profits. The same is the case, as pointed out by my learned brother, with that description of personal property called Government Stock, for there nothing exists but the right to receive the dividends. The rule, however, is not confined to a sum of stock, but applies equally to a sum of money. A gift of the dividends of 1,000*l.* carries with it the capital sum of 1,000*l.* The question is, whether the rule is applicable to the present case; whether, in this case, the direction to pay the dividends, &c. to "the wife and niece, and the survivor" (whatever "survivor" may be supposed to mean), indicates that the *corpus* of the fund is to be taken, or only the dividends, for the life of the survivor. Upon this I have come to the conclusion that the Vice-Chancellor's construction is the right one, and for this reason the rule is one which has been adopted for convenience, and ought not lightly to be departed from. It was acted upon in *Humphrey* v. *Humphrey*, and is the correct principle, unless there be something to show that the rule is inapplicable to the particular case. Here it is almost impossible of application, and for this reason—what did the testator give to the two

to take equally between them? Clearly life interests only. That is not disputed. It is agreed that they take life interests only during their joint lives. It has happened, indeed, here, that one of the legatees died in the lifetime of the tenant for life; but the same interpretation must be adopted as if both had survived her. It is contended that if one died the other is to take the capital; but why so, if she only takes an interest for life during the joint lives? I think "dividends" here does not mean *corpus*; but interest as distinguishable from *corpus*. What is the survivor to take? Why, only the same thing as the deceased co-legatee. She stands in her place as to her half, and takes only the same interest as she did, namely, a life interest. I think that is the reasonable construction to be put upon this obscure clause; but, as the question is a very reasonable one to bring before the court, I think all the costs should be paid out of the capital stock.

Lord Justice KNIGHT BRUCE.—This appeal raised but two questions: one, the point of conversion. On that point we both delivered our opinions yesterday, in conformity with the view taken of that part of the will by the able and excellent judge whose loss we all deplore. Subsequent consideration has confirmed me in that view. The other point is as to the meaning, in this particular will, of this particular passage. [His lordship read the bequest of the dividends of the 1,500*l.* stock.] Sir J. Parker, V.C. held, that these words ought not to be considered as giving an absolute interest in the 1,500*l.* to the survivor of the two legatees in remainder. My learned brother is of the same opinion, as he has just declared and explained. Since that is so, and I have no other point of appeal before me, the total affirmance of the decree becomes necessary upon both the points. Upon this part of the decree, however, I have entertained very considerable doubt. Upon it my mind is not yet made up; and if it were material that my mind should be made up, I should have requested a postponement of the case for that purpose. It is not, however, material that it should, for the reason I have stated, and for the further reason that my learned brother is of opinion that, the appeal being reasonable, all the costs should be paid out of the fund. Therefore I do not think I ought to delay the final disposal of the case.

ROLLS COURT.

Reported by J. MACAULAY, Esq., of the Inner Temple, Barrister-at-Law.

Nov. 16, *and Dec.* 2, 3.

CLARK *v.* MAY.

Vendor and purchaser—Conveyance—Stamp duty—Apportionment of consideration money.

A purchaser of real estate and of a judgment debt, which represents the same property, at a particular price, has a right to apportion the purchase-money as he thinks fit, and to have a conveyance by two separate deeds, one comprising the real estate, and purporting to be in consideration of a certain sum; and the other comprising the judgment debt, and purporting to be in consideration of the residue of the purchase-money.

In a suit, in which the question in dispute resolved itself into a question of conveyance in the above form, an order was made accordingly, but no costs were given on either side.

This was a suit for specific performance of an agreement for the purchase of a judgment debt for 2,500*l.*, recovered by Philip May against Charles King and Henry Edmonds; and also of an interest in two fourth shares of certain freehold houses. The parties had concluded everything up to the time of conveyance, when they differed about the form of it, and the bill was filed. It appeared that Anthony Edmonds and Robert Edmonds were entitled to two fourth shares in four freehold houses in Prospect-terrace, Peckham Rye-common; and being so entitled, they, by indentures of the 25th and 27th of May, 1847, assigned all their property, except their shares in the said freehold houses, to the defendants Philip May and James Lawrence, in trust for the benefit of their creditors; and by indentures of the same date they agreed to convey all their interest in their two-fourth shares of the freehold houses to Charles King and Henry Edmonds in consideration of the sum of 2,500*l.*, and Charles King and Henry Edmonds thereby agreed to pay the 2,500*l.* to Messrs. May and Lawrence, to hold upon the trusts of the creditors' deed. The purchase-money, however, was not paid at the time mentioned in the agreement, and accordingly the trustees of the creditors' deed brought an action against C. King and H. Edmonds for the 2,500*l.*, which they recovered, with 56*l.* 4*s.* costs. Subsequently, to prevent execution issuing on the judgment so obtained, C. King and H. Edmonds released their interest in the estate to the trustees of the creditors' deed; and by indentures of the 17th and 18th of February, 1848, Anthony Edmonds and Robert Edmonds conveyed their interest in the estate to the trustees, upon trust to sell and apply the proceeds in satisfaction of the judgment debt, and subject thereto upon the trusts of the creditors' deed. Anthony Edmonds's share of the freeholds, however, had been mortgaged to its full value, and C. King and H. Edmonds afterwards became embarrassed. In 1851, the plaintiff, George Henry Clark, entered into an agreement with the trustees for the purchase of the share of Robert Edmonds, at the sum of 1,000*l.*; and by a subsequent arrangement it was agreed that the equity of redemption of Anthony Edmonds's share, and also the judgment against C. King and H. Edmonds, who were then in insolvent circumstances, and their judgment debt, therefore valueless, should be included in the purchase, but without the payment of any additional purchase-money. The contract for the purchase was signed on the 11th of March, 1851, and it was thereby stipulated that the purchase should be completed on the 25th of the same month. The plaintiff prepared his conveyance in the form of two separate deeds, for the purpose, as alleged, of keeping the title to the real estate distinct from the judgment, and he apportioned the purchase-money in two parts, stating 800*l.* to be the consideration for the real estate, and 200*l.* for the judgment debt. This form was at first agreed to by the solicitors for the defendants, and the deeds were engrossed; but afterwards the defendants refused to execute the deeds, on the ground that there were separate creditors of Anthony Edmonds who might claim his share of the proceeds of the judgment, if it should appear on the face of the deed of conveyance that the judgment debt had an independent value; but they offered to execute a single conveyance of the whole property sold, both the real estate and the judgment debt, or to execute separate deeds as proposed, provided that the conveyance of the judgment debt should be expressed to be for a merely nominal consideration. The purchaser, however, insisted on having his own form of conveyance, which not being conceded, he, on the 3rd of April, filed his bill for specific performance of the contract; but, on the case coming on for hearing, the only question between the parties was as to the form of the conveyance. Under these circumstances the court directed the case to stand over, to give each party an opportunity of preparing a draft conveyance in the form he was willing to adopt, and of tendering to the other. This was done; but, neither party being willing to waive his objections, the case came on to be heard.

R. Palmer and *W. R. Ellis*, for the plaintiff, contended that the purchaser was entitled to choose his own form of conveyance, and to require the vendor to execute it. If, indeed, it could be shown that injury was likely to result to the vendor, the case might be different; but here the injury suggested was a bare possibility, as the land and judgment were securities for the same debt. But it was a matter of importance to the purchaser to have his title deeds unconnected with the creditor's deed. Besides, with regard to the provisions of the Stamp Act, it was material to apportion the purchase-money in such a manner as to make the duty as low as possible; and by putting a substantial value on the judgment debt the *ad valorem* duty would be lessened. They cited *Warren* v. *Howe*, 2 Bar. & Cr. 281.

Russell and *Hardy*, for the defendants, admitted that a purchaser might choose his own form of conveyance, provided his doing so did not injure the vendor. Here, however, if a valuable consideration is stated as given for the judgment debt, and the joint creditors of Anthony Edmonds and Robert Edmonds were satisfied, the separate creditors of the former would claim his share of the purchase-money of the judgment debt. Then as to the stamp duty, that argument could have no weight; for the deed-stamp would be more than the *ad valorem* duty on the 200*l.*

The MASTER of the ROLLS thought the contest was as idle a one as he had ever seen brought into a court of justice. It was equally so on both sides; for it would have worked no injury to the plaintiff to take a conveyance in the form proposed by the defendants; and on the other hand, it would have produced no injury to the defendants to give it in the form proposed by the plaintiff. It was said by the defendants that if the purchase money was apportioned, there were separate creditors of Anthony Edmonds who would put the parties to trouble, and claim his share of the purchase money of the judgment debt; but he (the Master of the Rolls) thought the argument that had been addressed to him was conclusive on this point, viz. that the interest in the land and in the judgment represented the same property and could not be separated. He could not, on the other hand, see why the plaintiff wished to have the money apportioned, and he was at a loss to comprehend on what ground he would be benefited by it. It would make no diminution in the stamp duty; and indeed the argument as to the stamp duty was an afterthought, which he altogether disregarded, inasmuch as it was not brought forward at first. It would hardly be possible to avoid showing the title of C. King and H. Edmonds on the conveyance; but, whether or no, it was difficult to see how the plaintiff could be injured by it. The two solicitors met and got into a contest, and one of them said he would do nothing, and the other filed a bill. The case ought never to have come before the court. The purchaser must have the conveyance in the form he asks, and no costs on either side.

Dec. 6 *and* 7.

M'DONNELL *v.* HESELRIGE.

Settlement—Breach of trust—Binding effect of a voluntary declaration of trust by feme sole.

A single lady, in contemplation of a marriage not then actually agreed upon, conveyed a fund to trustees, upon trust for herself, until the solemnisation (if any) of the marriage, or in case there should be no marriage; and after the solemnisation (if any) of the same marriage, upon trust for her for life, for her separate use, exclusive of the contemplated or any other husband; and after her decease, in trust for her children; and in default of children, in trust for such persons as she should appoint; and in default of appointment, in trust for her next of kin. The contemplated marriage did not take effect, and the settlor afterwards married another gentleman, having previously prevailed on the trustees, to whom the fund was duly transferred, to sell out a portion of it:

Held, that the settlement applied to any marriage; that the settlor could not revoke the settlement previous to her marriage; and that the trustees had committed a breach of trust in selling out part of the fund.

This was a bill by the infant child of a lady who had, previously to a contemplated marriage which did not take effect, settled her property upon herself and children, to carry the trusts of the settlement into effect, and to compel the trustees to replace a sum, part of the settled fund, which they had paid to the settlor, at her request. It appeared that Isabella Heselrige, a single lady, by deed bearing date the 15th of March, 1834, reciting that she had a marriage in contemplation between herself and a Mr. John Taylor, but that it was not actually agreed upon, conveyed, among other things, the sum of 1,878*l.* Consols, to trustees, upon trust for herself, her executors, administrators, and assigns, until the solemnisation (if any) of the marriage, or in case no such marriage should be solemnised; and from and after the solemnisation (if any) of the same marriage upon trust thenceforth during her life for her sole use, separate and apart, and exclusive of the said John Taylor or any other husband with whom she might intermarry, with the usual clause restraining anticipation; and after her decease, in case she should marry and have children, upon trust for her children lawfully begotten as therein mentioned; and, in default of such issue, in trust for such persons and for such intents and purposes as she, either before or after such failure of issue, and as well when covert as sole, and notwithstanding her coverture by any husband, should by will appoint; and, in default of appointment, in trust for her next-of-kin (as though she had died intestate and unmarried) according to the Statute of Distributions. The fund was duly transferred to the trustees, but the intended marriage never took effect; and in 1836 Miss Heselrige married Francis M'Donnell, by whom, in 1838, she had one child, the plaintiff Isabella Elizabeth M'Donnell. Mrs. M'Donnell died immediately after giving birth to this child. It appeared that in May, 1834, soon after the execution of the deed and before her marriage, Mrs. M'Donnell requested her trustees to sell out 200*l.*, part of the trust fund, and they did so and paid the amount to Mrs. M'Donnell; but they still retained the rest of the funds in their hands, and paid her the dividends during her life. It turned out that the husband was unable to maintain his child, the plaintiff, who had been brought up by her grandfather, Edward M'Donnell, who as well as her father was a Roman Catholic. The trustees had refused to advance any money for maintenance (though they had power to do so under the trusts of the settlement), except upon the condition of the child being educated in the Protestant faith. The plaintiff accordingly, by Edward M'Donnell, her next friend, filed her bill praying that the trusts of the deed might be carried into execution, and that the trustees should be decreed to replace the sum of 200*l.* which they had sold out in breach of their trust.

R. Palmer and *C. Barber*, for the plaintiff, insisted that the trust was complete, and the trustees in selling out had committed a breach of trust. They cited *Bill* v. *Cureton*, 2 Myl. & K. 503; *Countess of Strathmore*, v. *Bowes*, 1 Ves. Jun. 22; *Beatson* v. *Beatson*, 12 Sim. 281.

Roupell and *Cory*, for the trustees, contended that this settlement only applied to the intended marriage with J. Taylor, and, even if it extended farther, that the fund was at the free disposal of the settlor till her marriage. They cited *Page* v. *Horne*, 11 Beav. 227.

Welch for the next of kin of Mrs. M'Donnell.

Bovill for Mr. M'Donnell.

The MASTER OF THE ROLLS said that in this case a deed had been executed by Mrs. M'Donnell, while a *feme sole*, which was only a voluntary settlement, and the question was whether a trust had been created under the circumstances of the case. His Honour was of opinion that, as soon as the stock was transferred into the names of the trustees, the relation of trustee and *cestui que trust* was duly constituted, and that the court was bound to execute that trust. Moreover the whole of the fund was, in his opinion—an opinion however at which he had arrived with regret—bound by the trust, and the settlor had no power to direct the disposal of it or any part of it before her marriage for any purpose other than in execution of the trusts. It plainly appeared from

the deed itself, and the way in which it was worded, that it was intended to apply to any coverture, not merely that then in contemplation with Mr. Taylor. The conclusion, therefore, must be that on the transfer of the fund the trusts immediately attached, and the trustees were not justified in selling out any part of it; and they must therefore make it good with interest from the death of Mrs. M'Donnell. His Honour was of opinion that though the conduct of the trustees, with respect to the maintenance of the infant, might not have been justifiable, it was nevertheless a proper case to bring before the court; and he would not make the trustees bear the costs of the suit, except to the extent to which they were increased by the breach of trust in selling out part of the fund.

V. C. TURNER'S COURT.

Reported by J. HENRY COOKE, Esq., Barrister-at-Law.

Nov. 5 and 6.

WATERHOUSE *v.* STANSFELD.

Mortgagor and mortgagee—Laws of Demerara.

In 1845 *M. contracted for the purchase from G. of lands in Demerara, and in the following year he executed in England, and in the English form, a mortgage for securing to W. a sum of money lent for the purchase. G. then by deed executed the conveyance of the lands to M., but by accident some parcels were omitted, and then M. became bankrupt. The assignees entered on the lands comprised in the contract of* 1845, *and sold the whole, as well those which were contained as those which were omitted in the conveyance.*

Mortgages cannot be made, according to the laws of Demerara, without certain formalities, which were not observed. And by the same laws the assignees of a bankrupt are the only persons who have power to sell his real estate:

Held, that the produce of the sale must be applied according to the law of Demerara; but there was no difference between the produce of the lands omitted from, and that of those contained in, the conveyance: and that where the law of a foreign country imposes restraints on the alienation of property, a contract in England cannot be enforced contrary to the foreign law, but that the lex loci rei sitæ must govern the whole transaction.

On the 11th of August, 1845, Mr. Wm. Grant entered into an agreement in writing to sell to Mr. S. B. Moody certain lands and houses in Demerara for 4,250*l.*, and it was stipulated that a conveyance should be executed at the time when the purchase-money should be paid. In October 1846 Mr. Waterhouse and another lent Mr. Moody 2,000*l.*; and by a deed dated the 10th day of that month, Mr. Moody executed a conveyance of all the premises contained in the agreement to Mr. Waterhouse and the other in fee simple in trust to secure the repayment of the 2,000*l.*, and further advances not exceeding 3,000*l.* This deed contained the usual words, "All the estate, right, title, and interest," &c. of Mr. Moody, and also a covenant for further assurance, and also that Mr. Waterhouse and the other might appoint a person to do all acts in Demerara necessary for giving full effect to the deed. On the same day a power of attorney was executed appointing Mr. Porter, of Demerara, the attorney both for Mr. Moody, and Mr. Waterhouse, and the other mortgagee, to carry the mortgage transaction into effect, and immediately afterwards the documents were sent to that colony. Soon after Mr. Waterhouse and his co-mortgagee lent 1,010*l.* to Mr. Moody, which he paid over as he had done the 2,000*l.* to Mr. Grant, and with other money completed the purchase-money of 4,250*l.* Mr. Grant, the vendor, was made acquainted with and acquiesced in the whole of these transactions. Upon the payment of the balance of the purchase-money Mr. Grant executed a conveyance to Mr. Moody, intended to include the whole of the property contracted for; but by some inadvertence when the document was before the officer of the court in Demerara, part of the parcels were omitted to be formally and completely passed. Before any complete conveyance could be executed Mr. Moody, as after mentioned, became a bankrupt. By deed, dated in January, 1847, Mr. Moody mortgaged the whole of the property contained in the contract of 1845 to Messrs. Thomson, Hankey, and Co. (subject to a former charge of 1,000*l.*) for securing 3,500*l.* and ther advances not exceeding 7,000*l.* Mr. Rose was was appointed, by both mortgagor and mortgagees, attorney to do all acts in Demerara to give effect to the deed. Messrs. Thomson, Hankey, and Co. in February 1847 instituted proceedings in that colony to stop the completion of the mortgage of 1846, and on the 18th of May they obtained an interdict or injunction for such purpose. On the 12th of the same month, Mr. Moody's bankruptcy took place, and Mr. Stansfeld and another were appointed assignees, and they, being made parties to the litigation in Demerara, set up the bankruptcy in bar to the proceedings, and therefore that matter was dropped. Then the assignees claimed and obtained from Mr. Grant a conveyance to them of so much of the property as had by inadvertence not been included in the conveyance to Mr. Moody; and they subsequently sold it for 1,394*l.* 9*s.* 8*d.*

The present claim was filed on Nov. 25, 1850, by Mr. Waterhouse and his co-mortgagee of 1846 against the assignees, praying a declaration of the court that the defendants might be declared trustees of the estates for the plaintiffs to the extent of 2,000*l.* and 1,010*l.* The affidavits filed in answer to the claim alleged that, by the laws of Demerara, to make a mortgage of land there effectual, the intention to effect the mortgage must be advertised for four successive Saturdays in the official gazette of that colony, and must be then passed before one of the superior judges; that, by the law of the colony, any creditor can prevent his debtor from giving any preference; and, further, that the law of England did not apply, for that the *lex loci rei sitæ* must, in such a matter, prevail.

The case was heard before the Vice-Chancellor, and, on the 14th of August, 1850, his Honour directed further inquiries to be made as to the law of Demerara on the four following points, namely: 1st, whether the plaintiffs acquired by the agreement of the 14th of August, 1845, or by payment of part of the purchase-money for the estate, or otherwise obtained, any lien upon the land for any and what sum; 2ndly, whether Moody, before his bankruptcy, or his assignees since, had the power to sell the lands free from the claims of any creditors; and, 3rdly, whether his creditors, or any of them, had the power to prevent such sale, or any interest in the proceeds of such sale further than generally as creditors. These questions were answered by the opinion of a late puisne judge and of a late solicitor-general in the colony, which was to the effect, that neither by the indenture of October 1846, nor by the payment of part of the purchase-money, nor in any other manner, had the plaintiffs obtained any lien on the land in question to the exclusion of the general creditors of Moody. That the assignees of Moody were the only persons competent to sell; that no creditor could prevent the assignees from selling; and that the assignees could have compelled Grant to execute any further assurance to them or their vendees; and that any creditor of Moody could have prevented Grant from executing any assurance to any person but the assignees or their vendees, by entering what in the law of Demerara is called an "opposition" on the court rolls, of which the judge would take notice when the conveyance should be brought to be enrolled. The Master made his report in conformity with this opinion against the plaintiffs, who took exceptions to the report; and those exceptions now came on for argument.

Bacon and *Cairns* for the plaintiff.—This court, having before it the person who has entered into a contract concerning land, and the money, the proceeds of the sale of that land, will enforce the equities of the parties to such proceeds, although it has no authority over the land itself. That principle was established, or recognized and acted on, in the case of *Ex parte Pollard*, 4 Deacon, 27. [THE VICE CHANCELLOR.—At the original hearing of this case I decided that *Ex parte Pollard* does not govern it. In *Ex parte Pollard* the lands were in Scotland, the mortgage being executed in England, and by the law of Scotland there was no anterior impediment to the mortgage being completed; but here the case set up is, that there is an anterior impediment to the execution of the mortgage, namely, that the intention to execute the mortgage must be advertised, and that any creditor of a man intending to mortgage his land can prevent him effecting that intention. The inquiries, I said at the hearing, were directed with a view also to ascertain whether the law of Demarara applies as well to the proceeds of real estate as to real estate itself.] The general creditor has no claim upon the land until he goes to execution. The assignees of Moody cannot now fall back on what would have been that gentleman's position if he had done all he was entitled to do to make his title complete. The case of an alien, who, although incapable of holding land, still may receive the proceeds of land directed to be sold, is an illustration of the point on which the plaintiffs insist.

Rolt and *Lewin* appeared for the assignees in support of the report.

Cairns was heard in reply.

Saturday, November 6.—The VICE-CHANCELLOR.—The question in this case arises between the plaintiffs claiming to be mortgagees and the defendants who are assignees, as to the proceeds of the property, which was not legally and completely vested in Moody at the time of his bankruptcy. It was not on the present argument disputed that, as to the lands actually conveyed by Grant to Moody before his bankruptcy, the plaintiffs had no lien at all. Then is there any difference between the property in the hands of Moody unconveyed by Grant? The law of Demerara is clearly laid down in the able opinions which have been taken to this effect, that no debtor can alien his lands except by certain set forms, and with the consent, express or tacit, of his creditors. As soon as the purchase money was all paid to Grant by Moody or by the plaintiffs on his account, this property, though legally in Grant, was in fact the property of Moody; and the same forms would have to be gone through on a sale by him of the property, though not yet completely conveyed to him, as would have been necessary if it had been formally conveyed to him. There must have been an advertisement by

Grant on the occasion of the alienation of the estate to Moody; and then Moody's creditors, or any one of them, would have had the power to intervene and prevent Grant from disposing of the estate in favour of any person but Moody or his assignees. Mr. Cairns said that no creditor would have such a power unless by taking out execution, that is, unless he had first proceeded to execution; but I do not read the opinion which has been taken in that manner. Mr. Downie, in his opinion on the case submitted to him says: "By the law of Demerara a general creditor of S. B. Moody had a right or interest in the lots in question after the contract of the 14th of August, 1845, and before a transport of them to Moody. The nature thereof was a common law right or interest, and that which every creditor has in the property of his debtor." All the creditors of Moody, then, had this right. And then, in the latter part of the same opinion, Mr. Downie says: "The right of a general creditor of Moody would, therefore, extend also to prevent a transport from Grant being made to any other person than the assignees of Moody, after his bankruptcy. The assignees, being the representatives of Moody as well as trustees for his creditors, a transport from Grant to them was compulsory on Grant." This was, therefore, the property of Moody in the hands of Grant, subject to all the rights and liabilities which attached to it, as much as if it had been already the subject of a transport or formal conveyance. When the law of a foreign country places a restraint upon the alienation of property there, a contract in respect of such property cannot be enforced against the *lex loci rei sitæ*. I am of opinion that the exceptions must be overruled. The argument for the plaintiffs passes by the consideration that the general creditors have something more than a possibility. Taking into consideration that the general creditors have got the benefit of the money advanced by the plaintiffs to complete the purchase, I think the justice of this case may be met by dismissing the claim without costs, and overruling the exceptions with costs. I do not see any substantial difference between the rights of the plaintiffs upon the portions of the land actually conveyed at the time of the bankruptcy, and the lands which were then unconveyed.

V. C. STUART'S COURT.

Reported by GEO. S. ALLNUTT, Esq., of the Middle Temple, Barrister-at-Law.

Wednesday, Dec. 22.

Re DAVENPORT'S TRUSTS.

Will—Construction.

A testator, by his will, gave a life interest in a sum of stock to the wife of his nephew G. At the date of his will, G. was living with a woman whom he had introduced to the different members of his family as his wife, and who was believed by them to be so. The testator believed that G. was married to this woman, but he was not personally acquainted with her. G. died without ever having been married:

Held, that the reputed wife was not entitled to the legacy.

Edward Davenport, by his will, dated the 26th of October, 1843, after various legacies, gave, devised, and bequeathed all his real and personal estate to trustees upon certain trusts for investment, and to stand possessed thereof upon trust for the testator's wife and her assigns during her life; and the testator directed that, as soon after the decease of his said wife as should be convenient, his executors should set apart and stand possessed of the sum of 1,000*l.* Three per cent. Reduced Annuities, upon trust to pay the interest and dividends thereof to his nephew George Charles Davenport for his life, and from and after his decease, in case his (the said G. C. Davenport's) wife should survive him, to pay the said interest and dividends to her for her life for her own sole, separate, and exclusive use and benefit; and from and after the decease of the survivor of them, upon trust to pay, transfer, and divide the said 1000*l.* Annuities unto, between and amongst all and every such one or more of the children of his (the said testator's) said nephew G. C. Davenport as should be then living, in equal shares and proportions as tenants in common, if more than one, and, if but one, then the whole to such only child. The testator died on the 30th of January, 1844, and his said will was duly proved. The testator's widow died on the 16th of June, 1852, and the said G. C. Davenport died in May, 1845. The trustees of the will, in consequence of the claim of the residuary legatees to this sum of 1,000*l.* Annuities, on the ground of G. C. Davenport's never having been married, transferred the sum into court under the Trustees Relief Act (10 & 11 Vict. c. 96). This was the petition of the residuary legatees, under the testator's will, for the transfer to them of the said sum of stock. It appeared from the affidavits that the person with whom G. C. Davenport was living at the date of the testator's will and by whom he had five children, was not his wife and that he was never married. The person with whom G. C. Davenport so lived was introduced to the different members of his family as his wife, and was believed by them to be so. It did not, however, appear that the testator had ever been personally

QUEEN'S BENCH.

acquainted with this person, although he believed that his nephew was married to her.

Malins and *Springall Thompson*, for the petitioners, referred to *Kennett* v. *Abbott*, 4 Ves. 802.

Beavan and *Prendergast* for other parties.

Chandless, for the reputed wife, contended that the testator had sufficiently designated the person for whom he intended this bequest, and that she was entitled to the benefit of it.

The VICE-CHANCELLOR said, that it was a very hard case; but, as it appeared that the testator was not acquainted with the supposed wife of his nephew, he could not hold her to be so described as to be entitled to the legacy. Her costs however on this petition should be paid out of the fund.

Ex parte THE MAYOR AND CORPORATION OF CARLISLE.

Lands Clauses Act—Re-investment in land—Costs.

Land belonging to a corporation had been taken by a railway company, and the purchase-money paid into court. The corporation afterwards agreed to buy land for a larger sum, and proposed that the sum in court should be applied in part payment of this sum. The land being held under one title, the court ordered the company to pay all the costs, excepting the excess of stamp duty by reason of the larger amount of the purchase-money.

This was a petition by the Mayor and Corporation of Carlisle, for the confirmation of the Master's report approving of a purchase by them of land, and for consequential directions. It appeared that land belonging to the corporation had been taken by the Caledonian Railway Company, who, under the Lands Clauses Act, paid the purchase-money into court, and the same was laid out in the purchase of 896*l.* Three per cent. Consolidated Bank Annuities. The corporation afterwards contracted for the purchase of land at the price of 1,700*l.* and they proposed to make up this sum by means of the 896*l.* stock. By an order of the late V.-C. Parker, it was referred to the Master to inquire whether this was a proper investment, and the question of costs, which the company contended should be apportioned, was reserved. The Master having reported in favour of the purchase, the present petition was presented, and it prayed, among other things, that the company should pay all the costs of the purchase, of the former order, and of this application. The property proposed to be purchased was held under one title.

Deere Salmon appeared in support of the petition.

Bagshawe, for the company, offered to pay all the costs except the excess of the stamp duty on the conveyance by reason of the increase of the purchase-money beyond the 896*l.* stock.

The VICE-CHANCELLOR considered that this was a very fair offer, and he made an order accordingly.

Re THE NORTHAMPTON CHARITIES.

Corporation charities—Appointment of new trustees. Whether the Vice-Chancellor has jurisdiction to appoint new trustees of corporation charities, quære.

This was a petition under the Municipal Corporations Act (5 & 6 Will. 4, c. 76), and Sir Samuel Romilly's Act (52 Geo. 3, c. 101), for the appointment of new trustees of the above-mentioned charities, the estates belonging to which, had previous to the Municipal Corporations Act, been vested in the corporation of Northampton.

Baggallay appeared in support of the petition, and stated that the only question was as to the jurisdiction of this court to make the order. He suggested, however, that if the petition were entitled in the Trustee Act, 1850, the 32nd and 45th sections of that Act would enable the court to make the order asked by the petition.

Whitcomb, for the corporation and the present trustees, did not object.

The VICE-CHANCELLOR, however, doubted whether he had jurisdiction in the matter, and said that he should be unwilling to be the first to make an order which might be an encroachment upon another jurisdiction. The petition had better, therefore, be taken to the Lord Chancellor.

Common Law Courts.

COURT OF QUEEN'S BENCH.

Reported by ADAM BITTLESTON and JOHN THOMPSON, Esqrs., Barristers-at-Law.

June 2 and Nov. 16.

REG. *v.* THE YORK AND NORTH MIDLAND RAILWAY COMPANY.

Railway—Obligation to complete line.

Where a railway, under the compulsory clauses of the Act of Parliament, has taken land on part of the line of railway authorised, and opened such part of the line for traffic, it is obligatory on them to complete the whole.

So held per Lord Campbell, C.J. and Crompton, J.; Dissentiente, Erle, J.

Mandamus to the York and North Midland Railway Company, commanding them to show cause why they should not complete a branch line from Market Weighton to Cherry Burton, in the East Riding of Yorkshire, pursuant to the 9 Vict. c. lxv. and the 12 and 13 Vict. c. lx., for making a branch line from York to Beverley, by way of Market Weighton and Cherry Burton.

Return.—That the part of the line from Cherry Burton to Beverley, three miles in length, had not been begun to be made; that the compulsory powers of purchasing land for making it expired on the 18th of July, 1851, before the writ issued; that Cherry Burton is a small village, three miles from Beverley, and that a convenient station could not be made there for Beverley; that the district is thinly populated, and that there are other means of convenient communication; that that portion of the line would be unremunerative, and that there were not adequate funds for making it.

Demurrer thereto.

By the 9 Vict. c. lxv., for enabling the York and North Midland Railway Company to make certain branch railways in the East Riding of the county of York, and for other purposes the Company were empowered to make a branch from the York and Scarborough line to Beverley, by way of Market Weighton, and passing through, among other places, the township of Cherry Burton; and the powers for the compulsory purchase of lands for the purposes of that Act were limited to three years after the passing of the Act, and expired on the 18th of June, 1849.

Then, by the 12 & 13 Vict. c. lx., for enabling the York and North Midland Railway Company to divert their railways between Market Weighton and Beverley, and Copmanthorpe and Tadcaster, the company were empowered to divert part of the line between Market Weighton and Beverley, and to abandon the parts rendered unnecessary by such diversion, and to make a line of railway from Market Weighton through Goodmanham, Elton, and Cherry Burton, and terminating by a junction with the then present authorised line of the said East Riding Branches No. 1 Railway, &c., referred to in the 9 Vict. c. lxv. By the 12 & 13 Vict. c. lx. the powers for the compulsory purchase of lands for the purpose of the act are limited to three years from the passing of the act (13 July, 1849).

H. Hill (*Lush* with him) in support of the demurrer, and Sir *F. Kelly* (*W. H. Watson* and *Addison* with him) *contrà*.

Authorities cited:—*Blakemore* v. *The Glamorganshire Canal Company*, 1 M. & K. 162; *Reg* v. *The Eastern Counties Railway Company*, 10 A. & E. 531; *Lee* v. *Milner*, 2 M. & W. 824; *R.* v. *Cumberworth*, 8 B. & Ad. 108; *R.* v. *Edge Lane*, 4 A. & E. 723; *R.* v. *The Caledonian Railway Company*, 20 L. J. 147, Q. B.; *R.* v. *Barlow*, 2 Salk. 609; *R.* v. *St. Saviour's, Southwark*, 7 A. & E. 925; *M'Dougal* v. *Paterson*, 21 L. J. 27, C. P.; Com. Dig. "Parliament," R. 22; *R.* v. *The London and North Western Railway Company*, 6 Rail. Cas. 641, Patteson, J.; *Cohen* v. *Wilkinson*, 5 Rail. Cas. 741; 8 Vict. c. 18, ss. 16, 20, 45, 46, 93.

Cur. adv. vult.

JUDGMENT.

Tuesday, November 16.—ERLE, J.—On this record the material facts appear to me to be these:—The defendants had obtained an act of Parliament making it lawful for them to construct a railway from Market Weighton to Beverley, giving them the usual powers for the purpose, and they had completed and opened part of the line as far as Weighton, and had not begun the remainder of the line. As to three miles of this remainder nearest to Beverley the powers under the act had expired and the *mandamus* related to making part only of the remainder running through a thinly populated district ending in the village of Cherry Burton. One of the applicants was a landowner who had land on the line both between York and Weighton, and also between Weighton and Beverley, and part of his land had been used for the part of the line that was completed. On these facts the defendants contended that there was no legal obligation to complete the line of railways thereon; and in answer thereto the prosecutor alleged,—first, that the obligation was created by the statute alone; and secondly, by the statute together with the subsequent facts. The first ground is of wide application, and involves important consequences to valuable property. It assumes that all private Acts of Parliament, granting to the applicants powers of compulsory purchase of land and other powers for the purpose of executing a project represented to be beneficial to the public, impose the legal duty upon the grantees of doing all they are so empowered to do until the project is executed, and, in case of omission, make the grantees liable to indictment and an action at the suit of any party who is specially damaged, and also liable to be called on for the specific performance of their project by *mandamus*. If the duty is supposed to be created by statute, the question must be decided by the words of the statute as constituting a co-ordinate jurisdiction in itself, and also by the intention of the Legislature to be collected therefrom—and according to my understanding of the statute the legal duty to make the railway was not imposed thereby. The language in respect of making the railway is permissive, and not imperative; the distinction between permissive and imperative language being maintained throughout the statutes—imperative, when a clear duty is to be created, and permissive when under common understanding they would express the matter to be optional: that is, the company is permitted at their option to take lands, turn roads, make new roads, alter streams, and do other matters which are made lawful; but they are commanded to make compensation for lands taken, and to substitute new roads for those destroyed, and they are to perform other conditions relating to the exercise of the powers, and these matters are required from them. Also, where there is reason for departing from the usual course, and the duty of completing the railway is intended to be absolutely or conditionally imposed, imperative language has been substituted for permissive, and companies have been required to make their lines. The provisions that operations should not be commenced till the capital had been subscribed, and that the compulsory powers should be put an end to after the lapse of four or five years, if the railway is not then completed, indicate that the Legislature, instead of creating an absolute duty, granted a privilege to be observed at option, on a contingency within a limited time. The statute was passed on the assumption that the undertaking would be profitable, and that therefore the work would be willingly continued; but when the completion would be attended with loss, the general public interest is against the completion, though the interest of some of the adjacent landowners may be augmented. There seems to me to be no ground for the notion that the powers granted to the company ought to be regarded in the light of a consideration for undertaking an onerous duty. Generally speaking, they are no boon unless they lead to a profitable undertaking. Thus the powers of taking land and making compensation for damage, and restoring it at a less price if no railway is made, and the power of turning roads and streams, and of substituting a full restoration, give no advantage and are not desirable unless as a means to a profitable end. Every step in preparing for applying to Parliament is a loss consented to by the company for the grant of the powers to raise the labour and capital; but the privilege is granted by Parliament because the profit, if any, must be attained through the promotion of public convenience. Also equally groundless, in my opinion, is the notion that the consent of some of the landowners on the line is to be deemed as the consideration for each landowner on the line to demand an outlay of the company's funds for a part of his estate against the wish of many of his neighbours. Different landowners may have different rights. A landowner may oppose the Bill, and after it has passed insist on a sufficient value, or he may oppose the Bill till his consent is bought at the best price he can get for it, or he may resist to the utmost for the value of his land, or he may receive payment in shares. In the first and second instances it would seem to me that they have no ulterior right beyond the restoration of the land if no railway is made: in the last case there may be a specific loss against the others, as when they require the shares to be paid up, and the funds applied in the best possible manner; and the *mandamus* is so framed as to be a beneficial remedy for the enforcement of this and of other civil rights, resembling rights from contract. But the prosecutor in the present instance has no such rights, and relied partly, on the duty for which any one may indict, and partly on the having sustained special loss by not having the benefit of railway communication, for which an action would lie, and partly on the assumption of a *quasi* contract between the landowners and the company. But I think that neither of these points would support the writ; and the mere fact of being a landowner on the line is not sufficient to support the third. For these reasons I have come to the conclusion that the present writ cannot be sustained, on the first ground above mentioned, namely, that the statute alone creates the duty; and on the argument of this case that ground was not relied on. Then, was the duty in question created by the statute together with the subsequent facts, that is, by the statute followed by the exercise of some of the compulsory powers of the Act of Parliament? In disposing of this question, I beg to confine myself to the facts of this case; and though they are not sufficient to support it, still many cases may occur where the exercise of the compulsory powers may create a duty to be enforced by *mandamus*. Here, a part of the proposed line, as far as it was supposed profitable, had been made, and the residue is to be abandoned, not from any corrupt motives, nor with any deception or bad faith, but because Beverley had other communications to the district between Weighton and Cherry Burton, and that it would not pay the necessary expenditure to make it. Where the defendants have taken land, and have made and opened the railway, and where they have abandoned their project, and have taken no existing public road, but have merely left the district in its former state, in order to ascertain whether a duty arises upon these facts recourse must be had to the statute, for the facts taken by themselves are wholly inoperative. The statute might attach any legal consequences to them, but unless they have statutory force they operate as nothing. There is no command requiring the completion of the whole of the line if a part is begun, and no indication of an intention of the Legislature that

this increased responsibility should arise from any exercise of the powers for making a part of the line. The supposition that the prosecutors consented to the Bill before Parliament in the expectation that the line would be completed is no origin for the legal duty to complete the line; and all considerations which might have arisen with respect to imposing the duty, if there are no words in the act that can justly be construed to create these considerations, do not authorise the Court to decide that such a duty was created. The obligation arising from taking the land to make the railway aforesaid was fulfilled by making a railway as far as the land is taken; and the owner of the land so taken does not, in my opinion, acquire a better right in respect of his land than other landowners on the line that has been abandoned. This brings me to the consideration of the main ground of contention of the prosecutors, namely, Lord Eldon's words in *Blakemore v. The Glamorganshire Canal Company*, 1 M. & K. 162, who, speaking of Acts obtained by companies, says: "I regard them all in the light of contracts made by the Legislature on behalf of every person interested in anything to be done under them, and I have no hesitation in asserting that, unless that principle is applied in construing statutes of this description, they become instruments of oppression. Such Acts of Parliament have become extremely numerous, and from their number and operation they so much affect individuals, that I apprehend those who come for them to Parliament do, in effect, undertake that they shall do and submit to whatever the Legislature empowers and compels them to do, and that they shall do nothing else; that they shall do and shall forbear all that they are thereby required to do and to forbear, as well with reference to the interests of the public, as with reference to the interest of individuals." Lord Eldon is supposed to have here laid down that companies can be compelled to do all they are empowered to do, but his words do not bear this meaning. He says, "companies shall do and submit to whatever the Legislature empowers and compels them to do," whereas he is supposed to say, "they shall do whatever the Legislature should empower and compel them to do." We cannot suppose that learned judge meant to construe words of permission into words of command, when they were not so intended; and the supposed principle was not laid down in the judgment he was pronouncing relating to the surplus water of a canal, because the duty of leaving it and the right to take it were created by the statute in question, and the point of the judgment was the meaning of "surplus water." The words occur in the judgment whether Mr. Blakemore's title to the water under the statute was affected by the quality of the right before the statute. This is answered in the negative, where the statute is the origin of a new right created thereby. If the learned judge regarded these statutes in the light of contracts, because rights created by such statutes are as original as rights created by contract, the observation is relevant and is assented to; and I understand the same remarks were applied to the concluding observation, which means that a company must be compelled to obey the law. Both positions are too obvious to require explanation. But if this learned judge is taken to mean that the words should receive a construction different from their ordinary meaning, on the ground that such statutes would be a source of the greatest oppression if construed as usual, I think the meaning has been misunderstood, and such a doctrine seems to me altogether erroneous. The attempt to introduce the incident of a special contract between the company and other persons leads to confusion in the reasoning, while the suggestion of the danger of the greatest oppression unless this principle of construction should be adopted against the company creates the utmost prejudice and feeling. This passage has been often cited, and the words "that the company shall do and forbear all they are required to do and forbear" are used in the other sense that they must do all the Act empowers them to do. In the latter case they were the foundation for the first decision in *R. v. The Eastern Counties Railway*, 10 A. & E. 531, where a writ was commanded for the completion of the whole line. It was again repeated when a peremptory *mandamus* was applied for and refused by reason of some informality in the first writ; but it was then accompanied with the observation that the case was in some respects new, and that its circumstances admitted of some doubt whether the power of the court ought to be applied. It is upon these authorities the application in the present instance for issuing a peremptory writ of *mandamus* to complete a railway is rested. On the other side, it is observed that Lord Mansfield, in *Rex v. The Birmingham Canal Company*, 2 Wm. Black. 708, whose a writ was applied for on stronger grounds than exist here, but refused, said,—"Because the act only imports an authority to the proprietors, not a command, they may desert and suspend the whole work, and *à fortiori* any part of it." In *Rex v. The Severn and Wye Railway Company*, 2 B. & Ald. 646, the defendants had destroyed the railway, it being a public highway which the applicant had used and required to use again. The writ commanding the reinstatement of it was in the ordinary course of proceeding; the right was admitted to be clear, and the only objection was, that the claimant had a remedy by indictment. Still, the court granted a *mandamus* to restore, and refused to grant it for maintaining the way after restoring it, although the company were empowered to maintain as well as make the line. On this review, there appears no precedent for issuing the writ now prayed for, and no instance has been cited, whether of indictment or action, on the supposed principle which is the foundation of the prosecutor's case. This absence of any precedent is equivalent to an authority against the existence of the principle; the occasions for bringing the principle into action, if it existed, having been extremely numerous. Cases at law, in which the principle has been under judicial consideration, have been mentioned above, and the cases in equity bear rather on the rights of shareholders *inter se* than on the duties of the company towards the public; and, on the whole, the balance of authority appears to be against the prosecutors. Considerations of convenience tend to the same conclusion. If the writ is refused, it will be for the Legislature in future to intimate by clear words what duty is to be created, and the law will be known. If the writ is granted, many questions relating as well to the rights and duties of directors, as also to the companies, by *mandamus* for enforcing specific performance of very complicated duties, will remain to be settled by the discretion of the Court. In the meantime the law will be left in uncertainty, and facilities for harassing by malicious litigation will be at the disposal of those who have ill-will against the company. In the present case there is a further defence on the ground that the *mandamus* requires them to complete a work which would probably remain useless. After expressing my opinion on the other grounds, I have only to say that I think our judgment should be for the defendants.

Lord CAMPBELL, C. J.—I have to observe that, this case having been argued before my brother Erle, my brother Crompton, and myself, my brother Crompton agrees in the judgment that I have to pronounce, which he has perused carefully, and in which he concurs. He is now occupied in the Bail Court, or he would in person express his opinion. The first question to be considered in this case is whether the writ of *mandamus* be good upon the face of it. The defendants having been incorporated by Act of Parliament in the reign of Will. 4, under the title of the York and North Midland Railway Company, obtained another Act of Parliament in the year 1846, which, reciting that it would be attended with local and public advantage if a railway were formed from the line of the York and Scarborough Railway, near the city of York, to Beverley, by way of Market Weighton, and that they were willing to execute the same, grants them for this purpose all the powers conferred by the former special Acts and by the Railway Clauses Consolidation Act, with power to borrow additional sums of money, and enacts "that it shall be lawful for the said company to make and maintain the said railways and works in the lines and upon the lands delineated in the plans, and described in the books of reference deposited with the clerks of the peace, and to enter upon, take, and use such of the said lands as might be necessary for such purpose." It appears that the company actually made the branch as far as from York to Market Weighton, about two-thirds of the whole distance to Beverley, and so far it was opened to the public. And then, in the year 1849, they obtained another Act, to enable them to divert this line of railway from the former line between Market Weighton and Cherry Burton, a place about three miles from Beverley: this Act, reciting that it would be of advantage if part of the said line between Market Weighton and Beverley were diverted, and if the part rendered unnecessary by such diversion were abandoned, and the company were willing to make such diversion, grants all the powers of the former Act for making the diversion, and enacts that it shall be lawful for the said company to make and maintain the railway in the line and upon the lands delineated and described and certain new lands, and to enter upon, take, and use such of the said lands as should be necessary for such purposes. The *mandamus*, after setting out the material parts of these Acts of Parliament, alleges that, though a reasonable time for completing the railway mentioned in the last Act (that is, between Market Weighton and Cherry Burton) had elapsed, the company had not made it, and have abandoned all intention to make and complete it. Allegations are then introduced, that David Burton, one of the prosecutors, at the time of the passing of the Act of 1846, was and still is owner of lands over which that part of the railway was to pass and authorised to be abandoned by the Act of 1849, and that at the passing of the latter Act he was and still is owner of other lands which the line described in the Act of 1849 would pass over, as shown in the books of reference; and that John Leaming was and still is the owner of lands that the company were authorised to take, and that the portion of his lands there required by the company have been conveyed to the company for the purpose of the Act, and that the remaining portion of his lands were much lessened in value by the non-completion of the railway; and that the compulsory powers of the Act of 1846 have been duly extended for two years; and that Burton and Leaming are desirous that the line should be completed, the completion of the same being of great public benefit and advantage, by affording to the inhabitants of the towns of Beverley and Cherry Burton further means of easy and speedy communication with York and the north of England, Selby, and the west of England, and the inhabitants of the districts intervening between Market Weighton and Cherry Burton means of speedy communication with Beverley, Hull, Driffield, Scarborough, and Malton. The writ, after further alleging a request to the company by Burton and Leaming to complete the line mentioned in the Act, and their refusal to do so, proceeds to command the company to complete the railway from Market Weighton to Cherry Burton, or to show cause to the contrary. That portion of the line between Market Weighton and Beverley to which the *mandamus* applies is not to be considered a separate railway or a separate branch of a railway, but is clearly to be treated as if, in its present direction, it had been included in the Act of 1846; the powers for compulsory purchase for making it being extended to the 13th July, 1852, although the powers of compulsory purchase for making the remainder of the line from Cherry Burton to Beverley expired on the 18th of June, 1849. Under these circumstances, are the prosecutors *prima facie* entitled to this *mandamus*? To answer this question it is unnecessary to decide whether a company incorporated by an Act of Parliament, which says it shall be lawful for them to make a line of railway, are bound to make it, if they have never availed themselves of the extraordinary powers conferred upon them, and they have come to a resolution entirely to abandon the undertaking before they began to execute it. Even if it were conceded that, down to the time when the defendants (the railway company) in fact executed the extraordinary powers conferred upon them over the property and the lands of others, the power to do that is only permissive and discretionary, a different state of affairs arises when they have actually begun to execute these powers—when they have taken land by compulsion under the Act, and when they have made and opened a part of the railway. They are not in the situation of purchasers of the land, with liberty to divert it to any purpose; they are allowed to purchase it only for the purpose of a railway; and when they do purchase under the compulsory powers conferred upon them, and which they had when they served the notice that they required the land, I am clearly of opinion that they enter into a contract to construct the railway. It was only with a view to the construction of the railway that the compulsory powers were conferred, and there must be an obligation to take the land so obtained for that and no other purpose. But this contract with one individual landowner cannot be performed by merely laying the rails over a section of land taken from him. It was never intended that he should be left with a high mound or a deep cutting running in the middle of his estate, the latter leading from one to any other terminus. What, then, are the termini? Surely those described in the railway Act. The Legislature contemplated the completion of this railway when it passed the Act. The enjoyment of such a railway is part of the compensation given to the landowner for depriving him of his property against his will, and may in many cases be fairly taken into consideration in estimating the compensation he is to receive. A railway being partly made, the public have likewise an interest that it should be completed. The power given to cross ancient highways and to construct a railway would often be prejudicial to the public if only partially exercised, and the company capriciously, from interested motives, abandoned part of the specified line, and thereby deprived the inhabitants of particular towns and districts of the benefit which was intended for them. The interest of the shareholders is not considered in this particular *mandamus*: but I may here observe that as to the shareholders, the company may contract an obligation to complete a railway which they have begun; for not only have such shareholders a common interest in the undertaking that it should be completed, but, in particular cases, may have taken shares and paid calls with a view to the railroad coming to their localities, and they would be all much aggrieved if only part was constructed from which they can receive no accommodation. Is it not then the duty of the railway company to complete the line specified in their Act of Parliament,—they having represented to the Legislature that the making of the whole of it would be attended with local and public advantage, and that they are willing to make the whole, and they having obtained from the Legislature the powers which they have partially used on the faith of these representations? It is to be presumed that they have the means of performing these duties, for they have likewise represented to the Legislature that the funds which have been subscribed and which they are enabled to raise are sufficient for the purpose. The next question is, if they refuse, ought they not to be compelled to do their duty by a writ of *mandamus*? It is only necessary to observe that there is no other adequate remedy. Suppose that an action would lie

against the company at the suit of the landowner whose land has been taken from him by the company and not used for the purpose of the railway, or suppose the railway, which ought to go several miles further to a neighbouring town, is left unfinished at the boundary of his estate and there stopped, the plaintiff could only recover damages without any specific relief. Again, if the company were convicted upon an indictment for disobeying the Act of Parliament, in this respect the Court would only impose a fine, without ordering the railway to be completed. The question really is whether it be a duty on the railway company to do the act; for if it be, a *mandamus* clearly is the appropriate remedy. We are in the constant habit of granting writs of *mandamus* to railway companies to do what is necessary for giving compensation for land taken or injured, or to do other acts according to the duties imposed on them, and no distinction is to be made between this and the act of constructing the railway. Supposing there were an Act of Parliament obtained in the usual form for making a railway from the town of A. to the town of B., the distance being ten miles, and the intervening land all belonging to X. and Y., and the company, having got possession of the requisite quantity of land under the compulsory clauses of the act, have actually completed the railway and opened it to the public, and then, resolving to abandon it, have removed the rails, leaving the mounds and deep cuttings remaining,—would not this court, on application, grant a *mandamus* to the company to reinstate it? For this *Rex* v. *The Severn and Wye Railway Company*, 2 B. & Ald. 646, is expressly in point, and I believe so far has never been questioned. Suppose the company I have imagined had made a railway for two-thirds of the line between A. and B., and had refused to go on, can there be the smallest doubt Lord Tenterden, Mr. Justice Bayley, and Mr. Justice Holroyd, on the same principle, would, at the suit of X. and Y., have granted a *mandamus* to complete it? Such a case would have been on all-fours with the present had this *mandamus*, before the contemplated diversion, been applied for to complete the railway from Market Weighton to Beverley. If part of the lands of the applicants had been taken by the company, and other parts were liable to be taken, there would have been a duty on the company to complete the line, and Burton and Leaming, being sufferers by the breach of duty, are entitled to a *mandamus*. Surely they are equally entitled to it, although it does not include the space between Market Weighton and Beverley, and that space is part of the line the company undertook to complete, and their powers for compulsory purchase respecting it were still in full force when the *mandamus* issued. Although, as yet there has not been any solemn determination that a *mandamus* will lie to complete the railway, there are many authorities to support the doctrine that there is a positive duty and obligation on which the *mandamus* rests. I begin with the case to which my brother Hill referred—*The Birmingham Canal Navigation Company's* case, 2 W. Black. 708, in which commissioners, being empowered to make a canal from a place called Newhall Ring to Birmingham, instead of beginning at Newhall Ring began in another part of the line; and, according to the marginal note, a *mandamus* to execute one-fourth part of the powers granted by Act of Parliament was denied, because they did all that was sufficient to have been done. The Court would not interfere as to the order in which the different parts were to be completed. Lord Mansfield said "There must be a strong case made out for awarding such a *mandamus*; the present is a very weak one." The reporter, Sir William Blackstone, who is not always accurate (as Lord Mansfield says), imputes these further words to Lord Mansfield: "The Act imports only an authority to the proprietors, not a command; they may dissent and suspend the whole work, *à fortiori* any part of it." But Willes and Blackstone (I am reading the words of the report), "Willes and Blackstone thought the application premature—that the court ought not to grant a *mandamus* to compel them to cut from Newhall Ring first, but if the commissioners had refused to make any cut to Newhall Ring at all, it perhaps might be a ground for a *mandamus* when the cut of the canal was finished." Therefore Lord Mansfield intimates an opinion that a strong case would warrant such a *mandamus*; and the other judges, properly thinking the application was premature, intimated a clear opinion that at least the company might be compelled by *mandamus* to complete the undertaking. I then come to the well-known passage in Lord Eldon's celebrated judgment, in *Blakemore* v. *The Glamorganshire Canal Company*, 1 M. & K. 162. We are told at the bar that the language is inapplicable, because he was then dealing with an application for an injunction; but the principle he lays down is equally applicable; for, after all, rights and obligations are to be inferred in the construction of such Acts of Parliament, whether the application be in a court of Equity for an injunction to prevent that being done which is forbidden, or in this court for a *mandamus* for the performance of a duty which the law imposes. Lord Eldon says: "When I look upon these Acts of Parliament, I regard them all in the light of contracts made by the legislature, on behalf of every person interested in anything to be done under them; and I have no hesitation in asserting that, unless that principle is applied in construing statutes of this description, they become instruments of greater oppression than anything in the whole system of administration under our constitution." He goes on further to say: "The parties are obliged to submit to the contract which the Legislature has made for them. The result is, that the contract shall be carried into execution; and the King's subjects are compelled to submit to it, upon the notion that it will be for the public good; but they are not compelled to submit to anything except what the Legislature has said shall be done." This doctrine has been recognised by every judge in Westminster Hall—in Courts of Common Law and Courts of Equity—for nearly thirty years, as often as the subject has been discussed; and it is wholly unnecessary to go through the long list of cases that have been cited in the argument, with a view to show that it has been so recognised and acted on. We have only to ask them whether the two applicants were interested in what was to be done under the Act of Parliament for making the line of railway from York to Beverley, and whether the company must not be considered, when taking their land under the Act of Parliament to have contracted with them to complete the line for the three miles and a half between Market Weighton and Cherry Burton. I cannot but think there is such a contract between the company and the owners of land that the company will apply the land to the purposes of the railway, and complete the line: if such is the case, a *mandamus* should issue to enforce it. Such is the view of the subject taken by Lord Denman, Mr. Justice Littledale, Mr. Justice Patteson, and Mr. Justice Williams, the judges of this court in 1839, when, in the case of *R.* v. *The Eastern Counties Railway Company*, a *mandamus* to complete the railway was first applied for; and though this is not a conclusive authority, because, for want of a particular averment that the company had abandoned their design to complete the railway, a peremptory *mandamus* was not awarded, it is entitled to much weight. When the return was discussed, all the arguments against a *mandamus* which could suggest themselves to the subtle mind of Sir William Follett, and which are repeated at the bar in the present case, were brought forward; and Lord Denman, after enumerating them, says: "We think it right so far to advert to these remarks, that we may wholly disavow them as having at all conduced to the judgment we are about to pronounce. We shall keep our minds open for the discussion of all such doubts on every proper occasion, but we do not yield to them, nor is it necessary to advert to them in coming to our present decision. We neither hold the court incompetent to enforce execution of an Act under the circumstances disclosed to us in the affidavits, nor think any of the reasons which we have enumerated are conclusive against making our *mandamus* peremptory. "The rule was made absolute, and the writ was directed to go, on the supposition that they had no intention to proceed *bonâ fide* with their works, and had, on the contrary, abandoned all intention to complete them. But the prosecutors of the writ have stated no such facts." "We can infer no fault; it must be distinctly charged; and the charge as it stands is quite insufficient, and falls decidedly below the case which we thought was made reasonably probable by the affidavits on both sides." This is the ground on which the judgment was given for the defendants; and though it was expressly said that these points appear to be open to argument, yet there seems reason to believe if the abandonment of a part of the line had been sufficiently averred in that case, a peremptory *mandamus* would have been granted. I may likewise observe, that in the case of *Anstruther* v. *The East of Fife Railway Company*, on appeal to the House of Lords from the Court of Session in Scotland, reported in the LAW TIMES of the 22nd May, 1852, the present Lord Chancellor (Lord St. Leonards) intimated a clear opinion that if a railway company have taken land under the compulsory powers conferred upon them, and have begun to make the railway, they ought to complete it. Assuming that for these reasons and on these authorities this *mandamus* can lawfully issue, and is good upon the face of it, I now proceed to examine the return the defendants have made. They mainly rely upon the statement that the line from York to Beverley between Cherry Burton and Beverley, which is three miles long, has not been made or begun to be made, and that the compulsory powers of purchasing land for taking it expired on the 13th of July, 1851, before this writ of *mandamus* issued. There is no allegation of the impossibility and want of power to purchase lands and complete that part of the line specified in the *mandamus* which is between Market Weighton and Cherry Burton, if there was an obligation imposed upon the company by the Legislature to complete the whole from Market Weighton to Beverley. But they cannot set up a want of power arising from their own neglect to do more than they are commanded to do by this *mandamus* as an excuse for not performing the duty which they do not deny they have the power of doing, namely, to complete the line between Market Weighton and Cherry Burton. They say it would be unlawful for them to go so far without going further. *Cohen* v. *Wilkinson*, 5 Rail. Cas., 748, is constantly cited as an authority in their favour; but when that case is examined, it appears to me that if it is to have any application to the present case it is in favour of the prosecutors. Where, a company being formed and incorporated to construct a railway from Epsom to Portsmouth, the directors resolved that they would make the line from Epsom to Leatherhead, and, they having entered into an arrangement with another company, the original line was to be abandoned, certain shareholders who wished the line to be adhered to filed a Bill for an injunction. Lord Langdale very properly held that the directors had no power to change the original design. This shows that the present defendants are altogether unwarrantable in resolving that they would apply the funds of the company to make the line as far as Market Weighton and no further, and that the original design of completing it to Beverley should be abandoned. The dispute there is between the shareholders and directors, who are charged with a breach of trust; and what is there laid down has hardly any application to a case like this, in which it is contended that a railway company has not performed the statute duty imposed on the property, and injury accrues to individuals not members of the company. This *mandamus*, instead of requiring the company to abandon the original design mentioned in the Act of Parliament, requires them to proceed in carrying it into effect. It can be no misapplication of the funds to make the line from Market Weighton to Cherry Burton, any more than it would be to keep them in their own hands at York or Market Weighton. Suppose the company were now to remove the rails from that portion of the line, *Rex* v. *The Severn and Wye Canal* would be a clear authority for a *mandamus* to restore it, and the argument that this is only part of an incomplete line would be as strong against the *mandamus* as with respect to that portion of the line between Market Weighton and Cherry Burton. The defendants further contended that Cherry Burton is a small village, three miles from Beverley; that a convenient station could not be made there for the inhabitants of Beverley; that the district is thinly populated; and that there are means of convenient communication from that to other places in England, irrespective of the railway to Beverley. But what weight can we attach to these assertions, contrary to what is declared in the preamble of the Act of Parliament, that it would be attended with local and public advantage if this railway were made. The company must have had to bring forward evidence to convince the two Houses of Parliament that the preamble was true, and that they were willing to execute their contract. If the prosecutors and the public are entitled under the Act of Parliament to still greater advantages when this *mandamus* shall be obeyed, it seems strange that the company should be permitted to allege their own wrong as a reason for withholding what is now claimed, and what may now be done. The company next allege that the portion of the line described in the *mandamus* would not be remunerative to the company. This is very likely to be true, or it would have been completed and open long ago; but no one can seriously contend that the company, having obtained powers to make a long line of railway, can at their pleasure make the parts that would be profitable and abandon the rest. Need I do more than repeat the futile language which follows in the return, "that the making of the same railway would be a useless expenditure of labour and money, whilst it would be destructive of the lands through which it would go for any agricultural or other useful and beneficial purpose?" It was hardly contended an issue could be taken on such an allegation; and it was hardly denied, although the making of a particular portion of the railway may not be profitable to the company, it may be of great benefit to individuals and the public that the whole should be completed. I have only further to notice the allegation of want of funds, in these words: "That all and every sum and sums of money applicable to the purposes of the said York and North Midland Railway Act, 1849, which can in reasonable probability come to the possession or be disposable by us the said company will fall short, by the very large sum of money of not less than 100,000*l.*, of the aggregate sum necessary for the making of the railway authorised by the said York and North Midland Act, 1849, and which we, the said company, are by the annexed writ commanded to make." I am not sure how far this part of the return is meant to be relied on; for the Solicitor-General, in arguing the question whether such an Act of Parliament only gives a permission and imposes an obligation, insisted that if there were an obligation, the want of funds would be no defence. Upon an application for a *mandamus* to complete the railway, where they clearly made out to the satisfaction of the Court that the company, although carrying out the design with good faith, was from unforeseen casualties left entirely without funds, I make no doubt, in the exercise of our discretion, we should refuse the application, and leave the parties to such relief as they may obtain by the interposition of the Legislature; and I am not prepared to say that, a *mandamus* having

issued, there might possibly be a return of the absolute exhaustion of funds, and the impossibility of raising any, so as to amount to an answer but I am quite clear that this attempt at alleging a want of funds is wholly abortive. The defendants do not say, they have not funds in their hands which would be sufficient to enable them to do all they are commanded to do, which is, to complete the line from Market Weighton to Cherry Burton; they merely allege that there is a reasonable probability that they may not have funds for all the purposes of the Act of Parliament. Such a reasonable probability the prosecutors could not take an issue upon capable of being tried. I think that the plaintiff did well in demurring to the return, for, in my opinion, it affords no answer to the *mandamus* either by any separate answer or by its multifarious allegations taken together. I most heartily rejoice that these questions are on record, that it may be carried to a court of last resort. In the meantime, agreeing in opinion with my brother Crompton, I must pronounce that the judgment ought to be for the prosecutor for awarding a peremptory *mandamus*.

Judgment for the prosecutor.

June 9 and Nov 16

REG. *v* THE LANCASHIRE AND YORKSHIRE RAILWAY COMPANY.

Railway—Obligation to complete line

Prima facie, there is an obligation on a railway company that has obtained an Act of Parliament to make a railway to complete such railway; and the company may be compelled to do so, by a writ of mandamus although the company may not have taken any step towards the formation of the railway

Mandamus to the Lancashire and Yorkshire Railway Company to make and complete an extension of the Holmfirth branch of the Huddersfield and Sheffield Railway, pursuant to the 10 & 11 Vict c cxii

Return—That nothing had been done under the 10 & 11 Vict c cxii towards exercising the powers of the Act, by the company

Demurrer thereto

By the 10 & 11 Vict c cxii "An Act to enable the Manchester and Leeds Railway Company to make an extension of the Holmfirth Branch of the Huddersfield and Sheffield Railway the extension railway was directed to commence by a Junction with the intended Holmfirth branch of the Huddersfield and Sheffield Junction Railway and terminate at a point about 100 yards north of the New Church at Holmbridge in a field occupied by Barber in the township of Cartworth

By sect 15, after the expiration of five years from the passing of this Act (2nd July 1847) the powers for making the said extension "shall cease to be exercised, except as to so much of the same as shall then be completed"

By the 10 & 11 Vict c cxiii the name of the Manchester and Leeds Railway Company was changed to that of the Lancashire and Yorkshire Railway Company

Swanston (*Addison* with him) in support of the demurrer, and *Sir F Kelly*, contra

The same authorities were cited as the arguments as in the previous case of *Reg v The York and North Midland Railway Company* *Ante* vol xviii

Tuesday November 16—Lord CAMPBELL, C J—We have now to deliver judgment in the case of *The Queen upon the Prosecution of Rawcliffe*, against *The Lancashire and Yorkshire Railway Company*, where nothing had been done under the Act of Parliament towards making the railway

The *Solicitor-General*—In reference to this case I am instructed to inform the court that, since the argument was heard, an Act of Parliament has passed relieving the company.

Lord CAMPBELL, C J—We must give judgment

The *Solicitor-General*—Exactly so only I thought it my duty to inform the court of what has taken place

Lord CAMPBELL, C J—If they have got an Act they have pursued the right course We must give judgment on the *mandamus*

JUDGMENT.

Lord CAMPBELL, C J.—This case was argued before my brother Coleridge, my brother Crompton, and myself My brother Crompton, who has read my judgment, concurs in it My brother Coleridge has likewise read it, and he, being present, will state now how far he concurs in it After long and anxious deliberation, I have come to the conclusion that we are bound in this case to pronounce judgment for the prosecutor. Where the directors of a railway company have actually availed themselves of the extraordinary powers conferred on them at their own solicitation, and on their own representation, by getting possession of lands without the consent of the owners, and beginning the foundation of a railway which necessarily interferes with public as well as private rights, I have never been able to bring myself to doubt that there is a duty incumbent on them to complete the undertaking, and that we are empowered to compel the performance of this duty by *mandamus*. Whether, where a company have done nothing as between themselves and third parties, or the public, under their parliamentary powers, they may not wholly abandon the undertaking is a very different question. I was at first inclined to think that until they had actively interfered with public or private rights after the passing of their Act of Parliament, they are not to be considered as having entered into any contract, or incurred any obligation to execute the undertaking. Neither individuals nor the public necessarily suffer any severe injury by the scheme having been formed and repudiated, and neither the consideration nor the promise which constitute the contract or obligation can be said to be so apparent if the shareholders agree to dissolve the company as soon as the Act of Parliament has passed But my present opinion is, that the moment the Act receives the royal assent the contract and obligation attach, and that by the Legislature alone can the contract and obligation be subsequently dissolved. There is great difficulty in drawing any other line The notion that upon the passing of the Act there is a *locus penitentiæ* still allowed the company, is rather a gratuitous supposition and I know not on what principle we are to interpolate the condition, if companies avail themselves of the extraordinary powers, which they have obtained on the declaration that, they are ready and willing, at their own expenditure to execute a work declared by the Legislature to be greatly for the public benefit Regarding the transaction as a matter of contract, we may well conclude, as between companies and the owners of the land to be taken for a railway as well as with the public, the contract is absolute when the Act passes There is ample consideration in any prejudice which the landowners sustain in being subject to any liability to have their land forcibly taken from them and in the benefit they are to receive to the company The reciprocal consideration flowing, from the company is the expenditure which they are to incur and the benefit they are to confer by making and completing the railway In mutual consents are given through the medium of the Legislature It was argued at the bar that all these Act of Parliament only gave a permission to the company because the powers are limited to a certain number of years But this limitation seems manifestly to be introduced for the protection of the landowners without giving the company the power at their pleasure to abandon their undertaking For the landowners there is no *locus penitentiæ* for the instant the Act receives the royal assent the company have the compulsory power of purchasing all the lands required by them throughout the whole extent of the railways as specified in the books of reference and by which notice they may become the actual purchasers at any moment until the last period to which the power of compulsory purchase is limited expires Until then the landowner is deprived of his full rights of ownership and if the agreement to be compensated by the construction of the railway they would in many cases sustain a serious loss during all the time while the compulsory powers of purchase subsist, and they are prevented from alienating the land or leases inscribed in the book of reference and from applying it to any purposes inconsistent with the claim which may be made to them by the railway company During the whole of this time is the party to the contract to be bound and the other to be free? May not the public be considered privy to the contract? and may not the public be moved at the contract may be repudiated by the company at any time before it is acted on? The fact is stated it would be for the public benefit that a new line of communication should be open between certain towns and the privilege of making it is conceded to a company with extraordinary powers over highways and other public rights Competitors who were willing to construct a railway between the same termini or defend for the period of at least fifty years no similar scheme can be brought forward May it not reasonably be concluded then that the company is bound to perform their part of the contract as well in respect of the public as of the landowners A permission which works any prejudice to the party who grants it may well be the subject of a bargain with the grantee but it is granted at the request of the grantee, on the representation that he is about to exercise it for the benefit of the grantor, who cannot withdraw is not the fair inference that the obligation is reciprocal? Rash and reckless speculators in railway shares may thus be considerable losers, if when the shares suddenly fall to a discount they may, at their pleasure break off the concern but if a speculation of this sort is conducted on fair commercial principles, no real hardship can arise from the consideration that the contract binds the company as well as the landowners and the public The companies always declare their readiness and willingness to execute the work for the public benefit and they engage to find funds for the purpose If the calculations have been honestly and prudently made, there is hardly a possibility of any discovery before the work is begun, that it may not be advantageously carried into effect If in the progress of the work unforeseen difficulties arise—if a tunnel costs much more than might reasonably have been expected, or a bridge is swept away by an inundation—a new arrangement may be made under the sanction of Parliament Applications have been repeatedly made, of which an instance is stated by the Solicitor-General here to-day,—applications have been repeatedly made to Parliament with success by railway companies for leave to abandon the whole of their undertaking, or a particular branch of it. I cannot allow, therefore, that the apprehended ruin of shareholders should induce us to abstain from giving such Acts of Parliament the construction which may fairly be put upon them. We are to find out what is the just inference, from the nature of the transaction and the language employed In some of the Railway Acts we find the expression,—The company is required to make and maintain the railway in others "It shall be lawful for the company to make and maintain the railway." I do not believe a different meaning is really intended by these different expressions The rule for construing the language of Parliament upon this subject is to be found in Comyn's Digest, "Parliament," R 22 Words of permission and obligation shall be obligatory If a statute says a thing for the public benefit may be done it shall be construed that it must be done According to this rule, a railway is expressly declared to be for the public benefit, and these two forms of expression in the Act of Parliament for the same object are synonymous Reliance was placed by the defendants' counsel on the case of *Innerarity v The East of Fife Railway Company*, 1 M Queen , the case to which I before referred. But when that case comes to be explained it will be found to be no authority for them. There the special Act received the royal assent on the 16th of July, 1844 The company, having received deposits and calls but before commencing any works or having any note of plans on the 28th of March, 1849, came to a resolution to abandon the undertaking, and apply to Parliament for an Act to authorise them to do so On the 30th of May following the appellant made an application to the Court of Session in due form, "that the company might be interdicted from taking any steps or proceedings, having for their object the dissolution of the said company, and from returning or paying back to the shareholders the money advanced and paid by them into the said company in the shape of deposits or calls, and from violating the contract or agreement entered into between him and the company and from acting in any other way prejudicial to the interests of the plaintiff under the said contract or agreement or contrary to the provisions of the statute incorporating the said company." That was the form of interdict applied for and which was refused the appeal was against the interlocutor refusing the interdict The appellant's counsel at the bar of the House of Lords admitted that the interdict would have prevented the company from coming to Parliament for an Act authorising them to abandon the undertaking, but relied on the very questionable dictum of Lord Cottenham, in a case where a company had begun to make a railway, that the Court of Chancery may grant an injunction and stop the proceedings in Parliament contrary to the contract supposed to have been entered into That most distinguished judge for whose memory I have the profoundest respect, had a notion that the Court of Chancery was to be omnipotent. It further appears that the appellant had brought an action of declarator against the company for the purpose of having it found that the company had no right to abandon the undertaking, and that in this action judgment had been given against him Lord St Leonards therefore, in advising the House to dismiss the appeal, observed:

What is prayed for is a general injunction on the assumption that the right will be established, at the very period when the right has been devised, and the injunction is to be dissolved by a judgment against the appellant In the action of declarator the appellant prays that the company may be prevented asking Parliament for an Act to put an end to its property It is perfectly clear that the terms in which the injunction is sought would go to interdict such an application If such a person desires to oppose a projected measure in Parliament, he is at perfect liberty to do so, and he would be duly heard by the Legislature on the ground of his interest But, says Lord St Leonards, "to grant an injunction under the circumstances of the present case is impossible, and he afterwards goes on to observe 'that to support the appeal, the propriety of the interdict in all its parts, as prayed, must be proved,' and that "there was no pretence for saying that the appellant had any right to restrain the company from paying back the deposits to the shareholders." The affirmance of the judgment refusing the interdict, is no authority against this *mandamus*. The question that is now before us, is more nearly touched by the action of declarator in the Court of Session, which will be found in the note of Mr M Queen's report of this case, that is that in the action of declarator that very learned judge, Lord Wood decided that the action was not maintainable, but he proceeded solely on the ground that it had been commenced too late, and an Act had been passed by the Legislature authorising the company to abandon the undertaking. He says, "The compulsory power enabling the company to take lands expired in July 1849. In 1850 they applied to Parliament for leave to dissolve themselves, and, having proved to the satisfaction of the

[illegible] QUEEN'S BENCH.

committee that the construction of the railway had never been commenced, and that it was expedient to abandon it, the Bill passed, directing the company to cease to exist, except for the payment of its debts, and that the company are absolutely released and discharged from all obligation and liability to make the railway. The action of declarator, therefore," says Lord Wood, "was intituled before the passing of the dissolving statute, but not till after the compulsory powers of taking the lands under the original Act had expired, so that the pursuer was clearly too late in bringing his action." His Lordship, however, goes on to intimate a pretty strong opinion. These are his words: "If a proper demand had been made whilst the compulsory powers subsisted, and within a reasonable time before there was a cessation, an action for that purpose timeously raised (that is, in time) would have been maintainable by the pursuer, and he might have been entitled to the decree now prayed against the defendants." Therefore we have the authority of Lord Wood in favour of this *mandamus*. Looking to the 10 & 11 Vict. c. cili. the special Act for making this extension, by an existing company which had previously made the line of railway to be extended, I doubt whether the company, in respect of an extension, are exactly in the situation of a new railway company, which had been created to construct a new railway, but have never availed themselves of any of the powers of the Act. But, supposing the defendants to be in this situation, I think that their return to the *mandamus* would be bad, as clearly showing that they have broken the contract and disregarded the obligation to construct the railway, which they are commanded to make. I have now to make a few observations on the form of the mandatory part of the writ, which was strongly objected to by the Solicitor-General, and which is said to command what is unlawful, by requiring the company to take all necessary acts and steps, both as to the purchase of lands and otherwise, for making and completing and to construct the company's said extension railway pursuant to the statutes in that behalf. Under the 4th and former sections of the Act 10 & 11 Vict. c. cili. power is given to raise a sum of money by the creation of new shares for making an extension and likewise to borrow on mortgage. If this money ought to have been raised by new shares on mortgage before the company proceeded to purchase under the compulsory powers, part of this writ requires them to do so. We must assume that the company have no difficulty in performing their undertaking. On arguing this objection we must assume that no obligation upon the company exists to execute the work, and to do all that is necessary for the purpose; they are in substance called on to take all the steps necessary for the completion of the railway in the order which the Act prescribes. Upon the whole, it appears to me that this writ of *mandamus* is valid in form as well as in substance; and, the only return to it being that the company, having taken no steps towards the making of the railway, are not bound to make any, I think there ought to be judgment for the prosecutor, with the award of a peremptory *mandamus*.

Mr. Justice ERSKINE, J.—I am of the same opinion, and as I have had an opportunity of reading and considering attentively both the judgments of my Lord now delivered, it is scarcely necessary for me to add more than my concurrence in the conclusion to which he has come, and, speaking generally of the arguments and the view of the authorities by which he has been guided to it, I should merely waste time in an attempt to repeat the former or to re-examine the latter. In the case now for decision it seems to me perfectly clear, if the writ has disclosed a *prima facie* case on which it can be supported, the return alleges nothing whatever to displace that case. The return can be no answer unless this can be maintained—that the defendants may make a representation to the Legislature, on which they are called upon to prove the truth, that it will be a great public benefit, that the railway shall be constructed for a particular distance and by a particular line, and that they are willing at their own expense so to construct it, and procure from the Legislature all necessary powers; and, most strange to say all, for that purpose that by this power they should in case, and for the whole number of years specified by the Act, take from the landowners on the line the free use of their property—impede all improvements—prevent all sales; that they should indirectly but effectually prevent the district from the admitted benefit of having a railway constructed by any other parties; and yet they, having thus procured the powers, given the undertaking, and occasioned the inconveniences above stated, may simply do nothing, retaining, however, all the power for the time specified. In this case the defendants allege no inconvenience, no impossibility of making the line, no want of means or funds; so that the bare and single circumstance of their having done nothing is relied on to relieve them from the obligation of doing anything. That very circumstance seems to me sufficient to show how entirely impossible it is to justify this return. The real question then is on the writ; and, after much consideration and some hesitation, I am of opinion that it discloses a sufficient legal right in the individual making the application, and sufficient obligation upon the defendants to render it valid. It alleges that the whistle of the projected line will pass through the township of W.; that Mr. Hinchcliffe was and is the owner of lands in C. through which the line will pass, and these lands are shown in the plans and his name included in the books of reference; and that he is desirous that the line should be made. He is therefore not merely interested as one of the public in the general benefits to result from the projected line; he is not merely one of the public in whose behalf the contract was made for the construction of the railway; but individually he has been affected in his property by the acts of the defendants. Ever since the statute passed at their instance, they have exercised a control over his lands, and he has been impeded in improving them, and substantially prevented from selling them. The only recompense for this is the specific performance of that which was originally contemplated by the parties and intended to be provided by the Legislature; none other would be complete, and to have this, in my opinion, he has a legal right. I therefore agree with my Lord that our judgment should be for the crown.

CAMPBELL, C. J.—Judgment for the crown and a right of peremptory *mandamus*. I would observe that this is certainly one of the most important cases ever argued in Westminster Hall, and it is certainly attended with considerable difficulty, and I earnestly hope that with all possible speed it may be brought before a higher tribunal.

HOUSE OF LORDS.

Reported by JAMES PATERSON, Esq., Barrister-at-Law.

Nov. 26 and 30.

THRELL *v.* ATHERTON and OTHERS.

Devise—Conversion—Real and personal estate—Cestuis que trust accelerating the enjoyment of trust funds.

A testator devised his real and personal estate to trustees, charging them not to sell, if they could avoid it, the real property till the end of nineteen years; but, if they should sell part, to apply the proceeds to pay off his mortgage debts, and to hold the residue till the end of the nineteen years, when the proceeds were to be paid to his children A., B. and C. in certain shares. The trustees declined to accept the trust. All the cestuis que trust then executed a deed of trust, by which they agreed to divide the property into two classes (1 and 2). Class 1 was to be sold immediately, to pay testator's debts. Class 2 was to be held by the trustees named, in trust for the purposes of the will, so far as not inconsistent with the trust deed, to pay the rents accruing to the parties as entitled under the will, and with power to a majority of the trustees to sell even within the nineteen years, at the end of which period, however, the property was to be sold absolutely, and the proceeds divided as the will directed. B. died before the end of the nineteen years.

Held, that under the trust deed there was a conversion out and out of class 1 from the date of that deed; but that there was a conversion of class 2 only at the end of the nineteen years, or, if sold before that period, then at the time of such sale; and that the intermediate rents of the part remaining unsold went to those entitled to the real estate.

Semble, under the will taken by itself, there was no conversion till the end of the nineteen years of that part of the real property which was then unsold, any conversion possible before that period being only for a certain limited purpose, that is, to pay debts of testator.

Robert Ferrie, builder in Glasgow, executed his will in 1837, by which he devised all his real and personal estate to trustees, on certain trusts therein specified. The real estate consisted of freehold houses in Glasgow, situated in St. Vincent-street, Renfield-street, Carlton-place, Buchanan-street, and Gordon-street. The 5th clause of the will was as follows:—"5th. It is my earnest desire and intention, that no part of my real estate (except that in Carlton-place) shall be sold until the eldest of my grandchildren, if any, shall attain the age of twenty-one years; or, in case of no grandchildren, until the expiration of nineteen years from the date of these presents; after which period, as the same may happen, and not sooner, if advisable by any reasonable means, the subjects may be sold, according to the judgment of the said trustees, and the free proceeds thereof divided and paid to and for behoof of my said children, their executors, &c., conform to their several rights and interest under this will; and in no event shall any part of the prices of my real estate, except that in Carlton-place, be divided or paid to my legatees, &c., until the period of division above written; and in every case the price of any subjects sold shall in the first place be applied in paying and clearing off the mortgage debts affecting that subject, and the residue of the price, if any, shall be applied towards paying other mortgage debts, until the whole shall be cleared off." The 6th clause provided, that, until the termination of the trust, and until the whole property should be sold, the trustees should divide and pay the free residue and proceeds of the same—one-fourth to his son William, one-fourth to his daughter Christian, and two-fourths to his son George. The 8th clause provided that, after the expiration of the nineteen years, and disposal of the real property, or such part thereof as might be necessary for the purposes of the [illegible] and payment of the whole debts, "the said trustees shall divide and pay, or dispose themselves of the whole free residue and remainder of the aforesaid trust subjects, and the proceeds thereof to and in favour of" the said children. The trustees were also empowered to borrow money on the security of the real estate. At the death of the testator, the trustees declined to act on account of the heavy debts on the estate, and the length of the period to which the power of sale was postponed. They accordingly advised all the parties beneficially interested, as there were no grandchildren, nor the prospect of any, to execute a trust deed, the object of which should be to accelerate the enjoyment of the fund. This was accordingly done in 1845. This deed recited the will of the testator—that his object had been to postpone the sale, in order to increase the value of the property; but that now it had been found that the property had reached its maximum value, and it was desirable to dispose of, at least, a large portion in order to pay the debts of the testator, which were heavy. They therefore bound and obliged themselves "to arrange and agree to the following mode of managing, superintending, and realising the whole of the trust property belonging to the testator." The deed then provided, in clause 2, that the whole of the property in St. Vincent-street, Renfield-street, and Carlton-place should be immediately sold, and the proceeds applied to pay testator's debts. The 4th clause provided that the whole of the free rents and proceeds of the remaining property in Buchanan-street and Gordon-street, so long as it remained unsold, should be divided and paid amongst the beneficiaries in the shares and under the provisions, restrictions, and limitations contained in the will. The 5th clause provided that the residue of the property in Buchanan-street and Gordon-street should be conveyed to five trustees, to hold to the uses of the will, so far as they are not inconsistent with this deed. The 6th clause provided that if a majority of the trustees appointed under this deed should, at any time before the end of the nineteen years, think it advisable to sell the property in Buchanan-street and Gordon-street, they should have power to do so, and to bind the minority, and, in the event of such sale, the shares of the price were to be paid to those designated in the will. The 7th clause provided that if the last-mentioned property should not be thus sold before the end of the nineteen years, then at such period it was to be sold in auction at the highest price it would fetch, and the proceeds divided in the shares specified by the will.

Before the end of the nineteen years, viz. in 1847, William Ferrie, one of the sons of the testator, died. At that time the only property unsold was part of that in St. Vincent-street, and the whole of that in Buchanan and Gordon-streets. William Ferrie left a will, by which he conveyed his whole interest under his father's will and under the trust deed above mentioned, and to which he was a party, to trustees. This will was voidable or not according as the interest which was vested in William at his death was of the nature of real or personal estate. If it was real property, then it passed to the appellant, if personal, it passed to the respondents, who were trustees of William Ferrie's will. The Court of Session held, that the interest of William Ferrie was of the nature of personality, there having been a conversion out and out under the trust deed, but declined to give any opinion as to whether his interest would have been the same if there had been no trust deed executed by the beneficiaries. Against that decree the heir-at-law now appealed.

Bethell and *Anderson*, for appellant, cited *Cookson* v. *Cookson*, 12 Cl. & Fin. 148; *Crabtree* v. *Bramble*, 3 Atk. 680; *Advocate-General* v. *Williamson*, 2 Bell's Appeal Cases, 89; Jarman on Wills, 526.

Rolt and *Dunlop*, for respondents, cited *Grierson* v. *Kirkupp*, 2 Keen, 658; *Burrell* v. *Baskerfield*, 11 Beav. 525; *Ashby* v. *Palmer*, 1 Mad. v. 296; *Amphlett* v. *Parke*, 2 Russ. & My. 221; *Jackson* v. *Burlock*, Ambl. 487; *Biggs* v. *Andrews*, 5 Sim. 424.

The Lord CHANCELLOR.—My lords, this case has been very elaborately argued, and the only difficulty which I feel is, upon what is the nature of the property between the time of the creation of the trust and the expiry of the nineteen years. I think there is no serious difficulty as regards the true construction of the trust deed. There may be a point of considerable difficulty upon the testamentary instrument, without going any farther into that at present; but the parties assumed a power to alter the destination of the property in an unusual way—not by altering the beneficial interest—but they assumed a power positively to sell the property, at a time when it was not saleable under the testamentary instrument; and the deed in effect assumed the power of abrogating that instrument, because their otherwise power could have obtained a power to sell the estate to the satisfaction of a purchaser, and to the satisfaction of the judges in the courts of Scotland, available on an immediate sale not bound by those trusts. I must, therefore, assume, that the deed of August 1845 enable the parties by that deed to delegate the property in the manner in which they thought proper. Ultimately there were no children, and I observe that all the judges, without giving any distinct opinion upon how far the parties had the right to abrogate

the will, from distribution, in the event which had happened, under the deed, must it must assume it, to be vesting. But upon this construction still upon the same hypothesis no doubt upon as regards that will, there had been of the property was this:—The testator had two properties; one, the whole of which was unquestionably fit for sale, and considered ripe for sale. It would certainly sell as well at the period named in the deed as it would at a future time; and there was a desire to accelerate the sale because the estate was very heavy. The creditors were pressing, and there were no assets to meet the debts. But the testator had unfortunately postponed the sale of this to the end of nineteen years. The parties, therefore, agree to a new arrangement. Now, in the first place, I think it will be admitted that the parties do not agree to an absolute sale of the whole property, that is, they have not expressed that intention; but when they come to deal in the operative part of the instrument with the property, they dispose of it in this way: They divide the property into two classes—the St. Vincent-street, Ranfield-street, and Carlton-place property are placed in one class, and the Gordon-street and Buchanan-street property in the other class. Now they deal with it in this way. The first property is to be sold immediately, and converted into money; and it is perfectly clear (and it is more like a power than a trust) that there was an absolute conversion of the property for the payment of debts. But it was assumed throughout the whole of that instrument that that fund would be exhausted in the payment of debts. It was perhaps thought that that fund would be sufficient to pay the debts, but it nowhere appears to have been supposed that there would be a surplus of that property after the payment of debts. The whole of the property, however, was delegated to the payment of debts. Now, in the result, debts are at this moment unpaid which are clearly provided for in this deed, and to the payment of which the first class of property is delegated by this deed. Therefore it is quite clear that that trust still remains to be exercised as regards the St. Vincent-street property, and, remaining to be exercised according to the settled rule of law, we must consider the property as converted from the time when it ought to have been converted, that is, forthwith after the execution of the deed. As regards the St. Vincent-street property there is no difficulty at all. Then comes the second class of property, the Buchanan-street and Gordon-street property. No absolute disposition seems to have been anticipated of any surplus fund arising from the property in the first class after the payment of the debts and the way in which the parties have dealt with the property in the second class is this: they have said, in the 4th clause, that until that property is sold, the rents shall go according to the destination in the will. That admits the only real doubt in the case. Till there is a sale you will take the legacy. Now observe that, if it had not been for the death of a party, it would have been perfectly indifferent whether the character of the property was changed or not. The person entitled under the will was to receive the rents equally under the deed. It would be perfectly indifferent whether he took it as real property or as personal property. But it is his death which has caused the difficulty which the House has now to deal with. Now, considering the matter as remaining certainly untouched by that 4th clause, then you come to the fifth clause, and that clause says, that immediately after the sale of the property in the first class, and the disposition of the proceeds in the manner specified, or, in other words, as soon as you have sold all the property delegated to the payment of debts, and paid those debts, and assuming in that particular part in the commencement that the debts would be paid by the application of the property in the first class, then it goes on to say, you shall forthwith deal with this property in the second class and convey it to the persons who are interested under the will, although not interested in the property in a way in which it can be directly conveyed to them or their survivors, but in trust, according to their several rights under the testamentary deed. So far that is untouched again. The property itself—the heritable property—the *corpus*, is there left to go according to the deed, hitherto, we will say, untouched. But there is this material proviso, or condition, or modification, at the end—"but in so far as it is not inconsistent with, or does not contravene any thing hereinbefore or after contained." And therefore it amounts to this,—you have sold the parties that when this property in the first class is sold, the rents of the property in the second class shall go to the persons entitled. Then, when the property in the first class is paid, you shall convey the property in the second class to the persons entitled to it, as trustees. They would not get it before, but in trust as if they really were entitled. Now, these are the words "immediately and effectually." They anticipated that, notwithstanding the sale of the property in the first class, and the conveyance of the property in the second class, to those persons, a case might become necessary to sell the property in the second class, or might be thought desirable; and then, by the 6th clause, they gave the trustees power to the majority to bind the minority to sell that property which has not before been directed in the 5th clause to be conveyed to those parties. They give the right and the absolute power to the majority to bind the minority to sell that property, notwithstanding the 5th clause. It is clear, therefore, that the property might be sold, whether it was thought necessary or not. If necessary, surely to be sold; if desirable, in the view of the majority binding the minority, equally to be sold. Therefore, if that sale should take place, then that property at once becomes impressed with the character of personal estate, and, being impressed with that character from that moment it is to belong to the persons who are entitled to the personal estate, and not to the persons who would take it as real property. Then comes the last clause—it is plain enough. They say, whether there are children or not, in the event of your not having exercised that power which is given to you to sell the property in the second class before the expiry of the nineteen years, that is, the nineteen years pointed out by the will—to that extent, therefore, bowing to the will of the testator, and intending to carry his views into effect so far that it might remain for nineteen years, but upon the expiry of the nineteen years in the event of its not having been sold, then it is perfectly clear by the 7th clause, which is now under your lordships' consideration, that the property is absolutely to be sold without the power of any body to prevent that sale. The sale is imperative, and being so, from that moment the property is impressed with the character of personal estate. Now observe how the price of that property so sold is to be applied. It is to be applied in the payment of the debts, if any, which shall then remain. So that the parties anticipated that, even at that time, the debts might not have been paid by the application of the other estates and yet that the party entitled might not have thought fit to sell the estates in the second class. The estates in the second class are absolutely to be sold and the money is to be applied to the payment of the debts. The result therefore is, in the view which I take of this part of the case, that the decision of the court below is perfectly right as regards the *corpus* of the property. I think that the estates in the second class must be considered as personalty when they are absolutely to be sold. But I do not entertain the same opinion as regards the intermediate rents arising from them. It does not appear to me that there is anything in this deed of trust which converts the property from the time it is delegated by the trust so as by expression but not by implication, to give those rents to the parties as personal estate. If that is the true view, the result would be that as far as regards the rents till the sale or till the time arrives when the sale is directed those rents would go to the parties who would take them as real property the *corpus* of the estate itself not being there referred to. But as this point was not taken in the court below I will not advise your lordships to dispose of that point now, but reserve it for further consideration. *Cur adv. vult.*

Tuesday, Nov. 30.—The LORD CHANCELLOR.—My lords I reserved for your lordships further consideration the question with regard to the rents until the time of conversion should have arrived having already stated the grounds on which it appeared to me that there was an absolute conversion at all events at the end of nineteen years. I have now looked with the greatest possible care at every word of the will and the deed of trust with a view to the point thus reserved. I think it very far from clear upon the will that there was an absolute conversion as regards so much of the property as might have remained unsold for the purposes of the debts and so on. But I do not think it necessary to pronounce any opinion upon that instrument, because I am clearly of opinion that the case depends upon the deed of trust and in that deed there is not a single word which I can find which amounts to an absolute conversion before the period of nineteen years shall have elapsed. There may be before that period a conversion for certain purposes, but if there should be no such conversion (with which your lordships will not interfere), then the conversion will take place from that particular period. But, in the meantime, the rents and rents are to be disposed of with the greatest possible care, and the estate itself is directed to be conveyed in trust for the parties who are to receive the rents. I think it is perfectly clear that, till the time specified, there is no absolute conversion. What I propose to your lordships therefore is, that there should be an affirmance of the interlocutor complained of, with this variation, namely, that there should be a declaration that there is no absolute conversion of the Buchanan-street and Carlton-place property till the expiration of nineteen years, unless, under the other provisions in the second deed, an actual sale shall occur, in which case the conversion is to be deemed to have taken place from the time of that sale. With that variation, I propose to your lordships to affirm the interlocutor complained of; but, as a question of [illegible] is involved, and as a variation must be made in the interlocutor, there will be no costs on either side.

[illegible]

LORD CHANCELLOR'S COURT.

Reported by C. E. Rundle, Esq., of Lincoln's-inn, Barrister-at-Law.

Saturday, Dec. 16.

(Before Lord St. LEONARDS and [illegible], C. J. COX v. DOLMAN.

Statute of Limitations—Annuities secured by [illegible] years—Arrears of annuity—Recovery of [illegible] of Young, Lord Waterpark, and Hunter v. [illegible] olds, considered

A general devise and bequest of freehold and [illegible] estate to trustees, their heirs, &c. to the use [illegible] of the testator's son and daughters, R., A., and [illegible] might during their joint lives take certain rent-[illegible] and that after the decease of either the [illegible] might take a rent-charge of 900l. per annum [illegible] during their joint lives, and that after the [illegible] two the last survivor might take a rent-charge [illegible] per annum for life, with powers of distress [illegible] and subject thereto to trustees for a term of [illegible] nine years, in trust for better securing the rent-[illegible] by usual means, without any trusts further, but with a provision that upon satisfaction of the trusts the term should cease, with further limitations, under which S. (since deceased) was, and R. S. is, tenant for life in possession. By a codicil, the testator bequeathed an additional 100l. per annum to each of his daughters A. and M. for life, with a provision that after the death of either her annuity should go to the survivor for her life, and which annual sums were charged and made payable by reference in the same manner with those given by the will. R. died in 1838, and A. in 1838. From the former to the latter period M. received only 300l. a-year. From the death of A. to the institution of this suit she had received only 400l. a-year. On a bill filed by her against the personal representatives of S. and against R. S., as defendants, for the arrears of the several annuities to which she was entitled as well under the will as under the codicil of the testator

Held, that the statute of limitations did not apply.

So long as the legal estate on a term remains unbarred, and the trustee can obtain possession, the right of the cestui que trust is not barred

The question in this case was, for what period of time an annuitant was entitled to recover the arrears of several annuities.

The point was originally brought before the Master of the Rolls, but in consequence of the supposed conflicting opinions of Lord Lyndhurst in the case of *Young v. Lord Waterpark*, 13 Sim. 199, and (on appeal) 1 Dr. & W. 68, C., and Lord Cottenham in that of *Hunter v. Nockolds*, 1 Mac. & Gor. 640, the case was heard before the full Court of Appeal.

The facts were shortly these:—Robert Kilby, by his will bearing date the 19th day of May, 1820, gave, devised and bequeathed all his freehold, copyhold, and leasehold estates to trustees upon trust, that his son Robert Kilby, thereinafter called Robert Kilby Cox, the son, and his daughters Alicia Mary Cox and the plaintiff Mary Ann Cox, and their respective assigns should and might enjoy, have, receive, and take out of the rents, issues, and profits of the said estate one clear yearly rent-charge of 200l. each during their joint natural lives, and that upon the decease of any one of them, the two survivors and their respective assigns might have, receive, and take thereout one clear yearly rent-charge of 300l. each during their joint natural lives, and after the decease of either of them then that the ultimate survivor of them, and his or her assigns, might have, receive, and take thereout one clear yearly rent-charge of 300l. during his or her natural life, the said several yearly rent-charges to be paid and payable at the said testator's said son and daughters respectively at the times therein mentioned, with powers of distress and entry for enforcing the due payment of the said rent-charges respectively as were usual in cases of nonpayment of rent reserved on common demises, and subject thereto, to the use of trustees, their executors, administrators, and assigns, for the term of ninety-nine years, to be computed from the time of his (the said testator's) decease, upon trust for better securing the due payment of the said rent-charges respectively, and subject thereto to uses in strict settlement under which Samuel Cox the son was tenant for life in possession, and under which Richard Snead Cox was now tenant for life in possession. By a codicil dated 23rd of October, 1827, he gave, devised, and bequeathed to each of his daughters Alicia Mary Cox and Mary Ann Cox, and their respective assigns, for and during their respective natural lives, one further annual sum or yearly rent-charge of 100l. sterling, to be issuing out of and charged and chargeable upon all and every his freehold, copyhold, and leasehold estates, to be raised by the trustees, of the term of ninety-nine years, and to be paid and payable at the same times; and the said testator did [illegible] that his daughters and trustees [illegible] same powers and remedies for [illegible] paying payment thereof [illegible] will were mentioned [illegible]

LORD CHANCELLOR'S COURT.

annuities of 200*l.*, therein respectively given to the said daughters; and after the decease of either of them the said testator thereby gave to the survivor of them and her assigns for her life the additional money of 100*l.* thereby given to such one of his daughters as should first depart this life, with the same powers and authorities as were thereinbefore given for the recovery thereof, and to be secured to them as the other annuities were secured; and the said testator did thereby declare that the said annuities so given to such one of his daughters as aforesaid should be over and above and besides all other annuities or bequests given to them respectively by the said will; and in the event of the deaths of both his sons, Samuel and Robert Kilby, without leaving issue male inheritable under the devises in his said will, the said testator did thereupon and immediately from and after the happening of such event, in and by his said codicil, give, devise, and bequeath, unto his said daughters Alicia Mary Cox and Mary Ann Cox, and their respective assigns, for and during their respective natural lives, one further annual sum or yearly rent-charge of 100*l.* each, to be issuing out of and charged and raisable in like manner, and with the like powers as were declared of the before-mentioned additional annuities of 100*l.* each thereinbefore given to them; and after the decease of either of them, the said testator thereby gave to the survivor of them and her assigns during her life such last-mentioned additional annuity of 100*l.* thereby lastly given to such one of his daughters as should first depart this life, with the same powers and remedies as were thereinbefore given for recovering the same; and the said testator did thereby appoint said Alicia Mary Cox to be his executrix jointly with his said two sons, Samuel Cox and Robert Kilby Cox.

The testator died in 1829; R. K. Cox, the son, in 1832, a widower, and without having had any issue; A. M. Cox died in 1838; Samuel Cox, the son, died in 1851, a widower, and without having had any issue. Of his will he appointed the defendants, Dolman and Witham, executors.

In 1852 the plaintiff, M. A. Cox, filed her bill, alleging that, upon the decease of the testator, she was entitled to the annual rent-charges of 200*l.* and 100*l.* under his will and codicil; that, upon the decease of R. K. Cox, the son, she became entitled to a rent-charge of 300*l.* in lieu of the 200*l.*; that, upon the death of A. M. Cox, to 400*l.* in lieu of the 300*l.* and also to the rent-charge of 100*l.* in addition to that of 100*l.* charged and secured by the codicil; and that, upon the decease of Samuel Cox, the son, she became entitled to two further and additional annual rent-charges of 100*l.* each, in addition to the two first-mentioned charges devised to her. It appeared that Samuel Cox, from the death of R. K. Cox, the son, to the death of A. M. Cox, paid to the plaintiff the annual sum of 300*l.* only; and from the death of A. M. Cox to December 1850 400*l.* in respect of the annuity contained in the will; and that none of the charges to which she was entitled after the death of R. K. Cox, the son, during the life of S. Cox, the testator under the codicil, were paid or had ever been received, but that the whole of such last-mentioned rent-charges remained unpaid; that the plaintiff was until after the death of S. Cox, in total ignorance of her right to receive any further or other sums than those which she had received. The bill prayed that the general assets of Samuel Cox, the son, and also the growing and future rents and profits of the estates devised by the original testator's will, might be made liable to make good the unsatisfied demands, &c. of the plaintiff.

Rundell Palmer (with him *J. A. Cooke*) contended that the plaintiff could claim the whole of the arrears. Certain estates were devised to trustees for a term of ninety-nine years, to raise and pay by sale or mortgage annuities, among which was the one to the plaintiff, and which was of a fluctuating character, with a power of distress and entry; and, subject to the payment of the annuities, the estates were given to certain persons as tenants for life in succession. That term was now subsisting, to the benefit of which the plaintiff was entitled. For a series of nearly twenty years the plaintiff had by mistake, arising from the varying limitation in the will, received 200*l.* a-year less than she was entitled to in respect of her annuity. The first tenant for life of the estates was dead, and the second was now in possession, and the plaintiff, upon discovering the mistake, claimed the whole of the arrears of her annuity, and instituted the present suit to enforce such claim. Her right was not barred by the statute. Sects. 40 and 42 were not applicable. They relied on the 25th section, and on the authority of *Young* v. *Lord Waterpark*.

Campbell and *Bagshawe*, jun., for the executors of the deceased tenant for life, contended that the 42nd section of the Act was in the most general terms, and that the express trusts mentioned in the 25th section referred only to questions between a trustee and *cestui que trust*.

C. P. Cooper and *Cory* appeared for the present tenant for life.

The following cases were cited:—*Ward* v. *Arch*, 12 Sc. 472; *Raven Croft* v. *Frisby*, 1 Coll. 16; *Harrison* v. *Duignan*, 2 Ir. Ch. R. W. 295; *Hughes* v. *Kelly*, 3 Dr. & War. 462; *De Visme* v. *Lee*, 2 Hare, 186; *Gough* v. *Bult*, 17 L. J. 486; *Chappell* v. *Rose*, 10 Law T. Rep. 57; *Law* v. *Bagwell*, 4 Dr. & W. 598.

The LORD CHANCELLOR.—I do not see that there is any difficulty in this case. It is not possible to distinguish it from that of *Young* v. *Lord Waterpark*, and there the point is clearly settled. I have had to consider points of this kind on more than one occasion, but the exact question which has here been raised has not been brought before me for decision. It appears to be settled law, that while the legal estate in a term remains unbarred and uncalled-in, and is still vested in the trustee who may obtain possession and so execute the trusts of the will, the estate of that trustee is not barred; and if the estate of the trustee is not barred, the right of the *cestui que trust* also is not barred. It has not been denied that the term is a valid and subsisting one, and if an argument had been offered as tending to prove the contrary, it would not have succeeded. The trustees can now enter and execute the trusts of the will; as soon as they recover possession they will be in a condition to execute them fully and raise the entire arrears of the annuity. I do not mean to say that a case may not occur in which a term may be barred and the arrears of an annuity lost, but that is not the question in the present case. The term is subsisting, parts of the annuity have already been raised, and it has been by accident only that the whole trust has not been executed. The cases which have been referred to do not apply to the question here raised, nor do they militate against the rule which was laid down in *Young* v. *Lord Waterpark*. With that case I entirely agree. Upon principle, and upon authority too, the plaintiff is entitled to have the whole arrears of her annuities paid. I do not think that the Statute of Limitations can possibly be made applicable to this case. The 40th and 42nd sections of the 3 & 4 Will. 4, c. 27, are immaterial, because they are not applicable; but the 25th section seems to meet this very case: "When any land or rent shall be vested in a trustee upon any express trust, the right of the *cestui que trust* or any person claiming through him to bring a suit against the trustee, or any person claiming through him to recover such land or rent, shall be deemed to have first accrued, according to the meaning of the Act, at and not before the time at which such land or rent shall have been conveyed to a purchaser for a valuable consideration, and shall then be deemed to have accrued only as against such purchaser and any person claiming through him." So far from there being any such adverse title, the estates have been and are still held subject to the term of ninety-nine years; and the plaintiff, therefore, for whose benefit the term was created, possesses all the rights and is entitled to every benefit under it. These rights are unaffected by the statute. I am of opinion (and I have also the concurrent opinion of the Lords Justices) that the plaintiff is entitled to recover the whole arrears of her annuities.

COURT OF APPEAL IN CHANCERY.

Reported by OWEN DAVIES TUDOR, Esq., of the Middle Temple, Barrister-at-Law.

March 13, 18, 19, *and April* 2.

EDWARDS *v.* BURT.

Vendor and purchaser—Reversionary interest—Inadequacy of value.

A purchaser by private contract of a reversionary interest, or at all events the purchaser of such an interest from an expectant heir, or some persons standing in the situation of an expectant heir, is bound, if the transaction is impeached within a reasonable time, to satisfy the court that he gave the fair market value for what he purchased:

Held, therefore, overruling the decision of the court below, that, the purchaser not having shown that he gave an adequate consideration for a reversionary interest, the sale must be set aside.

It is not necessary, in order to sustain the sale of a reversionary interest, that it should take place by public auction. If previously to the sale of a reversionary interest, the vendor and purchaser concur in ascertaining from persons of competent skill, and having knowledge of the property, and of all the circumstances likely to influence its value, a well-considered estimate of what the property would fetch on a sale, and act on that opinion, such transaction would not afterwards be impeachable merely because other surveyors should come to a conclusion different from that on which the parties have acted. The court would probably in such a case be much inclined, as a matter of fact, to believe the original and not the subsequent estimate to be correct.

This was an appeal from the decision of the Master of the Rolls, dismissing the bill filed by James Edwards, and Harriet his wife, for the purpose of setting aside two sales by private contract of reversionary life interests, expectant on the decease of Mary Compton, the mother of Harriet Edwards, to the defendant, a solicitor, on the ground of inadequacy of price and undue influence. The defendant, it appeared had formerly acted as solicitor for the appellants, who were in very humble and distressed circumstances.

The facts are stated in the judgment.

Anderson and *Cogland*, for the appellants, contended that, according to the evidence of the defendant's witnesses, he had not given a fair value on either of the two purchases; but even assuming that the value was doubtful, the appellants were entitled to a decree in their favour, as the rule of reversionary interests the onus lay on the purchaser by private contract to show that he had given a fair value: (*Edwards* v. *Browne*, 2 Coll. 100.) Moreover in this case there was this additional element to be taken into consideration, the purchaser was a solicitor, and had formerly acted in that capacity for the appellants, who were in distressed circumstances, which might be easily seen from the way in which the purchase-money had been paid to them by the defendant, who had, instead of handing it over to them in one sum, doled it out by instalments: (*Lord Portmore* v. *Taylor*, 4 Sim. 182, 212, 216.) However, where there was undervalue, it was not necessary to prove distress: (*Potts* v. *Curtis*, You. 548; *Shelly* v. *Nash*, 3 Madd. 232; *Peacock* v. *Evans*, 16 Ves. 512; *Lord Aldborough* v. *Trye*, 7 C. & F. 436.)

Bethell, *Roundell Palmer*, and *Greene*, for the respondent, contended that the value of the property sold by the appellants was less, in consequence of their not being able to show a title, or make out an abstract. [Lord Justice KNIGHT BRUCE.—The will under which the property was devised is dated so far back, it seems, as the 21st April, 1825, and possession has been held according to the will. The deeds would necessarily be in the possession of the tenant for life, Mrs. Compton, unless she had mortgaged her interest. The difficulty or inability of making out an abstract must exist in most sales of reversionary interests.] Fraud, moreover, ought to be inferred from the lowness of the price: (*Chesterfield* v. *Jannssen*, 2 Ves. 125, 157.) They also cited *Mack* v. *Attwood*, 5 Ves. 845; *Headen* v. *Rosher*, 1 M'C. & Y. 89.

Anderson, in reply, contended that in these cases it made no difference whether the property, the sale of which was attempted to be set aside, was a vested or contingent reversionary interest, *Aldborough* v. *Trye*, 7 C. & F. 436; *Portmore* v. *Taylor*, Sim. 803; and the rule as to the onus of proving the adequacy of price was not confined to expectant heirs, but it include reversioners, though in this case the plaintiff, Mrs. Edwards, was heir of her mother, Mrs. Compton, the tenant for life: (*Peacock* v. *Evans*, 16 Ves. 512). As to costs, *Gwynne* v. *Heaton*, and *Lord Portmore* v. *Taylor*, were cited.

Lord Justice Lord CRANWORTH.—The bill filed in this cause seeks to set aside two sales made, one in the month of October 1846, and the other in Feb. 1848, being sales by the plaintiff to the defendant of the reversionary life estate of the plaintiff, Mrs. Edwards, in some real property at Reigate. The interest of Mrs. Edwards was derived under the will of John Carter, who died in 1825. Under that will Mary Compton, the mother of Mrs. Edwards, was tenant for life of the property in question, with remainder to Mrs. Edwards for her life; and in the month of October 1846 Mrs. Compton was seventy-four years of age, and Mrs. Edwards thirty-eight. The relief is sought on the ground that the plaintiffs had been induced to part with their reversion at materially less than the fair value, so that this court ought not to allow the transaction to stand. The bill alleges further, that at the time of these sales the defendant was acting as solicitor of the plaintiffs, and so exercised an influence over them; and it suggests circumstances of undue pressure on the part of the defendant, which, independently of the question of value, might entitle the plaintiffs to relief; but, as we intimated at the hearing, those allegations and suggestions are not established by the evidence, and the case must, therefore, be considered merely with reference to the point of value. The doctrine on this head of equity has been the subject of frequent discussion in modern times, from the decisions of *Peacock* v. *Evans*, 16 Ves. 512, and *Gowland* v. *De Faria*, 17 Ves. 20, before Sir William Grant, down to that of *Edwards* v. *Browne*, 2 Coll. 100, before my learned brother; but it is unnecessary now to canvass or discuss the principle, for the rule on this subject was finally and distinctly established by the House of Lords in *Lord Aldborough* v. *Trye*, 7 C. & F. 436; and that case, following several of the previous authorities, clearly establishes that the purchaser of a reversionary interest, or at all events the purchaser of such an interest from an expectant heir, or from a person standing in the situation of an expectant heir (and the plaintiff, Mrs. Edwards, clearly sustained that character), is bound, if the transaction is impeached within a reasonable time, to satisfy the court that he gave the fair market value for what he purchased. Applying then that rule to the facts now before us, what we have to determine is, whether the case furnishes evidence to satisfy us that 250*l.* was the fair market value of the reversionary interest sold in 1846, and 300*l.* with the additional 50*l.* payable contingently, a fair and sufficient price for the reversion sold in 1848. We think that the case does not furnish such evidence. With respect to the property disposed of in the first purchase, the evidence of Mr. Hall, one of the plaintiff's witnesses,

stated that the market value, if it had been sold in 1846 by public auction, would have been 500*l.* As Mr. Crawter, the other surveyor examined on behalf of the plaintiff, puts the value much higher, namely, at 840*l.* Both these witnesses are surveyors of experience, well acquainted with the property, so that they had the best means of forming a correct judgment. They certainly differ widely in their estimates, but the question is not whether, on their testimony, we should be prepared to say we were satisfied that the value was such as they represent, but whether, in the face of their evidence, we can say we are satisfied that the price actually paid (namely, 250*l.*) was the fair value. In order to enable us to do so, the defendant has examined two surveyors (Mr. Shuttleworth and Mr. Marsh); and they, treating this property, not as it actually existed at the time of the sale, but as a well-secured annuity of the same yearly value as the actual rent, say that its market value was 318*l.* according to Mr. Shuttleworth, or 321*l.* according to Mr. Marsh. It thus appears that, according to the defendant's own witnesses, the price paid (250*l.*) was less by about 70*l.* than the fair market value, being a deficiency of above one-fourth of the actual consideration. We have not forgotten the argument of the defendant's counsel, that some deduction ought in fairness to be made from the estimate of his surveyors, in consequence of their not having taken into consideration the perishable nature of a large portion of the property, consisting as it does in part of a pottery, and the want of repair in which the buildings are represented to have been. But this is not a matter which can be justly insisted on by the defendant. He is himself an inhabitant of Reigate, and must have been perfectly acquainted with the property. The burden is on him to show that 250*l.* was the fair market value; and it would be contrary to all principle that he should be allowed to abstain from examining (as he might easily have done) persons of skill acquainted with the property, and then call on the court to make such deductions from the estimates of those whom he produces, in consequence of their imperfect acquaintance with the subject-matter of their testimony. Considering then that, according to the evidence on the part of the plaintiff, unsatisfactory as we conceive that evidence to be, the sum paid was less than half the market value, and that the defendant has offered no sufficient evidence to show that he paid the full value, we have come to the conclusion that this transaction cannot stand. The case as to the second transaction, *i. e.* the sale of Mrs. Edwards' life interest in the house and land let on lease to Mrs. Wood, is not perhaps so clear, but still we think that the defendant has failed to make out, as he was bound to do, that 500*l.* with an additional 50*l.* to be paid on the death of Mrs. Compton if she should die within ten years, was the fair market value. The property sold was Mrs Edwards' reversionary life interest in a house and land let to Mrs. Wood on a lease for twenty-one years commencing in 1840. The tenant appears on the evidence to have laid out money in improving the house; and the uncontradicted evidence of the plaintiff's surveyors goes to show that the property, if now to be let on lease, would probably yield a much higher rent, one of the surveyors puts the value at 120*l.* per annum, the other as high as 160*l.* It is impossible not to infer from this that the subject-matter of the sale in 1848 was a perfectly well-secured annuity of 100*l.* per annum for thirteen years, with a probability of a material increase at the expiration of Mrs. Wood's lease in 1861. Now one of the plaintiff's surveyors estimates the market value of the reversionary life interest of Mrs. Edwards in this property at 1,100*l.*, the other at 900*l.* They distinctly give those sums as the amount which, in their judgment, the property would have realised on a sale by auction. Mr. Smith, the actuary of the Eagle Office, states the calculated value of the interest sold, treating it as a well secured annuity of 100*l.* per annum, to be 870*l.*, from which, however, he says one-third ought to be deducted in estimating the probable result of a sale, thus making the true market value 580*l.*, being 80*l.* less than the defendant was under any circumstances to pay, and 80*l.* less than he was to pay if Mrs. Compton had lived for ten years. Now in this evidence we make the same observations as on that relating to the other property, namely, that if the question had been whether the plaintiffs had satisfied us what the true value of the property was, we should have been unable to answer in the affirmative. Neither Mr. Nash nor Mr. Crawter explains the ground on which his opinions are formed, the difference between the sums which the one and the other state as being the true market value is considerable, the one putting it at two-thirds higher than the other. And there certainly is nothing to show that they were aware of the existence of a lease for twenty-one years from 1840, at a rent of 100*l.* a year. The actuary puts the calculated value, treating the property as a mere annuity, at 80*l.* less than the estimate of the lowest value as given by the surveyors. If therefore we had to say on the plaintiff's evidence what the fair market value was in 1848, the time of the sale, we should have felt great difficulty in coming to any satisfactory conclusion. But it is not our province to decide what the value was; all we have to say is whether the defendant has made out that 500*l.* with 50*l.* additional in the event of Mrs. Compton dying in ten years, was the fair market value. This we think is not made out. The evidence of the plaintiff's two surveyors taking a mean between them makes the value 1,000*l.* *i.e.* doubles the price actually paid,—a difference which it is impossible to explain by any suggestion that they might not have been aware of Mrs. Wood's lease. The value of the property calculated by an actuary, treating it as a mere annuity of 100*l.* per annum, is fixed by him at 870*l.*; but in coming to this conclusion he certainly did not take into account the probable rise in the value at the end of thirteen years from 1848, when the lease to Mrs. Wood would expire. On the contrary, the defendant says that one reason why the actuary put the market value at only two-thirds of the calculated value was the risk that there might be a loss of rent in case the property should be unlet; he also relied on the expenses of repairs, insurance, and other outgoings incident to house property. Whether these were expenses to be borne by Mrs. Wood, the tenant, was not shown. The defendant's evidence on the subject of the value of this property consisted of the testimony given by Mr. Shuttleworth and Mr. Nash, the same gentlemen who were examined as to the sale in 1846. They agree in fixing the market value at 475*l.* or 476*l.*, plainly treating the subject-matter which they were employed to value as a mere well-secured annuity, worth 44 years' purchase. It is to be regretted that the defendant did not, instead of resting on the mere speculative opinions of London surveyors, recur to competent persons on the spot, who would evidently, from local knowledge, have had much better means of judging of value than could possibly be possessed by persons, however eminent, who, as far as appears, never saw the property in their lives. The evidence of the surveyors examined by the plaintiffs is at least the evidence of persons who knew the property well, and so had the means of forming a correct judgment. One of them, Mr. Nash, says, that the market value on a sale was 900*l.*; thus agreeing very nearly with the calculated value 870*l.* as given by the actuary. It is true that the actuary said that the market value was not more than two-thirds of the calculated value; but then he gives as his reason for that opinion that the nature of the property was such as to make it liable to certain risks and outgoings, which, perhaps, witnesses acquainted with the neighbourhood, and with the circumstances of the case, might have known to be entitled to little or no attention, and in fact might consider to be more than compensated by the probable rise in value, at the end of the twenty-one years' term That the defendant himself places little reliance on the testimony of his own surveyors may be fairly inferred from his answer, for he states that he believes the value of the property was 580*l.*, not 475*l.* or 476*l.* as estimated by his surveyors. And even if 580*l.* was the true market value, the sum paid was still too small, for the difference between 580*l.* and 500*l.* with an additional 50*l.* payable only on a contingency, is not to be disregarded. Contrasting, then, the evidence of the value given by the defendant with that of the plaintiffs, we have come to the conclusion that the defendant has not, as he was bound to do, shown that the consideration given on occasion of this second purchase was the fair market value at the time of the sale, and, he having failed to show this, the transaction cannot stand. It was contended that as to both transactions some deduction ought to be made in estimating the price which could probably have been obtained, by reason of the inability of the plaintiffs to furnish an abstract. This circumstance is alluded to by Mrs. Edwards, in her first letter to the defendant, but no one afterwards appears to have paid any regard to it. In truth, persons selling reversionary interests seldom can be in a position to produce title-deeds, or to furnish a perfect abstract. But the testator, under whose will the vendors derived their title to the property sold, had been dead above twenty years; possession had, no doubt, gone since his death in conformity with the devises contained in the will; the will seems to be that of a person who had been an established resident at Reigate, and who had acquired considerable property in and near that place, and who himself occupied the house now let to Mrs. Wood. In all probability, therefore, the inability of the plaintiffs to furnish an abstract was not considered by any one as a circumstance really calculated to influence the saleable value. It was then urged upon us that, if we should set aside the present transactions on the ground of undervalue, we should in effect be deciding that no sale of a reversion can be sustained unless it be made by public auction. This we certainly do not mean to decide. But here not only the sale was not a sale by auction, but no effectual steps were taken to acquire a knowledge of the market value before the bargains were completed. As to the first transaction, no steps whatever were taken. As to the second, nothing was done except to obtain the opinion of an actuary, and such an opinion is evidently unsatisfactory with reference to the local circumstances likely to influence market value. Indeed, on such a subject, an actuary is by no means the best authority to refer to. If, previously to the sale of a reversionary interest, the vendor and purchaser concur in ascertaining from persons of competent skill, and having knowledge of the circumstances of all the circumstances likely to influence value, a well-considered estimate of what the property is worth, the Master, to whom on a sale, and not on these opinions, we can see no meaning to decide that such a transaction could be afterwards impeached, merely because subsequent purveyors should come to a conclusion different from that on which the parties had acted. The court would probably in such a case be much inclined, as a matter of fact, to believe the original and not the subsequent estimate to be correct; but nothing of the sort is contended here, and we advert to the point only to explain that we do not concur in the suggestion that no sale of a reversionary interest otherwise than by auction could be sustained. We think that neither of the sales impeached by the present bill can be supported, not because they were sales by private contract, but because, it being incumbent on the defendant to show that the price given by him was the fair market value, he has failed in doing so. We thus come to a result not conformable to that at which the Master of the Rolls arrived; and this can hardly be matter of surprise on a doubtful question of fact, such as that of market value, which different minds may naturally view in very different lights. The consequence of our conclusion at which we have thus arrived is, that the two sales must be set aside, and it must be declared that the deeds ought to stand only as a security to the defendant for the sums actually advanced by him, including, according to what was consented to by Mr. Anderson at the hearing, the money advanced for premiums on the policies of assurance, with interest, at the rate of 5*l.* per cent., that being the rate generally given in cases like the present. The defendant is entitled to his costs of the suit, except the costs of such of the depositions as relate to the state and value of the property. These costs have been incurred in an endeavour to prove what the defendant has failed to make out, and no costs should be given on either side on this part of the case; but the rest of the rest of the costs was occasioned by the unfounded charges in the bill, imputing to the defendant undue influence and pressure on the plaintiffs. Subject to the foregoing declaration the plaintiffs must have the decree usual in such cases, treating the defendant as liable to account for the rents on the footing of his being a mortgagee in possession; and on payment to the defendant of the balance found due to him he must reconvey the property comprised in both deeds, and assign the policies to the plaintiffs. If both parties prefer to have a sale that course may be pursued; but that can only be done by arrangement.

(Before the Lords Justices.)

Saturday, Dec. 4.

Lee *v.* Bush.

Will, construction of—Implication, what constitutes a gift to children by.

A. devised her residuary real estate to the sons of her relative B. successively in tail male, with remainder in default of issue male of the sons to the only daughter of B. in tail male, with remainder in default of issue male of the daughter of B. to the testatrix's relative C. in fee simple. She then bequeathed her residuary personal estate upon trust for A.; but if he should die in her lifetime without leaving any child or children him surviving, then in trust for B. A. died in the lifetime of the testatrix, leaving children:

Held, affirming the decision of the court below, that the children of B. did not under the will take any interest in the personal estate by implication.

This was an appeal from the decision of the Master of the Rolls dismissing the claim of the plaintiffs, who contended that they took by implication as residuary legatees of the testatrix. By her will dated the 27th of August, 1847, the testatrix, after specifically devising certain real estates to her relative John Lee, his heirs and assigns, and giving legacies to different persons, gave and devised all her messuages, lands, tenements, and hereditaments not hereinbefore specifically devised unto C. B. Lee (one of the sons of the said John Lee by Maria his wife) for the natural life of him the said C. B. Lee; and from and after his decease she devised the said last-mentioned hereditament (except as aforesaid) to the issue in tail male in succession of the said C. B. Lee, with remainder on failure of issue of the said C. B. Lee to every other son of the said John Lee and Maria his wife in succession and his issue in tail male, with remainder, on failure of such issue, to the only daughter of the said John Lee and Maria his wife, and her issue male in succession, so that every elder son of the said daughter of the said John Lee and his issue male might be preferred to every younger son and his issue male, according to seniority, in tail male, with an ultimate remainder, on failure of such issue, to the testatrix's relation Charles Lee, his heirs and assigns. Finally, the testatrix gave and bequeathed all the residue of her personal estate and effects to her said executors and trustees, upon trust to convert the same into money and stand possessed thereof upon the following trusts, viz., "upon trust for my relation John Lee; but *if he shall die in my lifetime, without leaving any child or children him surviving*," then I direct

COURT OF APPEAL.

child the residue of my said trust-moneys shall be invested for the said Charles Lee."

John Lee died in the lifetime of the testatrix, leaving five children, who, after the decease of the testatrix, filed the present claim against the executors and trustees, and they claimed, according to the proper construction to be put upon the will, to be entitled to the testatrix's residuary personal estate by implication. His Honour, in dismissing the claim, said that the case was expressly decided by the authorities, which rendered it impossible for him to hold that the children took anything by implication. He could not give to the same words a different construction when used in relation to a residue from that which he should when applied to a simple legacy. That the testatrix knew how to express a gift to the children, for she had done it in the case of the real estate. That words might possibly have been left out but it was not the province of the court to supply them, and thus make a will for the testator.

Rowsell Palmer, *Terrell*, and *Grensid*, for the appellants, the children of John Lee, contended that they must take by implication, as it was clearly the intention of the testatrix that the residue should not go to Charles unless John Lee died without leaving children. That the testatrix intended to prefer the children of John Lee to other persons was apparent from the limitations in the will of the residuary real estate. This construction was supported by many authorities, as *Littlecottier* v. *Tracy*, 3 Atk. 796; *Crowder* v. *Clowes*, 2 Ves. jun. 449; *Wainewright* v. *Wainewright*, 3 Ves. 558; *Harman* v. *Dickenson*, 1 Bro. C. C. 91. The case of *Ex parte Rogers*, 2 Madd. 449, was exactly in point. In that case the testator, having by his will bequeathed 1,000*l.* to his niece A., by a codicil, reciting that she had married indiscreetly and that he intended to withdraw the legacy out of her power to dispose of it and out of the power of her husband so to do, did therefore direct his executors to secure his said niece the interest of the said 1,000*l.* independently of her husband, by placing out that sum in trust for his niece; she to enjoy the interest or dividends during her life, *and at her decease without child or children*, the principal and interest to be divided among such of her sisters as should be then living. Sir Thomas Plumer, M.R. thought that by the combined effect of the will and codicil he was justified in saying that the children took the legacy by necessary implication at the death of the mother. [Lord Justice Lord Cranworth.—I am disposed to think there was more in the case of *Ex parte Rogers* than what appears in Mr. Maddock's report. Let the order be brought from the office.] The Master of the Rolls had relied upon the authority of *Andree* v. *Ward*, 1 Rus. 261, *Greene* v. *Ward*, 1 Rus. 262; *Randagh* v. *Randagh*, 12 Beav. 200; and *Cooper* v. *Pitcher*, 4 Hare, 180; but in those cases the events specified were failure of issue either generally or of a particular marriage; and it is clear that such events were less favourable to the construction by way of implication than where, as in the present case, it has reference to a failure of children. That those cases, moreover, were gifts of legacies, while this was a gift of a residue, and the result of holding that the appellants did not take by implication would, in effect, be to adopt a mode of construction which would lead to an intestacy, which the court, according to the well-known rule, always endeavoured to lean against. [Lord Justice Knight Bruce.—The meaning of the term "leaning against intestacy" is this—not that the court abhors intestacy, but that it infers it to be probable that where a man makes his will he intends to dispose of the whole of his property.] The appellants claimed the benefit of such an inference. The court ought, however, to supply words which have evidently been omitted by the testator, as in this case is clear from the context and the general scheme of the will: (*Forth* v. *Chapman*, 1 P. Wms. 663; *Papillon* v. *Voice*, 2 P. Wms. 471; *Wookley* dem. *Knight* v. *Rugg*, 7 T. R. 822; *Clarke* v. *Lubbock*, 1 Y. & C. C. C. 492; *Cockshott* v. *Cockshott*, 2 Coll. 432, were also cited.)

Bethell, *Faber*, and *T. W. Greene*, for the executors, were not called upon.

Lord Justice Knight Bruce.—If this will is to be construed according to the rules of grammar, sense, and idiom, it is a case of intestacy. It is therefore incumbent on those who allege that it is not a case of intestacy to show it from the whole will, and also to show what is the particular course of devolution in which the property, as to which there is no intestacy, is to go. Now, assuming for the purpose of the argument, but only for that purpose, that the will does exhibit an intention that, in the events which have occurred, there should not be an intestacy, we must then consider the question, what is the mode of gift which this will demonstrates, or which is to be implied? I confess that, even on the assumption which I have mentioned, I think it impossible to say with anything like—I do not say certainty, but reasonable probability, whether the gift is to the personal representatives of John Lee or to his children: and, further, that even on that most favourable assumption to the plaintiffs, it is impossible to say that here has been anything but intestacy. In saying that, I do not wish to be understood as intimating anything to prejudice the claim of the personal representatives of John Lee, if they think proper to bring one forward.

Lord Justice Lord Cranworth.—I am compelled, though with reluctance, to express the same opinion. I only wish that, before the final determination of the case, the report of *Ex parte Rogers* could have been tested by comparison with the Registrar's book. That case is reported by Maddock, not in its regular course, but in a note at the end of the volume; and I have never felt quite certain that, upon investigation, there might not turn out to be more in the case than appears on the face of the report. Assuming the report, however, to be perfectly accurate, still I do not look upon it as an authority governing the present case; and for this reason, that the party to whom in that case a life interest was given survived the testator. That is quite sufficient to distinguish the two cases. I think the present a clear case of intestacy, but without meaning by that statement in any way to prejudice the case as against the personal representatives of John Lee.

Appeal dismissed, with costs out of the personal estate.

Tuesday, Dec. 21.

BOWLEN v. PRICE.

New Practice—15 & 16 *Vict. c.* 86, *s.* 12—*Orders 7th August*, 1852, 17, 18—*Delivery of interrogatories.*

Delivery of interrogatories for the examination of a defendant need not be made to his solicitor personally, under the 12th section of 15 *&* 16 *Vict. c.* 86, *and the 17th and 18th orders of 7th August*, 1852; *it will be sufficient if the delivery be made at the office of the solicitor.*

W. Morris made an application to their lordships in this case, as to the course to be adopted under the 12th section of the Act for the Improvement of the Jurisdiction of Equity (15 & 16 Vict. c. 86), where interrogatories are directed to be "delivered to the defendant or his solicitor." The question was, whether the interrogatories must necessarily be delivered to the solicitor *personally*, or whether delivery at the office of the solicitor, in the same manner as notices of motion, petitions, and other proceedings, would not be sufficient. The 12th section is as follows: "Within a time to be limited by a general order of the Lord Chancellor in that behalf, the plaintiff in any suit in the said court commenced by bill may, if he requires an answer from any defendant thereto, file in the record office of the said court interrogatories for the examination of the defendant or defendants, or such of them from whom he shall require an answer, and *deliver to the defendant or defendants so required to answer, or to his or their solicitors*, a copy of such interrogatories, or of such of them as shall be applicable to the particular defendant or defendants; and no defendant shall be called upon or required to put in any answer to a bill unless interrogatories shall have been so filed, and a copy thereof *delivered to him or his solicitor*, within the time so to be limited, or within such further time as the court shall think fit to direct." Similar language as to delivery to the defendant or his solicitor is also made use of in the 17th and 18th of the Orders of 7th August, 1852. Sir Richard Kindersley, who had consulted the other Vice-Chancellors upon the point, thought that the words of the Act and Order ought to be construed strictly, and that *personal service* of the interrogatories either upon the defendant or his solicitor was absolutely necessary.

Lord Justice Knight Bruce said that he should have been disposed to think that service at the office of the solicitor would be quite sufficient. To hold to the contrary would lead to great inconvenience; for instance, if the solicitor was ill in bed, or absent on professional business, on circuit or otherwise. If the interrogatories were left at the place where any other documents of a similar character could be left and be so deemed to be well delivered or served, it seemed, with great deference to the Vice-Chancellors, difficult to say that the delivery of the interrogatories at the solicitor's office was not a proper delivery. His Lordship then said he would consider the matter further.

Lord Justice Lord Cranworth said that it appeared to him that to hold that the delivery must be to the solicitor personally, might and would lead to as much inconvenience to one side as the other; that there must be numerous instances in which the delivery would have to be made at Lancaster or Newcastle, or some other distant part of the country; that their Lordships would not now decide the point; and that after what they had said upon it another application had better be made to the Vice-Chancellor Kindersley.

The Vice-Chancellor Kindersley, the reporter has been informed, acted upon the opinion of their lordships by holding a delivery of the interrogatories at the office of the solicitor of the defendant, to be sufficient.

ROLLS COURT.

Reported by J. Macaulay, Esq., of the Inner Temple, Barrister-at-Law.

Tuesday, Nov. 16.

Price v. Wisden.

Specific performance—Lease for a term with option to purchase absolutely on notice—Abandonment of contract—Time of the essence of the contract—Acceptance of title—Waiver.

The plaintiff being in occupation of certain premises belonging to the defendant, entered into an agreement with the defendant on the 2nd of April, 1846, to hire of him the premises in question at a rental of 100l. a year, and to pay down 65l., the plaintiff to have the right of purchasing the premises upon title within nine years at the price of 2,500l. in addition to the 65l., on giving three months' notice of his intention so to do. The plaintiff accordingly gave notice on the 14th of May, 1850. On the 4th September the defendant complained of delay in completing the purchase, and on the 3rd November gave him notice that unless he completed in six weeks he should consider the contract abandoned. The plaintiff went on investigating title, but did not complete before the six weeks expired. The defendant treated the contract as abandoned. In a suit for specific performance:

Held, that time was not of the essence of the contract, and even if it were it had been waived by the conduct of the defendant; that the six weeks limited by defendant was not a reasonable time; and that specific performance must be decreed.

Held, also, that the plaintiff, having proceeded to compare the abstract with the deed, must be considered to have accepted the title; but under the circumstances he was allowed a week to bring in objections into chambers.

The bill in this case was filed by a purchaser for the specific performance of a contract for the purchase of a freehold messuage and land. It appeared that Thomas Wisden, the defendant, being seised in fee of a messuage or dwelling-house, with a coach-house, stable, garden, outhouse, and buildings, and certain pieces of arable, pasture, and garden ground adjoining thereto, commonly called New England Farm, situate near Brighton, in April 1846 agreed to let the same to the plaintiff (then and for some time previously the tenant thereof under the former proprietor, from whom the defendant had purchased the premises), at a rent of 100*l.* per annum from the 24th of June, 1846; and also to give plaintiff a right to purchase the same at any time within nine years from the said 24th of June, for the sum of 2,500*l.* in addition to the sum of 65*l.* to be paid to him by the plaintiff. The agreement was in the form of a letter, addressed by the plaintiff to the defendant, bearing date the 21st of April, 1846, and was in these words:—"Brighton, 21st April, 1846. Mr. Thomas Wisden. Dear Sir,—I undertake to hire of you the house and buildings called New England Farm, at a rental of 100*l.* per annum, from the 24th of June now next ensuing, together with the land, being about five acres; and I agree to pay down to you on that day the sum of 65*l.*; and it is understood and agreed that I am to have a purchasing clause of the said estate at any time within nine years, by giving you three months' notice, for the sum of 2,500*l.* in addition to the sum of 65*l.* H. Pegg." The plaintiff continued to occupy the premises under this agreement, and paid the 65*l.* but not till after the 24th of June, 1846. This sum was alleged by the plaintiff to be in part payment of the full purchase-money of 3,150*l.* agreed to be the price of the premises; but the defendant, on the other hand, alleged that it was paid as a premium or fine for the lease, and was so paid wholly irrespective of the purchase. The plaintiff had in his original bill founded the contract upon a letter signed by the defendant, but not addressed to any one by name, and which was in these words:—"Brighton, 21st April, 1846. Dear Sir,—I agree to let you the New England Farm, containing, with the buildings, &c. about five acres, more or less, for one hundred pounds per annum, from June 24th next ensuing. As also I further agree to give you a purchasing clause any time within nine years, by paying me the sum of 2,500*l.* after paying me the sum of 65*l.* on the 24th of June now next ensuing, being altogether the sum of 3,150*l.* Thomas Wisden." This letter was written partly by the plaintiff and partly by the defendant, by whom also it was signed. In his answer, however, to the original bill, the defendant denied having signed the letter, but he admitted the contract, and said it was evidenced by the letter signed by the plaintiff. Thereupon the plaintiff amended his bill by striking out the defendant's letter, and inserting his own as containing the evidence of the contract. The defendant's letter, however, was proved as an exhibit, for the purpose of being used as evidence in ascertaining the intention of the parties as to the 65*l.*, and it was admitted by the defendant in his answer to the amended bill. There was also some evidence by the plaintiff and his wife of admissions by the defendant that the 65*l.* was in fact a payment on account of purchase-money; and the plaintiff further alleged, that the 100*l.* rent was treated and considered by both parties as an instalment of the interest upon the 2,500*l.*, the balance of the purchase-money, at the rate of 4*l.* per cent. per annum. The plaintiff after the contract laid out, as he alleged, considerable sums of money upon the premises in building a wall round the same, and painting them, which unless he considered himself the owner he would not have done, and that the defendant was aware of his doing so, and accommodated him. Accordingly, on the 14th May,

1850, the plaintiff's solicitor (Mr. G. W. Lyle), as the plaintiff's agent, gave notice to the defendant of the plaintiff's intention to complete the purchase; and in the beginning of July, Messrs. Faithfull, the defendant's solicitors, delivered the abstract of title to Mr. Lyle. On the 4th of September, the plaintiff's solicitor wrote complaining of delay in completing the purchase. No steps were taken till the 2nd of November, 1850, when the defendant sent the plaintiff notice that unless the purchase was completed and the purchase-money paid in or before the 14th of December, 1850, the defendant would treat the notice of purchase given in May as absolutely null and void, and the right of purchase thereby claimed as forfeited, and the agreement of the 21st of April 1846, so far as respected the purchase, as cancelled. On the 5th of December, 1850, Mr. Lyle wrote to Messrs. Faithfull to know when and where the abstracts could be compared with the deeds. On the following day Messrs. Faithfull, stating that the deeds were in the hands of various persons, mentioned some of them in the possession of Messrs. Lawford, who, it was said, had attested copies of all the deeds in the hands of other parties. Mr. Lyle accordingly applied to Messrs. Lawford, who, in their reply of the 10th of December, said they assumed that Mr. Lyle's client would pay the charges for producing the deeds. Mr. Lyle then wrote to the Messrs. Faithfull, to say there was nothing "in the contract entailing the expenses on us." They replied that Mr. Pegg knew he was to pay all the charges, and that Mr. Wisden was to be at no expense. It appeared that there was an understanding between the parties, of which Mr. Lyle was not aware, that Mr. Pegg should bear all the expense. The correspondence ceased, and the defendant gave notice that he had abandoned the contract; and on the 8th of January, 1851, the plaintiff filed his bill, praying specific performance of the agreement, or, in the alternative, the repayment of the 650*l.* with interest, and consequential relief.

R. Palmer and *Bevir*, for the plaintiff, contended that the plaintiff had a right any time within the nine years to complete, and that time was not of the essence of the contract, or, if it was, it was waived.

Willcock (with whom was *Hingeston*) for the defendant.—The agreement signed by the defendant was not the contract relied on by the plaintiff, but that signed by himself. The plaintiff had nine years within which he might become the purchaser, upon condition of giving three months' notice; and, when notice was given, the purchase must be completed within the time limited. Contracts of this nature must be performed literally, and in this case the condition has been broken. The case was like that of a condition for repurchasing on a sale by A. to B.; if a time for the repurchase is prescribed by the condition, that must be observed; and if the estate is not repurchased in the time, the right to do so is gone. There was no difference between such a case and that of a right to purchase. Suppose the plaintiff had given notice of his intention to purchase when he first entered on the premises, could he have kept the matter open for the whole nine years? In *Davis* v. *Thomas*, 1 Russ. and Myl. 506, the privilege of repurchase was forfeited, on non-payment of the money as stipulated. [The MASTER of the ROLLS.—If this is a contract to pay in three months, that case would apply]. That is this case; it is to be paid when the purchase is to be completed. The plaintiff must abide by his condition. [The MASTER of the ROLLS.—Yes; and if he went over the nine years the condition would be forfeited.] The agreement was for "a purchasing clause," so that this bill should have been for a lease with an option to buy. If any estate is to be taken away it must be so taken according to the letter of the contract: (*Jay* v. *Birch*, 4 Cl. & Fin. 89.) Consider it as an ordinary case of vendor and purchaser. The time would have expired on the 14th of August, but nothing was done till we gave notice. The plaintiff's first movement was on the 8th of December, asking when and where the deeds could be examined with the abstract; he was therefore guilty of great laches; and the defendant had a right by notice to make time of the essence of the contract, and fix a reasonable time for its completion, or else to insist on its abandonment. The original bill did not mention the agreement which is now set up, although the plaintiff must have known of it, for he sent the defendant a copy. It did not notice the agreement by the plaintiff to pay all expenses. The contract was either a condition which must be observed, or an ordinary contract which ought to be completed in due time. The plaintiff must either take a decree for specific performance (if the court should be of opinion that the purchase ought to be completed) without any inquiry as to title, or must fail altogether. [The MASTER of the ROLLS.—If the vendor means to insist on the acceptance of the title, the point must be raised on the pleadings.] The plaintiff has raised the point himself, for he asks for the execution of the conveyance at once. They cited *King* v. *Wilson*, 6 Beav. 124; *Thursby* v. *Bedwell*, 14 Ves. 590; *Lawes* v. *Bennett*, 1 Cox, 167; *Southcomb* v. *The Bishop of Exeter*, 6 Beav. 213.

R. Palmer, in reply.

The MASTER of the ROLLS.—I have no doubt as to

some parts of this case. The first point was whether, in the agreement of the 1st of April, 1846, the words "I am to have a purchasing clause of the said estate at any time within nine years by giving you three months' notice, for the sum of 2,500*l.* in addition to the sum of 650*l.*" were to be read as if a condition was added that the contract should be completed in three months, and that the 650*l.* was to be considered as part of the purchase-money, and to be returned if the purchase did not take place. I think that such an understanding of the passage would be contrary to all the rules of construction. This must be looked on as a common case of purchase by a tenant from his landlord. The relation of landlord and tenant ceases as soon as notice is given, and that of vendor and purchaser is commenced; and in this case, on the expiration of the three months from the 14th of May, 1850, the relation of vendor and purchaser was complete. Was the time of the essence of the contract? I am decidedly of opinion that it was not; and even if it had been, it has been waived by the consent of the parties; for not only did seven weeks elapse before the defendant sent the abstract of title in answer to the requisition of the plaintiff, but after the three months had expired the defendant wrote complaining of the delay in completing the contract, which he treated as still existing. If time, therefore, was essential originally, I am of opinion that it was waived by the letter of the 4th September. It remains to consider the effect of the letter of the 2nd November, in which the defendant gave notice of a fresh day, on which the purchase was to be completed. It must be kept in mind that some of the circumstances of the case were peculiar. The purchaser was in possession of the property, and made payments to the vendor either by way of rent or as interest on the purchase-money; and after the vendor gave his notice the plaintiff went on taking steps to complete the contract, to satisfy himself as to title, and to compare the deeds till the 10th December, when the foolish dispute arose about the payment of expenses. Delay was thus occasioned, and in five days after the time specified by the defendant expired, and then the defendant refused to complete, and the bill was filed without any loss of time by the plaintiff. Under all the circumstances of the case, I cannot say that the six weeks given by the defendant was a sufficient or reasonable time. As to the title, I think, strictly speaking, the plaintiff has accepted it; but, the point not having been properly raised on the pleadings, I will allow the plaintiff a week's time to bring in objections before me in chambers, and the defendant will be at liberty either to remove them or have them argued in open court. There must be a decree for specific performance.

V. C. TURNER'S COURT.

Reported by J. HENRY COOKE, Esq., Barrister-at-Law.

Nov. 12 and 13.

WHITTINGTON *v.* CORDER.

Demise—What passes by a demise of all in occupation under a lease.

A. B. was the owner of two houses, and demised one to C. D. He afterwards found a subterranean chamber extending under both houses. He converted this into a cellar for his own use. He then mortgaged both houses to E. F. and G. H. with power of sale. Default was made, and the mortgages sold. C. D. bought the house leased to him, described as being in "his occupation," and opened a way into the cellar, and partitioned off so much as was under his house. The mortgagees denied his right, but he refused completion unless he had this part of the cellar, as being in his occupation under his lease. The mortgagees filed a claim for specific performance; but the court dismissed it, holding, that occupation under a lease means occupation of all that passes under the lease, whether in actual enjoyment or not, and whether known or not to exist at the time of the lease.

The facts of this case were that Mr. Fowler owned two houses in Rodney-street, Chepstow; and in 1847 he occupied one and demised the other, which was adjoining, to Mr. Corder, for twenty-two years. Soon after the lease he discovered an old cesspool, which extended under both houses, and made an entrance into it from his own house, and, converting it into a cellar, used it for his own purposes. With the other house there was no communication from the cellar. Mr. Fowler afterwards mortgaged the whole of this and other property to Mr. Whittington and another, who, upon there being a default in the payment of the mortgage money, put the same up to sale by auction under their power of sale contained in the deed, in lots, of which these houses were Nos. 2 and 3, and were thus described in the particulars of sale, "Lot 2, dwelling-house and shop, 209, Rodney-place, now in the occupation of Mr. Jno. Corder, as tenant, at the annual rent of 150*l.*, under a lease for twenty-two years from Lady-day, 1847. The house contains good dining, drawing-rooms, four bed-rooms, and two attics." "Lot 3, all that shop immediately adjoining lot 2, with large cellarage under ground; part of this lot is now occupied by Mr. Cordeaux, the remainder is in the occupation of Mr. Thomas Fowler." At a sale in August,

1851, Mr. Corder bought the house so described as in his occupation, and before the conveyance was executed, having before the sale discovered the existence of the cesspool or cellar, made an opening into it from his house, and partitioning off so much as was under it, he built a party-wall between the portion he claimed and so much as was under the other house. The mortgagees, the vendors, disputed his right to do this, but he refused to complete his purchase unless it were conceded to him, whereupon the mortgagees filed a claim against him for specific performance.

Berry for the defendant.

Russell and *J. H. Palmer*, for the plaintiff, relied on the case of *Doe* v. *Burt*, 1 Term Rep. 701, where a demise was made of parts of a messuage in Swallow-street, &c. "and together with a piece of ground on the north side," particularly describing it, "with an exception of a right of way, the whole of which was late in the occupation of A. B." An action of ejectment was brought for a cellar and wine-vaults, admitted to be under this piece of ground, which was a yard. The lessor, the plaintiff, insisted that the lessee was not entitled to the cellar; but the lessee insisted that he was, on the principle of law, *cujus est solum, ejus est usque ad cœlum et ad inferos*. On a rule to show cause it was observed, that it was not in the contemplation of the parties at the time of the lease to pass the cellar, and it appeared that for three or four years after the defendant's lease the lessor received rent from a former tenant of the cellar; and the same judge, Ashurst, J. illustrated the case before him thus: "The case of the Inns of Court; now it would be very extraordinary to contend that if a person purchased a set of chambers, then leased them, and afterwards purchased another set under them, the after-purchased chambers would pass under the lease." And Grose, J. said: "This is a demise of premises in Westminster, and the question is, whether it appears to have been the intention of the parties to demise this cellar; but everything which was meant to be demised is particularly described in the lease, and no notice is taken of this. It might as well be contended that a lease of a house in the Adelphi would pass the warehouses underneath. But it would be the greatest injustice to put the general construction of law on grants of the houses in that building; for we all know that these houses are held under titles entirely distinct from the cellars and warehouses underneath. And here the premises demised are described to have been lately in the occupation of A.; and if the parties had intended that this cellar in question should have passed, it would have been described as being in the possession of B. But this cellar, not being a part of the premises, nor appurtenant to them, did not pass under this lease."

The VICE-CHANCELLOR.—The facts lie in small compass. The defendant is the lessee under Fowler, under a lease for twenty-two years, from 25th of March, 1847, of a house and premises at Chepstow. Underneath this house and premises there is an old cesspool, formerly used for the drainage of the roads. It is nowhere stated in the affidavits that the cesspool was in use; and it seems quite clear that the existence of it was unknown to the parties at the time of the lease. The demise in 1847 being of the house and premises, the question is, what passed under that demise? I have no doubt that the cesspool did pass. I take it that a demise of the surface amounts to a demise of all that lies above and also of all below the surface. The test is, could a man after having demised the premises in these terms enter and dig? For example, if a mine existed under the land unknown to both parties, could the landlord, after the demise, enter, and dig and search for minerals, without the consent of the lessee? The case of *Doe* v *Burt*, in the first volume of the Term Reports (p. 701), was much relied upon by the plaintiff, but I think it does not apply, because there the cellar was not only known to exist, but was actually in the occupation of a third party at the time of the demise. At the time of this demise, however, the cesspool in question was walled in, and though under the premises was not in the use or occupation of any person—in fact, was not known to exist. It was in 1848 that Fowler, being the owner of the adjoining land, in building a house on it, struck the arch of the cesspool, which he then, for the first time, had any knowledge of. He immediately proceeded to convert it to his own uses, and did make use both of that part which was under his own land and also of that under the defendant's, by making it into a cellar. There can be no doubt this appropriation was unwarrantable if the cesspool in question was included in the demise to the defendant in 1847. On the 26th Aug. 1851, a sale by auction took place. [His Honour read the description and particulars of the sale, already set out.] The first question is, what is the meaning of a person being in possession of property under a lease? Is it to be said that a man is not in occupation of property comprised in that lease unless he be actively using and enjoying it? I apprehend the true meaning of the words "occupation under a lease" is not actual personal use and occupation, but occupation to which he is entitled under the instrument by which the right of possession was granted; and therefore, on the true interpretation,

V. C. TURNER'S COURT.

what was put up for sale was all the property included in the lease; and this, as I have already stated, in my opinion comprised the cellar in question. The defendant swears he would not have bought had he not expected to have possession of the cellar. I do not think this is a case for exercising the discretionary power of the court, and directing a specific performance; but I shall leave the parties to their remedies at law, if they cannot agree.

Saturday, Nov. 20.

PINFOLD *v.* PINFOLD.

Injunction bill—Dismissal of bill for want of prosecution.

A bill was filed for an injunction to stay waste pending an action of ejectment to try the title. The plaintiff obtained judgment and afterwards sold the estate. The defendant was a pauper, and changed his solicitor. He moved to dismiss the bill for want of prosecution:

The Court considered it an abuse, after the object of a suit had been gained, that a defendant should be able to force the plaintiff to go into evidence, and, considering that there were special circumstances, refused to dismiss the bill at once, but directed the motion to stand over for additional evidence as to the representations made by the plaintiff.

This was a motion made on behalf of the defendant to dismiss a bill for want of prosecution. The bill was filed in August, 1852, for an injunction to restrain waste, pending an action of ejectment brought by the plaintiff to try the title to certain hereditaments, and the injunction issued. The action was tried and the plaintiff obtained a verdict, and judgment was entered up and the plaintiff entered into possession and proceeded to a sale of the estate. The defendant took no steps to disturb the verdict and offered no opposition to the sale. It appeared that the defendant was a pauper, and had recently changed his solicitor. In November the defendant gave notice of the present motion. The facts asserted by the plaintiff, which have been before stated, were supported by affidavit

Sidney Smith for the motion.—This is, upon authority, a motion which it is the duty of the court to comply with: (*Stagg* v. *Knowles*, 3 Hare, 241.) Indeed the inconveniences to suitors would be endless if it be necessary to offer any evidence in support of the motion, the fact that the plaintiff has taken no steps to proceed with suit being notorious.

Bagshawe, junior.—The vexation to the suitors will be far greater if the plaintiff be put to further trouble. The affidavits here show that there are special circumstances which take the present case out of the ordinary rule. The conduct of the suit by a solicitor on behalf of a pauper is a mere speculation, and has only been undertaken with a view of compelling the plaintiff to further and wholly useless litigation. The purpose of the suit has been answered and the property sold, and in all this the defendant has acquiesced.

Sidney Smith, in reply.—It is contrary to all rule, after a plaintiff has permitted the time to go by at which he could proceed with the cause, to permit the merits to be entered into on a motion to dismiss for want of prosecution. Upon this subject the observations of Vice-Chancellor Kindersley, in the *South Staffordshire Railway* v. *Hale*, 16 Jur. 160, is plain in explaining the rule.

The VICE-CHANCELLOR.—The rule of the court (which as a general rule of course is beyond dispute) is so technical, that I shall avail myself of any discretion which I may have, to refuse following it. I quite agree with the doctrine laid down by Vice-Chancellor Wigram in *Stagg* v. *Knowles*, and also with the expression of Vice-Chancellor Kindersley as containing the ordinary rule. The bill must be dismissed unless there are special circumstances; but in my opinion the affidavits do disclose special circumstances, and therefore the motion must stand over till the first seal-day after term, to obtain additional evidence as to the accuracy of the plaintiff's representations.

Wednesday, Dec. 1.—*Bagshawe*, junior, this day moved to dismiss the bill without costs.

Sidney Smith opposed the motion; but

The VICE CHANCELLOR made the order. During the argument of the case originally, his Honour took occasion to make the following observation: "As to the merits of the case not being gone into, I am not to be tied down by such technical rules. If it can be shown from authority that I am prevented from dealing with such a motion, I will not do so; but if I can see my way to deal with it, I most certainly will. There is not a greater abuse of the proceedings of this court than that after the whole object of a suit has been obtained, the plaintiff may be compelled by a litigious defendant to go into evidence, and bring the suit to a hearing at a great expense, which is wholly thrown away.

Thursday, Nov. 25.

CHOLMONDELEY *v.* LAVENDER.

Mortgagor and mortgagee—Sale under the 48th section of the Chancery Procedure Amendment Act.

Where a sale of mortgaged estate is asked under the 48th section of the 15 & 16 Vict. c. 86, instead of foreclosure, it must be applied for at the hearing, and if the decree at the hearing be made for foreclosure it cannot afterwards on motion be converted into a decree for sale.

This was a foreclosure suit, instituted before the recent alterations in the procedure and practice of the court; and a decree for foreclosure was made in April 1852, in default of the nonpayment of principal and interest. By the Master's report, it appeared that the principal and interest amounted to 395*l.*; but the property was out of repair, and not worth on a sale 200*l.*, and would require 270*l.* for repair.

Druce now applied on behalf of the mortgagee by motion that a sale might be directed, or that a rehearing of the cause might be had, with a view to obtain a sale instead of foreclosure.

The VICE-CHANCELLOR.—How can I alter the decree?

Druce.—The 48th section of the Act gives the court power, in any suit for the foreclosure of the equity of redemption, to direct a sale of the property, instead of a foreclosure of the equity of redemption. So that there is nothing to show that the power of the court is confined to the hearing, but is most general. The application may be made by the mortgagee. If, however, the court shall be of opinion that, there being a decree, it cannot now order a sale, then it is asked that the cause may be reheard, with a view to obtain what is asked. The mortgagor, who has had notice, has not even appeared on this motion.

The VICE-CHANCELLOR.—I think the meaning of the section is to give power to the court to direct a sale if the parties ask it at the hearing. If otherwise, if the section is to be read as you contend, then not only the mortgagee, but the mortgagor also, after a decree for a foreclosure, can come here and ask for a sale at any time before the time fixed for foreclosure has elapsed. But if you read the whole of the section, I think that the powers and discretion given to the court show that it is supposed they are to be exercised at the hearing. The sale is to be directed, "if the court shall so think fit, without previously determining the priorities, or giving the usual or any time to redeem;" these are inquiries which could only properly be directed at the hearing.

Motion refused.

Wednesday, December 1.

ANONYMOUS.

Motion to suppress depositions and to take evidence orally, under the Chancery Procedure Amendment Act, 15 *&* 16 *Vict. c.* 86.

W. J. Borrill moved, by consent, that depositions which during the long vacation had been taken in the old form might be suppressed, and that the parties on each side might take the examination of witnesses orally under the 15 & 16 Vict. c. 86.

The VICE-CHANCELLOR.—Had this been a motion by consent to suppress depositions simply, it ought to have been made in chambers; but, as it goes further, and seeks that the evidence may be taken orally under the newly-established practice, it was proper to make it in court, and I grant the application.

Ex part. LADY BRAGE *re* THE LONDON AND NORTH WESTERN RAILWAY COMPANY.

Dividends of money paid into court by a railway company—Affidavit.

The affidavit of the party entitled to dividends of money paid into court by a railway company, is not required where the application is for payment of those dividends, but the affidavit of title by the solicitor is sufficient; otherwise where the affidavit is for payment of the capital.

This was the petition of the Baroness Brage, who was tenant for life of lands taken by the London and North Western Railway Company under the powers of their Act. The purchase-money was paid into court and invested, and the prayer of the petition was that the dividends might be paid to her during her life. The petition was supported by the affidavit of the solicitor of Lady Brage, setting forth her title to the land taken and to the dividends of the stock representing the purchase-money of it.

Keat, in support of the petition, stated that the registrar had declined to draw up the order, which had been made, on the ground that the evidence was defective, first, because the affidavit was not that of the petitioner herself, and secondly, because it did not state her belief in her exclusive title to the dividends.

The VICE-CHANCELLOR.—The affidavit by a petitioner in the form required by the registrar, verifying the title and negativing the claim of any other person, is necessary only when payment out of court of the principal money is sought. Here the dividends only are asked, and that form is not necessary. The order may be taken upon the evidence as it is.

V. C. STUART'S COURT.

Reported by GEO. S. ALLNUTT, Esq., of the Middle Temple, Barrister-at-Law.

Saturday, Nov. 6.

Re BEAUFOY'S TRUSTS.

Leaseholds—Compulsory purchase.—Tenant for life.

Leaseholds for lives were bequeathed to trustees in trust for A. for life, and afterwards for other persons; and the testator directed the trustees to renew the lease once, to put in another life in the place of his own. The leaseholds were, after the testator's death, taken by a railway company, and the purchase-money was paid into court and invested, and the dividends ordered to be paid to A. during her life. The trustees did not renew the lease, and upon the death of the remaining life the lease expired in A.'s lifetime. Upon the petition of A., the court ordered the corpus of the purchase-money in court to be paid to her, without prejudice to any question as to the renewal.

This was a petition by Mrs. Agnes Beaufoy, presented under the following circumstances:—Certain land was in 1795 leased to J. H. Beaufoy, for ninety-nine years, determinable on his own and two other lives. By his will, dated in 1823, J. H. Beaufoy devised certain real estate to his wife, Agnes Beaufoy, for life, with remainder to C. Beaufoy for life, with remainders over; and the testator bequeathed the said leasehold property unto and to the use of trustees during the remainder of the term; and he directed that as soon as possible after his death the trustees should renew the lease for the purpose of substituting a new *cestui que vie* in his place, the amount of the fines not to exceed 500*l.*, the testator's intention being to give the trustees power to make only that one renewal: subject to this trust for renewal, the trustees were to stand possessed of these leaseholds upon trusts similar to the uses declared of his freehold estates. In 1836 the testator died, one of the lives upon which the lease was held having dropped between the date of the testator's will and his death. No renewal of the lease was obtained by the trustees. In 1846 the Oxford, Worcester and Wolverhampton Railway Company, under the compulsory powers of the Lands Clauses Consolidation Act (8 & 9 Vict. c. 18), took possession of part of these leaseholds, and paid the purchase-money into court. This money was afterwards invested in the sum of 243*l.* Consols, and the dividends thereof were ordered to be paid to the tenant for life. In 1851 the last life upon which the lease was held dropped, and the lease consequently expired. The present petition was presented by the tenant for life, claiming to have the amount in court transferred to her.

Waley, in support of the petition, referred to *Phillips* v. *Sargent*, 7 Hare, 33; and 8 & 9 Vict. c. 18, s. 74.

Dart, for the persons interested in remainder and the trustees, opposed the claim, and referred to *Osbourne* v. *Manby*, 6 Madd. 72; 2 Russ. 238; and *Bennett* v. *Colley*, 5 Sim. 181; 2 Myl. & K. 225.

The VICE-CHANCELLOR said that he could not adopt the view taken by the counsel for the respondents. He was bound by the terms of the Lands Clauses Consolidation Act to give to the party entitled in possession the same benefit in respect of this fund as she would have been entitled to in case the conversion had not taken place, and the money had not come into court. There could be no doubt upon the fact of what that interest would have been. The whole property would then have gone to the tenant for life, the lease having expired; so that, had no conversion taken place, the remaindermen could have taken nothing. No new right could accrue to the remaindermen consequent upon the conversion; and as to them the case must therefore be dealt with as if no conversion had taken place. It had been suggested, however, that with regard to the leaseholds there had been neglect, amounting to a breach of trust, by reason of the non-renewal of the lease. Into the merits of that question his Honour could not now enter, but he was bound not to prejudice it by the order to be made upon the present petition. The order, therefore, would be that the fund should be paid to the petitioner without prejudice to any question as to the renewal of the lease: the costs of all parties must come out of the fund.

Dec. 9 *and* 10,

GURNEY *v.* JACKSON.

Foreclosure suit—Disclaimer—Costs.

A. B. a mortgagee filed a bill for foreclosure against C. D. the mortgagor and E. F. a second mortgagee, and therein stated applications had been made to C. D. and E. F. to pay the debt. E. F. put in a disclaimer and answer, and thereby denied that any applications had been made, and stated that if A. B. had so applied he (E. F.) would have released and disclaimed all right and interest, &c. At the hearing, E. F.'s costs were directed to be paid by A. B. the plaintiff.

This was a foreclosure suit instituted by the plaintiffs, who were mortgagees on a joint account, against the mortgagor and subsequent mortgagees; and the only question which arose was as to the costs of the subsequent mortgagees. The bill stated that the plaintiffs had applied to the mortgagor and also to the mortgagees, and requested them to pay to the plaintiffs the mortgage debt and interest due to them, but that the defendants had refused so to do; and the defendants were interrogated as to such applications. The subsequent mortgagees filed a disclaimer and answer, and in that stated "that they disclaim all right, title, and interest to or in the mortgaged lands and hereditaments in the said bill mentioned, and every part and parcel of the same;" and "that no application was ever made to these defendants by or

on behalf of the plaintiffs, prior to the institution of this suit, respecting the matters in question in this suit, and that if the plaintiffs had so applied they would have released and disclaimed all right and interest to and in the said mortgaged lands and hereditaments, and every part and parcel of the same."

Rasch, for the plaintiffs, contended that the defendants, the subsequent mortgagees, were not entitled to their costs, the terms of the disclaimer not being sufficient. He cited *Collins* v. *Shirley*, 1 Russ. & Myl. 638; *Perkins* v. *Stafford*, 10 Sim. 562; *Silcock* v. *Roymon*, 2 Y. & C. C. C. 376; *Grigg* v. *Sturgis*, 5 Hare, 96; *Gabriel* v. *Sturgis*, 5 Hare, 100; *Gibson* v. *Nicol*, 9 Bea. 408; *Oberly* v. *Jenkins*, 1 De G. & Sma. 543; and *Buchanan* v. *Greenway*, 11 Bea. 58.

The VICE-CHANCELLOR (without hearing *Freeling* for the defendants) said that he thought this was a very important question, and to be disposed of on a principle which none of the authorities cited touched. The defendants insisted upon their right to the costs, not upon the ground of their not being necessary parties, but because if they had been applied to before the bill was filed they would have submitted to the plaintiffs' demand. The answer was distinct, "that if the plaintiffs had so applied they would have released and disclaimed all right and interest." The plaintiffs by the bill made it a part of their case, and put in issue the fact that they had applied to the defendants and requested them to pay the mortgage debt and interest, and interrogatories were put to the defendants whether they had not been so applied to. It was very true that these were common words, but they were common words used for a wise purpose. At law, if a man sued out a writ, and the demand was immediately paid, the costs would follow, as no previous application for the debt was necessary. An entirely different course, however, was pursued in this court; and under the old mode of pleading the forms used were not senseless ones, but were wisely adopted according to the established principles of the court. Thus the form was, not that a simple application had been made, for a man might apply in such terms as to invite a refusal, but that the plaintiff had "frequently and in a friendly manner" applied, and that the defendant had refused. The words were introduced to guide the court in its discretion in dealing with the costs; for if a man were willing to accede to a demand, and were dragged into court without a previous application, such a circumstance was important upon the question of costs. It had been urged that the application alleged to have been made to these defendants was to pay the money; but that their answer said, not that they would have paid, but "that, if applied to, they would have released and disclaimed all right and interest." But if they had thus released and disclaimed, the defendants need not have been brought here. A bill of foreclosure was said to have been called a bill to recover a sum of money, and Mr. Rasch appealed to a number of authorities in support of that. In all of these authorities, however, the substantial question was, not upon the effect of an averment of an application, but upon how a party who disclaimed should be dealt with at the hearing. Had there been here only a simple disclaimer, his Honour did not consider he should have any reason for calling upon the plaintiffs to pay these defendants their costs; but, as no previous application had been made by the plaintiffs, they must pay the costs of these defendants.

Dec. 10, 11, 13, *and* 18.

MORGAN *v.* HOLFORD.

Contract for sale—Devisable interest.

In August 1836 *A. B. entered into a negotiation for the purchase of an estate of C. D. and on the* 11*th of October in that year C. D. wrote to his solicitor that A. B. had agreed to purchase the estate for* 60,000*l. on the production of a sufficient title, and desiring that an agreement should be prepared. An unsigned memorandum to this effect was then delivered by C. D. to A. B. On the* 29*th of November*, 1836, *A. B. wrote to C. D.'s solicitor, desiring to know where he would forward "the agreement relative to the purchase he had concluded with C. D." The contract was ultimately signed on the* 18*th of February*, 1837, *and the estate was conveyed to A. B. in the following April. On the* 9*th of January*, 1837, *A. B. by his will gave personalty to E. F. and G. H. upon trust to complete the purchase which he had recently made of C. D. and to get the same conveyed to them upon trust, &c.:*

Held, that at the date of his will A. B. had a devisable interest in the estate, and that the same passed by his will to E. F. and G. H.

This was a special case for the opinion of the court under the following circumstances. In August 1836 Major Holford entered into negotiations for the purchase of an estate in the county of Brecon, from Mr. Crespigny. In the course of a correspondence as to the purchase-money, &c., Major Holford wrote, on the 6th of October, 1836, to Mr. Crespigny as follows: "I will therefore take your word, and agree to give 56,000*l.* I will take the timber at a valuation," that valuation being 4,000*l.* On the 11th of the same month Mr. Crespigny wrote to his solicitor, Mr. Clarke: "My friend Major Gwynne Holford has agreed to purchase our estate in this county for 60,000*l.* including the timber, on our producing a sufficient title. Will you have the goodness to settle an agreement on the basis of the above for us to sign? I have shown this to the Major, and given him a copy, not signed, as a memorandum." This memorandum was in the words of the letter, commencing, "Major Gwynne Holford has agreed to purchase our estate in this county for 60,000*l.* including the timber," &c. Further correspondence passed relative to the leases existing on the estate, and the obligations Mr. Crespigny considered himself under to maintain or renew them, and also as to the payment of a jointure to the mother of Mr. Crespigny; and in one letter, dated Oct. 16, 1836, Mr. Crespigny said, "Do not imagine that it has been my wish that you should be in the smallest degree surprised into the engagement, or that you should not have the fullest and most patient investigation of every bearing connected with this business, so important from the amount of its value." On the 1st of November, 1836, Mr. Crespigny, in a letter to Major Holford, said that if the leases were looked upon as affecting the value of the property he would certainly not think of holding him to any engagement. On the 18th of January 1837, Mr. Crespigny thus wrote to Mr. Powell, the Major's solicitor: "There seems to be unnecessary delay on Major Holford's part in accepting the agreement. I shall consider our treaty at an end." The draft agreement was submitted to Mr. Bellenden Ker in November 1836; and on the 29th of that month Major Holford wrote to Mr. Clarke, Mr. Crespigny's solicitor: "I beg to know by return of post when you will forward the agreement to be entered into with Mr. Crespigny relative to the purchase I have concluded with him for his estate in this county. I cannot comprehend the cause of delay, and hope you will expedite the business." The agreement was not signed until the 18th of February 1837. The estate was afterwards conveyed to Major Holford in two portions, by indentures of lease and release, dated respectively April 4 and 5, and May 11 and 12, 1837. On the 9th of January, 1837, which was prior to the 1 Vict. c. 26, coming into operation, Major Holford by his will gave to the plaintiffs, who were the trustees of his marriage settlement, all his personal estate, upon trust to complete the purchase which he had recently made of Mr. Crespigny, and to get the same conveyed to them upon trust to secure a jointure of 2,000*l.* per annum for his widow, and to hold the remainder upon the trusts of his marriage settlement, which contained provisions for the benefit of his younger children. In August 1846 Major Holford died, without having altered or revoked his will, and leaving J. G. P. Holford, his eldest son and heir-at-law, an infant. The principal questions submitted for the opinion of the court by this special case were: 1. Whether the equitable estate or interest in the said hereditaments comprised in the indenture of the 4th and 5th of April 1837, and the 11th and 12th of May 1837, passed by the said will to the plaintiffs, to be held by them upon the trusts of the said will; and, 2. Whether, if such equitable estate or interest was not effectually devised, the said J. G. P. Holford, the heir-at-law of the testator, was bound to elect either to establish the trusts by the said will declared concerning the said hereditaments, or to forego the benefits by the said will given to or intended for him.

Glasse for the trustees.

Malins and *G. L. Russell* for the widow.

Elmsley for the younger children.

J. Baily and *Green* for the heir-at-law.

G. L. Russell, in reply.

The following authorities were cited:—*Fowle* v. *Freeman*, 9 Ves. 351; *Kennedy* v. *Lee*, 3 Mer. 441; *Owen* v. *Thomas*, 3 Myl. & Keen, 353; *Martin* v. *Mitchell*, 2 J. & W. 426; *Broome* v. *Monck*, 10 Ves. 597; *Gibbins* v. *The North-Eastern Metropolitan Asylum District*, 11 Beav. 1; *Clinan* v. *Cooke*, 1 Sch. & Lef. 22; *Staunton* v. *Jackson*, 2 Bos. & Pul. 288; *Earl of Radnor* v. *Shafto*, 11 Ves. 448; *Bennett* v. *Earl of Tankerville*, 19 Ves. 170; *Western* v. *Russell*, 3 Ves. & Bea. 187; *Tebbott* v. *Voules*, 6 Sim. 40; *Buckmaster* v. *Harrop*, 7 Ves. 341; *Dobell* v. *Hutchinson*, 3 Adol. & Ell. 355; and Sugd. Vend. and Purch. c. 3, s. 3.

Saturday, Dec. 18.—The VICE-CHANCELLOR said that it had been contended for the heir-at-law that the true construction of the acts of the parties, antecedent to the will and to the execution, after the date of the will, of a formal agreement for the purchase by the contracting parties, was, that no binding agreement for the purchase of the estate had been made, but only a basis agreed upon for the discussion of the terms on which the treaty for a contract to be executed was to proceed, and that it was understood between the parties that, until a formal agreement was prepared and executed, neither party was to be considered as bound. On the part of the widow and younger children of Major Holford, it had been contended that the basis of the formal agreement was an actual agreement in general terms that Major Holford should purchase and Mr. Crespigny sell to him the estate for 60,000*l.*, and that the formal agreement which was to be prepared was merely to settle the necessary details upon points relating to the tenancies on the estate, the title, and other matters upon which the parties, by coming to a distinct understanding by specific stipulations, might on fair discussion escape the danger of an adverse litigation to settle the various points likely to arise in carrying into effect a general contract for the purchase of a considerable estate, the title to which had not been investigated. In a letter of the 11th of October, 1836, the vendor, Mr. Crespigny, wrote to his solicitor, that "Major Holford has agreed to purchase our estate in this county for 60,000*l.* including the timber, on our producing a sufficient title," &c.; and in the same letter said, "I have shown this to the Major, and given him a copy, not signed, as a memorandum." This letter also desired the solicitor to whom it was addressed "to settle an agreement on the basis of the above for us to sign." It was well settled on sound principles that, if the main terms of an agreement for the sale and purchase of an estate be concluded, and those main terms expressed in a writing signed by the party sought to be charged, it made a binding contract, although there might be an arrangement between the parties to have a formal contract prepared for their signature. In the present case, in none of the many subsequent letters or acts of the parties was anything to be found to alter or vary the essence of that agreement as to the contracting parties, the estate which was the subject of the contract, or the price to be paid. The subsequent discussions were entirely on minor points. It was not disputed for the heir-at-law that the letter of the 11th of October was evidence that a basis for the subsequent treaty had been agreed upon; but, as it was admitted that it was evidence of an agreement as to a basis, where the argument for the heir-at-law failed on this point was to show that this basis was anything short of the general contract to sell the estate for 60,000*l.* to Major Holford, including the timber, on producing a sufficient title. There could, therefore, be no doubt on this view of the case that on this evidence in writing signed by the vendor, Major Holford, before he had signed any memorandum or evidence in writing of the contract, might, on the well-established authorities, have enforced the performance of this agreement. But then it was contended that this right to enforce the contract not signed by himself, being a right little more than an option, was not a devisable interest. As in his Honour's opinion the letter of Major Holford of the 29th of November, 1836, to Mr. Crespigny's solicitor, in which he said, "I beg to know when you will forward me the agreement relative to the purchase I have concluded with Mr. Crespigny," on the plain construction of it, taken in connection with the whole correspondence and transactions, was clear evidence to bind him, it established a complete mutuality in point of signature on his part of the agreement which was mentioned in the letter of Mr. Crespigny of the 11th of October. The facts of the case upon that, which seemed to his Honour the only correct, view of them, excluded entirely the argument by which the proposition was maintained, that a contract for the purchase of an estate being a contract certain in its terms, but signed only by the vendor, not being signed by the purchaser at the date of his will, although completed afterwards, did not give the purchaser a devisable interest in the estate. Every lawyer who had well weighed the observations of Sir Thomas Plumer in the case of *Martin* v. *Mitchell*, 2 J. & W. 426, and what he noticed as having fallen from Lord Eldon, Lord Redesdale, and Sir William Grant, as to the right of a party to enforce in equity a contract which he had not himself signed, against the other party who had signed it, must feel the difficulties which surrounded the proposition that the interest of a purchaser who had made, but had not actually signed, a contract, the terms of which were clearly proved and which was signed by the vendor, was not a devisable interest in the estate which was the subject of the contract. The difficulty of maintaining such a proposition was greatly increased where the purchaser in such a case, by his will, directed the contract to be carried into effect. In the present case, as it was his Honour's opinion that the letter of the 29th of November must be construed, on a fair view of the evidence, as referring to the agreement and transaction stated in the letter of the 11th of October, and therefore to the memorandum referred to in that letter, and could not be held as referring to anything else, the difficulty which might otherwise have occurred did not arise, and he must hold that there was a valid contract for the purchase of the estate by Major Holford before the date of his will, and that his equitable interest under that contract passed by his will. In the case of *Broome* v. *Monck*, 10 Ves. 597, the difficulty arose from the title of the estate having, after the testator's death, been reported to be a bad title, which put an end to the contract. Any ordinary contract for the purchase of an estate might fail on that ground. But the testator might in his lifetime have agreed to accept the title, however defective, and no argument seemed to have been suggested for the devisee in *Broome* v. *Monck* as to how far the direction in the will to complete the contract could be held to amount to an acceptance of the title. The case of the devisee there failed from his attempt to enforce a right to have the purchase-money invested for his benefit in

other real estates. Upon the whole in this case, after the best consideration, his Honour could come to no other conclusion than that the right of the heir-at-law was excluded by the devise in the will of Major Holford.

Thursday, Dec. 23.

WEATHERILL v. GARRETT.

Appointment of new trustees—Parties.

A claim for the appointment of new trustees of certain real estate was filed by the mortgagee of a portion of the beneficial interest against the heir-at-law of the surviving trustee, without making any of the other cestuis que trust parties; and it was proposed to take an inquiry as to the parties beneficially interested. The court declined to order such an inquiry, and directed the claim to stand over, with leave to amend.

This was a claim by the mortgagee of a portion of a trust estate for the appointment of new trustees, and for accounts to be taken. By an indenture of the 23rd of May, 1825, certain freehold, copyhold, and leasehold estates were vested in trustees upon trust for the benefit of Charles Hornby and other persons. By a mortgage dated the 15th of May, 1841, Charles Hornby mortgaged his interest to the plaintiff to secure the sum of 800*l.* and interest. Charles Hornby afterwards died, having devised his interest to his wife. The heir-at-law of the surviving trustee was the only defendant to this claim.

Brodrick, for the plaintiff, proposed to take an inquiry as to the parties beneficially interested in the trust estate.

Babington, for the defendant.

The VICE-CHANCELLOR said that if he directed the inquiries proposed, they would be very expensive, and inquired who was to pay the costs. He could not make the order, but would direct that the claim should stand over, with leave to amend.

V. C. KINDERSLEY'S COURT.

Reported by W. H. BENNET, Esq. of Lincoln's-inn, Barrister-at-law.

Thursday, Dec. 21.

KING v. MALLINGS.

Release; or receipt in full of all demands—Trustee—Executor.

A trustee who has a specific trust to execute, where the trust is apparent, and the fund clear, and paying the trust fund in direct accordance with the trust, is not entitled to a release under seal.

On the contrary, if the trustee be asked to do what is not in strict accordance with the tenor of the trust, he is entitled to a general release.

Where a trust fund in the hands of an executor is about to be distributed, it is the practice to grant him a general release by the parties to whom the fund is paid.

An injunction had been granted to restrain an action-at-law for the payment of a sum of money, part of a trust fund; and on the application to dissolve this injunction, a question arose as to whether the trustee was entitled to a general release from the children of a party who had had a life interest in the fund, with a power of distribution to those children at the death of the tenant for life. The trust was created by parol, there being no declaration of the trust by deed; it was to pay the interest of a small sum to A. B. for life, then to C. D. for her life; at her death to pay the expenses of her funeral, and the residue to be divided between her two children.

The trustee contended he was entitled to a general release from the children.

Lewin, in support of the application to dissolve the injunction, contended that, as the trust was precise, the trustee had no right to call for a general release. There was here no open account or intricate trust created; it was an ascertained sum of money, and the expense of the funeral small and defined; and that the balance ought to be paid over to the children, on their signing a receipt in full of all demands, which was a valid discharge, and as good and effectual under the circumstances as a general release. He relied on *Chadwick* v. *Heatley*, 2 Coll. 137, where it was held that a trustee of stock under a will, on transferring the stock to his *cestuis que trust*, was entitled to an acknowledgment by the *cestuis que trust*, that the stock was transferred to them in full of all demands, although he was not entitled to a release under seal. He relied also on *Fulton* v. *Gilmour*, cited in Hill on Trustees, p. 605.

Loftus Wigram and *Roxburgh*, contrà, argued that in the first case cited nothing remained to be done but to transfer to the party entitled the balance of the stock to which he was clearly entitled; but in the present case a receipt would be insufficient, as, although a bar to a legal debt, it was not so in regard to an equitable demand, which the present was. Having a release under seal, of course the trustee would be safe, as no parol evidence could be given against such deed. They relied on *Goldsmid* v. *Goldsmid*, Turn & Russ. 445. [As to this case the Vice-Chancellor said he doubted if he ought to act upon it as an authority for the propositions there stated.]

Lewin, in reply.

The VICE-CHANCELLOR, after stating shortly the facts of the case, said that as to the question of a trustee having a strict right to insist upon a release under seal, he was of opinion that where it was a case of declared trust, as where the trust was apparent on the face of a deed, the fund clear, and the trust clearly defined, and the trustee was paying either the interest or the capital of such fund in strict accordance with the terms of the trust, a trustee under those circumstances was not entitled to a formal release by deed. Certainly in the common case of executors, the executorship affairs being wound up, it was, he believed, the universal practice to give the executors a release. No doubt an executor has a right to be clearly and fully discharged, not to be left to the chance of future litigation, and therefore he could not safely hand over the surplus without such a release. But where a trustee is paying in strict accordance with the trust, it is clearly unnecessary. A general receipt would be sufficient. That, however, was not the present case: here there was no deed at all, no writing by which the trust was declared. A small sum of money was in the hands of the trustee, and only a verbal expression of the trusts. The terms of the trusts are, it is true, admitted by the parties; therefore there is no doubt upon that; but it clearly transpires that they could not be completely carried out until after the death of the tenant for life. Considering, therefore, that in the first place there was no writing to indicate either what the trusts were or the exact amount of the fund put in trust; and in the second place, that what the trustee had been asked to do was not in strict accordance with the tenor of the trust; he (the Vice-Chancellor) was of opinion that it was not improper in the trustee to demand a release by deed under seal. *Order accordingly.*

Common Law Courts.

COURT OF QUEEN'S BENCH.

Reported by ADAM BITTLESTON and JOHN THOMPSON, Esqrs., Barristers-at-Law.

Wednesday, Dec. 1.

COUNTY COURT APPEAL.

(Before COLERIDGE and EDLE, JJ.)

ROOKE AND OTHERS v. THE MIDLAND RAILWAY COMPANY.

Trover—Evidence of conversion.

The plaintiffs bought timber at Hull, which was by their direction delivered to the York and North Midland Railway Company at Hull, to be forwarded to the plaintiffs at Nottingham. The timber was carried over the Ambergate Railway Company to the Nottingham station, which belonged to the Midland Railway Company, and came into the possession of the Midland Company. The plaintiffs made a written demand of the timber on the Midland Company, with an offer to pay any expenses to which it was liable, but this was refused, and they were told that they could only have it by taking it back to the first station on the Ambergate line, five miles from Nottingham:

Held, evidence of a conversion by the Midland Railway Company.

This was an appeal from the decision of the judge of the County Court at Nottingham.

Trover for timber.

The plaintiffs, who resided at Nottingham, purchased timber at Hull, and ordered it to be forwarded to them by the York and North Midland Railway Company. The timber was proved to be in the defendants' possession at their station at Nottingham; and the mode by which it came there was proved by the following letter from the goods manager of the Midland Railway Company to the secretary of the Ambergate, Nottingham, and Boston and Eastern Junction Railway Company:—

"Midland Railway, Nottingham.

"Sir,—I have to inform you that the understated goods have arrived at this station by your line, and, not being included in the agreement under which the use of the station is to be afforded to your company in regard to the traffic of your line, this company cannot undertake the delivery thereof, and I am instructed therefore to require that the said goods shall be taken back again. John Ashworth."

[A list of the goods was appended.]

Several attempts were made by the plaintiffs to obtain the timber from the Nottingham station, and ultimately a written demand was served upon the defendants with an offer to pay any legal claim the defendants had upon the timber. The plaintiffs attended at the station pursuant to their written demand, when they were referred by the station-master to M'Craith, another servant of the defendants. The plaintiffs then made a demand of the timber of M'Craith, offering to pay any legal charges to which it might be subject. Some of the timber was taken by the plaintiffs out of the defendants' warehouse for the purpose of conveying it away; but by M'Craiths' orders it was removed back again into the defendants' warehouse, M'Craith stating he was ordered by Ashworth (the goods manager above referred to) not to let the timber go, and that they could only have it by taking the same back again to the first station on the Ambergate line (five miles from the Nottingham station.)

Upon these facts the defendants contended at the trial that there was no evidence of a conversion by them. The learned judge was of a contrary opinion, and gave judgment for the plaintiffs.

Against this decision the defendants now appealed.

Miller (*Gifford* with him), for the defendants.—The refusal to part with the possession of the timber was in this case a qualified and reasonable one under the circumstances. Ashworth's letter explains the defendants' conduct: the timber had arrived at the Nottingham station by the Ambergate line, and, according to the contract between the Ambergate line and the defendants' company, the defendants were not bound to deliver the timber, and refused to accept that responsibility, and told the parties who brought the timber to take it back again. It was not for the defendants, under these circumstances, to part with the timber to any others than the Ambergate company. [COLERIDGE, J.—Suppose the timber had been trespassing. The notice says the plaintiffs are willing to pay any charges upon the timber; and if the defendants thought they were not safe in delivering the timber to the plaintiffs, they might have obtained an indemnity.] They were not bound to take an indemnity; they had no contract with the plaintiffs; the timber was lying at their station by mistake. Secondly, there is no evidence of a conversion by the defendants. In all the cases of trover against corporate bodies, there will be found to be evidence that the fruits of the conversion have found their way into the hands of the corporation. Here there is no evidence of that. The connection of Ashworth and M'Craith with the company was not such as to make the company responsible for what they did: (*Pathonier* v. *Dawson*, Holt's N. P. C. 383; *Glover* v. *The North Western Railway Company*, 5 Ex. 66; *Smith* v. *The Birmingham Gas Company*, 1 A. & E. 526.)

Willes, contrà, was not called upon.

COLERIDGE, J.—We are both of opinion that the judgment must be affirmed. There is abundant evidence of a conversion. It is no answer to the action to say there must be a conversion by somebody to the use of the defendants themselves, when there was clearly a detention for the purposes of the party detaining them. A demand and refusal are certainly not conclusive evidence of a conversion, but there is nothing to show they do not in this case amount to a conversion. In consequence of some disagreement between the two railway companies, the defendants chose to detain the plaintiffs' goods. The plaintiffs demanded the goods of the defendants, and in addition served a written notice of demand on the station-master; and when they attended at the station to take away their goods, the station-master refers them to M'Craith, and he therefore would be in the same position as the station-master. If any one could bind the company, surely the station-master could. Then M'Craith does plenty to bind the defendants.

EDLE, J.—When the goods arrived at Nottingham, the plaintiffs were entitled to have the goods delivered to them; they demanded them, and they were refused. That was a conversion, unless the defendants can justify their refusal. They say the goods were brought to their station by the Ambergate Railway Company, an intermediate line, which had no right to send such goods to their station, and they therefore insist that the Ambergate railway should take them back to the part which belongs to that company. The plaintiffs clearly had a right to have their goods, though brought by mistake or without right on the defendants' premises, upon paying the charges the defendants might have against them in respect of those goods, which the plaintiffs offered to do.

Judgment affirmed with costs.

COURT OF EXCHEQUER.

Reported by FREDERICK BAILEY and C. J. B. HEATHLEY, Esqrs., Barristers-at-Law.

Nov. 8 and 16.

LEVERONI v. DRURY.

Shipowner—Liability, as carrier, for damage—Bill of lading.

The plaintiff shipped certain goods on board the ship of the defendant to be carried from Genoa to London. By the bills of lading, which were in the usual form, the master bound himself to deliver the goods safe and free from damage in London. In the course of the voyage they were much damaged by rats, although the defendant had kept cats on board and used the usual means to protect his cargo from vermin:

Held, that the defendant was nevertheless liable as a common carrier for the damage done to the goods of the plaintiff.

This was an action brought by the plaintiff, as owner of a quantity of Parmesan cheeses shipped on board the defendant's ship the *Sophia* at Genoa, for damages alleged to have accrued in consequence of the negligence of the defendant, whereby some portion of the goods had been damaged and damaged by rats. It appeared at the sittings before Martin, B. at the first sittings in Michaelmas term last, that the cheeses in question were

shipped on board the ship *Sophia* at Genoa to be carried to London, and that in the course of the voyage five of the tubs of cheese were damaged by rats. The bill of lading bound the master absolutely to deliver the cheese safe and free from damage in London. The defendants contended that they were not liable, as they had taken every usual precaution by keeping cats on board and baiting traps, &c. to prevent damage from vermin. A verdict having been returned for the plaintiff,

Crowder moved for a rule to show cause why the verdict should not be set aside and a new trial had on the ground of misdirection. *Cur. adv. vult.*

JUDGMENT.

POLLOCK, C.B.—This was an application by Mr. Crowder for a new trial, on the ground of misdirection; and we took time to consider our judgment, not because we have any doubt on the question, but because we wished to consider the various authorities which had been cited by Mr. Crowder as adverse to our opinion, and we are now so entirely satisfied that the direction of the learned judge was correct, that we consider it would be a waste of money to grant the rule. The cause was tried at the first sittings in this term, before Martin, B. The declaration was in the ordinary form by the plaintiff, as owner of goods, against the defendants, who are shipowners, for damages alleged to have accrued by the negligence of the defendants, owners of the ship *Anna Sophia*, to some Parmesan cheese, the property of the plaintiff, on a voyage from Genoa to London. In the month of December, 1851, the *Anna Sophia* was at Genoa, taking in cargo as a general ship, and the cheese in question was loaded on board, and bills of lading signed in respect of them. The bills of lading were in the Italian language, and are substantially in the same form as ours; and by their terms the master proposed to bind himself absolutely to deliver the cheese safe and free from damage in London. He was, however, examined at the trial, and stated that he was ignorant of the Italian language, and that before he signed the bills of lading they were read to him, and he believed they were in the ordinary English form. For the purpose of the present question, it is to be considered they were in such form, for the direction which is complained of was founded on the supposition that the ordinary exceptions were contained in the bill of lading, and that the plaintiff was bound by them. The ship sailed and arrived in London, but several of the cheeses were eaten and damaged by rats in the course of the voyage. It was proved by the master that he had two cats on board, and it was insisted by the counsel for the defendant that it was a question for the jury whether the defendant had not by keeping the cats exempt himself from the charge of negligence. The learned judge however was of opinion that it was not for the jury, and he directed them that damage by rats was not within the exceptions, and, if they believed that the cheeses were damaged by rats in the course of the voyage, the defendant was responsible; and we are of opinion that this direction was right. By the law of England, the master and owner of a general ship is a common carrier for hire, and responsible for negligence. This, according to the well-known rule, renders him liable for every damage except "the act of God, or the King's enemies." They however always, not universally, receive goods under bills of lading signed by the master, and in such case it depends upon the bills of lading, that being the express contract between the parties, the owners of goods on the one hand, and the master and owner of the ship on the other. The exceptions contained in an English bill of lading, which is assumed to be the form of the bill of lading in this case, as stated in Abbott on Shipping, page 280, are as follows: "The act of God, the King's enemies, fire, and all and every other danger of the seas, rivers, and navigation of whatever nature and kind soever, save risk of boats, so far as ships are liable thereto, excepted." We agree with the learned judge, the question is, whether damage by rats falls within the exception? and we are already of opinion that it does not. The only part of the exception under which it were possible it could be contended to fall is "a danger or accident of the sea;" but this we think includes only the dangers properly so called by the violence of the wind and waves which may be acting on a seaworthy ship, and does not cover damage by rats, which is a kind of destruction not peculiar to navigation, but to which all commodities are liable to, on land or in warehouses. In moving for the rule, the learned counsel cited various foreign writers of great authority; Emerigon, p. 575, Consolato del Mare, Roccus de Navibus, and Story on Bailments, 513. The foreign authorities first above-mentioned lay down the rule distinctly, that a shipmaster or owner who keeps cats is excused from damages by rats; but however worthy of attention their authority may be, we cannot act on them in contradiction to the bill of lading. As to Story, he very cautiously confines himself to stating that such are the [illegible] and it seems to us he avoids expressing his own opinion upon the point. It was also contended that the same doctrine was laid down by Lord Tenterden, and there is no doubt that the learned lord is entitled to the greatest weight and consideration. We do not, however, think that Lord Tenterden can be understood as laying down such a rule. He cites a passage from Roccus, which states that keeping cats on board excused the shipowner from damage by rats; and after that he states it as an illustration of the general principle by which masters and owners are responsible for every injury which might have been prevented. Now, whatever be the case when Roccus wrote, we cannot but think rats might be now banished from a ship without any particular vigilance on the part of the master; and we are inclined to think, in the present mode of stowing cargos, cats would be of very little protection. But we think that Lord Tenterden cannot be understood as contended for by the learned counsel for the defendant in this case. And that is evident from the authority he cites of *Dale* v. *Hall*, 1 Wils. 281. That was an action against a shipowner who carried goods for hire. It was contended that the plaintiffs had proved no negligence, and it was proposed to prove the defendants had taken care of the goods, and the damage occurred by rats having made a leak in the vessel, whereby water was admitted, and everything was done that could be done to pump out the water. The evidence was admitted, and the defendant obtained the verdict. A new trial was moved for on the grounds that the evidence was not admissible, and the rule was made absolute, the Chief Justice stating that the evidence ought not to have been received; that everything was negligence in a carrier which the law does not excuse; that he was answerable for the goods immediately he received them, at all events except damaged by the act of God or the King's enemies. This is a case cited by Lord Tenterden in a part of his book as the principal authority on the subject; we entirely concur in it, and it seems to us it is the same principle as in the present case. In our opinion the principle laid down in that case affords the only true rule of ascertaining with certainty the liability of the masters and owners of a general ship, namely, that *prima facie* he is a common carrier, but that his responsibility may be either enlarged or qualified by the terms of the bill of lading, if there be one; and the question whether the defendant is liable or not is to be ascertained by the terms of the document, where such a document exists. There will, therefore, be no rule. *Rule refused.*

INSOLVENT DEBTORS COURT.

Reported by DAVID CATO MACRAE, Esq., of the Middle Temple, Barrister-at-Law.

Wednesday, Nov. 17.

Before the CHIEF COMMISSIONER.)

Re ——

Allowance for support of insolvent in prison under a remand by the court.

An application was made (under the 1 & 2 Vict. c. 110) in the case of two insolvents, for an allowance from the detaining creditors not exceeding 4*s.* a week, in each case for their support while in prison, under the judgments pronounced by the court. In one case an order was made. The other stood over.

NOTE.—In default of payment, orders are made to discharge the insolvents notwithstanding the remand.

Friday, Nov. 19.

PROTECTION CASE.

Re CHARLES WALLEN.

Description.

An insolvent petitioning as a trader, will have his petition dismissed if the evidence shows him to be a non-trader.

This insolvent had hired an omnibus, and purchased horses and intended to trade, but had never in fact commenced business in consequence of the withdrawal of the permission which he had been promised, to run into the Kilburn Station of the London and North Western Railway.

The CHIEF COMMISSIONER held, that to constitute a trading, there must be both the intention and the act. Here there had been no act of trading. The description was therefore incorrect and the petition must be dismissed. *Petition dismissed.*

Monday, Nov. 22.

(Before the full Court; Chief Commissioner REYNOLDS, and Commissioners LAW and PHILLIPS).

PROTECTION CASE.

Re JAMES FRY.

Prisoner—Protecting order under 28th section made, and discharge issued by mistake.

Held, that where a protecting order under the 28th section has been made, and a warrant discharging an insolvent by mistake, the court may revoke the order and recommit the petitioner.

This insolvent petitioned the court under the protection statutes in April last, and upon his first examination, being opposed by *Macrae* for a creditor named Impey, no day was named for the final order, upon the ground of fraud; but it was intimated that he might apply at the end of three months for a protecting order. He was also ordered to file certain documents relating to property in which he was interested, and give due notice to the opposing creditor of having done so, before he applied for his protecting order; but from some inadvertence, this did not appear upon the record as part of the order made. The insolvent being thus without protection, the opposing creditor took the proper steps to arrest him, by issuing a *ca. sa.*, and placing it in the hands of an officer, whose exertions to arrest him were not successful for about two months after the examination, when he was at length taken, and conveyed to Maidstone gaol. In July 51 an application was made by the insolvent for a protecting order, under the 28th section, and there being no opposition the order was granted, and a warrant issued for his discharge forthwith. The opposing and detaining creditor, Mr. Impey, and his attorney, Mr. Godwin, of Essex Court Temple, being apprised that their prisoner was liberated from custody, immediately inquired at the court-house as to how he came to be discharged without their knowledge, when it was discovered that the protecting order had been granted without the notice to the opposing creditors which the court directed having been forwarded to them, which accounted for the discharge without opposition.

Macrae then moved for and obtained a rule, calling upon the insolvent to show cause why the protecting order should not be rescinded, and a warrant issued for the re-committal of the insolvent to his former custody, the order of protection and the discharge having been improperly obtained by the withholding of notice to the creditors; and why service of the rule upon the attorney of the insolvent should not be sufficient in the event of the petitioner not being found.

On Nov. 6 *Cooke* showed cause.

Mr. Commissioner PHILLIPS said that the impression upon his mind was, that the court had power to revoke its order, and remit the insolvent to his former custody: but as the question raised was an important one, involving some doubt, he should take an opportunity of convoking a full court, that the matter might be fully discussed and decided.

The rule was accordingly directed to be enlarged for that purpose.

Nov. 22.—*Macrae* appeared before the full court and moved to make the rule absolute. Counsel detailed the facts of the case. Upon these facts the questions submitted to the court were; first, whether the commissioner had power to remand at the first examination in cases other than those where he was specifically directed to remand in the Act (sect. 24); and secondly, if so, whether it was just and right to remand this petitioner to his former custody under the circumstances of the case. Upon the first point the statute (7 & 8 Vict. c. 96) enacted that upon some seventeen grounds of opposition, enumerated in sect. 24, being made to appear where the petitioner shall have been a prisoner in execution, and discharged out of custody by order of the commissioner under the provision herein in that behalf contained, such petitioner shall be remanded by an order of the commissioner to his former custody. In these cases, then, there could be no doubt as to the authority of the court to remit a petitioner who had been discharged *ad interim* under sect. 6 to his former custody. But there was another class of cases, not coming within the specific words of the statute, where the commissioners had often been induced to discharge *ad interim* when, if they had known the facts brought to their knowledge at the hearing, they would never have interfered. In these cases the commissioners in the Court of Bankruptcy had constantly remanded the petitioners if they appeared, or issued warrants for their recommittal if they did not appear, although they were not specifically warranted in so doing by the language of the statute: (See Macrae's Insolvent Practice, p. 333.) In one of those cases (*Re Partington*), before Mr. Commissioner Evans, the insolvent, it appeared at his first examination, was in contempt of the Insolvent Debtors' Court for not filing a schedule; and all his property was vested there. The learned commissioner said that if he had known that, he would never have entertained his application under those statutes for a discharge *ad interim*; and he should therefore remand him to his original custody, which was done accordingly. Upon this recommittal Partington applied upon a *habeas corpus* to the Court of Q. B. (6 Q. B. Rep. 649) for his discharge, upon the ground that his detention was illegal, the commissioner having no authority given him by the statute to make any such order. The Court of Q. B. after full argument, held that the right to remand was incident to the commissioner's jurisdiction upon the petition, and refused to discharge the prisoner. He then applied to the Lord Chief Baron at chambers with no better effect; and lastly he brought his case before the learned barons of the Ex. (13 M. & W. 679), who, after argument and taking time to consider, delivered their judgment by Parke, B. in the following terms:—"An application was made by Mr. Peacock for the discharge of a defendant who was in custody in execution for more than 300*l.*, and who had in August last filed his petition under the 8th section of the 7 & 8 Vict. c. 96. It appears that an interim order was made for his protection, and that he was discharged out of custody by the learned commissioner, Mr. Evans. But when the case was heard on the 27th Sept. (the day prefixed), the commissioner refused the final order, and remanded him into

custody as if the interim order had not been made; being of opinion that he was not entitled to the benefit of the Act, as he had previously, in the year 1842, petitioned the Court for Relief of Insolvent Debtors, and all his estate was vested in the provisional assignee of that court, and could be dealt with according to the provisions of that Act. The application for a *habeas corpus* was made on three grounds,—first, that the commissioner had no power to remand in this case, it not being one in which he is directed to remand under the 24th section; secondly, that upon the refusal of the final order the defendant could only be taken in execution by the creditor under the 6th section by a fresh writ, or by ordering the sheriff to take him again under the old writ; thirdly, that under the 28th section the defendant, who had been already in execution for more than twelve months, could not be detained any longer. The case has already been before the Court of Q. B. on the return to a *habeas corpus*, and before my Lord Chief Baron at chambers on a subsequent application for a similar writ. In both instances the discharge was refused. The defendant had, however, a right to take the opinion of this court as to the propriety of his imprisonment; and therefore we have thought it proper to examine attentively the provisions of the statute without considering ourselves as concluded by these decisions. But we are all of opinion that the defendant is not entitled to his discharge, and we entirely agree in the judgment of the Court of Queen's Bench, which was approved by the Lord Chief Baron, and are satisfied of the correctness of the reasons stated to us to have been assigned by Lord Denman for that judgment. The right of remanding as if the interim order had not been issued does not depend upon the 21th section, which is compulsory in all the cases therein mentioned, but is incident to the jurisdiction to grant the interim order given by the statute to the commissioner, who, if he finds that he has granted an order *ex parte* which he is satisfied he ought not to have done, must have a right to revoke that order and place the defendant in the situation in which he was before, and where he ought to have remained. The commissioner, therefore, when he discovered that the defendant was not entitled to the benefit of the Act, was perfectly right in not merely rescinding the order but in ordering him to be remanded and placing him in the same situation in which he was when the interim order was obtained." This clearly established the commissioners power to remand in cases not within the express language of the Act, the principle being that it was a power incidental to the jurisdiction given to the commissioner by the petition, and necessary to prevent the abuse of the Act by perverting it to purposes for which it never was intended. Now it was true that case was not under this section (sect. 28); but the principle it established was precisely analogous to that involved in this rule, and the facts too were analogous. Then as to the remainining question whether it was just and right for the court to make the orders asked for, it was only necessary to observe that if the commissioner found that by his interference he had deprived parties of legal rights as against their debtor, he was bound to restore those rights by another order; and if he found that he had conceded legal rights to an insolvent who was not entitled to them, it was only common justice to take them from him and restore all parties to their original position. The learned barons of the Ex. at the close of their judgment just read, affirmed the justice of such a proceeding most distinctly. He submitted, therefore, that the rule should be made absolute.

Cooke, in showing cause, adverted to the specific clause inserted in the 1 & 2 Vict. c. 110, giving the court power to order a rehearing in cases of this description under that statute, the absence of which in the Protection Statutes afforded a strong presumption that the Legislature did not intend to give the court a similar power under those Acts of Parliament. He doubted also, whether the Court of Q. B. in their judgment in *Partington's case*, had approved of the act of the commissioner in remanding that insolvent. They simply affirmed his jurisdiction.

The CHIEF COMMISSIONER, who spoke in a low tone of voice which scarcely reached the bar, was understood to say that the rule involved two important points; the first being, whether the court had the power to make an order to revoke an order improperly made. Upon that point it seemed to him but common sense and common justice that, when there had been a surprise, or a suppression of facts, or false evidence, a court should have the power of setting itself right upon the true facts being brought to its knowledge. He was therefore clearly of opinion that the court had the power to revoke this order. Upon the second point, namely, whether the court could issue its warrant again to apprehend the petitioner, he had some doubt. Upon this point he should be very glad if he had the facts of the case more fully before him. The discovery that he had withheld papers or documents, might have very much aggravated the case; but no such order as counsel alleged to have been made appeared upon the record, and it did not appear whether the insolvent had acted fraudulently or merely inadvertently in the matter. Under these circumstances, and entertaining considerable doubt whether the court had power to issue its warrant for the apprehension of the petitioner and his recommittal to his former custody, he thought that probably the better way would be to make the first part of the rule absolute for revoking the protecting order, and then grant a new order under the 28th section for the petitioner to come up and be dealt with as in other cases.

Mr. Commissioner LAW said that the important question was to ascertain whether they could legally do that which they were asked to do by this rule; and it appeared to him that the authority was so clearly laid down that there was nothing to answer, and consequently the counsel for the opposing creditor had not answered. He could entertain no doubt about the power of the court to revoke an order improperly obtained, and he could have as little reason to doubt the power to issue the warrant. This case of *Ex parte Partington* affirmed the propriety of what he was prepared to do; that was to say, if he had done that improvidently which he ought not to have done, he could so act as to repair the injustice that might have been done to any party, and restore things to the state in which he found them. That appeared to be clearly laid down by the judges in the authority before them. He thought the case was perfectly cogent, and in point. The section there alluded to enacts that the commissioner shall not have the power of naming a day in certain cases, that was to say, when for sixteen or seventeen reasons he may remand the petitioner to custody. The case before Mr. Commissioner Evans was not within that section, but the learned commissioner exercised the power notwithstanding, and the courts at Westminster decided that as he had decided the point, and that as he had exclusive jurisdiction in the matter of the petition, they could not interfere. That was a decision upon a plain principle; and that principle applied more strongly here, for the discharge from custody had been illegal. In *Ex parte Partington* the commissioner acted in ignorance, and that section did not positively require notice to be given to creditors; but the section here expressly alludes to the hearing of creditors. If, as in this case, the petitioner was discharged by any neglect, such as not hearing the parties, the discharge was positively illegal. The opposing parties must have notice. In this case it is specially directed that a certain creditor should have ten days' notice; and therefore, having obtained the protecting order without the condition the law imposed, namely, without hearing the other side, the order was clearly bad, and ought to be revoked. Then as to the suggestion of the Chief Commissioner, that instead of at once issuing a warrant for the insolvent's recommittal he would grant a fresh order to come up, if the petitioner by anything on his part had obtained the order improperly, he would, without hesitation, at once direct the issue of a warrant for his recommittal; but if he was personally without blame, he did not say that he would revoke at once or issue a warrant instanter for his recommittal. But if by any misconduct he had brought about his discharge, he would exercise the entire power asked for in this rule, and recommit; but if the insolvent was personally innocent of blame, he would not do so.

Mr. Commissioner PHILLIPS said, the only doubt he had was, whether there was a power under these Acts, as there was under the 1 & 2 Vict. c. 110, namely, where an adjudication was made on false evidence, or otherwise improperly made or fraudulently obtained, the court might grant a rehearing. If by any section in this Act the court possessed a similar power, he would have granted a rehearing. He doubted whether he had the power. However, upon full consideration of the case of *Partington*, he thought it went to the full length of exercising the power claimed to be exercised by this rule. He thought the case went the whole length; and it was a singular fact that the demerits in *Partington* was the same as in *Fry*. *Partington* had petitioned this court, of which the Court of Bankruptcy was kept in ignorance, and *Fry* had not given the notice required, of which fact this court was kept in ignorance. The commissioner's judgment in the case of *Partington* proceeded upon a fraudulent suppression of facts; and as in the one case the Superior Courts decided affirming the power exercised by the commissioner, he could not doubt that the same power existed in this case. He was of opinion that this court had the power both to revoke the order of protection and issue a warrant of re-committal. Upon looking at the schedule, there appeared to have been fraud in the case, and upon that no day was named. His rule was, when he mentioned any time, to specify the sufficient term of imprisonment, or of anxiety or suspense during which he was to be exposed to his creditors. But as the majority of the court do not agree in opinion, he deferred to their experience, and thought it would be sufficient to revoke the protecting order, without recommitting the insolvent, thus leaving him without protection, and at the discretion of his creditors.

Cooke asked for a day to be named for the insolvent to come up and be heard *de novo* under the 28th section.

Macrae said that it seemed, in deference to the doubts of the Chief Commissioner, that the court, instead of at once making the latter part of the rule absolute, intended to grant a new order, and the insolvent then to be dealt with upon the merits; but he would beg to suggest that, supposing a case were then made against the petitioner, what power would there be under that section to recommit him? He did not say that the court had not the power to recommit in that event, but they were leaving strong and safe ground under this rule, and taking up a new position, the nature of which, in reference to the rights of his client, he had not had time to consider.

Cooke replied, that that question could be considered when it arose.

Mr. Commissioner LAW thought that was a very proper suggestion, and the question should be considered now. He had no idea of allowing this rule to drop, or the power they possessed under it to be diminished by placing the parties in a new situation. There might be great doubt and difficulty in recommitting the insolvent if this rule were permitted to drop; and, therefore, he thought the best course would be, to let the rule stand over for the insolvent to come before the court and be examined *viva voce*, with liberty to the creditors to adduce any evidence they thought proper.

Macrae said that that course was quite unobjectionable.

Mr. Commissioner PHILLIPS said that then, if the court should be of opinion, after hearing both sides, that a case was proved, this rule would be made absolute fully.

The rule was then directed to be enlarged, and the 6th of December named for the petitioner to come up for examination upon the merits, as under the 28th section. The opposing creditor present in court to take notice. The other opposing creditor at the first examination also to have due notice.

Rule enlarged.

Tuesday, Dec. 7.

(Before Mr. Commissioner PHILLIPS.)

PROTECTION CASE.

Re R. J. SMITH.

Trader debtor—Debts in schedule contracted in trade.

An insolvent owing debts contracted whilst in trade must petition as a trader.

The insolvent petitioned as a non-trader, and upon coming up to-day for his first examination was opposed by a creditor, the holder of a bill of exchange for 20*l.* (the only debt in the schedule) bearing the insolvent's name, which was the last of several renewals, on all of which a somewhat heavy discount had been charged. The first bill had been given three years ago, on account of a loan of money by the opposing creditor, at which time insolvent was a trader, and so continued for some eighteen months afterwards.

Surgood, for the opposing creditor, submitted that although the bill was a renewal, and the insolvent only a surety, yet the debt it represented was contracted while insolvent was in trade, and he ought to have petitioned as a trader.

Mr. Commissioner PHILLIPS dismissed the petition.

Monday, Jan. 3.

(Before Mr. Commissioner PHILLIPS.)

PROTECTION CASE.

Re JAMES RANDALL.

Parting with property within three months of the date of the petition.

Held, that the payment of debts within three months of the date of the petition, not within the exceptions specified in the petition, is a parting with property, and fatal to the locus standi of a petitioner in court.

This insolvent appeared for his first examination upon his interim order.

Nichols appeared to oppose for a creditor. The ground of his opposition was a parting with property within three months of the date of his petition. He directed the attention of the court to the following entries in the Special Balance Sheet: "Oct. 21; paid said Miss Randall for cash lent 15*l.*" "Oct. 16; paid said Miss Randall for cash lent 20*l.*;" and submitted that the allegation in the petition that the petitioner had not parted with any of his property, except within the exceptions allowed, within three months of the date of his petition was untrue, and the petition must be dismissed.

Mr. Commissioner PHILLIPS. — It is a *bonâ fide* debt, and the repayment of a loan is a parting with property.

Surgood, for petitioner.—But the money was borrowed to enable him to carry on his business; and these were the last of a series of repayments in the way of business for money borrowed to enable him to carry on the business.

Mr. Commissioner PHILLIPS. — Though the borrowing was in the way of his trade, I cannot hold that the repayment was in the way of his trade. The petition must be dismissed.

The registrar's endorsement upon the schedule was, "Petition dismissed, having parted with property within three months of the date of filing the petition."

NOTE.—For cases upon this point, see *Macrae's Insolvent Practice*, pp. 137, 131, 401, *et seq.*

SHERIFFS' COURT.

Reported by [illegible], Esq., Barrister-at-Law.

Saturday, Dec. 11.

(Before [illegible], QUERIST, Esq., Q.C.)

[illegible], Deputy.

Authority to bankers to pay bill accepted payable at their house.

H., having an account at the head office of a joint-stock bank, accepted a bill payable generally at that bank. H. subsequently, and before the bill became due, opened an account at a branch bank belonging to the same company, but gave no notice to the bank to dishonour the bill. The bill, on becoming due, was presented at the head office, and was refused payment for want of funds. The holder then presented it at the office of the branch bank, where it was paid.

Held, that the company were authorised in paying the bill at the branch office; though there were distinct printed forms of cheques issued by the company for the head office and the branch bank; and though bills made payable at the branch bank by H. were always specially accepted payable at the branch office.

This was an action brought by the plaintiff against the defendant, as the public officer of the Union Bank of London, for the balance of his banking account with the company, and also for dishonouring a cheque for 87*l.* drawn by him on the company, although the company had funds in hand to pay the same.

Pulling, for the plaintiff.

Hislop Clarke, for the defendant.

The plaintiff had up to September 1852 kept a banking account with the Union Bank of London, at their principal office in Princes-street, in the city of London. In July the plaintiff accepted a bill for 87*l.* at three months' date, payable generally at the Union Bank of London. Shortly afterwards the plaintiff made an arrangement with the majority of his creditors for the payment of a composition, and was in course of negotiation with the holder of the bill in question for the same purpose when the bill became due. In October, a short time before the bill became due, the plaintiff, having changed his residence, opened an account with the branch office of the Union Bank at 99, Pall Mall, but he gave no notice either at the chief office of the company, or at the branch office, to refuse payment of the bill in question: and on the same becoming due it was presented at the chief office and refused payment for want of funds; and was then taken by the holder to the branch office in Pall Mall, where the same was paid. The plaintiff at this time had only a balance of a few shillings at the chief office, but had sufficient funds to meet the bill at the branch office. The plaintiff having discovered that the bank had paid the bill at the branch office, expostulated with them for so doing, drew a cheque on the company for the exact amount of such funds, and this cheque having been dishonoured, the present action was commenced.

These facts were admitted, and it was also shown that cheques drawn payable at the principal office were always headed "Union Bank of London, Princes-street," whilst cheques drawn payable at the branch office were always headed "Union Bank of London, Branch Office, Pall Mall." It was moreover shown that bills made payable by the plaintiff at the head office were always accepted "payable at the Union Bank of London," whilst the bills made payable at the branch office were always accepted payable at the "Union Bank of London, Pall Mall."

The cases of *Marzetti* v. *Williams*, 1 B. & Ad. 415, and *Kymer* v. *Laurie*, 18 L. J. 218, N. S. Q. B. were cited; and it was contended on the part of the plaintiff that the authority given to the bank was a limited one to pay the bill at the precise place where it was made payable. On the other hand, the defendant's counsel contended that the authority to the bank was a general one to pay the bill wherever it was presented to them.

GURNEY, Q.C. the Judge, said, the only question was whether the plaintiff had given any authority to the Bank to pay the bill in question. He was of opinion that the authority had been proved. The plaintiff, by making the bill payable generally at the Union Bank of London, gave the officers of the company authority to pay the bill either at the chief office or the branch office; and there must be

Judgment for the defendant.

Circuit Reports.

OXFORD CIRCUIT.

(Reported by J. E. DAVIS, Esq., Barrister-at-Law.)

Monmouthshire Summer Assizes, Aug. 2.

(Before WILLIAMS, J.)

DOE dem. HULIN *v.* POWELL.

Ejectment—Evidence—Pedigree—Declarations of deceased relations ex parte maternâ—Deposition of deceased witness in one action used in another—Proof of loss—Secondary evidence of contents of deed.

In an action of ejectment brought to recover property settled on the heirs of E. R. the lessors of the plaintiff claimed title through the maternal ancestors, it being admitted that E. R. had no descendants living. In addition to evidence of the pedigree through the mother, a statement of E. R.'s father that he had no father or mother to cry for him was proved, and all the witnesses who were acquainted with the family agreed that they never heard of any other relatives of E. R. on the father's side except the father and grandfather, both long since dead:

Held, that this constituted a prima facie case for the plaintiff, and that it was not necessary to further exhaust the paternal line, or to trace the heirs of E. R.'s grandmother or great grandmother on the father's side.

In a former unsuccessful action of ejectment brought on the same demise to recover the same property, J. R. defended as landlord, and obtained a commission to perpetuate testimony. Before the witnesses were examined under it, J. R. finding he had no legal claim, agreed to defend for P. (the defendant, as landlord, in the subsequent action), and to be repaid the costs out of rents received on P.'s account:

Held, that the deposition of a deceased witness under the commission in the former suit was admissible in the second, although it did not appear that the lessors of the plaintiff had notice that R. defended the first action on P.'s behalf.

The deed by which the property was settled on the heirs of E. R. being in the hands of the defendant P., a summons was taken out by the lessors of the plaintiff for its inspection. The clerk of the defendant's agent, on the hearing, attended and opposed the application, and, in order to show that the defendant had no such deed as that described in the affidavits in support of the summons, he stated the real contents of the deed:

Held, that such statement of the clerk was not admissible as secondary evidence of the limitations of the deed.

Ejectment to recover freehold and copyhold property in Monmouthshire.

The first count of the declaration was on the demise of Anne Hulin, John Williams the younger, and Thomas Williams and Mary his wife. The second count was on the demise of Anne Hulin, John Williams the younger, Thomas Williams and Mary his wife, and George Holbrook. There were other counts alleging the demise to be by one or others of those persons.

Keating, Q.C., *Gray*, and *Horace Wright*, for the lessors of the plaintiff.

Whateley, Q.C. and *Phipson*, for the defendant.

The copyhold estate in question was purchased in the year 1786 by Isaac Paske the elder, and it was surrendered to him for life, with remainder to the heirs of his daughter Elizabeth, the wife of Lewis Richards. The freehold estates sought to be recovered were on the marriage of Elizabeth Richards settled in the same manner and with the same limitations over as in the surrender of the copyhold estates. The lessor of the plaintiff claimed as her heir-at-law. It was admitted on both sides as a fact that there were no descendants of Elizabeth Richards living, and the lessor of the plaintiff claimed through her maternal ancestors, and for this purpose proved that Rachel Paske, her mother, whose maiden name was Hugh, had an only sister, Elizabeth Hugh, who married James Probyn. It was admitted that the lessors of the plaintiff were the heirs-at-law of James Probyn and Elizabeth his wife.

Powell, the defendant, claimed as heir-at-law of Elizabeth Richards, through the paternal line, alleging that Thomas Paske, the father of Isaac Paske the elder, had a brother, Morgan Paske, and that the defendant was his heir-at-law.

In order to prove the limitations of the marriage settlement of 1786, relating to the freehold estates, which was now in the hands of the defendant, evidence was adduced that a summons before a judge at chambers was taken out in this action by the lessors of the plaintiff, under the recent statute for the inspection of documents, for an order to inspect the deed in question. The affidavits in support of the application did not correctly describe the deed, and the clerk of the defendant's agents attended the summons and stated the contents of the deed, but submitted that he was not bound to produce it for inspection, inasmuch as the limitations being different from those alleged to be contained in the deed sworn to be in the defendant's possession, he had not any such deed as the lessors of the plaintiff wished to inspect. The learned judge (Erle, J.) refused to make any order for inspection except upon terms to which the lessors of the plaintiff refused to submit. Notes of what the clerk stated to be the real limitations of the deed were taken down at the time by the agent for the lessors of the plaintiff, who was now put in the box to verify them, and it was contended (notice to produce the original deed having been given) that this was good secondary evidence of its contents.

Whateley, Q.C. having objected to the reception of this evidence for such a purpose,

WILLIAMS, J. after some deliberation expressed his opinion that the evidence was not admissible. There was no authority given to the clerk of the attorney's agent attending on the summons (?) at the same time, if it should turn out that there was no other evidence to prove the limitations of the freehold, he would receive this, and give leave to the defendant to move.

Mr. Powles, a solicitor, was then examined as a witness. He stated that he was formerly employed by Mr. Ample[illegible], a client, to complete the purchase of some property sold to him by Richards, a member of the same family as Lewis Richards. Mr. Richards's solicitor, Mr. Williams, supplied an abstract of the title, which was subsequently returned to him. Witness perused the abstract, which was afterwards examined with the deeds by witness's late partner, Mr. Tyler.

Gray proposed to ask Mr. Powles the contents of the abstract, it having been examined with the original deeds by his partner in the course of business.

WILLIAMS, J.—That will not do. How can the witness speak to the accuracy of his partner?

Mr. Williams was then called. He was the solicitor of the late Mr. James Richards. He died without issue, and his cousin, the present Mr. Richards, was his heir. The deeds were placed by him in the hands of the witness, who also acted as his solicitor after the death of James. The abstract in question, and now produced was prepared in witness's office, and had been in his possession ever since it was returned by Mr. Powles. It was in the handwriting of a clerk not now with him, but who was alive in Somersetshire three years ago. The draft was compared with the deeds, and the draft with the abstract. Some of the deeds abstracted, including the deed of 1786, were now in the possession of the defendant's attorney, having been handed over to him at Mr. Richards's request, who had given up all title to it. The witness also stated that he observed in the abstract notes and corrections in his own handwriting, and therefore believed that he must have examined it with the deeds.

It was now proposed to have the abstract read, the deed of which this was an abstract or copy having been traced to the possession of the defendant's attorney.

Whateley objected that it would be a disclosure of professional confidence on the part of the witness, and was a privileged communication. Moreover, it was not shown that the witness himself examined the abstract with the deed.

Keating and *Gray*, contrà.—The contents of the deed had been disclosed to Mr. Powles. Here the source of information, the abstract, had been prepared for the purpose of being divulged to others.

WILLIAMS, J.—I think the evidence is now sufficient. There are no degrees in secondary evidence. I shall make a note that I think the evidence is admissible, not being privileged, and that it is good secondary evidence.

The abstract was then taken as read, the defendant's counsel having leave to move on this point, with respect to the freehold.

Mr. Williams, the witness, was then further cross-examined. He stated that a former action of ejectment, tried at Monmouth, to recover the same property, was defended by Mr. Richards for the present defendant, Mr. Powell. There was a commission issued to examine witnesses in that case, and William Morgan, since dead, and other witnesses, were examined as witnesses under that commission. There was an arrangement in writing with Powell respecting the costs.

Re-examined.—I did not communicate personally with Mr. Powell. I was employed by Mr. Richards to defend the action, and I looked to him for the costs. He succeeded in that action, the plaintiff being nonsuited. I received extra costs out of the rents which passed through my hands. I was not present at any arrangement for Richards defending for Powell.

Evidence was adduced to show that the lessors of the plaintiff were the sole heirs, on the maternal side, of Elizabeth, the daughter of Isaac Paske, and the wife of Lewis Richards, tracing the pedigree through the Hughs. A witness also deposed to a statement of Isaac Paske on the occasion of a funeral, that he had no father or mother to cry for him. All the witnesses stated that, although acquainted with the family, they never heard of any member of Isaac Paske's family, except Thomas Paske, his father.

At the close of the plaintiff's case,

Whateley and *Phipson* objected that the case was not proved as against William Powell. The plaintiff had exhausted the maternal heirs of Elizabeth Paske, but had not exhausted the paternal side. It was not shown that Thomas Paske had no other children than Isaac Paske. Before the claim *ex parte maternâ*, which is the lowest, can be entertained, it must be shown affirmatively that the paternal line is exhausted. Moreover, in this case the title relied on is that of the heir-at-law of the mother, namely, through Elizabeth Hugh, the sister of Rachel, the mother of Elizabeth Richards; but, before the heirs on the mother's side are admitted, the maternal line on the father's side ought to be exhausted. Here the plaintiff ought to trace, first, through Isaac Paske's mother. The maternal heirs of the mother are the very last persons entitled.—[WILLIAMS, J.—There is the statement of Isaac Paske, that he had no father or mother to cry for him.]—Then the heirs of his grandmother would be entitled before the heirs of the plaintiff, and no evidence had been given respecting her heirs.

WILLIAMS, J.—I cannot say that there is no case.

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Wilde for the conversation of the old man, and the statement of the witnesses that they never heard of any relation of his. All I say is, that there is some evidence for the jury. Suppose it had been proved that Isaac Paske was an illegitimate child, who would be entitled? The nearest relation of his daughter would be her aunt Elizabeth Hugh, who married Probyn.

Whateley then addressed the jury.—He opened that the defendant claimed through a Morgan Paske, alleged to be the brother of Thomas Paske, Isaac Paske's father. A former action, substantially between the same parties and involving the same question, was tried in 1845. The lessors of the plaintiff were the same, and Mr. Richards, the defendant, gave up his claim to the property and defended for Mr. Powell, the present defendant. Several old witnesses were examined in that action under a commission, and the testimony of one of those witnesses, since dead, would be laid before the jury in addition to other evidence.

James Richards said: I am the cousin of James Richards, who died in 1845, and I entered into possession of his estates. I was the defendant in the former action. I was applied to to defend for Powell. I refused at first, but afterwards consented. The ejectment was nonsuited. I received the costs from the opposite side, but I had extra costs to pay, and paid them out of the rents. This was an arrangement made with Powell about two months before the trial. I subsequently gave up the deeds and back rents (deducting the amount of the extra costs) to Mr. Norton, Powell's attorney. Mr. Norton was then and now the attorney for the defendant, but was previously the attorney for the lessors of the plaintiff.

John Seymour, Mr. Richard's agent, said that before the action was brought there was a communication made on the part of Powell, to the effect that if Mr. Richards defended for him the costs should be paid out of rents. In consequence of this the witness went to Mr. Williams, Mr. Richards's attorney, to defend the action for Powell. This was about six weeks or two months before the trial. The Nisi Prius record in the former action was produced. The lessors of the plaintiff were the same. James Richards defended as landlord and tenant, and Susannah Keymiss as tenant, by separate consent rules. The issue was also produced with a judge's order for the admission of the declaration in ejectment, and the consent rule by Richards, bearing date July 16, 1845.

A commission to examine witnesses under a rule of court dated 3rd June 1845, drawn up on rules of the 3rd and 5th days of May, with the examination of the witnesses under it, was produced from the proper custody. It being admitted that Morgan, whose evidence was so taken, was alive at the last trial, and had died since, it was now proposed to read his deposition.

Keating submitted that the defendant was not in a situation to read the deposition, on the ground that this was a commission in a different action from the present, and that a deposition taken in one action could not be read in another. The cause in which the commission issued appeared by the record to be against Richards and Keymiss. Both parties appeared, and separate consent rules were entered into. In the present action another person, Powell, defended. The actions, therefore, were different. If the case stood there, the deposition is clearly inadmissible; but it is attempted to be shown that Richards defended for Powell. But in the first place that fact was not made out; and, secondly, if made out, the evidence is inadmissible. Now, it was impossible that the steps in the former action could have been taken on behalf of Powell, Mr. Seymour says that six weeks or two months before the trial the arrangement was made for defending for Powell. The rule for the commission was made absolute on the 3rd of June, and drawn up on reading rules of the 3rd and 5th days of May, being, it is presumed, a rule *nisi* and enlargement, the 5th of May being the last day of term. As the rule *nisi* issued, therefore, more than three months before the Summer Assizes at Monmouth, when the action was tried, it was, therefore, absurd to say that the commission was applied for or issued on behalf of Powell, or for the purpose of defending for him. It is not because during the progress of the cause an arrangement is made such as that deposed to, that the defence became Powell's. If Richards's defence were inconsistent with Powell's, and the former abandoned [illegible] action, it might be so.

[illegible]—This is a very important point. [illegible] the same side.—It is apprehended that the [illegible] quite clear. The action must be between the same parties, or representing the same parties. They must be privies. In a case at Shrewsbury, *Doe d. Spencer v. Gittelby*, before Pattesall, J., where the question depended under the same deed, but under a different limitation, similar evidence was rejected. Powell ought to have perpetuated the testimony in his own name. Suppose in a suit by Richards this testimony had been perpetuated, could it have been said [illegible] for Powell? Clearly not. Therefore it is [illegible] on general grounds. But by the [illegible] appears Richards defended as landlord and [illegible]. He was in receipt of the rents. Suppose Powell to be the true heir of Elizabeth Richards, who became Mrs. Maynard, [illegible] ejectment is brought at the death of old James Richards? Powell would then become her landlord. Miss Richards defended as landlord. How can he be admitting another landlord's title by any arrangement between himself and Powell? His entering into the consent rule as landlord prevents him making any arrangement that Powell shall defend as landlord. Then it does not appear that the lessors of the plaintiff in the former action had any knowledge that they were in contact with Powell. It is most important in these cases, for the purpose of examination and cross-examination, to know who the parties are that are in contact. Who can say whether, if the lessors of the plaintiff had notice that Powell was the defendant, the line of cross-examination of the witnesses would not be different, and so the evidence of the person examined materially different? [WILLIAMS, J.—I may assume that the deposition was made and is now sought to be used for the purpose of setting up a hostile pedigree.] Yes; to render the evidence admissible, the parties and the issue must be the same: (Roscoe's Nisi Prius, 8th edit. p. 89.) Here it cannot be said that we were aware of the issue.

Whateley, contrà.—The test is not whether the action is the same, and the parties literally identical, but the question is whether it is substantially the same action, and between the same parties. If substantially so, it is not necessary to be nominally the same. It is not material that Powell was not known to the lessors of the plaintiff, as Mr. Richards might have set up Powell's title, or anybody else's. It clearly was Powell's defence, as Mr. Richards knows he had no claim. Then, as to the test, had the parties the means of cross-examination? Here they had. They had the opportunity. That is sufficient: (1 Stark. on Evid. 2nd edit. p 270: *Kynnersley* v. *Orpe*, Douglas, 56.) Is there any doubt that this deposition could be used as against Powell? [WILLIAMS, J.—That is the great test in the case.] Suppose the lessors of the plaintiff wished to make use of the evidence of Charles, another witness examined under the commission, surely it would be competent to them to give it in evidence.

WILLIAMS, J.—I understand the facts to be that, after the commencement of the action against Richards, and after a rule for the commission had been obtained, an agreement was effected between Richards and Powell that Richards should defend for Powell and be allowed the costs out of the back rents. Then did that put Powell substantially in the place of the defendant? All these cases must depend on something more than the bare proposition. The foundation of the rule involves two considerations. First, had the opposite party a proper opportunity for cross-examination? That does not mean a bare opportunity of cross-examination, for, if so, that would let in strange depositions; but had the party an opportunity of examining in such a way that he would not have examined the witness in another way if he had known who the parties really interested were? Now in this case, even if the parties had been so aware, the cross-examination could not have assumed a different course, because, the object of the lessors of the plaintiff remaining precisely the same, the cross-examination must have taken the same line. The second point is more difficult to determine. In all cases there must be reciprocity; and therefore the question arises, whether Powell was so substantially the defendant that this would be evidence against him. I have come to the conclusion that the evidence is admissible; but I feel great diffidence on the subject, and I am by no means confident, but I decide on the general principle that I ought to admit rather than reject.

The deposition of William Morgan was then read. It referred to Morgan Paske, an elder brother of Thomas Paske, who told the deponent that he had three brothers and one sister. Further evidence was adduced, and the question which the evidence finally resolved itself into was, whether Morgan Paske was the brother of Thomas Paske, the pedigree of the defendant from a Morgan Paske being admitted.

The jury found for the plaintiff.

Stafford Summer Assizes, July 28.

(Before WILLIAMS, J.)

REG. *v.* PIERCE AND OTHERS.

Larceny—Property left by passenger in railway carriage—Venue—Statute 7 Geo. 4, c. 64, s. 18—Order for delivery to prisoner of money found on his person.

The law with regard to the finder of lost property does not apply to the case of property of a passenger accidentally left in a railway carriage, and found there by a servant of the company; and such servant is guilty of larceny if, instead of taking it to the station or superior officer, he appropriates it to his own use.

Where the evidence is consistent with the fact of an article having been abstracted from a railway carriage either in the course of the journey through the county of A., after the arrival at B. station, in the county of B., and the prisoner is indicted in A. under the statute 7 Geo. 4, c. 64, s. 18, the venue must

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be made out to the satisfaction of the jury before they are satisfied that the larceny was committed in the county of A. otherwise [illegible]

The justice will not grant an order for the delivery to a prisoner of money found upon him for safe keeping, unless satisfied that he has power to decide such an order.

James Pierce and Richard Pugh were indicted for stealing on the 23rd of May, 1855, a dressing-case and other articles, the property of the Shrewsbury and Birmingham Railway Company; and in another count the prisoners, together with John Pugh and Jane Pugh his wife, were charged with feloniously receiving the same articles. The other counts the articles were laid as the property of Harry Cunliffe.

Scotland and *J. A. Hill*, for the prosecution.

Huddleston, for the Pughs; *Keith* for Pierce.

After the grand jury had found the bill, and before the trial, *Keith* made an application to the court for an order directing that some money taken from Pierce, and now in the possession of the chief constable, be given up to the prisoner to enable him to prepare for his defence. There was no pretence for saying that the money was connected in any way with the charge.

The application was resisted by the prosecution. A considerable sum, upwards of 13*l.* had been already given up by an order of the committing magistrate, and the chief constable produced an order from the Under Secretary of State for the Home Department, directing that such moneys only taken from prisoners were to be given up as the committing magistrate might order. After some discussion, WILLIAMS, J. refused to make the order, as it did not appear what power, on the one hand, a judge or justice of the peace had to make such an order, and, on the other hand, what authority the Secretary of State had to control the right, if it existed.

At the trial the following facts were proved on the part of the prosecution:—The Rev. Henry Cunliffe on the 9th of May was a first-class passenger from Shrewsbury to the Shiffnal station on the railway. On reaching home he missed a dressing-case, which formed part of his luggage, and was in the carriage with him. Having reported his loss to the railway authorities, inquiries were instituted, and the dressing-case and some of its contents were found in the house of the prisoner Pierce, at Shrewsbury, who was an engineer in the employment of the railway company, and who conducted the train by which Mr. Cunliffe had travelled. Richard Pugh was a stoker in the employment of the company, and he accompanied the train in question with Pierce. The evidence against him consisted in a statement which he made to the police constable, to the effect that he found the dressing-case in a first-class carriage on the arrival of the train at Codsall, one of the stations on the line; that he carried it to the engine, and gave it to Pierce, who opened it with a wrench, and, on their return to Shrewsbury, gave him some of the articles out of it as his share. A portion of the contents of the dressing-case was found at Shrewsbury, in the house of John Pugh, Richard Pugh's father. Jane Pugh, the mother, was proved to have pawned a gold ring, which also formed a part of the contents of the dressing-case.

The part of the line of railway along which Mr. Cunliffe travelled is in the county of Salop; but the Codsall station, to which the train proceeded after Mr. Cunliffe left it, and where, according to Pugh's statement, the dressing-case was taken from the carriage, is in Staffordshire.

At the close of the case for the prosecution,

Huddleston objected that the indictment was not supported as against Pugh. The larceny, if committed at all, must have been committed in the county of Salop. The statute 7 Geo. 4, c. 64, s. 18, did not apply here. That section enacted that, in "indictments for felonies or misdemeanours committed upon any person, or on or in respect of any property in or upon any coach, cart, or other carriage whatsoever employed in any voyage or journey upon any navigable river, canal, or inland navigation, the venue may be laid in any county through which the coach, &c. or vessel shall have passed in the course of the journey or voyage during which the felony or misdemeanour was committed, in the same manner as if it had been actually committed therein." The whole of Mr. Cunliffe's journey was in Shropshire. If the statement of the prisoner Pugh was relied on as evidence of his guilt, it must be taken altogether, and that showed that the larceny was not committed during the journey; for the removal of the dressing-case from the carriage did not constitute the larceny, according to Pugh's statement, but the distribution of the property on the platform at Shrewsbury after the return journey. If so, the offence was not triable in Staffordshire, but in Shropshire.

WILLIAMS, J. thought there was some evidence for the jury, from which they might believe that the dressing-case was taken during the journey. The evidence, with the exception of Pugh's statement, was consistent with either supposition, and therefore the case must go to the jury.

Huddleston and *Keith* then addressed the jury for their respective clients. Among other topics, it was urged that if the prisoners found the dressing-case,

without any owner [illegible] to take care of it for safe custody.

Williams, J., in summing up said there was no pretence for calling this an case of lost property. It was the duty of the prisoners, if they found such an article left by a passenger, to take it to the station-house or some office of the train. It was absurd to say that this case bore any resemblance to that of the finder of lost property. He in nothing like lost property. With respect to the point raised as to the venue, if the jury thought the evidence was not satisfactory of a stealing from the carriage in the course of the journey, then they must acquit the prisoners Pierce and Pugh of the charge of stealing, and consider what evidence there was against them and the other prisoners of receiving the goods knowing them to have been stolen.

The jury convicted Pierce and Richard Pugh of stealing, and acquitted the other prisoners.

Irish Reports.

COURT OF QUEEN'S BENCH.

(Reported by P. J. M'Kenna, Esq Barrister-at-Law.)

MICHAELMAS TERM.

Saturday, Nov. 20.

(Before Lefroy, C.J. and Crampton, Perrin, and Moore, JJ.)

Re Dennis Shanahan.

Habeas corpus—Deaf and dumb boy—Illegal restraint—When court will deliver to father.

Where a deaf and dumb boy more than fourteen years of age is brought up under a writ of habeas corpus sued out by his father to obtain the custody of his son, and for the purpose of removing him from what he alleged was a proselytising institution, the court will not deliver the boy into the father's custody, but will inform him that he is at liberty to go where he pleases, and that the court will protect him either in remaining or going, as he wishes; and where the boy can write, for the purpose of preventing any undue influence on the part of the master of the establishment where the boy was, one of the court will examine him in chambers, in the master's absence, for the purpose of ascertaining the boy's wish, which being reported to the court, they will make an order according to such choice.

In this case a conditional order for a *habeas corpus* was obtained by *J. D. Fitzgerald*, Q.C. on behalf of the father of a deaf and dumb boy, for the purpose of obtaining possession of his son, who was an inmate of the Claremont Deaf and Dumb Institution. The affidavit on which the order was obtained stated that he (the father) was a Roman Catholic in very impoverished circumstances, and that he was induced to allow his child to be sent to this charitable institution, relying on the promise of the lady who obtained his admission that the boy would be educated in his father's religion. That he afterwards discovered that this was a Protestant institution, and that he was anxious to take away the boy on this account, and because the promise on which he was induced to allow the boy to enter was not kept. That he had gone to the Claremont Institution for the purpose of taking away the boy; but that the people there refused to allow him to do so.

Fitzgibbon, Q. C. (with whom *Griffin* and *Norwood*) now showed cause.—From the affidavits filed on behalf of the governors of this institution, it appears that the father well knew the character of this institution. Another of his children, a daughter, who was similarly afflicted, had been placed there in 1844. It is a rule of the institution that children, after being sent in by their parents, are not to be taken away for five years. As there are many more candidates than they can afford to take in, it is a great favour to parents or guardians; and the directors will not allow the children to be removed at the whim of their parents. With regard to the girl, the father had complained to the magistrates, and as the girl had completed her fifth year in the institution he was allowed to take her away, and she is now in the poor-house. The conversation with the lady who obtained the boy's entrance was contradicted. It was through charity to the boy that the directors of this institution refused giving up the child, as the father was in wretchedly poor circumstances, and unable to provide for the child. Although there is some controversy about the boy's age, it is admitted that he is more than fourteen years of age. Under these circumstances the court does nothing further than to release the person when brought up under the writ, and inform that he is at liberty, and may go where he pleases: (*R.* v. *Delaval*, 3 Burr., 1434.) In *Rex* v. *Greenhill and others*, 6 Mod. 71, it was held that, though under many strong circumstances the father was entitled to the custody of his child, yet if the child has arrived at an age to judge for itself, the court will not interfere with what choice he or she child may make. In that case Holt, Justice, says: "The effect of the *habeas corpus* is that the individual is brought before the court, and if he be of an age capable of taking care of himself he may elect where he will go." Colebitch, J. [illegible] says also: "The writ of *habeas corpus* always proceeds on the supposition of illegal restraint of the body. When you have a person of age to judge for himself, the case is a very simple one, and the party simply declares any illegal restraint the party may have been subjected to to be at an end, and, when the party has been in danger of being seized, has directed some one of the officers of the court to conduct the party safely."

J. D. Fitzgerald, Q. C. and *J. A. Curran*, in support of the rule.—This is the case of a natural guardian placing a child at a school, and afterwards wishing to remove him: he has a right to do so. He is not like another boy arrived at the age of discretion, who has the use of speech and hearing. We are entitled to have the child given up to us. The father is the guardian of the child, and he does not wish to leave him in this proselytising institution, and he may deliver him to whom he pleases. Under any circumstances we are entitled to have the boy brought up in court and allowed to choose for himself.

Crampton, J.—Now, to save expense, we might as well make the order at once, as I understand the boy is in court, and we might ascertain what is his wish.

Lefroy, C.J.—We are not to deliver the child to his father. You are agreed that this court will merely deliver a party from illegal custody. We have therefore, as it is admitted he is of an age to choose for himself, to see what his choice is and to protect him in the exercise of it. It seems to me that, the master of the institution being sworn, we may inquire through him what is the boy's wish, and also inform him that he is at perfect liberty to go where he pleases.

J. D. Fitzgerald.—The father swears that the boy was always desirous of leaving the place, and we suspect undue influence will be exercised by the master. The boy can write, and may be examined in that way.

Lefroy, C.J.—We propose then that the boy should be brought, the master having been removed; that he should be informed that he is at liberty to go where he pleases; and then that we should ascertain what his wish is on the subject.

Crampton, J.—We will have him brought into the Chief Justice's chamber and examined by one of the court.

Mr. Justice Moore accordingly retired to their lordships' chamber, and, returning after a short time, reported to the court that he had examined the boy by written questions and obtained his answers in writing; that the lad said that he had seen his father last yesterday. That his lordship then wrote, "You are at liberty to stay at Claremont where you have been, or to go with your father as you please; which do you choose, and do you understand this question?" He replied that he understood. He was then asked, "Which did he wish? to stop there, or go to Claremont?" He then wrote "To Claremont." He was then asked, "Was he told to make that reply by any person?" As he did not seem to understand this question, his lordship then sent for a member of the bar, Mr. Purcell, who, as he was informed, understood the language of the deaf and dumb, and, after some explanation, put again substantially the same question, when the boy replied that he wished to stay at Claremont, and not to go with his father, because he was poor.

By the Court.—It is admitted he is beyond fourteen. He has decided to remain where he is. We have, therefore, no right to take him away from the place while he chooses to remain.

Rule accordingly, and no costs.—It is ordered by the Court that the cause shown be allowed, and the said conditional order be and same is hereby discharged. And it is further ordered that said Dennis Shanahan be forthwith remitted to the care and protection of the managers and head master of said institution at Claremont, there to continue and remain, in compliance with his election and decision.

Ecclesiastical Courts.

PREROGATIVE COURT.

Reported by Dr. Waddilove, of Doctors' Commons.

Stultz and others v. Schokelle and another.

How far a wife may exert her authority over the testamentary disposition of her husband.

The facts fully appear in the judgment.

Bayford and *R. Phillimore* appeared in support of the will.

Adams and *Twiss* contrà.

Dr. Lushington (sitting for Sir John Dodson, he having originally been counsel in the cause).—I will commence this judgment by stating so much of the undisputed facts, set forth in the proceedings, as are necessary clearly to show what are the questions to be decided. The testator, Mr. John Stultz, died in the month of April, 1849, at the age of 61. He left behind him a widow, no children, and two sisters. Had the deceased died intestate the widow and sisters would have been the only persons entitled to his personal estate. The will and codicil in question had been propounded by the widow and Mr. H. and Mr. C., the executrix and executors; the two sisters opposed it. One of them subsequently withdrew from the suit. A nephew of the deceased, a son of one of the sisters then intervened. The trustees of the Asylum Benevolent Institution also intervened. The interest of the sisters and the nephew was in opposition. The interest of these trustees was adverse to this will, since under a former will they took a larger benefit. [The learned judge, after having stated the pleadings of the parties in the suit and their respective interests, passed on to the pleadings, saying he should confine himself to that part of the allegation which was of importance. He then continued.] The 9th article of the allegation, opposing the will, is that to which attention must be particularly directed, and that pleads that in the summer of 1846 the testator, whose health had been giving way for some time previously, became subject to epileptic fits, and especially that he had a very severe one in March 1847, from the effect of which upon his reasoning powers, though he sometimes rallied, he never quite recovered. The 11th article pleads that Mrs. Stultz, after her return to her husband in May 1847, took advantage of the testator's increased and increasing infirmities in body and mind to obtain complete control over him. The 12th section pleads that, notwithstanding this reduction of the testator's bodily and mental powers, he was competent to the transaction of business of an ordinary character, and even to the making a will properly aided and advised, until the end of the year 1847; that he did duly make and execute a will on the 7th of August, 1847; that in the latter part of the year 1847, and in the early part of the year 1848, he became and generally speaking was incompetent to the transaction of business of any moment or concern, and unequal to the management of himself and his affairs. Now with regard to the article, the contents of which I have now stated, I think it is obvious that, to part of it, it is next to impossible that any evidence could have been produced, because I am at a loss to conceive how any witness could give his evidence according to the terms of this allegation, viz., to fix upon what is the decrease of mental power which would just leave a man competent to the making of his will, properly aided and advised. I do not know how any opinion, or rather any evidence, could be given upon the subject. However, to proceed; the 17th article alleges, "That the will and codicil propounded were written by the direction of Mrs. Stultz and her solicitor; that the testator had neither known nor approved, nor was he capable of knowing or approving, of the contents of the will and codicil, and was not at the time they bore date of sound mind." Very many specific facts are also pleaded in this allegation, intended to prove the main averments and conclusions contained in it; and unquestionably, if this allegation of which I have now stated the principal contents should be proved by the evidence in the cause, the testator was not competent at that period to make his will. On the 5th of November, 1850, a responsive allegation on behalf of the executors is admitted, and all I need say of that is, that the object of it was to deny or explain the facts pleaded in opposition to the will, and to state other facts for the purpose of supporting the will. It appears to me, from the very brief statement I have now given of the contents of these pleas, that the main ground of opposition to the will is that the testator was of unsound mind, or, to put it perhaps in a more correct point of view, of weakened and impaired mind, at the time of the execution of the testamentary instrument; that he was not a free agent, but acted under the control and undue influence of his wife. In the course of the argument against the will and codicil propounded it was said, and truly said, that, according to the established doctrine of these courts in deciding whether a testator was capable or not, his capacity must be considered with reference to the act done—whether he was equal to and capable of the act in question. That is the first point. There was, however, very little discussion as to what amounted in law to control or influence when exercised by a wife over a husband. There are no cases more difficult, or which require a narrower examination of evidence, than questions of capacity proportionate to any given act; nor can I conceive any subject more incapable of approaching to a definition than the question, what constitutes undue influence or control in a wife over her husband? In speaking of capacity proportionate to a given act, and of impaired faculties, we must remember that we have no absolute standard whereby to make a measurement. It will be difficult, perhaps impossible, to say at what period of life all the mental faculties are in their fullest vigour, or how any of them begin to decline. It may perhaps be, I think very frequently is, that the memory loses some of its former vigour at the very time that the judgment is in its greatest strength. Even when disease supervenes it is not easy to trace the effect of that disease, and to show how far it may have weakened or impaired any of the mental faculties in particular. All we can do is to form the best judgment in our power from the conduct of the testator himself, and the acts done by him,—the only safe evidence to rely upon in investigations of this description. The opinions and conclusions of witnesses, for various reasons, are so little to be depended on that it would be very unsafe in ordinary cases to make them the

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execution of any judgment. Again, in prosecuting this inquiry it is part of the duty of the court,—and I think, of its most difficult duty,—to ascertain how far the evidence of the witnesses in the cause is deserving of credit; for it matters not what a man swears, unless you are satisfied that he deserves to be believed as to what he does depose to. I apprehend, indeed I may say, that upon the successful prosecution of that investigation necessarily depends the question whether the decision of the court in this and in a multitude of other cases be well founded or not. With regard to the question of control and undue influence, a manifest distinction exists between them. Control is more easily capable of a description approaching to a definition, because it necessarily imports something of the nature of force, duress, or fear. Upon the question of undue influence, especially in the case of a wife, very little is to be found in the books, or indeed could be expected to be found. Some dicta we have, not with respect to a wife, but in other cases in some degree approaching to it, but still from their circumstances widely different when we take an accurate inspection of the whole; and some *dicta* have said, as, for instance, Sir John Nicoll, in the case of *Kensington* v. *Harrison*, 2 Phill. 551, observes:—"Importunity, in its correct legal acceptation, must be in such a degree as to take away from the testator free agency." The same question was discussed in *Weddons* v. *Goode*, 1 Haggard 581 to which I shall presently refer; and in *Huddleston* v. *Armstrong*, 1 Moore, P. C. C. 480. It was there observed, "that undue influence to vitiate an act must amount to force and coercion, destroying free agency." The testator must therefore be a free agent, by which, I apprehend, must be intended and meant that he must have the power, if he had the will, to do or not to do any given act. Whether a testator be a free agent or not, as there are no possible means of penetrating into the motives by which he was actuated, must be judged of by his acts and deeds and all the surrounding circumstances. This, I fear, of necessity leads the way to the consideration of a part of the bulky evidence produced in this cause, both as regards the capacity of the deceased, and his freedom from control or the contrary. But I will here observe there are certain parts of the case which were much discussed by counsel, and not improperly so, into which it is not my intention to travel, or at least with any particularity. I mean the execution of various deeds and the precise amount of property possessed by the deceased at the making of the will propounded, or at any given period; and I decline undertaking this task because, after having again carefully considered the whole of these papers, I have not materials for doing so satisfactorily. I have not enough whereon I can, upon any of the circumstances, come to a safe judicial conclusion; and indeed it is not to be wondered at, because the very facts relating to these deeds and the property of the deceased have not formed a part of the pleadings in this cause, and no evidence has been produced directly on the one side or the other as to the circumstances under which the deeds were made, or with respect to the amount of property, at the various times when different wills have been made. In a case of this description, the history and the character of the testator are necessarily most important ingredients in the decision of the case. The testator, it appears, was born in Germany, and possessed of no property, or very little, when he came to this country for the sake of seeking his fortune; that he was a person of no education, and does not appear to have made much improvement during his long residence here. The evidence varies as to the extent of his acquirements: he could not read English, save in a very limited degree; he could sign his own name and write a little, but not much. His occupation was that of a tailor, and in 1826 he was admitted by his cousin as a partner in his business. In the progress of time he gradually acquired very considerable wealth, and continued to reside in this country, with occasional visits to his relations in Germany, until his death. I must take his character from the evidence of the witnesses produced in the cause, and also in some degree from the facts proved. He was manifestly, at least up to some of the periods in controversy, a person of very shrewd mind, active and adroit in the management of his business, of a very reserved disposition, kind, generous, and charitable to the greatest degree, but, as appears too clearly from the evidence, very irritable, and utterly incapable of restraining his violence when under the influence of passion. I am endeavouring to state the result of the evidence. I will refer to one or two passages in it. One witness, who was intimately acquainted with the testator, and who was a person of the same nation, says: "The deceased was at times as violent and uncontrollable as a madman. I have seen him in that state in his last days." Another witness, who lived in his house nearly thirteen years, says: "The testator was of a very irritable and violent temper; it was, not caused by bodily infirmities"—a very important statement—"his temper was bad when he was in good health." Again, his most intimate friend and confidential solicitor says: "The testator was of a very reserved disposition, and of a very irritable temper;" and one of these witnesses repeats, "I like the testator to have been constitutionally very irritable; he was very hasty, and easily excited. A trifle would upset him, and make him very angry; he expressed himself in very violent terms towards those about him, and sometimes for the most trifling causes." It cannot certainly be necessary, in order to elucidate the proposition here set forth, to refer to more evidence, and for this reason, that there is no conflicting evidence upon the point. All the evidence on both sides tends to establish and prove that which I have now stated. The will propounded in this cause is dated 6th July, 1848, the codicil September 5 in the same year. By this will Mrs. Stultz is very largely benefited. The will preceding in date that of the 6th July, 1848, is pleaded, though not propounded in the allegation of those opposing the will now in question. It bears date August 7, 1847, and differs in some very important respects from the will of 1848. There is, it is true, the same bequest of the household furniture; and all the legacies which I have before recited are given by this will, and others in addition, but to a much larger extent, such as the charitable legacies, and those to the German relations of the testator; and finally to trustees for the benefit of Mrs. Stultz. The difference amounts to many thousands of pounds. It has been said, and said truly, that the only question upon which the court can now decide is, whether the will propounded is entitled to probate; and that is so. But the court cannot shut its eyes to the evident consequence of its decision, whichever way it may be. If against the will propounded (the will of 1848), it is in vain for the court to shut its eyes against the fact that the will of August 1847 will most assuredly receive probate, so far as appears from the facts before me. The question, therefore, is really not between Mrs. Stultz and the next of kin, but between Mrs. Stultz and the legatees of the preceding will, especially the nephews and nieces, the Tailors' Institution; and to Mrs. Stultz it is a question of so many thousand pounds. In the following observations I shall endeavour to a certain extent to take the order of time. The deceased, being a widower, in the year 1826 married Mrs Stultz, the party in this cause, who has since taken a second husband. He was accustomed occasionally, as I have said, to visit Germany for the purpose of seeing his relations, until the year 1845. Now I think there can be no doubt that he felt a great regard for some of his relations, for he evinced it by great liberality. According to the evidence in the cause, regard for his relations generally may be received as a proved fact, and also great generosity towards them. A witness in the cause states that a great many thousands of pounds at various times were given by the deceased to his relations, and it appears he was most liberal towards them. Now how far his regard and affection to his relations varied at different times is a very different question, and is not so easily solved as the first. I think, however, that it will not be necessary to go further into that part of the subject; I mean, as to the earlier part of the transaction. Nor is it at all necessary to inquire whether the deceased made certain declarations at so early a period as the year 1817 or afterwards, of his sisters having shown their affection for him by making him a sharer in his brothers' inheritance, from which he had been excluded. In the first place I think, looking at the deceased's character, it is quite clear that this act of generosity on their part would have been strongly felt by him. In the second instance, I think the whole of his conduct and munificence towards his relations manifestly shows what he really felt upon the subject. It is not necessary to prosecute the inquiry into what may have occurred in the year 1817, when so many things have taken place since, that make it impossible to say that a declaration in 1817 could affect the making of a will in 1848. But, in truth, to argue against the will propounded on account of his affection for his sisters is to compare its probability with an intestacy. Now in my judgment that is wholly fallacious. The true comparison is not with an intestacy, because since the year 1836 there never was an intestacy; the sisters never benefited by an intestacy since the year 1836. It is no comparison at all to compare this will propounded with an intestacy, when there were so many preceding instruments executed, from the tenor of which we see what were the deceased's feelings. The comparison is between the will propounded and the former wills, but especially the one of 1847, which, when made, was at that time the best evidence of the extent of the intentions of the testator to benefit his relations. It was not his intention to benefit his sisters, for reasons I do not know. Whether they did not require it, or whether he thought he had given them enough in his lifetime, it is not necessary to examine. It was his intention to give his other relations, his nephews and nieces, a larger benefit than appeared to be given by the will of 1846. In 1845 the mother of the testator died, and there is only one transaction prior (for I am now looking at the transactions somewhat in the order of time) there is only one transaction prior in date to which I apprehend it is necessary to advert. That is the fact that prior to 1845 Mrs. Stultz left the testator's roof, in 1844, when a letter was written which I shall have occasion to mention; but the departure of Mrs. Stultz from her husband's roof, both in the year 1844 and 1845, must

his closely, considering; but I must defer it for the moment. The year 1845 is a most important period for the consideration of this cause. It appears that in that year Mrs. Stultz, who had married the deceased some time in 1826, left his house and home, and continued to reside with her husband; and I can entertain no doubt, upon the evidence in this cause, that in some degree at least the rendering for this retirement arose from the intemperate language which she had indulged. In the month of December of this year Mrs. Stultz was admitted into [illegible], but she did not return to reside with the deceased until a subsequent period, viz. in [illegible]. During the absence of Mrs. Stultz, Miss Warne, who had been for many years domiciled with the testator, continued to reside with him. In the allegation opposing the will in question it is pleaded that the testator became subject to epileptic fits of short duration, but which produced effects which sometimes lasted for several days, and deprived him of the power of duly exercising his mental faculties; and this will bring me to consider whether your lordship, if at all, the mental faculties of the deceased were at the time impaired. On the 19th Dec of the year 1845, codicil was executed at Brighton. The first witness to prove the decay of the faculties of the deceased, consequent upon ill-health and the occurrence of fits, is Durling. He was his servant from November 1844, to 1847. He dates the illness of the deceased from 1845. He says, "that in the beginning of 1846 the paralysis became perceptible; that about August 1846 the deceased was attacked with a fit at Brighton; that from that time he became subject to these fits about once a week." He details the effect of them as seen partly in stupor and, according to his account, in delirium, but he adds that he got better towards the end of 1846. Now the next witness is Miss Warne; and I must here again observe, that she was permanently resident with the deceased during the whole of this period to which Durling speaks. She says, and strange she does so say, if there was any correctness in Durling's evidence, that she knows nothing of this transaction pleaded in the 9th article; she knows nothing of any fit until March 1847, and yet, according to Durling, they were once a-week, and the effect of them was seen partly in stupor and partly in delirium. The result is quite evident, either that memory is exceedingly defective, or that Durling is strangely mistaken in his evidence, because she can hardly have forgotten the first fit, which, according to the evidence of Durling, produced stupor lasting nearly a week, and this again recurring and becoming very frequent. Now what advantage can I derive from clearing up these matter—contradictions? Mr. Bloxam, who was a medical man resident in London, attended on the deceased from the 25th of May, 1846, to the 10th of April, 1847. This gentleman was not at Brighton; but the deceased was there about this period, for how long I have no means of forming a conclusion. Now Mr. Bloxam says that when he first attended the deceased (this was of course in May 1846) he found him suffering under considerable disorder of the digestive functions, and subject to fits of despondency; that he had two epileptic fits, one in the winter of 1846 (so that as to time he does not confirm Durling) or early in 1847, which rendered him incapable for two or three weeks. He then, having advanced as far as the year 1847, goes back in his evidence to 1846, and there he says he had a consultation with Dr. Bright as to the propriety of authorising some one to draw checks for the deceased, and this on account (these are his words) of his present state and apprehension of subsequent attacks. Now, although this gentleman cannot speak as to what occurred at Brighton, I think I must presume that he is correct in his date as to the consultation with Dr. Bright; and if so, however occasioned, the testator was in some degree at that time treated as a person not of perfectly sound mind, memory, and understanding, and was therefore incapable of transacting all his own business. I say in some degree, because I can put no other construction on the words used by Mr. Bloxam, "on account of his present situation and apprehension of subsequent attacks." Mr. Hunter, who knew the deceased from the year 1820, who represents himself to have been his confidential friend from that time to May 1847, has been examined upon this article of the allegation; but again, strange to say, though he saw the deceased at Brighton, and though he states in another part of his evidence that he assisted the deceased in drawing his will for him, namely, the will of 1846, he is altogether and wholly silent as to the state of the deceased's mind in 1846. He commences his examination stating that it was at the anniversary dinner of the Tailors' Institution in the month of March that he noticed a change in the deceased. Here again I must think either that his memory has failed him, or, what I have no right to suppose, that he was through error examined upon this article; for, to the 77th interrogatory he says: "The testator was so far affected in health, but in what way or with what disease I do not know, in the latter part of 1846, as not to have any desire to attend to business; but he was not incompetent to do so; he did attend to business during the time interrogated, but only partially." I

pike, upon the evidence of two other witnesses on this part of the case,—of the solicitor it is of little consequence, both of the other because I regret to say it is not worthy of credit;—but these is all the evidence I have to publish upon them so far as to the mental state of the deceased is concerned. There was, however, a will made on the 16th December in that year, prepared by a solicitor at Brighton. Whether this will was, if then revoked or cancelled, a valid testamentary disposition of the deceased's property at any time, is not a question I am called upon to determine; prima facie, I apprehend I must presume it was a genuine will. Now if this will really contained the unbiassed testamentary intentions of the deceased, the subsequent wills are certainly most widely different in their disposition. If, on the contrary, the testator at the time of making this will was in a state of mental incapacity or under influence, it greatly behoves the court to be on its guard; for, whichever way it be taken, this will is a proof either of intentions wholly contrary to subsequent acts, or it is evidence of a mind so impaired at that particular time and period as to be subject to undue influence. From one of these conclusions it is utterly impossible to escape. I repeat again, it is proof either of intentions wholly contrary to subsequent acts, or it is evidence of a mind to such a limited degree, it matters not what, but a mind in that state and condition that, at the period of making the will, it was subject to undue influence, because, if it does not contain his real intentions, it must have been made under undue influence. So much for the year 1846. We now approach the year 1847; and in the month of May of that year Mrs. Stultz returned to the deceased, who was then at Brighton. A great deal of evidence has been given as to her conduct after she was released from the lunatic asylum in September 1846, as to the period of rejoining the testator. Much, too, has been said of the deceased's alarm and fear lest she should enter his house during any period of that interval, and of the negotiations which took place with him as to her maintenance. I think, without entering into details, I give the opponents of the will of 1848 the full benefit of this evidence when I say that I think it is satisfactorily established that the deceased was at times greatly alarmed lest Mrs. Stultz should intrude upon him, namely, between the month of October 1846 and the month of May 1848, and that he was exceedingly averse to her return. I take that as an established fact in the cause. Going on then from the year 1847, in the month of March of that year, the deceased having been resident at Mr. Housley's, in the Regent's-park, it is a fact fully established that he there experienced a fit of a most serious character. He was thence removed to an hotel in Oxford-street, and afterwards to Brighton, accompanied by Miss Warne. I can entertain no doubt that his mind was weakened by that attack; perhaps not very materially so, for Mr. Hunter states, in answer to the 16th interrogatory, "that the testator did recover his health in a great measure in the spring of 1847;" and in August 1847 there is another will made by Mr. Pike. I refer to these circumstances in order to show, as appears to me, that the return of Mrs. Stultz cannot be ascribed to any particular deterioration of the faculties of the deceased at that time. Whatever might have taken place with respect to Mrs. Stultz before—however violent her temper, or outrageous her conduct—it is, I think, clear that the testator, upon due deliberation, not hastily, but after much consideration, thought it most for his happiness that she should return to him; nor is it possible, I think, to attribute this intention entirely to any neglect of the Misses Warne, though this was certainly, in fact, the moving cause. The departure of Miss Warne too, under the circumstances mentioned by Durling, and looking at the statement made by herself, clearly evinces that whatever regard the testator had for her was, at that time at least, extinguished, not merely on account of her inattention, but from his supposition that she might possibly intend to confine him in a madhouse. Assuming that the deceased was not serious in this expression, or that it was to be taken literally, still it showed great exasperation of mind against her. The will of Aug. 7, 1847, was prepared by Mr. Pike, the confidential solicitor of the deceased, at least in many matters; and I am not aware that there is any material evidence as to the interval between May 9, Mrs. Stultz's return, and Aug. 7. I have already said, and I now repeat it, that I must assume this will to have been executed by a competent testator; and I think that this is a real starting-place, from which I ought to commence a more narrow examination of the evidence in the cause. I use the expression competent testator, not meaning thereby to aver that the mental faculties of the testator were not in some degree weakened and impaired; for I think it most probable that the illness he had experienced, and the anxieties he had undergone, must to a certain extent have diminished the original vigour of his mind. The real subject of inquiry is, how far after Aug. 1847, up to July 1848, any diminution of mental capacity had taken place. [Dr. Lushington having here gone through the witnesses produced against the will, in the order in which they had been examined, except Mr. Pike, continued.] Mr. Pike is the most important witness in this cause, save Mr. Harrison.

I apprehend that it will not be disputed on either side that Mr. Pike is a witness of unimpeachable veracity, and that he has given his evidence in this cause with fairness and impartiality. His means of knowledge were great. He was for many years not only the confidential solicitor of the deceased—at least for the most part,—but also the private friend. One result, I think, necessarily follows from the credit due to him and his evidence, namely, that the will of August 1847 was made by a competent testator. I do not, by that expression, mean by a testator in the enjoyment of all his faculties wholly undiminished, but legally competent to give effect to the act he did—being to make the will of 1847, a will almost wholly departing from the will of December 1846. [Dr. Lushington then reviewed the evidence of Mr. Pike.] I have now, I hope, carefully analysed the whole of the evidence bearing upon the question of capacity produced by the opponents of the will of 1848, given by all the witnesses who could speak to that period; and, speaking of this evidence, and of this evidence alone, I conceive that it is utterly impossible to arrive at any conclusion but that the attempt to prove general incapacity at the time of making the will of July 1848 has totally and entirely failed. I do not mean to say that there were not times and seasons when, from the attacks the testator experienced, of whatsoever kind they might be, he might not be incapable for periods of transacting business; nor that, in consequence of those and previous attacks, to a certain extent the mental faculties of the deceased were not weakened or impaired; but I do assert that not only has this evidence failed in establishing general incapacity, but has proved to my satisfaction that the testator was in July 1848 a competent testator—or that, in other words, no testamentary act done by him could be set aside on the ground of mental incompetency alone. I must, however, distinctly guard against being supposed to say more than that there is established an adequate general legal capacity, though the mental faculties were in my judgment weakened to an extent which no words can describe, and which I can only define by saying not so weakened as to affect *generally* the testamentary power. I have advanced this step in the cause; but I well know that the ultimate decision of this case must depend upon a very careful review of very many facts and circumstances besides mere capacity; that the case of the opponent of this will may be said to consist not only of incapacity or impaired capacity, but also of control, influence, and of improbability so gross, that the court must conclude that the deceased never would, except under control or under influence, have made such a disposition of his property. These considerations lead me to that part of the case which occupies by far the greatest portion of the evidence, namely, the relation that subsisted between the deceased and his wife, her conduct, his regard or other feeling for her; and this it is my duty to trace as accurately as the materials I possess will allow. [Dr. Lushington then reviewed the evidence bearing on this part of the case.] The period of real importance to the ultimate decision of this cause is that from the return of Mrs. Stultz, in May 1847, to the month of July 1848. Upon what terms did Mrs. Stultz live with her husband? To what extent did she exercise influence or control over him? As the will of 1848 is a departure from the will of 1847, and wholly in favour of Mrs. Stultz, the terms upon which they lived are important to this extent, as showing the probability or improbability of such alteration. Now as to the terms on which Mr. and Mrs. Stultz lived, the evidence is somewhat contradictory; there is evidence of kind treatment on her part, and there is evidence of the contrary, and there is evidence of violent quarrels taking place between them. The conclusion I am disposed to draw is, that Mrs. Stultz, immediately after her return, conducted herself with greater kindness and consideration towards the deceased, and practised more self-restraint, but that in the course of no long period of time they relapsed into their former state. Quarrels, and violent quarrels too, were not unfrequent. Mr. Stultz was most irritable, and when irritated wholly ungovernable. Mrs. Stultz resumed to some extent her former habits, and occasionally exasperated the deceased—a state of things, as I have already said, not wholly without example, nor inconsistent altogether with affection between the parties. Then as to control and influence—I have no hesitation in expressing my conviction, that the deceased was under the influence of Mrs. Stultz during this whole period, and up to the time of his death, and moreover that during the year of her absence he was under the influence of Miss Warne. I believe that when Mrs. Stultz returned in May 1847 the deceased continued to be influenced, if I may use that word in this peculiar sense, and that the transition was easy from influence exercised by Miss Warne, to influence exercised by Mrs. Stultz; but how far the exercise of this influence was increased as time went on, and whether it became ultimately that degree of influence amounting to control which would invalidate an instrument made whilst the testator was subject to it, is a question which cannot be easily settled. It is not easy to describe with accuracy the result of this evidence. That the deceased was in many instances prevented following his own immediate wishes by the act and influence of his wife

must, I think, be conceded, especially in all matters of domestic arrangements, and occasionally in his wishes frequently to visit London whilst at Dulwich; but the strongest instance of all is the limiting the supply of money, which, standing alone, is a circumstance of considerable weight. To fix however the value of all this evidence, all circumstances must be taken into consideration; we must see in what particulars the deceased acted as a free agent, as well as those in which he gave way to influence or submitted to be controlled. [Dr. Lushington then reviewed the evidence as to this point.] I enter upon the consideration of the evidence as to the will of 1848 with the following convictions, which I have endeavoured to prove to be well founded by reference to the evidence in the cause: 1st. That in June and July, 1848, the testator was generally competent to make any testamentary disposition of his property, though to some extent his faculties were weakened, and necessarily weakened, by previous illness. 2nd. That the deceased was in great measure subject to the influence of Mrs. Stulz, but not under control in many important matters. 3rd. That the probability is against the will of 1848, if the testator were left uninfluenced. [Dr. Lushington then reviewed the evidence as to the will of 1847.] I think that the true cause of Mr. Harrison being called in was the influence of Mrs. Stulz; and though there is no direct evidence of such being the case, I am of opinion that the circumstantial evidence renders it most probable that he was called in at her instigation, and at her instigation only. On the 24th of June, 1848, Mrs. Stulz writes a note, requesting Mr. Harrison to come to Dulwich and dine there, but not saying for what purpose. Mr. H. answers he will come on Friday the 30th, and on that day he goes. It is worthy to be noted, that Mr. Harrison deposes that between the 30th June and the 6th Sept. he saw the deceased seventeen times in Saville-row, and probably other times of which he has no note. This then is most clear, that Mr. Harrison had most ample opportunity of seeing the state of the deceased; all that was apparent must have been seen by him. If the statement of Mr. Harrison be true, what is the short summary of the facts? That Mrs. Stulz was the *dux facti*; that the instructions proceeded from her, or were in her handwriting; but that the deceased took a part therein, adopted what was done, and that, too, as a free agent, and a person of testamentary capacity. By this observation I mean that Mr. Harrison so considered him to be, and has so represented him, and, if Mr. Harrison's evidence be not rebutted by a consideration of all that previously occurred, that this is the conclusion to which his evidence would lead. The draft was prepared and was read over, and the blanks supplied partly by Mrs. Stulz, and partly by the deceased. This interview lasted two hours. Mr. Harrison gives a very brief account of the execution of this will. I presume that he was satisfied from what had previously passed of the deceased's knowledge and approbation thereof, and he deposes in very decided terms as to capacity on all these as well as other occasions, and states his reasons. And now let me bring this judgment to a close, by stating the general effect produced on my mind by a consideration of the whole of this mass of evidence, and the conclusions to which I have been led. I am satisfied that the deceased possessed, during the period of these transactions, testamentary capacity at all times when not under the influences of certain attacks, whether of epilepsy or paralysis, or whatever else they may be called. Looking at his bodily infirmities, and the disorder to which he had been subject, and also to the evidence in the case, I can arrive at no other conclusion than that, although his testamentary capacity remained, there was and must have been some and no inconsiderable reduction of mental energy, and of firmness and resolution of mind. That I think was his state and condition. I conclude further, that in many respects, and from various motives, he was under the influence of Mr. Stulz. His very necessities rendered this most probably the case. Quarrels though there were, Mrs. Stulz was attentive and kind to him, she managed many of his affairs, and was his amanuensis. The whole control of the household rested with her; her superior education and energy gained ground as his capacity for exertion diminished, and his power of expression decreased. The very character of the deceased placed him under influence.—his want of education, his irritability, his violent passions, which are almost always followed by subsequent submissiveness. What were the motives upon the mind of the testator? Put the case in the strongest point of view. Fear of displeasing; fear of future solicitation; love of peace; or it may be deference to superior judgment, or affection and regard. Who is to drive into these motives? What evidence can any tribunal have? Coercion may indeed be capable of proof, and in such case no act would be valid. Influence may be proved, but what would be the legal result? Hundreds of wills have been made under the influence of wives, apparently unjust sometimes towards children, sometimes towards relatives. As I have previously observed, some of the largest estates in this kingdom are now held under wills disinheriting the heirs-at-law of the testator and giving them to the wife or her relatives. But it

may be said, all this is very true, yet in the present case the testator was so enfeebled that he had no power of resisting the will of his wife. The answer is given in this case as I think. First, that there is not the slightest proof of importunity. Second, that there is proof of the power of resistance in an instance when Mrs. Stuls was urgent for the testator to take measures for the recovery of a certain sum of money due or supposed to be due to him. Third, that his testamentary capacity was beyond all doubt. Fourth, that he voluntarily did many acts to complete this will, and by the evidence voluntary acts. I will put this case on the lowest foundation, lower indeed than the facts warrant. The will of 1848, let it be assumed, originated with Mrs. Stuls; further that the instructions emanated from her; still it was adopted, it may be reluctantly, by the deceased, who was a competent testator. It is a valid will, and such is my opinion. I believe that this decision is in strict conformity with the doctrines laid down in *Armstrong* v. *Huddleston*; that in principle there is no distinction. The only difference is, that in *Armstrong* v. *Huddleston* it was necessary, to uphold that will, to carry the principle much further. The circumstances of this case are much more favourable to the validity of the will. I will only add that I believe these to be sound principles of testamentary law, and that none other could be found to support the validity of wills alleged to be made under the influence of a wife without either curtailing the testamentary power, so firmly established by the law of England, or introducing a species of investigation into motives and reasons where even the most industrious and acute would soon be in "endless mazes lost." I need not occupy time in discussing the subject. I also pronounce in favour of it. I have entered at great length into the facts of this case, for the satisfaction of parties; but let it not be supposed that I have entertained any doubt as to the judgment to be given. The evidence of Mr. Pike, Mr. Harrison, senior, and Mr. Johnson, in truth dispose of this case. I shall make no order as to costs. I think the circumstances justified the investigation, but not the profuse production of witnesses utterly useless.

Equity Courts.

LORD CHANCELLOR'S COURT.

Reported by C. H. Knapp, Esq. of Lincoln's Inn, Barrister-at-Law.

Jan. 12, 1853.

(Before Lord Cranworth.)

Re Northampton Charities.

Practice—Appointment of new trustees of a charity—Jurisdiction—Municipal Corporation Act.

A general affidavit, verifying the deaths of trustees of a charity by a person acquainted with them, held to be sufficient evidence of their deaths without the production of the certificates of burial.

A petition for the appointment of new trustees of a charity, if entitled under the General Trustee Act, may be heard by the Master of the Rolls or one of the Vice-Chancellors.

This was a petition presented under the Municipal Corporation Act, 5 & 6 Will. 4, c. 76. Under the 71st section of that Act twenty persons were appointed trustees of certain charity funds and estates called the Church Charities, which were formerly vested in the corporation of Northampton as trustees; and under the same Act twenty persons were also appointed trustees of certain other funds and estates called the General Charities, which were also formerly vested in the aforesaid corporation as trustees. Out of the twenty persons appointed trustees of the Church Charities eight had since died and four had left the place and taken up their permanent residence elsewhere; and of the trustees of the General Charities five had died.

Bagallay appeared for the petitioners, and asked for the appointment of new trustees in the place of those who had died and of those who had changed their residence. Their deaths were verified by affidavit only. This application had been made to the Vice-Chancellor Stuart, who had declined to make any order, doubting whether he had jurisdiction. The petition was entitled in the General Trustee Act, under the 22nd and 32nd sections of which the order as prayed might have been granted.

Wilkinson for the corporation.

The Lord Chancellor decided that a general affidavit of the deaths of the deceased trustees, by a person acquainted with them, was sufficient without the production of the certificates of burial, and that such a petition, being entitled under the General Trustee Act, could be heard by the Master of the Rolls or by one of the Vice-Chancellors.

COURT OF APPEAL IN CHANCERY.

Reported by Owen Davies, Tudor, Esq., of the Middle Temple, Barrister-at-Law.

IN BANKRUPTCY.

June 30, *July* 8 *and* 10.

Ex parte Dufaur, *re* Dufaur.

Bankrupt Law Consolidation Act, 1849—Whether solicitor had acted as scrivener—Trading.

A solicitor who had upon a few occasions had money deposited with him for the purpose of investment, was held not to be a scrivener within the meaning of the bankrupt laws, the adjudication of the Commissioner making him a bankrupt was therefore annulled; but as he had not tendered himself for examination before the Commissioner, he was held not to be entitled to costs, and he was to undertake not to bring any action.

Though an attorney may have incidentally acted as a scrivener, and money may have been entrusted with him, for which he was afterwards to seek a borrower, a few isolated instances of that sort occurring in the course of his business as an attorney will not bring him within the operation of the bankrupt law.

This was an appeal from the decision of Mr. Commissioner Fonblanque, under the following circumstances:—Mr. Antonine Dufaur carried on business in partnership with Mr. Blakeney down to March 1851, when the partnership was dissolved. On May 22, 1852, a petition was presented by Timothy Fogarty and Julia Regan for an adjudication against him, and on the 26th of the same month he was adjudged a bankrupt. On June 2, the bankrupt, by his solicitor, appeared before Mr Commissioner Fonblanque to show cause against the adjudication, when the adjudication was confirmed. The bankrupt did not submit or tender himself for examination before the Commissioner. The case now came before this court on a petition of the bankrupt alleging that he was *not a trader* within the true intent and meaning of the bankrupt laws, and that the decision of the Commissioner was erroneous, for that the adjudication was invalid, on the ground that the proof of the trading was insufficient to support it, and it prayed that the adjudication might be annulled. The evidence on which the adjudication was made was that of H. Stanley, who had been managing clerk of, and F. W. Dolman, who had been articled to, the bankrupt. The former deposed that from 1843 to 1847 Dufaur exercised the trade, business, or profession of a money-scrivener, receiving other men's moneys and estate into his trust or custody, and making merchandise thereof, and sought and endeavoured to get his livelihood thereby as others of the same trade or business usually do; that the business of Dufaur and of Blakeney his partner consisted for the most part of the procurement and advance of moneys by way of mortgage and annuity, and occasionally for the discount of bills of exchange for parties introduced to Dufaur as requiring advances of moneys, that Dufaur so applied moneys in his hands, and which were entrusted to him for the purpose of finding securities for the same, and that among several of such parties so entrusting their moneys were a Mrs. Browne and Messrs. Basham and Blakeney, the trustees of Mr. and Mrs. Browne's settlement, a Mr. Cross, and a Mr. Williams and others. The deponent then proceeded to set out items of a bill of costs, for one particular mortgage transaction, partly as follows: "Attending Mr. S. jun. with reference to the trust fund, and raising of 250*l.* thereon," and "upon Mr. G. Hunter, who agreed to advance the same, drawing memorandums," &c. (this loan went off); "attending upon Mr. S. sen. who proposed that 550*l.* should be raised by way of mortgage, to pay off, &c. and begged me to write to Mr. S. jun. fully thereon, explanatory of the proposed transaction, and for his assent," "attendance on Messrs. Basham and Blakeney, proposing security to them for 550*l.*, when they agreed to advance the money provided the security was unobjectionable," "attending in the city to sell out stock." Mr. Dolman deposed in the same manner as to Dufaur's exercise of the business of scrivener, and then said: "Dufaur has been in the constant practice of receiving the moneys of parties, the same being lodged in his hands by clients and others, for the purpose of being invested in securities, and for the purpose of finding securities for the same; and, upon the money being invested, he has charged not only for the mortgage deed and conveyancing part of the business, but also certain fees, bonuses, or compensation for such procurement of the said moneys; but, in particular, the said Dufaur has invested moneys intrusted to him, placed, or left, in his hands by Dr. E. Blakeney and a Mrs. Mary Browne, for the purpose of being invested in securities." "That Dufaur, in an affidavit he made in April 1851, swore that he and his partner had been for the last four years concerned for the said Mrs. Browne, in investing her money on mortgages or other securities; and that, in the course of such employment, they had recommended various investments to her, all of which had been accepted by her, and that she had from time to time left it to Dufaur and his partner to find such securities for such sums of money as might be paid off; that, in answer to a letter from Dufaur to her, dated the 15th of Aug. 1850, requesting her to pay over [illegible] of money having been paid off, and that another [illegible] to Mrs. Browne, in which [illegible] to Mrs. Browne, it [illegible] consent of Mrs. Browne was obtained to the advance of 500*l.* to Lieut. Newenham, and she [illegible] in the Court of Q. B. as follows: [illegible] She has never been consulted either by [illegible] Dufaur or Blakeney on the subject of the proposed advance of any portion of her monies to Lieut. Newenham; no mention has ever been made by either of them of such advance being required, or contemplated, nor have the particulars or nature of any interest or property whatever proposed as a security for the loan of 500*l.* or any other sum, or money, by the said Lieut. Newenham, been at any time mentioned to her; and further, that had any such proposal been made to her she should most decisively and peremptorily have declined to assent to any such application of her monies." This affidavit was used in evidence by the consent of the petitioner, to save the expense of an oral examination.

The affidavit of Dufaur stated that he had been for twenty-one years past in practice as an attorney and solicitor, that he never exercised the trade, &c. (a denial of the technical passages in Stanley's and Dolman's depositions); that his business consisted of the usual business of an attorney and solicitor, namely, that of conducting affairs in common law, chancery, conveyancing, and all other branches of his profession, and that some but not the most part of his business consisted in the preparation of mortgages and annuities granted to clients; that he had not, since 1844, been in the habit of procuring the discount of any bills of exchange or promissory notes for clients or any other persons, but, &c. (then followed admission of two instances); that he had not, since 1844, invested any client's money, or any part thereof, in the discount of any bills of exchange or promissory notes, but, on the contrary, had most studiously avoided doing so; that money had not been entrusted to him, nor to him and his late partner, for the purpose of finding securities for the same; he had never advanced the moneys of Mrs. Browne (repeating the names) nor the money of any other client, by way of mortgage or annuity, without first communicating to them the nature of the security on which he proposed to advance the same, and procuring their sanction, authority and consent thereto. The affidavit then entered into a full explanation of several particular matters, and in each case stated the assent of the lender to the security, and contained the following passage—"I say that the statement in the examination of F. W. Dolman, sworn in this matter, that I have been in the constant habit of receiving the moneys of parties, &c. (following the words of the deposition) is utterly untrue; for I say I have never had money lodged in my hands by clients or others for the purpose of finding securities for the same."

In one of the accounts, No. 6, "Capital Account," on which reliance was placed as proving that money was placed in Dufaur and Blakeney's hands for the purpose of investment at their discretion, were items such as these:—

	£	s.	d.
To sums of money drawn out by Mr. Blakeney, for his own private purposes, between, &c. out of 1202*l.* 3s. 1*d.*	187	14	9
To Best's mortgage	300	0	0
To Ryan and Fogarty, in part of 600*l.* agreed to be advanced to them on mortgage	420	0	0
To Mitchell, in part of 800*l.* agreed to be advanced to him on mortgage ...	411	0	0
To Newenham, in part of 500*l.* agreed to be advanced to him by way of annuity	420	0	0

On the other side of the account appeared, among others, these items:—

	£	s.	d.
By cash, Salamans	1202	3	1
By cash, Beaver...	200	0	0
By cash, Stevens	250	0	0
By cash, Rymer...	400	0	0

Mr. Dufaur was examined and cross-examined at great length, and in the course of it he explained this to be that Dufaur and Blakeney had received moneys belonging to Mrs. Browne, which had been lent on mortgage, and upon being paid off by Beaver, Stevens, and Rymer, the amounts were paid to Dufaur and Blakeney as the solicitors of Mrs. Browne. As to the item 1202*l.* 3s. 1*d.*, and the 187*l.* 14*s.* 9*d.* cash drawn out by Mr. Blakeney, Mr. Dufaur accounted for it thus; Mrs. Browne was present when Salamans paid the money, and requested her solicitors to put the money for safe custody into their hands, which they did, and the 187*l.* 14*s.* 9*d.* was drawn out by Mr. Blakeney, the partner, upon some understanding or agreement (unknown to him, Dufaur) between him and Mrs. Browne, they being [illegible] partner. The 1202*l.* 3*s.* 1*d.* was never in the hands of the firm for any other purpose than for safe custody. Mrs. Browne not having, any business. He also swore that on every

occasion, which he advanced himself, he allowed, besides the commission of [illegible] per cent. In some few instances, particularly according to Mr. Dufaur, where [illegible] and swore that [illegible] he knew the nature of the business, and that the chief business was to [illegible] money agents," that is, "the persons who are employed to borrow money." In the case of sales belonging to Mrs. Browne's money, it appeared that the only advances made by Mr. Dufaur were the small sums for charges. In one or two particular instances in the bills, charges for commission on the sale of estate appeared to have been made; but, [illegible] of the court is founded on the case of Mrs. Browne, and therefore it is needless to go into the details of the other cases.

Hemming and *Bagshaw*, for the appellant, contended that it had not been shown that Mr. Dufaur was a bankrupt, according to the definition in the 6 Geo. 4, c. 16, and which was contained in the present bankrupt law, "receive other men's moneys or estates into his custody." Mr. Dufaur was simply employed, as other attorneys, to invest their moneys in the character of an attorney, and not as a scrivener. In Mrs. Browne's case, which will be much relied upon to support the case of trading as a scrivener with the monies of others, it will be seen that he acted rather as an attorney than a scrivener; and even if he had her money for some time in his hands, it was, to use the words of Gibbs, C.J. in *Adams* v. *Malkin*, 3 Camp. 539, "only having incidentally, on particular occasions, the money of his clients to lay out for them." That was not sufficient to constitute a case against him as a scrivener. He cited *Ex parte Bath*, Mont. 92.; *Malkin* v. *Adams*, 2 Rose, 28; 2 V. & B. 31; *Ex parte Paterson*, 1 Rose, 402; *Hutchinson* v. *Gascoigne*, Holt, 507.

Eadon and *Cooke*, for the opposing creditors and the assignees.

Lord Justice Lord CRANWORTH.—In this case it appears that an attorney and solicitor, of the name of Antoine Dufaur, was adjudicated a bankrupt in May last, as a scrivener within the meaning of the bankrupt laws. Two of his former clerks were examined, and who said what, if true, was conclusive, and left the Commissioner no alternative. It is to be remarked that Mr. Dufaur did not tender himself for examination before the Commissioner, and doubtless, if he had, that learned person would have taken his examination, and he now demurs to the result of the evidence. The evidence which was before the court below as to the practice of scrivening was, as I before observed, the testimony of two clerks who were formerly in the service of Mr. Dufaur, and, if their evidence is to be relied upon, no doubt the practice of scrivening within the meaning of the bankrupt law is made out. The question is, whether the evidence of these two persons is to be relied upon. They say that the general practice of Mr. Dufaur's business was the receipt of moneys from clients, and the laying of it out upon securities at his discretion, and from time to time as he found convenient opportunity. But their evidence is general, not specific, excepting to a certain extent as to the dealings with the moneys of Mrs. Browne. This court is not at liberty to rely upon general allegations, unsupported by specific facts or instances. If such general evidence were to be relied on, no doubt can be entertained that Mr. Dufaur is a scrivener who receives other persons' money into his custody or trust in the manner stated in the bankrupt law. The trade of a scrivener has ceased in this country for two or three centuries, and its business is now divided between bankers and brokers. As bankers are now by statute declared to be within the operation of the bankrupt law, it never matters whether a banker has traded as a scrivener or not; but as attorneys, as such, are unquestionably excluded from the operation of the bankrupt law, it is frequently, as in the present case, very important to see whether an attorney who is sought or seeks to be made a bankrupt can be so made by the fact of his acts of scrivening. In the case of *Adams* v. *Malkin*, it was said by Gibbs, C.J.: "At the present day the banker occupies one department of the business of the scrivener by being the depository of the money, and the attorney the other by drawing the securities. The banker would not be an attorney though he were occasionally to fill up bonds for his customers; nor does the attorney become a money scrivener though on particular occasions he incidentally has the money of his clients to lay out for them. In order to make a man a money scrivener he must carry on the business of being trusted with other people's money to lay out for them as occasion offers. If, in that course, and with the money of his client, he receives it from the person with whom his client may have previously contracted, and pays him on account, an attorney a money scrivener. In that part of the transaction he is no more than a person employed to count and carry. Having negotiated the loan and secured the goods, his happening to receive and pay the money is incidental to his business of an attorney. Now, if on one or two occasions money were deposited with him to lay out, would that constitute him a money scrivener? He must be carrying on generally the business of a money scrivener; that is what the statute of 1 Jac. 1 means by the well-known occupation." I do not quarrel with the law of that case; the question is whether Mr. Dufaur is brought, upon the evidence before us, within it. The evidence shows that from 1847 to 1848 he received moneys from Mrs. Browne. Arrangements were made before the money was received. Several cases were relied on, but no evidence on more than one or two; and Mr. Dufaur denies that any other ever existed on which the question could arise. In the absence of any such evidence, I think we are bound to believe Mr. Dufaur, and we must rely on Mrs. Browne's case if any case can be relied on. Even supposing the evidence of the two late clerks of Mr. Dufaur, with relation to Mrs. Browne's case, were to be taken as true, still I am of opinion that it will not be enough, for the case of that lady is most peculiar. In every instance but one of the investment of her property, the security was agreed on beforehand; and if it had not been so, still if the facts are true of her being the wife of a former partner of Mr. Dufaur, and the sister of a subsequent partner, and that he has been wholly confided in by her as to the disposal of her money, they will account for his dealing with it, and we should not, in any case of such description, hold Mr. Dufaur to be a scrivener. Lord Eldon and Lord Chief Justice Gibbs have both plainly laid down that the fact of scrivening, isolated acts of scrivening, is not sufficient to support a commission against an attorney as a scrivener, but it must be shown that the general course of his business is of that nature. It is not to be forgotten that in all Mrs. Browne's investments Mr. Dufaur charged his attorney's costs only. Lord Chief Justice Gibbs says, in the case I have before referred to, "Though an attorney may have incidentally acted as a scrivener, that is not sufficient; though money may have been deposited with him, for which he was afterwards to seek a borrower, a few insulated instances of that sort occurring in the course of his business as an attorney would not bring him within the operation of the bankrupt laws; for that would not be using the trade or profession of a scrivener, receiving other men's moneys or estates into his trust or custody." And Lord Eldon, in *Ex parte Paterson*, observes, "The next question is, as to the trading as scrivener. That does not depend upon the fact whether the bankrupt has or has not occasionally done acts which a scrivener peculiarly and properly would have done; not upon what he may have done upon one day, and what upon another, but upon his intention generally to get a living by so doing." Now, this requirement is not proved on the evidence before us to exist in the present case. The few cases of Mrs. Browne, and Dr. Blakeney and others, so far as they go, are exceptional, and there is no evidence of a general intention on the part of Mr. Dufaur to get money by scrivening, and these cases are explained by the particular and intimate connexion existing between the parties. On the whole, I am of opinion that the examination of Mr. Dufaur, whose evidence was not before the Commissioner, has shown that he is not a scrivener within the meaning of the bankrupt law, and the adjudication must therefore be set aside; but I do not consider Mr. Dufaur entitled to any costs, as he did not tender himself for examination before the Commissioner. It is not necessary to decide anything as to any charges made by Mr. Dufaur for commission, for the case does not depend on that. He must undertake not to bring any action.

Lord Justice KNIGHT BRUCE.—The only possible objection to the adjudication the Commissioner has made, and which, upon the only evidence before him, he was bound to make, is that Mr. Dufaur is not and has not been a scrivener, within the meaning of the bankrupt laws. Considering that the petitioner did not offer himself before the commissioner for examination—considering how he has conducted himself—considering that he is probably or certainly insolvent—I was at one time disposed to refuse to interfere to assist him against the adjudication, and to require that an action should be brought. Upon the whole evidence now before the court (evidence not before the Commissioner) I agree with the conclusion of my learned brother; but I agree because I find the law, as applicable to the facts proved, is in support of that view, and I agree only because of authority by which I do and ought to feel myself bound, and not on my own view of the question. The authority is that of great judges and eminent men, and is such as I consider myself bound by. I also agree with Lord Cranworth in holding that Mr. Dufaur can have no costs, and that he must undertake not to bring any action.

Tuesday, Nov. 2.

Re HALL'S ESTATE.

Evidence—Extracts from parish register—Incumbent's signature—Sect. 14 of 14 & 15 Vict. c. 99.

The extracts from parish registers of entries of marriages, baptisms, and burials, purporting to be signed by the incumbents of the respective parishes, may, without any further verification, be received in evidence under the statute 14 & 15 Vict. c. 99, s. 14.

This was an application which, at the request of Sir George Turner, V.C., was made to their Lordships, in order to take their opinion on a new point of very great consequence, as to the reception of evidence under the 14th section of 14 & 15 Vict. c. 99.

The point arose upon the application on behalf of the petitioners, who wished to obtain payment of moneys out of court, and had tendered as evidence of marriages, baptisms, and burials in support of their title, the extracts from parish registers, signed by the incumbents of the respective parishes, and certifying that the extracts respectively were truly copied by them from the registers of the respective churches. The question was whether the court could receive the extracts thus attested without any further verification.

By the Law of Evidence Amendment Act, 14 & 15 Vict. c. 99, s. 14, it is enacted, "Whenever any book or other document is of such a public nature as to be admissible in evidence on its mere production from the proper custody, and no statute exists which renders its contents provable by means of a sworn copy, any copy thereof or extract therefrom shall be admissible in evidence in any court of justice, or before any person now or hereafter having by law or by consent of parties, authority to hear, receive, and examine evidence, provided it be proved to be an examined copy or extract, or provided it purport to be signed and certified as a true copy or extract by the officer to whose custody the original is intrusted, and which officer is hereby required to furnish such certified copy or extract to any person applying at a reasonable time for the same, upon payment of a reasonable sum for the same, not exceeding fourpence for every folio of ninety words."

By the 17th section it is provided that any person who shall forge the signature, &c. or tender in evidence a document with a false signature, shall be guilty of a misdemeanor and be liable to seven years transportation.

Forster, for the petitioners, contended that the evidence tendered was sufficient.

Their LORDSHIPS, after referring to the statute 52 Geo. 3, c. 146, as to what officers were to be intrusted with the custody of the parish registers, said that they considered that, according to the proper construction to be put upon that statute and the Statute to amend the Law of Evidence, the extracts which had been tendered in evidence ought to be received.

(Before the LORDS JUSTICES.)

Tuesday, Nov. 28.

Ex parte DANE and HIGGINS, *Re* CHARLES BELTON a Bankrupt.

Bankruptcy—Practice—Petition to disallow certificate—Costs.

Upon a petition to disallow a bankrupt's petition coming on to be heard, it appeared that, the bankrupt having gone out of the jurisdiction, the petitioning creditors who had presented the petition had been unable personally to serve the bankrupt with the petition:

Held, that the petition ought to be dismissed with costs as against the assignees, but, as the petitioners undertaking not to file another petition, without costs as against the bankrupt.

Upon the usual application by the bankrupt in this case the Commissioner had allowed him his certificate, suspending, however, the same for three months. Two of the petitioning creditors thereupon presented an appeal against the decision of the Commissioner, praying that the certificate might be altogether disallowed. The bankrupt had gone out of the jurisdiction, and the petitioners, although they had used all due diligence, had been unable to serve the bankrupt with the petition. It appeared that the solicitor of the bankrupt at first appeared, and promised to accept service for the bankrupt, but he afterwards refused so to do. The petitioners then served the petition at the house in which the bankrupt lived previous to his going out of the jurisdiction.

Renshaw, for the petitioning creditors, in support of the appeal.

Lord Justice KNIGHT BRUCE said that it seemed a hard case that the bankrupt should be enabled to secure his certificate by going abroad. His Lordship then asked whether it had ever been the practice to allow such petition to stand over?

Bacon (*amicus curiæ*) said that he thought the bankrupt had a right to have the petition heard, or, if not personally served, dismissed.

Lord Justice KNIGHT BRUCE.—That is my impression; it certainly used to be so. My impression is that this petition must be dismissed.

Glasse, on the part of the bankrupt, then asked for the costs of the petition, and cited the case of *Ex parte Long*, 1 Gl. & J. 351.

Lord Justice KNIGHT BRUCE.—We are not bound to give the bankrupt his costs, and shall not do so if the petitioners will undertake not to file another petition. On the other hand, if the petitioners will not give that undertaking, the bankrupt may as well have his costs at once.

Renshaw then gave the required undertaking on behalf of the petitioning creditors.

Bird, for the assignees, who had been served with the petition, asked for the costs.

The Court thereupon ordered that the petition should be dismissed with costs as against the assignees, and without costs as against the bankrupt, the petitioners undertaking not to file another petition. (a)

(a) See 1 Rose, 67, note; *Ex parte Kaddick*, 1 V. & B. 343; 2 Rose, 115; *Ex parte Moore*, 1 Gl. & J. 288; *Ex parte Levy* 4 Deac. & Ch. 284.

ROLLS COURT.

Reported by J. Macaulay, Esq., of the Inner Temple, Barrister-at-Law.

Nov. 22 and 23.

HIORNS v. HOLTOM.
FORTNUM v. HOLTOM.

Sale or foreclosure under 15 & 16 Vict. c. 86, s. 48—Fraudulent dealings by a solicitor—Who to bear the loss—Mortgage—Sale—Purchasing debt—Costs.

An arrangement was made on behalf of A. by his solicitor, for a loan to B. of 1,000l. on the security of a second mortgage of certain property which was already mortgaged to secure 1,000l., and a mortgage was prepared and executed by B. but no money was paid; and on A. learning what was done he refused to convey, but agreed to advance 2,000l. (on having a transfer of the first mortgage) by way of further charge. The deed of transfer and further charge was accordingly executed, but the deed of second mortgage was not cancelled, but remained in the hands of the solicitor, who advised a third party, C., to advance 1,000l. on a transfer of it, C. paid the money to the solicitor, who handed him the deed, with a memorandum which he had fraudulently induced A. to sign, undertaking to transfer the second mortgage; and subsequently the solicitor induced A. to execute the transfer accordingly, and to sign a receipt for the 1,000l. which the solicitor applied to his own use. The deed of transfer was expressed in words sufficient to convey the legal estate, which was vested on C. by the deed of transfer and further charge.

Held, that as between A. and C. the former must bear the loss occasioned by the fraud which he had enabled the solicitor to commit, and that C. was entitled to half the benefit of the security of the deed of transfer and further charge, and to costs of the suit, to be paid by A. except the costs of the mortgagor and a defendant who ought not to have been made a party.

The mortgagor held, not entitled to his costs, but decreed to have them himself because he ought to have taken care that the deed of second mortgage was cancelled; and a mortgagee of the equity of redemption, who by his answer disclaimed, stating that his claim was satisfied, and if applied to before being made a party he would have disclaimed, was held entitled to his costs.

The transfer of the deed of second mortgage to C. being intended only to give the benefit of a deed which did not pass the legal estate: quære the effect.

Under the New Chancery Act, 15 & 16 Vict. c. 86, s. 48, a sale instead of a foreclosure will not in general be ordered, unless there is such complication that the common decree for foreclosure cannot conveniently be worked out.

This was a bill to obtain the benefit of a security to the extent of 1,000*l.*, and consequential relief. The principal question was, in fact, which of two incumbrancers should bear the loss consequent upon the fraud perpetrated by a solicitor. It appeared that Mr. Samuel Robins, who was possessed of some freehold property in Gloucestershire, in 1842 applied to his solicitor, Mr. Charles Handley, of Warwick, to procure him the loan of 1,000*l.* on the security of a second mortgage of the property in question, which he had in 1840 mortgaged to secure a similar sum. Handley, who was also the solicitor of Mr. Joseph Holtom, accordingly agreed with Robins to provide an advance of 1,000*l.* from Holtom on the security of the second mortgage; and without the knowledge of Holtom a deed bearing date the 13th Feb. 1843 was prepared, which purported to be a mortgage of the property by Robins to Holtom, to secure (subject to the mortgage of 1840), the sum of 1,000*l.* This deed was executed by Robins, but no money was paid, and Holtom, so soon as he learned the nature of the transaction, refused to proceed with it and to advance his money on a second mortgage; but he agreed to pay off the mortgage of 1840, and take a transfer of it, and then advance to Robins a second 1,000*l.* by way of further charge, by which means he would become a first mortgagee for the sum of 2,000*l.* This was agreed to, and a deed of transfer and further charge, dated 28th Feb. 1842, was prepared and executed, and the money paid and the transaction completed, but no notice whatever was taken of the deed of the 13th Feb. 1842, which had not been cancelled, but was retained by Handley, for the purpose, as he pretended, of having the stamp duty returned. In June 1843 Robins borrowed 500*l.* from one Tatnall and, to secure it, mortgaged the property subject to the mortgage of the 28th Feb. 1842. The 500*l.* mortgage was afterwards transferred to Richard Hiorns, the plaintiff in the first suit. In 1844 Mrs. Wilkes, afterwards Mrs. Fortnum (the plaintiff in the second suit), wishing to invest a sum of money, applied to Handley for this purpose, who told her that Holtom had two mortgages for 1,000*l.* each on the property of Samuel Robins, on which he wished to raise 1,000*l.* and recommended her to advance 1,000*l.* on the security of a transfer of the mortgage of the 16th Feb. 1842. Mrs. Wilkes accordingly paid the 1,000*l.* to Handley, and received from him the deed of the 16th Feb. 1842, and a memorandum (which he had prevailed upon Holtom to sign, on the ground, as alleged, that it would enable Robins to raise 1,000*l.* and would not affect Holtom's security) in these words:

"March 3rd. Memorandum. I, the undersigned Joseph Holtom, of Blockley, in the county of Worcester, farmer, do hereby undertake and agree, when called upon, to assign to Mrs. R. Wilkes, of Brailes, in the county of Warwick, widow, or to whom she may direct, a certain indenture of mortgage, dated the 16th Feb. 1842, on property at Mickleton, in the county of Gloucester, for securing the sum of 1,000*l.* and interest from Mr. Samuel Robins to me. Joseph Holtom. Witness, Charles Handley." The money being paid to Handley, he applied it to his own use. Subsequently Mrs. Wilkes applied several times to Handley for a legal transfer of the mortgage as stipulated, but in vain; and, after numerous evasions by Mr. Handley, Mrs. Wilkes at last, in 1848, put her affairs into the hands of another solicitor, who applied to Handley, and the result was that Handley delivered to Mrs. Wilkes's solicitor a deed, dated the 1st of March, 1848, executed by Holtom, and with the proper receipt indorsed, transferring to a trustee for Mrs. Wilkes the mortgage of the 16th Feb. 1842. This deed of transfer was in the usual form of transfers of mortgages passing the legal estate, and contained the clause of "all the estate, right, title," &c. Soon after, Mrs. Wilkes married Mr. Fortnum, and the money secured by the deed of 1st March, 1848, was made the subject of their marriage settlement. Hiorns, the transferee of the 500*l.* mortgage, filed his bill for redemption and foreclosure against Holtom, Mrs. Fortnum, and those claiming under her against the mortgagor and some subsequent incumbrancers, praying a declaration of his title to redeem both Holtom and Mrs. Fortnum on payment of 2,000*l.* only. On the other hand, Mrs. Fornum and her trustees filed their bill against Holtom, Hiorns, the subsequent incumbrancers, and the mortgagor, praying that they might be declared entitled to the benefit of the security of the 28th Feb. 1842, to the extent of 1,000*l.*, and asking consequential relief. Holtom resisted this claim, on the ground that Handley had fraudulently procured him to sign the memorandum of March 1844 and to execute the transfer of March 1848, and converted the money to his own use; that Handley devised the fraudulent scheme to obtain the 1,000*l.* for his own benefit. Nobody doubted but the question was, who was to bear the loss in consequence of the fraud. The case now came on to be heard.

Lloyd and *J. V. Prior*, for the plaintiff in the first suit.—We contend that there was constructive notice of our advance of 500*l.*; for Handley was solicitor to both in the mortgage transaction of 1844. We therefore have a lien on the property, subject only to the prior charge of 2,000*l.* secured by the mortgage of Feb. 1842, but not to the further sum of 1000*l.* advanced by Mrs. Fortnum, for Handley was not only the solicitor in that transaction of Mrs. Fortnum's as Mr. Robins' agent, but regularly paid the interest on his mortgage to Mr. Hiorns. Whatever effect the transactions between Mrs. Fortnum, on the one hand, and Robins and Handley his solicitor on the other, as between themselves, they could not affect a third party who was not privy to them, so as to let in an additional charge of 1,000*l.* in priority to the charge of the third party.

Bird, for Garrett, a mortgagee subsequent to Hiorns.—The deed of transfer of 1848 was only intended to operate as a transfer of the mortgage of the 16th of February 1842, which was only a mortgage of the equity of redemption, and did not purport to pass the legal estate, and, therefore, the transfer of 1848 could not pass the legal estate. [The Master of the Rolls.—You are not affected by that point, if it should be held that the parties entitled to the securities of the 28th of February 1842 and March 1848 are only to have 2,000*l.* between them.] Even if the legal estate did pass that would make no difference, for in a mortgage transaction the debt is the principal, and the property only the accessary. There being no debt therefore on the security of the 16th of February 1842, though purporting to be a mortgage for 1,000*l.*, a court of equity will hold that the deed of transfer passed nothing.

R. Palmer and *James* for Mrs. Fortnum.—The deed of the 28th of Feb. 1842 superseded that of the 16th of the same month, which ought to have been cancelled. It was, however, retained by Handley; but, though retained by him, it must as regards us be considered as having been in the possession of Holtom. Handley no doubt was our solicitor in 1844; but that in no way prejudices us, inasmuch as Holtom himself signed the memorandum admitting the deed of the 16th of February 1842 to be in his possession, and treating it as a subsisting mortgage, and afterwards executed the deed of transfer, which was so worded as to be capable of operating so as to pass the legal estate in the property; for he had the legal estate vested in him, which therefore passed to us, and he has no right in equity to deprive us of it without paying off our claim. According to his own statement, he was told by Handley that his signing the memorandum would enable Robins to raise 1,000*l.*; he must therefore be considered as having signed the memorandum to enable Robins to raise the money on the estate, and is therefore bound; the documents which he signed and gave to Handley being a sufficient authority to us to pay the money to Handley as his agent; and we are not answerable for the appropriation of it by Handley to his own use. (They cited *West* v. [illegible] 2 Sim. N.S. 196.)

Field, for parties claiming under Mrs. Fortnum's settlement.

Daniel and *Roderick*, for Holtom, insisted that Handley was only Holtom's general agent, and had no authority to raise money for him. [The Master of the Rolls.—The difficulty of answering is, that you gave him documents which enabled him to represent to third parties that he had authority.] He came to us representing himself to be Holtom's agent, and practised a fraud upon us; and, as against us, the deed of 1848 is void for fraud, and we are not bound by it. The memorandum of 1844 does not amount to or operate as an agreement which Mrs. Fortnum could enforce against us; and even if it were, she did not thereby acquire any right except to a transfer of a void security. [The Master of the Rolls.—Are you not estopped by the memorandum from saying the security was void; and if you allege the deed to be void for fraud, you ought to file a bill to have it cancelled.] We should require to file a bill if it were only void in equity; but it is void at law, for it was executed four years after the memorandum, and its execution was obtained by fraud. But suppose it to be valid, it did not operate to pass the legal estate; for it is plain on the face of the deed itself that there was no intention to pass the legal estate. Mrs. Fortnum, not having the legal estate, therefore must take subject to all prior equities, and to ours among others, over which she cannot claim any priority. Holtom has the title-deeds in his possession, and the court will not in any case deprive him of them.

They cited *Fauset* v. *Carpenter*, 2 Dow. & Cl. 232; *Ramsden* v. *Hilton*, 2 Vern. 309; *Cole* v. *Gibson*, 1 Vern. 506; *Lord Braybroke* v. *Inskip*, 3 Ves. 417; Bac. Ab. "Release," K. 633.

Roberts, for the mortgagor, asked that the costs of litigation as to the transactions between Mrs. Fortnum and Holtom should be borne by the parties themselves, and not charged against the estate. [The Master of the Rolls.—I shall not give any costs in the second suit out of the estate. You do not, I suppose, contend that the costs in the first suit should not follow the general rule.]

H. C. Jones, for Garner, a mortgagee of the equity of redemption, asked that both bills should be dismissed as against him, with costs, inasmuch as by his answer he had disclaimed, stating that his charge had been satisfied two months before the first bill was filed; and if he had been then applied to, he would have disclaimed, and by deed if necessary. As to his not having reconveyed, there was nothing to convey, inasmuch as an equitable mortgagee's interest determines *ipso facto* by being paid off.

R. Palmer, in reply.—[The Master of the Rolls.—There is only one point on which I wish to hear a reply, viz.—Whether the deed of 1848 could pass the legal estate, when its only object was to transfer a security which did not purport to pass the legal estate?] If the court should hold that we have an equity against Holtom, it will probably not be necessary to argue that point, inasmuch as we only bargained to have a security for 1000*l.* subject to a prior one for the same amount, and we ask no more.

The Master of the Rolls.—As the claim is only to the extent of the estate, and not to be paid in full if the estate should not be worth 2000*l.* a reply is unnecessary; and I have only to state my reasons for deciding that Mr. Holtom cannot maintain that Mrs. Fortnum is not entitled to 1000*l.* out of the 2000*l.* for which he holds a security on the property. [Here his Honour shortly stated the facts.] Now what is Holtom's own account of this transaction? He says that Handley came to him as the solicitor of Robins the mortgagor, and told him that Robins wanted to raise 1000*l.* on the property; and to enable him to do so, it was necessary that he should sign the memorandum. Holtom inquired whether it would affect his own security, and on being informed by Handley that it would not, he signed it. Now, how could he suppose his signature would be of any use if it did not affect his interest in the mortgaged property? It was argued, indeed, with reference to the form of the memorandum containing no statement that it was given for raising money, that Holtom is not to be affected by the use made of it, and much stress was laid upon this part of the case; but it is clear from Holtom's own statement that he gave it for the very purpose of enabling money to be raised, and not only so, but four years afterwards he executed a deed in conformity with the memorandum, and signed a receipt for the money. Now he turns round, and after all this says he did not know what he was doing, and that the deed in the hands of persons who innocently advanced money upon it, on the faith of the memorandum signed by him, is void. Such an argument has never, in any case I have met, been admitted. In *Kennedy* v. *Green*, which was a case of gross fraud, it was considered clear that a purchaser for value was safe unless he had actual or constructive notice of the fraud. But here it is impossible to hold that, as between Mrs. Fortnum and Mr. Holtom, the former is to, but the person who [illegible] the latter has occasioned such a [illegible] which he [illegible]

V. C. [illegible] COURT.

[illegible] it [illegible] Holton to [illegible] the [illegible] Feb. 1852; and there must be one [illegible] in both suits for redemption and foreclosure. The plaintiff in this second suit must pay the costs of all the defendants in that suit, except those of Holton, whom and his mortgagee, and have them [illegible] Holton. I was at first inclined to make Holton also pay the mortgagee's costs in the second suit; but I think the mortgagee ought not to receive any costs, inasmuch as he ought to have taken care to have the deed of the 16th Feb. 1852 cancelled, and not having done so, is to blame. The costs in the first suit will follow the rule in redemption and foreclosure suits, except as to Garnett, as against whom the bill must be dismissed with costs to be paid by the plaintiff, because they chose to make him a party without first asking him whether he had any interest, and they must take the consequences.

Bird observed, that this was a proper case for the court to order a sale under the 15 & 16 Vict. c. 86, s. 48, there being three mortgages, and there being no doubt that the estate was incumbered beyond its value.

The Master of the Rolls felt unwilling to order a sale, unless by consent, in a case where there was not such complication as to render it inconvenient to work out the common decree. This he thought was not such a case; but if all the parties agreed to it, the decree might be drawn up as asked.

V. C. TURNER'S COURT.

Reported by J. Henry Cooke, Esq., Barrister-at-Law.

July 12, 21, and 22, and Aug. 2.
Nov. 26 and Dec. 6.

CROFTS v. MIDDLETON.

Practice—Equity Jurisdiction Improvement Act—Affidavit—Evidence—Examiner abroad.

The Court of Chancery has power to appoint an examiner to take the examination of witnesses who are not out of the jurisdiction, notwithstanding the provisions of the 36th section of the statute 15 & 16 Vict. c. 86.

In this suit two of the defendants not principally interested in the subject-matter of the litigation, were necessary to be examined as witnesses, and they had put in their answers. The cause was at issue before the statute 15 & 16 Vict. c. 86 came into operation, but the parties to the suit had come to an arrangement that the evidence in the cause should be taken conformably to the new practice established by the Act and the Orders of August 1852; but subsequently one of these defendants, Mr. Beale, left England, and was now in Australia.

E. F. Smith now moved, pursuant to the arrangement, that the plaintiff might be at liberty to take the evidence of Mr Beale as a witness in the cause by affidavit; and that such affidavit when made, might be used by the plaintiffs at the hearing, and on all subsequent proceedings. He relied upon the 36th section of the Act, which provides that, notwithstanding any election by the parties to a suit to take evidence orally, "affidavits by particular witnesses, or affidavits as to particular facts or circumstances may by consent, or by leave of the court obtained upon notice, be used in the hearing of any cause.

J. V. Prior, for the defendant, was willing to take the affidavits of both Mr. Beale and of Mr. Middleton, the other defendant, who was required as a witness, because then the parties would be on equal terms. Mr. Beale, having gone to Australia, could not be cross-examined as Mr. Middleton could, and therefore it was right that if he were examined orally the other should be so too, and that a commission should issue for that purpose.

E. F. Smith, in reply.—The examination must be by commission if the affidavit be objected to, and as the 38th sect. of the statute only abolishes the commission for examining witnesses within the jurisdiction, there seems to be no other course but to have a commission here if the court has authority to issue it, which seems doubtful.

The VICE-CHANCELLOR.—All the judges of the court, who have been consulted on this point, are of opinion that the court has power to appoint an examiner for the examination of witnesses who were out of the jurisdiction of the court; and I will in this case appoint an examiner in Australia. The parties may agree on the person to be named; or, if not, the court will make the appointment. It is not a case in which the plaintiff is entitled to have the evidence of his witness taken upon affidavit.

Saturday, December 18.

RAMSBOTTOM v. BOURDON.

Practice—Equity Jurisdiction Improvement Act—Service of subpœna.

Where a decree is made in an administration suit, the judge in chambers will dispense with service of the subpœna upon such parties as he considers properly entitled to be served, and will there direct service on such as he thinks it proper should be served.

A claim was filed before Michaelmas Term 1852 for the administration of the estate of an intestate, and in that term the minutes of the decree were handed out from the registrar's office, by which inquiries were directed as to the next-of-kin, and then, on its being ascertained that all the next-of-kin had been duly served with writs of summons, that the accounts should be taken of the intestate's estate. Some of the next-of-kin were known to be out of the jurisdiction of the court, and by the 18th of the Orders of the Court of the 7th of August, 1852, it is provided that "The existing practice of the court with reference to issuing, and serving writs of subpœna, to appear to and answer bills and writs of summons on claims, is also to continue in force with respect to bills and claims filed before these orders came into operation;" and the orders are directed, by the 47th of them, to come into operation on the 2nd of November, 1852.

Welford asked for the variation of the order, so that service of the writ of summons on such of the next-of-kin who were out of the jurisdiction might be dispensed with.

The VICE-CHANCELLOR.—The minutes of the order are not in the proper form, according to the present mode of proceeding. The form of order which was originally adopted on claims, directing what parties were to be summoned, and that when such parties had been served the accounts should be taken, is not now suitable to the case. In a case like the present, the Act tells you what you are to do. A suit for the administration of the estate of an intestate may be brought by or against one of the next-of-kin; and the decree simply directs an inquiry who were the next-of-kin of the intestate at the time of his death, and whether any of them are dead, and if so, who are their personal representatives; and then it goes on to direct that the accounts of the estate shall be taken. The General Orders of the Court which have been made are well adapted to provide for any such difficulty as that which is represented to occur in this case. The judge in chambers is enabled to dispense with service of the decree upon any party as to whom it shall appear to him that, from absence or other sufficient cause, it ought to be dispensed with or cannot be made. The course is this: having ascertained who are the parties interested in the estate, upon the first summons before the judge in chambers to proceed with the decree, the judge will consider any circumstances which may be brought before him with reference to any of the parties, and direct who are the parties to be served, and whether service on any of them may be dispensed with.

V. C. STUART'S COURT.

Reported by Geo. S. Arthur, Esq., of the Middle Temple Barrister-at-Law.

Tuesday, Jan. 11

LAWSON v. HALL.

Practice—15 & 16 Vict. c. 86, s. 31—Appointment of examiner.

Nichols applied on the part of the plaintiffs, some of whom were infants, for the appointment of a solicitor, not engaged in the cause to be the examiner of witnesses in this cause. The witnesses were all resident in the county of Somerset, and the application was made to save expense. He referred to the 15 & 16 Vict. c. 86, s. 31 and the General Orders.

The VICE-CHANCELLOR said that he thought it desirable there should be some affidavit of the facts. He was unwilling to depart from the usual practice of the court unless there was distinct evidence that there would be a saving of expense.

Nichols read an affidavit of the respectability and competency of the solicitor proposed to be appointed, and

The VICE-CHANCELLOR made the order.

GILLGALL v. JOHNSON.

Practice—Evidence—15 & 16 Vict. c. 86, ss. 40 and 41.

A decree referring it to the Master to make certain inquiries having been made previous to the passing of the above-mentioned statute, the court by consent ordered that parties and witnesses should be examined viva voce.

Berkeley, on behalf of a defendant in this cause, renewed an application made on the 8th ult. for an order that the parties and witnesses should be examined *viva voce*. A decree had, previous to the recent statute, been made, referring it to the Master to make certain inquiries. The Master declined to examine the witnesses, and the examiner doubted his power to do so without the order of the court. He referred to *Heatcoll* v. *Cheatle*, 20 L. T. 139.

The application was consented to by the other parties to the suit.

The VICE-CHANCELLOR accordingly made the order.

Jan. 11 and 12.

MAY v. BIGGENDEN.

Practice—15 & 16 Vict. c. 86, ss. 39 and 40.

The plaintiff in a cause, after publication had passed and the cause been set down for hearing, applied for leave to serve the defendant with a subpœna to appear at the hearing, that he might be orally examined. The application was supported by an affidavit showing that it was very important to the plaintiff's case, and to the discovery of the truth as to the matters in question, that the defendant should be examined viva voce at the hearing.

The motion was refused with costs.

W. D. Lewis, on behalf of the plaintiff in this cause, moved that the plaintiff might "be at liberty to issue a subpœna, directed to the defendant John Biggenden, commanding him the said John Biggenden that, having all other matters aside and notwithstanding any excuse, he personally be and appear before the Right Honour the Vice-Chancellor Stuart on the hearing of this cause to testify the truth according to his knowledge touching the matters in question in this cause." The solicitor for the plaintiff, in an affidavit filed in support of the motion, after stating certain circumstances connected with the case, deposed that he had laid the papers therein before mentioned before counsel, and he was advised and he verily believed that it was of great importance to the plaintiff's case, and to the discovery of the truth of the several matters in the pleadings of the cause mentioned, that the defendant John Biggenden should be examined *viva voce* at the hearing of the cause. The present application was made by way of precaution, to secure the attendance of the party in case the court should, at the hearing, think proper to examine him; and that the defendant should not object that he was taken by surprise. The 39th section of the 15 & 16 Vict. c. 86, provided that "upon the hearing of any cause depending in the said court, whether commenced by bill or by claim, the court, if it shall see fit so to do, may require the production and oral examination before itself of any witness or party in the cause," &c. The Vice-Chancellor Kindersley, in *Smith* v. *Scottish Dock Company*, reported in 9 Hare, Appendix xxi. said, that "the introduction of oral testimony, on a motion under the 40th section of the Act, must be procured by due service of the writ of subpœna in the ordinary way, upon an application to be made before the motion came on to be heard."

Bazalgette, for the defendant Biggenden, opposed the motion. Publication had passed in the cause, and the cause had been set down to be heard. The evidence, therefore, was closed, and the section which was beyond the evidence applied to the discretion of the court and not to either of the parties. It was not the intention of the Legislature that parties should be harassed by such a compulsory attendance as was now sought, when the court might not require the oral examination to be made. Should the court desire to examine a party, the cause could be ordered to stand over for the attendance of the party whose testimony was required; and though this might be an inconvenient course, it was much less so than that proposed by the plaintiff. In the case cited the Vice-Chancellor Kindersley did nothing which could bear the construction now attempted to be put upon it. The hearing there was upon a motion, and from the report of the case in *The Jurist*, the learned reporter whose note had been cited appeared to have been misinformed as to what was said by the judge.

Bacon and *Follett* (*amici curiæ*) stated that they were counsel in *Smith* v. *Scottish Dock Company*, and they explained the circumstances of the case, showing that the report in 9 Hare as to this point was not strictly correct.

J. H. Palmer, for the defendant Cheesman, contended that the present application was either premature or unnecessary. The 39th section required that, at the hearing the court should decide upon the necessity for an oral examination, and therefore no such application as the present could be made previous to the hearing. The issuing of a subpœna was a matter *ex debito justitiæ* (24 Ord. May 1845) and therefore this motion was unnecessary.

W. D. Lewis, in reply, said that the court was not now asked to decide in any way as to the effect of this examination. The object of the motion was simply that without hindrance the benefit of the 39th section might be obtained. At the hearing, Biggenden might be abroad or not to be found, and then it would prove a serious inconvenience that the hearing of the cause should be interrupted until his attendance could be obtained.

The VICE-CHANCELLOR said that this was an application which was perfectly novel, and was alleged to be necessary in consequence of the changes which had been recently introduced in the practice of the court. The application was said to be necessary by the special circumstances of the case; first, because it was stated that the clerk of records and writs would not issue the *subpœna* without the order of the court; and in the next place because on the facts shown by the affidavit, which were very peculiar, the court was pressed with the consideration that the circumstances of the case were such as that, under the discretion given to the court by the 39th section, it would require a viva voce examination of this defendant at the hearing of the cause. The question then was whether, for the purposes of justice under the authority of this late act of Parliament, the court would be authorized to make the order asked for. If the order required were issued for

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enabling provisions of the 30th section of the 15 & 16 Vict. c. 86, those provisions pointed to nothing in the nature of a subpœna, but empowered the court at the hearing of the cause, if it should see fit, to order any witness or party in the cause to be examined *viva voce*; and, therefore, if the order to issue a subpœna were a novel and unprecedented matter in the practice of the court, his Honour had no authority under that section to make an order directing the clerk of records and writs to issue a subpœna of this kind. It had been said, that it would be inconvenient to interrupt the hearing of the cause, if the court at that stage of the proceedings should think the examination of Biggenden necessary, and that it would be more convenient that the party should have means that he might be required to be examined, and that such notice would be best given by a subpœna. On the other hand, the application had been resisted, on the ground that under the 30th section the court could only upon the hearing, if it should then see necessary, require the attendance and oral examination of the party. That, in his Honour's view, was the more just construction; and although upon the ground of convenience the purposes of all parties might be better served by giving the defendant notice, his Honour said that his sentiments of what was convenient and proper did not justify him in stretching the construction of an Act beyond what the words authorised. Of the cases which had been mentioned as having occurred before the Vice-Chancellor Kindersley his Honour had been furnished with two reports, and one of them appeared to justify Mr Lewis's argument. But from what had been stated by the counsel engaged in that case, it appeared that the report in 9 Hare was not accurate, and that nothing had passed which would sanction the present application. Upon the whole, therefore, his Honour considered that the motion was unnecessary, unsanctioned by the practice of the court, and altogether misconceived; and he must refuse it; and as the motion was not justified, it must be refused with costs.

Thursday Jan. 13

SMITH *v* HARWOOD

Practice—Using copy petition

Haldane applied in this case that the copy of a petition left for the use of the court might be filed instead of the original petition, which had been lost. An order was made on the petition on the 18th Dec. last.

The VICE-CHANCELLOR (after consulting Mr Collis, the registrar) made the order.

Common Law Courts.

COURT OF QUEEN'S BENCH.

Reported by ADAM BITTLESTON and JOHN THOMPSON, Esqrs. Barristers-at-Law.

HILARY TERM

Tuesday Jan 11

NEW RULES

Lord CAMPBELL, *C.J.*, on taking his seat on the bench, said that he had the satisfaction to announce that the judges had this day signed a body of new rules for regulating the practice of the three Superior Courts of Common Law in Westminster-hall. They had adopted the plan and he hoped it would be generally approved of, to abolish all the rules of practice from the earliest times, and to make in that way a *tabula rasa* for the new practice. The new body of rules would be equally applicable to all the three Superior Courts, and were intended to establish a uniformity of practice, so far at least as the judges had the power in themselves to establish it. There was matter as to which they had not the power of themselves to make new rules at once binding on the Profession—they had not the power of their own authority to establish new rules relating to pleading. The objections to the existing system of pleading they had endeavoured to obviate by certain rules which they had made under the authority of recent Acts of Parliament. Under these Acts the judges had done all they could to render the course of justice speedy and effectual, but before the rules they had agreed to could come into operation they must be laid before the two Houses of Parliament and on the expiration of three months, they would unless disapproved of by either House of Parliament, become law and come into actual operation, and he hoped that they would then be found materially to improve the administration of justice.

RE THE BIRMINGHAM AND OXFORD JUNCTION RAILWAY COMPANY AND THE BIRMINGHAM, WOLVERHAMPTON, AND DUDLEY RAILWAY COMPANY.

Mandamus—Service of writ by copy of original.

The Court will not, on a suggestion that the original writ of mandamus has not been served on the defendant or sworn to him, grant a rule to show cause why the service should not be set aside.

It is for the party who has been served to determine whether he will make a return or not.

Phipson moved for a rule calling on the prosecutor to show cause why the service of the writ of *mandamus* herein should not be set aside on the ground that the original had not been served nor even shown. The affidavit on which he moved was made by a gentleman who is secretary to both companies, which set forth that the companies, though distinct, are carried on by the same staff, and the business conducted in the same place, that the deponent had never been personally or otherwise served with the original of the writ of *mandamus* issued in this case, nor to his belief had the original ever been served by the same having been left at or transmitted through the post directed to the principal office of either of the said companies, and that the original of the writ had not come to his knowledge or to that of any one in his office.

LORD CAMPBELL, *C.J.*—The prosecutor has taken some step that has brought this writ to your knowledge. What is it?

Phipson.—No doubt he has served a copy, but he ought to have served the original.

LORD CAMPBELL, *C.J.*—Have you any authority for setting aside the service of a writ of *mandamus* on the ground that the original writ was not served?

Phipson.—In Corner's Practice p. 277 the analogy with the service of the writ of summons is pointed out; but in this case it does not appear that the original was ever shown. How can the defendants make a return to that of which they have no knowledge?

WIGHTMAN, *J.*—In the case of several defendants with distinct interests, how is the service of each with the original to be effected?

Phipson.—That is precisely the difficulty. One only may have knowledge of the writ; how are the others to make the return?

COLERIDGE, *J.*—Why may not a return be made to a copy? The Master tells me that it is constantly done; and unless there is authority for setting aside the service, I do not see why we should interfere.

By the COURT.—It is for the party who has been served with a copy to elect whether he will make a return or not.

Rule refused.

Wednesday Jan 12

Re JOHN SMITH, Gent. &c.

Attorney—Striking off rolls.

The court declined to rule for striking an attorney off the rolls obtained on the opinion that he had been at sufficient punishment by having been subsequently restored to the rolls of the Court of Chancery at appearing that he had been suspended from practice in the Court of Chancery and suspended for six months. The court refused to suspend him from practice therein for the same period as could not say that the punishment inflicted by the Court of Chancery was not a sufficient punishment for the attorney's misconduct but merely ordered him to pay the costs of the rule.

Gray showed cause in this case in which he said a rule had been granted by this court to strike Mr Smith off the rolls of attorneys of this court upon production of a verified order of the Lord Chancellor that he should be struck off the rolls of solicitors of the Court of Chancery. The rule had been enlarged on the representation that a petition had been presented to the Lord Chancellor to reconsider the case. Since then the petition had been considered and the result had been that the Lord Chancellor had ordered Mr Smith's name to be restored to the roll of solicitors in the Court of Chancery but that he should be suspended from practice for six months. It must therefore be assumed that Mr Smith had been guilty of some degree of misconduct which required a punishment by a suspension for six months; but that would not warrant the making absolute the rule in this court which was not for mere suspension but for striking Mr Smith off the rolls.

The Court called on

Wilde to support the rule.—He did not mean to ask that the rule should be made absolute in its terms. After what had occurred in the Court of Chancery he could not do so. But he asked for a similar judgment as in the Court of Chancery, and that Mr Smith should pay the costs of the application. The two courts ought to be uniform in the course they pursued. That had always been the principle observed in cases of this kind.

Gray said that that principle did not apply in this case. It might be that the attorney who was struck off the rolls of one court, for misconduct which was deemed to show him unfit to practise ought therefore to be struck off the rolls of another court.

Lord CAMPBELL, *C.J.*—Because in fact he would not be struck off the rolls without proof of some fraud which would disqualify him from practising in any court.

Gray said that that was so. Here, however the punishment inflicted must be taken to be the whole which was due to his offence. There was no occasion here for the uniformity now asked for. He was suspended in Chancery for what he had done there, and if he were punished here by a similar order for suspension from practice, he would receive an additional punishment, when it must be assumed that that which the Lord Chancellor had inflicted was all that his misconduct required. Suppose the Lord Chancellor had fined him fifty pounds, might that would not have been a reason why he should be punished in the Common Pleas, and the Exchequer, in each also to be fined fifty pounds for the same offence.

Lord CAMPBELL, *C.J.*, said he did not think the circumstances; that the rule ought to be discharged, and that Mr. Smith ought to pay the costs. He quite agreed that the Lord Chancellor did not think that the punishment which he inflicted in his opinion was also a sufficient punishment. If we were to enable the greater by any addition here, we might in fact be acting against the exercise of his discretion.

COLERIDGE, *J.*, said that he had at first a different opinion, but Mr. Gray's argument had convinced him.

The other judges concurred.

Rule discharged on payment of costs by Smith.

BUSINESS OF THE WEEK

HILARY TERM

Tuesday Jan 11

Re ROBINSON.—*J. Wilde* moved to strike an attorney off the rolls on the ground that he had been convicted of misdemeanour and sentenced to eighteen months' imprisonment.

Rule nisi.

Keane v Stewart.—*Sir F. Thesiger* and *Keane* showed cause against a rule to set aside the finding of the Master as to an issue of set off referred to him. *Watson* and *Maynard* contra.

Adjourned.

Wednesday, Jan. 12

TALLIS *v* TALLIS.—*The court delivered a written judgment herein.*

Judgment for the plaintiff.

THE MAYOR OF BERWICK-ON-TWEED *v* OSWALD.—SAME *v* RENTON.—SAME *v* DODD and another.

Judgment for the plaintiff.

KEANE *v* STEWART.—The argument on this rule was resumed by *W. H. Watson*.

Rule absolute.

Re ARCHIBALD WILSON.—*Sir F. Thesiger* moved to discharge a rule for taxation of costs. This was a case in which the City Solicitor had, as such, instituted, under the direction of a magistrate, a prosecution against the defendant for an assault upon a boy. The case had at the instance of the defendant been removed by *certiorari* and the defendant convicted. The question now was, whether under the 5 Will. & M. c. 11 s. 3 the City Solicitor was entitled to the costs of the prosecution. That section gave to the party grieved or injured the right to the costs in a case where the prosecution had been removed by *certiorari* into the Superior Courts. It was quite clear that the City Solicitor was not a party grieved in this case, and the question therefore was whether he could claim costs under the other part of the section. The section, after giving the right to costs to any party grieved went on to award them to any officer who prosecuted in respect of any fact committed or done that concerned him or them to prosecute or present. It could not be said that this assault on a boy was a matter which concerned an officer in his office to prosecute or present, and therefore it was submitted that the City Solicitor was not in this case entitled to claim the benefit of the words in the statute. The Court suggested that in *Rex. v. ——* this court had held that if the act of offence was of which, on public grounds of safety or morals, required a prosecution it became the duty of a public officer to prosecute and costs might be given. *Sir F. Thesiger* said that the doctrine went to that extent it would follow that all prosecutions ought to be undertaken by him.

Rule nisi.

Re J. BARNETT, Coroner of the County of Gloucester.—*Huddleston* moved for a rule to show cause why the inquisition taken by Mr Barnett in a case of death inquired into before him should not be quashed on three grounds, first that the coroner did not accompany the jury to view the body and never saw the body, so that there was a want of jurisdiction in the case; secondly, that the inquisition was not taken within the limits of his jurisdiction. On the second ground of objection, it appeared that the evidence had the inquest at the Bush Inn in Duke's in the county of Monmouth though the body was in Gloucestershire until the jury had had the view in that county. The inquest was in Monmouthshire, the verdict was given there and the warrant issued there. Thirdly, the jury were formed of persons not qualified to sit as jurors, on an inquest held in the county of Gloucester. This objection rested on affidavits which set forth that eight of those persons were not, nor was any one of them a resident within the county of Gloucester, nor qualified to act as a juror within.

Rule nisi.

JEFF PARR, *qui tam*, &c. *v* FISHER.—Tried at the last Nottingham Assizes before Coleridge, *J.*, verdict for the defendant. *Macaulay*, *Miller*, *Serjt.*, and *Sir F. Thesiger* showed cause, and *Willmore* and *Hayes* supported a rule *nisi* for a new trial.

Rule absolute on payment of costs.

Thursday, Jan. 13

COUNTY COURT APPEALS

Lord CAMPBELL, *C.J.* announced that in future the County Court Appeals were to be set down in the Special Paper, and paper-books to be delivered as in other cases in that paper.

COURT OF COMMON BENCH.

Reported by DANIEL THOMAS EVANS and R. VAUGHAN WILLIAMS, Esqrs. Barristers-at-Law.

BUSINESS OF THE WEEK

HILARY TERM.

Tuesday, Jan. 11.

(Before JERVIS, *C.J.* and MAULE, CRESSWELL, and WILLIAMS, *JJ.*)

MITCHELL and WIFE *v.* CRASSWELLER.—*Hoggins, Serjt.*, moved for a rule to set aside the verdict which had been entered for the defendant under the direction of the Chief Justice. The action was brought to recover damages from the defendant for injury caused by the negligent driving of the person in charge of the defendant's cart. Plea—1. Not guilty. 2. Denial of the negligence of the cart. The defence was that the servant had been sent with the cart to deliver goods in the City, and after he had returned drove the foreman part of his way home without the permission of his master, and on his way back did the injury complained of, and that the defendant was not liable for an injury caused by the act under such circumstances. There being no plea denying that the act was done in the course of the defendant's business, the learned Judge, at the trial, allowed one witness to be called, [illegible] and intimated that the verdict ought not to be entered for the plaintiff, [illegible] than the ver

[illegible] dict should have been [illegible] 6 C. & P. 561; [illegible]

Evans v. [illegible] the verdict [illegible] tried. Where the [illegible] between [illegible] covenanted to pay [illegible] The action was brought [illegible] money-[illegible] The defence set up in the plea was, [illegible] and kept indemnified by the plaintiff to enter into the deed and to separate from his wife that the plaintiff might have cause to her for a criminal purpose. It was not contended that this was no answer to the action, it being for the benefit of the wife, and she not being alleged to have been a party to the fraud.

Rule nisi on both points.

In Matter of [illegible] made an application under the 91st section of the Fines and Recoveries Act. The applicant had not seen her husband since 1843. *Granted.*

In re Mary Francis.—*Bovill* made a similar application. The husband was transported for fifteen years. *Granted.*

Davy v. [illegible]—*Bramwell* moved to make the rule in this case absolute. *To stand over for a day or two.*

Wednesday, Jan. 11.

Pursell v. Axon.—This was an action on a special contract for the shipment at Flensburgh of a quantity of linseed cake, and was tried before Jervis, C. J. in London, at the sittings after Trinity Term. The case was ordered to stand over. *Stands over.*

Duncan v. Thwaite.—This case was ordered to stand over. *Stands over.*

Moffatt v. Dickson, Clerk of the Committee of Visitors, &c.—This was an action brought by the plaintiff to recover from the defendant as Clerk of the Committee of Visitors, acting under the provisions of the statute 8 & 9 Vict. c. 126, the sum of 437*l.* 10*s.* for work and labour in preparing certain probationary drawings for a lunatic asylum. Verdict for the plaintiff. A rule to set aside the verdict and enter it for the defendant or for a new trial having been obtained by *Knowles*, Q.C.; *Byles*, Serjt. and *J. Thompson*, now showed cause. At the close of their arguments the court rose. *Part heard.*

COURT OF EXCHEQUER.

Reported by Frederick Barlee and C. J. B. Hertslet, Esqrs. Barristers-at-Law.

Wednesday, Jan. 12.

Price *v.* Hewitt.

Common Law Procedure Act, 1852—*Pleading and demurring together.*

An action was brought against an infant for fraud in representing himself to be of full age, so as to induce credit to be given to him—alleging damage:

Held, that defendant may plead and demur to the declaration at the same time.

This was an action of *tort* against the defendant, an infant, for having represented and stated that he was of full age and more than twenty-one years, so as to induce credit to be given to him; which statement was false, the defendant being a minor at the time.

The declaration alleged that the defendant requested the plaintiff to lend him a sum of money, and falsely, fraudulently, and deceitfully represented and pretended to the plaintiff that the defendant had attained the age of twenty-one years; and the plaintiff, confiding in the truth of the said representation and pretence, agreed with the defendant to lend to him and did lend to the defendant, and the defendant then borrowed of the plaintiff a sum of money, upon the terms, amongst others, that the defendant should, for securing the repayment to the plaintiff of the same on the 28th Sept. 1852, execute, and the defendant did execute, a certain warrant of attorney, authorising certain attorneys therein named to appear for the defendant in the Court of Q. B. and receive a declaration for him in an action of debt for 800*l.* at the suit of the plaintiff, and to confess the said action, or to suffer judgment to pass against defendant, and to be entered up against him for the said 800*l.* besides costs of suit as between attorney and client; whereas in truth and in fact the defendant had not at the time of the making of the said representation and pretence attained the age of twenty-one years, but was an infant under that age, as the defendant at the time of his making the said representation well knew, and the defendant has hitherto wholly refused to repay, and has not repaid the plaintiff the said loan, and refuses payment thereof, and has obtained an order of one of her Majesty's barons of her Court of Ex. whereby, on hearing the plaintiff and defendant the said baron did order that the said warrant of attorney should be taken off the file of the said Court of Q. B. and delivered up to be cancelled, and that a certain judgment which plaintiff had signed against defendant, under and in pursuance of the said warrant of attorney, in the said Court of Q. B. and all subsequent proceedings taken, if any, should be set aside, the defendant being such infant as aforesaid. By reason of which premises the plaintiff hath been and is greatly injured, and was put to and incurred such expenses and trouble and about the application to the said baron for the said order, and in attending the hearing of the summons for the obtaining thereof, and otherwise, and the plaintiff claims 500*l.*

A rule nisi was then obtained to show cause why the defendant should not under the 15 & 16 Vict. c. 76, s. 50, be allowed to plead and demur at the same time to the declaration upon stating the facts and circumstances of the case in an affidavit made by defendant's attorney, which stated, amongst other things, "that deponent is advised and believes that the defendant has, under the circumstances aforesaid, just ground to plead not guilty to the declaration in this action, and also a traverse that the plaintiff confided in the said alleged fraudulent representation, and that he is also advised and believes that the declaration will be held bad in substance on demurrer, and that the objections to the same raised by such demurrer are good and valid objections in law."

Peterdorff showed cause.—The court may, perhaps, determine that the defendant here may plead and demur to this declaration at the same time, under the 80th section of the 15 & 16 Vict. c. 76, which enacts, that "either party may, by leave of the court or a judge, plead and demur to the same pleading at the same time, upon an affidavit by such party or his attorney, if required by the court or judge, to the effect that he is advised and believes that he has just ground to traverse the several matters proposed to be traversed by him, and that the several matters sought to be pleaded as aforesaid by way of confession and avoidance, are respectively true in substance and in fact, and that he is further advised and believes that the objections raised by such demurrer are good and valid objections in law, and it shall be in the discretion of the court or judge to direct which issue shall be first disposed of." Yet the affidavit in support of the application is insufficient, as it only alleges that the deponent is advised and believes that defendant has just ground to plead not guilty, &c., but it does not aver that the circumstances stated are true in substance and in fact.

Alderson, B.—No, because that only applies to pleas by way of confession and avoidance; this is a traverse, a denial of the fraud alleged in the declaration.

Parke, B.—There would be no cause of action for simple fraud, unless the party is damaged by it in some way or other There is a case in 1 Siderfin, p. 258, which seems to show this action lies. The demurrer here had better be argued first.

Martin, B.—It is clear under the Act the defendant in this case may do both.

Field, contrà, not called upon.

Rule absolute to plead and demur at the same time, the demurrer to be first disposed of.

Heslop *v.* Baker and others, Assignees, &c.

Bankruptcy—12 & 13 *Vict.* c. 106, *s.* 125—*Relation from date of order of the court, back to the time of act of bankruptcy—Title of assignees.*

One Atkinson assigned to the plaintiff Heslop, certain goods by way of security for advances made; Atkinson remained in possession as apparent owner, and subsequently, in August 1850, *he committed an act of bankruptcy. On the 4th Sept. plaintiff, with notice of the bankruptcy, took possession. On the 9th Sept. Atkinson was adjudged a bankrupt, and on the same day Baker (the defendant) was appointed official assignee; on the 20th Sept. the other defendants were appointed trade assignees; on the 7th Oct. defendants took possession of the goods. Subsequently the Court of Bankruptcy made an order under the 125th section of the* 12 & 13 *Vict. c.* 106, *for sale:*

Held, in trover by the plaintiff against the assignees, that he was not entitled to recover, as the order of the court related to the date of the act of bankruptcy, from which time the assignees became entitled for the benefit of creditors.

In order to vest the property in such goods in the assignees or other person, the Court of Bankruptcy must make an order under the provisions of the 125th section.

Trover for goods.

Pleas—not guilty and not possessed.

At the trial before Lord Campbell, C. J. at the Newcastle assizes, it appeared that the plaintiff claimed the property in question under an assignment made several years before the commencement of the suit by one James Atkinson, as a security for alleged advances. The defendants were the assignees of Atkinson, who had committed an act of bankruptcy in Aug. 1850 by leaving his dwelling-house and place of business and going to America. Up to that time the property in question had remained in his possession as apparent owner. On the 4th Sept. after the departure of the bankrupt, the plaintiff, who at that time knew of the act of bankruptcy, took possession of the property. On the 9th Sept. Atkinson was adjudged a bankrupt, and upon the same day the defendant, Baker was appointed official assignee. On the 20th Sept. the other defendants were apointed trade assignees; and on the 7th Oct. the defendants took possession of the property. The cause was tried at the Spring assizes in 1851, before Cresswell, J., when the learned judge directed the jury to find a verdict for the defendants, if they thought that the goods remained in the order and disposition of the bankrupt at the time of his bankruptcy with the consent of the plaintiff, and that he knew of the act of bankruptcy before he took possession. A verdict having been found for the defendants, a rule was made absolute for a new trial (reported 6 Ex. 740), the court holding that goods in the order and disposition of a bankrupt as reputed owner do not pass to the assignees under the 12 & 13 Vict. c. 106, s. 141 (the Bankruptcy Law Consolidation Act); but, in order to vest the property in such goods in the assignees or other person, the Court of Bankruptcy must make an order under the provisions of the 125th section. An order of the Court of Bankruptcy was subsequently obtained, and a second trial, which terminated again in a verdict for the defendants. Another rule *nisi* having been obtained to set aside that verdict, and to enter the rule for the plaintiff for 250*l.*:

Watson, Q. C., *Hugh Hill*, Q. C., and [illegible] showed cause.—The question depends upon the construction of the 125th section (*a*) of the 12 & 13 Vict. c. 106, viz., whether its effect is to divest the property out of the true owner and render his goods, by order and disposition of the bankrupt, with his consent, part of the bankrupt's estate, so as to [illegible] the assignees by relation back to the time of the act of bankruptcy, the court having subsequently ordered the same to be sold and disposed of for the benefit of the creditors under the bankruptcy; or whether the property and right of possession still remain in the owner, notwithstanding the order of the court, no order of court having subsequently been made, till the goods vest in the assignees from the date of the act of bankruptcy by relation back to that period. The 125th section gives the court power to order a sale of any goods or chattels which any bankrupt, *at the time he becomes bankrupt*, shall, by consent and permission of the true owner thereof, have in his possession, order, or disposition. The question has been already determined by this court when this case was last argued; the judgment was then delivered, after time taken for consideration, by Parke, B. who says, in delivering the opinion of the court, "Where we find that in the same Act of Parliament the 72nd section of the 6 Geo. 4, c. 16, is re-enacted, with this alteration only that instead of the commissioners having power to sell and dispose of the same, they practically to assign them to the assignees, the order has power—not to sell and dispose of, but—to order them to be sold and disposed of, we think that the meaning of these enactments in the new statute is, that in the case of the bankrupt's own property it is to pass by the adjudication; but in the case of chattels in his reputed ownership, something different must be done, and the court must make an order to sell and dispose of the same, in order to vest the property in the assignees or some other person." And again, in a subsequent part of the judgment, he adds: "There is no absurdity, or inconsistency, or inconvenience in holding that an order is necessary in such a case; when given, the title of the vendee of the goods are sold, of the assignees if the order is to vest the goods in them, will relate to the act of bankruptcy in the same way that the title of the assignees does by the general assignment, for all will be sold or assigned which the bankrupt had at the time *he became bankrupt*." The 125th section of the recent Bankruptcy Act is copied from the 21 Jac. 1, c. 19, s. 11, and is precisely the same, except the words "the court" are substituted for the word "commissioners." It is therefore the old reputed ownership clause, as to which the leading principles are clear and settled, and the point in this particular case upon the facts arising out of it has been determined by this court; the defendants have, under the order of the court, sold the goods and paid the money arising from such sale into court. Under the old law the goods vested in the assignees from the date of the act of bankruptcy, and so they do now (the order having been), made as the new Act in no way alters it: (*Whitney* v. *Taylor*, 10 A. & E. 280; *Buron* v. *Denman*, 2 Ex. 167; *Fitch* v. *Adams*, 2 Strange, 1128; *Foster* v. *Bates*, 12 M. & W. 226;

(*a*) And with respect to the power of the court over certain descriptions of property, be it enacted, sect. 125. "That if any bankrupt at the time he becomes bankrupt shall by the consent and permission of the true owner thereof have in his possession, order, or disposition, any goods or chattels whereof he was reputed owner, or whereof he had taken upon him the sale, alteration, or disposition as owner, the court shall have power to order the same to be sold and disposed of for the benefit of the creditors under the bankruptcy: provided that nothing herein contained shall invalidate or affect any transfer or assignments of any ship or vessel, or any share thereof, made as a security for any debt or debts, either by way of mortgage or assignment, duly registered according to the provisions of an Act made in the Parliament holden in the eighth and ninth years of the reign of Her Majesty, intituled 'An Act for the Registering of British Vessels' or any of the Acts therein mentioned."

Sect. 141. "That when any person shall have been adjudged a bankrupt, all his personal estate and effects, present and future, wheresoever the same may be found or known, and all property which he may purchase, or which may revert, descend, be devised or bequeathed, or come to him before he shall have obtained his certificate, and all debts due or to be due to him, wheresoever the same may be found or known, and the property, right, and interests in such debts, shall become absolutely vested in the assignees for the time being, for the benefit of the creditors of the bankrupt, by virtue of their appointment; and after such appointment neither the bankrupt, nor any person claiming through or under him, shall have power to recover the same, nor to make any release or discharge thereof, neither shall the same be attached as the debt of the bankrupt by any person according to the custom of the City of London or otherwise; but such assignees shall have full power to recover the same in their own names as the bankrupt himself might have had if he had not become or been bankrupt."

EXCHEQUER.

Young v. *Cooper*, 6 Ex. 199; *Wallis* v. *Baker*, 6 Ex. 799; *West* v. *Loveday*, 4 M. & G. 973, were cited.)

Willes, Q.C. (*Unthank* and *Lewis* with him) in support of the rule.—There are three points to be considered; 1st, Whether the plaintiff having, after the act of bankruptcy, taken possession of his own goods then in the possession of the bankrupt, the subsequent order of the court vests them in the assignees from the date of the act of bankruptcy, so as to deprive the real owner of them? 2nd, Whether the order of the court is not bad on the face of it? and 3rd, Whether the plea of "Not possessed" has been properly pleaded, or is sufficient to raise the points to be determined? The plaintiff took possession of his own goods, which at the time of the bankruptcy were in the possession of the bankrupt. No order at that time was made; clearly therefore the plaintiff, and he alone, could take possession at that time; the assignees were not then, at all events, entitled to do so: can the defendants, by any subsequent order or course of proceeding, say that the plaintiff was "not possessed?" They can only do so by the fiction of law that, after an order of the Court of Bankruptcy, they are supposed to be entitled, under certain circumstances, to goods belonging to the bankrupt from the date of his bankruptcy. [Pollock, B.—It is not by fiction of law, it is the words of the Act of Parliament.] The question turns principally upon the 125th section of the recent Bankrupt Act; but the plaintiff contends there is nothing even in the spirit of that Act to take away his goods, although in the possession of another at the time of his bankruptcy, to pay that other's debts. The plaintiff was the true owner; and who but he is entitled before the bankruptcy and order made? Not the assignees certainly, for an order never may be made. Can it then be said that upon an order being made, the assignees become entitled from the date of the act of bankruptcy, so as to deprive the true owner of his property to distribute it to pay the bankrupt's debts? It would be a case of very great oppression if it were so. He referred to *Lyon* v. *Weldon*, 2 Bing. 334; *Fawcett* v. *Fearn*, cited therein; *Biggins* v. *Adam*, 8 T. & J.; *Perry* v. *Skinner*, 2 M. & W. 471; *Rogers* v. ——, 7 Ir. Law Rep. 482; and Ventr. 358. It was also contended that the order of the court was bad on its face for informality, as it claimed that the plaintiff was the true owner.

Pollock, C. B.—We adhere to what was said before in this case, when it was before the court upon a previous occasion; it was then a written judgment, and much considered before it was given. The argument to-day on behalf of the plaintiff at first made some impression upon me, but it has not induced me to alter the opinion at which I before arrived, and still think correct. It appears to me the order in question is perfectly good, and indeed the objection taken to it was purely technical. As to the relation from the time when the order was made back to the date of the act of bankruptcy, I think the court was perfectly correct in the opinion expressed in this case on the former occasion. The learned Chief Baron here read the judgment as delivered in that case, as also the 125th and 141st sections of the 12 & 13 Vict. c. 106.] The effect of it therefore is that the court has the power to make the order in respect of goods in the possession of the bankrupt at the time he became bankrupt. I think therefore the better course is to adhere to the judgment, which I think is quite correct, given in this court in this case not long since, and to hold that, the goods in question being in the possession of the bankrupt at the time he became bankrupt, by the consent and permission of the true owner thereof, whereof the bankrupt was reputed owner, and that the court had power to order the same to be sold and disposed of for the benefit of the creditors under the bankruptcy. Having made such an order, it related to the date of the act of bankruptcy. The only other point is as to the pleas of not guilty, and not possessed. I think these pleas are sufficient to determine the question raised; indeed it would be difficult to see how there could be any other plea available. The rule therefore must be discharged.

Parke, B.—I am of the same opinion. There are three points raised in the case to be considered. I expressed my opinion on the point as to the relation from an order of the court for a sale to the date of the act of bankruptcy committed, on the former occasion when this case came before us. (The learned Baron here read his judgment in reference to that part of the case.) That particular point it was not then essential to determine, because it was not then raised, and no such order by the Court of Bankruptcy had at that time been made; but subsequently the order was made, and now the points have arisen, and the opinion I expressed on the former occasion, in reference to it is, I still think, right. The 21 Jac. 1, c. 19, s. 11, is the same [illegible] 12 Vict. c. 106, s. 125, except that the [illegible] court," are substituted for the word "commissioners." No act by the reputed owner, subsequent to and with knowledge of the act of bankruptcy, could affect the order of the court, or of its having its full operation and effect from the date of the act of bankruptcy. There must be the same decision here as there was in the cases under the statute of 21 Jac. 1, where the commissioners made the order. There is no protection given by any of the other sections in the late Bankrupt Act, and the assignees became, therefore, entitled to claim the goods by virtue of the order from the date of the act of bankruptcy; the terms of the 141st and 125th sections are to be construed in precisely the same way as they were under the statute of James. Then the criticisms which were made upon the order are invalid: the order is effectual to pass the property; and that is sufficient. And 3rd, As to the pleas, the points raised are, I think, all available under "Not possessed."

Alderson, B.—The first and last points made are virtually the same; I think there was a relation in this case from the date of the order to the time of the act of bankruptcy. The court had the power, under the 125th section, to take from the bankrupt any goods or chattels, whereof he was reputed owner, that were in his possession, with the consent and permission of the true owner, at the time he became bankrupt. That power has been exercised by the court making the necessary order; the same power exists here as there did under the statute of James; and the order must have the same relation now under the new statute as it did under that of James. The order is, I also think, in itself valid.

Martin, B. had previously left the court.

Rule discharged.

BUSINESS OF THE WEEK.

Wednesday, Jan. 12.

Bedford and others Executors *v.* Collier.—*Bramwell* and *Sir E. Wilmott* showed cause against a rule obtained to enter a verdict for the plaintiff pursuant to leave reserved for 427*l.* 11*s.* or for a new trial. The cause was tried before Martin, B. in Middlesex: the learned Judge thought there was no evidence to go to the jury so as to support the verdict for defendant.

Rule absolute to enter the verdict for the defendant for 427l. 11s.

BAIL COURT.

Reported by T. W. Saunders, Esq., of the Middle Temple, Barrister-at-Law.

Hilary Term, 1853.

Tuesday, Jan. 11.

(Before Mr. Justice Erle.)

Reg. *v.* Smith.

Municipal election—Voter on the burgess roll for two wards, voting in each—Voting after the legal hour for closing the poll.

Cowling moved for a rule calling upon Mr. Samuel Smith to show cause why a *quo warranto* information should not be filed against him for exercising the office of town councillor for the borough of Leeds.

The borough of Leeds is divided into several wards, two of which are respectively called "Middle Hill Ward" and "Kirkgate Ward," and at the election of councillors on the 1st Nov. last, Mr. Scholey (on whose behalf this application was made) and Mr. Samuel Smith were candidates for Kirkgate ward. At the termination of the election the presiding alderman and the two assessors declared Mr. Samuel Smith to have been duly elected; the votes being, for Smith, 195, and for Scholey, 194. It was now alleged that the legal majority was in favour of Mr. Scholey, inasmuch as one of the voters who voted for Mr. Smith, being on the burgess list for both Middle Hill and Kirkgate wards, had previously voted in Middle Hill ward, contrary, as it was argued, to the provisions of the 5 & 6 Will. 4, c. 76, s. 44, which enacts that "if any burgess shall be rated in respect of distinct premises in two or more wards, then he shall be entitled to be enrolled and to vote in such one of the said wards as he shall select, but not in more than one;" and also that a vote was received for Mr. Smith after four o'clock, which is the hour fixed by sect. 32 of the above Act for the final close of the poll.

Rule nisi.

Reg. *v.* John Richard Carr.

Municipal election—Election of a burgess who was auditor and assessor, to the office of town councillor.

Welsby moved for a rule calling upon Mr. John Richard Carr to show cause why a *quo warranto* information should not be filed against him for exercising the office of town councillor of the city of Oxford. At the election of town councillors for Oxford on the 1st Nov. last, Mr. Carr was elected a town councillor, and since then has acted in the office and still retains it. It was now objected that he is disqualified from holding such office, inasmuch as he was, in the previous March, elected an auditor and assessor, which offices he still retains, the 1 Vict. c. 78, s. 15, enacting "that no burgess shall be eligible to be elected a member of the council while holding the office of of assessor or elective auditor."

Rule nisi.

Farthing and another *v.* Reed.

Practice—Notice under sect. 101 of the 15 and 16 Vict. c. 76, to proceed to trial—Course to be pursued by a plaintiff when he has a sufficient excuse for not proceeding to trial.

Hance moved for a rule calling on the defendant to show cause why he should not be restrained from taking any further proceedings to compel the plaintiffs to proceed to the trial of this cause, or to show cause why the time for proceeding to trial should not be extended, with a stay of proceedings. It appeared from the affidavits upon which this motion was made, that the action was brought to recover a debt, and that pending the writ the defendant called upon the plaintiffs, admitted the debt, and offered terms of settlement, which however were declined; the action thereupon proceeded, and the defendant pleaded "never indebted, except as to 1*l.* 4*s.*" Subsequently he obtained a commission in the army, and is now out of the country; but his mother agreed to pay the amount by instalments, which are accordingly in the course of payment. The plaintiffs for these reasons not having proceeded to trial, the defendant's attorney served the plaintiffs with a notice under sect. 101 of the 15 & 16 Vict. c. 76 (the Common Law Procedure Act), to bring the issue on to be tried. It was now contended that the notice mentioned in sect. 101 being merely a substitution for the old proceeding of a motion for judgment as in case of a nonsuit, which by sect. 100 is wholly abolished, the plaintiffs might avail themselves of the same defence upon the new proceeding as they would have had under the old; and that as the excuse now offered would have been sufficient under the old practice to have discharged the rule, it may be used upon the present occasion in the shape of the motion now submitted to the court. Two days' notice had been given of the present motion.

Erle, J. thought the present motion correct in practice, and therefore granted a

Rule nisi.

BUSINESS OF THE WEEK.

Tuesday, Jan. 11.

Re Boreham.—*Prentice* moved for a writ of *habeas corpus* to bring into court a child, that it may be delivered up to the custody of its father.

Writ granted.

The Bail Court sat at Nisi Prius on Wednesday, Thursday, and Friday.

INSOLVENT DEBTORS COURT.

Reported by David Cato Macrae, Esq., of the Middle Temple, Barrister-at-Law.

Friday, Nov. 5.

(Before Mr. Commissioner Phillips.)

Protection Case.

Re T. Burgess.

Trader debtor—Debts in schedule contracted in trade. An insolvent owing debts contracted whilst in trade, must petition as a trader.

This insolvent was opposed by *Macrae*, who submitted, as a preliminary objection, that his client's debt was contracted whilst the insolvent was in trade, and as his debts exceeded 300*l.*, his petition must be dismissed. The insolvent had been a farmer and extensive hop grower, and had not only consigned his own hops to the opposing creditors for sale, but had instructed them, as his factor, to buy and sell other hops on his account. He had also, in 1845, been partner with another person as a coal merchant. The opposing creditor's debt begun in 1844.

Cooke for insolvent.

Mr. Commissioner Phillips said the insolvent had been a trader during a portion of the period over which the debts extended. He was therefore a trader, and, owing debts above 300*l.*, his petition must be dismissed.

Friday, Jan. 7.

(Before Mr. Commissioner Law.)

Re William Pritchard.

Fraud—Breach of Trust—Embezzlement—Opposition—Condonation.

Held that a creditor who has taken a warrant of attorney or other security against the debtor's person or property, in respect of a debt improperly contracted, is not thereby precluded from opposing the debtor's discharge, upon his application under the Act to get rid of such security and the debt for which it was given.

This insolvent came up to-day for his hearing, and was opposed by *Cooke* for Barron and Stevens, West India merchants. The insolvent entered the service of the firm in Oct. 1851 as clerk and book-keeper; and in the following February the manager of the business had reasons to suspect the accuracy of the insolvent's accounts, and, upon examination, discovered a deficiency of 165*l.*, caused by the insolvent's tampering with the petty cash accounts. The insolvent, upon being taxed, after some hesitation admitted his offence, and begged for permission to repay the amount, to insure which he gave a policy of insurance upon his life, a warrant of attorney and an assignment of his furniture; and the manager, being aware that the only character which he could truly give would effectually debar the insolvent from obtaining another situation, kindly retained him in the office, taking, however, the precaution of removing from his control the petty cash book with which he had heretofore so successfully tampered. In October following, another and a larger defalcation was discovered, amounting to 394*l.* which had arisen in this way. It was the custom of the house that manufacturers or warehousemen who supplied goods when their accounts became due delivered a statement of account, upon which it was the insolvent's duty to fill up a crossed check for the amount for the

INSOLVENCY.

managers signature. To carry out his fraud, the insolvent had first falsified the account by creating a larger sum, and then drew the check for a corresponding amount, which, being compared with the creditor's statement of account, was signed by the manager and paid to the creditor. The insolvent, however, a day or two afterwards calling upon the latter and pointing out the overpayment which had been made, received the balance, which he appropriated to his own uses. When the second discovery was made, the insolvent told the creditors they could not prosecute him, because they had condoned a former defalcation. After discussion it was arranged that as the present defalcation had been entirely paid off, by the insolvent's relations in fact, an assignment of the furniture should be again given, and a warrant of attorney. The furniture had produced 118*l.* and the insolvent was now in execution for the balance.

Sargood said: In this case upon the discovery of the defalcation the creditor, instead of prosecuting, accepted the insolvent's undertaking to repay in the shape of a warrant of attorney for the whole amount, and an assignment of his furniture which had since been sold and realised 118*l.* out of 394*l.* The offence originally was a highly criminal one, amounting to nothing less than embezzlement or sheer robbery, for which the creditor might have indicted the insolvent criminally: but having preferred, instead of so doing, converting the transaction into a civil debt by accepting a security, under which he had received part payment on account, he could not be allowed now to revert to the original transaction, and clothe that which he had made a civil debt with the attributes and character of a criminal offence.

Cooke contended, first, that there had been a gross breach of trust clearly established, the insolvent having misappropriated the money intended by the firm for specific purposes; and, secondly, if the court had any doubt upon the first point, that at all events the debt was one most fraudulently contracted, and meriting the fullest reprobation of the court. The learned counsel, after some further remarks, said that the doctrine of condonation would be urged, no doubt. He knew that it had been held that where parties had taken securities after the fraud was discovered, they had condoned the offence, but that doctrine was carried sometimes to an extent which was prejudicial to the interests of society.

Mr. Commissioner LAW said the learned counsel has done all that lay in his power upon the subject of what is sometimes called condonation. That is a subject on which I have never been able to agree with the doctrine I have heard sometimes spoken of as held by others. I think, and it is likely I shall continue to think, that the doctrine that a creditor, because he has taken a warrant of attorney, is therefore to be excluded from all opposition to the discharge of a party, or all inquiry into the mode in which a debt was contracted, is a doctrine not warranted by common justice or common sense. There might be cases in which that doctrine might be tenable. If it could be said that the act of arresting him was contrary to good faith, then I would not allow him to suffer from the proof of circumstances such as are in this case. If, instead of taking his own warrant of attorney, which is but giving a man a judgment without the trouble or expense of bringing an action, they had taken the warrant of attorney of any relation, and on that had dropped all intention of proceeding against this man, and that then we saw them turn round and put him into prison, it would have been contrary to good faith, and might have been urged—not as condonation, for I don't like the word; but I should have said that if they professed to have been satisfied with the security of this kind of person, they could not afterwards turn round and urge their original complaint: or if they had undertaken that the warrant of attorney was to be without one of its ordinary consequences, that is, that it was to be exempt from the consequences of proceedings against the person who gave it, it would be against good faith that they should arrest that person; but there is no such thing here. Here all is, that he gave up his furniture to pay a part of the debt, and gave a warrant of attorney to pay the rest, which saved them the trouble of going through an action, and gave them a right to have execution both against person and property. To give an execution against the person, if a man was not allowed to oppose his debtor in this court, would be an idle proceeding. They had a right to proceed against him, and he had a right to petition the court. I find no bad faith in this case, and therefore in my mind it is just the same as if the arrest was not founded upon a warrant of attorney. It is not imputed that there has been any bad faith in arresting him; and if not, then all the rest follows. They have the right to arrest him; he has the right to petition, and they as creditors have a right to oppose. After commenting upon the facts of the case, the learned Commissioner said it was a melancholy case, and that the insolvent had been guilty both of a breach of trust and of contracting a debt most fraudulently, for which the judgment of the court would be that he was entitled to the benefit of the Act, and to be discharged at the expiration of fifteen months from the date of the vesting order, at the suit of Messrs. Barron and Stevens.

NOTE.—This case has been carefully reported, in consequence of the valuable remarks of the learned and experienced Commissioner upon what is commonly called the "Doctrine of Condonation," namely, that the acceptance of a security which alters the nature and character of the debt determines the right of the injured creditor to oppose, upon the insolvency of his fraudulent debtor, in respect of the fraud, embezzlement, or breach of trust by which the debt was originally contracted. No doubt there are circumstances (as the learned Commissioner observes) involving a breach of faith by the creditor, which, when they occur, should disqualify him from opposing; because the debtor's inability to meet his engagements might be brought about entirely by his own conduct; but, upon the other hand (as the same learned authority remarks), the mere acceptance of a security against the person or property of the debtor, unaccompanied by any breach of faith on his part, ought not in common justice to disqualify a creditor from opposing. This doctrine of "condonatio" has in some courts obtained to a great extent; and in very many cases where it has been permitted to apply it has been nothing but hypocrisy and falsehood on the part of the insolvent, added to his original fraud. In some other cases there has not been the least pretence for the application of the doctrine. For instance, a gentleman employed a broker to sell some stock, which was done, but the broker applied the proceeds to his own use. His principal, finding this out taxed his broker with the breach of trust, who admitted it, but promised faithfully to repay the money at a certain time fixed. Believing that the broker would keep his promise, he employed him in the interval to effect one or two transfers of stock; and because he had done this, although he was never repaid one farthing of the debt which had been contracted with him by breach of trust, Mr. Commissioner Phillips was persuaded by counsel, that this amounted to a condonation, which was a doctrine in universal acceptance in those courts. It is true that this was not very long after his appointment; but it is also true that there is still too much of this nonsense, by which the effective clauses of the statute against fraud are very much frittered away.

LORD CHANCELLOR'S COURT.

Equity Courts.

LORD CHANCELLOR'S COURT.

Reported by C. H. KENE, Esq. of Lincoln's-inn, Barrister-at-Law.

Wednesday, Dec. 15.

(Before Lord ST. LEONARDS, L.C. and the LORDS JUSTICES.)

SHEFFIELD *v.* The Earl of COVENTRY.

Construction—Appointment.

Bequest to trustees, upon trust, to purchase the sum of 20,000l. Four per cent. Bank Annuities, and to pay the dividends to his son J. for life, with a proviso that, in case his son should at any time thereafter marry with the consent of his said trustees, then that that sum, subject to the life-interest of the son in the dividends thereof, should be settled for the benefit of any woman with whom he should intermarry, and the issue of such marriage, in such manner as should be agreed upon with the concurrence of such trustees, and subject to the trusts to be declared of and concerning the said Bank Annuities in any settlement to be made on the marriage of his son, or, in case none should be declared, then that the said Bank Annuities should go unto such person or persons, for such uses, &c. and in such manner as the son should by his last will direct and appoint: and in case his son should die unmarried, then that the trustees should stand possessed of and interested in the sum of 10,000l. Four per cent. Bank Annuities, part of the said sum of 20,000l. like Annuities, in trust for all his children then born, or thereafter to be born, other than and except, &c. who should be living at the time of the decease of his son, and the issue of any of his children who should happen to die in his lifetime leaving issue, to be divided between or amongst them, &c.; and as to the residue of his personal estate, after making such appropriation thereout as was thereinbefore directed, upon trust for the payment of certain annuities, and after the decease of the said annuitants of and in the fund so to be appropriated to answer and satisfy the same, in trust for his the testator's children, except, &c. and the issue of such children, in such shares, &c. as he had thereinbefore directed with respect to the share or shares of such children and their issue of and in the said sum of 10,000l. Four per cent. Bank Annuities thereinbefore directed to be transferred to them from and after the decease of his said son J. J. by his will, appointed 10,000l.:

Held, reversing the decision of the Master of the Rolls, that the appointment was valid.

This was an appeal from an order of the Master of the Rolls.

The question arose as to the construction of the will of the late Earl of Coventry. His lordship by his will dated the 8th July, 1818, gave and bequeathed the general residue of his personal estate and effects to Sir Robert Sheffield and Henry Pitcher Boyce, their executors, &c. upon trust, among other things, to appropriate and set apart so much thereof as would be sufficient to purchase the sum of 20,000*l.* Four per cent. Bank Annuities, and to stand and be possessed of and interested in the same when so purchased, and to receive the dividends, interest, and annual produce thereof, and pay, apply, and dispose of the same during the life of his son John Coventry, to such person or persons and for such intents and purposes, and in such manner as his said son should from time to time by any draft, note, order, or writing signed by him (but not by way of anticipation) direct and appoint; and in default of or subject to any such direction or appointment, pay such interest, dividends, and annual produce into the proper hands of his said son, for his sole use and benefit during his lifetime, subject to the proviso next thereinafter contained (being a proviso against alienation of the provision thereby intended to be made for his said son, or any part thereof). And the said testator further declared his will as follows: "Provided also and my will is, that in case my said son shall at any time hereafter marry, with the consent of my said trustees, or the trustee for the time being of this my will, then I direct that the said last mentioned sum of 20,000*l.* Four per cent. Bank Annuities (subject nevertheless to the life interest of my said son of and in the dividends, interest, and yearly proceeds thereof,) shall be settled for the benefit of any woman with whom my said son shall or may intermarry, and the issue of such marriage, in such manner as shall be agreed upon, with the concurrence of my said trustees or trustee for the time being, and subject to the trusts to be declared of and concerning the said Bank Annuities, in any settlement to be made on the marriage of my said son, or in case none shall be declared, then I direct that the same Bank Annuities shall go unto such person or persons for such uses, estates, and interest, and in such manner in all respects as my said son shall by his last will and testament, or any codicil or codicils thereto, to be signed and published by him in the presence of and attested by two witnesses, direct or appoint, and be paid, assigned, or transferred accordingly: provided also, and my will is, that in case my said son shall die unmarried, then I direct that the trustees or trustee for the time being of this my will do and shall stand possessed of and interested in the sum of 10,000*l.*, Four per cent. Bank Annuities, part of the said sum of 20,000*l.*, like annuities, in trust for all my children now born or hereafter to be born, other than and except my son, Lord Deerhurst, who shall be living at the time of the decease of my said son John, and the issue of any of my children who shall happen to die in his lifetime leaving issue, to be divided between or amongst them in equal proportions, share and share alike, if more than one, save only and except that the issue of any deceased child shall take between them such part or share thereof only as his, her, or their father or mother, if living, would have taken." And as to, for, and concerning the surplus of the residue of his said personal estate, after making such appropriations thereout as were thereinbefore directed, the said testator directed that the trustees or trustee for the time being of his will should stand and be possessed of and interested in the same, upon trust that they, or the survivor of them, his executors, administrators, or assigns, should appropriate and set apart so much of such last-mentioned surplus as would be sufficient to create a fund for the payment of certain annuities thereinbefore given to his wife Lady Coventry, and his sister Lady Ann Margaret Wright; and, after making the several appropriations aforesaid, upon further trust that his said trustees should stand possessed of and interested in such surplus, and also from and after the decease of both or either of the said annuitants of and in the fund so to be appropriated, to answer and satisfy the same, in trust for his the testator's children (except his son Lord Deerhurst and his said son John), and the issue of such children, in such shares and proportions, and to vest and become transmissible at such ages or times, and to be subject to such benefit of accruer and survivorship, as he had thereinbefore directed with respect to the share or shares of such children and their issue of and in the said sum of 10,000*l.*, Four per cent. Bank Annuities, thereinbefore directed to be transferred to them from and after the decease of his said son John. The testator died in March 1831, and pursuant to a decree the sum of 20,000*l.* was paid into court, and the dividends thereof paid to John Coventry during his life. He died in May 1852 without having been married, but having first made his will bearing date 28th Oct. 1841, whereby, after reciting that he was entitled under the will of his late father to the sum of 20,000*l.*, then Three-and-a-half per cents., with a power of disposing of the same by will, but subject to a proviso that in case of his dying unmarried, 10,000*l.* part thereof should be paid to his brothers and sisters equally, he gave and appointed the sum of 4,000*l.*, part of the portion of the said stock over which he had power, to his brother, the Honourable William James Coventry, for his own use and benefit, without prejudice to his interest in the remaining portion of the said stock: and he gave and appointed all the

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residue and remainder of the said portion of Stock unto his brother, Thomas Henry Coventry, for his own use and benefit.

In July 1852 the surviving executors and trustees of the will of the late Earl of Coventry, and the said Thos. Henry Coventry, and John James Coventry, preferred their petition to the Master of the Rolls, praying that the said sums of 4,000*l.* and 6,000*l.*, part of the 20,000*l.*, might be transferred and paid to the two latter petitioners, and that the remaining 10,000*l.* might be transferred and paid to such of the children of the late Earl as were living at the death of John Coventry.

His Honour, on the hearing of such petition, held that the marriage of John was a condition precedent, and that under the circumstances he had no power of appointment under the will of the late Earl over any part of the 20,000*l.*, and ordered the whole of that sum to be paid to such of the children of the Earl as were living at his son John's death.

From that order the petitioners now appealed.

Bethell, *Bolt*, *R. Palmer*, *Elmsley*, *Follett*, *Osborne*, and *Pemberton* appeared for the several parties.

The LORD CHANCELLOR.—In this case the testator intended the 20,000*l.* to be a portion for his younger son John, with certain checks and provisions in consequence, as one may suppose, of his want of confidence in that person, because, although he gives him a life interest, he carefully provides that he shall not have a power to anticipate. With the same view he makes a provision with regard to his marriage, and, having made no absolute gift of the property after his death, he makes a provision in case he marries with consent. Now by the first part of the proviso (which his Lordship read) there is nothing further provided for than a marriage with consent, and a direction that in that event the property should be settled. It was to be settled in such a manner as might be agreed on with the concurrence of the trustees. Then comes a sentence which I think may be read in a great measure as an independent sentence,—as beginning a new sentence: "And subject to the trust to be declared of and concerning the said Bank Annuities in any settlement to be made on the marriage of my said son, or in case none shall be declared, then I direct that the same Bank Annuities shall go unto such person or persons for such uses, estates, and interests, in such manner in all respects as my said son shall by his last will appoint." Therefore it is, if you marry with the consent of my trustees, a certain settlement shall be executed; and subject to the trusts to be declared by such settlement, or in case none shall be declared you shall appoint it by your will: that would effect every intention which this testator had. He intended to put such a bridle upon his son as to prevent his anticipating; that was his intention. The testator did not intend that any woman whom his son might marry should enjoy the property, unless the trustees concurred; but he meant not only that his son's issue should take, but that his son's power of disposition, subject to the issue taking, should remain. I agree, as was argued, that the context would meet the view of the appellants; that, taking the context, if it would admit of it, you need not introduce any particular words, because you might take it as it stands; but if you are not to take the entire context, you must introduce words in every place to explain the testator's meaning. For instance, before the words "or in case none shall be declared," you have to introduce the words "or upon such marriage;" and when you come to the gift over, "or having been married without leaving issue," you must there again introduce the words "or having married with such consent as aforesaid, and without leaving issue,"—this is without leaving issue entitled under the settlement; for the case provided for would not come in regularly after the limitation in the supposed settlement; for it is an absolute disposition in case he dies, having married (to say nothing of consent) without leaving issue, which means at his death, whereas the settlement would provide for issue which had died in his lifetime. There is therefore nothing that brings it into a regular course of settlement. You must take the context in order to get at the intention, and if you do take the context, I can see no difficulty. If my son marries with my consent, let there be a settlement, such as the trustees shall agree upon; and subject to the trusts, whatever they might be, created by the settlement, still my son shall have power of appointment by will. But the fund was not only subject to those trusts, "but subject to the trusts to be declared of and concerning the Bank Annuities in any settlement to be made on the marriage of my son." If it had stopped there, that would have been a gift over in any event, in case he did not marry, or in case he died without a settlement. In either case he would have had a power of appointment by will. This testator intended to put him on the footing of a favourite younger son; he was intended to take the property, and so he would have taken it without violence to the will, provided he married with consent. There was no provision made for a woman whom he married without consent, or for the issue of such a marriage. The testator intended to provide by his own will for his son's wife and children if he married without consent; but if he married with consent, that that trust should fail, or become subject to the son's disposition; and by taking that view I conceive no violence is done to the will. But the words "in case none shall be declared" render it difficult to say that there was an absolute trust imposed in the first part; because, although those words would seem to relate to a settlement in case of marriage with consent, yet, if you find a positive disposition that if no trust be declared the man shall have power of disposing of it by will, it seems to remove that imperative direction, and to substitute the man's own will in place of that direction; therefore I am by no means prepared to say that this will did make it imperative on the testator's son to make any settlement which should be agreed on with the concurrence of the trustees. They might have consented to the marriage, and might not have agreed to a settlement. The testator says, "In case none shall be declared." "None," there, refers to trusts; for he first of all says, that "subject to the trusts to be declared concerning the Bank Annuities in any settlement to be made on the marriage of my son," then, though he married with consent, he was to have the power of appointment. It has been asked by one of the Lords Justices: "What would have been the case if this gentleman had married without consent, and left issue?" The answer necessarily was, to maintain the argument, that that issue would not have been entitled, that the son would have had no power of disposition, and that the property would have gone over. Was that the testator's intention? He tells you he means to provide for his son John far above all others; and could he therefore intend to cut him down to a life interest, and to leave his family penniless? It is perfectly clear that he had no such intention; but he did intend, in the different cases that might arise, to retain some power over this property. Supposing the words "in case none shall be declared" to be an independent sentence, and read, "If my son marries with the leave of the trustees, then there shall be a settlement such as the trustees approve of, and subject to those trusts," that is, "the trusts of any settlement" (there may be none), "but subject to those trusts" (if there be any), "or if none shall be declared"—would not that apply as well to the case of a defect in, or a want of, a declaration of trust in a settlement; as to that of there being no settlement, and therefore of course no declaration of trust? In either case the property is to go as he shall appoint by will. Now is that construction assisted, or is it excluded, by the proviso that follows?—"Provided also, and my will is, that in case my said son shall die unmarried, or, having been married, without leaving issue, and without having exercised the power of appointment I have hereby given to him," then I leave the trustees possessed of half the sum I have given to him. If you read the one as an independent and the other as a disjunctive part—no doubt the one is not altogether unconnected with the other—it is very difficult to explain the sentence; for as marriage generally has not been provided for, but only "marriage with consent," and he might marry without consent, it is very difficult to say what the meaning of "without having been married" is; but if we are to put that construction upon the will which has been contended for, and take every part of it as bearing on every specific disposition, where is the difficulty? A case of this nature was decided in the House of Lords yesterday. After limitations to a daughter for life, and to her first and after sons in tail, came words to this effect, "And in case my daughter shall depart this life without issue male living at her death, or no such issue male as shall be entitled under this my will, then in either of those cases I give the estates to my granddaughters living at my daughter's death." It had been decided by the Court of Ex., the Lord Justice Cranworth having delivered the judgment of the court, that there the whole sentence applied to the disjunctive part or second alternative. It was decided by the Court of Q. B. that you could not import those words; they read the second clause as an independent clause, and decided that the gift over took effect. The House of Lords, under my advice, decided that that could not be supported, and came to an opinion in favour of the construction of the Court of Ex. They considered the whole clause was to be taken with the context—both events were governed by all the words in the first clause, and therefore it really was the same as if the words "or such issue male not entitled under this my will" had been specified in the first part, repeating the clause, "in case my said daughter shall die without issue male living at her death, or in case my said daughter shall happen to die without such issue as shall be entitled at her death, then in either of those cases I give over." That construction would enable this court without any difficulty—not as a regular rule of construction, not as a construction to be adopted in every will, but upon the context of this will—to read this clause in this way: "Provided also, and my will is, that in case my son shall be unmarried, or having married without leaving issue" (and that clause applies to both alternatives), "and without having exercised the power of appointment I have hereby given to him, I give 10,000*l.* over." That construction makes this a sensible will, and that shows that he meant in the previous part to give him the power of appointment. If he had given him the power of appointment then this construction is perfectly sensible and entirely accords with the first part, for then the first part is a gift over of a power to the son at all events by his will; the one exactly harmonises with the other—in case my son dies unmarried, or having married without leaving issue, and does not exercise his power (the power I have shown arising in each case), then this 10,000*l.* shall go over. I do not understand the ground on which this gentleman executed his power only as to 10,000*l.*; but I suppose a doubt had been raised on the first part of the will; it was considered, I suppose, that as 10,000*l.* only was given over, a gift by implication arose of no more than that sum. I can find nothing in the will to justify that construction. The conclusion to which I have come is a very satisfactory conclusion to my own mind, although I say it with the greatest deference to the learned judge below; but I have come to that conclusion with the concurrence of my Lords Justices, and in doing so I feel we do execute the manifest intention on the face of the will of this testator. The order of the Master of the Rolls must be reversed; and let it be declared that in the events which have happened John had a sufficient power to dispose of the property, and that it has been well disposed of by his will.

LORD CHANCELLOR'S COURT.

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COURT OF APPEAL IN CHANCERY.

Reported by OWEN DAVIES TUDOR, Esq. of the Middle Temple, Barrister-at-Law.

March 24 and April 2.

RICHARDSON *v.* EYTON.

Compromise of suit—Specific performance, decree to carry into effect—Construction of compromise—Abstract of title—Mistake.

A., who was tenant for life of coal mines under a will with remainder to his children, filed a bill in which he set out his title, and the will under which he took, alleging however by a clerical error that he was tenant in tail, although in the interrogatory founded on that statement he asked whether he was tenant for life. The bill, which was filed against the lessees of a conterminous mine, prayed an account of coals raised by them, and payment to him of the value thereof, and for an injunction to restrain them from getting any coals, and that the plaintiff might have liberty to view the workings. An interim order was obtained and from time to time continued, whereupon a compromise was entered into between the solicitors of the parties, by which the defendants were to pay to the plaintiff 400l. for the full value of the coals to be raised from the mine, with costs of suit to be taxed in Michaelmas Term then next as between solicitor and client, and if reasonable security were given to the satisfaction of the plaintiff, six months time from the date thereof for payment of the 400l. was to be given. First a petition to which an objection was taken and allowed, and then a claim, was filed for the purpose of enforcing the agreement for a compromise:

Held, overruling the decision of the court below, that as the statement in the bill that the plaintiff was tenant for life was clearly a clerical error, and could not, as the plaintiff's title was stated on the bill, have misled the defendants, the court was not precluded from decreeing specific performance on the ground that the agreement for a compromise was entered into by mistake or under an erroneous impression.

Held also, that the defendants were not entitled under the agreement to have an abstract of the plaintiff's title.

Held also, that a claim was properly filed to enforce specific performance of the agreement, and that a petition in the original suit was not a proper mode of obtaining that object.

The first of these suits was a bill filed by Ralph Richardson, who was tenant for life of certain coal mines under a field called Coltia Nicholas, near Mold, in Flintshire, against John Prys Eyton, Edward Eyton, who were the lessees of some adjoining mines, against Sir William Trelawney, whom the bill charged that the defendants pretended that he had an interest in the minerals raised under Coltia Nicholas, and against Hugh Roberts, a trustee, and Ralph Richardson, the eldest son of the plaintiff, and against his other children, Mary, Louisa, Helena, and John Billingley Richardson. The bill prayed an account of the coals raised by or by the order of John Prys Eyton, Edward Eyton, and James Eyton, or either of them, from under the field called Coltia Nicholas, and that it might be declared that the petitioner was entitled to the full value of all coals so raised, and that John Prys Eyton, Edward Eyton, and James Eyton, might be decreed to be liable for such coals, and be ordered to pay what should be ascertained to be the full and utmost value thereof, as well as to make good all damage done by them or either of them, or their or either of their agents, to the coal and minerals under the field; and that the same defendants might be restrained by injunction from continuing their works under the field, and from getting or raising any coals therefrom, and that the plaintiff and his agents might be at liberty to view and inspect the workings and coals under Coltia Nicholas. The bill, after showing the title of the

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testator, Mr. Richardson, to eleven-twelfths of the mine under Coitia Nicholas, set forth his will, by which he gave all his real and personal estate to his wife and Hugh Roberts, their heirs, executors, administrators and assigns, upon trust to receive the rents, issues, and profits, and place the same at interest, in order that the same might accumulate, and to stand possessed of all such accumulated property in trust for his nephew, the plaintiff Ralph Richardson, until he should attain the age of twenty-one years, and then upon trust to pay and apply the interest, dividends, and proceeds of such accumulated property in such manner as thereinafter particularly mentioned; and he gave all his real estate whatsoever and wheresoever to the use and behoof of the plaintiff for his natural life, accountable nevertheless for waste, with remainder to trustees to preserve contingent remainders, and, after the decease of the plaintiff Ralph Richardson, to the use of the first and other sons of his body successively in tail male, and with a charge for portions of younger children. And the said testator thereby authorised and empowered his trustees to purchase the remaining undivided twelfth part or share of and in the estate. The bill then stated that the plaintiff had long since attained his majority, and had issue, the defendants, Ralph, Mary, Louisa, Helena, and John Billingley, and no others; that the hereditaments, eleven-twelfths whereof were bought by the testator, and the remaining one-twelfth whereof was purchased by the trustees after his decease, consisted of the mines and minerals under Coitia Nicholas, but that the testator had no interest in the surface of the lands under which the mines and minerals were; that the property in the mines and minerals had always devolved and passed consistently with the title thereinbefore set forth; and that the plaintiff *was and continued to be the tenant in tail* of all the mines and minerals under the piece or parcel of land called Coitia Nicholas. [It must here be remarked that the interrogatory part of the bill corresponding with and founded upon this statement asked whether the plaintiff was not "tenant for life."] The bill then stated that the defendants, the Messrs. Eyton, were lessees of lands adjoining to the close called Coitia Nicholas, and had caused a pit to be sunk called the Mill Pit, in the land so leased; that, after some negotiation, the plaintiff's agent, on the 14th Sept. 1849, wrote and sent a letter to one of the defendants, stating that the plaintiff was willing to dispose of certain seams of coal below the Red Bar, in the field called Coitia Nicholas, for sums amounting to 336*l.* 7*s.* 6*d.*, but so that the sale of these coals should not prejudice the working of such other beds as might be in the ground, but that he strictly forbade any working going on in the ground while this settlement was pending. The bill also stated that some time in Aug. or Sept. 1849, a clerk of one of the defendants called at the office of the plaintiff's solicitor, and said the defendants would like to purchase the minerals under Coitia Nicholas, and asked to see the plaintiff's title, to which the plaintiff's solicitor replied that he had received no instructions in the matter, but that, if the plaintiff agreed to sell, *the defendants would be furnished with an abstract, in the usual manner*; that some time in Oct. 1849, one of the defendants told the plaintiff's solicitor that the only reason why they had not come to some arrangement was because he understood that Sir William Lewis Salisbury Trelawney's solicitors considered that the minerals belonged to Sir William; and that it was then proposed that the defendants should pay the gross value of the minerals, when the amount should be ascertained, into some bank, in the joint names of the solicitors of Sir W. Trelawney and of the plaintiff, who could afterwards compare the titles of their respective clients, and settle the ownership amicably. And the bill amongst other things charged that, unless the relief thereby prayed was granted, irreparable mischief would happen to the plaintiff and those interested in the matters aforesaid. All the defendants appeared to the bill, but no answer had been put in. After an interim order had been obtained, and had been from time to time continued, Mr. Williams, the solicitor of the defendants, met the solicitor of the plaintiff at Mold, and the following agreement was signed by them.

"In Chancery.—*Richardson and others* v. *Eyton and others*.—It is agreed that this suit be compromised on the following terms. The defendants, Messrs. Eyton, to pay the plaintiff Richardson 400*l.* which he, the plaintiff, agrees to accept for the full value of all coals to be raised below the Red Bar in Coitia Nicholas, or Coitia Tan-y-ty, or by what other name the close may be called, with costs of suit, to be taxed next Michaelmas Term, as between solicitor and client. The plaintiff to execute a release if required. If reasonable security be given, to the satisfaction of the plaintiff, six months' time from the date hereof for the payment of 400*l.* and costs will be given.

John Williams, solicitor for the defendants Eyton.
R. T. Roberts, solicitor for the plaintiff.
Mold, 11th Oct. 1850."

In Nov. 1850 the plaintiff presented a petition, praying that it might be referred to the Taxing Master to tax the petitioner's costs of the suit, including the costs of that application, and incidental thereto, as between solicitor and client; and that the defendants, John Prys Eyton, Edward Eyton, and James Eyton, might, after the Master should have certified the amount thereof, be ordered to pay the same, and also the sum of 400*l.* to the petitioner.

In Dec. 1850, when the petition came on to be heard, counsel for the Messrs. Eyton took the objection that the court could not make any order on petition for the specific performance of the agreement. The court thereupon ordered that the petition should stand over, with liberty for the plaintiff to take such proceedings, by claim or otherwise, as he might be advised. The plaintiff therefore filed on the 20th Dec. 1850, a special claim, being the second of the above suits, against the Messrs. Eyton, and thereby, after setting forth the agreement for a compromise, claimed that the petition might come on to be heard, together with the claim, and that it might be referred to the Taxing Master to tax the petitioner's costs of the suit, as between solicitor and client; and that the defendants might be ordered to pay the same, and also the sum of 400*l.*, to the plaintiff, and also the costs of the claim, the plaintiff thereby offering to execute a release when required so to do. Affidavits were filed in support of the claim as to the facts above-mentioned. Affidavits also in opposition were filed, and in one of them Mr. Williams, the solicitor for the defendants, the Messrs. Eyton, deposed that he had considered and treated the agreement for a compromise as one which would carry out the original proposal of 1849, under which *a title was to be deduced to the minerals*. On the 18th Dec. 1851 the petition and claim came on to be heard before Vice-Chancellor Turner, whereupon his Honour dismissed the petition and the claim, but as against the defendants in the second mentioned cause without costs, his Honour being of opinion that the erroneous statement of the plaintiff's title in the bill and the affidavit of Mr. Williams showed that the agreement for compromise had been entered into under a mistake and misunderstanding, and that the court therefore, acting upon the principle long since established in such cases, could not decree a specific performance. From this decision the plaintiff now appealed.

Rolt and *Giffard*, for the appellant, contended, first, that the decision of the Vice-Chancellor, which proceeded upon an assumption that the compromise had been entered into under mistake and by a misunderstanding of the title of the plaintiff, was incorrect; for although the plaintiff in one part of his bill stated that he was tenant in tail, that was clearly a clerical error, and could not have misled the Messrs. Eyton or their legal adviser, as the corresponding part of the interrogatories, asked whether the plaintiff was not "tenant for life;" and the title of the plaintiff under the will of the testator, as set out in the bill, clearly showed that he was only tenant for life. With regard to the second question raised by the defendants, whether they were not entitled to an abstract of the defendant's title, either for the life of the plaintiff or in fee simple, though the defendants would not state to which of those two interests they were entitled, it was clear from the terms of the compromise that no abstract was to be furnished; that that part of the agreement by which it was stipulated that the 400*l.* was to be paid within six months, showed that the compromise was to be carried immediately into effect, without waiting for an abstract and the examination of the title by means of it, which might in fact take some years to do.

C. P. Cooper and *W. H. Terrell*, for the respondents, the Messrs. Eyton, contended that the statement of the plaintiff that he was tenant in tail had misled the defendants, for it was clear that if they only bought a life interest from him, if he died immediately, they would lose their 400*l.* and be subject to the vexation of another suit; that such a mistake was a good defence to a suit for specific performance: (*Mason* v. *Armitage*, 13 Ves. 25; *Malins* v. *Freeman*, 2 Keen, 34.) Secondly, that the agreement was of so indefinite and doubtful a character that the court could not properly make a decree upon it: (*Price* v. *Griffiths*, 1 De G. M. & G. 83.)

Giffard, in reply, contended that no weight ought to be attributed to the argument that there must have been a mistake in the agreement because, if the plaintiff was only tenant for life, they might immediately lose the 400*l.*; he might live for a considerable time; and the 400*l.* was intended rather as a remuneration for the coal which had already been got, than for the coal which they intended to get.

Lord Justice KNIGHT BRUCE.—The Vice-Chancellor disposed of the case upon the ground that the bill contained an allegation that the plaintiff was tenant in tail; and his Honour considered the defendants entitled to the benefit of the assumption that they were misled by this statement. That seems to have been a point to which the attention of the plaintiff's counsel had not been particularly directed, and which they say was not argued so fully as it would have been if they had considered it likely to affect the mind of the Judge. I am of opinion that if the matter had been fully, minutely, and clearly presented to the mind of the Vice-Chancellor, he would have thought as we do, that the precise and accurate statement of the plaintiff's title in other parts of the bill, shewing that Mr. Richardson was tenant for life only, enabled the defendants to correct the accidental and erroneous statement that the plaintiff was tenant in tail. The interrogating part of the bill, indeed, shows that the mistaken allegation in the statement was a mere clerical error. I do not, however, lay much or any stress upon the interrogatory, as the statements in other parts of the bill are sufficient to correct the mistake. We consider ourselves as hardly differing from the Vice-Chancellor, as we have had the advantage of having these other parts of the bill fully called to our attention. With regard to the rest of the case we have not the benefit of the Vice-Chancellor's opinion; because, viewing as he did the consequence, of the erroneous allegation in the bill, he did not address his mind to the other parts of the case. It appears that the plaintiff, stating himself to be tenant for life of coal under land in the surface of which he had no interest except a right to sink pits (if he had that right), filed a bill against owners of conterminous mines, complaining that the defendants had laterally and subterraneously taken his coal, and prayed for an account, an injunction, and liberty to inspect the defendants' workings. An interim order was made in the summer, and was afterwards extended till Michaelmas Term. Thus the matter stood in October, when the London solicitor for the defendants met the plaintiff's country solicitor at Mold, not far from the mines, the place of residence of the country solicitor, upon which occasion the agreement in question for a compromise was entered into. Now it is contended that this is a mere agreement to purchase for 400*l.* all coal raised or to be raised, either for the life of the plaintiff or in fee simple. The defendants decline stating which of the two interpretations they adopt, but say that, whichever ought to be adopted, they are entitled to the production of an abstract of the plaintiff's title. With this contention we do not agree. The defendants entered into the agreement with full knowledge of the plaintiff's title, which the pleadings disclosed. They knew that he was tenant for life, and claimed manifestly, as we think, to be no more. The meaning of the agreement, therefore, was, that he was to receive 400*l.* for all the coal raised already, and that if any more remained to be raised (which was very improbable) the defendants were to take it so far as the plaintiff could give it them; that so far the plaintiff was to have 400*l.* in full for all coal gotten, or to be gotten, for the time past and to come. The plaintiff was also to have, by the terms of the compromise, the costs of the suit taxed, as between solicitor and client, in the following Michaelmas Term, that is to say, within a month. It is, however, contended that all this was to be suspended till an abstract of title should be furnished, and the title investigated in the ordinary way. But the agreement contains a clause which throws light, if any were wanted, upon this part of the case, by providing that, if reasonable security shall be afforded to the plaintiff's satisfaction, six months' time for payment may be given. This seems inconsistent with the argument that everthing was to wait until a title shown, which might involve the lapse of years. The obvious meaning appears to be, that the agreement was to be immediately carried into effect, and that the defendants were to have what the plaintiff could give them and no more. That is our opinion, and we are glad to find that our views do not differ from those of the Vice-Chancellor upon the materials brought under his consideration. It is said, however, that, whatever may be the true construction of this agreement, it is competent for the defendant in a suit for specific performance to show that his belief or understanding of the terms of it was or might be different from that which the words of themselves import. If the defendants could satisfy us that this was the case, we might give effect to the argument; but a consideration of the evidence has not convinced us that there was any such mistaken belief or any such erroneous understanding. We both affirmatively believe the reverse to be the fact. There must be a decree for specific performance. The petition in the original cause should be brought on with this appeal. I think that the petition would not of itself have been sufficient, and that a separate suit was requisite to enable the court to give effect to the agreement.

Lord Justice Lord CRANWORTH.—I will only add, with reference to one of the last remarks of my learned brother, that not only is the evidence not sufficient to show that Mr. Williams was misled, but it is sufficient to show that the defendants were not misled; for although the affidavits approach this subject, they do not allege such misapprehension on the part of the defendants.

April 2.—On this day the appeal was again spoken to, together with a petition in the first-mentioned cause, praying that one order might be made on the petition and the claim and motion, and that the order of the 18th Dec. 1851 might be discharged, in so far as it dismissed the petition as against the defendants other than and except Sir William Trelawney, and in so far as it dismissed the claim, the petitioners being ready and willing and thereby offering to act as the court might direct in respect of the costs of the plaintiff's trustee and his children, on the original cause being stayed or dismissed, as

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between the petitioners and the said last-named defendants; and that the costs of the said first-mentioned suit might be taxed as between solicitor and client; and that the costs of the second-mentioned suit might be taxed in the ordinary way, as between party and party; and that all such costs, and the sum of 400*l.* in the agreement mentioned, with interest thereon from the 4th Oct. 1850, at 5*l.* per cent. until the day of payment, might be duly paid to the petitioner, or as he should direct, by John Prys Eyton, Edward Eyton, and James Eyton, and that on such taxation and payment all proceedings in the first-mentioned suit might be finally stayed.

Upon the plaintiff undertaking to pay the costs of his trustee and of his children, the order was made as prayed, and it was thereby declared that it should operate as a release to the defendants, the Messrs. Eyton.

Monday, Nov. 15.

LOWES *v.* LOWES.

New Practice—Order to effect of usual supplemental decree—15 & 16 Vict. c. 86.

In an administration suit, on the death of the sole plaintiff, an order to the effect of the usual supplemental decree, under the 52nd section of 15 *&* 16 *Vict. c.* 86, *was made on behalf of a person not a party to the suit, but found a creditor by the Master's report, he having served the parties with notice of the application, and they not having appeared.*

Foster made an application in this case on behalf of Eleanor Kemp, a creditor of the testator in the cause, for leave to prosecute the suit, either by filing a supplemental bill, or that the court would make an order to the effect of the usual supplemental decree under the 52nd section of 15 & 16 Vict. c. 86. The circumstances of the case were as follows:—The bill was filed by executors and trustees for the administration of the testator's estate. All the plaintiffs died, and the suit was revived by an infant defendant. The usual accounts had been taken, and Eleanor Kemp was found by the Master to be a creditor for 100*l.* The report was confirmed, and the usual decree made for the sale of the real estate. In 1848 the infant plaintiff died, and nothing had been done since in the suit. The parties who, had a supplemental bill been filed would have been defendants, had been served with notice of the motion.

Stuart, V. C. refused the application, observing that the case was clearly not within the 52nd section of 15 & 16 Vict. c. 86, which in his opinion was applicable only to the usual order to revive on the usual supplemental decree. See 20 L. T. Rep. 61. The 52nd section is as follows: "Upon any suit in the said court becoming abated by death, marriage, or otherwise, or defective by reason of some change or transmission of interest or liability, it shall not be necessary to exhibit any bill of revivor or supplemental bill, in order to obtain the usual order to revive such suit, or the usual or necessary decree in order to carry on the proceedings; but an order to the effect of the usual order to revive, or of the usual supplemental decree, may be obtained as of course upon an allegation of the abatement of such suit, or of the same having become defective, and of the change or transmission of interest or liability; and an order so obtained, when served upon the party or parties who, according to the present practice of the said court, would be defendant or defendants to the bill of revivor or supplemental bill, shall from the time of such service be binding on such party or parties, in the same manner in every respect as if such order had been regularly obtained according to the existing practice of the said court; and such party or parties shall thenceforth become a party or parties to the suit, and shall be bound to enter an appearance thereto in the office of the clerks of the records and writs, within such time and in like manner as if he or they had been duly served with process to appear to a bill of revivor or supplemental bill filed against him; provided that it shall be open to the party or parties so served, within such time after service as shall be in that behalf prescribed by any general order of the Lord Chancellor, to apply to the court by motion or petition to discharge such order on any ground which would have been open to him on a bill of revivor or supplemental bill, stating the previous proceedings in the suit, and the alleged change or transmission of interest or liability, and praying the usual relief consequent thereon: provided also, that if any party so served shall be under any disability other than coverture, such order shall be of no force or effect as against such party, until a guardian or guardians *ad litem* shall have been duly appointed for such party, and such time shall have elapsed thereafter as shall be prescribed by any general order of the Lord Chancellor."

Lord Justice KNIGHT BRUCE said that he was of opinion that the application was clearly within the spirit of the 52nd section, and that if it had not been for the opinion of the Vice-Chancellor he should have thought it also as clearly within the letter. The parties having been served and not appearing, the order to the effect of the usual supplemental decree ought to be made under the 52nd section, within which his Lordship thought the case came.

Lord Justice Lord CRANWORTH concurred.

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Wednesday, Jan. 12.

Ex parte S. T. WOOD, re THE VALE OF NEATH AND SOUTH WALES BREWERY COMPANY.

Joint-Stock Companies' Winding-up Acts—Contributory legatee—Executor.

A legatee of shares in a joint-stock company and her husband, it not appearing by the evidence that the executor had assented to the legacy, or that the directors had approved of them, or either of them, to be proprietors according to the terms required by the deed of settlement:

Held, not to be liable as contributories; and that consequently, the liability of the executor not having ceased, his name ought to be placed in the list of contributories without qualification.

Distinction as to the extent of the power of partners in an ordinary partnership, and of directors of a joint-stock company, to depart from or waive the terms of the deed constituting the partnership.

This was an appeal by the official manager from the decision of Stuart, V. C., reversing the decision of Master Brougham, who had included the name of Samuel Thomas Wood in the list of the contributories of the company without qualification, and directing that the name of the said Samuel Thomas Wood should remain on the list as liable only up to the death of the testatrix, Miss Lydia Keene, whose surviving executor he was. The facts of the case are stated in 20 Law T. Rep. 108, with the exception of three clauses of the deed of settlement, under which the shares were held. These are set forth in the judgment of Lord Justice Knight Bruce.

Russell and *Terrell* for the official manager, in support of the appeal, contended that there had been no acceptance of the shares by Mr. or Mrs. Kluht, and that neither the directors nor the company had, according to the terms of the deed of settlement, approved of either of them as proprietors, so that they never became proprietors, or responsible as such, and that consequently the responsibility remained with Mr. S. T. Wood, the then surviving executor, and that the Master was right in putting his name on the list of contributories without qualification. They cited *Ex parte Kluht*, 3 De G. & Sma. 210; *Ex parte Southcote*, 3 Mac. & Gord. 187; *Strafford's Executors*, 1 De G. Mac. & Gord. 576; *Crosfield's case*, 17 Law T. Rep. 47, 2 De G. Mac. & G. 128.

Bacon and *Roxburgh* for the respondent.

Russell in reply.

Lord Justice KNIGHT BRUCE.—*Primâ facie* the estate of Miss Lydia Keene, who was proprietor of five shares in this company at the time of her death, would continue liable in respect of those five shares; it is upon those who assert that such liability has ceased to prove it. It is said that the liability has ceased under the 38th and 44th sections or clauses of the deed, inasmuch as Miss Lydia Keene made a will by which, either as part of her residue or specifically, she bequeathed the shares in question to her sister, who, after the testatrix's death, married a gentleman of the name of Kluht. It is said that the executor *assented* to the bequest, whether it was specific or residuary, and that the legatee or her husband was *approved* of by the directors, in a binding manner as a proprietor, or that they were both *approved* of as proprietors in respect of these shares, as from the death of the testatrix; in which case it is assumed that the liability of the executor ceased. It is denied on the part of the official manager that there was any assent to the bequest. It is denied also, on his part, that Mr. and Mrs. Kluht were approved of as proprietors of these shares, as successors to the testatrix, and consequently that a discharge of the estate has not arisen. The 38th clause provides that "husbands of female proprietors, executors, administrators, or *legatees* may, with the approbation of the directors, to be manifested as hereinafter mentioned, but not otherwise, be admitted and become proprietors of the company in respect of the shares which belonged to or were claimed by them as such; but husbands, executors, administrators, or legatees who do not apply to or obtain the approbation of the directors to be admitted proprietors, and also all guardians, &c. shall, within six calendar months after becoming entitled to the shares belonging to or claimed by them respectively in such characters, sell and dispose of the same, and on refusal or neglect so to do shall forfeit the said shares for the benefit of the other proprietors of the company; every purchaser or transferree of a share or shares, and every husband, administrator, and legatee, who shall have obtained the approbation of the directors to be admitted a proprietor of the company in respect of the share or shares belonging to or claimed by him or her as such, shall, unless already a proprietor in respect of some other share or shares, execute this indenture or some deed of accession thereto, binding himself or herself to conform to, observe, and abide by all stipulations, regulations, and provisions for the time being affecting or intended to affect the proprietors of shares in the capital and property of the company; and no purchaser, transferee, husband, executor, administrator, or legatee, unless already a proprietor, shall, before being approved of by the directors as fit, become a proprietor, or before executing this indenture, or some deed of accession thereto, be entitled in any manner or respect whatever to any of the rights, privileges, or benefits of a proprietor of the company, save and except to a proportionate part of the income or proceeds of the capital and property of the said company, upon the next yearly or other divisions thereof." And the 41st clause provides that, "upon all transfers of shares to purchasers and others approved of by the directors, and in all cases of husbands, executors, administrators, or legatees applying to become proprietors of shares belonging to or claimed by them in those characters, and being approved of by the directors, such alterations shall be made in the Share Register Book, and also in the copies by way of certificate of former entries therein respecting the same shares, as the circumstances may require. And the approbation of the directors in all the above cases (to be valid) shall be manifested by entries or memorandums to that effect in the Share Register Book, under the signature of two of the directors for the time being, and by like memorandums so signed, added to, or indorsed upon the copies or certificates of the former entries respecting the shares in question in the Share Register Book; or, instead of such last-mentioned memorandums, by such copies or certificates being delivered to the parties entitled thereto of the new or altered entries respecting the same shares in the Share Register Book." The 44th clause provides that, "whenever any share or shares in the capital of the company shall become actually forfeited, or shall be duly and effectually vested in any new proprietor, and such entry or alteration in regard to such share or shares shall have been made in the Share Register Book as hereinbefore required, then and not before the responsibility of the previous owner as a proprietor in the company, with respect to the same share or shares, shall, from and after the completion of such entry and certificate granted as aforesaid, and the payment of all instalments on such shares previously called for, cease and determine as to the same share or shares; and such previous owner shall thenceforth be exonerated and released from all subsequent claims, demands, and obligations in regard to the same share or shares, and from all future observance and performance of the covenants, conditions, and stipulations contained in or referred to by this indenture, or in or by any deed or deeds relating thereto; and the certificate to be given by the directors as hereinbefore required of such entry, erasure, or alteration, shall at all times be evidence of such acquittance and discharge as aforesaid in respect of such share or shares. And the person in whom any share or shares shall or may become vested, and whose name shall be entered as the approved proprietor thereof in the Share Register Book as hereinbefore-mentioned, shall immediately thereupon, but not before, have and be subject to all the same privileges, advantages, and future liabilities, in respect of such share or shares, as the person originally owning such share or shares." Now it is plain and undisputed, that the things required by the deed of settlement to be done were not done, and therefore, if the letter of the deed is to be followed, the responsibility has not ceased, and the Master's conclusion was correct. But it is said that, although everything provided by the deed was not done, something that is equivalent has been done; inasmuch as the usual manner of proceeding by the company was so loose, and departed from the language of the deed so much, that the course of proceeding taken ought to be considered as the course of proceeding adopted by the company and substituted for what ought to have been done. In ordinary partnerships any clause of a deed may be departed from or waived, where two or three or four partners alone are interested; and thus it often happens that on winding up such concerns, a different course is pursued from that pointed out by the deed. The same course, attended with the same results, is not absolutely impossible in cases of larger companies, called joint-stock companies, in which, as it is impossible for every proprietor to interfere directly in the management of the business, it is often delegated to a chosen body as directors. But there is a difference in acting in such a case, because agents (as the directors are) must carry their instructions exactly into effect, and cannot depart from their deed. Now, in the present case, it appears to me, from the best attention I have been able to give to the case, it fails on two grounds; in the first place, how is it shown that the body at large did assent to a departure by the directors from those provisions in the deed as to the manner of exhibiting the assent of the directors to the introduction of a new partner? The evidence does not authorise this conclusion. If the body at large had been shown to make the directors their agents to give consent, they must have been bound by them. But that observation that the directors themselves have concurred in the approval of the husband and wife, or both, in respect of the shares, does not appear from the evidence to be proved. The concurrence of the directors with the acts of the secretary does not appear to be proved, even if it were of any importance. The proprietors at large have a right to say, not only in form but in substance, that those acts were not done by which the responsibility of the estate of the testator could be made to cease. It illustrates the case to observe that no man living can tell what manner of proprietorship was accepted in lieu of that of the testatrix; it nowhere appears. But it is most essential to show which of

these things was intended to be done, and was done. For these reasons my impression is that the Master was correct.

Lord Justice TURNER.—I concur in this opinion. The deed of settlement provides for the shares of legatees becoming vested in them with certain qualifications and stipulations. Though there may be conduct on the part of the directors which may dispense with the stipulations of the deed, showing that all the proprietors have concurred, that has not been shewn. Now the argument at present is, that there has been approbation on the part of the directors to the vesting of the shares in the legatee or her husband. There are two grounds insisted on. First, it is said, a letter was written to the secretary, in which the executor expressed himself to the effect that the dividends must be paid to the legatee; and another, in which he said that the shares must be transferred to her husband, Mr. Kluht; and the secretary, in consequence of this last letter, wrote in pencil against the shares in the share ledger the name "Kluht." Whatever weight must be attributed to that, it is shown that at a subsequent period the dividends were paid to Keene, the executor. Subsequently, in the years 1843 and 1844, a transaction of this kind took place; it became necessary for shareholders to advance 5*l.* per share, and Mr. Keene gave his acceptance for 400*l.*, being 330*l.* on account of his own shares, and 70*l.* on account of the shares left to Mrs. Kluht. This was renewed by another bill, and the bill was returned on Mr. Keene paying the 330*l.* but the 70*l.* was not paid. Now, it has been held in Kluht's case, that the circumstances which took place, did not make him liable as to shares in his wife's right. I do not see how it makes him liable as legatee, or his wife either: and if it did not render either of them liable, there was no shareholder liable except the executor of the testator. The Vice-Chancellor's judgment, therefore, must be reversed. This is not a case of specific bequest; but, assuming it to be so, it makes no difference, because it is not only necessary that there should be assent, but approval on the part of the directors. Costs of the official manager are to come out of the estate, and dismiss petition with costs as against the others.

ROLLS COURT.

Reported by J. MACAULAY, Esq., of the Inner Temple, Barrister-at-Law.

Dec. 8 and 9.

FRAIL *v.* ELLIS.

Fraud—Vendor and purchaser—Lien—Notice—Bills of exchange—Mortgage.

The plaintiff, having let certain property to a party who entered into possession as tenant, afterwards agreed to sell it to him for 450l. The purchaser proposed that 150l., part of the 450l., should be paid down, and that he should give his bill at three months for 300l., the remaining part; but this the vendor declined to accept, and insisted upon the unpaid purchase-money being secured by a mortgage of the property. The contract for sale was accordingly drawn up by the purchaser's solicitor, and signed by the plaintiff, but no mention was made therein of the amount of purchase-money or the mode of payment. The purchaser had no copy of this contract given to him, but having subsequently obtained one, it was found that an alteration had been made in the original document by stating that the purchase-money was to be paid as originally proposed. At the meeting to execute the conveyance the plaintiff still insisted on the mortgage, and was told by the solicitor that he had procured the mortgage from the purchaser. The conveyance was executed, and the 150l. was paid and the acceptance given for 300l., but no mortgage was executed. The purchaser soon after executed a mortgage of the property for 300l. to a third party, a client of the same solicitor, and absconded:

Held, that the vendor's lien was not discharged; that the mortgagee of the purchaser ought to have inquired whether the bill for the unpaid purchase-money was satisfied, and, not having done so, his security must be postponed to the vendor's lien, of which he had notice.

This was a bill by James Frail, a vendor of a freehold dwelling-house, with a piece of land, &c. situate in Three-Colt-street, Bow, in the county of Middlesex, to establish his lien on the property for part of the purchase-money which had remained unpaid. In the month of Dec. 1849 the plaintiff had let the premises in question to Charles Lloyd, who had been let into possession as tenant. Soon afterwards Lloyd offered to purchase the property at the price of 450*l.* and the plaintiff, having accepted the offer, delivered his title-deeds on the 20th Dec. 1850 to Edward Lawrence Levy (of the firm of Edward Lawrence Levy and David Lawrence Levy, Doughty-house, solicitors), who was the solicitor of Lloyd, for the purpose of having a conveyance prepared. Meantime, however, it was proposed by Levy, on behalf of Lloyd, that the plaintiff should take 150*l.* in money and an acceptance for 300*l.* the residue of the purchase-money, payable in three months. The plaintiff, however, declined to accede to this proposition, but offered to accept a mortgage of the premises as a security for the unpaid purchase-money. This appeared to be satisfactory to all parties, and accordingly a contract for the sale of the premises was drawn up by Levy, and signed by the plaintiff, in which no mention was made either of the amount of the purchase-money or the mode of payment. Though the plaintiff signed this document, no copy of it was given to him at the time, but he subsequently applied to Levy and obtained a copy; and thereupon it appeared that an alteration had been afterwards made in the contract as originally signed, by the insertion of a statement that 450*l.* was to be paid for the house, of which the sum of 150*l.* was to be paid down, and the rest by an acceptance payable in three months. On Jan. 12, 1850, the parties met and the plaintiff executed the conveyances, in which the consideration was stated to be 150*l.* paid at the time of the execution, and a bill by Lloyd for 300*l.* payable in three months; and the receipt indorsed was drawn up in the same form. It was in evidence, on the part of the plaintiff, that previous to the execution of the conveyance, he again refused to take a bill, and insisted on having a mortgage, and that Levy then told him that he had procured a mortgage from Lloyd by way of additional security for the 300*l.* It also appeared, that in the receipt for Levy's charges, which were paid by the plaintiff, there was a reference to a mortgage-deed alleged to have been prepared, the charge being 8*l.* 10*s.* No such mortgage, however, was ever executed, and soon after Lloyd mortgaged the property to the defendant Ellis to secure the sum of 300*l.* advanced by him on loan to Lloyd. Ellis was also a client of Levy. In Feb. 1850, Lloyd absconded, and the bill on coming to maturity was dishonoured. The plaintiff filed his bill to establish his lien on the property for the unpaid purchase-money in priority to Ellis's mortgage, whom he charged with having notice of the fraud; and he also sought to recover the deeds which were in Levy's possession.

R. Palmer and *J. Hadden* for the plaintiff, *Roupell* and *Burk* for Ellis, contended that the vendor had waived his lien by making a special contract for the payment of the purchase-money. He had, as appeared by the deed itself, accepted an indemnity in substitution of the lien. If Levy had committed any fraud, it was not communicated to Ellis.

Lloyd and *Southgold*, for E. L. Levy, disputed the charge of fraud, and insisted that he ought not to have been made a party.

Temple and *Forbes* for D. L. Levy.

The following cases were cited:—*Beadles* v. *Birch*, 10 Sim. 332; *Veed* v. *Caruthers*, 2 Y. & C. C. E. 32; *Winter* v. *Lord Anson*, 3 Russ. 488; *Toogood* v. *Robins*, not reported; *Mackreth* v. *Symonds*, 15 Ves. 329; *Clarke* v. *Boyle*, 3 Sim. 499; *Buckland* v. *Pocknell*, 13 Sim. 406; *Kennedy* v. *Green*, 3 Myl. & K. 699; *Parrot* v. *Sweetlands*, 3 Myl. & K. 653; *Hewitt* v. *Loosemore*, 9 Hare, 499; *Blair* v. *Bromley*, 5 Hare, 542; Sugd. V. & P. 863.

The MASTER of the ROLLS.—There are two questions in the present case: first, whether the plaintiff's lien for the unpaid purchase money is discharged by the substitution of the bill of exchange for 300*l.*; and, secondly, whether Ellis had notice of the fraudulent transaction. As to the first question, whether the original contract was to sell for 150*l.* money and 300*l.* bill, or if it was to sell for 450*l.* and then there was an agreement to take the bill for 300*l.* part of it—whether, in short, it was by way of security or a substitution for the unpaid purchase money—on this point it was argued that the plaintiff is concluded by the terms of the deed; but to this argument I cannot accede, and I am of opinion that the plaintiff was at liberty to adduce evidence in accordance with the case, to prove the real nature of the transaction. There is a conflict of testimony, and a contradiction in the evidence; but I do not think it is satisfactorily proved that the plaintiff ever sanctioned the alteration of the agreement by the insertion of the consideration in the shape in which it now appeared. It is quite clear the plaintiff did not consider himself bound to take an acceptance; but he always insisted on having a mortgage security, which he states he was informed had been actually executed; and this statement is corroborated by the receipt given by Levy for his bill of costs. Under these circumstances I am of opinion that the plaintiff never lost his lien on the property. The next question is as to the notice to Ellis of the plaintiff's right. If he had any notice it was through his solicitor. In the absence of any special contract discharging the plaintiff's lien, the duty of Ellis was to inquire whether the bill for the unpaid purchase money was paid, and no indifferent solicitor would have allowed a mortgagee under such circumstances to advance money without seeing that it was applied in paying the vendor. It was not necessary to fix Ellis with notice of the fraud, it was sufficient that he had notice of the plaintiff's lien. He must therefore be postponed to the plaintiff, who must have the usual foreclosure decree against him, with liberty to sell the property.

Dec. 11 and 20.

PATRICK *v.* ANDREWS.

Practice—Answer of party who is imbecile—Guardian ad litem, who may be.

Where the sole surviving trustee of a fund had become imbecile, and a bill was filed by the parties interested in the fund, the court refused to appoint his nephew, who acted as the family solicitor, guardian ad litem for the purpose of putting in the answer of the trustee, and admitting an incumbrance by one of the cestuis que trust of which the trustee had had notice, though his only sister and nearest relative was also imbecile and paralytic.

The bill in this case was filed by certain persons interested in a trust fund against the sole surviving trustee. It appeared that one of the *cestuis que trust* had mortgaged his share, and had given notice of the mortgage to the trustee. The trustee, however, had become imbecile through age and illness, and was incapable of putting in his answer. His nearest relative was an only sister, who was also imbecile and paralytic. Under these circumstances—

Freeling moved that the nephew of the defendant, who was a solicitor, and acted for the family in that capacity, should be appointed guardian *ad litem* for the purpose of putting in the defendant's answer, and admitting notice of the mortgage. (He cited *Lee* v. *Ryder*, 6 Mad. 294; *Biddulph* v. *Lord Camoys*, 9 Beav. 548; *Brooke* v. *Jobling*, 2 Hare, 155; *Howlett* v. *Wilbraham*, 5 Mad. 423.)

The MASTER of the ROLLS, after taking time to consider, refused to make the order. He could find no precedent for making a solicitor guardian *ad litem* to a lunatic defendant.

Tuesday, Dec. 21.

BYCROFT *v.* SIBEL.

Practice—Production of documents—Mortgage deeds and drafts of deeds.

A mortgagee is not obliged to produce his deeds, as he cannot be compelled to show his title; and the same rule applies to drafts and copies of deeds.

Cottrell moved on behalf of the plaintiff, a mortgagor, who had instituted a suit for the redemption of the mortgaged estate, that the defendant might produce certain drafts of deeds which by his answer he had admitted to be in his possession, contending that the same rule did not apply to drafts or copies as to original deeds.

The MASTER of the ROLLS refused the motion. The reason why a mortgagee was not obliged to produce his title-deeds was that he could not be obliged to show his title; and the same rule must apply to drafts and copies of deeds.

Thursday, Jan. 13.

Re THE BRITISH AND AMERICAN STEAM NAVIGATION COMPANY, *ex parte* MEYER.

Winding-up Acts—Contributory.

A joint-stock company was projected in 1836, and prospectuses were issued setting forth its objects and purposes, and the terms upon which it was intended to be established. In 1837 the company was established, but on a footing essentially different from the original prospectus. M. took ten shares in the original company, and paid a deposit upon them, but did not sign the company's deed; but in the company as altered he took no shares, except that he agreed to have all the deposits he had paid considered as having been paid upon one share, and he paid up the balance payable upon that share, and the other nine shares were cancelled. This was done by a resolution of the board of directors in 1838, which was passed at one meeting and confirmed at the following. The company became defunct in 1841, and on being wound-up under the Winding-up Acts, the Master placed the name of M. on the list of contributories for the nine cancelled shares, on the ground that the board had no power to cancel them, the only point argued before the Master. On a petition to expunge M.'s name from the list of contributories:

Held, that he was not liable as a contributory in respect of the nine shares, but only in respect of the one share which he did not dispute.

The decision turning not upon the cancellation of the shares, but upon M.'s having done no act to make himself a shareholder in the new company, or the company after being placed upon a new footing, which point was not argued before the Master, the petition was allowed, but without costs.

This was a petition to expunge from the list of contributories of the British and American Steam Navigation Company the name of Mr. Meyer. It appeared that in the early part of 1836 the British and American Steam Navigation Company was projected, and a prospectus was issued whereby it was proposed that the capital should consist of 500,000*l.* in 5000 shares of 100*l.* each; that the steam vessels should be partly English and partly American, in order to bring them within the provisions of the navigation laws of both countries; and that an Act of Parliament should be obtained limiting the liabilities of shareholders, with other provisions. The company did not proceed according to this prospectus; but in 1837 the company became in fact a new company, simply for carrying on intercourse by navigation with America, but neither providing the means of bringing itself within the navigation laws of the two countries, nor limiting the liability of its shareholders, and even reducing its intended capital from 500,000*l.* to 100,000*l.* On the company being projected, Mr. Meyer took ten shares in the original scheme, but did not sign the company's deed. He however paid a deposit

of 50*l.* being 5*l.* per share upon the ten shares. Several calls were made upon the shareholders, and upon Mr. Meyer among others; but he took no notice of them, nor did any act whatever in respect of them till Dec. 1837, when, upon receiving notice of a further call, he sent through Mr. Bainbrigge, the chairman of the company, and a personal friend of Mr. Meyer, a communication to the board of directors that if they would cancel nine of the shares, and add the deposit on them to that on the other share, he would pay up 50*l.* more, making 100*l.* and being the whole amount payable upon the one share. On the 7th March, 1838, accordingly Mr. Bainbrigge stated to the board that Mr. Meyer, not being able to pay upon the ten shares, was willing to pay upon the one as proposed, if the others were cancelled. The proposition was agreed to, and entered on the minutes, and on the 14th March the minutes were confirmed, and the nine shares were cancelled, the remaining one being fully paid up, and afterwards sold. The company continued to carry on operations for some time; but eventually, in 1841, it was broken up. So matters stood till the Winding-up Acts came into operation, when their provisions were applied to this company; and on going before the Master he placed Mr. Meyer on the list of contributories not merely in respect of the one share but the nine shares which had been cancelled, on the ground that the board of directors had no power so to cancel shares—the only point which was argued before him. Mr. Meyer then presented a petition praying that his name should be expunged from the list of contributories in respect of the nine shares; and the petition now came on to be heard.

R. Palmer, for Mr. Meyer, contended that this case came within the recent cases of exemption from liability, and was within the principle of *Goldsmid's* case,—a case in this very same company. In that case there was no communication whatever, as here, between Mr. Goldsmid and the company as modified, and yet he was held not to be a contributory. The shares have been continued debited to Mr. Meyer, on the assumption that the original contractors, that is, the shareholders in the original scheme, continued liable as shareholders in the new or modified scheme; and Mr. Meyer has been held liable, though he expressly took one share on condition of the other nine being cancelled and his liability thereon determined. This is an executory contract only, which may or may not be enforced; and where that is so, and the parties come to an arrangement respecting its being cancelled, they cannot enforce it afterwards. He cited *Beresford's* case, 2 M'N. & Gor. 197.

Roxburyh, for the official manager.—There was no evidence of a suggestion from Mr. Meyer to the directors that he would take one share if the others were cancelled. If it were so, and they had acted upon it, then this might come within *Beresford's* case; but on the 7th March, 1838, for anything that appears, Mr. Meyer was the holder of 1,000*l.* stock in the company, and had dealt with 100*l.* (part of it) by transfer to a purchaser. The Master held that *Beresford's* case did not apply, the suggested alteration of the company not being in question before him. Mr. Bainbrigge had no authority, nor had the directors any authority, nor was there any authority in the company by their deed, either to cancel or forfeit shares. Mr. Meyer has not sworn that he had no connection with the new company.

The MASTER of the ROLLS.—I am of opinion that Mr. Meyer is not liable as a contributory, and that his name must be removed from the list. The company was originally formed in 1836, and Mr. Meyer took ten shares in it; but it is not disputed that this company was completely changed in the latter end of 1837 or beginning of 1838, and, being so changed, the original shareholders are not bound, unless they have done some act to make them shareholders in the company as altered; and Mr. Meyer is not bound unless he has done some act to bind him. I omit now any consideration of what took place on the 7th March, 1838; but if there was nothing more than that, Mr. Meyer would be a shareholder in the original company, but without having done any act to make him a shareholder in the altered or new company, and so the matter would have gone on till the present time; and having done no act to show his intention of becoming a partner in the new company, I do not see how, following out the principles which I always follow, and which I think ought to be followed in a Court of Equity, I can, after the lapse of eleven years, place him in the position of a contributory in respect to the new company, unless he did some act to make him such. Now what act did he do? The matter stands thus:—On the 7th March, 1838, Mr. Meyer had ten shares in the original company, upon each of which he had paid a deposit of 5*l.*, amounting in all to 50*l.*, but he was allowed to take, and did take, one share in the new company, on the terms of the other nine being cancelled, and thus his shares were reduced from ten to one. Now this is either a valid act, or it is not; but I cannot say that it is valid as an admission against Mr. Meyer for the purpose of making him a shareholder in the new company, and yet at the same time hold that it is not valid for the purpose of releasing him from liability as to the nine cancelled shares. However, the company was so altered as, in reality, to become a new and distinct company, and, upon such alteration, Mr. Meyer had a right to say, The company is a new company, and I want back my 50*l.* deposits; but, instead of that, he says, "I will not ask for my 50*l.* back, but I will give you 50*l.* in addition, which you can add to the other 50*l.*, and give me one share fully paid up instead of ten shares upon which only a deposit has been paid." The directors, upon the proposition of the chairman, agree to this, and they enter the agreement on their minutes, and subsequently sign and confirm them; and, besides, the remaining nine shares are cancelled in the company's books for registration of shares, though the books treat the shares as shares in both companies. Now I do not think that is the right view of the case; but it is to be considered as ten shares in the old company reduced to one in the new company. The Master, therefore, is wrong, and Mr. Meyer's name must be struck off the list of contributories as to the nine shares, for he has done no act to admit himself to be a shareholder for more than one share. I decide the case entirely on the ground of no act being done by Mr. Meyer to make himself a shareholder except as to the one share, and not upon the point of the cancellation of the shares, the only point taken before the Master. There will, therefore, be no costs of this petition.

V. C. KINDERSLEY'S COURT.

Reported by W. H. BENNET, Esq. of Lincoln's-inn, Barrister-at-law.

Dec. 13, 14, 16, *and Jan.* 14.

MURRAY *v.* BOGUE.

Copyright—Piracy—Copyright Registration Act, 5 & 6 Vict. c. 45*—Injunction.*

The first edition of a book published before the Copyright Act (July, 1842*) did not require registration at Stationers' Hall under the* 24*th section, and, consequently, Held, that such edition is protected from piracy; and the author may institute proceedings at law or in equity in respect of the infringement of the copyright of such edition.*

But as to the editions published after the passing of the above Act, if such editions are not duly registered, so much of new matter as is contained in them is not protected from piracy.

Where there are errors in both publications, the presumption is, that the author of the last publication has pirated the first author's work; but where the same errors are found in works common to both, and upon evidence that the second author had used such works, the mere insertion of like errors in both publications would not be proof of piracy.

An author may make a fair use of a prior publication, as to the scope and tenor of a work; and, therefore, where upon the evidence it appears that no unfair use of the prior publication has been made, an injunction to restrain the publication of the second book will be refused.

This was an application to restrain the defendant, a bookseller in London, from publishing a work called "Bogue's Guide for Travellers," on the ground of such work being pirated from the plaintiff's work, so well known as the "Handbook for Switzerland," &c.

The arguments occupied several days in the December sittings of the court.

It appeared by the bill filed that about Sept. 1838, the plaintiff, Mr. Murray, composed his "Handbook, for travellers in Switzerland and the Alps of Savoy and Piedmont," principally from his own personal observation and experience, obtained in the course of extensive and carefully-performed journeys through the countries named. By the accounts of other travellers and authors, and comparing them with his own observation, he was enabled to add much useful information. He also added a few communications made by personal friends, which they furnished him with for his work. Mr. Murray stated that this particular handbook had gone through five editions; the second having been published in July 1842; the third in June 1846; the fourth in Sept. 1851; and the fifth in Sept. of the present year. It was stated that the work on Switzerland formed one of a series of handbooks or travellers' guides, which were printed in a uniform manner, bound in red cloth with gilt lettering on the outsides, and that these guides were generally known by foreigners as the "Red Book." The plaintiff stated that the defendant, Mr. David Bogue, of 86, Fleet-street, some time ago announced a series of guide-books, under the title of "Bogue's Guides for Travellers," of which he had published two parts or volumes, the first of which was entitled "Belgium and the Rhine," and was published in July last; the second, being entitled "Switzerland," was published in August last, but afterwards was entitled "Switzerland and Savoy." These volumes were also bound, gilt, and lettered in a manner similar to those of Mr. Murray's handbooks. The bill alleged that parts of the defendant's work, called "Switzerland and Savoy," had been pirated and copied from Mr. Murray's work on the same subject; that in many respects an unfair use had been made of his Swiss handbook; the design and plan of it had been followed to a very considerable extent; and it stated that the extent and nature of the alleged piracy of

his copyright would appear from the inspection and comparison of the respective works. The plaintiff, in particular, referred to various instances of the piratical use of his work by Mr. Bogue, alleging that errors contained in the editions of Murray's handbook previous to the fifth edition, had accidentally crept into the defendant's work; that 32 routes in the whole had been taken from Mr. Murray's work and used in that of Mr. Bogue. Amongst numerous instances were the following, which were stated in the bill:—At page xii. of the introductory information contained in the handbook there was the following passage:—"1 Swiss franc, containing 10 batz, or 100 rappen, equal to 1 French franc (1 franc 48 cents,) equal to (nearly) 1*s.* 2*d.* English;" and in such passage the word "cent" occurred by mistake for the word *centimes*, there being no French coin termed a "cent." It was stated that this mistake in the use of the word "cent" had been copied into the defendant's work, at p. 16, as follows:—"It must be impressed on the memory that the Swiss franc has a value equal to 1 franc 48 cents, or, more practically, one franc and a half French currency." Another instance specified was this:—At p. 15 of Mr. Murray's handbook the word "Ange" occurred by mistake as the name of an inn at Frick, whereas there had not lately been such an inn there. The above mistake in the use of the word "Ange" had been copied into the defendant's work, in a passage at p. 324, thus: "Frick (inns, Adler and Ange)." It was further stated that in the early editions of Mr. Murray's handbook, the town of "Fluelen" was inaccurately spelt as "Fluellen," and this mistake was alleged to have been copied several times into the defendant's work, called "Switzerland and Savoy." In one instance, it was observed, at page 75, not copied and taken from the handbook, the word was spelt "Flueln." In the Swiss and German books the name of the town was spelt "Flüelen." Another passage referred to was the following:—At page 108 of the plaintiff's handbook, the bridge called the "Devil's Bridge" was described as being of two arches, although, in fact, the bridge consisted only of one. At page 76 of the defendant's book, this error was alleged to have been copied as follows:—"The old bridge was only one arch thrown across the gorge, but just broad enough to admit of two persons passing each other in safety, with scarcely any protection at the sides, and at a height of about 100 feet above the torrent. It was a dizzy thing to pass it, and to get upon it the passenger must coast the gulf on zigzag terraces. The new bridge is of two arches, with safe and strong parapets, and of ample width for carriages." Again, it was alleged by the plaintiff that at page 116 of the handbook the inn at Kandersteg was spoken of as the "Cheval Blanc," although the real sign of such inn was the "Kain Zum Ritter." Mr. Murray stated that he had been led into the mistake respecting the sign by the circumstance of the sign being, in fact, a knight upon a white horse. He had corrected the error in the last edition of his handbook, but the mistake as to the inn at Kandersteg occurred at page 284 of the defendant's work.

Bacon and *Renshaw*, in support of the motion for the injunction, contended that it had always been considered as decisive evidence of piracy when a defendant had copied the errors of the work which it was sought to protect. In one part of Mr. Murray's work, Interlacken was spoken of as an "English colony." The defendant's work referred to the same place by the terms "Anglicised neighbour." Murray spoke of "Roman" antiquities; Mr. Bogue spoke of "Romish;" and other instances were pointed out. They cited *Lewis* v. *Fullarton*, 2 Beav. 6; *Mawman* v. *Tegg*, 2 Russ. 385; *Dickens* v. *Lee*, 8 Jur. 183 (relating to Mr. Charles Dickens's Christmas Tale); *Bramwell* v. *Halcombe*, 3 Myl. & Cr. 708; *Gray* v. *Russell*, 1 Story's Rep. 111 (the case of a Latin Grammar); *Emerson* v. *Davis*, 3 Story's Rep. 711 (relating to a Treatise on Arithmetic).

Craig and *Riley*, for the defendant, opposed the motion, contending—1st, that the plaintiff had not registered his publication according to the Copyright Acts, by which it could be protected; and, 2ndly, that the defendant had not made an unfair use of the plaintiff's work, although admitting that the general object and scope were the same. They said it would appear by the evidence that the defendant, Mr. Bogue, having had repeated demands from his customers for guide-books, had employed Mr. F. K. Hunt to prepare the work in question, he having been to Switzerland twice, and having kept notes of his travels. Mr. Hunt had been assisted by a literary gentleman named Walker; and they had been expressly enjoined by the defendant to avoid interfering in any way with Mr. Murray's work. The defendant and these gentlemen had availed themselves of various books of travels and of their own manuscripts. It was positively denied that any portion of the handbook had been extracted or pirated. They had availed themselves of an American work by Dr. Cheever. They also objected that under the 24th section of the Copyright Act, 5 & 6 Vict. c. 45, it was the duty of a publisher, on publishing a new edition of a work already registered under that Act, to register it, to enable the proprietor to avail himself

of his copyright by a suit in equity. The first edition was published by Mr. Murray, sen., now deceased. It was the duty of his representatives to register the subsequent editions; certainly to register the third edition, which was referred to during the argument to prove the alleged piracy. If the subsequent edition contained no alteration then the statute did not require a fresh registration. By the 6th section of the above statute copies were required to be sent to the British Museum of any republication with additions or alterations. The book in respect of which protection was sought never had been registered at Stationers' Hall, and the plaintiff therefore had no *locus standi*. They proceeded to criticise and comment upon Mr. Murray's affidavit with much particularity. As to the charge of piracy, the plaintiff had confused the evidence of piracy, founded upon copying slight mistakes, with piracy itself. The defendant had a right to make a fair use of Mr. Murray's handbook, provided he did not do so to an extent likely to injure his work. The question, as was said by Lord Cottenham and Lord Eldon, in *Bramwell* v. *Halcombe*, and *Wilkins* v. *Aikin*, was, whether the defendant had fairly employed his intellect in producing an original work, and not whether he happened to use phrases which, in many instances, were similar to those of the plaintiff. The passages to which Mr. Murray's counsel had referred were mere shreds and patches, immaterial to the general importance and leading merit of the work. In *Cary* v. *Longman*, 1 East, relating to a road-book, it appeared both parties had used Paterson's handbook, and Lord Kenyon said there could be no copyright in those passages which were taken from other works. A great portion of Mr. Murray's work was compiled from authorities common to all the world. In *Sayer* v. *Moore*, in the same volume, the copyright was claimed in sea charts. Lord Mansfield said the similitude of the two works must be such as to show that the one was a transcript, or copy, or a servile imitator of the other. So in *Carey* v. *Kearsley*, 4 Esp. 168, as to a road-book; *Matthewson* v. *Stockdale*, 12 Ves. 270, the case of copyright in an East Indian Calendar; *Longman* v. *Winchester*, 16 Ves. 269, the case of copyright in a Court Calendar; *Barfield* v. *Nicholson*, 2 Sim. & S. 1; and 4 Russ. 355; *Sweet* v. *Maugham*, 12 Sim. being copyright in law reports; *Sweet* v. *Cator*, 11 Sim. 572, being alleged piracy of Sir Edward Sugden's work "Vendors and Purchasers;" and *Spottiswoode* v. *Clarke*, 2 Phil. 157; all these cases recognised the same principle, that the case to be established must be one of *mala fides*.

Bacon, in reply.

On Jan. 14 the Vice-Chancellor pronounced the following

JUDGMENT.

The VICE-CHANCELLOR, after stating the general character of the application, said,—Now the defendant Bogue insisted in the first place that, even supposing his work was borrowed from that of the plaintiff, he was not entitled to sue in respect of the infringement of his copyright, from the want of a due registration of his own work; and secondly that, if even that were not an objection, in fact the defendant's work was no piracy of Mr. Murray's work. With respect to the first point, namely, the question as regarded the registration, it was necessary he should consider that first. Previously to the Act of the 5 & 6 Vict. c. 45—the recent Act which had made an alteration in the law of copyright—it was not necessary, in order to enable the owner of a copyright to sue another in respect of the infringement of that copyright, that there should have been any registration of the work at Stationers' Hall. Registration was required by the previous Acts, but it had been decided that even where no registration had been effected the proprietor might still protect his copyright either by action or suit. The Act of 5 & 6 Vict. c. 45 made an alteration in the law in that respect; besides altering the duration of the copyright, it altered the law in the following manner:—By the 24th section it was enacted, "That no proprietor of any copyright in any book which should be first published after the passing of that Act, should maintain any action or suit at law or in equity, or any summary proceeding in respect of any infringement of such copyright, unless he should before commencing such action, suit, or proceeding have caused an entry to be made in the books of registry of the Stationers' Company of such book, pursuant to the provisions of the Act; provided always, that the omission to make such entry should not affect the copyright of any book, but only the right to sue or proceed in respect of the infringement as aforesaid." So that, with respect to any book which should be first published after the passing of that Act, although the author had a copyright in the book, he could not sue, either at law or in equity, in respect of the infringement of such copyright, unless the work had been registered at Stationers' Hall, pursuant to the provisions of the statute. But that applied only to books which should be first published after the passing of the Act; it did not in any way affect works first published previously to it. That Act was passed on the 1st of July 1842. The first edition of Mr. Murray's work, "The Handbook for Switzerland," was, according to the affidavits published in September, 1838, of course long before the passing of that Act. The second edition was published in the month of July, 1842, and the Act was passed on the 1st of that month. He thought that he was bound to assume, and must assume, that that second edition was first published after the passing of the Act. If it were otherwise—if the second edition had been published on the 1st of July—it would have been incumbent upon the plaintiff to show that fact. All that he stated in his affidavit was, that it was published in the "month of July, 1842;" but as the Act received the royal assent on the 1st of July, he thought he must assume that the second edition was published after the passing of the Act. The third edition was published in 1846; the fourth in 1851; and the fifth in 1852. Now, what was the effect of this Act of Parliament in respect of the several editions of Mr. Murray's book? That work, except so far as it was registered previously—that is, the first edition, previously to the Act of Parliament—had not been registered at all at Stationers' Hall subsequently to the passing of the Act of Victoria. With regard to the first edition, as he had already said, the law, as it existed previously to the 5 & 6 Vict. did not require any registration in order to enable the plaintiff to sue in respect of an infringement of the copyright of that first edition, nor had that statute, with regard to that edition published antecedently to the passing of the Act, made any alteration, except in this way: it entirely repealed the prior Acts. And, if that were all, it might be a question whether a party had any copyright at all in a book published previously to that Act, because it had been held (although a doubt had at one time been entertained on the point in consequence of contrary decisions) that there was no copyright at common law, it being entirely statutory, or, as it was termed, entirely "the creature of the statute" law. But although the Act of Vict. repealed the prior Acts—the Act of Anne and the two Acts of Geo. 3,—it re-enacted a copyright, and a better copyright; that is, a copyright enduring for a longer period than under the prior Acts. It gave to the author or the proprietor of any book published previously to the Act a copyright for a period of not less than forty-two years. But as to the obligation to register, it left the matter where it was. The obligation to register was confined to a work first published after the passing of the Act. It left any work first published previously to the passing of the Act unaffected with any obligation to register at Stationers' Hall. So that, supposing Mr. Murray had published that first edition of 1838, and that no other editions had afterwards been published at all, and any one had infringed Mr. Murray's copyright in that first edition, he would have had clearly a right, although that book was not registered at all, notwithstanding the Act 5 & 6 Vict. to have sued either at law or in equity respecting the infringement of that copyright. His publication of another edition after or before the passing of that statute did not in any way affect the copyright which he had in the first edition. But, if he published, as he had done, a second edition after the passing of the Act, which second edition was not materially different from the former edition, but containing alterations and additions, *quoad* those alterations and additions it was a new work; that is to say, in order to entitle him to sue at law or in equity in respect of the infringement of his copyright of those portions of the second edition which were new, if they were the only part infringed, he must, before he could sue, have registered that book at Stationers' Hall, in pursuance of the 24th section of the Act. Mr. Murray, in the preface of his second edition, repeated (naturally enough) the preface to his first edition; but he added a note to it, to this effect, which appeared not only in that second edition, but in all subsequent editions—"The present edition has been very carefully revised and corrected, as far as possible, down to the present time; some new routes have been added, and others have been rewritten." Now if this had occurred, that Mr. Murray, having in that second edition, published in 1842, and in the subsequent editions of 1846 and so on—if he had, as he had there, added new routes or new matter which altered the former work, so as to introduce new matter, and to make it in that respect a different work, although substantially the same—if Mr. Murray wished to protect the portion thus introduced for the first time after the passing of the Act, he was bound to register the work at Stationers' Hall before he could sue; and not having done that, if the defendant or any one else simply pirated that, or simply took *verbatim et literatim* every portion of that which was new for the first time in the second or any other edition after the first, the defendant might with perfect impunity, and Mr. Murray would have no redress until he had registered his new work at Stationers' Hall, after which he might sue either at law or in equity. A case might be conceived in which the alterations made in a second or subsequent edition might be extremely trifling, even to the extent of a few words by way of correction; but a case might also be conceived in which a subsequent edition might contain four times the matter contained in the prior edition. A familiar instance of this occurred in law books, where the first edition might be a very slight treatise, but afterwards might swell in subsequent editions into one of great bulk. But it signified nothing, in his Honour's judgment, what was the extent of the alterations or additions so far as the work was thus made new, for the new portion contained in the work could not be protected by statute unless the party claiming copyright had registered it at Stationers' Hall. How did this operate as regarded the old part of the work? It left the copyright in that just where it was. Therefore, if the defendant or any other party took that which, being contained in the first edition of Mr. Murray's book, was also contained in the second or any subsequent edition, in that respect Mr. Murray might protect his copyright in that matter, because it was a book published prior to the passing of that Act, and prior to that period no registration was requisite to give the party a right to sue. This brought his Honour to another point—namely, that Mr. Murray could have no relief at all, and that the defendant might copy Mr. Murray's book *ad libitum*, from want of registration; but to this extent it had the effect, which was not an inconsiderable one, that he must discard all reference to Mr. Murray's book, except the first edition, because, as the second and subsequent editions were published after the passing of the Act of the 5 & 6 Vict., if the defendant had simply transcribed all that was new in the subsequent editions, but nothing that was contained in the first, clearly, according to the terms of the Act of Parliament, Mr. Murray could have no redress. Therefore, although he had been referred throughout to the edition of 1846, he must discard it, as he must also that of 1842, which he must take to have been published after the passing of the Act of Parliament, and he must confine himself entirely to the edition of 1838, which was the only edition published prior to the passing of the Act of 5 & 6 Vict. Still the edition of 1838, the first edition, did contain a vast bulk of what was in the subsequent editions. The question if much or little was not the point as to the 24th section of the Act of Victoria. Whatever was in the first edition Mr. Murray had a right to protect, whether it was contained in the subsequent editions or not; but whatever was new in the subsequent editions he had no right to protect. This brought him to consider how far the defendant's book was a piracy of anything contained in the first edition of Mr. Murray's book, published in 1838. Beyond all question, he was quite satisfied in his own mind that to some extent the defendant had made use of Mr. Murray's book. A great many instances were adduced in argument by counsel—some were stated on the bill, some upon affidavit, and some were merely suggested by counsel at the bar, for the purpose of showing that the defendant or whoever was the compiler of his book, had copied errors. That was the ordinary and familiar mode of trying the fact whether a defendant had used a plaintiff's book. But his Honour thought that the argument arising from the fact of copying errors had been pressed a little beyond what it would bear. The argument was used to show that the defendant's book had the same errors as that of Mr. Murray, and the use intended to be made of it was this, that when the defendant said he had obtained all his information, not from Mr. Murray's book, but from other sources, common to both, referring to different works, and a contest arose whether the defendant had unfairly used Mr. Murray's books, the fact that the defendant had copied errors would of course be a strong argument to convince him of that fact. He thought that a great many of the instances which he had cited were fully explained or did not apply. There was one instance which his Honour might mention without going into all of them. He did not feel the weight of the argument which was adduced from the peculiar expression used in both books, giving the height of a "mountain above the level of the sea." He did not understand that to be a "peculiar" expression, but a common expression, not only in our own but in other European languages. He found it over and over again in the defendant's work, the expressions—a certain mountain so many thousand feet "above the sea;" at other times, "above the level of the sea," or, "above the sea-level." He did not follow the argument which arose out of instances of that sort. Other instances applied to passages contained in the subsequent editions of Mr. Murray's work, but not in the first. But there were other passages which related to very trivial matters—the more trivial, generally speaking, the more conclusive—which left not the smallest doubt whatever that, to some extent, the defendant Bogue had used Mr. Murray's work. He did not suppose that the defendant had used the first edition, nor did he suppose that he had used any edition which was published before 1846; the probability was that he had used the latest edition when he published his book in 1852. The latest edition of Mr. Murray's book then, was in 1851. It was not material which he took. He was perfectly satisfied, from various little matters, that to some extent he had used Mr. Murray's book. He would mention one or two very trivial instances which led to that conclusion. There was one, however, the force of which he could not perceive, namely, that Mr. Murray, in his work, speaking of certain antiquities at Basle, used these words:—"From August the site of the *Roman* 'Augusta Rauracorum;'" whilst the defendant used these expressions:—"The

Romish antiquities are chiefly from Augst." His Honour had no doubt that the defendant had taken it from Baedeker's German work. But there was a very slight instance which impressed his Honour's mind a great deal more than many which had been pressed at the bar. In the description of Basle, the defendant, in his book, spoke of the university library as "contained in a back-lying building, called 'Zur Mucke,' in a corner of the square in which stands the minster." The whole of the description of Basle in the defendant's book was transcribed from Baedeker, or, he should rather say, an abridged translation. No doubt it was generally taken from Baedeker's book; but Baedeker, when he spoke of the university library, spoke of it as a back-lying building; and although he mentioned it as a building in a recess, he did not mention it as being in the corner of a square, but Mr. Murray's book did say that it was in the corner of a square. He said, "The minster is situated in a square of considerable size, in one corner of which, in a recess, stands a building called 'Zur Mucke.'" He could not, therefore, help concluding that in this instance, although it might be very fairly, the idea of its being in the corner of a square had been taken from Mr. Murray's book. So, in speaking of the pictures at the picture-gallery, amongst others mention was made of a painting by Holbein, described in the defendant's work as a "School, painted in the fourteenth year of the artist's age, as a schoolmaster's sign-board, and used for several years at Basle." The whole of this is an abridged translation from Baedeker, who did not say that it had been so used at Basle, or that the schoolmaster used it as a sign-board at Basle; but Mr. Murray said: "Two representations of a school, painted by Holbein at the age of fourteen, and hung up as a sign over a schoolmaster's door in the town of Basle." He had no doubt that this was taken from Mr. Murray's book. It was but a trifling instance. He might mention another instance in the same description of Basle: the defendant's book mentioned "Some droll wood carvings, some of which represent the hares rising in a revolutionary manner against the sportsmen and dogs. These works are by Giger, and were executed in 1608." This was translated from Baedeker, who did not mention Giger; but Mr. Murray did, using the words "The Stadt-Rath-Sall is ornamented on the walls and roof with humorous reliefs by Mat. Giger (1609)." His Honour mentioned these as indications which satisfied him that to some extent (although it might be to a lawful extent, which was another question) use had been made by the defendant of Mr. Murray's book. This really was all that was to be deduced from any number of blunders which had been copied, or any number of instances of this or any other kind. Upon the whole he had found that in a great many passages—by no means in the whole of the book, or in any vast proportion, but in a great number of places, as far as the whole description of the town of Bade went, which occupied many pages—he found that the defendant's book was a translation (generally an abridged translation) from Baedeker's German work. This had made it necessary to examine that work, and to compare it with those published by the plaintiff and defendant, and had prevented him from giving judgment in the case before the holidays. However, this view might be taken of the case—he was putting an extreme one—even if Baedeker's work had been a translation into German of Mr. Murray's book, and even if the defendant, Mr. Bogue, had not known that Baedeker's work was a translation, he would never have allowed the plaintiff's work to be pirated in that way. In short, he had come to the conclusion that it was necessary to ascertain how far Baedeker's book itself, if it had been published as an English book in England, would have been a piracy of Mr. Murray's book which the Court would have interfered to prevent. He had gone through Baedeker's work sufficiently to test the general accuracy of the conclusion at which he had arrived as to the facts of the case. He found that Baedeker, in his preface, avowed the advantage he had derived from Mr. Murray's book: he spoke of it as being a book from which he had derived considerable benefit, and he expressed himself in regard to it in this way:—"The favourable reception which has fallen to the lot of the former attempts of the author has encouraged him to work this 'Guide of Switzerland,' which now appears very much improved from the former edition, and of this also, Mr. Murray's celebrated 'Travellers' Handbook' forms the groundwork; and it was only the frame in which this exclusively peculiar German work was put together." His Honour, after minutely comparing Baedeker's works with that of Mr. Murray, said the conclusion of fact at which he had arrived, was that Baedeker's was a book which had taken Mr. Murray's as its ground-work, but that it was substantially an original work. As to the comparison between Baedeker's work and the defendant's he found that in many parts it was literally a transcript, or an abridged transcript of the former work. Baedeker's book having been published in 1848, and the defendant's four years afterwards, it was to be expected that the defendant should use it, as he had done, not only very freely, but often as a simple servile copying. In other parts of the defendant's work, especially those which described scenery, he had freely taken extracts out of Dr. Cheever's work, the author of which was an American, who had travelled in Switzerland, and who had given very interesting and florid descriptions of the scenery in that country. Dr. Cheever's book no doubt was compiled by a person who had Mr. Murray's book in his hand, and Dr. Cheever, like every other rational man who travelled in Switzerland, would take Mr. Murray's book with him. His Honour did not see how it was possible for any human being who happened to have, as he naturally would have, and as he ought to have, Mr. Murray's "Handbook of Switzerland" with him when he was writing letters to his friends, or the journal of a tour which he afterwards intended to publish,—how he could avoid most fairly having passages which were in effect, if not servilely transcribed from, at least taken from, the ideas and particulars which were to be obtained from Mr. Murray's "Handbook." Nobody could pretend that Dr. Cheever's book was anything approaching to a piracy of Mr. Murray's. He had very great difficulty in arriving at the conclusion in his own mind whether, taking the defendant's own book to have been written and compiled with a certain use of Mr. Murray's book itself, and taking his book also to have been clearly compiled with a free and unlimited use of Mr. Baedeker's book and Dr. Cheever's book, although he did find instances in which there were copies from "Ebel" and the "Manuel des Voyageurs"— taking his book to have been composed in that way, and taking it to be a book which he ought to look at with great jealousy, by reason of its not professing to be the work of a person going to the spot and writing it from sources accessible to himself, but compiled from the labours of others — his Honour confessed he had great difficulty in coming to a conclusion in his own mind whether the use which had been made, and the benefit which had been derived by the defendant from Mr. Murray's book, directly or indirectly, was to such an extent as to amount to what Lord Cottenham called the "extraction of the vital parts of the book;" that is, whether it amounted to what, in other language, was described as a fair or unfair use of the book. The difficulty was obvious at first sight; for any two books which professed to be guides for travellers in Switzerland must, of necessity, have a great deal that was the same. When, for instance, the description of Basle was taken, which occurred in both the books, and which was almost an entire translation or transcript from Baedeker, could any one doubt that nine-tenths, and probably the remaining tenth also of the objects of curiosity in the place, would be mentioned by all? In some instances, Baedeker mentioned them in the same order in which Mr. Murray did; in others he mentioned them in a different order; but in the particular case of Basle the defendant followed Baedeker in the description. There was one thing, for example, which Mr. Murray did not mention in the subsequent editions of his work, for it had been done away with—his Honour meant the figure which was thus described in the defendant's work:—"A curious memorial of the local feuds of which one continually hears in the neighbourhood of the borders, existed until lately at Basle. This was the 'Lalenkönig,' often mentioned in the 'Folks-books' of the middle ages. A tower stood on the left bank of the Rhine, near the bridge, having a clock, from above which a wonderfully-carved human head of colossal size projected; a long tongue was thrust out of the mouth, which, being connected with the machinery of the clock, wagged derisively with every beat of the pendulum in the face of the people of Little Basle, on the opposite side of the river." He thought that with regard to the general scheme of the routes the defendant's book was altogether different from Mr. Murray's or Baedeker's. The plan of the defendant's book was much more limited than either. The conclusion to which his Honour had arrived upon the whole was, that he could not say that the defendant's book was an unfair use of Mr. Murray's work. He confessed that as he had gone through the works he had sometimes come to parts where he had a strong leaning one way, and then he had immediately afterwards come to other parts which gave him a strong leaning the other way. But the result was, that he was obliged to come to the conclusion—he would not say that he was absolutely and entirely satisfied that the use made of Mr. Murray's work might not be looked at by a judgment far more experienced and able than his own quite in a different light; but viewing it as he did, he could not say that this was a case for him to exercise the jurisdiction of the court in restraining the publication of the defendant's work. Of course he could not grant the injunction unless he was satisfied, which he was not, that an unfair use had been made of the plaintiff's work. He thought he might say this, although it had nothing to do with the grounds of his judgment, that he could not understand why Mr. Murray should be apprehensive of any mischief likely to arise from the publication of Mr. Bogue's book. He must say, without intending to depreciate Mr. Bogue's book at all, that it did appear to him that Mr. Murray's was so far superior that no person going to travel in Switzerland would, even with the greater expense of Mr. Murray's book, hesitate about choosing it; and the more so, as the defendant's book (though very able, very clever, and very useful, if there were none better), partly from mistranslations of Germans, and from other causes, had a number of errors, and sometimes of a practical kind. He mentioned this, because it was some satisfaction to him to think that, being obliged as he was to refuse this injunction, Mr. Murray's book, he believed, would take no hurt whatever from the publication of Mr. Bogue's work. He could only say that he did not know any book more deserving of protection than that of Mr. Murray. A more generally accurate and useful book it was difficult to meet with. All, no doubt, had derived great advantage from his work. However, for the reasons he had mentioned, being obliged, having regard to the statute, to confine himself to the first edition, and Mr. Murray not being able to protect anything new in the subsequent editions without registering them under the Act, and following out first a comparison of the defendant's book with the plaintiff's, and then of the defendant's with Baedeker's, and the plaintiff's with Baedeker's, and the same with Dr. Cheever's, he had been obliged to come to the conclusion that he ought not to grant the injunction.

The motion refused; the costs to be costs in the cause.

Reported by P. M. Leonard, Esq., Barrister-at-Law.

Friday, Jan. 14.

PENNY *v.* COOKE.

Production of documents.

Motion to produce documents, not in absolute possession of defendants, refused with costs.

In this case the suit was instituted by a party whose property was insured in the Westminster Fire Office, and who claimed against that office the full amount of the sum insured in respect of an alleged loss by fire. The only question in the cause was what evidence of loss should be given—the policy providing certain evidence which the plaintiff declined to give.

The defendants were three out of a numerous body of the directors who were at the time of the filing of the bill the treasurers of the office, and by the bill required to answer the usual interrogatory respecting documents in their possession relating to the matters in question in the cause. By their original answer they stated that there were at the office, but not otherwise in their possession, custody, or power, the deed of settlement of the company, and certain other documents relating to the matters in question in the cause; and in a further answer they set forth a list of such documents. In this further answer they stated that they had then ceased to be directors and treasurers of the society.

The plaintiff took out a summons under the new practice in chambers for the usual order for the production of the deed of settlement, and the other documents referred to in the further answer. The Vice-Chancellor directed the application to be heard in court. At the hearing an offer was made on behalf of the office (not by the defendants) to produce the deed and other documents at the office at all seasonable hours, and also before the examiner; and at the hearing if required. The plaintiff declined the offer.

Terrell, for the motion.

Walford, contrà.

The following cases were cited: (*Taylor* v. *Russell*, Cr. & Ph. 104; *Murray* v. *Walker*, Cr. & Ph. 114; *Reid* v. *Langlois*, 1 Mac. & G. 114; *Glyn* v. *Caulfield*, 3 Mac. & G. 468.)

The Vice-Chancellor said: This is a motion for the production of documents admitted not to be in the exclusive possession or control of the defendants. If they are in the possession or control of other persons, I cannot order them to be produced. The case before Lord Truro does not touch the point. If documents were in the possession of A., B., and C., the court could not order A. to produce them, because B. and C. might refuse, and leave A. to be sent to prison for not doing that which perhaps might not be in his power to do. The case before Lord Truro (a) was founded on an attempt to establish a partnership which failed, and all the documents had been deposited in the hands of trustees, with full power to deal with the fund. But in that case the defendants sufficiently represented the whole of the partners and shareholders for all the purposes of litigation, which is not the case here. And even if the defendants were still the treasurers of the company, the court would not make an order to take the documents out of their custody in the absence of the other parties.

Motion refused with costs.

Jan. 15 and 18.

BROOKS *v.* LEVEY.

Practice—15 & 16 Vict. c. 86, s. 22.

In support of the prayer of the petition in this case, an application had been made under the provisions of the 15 & 16 Vict. c. 86, s. 22, (b) for a direction to

(a) *Glyn* v. *Caulfield*, 3 Mac. & G. 468.

(b) All pleas, answers, disclaimers, examinations, affidavits, declarations, affirmations and attestations of honour in causes or matters depending in the High Court of Chancery, and also all acknowledgments required for the purpose of enrolling any deed in the said court, shall and may be sworn and

the Clerks of Records and Writs to receive an affidavit which embodied certificates from the books of the Jewish Synagogue at Sydney, sworn to at the colony before Mr. Justice Dickenson and Mr. Justice A'Beckett. The Clerks of Records and Writs refused to receive the affidavit, as it had been sworn before the passing of that Act, without having it verified in the usual way, according to the practice of the court previous to the Act.

Glasse, in support of the application for receiving the evidence, submitted that the Act had a retrospective view, and therefore enabled the evidence to be received.

The VICE-CHANCELLOR then intimated that he thought the Act was retrospective, and allowed the evidence to be received, but on a subsequent day (Tuesday, Jan. 18), stated that he had conferred with the Master of the Rolls and the Vice-Chancellors, and they were of opinion that the Act was not retrospective; but, as he had given leave to receive the affidavits, he would not disturb that decision. The case, however, must not be held to be a precedent.

V. C. TURNER'S COURT.

Reported by J. HENRY COOKE, Esq., Barrister-at-Law.

O'BRIEN *v.* OSBORN.

Creditor—Deed—Covenant not to sue—Release.

A debtor conveyed a life estate and policies of assurance on his life to trustees upon trust, out of the rents of the life estate to keep up the policies, and then to pay the debts rateably from time to time mentioned in the first schedule. The surplus, if any, of the rents, and the policy monies when received, were to be applied in paying the debts in the second schedule, and the surplus on the fund to the debtor. All the debtors were required, if called upon, to make out their claims to the satisfaction of the trustees, and it was provided that, in consideration of the assignment, the debtor might remain in England without molestation, the creditors consenting not to sue him. A bill was filed by the personal representative of a creditor against the trustees to enforce the trusts of the deed, and the present suit was subsequently instituted by the same plaintiff against the debtor for enforcing the trust, and also for the administration accounts against the debtor's estate. After arrangements had been made, both causes came on together, and the first suit was dismissed and the costs arranged, and on the second (the present suit) decree for an account of rent now due to the plaintiff was made, under which the Master reported that nothing was due from the estate to him. On exceptions to the reports on a petition of rehearing:

Held, that the plaintiff's debt was established: that the proviso in the deed permitting the debtor to remain in England without molestation did not operate as a release: that the first suit for enforcing the trusts of the deed was not a forfeiture under the covenant not to sue, and that the covenant not to sue prevented the Statute of Limitations from running against the creditors during the life of the debtor (a)

This was a bill filed in 1849 by the executrix of the late Mr. William Neale, a creditor of the late Sir John Osborn, on behalf of herself and all others the unsatisfied creditors of that gentleman, against Lady Osborn, his widow and executrix. Mrs. O'Brien by her bill stated that in 1823 Sir John was indebted to her late husband in 1853*l.* 8*s.*, and interest on promissory notes, and to other persons in various sums; and that by a deed dated 9th April, 1822, Sir John had conveyed to George Lord Kenyon, and Thomas Metcalfe, all his estates to which he was entitled for life, in Bedfordshire; and that by an indenture dated 1st July, 1823, made between Sir John of the first part, Lord Kenyon and Mr. Metcalfe (as trustees) of the second part, and the creditors whose names appeared in the schedules, of the third part, by which it was recited that meetings of Sir John's creditors had been held, and that it had been resolved that the whole of the clear surplus income of the trust estates vested in the said trustees should be available for the benefit of his said creditors in manner thereinafter expressed, and that in consideration of the provision so to be made for payment of the said debts with interest, the said creditors had granted to the said Sir John Osborn such licence and immunity from suit and molestation as thereinafter was expressed. And after reciting that the amount of the several debts then claimed to be due and owing from the said Sir John Osborn to the several persons or parties thereto of the third part, was set opposite to their respective names in the first column of the said several schedules thereunder written; and so much of the same debts respectively as was due for arrears of interest on such debts respectively, up to the day of the date thereof, was specified in the second column, but which arrears of interest were for all purposes of the trust therein contained to be considered as principal; and the several securities held by the said several creditors respectively for securing their said respective debts were specified in the third column; it was declared that the said trustees should hold all the said lands and hereditaments for all the estate and interest of the said Sir John O., upon trust to pay the expenses, then to pay various sums, and as to the residue to pay and divide it into two shares bearing to each other the same proportion as the aggregate amounts of the debts comprised in the said first and second schedules respectively "when those aggregate amounts should have been adjusted and ascertained as thereinafter mentioned, and should pay and divide the share which should be proportionate to the debts comprised in the said first schedule, to and amongst the creditors in the same schedule, in proportion to the amount of their respective debts set after their respective names in the same schedule, after the same shall have been so adjusted or ascertained as aforesaid;" and with the share proportionate to the amount of the second schedule, or so much as was necessary, should effect and keep on foot the policies therein mentioned on the life of Sir John; and so much as was not necessary for that purpose or for paying the interest on all debts, the same, together with the policy moneys when received, to be held in trust, after paying all costs and expenses, to divide the same among the creditors named in the said second schedule, rateably to the amount of their respective debts set opposite to their respective names, after the same should be so ascertained and adjusted as aforesaid. The surplus, if any, of the estates was to be for Sir John, his executors, administrators, and assigns, for his own use and benefit. It was then provided that no creditor should be entitled to any benefit under the trusts thereof until he should, if thereunto required by the trustees, prove the amount of his debt by affidavit or otherwise to the reasonable satisfaction of the trustees, who were to be at liberty to admit the whole or any part of the debt on such evidence as they should think fit. And then followed this clause: "And this indenture further witnesseth, that in consideration of the provision hereby made for the payment of the said debts of the said Sir John Osborn, with interest as aforesaid, and the covenants and agreements on his part contained in the said recited indenture of 9th April 1822, the said several persons parties hereto (other than Sir John) do, and every of them doth hereby give and grant to the said Sir John Osborn, that in case he shall duly observe and perform the several covenants and agreements on his part contained in the last-mentioned indenture, and in all respects duly conform to the true intent and meaning thereof and of these presents, it shall be lawful for the said Sir John Osborn to live and reside and to attend to follow and negotiate his affairs and business in any place and in any manner which he shall think proper, without any let, suit, trouble, arrest, attachment, or other molestation or impediment whatever to be done or offered, or attempted or procured to be done, to the said Sir John Osborn in his person, or in his goods, chattels, and effects by the said several persons parties hereto or any of them, or their partners, executors, administrators, or assigns, &c. And also that in case any of the said several persons parties hereto, or his partner, executors, administrators, or assigns, &c. shall sue, arrest, &c. the said Sir John Osborn, contrary to the true intent and meaning of the licence hereinbefore contained, then his, her, or their debt or debts shall be considered as discharged, and the said Sir John Osborn shall be wholly released, &c. and these presents shall be pleaded in bar of any suit to recover such debt, &c. and such person or persons shall be excluded from all benefit and advantage under these presents." The creditors, after the death of Mr. Neale, which occurred in 1836, made an endeavour to effect some arrangment, but Mrs. O'Brien, who was Mr. Neale's executrix, refused to accede to it; and on the 1st of June, 1850, a deed of arrangement was executed between all the parties to the deed of 1823 (excepting, of course, Mr. Neale's executrix) and Lady Osborn, who was the executrix of Sir John, who had died, which, after reciting that the parts of the trust moneys therein mentioned had been duly distributed among the parties of the first part (the creditors), and that three sums of 4160*l.* 8*s.* 6*d.* Three per Cents., 6986*l.* 6*s.* 9*d.* like stock, and 101*l.* 15*s.* 9*d.* cash, were standing in the names of the trustees, and were the only funds which had not been so distributed. It was argued that parties would be bound by any arrangement which the majority of the trustees and creditors might be able to effect. Mrs. O'Brien, in 1847, filed a bill against Lord Kenyon and the other trustees of the deed of 1823, to enforce its trusts, and then she filed the present bill for carrying the same trusts into execution, and for the administration of Sir John Osborn's estate, and to this suit his executrix was a party. Negotiations were entered into among all parties, which resulted in the two causes being brought on together for hearing in July 1851, when an order was pronounced, by consent of Mrs. O'Brien, dismissing the suit with costs against some of the defendants, and making provision for payment of the whole of the costs of that suit; and in the present suit an order was made at the same time for an account of what was due to the plaintiff for her said debt, and for the usual accounts in an administration suit. The Master, upon the reference thus directed, came to the conclusion that nothing was due to the plaintiff as executrix of her husband from the estate of Sir John Osborn. To this report the plaintiff excepted. Before, however, this report was made, a deed was executed, dated 8th Aug. 1851, and which was between Mrs. O'Brien, Lady Osborn, and Lord Kenyon and Mr. Metcalfe, which, after reciting the deed of June 1, 1850, and all the proceedings which had taken place since that time, witnessed that the following arrangement had been determined on: First, that out of the said trust funds there should be paid to the said plaintiff Emma Eliza O'Brien 1000*l.* Five per cent. Consols. and 45*l.* cash, and to the said Earl of Westmoreland the sum of 404*l.* 18*s.* 4*d.* Consols, and 18*l.* 4*s.* 1*d.* cash, it being thereby admitted that the said Emma Eliza O'Brien and the said Earl of Westmoreland would thereby severally receive a dividend on the amounts due to them respectively proportionate to the dividend theretofore received under the said indenture of the 1st day of June 1850, by the said parties thereto respectively. And then after provision for certain costs it was declared that the said trustees, after making the transfers and payments aforesaid, should divide the residue of the said trust funds among the several persons parties of the first part to the said indentures of the 1st day of June 1850, and the said Emma Eliza O'Brien and the said Earl of Westmoreland, rateably and in proportion to the respective debts appearing by the second schedule of the said deed of the 1st day of July 1823 to be owing to them, and that all and every the parties receiving the amount so to be apportioned to them respectively should release the said George Lord Kenyon and Thomas Metcalfe from the trusts of the said indentures of the 1st day of July 1823, and of the indenture there recited, and of the first indenture of the 1st day of June 1850, and from all claims and demands under or in respect thereof or of either of them.

The cause was set down upon exceptions taken by the plaintiff to the Master's report, and upon a petition of rehearing which by direction of the court had been presented.

Lewin, *Hare*, and *Hannan* for the several parties.

The arguments of counsel were fully adverted to in the judgment, as were letters of Sir John Osborn referring to the amount of the plaintiff's claim, and which are not set forth in the foregoing statement. The following cases and authorities were cited in support of the exceptions:—Year Book, 27 Hen. 8, 16, cited in *Cardell* v. *Edwards*, 1 Show. 46; *Ivimy* v. *Veitch*, 3 M. & W. 90; *Hemp* v. *Garland*, 4 Q. B. 519; *Gibbons* v. *Venillon*, 19 L. J. 74; and for the defendants, *Barnard* v. *Young*, 17 Ves. 46; *Hart* v. *Prendergast*, 14 M. & W. 741; *Pott* v. *Clegg*, 16 M. & W. 321; *Ford* v. *Beech*, 11 Q. B. 852; S. C. 7 Hare, 208; *Tanner* v. *Smart*, 6 B. & C. 608; and *Foster* v. ———, 20 L. J, 385.

Monday, Aug. 2.—The VICE CHANCELLOR.—The first argument on the part of the petitioner, Lady Osborn, is, that there is no proof of the debts upon which to ground any decree at all. Now this is a view in which I cannot agree. Sir John, by the indenture of 1822, conveys certain property to Lord Kenyon and Mr. Metcalfe, with powers to them to make arrangements with his creditors enumerated in the schedule. Among these appears Mr. Neale's name, for the sum of 600*l.* Sir John, it must be remembered, was a party to this deed. Under the powers thus given to them, Lord Kenyon and Mr. Metcalfe came to an arrangement with the creditors, which is embodied in the indenture of the 1st July, 1823. By that deed trusts are declared of Sir John's life interests, for the payment of debts; viz. the trustees were to receive the rents, and after payment of all their costs to which they might be put, and certain annual charges and payments, the surplus was to be divided among the creditors named in the first and second schedules to that deed. The creditors named in the first schedule were to take payment out of the rents and profits received; and the creditors named in the second schedule were to take payment out of certain policies of insurance thereby directed to be kept on foot; any surplus rents were to be applied in payment of interest of the debts in the second schedule. In this second schedule William Neale's name appears with two sums of 600*l.*, and 753*l.* 8*s.* opposite, for principal money, and 57*l.* 10*s.* and 73*l.* 4*s.* 10*d.* as interest due on those sums respectively; it being stated that the 600*l.* is due on a promissory note, and that the 753*l.* is due for coals supplied to Sir John. The deed is particular in declaring that the sums appearing in the schedule are to be paid when the same shall have been adjusted and ascertained, and in the schedule itself the column in which the sums are entered is headed "amounts claimed." It was contended on these

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taken in Scotland or Ireland, or the Channel Islands, or in any colony, island, plantation, or place under the dominion of her Majesty in foreign parts, before any judge, court, notary public, or person lawfully authorized to administer oaths in such country, colony, island, plantation, or place respectively, or before any of her Majesty's consuls or vice-consuls in any foreign parts out of her Majesty's dominions; and the judges and other officers of the said Court of Chancery shall take judicial notice of the seal or signature as the case may be of any such court, judge, notary public, person, consul or vice-consul attested, appended or subscribed to any such plea, answers, disclaimers, examinations, affidavits, affirmations, attestations of honour, declarations, acknowledgments, or other documents to be used in the said court.

(a) It was argued that the deed was usurious; but that point had been decided in the negative by the Court of Exchequer, in the case of *O'Brien* v. *Lord Kenyon*, 6 Exch. Rep. p. 466.

V. C. TURNER'S COURT.

grounds, that this indenture has the effect barely of stating claims, and that it does not treat any of the amounts named as recognised debts. It is clear, on the recital, that the deed treats these merely as debts which are claimed to be due; and the declaration of trusts directs the rents and profits to be divided proportionally to the aggregate amounts of the sums in the two several schedules which shall be ascertained; and there is a proviso that no creditor shall be admitted to any benefit unless he shall prove his debt to the reasonable satisfaction of the trustees. On the deed alone then I admit it might fairly be argued, that the specification of these sums in the schedule did not amount to an admission of a debt of that amount by Sir John, or any of the other parties to the deed, but only that such an amount was claimed. But twenty-five years afterwards a bill is filed for carrying into execution the trusts of that indenture, and the answer of Sir John to that bill admits that the trustees had ascertained these debts. Now, it is said that the trustees were merely Sir John's agents for administering the trusts of the deed, and not for the purpose of binding him by their admissions or by ascertaining the amount of the debts. I think, however, that that could hardly have been the intention at the time of the execution of the deed; and it is not quite consistent with the clause enabling the trustees to admit any debt as ascertained upon such evidence as they should think fit. Then there is the letter of Sir John in 1828, in which he mentions being indebted to Mr. Neale in upwards of 1000*l.*; the amount is not quite accurate, but it is near enough to render it almost a certainty that he referred to these scheduled debts. Then Lady Osborn was a party to and executed the indenture of the 8th Aug. 1851, in which not only the existence of the debt is admitted, but its amount is taken at the sum appearing in the second schedule of the indenture, 1st July 1828, and provision is made for its immediate payment. It was then argued that the deed of 1st July 1828 operated as a release of this debt, and this argument was founded on the wording of the operative part of that deed, by which it is witnessed that in consideration of the provision thereby made for the payment of the said debts, with interest, and the covenants and agreements on the part of Sir John Osborn therein contained, the said persons parties thereto of the third part (viz. the creditors) gave and granted to Sir John that in case he should perform, &c. the covenants, &c. to be by him observed and performed, then he, Sir John, might live and reside, and attend to his affairs, in any place he might think proper, without suit, molestation, &c. to be offered, &c. to him in his person or in his goods, chattels, and effects, by any of the other persons parties thereto, or the partner, executor, administrator, or assignee of any of them. And it was argued that as Sir John had not done anything by which the plaintiff was prevented from getting the full benefit of that indenture of 1828, that provision operated in effect as a discharge of the debt, Neale having thus agreed, in consideration of the security furnished by the deed, not to take any other steps or proceedings against Sir John or his estate. But the court is bound to put a construction upon the instrument which will not defeat the intention of the parties; and it obviously never was intended that this deed should operate as a release. It is a mere licence by the creditors to enable their debtor to live unmolested in this country, in consideration of the trusts and the whole intention of the deed being carried into effect. The main intent was, that the debts in the schedule should in some way or other, at some future day, be paid or satisfied. It is utterly inconsistent with that intention to argue that the deed itself operated as a present discharge and satisfaction. The third point made was as to the question of forfeiture. It was said that this debt was forfeited in 1847, when this creditor (the present plaintiff) filed a bill in this court for the purpose of carrying into execution the trusts of the indenture of the 1st July, 1828, bringing forward two breaches of trusts, viz., the dropping of one of the policies which formed the fund to which this plaintiff had to look for the discharge of his debt; and, secondly, that some of the debtors whose names were originally in the second schedule had been transferred into the first schedule: and it is argued that this proceeding was such a suing or molesting Sir John as to bring the plaintiff within the operation of that ultimate proviso in the deed declaring that in case of any such suing or molestation by any creditor such creditor shall forfeit his claim. Now that clause does not go so far as the clause immediately preceding it, in which the goods also and estate and effects of Sir John are protected against any proceedings. Here it is only Sir John himself who is mentioned: and the purport of it evidently is to protect him personally from molestation. This suit was merely for the purpose of enforcing the deed itself: an object which it is impossible to conceive should work a forfeiture of rights under the deed. It never could have been intended that the deed should create a right and at the same time preclude the parties from protecting themselves on the right so created. The fourth branch of the argument was that addressed to the ground of usury; but that point has been already decided by the Ex. in favour of the legality of the deed. Then it was contended that the amount of the debt was unascertained at the date of the deed; and therefore, if the court gave a fixed and definite meaning to the scheduled debt, and took that *as* sufficient evidence without more, and as binding upon Sir John, it would by such a course give a force and meaning to the deed which it would not of itself possess; and *Walkeyn* v. *Coutts*, 3 Mer. 707, and *Garrard* v. *Lord Lauderdale*, 2 R. & M. 453, were cited to show that a creditor's deed of this description is merely voluntary. The true meaning probably of the deed is that Sir John leaves it to the trustees to arrange the amounts which might turn out to be due, and is therefore bound by what they have done. The deed would be revocable until an arrangement of the amounts was made; after that arrangement it would be irrevocable. Taking the judgment of the Ex. in this sense, I do not think it is objectionable. Besides, I think the deed might well be supported as a purchase by Sir John of a licence to live in England without exposing himself to molestation; and therefore as being made and entered into for valuable consideration. In that view it would be irrevocably valid from the time of its execution. Then it was in the next place urged that the debt was barred by the Statute of Limitations. But I think that bar is removed by the tenor of the whole deed, taken altogether, the licence to Sir John to live in England unmolested precluding this suit during his life. Besides, there are Sir John's own letters clearly referring to this debt in 1847. But then it was said that the debt, assuming it to have subsisted at the time of the decree, had in fact been satisfied since that time. It appears that, the Court of Ex. having determined that the deed was not usurious, the trustees came to an arrangement with all the creditors except the present plaintiff and Lord Westmoreland, by which their debts were to be paid rateably out of the moneys in the hands of the trustees; and thereupon all the creditors were to release the trustees from the trusts of the indentures of 1828 and 1851, and all claims in respect to them or either of them. Therefore, the question of satisfaction arises, since out of the trust funds the plaintiff was to receive the value of 1000*l.* Consols. and 45*l.* cash, and Lord Westmoreland was to receive 404*l.* Consols. and 18*l.* cash, and receive a rateable dividend out of the residue of the trust fund proportioned to their respective debts as appearing in the second schedule of the deed of 1828; and thereupon they were to release the trustees of all the trusts of those two deeds and of all claims, in respect that this arrangement was accepted and entered into by the present plaintiff and by Lord Westmoreland, who both of them signed the deed. Now what position did the parties occupy at the time of entering into it? The present plaintiff stood in this position, that she had released neither the estate nor Sir John. She had therefore a double claim; and the deed of 1851 is silent as to any claims against the estate of Sir John, but only speaks as to Sir John himself personally and the trustees; and therefore I think the deed of 1851 releases one part only of this double claim of the plaintiff, viz. her claim against the person of Sir John and against the trustees, but that it does not operate as a release of the estate.

Nov. 11 *and* 17.

COOK *v.* HALL.

Practice—Equity Jurisdiction Improvement Act—Examination of witnesses de bene esse.

Witnesses de bene esse are to be examined orally, like other witnesses; and it is not a sufficient reason for departing from the mode of examination prescribed by the 30*th*, 31*st*, *and* 32*nd sections of the* 15 *&* 16 *Vict. c.* 86, *that the evidence is not published.*

A motion was made in this cause for the examination of a particular witness *de bene esse* by commission, the witness residing at Cheltenham. The common order for the examination of the witness was obtained on the 20th Oct. 1852; but, the statute 15 & 16 Vict. c. 86 coming into operation before the examination, and the 35th section abolishing commissions for such purposes where witnesses are within the jurisdiction, it became necessary to move for leave to examine, and for the appointment of a commissioner for the purpose.

Pearson now moved accordingly.

Cole for the defendant.—The new Act does not apply to examinations *de bene esse*. The 31st section says witnesses are to be examined "in the presence of the parties, their counsel, solicitors, or agents." Clearly, therefore, a secret examination cannot be permitted; and such is always the case where witnesses *de bene esse* are examined; for unless they are subsequently unable to give their testimony, their evidence so taken is never used. The 35th section merely says "that it shall not be necessary to sue out any commission," not that "no commission shall be issued;" and therefore it is amply within the power of the court to issue a commission in the common and ordinary manner for the examination of the witness, and not in any other way.

The VICE-CHANCELLOR.—I have consulted with other judges of the court, and we are of opinion that the case of the examination of witnesses *de bene esse* is within the Act. The general clause, section 28, of the statute on this subject enacts, that "the mode of examining witnesses in causes" in this court, "and all the practice of the court in relation thereto, so far as such practice shall be inconsistent with the mode hereinafter prescribed of examining witnesses, and the practice in relation thereto, shall, from and after the time appointed for the commencement of this Act, be abolished." The clause afterwards proceeds to give the court a discretion to examine any particular witness, either one way or the other, upon interrogatories under a commission or *viva voce*; but the latter mode of examination is the general method prescribed by the Legislature, and which it is the duty of the court to adopt, unless there are special reasons to the contrary. The circumstance that the depositions taken *de bene esse* are not published, and will continue not to be published, is not a sufficient reason for departing from the general form of examination now to be used. The evidence will be known to the parties, but it will not be published or used.

It was ultimately ordered that an examiner should be appointed by both parties, and if they could not agree on a choice, his Honour said he would himself appoint one at chambers.

Nov. 11 *and Dec.* 15.

GOLDSMID *v.* STONEHEWER. (*a*)

Practice—Equity Jurisdiction Improvement Act—Foreclosure—Representative trustee and cestui que trust.

An estate was mortgaged, and was then again mortgaged. The first mortgagee filed a claim for foreclosure and sale. The second mortgagee (a defendant), was the trustee for parties interested under a marriage settlement. The mortgagor was the tenant for life under the settlement, and the children were infants:

The Court held, that under rule 9 *of the* 42*nd section of the statute* 15 *&* 16 *Vict. c.* 86, *the infant cestuis que trust were sufficiently represented by the trustee (second mortgagee), but that the adult cestuis que trust must be parties. As, however, one of them, namely, the mortgagor, was before the court in that character, it was not necessary to serve him with the amended claim.*

Some of the shares of the children under the settlement had also been settled by assignment to trustees, and it was held that they were not necessary parties.

This was a claim for foreclosure by a first mortgagee against the mortgagor and the second mortgagee. Before the hearing of the claim the second mortgagee filed an affidavit, in which he stated that the second mortgage was held by him as the trustee of a marriage settlement, under which trusts were declared for the husband and wife for their lives, and for the children of the marriage in remainder; and that some of the shares of the children had been again made the subject of other settlements. The case was opened to the court before the Act of the 15 & 16 Vict. c. 86 came into operation; and it then stood over at the request of the plaintiff, that the benefit of the new rules with regard to parties might be had.

Sir *W. P. Wood* and *Goldsmid*, for the plaintiff, submitted that under the above-stated circumstances the case came within the 9th rule of the 42nd section of the before-mentioned statute, by which it is directed that "in all suits concerning real or personal estate which is vested in trustees under a will, settlement, or otherwise, such trustees shall represent the persons beneficially interested under the trust, in the same manner and to the same extent as the executors or administrators in suits concerning personal estate represent the persons beneficially interested in such personal estate; and in such cases it shall not be necessary to make the persons beneficially interested parties to the suit, but the court may, upon consideration of the matter, on the hearing, if it shall so think fit, order such persons, or any of them, to be made parties." The learned counsel urged that the parties beneficially interested, as well under the original as under the subordinate settlements, were sufficiently represented on the record, and that it would be burdensomely expensive to make any of the *cestuis que trust* parties; the case being, if not in letter at least in spirit, within the relief intended by the Legislature to be afforded to the suitors of the court.

The VICE-CHANCELLOR.—The question before me now is whether, in order that a decree for foreclosure may be made, it is sufficient that the trustees of moneys secured by a second mortgage are parties, without the *cestuis que trust* under the settlement being also parties. I have carefully considered the point with the desire of relieving the plaintiff, as far as it could be safely done, from the necessity of bringing the persons beneficially interested before the court. It was suggested, that the court might act on the principle which is applied in the case of executors, and which is now made applicable in proper cases to the trustees of real estate. If the mortgage had been made to the party, or become vested in him in the character of executor, it would be sufficient to make him a defendant without any of the persons beneficially interested, and the decree of the court would bind all the persons who might be so interested; but there is this difference between the case of an executor and that of a trustee, that the executor has the control of the whole estate of his *testator*, whilst the power of the trustee is

(*a*) See next case.

limited to the particular fund which is the subject of the trust, and he has not necessarily the control of any other funds. I think therefore that the court should not, by a decree of foreclosure against the trustee only, without giving the *cestuis que trust* the opportunity of redeeming, foreclose all the parties interested under the settlement. Still it is clear that the infants and the trustees of the settlements which have been made of the shares of the children in remainder, cannot reasonably be expected to be in a position to redeem the estate; and not having the means of redeeming the mortgage, I think it is not necessary that they should be made parties. If the husband and wife and the adult persons interested under the trusts of the original settlement are made parties, the order may be made. It appears, however, that the husband, who is tenant for life under the settlement, is the mortgagor, and is a party therefore before the court in that character. It is said that if it be necessary to serve him with the amended claim, for the purpose of making him a party to the suit as one interested under the settlement, great delay would be occasioned, on account of his now residing in Australia. In that case, as he is already before the court, I am of opinion that the plaintiff may proceed without serving him with the claim a second time. The order will accordingly give him the right to redeem.

Monday, Dec. 20.

HANMAN v. RILEY. (*a*)

Practice—Equity Jurisdiction Improvement Act—Representative trustee and cestui que trust—Foreclosure—Sale.

A claim was filed by a mortgagee of a term against the mortgagor's executors, and the devisees in trust of the mortgaged premises under the will of the mortgagor, and a sale was asked for instead of foreclosure, under section 47 of the 15 & 16 Vict. c. 80; and it was asked that, under rule 9 of section 42 of the same statute, the Court would direct that the cestui que trust need not be further represented; and the plaintiff asked to be admitted a general creditor against the mortgagor's estate for so much of his debt as the mortgaged estate should fail to realise:

Held, first, that the cestuis que trust were sufficiently represented; and secondly, that the decree was directed to take an account of the debt due to the plaintiff on his mortgage, then a general account of personal estate and debts, and if deficient an account of the real estate, and as to incumbrances; and after the report the Court would give the plaintiff the benefit of his security, and such right as he might have against the general estate.

This was a claim filed by the mortgagee of a term against the executors of the mortgagor, and against the devisees in trust of the mortgaged estate under the will of the mortgagor. The defendants were devisees in fee of the mortgaged premises, the trusts of the will being not an immediate sale and conversion of that and the residue, but a trust to pay annual sums to the testator's widow for her use, and for the maintenance of Rebecca Riley, and subject thereto to accumulate the rents and profits of the mortgaged premises, until a sufficient sum could be raised to pay off any mortgage which might subsist thereon, and then to pay the rents and profits for the maintenance of Rebecca Riley until she should attain the age of twenty-one years, and thereafter to be for life for her separate use, and after her death upon trusts for her children who should be then living, and if there should be no child of her then living, upon trust for sale, and a direction to divide the money among several persons in the will named.

Southgate now applied for a sale instead of a foreclosure, under the authority of the 48th section of the statute 15 & 16 Vict. c. 86, by which the court is enabled to direct sale of mortgaged property instead of foreclosure on such terms as it may think fit. He also asked, that the plaintiff having taken all necessary preliminary steps, under the 47th section of the same Act, might be admitted a general creditor against the estate of the testator, the mortgagor, for so much of the mortgage debt as the mortgaged premises should on sale fail to realise. The defendants were the persons who were authorised to sell and to give receipts for the purchase-money, and although there were *cestuis que trusts* under the will who were not before the court, the learned counsel relied on the 9th rule of the 42nd section of the same statute to show that they were not necessary parties. (*b*) In support of the relief beyond the sale the learned counsel cited *King* v. *Smith*, 2 Hare, 239.

Metcalfe, for the defendants, said there was no present power of sale vested in them, but only a prospective one. He submitted that the plaintiff should be content to have a sale of the term of 1000 years, for which his mortgage was granted, and that the defendants in their character of executors could probably profitably deal, but as to interfering with the fee they had by the will no authority.

Southgate, in reply.

THE VICE-CHANCELLOR.—The object of the Act, in enabling trustees of real estate to represent the parties beneficially interested in such property, was to save the expense of bringing before the court all the *cestuis*

(*a*) See last case.

(*b*) See this rule set out in the last case.

que trust, who generally, if necessary parties to the conveyance of the estate, were only so for the purpose of covenanting with the purchaser. The trustees convey to the purchaser the legal estate, and the court deals with the purchase money. In *Goldsmid* v. *Stonehewer*, (*c*) a claim for foreclosure was filed by the first mortgagee against the mortgagor and the second mortgagee, and the latter filed an affidavit shortly before the claim came on to be heard, stating that he was a trustee for a great number of other persons, who, upon the decree of foreclosure, would be entitled to redeem. That was the case of a settlement, and not of a will; and I was of opinion that, as the trustees would be in possession only of the settled funds, and not of funds applicable to the purpose of redemption, it would be proper to require that the tenant for life under the settlement, and the children who had attained twenty-one, should be made parties. This is the case of a will, in which the devisees in trust of the estate are also the executors, and are therefore the persons in whom any funds which may be applicable to the payment of the debts of the testator, and to the redemption of this estate, are vested. I do not think it will be necessary therefore in this case to make the *cestuis que trust* parties. The decree may be made in their absence. I have had occasion to consider the form of the decree in a suit by a mortgagee against the estate of the deceased mortgagor, seeking also to enforce his security as against the mortgaged premises. The right of the mortgagee in that character is foreclosure; and if he comes for that relief and obtains foreclosure he is satisfied: he has taken the estate for his debt. If, on the other hand, he comes against the general estate of the testator, he may possibly be satisfied out of the personal estate, as the primary fund for the payment of the mortgage debt, and may not need the application of the property comprised in his security. A decree, therefore, founded in the first instance on relief directly against the mortgaged premises, by way of foreclosure, and also against the general estate, would be inconsistent. The decree, which it has appeared to me to be right in such cases to take, is an account of what is due to the plaintiff for principal and interest on his mortgage; then to take the usual accounts of the personal estate and of the debts; and if the personal estate should appear to be insufficient for the payment of the debts, then an account of the other real estate of the testator; and ascertain whether there are any and what incumbrances on the real estates other than that of the plaintiff. When the case comes back it will be in a condition which will enable the court to give the plaintiff the benefit of his security, and also such right as he may have against the general estate; and I make that

Order accordingly.

Monday, Nov. 15.

KING v. PHILLIPS.

Vesting of trust and mortgage estates.

A testator devised and bequeathed real and personal estate to A. and B. and the survivor of them, and the heirs, executors, administrators, and assigns of such survivor upon certain trusts, and appointed them and C. executors. A. never acted in the trusts, and did not prove the will; but he survived B. as co-trustee. A. then, by his will, devised and bequeathed all his mortgage and trust estates to D. and E., and appointed them executors, and they assented to act as trustees, and proved the will:

Held, that as he had never disclaimed the trusts of the will of the original testator, the legal estate in that testator's estate had passed to him as surviving trustee, and, as D. and E. had accepted the trusts of A.'s will, such legal estate was vested in them.

This was a creditor's suit instituted by Jane King, the only daughter and executrix of the will of William King, on behalf of herself and all other the creditors of John Phillips, deceased. The alleged debt due to Mr. King was 550*l.*, secured by covenant by John Phillips to mortgage freehold estate in the event of such freeholds falling to him in a particular contingent event. No mortgage was ever made. John Phillips by his will directed his debts to be paid, and devised his freehold hereditaments to Mr. Ward and Mr. Sanford, and the survivor of them to hold the same to them, and the survivor of them and the heirs and assigns of such survivor, upon certain trusts. The testator then, after making certain bequests, gave the residue of his real and personal estate, after payment of his debts, to Mr. Ward and Mr. Sanford, and the survivor of them, and the heirs, executors, administrators and assigns of such survivor, upon certain trusts. He appointed his wife executrix, and Mr. Ward and Mr. Sanford executors of his will. Mr. Phillips died in 1829, and Mr. Ward and Mrs. Phillips alone proved the will. Mr. Sanford never proved the will, nor in any manner acted in the trusts. Mr. Ward died in 1832, and Mr. Sanford died in 1847, having by his will devised all his trust and mortgage estates to Mr. Langton, and Mr. Bicknell, and appointed them executors who proved the will, and acted under the trusts of it. Mr. King died in 1848, leaving the plaintiff, his daughter and only child, whom he had appointed executrix of his will. The 550*l.* and a

(*c*) See last case.

large arrear of interest still remained due from Mr. Phillips' estate. The bill prayed an account of the principal and interest due to the plaintiff, and, if need be, for a sale of the estate agreed to be mortgaged, and an account of the personal estate and its due administration. Mr. Langton and Mr. Bicknell, who were defendants, by their answer, after setting forth the facts as before detailed, as to the non-interference of Mr. Sanford with trusts of Mr. Phillips' will, and submitted whether the trust and mortgage estate even vested in them; and they each disclaimed all right or interest therein.

Smythe, for these defendants, submitted that, under the circumstances, they ought to be dismissed; and relied on the cases cited in 2 Jarman on Wills, 199.

THE VICE-CHANCELLOR.—I consider that these defendants have accepted and acted in the trusts of the testator's (Mr. Sanford) will, and as Mr. Sanford never in his lifetime disclaimed the devises or trusts of the will of Mr. Phillips, the estates by the last-mentioned will vested in him, Mr. Sanford, on his surviving Mr. Ward, his co-trustee, and passed to Mr. Langton and Mr. Bicknell accordingly. The usual decree will be made.

Friday, Nov. 19.

ESPEY v. LAKE.

Principal and surety—Guardian and ward—Undue influence.

A stepfather applied for a loan of 500l. for a party who required that the stepdaughter of the borrower should join in a joint and several promissory note for payment of the money, with large interest. The stepdaughter lived with her mother and stepfather from tender years, and was not twenty-two years of age, and the lender had married the sister of her mother, and was well acquainted with the fact of the whole property being 550l. The lender sued the stepdaughter on the note, and obtained a verdict; but the court granted an injunction to stay execution on account of the relative position of the makers of the note, and of the knowledge of it by the lender.

This was a bill filed for an injunction. The facts alleged on the bill were that the mother (Mrs. Speakman) of the plaintiff (Miss Espey) was the sister of the wife of the defendant Mr. Lake; that the plaintiff lived with her mother and her stepfather, Mr. Speakman, from very tender years, and that she attained the age of twenty-one in 1841; that in 1842 Mr. Speakman borrowed 500*l.* of Mr. Lake, upon an arrangement that he was to pay 10*l.* per cent. interest for five years, such interest to be secured by a promissory note from Speakman for 250*l.*, and the 500*l.* and interest at 5*l.* per cent. to be secured by the joint and several promissory note of Mr. Speakman and Miss Espey, payable to Mr. Lake on demand; that the note was accordingly made and handed to Mr. Lake, and the 500*l.* paid to Mr. Speakman; but it was understood between the parties, that it was not to be called in; that the plaintiff received no consideration for the promissory note; and that she made it solely on the representions of her mother and Mr. Speakman, her stepfather; that she was ignorant of the arrangement as to the payment of the 10*l.* per cent.; that for many years after the making of the note, Mr. Speakman was well able to pay the 500*l.*; and that he had paid the 250*l.* on the other note; that he was now in difficulties and embarrassed in his circumstances; that she was ignorant of the 500*l.* being unpaid, although she was constantly in the habit of meeting and speaking to Mr. Lake; that interest being alleged to be due on the note, Mr. Lake, in March, 1852, sued the plaintiff, and in Aug. following obtained a verdict for 525*l.*; and that the form of action prevented her from pleading fraud. The bill, therefore, prayed a perpetual injunction against Mr. Lake to prevent her from entering up judgment, and for suing out execution thereon, or alternatively, for other relief.

Rolt and *Elderton*, for the plaintiff, now moved for the injunction, and, on the question of undue influence having been exercised by Mr. Speakman over his stepdaughter, cited *Archer* v. *Hudson*, 7 Beav. 561; and *Maitland* v. *Backhouse*, 16 Sim. 58. On the question of the whole transaction not being explained to the plaintiff as surety, they relied upon *Pidcock* v. *Bishop*, 3 B. & C. 605; *Green* v. *Gosden*, 11 L. J. Rep. N. S. 24 C. P.; and *Owen* v. *Homan*, 3 Mac. & G. 378.

Daniel and *C. M. Roupell*, for the defendant, remarked on the delay in coming to a Court of Equity, and not preventing the costs of an action, and insisted that the plaintiff having failed in establishing by her evidence the case of fraud she had charged in the bill, she was not entitled to the equity, if she had any, on any other ground even if substantiated by evidence, as was laid down by Lord Cottenham, in *Wilde* v. *Gibson*, 1 Ho. of Lords Cases. If the court should be disposed, however, to give any aid, it ought to be only on the terms of the money being brought into court. The other arguments are sufficiently set forth and commented on in the judgment.

THE VICE-CHANCELLOR.—This is an application to restrain the defendant from entering up judgment, and to stay execution upon the verdict he has obtained. I take it to be quite clear, that the principles of this court go to this extent, that in the case of securities taken from a person just of age,

V. C. TURNER'S COURT.

living under the influence, and in the house of another person, with a relation subsisting between that other person and the party from whom the security is taken, which constitutes anything like a trust, or anything approaching the relation of guardian and ward, or standing *in loco parentis* to the surety, this court will not allow a security of that description to be enforced against the party from whom it is taken, unless it is perfectly satisfied that that security was given freely and voluntarily, and independently of any influence which might be exercised by the party in whose favour the security was given, or by the party who was the medium or instrument of obtaining the security from the person from whom it was taken. These being the principles of the court let us see how far the circumstances of this case are affected by them. In this case the young lady who is the plaintiff attained the age of twenty-one in the month of December, 1841. She was living in the house of her stepfather, Mr. Speakman, and her mother, Mrs. Speakman. At the end of 1842 her stepfather proposes to borrow from Lake 500*l*. I do not enter into the particular terms proposed. It is said that he proposed to pay 10*l*. per cent. for five years, and 5*l*. per cent. afterwards; but the fact is undoubtedly that the loan was to be a loan by Lake to Speakman, the stepfather of the young lady. Now what next took place? I take it from Lake's own affidavit in reply in this case. Lake says, "I admit that I asked for security, and that he (Speakman) said, he had no security to offer, but that of his stepdaughter, meaning Miss Espey." It is quite clear that Lake knew that the only security he could have was that of the plaintiff, the stepdaughter, who was living in the house with her stepfather at the time. Lake knowing all these circumstances, the result was that the joint and several promissory note, dated the 1st Jan. 1843, was given by Mary Espey, jointly with Speakman, for securing that sum. It is said by Lake that he took no part in it; that he left it entirely to Speakman. I impute no moral fraud to Lake in the course of this transaction. I believe there was no moral fraud on his part; I am glad to be able to say that. He might have been mistaken as to the mode of securing the 10 per cent., or not have been aware of the principles which guide the court as to securities taken from a person in the situation in which Miss Espey was. But what does he say? Why, that he left it wholly to Speakman. That is, he himself allows a party standing in the relation of guardian to this young lady to persuade her to join in this security for the sum of 500*l*. How can that be permitted consistently with the principles of the court? How can a security of that kind be maintained under such circumstances? Then it is left to a person who had influence over his young ward, if I may so express myself, to induce her to join in this security, putting her more directly under this undue influence than if the creditor had applied for the security himself. It is said that this was a matter which had not been put in issue by the bill. Perhaps the bill might have done that more distinctly, but in my opinion the bill sufficiently brings forward such a case, for it says that at the time Lake agreed to lend the 500*l*., it was well known that she had no property, except a sum of 550*l*.; that she was applied to to join Speakman in a promissory note for 500*l*., and she did so on the representation that she would never be called upon to pay the note, and influenced by the representation of her mother and Mr. Speakman; but, as was well known to Lake, without receiving any consideration. In a subsequent part of the bill, it is alleged that during thirteen years previously this lady had continued residing in the house of Speakman and his wife. These facts raise the equities upon which this motion was argued in the opening. But it is said that there are other circumstances alleged in the bill which rest the equity, not on the law of the case, as applied to the circumstances to which I have referred, but on a case of personal fraud; and that no personal fraud being proved, this is brought within the principle laid by Lord Cottenham in *Wilde* v. *Gibson*; but Lord Cottenham, if I recollect rightly, qualified that principle in subsequent cases. I take it to be the law of this court, that it is not because there are superadded allegations of fraud upon circumstances which of themselves would be sufficient to maintain an equity that the original equity is not to be attended to by the court. In that principle, with that explanation, I fully agree with the *dictum* laid down in *Wilde* v. *Gibson*. In this present case there is nothing which would take the case out of *Archer* v. *Hudson* and the subsequent case of *Maitland* v. *Backhouse*, except the time which has elapsed. The question has been whether there have been circumstances in this case before me which would destroy the original equity? I see no circumstance arising in reference to the lapse of time which would destroy that equity. It has been stated that the lady has been participating in the profits of the business since the transaction; a business carried on with this borrowed capital. If there be any facts of this kind, the defendant may allege them and make use of them when proved at the hearing of the cause; but I must deal with this injunction upon the evidence before me, and in that I see nothing which deprives her of her equity. I think there is sufficient to authorise me to restrain execution upon the judgment at law. Another question was raised in the case, but I do not think it necessary to give any opinion upon that, although it is of considerable importance, namely, to what extent a creditor is bound to communicate with the surety the whole nature of any arrangements which may have been entered into between the creditor and the principal debtor, when all those facts do not appear on the instrument constituting the suretyship. I think that is too important a point to dispose of without more fully looking into the case. It is not necessary on this occasion to decide it. I do think that, upon what I may call the pure equity of this case, there is sufficient ground for granting the injunction further than to stay execution, without putting the plaintiff to the terms of paying the money into court.

Wednesday, Dec. 22.

CHATFIELD *v.* BERCHTOLOTT.

Practice — Equity Jurisdiction Improvement Act — Indorsement on bill or claim—Amendment.

Where a plaintiff obtained an order for service of copies of the bill on defendants out of the jurisdiction, and a time was fixed for appearance, the Court ordered the indorsement on the bill to be altered to correspond with the time mentioned in the order in cases where it was found necessary to make such variation.

Some of the defendants in this case were out of the jurisdiction, and it became necessary to serve them with copies of the printed bill pursuant to the 8rd section of the 15 & 16 Vict. c. 86; and on such order being obtained the printed bill was tendered to the Clerk of Records and Writs indorsed in blank with the time for entering appearance, the eight days limited by form in the schedule to the Act being insufficient, as one defendant lived at Naples, another at Pesch, and others in other parts of Hungary. That officer, however, refused to file the bill unless it were indorsed in the form directed by the schedule of the Act, and accordingly the eight days were thereon specified.

Tripp now moved for leave to amend the indorsement on the printed bill, by substituting such periods as might be found sufficient for the purpose.

The VICE-CHANCELLOR.—This point has been brought before the judges of the court. The Act directs that the defendant shall be served "with a printed bill of complaint or claim, with an indorsement thereon, in the form or to the effect set out in the schedule, with such variations as circumstances may require." The form of the indorsement given in the schedule is applicable to all ordinary cases where the defendants are within the jurisdiction. If the defendants are out of the jurisdiction, and it is necessary to obtain an order of the court fixing special terms or times of service, the indorsement may be altered, and the time fixed by the court inserted instead of the eight days, or such other variation may be made as the circumstances may require.

WARWICK *v.* COX.

Dismissal of Bill—Compromise—Trustees—Consent—Sanction of the Court.

Where a bill is filed to which executors or trustees are parties, and it is proposed that the same shall be compromised upon stated terms, the Court will not permit the bill to be dismissed until it is satisfied that the arrangement is such as is proper for the executors or trustees to enter into. Such a bill may, however, be dismissed simply by consent.

This was a motion for the dismissal of the bill by consent of all parties. The suit was instituted by parties interested in an estate, and the defendants were the executors of the testator whose estate was in dispute. The motion was made on behalf of the plaintiffs, who had arranged among themselves as to the mode of distribution of the property among them, and the terms of that arrangement for compromise had been settled between them and the defendants, one of which was that the bill should be dismissed.

Bird, for the plaintiffs, in support of the motion asked that it might be made upon the terms which had been come to among the parties.

The VICE-CHANCELLOR.—Applications of this kind are not unfrequent, in which executors and trustees have entered into agreements for the termination of suits. There is no doubt, that, if the court makes an order for the dismissal of a bill, to which executors or trustees are parties, upon the terms which the parties have agreed to, the terms of such an arrangement would be afterwards set up as having been sanctioned by the court. The bill may be dismissed by consent and the parties may carry out their arrangements out of court; but, if they are to be made part of the order of the court, the court must be satisfied that the arrangement is proper for the executors or trustees to enter into.

V. C. STUART'S COURT.

Reported by GEO. S. ALLWOOD, Esq., of the Middle Temple, Barrister-at-Law.

Nov. 10 and 11.

ORTELL *v.* LEPAGE.

Decree in suit in India—Staying proceedings in suit in England for the same purpose.

V. C. STUART'S COURT.

An administrator de bonis non of an intestate's estate in India, who was also appointed attorney for the administratrix, resident in England, instituted a suit in India for an account of certain partnership transactions, and this suit resulted in a compromise, upon which a final decree in India was made. Previous to this final decree being made the administratrix instituted a suit in England for a similar purpose, though alleged to be more extensive in its object than the India suit, and the defendant put in an answer which was excepted to for insufficiency. Upon the final decree in India being made the defendant moved to stay all proceedings in the English suit, and the court granted the application without prejudice to any proceedings to be adopted with reference to the decree and proceedings in India.

The circumstances of this case, which was argued before Sir J. Parker upon a plea which his Honour then overruled, are fully stated in 18 Law T. Rep. 219. The defendant afterwards put in his answer, and to this the plaintiff filed exceptions which were set down to be argued. In the meanwhile the proceedings in the suit in India were continued, and on the 2nd of July last a final decree therein was made. Notice of this decree was received in England on the 16th Aug. The decree,—after reciting a previous decree referring it to the Master to take an account of the partnership dealings between Thomas Ostell and the defendant from the commencement of the partnership until the 30th Dec. 1841, and between Margaret Ostell, the present plaintiff, and the defendant to the 21st Oct. 1848, and directing that Lepage should be at liberty to lay before the said Master any proposal for a compromise on payment of a fixed sum instead of taking such accounts, and if he did so, that the Master should inquire and state whether it would be for the benefit of Olivia M. M. Ostell, the infant, that such proposal should be accepted; and reciting the Master's report whereby, amongst other things, he found that certain terms of compromise proposed were for the benefit of the infant O. M. M. Ostell,—proceeded as follows: "This court doth decree and declare that the proposal for compromise mentioned in the said report of the said Master is for the benefit of O. M. M. Ostell, the infant daughter of the said Thomas Ostell in the said report named, and ought to be accepted, and doth therefore order and decree the same accordingly; and this court doth order that the said defendant R. C. Lepage be at liberty, according to the terms of the said compromise, to purchase all the interest of the said infant and of the said complainant as such administrator and such attorney of the said Margaret Ostell as in the pleadings mentioned, in the matters in dispute, for the sum of 63,842 Company's rupees 8 annas 11 pice, and that he do pay to the complainant Robert Molloy, as such administrator and attorney as aforesaid, the sum of 12,768 Company's rupees 8 annas 3 pice, in part payment of the said principal sum of 63,842 Company's rupees 8 annas 11 pice, and do pay the balance or residue of the said sum by instalments, bearing interest at the rate of 5*l*. per cent. per annum, that is to say, &c. And it is further ordered that the said instalments be secured by a bond of the said defendant R. C. Lepage, together with an assignment by way of mortgage of all and singular the stock-in-trade, property, and effects now on the premises of the said defendant, situate in Tank-square in Calcutta, and all such other property and effects as shall from time to time be added to the said stock and effects, with liberty to the said defendant to redeem the said mortgage at any time before the expiration of the period limited for payment of the said debts. And it is further ordered that all necessary and proper deeds, conveyances, and assurances for effecting the said compromise be executed, and that all necessary parties do join therein; and the said master is to settle the said bond, assignment, deeds, conveyances, and assurances; and the first-mentioned sum of 12,768 Company's rupees 8 annas 3 pice shall be paid by the said defendant as aforesaid, upon the tender to him of an assignment and release duly executed by the said complainant as such administrator and attorney as aforesaid, in respect of the interest so to be purchased by the defendant as aforesaid in the partnership property in the pleadings mentioned. And it is further ordered that the said defendant, R. C. Lepage, do pay to the solicitor of the said complainant, R. Molloy, his costs of this suit, when the same shall have been taxed by the Taxing Master of this court; and all parties are to be at liberty to apply to this court from time to time as they may be advised."

W. M. James and *Cotton*, on behalf of the defendant in the present suit, now moved that all further proceedings in the suit might be stayed. They referred to *Garcias* v. *Ricardo*, 14 Sim. 255; *Harrison* v. *Gurney*, 2 J. & W. 563; and *Ostell* v. *Lepage*, 18 Law T. Rep. 219.

Russell and *Bagshawe*, for the plaintiff, opposed the motion, upon the grounds stated in the Vice-Chancellor's judgment.

The VICE-CHANCELLOR said that this was an application to stay proceedings in a suit in this court, instituted by a legal personal representative, in order to recover for the estate which he represented what might be found due in respect of certain partnership transactions. The person whom the plaintiff repre-

V. C. STUART'S COURT.

sented was engaged in a bookselling business in Calcutta. It appeared upon the pleadings that a litigation for the same purpose substantially as in this suit had been instituted in the court in Calcutta, and it was now brought to the attention of this court by the present motion that that litigation in Calcutta instituted not by the present plaintiff, but by a person who in India became under the authority of the plaintiff the representative of the same estate which was here represented by the plaintiff, had ended in a final decree, which had established that a certain sum was due to the estate in respect of the partnership transactions which were the subjects of both suits. His Honour was therefore very naturally asked on the part of the defendant that, there being this decree of a court of competent jurisdiction, the present proceedings in this court might be stayed. Against this it was urged that the relief prayed in this suit was more extensive than that in the suit in India; but he was not satisfied that there was a perfectly just ground for that contention. It was next urged that the suit in the court in Calcutta was not between the same parties who were suing in this court, for the plaintiff who represented the estate in Calcutta was not the same individual who sued here; but he became the representative under the authority of the person, who was suing in this court, and his Honour could not therefore pay attention to that part of the argument which asked him, on the ground that the two suits were not between the same parties, to refuse this motion. Next it was contended that the suit in India was settled on a compromise under the authority of that court. That would be no objection to the finality of the decree, if a party having authority to conduct the proceedings arrived at that end by a compromise authorised by the court. If that was done by a party having sufficient authority, the decree was and ought to be binding; and even if done without such authority, proceedings must be taken of a nature very different to the pleadings in this suit in order to get rid of that decree; and therefore on that ground his Honour saw no reason for refusing this motion. It was finally said that what appeared on the face of the decree, and what the court had now before it as to the proceedings in India, showed that this court ought not to recognise the proceedings in the court in Calcutta. The decree, however, appeared to be a regular decree, directing accounts to be taken in the first instance, and then a final decree directing a compromise and sanctioning the amount to be paid. The decree, therefore, in form was one which for the present purpose this court must recognise. But the question to be considered was whether, this decree being for the same object and concerning the same estate, any good purpose could be answered by allowing the present litigation, which assumed that there had been no final decree in India, to go on in its present shape. Upon that part of the case it was conceded on the part of the plaintiff, who wished to go on, that some alteration should be made in the frame of the proceedings in the present suit, because it was suggested that by amendment the matter could be put into a shape in which the court might decide on the finality of the decree in India. His Honour could not, however, entertain that view of the case. It was plain that a bill to set aside the decree in India, or to get more extensive relief in respect of the matters in this case than was given by that decree, must be framed on a totally different plan from the bill in the present suit, which had proceeded so far as to obtain an answer, which was excepted to for insufficiency. But then it was said that, in order to put the proceedings into a proper form by amendment or by filing another bill to set aside the decree, some discovery ought to be allowed from the defendant in this suit, and that the court should see before it stayed proceedings that a sufficient answer was put in to the bill filed in this court. It was plain however upon all sound rules for conducting the proceedings in this court, that the discovery sought to be obtained by means of the answer ought to be ancillary to the relief prayed by the bill; and the relief now prayed was wholly inconsistent with any case, if any case could be made, for setting aside the decree in India. It would be, therefore, entirely useless to allow this suit to proceed for the purpose of enabling the plaintiff to obtain this discovery by the bill as at present framed. His Honour therefore made an order staying all proceedings in this court, without prejudice to any proceedings the plaintiff might be advised to adopt with reference to the decree and proceedings in India.

Russell and *Bagshawe* asked that the words "or otherwise" might be added to the order; but

The VICE-CHANCELLOR refused to allow the addition to be made.

Wednesday, Jan. 19.

ROBERTS *v.* COLLETT.

Practice—Married Woman—Settlement.

Where the share of a married woman was not ascertained, but would necessarily be less than 300l. and might not much exceed 200l., the Court, under the circumstances of the case, ordered, without an examination of the wife, that the same should be paid to the husband.

In this case, which was heard as a short cause, a married woman was entitled to a share of property, the amount of which, being subject to be reduced by the taxation of the costs, could not at present be precisely ascertained. The share, however, would certainly be less than 300l. and probably not much above 200l.

Bagshawe, jun. appeared for the plaintiff and proposed as to this share, that the lady might be examined by the court at some future day, when the amount of her share had been ascertained, and without requiring the attendance of the other parties to the suit; or that the court should take the lady's consent at once.

Bagshawe, sen., *Selwyn*, and *J. V. Prior*, appeared for other parties.

The VICE-CHANCELLOR said that this fund not being yet ascertained, he could not now take the consent of this lady as to the disposal of it. As however it appeared that the amount must be less than 300l. and might not much exceed 200l. he thought it was a case in which the court might exercise a discretion, and he would therefore at once order that the sum should be paid to the husband.

SOMERVILLE *v.* JAMIESON.

Practice—Costs.

Where the usual papers had not been left with the court, the plaintiff's solicitor was ordered personally to pay to the defendant the costs of the day.

Upon this case, which was a short claim, being called on,

Bates appeared for the plaintiff, and

Brodrick for the defendant.

The VICE-CHANCELLOR said that the solicitor for the plaintiff had not thought proper to leave the usual papers with the proper officer of the court, and he should therefore order that the cause be struck out, and that the plaintiff's solicitor should personally pay to the defendant the costs of the day.

Jan. 19 and 20.

SMITH *v.* ROBINSON.

Practice—15 & 16 *Vict. c.* 86, *s.* 48—*Sale of mortgaged property.*

Where a mortgagor had appeared in a suit instituted against him for foreclosure, but did not appear at the hearing, the Court declined to direct an immediate sale of the property under the above section.

This was a claim for foreclosure of certain copyhold property which had been mortgaged by the two defendants, who were entitled as tenants in common. The defendants appeared in the cause. The claim was set down as short, and notice of this was given to the defendants.

Shapter appeared for the plaintiff, and asked that the court should, under the 15 & 16 Vict. c. 86, s. 48, direct an immediate sale of the property.

There were no subsequent charges on the court rolls. The defendants did not appear at the hearing.

Thursday, Jan. 20.—The VICE-CHANCELLOR said that this claim was for foreclosure, and the question upon which he reserved his opinion was whether, upon the construction of the 48th section of the 15 & 16 Vict. c. 86, the plaintiff was entitled to have, instead of a foreclosure, an immediate decree for sale. On looking at the words of the section it appeared that the effect of it was to supply that, the want of which had been the occasion of great injustice, great delay, and considerable expense, viz. an authority to direct the sale of an estate which was the subject of a claim for foreclosure. Now in the present case his Honour was pressed for an immediate order for sale in the absence of the parties entitled to the equity of redemption. The two defendants, who were the mortgagors, had been served with a writ of summons upon the claim, had appeared in the cause, but did not appear now, although they had been served with notice of the claim being set down as a short claim. The prayer of the claim did not ask for a sale; and in every case his Honour considered that the owner of the equity of redemption was entitled to a fair opportunity to redeem. This claim, with perfect propriety, asked for an account to be taken of what was due, and for payment, or in the alternative for foreclosure. There would be ample authority for effecting a sale hereafter, but his Honour thought it would be too harsh to direct an immediate sale, as was proposed. He should, therefore, direct that his chief clerk should ascertain the amount due on account of the mortgage, and fix a short time for payment, and that in default of payment the property should be sold, with the approbation of the court.

Thursday, Jan. 20.

BRYSON *v.* THE WARWICK AND BIRMINGHAM CANAL COMPANY.

Practice—Evidence.

Where the depositions of some witnesses in a cause had been taken down in the hand-writing of an examiner, and signed by them, but were not signed by the examiner, all the witnesses not having been examined, and the examiner afterwards died, the Court ordered the depositions to be received without the examiner's signature.

De Gex, on behalf of the plaintiff in this case, moved that the depositions of witnesses who had been examined before the late examiner, Mr. Plumer, might be received without having been authenticated by his signature. The depositions were in Mr. Plumer's hand-writing and signed by the witnesses; but as there were other witnesses to be examined, Mr. Plumer had deferred affixing his signature until the depositions of the witnesses were complete. The death of Mr. Plumer, however, had occurred before all the depositions had been taken.

H. Cadman Jones, for one of the defendants, submitted that he should be at liberty again to cross-examine some of the witnesses whose depositions had been taken.

Hallett, *Eklerton*, *Southgate*, and *Baggallay*, appeared for other defendants.

The VICE-CHANCELLOR considered that the application on behalf of the plaintiff was very reasonable, and therefore ordered that the depositions in question should be received, but declined to allow another cross-examination of the witnesses.

V. C. WOOD'S COURT.

Reported by J. HENRY COOKE, Esq., Barrister-at-Law.

Saturday, Jan. 15.

DUFFIELD *v.* STURGIS.

Practice—Equity Jurisdiction Improvement Act—Replication.

Where a case is about to be brought before the court upon motion for a decretal order, it is not necessary to file a replication pursuant to the 26th section of the statute 15 & 16 *Vict. c.* 86, *and the 28th order of the General Order of 7th Aug.* 1852.

Secus, where the motion for the decretal order has been made and has failed.

Hare moved in the above suit that the Clerk of Records and Writs might be directed to file a replication. The application was made under the 26th section of the Chancery Practice Amendment Act, by which it is enacted that in suits commenced by bill, where notice of motion for a decree or decretal order shall not have been given, or, having been given, where a decree or decretal order shall not have been made thereon, issue shall be joined by filing a replication in the form or to the effect of the replication now in use. The 28th of the General Orders of 7th Aug. 1852 directs issue to be joined by filing a replication in the form or to the effect of the replication now in use. In the present case a notice of motion had been given by the plaintiff for a decretal order under the 22nd of the same Orders; but the Clerk of Records and Writs considered that there was an inconsistency in asking to file a replication when the defendant had had notice of motion for a decree, the Act and Orders, as he said, not contemplating such a course.

W. M. James and *Chapman Barber* (*amici curiæ*).—The Act and the order founded upon it were only intended to apply to cases where the motion for the decretal order or decree has not succeeded.

The VICE-CHANCELLOR.—Where the motion has been made, and has failed, then the filing of the replication is necessary; but here notice of the motion has been given, but the motion has not been made, and, therefore, the replication is at present needless. The motion being now pending, I must refuse the application.

Common Law Courts.

COURT OF QUEEN'S BENCH.

Reported by ADAM BITTLESTON and JOHN THOMPSON, Esqrs Barristers-at-Law.

Nov. 8 *and* 20.

COOK *v.* GILLARD.

Attorney—Sufficiency of signed bill—Name of the court in which business done.

A bill of costs contained items for business in one of the Superior Common Law Courts, but did not contain any information as to which court, and the defendant did not prove at the trial that any further information was practically wanted for taxation:

Held, that the bill was sufficient under 6 & 7 *Vict. c.* 76, *s.* 37:

Semble, that the true meaning of the statute is that a defendant, who undertakes to prove that a bill is not a bonâ fide compliance with the Act, cannot found an objection upon want of information in the bill, if it appears that he is already in possession of that information.

Debt for work and labour as an attorney.

Plea.—No signed bill delivered pursuant to 6 & 7 Vict. c. 76, s. 37.

At the trial the bill delivered to the defendant was produced. It was divided into four parts. Among the items in the first part were the following: —

"*Hilary Term*, 1846.

Feb. 7. Instructions to sue.
Writ of summons.
Attending settling."

In the fourth part of the bill there were also items of charge in respect of—

Instructions to sue in an action on the case.
Writ of summons.
Service.

QUEEN'S BENCH.

Attending in court, when, on motion by counsel, a rule was made to refer all matters in dispute."

The other parts of the bill related to business done at the Middlesex sessions. It was objected that the bill was insufficient, because there was nothing in it to indicate in which of the Common Law Courts the above items of business were done; on the other side it was contended that the whole bill was not thereby vitiated. The judge directed a nonsuit, with leave to the plaintiff to move to set it aside and enter a verdict for 100*l.*, the sum admitted to be due on the whole account, or for such portion of the bill as the court should think fit, if the bill should not be vitiated altogether.

Keating, in Trinity Term 1852, obtained a rule *nisi* accordingly.

Atherton and *Milward* showed cause.—First, it does not appear by the bill of costs that the business, the items of which are now pointed out, was done in any of the Superior Courts at Common Law. It might have been done in an inferior court; for by the 2 & 3 Vict. c. 27 (for regulating the proceedings in the Borough Courts), sect. 3, all personal actions brought in the Borough Courts shall be commenced by writ of summons: (*Lewis* v. *Primrose*, 6 Q.B. 625; *Martindale* v. *Falkner*, 2 C. B. 706; *Engleheart* v. *Moore*, 15 M. & W. 548; *Ivimey* v. *Marks*, 16 M. & W. 843; *Sargent* v. *Gannon*, 7 C. B. 742; *Dimes* v. *Wright*, 8 C. B. 831; *Anderson* v. *Boynton*, 13 Q. B. 308; *Keene* v. *Ward*, 13 Q. B. 515; *Cozens* v. *Graham*, 16 Jur. 952.) Secondly, as to entering a verdict for the plaintiff for such portion of the costs as to which the objection does not apply. The bill is an entire thing, and the issue taken on the plea is as to the entire bill, and it is not divisible. This point seems to have been decided in *Ivimey* v. *Marks*. There is a direct decision against splitting the bill in the manner proposed, *Hill* v. *Humphreys*, 2 B. & P. 343. That was upon the old statute, but is also applicable to 6 & 7 Vict. c. 76, so far as this point is concerned: (*Drew* v. *Clifford*, 1 Ry. & Moo. 280; *Waller* v. *Lacy*, 1 M. & G. 54; *Page* v. *Watkins*, 16 Law T. Rep. 512.)

Keating, in support of the rule.—By the 2 Geo. 2, c. 23, s. 23, the bill was required to be taxed in the court in which the major part of the business was done, and there was some reason for naming the court in the bill, but it was once doubted even then whether it was necessary: (*Lester* v. *Lazarus*, 2 C. M. R. 665.) But since the 6 & 7 Vict. c. 76, the bill may be taxed in any of the Superior Courts, and the reason for naming the court in the bill no longer exists. It has, however, been held that the court need not be expressly named, if it can be collected from the bill generally, by reasonable intendment. As to the second point, *Drew* v. *Clifford* and *Waller* v. *Lacy* are authorities for plaintiffs recovering those items in the bill for business as to which the objection of the want of the name of the court does not apply. *Cur. adv. vult.*

JUDGMENT.

Saturday, Nov. 20.—CAMPBELL, C. J.—In this case the question was whether an attorney's bill, intended to be delivered according to the statute 6 & 7 Vict. c. 78, s. 37, was sufficient. The bill related to several transactions, all of which were properly described, except that there were items to a small amount in two actions for writs of summons and other proceedings such as would occur in actions in the Superior Courts; and there was nothing to indicate in what courts these actions were brought. The defendant objected that the bill was therefore invalid. *Ivimey* v. *Marks*, 16 M. & W. 843; *Engleheart* v. *Moore*, 15 M. & W. 548; *Dimes* v. *Wright*, 1 C. B. 831, were cited, in which the rule was laid down that a charge for an item in an action, without specifying in what court the action is brought, renders the bill bad, the reason assigned being, that the client ought to be enabled by the bill to obtain advice as to taxation without the need of further question. But after considering the provisions of the statute, the change that has been made in the taxation of costs, the reason assigned for the rule, and the late cases upon the subject, we have come to the conclusion that the objection ought not to be sustained. The stat. 6 & 7 Vict. c. 73, s. 37, forbids an action until a bill of fees, charges, and disbursements shall have been delivered. No requisites for the bill are particularised; there is no requirement that the court should be specified; and the section further declares that the plaintiff is not bound in the first instance, in proving a compliance with the Act, to prove the contents of the bill delivered; but it is presumed sufficient, unless the defendant proves that it is not such a bill as constitutes a *bonâ fide* compliance with this Act. The defendant here does not prove that any further information was practically wanted for taxation, or suggest that the name of the court in which the two writs of summons were issued would have been of any use to him; nor does he contend that the Act has not in this case been *bonâ fide* complied with, unless the arbitrary rule to be deduced from the cases above mentioned, that the name of the court as to every item is indispensable, can be maintained. Now this rule as applied to the existing statute appears to have originated in a mistake. It was first introduced by judges applying the provisions of the 2 Geo. 2, c. 23, s. 23; and then there was good reason for that, for the jurisdiction to tax under that statute is given to the court in which the greater part of the business was done, and it was therefore indispensable for the parties and for the taxing officer to be able to assign each item to its appropriate court before the taxation could be entered upon; and moreover at that time the scale of charges in the several courts was different, so that the name of the court was also wanted in order to estimate the amount of charges. But under the existing statute, if there is any item in any court of law, jurisdiction is given to all the Superior Courts indifferently; so that in respect of jurisdiction the name of the court is entirely immaterial; and so likewise is it for estimating the amount due, as the scale of charges in all the Superior Courts is now uniform. The judges who instituted the rule in relation to the existing statute adopted it from cases under the former statute, without adverting to the important changes in the law which the Legislature had made, and thereby, as we think, contravened the intention of the Legislature. If this reasoning is correct, it follows that the rule which so originated has been maintained without any useful purpose. The greater number of the later decisions accord with this view of the law. In *Martindale* v. *Falkner*, 2 C. B. 706, a bill was decided to be sufficient, which showed by reasonable intendment that the business charged for was done in one of the Courts of Chancery, though there was nothing to show which of those courts was intended. In *Anderson* v. *Boynton*, 13 Q. B. 308, it was held sufficient if the name of the cause and the court could be gathered by intendment from the bill without being expressly mentioned. In *Keene* v. *Ward*, 13 Q. B. 515, a bill was held good, although it contained items in an action, and did not indicate in what court that action was brought; and in that case the change in the law, in respect of the jurisdiction to tax, and of the uniformity of charges in the different courts, and also the practical result of the supposed rule, was pointed out. This has been followed by a very salutary judgment in *Cozens* v. *Graham*, 16 Jur. 952, where a bill was held valid, although the court in which the business was done was not mentioned or described—it being clear that the defendant, knowing the court, did not want the information, and only made the objection to evade payment of the debt. The judgment there points out that the words of the last statute are complied with, although the court is not mentioned in the bill, and also that the changes introduced by the last statute had not been adverted to in the decision now relied on for the defendant. This judgment appears to us to give effect to the true meaning of the statute. The defendant who undertakes to prove that the bill is not a *bonâ fide* compliance with the Act cannot found an objection upon the want of information in the bill, if it appears that he is already in possession of that information. It seems to us probable that the Legislature changed the law relating to attorney's bills from having perceived that a clerical error or an accidental oversight often worked the forfeiture of the remuneration due for many years of professional services, and therefore meant, while it secured the client a right to reasonable information respecting the bill before an action should be brought upon it, at the same time to give to the attorney security that the delivery of a bill intending to give, and giving, all requisite information, should be a compliance with the Act, unless the client could show that information which was really wanted had been withheld. Upon this principle, and according to these cases, we decide against the objection raised by the present defendant. We consider that the doubt, whether the writs of summons and other proceedings, apparently such as belong to the courts of Westminster, were issued here or in the borough court of some municipal corporation, emanated from the ingenuity of the advocate, without having had any existence in the mind of the defendant; and that a client has no ground of objection to a bill, who is in possession of all the information that can be reasonably wanted for consulting on taxation. We further consider that it would be better to require a demand of further information, so that a bill might be corrected before action, rather than to allow a defendant to conceal a defect till time had become a bar to another action, and then obtain an unfair advantage by disclosing it.

Rule absolute.

Thursday, Jan. 13.

JOHNSON *v.* GIBSON.

Debt for rent—Statement in declaration of time when rent became due.

In a declaration in debt for rent, the statement of the time when the rent became due is material, and, though laid under a videlicet, must be proved.

Where, therefore, the declaration stated that on a certain day the rent for three-quarters of a year then elapsed became in arrear:

Held, that the plaintiff could only recover the rent for the three-quarters next preceding the day mentioned, although no particulars of demand had been delivered, and the day was stated under a videlicet.

Debt for rent.—The declaration stated a demise by the plaintiff to one Keble for twenty-one years, at a rent of 80*l.* per year; that afterwards the term became vested in the defendant; and that whilst the defendant was assignee, to wit, on March 25, 1849, a large sum of money, to wit, 22*l.*, parcel of the rent aforesaid for three-quarters of a year then elapsed, became in arrear and unpaid.

Pleas.—Except as to 7*l.* 10*s.* never indebted; and as to 7*l.* 10*s.* payment into court.

No particulars of demand had been delivered by the plaintiff. At the trial it was proved that the defendant had ceased to be assignee of the term and liable for rent during the last two quarters prior to March 25, 1852; and the money paid into court was sufficient to cover the third quarter. It was contended, however, that the plaintiff was not limited to the three-quarters next preceding that day; and that although the defendant had in fact paid all the rent previously due, yet he could not avail himself of the payment in this action because he had not pleaded it. A verdict was accordingly taken for the plaintiff, damages, 15*l.*; but leave was reserved to the defendant to move to enter it for him. A rule *nisi* had accordingly been obtained for that purpose.

Hawkins now showed cause.—Without a plea of payment, the defendant could not prove payments even in reduction of damages, and the plaintiff was not bound by his declaration to any particular three quarters. [WIGHTMAN, J.—Gilbert says that, in debt for rent, the time when the rent became due must be shown.] A time must certainly be stated; but it need not be proved as laid.

Borill, contrà, was not called upon.

LORD CAMPBELL, C. J.—I think that this rule must be made absolute. It is true that the payments could not be proved under "never indebted;" but under that plea the defendant might show, as he did, that he had ceased to occupy the premises for which the rent was claimed before the time mentioned in the declaration. It is laid down that the time must be stated; and this declaration is for rent for three quarters "then elapsed;" the reasonable construction of which is "then *next* elapsed;" and although the day is laid under a *videlicet*, that does not exonerate the plaintiff from the necessity of proving it as laid.

COLERIDGE, WIGHTMAN, and CROMPTON, JJ. concurred. *Rule absolute.*

Friday, Jan. 14.

DOE DEM. BUTT *v.* ROUS.

Turnpike—Mortgage—Ejectment—3 Geo. 4, c. 126, ss. 49, 81.

After the plaintiff, the mortgagee of turnpike tolls, &c. had commenced ejectment to recover the toll-gates, &c. the defendant, a prior mortgagee, commenced an ejectment and succeeded in first obtaining judgment and possession of the gates, &c.:

Held, that the defendant's possession so acquired was no answer to the lessor of the plaintiff recovering a verdict in his action.

Quære, whether the lessor of the plaintiff could disturb the defendant in his possession by writ of habere facias possessionem.

Ejectment for toll-gates, bars, houses, &c. under 3 Geo. 4, c. 126, s. 49.

It appeared at the trial before Martin, B. at the Wiltshire Summer Assizes, that the plaintiff was the mortgagee of the tolls of a turnpike road, and that the defendant was also another mortgagee of the tolls by an earlier title, and also one of the trustees of the road. Upon default, the plaintiff commenced this ejectment, but subsequently the defendant also commenced an ejectment, and obtained judgment and possession of the toll-gates, &c. before the plaintiff's ejectment came on to be tried. The date of the demise was laid earlier in the plaintiff's ejectment than in the defendant's, and at the trial it was insisted that the plaintiff having recovered possession in his ejectment, the plaintiff could not maintain his action, and thereupon a verdict was directed for the defendant.

M. Smith in last term obtained a rule *nisi* to set aside the verdict and enter it for the lessor of the plaintiff.

Butt and *Fitzherbert* showed cause.—The question is whether the lessor of the plaintiff can have a verdict in this case. He had no right of possession against the defendant, who was a mortgagee in possession. The form of the mortgage is given by the 3 Geo. 4, c. 126, s. 81: "grant and assign unto A. B. such proportion of the tolls and the toll-gates and toll-houses, as the said sum shall bear to the whole sum now or hereafter to become due, to have, hold, &c., for and during the residue of the term for which the said tolls are granted by the last-mentioned Act," &c. And by sect. 49, if any mortgagee shall seek to obtain possession of the said toll-gates, &c. in order to pay himself the principal and interest due to him, it shall be competent for him and upon his demise only, and without uniting in such demise the other mortgagees, to obtain such possession; but he shall not apply the tolls to his own use and benefit, but for the benefit of all the mortgagees *pari passu* in proportion to the several sums due. The defendant obtained judgment and possession in his action before the plaintiff's ejectment was tried, and he holds now for the general benefit of all the mortgagees. The right to the possession dates from the judgment. [WIGHTMAN, J.—Is that any answer to the plaintiff's maintaining a verdict?] One mort-

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gagee cannot turn another out of possession, and the Act does not contemplate a multiplicity of ejectments. If a mesne landlord brings ejectment against his tenant, and then the superior landlord brings another ejectment for a forfeiture of the lease, and the day of demise in the latter ejectment is prior to that in the other, has not the superior landlord the right to the possession? [Lord CAMPBELL, C.J.—We have only to determine whether the verdict shall pass for the plaintiff or the defendant.] There is only one title that can be taken advantage of under the statute, and the defendant has secured that. (*Doe dem. Banks* v. *Booth*, 2 B. & P. 219; *Doe dem. Thompson* v. *Lediard*, 4 B. & Ad. 137; *Doe* v. *Penfold*, 8 Q.B. 757.)

M. Smith and *Phinn*, in support of the rule.—There is nothing in the 8 Geo. 4, c. 126, which obliges a mortgagee who has obtained possession to remain in possession. [Lord CAMPBELL, C.J.—If he was to throw it up, he would be guilty of a breach of trust. We must suppose that the plaintiff had a title to possession on the day of demise in the declaration.] If so, the plaintiff was entitled to the verdict. There may be some question hereafter as to whether the plaintiff may disturb the possession of the defendant, but that is no bar to the plaintiff obtaining the verdict in this action. (*Thrustout* v. *Grey*, 2 Stra. 1056; *Doe dem. Morgan* v. *Bluck*, 3 Camp. 447.)

Lord CAMPBELL, C.J.—I am of opinion that the lessor of the plaintiff is entitled to the verdict on the demise laid in the declaration. Whether he is entitled to have a writ of *habere facias possessionem* is not now to be considered, but only whether there was evidence to entitle him to a verdict, and whether that verdict is to stand. It is admitted that, if no subsequent action had been commenced, this ejectment would have been well brought. If, then, it was well brought, it is difficult to see how, by some subsequent proceedings, the plaintiff's right is entirely barred, and how he thereby becomes liable to pay the costs of this ejectment.

WIGHTMAN, J.—As soon as it appeared that the lessor of the plaintiff had the privilege of bringing this ejectment, the argument of the defendant failed. To say that there is no right of possession until possession is obtained, is absurd and contradictory. The plaintiff is therefore entitled to have the verdict entered for him. What may be the ultimate effect of the verdict, and whether the defendant can be disturbed in his possession, we have not now to determine. *Rule absolute.*

REG. v. THE JUSTICES OF NEW SARUM.

Poor-rate—Commitment for non-payment—13 & 14 Vict. c. 14.

Where a poor-rate was made under a local Act, 11 Geo. 4, c. lxxvi. which only gave a power of commitment to prison for non-payment where no sufficient distress could be found, in consequence of removal of goods to evade payment:

Held, nevertheless, that the justices had power to commit under the 13 & 14 Vict. c. 14 (a general Act) for default in non-payment, there being no distress, although it was not suggested that there was any fraudulent removal of goods.

A rule *nisi* having been obtained by *Archbold*, calling upon two justices of New Sarum to show cause why they should not commit W. J. Targett to prison for non-payment of 14*s.* 3*d.* assessed upon him by a rate made for the relief of the poor of the parish of St. Edmund, &c.

G. S. Carr showed cause.—In this case a rule has been obtained under 11 & 12 Vict. c. 44, s. 5, in order that the justices may know how to act. The poor-rate in question was made under a local Act, 11 Geo. 4, c. lxxvi. (for the relief of the Poor of New Sarum), and by section 9 a power to commit for non-payment is given, only where no sufficient distress on the premises can be found, "in consequence of removal of any such goods or chattels with intent to evade or elude payment." Here there is no removal of goods to evade payment, and it is not contended that the justices should commit under the local Act; but it is said that the 12 & 13 Vict. c. 14, s. 2 (a general Act) gives them power, and they are called upon to act under that provision. That section recites the power to commit under the 43 Eliz. c. 2, in default of distress for a poor-rate, and enacts, that hereafter, when to any warrant of distress for the levying of any sum assessed by any poor-rate it shall be returned that no sufficient goods can be found, it shall be lawful for any two or more justices of the peace, "*if in their discretion they shall so think fit*," to issue their warrant of commitment against the person with relation to whom such return shall be so made. Now the 12 & 13 Vict. c. 14 is inconsistent with the local Act, and cannot operate to repeal it. Under the local Act the justices have no discretion to commit, but are bound to commit; but under the 12 & 13 Vict. they may exercise their discretion whether they will commit or not. The effect, therefore, of the 13 & 14 Vict. c. 14 would be to repeal the provision in the local Act, and, there being no express words to effect that, the 13 & 14 Vict. c. 14 does not apply to this case. Besides, the 12 & 13 Vict. c. 14, s. 2, enacts, that the warrant of commitment is to be for costs and expenses, whereas under the 11 Geo. 4, c. lxxvi. these were not provided for: (*Doe dem. Bywater* v. *Brandling*, 7 B. & C. 660, Lord Tenterden, C. J.)

Archbold, contrà, was told to confine his argument to the point as to the discretion of the justices to commit under 13 & 14 Vict. c. 14.—It is only the same discretion that they had previously under the 43 Eliz. c. 2. (He was then stopped.)

Lord CAMPBELL, C. J.—We are all of opinion that there is nothing in the local Act to prevent the justices acting under the 13 & 14 Vict. c. 14.

Rule absolute.

POWELL v. SPENCER.

Production of documents—14 & 15 Vict. c. 99.

Where a judge at chambers made an order on the defendant to allow plaintiff to inspect, &c. a bill of costs and letter, stated on affidavit to have been sent by the plaintiff to the defendant, although the defendant swore that he did not recollect ever receiving them, and that he could not discover any trace of them, and that it was impossible for him to comply with such order, if made:

This Court refused to rescind the order of the judge, inasmuch as the matters alleged in the affidavit of the defendant would be an answer to an attachment for disobeying the order, if moved for.

Field moved for a rule *nisi* to rescind an order of Erle, J. for production by the defendant of a bill of costs and the letter accompanying it. It appeared that this was an action by the plaintiff, an attorney, to recover his bill of costs, and that he had sent a bill of costs, with a letter accompanying it, to the defendant, in 1849, pursuant to the 6 & 7 Vict. c. 76, s. 37; and that Erle, J. had made an order at chambers calling on the defendant to produce and allow the plaintiff to inspect such bill of costs and letter so sent, under the 14 & 15 Vict. c. 99, s. 6, notwithstanding an affidavit by the defendant that he never recollected receiving such bill of costs and letter, that he had caused a search to be made for them, and that he had not been able to discover any trace of the same, and that it was impossible for him to comply with such order if made. It is now submitted that there was no evidence before the judge at chambers as to these documents being in the possession of the defendant.

COLERIDGE, J.—Is it not for the judge to determine that?

Field.—This affidavit shows that the defendant cannot possibly comply with the order.

Lord CAMPBELL, C.J.—Then that would be an answer to an attachment for disobeying the order.

Field.—But it might be said, if the defendant were to lie by until an attachment is moved for, that he ought to have asked the relief of the court earlier, as he knew when the order was made it could not be complied with.

By the COURT.—The defendant shall sustain no prejudice for that reason. *Rule refused.*

Monday, Jan. 17.

HEYWOOD AND OTHERS v. POTTER.

Copyright: design.

By the 4th section of 5 & 6 Vict. c. 100, the proprietor of a registered design for paper-hangings, is bound to put the letters "Rd." and the number, on the pattern pieces containing the whole design, published to the world, though such pieces may be of so small size as to be inapplicable to papering walls, such pieces being articles of manufacture within the above section.

So held per Lord Campbell, C. J. and Wightman, J. Coleridge, J. dissentiente.

Case for the infringement of a copyright design for paper-hangings.

There were two counts in the declaration; first, for applying the registered design of the plaintiffs without leave; and, secondly, for selling after notice that the design had been so applied without consent.

The 6th and 11th pleas were substantially the same, and averred that certain articles of manufacture to which the plaintiff's design had been applied were published by him without having thereon the letters "Rd." together with the number, as required by the 5 & 6 Vict. c. 100, s. 4.

At the trial before Lord Campbell, C.J. in London, it appeared, that the plaintiffs had sold pattern pieces of paper-hangings of the registered design, without having the letters "Rd." or the number on them as required by the above provision, and that the defendant had bought some of them, and imitated the design, without being aware that the design was a registered one. Paper-hangings are usually sold in lengths of twelve yards each; but these pattern pieces were of so small a size as not to be applicable to papering walls. It was thereupon contended for the plaintiffs that these pieces were not such articles as required the letters "Rd." and the numbers on them, according to the above Act. The learned judge was of a contrary opinion; and the jury found the verdict on the above pleas for the defendant, and, in answer to a question left to them, they also found that it was not the practice of the trade to publish such pattern pieces, without the letters "Rd." and the number upon them, when the design was a copyright one.

By the 5 & 6 Vict. c. 100 (for consolidating and amending the Laws relating to the Copyright of Designs for ornamenting Articles of Manufacture), s. 3, the proprietor of any new and original design applicable to the ornamenting of any article of manufacture, &c. shall have the sole right to apply the same to any articles of manufacture for the term of three years, so far as regards the article of manufacture (paper-hangings) in the fifth class mentioned in the section.

By sect. 4 no person shall be entitled to the benefit of this Act unless (among other things), after publication of such design, every such article of manufacture to which the same shall be so applied, published by him, hath thereon the letters "Rd." together with such number or letter or number and letter, and in such form, as shall correspond with the date of the registration of such design.

A rule *nisi* having been obtained to set aside the verdict on the above pleas and enter it for the plaintiff,

Webster now showed cause.—The question depends on the meaning of the words "every such article of manufacture," in sect. 4. It is submitted that every piece of paper-hanging containing the entire design, is an article of manufacture within that section; and therefore these pattern pieces were such. The design and the article to which it is applied must be taken in combination; and the combination must have the letters "Rd." and the number put on them. By sect. 17 no registered design, the copyright whereof has not expired, shall be open to inspection, except to the proprietor or a party authorised by him. Where then is a stranger to learn that a design is registered if the marks and letters required by sect. 4 are not put on pattern pieces like these? Sect. 4 was for the protection of the public, to guard them from imitating registered designs; and that object would be entirely frustrated, if pattern pieces like these do not require to be lettered and numbered under sect. 4.

Bramwell and *Lush* in support of the rule.—The words "article of manufacture," in sect. 4, mean a commercial article, in the state in which it is sold for public use; and as these pattern pieces are not applicable to papering walls, they are not such articles of manufacture as were contemplated by that section. Paper-hangings are usually sold in lengths of twelve yards each, and the whole design of a paper-hanging might be contained on pattern pieces of two or three inches square. The words "article of manufacture" must receive the same meaning throughout the Act; and a party would, if the meaning contended for by the defendants is right, be liable to the penalty under sects. 7 and 8, for imitating the design, though with no intention of sale. Further, it is submitted, that a piece of an article, which such a pattern is, is not an article of manufacture within sect. 4. Then, as to the protection of the public, what protection is there after the sale by the manufacturer? The retailer may cut up the article into as many pieces as he pleases, and sell them without the letters or numbers on them: (*Itiego de la Branchardiere* v. *Elvery*, 18 L. J. 381, Ex.)

Lord CAMPBELL, C. J.—I am of opinion that the plaintiffs have not complied with the conditions imposed by the Legislature in granting protection to designs. It seems to me that the Legislature, in giving that protection, required that every portion of the manufacture containing the design, published and put forth to the world by the inventor, should contain certain numbers and the letters "Rd." in pursuance of sects. 3 and 4 of 5 & 6 Vict. c. 100, in order that the public might be aware that such design was registered, and be cautioned not to imitate such design. Now here in the paper-hanging trade, it turns out that the pieces of paper that are sold for the purpose of being put on walls, are generally twelve yards in length, but the manufacturers are in the habit of selling smaller portions, not for papering walls, but to be used as patterns in the course of business. The question is, whether such patterns are articles of manufacture within sect. 4 of 5 & 6 Vict. c. 100. Here the plaintiffs did sell patterns of this nature, the design of which had been registered, but which patterns did not contain the letters "Rd." or any number upon them, and it was by reason of such omission that the defendants imitated the design, without the smallest idea that they were infringing a copyright design. It seems to me that such patterns are articles of manufacture, and are sometimes sold for money, and sometimes given away to the customers of the manufacturer. But it cannot make any difference that patterns of such dimensions are not applicable to papering walls, for they are equally articles of manufacture used in the trade, and the mischief to be guarded against may equally arise in either case. If such patterns are marked with the letters and numbered, parties will consider that they belong to a registered design, and that they are not to imitate it; but, if they are not so denoted, they may reasonably suppose that the design is not registered. I see no hardship in this case, as it is the general though not the universal practice of the trade that manufacturers do put on such patterns the letters "Rd." with the number of the design, and if the plaintiffs had complied with the usage of the trade the defendants would not have imitated their design.

COLERIDGE, J.—I confess I have come to a different conclusion in this case. The question is whether these patterns are properly articles of manufacture within sect. 4 of 5 & 6 Vict. c. 100. In the literal sense no doubt they are. To ascertain the proper

sense, it is not very material to inquire whether such articles are usually sold for papering walls, or what the practice of the trade has been (considering how recently this Act of Parliament has passed); but, looking to the whole Act, the court must determine the intention of the legislature. The object of the Act was to protect the application of designs to articles of manufacture. And by sect. 8 articles of manufacture are arranged in several classes, paper-hangings being class 5. Now, common sense points out that paper-hangings may mean two different things, the pattern and the thing itself. There is a broad distinction between the pattern of a paper-hanging and the paper-hanging itself. The mischief that would result from allowing patterns to go out without being lettered and numbered is not a sound argument in this case. It is said that the object of the letters and numbers is that every one may know that the design is registered; but how is such object protected by the construction of the Act contended for by the defendant? If the article is capable of being subdivided, how is the purchaser of one of the subdivisions to know that the design is registered? All the subdivisions may go out to the world except the one containing the letters and number. Therefore, it comes to the same thing whether a manufacturer cuts a piece of the length of twelve yards into patterns and sends such patterns to the retailer without the letters and number upon them, or whether the retailer cuts up such lengths into smaller pieces and so sells them.

WIGHTMAN, J.—After some doubt, I think that the plaintiffs are not entitled to the protection of the Act. The question really is whether these patterns can be considered articles of manufacture within sect. 4. If they can, no doubt they should have had the letters "Rd." with the number upon them. Paper-hangings, to be within class 5 of sect. 8, it is said by the plaintiffs, must be such paper-hangings as are used for papering rooms. I find great difficulty in saying what are such paper-hangings. The inquiry would be a difficult one in many cases. It appears to me that it would defeat the obvious intention of the Act, if the publisher or proprietor of the design could send out to the world, patterns such as these, without having on them the requisite letters and numbers.

Rule discharged.

BUSINESS OF THE WEEK.

Thursday, Jan. 13.

HOLT *v.* ELY.—*Bramwell* moved for a rule for a new trial. The question was whether the plaintiff had been induced to pay money by a misrepresentation. *Rule nisi.*

TUCKER *v.* RAVENHILL.—*Bramwell* also moved for a new trial herein. *Rule nisi.*

WALSH *v.* IONIDES.—Lord CAMPBELL, C. J. delivered judgment. *Rule absolute for prohibition as to part.*

REG. *v.* ST. PANCRAS. *Postponed to next term.*

WILTSHIRE *v.* COTTERELL.—*Whateley* and *Phipson* showed cause. *Keating* and *Hodgson*, contrà. The question was whether a granary, threshing-machine, and certain rick-straddles, passed under a deed. *Cur. adv. vult.*

BESSELL *v.* WILSON.—*O'Malley* and *Lush* showed cause against a rule to enter the verdict for the defendant. *Hugh Hill* and *Willes*, contrà. The question was as to the protection afforded by 11 & 12 Vict. c. 44, s. 2, to a magistrate who had issued a warrant to apprehend the plaintiff, he having been convicted under the Copyright of Designs Act, summoned for non-payment of the penalty, and having attended by counsel and attorney only, not in person. *Cur. adv. vult.*

Friday, Jan 14.

RATHER *v.* ALLHUSEN.—Tried before Lord Campbell, C. J., in London; verdict for the plaintiff 517*l*. *Crowder* moved for a new trial on the ground of misdirection. *Rule nisi.*

CROMONT *v.* ASHLEY AND WIFE.—Tried before Lord Campbell, C. J., when the plaintiff was nonsuited. *Udall* moved for a new trial. It appeared that the writ of summons was specially indorsed under the Common Law Procedure Act, sect. 25, and the plaintiff also delivered further particulars with the declaration, differing from those indorsed on the summons. At the trial the learned judge confined the plaintiff's proof to the particulars indorsed on the writ. *Rule nisi.*

KERNOT *v.* PITTIS.—Tried before Lord Campbell, C. J. in London; verdict for the plaintiff. *Willes* moved to set aside the verdict and enter it for the defendant. *Rule nisi.*

MANLEY *v.* BOYCOTT.—Action on a promissory note payable by the defendant to a banking company, of which the plaintiff was the public officer. The note was joint and several, the defendant on the face of it being a principal. There were three pleas on which the defendant had the verdict, showing that the defendant was surety only. *W. H. Watson* (*Fry* and *Normen* with him) moved to enter up judgment *non obstante veredicto* on those three pleas, or for a new trial: (*Smith v. James*, 19 L. T. 104; *Harrison v. Cortauld*, 3 B. & Ad. 36.) *Rule nisi.*

COCHRANE *v.* MADDEN.—Tried before Wightman, J.; verdict for the defendant. *W. H. Watson* moved for a new trial. *Rule refused.*

WOOD *v.* MOYES.—Tried before the Under-sheriff of Middlesex; verdict for the plaintiff, 2*l.* 13*s.* 6*d.* *Pearson* moved for a new trial: (*Turner v. Mason*, 14 M. & W. 112.)

Rule nisi, unless the plaintiff, within a week, consent to reduce the verdict by one guinea.

CHAPPELL *v.* HUNTER.—*Prideaux* moved to set aside the *exigi facias*, and all subsequent proceedings, for irregularity. *Rule nisi.*

THE MAYOR OF BERWICK-UPON-TWEED *v.* RENTON.—This was a rule for a new trial, on the ground that the verdict was against evidence. *W. H. Watson* and *J. Brown* showed cause, and *Knowles* and *Manisty* in support of the rule.

Rule absolute on payment of costs.

Saturday, Jan. 15.

REG. on the prosecution of OSBORN AND OTHERS *v.* THE MANCHESTER AND SOUTHPORT RAILWAY COMPANY.—*Mandamus* to complete a line of railway. *Demurrer* to the return of the defendants. Sir *F. Kelly* (*J. Henderson* with him), in

support of the demurrer. *Atherton* (*Tomlinson* with him), contrà.

Leave to amend the return on payment of costs.

REG. *v.* INHABITANTS OF HAUGHLEY.—This was a rule for a *certiorari* to quash an order of Sessions. *O'Malley* showed cause; and *Crouch* appeared to support the rule.

Rule absolute; the appellant to receive costs of proceedings exclusive of the trial, to be taxed by the Master at the Crown-office. No costs on this rule.

REG. *v.* INHABITANTS OF NEMPNETT THRUBWELL.—This was an appeal against an order of removal. *Prideaux* (*T. W. Saunders* with him), in support of the order of Sessions. *Pashley* (*H. T. Cole* with him), contrà.

Order confirmed.

Monday, Jan. 17.

EVERARD *v.* WATSON.—*Prentice* moved to set aside the verdict for the plaintiff in this action, upon a bill of exchange by indorsee against indorser, and enter it for the defendant, on the ground of the insufficiency of the notice of dishonour: (*Messenger* v. *Southey*, 1 Sc. N. C. 180; *Strange* v. *Price*, 10 A. & E. 125.) *Rule nisi.*

HASTINGS *v.* BROWN.—Action for the infringement of a patent. The question argued on this rule to set aside the plaintiff's verdict and enter a nonsuit was, whether or not the specification sufficiently distinguished the parts of the invention claimed to be new from those previously known. The *Attorney-General*, *Webster*, and *Holl* showed cause. The other side was not called upon. *Rule absolute.*

WALTON *v.* M'GRATH.—Rule *nisi* for a new trial for misdirection by Wightman, J. in this case tried at Carlisle, when a verdict was found for the defendant. *Edward James* and *Rew* showed cause. *Part heard.*

Tuesday, Jan. 18.

GILL *v.* FOWKE.—This was a special case, raising a question as to the validity of an order of justices and an award of commissioners for the stoppage and diversion of a road. *Cowling* for the plaintiff. Sir *F. Thesiger* for the defendant. *Cur. adv. vult.*

JOHNSON AND WIFE *v.* LUCAS.—Demurrer to declaration. *Ogle* in support of demurrer. *Quain*, contrà.

Cur. adv. vult.

KERNOT *v.* CATTLIN *Stands over for settlement.*

CORCORAN *v.* GURNEY.—*Bovill* for the plaintiff. Sir *F. Thesiger* for the defendant. *Judgment for the plaintiff.*

Wednesday, Jan. 19.

BESSELL *v.* WILSON. *Judgment for plaintiff.*

REG. *v.* ST. ANDREW'S, WORCESTER. *Order of Sessions confirmed.*

WALTON *v.* MACRATH.—*Atherton* and *Cowling* were heard in support of the rule.

Rule absolute for a new trial, on payment of costs, by consent.

NEILL *v.* WARNURST. *Settled.*

REG. *v.* THE INHABITANTS OF HOUGHTON.—*Cowling* and *Holland* showed cause against a rule for a new trial. *Atherton*, *Monck*, and *Russell*, contrà. *Cur. adv. vult.*

DE MORODA *v.* DAWSON.—*Macaulay*, *Mellor*, and *Hayes* showed cause against a rule for a new trial. *Miller*, Serjt. and *Field*, contrà. *Rule absolute.*

COURT OF COMMON BENCH.

Reported by DANIEL THOMAS EVANS and R. VAUGHAN WILLIAMS, Esqrs. Barristers-at-Law.

Thursday, Jan. 13.

INGRAM *v.* KNOWLES.

The fact of a tenancy may be proved by parol evidence, although there is a written agreement; but not so the duration of the tenancy, which must be proved by the production of the agreement.

This was an action of trespass tried at Westminster, at the sittings after last term. Verdict for the plaintiff, damages 1*s.*

Horn, for the plaintiff, now moved for a rule for a new trial. Both the plaintiff and the defendant were builders, and the action was brought against the defendant for breaking down a wall which separated a piece of ground, the subject-matter of the dispute, from some premises of his own, and for depositing thereon bricks and old building materials. The defendant pleaded not guilty, and that the close was not the close of the plaintiff. At the trial, evidence was given that the plaintiff was in possession of the close down to a certain day, but the agreement under which he occupied, being unstamped, was not produced; and the only proof of any tenancy was the evidence of the person who had the letting of the land, and who stated that he let the close to the plaintiff, and that there was a piece of paper—that he applied for the payment of the rent, but it was not paid. Shortly after the first trespass the close was let to the defendant. The Lord Chief Justice told the jury (as was now stated by *Horn*) that he should leave it to them as the case of an easement; that there was no evidence of any tenancy, and that they could not presume a tenancy from year to year, or at will, without the agreement being in evidence; and that they could only give damages for the trespass before the lease to the defendant. It was now contended that there was evidence of a tenancy; and *R. v. The Inhabitants of Holy Trinity*, 7 B. & C. 601, and *Strother v. Barr*, 5 Bing. 136, were cited, to show that parol evidence of the fact of a tenancy was admissible.

MAULE, J.—This case differs from those cited in this, that it was not only necessary to prove a tenancy, but also the duration of it. The plaintiff shows some sort of tenancy in the land, and has obtained 1*s.* damages. In order to entitle him to more he must show the duration of the tenancy; and to do that he must produce the agreement. He does not do so; but merely gives the evidence of the man who let the land. The jury are not satisfied that it lasted a longer time than would entitle him to 1*s.* damages. The substance of the summing-up seems to be that, in order to entitle the plaintiff to recover more than nominal damages, the plaintiff ought to show the duration of his tenancy; he has the means of showing it; and his not having done so raises a presumption that it would do him no good. I think that is correct.

CRESSWELL, J.—I am of the same opinion. It is admitted that another person was seized in fee; and the plaintiff showed a bare possession under an agreement not before the court. He rested his case on an inference from bare possession. He did not choose to go further; and only showed himself entitled to nominal damages.

WILLIAMS, J. concurred. *Rule refused.*

PEACHEY *v.* ROWLAND AND ANOTHER.

A contractor is not liable for an injury caused by the improper conduct of his sub-contractor.

A. the defendant, contracted to make a sewer, and sub-contracted with B. for excavating it. A.'s carts were to carry away the surplus earth. B. left a heap of earth, which overturned the plaintiff's carriage: Held, that there was no evidence to go to the jury.

This case was tried in Middlesex, before the Lord Chief Justice, under whose direction a verdict was found for the defendants.

Piggot now moved for a rule for a new trial, on the ground of misdirection. It appeared that the defendants had contracted to make a sewer, and had sub-contracted with one Ansel for the excavating, and another person for the brick-work; and Evans, one of the defendants, stated at the trial that he could not interfere with the man who had contracted to excavate the sewer, but that his carts were to take away the surplus earth after the sewer had been filled in. After the sewer was constructed the earth was piled up over it about a yard high, to allow for sinking, and railings with a light were placed round it; when it was in this state the defendant Evans saw it. Afterwards the railing was taken away, and the plaintiff's carriage was upset by the earth, and his horse killed.

It was now contended that the evidence showed that the defendants had not abandoned all control over the work, one of them having seen it after the earth was piled up, and the refuse earth being removed by their carts; and that the jury ought to have been asked whether Ansel was the servant of the defendants: (*Overton* v. *Freeman*, 21 L. J. 52, C. P.; *Knight* v. *Fox*, 5 Ex. 721; *Burgess* v. *Gray*, 1 C. B. 578.)

MAULE, J.—It was necessary for Ansel to have placed so much earth upon the sewer; and if he put too much, the defendants are not to be held liable for what he did under his contract with them. If a man employs another to do a thing, and there are several ways of doing it, one criminal and another innocent, and he does it in a criminal manner, the employer is not liable. It would be inconvenient to distinguish the present case from *Overton* v. *Freeman*. I think the defendant Evans in substance showed that he and his partner had nothing to do with this matter. They did not employ Ansel to make this heap, but to do what might be done in a proper manner. He did it in an improper manner; but they are not to be liable for that. We are not to look with extreme scrupulosity for a grain of evidence where there is practically no evidence: we are to take it as no evidence at all for the purpose in hand. If the verdict had been found upon it, it would have been set aside. In *Burgess* v. *Gray* it does not appear that the barrel fell into a highway; and it was there contended by the counsel for the defendant that the remedy was against some one else; and the question was whether there was evidence that the men engaged in the matter were servants of the defendant. Lord Denman said there was. The circumstances are very different, because the fact of a man lowering a barrel as servant of another man is evidence of the other man lowering it; but that does not show that there was any evidence here to go to the jury.

CRESSWELL and WILLIAMS, JJ. concurred.

Friday, Jan. 14.

VOLANT *v.* SOYER AND SYMONDS.

Attorney and client—Privileged communication—Title-deed—Misdirection—Surprise.

In an action of debt for work and labour, &c., the defendant called one M., who was the attorney of H. (a third party), to produce a deed of assignment from defendant, and S., his partner, to H., for the purpose of showing that at the date of the assignment the partnership, and with it the liability of the defendant had terminated. The attorney refused on the ground that it was his client's title-deed, and the judge ruled that he was justified in withholding it. The judge also refused to look at the deed for the purpose of ascertaining whether it really was, as alleged, the title-deed of H., and to admit secondary evidence of its contents: Held, on motion for a new trial on the ground of the improper rejection of evidence, and for misdirection:—First, that the attorney was justified in withholding the deed, and the judge in declining to enforce its production.

Secondly, that the judge was not required to examine the deed to ascertain whether or not it was a title-deed.

In asking for a new trial on the ground of surprise, it is not sufficient to state that charges of perjury and forgery were for the first time imputed to the defen-

COMMON PLEAS.

dant at the trial, and that, being thus taken by surprise, he had not an opportunity of rebutting those charges and establishing his case; but the party applying must show affirmatively that he has additional evidence to offer, with which he was not prepared at the trial.

This was an action of debt brought to recover a sum of 54*l.* 18*s.* for work done, for money paid, and on an account stated. The defendants pleaded, 1st, never indebted; 2nd, payment. The cause was tried before Jervis, C. J. in Middlesex, at the sittings after Michaelmas Term; verdict for the plaintiff for full amount claimed. The plaintiff, as appeared on the trial, was clerk to the defendants (Soyer and Symonds) whilst they were joint proprietors of "The Symposium" at Gore-house, for services rendered in that capacity. The defendant Soyer suffered judgment to go by default, and was subpœnaed as a witness against the co-defendant Symonds. In the course of the trial the defendant called Mr. Michael, an attorney formerly engaged in this suit, to produce a deed of assignment of the property at Gore-house, the copyright of certain books, &c. from the defendants to one Hart, for the purpose of proving that the partnership had legally terminated at the date of the assignment. *Byles*, Serjt. thereupon objected to the production of the deed on the ground that it belonged to his client, and was his title-deed; and thereupon the attorney refused to produce it. The learned judge held the objection valid, and refused to examine the deed to ascertain whether or not it was, as alleged, a title-deed; and his Lordship also refused to admit secondary evidence of its contents. In the course of his examination at the trial, the defendant Symonds produced a receipt for money paid to the plaintiff for his services, dated 5th Nov. 1851, and containing the words "up to this date." On the other hand the plaintiff and another witness both swore that those words were not in the receipt when plaintiff signed it; and that it was not given as a discharge up to that day, but in respect of services rendered up to a certain time previously. The Lord Chief Justice left this question to the jury, who found that the words "up to this date" had been added since the plaintiff signed the receipt.

Horn (*Woollett* with him) now moved for a rule calling on the plaintiff to show cause why the verdict and all subsequent proceedings should not be set aside and a new trial had; first, upon the ground that the learned judge should not have rejected the evidence of Michael, he being liable to produce the deed; secondly, the improper rejection of secondary evidence of the contents of the deed; thirdly, misdirection in this—that his Lordship ought to have directed the jury that the partnership between the defendants had terminated at the date of the assignment; and, lastly, on the ground of surprise, the defendant having sworn that until the crime of forgery was imputed to him at the trial, it had never been intimated to him that the receipt had been altered by the addition of the words "to this date." As to the first point, the deed was a trust-deed signed by both parties, of which the defendant Symonds was *cestui que trust*, and by its production the trustee could not be damnified. Inspection, in analogous cases has been ordered, and the judge should have looked at the documents: (*Blakey* v. *Porter*, 1 Taunt. 386; *King* v. *King*, 4 Taunt. 666; *Broom* v. *Rose*, 6 Taunt. 288.) If the deed had been deposited with Michael as a trustee for others, it would be admissible: (*Pickering* v. *Noyes*, 1 B. & C. 263; *Lord Falmouth* v. *Moss*, 11 Price, 455; *Nixon* v. *Mayoh*, 1 Moo. & Rob. 76; *Harris* v. *Hill*, 3 Starkie, 140.) To make such an objection valid, the attorney should show that his client also objects to the production of the deed: (*Marston* v. *Downes*, 1 A. & E. 31.) But having refused to order Michael to produce the deed, on the ground of privilege, the judge ought to have admitted secondary evidence, which was offered in the form of a copy of the deed, prepared in Michael's own office, which had been read by him and delivered as a true copy. Then, as to the point of misdirection, the assignment was an act of bankruptcy. By the assignment the business was at an end, and the authority of the partners ceased; for one partner cannot afterwards pledge the credit of the other, and the judge should have so directed the jury. Lastly, the defendant was taken by surprise when the receipt was pronounced by the plaintiff to be a forgery. Nothing of the kind was said of it when the plaintiff inspected the deed before the trial; and the defendant never suspected any such charge would be made until plaintiff's counsel called upon the court to impound the receipt as being a forgery.

JERVIS, C. J.—In this case there should be no rule. To take the objections in their order, as raised by Mr. Horn; first, it has been objected that when Michael, the attorney of Hart, declined to produce the title-deed of his client, I should have ordered him to do so. I disallowed the production of the deed on this ground, that it was entrusted to him in his professional capacity as attorney for a third party, and should therefore be considered confidential. But there are other grounds on which the attorney might have declined to produce the deed; for instance, he might have objected on the ground of lien, even though, in the case of a broker, it has been held that he is bound to produce a deed upon which he may have a lien. But it is not necessary to consider the question on that ground, for this case is governed by the common principle which precludes an attorney from producing his client's title-deeds or any other documents confidentially entrusted to him. Perhaps under the new regulations, the defendant by taking the proper course might have compelled the production of the deed. Neither, for the same reason, was I required to look at the deed myself. Then comes the question of misdirection. That depends upon a point which did not in fact arise; for the deed of assignment was not in evidence. I could not tell the jury the effect of it; that is to say, that the partnership had terminated before the accruing of the plaintiff's claim. The remaining question is that of surprise. The statement of facts may be thus given:—the defendant charges the plaintiff with perjury, and the plaintiff charges defendant with both perjury and forgery. The only ground on which in this case a new trial can be asked on this point would be that the party seeking it would, if it were granted, be prepared at the second trial with additional evidence; but no such promise is made here. Were we to grant a new trial merely because the evidence conflicts, and one party imputes perjury to another, who recriminates in like manner, we must grant one wherever plaintiff and defendant contradict each other, which is a precedent we cannot allow. It would be highly impolitic to do what is here asked of the court. The defendant Symonds need not be so sensitive, for it is quite consistent with the facts of this case, as Mr. Horn has shown, that he is not guilty of either perjury or forgery. For these reasons I think there should be no rule.

MAULE, J.—I am of the same opinion. With respect to the refusal of the Lord Chief Justice to enforce the production of the deed of assignment, I think it was properly made. The deed was asked for as the deed of assignment to a third party, from that party's attorney, and the latter was justified in refusing to produce it, on the ground that it was the title-deed of his client, and because it came into his possession in his confidential character as an attorney. Every person employing an attorney has a right to be protected by him. (His Lordship referred to *Harris* v. *Bell*, *supra*.) I do not share the doubt of the Lord Chief Justice as to the probable effect of the power newly created for enforcing the production and inspection of documents. I think that the old rule as to the protection of the client still remains in its full integrity; and that an attorney cannot now any more than before the Common Law Procedure Act be compelled to produce documents entrusted to him in a confidential character. Therefore, I consider the refusal of the judge to require the production of the deed was just and proper. As to the admission of secondary evidence, what the Lord Chief Justice has said is true; for the primary evidence being properly shut out, secondary evidence must be also inadmissible. With respect to the question of misdirection, there was no evidence before the court of the termination of the partnership, so that the judge could not direct the jury that the liability of plaintiff had ceased. Then, as to the question of surprise, the case stands thus: a receipt was put by defendant purporting to be signed by the plaintiff, and giving acquittance up to its date. The plaintiff says, The receipt was not in its present state when signed by me. This was a question for the jury, who found that the words "to this date" were not on the receipt when plaintiff signed. The defendant Symonds having a receipt dated 5th Nov. added that it extended up "to that date," probably thinking that he was entitled so to do. This was not a very grave offence at the most, for it is not uncommon to see persons in a respectable sphere of life differing between themselves concerning sums so small as to be insufficient to induce either party to make a wilfully false statement. On these grounds then the rule must be refused.

CRESSWELL, J.—I am entirely of the same opinion. With respect to the first point, I think that the case cited by my brother Maule is sufficient to show that the attorney was not liable to produce the deed. Neither was the learned judge who tried the cause required to examine the deed for the purpose of ascertaining whether or not it related to Hart's title. The deed was called for as a title-deed, and was intended to be used as a title-deed to show that the partnership had ceased, and the property had vested in a third party. With reference to the third point,—that is, the surprise, I do not think sufficient materials have been laid before the court to justify it in granting a new trial. The only ground on which a rule could go in such a case would be that the party seeking it would be prepared with additional or stronger evidence. But if we granted the rule it does not appear that any better evidence could be adduced, at the second trial, by the defendant; the most that can be said is, that if a new trial were granted the defendant would, perhaps, be in a position to lay fuller arguments before the court. That, however, is not a ground sufficient to disturb the verdict and grant a new trial.

WILLIAMS, J.—I am also of like opinion. I think the learned judge was quite right in the course he took upon the single point of law (for there is but one); and that the attorney was justified in refusing to produce the deed. This case is not so strong as that of *Harris* v. *Bell*, *supra*. With respect to the granting a rule on the ground of surprise, I was at one time inclined that the rule should go, because the imputation of forgery seemed to lie on the defendant, and because it evidently took him by surprise; but my learned brothers have convinced me of the impolicy of such a course as regards other cases, and that in reality there is nothing here injurious to the character of the plaintiff. *Rule refused.*

COMMON PLEAS.

BLYTH *v.* DENNETT.

Landlord and tenant — Ejectment — Notice to quit — Waiver by demand of rent.

A mere demand of rent accrued due after notice to quit, without acceptance of such rent, is not a waiver of the notice to quit.

In an action of ejectment to recover possession after a notice to quit, the evidence showed that the plaintiff demanded, but did not receive, rent accrued due subsequent to the notice. The tenant, on the demand, said: "If I continue to pay my rent it will all go on right?" and was answered: "Yes; all will be right." The judge, instead of deciding, as a question of law, whether the demand of rent was a waiver of the notice to quit and a recognition of a fresh tenancy, put it generally to the jury to find what was the intention of the parties, whether to continue or terminate the tenancy:

Held, no misdirection; and that the question, as a question of fact, was properly left to the jury.

This was an action of ejectment brought to recover possession of a house and premises. Verdict for the plaintiff. The cause was tried at Westminster during the sittings after Michaelmas Term.

F. Edwards now moved for a rule calling on the plaintiff to show cause why the verdict should not be set aside on the ground of misdirection. The question at the trial was, whether a demand of rent, subsequent to notice to quit, was a waiver of the notice, and an acknowledgment of a fresh tenancy. The notice to quit expired at Lady-day, 1851; but the tenant held on down to the trial. It was proved that after the notice was given the landlord repeatedly applied for rent accrued due both before and after the notice. The plaintiff in fact brought elsewhere an action of debt for rent, in which the particulars of demand claimed for several quarters accrued due subsequent to the notice. [JERVIS, C. J.—I told the jury that if there had been payment of rent accrued due after the notice to quit, the plaintiff's case was at an end.] On the several demands for rent, the defendant from time to time promised to pay, and this, it is contended, amounts to a fresh agreement for further tenancy. [MAULE, J.—You say that asking rent was the same as taking rent, as regards waiver.] Yes. [JERVIS, C. J.—Is it a question for the jury or the court?] It is a question of law for the court, and should not be put to the jury. If then it be, as I contend, a question of law, the point is whether such a demand of rent is waiver of notice to quit, and evidence of the recognition by the landlord of a new tenancy. [WILLIAMS, J.—You say it is the same as putting in a distress?] Yes, and there are authorities to show that conduct such as this amounts to waiver. There is an authority in favour of this application in *Green's case*, Cro. Eliz. 3. Payment of rent accrued after notice was held to be waiver in the case of *Goodtitle dem. Charter* v. *Cordwent*, 6 T. R. 219. Acceptance of rent under such circumstances is an acknowledgment by the landlord of a subsisting tenancy. The express point was raised in *Doe dem. Nash* v. *Birch*, 1 M. & W. 402. The court should have left to the jury to find the facts only, and have decided the point of law itself, instead of leaving generally to them to find whether, on all the facts of the case, there had been waiver of notice. This was the misdirection.

JERVIS, C. J.—I am of opinion there should be no rule in this case. The facts were these: The defendant being in arrear with his rent, the plaintiff, his landlord, gave him notice to quit, and sent his son to demand rent due. The defendant said to him, "If I continue to pay my rent it will all go on right?" The son answered, "Yes, all will be right." It was, therefore, a question for the jury, what was the intention of the parties, whether to continue or terminate the tenancy, and thus a question of fact and not of law.

MAULE, J.—I am of the same opinion entirely. Evidence being given that plaintiff said "All will go on right if you pay the rent," it cannot be held that this amounts to waiver. I think, therefore, that a rule should not go.

CRESSWELL, J.—I think this was altogether a question for the jury, and not for the court.

WILLIAMS, J. concurred. *Rule refused.*

BUSINESS OF THE WEEK.

Thursday, Jan. 13.

Re a Prohibition to the JUDGE OF THE COUNTY COURT OF NORTHAMPTON.—No cause shown. *Rule absolute.*

MOFFAT *v.* DIXON.—*Knowles*, Q.C. and *Manisty* were heard in support of the rule. *Cur. adv. vult.*

DAVY *v.* HARDING. *Rule absolute.*

Friday, Jan. 14.

DALTON *v.* MIDLAND RAILWAY COMPANY.—This was an action of debt brought by a married woman named Ann Dalton, to recover dividends due to her upon certain shares in the Midland Railway Company. *Pleas*, never indebted. The cause was tried before Jervis, C. J. Verdict for the plaintiff. *Macaulay*, Q. C. (*Bovill* with him), now moved pursuant to leave reserved, for a rule calling on the plaintiff to show cause why

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the verdict should not be set aside on the ground of misdirection, and also that the verdict was against the weight of evidence. The facts of the case are peculiar. The plaintiff bought the shares by means of a Mr. Mitchell, a sharebroker, from one Demisse, and they were duly transferred to her in the books of the company, and registered in her name by the secretary. When the half-yearly dividend became due, the secretary enclosed a cheque for it to Mrs. Dalton. This was in August 1850. A forged transfer of these shares from Dalton to one Eslin was afterwards presented to the company by Mitchell (who shortly after absconded), and a transfer thereupon made. On the 4th October following, Ann Dalton wrote to the secretary cautioning the company that there was reason to believe a forged transfer had been sent to them in favour of Eslin, and the secretary replied that there was no stock standing in her name, it having been transferred on a certificate bearing her signature to Eslin. She then brought her action to recover her dividends on the shares. At the trial it appeared that, though the shares were purchased and the action brought in the name of Ann Dalton, she was in fact a married woman, and her husband living in America. To make out her case, the plaintiff undertook to show that she was registress of the shares, and as such entitled to the dividends; and the mode in which she proved this was by showing that the company had registerered a mere piece of paper, it being a forgery. For the defendants it was shown that what they did, they were bound to do; and that was to register a transfer which on the face of it appeared good. There was no evidence before the court that Demisse had ever assigned the shares to the plaintiff. [JERVIS, C.J.—That is your first point; but it is not good—you cannot have a rule on that. MAULE, J.—Mitchell has cheated somebody, that is clear; and the question is, whether the plaintiff or defendants must suffer?] The next point is, that this is not an action maintainable by the plaintiff, she being a married woman, and the property in her husband. Upon the transfer from Demisse, the title to the shares vested in the husband, and as the property is in him, the duty goes with it. [MAULE, J.—The answer to that is, that this is plea in abatement.] JERVIS, C. J.—You may take a rule on the last, but not on the first point. *Rule nisi.*

SHARP v. SAUNDERS.—Macaulay, Q. C., asked the court not to take this case in its turn on the morrow, as it would be inconvenient. *Mixed for Tuesday.*

PENN v. FORBES.—Creasy moved herein for a rule to show cause why an award and judgment signed thereon should not be set aside, on the ground that the arbitrator did not allow the defendant sufficient time to produce his witnesses: or why the case should not be referred back to the arbitrator. It was an action to recover 165*l.* for goods and machinery. The first meeting under the submission to reference was on Dec 5, and an appointment was then made for the 8th, which was enlarged to the 13th. Finding a witness from Devonshire could, by his evidence, reduce the claim to 100*l.*, he was written for, but did not get the letter till the 14th, when he came on, but missed the mail, and then wrote to defendant. Application was, on the 17th, made to the arbitrator to make another appointment, which the witness should attend; but he declined, having, as he said, made his award, though he had not published it. JERVIS, C. J.—Take a rule to show cause. *Rule nisi.*

Saturday, Jan. 15.

COLES v. STACEY.—*Montague Smith* showed cause against a rule obtained by *Morgan Lloyd*, for a prohibition to the Judge of the County Court of Wiltshire. The affidavit upon which the rule was obtained stated that the claim was reduced within 50*l.* by a set-off of 16*l.*; but in the particulars of demand the plaintiff did not treat this sum as a set-off, but gave credit for it in the ordinary manner; and it was now shown on affidavit that a balance had been struck before action brought, and a sum within 50*l.* agreed upon. MAULE, J.—It is clearly not a set-off, and the defendant's affidavit does not show that credit had not been given for it. *Rule discharged.*

LANG v. TODD.—*Addison* moved for a rule to show cause why Lang should not pay a certain sum awarded to Todd. In the award he was directed to pay it to Matthew Popplewell, but it was not stated in the award that it was to be paid to him as Todd's agent: (Comyn's Digest, title "Arbitrament," E. 7; 1 Salk. 74; *Adcock* v. *Wood*, 20 L. J. 435, Ex.; 21 L. J. 204, Ex.) *Rule nisi.*

CLOTHIER v. GANN.—*Prentice* moved for a rule calling upon the plaintiff to show cause why the taxation of costs by the Master should not be reviewed. The declaration contained only the common count for wages. *Pleas*—1. Except as to 50*l.* 12*s.* never indebted. 2. Except as above, set-off. 3. Except as above, payment. 4. Payment into court of 50*l.* 12*s.* *Replication*—Issue joined upon the first plea. Traverses of second and third plea; and as to the fourth, money taken out of court. The case was referred to arbitration, and the award was in favour of the plaintiff on the first issue, and for the defendant on the others. The question was whether the Master was right in allowing 52*l.* 10*s.* for the plaintiff's evidence: (*Harrison* v. *Watt*, 16 M. & W. 316). If the plaintiff's evidence had been confined to the first issue, there is no doubt that he would have been entitled to all the costs of his evidence. But as it extends to the second and third issues, he is not entitled to expenses for proving the defendant's case. (The Master was referred to, and stated that he had acted upon the principle of *Harrison* v. *Watt*.) *Lush* contrà. The Court directed the Master to consider whether the plaintiff had been called upon the set-off and payment, as well as upon the general issue.

The rest of the day was occupied with the part-heard case of *Peterson* and *Ayre*.

Monday, Jan. 16.

QUARTERMAINE AND ANOTHER v. BITTLESTONE AND ANOTHER.—This was an action of trover to recover possession of certain furniture which had been seized by the officers of the Court of Bankruptcy as being within the order or disposition of the bankrupt. The defendants pleaded not guilty and no possessed. The cause was tried before Maule, J. at the Leicester Summer Assizes, and the matter turned into a special case for the opinion of this court. *Bramwell*, Q. C. and *Hayes* (*Willes* with them) were heard for the plaintiffs. *Bittlestone* (with him *Willmore*, Q.C. and *Macaulay*, Q.C.) was heard for the defendants. The case lasted the entire day, and the court took time to consider its judgment on one point, intimating that it would take the arguments on the other points next special paper day. *Cur. adv. vult.*

Tuesday, Jan. 18.

PETERSON v. AYRE.—This case, after a rambling discussion, was disposed of by the Court saying the facts before them did not enable them to decide the matter, and there must be a new trial.

DUNCAN v. TINDAL. *Part heard.*

Wednesday, Jan. 18.

MATTHEWS v. OSBORNE.—This was an action for mesne profits of copyhold premises, the main question being whether, the plaintiff being a trustee, there had been a sufficient surrender to his use, so as to enable him to maintain his action. *Chambers*, Q.C. *Goodeve*, and *Newham* showed cause, and *Bramwell*, Q.C. and *Willis* appeared in support the rule. The case occupied the whole day. *Part heard.*

COURT OF EXCHEQUER.

Reported by FREDERICK BAILEY and C. J. B. HERTSLET, Esqrs. Barristers-at-Law.

Thursday, Jan. 13, 1853.

ROBINSON AND ANOTHER v. WAIT AND ANOTHER.

Charter-party—"Usual and customary terms"—Right to sue.

A charter-party between A. and B. to carry cargo to Calcutta on the usual and customary terms. It appeared that the usual and customary terms gave the consignee a right to send a cargo home, and entitled him to the commission on such return cargo:

Held, that the consignor might sue for such commission.

This was an action upon a charter-party, dated 6th Feb. 1851, and entered into between the plaintiffs as owners of the ship and the defendants as owners of the cargo, whereby the former undertook to carry 700 tons of salt, to be shipped on board at Liverpool, and to deliver the same to Messrs. Ewen and Co. at Calcutta, on "the usual and customary terms." It was not disputed that these words gave the consignee a right to send a cargo home, and entitled him to the commission on it. The declaration assigned two breaches: first, that the defendants did not ship a portion of the cargo; and, secondly, that they did not consign the salt to Ewen and Co., whereby the plaintiffs had lost divers gains, profits, and commission, &c. At the trial before Wightman, J. at Liverpool, the plaintiffs contended that under the words "usual and customary terms," the defendants were bound to deliver to the consignees mentioned in the charter-party; and to prove damage a party in the Calcutta firm was called, who said that there was an agreement between the plaintiffs and Ewen and Co., by which the former were entitled to one-half of the commission on the return cargo; but this evidence was objected to and excluded, on the ground that the agreement was in writing and ought to have been produced. The plaintiffs then contended that, inasmuch as the consignment was for the benefit of Ewen and Co., and the contract was entered into with them (the plaintiffs), they had a right to sue as trustees for Ewen and Co.

The learned judge, as to the last point, held that the plaintiffs could not sue in the capacity of trustees for Ewen and Co. and so directed the jury, and a verdict was accordingly entered for the plaintiffs for nominal damages only, leave being reserved to move to increase the damages to 150*l.*, if the court should be of opinion that the plaintiffs could recover as trustees for Ewen and Co.

A rule having been obtained accordingly, *Rowe* now showed cause.—The plaintiffs cannot upon this declaration recover on behalf of Ewen and Co. The damage they allege is loss sustained, not by Ewen and Co. If a man enter into an agreement with another for the benefit of a third party, he may sue on behalf of that party; but the mere fact of a third party being entitled to some benefit is not sufficient: (*Lamb* v. *Vice and others*, 6 M. & W. 467; *Stansfield* v. *Hellawell*, 6 Ex. 708). The house at Calcutta was in no way a party to this contract, but is merely remotely and indirectly benefited by it.

MARTIN, B.—If a man contract to do something for the benefit of a third party, the party with whom the contract is made may sue, and indeed is the only person who can sue.

PARKE, B.—The words in the charter-party were inserted for the benefit of Ewen and Co.; and the contract was so far made on their behalf.

Wilkins, Serjt. (with him *Aspland*), contrà, were not called on.

THE COURT said the case was clear enough, and recommended the defendants to accept the offer of the plaintiffs to take a verdict for 75*l.* *Rule absolute accordingly.*

Saturday, Jan. 15.

THE DUBLIN AND WICKLOW RAILWAY COMPANY v. PIDCOCK.

Liability for calls—Companies' Clauses Consolidation Act—"Subscriber."

A subscriber to a company is a man who pays under a subscription, and he is not a subscriber till he has signed the deed. The mere payment of a deposit will not make a man responsible as a subscriber, although his name has been put on the register by the company without his knowledge or consent.

The case established by the production of the registry, showing an entry of a man's name in it, may be rebutted by the fact that he had not executed the deed; and until he has done so he is not a subscriber or entitled to shares, and the company has right till then to put his name on the register.

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This was an action for calls on fifty shares in the Dublin and Wicklow Railway Company. At the trial before Martin, B. at the sittings in last Michaelmas Term, it appeared that the defendant applied on the 29th April 1845 to the provisional committee in the usual form for an allotment of one hundred shares; that he received a reply from the secretary, dated 11th June, allotting him fifty shares, and requesting him to pay a deposit on such allotment of 1*l.* 10*s.* a share, on or before the 30th of June; and in the letter of allotment it was also stated, that the shares would be forfeited if the deposit was not so paid; and, further, that the parliamentary contract and subscribers' agreement must be signed on or before the 20th August. The defendant attended on the 17th June and paid the deposit on the fifty shares, but did not sign the deeds, and was never called upon to do so. His name was, however, inserted in the register of shareholders, and on this document the plaintiffs at the trial rested their case. For the defendant it was contended that such *prima facie* case was robutted by the fact that the defendant had never executed the deeds, the doing which alone authorised the company to put his name upon the register; and the court having so ruled at the trial, the plaintiffs were nonsuited.

H. Hill, Q.C. now moved to set aside the nonsuit, and to enter a verdict for the plaintiffs, on the ground that the above direction was incorrect. The question was, whether the fact of the defendant's name being on the registry was not in itself sufficient to constitute him a shareholder, although he had not in fact executed the deeds. The 8th section of the Companies' Clauses Consolidation Act (8 Vict. c. 16) enacts that "every person who shall have subscribed the prescribed sum or upwards to the capital of the company, or shall otherwise have become entitled to a share in the company, and whose name shall have been entered on the register of shareholders hereinafter mentioned, shall be deemed a shareholder of the company." Here the defendant is within the description of a shareholder contained in that clause. [ALDERSON, B.—A subscriber is a man who pays under a subscription; and he is not a subscriber till he has signed the deed. I think, also, he must be a person who, according to the 21st section of the Act, has paid the whole sum. That the defendant clearly has not done. MARTIN, B.—I have very little doubt that it was intended that a contract of some sort should be signed; and the jury are not to draw an inference from the mere payment of a deposit that the person thereby intended to bind himself as a subscriber.] *Fox* v. *Clifton*, 2 M. & S. 146; 9 Bing. 115; 6 Bing. 776; and Collyer on Partnership, 736, were cited.

PARKE, B.—I think that in this case there should be no rule. The company has the management of this register, and might put down any person's name, and so make him liable, if the mere fact of the name being on the register were sufficient. Here there is, first, the application by the defendant for 100 shares; then a letter telling him he may have fifty, and that he is to pay a deposit and sign certain deeds before a certain day; he does pay the deposit, but he never signs the deeds, and the question is whether this is sufficient to bring him within the 8th clause of the Companies' Clauses Act—whether he had so subscribed as to be entitled to the fifty shares. It appears to me, from this letter of allotment, that it is clear he was not to have the benefit of the shares until he had signed the Parliamentary contract and the subscribers' agreement, and brought his letter and exchanged it for scrip—all which, I think, were conditions precedent to his right to the shares. Here the defendant never signed, and, not having done so, he is not a subscriber; he could not recover the deposit he has made; that he chooses to forfeit, and he has a right to do so if he please.

ALDERSON, B.—The only proof of an agreement with the defendant is the register; but the defendant says, "You had no right to put my name there;" you have only a right to put the names of such as are shareholders, or those who have, according to the 8th section of the Act, "subscribed the prescribed sum;" and, looking at the 21st section, I think that means "shall have rendered themselves responsible by subscribing the deed." What has the defendant done? He says, I will pay and subscribe; then he pays, but does not subscribe; and as he has not subscribed, they had no right to put his name on the register.

MARTIN, B.—I am of the same opinion. I should be very sorry that it should be held that this Act entitles railway companies to put who they will upon the register. If they have any remedy, though I think not, it would be by action upon the contract; but I agree with Parke, B. that the defendant had a right to sacrifice his money if he pleased, and was not obliged to go on with the bargain.

POLLOCK, C.B.—I quite agree that in this case there should be no rule. If there be any difficulty it arises from the ambiguous meaning of the word "subscriber." That word sometimes refers to the payment of a sum of money by a person, and sometimes to his putting down or subscribing his name. I think the Act of Parliament means the putting down the name; and if taken in the other sense, I think a man can only be said to be a subscriber when he has paid the whole, and by such payment become

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entitled to some benefit; but the payment of this deposit cannot be held to make him a subscriber.

Rule refused.

Monday, Jan. 17, 1858.

SHAW *v.* BECK AND ANOTHER, Executors, &c.

County Court—Practice—Evidence in reply—Discretion of judge.

Upon an interpleader summons the plaintiff put in and proved an assignment by way of mortgage to him of the goods in question seized by the bailiff. The defendant then proved the deed fraudulent as against creditors; the County Court judge held it fraudulent, and declined to hear the plaintiff's evidence tendered in reply to negative the fraud:

Held, upon an appeal to this court, that the County Court judge was wrong in rejecting the evidence tendered by the plaintiff in reply to negative the fraud. A new trial was directed.

This was an appeal from the County Court of Halifax, arising upon an interpleader summons obtained by the officer of the court, who had levied an execution upon certain goods to which a claim had been set up by the plaintiff Shaw, who alleged that the goods in question had been assigned to him by way of mortgage for securing 50*l.* 15*s.* which had become absolute by reason of non-payment on the 9th April, 1852. A power of sale was contained in the mortgage given by Mellor, the mortgagor, to Shaw, and a schedule of the goods annexed. The execution of the deed being proved, the defendant then gave evidence that it was fraudulent, whereupon the plaintiff wished to offer evidence of the circumstances under which it was given, so as to negative fraud; but the County Court judge rejected it, and held the deed to be fraudulent; the defendant contending that the plaintiff should have given such evidence, if at all, in the first instance, when he offered proof of the deed, &c. The question for the opinion of the court, therefore, was, whether under the circumstances the plaintiff should have done so when he first proved a *primâ facie* case, or whether he could not give evidence to negative fraud in reply to the defendant's case—whether the County Court judge was right or wrong in rejecting the plaintiff's evidence, which was tendered in reply to the case made by the defendant.

Hugh Hill, Q.C. for the plaintiff.—It does not appear from the case how the executors were suing; if in tort, there would be no debt until judgment, and they could not be creditors so as to be enabled to dispute the validity of the deed, which would be good and binding at all events between themselves or third parties not creditors. The real question, however, is, whether the judge of the County Court was correct in not allowing witnesses to be examined by the plaintiff to rebut fraud, after fraud had been proved or attempted to be proved by the defendant. In the first place, the plaintiff may prove a *primâ facie* case on his part by proving the deed, &c. to show his title to the goods. Then, if the defendant shows that the deed and the transaction, from the circumstances under which the deed may have been given, were fraudulent, the plaintiff may prove by way of reply that there was no fraud connected with it. How can the plaintiff know in the first instance what the defendant is going to prove? [PARKE, B.—The rule appears to be laid down by Lord Tenterden in *Brown v. Murray*, Ry. & M. 254.] This is the most convenient course, and is in accordance with the general practice.

Atherton, Q. C.—The only point to be determined now is the second question raised in the case, whether the plaintiff was not bound in the outset of his case to prove it perfectly, as he must have known that fraud was intended to be proved by the defendant, and not to lie by to see if fraud was proved in fact, and then tender evidence to negative it. [MARTIN, B.—Is not the same course to be pursued as in an action upon a bill of exchange, for instance, with a plea of fraud?] The judge is to exercise his discretion at all times as to how the case shall be conducted, and whether evidence should be given at one particular time or another; and that appears to be the decision come to by the C. P. in *Wright v. Wilcox*, 19 L. J. 338, C. P. as to the practice at Nisi Prius, on evidence in reply. That was an action of trespass for false imprisonment. The defendant justified, first, on the ground that the plaintiff had stolen some "chaff" belonging to the defendant; and, secondly, on the ground that the defendant had reasonable cause for suspecting the plaintiff of stealing his "chaff." The plaintiff gave some evidence of the honest possession of some chaff, and some peculiarities in that chaff were spoken to similar to those in the chaff found in the plaintiff's drawer, and claimed by the defendant as his stolen property. No mention was made of linseed either in the pleadings or in the course of the plaintiff's case by cross-examination or otherwise. The defendant called witnesses, who proved that in the chaff lost by him, and also in that found in the plaintiff's drawer, linseed was found mixed. The plaintiff then proposed and was allowed by the judge to call her father, who was in court, to prove that he had bought linseed some months before the alleged felony and mixed it with chaff, and sent it to the plaintiff, and to produce the invoice which he had received for that linseed. The court there did not appear to wish to lay down any general rule as to the admission of evidence in reply, but held that it was in the discretion of the judge to allow such evidence to be given by way of reply, and that he had rightly exercised such discretion. [ALDERSON, B.—The discretion should be always one way, that is, to receive the evidence; as a general rule for the learned judges of the County Courts it may be always as well perhaps that they should hear as much as they can. But suppose in a case of felony the name of the parish had been omitted to be proved by the prosecutor, and some evidence given on behalf of the prisoner to negative the supposed place, can any one doubt that the judge would immediately have the witness or witnesses called to prove the correct parish?] The question is whether the County Court judge has a discretion to exercise, and if so, whether he wisely exercised that discretion by rejecting the evidence. In 2 Phillips on Evidence, 409 (edit. of 1843), it is laid down that the question whether evidence ought to be admitted in reply is entirely for the discretion of the judge, looking at the circumstances of each case: (Taylor on Evidence, p. 275.)

Hill, in reply (was stopped by the court).

Pollock, C. B.—We are all of opinion that there must be a new trial in this case, as the judge of the County Court should have received the evidence offered by the plaintiff in reply to the fraud alleged by the defendant. In ejectment the practice is common enough, although I don't at this moment recollect the cases upon the subject, that if a defendant proves some title to defeat the plaintiff's *primâ facie* case, the plaintiff may prove something else to defeat that case the defendant has set up, and so go on: (the learned Chief Baron afterwards mentioned *Doe dem. Sturt* v. *Mobbs*, Car. & Marsh. 1; *Rowe* v. *Brenton*, 8 B. & C. 737, and other cases in reference to it.) This case differed altogether from *Middleton* v. *Barnard*, 18 L. J. 433, Ex. where the case had been closed; and also from *Jacobs* v. *Tarleton*, 11 Q. B. 421, where the evidence offered in reply was held properly rejected, because it was not in contradiction of the defendant's case, but merely confirmatory of the plaintiff's *primâ facie* case. In *Wright* v. *Wilcox*, in the C. P. the evidence was received, not rejected. Where an action is brought by the heir-at-law claiming as such, if the defendant proves a devisee, then the heir-at-law would be at liberty to rebut the devise. In this case a deed is put in showing title *primâ facie* to the goods claimed; the defendant answers that by saying it was fraudulent as against creditors; the plaintiff then desired to give evidence to negative the supposed fraud, and I must say I think he was at liberty to do so: the evidence should have been received, and the plaintiff had a right to say, I shall not in the first instance offer this evidence, until I see what is proved by the defendant in answer. It is better, therefore, to adhere to the general current of authority that it is only incumbent on him to prove, in the first instance, just as much as is necessary to establish his *primâ facie* case. In ejectment a *primâ facie* case is made, then a *primâ facie* answer, which may be again rebutted, and so they go on: the judge here, therefore, should have received the evidence, and there must be a new trial.

PARKE, B.—I am of the same opinion; yet, after the case of *Wright* v. *Wilcox* in the C. P. I will not say it is not in the judge's discretion; but the judge ought to have exercised that discretion in this case by receiving the evidence. *Browne* v. *Murray*, Ry. & Moo. 254, was a decision by Abbott, C. J. and is in my opinion quite correct. That was an action for a libel, where the general issue was pleaded, and also special pleas in justification; it was there held the plaintiff may, in the outset, give all the evidence he intends to offer to rebut such justification, or he may do so in reply to evidence produced by the defendant; but he is not entitled to give part of such evidence in the first instance, and to reserve the remainder for reply to the defendant's case. That is the rule generally acted on in the Superior Courts, and should be adopted in the County Courts. Certainly there are no pleadings, as all is there by parol; the bailiff having seized the goods for the execution creditor, the plaintiff claims them by virtue of this deed which he gives in evidence. If fraud be imputed to the plaintiff by the defendant, it is incumbent on him to prove it; and when he has done so, it was then competent to the plaintiff to give evidence to negative that alleged fraud. No consideration was necessary to support the deed, and the deed therefore was *primâ facie* good. It was incumbent on the defendant then to prove fraud, which he appears to have done to the judge's satisfaction, and I am far from saying he was wrong in that as far as it went; but it certainly was open then to the plaintiff to be allowed to tender evidence to disprove the fraud; the judge refused the evidence offered, in which I think he was wrong. There must be a new trial.

ALDERSON and MARTIN, BB. concurred.

New trial.

Wednesday, Jan. 19.

ROSSITER, Executor, &c. *v.* CAHLMANN AND OTHERS.

Weights and measures—Imperial measure.

A contract was made to supply palm oil at so much per gallon, old measure, by the plaintiff on the coast of Africa to the defendant, who was to send his vessel there for it. Defendant pleaded that such a contract by that measure was void under the Weights and Measures Act (5 & 6 Will. 4, c. 63):

Held, that the Act did not apply to such a contract as this.

Declaration for goods sold and delivered, which consisted of a quantity of palm oil.

Plea, that the contract was for the sale of palm oil by the gallon, old measure.

Replication, that the contract was at a certain rate or price per gallon, old measure; the oil to be procured in parts beyond the seas; to be shipped in a vessel of the defendants' to be sent there by the defendants for the purpose of receiving the same.

Rejoinder, that the contract was made in England, and to be paid for here, and that the contract was by a measure other than those by law authorised.

Demurrer to the replication.

Montague Smith, in support of the demurrer.—The plaintiff is entitled to judgment. The question is, whether the contract entered into for the supply of palm oil from the coast of Africa is illegal, because it says that it was to be at so much per gallon, old measure; and it will be contended on the other side that all such local and customary measures are abolished by the 5 & 6 Will. 4, c. 63. (He was stopped by the court.)

Field, contrà, called upon.—This replication affords no answer and is bad in substance, inasmuch as the contract set forth in the replication and in the rejoinder is wholly void by the 5 & 6 Will. 4, c. 63. That is "An Act to repeal an Act of the 4 & 5 Will. 4, relating to Weights and Measures, and to make other provisions instead thereof;" and by the 6th section it is enacted that, after the passing of this Act, the measure called the Winchester bushel, and the lineal measure called the Scotch ell, and all local or customary measures, shall be abolished; and every person who shall sell by any denomination of measure other than one of the imperial measures or some multiple or some aliquot part, such as half, the quarter, the eighth, the sixteenth, or the thirty-second parts thereof, shall, on conviction, be liable to a penalty not exceeding the sum of 40*s.* for every such sale: provided always, that nothing herein contained shall prevent the sale of any articles in any vessel where such vessel is not represented as containing any amount of imperial measure or of any fixed local or customary measure heretofore in use." By the 21st section it is enacted that "any contract, bargain, or sale, made by any such weights or measures, shall be wholly null and void." The contract was made in England, and to be performed in England; this should be taken as admitted by the pleadings. [POLLOCK, C. B.—The Act only applies to England, Ireland, and Scotland.] The oil was to be delivered on the coast of Africa, but paid for here. [MARTIN, B.—Why are we to infer there was no measure of that description used out there? It does not appear there was any to be sent out.] It would be measured here when brought home, as it was to be paid for here, and the contract was entered into here; the Act expressly says any such contract shall be null and void.

POLLOCK, C. B.—We are all of opinion that the statute does not apply to such a contract as this, and therefore there must be *Judgment for the plaintiff.*

BUSINESS OF THE WEEK.

Thursday, Jan. 13.

PUGH *v.* ETLES.—Tried before Pollock, C.B. at Westminster, at the sittings after last term. Verdict for the defendant. *Hodges* moved to enter the verdict for the plaintiff pursuant to leave reserved, or for a new trial. *Rule nisi granted.*

LAMBERT *v.* JONES.—Tried before Martin, B. at the sittings after last term. Verdict for the defendant. *H. Hill*, Q. C. moved to set aside the verdict on the ground that there was no evidence. *Rule nisi granted.*

New Trial Paper.

WATERS AND OTHERS *v.* TOWERS AND ANOTHER.—Tried before Wightman, J., when a verdict was returned for the plaintiff for 14*l.* with liberty to move to increase the verdict to 134*l.* *H. Hill*, Q.C. now showed cause. *Rule absolute.*

HUBBERSTY AND ANOTHER *v.* WARD.—Tried at Liverpool before Wightman, J. Verdict for the plaintiff. *Unthank* now showed cause against a rule for a new trial; *Jones* contrà. *Cur. adv. vult.*

HILL *v.* MITSON. *Part heard.*

Friday, Jan. 14.

ANDERSON AND OTHERS *v.* THORNTON.—*Sir F. Kelly* moved for a new trial herein, on the ground of misdirection and that the verdict was against the evidence. *Cur. adv. vult.*

LEVI *v.* COTTRELL.—*Watson, Q.C.* moved for a new trial on the ground that the verdict was against the evidence and for misdirection.

Rule nisi unless defendant would consent to a stet processus.

WOODHOUSE *v.* CRAIG.—The Attorney-General moved in this case, tried before Martin, B. in Middlesex, to set aside the plaintiff's verdict for 1050*l.* and enter a nonsuit or verdict for the defendant. The defendant was the vicar of Leamington, and the plaintiff registered officer of a bank. The defendant kept two accounts at the bank, one his private account, and the other on the church account; the bankers sued him for a balance of account, and signed judgment for the whole of the debtor side of the account, but issued execution for that which they thought to be a balance due to them: the defendant considered the 1050*l.* had already been allowed to them in the account. *Rule nisi.*

REG *v.* HARTLEY.—*Phinn* moved that the body of defendant be brought into court. He had been taken under an extent at the suit of the Crown, but was afterwards discharged under some order of a Commissioner of Bankruptcy, which it was considered he had no power to grant.

Rule accordingly.

BAIL COURT.

Rex v. Power.—*Meade* moved in this case, tried before the under-sheriff of Middlesex, to set aside the plaintiff's verdict, and for a new trial on the ground of surprise. The action was for 8*l*. *Pleas*—Never indebted, statute of limitations, and payment. The plaintiff and defendant were the only witnesses called, and they swore directly contrary to each other; the defendant would now be enabled to confirm his evidence by other testimony, with which he was not prepared on the former trial, not knowing at that time what the plaintiff's testimony would then be.

Rule nisi.

Saturday, Jan. 15.

Martin v. Bebaby.—This cause has already been tried twice, on each occasion a verdict having been returned for the plaintiff. *Bramwell*, Q. C. now moved for a new trial, or to enter a verdict for the defendant, or that the court would proceed under the 24th section of 3 & 4 Will. 4, c. 42, to "give judgment according to the very right and justice of the case." It was ultimately arranged that Martin, B. should settle the special finding, and the court should then say whether they would grant the rule.

Symons v. Edistow.—Tried in London before Pollock, C.B.—Verdict for the plaintiff, with nominal damages on the 1st count, and 60*l*. damages on the 2nd count. *Bramwell* now moved to enter a verdict for the defendant on the 1st count, or for a new trial, or in arrest of judgment.

Rule nisi granted.

Else v. Platt.—In this case *Hindmarch* moved for a rule to plead several matters, the application having been refused at chambers by Martin, B. *Rule nisi granted.*

Forsyth v. Bristowe.—*Quain* moved for a rule calling on the plaintiff to show cause why he should not amend his replication, as tending to embarrass the fair trial of the action. The application was made under the 52nd section of the Common Law Procedure Act; a previous application having been made to Martin, B. at chambers. The action was on two mortgage deeds and two collateral bonds; the plea, statute of limitations, under 3 & 4 Will. 4, c. 42, s. 5; replication, "that the defendant within the twenty years made an acknowledgment within the meaning of the Act." This, it was contended, would be bad on special demurrer. They ought to state more fully the acknowledgment on which they intend to rely. Parke, B.—They must clearly state whether the acknowledgment is in writing, or by part payment. *Rule nisi granted.*

Monday, Jan. 17.

Bull v. Chapman. *Cur. adv. vult.*
Clay v. Crowe. *Cur. adv. vult.*
Avarne v. Rhodes. *Cur. adv. vult.*

Tuesday, Jan. 18.

Hills v. Mitson. *Cur. adv. vult.*
De Clermont v. Bradbury. *Part heard.*

Wednesday, Jan. 19.

Arnold v. Gaussen. *Cur. adv. vult.*

Parker v. Watson.—*Hugh Hill*, Q. C. appeared in support of the demurrer, but was stopped by the court. *Hall*, contrà, called upon. *Judgment for the plaintiff.*

Frenelin v. Hamilton, Bart. Executor, &c.—The declaration set out an agreement by the late Sir James Cockburn to grant the plaintiff a lease. Sir J. Cockburn died before it was carried into effect, and this action was against his personal representatives for not performing their part in reference to it, the plaintiff averring performance on his part, with an allegation of special damage, to which there was a general demurrer. *Honeyman* appeared in support of the demurrer, and contended the declaration, which had been twice before amended, was bad on several grounds; first, there was no consideration for the promise: (he was then stopped.) *Horn*, contrà, called upon to support the declaration.

Leave to amend on the usual terms, and to plead again or amend, if necessary.

BAIL COURT.

Reported by T. W. Saunders, Esq., of the Middle Temple, Barrister-at-Law.

Monday, Jan. 17.

(Before Erle, J.)

Reg. v. Newhouse.

Indictment for libel—Taxation of costs—Jurisdiction of judge.

At the Spring Assizes in 1852, an indictment for libel was tried under the commission of oyer and terminer. Subsequently, and after the following Summer Assizes, the costs were taxed under the provisions of the 6 and 7 Vict. c. 96, s. 9. Upon an application in this term to Erle, J., who was one of the judges of oyer and terminer before whom the libel was tried, for a rule to review such taxation:

Held, that as a judge of the Queen's Bench he had no power to interfere, nor had he under the commission of oyer and terminer, such commission having expired on the issuing of a fresh one for the Summer Assizes.

This was an indictment for libel preferred at the Hampshire Sessions, and sent by the justices to the assizes for the county for trial. The defendant pleaded first, that the libel was a privileged communication, and, secondly, a justification. At the trial at the last Spring Assizes, a verdict was found for the defendant on the first plea, and for the Crown upon the second.

By the 6 & 7 Vict. c. 96, s. 9, it is enacted that "in case of any indictment or information by a private prosecutor for the publication of any defamatory libel, if judgment shall be given for the defendant, he shall be entitled to recover from the prosecutor such costs sustained by the said defendant by reason of such indictment or information; and that upon a special plea of justification to such indictment or information, if the issue be found for the prosecutor, he shall be entitled to recover from the defendant the costs sustained by the prosecutor by reason of such plea; such costs, so to be recovered by the defendant or prosecutor respectively, to be taxed by the proper officer of the court before which the indictment or information is tried."

NISI PRIUS.

Subsequently to the trial, and after the next assizes, namely in September, both the parties went before the clerk of assize for the Western Circuit for the purpose of having their respective costs taxed, when the expenses of certain witnesses of the prosecution called to rebut the plea of justification were disallowed.

Massey now moved, on the part of the prosecution for a rule, calling upon the defendant to show cause why the taxation of costs should not be reviewed on the ground of the disallowance of certain witnesses. [Erle, J.—Is it a record of this court?] No, the indictment was tried under the commission of oyer and terminer. [Erle, J.—That being so, I don't see what jurisdiction I have to interfere.] If that be so, it will almost be impossible to review a taxation under this Act of Parliament, as the commission of oyer and terminer expires so soon.

Erle, J.—Upon this application it is sufficient for me to say that, sitting here as a judge of the court of Queen's Bench, I have no jurisdiction whatever over the clerk of assize. The two judges of oyer and terminer would have had jurisdiction down to the time of a new commission appointing their successors. In this case a fresh commission has issued (for the last Summer Assizes) and I have therefore no further power in the matter. *Rule refused.*

Tuesday, Jan. 18.

(Before Erle, J.)

Re Emily Susan Borehan.

Habeas corpus—Infant—Right of father to custody.

The father of an infant entered into a contract, whereby A. B. was to have the charge of the child until it was twenty-one years of age, the father paying a certain sum periodically in respect thereof, and having free access to it. Upon a habeas corpus obtained by the father to obtain back the child:

Held, that the contract was no bar to his right to have possession of it.

Prentice on a former day obtained a writ of *habeas corpus* to bring into court a young female child now in the possession of its uncle, that it may be delivered over to the custody of its father.

The writ being now returned, the return was read, wherein it was stated that, the father and mother having lived unhappily together, the mother during her last illness requested that the child might be brought up by its uncle, and upon this a contract was entered into by the father that the uncle should have the care of the child until it was twenty-one years of age, the father paying a sum per month in respect of it, and having all reasonable means of access.

Heneker now, in support of the return, contended that as the child was in the custody of the uncle under a contract with the father, it could not be said to be improperly detained against his will, which was the ground upon which this court would interfere.

Prentice, contrà, argued that, notwithstanding the child originally was placed in the custody of the uncle with the father's consent, yet the father had a natural right to revoke that consent at any time, and obtain the child back: (*Rex* v. *De Manneville*, 5 East, 221; *Rex* v. *Greenhill*, 4 A. & E. 624; *Ex parte Skinner*, 9 B. Moore, 270.)

Erle, J. wished, as this was a somewhat new question, and of much importance, to consider it until the next day. *Cur. adv. vult.*

His Lordship on this day (Wednesday, Jan. 19) said: I have looked into the cases that have been decided, and it seems to me that the arrangement made between the father and the uncle, that the child should be brought up by the uncle, is in the nature of a consent given by the father, and a contract by him to pay for the maintenance of the child. It being in the nature of a consent by the father, I think he is at liberty to revoke that consent, and the child must be delivered up to him. I am bound to say that the father has a right to the custody of the child.

Order accordingly.

BUSINESS OF THE WEEK.

Tuesday, Jan. 18.

Brandon v. Smith.—*Lush* moved for a rule calling upon an attorney to pay over a sum of money pursuant to his undertaking. *Rule nisi.*

Re an Attorney.—*Lush* showed cause against a rule calling upon an attorney to pay over a sum of money.—*Maynard*, contrà. *Rule discharged without costs.*

Re Cowburn.—*Millward* showed cause against a rule for an attachment for not delivering up a deed. *Lilah*, contrà. *Rule absolute on terms.*

On Wednesday, Thursday, and Friday, the Court held its second sitting at Nisi Prius.

Nisi Prius.

COURT OF QUEEN'S BENCH.

Reported by W. J. Metcalfe, Esq., Barrister-at-Law.

FIRST SITTINGS AT WESTMINSTER IN HILARY TERM.

(Before Erle, J.)

Wednesday, Jan. 12.

Practice of the court.

Erle, J., after disposing of an undefended action, said: In conformity with the practice adopted last term, in all cases of verdicts against acceptors of bills of exchange and makers of promissory notes, and of cheques, execution will issue in four days; but where the parties are only liable secondarily execution will not issue for fourteen days, as such parties may be called upon to pay quite unexpectedly.

Ogle asked whether this practice would be acted upon without application to the judge.

Erle, J.—It will.

Ogle afterwards said that Mr. Baron Platt had just held in the Exchequer that in all money demands execution should issue in four days.

Erle, J.—I am at a loss to know what, with the exception of ejectment, is not a money demand. The law has recently been revised, and it is considered that execution in fourteen days is going fast enough, unless the judge may think that there are special circumstances which require his interference. The practice in this court will be as I have stated it.

Thursday, Jan. 13.

Erle, J., at the sitting of the court, said: I may as well mention, with reference to the time of issuing executions, that the judges have made a rule applicable to executions after verdict in term. According to that rule the execution is to issue within fourteen days after verdict, and that is to be the general rule, subject to exceptions in case of special circumstances, such as the defendant making away with his goods, and so on. The practice I mentioned yesterday of execution in four days was a practice entered into until the judges settled the rule; they have now settled it, in the way that I have stated. The rule will take effect from this time.

Thursday, Jan. 13.

Clarson and Wife v. Allen.

Case—Negligence—Dangerous opening.

A tradesman had in his house, between the shop and the back-door, a dangerous opening. Whilst A. was in his shop as a customer the shop was closed for the night, and he directed her to go out by the back-door; in doing so she fell down the hole. Another person had before fallen down, and the defendant had, just before the accident, been cautioned as to the danger:

Held, that he was liable for the injury to A.

This was an action for injuries sustained by the wife of the plaintiff, from falling down some stairs left exposed by the defendant.

It appeared that the defendant carried on business as a linen-draper and hosier, and that on the night of the 16th Oct. the plaintiff's wife went into the defendant's shop as a customer; that whilst there the defendant's assistant put up the shutters and fastened up the front entrance, and defendant said that he would take Mrs. Clapson and the other customers out by the private door. Mr. Twentyman, one of those customers, was taken out that way. There was a trap-door in the passage through which he passed, which was open, leaving uncovered a hole with a steep staircase. Mr. Twentyman nearly tumbled into it, and observed to the defendant that it was very dangerous. Shortly afterwards Mrs. Clapson was directed to go out by the same way. She went into the passage, and, the place being quite dark, she fell down the staircase and was seriously hurt. The wife of the defendant had some time before fallen down the same hole.

Erle, J. in summing up the case to the jury, said: A man has a right to keep his private house in whatever state he pleases; but if he has a place to which the public are invited, and in which there is great danger where a man, according to ordinary experience, would not be led to expect any, then, if damage ensues, the person who keeps that public place is responsible for that damage. If, therefore, there was in this case want of care on the part of the defendant, the plaintiff is entitled to your verdict.

Verdict for plaintiff. Damages for the husband, 5l.; for the wife, 20l.

Wilkins, Serjt. and *Bronsil*, for the plaintiffs.

Lush for the defendant.

Friday, Jan. 14.

Theobald v. Gotterell, and another.

Sheriff—Writ of Execution—Priority.

If writs of execution are lodged with the sheriff, they are entitled to priority over writs subsequently placed in his hands, unless there has been fraudulent collusion to keep them unexecuted.

The action was in case against the defendants as Sheriff of Middlesex, for making a false return to a writ of *fi. fa.* issued by the plaintiff against Lord Glengall, and placed in the hands of the defendants for execution. It was proved on behalf of the plaintiff that Lord Glengall had some property which might have been seized by the sheriff.

For the defendants it was shown that before the plaintiff's writ of execution was placed in the hands of the sheriff, several other writs against Lord Glengall, to an amount far exceeding the value of the goods belonging to Lord Glengall, had been lodged with the defendants; and, it was contended that the sheriff could not execute the last writ, until the others had been satisfied.

Erle, J. said: I take the law to be this, that if writs are lodged with the sheriff for execution, they are entitled to priority over writs subsequently deposited with him, unless such prior writs have been kept unexecuted by fraudulent collusion. I (the jury, there-

fore think that in this case there has been no such fraudulent collusion, the defendants are entitled to a verdict. *Verdict for the defendants.*

E. James, Q. C., and *Jones*, for the plaintiff.

Bramwell, Q. C. for the defendants.

DANCEY *v.* RICHARDSON.

Case — Negligence — Boarding-house-keeper — Loss of goods — Liability.

A boarding-house-keeper does not incur the same liability as an innkeeper in respect of a lodger's goods. He is bound to use the same care as a prudent person would use with regard to his own premises and goods; and if he does so he is not responsible for any loss.

Nor is he responsible for the negligence of his servant, unless he knew that such servant was a negligent servant.

The declaration was in case, averring that the defendant kept a boarding-house in Weymouth-street; that the plaintiff was in her house as a lodger and guest, and that the defendant undertook to take care of her goods; that the defendant did not take care of the goods of the plaintiff, but that through the carelessness and negligence of the defendant, a valuable dressing-case and box of the plaintiff were stolen and lost from the boarding-house. The defendant pleaded not guilty; that she did not keep a boarding-house; that the plaintiff did not become a guest there; and that the plaintiff did not become a guest on the terms mentioned in the declaration

The defendant kept a boarding-house in Weymouth-street, and the plaintiff, who had arrived from Paris, went to lodge there. When about to leave, the page belonging to the establishment went up to the plaintiff's bedroom to call her for dinner, and was told by the plaintiff to take her dressing-case and box down stairs, and then to fetch a cab. He did so, and the plaintiff went into the dining-room. She then asked the butler to get her some biscuits; and he went out for that purpose, leaving the outer door partly open. During his absence the defendant saw a man go out of the door with the box and dressing-case, and, supposing him to be the cabman, took no notice; but upon finding that no cab was there she gave the alarm; but the thief had disappeared. When the police came the defendant said that there had been a robbery there some time before; that she had repeatedly cautioned her servants not to leave the door open; and that on this occasion the butler had gone out, leaving the door ajar.

It was contended for the defendant that the plaintiff was guilty of negligence in sending out one servant for a cab and the other at the same time for biscuits. No doubt the defendant was bound to take care of her lodger's goods; but so was the lodger bound to take care of them; and if the loss resulted from negligence on the part of the plaintiff, the defendant would not be responsible.

ERLE, J. in leaving the case to the jury, said: You must bear in mind the degree of care which the law requires of a person in the situation of the defendant. It is very different from the care required from an innkeeper. By law an innkeeper is responsible for goods brought into his inn, and would be responsible for them if stolen, unless the owner had contributed to their loss; but there is no such extensive responsibility with respect to the keeper of a boarding-house: in such a house a person must look after his own goods to a much greater extent. A person keeping a boarding-house is bound to use such care as a prudent owner would use with regard to his own premises. If he does so he will not be responsible for any loss. Has there been then, on the part of Mrs. Richardson, such conduct as would be negligence if tried by the standard of what the conduct of a private person would be? A boarding-house keeper is not responsible for the negligence of her servant, unless that servant is known by her to be a negligent servant. If you think that there has been negligence on the part of the defendant, then consider whether or not the conduct of the plaintiff has contributed to the result. If so, you will find your verdict for the defendant.

Verdict for the defendant.

M. Chambers, Q.C. and *Pearson*, for the plaintiff.

Bramwell, Q.C. and *Lush*, for the defendant.

Equity Courts.

LORD CHANCELLOR'S COURT.

Reported by C. H. KERR, Esq. of Lincoln's-inn, Barrister-at-Law.

Saturday, Dec. 11.

STUMP *v.* GABY.

Devise — Voidable estate — Confirmation — Right of entry — Solicitor and client.

To a bill by a party claiming as the heir-at-law of A. W. against parties in possession of the estate, alleging that the defendants had acquired the estate under and by virtue of a conveyance from A. W. to H. G. who was his solicitor, that at the date of the purchase A. W. was in embarrassed circumstances, and that the consideration was inadequate; and praying that such transaction might be set aside, and that any testamentary disposition by A. W. in favour of the defendants who represented H. G. in confirmation thereof might be declared void. A plea stating that, by a codicil to his will, A. W. after reciting the sale and conveyance to the defendants, and that a party had thought fit to threaten that such conveyance should be disputed, in order to prevent all dispute, he ratified and confirmed the conveyance and devised the estate to the defendants in fee — was (affirming the decision of the court below) allowed.

The interest which A. W. had in the estate after the sale thereof, assuming he could have set it aside, was not a mere right of entry, which under the old law could not have been devised, but an equitable estate, and devisable under the old law.

A voidable estate may be confirmed by will; and this codicil was a valid confirmation.

A conveyance may be so fraudulent as to be void at law, as a conveyance; but the conveyance in this case was not a conveyance at law, nor was it a voidable conveyance at law: but it might, perhaps, have been set aside by the vendor in equity upon equitable grounds.

If a man conveys his interest in an estate to his attorney in a manner which the attorney cannot maintain as a conveyance, he is still, in the view of the court, owner of his estate, subject to his paying to his attorney, when the transaction is impeached, the money which the attorney has paid.

If an attorney takes an undue advantage of communications which are not made to the client, which would give him a right in a court of equity, he would, in the view of that court, still be considered as owner; he might devise that right, not as a legal but an equitable estate.

A conveyance to an attorney may or may not be good in a court of equity; it is certainly good at law, if there is no startling fraud upon the face of it.

A deed, properly executed by a client to his attorney, is primâ facie good, and can only be impeached in a court of equity on equitable grounds, under certain circumstances.

If a client sells to his attorney, who has not disclosed circumstances which would enable the former to set aside the deed in equity, yet if he, having ascertained that he has a right to set it aside, and that it is impeachable, chooses to confirm it, the estate in the hands of the latter will be perfect.

If an attorney, in acquiring an estate from his client, commits what may be considered a fraud, and afterwards claims and obtains from him a confirmation, the former must show fair dealing upon that confirmation, and that he communicated to the latter the fact of its being in his power to set aside the conveyance, and that it was with a full knowledge of all the circumstances of his right so to set it aside he confirmed it.

This was an appeal from a decision of the late V. C. Lord Cranworth, allowing a plea. The facts were these:—Ayliffe White, by his will dated in 1760, devised the estate in question (after certain uses and trusts which failed) to his son Henry Boswell White for life; remainder to his grandson, Ayliffe White, son of the said Henry Boswell White, for life; remainder to the first and other sons of Ayliffe White, the grandson, in tail male; remainder to the second and other sons of Henry Boswell White in tail male; remainder to testator's son Francis for life; remainder to the first and other sons of Francis in tail male; remainder to testator's son James for life; remainder to James's first and other sons in tail male; remainder to testator's own right heirs. The testator died in 1761, and left Henry Boswell White his eldest son, Francis his second, and James his youngest, and the said Ayliffe White the grandson, all surviving. Francis and James both died without issue male. Henry Boswell White held the estates for life, and died without issue male other than Ayliffe, and on his death Ayliffe, the grandson, became tenant for life. Ayliffe White, the grandson, had no issue, and was the heir-at-law of the testator, and during his life he claimed to be entitled to the reversion in fee limited to the testator's right heirs in the event of his (Ayliffe) dying without issue male; he executed an absolute conveyance of the estates, subject to the contingency of his having issue male, to one Ralph Hall Gaby. Francis White, the second son of the testator, had one son, who died without issue male, but leaving four daughters, who, upon the death of Ayliffe White, the grandson, without issue, became the coheiresses-at-law of the testator, and also the coheiresses-at-law of Ayliffe White, the grandson. The plaintiff was the eldest son of the second daughter. The case made by the bill was, that Ayliffe White, the grandson, had executed a conveyance of the property to Gaby, who was his solicitor, under the pressure of embarrassed circumstances, and for an inadequate consideration, and that such conveyance ought to be set aside; and that the plaintiff claimed to be entitled to them either as heir-at-law of Ayliffe White the grandson, or of the testator. Gaby, the purchaser, was dead, and the defendants claimed under him.

To this bill the defendants put in a plea which was, in effect, the will of Ayliffe White, the grandson, whereby,—after reciting that some time in the year 1812 he had conveyed to Gaby the hereditaments in question, and "that certain persons had threatened to dispute such conveyances,—in order to prevent all dispute, he therefore ratified and confirmed the conveyances made to him the said Gaby, and for further assurance and confirmation gave and devised unto him the several hereditaments, to hold to him, his heirs and assigns for ever."

This plea was allowed by Lord Cranworth, V. C., and this was an appeal from his decision.

Cottrell (in the absence of *Sir William Page Wood*), in support of the appeal, contended that Ayliffe White having conveyed away his estate during his life, was not seised of such an estate as could pass by his will; under the old Wills Acts he must have been seised at the time of making his will and of his death of the same estate; that he was not, in fact, *seised* at either of these periods, inasmuch as he had granted the estate and all his interest therein, "both at law and in equity," before he made his will. So long as the conveyance remained unavoided, the whole estate remained in the grantee. The test of that position was that, without further corroboration on the part of the grantor, the *whole* estate would under the conveyance have been well vested in the grantee; and if the whole estate had been so vested, that then Ayliffe White had nothing in him upon which his will could operate. So long as the conveyance continued in force, all the interest which Ayliffe White had in the estate was a right of action, which right was not before the new Wills Act devisable. He cited *Goodtitle* v. *White*, 15 East, 174; *Cave* v. *Holford*, 3 Ves. 669; *Attorney-General* v. *Vigor*, 8 Ves. 281; and the other cases there cited.

Bethell and *J. V. Prior* appeared for the defendants, but were not called upon to address the court.

The LORD CHANCELLOR.—I had thought this was a concluded point, and I believe it has actually been decided. There is a case in which the question was raised as to the effect of a devise after a void contract, and I have always considered that there was no point to be raised upon it. The case set up by the bill is, that the person under whom the plaintiff claims executed a conveyance to his attorney which could be set aside on equitable grounds; that he is the heir-at-law of such person, and that he has a right to set it aside. The plea, which seems to cover the bill in that, and indeed in all respects, says, in answer, that the person whose heir-at-law the plaintiff is, and whose deed he professes to set aside, did himself, by his will, confirm that deed, and, moreover, that he devised the estate; and so, if he had the fee, it passed by his will. The answer in the argument was—First, that you could not devise a right of entry; and, secondly, that the confirmation was of no value, because it was not shown that the person confirming was aware of all the circumstances under which the fraud existed, and that he had a right to set it aside. Now, upon the first point, under the old statute, you could not devise a right of entry; that is a settled point of law; but this is no right of entry. How could he enter? Where was the right of entry? The whole legal fee-simple passed by the conveyance, and this testator had no legal estate or right of entry at all. Whether that was a deed which could be maintained in this court or not is another question; but it is quite clear that the entire legal fee-simple passed by that deed, and that the person who executed it had not the slightest remedy at law to set it aside, because it is not put as a case of that monstrous degree of fraud that the deed of itself was void. There are cases in which a conveyance may be so fraudulent as to be void at law as a conveyance, but this was not a conveyance at law at all, nor was it a voidable conveyance at law; but it was a conveyance which I will assume could be set aside in equity upon equitable grounds. But then, what is the interest of a man in an estate which he has conveyed to his attorney in a manner which the attorney cannot maintain—that is, which he cannot maintain as a conveyance? Why he is still, in the view of this court, owner of his own estate, subject to the repaying to his attorney, when he impeaches the transaction, the money which the attorney has paid; he remains owner subject to the estate which he had conveyed away to his attorney for an improper price. If an attorney takes an undue advantage of communications which are not made to the client, which would give a right in this court, even then he remains owner of his estate, and he may devise that estate as an equitable and not a legal estate. It could be open to no question as to right of action; but leaving the conveyance to have its full operation at law, and looking at the equitable right to set it aside in this court, he is in this court owner of that estate, subject to the repaying to the attorney the money which he had paid. He has, under the old law, a devisable estate; and I believe there are authorities disposing of the very point. My strong impression is that the very point is concluded by authority; but if it is not, I am ready, as far as my opinion goes, to make an authority now, and to decide the point. There is not the slightest doubt that the equitable estate is in him, subject to what I have before stated, and that he may devise by will. Well then, in the clearest terms, he

LORD CHANCELLOR'S COURT.

has devised it. The question of descent is prevented; it would have gone to the heir-at-law supposing there had been no disposition. There is a clear devise of fee simple of the estate, if the man had it; and if he had it, as I am of opinion he had, then it passed. But then as to the confirmation. It is said that a conveyance to an attorney may or may not be good in this court; it is certainly good at law, beyond all question, where there is no absolute startling fraud, such as that upon which a jury would find that there was no deed at all executed; but a deed properly executed by a client to his solicitor is *primâ facie* good, and you can only impeach it in this court on equitable grounds, under certain circumstances. Now assuming this to be impeachable, the man who has made it addresses himself in his will to the very case. He says—"I find a person who has married into my family, and who will claim after me on my death, has threatened to set aside this deed; now I do hereby confirm the deed." It is said that there is something in the Statute of Wills to prevent that confirmation. I do not understand that; the Statute of Wills merely says that a man having an estate shall have power to devise it; and therefore that point refers to the question which I have considered, namely, whether he had the estate or not; and I am clearly of opinion that he had the equitable estate. It is beyond dispute that a man may confirm, if he pleases, a voidable conveyance which he has made. A man may sell to his attorney, where the attorney has not disclosed circumstances which would enable the client to set aside the deed in equity. Yet if the client afterwards, having ascertained that he has a right to set it aside, that it is impeachable, or that he may impeach it, chooses to say that he will confirm it, he clearly may do so. Now the difference here is between contract and disposition by will. If I deal with my attorney, and he commits what in this court may be considered a fraud in obtaining my estate, and he afterwards claims and obtains from me a confirmation—he has to show fair dealing upon that confirmation, and that he communicated to me all knowledge that I was perfectly aware that I could set aside the first deed, and that I confirmed with a knowledge of all the circumstances of my right to set it aside. That is established. I have no intention to disturb that which is, I think, so properly settled. But what has that to do with this case? There is no dealing with the attorney. There is a disposition by a man of his own property and his own right in favour of a person with whom he has previously dealt; he might give it to any one he pleased. Why should he not give it by way of confirmation if he thought proper to the man with whom he had had dealing? He is not in the dark on the subject. He says, a person who will claim after my death means to dispute this, therefore there is something to be disputed—that is, somebody else thinks so; I do not think so. He has got the absolute right of disposition; it is testamentary—it is not contract; it is a disposition by will, and his will must be the guide under which the court must act. He has not only devised the estate, but my opinion is that if he had simply said "I confirm it," without any devise at all, that would have been a valid confirmation—not as a dealing with an attorney whose estate I will assume wanted confirming, but as a confirmation to a party by his will, giving, in effect, to the attorney, the advantage of not having his conveyance disturbed, just as he might have given any part of his estate to a stranger. He gave the same right as he himself had. I must dismiss this appeal; but as it is instituted *in formâ pauperis*, it is no use giving costs.

Appeal dismissed.

Saturday, Jan. 15.

(Before Lord CRANWORTH, L.C. and the LORDS JUSTICES.)

ANONYMOUS.

Practice—Chancery Amendment Act.

An appearance had been entered to a bill by a plaintiff for a defendant who had absconded. Notice of filing replication under the 28th Order of Aug. 1852 *was (under the circumstances of the case) ordered to be served at the defendant's last place of abode, with directions to advertise in the Gazette and two country papers.*

A defendant to a bill had absconded, and an appearance had been entered for him by the plaintiff. The 77th and 78th Orders of May 1845 being no longer applicable, and the defendant, under the 15 & 16 Vict. c. 86, being considered to have traversed the case made by the bill, it was asked how notice of the filing of the replication directed by the 28th Order of Aug. 1852 was to be served.

Renshaw applied.

The LORD CHANCELLOR.—Under the circumstances let the notice of filing the replication be served at the defendant's last place of abode, and let advertisements be published in the Gazette and two country papers. I must be understood as making no general order. The order I now make has reference only to the present case.

COURT OF APPEAL.

COURT OF APPEAL IN CHANCERY.

Reported by OWEN DAVIES TUDOR, Esq. of the Middle Temple, Barrister-at-Law.

IN BANKRUPTCY.

January 14 *and* 19.

Ex parte JAMES JAMES and JAMES CUSHION, *re* TRATT, a bankrupt, deceased.

Costs—Trustee and cestui que trust—Public policy.

A., when in difficulties and insolvent, procured from an insurance office, for a small consideration, an assignment to B. of an annuity and arrears payable by him to the office, secured on some leasehold property belonging to A. Afterwards A. became bankrupt, and B. purchased the equity of redemption in the leaseholds. A bill in Chancery was filed by the assignees against B.; and the sale of the annuity, and of the equity of redemption of the leaseholds, was set aside with costs upon the usual terms. By an order in bankruptcy, it was declared that the direction in the decree as to costs was to be without prejudice to any question between A. and B. A. obtained his certificate, and died, having previously assigned all his property for valuable consideration to C. The leaseholds were sold by the assignees, and, after payment of all creditors and costs, there remained a surplus in court:

Held, reversing the decision of the Commissioner, that whether B. was to be regarded as a mere trustee of the annuity and leaseholds for A., or whether A. and B. had both combined together for the purpose of defeating A.'s creditors, in the former case because B. had set up a title adverse to A., and in the latter upon grounds of public policy, B. was not entitled to his costs as against A., and that consequently A. or his assignees for value were entitled to the surplus.

This was a petition by way of appeal from the decision of Mr. Commissioner Evans, praying that the sum of 596*l.* 18*s.* 4*d.* being the surplus of the estate of the bankrupt after paying all debts and interests, and proper costs and charges, then in the hands of the assignee or accountant, should be paid to the petitioner James James, as trustee for the petitioner James Cushion.

Mr. Henry Smith Cafe, an auctioneer, also claimed the 596*l.* 18*s.* 4*d.* for the costs of a suit which had been instituted against him by the assignees of the bankrupt under the following circumstances:—The bankrupt, Joseph Tratt, a plumber and glazier, being in great difficulties, had committed an act of bankruptcy in the month of July 1838. Mr. Tratt was at that time possessed of leasehold property which was charged with an annuity to the Globe Insurance Company, on which there was then due arrears to the amount of 499*l.* On the 8th Nov. 1838, the trustees of the Globe Insurance Company, and Mr. Tratt, in consideration of 900*l.* paid to the Company for the purchase of the annuity, executed an indenture of that date by which it was assigned with the arrears to Henry Smith Cafe absolutely. On 21st Nov. 1838, Mr. Tratt was declared bankrupt, and assignees were appointed. On 27th Dec. 1838, the equity of redemption of the leasehold premises comprised in the annuity deed and in the assignment thereof to Henry Smith Cafe were put up to sale by public auction, and were purchased by Mr. Cafe for 120*l.* Mr. Cafe was in the year 1843 appointed creditors' assignee in the place of Mr. D. Jonathan, deceased, but, on the 1st Feb. 1848, Mr. Cafe was removed from being such assignee, and Mr. S. Baskett, W. Mitchell, and Martha Sharpe were on that day appointed sole assignees. On the 27th March, 1848, the assignees filed a bill in Chancery against Mr. Cafe, praying that he should be declared a trustee of the annuity, and the arrears thereof for the plaintiffs, as assignees of the estate and effects of the bankrupt, subject to such lien as he might have thereon in respect of the 900*l.* paid by him to the Globe Insurance Company; and also that it should be declared that the purchase by Mr. Cafe of the leasehold premises was fraudulent and void as against the creditors of the bankrupt, and that he and Edward Leech (his trustee) were trustees thereof for the plaintiffs, as assignees of the bankrupt, subject only to such lien thereon as he might have in respect of the purchase-money of 120*l.* paid by him for the purchase of the said equity of redemption, with lawful interest thereon. Upon the cause coming on to be heard before Sir J. L. Knight Bruce, then Vice-Chancellor, his Honour said that he was of opinion, from the answers and evidence, first, that the interests and rights which the directors of the Globe Company sold to Mr. Cafe for 900*l.* were not at any time during the year 1838 worth so little as 1200*l.*; secondly, that in contracting originally to take the price of 900*l.* they meant to confer a benefit on Tratt; thirdly, that without his consent they would not have assigned or sold as they did at that price to Mr. Cafe; fourthly, that they sold and assigned to him, and took his money, in the belief that Tratt would and was in some manner to derive advantage from the transaction; fifthly, that the transaction was intended and understood by Tratt and represented by Cafe, as intended and understood by the latter to be a transaction from which Cafe was in some manner to derive advantage; sixthly, that Tratt at the time was considered by Cafe to be, and was in fact, not only embarrassed, not merely in difficulties, but hopelessly insolvent. . . That there was a common understanding between each of them to make unjust gains—Cafe by the lowness of the price for the annuity, and Tratt by the promise held out by Cafe that he would advance and pay him money, or otherwise help him in his difficulties; and that both Cafe and Tratt had the bankruptcy of Tratt in contemplation, and had entered into the transaction with the Globe Insurance Company with the view of improperly abstracting the pecuniary benefit to be derived thereby from the creditors of Tratt. His Honour therefore set aside both sales according to the prayer, upon the usual terms. And it was, amongst other things, ordered that it be referred to the Taxing Master to tax the plaintiffs their costs of those suits. And it was ordered that the amount of such costs, after deducting the sum of 20*l.* and such sum (if any) as should be set off against such costs as thereinbefore mentioned, *should be paid by the defendant Cafe to the solicitor of the plaintiffs.*

It may be here mentioned that Mr. Tratt, in his examination on Jan. 16, 1839, swore that Cafe purchased the annuity with his concurrence, and that there was no agreement as to any benefit to be derived by him in consequence of Cafe's making the purchase. Mr. Tratt, however, when he made that statement, was in great difficulties, and receiving small weekly or monthly payments from Cafe.

By an order of the 2nd Aug. 1850, made by V. C. Knight Bruce, on a petition in bankruptcy, the said H. S. Cafe consenting thereto, it was amongst other things ordered that Cafe should be discharged from being an assignee of the estate of the bankrupt, and should account before the Commissioners, &c. And it was ordered that the said H. S. Cafe should pay to such of the petitioners as were living their costs of and occasioned by the said petition, so far as they had been increased by any evidence in his behalf in support of his title to the leasehold premises in the said petition and former order mentioned. And it was referred to W. Vizard, Esq., an officer of the court, to tax such costs between the parties in case they differed about the sum. And the court declared that *this order and the decree, so far as they directed the payment of any costs, were to be without prejudice to any question between the said H. S. Cafe and the said bankrupt or his representatives. And the court ordered that no part of the surplus estate of the bankrupt be paid to the said bankrupt or his representatives without previous notice to the said H. S. Cafe.*

By an order in bankruptcy, dated the 1st May, 1852, it was ordered that the defendant, H. S. Cafe, should pay to the official assignee of the bankrupt the sum of 158*l.* 14*s.* 9*d.* the balance due from him on the accounts directed by the decree, and that it should be referred to the Taxing Master to tax the petitioners' costs of the suit, since the last taxation as between solicitor and client; and that such costs when taxed should be paid by the defendant H. S. Cafe; and that thereupon all further proceedings in the cause should be stayed.

The bankrupt obtained his certificate of conformity on the 21st Jan. 1839, and on the 4th June, 1845, Mr. Tratt, for valuable consideration, assigned the leasehold premises and all his property and effects to the petitioner James James, as a trustee for the petitioner James Cushion. Mr. Tratt died in 1847.

All the creditors of the bankrupt were paid in full, and, the leaseholds being sold, there remained in court a surplus of 596*l.* 15*s.* 4*d.* Notice having been given to Mr. Cafe of the intention of the petitioners to apply to the Commissioner for the payment to them of the surplus, he appeared to oppose the application, and insisted that he was entitled to the surplus, because he had during the several proceedings in bankruptcy, and in the suit instituted against him, paid and disbursed according to the several orders and decrees made in each proceeding respectively, as for costs to the petitioners and plaintiffs, amounting to the sum of 585*l.* 18*s.* 1*d.* Whereupon Mr. Commissioner Evans refused to grant the prayer of the petition, or to make any order thereon. The petitioners thereupon presented their petition of appeal.

Russell and *Cooke* for the appellants, contended it was clear upon grounds of public policy, that Cafe ought not to be allowed his costs; consequently that the surplus ought to belong to the petitioners, as the assignees, for valuable consideration of Tratt. *Reynell* v. *Sprye*, 21 L. J. N. S. Ch. 638, and *M'Neill* v. *Cahill*, 2 Bligh, N. S. 316, were referred to.

Bacon, *Pigott*, and *Hardy*, for Mr. Cafe.

Bury for the assignees.

Lord Justice KNIGHT BRUCE.—This purchase (I am now speaking of the annuity) must, upon the evidence, have been made by Mr. Cafe, I think, in one of two ways—either as a trustee for Mr. Tratt, in which event there is no question but that the present controversy must be decided in favour of the present petitioners; or, if he did not purchase as trustee for Mr. Tratt in the ordinary sense in which I have been using the expression, the purchase must be taken to be the result of a combination between Mr. Cafe and Mr. Tratt to withhold property, for the benefit of one or either or both of them, from the creditors of Tratt, a failing and fallen man in worldly circumstances.

COURT OF APPEAL.

Now, in that state of things, as far as the title to the property goes, public interest requires that the purchase should be considered as a trust, and that, for the sake of society, without regard to the merits or deserts of either of the parties, the man so acquiring property should not be heard to state that he has acquired it. I am of opinion that the disparity of circumstances was such as to create a gross inequality, and to prevent Tratt having any voice in the matter, and that there are also consequences of advantage to society, which is deeply interested in preventing men from gaining by such a transaction. The property must be considered as having remained in Tratt, whether by means of trust, or by the same result as a trust, as far as mere title is concerned. It has been suggested, and fairly argued, that the costs of the suit, as between Cafe and Tratt, ought to be borne by Tratt; that is not my view of the case. The defence to the suit for setting aside the purchase was not put by Mr. Cafe on grounds which Mr. Tratt is bound to recognise, nor on grounds which this court can allow Mr. Cafe to charge against him; they must remain where the law has thrown them. With respect to the account between Mr. Cafe and Mr. Tratt, it must to a great extent be taken as a stated account; but there are certain allowances which would be just as between Cafe and Tratt, which could not have been made as between the creditors and Mr. Cafe, and we shall be glad to receive suggestions as to the mode in which these shall be made. With regard to the claims made by the assignees, I have not a clear apprehension.

Lord Justice TURNER.—This is an application by a party, who for present purposes must be assumed to represent the bankrupt, for the surplus of the bankrupt's estate. *Primâ facie* that surplus must belong to them. It is attempted to be intercepted by a claim of Mr. Cafe, and the claim rests on this:—A suit was instituted against Mr. Cafe by the assignees, for the purpose of getting part of the bankrupt's property, and he was compelled to pay the costs. This was followed by an order in bankruptcy, by which it was declared that the directions in the decree as to costs were to be without prejudice to any question between Cafe and Tratt. Looking, therefore, to the probability of a surplus, the truth of the case is this: Supposing the property had not been sold under the bankruptcy, but that from other funds of the bankrupt's estate, all the debts had been paid, to whom would the equitable right to this property remaining vested in the assignees belong? Who could call for an assignment of the legal estate from the assignees,—would it be in Tratt, or his assignees, or in Cafe? Now, in determining that question it is to be considered what were the circumstances under which Mr. Cafe became purchaser of the property and of the annuity. Now it is clear that a confidential relation anterior to October 1850 existed between Tratt and Cafe; it is equally clear, and it is the common case on both sides, that the transaction was intended to be beneficial to Tratt; and it is not disputed that the Globe intended to confer a benefit on Tratt, who was in a position of great difficulty, and no one was acting on his part. Now can it be doubted that, as between Tratt and Cafe, the former would have had an equity to consider this a trust of the purchase from the Globe. But it was said that Tratt was examined under the commission, and that he had said that there was no arrangement between him and Cafe that Cafe was to be a trustee for him, and that therefore the case could not now be set up that Cafe was a trustee for Tratt. But what was the situation of Tratt at the time he gave this evidence? He was in a state of dependency upon Cafe, and was receiving from him small weekly and monthly payments. It is clear, therefore, that when this representation was made by Tratt he was under the influence of Cafe, and that no statement then made by him, according to the principles laid down by Lord Eldon in *Walker* v. *Symonds*, 3 Swanst. 2, can bind him so as to extinguish the equity, to set aside the transaction, and make Cafe a trustee for him. That being the state of things, it is said that the court would not have given costs as against Cafe if a bill had been filed against him by Tratt; but what was the defence made by Cafe in the suit which was actually brought against him? Now it is clear that, in the suit which was instituted against him by the assignees of Tratt, Cafe was claiming for his own benefit independently of Tratt. It is equally clear that the same view would have been taken by the court if the suit had been instituted against him by Tratt. From the year 1840 to the year 1848, when the suit was instituted by the assignees, Cafe treated the property as his own; there was no recognition of the title of Tratt. Now if Cafe had put in an answer stating that he was beneficially interested, the court would have made a decree against Cafe with costs; and as the representatives of Cafe cannot be in a worse position, it is clear that there is no ground for the claim of costs set up by Mr. Cafe.

Thursday, Jan. 20.

(Before the LORDS JUSTICES.)

ROBERTS *v.* BERRY.

Demurrer—Specific performance—Time whether of essence of contract.

COURT OF APPEAL.

In a bill filed by a purchaser for specific performance, it appeared that the abstract to the title of ground-rents, purchased at an auction on 22nd July, was to be furnished within seven days from the day of sale by the vendor to the purchaser, on his application for the same, and the objections to the title were to be taken within eight days from the delivery of the abstract, or be considered as waived. The purchase was to be completed on the 8th Aug. On the 24th July the purchaser's solicitor called for the abstract, but, owing to the absence of the mortgagee, who had the title-deeds on the Continent, the abstract was not delivered until the 3rd Aug. On the same day the purchaser's solicitor wrote to rescind the contract for non-delivery of the abstract, requesting a return of the deposit which had been paid at the time of the purchase:

Held, that time not being of the essence of the contract, the court below had properly overruled a demurrer to the bill:

Held also, per Turner, L. J., that the accidental circumstance of the mortgagee's absence on the Continent was a sufficient ground for overruling the demurrer.

This was an appeal from the decision of the M. R. overruling a demurrer put in by the defendant to the plaintiff's bill, which sought specific performance of an agreement for the purchase of freehold ground-rents, and to restrain the defendant from proceeding with an action at law or prosecuting any other action at law against the plaintiffs for the recovery of the deposit. The bill amongst other things stated, that on 22nd July, 1852, the plaintiffs put up for sale by public auction certain ground-rents, together with certain cottage residences, according to certain printed particulars and conditions of sale, in three lots; and the freehold ground-rents comprised in lot 1 of the printed particulars were described as follows, that is to say:—Lot 1. Freehold ground-rents of 43*l.* 0*s.* 6*d.* per annum, arising from nine houses, Nos. 1 to 9, Upper Mary-street, Bromley, in the county of Middlesex, Nos. 1, 2, and 3, let on leases which expire at Midsummer 1925, and Nos. 4 to 9 on lease which expires Nov. 1, 1891, as under: No. 1 at 2*l.* 13*s.* 6*d.* per annum, Nos. 2 and 3 at 5*l.* 7*s.* per annum, and Nos. 4 to 9, 35*l.* per annum: rack-rental value about 135*l.* per annum. That the third of the said conditions of sale was as follows (that is to say):—"The purchaser shall, immediately after the sale, pay into the hands of the auctioneers a deposit of 20*l.* per cent. in part of his or her purchase-money, and sign an agreement for the payment of the remainder to the vendor on or before the 8th Aug. next, at which time the purchase is to be completed; but if such purchase is not completed on the said 8th Aug., the purchaser thereof, from whatever cause the delay shall arise or be occasioned, shall pay interest on the remainder of his purchase-money at the rate of 5*l.* per cent. per annum, from that day until the day of completing his or her purchase, without prejudice to the right reserved to the vendor by the last condition: the purchaser will be entitled to receive the rents as from the day of completing the purchase or possession, as the case may be." And that the fourth of the said conditions of sale was as follows (that is to say):—"In order to save expense, *within seven days from the day of sale, the vendor shall, at his own expense, on application for the same, make and deliver to the purchaser or his solicitor an abstract of title*, commencing with a conveyance to the vendors, and on the completion of the purchase title-deeds of earlier date will be handed over to the purchasers; and no earlier title shall be required; and the purchaser shall make his or her objections or requisitions (if any) in regard to the title, and cause the same to be delivered at the office of the vendor's solicitor, within eight days from the receipt of his or her abstract; and all objections or requisitions which shall not be made within the time above specified shall be taken to be waived, and shall not under any circumstances be capable of being afterwards made or adduced; but in case any requisition or objection shall be so delivered or made, and be such that the vendor's solicitor should consider it advisable to abandon the contract, the vendor shall, on returning or tendering to the purchaser his or her deposit money, be at liberty to rescind the contract altogether by a note in writing under his or her hand, without any further claim on the part of the purchaser for interest, costs, expenses, or otherwise. Lots 1 and 2 are comprised in one conveyance: the largest purchaser in amount will be entitled to the custody thereof, who will covenant with the other purchasers in the usual way for production; and as to Lot 3, being part of a larger estate, the whole thereof being comprised in one conveyance, the purchaser shall have a conveyance from the vendor with the usual covenant to produce the said conveyance, and any other document that may relate to this and other portions of the estate. Lots 1 and 2 are sold subject to a rent-charge riding over this and other property of very considerable value; no objection shall be taken on this account, and no compensation or allowance shall be made, and no evidence required on what property the said rent-charge is made." The bill then stated that the defendant John Robert Berry attended the sale by auction, and was the highest bidder for Lot 1, and was declared and became the purchaser of the freehold ground-rents comprised in Lot 1, for the sum of 800*l.*, and paid to the plaintiffs his deposit of 160*l.* on the purchase-money, and signed an agreement bearing date the 22nd July, 1852, for the purchase of the said ground-rents, and for the payment of the remainder of the purchase-money according to the third condition. That the 2nd and 3rd lots were not sold at the said auction, and that some negotiation took place between the said defendant and the plaintiffs relative to the purchase of the said Lot 2, which, however, went off; and that pending such negotiation Henry Farnell, the solicitor of the said defendant, by letter dated the 24th day of July, 1852, called upon the plaintiffs to send to him an abstract of the title of the said freehold ground-rents with a copy of the said contract. That the title-deeds of the said freehold ground-rents were in the possession of a mortgagee of such ground-rents, and that the plaintiffs immediately applied to the solicitors of such mortgagee to furnish the said abstract of title to the said freehold ground-rents to the said Mr. Farnell; but that, owing to the absence of the said mortgagee *on the Continent, such abstract could not be at once furnished.* That, however, on the 3rd Aug. 1852, Messrs. Finch and Shepheard, the solicitors of the said mortgagee and of the plaintiffs, sent an abstract of the title of the said freehold ground-rents to Mr. Farnell, with a letter from the said Messrs. Finch and Shepheard to the said Mr. Farnell, dated the 2nd Aug. 1852, together with a copy of the said contract, and which letter stated that the said abstract could be examined with the deeds at any time the said Mr. Farnell might appoint. That the said Mr. Farnell received the abstract letter and copy of contract sometime in the course of the day of the 3rd Aug. 1852. That the plaintiffs received from the said Mr. Farnell a letter, dated the 3rd day of August, 1852, and written, as the plaintiffs believed, after the said abstract of title had been received by him, and which, except the formal parts, was as follows (that is to say): "Not having received the abstract of title to the lot purchased by Mr. Berry agreeably to the conditions, I presume there is some difficulty regarding the title; I will therefore thank you to return me the deposit of 160*l.* paid by my client, and I do hereby rescind the contract on his behalf;" and that on the 5th Aug. 1852, the Messrs. Finch and Shepheard received a letter from the said Mr. Farnell, dated Aug. 1852, but without stating any precise day, and which, except the formal parts, was as follows (that is to say): "I beg to acknowledge the receipt this day of abstract of title to freehold premises at Bromley, Middlesex, purchased by my client, Mr. John Robert Berry, at auction, on the 22nd July last, and to refer you to my letter of yesterday, addressed to the auctioneers, Messrs. Roberts and Roy, rescinding the contract on the part of Mr. Berry for the reason therein stated; the abstract shall be returned as you may direct." That some further correspondence took place between the said Mr. Farnell and Messrs. Finch and Shepheard, and that the plaintiffs refused to rescind the said contract, and the said abstract was returned to the said Messrs. Finch and Shepheard by the said Mr. Farnell on the 20th Aug. 1852; and he, on the part of the said defendant, and with his sanction, stated that the said defendant rescinded the said contract, demanded the repayment of the said deposit money of 160*l.*, and intended to proceed for the recovery thereof at law. The bill then stated that the said defendant refused to perform his agreement for the purchase of the said freehold ground-rents comprised in the said Lot 1, and had served the plaintiffs with a writ of summons in her Majesty's Court of Q. B. in an action at law for the recovery of the said sum of 160*l.*, and he threatened and intended to proceed in the said action at law, unless restrained by injunction.

J. Hinde Palmer, for the appellant, contended that the demurrer ought to have been allowed by the Master of the Rolls; that in a similar case, *Parkin* v. *Thorold*, 2 Sim. N. S. 1, the present Lord Chancellor, when Vice-Chancellor, had held that time was of the essence of the contract, and dissolved an injunction which had been obtained to stay the trial of an action brought for the return of the deposit. It was true that the Master of the Rolls, who had decided the present case, when *Parkin* v. *Thorold* came on before him for hearing (16 Jur. 959), held, that time was not of the essence of the contract, but the decision of Lord Cranworth, when Vice-Chancellor, ought to be followed, more especially as it was the tendency of modern decisions to hold that persons concerned in contracts relating to land were bound as in other contracts to regard time as material. This was shown by the cases cited in *Parkin* v. *Thorold*, 2 Sim. N. S. 1; that *Webb* v. *The Portsmouth Railway Company*, 19 L. T. 2, was an important authority. [Lord Justice KNIGHT BRUCE.—Was *Lennon* v. *Napper* cited in any of these cases?] It does not appear that it was; but the Master of the Rolls considered this a better case for an appeal than *Parkin* v. *Thorold:* [Lord Justice KNIGHT BRUCE.—Lord Redesdale, who was a perfect master of equity jurisprudence, in that case, which arose upon the subject of renewals in Ireland before the Tenantry Act (19 & 20 Geo. 3, c. 30), lays down the law upon this subject with admirable perspicuity and precision: (see 2 S. & L. 684.) He says: "The courts, in all

cases of contracts for estates in land, have been in the habit of relieving, where the party from his own neglect had suffered a lapse of time, and from that or other circumstances could not maintain an action to recover damages at law; and even where nothing exists to prevent his suing at law, so many things are necessary to enable him to recover at law, that the formalities alone render it very inconvenient and hazardous so to proceed. Nor could, in many cases, the legal remedy be adequate to the demands of justice. Courts of equity have therefore enforced contracts specifically, where no action for damages could be maintained; for at law, the party plaintiff must have strictly performed his part, and the inconvenience of insisting upon that in all cases, was sufficient to require the interference of courts of equity. They dispense with that which would make compliance with what the law requires oppressive; and in various cases of such contracts, they are in the constant habit of relieving the man who has acted fairly, though negligently. Thus, in the case of an estate sold by auction, there is a condition to forfeit the deposit, if the purchase be not completed within a certain time, yet the court is in the constant habit of relieving against the lapse of time; and so in the case of mortgages; and in many instances, relief is given against mere lapse of time, where lapse of time is not essential to the substance of the contract."]

Teed and *Hislop Clarke*, for the plaintiffs, were not called upon by the court.

Lord Justice KNIGHT BRUCE said that it must be sufficient to dispose of this demurrer to say the point might be better dealt with at the hearing than at that time. It did not, however, depend on that. The question was whether, if the case were brought to a hearing and the facts were either proved or admitted, and there were no other evidence in case, and nothing in the answer, specific performance would be decreed. His lordship thought it would. There was nothing on the face of the contract to show that time was of importance; and he apprehended when time, from the nature of the case, was not shown to be of importance—of the essence of the contract, courts of equity had long been in the habit of relieving in such cases. His Lordship said he could not express the rule better than by referring to the words of Lord Redesdale in *Lennon* v. *Napper*. That is to say, the court would relieve against the legal effects of lapse of time in such cases, provided that time was not made expressly of the essence of the contract, or there were other circumstances in the case which might render it so. The defendant must show that. It was not inconsistent with the present decision that upon the answer of the defendant, or upon the answer and evidence, the bill might be dismissed, especially in a case like this, where the time was limited within which the purchaser was bound to furnish an abstract of title, and that the time was past, was part of the defendant's case. [His Lordship here read the 4th of the conditions of sale.] One effect of that might be of importance with regard to the question before them; but, as the court must take the whole bill to be proved or admitted, his Lordship was of opinion that this was a case for specific performance, and that he agreed in the conclusion of the learned judge, which was perfectly consistent with a case being made at the hearing on which bill might be dismissed with costs.

Lord Justice TURNER.—The demurrer must be overruled, he thought, on this ground alone; viz. that the delivery of the abstract was prevented by the accidental absence of the mortgagee on the Continent. This was sufficient to overrule this demurrer. He, however, concurred with all that had fallen from Lord Justice Knight Bruce, that time might or might not be of the essence of a contract, by the stipulation of the parties, by the state of the property or surrounding circumstances; and the question here was, whether it was made so by any of these modes. His Lordship was clearly of opinion that it was not. The doctrine of the court was to look at the substance, and not at the mere form of a contract. Here the contract was in substance for a sale on one side and a purchase on the other; but it was not made essential that it should be completed at any particular time. The abstract, it was true, was to be delivered at a particular time, but it was not said that if the abstract were not delivered at such time, the contract was to be at an end. That the demurrer ought therefore to be overruled, and the appeal dismissed.

Teed asked for costs.

Their LORDSHIPS, however, thought that the costs, both at the Rolls and on the appeal, as to the demurrer, should be costs in the cause.

ROLLS COURT.

Reported by J. MACAULAY, Esq., of the Inner Temple, Barrister-at-Law.

Thursday, Dec. 16.

MORRIS *v.* STUART.

Rights of cestui que trust of mortgage debts against a purchaser—Duty of purchaser as to purchase-money—Lis pendens—Notice.

The purchaser of a mortgaged estate paid the purchase-money to the receiver in lunacy, to be administered under an order made on petition in lunacy by the mortgagee to carry out the sale. The mortgagee, however, was trustee of part of the mortgage debt for a third party, who, pending the contract for sale, filed his bill in Chancery to establish the trust, and gave notice to the purchaser:

Held, that the purchaser was bound to see to the application of the purchase-money; but the cause was allowed to stand over, that the cestui que trust might go in and establish his claim under the petition in lunacy.

By deed of the 9th Sept. 1840, C. E. Thompson mortgaged certain household furniture and other personal effects to James Morris, for the sum of 200*l.* and interest. James Morris died shortly after, having appointed the plaintiff James Morris and two other persons, who renounced probate, his executors. On the 29th Aug. 1842, C. E. Thompson mortgaged a messuage called Scott's Lodge and certain lands to J. Sandford, to secure 500*l.* and interest; and subsequently Sandford advanced to E. C. Thompson 246*l.* the amount of principal and interest due to the estate of James Morris, the testator, for the purpose of paying it off, and took a fresh security for 700*l.* in addition to the 500*l.* previously secured, and also a transfer of the security of the 9th Sept. 1840, in order that the furniture and effects therein might be comprised in the fresh mortgage. James Morris, the executor, accordingly gave up the deed to W. Hardy, the solicitor of Sandford, having indorsed thereon a memorandum acknowledging the payment of principal and interest. The 246*l.* however, was not paid to James Morris. In 1843 and 1844 Sandford, being indebted to R. Trimen and H. Westmacott, deposited with them his mortgage deeds by way of security for repayment of the several sums due. Sandford became of unsound mind in 1846, and his brother, the Rev. Humphrey Sandford, was appointed receiver of his estates. E. Sandford, sister of the lunatic, paid off the debts due to Trimen and Westmacott, and took possession of the mortgage and title-deeds of Scott's Lodge. Ont he 15th Feb. 1848, C. E. Thompson released an equity of redemption in Scott's Lodge to H. Sandford, in trust to sell and pay Miss Sandford and the debt due to the lunatic's estate on the securities, and the surplus to C. E. Thompson. H. Sandford accordingly sold Scott's Lodge by public auction to Lord Dudley Coutts Stuart for 900*l.* Pending the contract James Morris, the executor, filed his bill against the lunatic and his guardian, E. Sandford, and C. E. Thompson, for the purpose of having it declared that J. Sandford was a trustee for him for the sum of 246*l.*, and that as to that he had a lien on the estate of Scott's Lodge. In 1849 the case was heard, and a reference was directed to the same Master who had charge of the lunacy matter, to take the accounts and to make inquiries as to the mode in which the mortgages were created. The plaintiff gave the defendant due notice of the filing of the bill and the decree, and registered the suit as a *lis pendens*. In the meantime the accounts were taken in the lunacy, and in July 1850 the contract for the purchase of the estate was confirmed, and the debt of E. Sandford was ordered to be paid out of the proceeds of the sale, and then the costs of completing and of the proceedings in lunacy. The estate was accordingly conveyed to the purchaser, and the surplus purchase-money, amounting to 400*l.* and upwards, was paid to H. Sandford, and by him carried to the account of J. Sandford in the lunacy for March, 1851. The Master made his report, certifying that the costs directed to be taxed amounted to 317*l.*, leaving about 90*l.* of the 400*l.* which was applicable to the satisfaction of the first mortgage. On the 26th July, 1851, the suit of *Morris* v. *Sandford* came on to be heard on further directions, and it was declared that the mortgage for 500*l.* was the first charge, and the 700*l.* the second; and that J. Sandford was a trustee of the second for the plaintiff James Morris to the extent of 246*l.* The plaintiff now filed his lien against Lord Dudley Stuart, charging him with notice of the trust, and praying that the 246*l.* and interest might be paid by him or raised out of the estate.

K. Parker and *Hetherington*, for the plaintiff, insisted that, after payment of E. Sandford's charge, the surplus purchase-money belonged to the plaintiff, exclusive of the costs and proceedings in lunacy, and that the defendant, who had notice of the trust, was bound to see to the application of the purchase-money.

Wilcock and *Birkbeck*, for defendant, cited *Bishop of Winchester* v. *Payne*, 11 Ves. 194; *Wigg* v. *Wigg*, 1 Atk. 383; *Story* v. *Lord Windsor*, 2 Atk. 630.

The MASTER OF THE ROLLS was clearly of opinion that Lord D. Stuart must have had notice of the plaintiff's rights, inasmuch as a suit had been instituted for the purpose of establishing a trust, and his having previously entered into the contract did not affect the question, for the application of the purchase-money only, and not the sale, is in dispute. If the money had been sufficient to pay all the charges on the estate, and the defendant had paid it to Mr. Sandford notwithstanding the notice by the plaintiff, the plaintiff would have had a claim on the estate to the amount of the charges; but the first mortgage and interest, together with the costs in lunacy, absorbed all the purchase-money except a few pounds, and the defendant relies upon having paid the purchase-money in discharge of these claims. The plaintiff, on the other hand, disputes the application of the purchase-money in payment of the costs at all, and at present it is impossible to decide as to the propriety of the payment. So long as the order in lunacy stands it must be assumed to be correct; but the plaintiff ought to have had an opportunity of disputing it. The cause therefore must stand over for six months, to give the plaintiff time to take steps to dispute the order, with liberty to either party to appeal.

Monday, Jan. 17.

HOLLAND *v.* HARPER.

Practice—Payment out of court—Attorney to receive—Payment to solicitor of attorney to receive.

An application was made to the court to pay a sum of money out of court to a lady who was appointed attorney for certain parties in America, who were *cestuis que trust* of the fund, and an order was made accordingly. It turned out, however, that the lady was too ill to attend personally to receive the money; and

James now asked that the solicitor in the cause be allowed to receive it on account of the lady, on the receipt of the lady being given for it, and her signature thereto being verified by affidavit.

The MASTER of the ROLLS granted the application on production of affidavits verifying the facts.

V. C. KINDERSLEY'S COURT.

Reported by P. M. LEONARD, Esq. Barrister-at-Law.

Friday, Jan. 21.

Re DRYLAND'S ESTATE.

Payment of money out of court.

In this case a petition was presented for payment to a surviving tenant for life of the dividends arising from a sum of money paid into court by the Commissioners of Woods and Forests under the Metropolitan Improvement Act. The money stood in the names of the tenants for life, and the question was whether it was necessary to serve the Commissioners of Woods and Forests with the petition.

Shepperd, in support of the petition, cited *Ex parte Hordern*, 2 De G. & S. 263.

The VICE-CHANCELLOR held that it was not necessary to serve the commissioners with the petition, and made the order as prayed.

Wednesday, Jan. 26.

EDMONSTON *v.* HARRISON.

Stop-orders—Practice.

This was an unopposed petition for a stop-order presented by a married woman, but without a next friend, and it did not appear in what manner she had a separate right.

Nelson, in support of the petition.

The VICE-CHANCELLOR, after observing that the petition must be amended by adding a next friend, and showing how the petitioner became entitled, said, the judges had determined that in future all unopposed applications for stop-orders, where the parties did not object, would be disposed of by summons in chambers.

V. C. TURNER'S COURT.

Reported by J. HENRY COOKE, Esq., Barrister-at-Law.

Thursday, Nov. 25

SWALLOW *v.* BINNS.

Practice—Equity Jurisdiction Improvement Act—Personal representative.

A parent was interested for life under a settlement made by him, and after his death his children were to take. Some of the children died in the lifetime of the father, the tenant for life, and he was their sole next of kin. The father died, and his executors proved his will. A special case was set down for the opinion of the Court on the true construction of the settlement, and to this the executors of the tenant for life, the father, were parties:

Held, that upon proof of the death of the children during the life of the tenant for life, and that they died intestate, the executors of the father might be appointed to represent the estates of those children, for the purposes of the special case, under the 44th sect. of the 15 & 16 Vict. c. 86.

The 51st sect. of the same statute applies only in those cases where there are some of the parties interested, in every point of view, before the court.

This was a special case submitted to the court under the provisions of Sir George Turner's Act (13 & 14 Vict. c. 35, s. 13), on the construction of a deed of settlement. The settlor, Mr. Nathaniel Binns, by an indenture dated in September, 1821, assigned certain personal estate to trustees, upon trusts for investment, and alteration, and variation of securities; and upon trust to pay the dividends, interest, and annual produce to the settlor for his life, and after his decease upon certain trusts for the benefit of his children. It was the obscure wording of these trusts that occasioned the necessity for the case being submitted for

the opinion of the court. The children were to take, sons at twenty-one, and daughters at twenty-one or marriage; but it was doubtful whether all such sons and daughters were to take, or whether only such of them as should survive the father, the tenant for life. Some of the children did, in fact, die in the lifetime of the tenant for life, but they all attained the age of twenty-one, and no personal representative of any of them existed. The father, the tenant for life, died, having made a will, and appointed executors, who proved the will, and they were parties to the special case.

Wickens now moved for leave to set down the case, and submitted whether it was or was not necessary that some person should be appointed to represent the deceased children for the purposes of the case. (*a*)

Selwyn for the defendants.—Here there are some of the parties interested in the subject-matter of the special case before the court, and perhaps, therefore, the court can, under the provisions of the 51st section of the 15 & 16 Vict. c. 86, now determine the question without resorting to the enactment contained in section 44. The 51st section for this purpose enacts, "It shall be lawful for the court to adjudicate on questions arising between parties, notwithstanding that they may be some only of the parties interested in the property respecting which the question may have arisen . . . without making the other parties interested in the property respecting which the question may have arisen, or interested under the same settlement, will, or other instrument, parties to the suit."

THE VICE-CHANCELLOR.—The 51st section relates to cases where there are already some of the parties interested in the question in every point of view before the court. In this case the question is not between the surviving children, but between the surviving children and the representatives of deceased children; and although the surviving children are before the court, there are no persons who represent the interests of the deceased children or any of them. If satisfactory evidence be produced that the father, the tenant for life, survived the deceased children, in which event he would be the next of kin of each of them; and also satisfactory evidence that each of the deceased children died intestate; the Court may then, under the 44th section of the statute 15 & 16 Vict. c. 86, appoint the executors of the father to represent the deceased children for the purposes of this special case.

The motion then stood over for the production of this evidence, and ultimately the order was taken for the executors of the father to represent the deceased children.

Friday, Dec. 3.

MORRELL v. TINKLER.

Practice—Master in Chancery Abolition Act—Reference to accountants or to persons of science.

Where, before the passing of the statute 15 & 16 Vict. c. 80, a cause had been referred to the Master to take accounts of a partnership, a petition was presented under the 42nd section of it, after it came into operation, that the prosecution of the decree might be transferred to the judge at chambers in order to have the assistance of an accountant. The Court held that to be the proper course, and ordered accordingly.

The statute does not give the Master jurisdiction to call in the aid of accountants or men of science.

This was a bill filed for the purpose of taking partnership accounts; and before the Master in Chancery Abolition Act (15 & 16 Vict. c. 80) came into operation a decree was made directing the usual accounts to be taken in the Master's office. The 42nd section of that statute enacts that "it shall be lawful for the said court, or any judge thereof, in such way as they may think fit, to obtain the assistance of accountants, merchants, engineers, actuaries, or other scientific persons, the better to enable such court or judge to determine any matter at issue in any cause or proceeding, and to act upon the certificate of such persons." A petition was now presented by the plaintiff, which, after setting forth the proceedings had in the suit, and the reference directed by the decree, prayed that the accounts and inquiries so ordered to be taken and made in the Master's office, might, in lieu thereof, be prosecuted and made and taken before the judge at chambers.

Rolt and *Bearan*, in support of the petition, stated that the suit related to the affairs of a partnership between bankers which had continued for the long space of thirty-one years. One of the partners had died, and by his will appointed the plaintiff, the surviving partner, the trustee under and the executor of his will. The accounts being of so long standing, it became important that the assistance of some accountant should be obtained, and it was with that view that the petition was presented. It had already been decided by Kindersley, V. C. in the case of *Mildway v. Methuen* (16 Jur. 965), that the Act of Parliament did not warrant the court in authorising the Master to call in the assistance of an accountant, but that the course to be adopted was that now adopted. The case of *Mildway* v. *Methuen* was that of an architect and builder who claimed to be a creditor of a testator

(*a*) See *Ex parte Cramer*, before Stuart, V. C., *ante*.

in an administration suit, in respect of large works performed in buildings; and, the Master having made a separate report, the court gave the creditor leave to bring an action. All this took place before the 15 & 16 Vict. c. 80 came into operation; but, on that statute coming into operation, the creditor presented a petition praying a reference back to the Master, instead of the action being brought, with power to the Master to call in the assistance of a builder and surveyor under the provisions of the above-mentioned section. Kindersley, V. C. however, held that the Legislature did not intend that the court should delegate its new power to the Master, but that the proper course would be to discharge the order made, by which liberty was given to bring the action, and to transfer the inquiry directed by the original decree to the judge in chambers, who would then be in a condition himself to call in and avail himself of the assistance of builders, surveyors, and such other scientific persons as he might deem proper. Counsel, therefore, now asked upon the present petition that a similar course should be adopted.

THE VICE-CHANCELLOR.—It has already been held that the Act does not give the Master any authority to call in the assistance of such persons; and I agree with the decision of Kindersley, V. C. which has been cited. I have no power to authorise the Master to employ an accountant; and the proper course, therefore, to be adopted in order to obtain the benefit of the powers conferred by the Act of Parliament in question, will be to make the order in compliance with the prayer of the petition; and I so order accordingly.

Thursday, Dec. 23.

DENSEM v. ELWORTHY.

Practice — Parties — Equity Jurisdiction Improvement Act.

A testator directed his estates to be sold, and the produce divided between several persons. A bill was filed for the administration of the trust, and the trustees of the will and the parties entitled to the produce were made parties. One of these persons had married, and her share was settled for her benefit and that of her husband and the children of the marriage:

Held, that under the 9th rule of sect. 42 of the statute 15 & 16 Vict. c. 86, the trustees of the settlement of the shares so settled must be parties, and that the interests of the children of the marriage would be sufficiently represented by the trustees.

A testator by his will devised his real estate to trustees, upon trust to sell the same, and to divide the produce thereof among the persons who were therein named the residuary legatees of his personal estate. A bill was filed to execute the trusts of the will, and the defendants were the devisees in trust and all the residuary legatees. One of the legatees, a lady, had married, and on her marriage a settlement was executed of her share under the will, and the trusts were declared for herself and her husband and the children of the marriage, in equal portions. The husband was also a party to the suit, but the trustees of the settlement were not parties, nor were the children of the marriage. At the hearing of the cause, after the Statute for the Amendment of the Practice and Course of Proceeding in the Court of Chancery came into operation, a question was raised whether the suit was not defective for want of parties, or whether the trustees of the settlement and the children of the marriage were not to be considered as *cestuis que trust* under the will of the testator, and as such sufficiently represented by the trustees of his will within the intent and meaning of the 9th rule of the 42nd section of that Act, or whether it was necessary to bring the trustees of the settlement and the children of the marriage or either of the three classes before the court as parties to the suit. The point was of importance, as upon a sale an objection might be taken to the title.

Karslake, for the plaintiffs.

Follett, for the defendants.

THE VICE-CHANCELLOR.—When the Act of Parliament expressly enacts that trustees shall represent the persons beneficially interested in the estate, I have not the slightest idea that any purchaser will be allowed to say that, because some of the *cestuis que trustent* are not parties to the suit in which the decree is made, he can object to the title. Under the Act the suit may be instituted by one of the residuary devisees or legatees, and the decree may then be made and the other parties may be served with notice of the decree. This practice has been substituted for the former one, of bringing all the *cestuis que trustent* before the court in the first instance—a practice which has its origin probably in the right of the purchaser under the decree to covenants for titles from the parties beneficially interested, but which practice is in truth a source of unnecessary difficulty and expense in the prosecution of suits. The present suit is not, however, framed in the manner authorised by the new Act. The plaintiff has brought before the court all the residuary legatees, but not the trustees of the settlement of one of the shares. I am of opinion that, the suit being framed in this form, the trustees of the settlement should be made parties; but I think those trustees will sufficiently represent the children of the marriage, and that the latter need not be made parties.

V. C. STUART'S COURT.

Reported by GEO. S. ALLSUTT, Esq., of the Middle Temple Barrister-at-Law.

Wednesday, Jan. 27.

Re THE WORCESTER COAL EXCHANGE.

Joint-Stock Companies Winding-up Acts—Appeals from the Master's decisions.

Daniel and *Selwyn* appeared on behalf of an appellant from a decision of the Master, and were about to move, in pursuance of the notice which had been given, when

THE VICE-CHANCELLOR said, that it was desirable that all appeals from the Master in these winding-up cases should be taken at once to the Lords Justices. Their Lordships were willing to hear these motions in the first instance; and as by far the majority of these cases were ultimately taken before the Lords Justices, the course his Honour proposed would save the time of the court, and also much expense to the parties.

Daniel was willing to adopt this course, but did not know whether *Glasse*, who appeared as counsel on the other side, would consent.

THE VICE-CHANCELLOR said that it was of no consequence whether counsel consented or not. If it were mentioned to the Lords Justices that it was his Honour's recommendation that they should hear the motion in the first instance, they would do so.

Daniel suggested that the notice of motion was for this branch of the court.

THE VICE-CHANCELLOR replied that the same notice would be available for the Lords Justices' Court; but if any difficulty should arise in this respect that would be set right by their Lordships.

V. C. WOOD'S COURT.

Reported by J. HENRY COOKE, Esq., Barrister-at-Law.

Jan. 13 and 18.

BERNASCONI v. ATKINSON.

Will—Construction—Misnomer and misdescription—Admission of parol evidence.

A testator by his will gave the residue of his personal estate equally between two persons by name, one of whom he called and described as "my first cousin V. B. son of my late uncle P. B." The testator has no cousin named V. B. He had one cousin named G. V. B. son of his, the testator's, uncle J. B., and another cousin named F. B. son of his, the testator's, uncle V. B.

Held, that G. V. B. was the cousin who was entitled to the share of the residue.

Held, also, that evidence of the surrounding circumstances when the will was made was admissible to show who was intended to take.

In this case the question was on the construction of a will. The testator, Bartholomew Bernasconi, of Alfred-place, Middlesex, and of Harrow Weald, by his will dated in the month of April 1852, after making various bequests, gave and bequeathed his residuary personal estate as follows: "unto my sister Jane Ann Blackwell, wife of Mr. Thomas Blackwell, and to my first cousin Vincent Bernasconi, son of my late uncle Peter Bernasconi, in equal shares." The state of the testator's family was as follows: he had a first cousin named George Vincent Bernasconi, son of his uncle Joseph Vincent Bernasconi; and two first cousins, Frederick Bernasconi and Alexander Bernasconi, who were the sons of his uncle Peter Alexander Bernasconi; but he had no first cousin named simply Vincent.

George Vincent Bernasconi claimed to be the person intended by the testator, and therefore entitled to the half of the residue; and thereupon the suit was instituted. Affidavits were filed, from which it appeared that the testator was well acquainted and was on terms of intimacy with the plaintiff, and who was spoken of by him and by others as "Vincent;" that Alexander left England for Russia, and had not been heard of for many years; but that Frederick resided in London, and was in humble circumstances, and did not visit at the house of the testator. Evidence was also adduced, but which was ultimately rejected, to prove that the name Vincent Bernasconi was that given by the testator when he gave instructions for his will, and that the words "son of my late uncle Peter Bernasconi" were added by the solicitor who drew the will without any authority or direction from the testator, the solicitor himself believing that Vincent was the son of Peter. Frederick Bernasconi was the only one of the family who claimed in opposition to George Vincent Bernasconi.

Bolt and *Chapman Barber* for the plaintiff.

Tripp for Frederick Bernasconi.

Freeling for the next of kin.

Dauney for the testator's widow.

W. M. James for the executors.

Tuesday, Jan. 18.—THE VICE-CHANCELLOR.—I reserved my judgment in this case, because I was anxious to consider whether any, and if any what, parol evidence could properly be admitted; for it is of the utmost importance to adhere to the rules which have been laid down upon that subject, otherwise there is danger of reviving the very mischief which the Statute of Frauds intended to prevent. The firs question then is, whether there is so much doubt as

V. C. WOOD'S COURT.

to which of the claimants is entitled to the property as to induce the court to hold that there has been an intestacy? All the authorities establish that the declaration of an intestacy should be the last resource, and that the court is bound, if possible, to discover the meaning of a testator; and it becomes necessary, therefore, here to decide what evidence shall be received for that purpose. The first canon in construing a will is, that the language must be taken to be entirely the testator's own; and though the will may have been drawn by another person, the testator must be taken to have read it over and adopted it. Secondly, it is equally clear that the words must be taken to be used in their natural sense, if possible; and unless, taking them in that sense, they are equally applicable to two persons or things, no extrinsic evidence can be admitted. Thirdly, there is the case where the description is not strictly applicable to any one; but the popular sense of the words used, or the general language used by the testator, points to one result: in such a case the court has a right to look at all the circumstances surrounding the testator at the time of making his will. But the present case goes one stage further; for not only are the words in their natural sense applicable to any one, but they are equally applicable to two persons. In such a position the cases lead to this result, that it is the duty of the court to lean against intestacy. I have made these observations in consequence of some evidence having been given that the description, "the son of my uncle Peter," was introduced by the solicitor who prepared the will, without the direction of the testator. No evidence of that description can be received. The only case in which evidence can be received of the intention of a testator is when a description is as applicable to one person as to another. In *Hiscocks* v. *Hiscocks*, 5 M. & W. 360, Lord Abinger says: "The description applies partially to each, and it is not easy to see how the difficulty is to be solved. If it were *res integra* we should be much disposed to hold the devise void from uncertainty. But the cases *Doe dem. Huthwaite*, 3 B. & A. 632, *Bradshaw* v. *Bradshaw*, and others, are authorities against this conclusion. If, therefore, looking at the surrounding facts to be found by the jury, the court can clearly see, with the knowledge which arises from those facts alone, that the testator meant either the lessor of the plaintiff or the defendant, we may so decide, and direct the jury accordingly; but we think that for this purpose they cannot receive declaration of the testator of what he meant to do in making his will." In *Camoys* v. *Blundell*, 1 Ho. of Lords' Cases, Lord Brougham, though he differed from the other Lords upon the particular case, expressed the same opinion upon the necessity of avoiding an intestacy, and he puts the case of a devise to A. B., eldest son of C. D., A. B. being second son of C. D., and says: "You are left to satisfy yourself in the best way you can whether you will go by the description and not the name, or by the name and not the description, seeing you must elect to abide by the one or the other." It appears to me that there are circumstances which enable me to say who is meant in the present case; and the question is, whether the testator was most likely to make a mistake in the name or the description of the person he intended to take. An argument may be drawn in favour of Frederick on the ground that, in fact, in all the reported cases the description has prevailed over the name. But there are peculiar reasons in each case why that should be so. Here there is nothing to show any partiality for the sons of one uncle over the other. But it is said that it militated against the idea of his having made a description that he has rightly described another legatee, the sister of the plaintiff, and it cannot be supposed that he should not know that two legatees are brother and sister. But that only amounts to the same thing, namely, that the testator has made a mistake; and it must be admitted that he has done in any case. But, going to the external evidence, the matter becomes so plain, that I think no jury would hesitate. A letter was put in addressed to plaintiff as his cousin Vincent, and I admit that letter merely to show that the testator was in the habit of calling the plaintiff Vincent, and not George Vincent; and then there is the fact of one of the two nephews visiting at the house and the other not. I have assumed in favour of Frederick that the son in Russia was forgotten, because, if plaintiff's claim is rejected, and the matter is left between the two sons of Peter, there is nothing to point to one rather than the other, and an intestacy must be the consequence. But, assuming he was forgotten, I consider the evidence points out the plaintiff as the person intended by the testator, and the decree I shall make will be in accordance with that opinion.

Tuesday, Jan. 18.

FLETCHER *v.* ROGERS.

Practice—Equity Jurisdiction Improvement Act—Binding declaration.

Where on the construction of a bill the court held that certain persons were entitled for life, and at their deaths their respective then surviving children were entitled to their shares:

Held, that it was a case wherein the court would, under the 50th section of the statute 15 & 16 *Vict. c.* 86, *declare the future rights.*

A testator bequeathed his residuary personal estate in such manner as that the court, upon the construction of the will, had held that certain brothers and sisters of the testator were entitled to equal shares for life, and after their deaths their children were entitled absolutely.

Shadwell, *W. J. Bovill*, and *Jessel*, for the several parties.

Jessel.—Will the court make a declaration of the rights of the children, that is, whether they will take the share of their respective parents, or whether all the children are entitled equally to the whole fund; and also, whether any children born after the death of the testator will be entitled? The 50th section of the 15 & 16 Vict. c. 86, is as follows: "No suit in the said court will be open to objection on the ground that a merely declaratory decree or order is sought thereby, and it shall be lawful for the court to make binding declarations of right without granting consequential relief."

The VICE-CHANCELLOR.—This case seems to come within the power conferred by that section, and I may make a declaration; and I do declare that such children as were alive at the death of each parent will be entitled to, and will take equally among them, the share of the deceased parent.

Common Law Courts.

COURT OF QUEEN'S BENCH.

Reported by ADAM BITTLESTON and JOHN THOMPSON, Esqrs. Barristers-at-Law.

June 18 *and Nov.* 11.

LORD CANNING *v.* RAPER.

Stamp—Mortgage-deed—Indemnity.

A deed between B. and R. recited that B. and R. had become jointly and severally bound to W. in 2000*l. by bond conditioned for payment of* 1000*l. and interest, and that R. was a surety merely, on B. agreeing to indemnify R. by assignment of his estate and effects. In pursuance thereof B. underleased to R. certain premises, with a proviso that if B. should pay the above money, &c. the deed should be void. Covenants that R. might mortgage or sell the premises and effects to repay himself any loss he might incur; and that R. would reassign and release to B. if the above bond should be satisfied by B. without calling on R.:*

Held, that this deed required an ad valorem stamp, by the 55 *Geo.* 3, *c.* 184, *sched. pt.* 1, *tit.* "*Mortgage.*"

Covenant by the reversioner for nonpayment of rent reserved by an indenture of lease (10th Sept. 1834) to G. W. Veasey.

The declaration averred that after the making of the indenture, all the estate, &c. of Veasey, by assignment thereof, came to and vested in the defendant.

Plea 3. Traverse of the above averment.

At the trial before Coleridge, J. in Easter Term last, the defendant put in a deed in the following form, to prove that he was an underlessee merely, and not the assignee of the term. The indenture, dated 5th August, 1841, was between W. Bonfield and T. Bonfield of the one part, and the defendant of the other part. It recited a joint and several bond by W. and T. Bonfield and the defendant, conditioned for payment of 1,000*l.* to Warner; and a similar bond to the like amount to Goodman; and a joint promissory note by the three, W. B. and T. B. and the defendant, to Day, for 1,500*l.* with interest. It further recited that the defendant had executed the bonds and the promissory note, as surety for J. B. and W. B., on their agreeing to indemnify him from loss by an assignment of the estate and effects of T. B. and W. B. and entering into the following covenants. The operative part of the indenture then demised to the defendant, by way of underlease, buildings and land, including a wharf (the Bonfields being the assignees of the residue of a lease thereof), to have and to hold to the defendant for the residue of the term, wanting one day. The indenture then assigned to the defendant the stock, goods, &c. on the wharf and premises, and all other the joint stock and effects wherever situate, and all debts owing to them, and also all other moneys, furniture, personal estate, &c. of the Bonfields', at law and in equity; *habendum* to the defendant, with power to give receipts. Provided that the premises were underleased, and the goods, &c. assigned, to indemnify the defendant from all liability and loss which might occur by reason of his having become surety as aforesaid. Covenant, that on payment by the Bonfields of the sums for which the defendant had so become liable, and on keeping the defendant harmless, &c. the indenture should become void. Proviso for the defendant repaying himself the moneys he might have to pay by reason of the suretyship, out of the debts and profits of the said business, or by mortgage or sale of any of the effects and premises assigned, together with interest at five per cent. and the expenses of carrying the deed into execution. Covenant on the defendant's part to reassign and release in case the Bonfields should duly pay the moneys and interest due on the bonds and note without calling on the defendant. Covenant to indemnify the defendant against the bonds and note, and all actions, demands, &c. in respect of the same. Covenant by Bonfields for further assurance.—In witness, &c.

The deed was stamped with a deed stamp, 35*s.*; and on the second skin with the further stamp of 25*s.* It was objected that these stamps were insufficient; and that the deed should have been stamped with an *ad valorem* stamp. The objection was overruled, and the verdict directed for the defendant on the third plea.

Ogle having obtained a rule *nisi* for a new trial on the ground that the above stamps were insufficient, and that the deed ought not to have been admitted in evidence:

J. Brown showed cause against, and

Ogle and *Malcolm* supported the rule.

Cases cited:—*Wroughton* v. *Turtle*, 11 M. & W. 561; *Baber* v. *Harris*, 9 A. & E. 532; *Schlember* v. *Moxay*, 8 B. & C. 789; *Edwards* v. *Bates*, 7 M. & G. 590; *Watson* v. *Macquire*, 5 C. B. 836. Stat. 59 Geo. 3, c. 184, sched. pt. 1, tit. "Deed, Mortgage."

Cur. adv. vult.

JUDGMENT.

Thursday, Nov. 11.—Lord CAMPBELL, C.J.—In this case the question is whether the assignment of chattels to secure to the assignee an indemnity in case he should be called upon to pay the amount secured by a bond which he had entered into as security for the assignor, is a mortgage liable to an *ad valorem* stamp. Is it an assignment to secure the repayment of money to be lent, advanced, or paid at a future time? If the debt so due is paid by the surety, the amount of that debt is so much money paid for the principal. If the defendant had bound himself absolutely to the payment of the debt of the principal at a future time, and the assignment had been made to repay what he should so pay, the instrument would clearly have been within the words of the statute. And although he bound himself only to pay in case the principal should make default, still the assignment was to secure the repayment of money at a future time, in case of that contingency happening. A security for contingent and future debts is as much within the sense and meaning of the statute as a security for certain future debts. In *Watson* v. *Macquire*, the assignment was, in effect, the same as in this case. John Watson was indebted in 600*l.* to Sabin and Lamb; and Henry Watson the plaintiff was bound in 600*l.* as surety for John; and John Watson entered into a bond to the amount of 600*l.* to indemnify him, in case he should be obliged to pay the 600*l.*; and upon this bond the *ad valorem* stamp of 5*l.* was paid. John also gave to Henry the benefit of the assignment in question of his goods and chattels, as an additional security for the 600*l.* that had been secured by the bond of the brother. It was assumed throughout that the assignment was a mortgage requiring an *ad valorem* stamp, and that it was within the exemption of the statute for additional securities, provided it had an *ad valorem* stamp. The objection relied upon was that the assignment secured 600*l.* and interest, and was therefore an indefinite sum. This objection was overruled. The judgment, in effect, decides that an *ad valorem* stamp was necessary; but that the 5*l.* paid on the bond was sufficient for the additional security. We are therefore of opinion that an *ad valorem* stamp was necessary.

Rule absolute.

Jan. 12 *and* 13.

WALSH *v.* IONIDES.

County Court—Prohibition—Jurisdiction.

A cargo was sold to plaintiff, to be delivered at any port in the United Kingdom. The price to be paid on delivery of the shipping notes and the policy of insurance. A demand of the shipping notes and the policy was made at Liverpool, and refused, but the cargo was ordered to be delivered at Drogheda. Thereupon plaintiff sued in the County Court at Liverpool, and, in the particulars annexed to the plaint, alleged his claim to be for 43*l. damages for non-delivery of the cargo.*

Held, on motion for prohibition, that, the plaintiff not having a cause of action for nondelivery of the cargo arising within the jurisdiction of the Liverpool County Court, the writ must go to restrain the proceedings as to that, but that, as the plaintiff had a cause of action arising at Liverpool for not delivering the shipping notes and the policy, the writ would not be a general prohibition as to the whole cause, for the plaintiff could apply to the County Court to amend his particulars of demand.

A rule *nisi* having been granted for a prohibition to the judge of the County Court at Liverpool to restrain him from further proceedings in this cause, under the following circumstances:—In December last the defendant, having a vessel with a cargo of Indian corn at Queen's Town, in the cove of Cork, an offer of purchase was made by a Mr. Meakin, broker in Liverpool; and the defendant the same day returned on answer stating what his lowest price was; but the defendant, before he received any reply from Mr. Meakin, disposed of the cargo. In the meanwhile Meakin had sold the cargo to the plaintiff, a merchant at Drogheda, on the terms stated in the judgment. Meakin sent orders to the captain of the vessel to

proceed to deliver the cargo to the plaintiff at Drogheda, but he, acting on the defendant's instructions, refused to do so; whereupon the plaintiff sued in the County Court at Liverpool, on a plaint containing particulars of demand for 43*l.* damages for nondelivery of the cargo, and 3*l.* 10*s.* 8*d.* for plaintiff's expenses in coming from Drogheda to Queen's Town.

Milward showed cause, and *Cowling* supported the rule.

It was contended that the County Court had no jurisdiction, as the parties did not reside within the district, nor did the cause of action arise within the jurisdiction: (9 & 10 Vict. c. 95, s. 60.)

Cur adv. vult.

JUDGMENT,—*Tuesday, Jan.* 18.

LORD CAMPBELL, C. J.—This was an application for a prohibition to the judge of the County Court of Liverpool, and we think that the rule ought to be made absolute, but with modifications. The application was for a general prohibition to stay all proceedings upon a plaint. Now we are extremely reluctant to interfere with the jurisdiction of a County Court, unless its jurisdiction has been clearly exceeded; but if it has been, it is our bounden duty to interfere by granting a prohibition. In the present case there is a suit brought in the County Court in respect of a contract whereby it was agreed that a cargo of corn on board a ship should be sold, and that it should be delivered at any port in the United Kingdom; and that upon handing over certain shipping documents and the policy of insurance, the price should be paid. At Liverpool there was a demand made on the vendor to hand over the shipping documents and policy of insurance, which he did not do; and the action was brought by the purchaser upon that contract. Now, in the particulars of demand, it was stated that the action was brought for the nondelivery of the cargo; if it were only for that, that would not be a cause of action arising within the jurisdiction of the County Court of Liverpool, because the cargo was to be delivered at Drogheda, and might have been delivered at any part of the United Kingdom. But under this plaint it is possible that the plaintiff may proceed for a cause of action within the jurisdiction of the County Court of Liverpool, for not having handed over to him the shipping documents, with the policy of insurance. The contract was made in Liverpool, and the breach of it took place in Liverpool; therefore we cannot say that there should be a general prohibition. There are ancient authorities to show that there may be a partial prohibition. I remember those authorities being acted upon in the case of *Dr. Frees*, which was a suit in the Ecclesiastical Court for immoralities, some part of which were barred by the statute, and others were not barred, and a prohibition was granted with respect to all which were barred by the statute. Now we think the proper course will be to grant a prohibition against proceeding on that breach which is not in the jurisdiction of the County Court; and therefore we think the rule should be made absolute, prohibiting the plaintiff from proceeding upon the said plaint in respect of the breach of contract mentioned in the particulars to the said plaint annexed, and that was for not delivering the cargo. Now this will allow the plaintiff, although he is prohibited from proceeding for that which was contracted for as to the cargo, still to proceed under this plaint for the breach of contract in not delivering over the shipping documents and policy of insurance at Liverpool; and then he may apply to the judge of the County Court, and the judge of the County Court may, in his discretion, allow the particulars to be amended, and to be restricted to that breach of the contract which took place within the jurisdiction of the County Court. Therefore the rule will be made absolute to that extent. *Rule absolute accordingly.*

Saturday, Jan. 15.

REG. *v.* THE INHABITANTS OF ST. LEONARD'S, SHOREDITCH.

Pauper lunatic—Order of removal to asylum by officiating clergyman and relieving officer—12 & 13 *Vict. c.* 103, *s.* 5.

The 12 & 13 *Vict. c.* 103, *s.* 5, *does not apply to the case of a pauper lunatic removed to an asylum by an order made by the officiating clergyman and the relieving officer under* 8 & 9 *Vict. c.* 126, *s.* 48; *and therefore the costs of maintenance in the asylum are chargeable on the parish of settlement of the pauper, and not on the common funds of the union.*

On an appeal against an order of justices, obtained by the parish of St. Bartholomew-the-Less, adjudging Mary Leach, a lunatic pauper, to be settled in the parish of St. Leonard's, Shoreditch, and ordering that parish to pay the sum of 1*l.* 18*s.* for the costs of the examination and conveyance of the said pauper to the lunatic asylum, and also 3*l.* 17*s.* costs of maintenance in the asylum, and also a further weekly sum so long as the said pauper should continue therein, the sessions confirmed the order, subject to the opinion of this court upon a special case.

By the case it appeared that the pauper had resided for more than five years next before her removal to the hospital hereafter stated, in the parish of St. Bride's, in the city of London, and that, becoming ill, she was taken to St. Bartholomew's Hospital, in the parish of St. Bartholomew-the-Less, also in the city of London, and whilst there she became insane; whereupon she was removed to the union workhouse of the two parishes of St. Bride's and St. Bartholomew, and whilst there at the charge of the parish of St. Bartholomew she was removed, by an order made by the officiating clergyman of St. Bride's and the relieving officer of the union, to a lunatic asylum at Peckham. It was admitted that the pauper had a settlement in the parish of St. Leonard's, Shoreditch, Middlesex.

The question for the court was, whether the order of maintenance obtained by St. Bartholomew-the-Less was legally made upon St. Leonard's, Shoreditch, or whether the maintenance of the lunatic should be charged to the common fund of the union.

Huddleston, in support of the order of sessions.—It is not denied that the pauper had a settlement in St. Leonard's, Shoreditch. The question raised is, whether the charge of the pauper is to be borne by the parish of St. Leonard's, or whether it is cast, by the 12 & 13 Vict. c. 103, *s.* 5, on the common fund of the union comprising the parish wherein such pauper lunatic was resident at the time of the removal to the asylum. The pauper was removed to the lunatic asylum by the order of the officiating clergyman and the relieving officer, under the 8 & 9 Vict. c. 126, *s.* 48. The 12 & 13 Vict. c. 103, *s.* 5, was passed, to remove the effect of the decision in *Reg.* v. *The Inhabitants of Leulen Roothin*, 18 L. J. 187, M. C., which decided that an order for maintenance of a lunatic pauper in an asylum under the 8 & 9 Vict. c. 126, might be made on the parish of settlement, notwithstanding five years' residence previous to the removal to the asylum in another parish. But the words of section 5 of 12 & 13 Vict. c. 103, do not apply to the case of a pauper removed to an asylum by an order of the officiating clergyman and the relieving officer, but only to a removal by an order of justices. The words are: "The costs and expenses incurred in the obtaining *any order of justices* for the removal and maintenance of a lunatic pauper removed under *any such order* to any asylum, if not exempt from removal by the 9 & 10 Vict. c. 66, shall be borne by the common fund of the union comprising the parish wherein such pauper lunatic was resident at the time when so removed to such asylum, notwithstanding the order for the payment thereof shall have been upon the overseers of the parish of settlement, or upon the treasurer or guardians of the union in which such parish shall be comprised. The question is, whether the 9 & 10 Vict. c. 66 is applicable to this state of things. By the 8 & 9 Vict. c. 126, *s.* 57, a pauper lunatic is deemed to be settled in the parish from whence sent to the asylum, till adjudged to be settled in some other parish. Here it is found that the pauper was chargeable to St. Bartholomew-the-Less while in the hospital. If the 12 & 13 Vict. c. 103, *s.* 5, only applies to the case of a removal of a pauper lunatic by order of justices, and the 9 & 10 Vict. c. 66 has no application, the chargeability must be on the parish of settlement, St. Leonard's, Shoreditch.

Bodkin for the appellants.—The time during which the pauper was in the hospital is to be excluded by the 9 & 10 Vict. c. 66, *s.* 1 (*Reg.* v. *Hartfield*, 21 L. J. 65, M. C.; *Reg.* v. *St. Andrews*, 21 L. J. 69, M. C.; and it must be taken as if the pauper was residing in St. Bride's during the time. The words of the 12 & 13 Vict. c. 103, *s.* 5, are, "the costs in obtaining any order of justices for the removal *and maintenance* of any lunatic pauper." Here the order of the officiating clergyman and the relieving officer was not for the maintenance of the pauper, but the order of the justices was. [COLERIDGE, J.—You must get it to a case where the pauper was removed by the order of justices before you can have the benefit of 12 & 13 Vict. c. 103, *s.* 5.]

LORD CAMPBELL, C. J.—I am of opinion that the order of sessions ought to be confirmed. It is admitted that the justices have authority to make an order for the costs of the maintenance of a pauper lunatic on the parish of settlement or the union wherein it is comprised. The question is whether they had a right to make it on the parish of the settlement in this case. No doubt, before the 12 & 13 Vict. c. 103, *s.* 5, the burden of maintenance was cast on the parish of settlement; but that statute is relied on, and, if this case is within it, the charge is cast upon the union comprising the parish where the lunatic was resident when removed to the asylum, and not on the parish of the settlement. One does not see why sect. 5 is confined to the case where a pauper lunatic is removed to an asylum by an order of justices, when power is given to the officiating clergyman and the relieving officer to make such order. The section, however, is expressly confined to a removal by order of justices: "who shall be removed under any *such* order," refers to the last antecedent, which is "any order of justices." Then the law remains in this case as it was before, and the charge falls on the parish of settlement. This order of sessions was therefore rightly made.

The rest of the court concurring,

Rule confirmed.

REG. *v.* DUGDALE.

Misdemeanour—Procuring indecent prints with intent to sell.

A count in an indictment charging defendant with having possession of indecent prints, with intent afterwards to sell them, is bad; but a count charging defendant with procuring indecent prints with intent to sell is good, as the procuring is an act done.

Indictment.—The first set of counts charged the defendant with having possession of indecent prints, in order and for the purpose of afterwards selling them.

The second set of counts charged the defendant with having procured indecent prints, for the purpose of afterwards selling them.

At the trial of the indictment at the Middlesex Sessions the defendant was found guilty, and judgment having been pronounced, the defendant brought a writ of error, which now came on to be argued.

Metcalfe, for the plaintiff in error.—The first set of counts is clearly bad. The mere possession, whatever the intent that may be charged, is no offence. There must be some act averred to carry out that intention. [LORD CAMPBELL, C. J.—It would be difficult to say at what moment the offence begins. It may be a mere passing intention in the mind.] *Rex* v. *Sutton*, 2 Stra. 1074, in which Lord Hardwicke held that the having coining tools in possession, with intent to make counterfeit coin, was a misdemeanor, was overruled in *Rex* v. *Heath*, R. & R. C. C. 184, where it was held that having counterfeit silver in possession, with intent to utter it, is not an offence. Then as to the second set of counts. No doubt the note to the case of *Rex* v. *Heath* will be relied on, where it is said, "But the facts seemed to afford grounds for a good indictment, by stating that the defendant acquired or procured the bad money with intent to circulate it, or packing up or delivering it to the bookkeeper with intent to circulate it." (MS. Judg.) [LORD CAMPBELL, C.J.—How do you distinguish this class of counts from *Rex* v. *Fuller*, R. & R. C. C. 308; where it was decided that procuring base coin with intent to utter it is a misdemeanour?] Would it be any offence to make a picklock key? The 11 & 15 Vict. c. 19, *s.* 1, could hardly have been necessary if this is an offence.

LORD CAMPBELL, C.J.—I am of opinion that the conviction must be affirmed. We have decisions to guide us with respect to both classes of counts. As to the first class, *R.* v. *Heath* is an authority that these are bad. No act is alleged to have been done, and the facts stated are consistent with the prints having come innocently into the defendant's possession; and it may have been a mere passing intention in the defendant's mind to make them public. These counts do not amount to a misdemeanour. With respect to the other counts, we have the solemn decision of all the judges in *Rex.* v. *Fuller*, that procuring base coin with intent to utter it is a misdemeanour. Applying that case to the present, is it not a misdemeanour to procure indecent prints with intent to sell them? The publication of indecent prints is an offence against morals, and indictable at common law. Procuring indecent prints with intent to sell them is an act done which is the beginning of the misdemeanour. On authority and principle, therefore, these counts are good.

The rest of the Court concurring,

Judgment for the Crown.

ROBERTS AND OTHERS, Appellants, *v.* CHURCHWARDENS, &c. OF AYLESBURY, Respondents.

Poor-rate—Market—Toll—Stallage.

Market-tolls are not rateable; and the fact that they are so are and always have been payable in a particular room in the market-house, of which the owner of the tolls is also the owner, does not make them so.

The lessee of stallage dues is rateable to the poor in respect thereof.

Case stated by a judge's order under the 12 & 13 Vict. c. 45, *s.* 11, for the opinion of this court, after notice of appeal against a poor's-rate made on the appellants. The rate or assessment, and so far as it is necessary to set out the same for the present case, is as follows (that is to say),

Name of occupier	Name of owner.	Description of property rated.	Name or situation of property.	Estimated extent.	Gross estimated rental.	Rateable value.	Rate at 6*d.* in the pound.
				A. R. P.	£ s. d.	£ s. d.	£ s. d.
William Roberts, James Tonge, Joseph Tonge, and James Tonge the younger.	Acton Tindal.	Market house, with the ground belonging thereto, used and occupied for the tolls of the markets and fairs.	Market square, Kingsbury and other parts of the town.		160 0 0	128 0 0	3 4 0

The notice and grounds of appeal, so far as it is necessary to set out the same, are as follows (that is to say): "That if, in and by the said rate, it is intended to rate the said William Roberts, James Tonge, Joseph Tonge, and James Tonge the younger, for or in respect of the tolls of or arising from the markets and fairs held, in the said parish of Aylesbury, they say that they are not, nor are or is any or either of them, liable to be rated or assessed for or in respect of such tolls" "That the said William Roberts, James Tonge, Joseph Tonge, and James Tonge the younger, are not the occupiers of, and have no title to, and are not liable to be rated or assessed for any ground belonging

to the market-house, and situate in Market-square, Kingsbury, and other parts of the town, save only the ground on which the said market-house is erected and stands." "That there is no ground belonging to the said market-house situate in Market-square, Kingsbury, and other parts of the town, save only the ground on which the said market-house is erected and stands." "That if, in and by the said rate, it is intended to rate the said William Roberts, James Tonge, Joseph Tonge, and James Tonge the younger, for or in respect of the tolls of or arising from the market and fairs held in the said parish of Aylesbury, as attached to or inseparable from the occupation of the said market-house, then they say that such tolls are not attached to or inseparable from the occupation of such market-house. That if, in and by the said rate, it is intended to rate the said William Roberts, Joseph Tonge, and James Tonge the younger, as inhabitants of the parish of Aylesbury, in respect of their share of the profits of or arising from the tolls of the market and fairs held in the said parish, the said William Roberts, Joseph Tonge, and James Tonge the younger, say that they are not liable to be so rated."

By an indenture of lease dated and made on the 12th Oct. 1848, between Acton Tindal, of Aylesbury, in the county of Buckingham, Esq. (lord of the manor of Aylesbury-with-Bierton in the said county), of the one part, and the appellants, of the other part, the said Acton Tindal granted, demised, leased, and to farm let unto the appellants, their executors and administrators, all and every the tolls and duties payable at the market and fairs of Aylesbury aforesaid, in respect of corn, grain, and seeds, and of horses, oxen, sheep, and kine, and of all other cattle, merchandise, and other articles sold at the said market or fairs, and all rights and profits of stallage, piccage, and all other tolls, duties, rights, profits, privileges, and advantages whatsoever, incident or belonging to the said market and fairs, and to or with the same now or heretofore severally belonging, held, occupied or enjoyed, granted, demised, or letten or accepted, reputed, deemed, taken or known as part, parcel, or member thereof, or appertaining or incident thereto, together with the market-house at Aylesbury aforesaid, and the corn-bins and toll-room therein, and also all that building with the appurtenances lately used as the cage, for the purpose of depositing therein stalls, grain, and other articles of merchandise, and for all the other purposes of holding the said market and fairs, but for no other use or purpose whatsoever (except and always reserved out of the said demise unto the said Acton Tindal, his heirs and assigns, and for his and their friends, agents, and servants, with or without surveyors and workmen, to enter and go into and upon the said market-house and premises, at his, her, or their free will and pleasure, to examine the state and condition thereof, and also except and reserved out of the said demise unto the said Acton Tindal, his heirs and assigns, the full and free use of the said market-house and other rooms therein, for any purpose not connected with the holding of the said market or fairs, on any day other than a market or fair day, or other than a period for the collection of tolls, and of which the said Acton Tindal, his heirs or assigns, shall give *six hours'* notice to the appellants or either of them, their or either of their executors or administrators; he the said Acton Tindal, his heirs or assigns, doing no damage or spoil to the said demised premises, or to the stalls or other property of the appellants, or the survivor of them, their executors or administrators), to have and to hold, receive, perceive, take and enjoy the said tolls of the said market, fairs, and other profits and advantages incident to or belonging to the said market and fairs, and the said market-house, corn-bins, and all and singular other the premises thereinbefore in the said indenture mentioned, and thereby granted and demised, or intended so to be, with their and every of their appurtenances (except as before excepted), unto the said appellants, their executors and administrators, from the 11th Oct. 1848, for and during and unto the full end and term of seven years from thence next ensuing, and fully to be complete and ending, yielding and paying yearly during the said term unto the said Acton Tindal, his heirs and assigns, the rent of 210*l.* of lawful money, in the manner and at the times in the said indenture in that behalf mentioned.

Under and by virtue of the above demise, the appellants, on the 12th Oct. 1848, entered upon, and thence hitherto have been, and were at the time of the making of the rate appealed against, and still are, in the actual occupation, receipt, perception, and enjoyment of the above-mentioned tolls, market-house (except for any purpose not connected with the holding of the said market or fairs on any day other than a market or fair day, or other than a period for the collection of tolls as in and by the said lease is excepted), and other tenements, hereditaments, and premises demised to them by the said indenture of lease of the 12th Oct. 1848, as tenants thereof to the said Acton Tindal. Three of the appellants, viz. William Roberts, Joseph Tonge, and James Tonge the younger, are, and were when the said rate was made, inhabitants of the parish of Aylesbury aforesaid, and the remaining appellant, James Tonge, is, and was when the said rate was made, an inhabitant of the parish of Pendleton, in the county of Lancaster. The said Acton Tindal, as such lord of the manor as aforesaid, was at the time when the said indenture of lease was made, and thence hitherto hath been and still is, the owner of the soil of the streets and squares of the town of Aylesbury aforesaid, and he and his predecessors in title as lords of the manor aforesaid, or their lessees, have, as far back as living memory goes, collected and received at the market and fairs aforesaid certain tolls and duties, in kind or in money, upon the sale of wheat, barley, oats, beans, peas, rye, vetches, turnip and clover seed, trefoil and all other grass seeds sold in the said market and fairs, and also upon the sale or exchange of all horses, mares, or geldings, bulls, oxen, cows, calves, sheep, pigs, and other cattle and stock sold or exchanged in the said market and fairs, and also upon all fruit, vegetables, poultry, eggs, butter, and all other goods and articles of merchandise in any way exposed for sale in the said market and fairs, and also for stallage. The tolls upon corn, grain, and seeds being generally taken in kind, a small measure full from each sack, and tolls upon fruit, vegetables, poultry, eggs, butter, and all other goods and articles of merchandise, being money payments charged for and upon each stall or stand, upon which the same are respectively exposed for sale as hereinafter mentioned, at the discretion of the said lord of the manner for the time being, or his lessees, according to the situation of such stall or stand or other circumstances affecting the same.

The said market and fairs at Aylesbury aforesaid have always, as far back as living memory goes, been and still are holden in a large square, there called the Market-square, and along the sides of the streets and highways surrounding and leading to such square, and also in another open space or square there called Kingsbury, which adjoins and opens into the Market-square aforesaid, and in another place called Pitcher-hill; all the said places where such market and fairs being within the parish and manor of Aylesbury. The market-house hereinbefore mentioned is a building standing in the centre of the said Market-square, and has existed as far back as living memory goes, in its present state and situation. The ground-floor of which building is an open space, upon which sacks of corn and other grain and seeds are deposited and exposed on market days for sale, and on an upper floor in the same building the corn-bins are from time to time let out to the farmers and others who frequent the said market and fairs for the purpose of depositing in such corn-bins, for their own convenience, any corn or other grain and seeds which they may be desirous of leaving upon the spot. The lower part of the market-house has also, as far back as living memory goes, been from time to time let out for the hustings at elections, and upon other public occasions for pecuniary considerations, by the lord of the manor for the time being or his lessees; but the use of the said market-house and other rooms therein for any purpose not connected with the holding of the said market or fairs on any day other than a market or fair day, or other than a period for the collection of tolls, have been expressly excepted and reserved by and to the said Acton Tindal, in and by the said lease as aforesaid; the said market-house has never, since the execution of the said lease, been so let out by the appellants.

Upon about one-half of the Market-square aforesaid stalls have been, as far as living memory goes, and still are usually placed, upon the market and fair days, on which stalls meat and other goods and articles are exposed for sale; but neither these stalls nor any other stalls, stands, or stables in the said market and fairs aforesaid are in any way affixed to or driven into the soil: and the other half of the said Market-square, and also the said open space or square called Kingsbury, is commonly used for the sale of horses, cows, pigs, sheep, and other live stock. These usually either stand at the sides and corners of the street, or in Kingsbury aforesaid, or are tied to the rails surrounding the Market-square, or are inclosed in pens formed by four hurdles tied together at the corners, no part of such pens being in any way affixed to or driven into the soil. Upon certain portions of the sides of the streets surrounding the said Market-square, and also upon certain portions of the sides of the said other streets leading thereto, and of Kingsbury aforesaid, fruit, vegetables, poultry, and other goods and articles are exposed for sale; generally either in baskets or on stalls, or upon stands or tables placed upon, but in no way affixed to or driven into, the soil.

The above statement as to the tolls, stalls, and the mode and places of holding the fairs and markets, and of exposing for sale and selling the live stock and various merchandise, articles, and things above mentioned, is to be taken to be true as far back as living memory goes. The lords of the manor and their lessees for the time being also, as far back as living memory goes, and the appellants have since the date of the said lease, been in the habit of letting to various parties on fair days and other occasions, the right and privilege of placing and erecting temporary theatres, booths, or shows upon various open spaces of ground, situated within the parish and manor of Aylesbury, and have derived therefrom considerable pecuniary profit, but none of such theatres, booths, or shows have been or are in any way affixed to or driven into the soil. All the tolls on the corn, grain, and other seed exposed for sale in the said market-house as aforesaid have been, as far back as living memory goes, and still are received in the said toll-room of such house, but all the other tolls and duties hereinbefore mentioned are and always have been, as far back as living memory goes, collected and received in those parts of the said parish of Aylesbury, wherein and whereon any live stock, merchandise, articles, and things in respect of which such last-mentioned tolls and duties are payable as aforesaid are exposed for sale. It is admitted that the appellants are in fact rated in and by the said rate for the said market-house, and for all the land so far as the same is demised to them in and by the said lease, and for the stallage, piccage, and all the tolls held, occupied, received, and enjoyed by them, within the parish of Aylesbury. It is agreed that the Court of Q. B. shall, if it shall see fit, be at liberty to draw such inferences from the facts above stated as the Court of Quarter Sessions upon the trial of the said appeal might have drawn. The appellants contend that at the time the rate appealed against was made, they were and still are rateable to the relief of the poor of the said parish of Aylesbury in respect only of the said market-house. The respondents on the contrary contend, that the appellants were when the said rate was made, and still are, rateable in respect of all the property they are rated for, in and by the said rate as aforesaid.

The question for the opinion of the court is, whether the appellants were, when the rate appealed against was made, rateable to the relief of the poor of the parish of Aylesbury in respect of all or any portion of the property in respect of which they are rated in and by the said rate as aforesaid.

If the court shall be of opinion that the appellants were, when the said rate was made, rateable in respect of all the property in respect of which they are so rated as aforesaid in and by the said rate, then the said rate is to be confirmed. If the court shall be of opinion that the appellants were, when the said rate was made, rateable in respect of some portion only of the said property in respect of which they are so rated as aforesaid, then the court is required to state in respect of which portion they are so rateable, and the said rate upon the appellants is to be amended and reduced according to the annual rateable value of such portion. It being agreed that such rateable value as last aforesaid shall be ascertained and determined, upon and according to the principle laid down by the judgment of the court, by two valuers, one to be chosen by the appellants, and the other by the respondents, or, in case of their disagreement, by their umpire, to be by them chosen before they enter upon their valuation. The court is also requested to adjudge the costs to be paid by the appellants or respondents.

O'Malley, (with him *Worlledge*), for the respondents.—First. There is a distinction between market tolls and tolls connected with the occupation of the soil. Market tolls *per se* are not rateable, inasmuch as they are unconnected with the possession of corporeal property, and the owner of them, therefore, cannot be rated as an occupier; but the tolls on the corn, grain, and other seeds exposed for sale in the market-house have always been (from time immemorial), and still are, received in the toll-room of the said house, and there is an occupation in respect of which rateability attaches. The actual permanency of the tolls seems to be annexed to the freehold of the soil, *Com. Dig.* "*Market*," *F.* 1. [COLERIDGE, J.—The room in the market-house is a convenient place for paying and receiving the tolls; but that does not alter the incorporeal character of the tolls. They must be collected somewhere; but collection in a particular room does not convert tolls into a corporeal hereditament.] Secondly. The appellants are rateable in respect of the tolls "on all fruits, vegetables, poultry, eggs, butter, and all other goods and articles of merchandise in any way exposed for sale in the said market." There is a difference between market tolls, which are levied on things sold, and stallage, or dues in the nature of stallage, which are levied on things exposed for sale. [COLERIDGE, J.—Stallage and piccage are for the use of the soil itself. WIGHTMAN, J.—If fruit, for instance, be exposed for sale in the market, and for the mere exposing some toll is leviable, that would still be toll only; but if the exposing to sale be by means of a particular standing in the market, that would be stallage.] Then, at all events, the appellants are rateable for stallage, which arises from property in the soil: (*Mayor of Northampton* v. *Ward*, 1 Wils. 107; *Mayor of Norwich* v. *Swetton*, 2 W. Bl. 1179; *R.* v. *Marquis of Salisbury*, 8 A. & E. 716; *R.* v. *Bell*, 5 M. & S. 221; *Mayor of Newport* v. *Saunders*, 3 B. & Ad. 411; *Lord Pulham* v. *Pickersgill*; 1 T. R. 660.)

Pashley, Q. C. (with him *Wells*), contrà.—This is an attempt to rate the owner of a market in respect of the tolls payable for goods sold on the stalls in the market. [Lord CAMPBELL, C. J.—The sale has nothing to do with it. Is there not use and occupation of the soil for the day? WIGHTMAN, J.—Stallage is in the nature of a ground-rent. COLERIDGE, J.—It is a mode of measuring the rent.]

According to the case, neither the stalls nor the stands or tables are in any way affixed to or driven into the soil. This case, therefore, is to be governed by that of *R.* v. *Joliffe*, 2 T. R. 90. [Lord CAMPBELL, C. J.—That case relates to a wayleave, and has peculiarities of its own; but in general wayleaves, those of the county of Northumberland for instance, are rateable.] In the case of the Northumberland wayleaves there is an actual occupation of the soil. [WIGHTMAN, J.—So there is in stallage.] The case shows that the exposure to sale is not all on stalls or stands. [Lord CAMPBELL, C. J.—In principle I see no difference between placing the basket of goods on the soil, and placing it on a stand or table on the soil.] In *R.* v. *The North and South Shields Ferry Company*, 1 A. & E. 140, it was held that the tolls from a ferry simply were not rateable.

Lord CAMPBELL, C. J.—The questions in the case are now reduced to the single one, whether the appellants may be rated in respect of the stallage; for Mr. O'Malley has properly given up the claim in respect of the tolls not connected with the actual use of the soil, but says that stallage is the use of the soil, and the dues for it a rateable subject. It is quite clear to me that stallage is rateable under the 43 Eliz. Stallage is the licence to erect a standing in a market; here the person who has that licence gets the right of use and occupation of the standing at market times, and has to pay for it whether goods be sold or not, and it is not a part of the consideration from him that goods shall be exposed for sale. The person, however, who has the stall, or right of standing for the time, has the exclusive use of it; and I cannot distinguish such a right of standing from the wayleaves in the north of England, which have always been rateable.

COLERIDGE, J.—The persons rated in this case are not those who pay toll and occupy on the market days, and have a short and fluctuating possession, but the lessees of the owner, who have given them the right to use the land in a particular way during their term. Those lessees have an occupation by those to whom they underlet day by day for money. I cannot conceive a more fit case for rating. The case of *R.* v. *Joliffe* is distinguishable; it related to two wayleaves; as to one, the defendant was not an occupier at all, because another person was rightfully the exclusive occupier; as to the other, though he had the right to the wayleaves, he had not exercised it; to have rated him in that case, it would have been like rating in this case those who were going to market.

WIGHTMAN, J.—I am of the same opinion. Stallage is like a special ground-rent or compensation paid by the person having the possession of the land on the market-day to the owner. Much of the argument of Mr. Pashley is founded on the application of "toll" to this species of rating. That, to my mind, is not at all applicable.

CROMPTON, J.—The appellants occupy the land and derive a profit from it; in respect of that they are rateable.

Judgment for the respondents, without costs.

Tuesday, Jan. 18.

CORCORAN *v.* GURNEY.

Ship—Policy of insurance—Average loss—Stranding.

A vessel bound from Nantes to Dublin was obliged, from stress of weather, to run into the Bay of Palais. The gale increased, and the captain let go the two bower anchors and chains. In consequence of the large anchor dragging, and for the preservation of the ship, cargo, and crew, and particularly to prevent the ship from going on shore, the captain slipped his two chains overboard, got the ship under sail, and succeeded in entering the tidal harbour of Sanzon, where, by reason of its being then low water, the ship took the ground. She was detained there a month, and floated only eight days in the month, and then at the top of spring tides:

Held, that the ship was stranded in the harbour of Sanzon within the meaning of the usual memorandum in a policy of insurance.

This was an action on promises brought by the plaintiff against the defendant for money due on an average loss under a policy of marine insurance, and for money paid by the plaintiff for the use of the defendant, and for money received by the defendant for the use of the plaintiff, and for money due to the plaintiff from the defendant on an account stated. The defendant has pleaded, first, that the loss was within the meaning of the memorandum in the said policy, and that the ship mentioned in the said policy was not stranded; secondly, he has paid 20*l.* into court; and lastly, to the *indebitatus* counts of the declaration he has pleaded the general issue. The plaintiff has joined issue on the last plea, has traversed the first, and to the second has replied damages ultra; and issue having been joined on the said first and last pleas, by the consent of Joseph Maynard, attorney for the plaintiff, and John Nurlseoe Pearce, for the defendant, and by the order of Erle, J. the following case has been stated for the opinion of the court:—

The ship *Victorine*, in the pleadings mentioned, sailed from Nantes bound for Dublin on the 6th day of March, in the year of our Lord 1850, with a cargo of barley and flour, and prosecuted her voyage without any accident or misadventure until the 10th day of March in the same year, when, from stress of weather, the captain was obliged to bear up and run into the Bay of Palais, on the coast of France. While the said ship was lying in the said bay the wind increased to a gale from north-east to east, and in consequence thereof the captain let go the bower anchors and chains, paying, in the meanwhile, due attention to the pumps. At half-past eight o'clock in the forenoon of the same day, the large anchor dragged, and in consequence thereof, and after consulting with the officers and crew, and for the preservation of the said ship and cargo and of the lives of all on board, and particularly with the purpose of preventing the said ship from going on shore, the captain slipped his two chains overboard, got the said ship under sail, and succeeded in entering the port of Sanzon, which is situated to the north of Point Bœuf on the French coast, and is a tidal harbour, where, by reason of its being then low water, the said ship took the ground. Whilst lying in the said harbour, and in consequence of the natural flux and reflux of the tide the said ship floated about eight days in the month only, and then only at the top of spring tides. By reason of the wind being contrary the said ship got nieped, and was therefore unable to leave the said harbour until the 10th day of May in the same year, when she proceeded to sea, and was then found to make water, in consequence of her having been so long on the ground and of being thereby strained, so that it became necessary to keep the pumps going. The said ship reached the Dublin river on the 21st day of May in the same year, and her cargo was then found to be damaged. The question for the opinion of the court is, whether the said ship was stranded in the harbour of Sanzon. If the court shall be opinion in the negative thereof, then the plaintiff agrees that a judgment shall and may be entered against him *of nolle prosequi* immediately after the decision of this case, or otherwise as the court may think fit; but if the court shall be of a contrary opinion, then the defendant agrees that judgment shall be entered against him by confession for the sum of 154*l.* damages, immediately after the decision of this case, or otherwise as the court may think fit, and that judgment shall be entered accordingly.

Bovill, for the plaintiffs.—The rule of law on this subject is well settled by a variety of cases; and it is this:—If a vessel takes the ground, that is a stranding within the meaning of the memorandum in the policy, unless it can be shown that she took the ground in the ordinary course of navigation, or unless she only remains aground for an inconsiderable period of time; and the reason is that the insurers must be taken to have contemplated all such groundings as are incidental to almost every voyage. So if a ship goes into a tidal harbour and takes her proper place there, and then, as the water falls, settles down upon the ground, that is clearly not a stranding within the memorandum; but if, as in this case, to avoid peril, she is driven by stress of weather to run aground, whether in or out of a tidal harbour, that, it is submitted, is a stranding. It is *casus fortuitus*, and out of the ordinary course of navigation. (He cited *M'Dougle* v. *The Royal Exchange Assurance Company*, 4 Camp. 283, 4 M. & S. 503; *Herrn* v. *Edmonds*, 1 Brod. & B. 388; *Kingsford* v. *Marshal*, 8 Bing. 458, 464; *Barrow* v. *Bell*, 4 B. & C. 736; *Bishop* v. *Pentland*, 7 B. & C. 219; *Wells* v. *Hopwood*, 3 B. & Ad. 20; *Magnus* v. *Buttemer*, 21 L. J. 119, C. P.)

Sir F. Thesiger (*G. L. Browne* with him) contrà. The true test in these cases is whether the vessel takes the ground by the mere operation of natural causes, in which case there is no stranding, or whether it does not arise from something extraordinary and fortuitous. In the present case nothing occurred out of the ordinary course of navigation. The vessel met with stormy weather, and the captain made sail for a port of refuge. He entered a tidal harbour at low water, and took the ground; but that is no uncommon occurrence; on the contrary, it is quite in the ordinary course of navigation for vessels to enter such harbours when it is known that there is not water enough to float them; and even if they enter at high water they inevitably take the ground when the tide falls. (In addition to the cases above mentioned he cited *Carruthers* v. *Sydebotham*, 4 M. & S. 77; *Rayner* v. *Godmond*, 5 B. & Ald. 225; *Bolton* v. *Dobson*, 1 Marsh. Ins. 281.)

Bovill, in reply.

Lord CAMPBELL, C. J.—I am of opinion that in this case there was *a stranding* within the meaning of the memorandum to the policy. We have some excellent guides as to what is and what is not a stranding. On the one hand, Lord Tenterden (in *Wells* v. *Hopwood*) says that "where a vessel takes the ground in the ordinary and usual course of navigation and management, in a tide-river or harbour, upon the ebbing of the tide or from natural deficiency of water, so that she may float again upon the flow of the tide or increase of water, such an event is not to be considered a stranding within the sense of the memorandum." On the other hand, Tindal, C. J. (in *Kingsford* v. *Marshall*), says that "where the taking of the ground does not happen solely from those natural causes, which are necessarily incident to the ordinary course of the navigation in which the ship is engaged, either wholly or in part, *but from some accidental or extraneous cause*," then it is a stranding. Now, was not the taking of the ground in the present case occasioned by some accidental or extraneous cause? The ship was bound from Nantes to Dublin; she encounters a gale of wind, and is in great danger when off a place near Palais. She is dragging her anchor, and for the safety of the cargo and crew, and particularly to prevent her from going on shore, the captain runs her into the harbour of Sanzon, where she took the ground. If she had been run on a bank outside the harbour, it would have been a clear case of stranding; then, does it make any difference that she got within the harbour? If, indeed, she had once been in good safety in the harbour, and afterwards grounded by the fall of the tide, that would not have been a stranding; but she never was in good safety in the harbour. It was from her extraordinary peril that she went there at all; and by reason of the state of the weather she was compelled to take the ground in such a manner that she floated only eight times in a month, and then at the top of spring tides. With the exception of *Bolton* v. *Dobson*, before Lord Kenyon, which has been much shaken, all the cases lay down the same rule; and in applying that rule to the circumstances of this case, I think we cannot dismiss from our consideration the fact that the ship was flying for safety when the event happened; and that being so, I do not see how it can be said that she took the ground in the ordinary course of navigation.

COLERIDGE, J.—I agree that the plaintiffs are entitled to judgment. Where the vessel takes the ground by reason of something which is ordinary and regular, as where she is in her proper place in a tidal harbour, and is expected to take the ground when the water falls, in such a case there is no stranding; but if the event arises from something out of the ordinary course, as in *Wells* v. *Hopwood*, and *Bishop* v. *Pentland*, it is a stranding. Here the vessel would never have been in the place where she took the ground but for the stress of weather; and if this was not to be considered a stranding, we must hold that there cannot be a stranding in a tidal harbour into which the vessel is driven by stress of weather.

WIGHTMAN, J.—Adopting the expressions of Lord Tenterden in the case referred to (*Wells* v. *Hopwood*), that "where the ground is taken under any extraordinary circumstances of time or place, by reason of some unusual or accidental occurrence, such an event shall be considered a stranding within the meaning of the memorandum," it seems to me that they are directly applicable to this case, and that the vessel took the ground under an extraordinary circumstance of time, it being then low water, and by reason of an accidental occurrence.

CROMPTON, J. concurred. *Judgment for plaintiff.*

Wednesday, Jan. 19.

REG. *v.* THE CHURCHWARDENS, &c. OF ST. ANDREW IN WORCESTER.

Poor—Bastard—Settlement after age of sixteen—Stat. 4 & 5 Will. 4, c. 76, s. 71.

A pauper, who was born a bastard after the passing of 4 & 5 Will. 4, c. 76, has the settlement of his mother only until he attains the age of sixteen. After he has attained that age his birthplace becomes his place of settlement, unless he has acquired another settlement in his own right.

This was a special case stated for the opinion of this court.

CASE.

On the 5th March, 1852, two justices of the peace for the county of Hereford duly made an order for the removal of Amelia Preece, single woman, and her illegitimate child, Elizabeth, from the parish of Bodenham, in the county of Hereford, to the parish of St. Andrew's, in the city of Worcester. Against this order the churchwardens and overseers of St. Andrew's gave due notice of appeal. The parties have agreed to state the facts of the case for the opinion of the Court of Q. B. under the provisions of the stat. 12 & 13 Vict. c. 45, s. 11. The pauper, Amelia Preece, was born in the appellant parish of St. Andrew's, the 14th Sept. 1834; she was the bastard child of one Susan Preece. Susan Preece in 1836 married one William Norman. Neither Susan Preece nor William Norman had ever any settlement in the appellant parish of St. Andrew's, but have always had, and now have, respectively a settlement elsewhere.

The respondents contend that, having been born a bastard in the appellant parish, that parish is the place of the pauper's legal settlement, and that, having attained the age of sixteen years in Sept. 1850, she thenceforth no longer had her mother's settlement, wherever it might be, but from that time was legally removable to the appellant parish.

The appellants contend that the facts above stated show that the pauper never was settled in the appellant parish; that under the 4 & 5 Will. 4, c. 76, s. 71, the pauper was at her birth settled in the parish which was the settlement of her mother, Susan Preece; and that the pauper followed, and still retains, the settlement which her mother, the said Susan Preece, gained by her marriage with the said William Norman. If the court should be of opinion that the pauper had and followed her mother's settlement only till she attained the age of sixteen years, and that

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on attaining that age, she was legally removable to the appellant parish by reason of her birth, then the order of removal is to be confirmed, otherwise it is to be quashed.

The 71st section of 4 & 5 Will. 4, c. 76, enacts, "that every child which shall be born a bastard after the passing of this Act shall have and follow the settlement of the mother of such child until such child shall attain the age of sixteen, or shall acquire a settlement in its own right, and such mother, so long as she shall be unmarried, or a widow, shall be bound to maintain such child as part of her family until such child shall attain the age of sixteen.

W. H. Cook, for the respondents.—The effect of the 71st section of the Poor Law Amendment Act is, to substitute for the period of nurture, during which under the old law the bastard child was not removable to the place of its birth settlement, because it could not be separated from its mother, a period of sixteen years, during which, but no longer, it was not merely to follow, but actually to have, the settlement of the mother. At the termination of that period, the bastard is put in the same situation as that in which, under the old law, the illegitimate child after the expiration of the period of nurture was; he becomes removable, and to the place of his own settlement; that is, he no longer follows or has the settlement of the mother. [CROMPTON, J.—Suppose the mother should die when the bastard was of the age of ten?] Following her settlement further would then be out of the question; but he would have her then settlement until he should attain the age of sixteen. He may follow the settlement of his mother without having the rights of settlement; but he cannot have the settlement of the mother without all the rights of settlement. The statute says he is to have them "until" he has attained the age of sixteen; that means up to that time, and no longer.

Selfe, contrà.—The settlement of the mother at the time of the bastard attaining the age of sixteen becomes his permanent settlement. Under the old law the child was irremovable until the age of seven, if removal caused separation from the mother. Under the present law the mother's settlement, and each successive settlement of the mother, is given to the child until it has attained the age of sixteen. At the age of sixteen the child ceases to acquire fresh settlements with the mother, but retains what it has got. Under the old law the child derived no settlement from the mother; under the present it takes the mother's settlement; and the only difference between the bastard child and the legitimate child without a paternal settlement is, that at the age of sixteen there is a statutory emancipation, and no fresh settlement can be acquired. This is the fair conclusion from the statute; for it is entirely against all notions of a settlement that it should expire by mere efflux of time. The section in fact changes the law which makes the place of birth the place of settlement; and made the mother's place of settlement, when the child attains sixteen, the place of its settlement.

Lord CAMPBELL, C. J.—This is a very plain case. This section admits of only one construction. Before the last Act the place of birth was the place of settlement, subject only to this, that the child could not be separated from the mother during the age of nurture; but now the Act provides that the child shall *have and follow* the settlement of the mother until it attains the age of sixteen. Mr. Selfe says that that provision has made a change in the law, so that the place of birth is no longer at any time the place of settlement; but if that was the object of the Legislature, the language of the Act is quite inadequate to express it. The Act says what shall be the place of settlement until the child attains the age of sixteen; but what is to happen then? If he is not to have the settlement of the mother, what settlement is he to have? The words "until he attain the age of sixteen" override the whole, and apply to the word "have" as well as to the word "follow;" so that he is to *have* the settlement until he is sixteen, but no longer. At that age the operation of the clause ceases, and, the old law coming in force, the child is remitted to his birth settlement. It was necessary to introduce the word "have" in order to prevent disputes in case of the separation of the mother and child during the sixteen years. This is not like the case of a woman with a settlement marrying a man with none, because there the settlement "suspended will remain;" but this is a settlement expressly conferred for the period of sixteen years, and no longer.

COLERIDGE, J. and WIGHTMAN, J. concurred.

CROMPTON, J.—I at first felt some doubt upon this point; but the decision is according to the grammatical construction of the words, and I have no doubt it is right. *Order confirmed.*

Tuesday, Jan. 25.

COE v. LAWRENCE.

Municipal corporation—Clerk to the justices, conducting prosecutions as attorney, contrary to the statute—Penalty.

By the 5 & 6 Will. 4, c. 76, s. 102, the justices in a borough are prohibited from appointing as their clerk any alderman, councillor, clerk of the peace, or any person employed in the office of the clerk of the peace of the same borough; and the clerk to the justices is prohibited from being employed or interested in the prosecution of any offenders committed by such justices to the quarter sessions or assizes. The section then imposes a penalty of 100l. upon "any person, being an alderman, councillor, clerk of the peace, or person employed in the office of the clerk of the peace, who shall act as clerk to the justices, or otherwise offend in the premises:"

Held, that although it was probably the intention of the Legislature to apply the penalty to all the offences previously mentioned in the section, that intention was not sufficiently expressed; and that a clerk to the justices, who was engaged as attorney in prosecuting offenders committed by them, did not forfeit the 100l., unless he was also either an alderman, councillor, clerk of the peace, or person employed in the office of clerk of the peace.

Debt for penalties. The first count of the declaration stated that, after the passing of the 5 & 6 Will. 4, c. 76, the justices of the borough of Ipswich committed a certain offender for trial at the quarter sessions; and that the defendant was afterwards employed as attorney for reward in conducting the prosecution of that offender at the quarter sessions, he being at that time clerk to the committing justices; whereby he had forfeited 100*l.*

The 2nd count alleged that he was interested in the said prosecution; and there were several other counts in the same form as the 1st and 2nd, relating to the prosecution of other offenders.

The defendant had, under the provisions of the Common Law Procedure Act, pleaded not guilty, and also demurred to the declaration; and the demurrer now came on for argument.

Stat. 5 & 6 Will. 4, c. 76, s. 102, enacts, that it shall be lawful for the justices of every borough to which a separate commission of the peace shall be granted as aforesaid, at their first or any other meeting, and they are hereby respectively required to appoint a fit person to be the clerk to the justices of such borough, to be removable at their pleasure, and so as often as there shall be a vacancy in the said office of clerk to the justices by death, resignation, removal, or otherwise: provided that it shall not be lawful for the said justices to appoint or continue as such clerk to the justices, any alderman or councillor of such borough, or clerk of the peace of such borough, or the partner of such clerk of the peace, or any clerk or person in the employ of such clerk of the peace: provided also, that it shall not be lawful for the said clerk to the justices, by himself or his partner, to be directly or indirectly interested or employed in the prosecution of any offender committed for trial by the justices of whom he shall be such clerk as aforesaid, or any of them, at any court of gaol delivery or general quarter sessions; and any person, being an alderman or councillor, or clerk of the peace of any borough, or the partner or clerk, or in the employ of such clerk of the peace who shall act as clerk to the justices of such borough, or shall otherwise offend in the premises, shall for every such offence forfeit and pay the sum of 100*l.*, one moiety thereof to the treasurer of such borough, to be paid over to the credit and account of the borough fund of such borough, and the other moiety thereof, with full costs of suit, to any person who will sue for the same in any of his Majesty's Courts of Record at Westminster.

Cowling, in support of the demurrer.—The declaration is bad, because it does not allege that the defendant was an alderman, councillor, or clerk of the peace, or person employed in the office of the clerk of the peace; and by sect. 102 of 5 & 6 Will. 4, c. 76, the penalty is only imposed upon a person filling one of those offices. It is true that the clause prohibits the clerk to the justices from being concerned in prosecuting offenders committed by them; but the penalty does not, according to the literal construction of the words, apply to that case; nor was it necessary that it should, because the justices might at any time dismiss their clerk if he violated the Act of Parliament. The penalty is directed against the offence of an unqualified person acting as clerk to the justices. [Lord CAMPBELL, C. J.—His dismissal would not be a punishment for the offence of violating an Act of Parliament. If no specific remedy is given by the Act, he would be indictable for a misdemeanour.] That may be so; but the court cannot stretch the language of a penal clause so as to include a person who is not clearly within it.

G. Hayes, contrà.—The intention of the Legislature is perfectly clear. The penalty was intended to enforce the two distinct prohibitions contained in the early part of the section. If it had been intended to apply to the first only it would have followed that immediately, and the words "or shall otherwise offend in the premises," would have been useless. The rule that a penal clause is to be construed strictly can hardly avail the defendant in this case; because his construction would render him liable to indictment, followed by fine and imprisonment; whereas the plaintiff's construction will subject him only to a pecuniary penalty. It is absurd to suppose that the Legislature has imposed the penalty upon a clerk to the justices, who, being an alderman, councillor, or clerk of the peace, illegally conducts prosecutions; for that is a case which it could not contemplate as occurring, because it has prohibited any of those officers from being appointed or acting at all as clerks to the justices. [COLERIDGE, J.—A double penalty may be intended; one for acting as clerk to the justices, and another for improperly conducting prosecutions.] It is inconceivable that the penalty should have been imposed in that case, but none in the case of a duly-appointed clerk to the justices similarly misconducting himself. In order, therefore, to give effect to the plain intention of the Legislature, the court will introduce the words "any person who," and read the clause thus: "any person being an alderman, &c. who shall act as clerk to the justices, or any person who shall otherwise offend in the premises, shall forfeit," &c.

Cowling, in reply.—If it were permissible to alter the language of an Act of Parliament, for the purpose of bringing a defendant within the operation of a penal clause, the plaintiff's argument might be correct; but it is not.

Lord CAMPBELL, C. J.—I cannot tell what the Legislature may have meant to enact by this clause. Probably they may have intended that the penalty sh uld apply to both prohibitions in the earlier part o" the clause; but they have not carried that intention into effect. *Quod voluit non dixit.* To subject the defendant to a penalty we must see that there are words which affect him; but this defendant is not an alderman, councillor, clerk of the peace, or person employed in the office of the clerk of the peace; he does not come within any of those descriptions; then has he committed an offence for which the penalty is imposed? It is suggested that by inserting the words "any person who" before the words "shall otherwise offend in the premises," the penal clause will apply to him; and so it would; because he is a person who has offended in the premises. But the penalty is not imposed upon all persons who offend in the premises, but only upon "any person being an alderman, councillor," &c. Therefore the defendant is not one of those who are made liable to the penalty. What is wanting is a nominative case to the verb "shall" which will include the defendant; but I am afraid that we should not be justified in putting in three words, which are not to be found in the Act, and thereby rendering a class of persons liable to a penalty upon whom it has not been imposed by the words of the Legislature. I may regret that the real intention should not be carried out on account of a careless and inaccurate mode of expression; but it is far better that we should adhere to the grammatical construction of the language used; and when the mischief which follows from Acts of Parliament being thus drawn is made apparent, some remedy may perhaps be applied.

COLERIDGE, J.—I am of the same opinion. This clause is most inaccurately drawn; for, according to the words, there would be no penalty for improperly appointing a disqualified person, though there is a penalty upon a disqualified person who acts. So as regards this very case, I do not doubt that the intention was to make the penal clause applicable to all the offences previously described; but we cannot so construe it if we give to the words their ordinary grammatical construction. To give effect to that intention we must introduce another antecedent and relative, which would alter the meaning of the words as they stand; and I have never yet heard that it is permissible to do so for the purpose of bringing any one within the meaning of a penal clause. Indeed, I think that it is against the sound rule of construction as applied to any instrument, to introduce words so as to alter its meaning.

WIGHTMAN and CROMPTON, JJ. concurred.

Judgment for defendant.

BUSINESS OF THE WEEK.

Thursday, Jan. 20.

REG. v. NEWMAN.—*Sir F. Thesiger* and *Sir F. Kelly* showed cause against the rule *nisi* for a new trial of this criminal information. *Part heard.*

Friday, Jan. 21.

REG. v. NEWMAN.—Argument herein continued. *T. F. Ellis* showed cause against, and the *Attorney-General* and *Bramwell* supported the rule *nisi* for a new trial. *Part heard.*

Saturday, Jan. 22.

REG. v. NEWMAN.—*Wilkins*, Serjt. *Adkison*, and *Baddeley* were heard in support of the rule. *Cur. adv. vult.*

Monday, Jan. 24.

REG. v. THWAITES.—*Sir F. Thesiger* moved for a *quo warranto*, calling on defendant to show by what authority he exercised the office of town councillor of Blackburn. *Rule nisi.*

BRIDGWATER v. GRIFFITHS.—*Whateley* moved for a new trial herein. *Rule refused.*

REG. v. HAZLEWOOD.—*O'Malley* moved for a *quo warranto* calling on defendant to show by what authority he exercised the office of town councillor of Harwich. *Rule nisi.*

BEALE v. NYE.—*Duncan* moved to rescind a rule absolute for a new trial, granted in Easter Term last. *Rule refused.*

HOWARD v. BROWN.—*Sir F. Thesiger* moved for an injunction to restrain the defendant from using the plaintiff's patent, and for an account under the Patent Law Amendment Act, 14 & 15 Vict. c. 69, s. 42. This is the first motion of the kind that has been made in the Common Law Courts. *Rule nisi.*

CORBETT v. Lord TREGO.—Tried before Crompton, J., in this term, when the plaintiff was nonsuited. The plaintiff now moved for a new trial on the ground of misdirection. *Rule refused.*

DANCEY v. RICHARDSON.—Tried before Erle, J., and a ver-

dict for the defendant. *M. Chambers* moved for a new trial on the ground of misdirection. The question was as to the degree of liability of a boarding-house keeper for the loss of a lodger's luggage through the alleged negligence of the defendant's servant. *Rule nisi.*

REG. *v.* THE JUSTICES OF THE WEST RIDING OF YORKSHIRE. —*Pashley* moved for a *certiorari* to bring up and quash an order of quarter sessions for reducing a poor-rate assessed upon the Lancashire and Yorkshire Railway from 3557*l.* to 2108*l.*, the ground of objection being that some of the justices who adjudicated were interested in the railway. *Rule nisi.*

BURLINGTON *v.* RICHARDSON.—*Pearson* moved for a rule *nisi* calling on the defendant to pay to the plaintiff 25*l.* with the costs of this application, or to show cause why final judgment should not be entered up for that amount. *Rule nisi.*

BOURGLEAUX *v.* SWAYNE.—*Kinglake*, Serjt. and *Karslake* were heard in support of the rule for a new trial herein. *Rule absolute; costs to abide the event.*

GROVE *v.* WHALLEY.—Tried before the under-sheriff of Middlesex: verdict for the defendant. *Horn* moved for a new trial on the ground of misdirection. *Rule nisi.*

REG. *v.* NEWMAN.—The COURT this morning discharged the rule *nisi* for a new trial herein, and directed that the defendant should be brought up for judgment on Monday next.

REG. *v.* STOWMARKET.—Appeal against an order of removal. *Order quashed.*

REG. *v.* THE WORCESTER UNION.—Case under 12 & 13 Vict. c. 45, s. 11. *Rate confirmed.*

REG. *v.* THE CHURCHWARDENS, &c. OF HESTON. *Order quashed.*

SELL (Plaintiff in error) *v.* THE QUEEN. *Judgment for the defendant.*

REG. *v.* THE INHABITANTS OF ALLER. *Cur. adv. vult.*

Tuesday, Jan. 25.

BATTARD *v.* HAWES.—*Crowder* moved for a rule for a new trial herein. The action was by one provisional committeeman against another for contribution, and the main question was whether the defendant was liable for one-fifth or one-twelfth of the expenses which had been incurred. *Rule nisi.*

MANTELL *v.* HILL.—*Watson* moved for a rule for a new trial herein. It was an action of libel, and the jury had found, contrary to the direction of the judge, that there was no libel.

Rule nisi, unless the parties will agree to a stet processus.

WILLIAMS *v.* EVANS.—Special case upon the construction of a will.—*Crowder*, for the plaintiff; Sir *F. Kelly*, contrà. *Cur. adv. vult.*

KERNOT *v.* CATLIN.—*Milward*, for the plaintiff; *Willes*, for the defendant.

Referred to Crompton, J. to decide between the parties in what mode the substantial question between them shall be raised.

OSBORNE *v.* RODWELL.—*Willes*, for the plaintiff; *O'Malley*, for the defendant. *Leave to amend on terms.*

COOPER *v.* THORNTON.—The question was as to the validity of a deed of arrangement under the Bankruptcy Act. *Prentice*, for the plaintiff.—The case is governed by *Tetley* v. *Taylor* (in error), 21 L. J. 346, Q. B. *Macnamara*, contrà. By the COURT.—The deed does not secure a distribution amongst the creditors as under a bankruptcy, for the trustees have a discretion to reserve an indefinite portion for the debtor himself; therefore, the case is not distinguishable from *Tetley* v *Taylor*. *Judgment for the plaintiff.*

DOE *v.* FORD.—Special case upon construction of an informal settlement. *Rudall*, for the plaintiff; *Phipson*, for the defendant. *Cur. adv. vult.*

HASLETT *v.* MARSHALL.—*Pulling* moved for a review of the Master's taxation herein. The question was whether the plaintiff was entitled to his costs of maintenance for the period during which he was necessarily detained in England in order to give evidence upon the trial of this action. He was about to emigrate, and had taken a passage in defendant's ship, but was turned out of the ship in consequence of a mistaken supposition that he had not paid the passage-money. The action was brought for that grievance, and he would have been a necessary witness upon the trial, but a verdict was taken by consent. In the recent case of *Howes* v. *Barber*, 21 L. J. 254, Q. B. the plaintiff was a master mariner; but the question was whether the allowance of those costs was to be confined to the case of a seafaring man. He submitted not: (*Sturdy* v. *Andrews*, 4 Taunt. 697.) *Rule nisi.*

COURT OF COMMON BENCH.

Reported by DANIEL THOMAS EVANS and R. VAUGHAN WILLIAMS, Esqrs. Barristers-at-Law.

Thursday, Jan. 20.

MARKER *v.* KENRICK.

Demurrer.

An action on the case will lie for waste by a lessee, although there is an express covenant against it in the lease, the remedies being cumulative.

A. the lessee of a coal-mine, cuts through the barriers of the mine. The lessor brings an action on the case for injury done to his reversion. Plea, setting out the lease, and alleging that the grievances complained of consisted of a particular mode of working the mine, provided for by the covenants in the lease. Demurrer.

Held, that the action would lie, although the plaintiff might have sued on the covenant.

The declaration stated that, before and at the times of the committing of the grievances thereinafter mentioned, the defendant was tenant to the plaintiff of divers beds, veins, seams, and mines of coal, cannel, slack, ironstone, and other minerals, with the appurtenances, in the parish of Ruabon, in the county of Denbigh, for a certain term of years, the reversion of and in the same beds, veins, seams, and mines of coal, cannel, slack, and ironstone, and other minerals respectively, then and still belonging to the plaintiff; and it was the duty of the defendant as such tenant to work and manage the said beds, veins, seams, and mines in a proper and tenantable manner. Yet the defendant, well knowing the premises, but contriving and intending to injure and aggrieve the plaintiff in his reversionary estate and interest of and in the said beds, veins, seams, and mines, theretofore, and whilst he the defendant was tenant thereof as aforesaid, and whilst the plaintiff was so interested therein as aforesaid, to wit, on the 1st day of June, in the year of our Lord 1850, and on divers other days and times between that day and the commencement of the suit, worked and managed the said beds, veins, seams, and mines in an improper and untenantlike manner; and then, to wit, on the several days and times aforesaid, wrongfully and unjustly, without the leave or licence and against the will of the plaintiff, cut, made, dug, bored, and broke through a certain barrier, to wit, of coal, which formed and ought to have been left as the boundary between the said mines of the plaintiff and a certain other mine adjoining thereto; and thereby then caused and permitted large quantities of water to escape, run, and flow from the said other mine into the said mines of the plaintiff, and to flood the same; and then also, to wit, on the several days and times aforesaid, wrongfully and injuriously made and caused and procured to be made certain roadways, passages, and communications, carried and brought divers large quantities of coal gotten from the said other mine into and upon and through the said mines of the plaintiff, and brought into and laid and deposited upon the said mines of the plaintiff divers large quantities of earth, spoil, and rubbish, and kept the same as deposited thereon, to wit, and by the means and in the manner aforesaid rendered the said mines of the plaintiff less workable than they would otherwise have been; by reason of which premises respectively the said beds, veins, seams, and mines of the said plaintiff were greatly injured and deteriorated in value, and rendered less productive and profitable than the same might and otherwise would have been; and the plaintiff was greatly injured, prejudiced, and aggrieved in his said reversionary estate and interest.

Pleas.—1st, Not guilty; 2nd, That the defendants were tenants under the indenture of lease, by which they covenanted (*inter alia*) that they would, at all times during the continuance of the said term, constantly carry on and effectually work the said beds, veins, seams, and mines so demised as aforesaid, in a fair and husbandlike manner, with a sufficient number of experienced and able miners, colliers, and labourers, not fewer than twelve at any time; provided the coal, cannel, slack, and ironstone that should be from time to time gotten and raised could be disposed of for profit, and by which the lessors (whom the plaintiff represented) covenanted for quiet enjoyment during the term under the reservations, forms, covenants, payments, and agreements thereinbefore mentioned, and that the alleged grievances in the said declaration mentioned were and constituted, and each of them was and consisted, of a carrying on, managing, and working of the said demised mines, veins, seams, and beds of coal and minerals in a particular manner, and that the manner of carrying on, managing, and working the same was and is provided for by the said covenants in the said first-mentioned indenture in that behalf contained as aforesaid, which still remained in full force. 3rd, Leave and licence.

Upon the first and third pleas there were issues in fact, which remain undisposed of. To the second plea the plaintiff demurred.

Lush, in support of the demurrer.—The defendant says that if the grievance complained of is a violation of a covenant in the lease, the plaintiff ought to have sued on the covenant instead of in case. But the breaking through the barrier would clearly be waste, and the subject of an action on the case, if there were no covenant; and that remedy is not lost by there being a covenant respecting the same matter: *Kinlyside* v. *Thornton*, 2 W. Bl. 1111; *Muskett* v. *Hill*, 5 Bing. N. C. 709; *Boorman* v. *Brown*, 3 Q. B. 511; 2 Williams's Saunders, 252, C.) Secondly, the covenant does not include this, the barrier or boundary being no part of the mine.

J. Brown (*Welsby* with him), contrà.—If the last point put for the plaintiff is good, namely, that no action of covenant would lie, then no action would lie; for, subject to the provisions of the lease, there is a covenant for quiet enjoyment; and therefore, if there is no breach of a covenant, the tenant is entitled to the benefit of the covenant for quiet enjoyment, and cannot be sued. Secondly, the remedies are not cumulative. The rights of parties must be governed by their express contracts where there are covenants, and therefore the plaintiff should now have sued on the covenant. *Kinlyside* v. *Thornton* is shaken by more recent cases: (*Schlenker* v. *Moxey*, 3 B. & C. 129.) [JERVIS, C. J.—This action does not arise out of the contract, but by common law for waste; in the case you have cited there would have been no action but for the deed] *Baker* v. *Harris*, 9 Ad. & El. 539. [MAULE, J.—No doubt, where there is an express covenant, the remedy by *assumpsit* is merged in the higher remedy. JERVIS, C. J.—Yes, or, in other words, an implied promise does not arise where there is an express one by deed.] So also an action in the case cannot be maintained.

JERVIS, C. J.—*Kinlyside* v. *Thornton* is expressly in point. Where waste has been committed an action on the case may be maintained, although there is an express covenant.

MAULE, J.—I am of the same opinion. Where waste has been committed, or an injury has been done to the reversion, an action on the case will lie. Mr. Brown answers, there is an express covenant. Well then, the plaintiff is entitled to both remedies. It has been so held where the promise is not under seal, and its being under seal makes no difference.

CRESSWELL and WILLIAMS, JJ. concurred. *Judgment for the plaintiff.*

COUNTY COURT APPEAL.

WINCH *v.* WINCH.

Jurisdiction of the County Court.

Statute 9 & 10 *Vict. c.* 95, *s.* 65, *enacts*, "*that the jurisdiction of the County Court under this Act shall extend to the recovery of any demand not exceeding the sum of* 20*l. which is the whole or part of the unliquidated balance of a partnership account, or the amount or part of the amount of a distributive share under an intestacy, or of any legacy under a will.*" *By* 13 & 14 *Vict. c.* 61, *s.* 1, *the jurisdiction was extended to the recovery of any demand not exceeding* 50*l. An action was brought in the County Court of Kent to recover a legacy of* 50*l from the executors. This involved a question of devastavit, and the judge, doubting his jurisdiction, gave judgment for the defendant:*

Held, that the above clauses gave him jurisdiction, and that there must be a new trial:

Semble, that when a judge has doubts about his jurisdiction he ought to exercise it.

This was an appeal from the decision of the judge of the County Court of Kent at Margate upon a case settled by the judge. The following is a copy of the case as settled:—"This was an action to recover a legacy of 50*l.*, the plaintiff having by his particulars abandoned any excess on account of interest. Charles Winch, the father of the plaintiff, died on the 7th Jan. 1850, having by his will, dated the 13th Sept. 1849, devised and bequeathed certain real estate, and all his residuary personal estate, to Mary Radcliffe and the defendant Amy Winch, upon trust to convert the same into money, and therewith to pay his debts and funeral and testamentary expenses; and 'in the next place to pay the following legacies, viz.: To the said Amy Winch, 50*l.*; to each of his sons, Charles Winch and John Winch, 50*l.*; and to his son James, 20*l.*; and he directed that such legacies should be retained by and paid to his said daughter and sons respectively as soon as his trustees should have funds in hand sufficient for the purpose." And he directed his trustees to pay the residue of the said trust funds and moneys in manner in his will mentioned. The will then contained the following words: 'Whereas I have lent my son Frederick Winch, or otherwise paid or advanced or expended for his use and benefit, several sums of money to a very large amount, the whole of which I have forgiven, with the exception of the sum of 600*l.*; now I do hereby will and direct that the trustees and executors of this my will shall allow him my said son Frederick Winch the period of six years to pay the same without interest: provided he my said son Frederick Winch shall liquidate such debt by instalments of not less than 50*l.* in each of the first five years of such period of six years; the first instalment to be paid at the expiration of twelve calendar months from the day of my decease.' And the testator appointed the said Mary Radcliffe and Amy Winch executrixes; and he empowered them, 'notwithstanding anything therein contained which might appear to be construed to the contrary, to compound or allow time for the payment of any debt or debts due to his estate, and to satisfy all dividends against his estate, whether by strictly legal evidence or not, and to settle all accounts between him and any person or persons on such terms as they his said executors should in their discretion think expedient, and to refer any matters in difference relating to his affairs to arbitration.' Mary Radcliffe renounced, and the will was proved by Amy Winch alone on the 5th Feb. 1850. On the hearing of this cause assets were admitted to have been received by the defendant to the amount of 2638*l.*, and it was admitted that she had paid the funeral and testamentary expenses and debts of the testator to the amount of 2785*l.* It was also admitted that no money had been paid by Frederick Winch to the defendant in respect of his debts, but that she had in the month of Jan. 1851 commenced an action of debt against him in the Court of Exchequer of Pleas, and obtained final judgment (in an undefended action) for 681*l.* 17*s.* 10*d.*, besides 21*l.* 12*s.* 7*d.* for interest. The judgment was obtained on the 26th day of Feb. 1851; but the defendant did not take any further proceeding under the judgment until the 25th Jan. 1852, when a *fi. fa.* was issued and the stock-in-trade and effects of Frederick Winch (who was a trader at Margate) were seized. The execution was, however, defeated by the subsequent bankruptcy of Frederick Winch. The plaintiff, under these circumstances, sought to charge the defendant with assets, alleging that she, the defendant, was liable to the payment of the *devastavit*

"The Court, however, doubting its jurisdiction, gave

judgment for the defendant, against which the plaintiff appeals.

"The question for the opinion of the court is whether, under the 65th section of the 9 & 10 Vict. c. 95, as extended by the 13 & 14 Vict. c. 31, the judge of the County Court has jurisdiction to charge the defendant under the above circumstances with the payment of the legacy.

"(Signed) CHARLES HARWOOD."

Byles, Serjt. for the plaintiff.—The question for the court is, whether the County Court has jurisdiction under the 65th section of 9 & 10 Vict. c. 95, as extended by 13 & 14 Vict. c. 61, s. 1, to try a question which in the Superior Courts would be called a *devastavit*. I do not quite understand why the judge doubted his jurisdiction. *Piers* v. *Wilson*, 6 Ex. 833, seems to be decisive on the point.

MAULE, J.—The Act gives jurisdiction to try a question of legacy, and that implies jurisdiction to try a *devastavit*. The 65th section says expressly that the jurisdiction shall extend to the recovery of an unliquidated balance of a partnership account. That is much the same kind of question.

Byles, Serjt.—To ascertain what the share of the residue is, as in *Piers* v. *Wilson*, it is necessary to see what claims there are upon the assets.

Channel, Serjt. for the defendant. The only point is that the executrix is also trustee, and there is a discretion given to the trustee to compound or allow time for the payment of any debt.

MAULE, J.—Well, that would be evidence in a *devastavit*.

JERVIS, C. J.—It is unfortunate that counsel were not employed in this case before the judge of the County Court. The judge seems to have forgotten the old maxim to "amplify." I should have thought where he entertained doubts about his jurisdiction, he would have exercised it. There must be a new trial; but as the point was started by the judge, there will be no order as to costs.

Monday, Jan. 24.

FOSTER BARKER AND ANOTHER *v.* THE OXFORD, WORCESTER, AND WOLVERHAMPTON RAILWAY COMPANY.

Contract by director of railway company—8 & 9 Vict. c. 16, ss. 85, 86, and 87.

By the 85th section of the Companies' Clauses Consolidation Act (8 & 9 Vict. c. 16), no person interested in any contract with a registered public company shall be capable of being a director, and no director shall be capable of being interested in any contract with the company during the time he shall be a director. Sect. 86 enacts that if any director, at any time subsequent to his election, be either directly or indirectly concerned in any contract with the company, then the office of such director shall become vacant, and he shall cease from voting or acting as a director:

Held, on the construction of the above clauses, that a contract entered into by a director with a company of which he is director is not thereby void; but the director becomes disqualified, and his office vacant.

This was an action for non-acceptance of a quantity of iron rails.

Covenant.—The declaration was by three plaintiffs, of whom Barker was one, on a contract under seal, by which the plaintiffs agreed to make and supply to the defendants, and the defendants agreed to accept and receive, a certain quantity, to wit, 17,500 tons of iron rails at certain intervals, to be paid for by prices ascertainable in a certain manner. Averment of plaintiffs' readiness and willingness to supply said rails. Breach: That after supplying 3000 tons of the said rails, the defendants refused to accept and receive any further quantity, and discharged the plaintiffs from making and supplying any more, to the damage, &c.

Plea.—That the plaintiff Barker, at and before the time of the making and entering into the said contract in the declaration mentioned, was a director of the Oxford, Worcester, and Wolverhampton Railway Company.

General demurrer.

Phipson, in support of the demurrer.—This question turns upon the construction of 8 & 9 Vict. c. 16 (the Companies' Clauses Consolidation Act). The 85th section of that Act says, that "no person holding any office or place of trust or profit under the company, *or interested in any contract with the company*, shall be capable of being a director; and no director shall be capable of accepting any other office or place of trust or profit under the company, or of being interested in any contract with the company, during the time he shall be a director." That clause must, it is contended, be read in conjunction with the subsequent (86th) section, which says: "If any director, at any time subsequent to his election, accept or continue to hold any other office or place of trust or profit under the company, or be either directly or indirectly concerned in any contract with the company, or participate in any manner in the profits of any work to be done for the company, &c. then, in any of the cases aforesaid, the office of such director shall become vacant, and thenceforth he shall cease from voting or acting as a director." These clauses, when read together, show the intention of the Legislature to have been that, in such a case as this, the director shall be disqualified and not the contract annulled. It is remarkable that the statute says that *during the time* a party is a director he shall not accept any other office or place of trust under the company. [MAULE, J.—On looking into the plea, there is no averment that the plaintiff Barker was interested in the contract, any more than the declaration shows he was a director. The two sections referred to evidently contemplate that a director may take an office or a place of profit under the company; but if he does, he becomes disqualified further to act as a director.] The Legislature, in sect. 87, evidently recognise in some cases a contract in which a director is interested. That section provides "that no person, being a shareholder or member of any incorporated joint-stock company, shall be disqualified or prevented from acting as such director, by reason of any contract entered into between such joint-stock company and the company incorporated by the special Act; but no such director shall vote on any question as to any contract with such joint-stock company." Taking these three sections together, it will be seen that the object of the Legislature was that, whilst a party is a director, he shall not take any other office under the company; and if he makes or participates in any contract with the company, he becomes thereupon disqualified, but the contract is not avoided. For this reason, judgment should be given for the plaintiff.

Gray, contrà.—It is submitted that by the 85th section a director is prohibited from entering into a contract with the company, and if he does so the contract is void; and for this reason,—that if a director has a voice in bringing about his own contract, the general interest of the body of shareholders might be seriously prejudiced. If the court should hold otherwise, it will negative the manifest purpose of the Legislature, which was to protect the general body of shareholders from jobbery and disadvantageous contracts. The director entering into the contract here declared on had an interest in that contract, and, therefore, such a construction as the plaintiff would have the court put upon the 85th section would remove from the shareholders the security and protection intended to be thrown over them by that section of the statute. The 85th section, construed with regard to its clear purpose, prevents a director from making a contract with the company. [JERVIS, C. J.—Then you would enlarge the words in order to prevent the mischief which you say the Legislature intended to avoid.] Yes, if it were necessary; but there is no need of enlarging the words; they are sufficient to support this plea in their present form. With respect to the 86th section, it is submitted that that is intended to meet another state of circumstances. Suppose a director takes an interest in a contract by the death of a relative, the contract having been made by another person, but its interest falling to him; he is simply disqualified by that section, and the contract not avoided. It was to meet such a case as that supposed that the 86th section was enacted. If a contract is entered into by a director, whilst he is a director, as in the present case, then it is void under the 86th section. [MAULE, J.—Suppose after the contract a man is elected a director?] In such a case, though the form of election has been gone through and is in itself good, the law prevents his acting as a director. The 86th section is only intended to apply to a case where the director had no interest in the contract at the time when it was made. If he is a party to a contract when it is entered into, then the contract is of no effect. [WILLIAMS, J.—Do you say the contract is absolutely void, or only voidable at the election of the company?] It is void. [MAULE, J.—The office is vacated by the 86th section; there can be no doubt of that.] The question is, whether the court will not so construe the words of the Act, as that the director shall not be capable of entering into such a contract at all.

Phipson in reply. There is no distinction between a party entering into office and one making a contract with a company as regards this point. What can be the meaning of the words in the 86th section that, "if a director, subsequent to his election, *continue to hold* any office or place of trust, *or be concerned in any contract* with the company, the office of director shall become vacant," if it be not the mere vacating of the office, and not the avoiding of the contract? That section, it is contended, shows that the legislature never intended to annul the contract. In addition to this, the 87th section expressly recognises a contract where a director may have interest as a member of a joint-stock company.

JERVIS, C. J.—I am of opinion that in this case the plaintiff is entitled to the judgment of this court. It is not because a presumed intention of the legislature will be contravened by this decision that we should be justified in extending in the case before us the language of the statute. (His Lordship here reviewed the 85th, 86th, and 87th sections.) I think, considering these sections together, that their meaning is, not that a director shall be wholly prohibited from making and entering into a contract, but that if he does contract with the company the penalty shall be his instant disqualification.

MAULE, J.—I am entirely of the same opinion, and for the same reasons as have been stated by the Lord Chief Justice.

CRESSWELL, J.—I am of the same opinion. The statute does not say that the contract shall be void.

WILLIAMS, J. concurred.

Judgment for the plaintiff.

BUSINESS OF THE WEEK.

Thursday, Jan. 20.

HOPPER *v.* JONES.—This was a demurrer to a declaration. The action was brought against the defendant in the character of a surety for his son, who had been apprenticed to the plaintiff and another person who were partners. Breach, "that he did not well and truly serve the plaintiff." The question intended to be raised was whether, where two persons agree to take an apprentice and teach him their trade, and he agrees to serve them and learn their trade, the words throughout being expressly joint, there is any liability to serve one of them separately. *Unthank* in support of the demurrer. MAULE, J.—If a joint service was meant, you should have taken issue by traversing the allegation that the apprentice agreed to serve the plaintiff.

Leave to amend on payment of costs.

Friday, Jan. 21.

TAYLOR *v.* ADDYMAN.—*Kemplay* moved for a rule to show cause why an order of Martin, B. for a writ of prohibition to the County Court of Yorkshire should not be set aside, on the ground that the County Court had not jurisdiction. The action was brought to recover one petty cash-book, one receipt-book, a collecting-book, an account-book, and other documents of the value of 50*l*. Judgment was given for 50*l*. and 7*l*. 9*s*. 2*d*. for costs. The cause was tried before a jury, and the defendant, at the trial, raised the question of jurisdiction, contending that this was an action of detinue, as appeared by the particulars of demand delivered, and therefore the court had no jurisdiction. The judge of the County Court thereupon altered the particulars of demand, so as to change the form of the action to trover; the defendant still objected to the jurisdiction, but the cause proceeded to judgment. Martin, B. on application by the defendant at chambers, made the order expressly to raise the question of jurisdiction before this court. *Williams* v. *Archer*, 5 C. B. 318; *Jones* v. *Doe*, 9 M. & W. 19; *Phillips* v. *Jones*, 19 L. J. 347, Q. B.; *Crossfield* v. *Such*, 20 L. T. Rep. 141; *Henry* v. *Earle*, 8 M. & W. 228; *Whickham* v. *Lee*, 12 Q. B.; *Hand* v. *Daniels*, 1 L. M. & P. 424. *Hull* showed cause in the first instance. The case will be duly reported. *Rule absolute.*

MATTHEW *v.* OSBORNE.—This case was resumed, and occupied the remainder of the day. *Part heard.*

Saturday, Jan. 22.

BLACKMAN *v.* ASPLAND.—*Prentice* moved for a rule calling upon Cooper, the attorney for the defendant, to show cause why he should not pay the costs of a summons to the plaintiff to appear at Judges' Chambers, and of the proceedings thereupon, on the ground that the summons had been taken out contrary to the orders of his client. *Rule nisi.*

EVELYN *v.* WILLIAMS AND OTHERS.—*Bramwell*, Q.C. moved for a rule calling on the defendants to show cause why two orders of Talfourd, J. to set aside a judgment and for particulars of breaches, should not be set aside, and why the judgment should not be restored, and why the costs should not be paid by the attorney of the defendants. An action of ejectment under the Common Law Procedure Act was brought by the plaintiff, founded on a breach of covenant and right of re-entry. The declaration was served on the four defendants, who occupied several tenements as weekly tenants under the lessee of the plaintiff. Judgment, for want of appearance within sixteen days, was signed. The sixteenth day was the Wednesday after Christmas-day, and the last of the days during which the law offices are closed for the Christmas holidays. Appearance was entered on the 17th. The judgment was set aside by Talfourd, J. on the ground that, it being impossible for the defendants to enter appearance when the offices were closed, appearance on the seventeenth day was sufficient. Since then it had been discovered that appearance had been entered by an attorney in London, without any directions from the defendants, and that that was done in order that the lessee might try the case in the names of the four defendants, who were men of straw. A rule was now asked for both on the latter ground, and also on the ground that Talfourd, J. was wrong in his decision. *Rule nisi on both points.*

MATHEW *v.* OSBORNE.—*Needham* continued the argument in this case. *Wilks*, contra. *Part heard.*

Monday, Jan. 24.

CHWYKLEY, app.; FULLER, resp.—This was an appeal from the County Court of Chelmsford. The action was brought to recover the sum of 50*l*. damages for a breach of a contract by reason of the defendant not taking the plaintiff into partnership in the month of July last. The action was tried on the 28th Oct. and a verdict found for the plaintiff, with 30*l*. damages. The plaintiff put in evidence a correspondence consisting of several letters between himself and defendant, which were relied on as forming the contract. After several letters had passed between them upon the subject of the partnership the defendant, on the 21st July 1852, wrote to the plaintiff word that "a circumstance quite unexpected, and very important," had occurred, which prevented his completing the proposed arrangement. At the trial the plaintiff relied on the previous letters as forming the contract, and it was then objected, on the part of the defendant, that the letters could not be read in evidence without a stamp, and that they did not constitute an agreement in point of law, and that the plaintiff ought to be nonsuited. The judge held that the letters did not require a stamp, and refused to nonsuit the plaintiff, or to decide the question whether the said letters did or not amount to a contract in point of law, but left the question to the jury whether it was a contract binding on the parties or not. The questions for the court were, first, whether the letters forming the alleged agreement were admissible in evidence without a stamp; secondly, whether the refusal of the judge to nonsuit the plaintiff on the ground that the said letters, admitted in evidence, formed no binding agreement upon which the said action could be maintained, was wrong in point of law; and thirdly, whether the judge was wrong in leaving to the decision of the jury the question whether the letters formed such an agreement as would be binding on both parties. *Honeyman*, for the appellant, and *Channell*, Serjt., for the respondent, were heard. By the COURT: There must be judgment of nonsuit entered in this appeal, with costs to the appellant. (The case will be duly reported.)

Judgment of nonsuit.

GIBSON *v.* GIBSON.—This was an appeal from the County Court of Durham, held at Gateshead. It was an action to recover 80*l*. for money had and received. *Milward*, for the appellant; and *Udall*, for the respondent. *Milward* did not

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ask judgment, but only prayed a new trial. (The case will be duly reported.) The court ordered a new trial; but reserved their opinion as to whether costs should follow until they had consulted the judges of the other courts.

Judgment for a new trial.

Tuesday, Jan. 25.

BERRY *v.* ALDERMAN.—This cause was tried before Talfourd, J. at the present sitting. *Collier* now moved for a new trial on the grounds of—firstly, misreception of evidence; and secondly, that the verdict was against the weight of the evidence.

Rule nisi on the first point; the court to consult Talfourd, J. on the second point.

DUNNETT *v.* HOWARD.—*Honeyman* moved for a rule to show cause why an award in this cause should not be set aside on three grounds. *Rule nisi on the first ground.*

LEVY *v.* COOK.—This cause was tried before Talfourd, J. at the present sittings. *Temple* now moved for a rule to show cause why a new trial should not be had, on the ground that the verdict was against the weight of the evidence The court said they would consult Talfourd, J.

Stands over.

DUNCAN *v.* TINDALL.—The arguments in this case were resumed. *Channell*, Serjt. and *Lush*, for the plaintiff. *Shee*, Serjt. and *Rochfort Clarke*, for the defendant. The COURT were of opinion that the rule must be absolute to enter the verdict for the defendant on the first issue; that the 34th sect. of 8 & 9 Vict. c. 89 (The Ship's Registry Act) extends to any contract for the sale of a ship, or part of a ship, and that such a contract must, therefore, be by an instrument in writing reciting the certificate of registry. *Rule absolute.*

Wednesday Jan. 26.

LEVY *v.* COOK.—*Temple* renewed his application in this case for a new trial, the court having yesterday expressed a purpose to consult Talfourd, J. JERVIS, C.J.—You say this is not a debt; but the statute uses the words "debt or claim." *Temple.*—There is nothing on the face of the schedule from which it can be ascertained who was the holder of the bill. JERVIS, C.J.—If the finding of the jury was correct, the 93rd section does not apply. By the COURT.—In this case there must be no rule. *Rule refused.*

FENN *v.* FORBES.—This action was brought for the recovery of 165*l.* 14*s.* 2*d.*, being the price and value of certain iron machinery. The defendant pleaded never indebted. It appeared that the goods were furnished in the months of January, February, and March 1851, on the terms of three months' credit, and were ordered by the defendant himself, who gave as his address, 9, Ely-place. At the expiration of the term of credit application was made for payment at the above address, but the defendant was not to be found. The plaintiff repeated his calls about five times a week for five or six months, and during all this time no complaint as to the quality of the goods supplied was made. The defendant, after much delay and trouble, was served with process in this action, and the case was referred to arbitration. At the hearing of the case before the arbitrator a postponement was asked for on the part of the defendant, for the purpose of enabling him to produce a witness whose evidence was to the effect that the machinery ordered was defective and valueless. The plaintiff's counsel objected to the adjournment, and urged that the defendant ought to have been better prepared with his case. The adjournment was, however, made, and was followed by some other adjournments, and at length the arbitrator peremptorily fixed the 9th Dec. last for the hearing and determining of the case, when judgment was given for the plaintiff. *Creasy* having obtained a rule on a former day, calling on the plaintiff to show cause why the award and final judgment signed and entered up herein should not be set aside, on the ground that the arbitrator did not give the defendant sufficient opportunity of producing a material witness for examination, or why the case should not be referred back to the arbitrator for reconsideration: *Bytes*, Serjt. (with him *Woollett*), now showed cause against the rule, limiting himself by direction of the court to the last part of the rule. He contended that the cause ought not to be sent back to the arbitrator, because it was an endeavour to delay the plaintiff in obtaining the fruits of the judgment. He stated the substance of long affidavits to show that the purpose of defendant was delay alone. *Creasy* was not heard in support of the rule. JERVIS, C.J.—This rule must be made absolute on terms. The defendant must bring the money into court and pay the costs of this application. The money must be lodged within a week, otherwise this rule will be discharged with costs.

Rule accordingly.

MATTHEWS *v.* OSBORNE.—The arguments in this case were resumed for the third time. *Needham*, before the reply, asked leave to name, upon the point whether copyhold admittance can be presumed, the case of *Wilson* v. *Allen*. JERVIS, C.J.—We cannot go into that point now. *Willis* was then heard in support of the rule. (He cited *Wagstaff* v. *Wagstaff*, 2 P. Wms. 261, and other cases.) The case will be duly reported.

SHARMAN *v.* SANDERS AND OTHERS.—This was an action for work and labour, to which defendants pleaded payment in goods, &c. To this the plaintiff rejoined that he was an artificer within the meaning of the 1 & 2 Will. 4, c. 37 (the Truck Act); which the defendant by his rejoinder denied. It appeared at the trial that the plaintiff had been employed by the defendants to remove a large quantity of ironstone, for which he was to be paid so much per ton; the payments to be made every month. He had hired a number of men, who worked under him (he himself also working), and had received in payment tickets for goods at a shop established near the spot by the defendants The learned judge before whom the cause was tried, in summing up, told the jury that they were to consider what the agreement between the parties was. If they thought the contract was that the plaintiff should do the work or cause it to be done, such contract would be fulfilled by the performance of the work, though the person so agreeing to perform, or procuring it to be performed, might be absent at the time, but in that case he would not be an artificer within the Act; but if, on the other hand, they were of opinion that it was part of the engagement that he should be obliged to attend, and was responsible to them for not attending, he (the learned judge) should direct them that he would be an artificer within the Act. A verdict having been found for the plaintiff, a rule, calling the plaintiff to show cause why there should not be a new trial on the ground of misdirection, was obtained, against which *Bytes*, Serjt., *Willmore*, Q.C. and *Willes* now showed cause, contending, on the authority of *Riley* v. *Warden*, 2 Ex. 59, that the ruling of the judge was correct. *Macaulay*, Q.C. and *Bittleston* were heard in support of the rule. The COURT were of opinion that the judgment in *Riley* v. *Warden* was sound, and that the ruling of the learned judge was correct; therefore the rule must be discharged. The case will be fully reported. *Rule discharged.*

EXCHEQUER.

COURT OF EXCHEQUER.

Reported by FREDERICK BAILEY and C. J. B. HERTSLET, Esqrs. Barristers-at-Law.

MORGAN, Administrator, &c. *v.* THOMAS.

Administration relating back to the death of the intestate. The widow of a deceased tradesman, intestate, carried on her late husband's business, and incurred a debt for which an execution issued against her. She retained possession of her late husband's goods, which were seized by the sheriff; subsequently to the action against the widow, her son, who lived near her, took out administration to the effects of his late father, and claimed all the goods, &c. as such administrator: Held, that he was entitled to do so; that the administration does not relate back to the death of an intestate, except in cases which are for the benefit of the estate in a rightful course of administration, and not for the administrator's own personal advantage.

This was an action brought against the defendant, a sheriff, to recover the value of certain goods taken in execution. The plaintiff's testator died in 1849, intestate, leaving these goods; his widow continued in possession of them afterwards, and in 1850, the execution creditor having trusted the widow, who carried on the business of her late husband, and she not having paid the amount due and owing from her, in 1851 an action was brought against her for it, which proceeded to judgment and execution; a notice was then served upon the officer in possession that these goods had been assigned to one Thomas Lewis. That proceeding however failed; and in March afterwards, the son, who had been living in the neighbourhood, took out letters of administration. The cause was tried at Carmarthen, before Crompton, J. when a verdict was found for the plaintiff; and a rule *nisi* having been obtained to set aside that verdict and enter it for the defendant,

Davidson and *Bowen* showed cause; but,

Evans, Q. C. and *Grove* were called upon to support the rule.—The son (the plaintiff) knew of the mother's business with the execution creditor, her having the goods of the testator in her possession, and the whole of the transactions; and he chose, in order to try to defeat the execution, to step in and say, I had no administration then, but I have since taken out administration; I am therefore entitled to the whole of my late father's effects—the goods you have seized—although in the possession of my mother at the time, now belong to me as such administrator, and you are not entitled. No one can doubt but that the obtaining this administration by the son was a trick to defeat the execution; the rent and expenses, in fact, exhausted the whole of the produce; and the question therefore is, whether the grant of administration relates back to the death. There are cases where the letters of administration have been held to have a relation to the death of the intestate, so as to give a validity to acts done before the letters were obtained. If a man take the goods of the intestate as executor *de son tort* and sell them, and afterwards obtain letters of administration, the sale is good. *Kenrick v. Burgess*, Moore, 126, is a case directly in point. [PARKE, B.—*Stewart, administrator, &c.* v. *Edmonds*, sittings after Hil. T. 1828, coram Abbott, C. J. is directly against you. There the intestate had sent some plate to the defendant, a silversmith, for safe custody, and was at the same time indebted to him in a sum exceeding the value of the plate. The plaintiff, after the death of the intestate, and before he obtained letters of administration, assented to the defendant retaining the plate in satisfaction of his debts; he afterwards took out administration, and brought trover for the plate. For the defendant *Whitehall* v. *Squire*, 1 Salk. 295, was cited; but the Chief Justice held, that the assent was not binding upon the administrator.] In *Parsons* v. *Mayesden*, 1 Freem. 152, it was laid down that, if a man takes the goods of the deceased by the consent of him to whom administration is afterwards granted, this is no defence if he is sued as executor *de son tort*: (*Curtis* v. *Vernon*, 3 T. R. 587; *Mountford* v. *Gibson*, 4 East, 441; and *Foster* v. *Bates*, 12 M. & W. 226, were also referred to.)

POLLOCK, C. B.—I am of opinion that this rule must be discharged. What was done or known by the son, the plaintiff, who administered to the effects of his late father, was not in the character of administrator in any way whatever; but what the counsel for the defendant contend is, that as the plaintiff subsequently became the administrator, that grant of administration related back to the time of the death of the testator, and that, between the death of the testator and the letters of administration being obtained, the party who afterwards became administrator permitting his mother to have the goods, and knowing that she transacted business with the execution creditors, must be taken to have assented to all that was done, and therefore these goods are liable under the execution; but there is no evidence whatever, in the first place, of any such assent, although the jury so found; there is really no evidence at all in the case to bear out any such proposition; all that appears is that he lived in the same neighbourhood as his mother, who had these goods, but that he, up to the time of obtaining administration, in no way interfered. The cases which have been cited are all different to the present, and none of them bear out anything like the proposition which has been here contended for, except the case in Moore, which is not a decision upon the point, nor are the observations there made conformable with the more modern cases; the rule, therefore cannot be sustained.

PARKE, B.—I am clearly of the same opinion; I have not the least doubt whatever upon the subject. In the first place, there is no evidence whatever of any assent that the goods should remain with the mother, to be liable to her debts, or otherwise; the son had, in fact, no power at that time, nor had the widow, to deal with these goods; and upon the authority of all the cases, which are uniform upon the subject, it is clear that the grant of administration relates back to the death of the testator only, in cases which must be for the lawful benefit of the estate, and in a rightful course of administration. There is no case to the contrary, except the one referred to in Moore's Reports, and that is only a *dictum*, not a decision upon it, and does not apply to the present case. The duty of an administrator is to collect in the estate, and then properly apply the money arising from it.

ALDERSON, B.—The jury have found, no doubt, in this case, that there was an assent on the part of the administrator; but there is not the least ground for it,—there was no evidence whatever to justify their doing so. It is really only necessary to state the proposition upon the facts proved, and it answers itself.

MARTIN, B.—I am also of the same opinion; there is no evidence whatever to go to the jury enabling them to find such an assent as has been mentioned. The administrator would have to collect the testator's debts, and divide the surplus between himself, his mother, and the other children, and it was for the defendant to show that an assent was given to the mother to retain the goods; yet that was not so, and that is enough to discharge this rule. But I agree with what the court has said also upon the authorities in point of law on the subject. If no administration had been taken out, and the widow had been left in possession of the goods for a long time, say some fifty years for instance, it might perhaps be fairly left to a jury to say whether the husband had not given them to the wife, and there would not be much difficulty about it; but that is a different case to the present.

Rule discharged.

Thursday, Jan. 20.

BOODLE *v.* DAVIS.

Judgment—Execution—15 & 16 Vict. c. 76, ss. 128, 129. (a)

Semble, that the 128th section of the Common Law Procedure Act applies to a judgment more than a year and a day old when that Act came into operation.

Cole moved for a rule to show cause why a suggestion should not be entered upon the roll pursuant to the 129th section of Common Law Procedure Act (15 & 16 Vict. c. 76.) In this case the judgment was signed in April 1850, more, therefore, than a year and a day had elapsed before the coming into operation of the Common Law Procedure Act, but less than six years; and the question was, whether in such a case the 128th section of that Act applied. The application was made for the purpose of ascertaining the opinion of the court whether the 128th section applies so as to make the judgment good for six years. If the court should think it unnecessary, it will reject the present application.

ALDERSON, B.—This is an application *quia timet*. You want to know whether the court will support it?

PARKE, B.—You must now argue that your application is necessary, and we must decide whether it is or not; my present impression is that it is not. I don't feel any doubt that the 128th section applies to existing judgments. *Rule granted.*

Cole declined to draw up the rule.

SCOTHORNE *v.* THE SOUTH STAFFORDSHIRE RAILWAY COMPANY.

Liability of Carriers—Contract to carry—Right of owner to countermand.

Goods were delivered in Staffordshire, directed to the ship Melbourne, East India Docks; subsequently a countermand was given to a clerk at the London station, and they were desired to be sent to Bell Wharf, Ratcliffe-highway; by mistake they were delivered according to the original address: Held, that the railway company was liable for the loss.

(a) The 128th section enacts that, "during the lives of the parties to a judgment, or those of them during whose lives execution may at present issue within a year and a day without a *scire facias*, and within six years from the recovery of the judgment, execution may issue without a revival of the judgment." And the 129th section enacts that, "in cases where it shall become necessary to revive a judgment by reason either of lapse of time or of a change, by death or otherwise, of the parties entitled or liable to execution, the party alleging himself to be entitled to execution may either sue out a writ of revivor in the form hereinafter mentioned, or apply to the court or a judge to enter a suggestion upon the roll to the effect that it manifestly appears to the court that such party is entitled to have execution of the judgment, and to issue execution thereupon."

EXCHEQUER.

This was an action brought to recover the value of certain goods delivered to the defendants to be carried to London. The declaration alleged that the defendants contracted to deliver the goods according to the direction of the plaintiff; the original direction on the goods was that they were to be delivered on board the ship *Melbourne*, about to sail for Australia. Subsequently, however, the plaintiff's son, for whom the goods were intended, called at the Euston station and desired the clerk there to send the goods to Bell Wharf, Ratcliffe-highway; but, by some mistake, they were sent as originally directed. At the trial a verdict was returned for the plaintiff. A rule to enter a nonsuit having been obtained, on the ground that under the circumstances the defendants were not liable, and that the judge should so have directed the jury,

James, Q.C. (with him *Hawkins*) now showed cause, and contended that this case was not distinguishable from the case of *Muschamp* v. *The Lancaster and Preston Junction Railway Company*, 8 M. & W. 421, and *Watson* v. *The Ambergate, &c. Railway Company*, 15 Jur. 448. The company is bound to carry the goods from the place from which they are sent, and to deliver them at the place to which they are directed. It is contended by the company that the transit of the goods terminated at Euston-square; but that is not so, if the cases referred to are law; and the clerk undertaking to carry the goods on to another place does not make a new contract—it is a mere incident.

Gray, in support.—The original contract is not disputed; it was this—that in consideration of the sum paid, the goods should be delivered on board the *Melbourne;* and the plaintiff afterwards directed the defendants to deliver the goods at Bell Wharf, Ratcliffe-highway. The declaration is not framed on a mere continuance of the original contract, but on a new contract entered into with the clerk to deliver the goods at Bell Wharf; and it is a question whether the clerk had authority to bind the company; and there is no evidence that he had such authority. The cases cited are not in point. [Alderson, B.—The contract alleged in the declaration is, that the defendants undertook to deliver the goods according to the direction of the plaintiffs. Martin, B.—A delivery to the company to carry is not an absolute delivery. The plaintiff has a right to stop them when he pleases, and he may countermand the order at first given at any time and in any manner he likes.] If a man choose from some caprice to stop at an intermediate station, after having directed his goods to London, is the company bound to stop the train and unload the trucks to get at the goods? [Martin, B.—The question of reasonableness of the demand would in such a case arise. Alderson, B.—This is not a contract to deliver at the docks, but to deliver according to the plaintiff's direction. It is quite clear that the clerk could not make a new contract. If therefore this is a new contract, the defendants are right; but if the original contract was to deliver according to the direction from time to time to be given, the plaintiff is entitled to recover. The fallacy of the argument on the part of the defendants is this, that, as they say, a person putting on a direction makes a contract with the carrier to carry to that particular place; but that is not so; the contract is to deliver according to the directions to be from time to time given.] The direction and written bill described the goods to be delivered on board the *Melbourne* in the East India Docks, and I cannot see how that can be held to be a contract to deliver in London, at any place to be afterwards named by the plaintiff.

Alderson, B.—I am of opinion that this rule ought to be discharged. The plaintiff made a contract with the defendants that the latter should carry these goods all the way to London. So far the responsibility of the defendants is not disputed; then the question is, what was the contract to deliver according to the plaintiff's direction in London? The first direction was to send the goods to the ship *Melbourne* at the East India Docks; but the son of the plaintiff having altered his mind, a direction is given to the agent of the defendant to deliver the goods at another place, and not according to the direction on the outside of the parcel. By an error that is not attended to, but it is sent to the East India Docks. Then has the contract been obeyed? The defendants undertook to deliver according to the direction and they did not do so, and are, therefore, responsible, and this rule should be discharged.

Platt, B.—I am of the same opinion. The contract was to deliver according to the directions of the plaintiff, and to take the goods to whatever place he might direct; and part of the contract is that such direction as to the carrying is subject to countermand. Were the defendants bound to carry the goods against the will of the proprietor on board this ship, although the plaintiff desired them not? Surely not. The clerk who took the order to carry the goods to Bell Wharf was the agent of the defendants to receive the countermand, as the jury found.

Martin, B.—I quite agree. In this case a woman made an arrangement with the defendants that they should carry certain goods. It is said that that is a contract; but if she had come back in an hour and said, My son has altered his mind and is not going to Australia, do you mean to say that the defendants can say, No, we have entered into a contract, and insist upon the goods going to Australia? A carrier is employed as a bailee, and I have no hesitation in saying that a man is entitled to have his goods delivered to him at any place at which they can reasonably be got at. I can conceive a case in which a man might give authority to carry to a certain place, and that they are packed and placed accordingly, and that it might be impossible without the greatest inconvenience to get at them; but I think that, if a man during a railway journey is discontented with the mode of travelling, he has a perfect right to stop and to have his luggage delivered up to him whenever he chooses. The clerk was the person authorised to receive the countermand, and agent for the purpose of carrying out the directions of the persons sending goods.

Rule discharged.

Friday, Jan. 21.

Cross v. Jordan.

Ejectment by landlord for nonpayment of rent—Judgment by default—Form of affidavit.

Upon motion for judgment in ejectment, under the Common Law Procedure Act, 1852 (15 & 16 *Vict. c.* 76), *sect.* 210, *an affidavit stating that three-quarters of a year's rent were in arrear, and that there was "no sufficient distress to be found upon the premises countervailing the said arrears of rent then due," is sufficient.*

Phipson moved in this case for judgment in ejectment under the Common Law Procedure Act, 1852 (15 & 16 Vict. c. 76), s. 210. This section is a re-enactment of 4 Geo. 2, c. 28, s. 2. The writ issued on the 4th Dec.; there being no tenant in possession, a copy was affixed to the door of the premises on the 9th Dec.; and the affidavit proceeded to state that three quarters' rent were in arrear, and no sufficient distress was to be found on the demised premises countervailing the arrears then due. In *Doe dem. Powell* v. *Roe*, 9 Dowl. 548, Coleridge, J. in the Bail Court, appears to have held that the affidavit must be precise in the statement that *half a year's rent* is due, and that a landlord has no right to lie by for a length of time and then seek thus to render the provisions of the section available. The precise words of the statute, however, appear to conclude the question. And suppose, for instance, the rent to be payable yearly—would not the statute apply? In *Doe dem. Gretton* v. *Roe*, 4 C. B. 576, the Court of C. P. seem to have thought it sufficient if the goods upon the premises were insufficient to countervail *all* the arrears then due. This affidavit is therefore sufficient.

Parke, B.—It seems to me, reading the words of the Act in the ordinary way in which Acts of Parliament are to be read, that if half a year's rent at least was due and payable before the writ was sued out you may proceed upon this affidavit. That is, I think, the proper construction of the Act.

The rest of the Court concurring,

Rule absolute.

Tuesday, Jan. 25.

The North-Eastern Railway Company v. The North-Western Railway Company.

New rules—Rule 67—*Construction—Setting down case for argument.*

After issue joined in error either party may set down the case for argument four days before the day of hearing.

Willis applied to the court to put a construction on rule 67 of the New Rules. That rule says, that "after the suggestion of error in law, alleged and denied, as prescribed by the Common Law Procedure Act 1852 (15 & 16 Vict. c. 76, s. 149), is entered, either party may set down the case for argument, and forthwith give notice in writing to the opposite party, and proceed to the argument thereof as on demurrer, without any rule or motion for a *concilium*. In this case there was a suggestion of error from this court, and the officer refused to file and enter such suggestion, except for a day in term. Chitt. Arch. p. 505, states the time to be ten days, but that is altered to four.

Parke, B.—The rule says you may set down the case and proceed to argument as on demurrer; for a demurrer four clear days is all that is necessary. That is all that is required.

The Court said that the opinion of the court as to the construction of the rule might be intimated to the officer.

Platt and others v. Elce and another.

Infringement of patent—Pleading.

To an action for the infringement of a patent the defendant may plead non concessit, and also a traverse of the specification.

This was an action for the infringement of a patent dated Dec. 11, 1848, of which Edmund Hartley was the first inventor; he enrolled the specification, and assigned it to the plaintiff on July 13, 1849. The declaration alleged that the said Edmund Hartley was the first inventor of a machine for spinning cotton and other fibrous substances, to which the plaintiff became entitled; and that the plaintiff had subsequently disclaimed as to the fibrous substances, and all such parts of the machine as might be supposed to relate to flax manufacture. The defendant proposed to plead—first, Not guilty; second, that the patentee was not the inventor; third, *non concessit;* fourth, that the invention was not a manufacture; fifth, that the invention was not new; and, sixth, a traverse of the specification; but upon an application to Martin, B. at chambers, for leave to plead several matters, he struck out the third and sixth pleas. Subsequently *Hindmarch* applied to the court, when a rule *nisi* was granted.

Webster now showed cause.—The learned judge at chambers thought that *non concessit* and a traverse of the specification ought not to be pleaded together. If the plea of *non concessit* is good for anything, it is good for all purposes; and under it any ground of invalidity may be raised. The ground of objection should be stated. [Parke, B.—Is not *non concessit* sufficient?] No. If it be, it is good for every thing, and no other plea is necessary. The class of cases relied on to support this application relate to grants of land or franchise, and in such cases you are dealing with things that had an anterior existence; but here there is no such anterior existence, and the analogy, therefore, ceases, and those cases are not applicable; and, moreover, since the New Common Law Procedure Act, the court will not feel itself so strongly bound by precedent, but will reconsider points, and decide them according to the spirit shown by the present course of legislation. Then, as to the affidavit of the truth of the pleas: it merely follows the words of the Act of Parliament (15 & 16 Vict. c. 76, s. 81), that "the defendant is advised, and believes that he has just ground to traverse the several matters proposed to be traversed by him," &c. It may be doubted whether this plea amounts to a traverse, since a part of the patent has been disclaimed; and under the new Act the court will not feel bound to allow things merely because they have been allowed before. I can resist the plea of *non concessit* unless the court holds that it is bound by cases prior to the Common Law Procedure Act; and if so, I say that the attention of the court in those cases has not been called to the fact that the old authorities were cases which related to land, offices, &c. (*Bennett* v. *Smith*, 13 M. & W. 552; *Bedells and another* v. *Massey*, 8 Scott's N. R. 337, were referred to.)

Hindmarch was not called on; but he referred to the case of *Holmes* v. *The London and North-Western Railway Company*, 20 L.T. Rep. 112.

Martin, B.—Upon the plea of *non concessit*, as I always understood it, you put in issue the grant of the patent; and with respect to the specification, the issue is, whether it sufficiently specified the matter for which the patent was obtained.

By the Court—

Rule absolute.

Forsyth v. Bristowe.

3 & 4 Will. 4, c. 42, s. 5—15 & 16 Vict. c. 76, s. 52—Replication to a plea of Statute of Limitations to a deed—Amendment.

To an action on two mortgage deeds and collateral bonds the defendant pleaded the Statute of Limitations under 3 & 4 Will. 4, c. 42, s. 5. Replication, an acknowledgment within the twenty years within the meaning of the statute.

On an application under the 52nd section of the Common Law Procedure Act, the Court ordered the replication to be amended so as to show on what description of acknowledgment the plaintiff intended to rely, but refused to put him on terms as to giving dates and stating particulars of such acknowledgment.

This was an action on two mortgage deeds and two collateral bonds. The defendant pleaded the Statute of Limitations under the 3 & 4 Will. 4, c. 42, s. 5. *Replication*—"That the defendant within the twenty years made an acknowledgment within the meaning of the Act."

On the 15th inst. *Quain* obtained a rule under the 52nd section of the Common Law Procedure Act, calling on the plaintiff to show cause why the said replication should not be amended, as tending to embarrass the fair trial of the action.

Milward now showed cause. The question is, what is the proper replication to a plea of the Statute of Limitations to a deed? [Parke, B.—There are two modes pointed out by the statute for making an acknowledgment, the one by writing, signed by the party or his agent, the other by part payment. Alderson, B.—The question is, whether you should not split your replication, and run the risk of having to pay the costs of the one on which you fail; in the 5th section of 3 & 4 Will. 4, c. 42, there are two methods of acknowledgment pointed out, and on special demurrer you would have to state on which you mean to depend. Parke, B.—You do not mean to say that before the late Act this replication would not have been bad on special demurrer. I almost think it would on general demurrer.] I should with great confidence contend that it would have been good. (He referred to *Arnott* v. *Holden*, 22 L. J. 14, Q. B.) [Parke, B.—There was no special replication there.] The latter part of the 5th section provides that "the plaintiff or plaintiffs in such action on any indenture, &c. may by way of replication state such acknowledgment" &c.; the statute gives me the subject of this replication, and I am entitled to use the language there adopted. [Parke, B.—The statute says "such acknowledgment," which is, by reference to the prior part of the section, either an acknowledgment in writing or by part payment. You can reply double if

you can make an affidavit as to the truth of your replication. ALDERSON, B.—Surely you can't deny that, in the words of the new Act, this is "so framed as to prejudice, embarrass, or delay the fair trial of the action." Suppose the defendant brings witnesses to disprove both acknowledgment by writing and by part payment, you may say you intended to rely on either the one only, and he may have to pay the costs of his witnesses brought to prove the other mode of acknowledgment.]

PARKE, B.—The only question is, whether this mode of replying does not prejudice and embarrass the defendant. I think it does; the plaintiff knows on what acknowledgment he means to rely; and why should he not state it in his replication, instead of making the defendant come prepared to disprove the several methods of acknowledgment when one only is necessary, and so be put to useless expenses?

ALDERSON, B.—You could not in such a case apportion the costs, and gross injustice would be the result. You may state the acknowledgments in as many ways as you please, so that you split them, and make an affidavit of their truth. *Rule absolute.*

On *Quain* applying that the plaintiff might be put on terms as to giving dates, &c., and some particulars of the acknowledgments on which he meant to depend, the Court said they could not impose terms; if the replication was split so as to state the several matters, and supported by affidavit, that was all they could require.

SHAW *v.* THE BANK OF ENGLAND.

Patent Law Amendment Act—Inspection.

The plaintiff having brought an action against the defendants for the infringement of a patent for some machinery was permitted, with scientific witnesses, to inspect the defendants' machinery. He subsequently discontinued his action. Having commenced a fresh one, he applied, under the 15 *&* 16 *Vict. c.* 83, *s.* 42, *for a second inspection:*

The court refused to make the rule absolute, on the ground that there had already been an inspection.

This was an action against the Bank of England for the alleged infringement of a patent

Bovill (with him *Webster*) now showed cause against a rule calling upon the defendant to show cause why the plaintiff should not be allowed, in company with three other scientific persons, to inspect a machine used in the Bank of England for paging books. It appeared that the plaintiff's patent had been obtained in 1845, and according to his own showing he had submitted it in that year to the Bank of England, with a view to their adopting it. He afterwards complained that Mr. Oldham, who was then the chief engineer of the bank, and who invented a machine in 1845, before the plaintiff's patent, had pirated his patent, and had not only used it in the Bank of England, but had sold the machine to persons in Manchester and other places. He did not however apply to the Bank of England on the subject until the month of December 1851, Mr. Oldham having died a few weeks before. The plaintiff then brought an action against the Bank of England for the alleged infringement of his patent, and in that action he had been allowed to inspect the machine in company with Mr. Woodcroft and Mr. Fothergill, two scientific witnesses, who had reported on the subject. The plaintiff did not in his affidavit state what were the opinions of those gentlemen, nor did he produce any affidavits from them that in their opinion the machine was an infringement of his patent; neither did the declaration specify what machinery was an infringement of his patent. This action was stopped by the bankruptcy of the plaintiffs, and, having commenced a fresh action, he now sought to obtain a second inspection of the same machinery. This was an application with which the Court of Chancery would not comply. The 42nd section of the New Patent Act (15 & 16 Vict. c. 83), under which this rule was obtained, is not intended to apply in a case like the present, where the plaintiff had already had an inspection, not only on his own part, but on that of two scientific witnesses. If the Bank of England were to be compelled to exhibit their machinery in this way, not only would the rights of the inventors of the machinery there be endangered, but the private affairs of the bank would be unnecessarily and dangerously exposed.

The plaintiff in person supported the rule, contending that it was absolutely necessary for the ends of justice that he should be allowed another inspection of the machine. The action was now nearly ready for trial in the Court of Queen's Bench.

[ALDERSON, B.—We must have something definite before us. You have not brought the affidavits of the scientific witnesses who examined the machine before, neither do you state in your rule what machinery you desire to inspect; you merely say the machinery mentioned in your pleadings. If we were to make the rule absolute to inspect the machinery mentioned in the pleadings, you would inspect nothing; for there is nothing mentioned in your declaration. The machinery is mentioned in the breaches, which must accompany the declaration under the new Act.

POLLOCK, C.B.—As at present advised, I see no reason for making this rule absolute.

The plaintiff.—Then will your Lordships discharge

the rule on the ground that there was a previous inspection?

PARKE, B.—Yes; and no ground for a second inspection. *Rule discharged.*

MILLINGTON *v.* BROWN.

Order to amend on payment of costs.

A plaintiff having obtained an order to amend his declaration on payment of costs, served a copy on the defendant, and an appointment was made to tax the costs. The defendant's attorney then consulted his special pleader, and incurred certain costs; but the plaintiff abandoned his order and declined to amend:

On application to the court, a rule to show cause why the plaintiff should not pay the costs incurred by the defendant was refused.

In this case *Pearson* moved for a rule calling on the plaintiff to show cause why he should not pay the costs incurred by the defendant by reason of the plaintiff having obtained an order to amend his declaration. The question was, whether a plaintiff, having obtained a judge's order to amend his declaration upon payment of costs, could afterwards abandon his amendments without paying the costs necessarily incurred by the defendant. The facts of the case were these. The plaintiff on the 16th Sept. last got a judge's order to amend his declaration on payment of costs. On the same day he served a copy of the order, and an appointment was made to tax the costs. The defendant then went to his pleader and gave him instructions to prepare special pleas. [POLLOCK, C.B.—Why did not the defendant wait till the plaintiff took another step in pursuance of his order. You ask us to grant a rule, the expense of which may be 20*l.*, upon a mattter of some 5*l.* costs, the whole of which might have been saved if the judge's order had been properly drawn up. ALDERSON, B.—It is a far more convenient course to provide for these things in the order to amend. That would save all the expense, trouble, and anxiety of an application to the court. MARTIN, B.—The defendant went to a pleader to prepare special pleas upon an imaginary declaration, without waiting to see what he had to plead to.]

POLLOCK, C. B.—We are all of opinion that there should be no rule. Why should the court put one of the parties to an expense of 15*l.* or 20*l.* to settle a question of costs, which, perhaps, may not amount to more than 2*l.* or 3*l.*? *Rule refused.*

BUSINESS OF THE WEEK.

Thursday, Jan. 20.

RANEUX *v.* TEAKLE.—Tried before Platt, B. at the sittings in this term. *James* moved for a new trial, on the ground that the verdict was against evidence, and for rejection of evidence. *Rule nisi.*

MAYNE *v.* WYLD.—Tried before Platt, B. at the sittings in this term. Verdict for the plaintiff, damages 1*d.* *M. Chambers* now moved to set aside the verdict, and for a new trial. *Cur. adv. vult.*

RUCK AND ANOTHER *v.* PERRY.—Tried on the 15th inst. Verdict for the plaintiffs. This was an action on a bill of exchange for 200*l.* dated the 5th July 1852, drawn by the plaintiffs and accepted by the defendant, payable three months after date. The defendant pleaded, as to 50*l.* payment, and, as to the residue, that before the action he had, at the request of the plaintiffs, and with their concurrence, accepted a bill of exchange for 292*l.* 13*s.* 6*d.* payable to Robertson and Co. at four months, in full satisfaction and discharge, &c. At the trial the defendant began, and it appeared from his evidence that the bill for which this action was brought became due on the 8th Oct.; that he had called on the plaintiffs to explain that he could not pay it, and offering to pay 50*l.* on account, and proposed that plaintiffs should draw for the residue at three months; to this arrangement the plaintiffs assented, and the defendant thereupon paid the 50*l.* and was desired to call on the morrow. On his calling he was put off from day to day, and at last was told that the bill for the residue should be sent for his acceptance, but this was not done, and ultimately he was told he must go and settle the matter with Robertson and Co. Upon his going there, Robertson made an account due amounting to 292*l.* 13*s.* 6*d.* for which the second bill (not yet due) was given, and the plaintiffs subsequently repudiated the matter altogether, saying the matter was Robertson's, and ultimately, when this bill became due, brought this action. Notice had been given to Robertson to produce the second bill, but he had failed to appear on his *subpœna duces tecum*. *Platt* moved for a new trial. The COURT said, that if an affidavit of the facts was made, they would probably grant a rule, on payment of costs; and an affidavit being produced later in the day, *Rule nisi, to come on as a motion.*

SMITH *v.* DOD.—*Trespass* for breaking and entering and taking goods, for excessive distress, and for not selling for the best price. *Plea*—General issue. The plaintiff was tenant under an agreement with R. G. Dod, dated 17th April, 1851. Moses Dod, the defendant, collected the rents and managed the property. He had collected two quarters; and the third was due Christmas 1851. In Feb. 1852 Moses Dod put in a distress for that quarter's rent, and in the authority to distrain treated it as rent due to himself, and the broker put in the distress in his name. The learned judge who tried the cause told the jury that he thought the distress was not authorised in point of law, and that if the defendant was authorised to distrain he should have stated that he distrained for the right owner. *Pigott* now moved for a new trial on the ground of misdirection. *Rule nisi.*

POTTER *v.* LUCAS.—*Kingdon* moved for a rule calling on the defendant to show cause why he should not pay certain costs pursuant to an award. *Rule nisi.*

CALLUM *v.* EDMUND.—*Joyce* showed cause against a rule for a new trial herein. The plaintiff in person supported the rule. *Rule discharged.*

REG. *v.* HARTLEY.—*Bailey* moved that the time for the bringing up the body of this defendant be enlarged till next term. *Phinn* consented. *Rule enlarged accordingly.*

DE CLERMONT *v.* BRADSCUE. *Rule discharged.*

BUTLER *v.* ALDON.—*Phinn* moved for a new trial on the ground that the verdict was against evidence. *Rule nisi.*

CHRISTIE *v.* WINNINGTON. *Rule discharged.*

Friday, Jan. 21.

INSTAN *v.* YATES.—*Allen*, Serjt. and *Phipson* showed cause against a rule obtained to set aside the plaintiff's verdict, and for a new trial, on the ground of misdirection. The cause was tried at Stafford before Cresswell, J. and was brought to recover a sum of money due in respect of work done upon a specific agreement to be completed in a certain time. The work was not finished by the time expressed; but the question was, as the learned judge left it to the jury, whether the defendant did not so interfere as to prevent the plaintiff from quite completing at the proper time, and whether there was not an extension of the time beyond the 18th Dec. by defendant. *Gray* (*Scotland* with him), contrà, called upon by the court to support the rule. The court thought, from the course which the cause took, the learned judge left it to the jury correctly. *Rule discharged.*

TANNER *v.* WOOLMER. *Cur. adv. vult.*

PUGH *v.* EYLES.—Tried before the Lord Chief Baron in Middlesex. *Horn* showed cause against a rule *nisi* to set aside the verdict found for the defendant, and to enter it for the plaintiff for 34*l.* 4*s.* 10*d.*, or for a new trial. *Hodges*, contrà, not heard.

Rule absolute to enter the verdict for the plaintiff.

Saturday, Jan. 22.

MARTIN *v.* BREARY.—Martin, B. having settled the special finding: on the application of *Honyman*,

Rule nisi, to go into the special paper for Wednesday.

WOODHOUSE *v.* CRAIG. *Cur. adv. vult.*

LAMBERT *v.* JONES. *Rule discharged.*

Monday, Jan. 24.

MONTAGU AND OTHERS (Executors, &c.) *v.* KATER.—A special verdict. *Cur. adv. vult.*

Tuesday, Jan. 25.

WYLLIE *v.* VARNISH. *Rule referred to Master.*

PINHORN *v.* SOUSTER.—Trespass to goods.—Tried before Martin, B. on the 20th instant. Verdict for the plaintiff for 15*l.* *Hawkins* moved for a rule to show cause why the verdict should not be set aside and a verdict entered for the defendant, or for a new trial. *Rule nisi.*

M'KINNON *v.* PENSON.

Judgment. Rule absolute for arrest of judgment.

TEMPLE *v.* PULLEN.—Tried before Martin, B. this term. Verdict for the plaintiff. *Hodgson* moved for a rule to show cause why the verdict should not be entered for the defendant on the 4th plea, or a new trial had on the ground of misdirection. The defendant being under arrest in July 1846, and being most anxious to procure his release, had given to one Pierrepoint, a clerk of Robinson, an attorney, 5*l.* and a stamp for a promissory note, with his, the defendant's, name written on it. On May 12, 1851, defendant obtained his certificate from the Court of Bankruptcy, and on Oct. 20, 1852, the blank stamp was filled up at a month's date, and indorsed by Robinson to Semple, and by Semple to plaintiff. *Rule nisi.*

BROTHERTON *v.* HOWARD.—*Atkinson* showed cause against a rule for a new trial obtained on the ground of surprise. *Maud*, contrà. *Rule discharged.*

SMITH *v.* PEAT.—*Clarke* moved for leave to plead several matters. *Cur. adv. vult.*

Wednesday, Jan. 26.

GREATREX *v.* HAYWARD.—*Mellor*, Q. C. stated the special case; and the question was whether the plaintiff had gained a right to the flow and maintenance by the defendant of water and a stream upon and from the defendant's land to and through that of the plaintiff, so that the defendant could not divert it to deprive the plaintiff of it or any part thereof, the same having been accustomed to run in the same state for upwards of forty years. The stream was an artificial one, created by the defendant. The COURT thought that the plaintiff had never enjoyed it as of permanent right against the defendant; that the case had been, in fact, decided by this court already by the cases of *Arkwright v. Gell*, and *Wood v. Waud*, from which it was not distinguishable, and therefore his remedy, if he had any, must be in the Court of Error. *Hayes*, contrà, not heard.

Judgment for defendant.

MELLISH *v.* HUNT.—*J. Browne* appeared in support of the demurrer to the plea. *Honeyman*, contrà, called upon to support it. *Judgment for the plaintiff.*

WILLIAMS *v.* WILSON. *Part heard.*

WAUGH *v.* MIDDLETON. *Cur. adv. vult.*

Thursday, Jan. 27.

SIMMONS *v.* LILLISTONE. *Cur. adv. vult.*

BUTLER *v.* ALDON. *Rule discharged.*

BAIL COURT.

Reported by T. W. SAUNDERS, Esq., of the Middle Temple, Barrister-at-Law.

Monday, Jan. 24.

(Before ERLE, J.)

REG. *v.* HENRY BLACKBURN.

Murder—Admission of a party to bail who is committed upon a charge of murder.

In this case, on the night of 24th Oct. last, two elderly persons (man and wife) of the name of Blackburn were murdered in their house, situate near the town of Stafford. Four persons were thereupon apprehended, including Henry Blackburn, a son of the deceased. Upon the investigation before the magistrates, the said Henry Blackburn, together with three others, were committed to Stafford gaol to take their trials at the next assizes for wilful murder. Subsequently to this investigation, the coroner held an inquest, when much additional evidence was received, and which went strongly to show that the said Henry Blackburn was in no way a party to the murder. The jury, by their verdict, found the said Henry Blackburn not guilty, but returned a verdict of guilty against the others.

Scotland now moved for a *certiorari* to remove the depositions taken before the justices and the coroner into this court, and for an order that the said Henry Blackburn may be bailed in the country; and he relied upon the facts as deposed to before the coroner as evidence of the innocence of the said prisoner.

BAIL COURT.

ERLE, J. thought sufficient grounds had been stated to justify his granting the application, and that the *certiorari* should go to remove the depositions taken before the magistrates, but not those taken before the coroner, as they were sufficiently verified, and before him already; and that there should be a rule to be served upon the justices and the prosecutor for admitting the prisoner to bail in the country,

Writ and rule accordingly.

Tuesday, Jan. 25.
(Before ERLE, J.)

THE QUEEN *v.* SKIPPEN.

Municipal election—Absence during a ward election of the alderman of the ward.

Willes moved for a rule calling upon a Mr. Skipper to show cause why an information in the nature of a *quo warranto* should not be filed against him for exercising the office of town councillor of Norwich. It appeared that Norwich is divided into several wards, one of which is called the sixth ward, and that on the 1st Nov. last there were two vacancies for that ward, which were to be filled up. By sect. 43 of the 5 & 6 Will. 4, c. 76, the ward elections are to be held before the alderman of the ward and two assessors; and by sect. 16 of the 1 Vict. c. 78, the mayor is empowered in case of the illness or incapacity to act of any alderman at any election to appoint another alderman to act in the room of such alderman during such illness or incapacity. At the election in question the alderman for the ward was absent through illness, and no other alderman had been appointed to supply his place, nor was there any one present to represent him, except during a portion of the time, when his son attended for him, and in consequence of such absence the votes of several voters had been rejected. Notwithstanding this Mr. Skippen had been declared duly elected, and had taken his seat. Upon these grounds it was now contended that the election was void. *Rule nisi.*

Willes also moved upon the same facts for a rule against a Mr. Kitten, who was the other councillor elected for the same ward, to fill the other vacancy.

Rule nisi.

Thursday, Jan. 27.
(Before ERLE, J.)

FARTHING AND ANOTHER *v.* REED.

Practice—Sect. 101 of the 15 & 16 Vict. c. 76.

Under sect. 101 of the 15 & 16 Vict. c. 76, the defendant served the plaintiffs with notice to proceed to trial, whereupon the plaintiffs, upon an affidavit showing that the mother of the defendant had arranged to pay the debt by instalments, and was actually paying them, obtained a rule calling upon the defendant to show cause why he should not be restrained from taking any further proceedings to compel them to proceed to trial, or why the time for proceeding to trial should not be enlarged. It not appearing, however, that the payment by his mother was with the consent or knowledge of the defendant, the court refused the first part of the rule, but enlarged the time for going to trial for a twelvemonth.

Under the foregoing section the plaintiff is not bound to wait until a suggestion has been entered by the defendant, but may come to the court at once upon being served with the notice.

In this case the attorneys for the defendant had served the plaintiffs with notice under sect. 101 of the 15 & 16 Vict. c. 76, to proceed to trial; and early in this term (see LAW TIMES, 15th inst.), *Hance*, on the part of the plaintiffs, obtained a rule calling upon the defendant to show cause why he should not be restrained from taking any further proceedings to compel the plaintiffs to proceed to the trial of the cause, or to show cause why the time for proceeding to trial should not be extended. Upon moving for this rule, an affidavit was used which disclosed that the action was brought to recover a debt, and that pending the action the defendant called upon the plaintiffs and admitted his debt, with the exception of a small sum, and then offered terms of settlement, which, however, were refused, whereupon the action proceeded, and the defendant pleaded "never indebted, except as to 1*l.* 4*s.*" Subsequently he obtained a commission in the army, and left the country; his mother, however, arranged with the plaintiffs, and agreed to pay the debt by instalments, which are in the course of payment, which was the reason alleged for not proceeding to trial.

By the 15 & 16 Vict. c. 76, s. 76, after providing for the giving of notice to proceed to trial as a substitution for the old practice of moving for judgment as in case of a nonsuit, it is enacted that, "if the plaintiff afterwards neglects to give notice of trial for such sittings or assizes, or to proceed to trial in pursuance of the said notice given by the defendant, the defendant may suggest on the record that the plaintiff has failed to proceed to trial although duly required so to do (which suggestion shall not be traversable, but only be subject to be set aside if untrue), and may sign judgment for his costs; provided that the court or a judge shall have power to extend the time for proceeding to trial with or without terms."

Keane now showed cause, and contended that the motion was premature, and in wrong form; that the statute itself had pointed out the course to be pursued if the defendant acted wrongly in giving the notice, namely, to wait until the suggestion is entered, and then to move to set it aside if untrue, for if the plaintiff had any valid and sufficient cause for not proceeding to trial, then the defendant would fail in showing that they had been duly required to go to trial. That the plaintiff should have waited, therefore, until the defendant had entered his suggestion, and sought to obtain his costs, and then have moved to set it aside. [ERLE, J.—The plaintiffs say by their present application, that the power to ask for the interference of the court arises as soon as the notice is given, without waiting till the suggestion is entered and being called upon to pay the costs; they endeavour to avoid going to trial, but if unsuccessful in that, they wish to have the time enlarged.] They cannot at this stage ask for an enlargement of the time for going to trial,—the Act gives no such right. He also argued upon the facts that it did not appear that the payment of the debt by instalments by his mother was known to or by the consent of the defendant, and therefore he was not bound by her acts.

Hance was not called upon.

ERLE, J.—I am certainly against you upon the construction of the statute; but it does not appear that the mother is paying the debt with the concurrence of the son; if it did, it would be another thing. I think, therefore, that the latter part of the rule only should be granted. What time, therefore, do the plaintiffs wish?

Hance.—A twelvemonth.

ERLE, J.—Very well, then, let the time for going to trial be enlarged for a twelvemonth.

Rule accordingly.

CROWN CASES RESERVED.

BUSINESS OF THE WEEK.

Monday, Jan. 24.

Re THE ARBITRATION OF HILLIER AND ANOTHER.—*M. Smith* moved for a rule for the payment under an award of a sum of money. *Rule nisi.*

REG. on the prosecution of REV. JOHN LLOYD *v.* KYNON.—*M. Smith* moved for a rule to stay all further proceedings on the writ of *mandamus* herein. *Taprell* (who showed cause in the first instance), contrà. *Rule absolute.*

Tuesday, Jan. 25.

REG. *v.* ANDUST.—*Cowling* moved for a *certiorari* to remove into this court an indictment found at the West Riding of Yorkshire Sessions on the prosecution of the Board of Health for Selby, against Mr. Andust for a nuisance, for an encroachment on the public way. The ground of the application was that difficult points of law are likely to arise, &c.

Application granted.

REG. *v.* GREGORY.—*Fortescue* moved for a rule calling upon a Mr. Gregory to show cause by what right he exercised the office of Town Councillor of Marlborough. The objection was that Mr. Gregory ought not to have been placed upon the burgess roll, inasmuch as he was not properly qualified by residence nor had sufficiently paid his rates. *Rule nisi.*

REG. *v.* ARTHUR HILLS.—*Borill* moved for a rule calling upon the defendant and his bail to show cause why an attachment should not issue against them for the nonpayment of costs herein. *Rule nisi.*

Ex parte THE LOCAL BOARD OF HEALTH OF CLITHEROE.—*Pashley*, Q.C. moved for a rule to quash the *certiorari* herein. *Rule nisi.*

REG. *v.* MARTIN AND SWAYLE.—*Cowling* moved for a rule calling upon two persons of the name of Martin and Swayle who are overseers for the parish of Boroughbridge, to show cause why a criminal information should not be filed against them for wilfully falsifying the parish books. *Rule nisi.*

Re AN APPEAL BETWEEN THE CHESTER AND SHREWSBURY RAILWAY COMPANY AND THE PARISH OF RUABON.—*Allen*, Serjt. moved for a *certiorari* to bring into this court an order of sessions in order that the same may be quashed on the ground of an excess of jurisdiction. *Rule nisi.*

Re SMITH.—*Lush* moved for a rule to set aside a warrant of attorney and the repayment of a sum of money, on the ground that the transaction was in fraud of the Insolvent Debtors Act. *Rule nisi.*

Thursday, Jan. 27.

REG. *v.* THE CALEDONIAN RAILWAY COMPANY.—This was an indictment preferred by the Corporation of Carlisle against the Caledonian Railway Company, relative to a bridge in that city. The Corporation and Company having come to an amicable understanding upon the subject, *Watson*, Q.C. moved that a verdict of "Not guilty" may be entered on the indictment. [ERLE, J.—No doubt, if this be in the nature of a civil proceeding, such a course may be adopted: have the Corporation acted for themselves, or on behalf of the public?] They are the owners of the soil, and have the management of the streets. *Thompson*, on the part of the Corporation, appeared to consent to the application.

Rule accordingly.

CALLENDAR *v.* ROBINS AND OTHERS.—*R. Clarke* moved to set aside the award herein. *Rule nisi.*

PENSON *v.* MITCHELL.—*Naylor* moved for a rule for a prohibition to the Judge of the Norfolk County Court at Mildenhall, restraining him from further proceeding in this action, on the ground that it was not within his jurisdiction.

Rule nisi.

REG. *v.* THE SHERIFF OF SURREY, IN YATES *v.* CAREW.—*H. Hill*, Q.C., and *Paterson* showed cause against a rule for setting aside the attachment against the Sheriff herein. *Lush* contrà. *Rule on terms.*

REG. *v.* THE JUSTICES OF MIDDLESEX.—*Huddleston* showed cause against a rule for a *mandamus* commanding certain justices of middlesex to issue their distress warrant. *Peiersdorff* contrà. *Cur adv. vult.*

REG. *v.* MULCASTER AND OTHERS.—*Manisty*, moved for a *certiorari* to remove into this court an indictment for a riot found at the Cumberland Assizes. *Writ granted.*

CROWN CASES RESERVED.

Reported by ADAM BITTLESTON, Esq. of the Inner Temple, Barrister-at-Law.

Saturday, Jan. 22.

R. *v.* RILEY.

CROWN CASES RESERVED.

Larceny—Original taking by mistake—Felonious appropriation.

A. by mistake took B.'s lamb from a field together with his own flock. Afterwards he discovered the mistake, but notwithstanding that discovery sold it with his own: Held, a larceny, inasmuch as the original taking was a trespass, and the trespass continued up to the time of the fraudulent appropriation.

At the General Quarter Sessions of the Peace for the county of Durham held at the city of Durham (before Rowland Burdon, Esq. Chairman), on the 18th day of October, in the year of our Lord 1852, the prisoner was indicted for having on the 5th day of October 1852, stolen a lamb, the property of John Burnside. The prisoner pleaded not guilty. On the trial it was proved that on Friday, the 1st day of October, in the year of our Lord 1852, John Burnside, the prosecutor, put ten white-faced lambs into a field in the occupation of John Clarke, situated near to the town of Darlington. On Monday, the 4th day of October, the prisoner went with a flock of twenty-nine black-faced lambs to John Clarke, and asked if he might put them into Clarke's field for a night's keep, and upon Clarke agreeing to allow him to do so for one penny per head, the prisoner put his twenty-nine lambs into the same field with the prosecutor's lambs. At half-past seven o'clock in the morning of Tuesday, the 5th Oct. the prosecutor went to Clarke's field, and in counting his lambs he missed one, and the prisoner's lambs were gone from the field also. Between eight and nine o'clock in the morning of the same day, the prisoner came to the farm of John Calvert, at Middleton St. George, six miles east from Darlington, and asked him to buy twenty-nine lambs. Calvert agreed to do so, and to give 8*s.* a-piece for them. Calvert then proceeded to count the lambs, and informed the prisoner that there were thirty instead of twenty-nine in the flock, and pointed out to him a white-faced lamb; upon which the prisoner said, "If you object to take thirty, I will draw one." Calvert, however, bought the whole, and paid the prisoner 12*l.* for them. One of the lambs sold to Calvert was identified by the prosecutor as his property, and as the lamb missed by him from Clarke's field. It was a half-bred white-faced lamb, marked with the letter "T," and similar to the other nine of the prosecutor's lambs. The twenty-nine lambs belonging to the prisoner were black-faced lambs. On the 5th Oct., in the afternoon, the prisoner stated to two of the witnesses that he never had put his lambs into Clarke's field, and had sold them on the previous afternoon, for 11*l.* 12*s.*, to a person on the Barnard Castle-road, which road leads west from Darlington.

There was evidence in the case to show that the prisoner must have taken the lambs from Clarke's field early in the morning, which was thick and rainy.

It was argued by the counsel for the prisoner in his address to the jury that the facts showed that the original taking from Clarke's Field was by mistake; and if the jury were of that opinion, then, as the original taking was not done *animo furandi*, the subsequent appropriation would not make it a larceny, and the prisoner must be acquitted. The Chairman, in summing up, told the jury that, though they might be of opinion that the prisoner did not know that the lamb was in his flock until it was pointed out to him by Calvert, he should rule that in point of law the taking occurred when it was so pointed out to the prisoner and sold by him to Calvert, and not at the time of leaving the field. The jury returned the following verdict:—The jury say that at the time of leaving the field the prisoner did not know that the lamb was in his flock, and that he was guilty of felony at the time it was pointed out to him.

The prisoner was then sentenced to six months' hard labour in the house of correction at Durham; and being unable to find bail, was thereupon committed to prison until the opinion of this court could be taken upon the question, whether Charles Riley was properly convicted of larceny.

Liddell, for the prisoner.—It being found in effect that the original taking was by mistake, the subsequent appropriation would not convert the innocent taking into a felony. That is the result of the recent cases of *R. v. Thurborn*, 1 Den. C. C. 387; *R. v. Thristle*, 1 Den. C. C. 501; and *R. v. Preston*, 2 Den. C. C. 360. The case put by Martin, B., in the latter case, of an umbrella taken by mistake, is quite in point. [PARKE, B.—I should say that the case put would be felony; because, though the taking is in first instance by mistake, it is a trespass; and the trespass continues up to the time of the appropriation *animo furandi*. In the cases of finding lost property a different consideration obtains; because the finder has a good title against all but the real owner.] There was no fresh taking, and the original taking was disputishable. He referred to 1 Hale P. C. 505; 2 East P. C. 661; 2 Russ. on Crimes, 12; *Leigh's case*, 2 East P. C.)

Grey, contrà, was not called upon.

POLLOCK, C. B.—We are all of opinion that the conviction is right. The case is distinguishable from those cited. *Reg. v. Thristle* decides only that if a man once gets into a rightful possession, he cannot, by a subsequent fraudulent appropriation, convert it into felony. So in *Reg. v. Thurborn*, in the elaborate

judgment [illegible] rule is laid [illegible] that the mere taking [illegible] appropriation of it; and [illegible] [illegible] to his own use, he is not guilty of felony. In Leigh's case also the original taking was wrongful, but here the original taking was innocent. I am not desirous of calling in aid the technicality of a continuing trespass; and I think this case may be decided upon the ground either that there was no taking at all by the prisoner in the first instance, or a wrongful taking; and in either case, as soon as he appropriates the property, the evidence of felony is complete.

PARKE, B.—I think that this case may be disposed of on a short ground. The original taking was not lawful, but a trespass, upon which an action in that form might have been founded; but it was not felony, because there was no intention to appropriate. There was, however, a continuing trespass up to the time of appropriation, and at that time, therefore, the felony was committed. Where goods are carried from one county to another they may be laid as taken in the second county; and the difference between this and *Leigh's* case, as well as the others cited, is that the original taking was no trespass.

WILLIAMS, J., TALFOURD, J., and CROMPTON, J., concurred. *Conviction affirmed.*

Equity Courts.

LORD CHANCELLOR'S COURT.

Reported by C. H. KERR, Esq. of Lincoln's-Inn, Barrister-at-Law.

Thursday, Nov. 25.

(Before Lord ST. LEONARD'S, L.C.)

MYERS v. PERIGAL.

Mortmain Act, 9 Geo. 2, c. 36—Shares in a banking company—The doctrine as to what consists of real estate and of estates or interests savouring of realty considered—The various kinds of property which may be rated considered.

Shares in a joint-stock banking company, established under the 7 Geo. 4, c. 46, having an interest in freehold and other lands vested in the trustees of the bank, are not within the Mortmain Act.

A testator directed his executors to convert into money all the residue of his personal estate, except his shares in the Durham and Northumberland District Bank, at Newcastle, and to invest the proceeds in Government securities, and to pay the dividends arising therefrom, and the dividends arising from his said shares in the Durham and Northumberland District Bank, unto his wife for her life; and after her decease to sell and convert into money his said bank shares, and invest the same in Government securities, which, with the Government securities before directed to be purchased, he directed to stand in his name for ever, and the proceeds thereof to be from time to time received by certain societies:

Held, reversing the decision of the court below, that the bequest of the shares, subject to the prior life estate, was a legal bequest within the statute 9 Geo. 2, c. 36.

This was an appeal from part of a decree made by the late Vice-Chancellor of England.

The facts were these:—Timothy Myers, by his will, dated 24th June 1844, among other things, directed his executors to convert into money all the residue of his personal estate (except his shares in the Durham and Northumberland District Bank at Newcastle), and to invest the proceeds in Government securities, and to pay the dividends arising therefrom, and the dividends arising from his said shares in the Durham and Northumberland District Bank, unto his wife for her life; and from and after her decease to sell and convert into money his said bank shares, and invest the same in Government securities, which, with the Government securities hereinbefore directed to be purchased, he directed to stand in his name for ever, and the proceeds thereof to be from time to time received by the following societies, namely, the Society for Promoting Christian Knowledge, the Society for Propagating the Gospel in Foreign Parts, the Church Missionary Society, and the Church Building Society. The testator died on 4th Feb. 1845, leaving his said wife, now his widow (the plaintiff), him surviving. The will was proved by the defendants Perigal and Robinson only. The widow instituted a suit for the administration of the testator's estate, to which the executors, the next of kin, and two of the societies mentioned in the will, which were incorporated, and the secretaries of the two other societies, which were unincorporated, were parties.

By the decree the Master was directed to take an account of the testator's personal estate possessed by the defendants, his executors; to distinguish what part of it (if any) consisted of money due on mortgages or of railway debentures, shares in bridges, or of chattels real or otherwise savouring of the realty, and to inquire and state whether the testator had standing in his name at the death [illegible] and other shares in the Durham and Northumberland District Bank; and this decree further ordered, that such shares should be without prejudice to any question on the statute of Mortmain.

The Master found that the testator was, at his death, possessed of 1,200*l.* due on a mortgage of certain leasehold tenements; a debenture of the Newcastle and Carlisle Railway Company for 600*l.*, a debenture upon the tolls of Morpeth Bridge for the like sum; and that he was also, at his death, possessed of the following chattels real, namely, 580 shares in the Durham and Northumberland District Bank, the property of which consisted, amongst other things, of freehold and copyhold hereditaments, and money due on mortgage of freehold, copyhold, and leasehold hereditaments; and that the aforesaid mortgage for 1,200*l.*, railway debenture, bridge debenture, and bank shares were all chattels real or savouring of the reality, except as far as the bank shares and railway debenture were respectively altered or varied in respect of their nature or quality of such chattels real as aforesaid (if they were at all so altered or varied), by a certain deed of settlement dated the 1st July 1836, whereby the shares in the bank were declared to be personal estate, and by an Act of Parliament of the 13th April 1839, whereby the shares in the railway were declared to be personal estate.

The Durham and Northumberland District Banking Company existed under the provisions of the Joint Stock Banking Act, 7 Geo. 4, c. 46, and under a deed of settlement of the 1st July 1836; the capital of which consisted of 500,000*l.* divided into 50,000 shares of 10*l.* each. The business of the company was to be exclusively confined to banking purposes, and no part of its funds was to be invested in the stocks, &c. of any foreign country, or in the purchase of land or other real estate, except for the purposes thereinafter mentioned. All the property of the company, as between the shareholders thereof and as between the irrespective real and personal representatives, was to be considered and deemed to be personal estate, so that each and every of the shareholders should as between and among themselves have a distinct and separate right to his shares in the capital or joint stock of the company; and the same was to be vested in him to and for all intents and purposes, and subject to his disposition by deed or will, or in cases of intestacy to be transmissible to his personal representatives as part of his personal estate and distributed accordingly, but under and subject to such provisions in the deed of settlement as should for the time being affect such shares. The company was empowered out of the funds of the company to purchase in fee simple, or for any other estate, or to take a lease of, any houses, buildings, &c. and to fit up the same, &c. for the use and purposes of the company, and if necessary to sell, exchange, or assign the same, &c. for the benefit of the company, and that such lands, houses, and buildings, &c. should be deemed personal estate; and as to such of the funds and capital or property of the company for the time being in the hands of the company as should not be employed or appear necessary to be employed in the ordinary business thereof, the directors for the time being were, so far as they conveniently could, to accumulate the same at interest, and for that purpose might from time to time lay out and invest the same, either in the names of the trustees for the time being of the company or of such other persons as they might appoint, in or upon some or one of the Parliamentary Stocks or Public Funds of Great Britain, or in Navy or Exchequer Bills, or on India Bonds or Bank or East India Stock, or on mortgage or purchase of freehold, copyhold, or leasehold lands, tenements, and hereditaments in Great Britain, or in the purchase of stock in this company, or of annuities for one or more life or lives, or of any other description as they might think proper; and any board of directors, when they should deem it expedient, might cause any of the funds or property so by this article authorised to be laid out and invested as aforesaid to be disposed of, called in, or otherwise converted into money, and the money arising thereby to be again laid out and invested in and upon any of the stocks or securities as aforesaid; and so from time to time as occasion might require.

The property of the bank, at the time of the testator's death, consisted, among other things, of certain freehold and copyhold hereditaments, and money due on mortgage of freehold or copyhold or leasehold hereditaments.

On the hearing of the cause on further directions the late Vice-Chancellor of England decided that the debenture of the Newcastle and Carlisle Railway Company was not within the provisions of the Statute of Mortmain; but that the debenture upon the tolls of Morpeth Bridge and the shares in the Durham and Northumberland District Bank were: (*vide* 10 Sim. 536.)

From so much of that decree as related to the shares in the Durham and Northumberland District Bank the four societies appealed.

On the hearing of that appeal before Lord Truro, L.C., the plaintiff, and those representing the next of kin of the testator living at his death, contended that the bequest of the proceeds of the sale of the testator's shares in the bank to the said several societies was

restrained or rendered void by the Act of the 9 Geo. 2, c. 36, for restraining the disposition of land, viz. the same being [illegible]. The defendants who represented the Society for promoting Christian Knowledge and the Church Missionary Society, the Society for the Incorporated Society for the Propagation of the Gospel in Foreign Parts, and the Church Building Incorporated Society for promoting the Enlargement, Building, and Repairing of Churches and Chapels, respectively contended that the last-mentioned bequest of the proceeds of the sale of the said bank shares was a valid bequest, not restrained by the said statute. His Lordship thereupon sent the following question for the opinion of the Court of C. P.: Was the said bequest made by the will of Timothy Myers, of his shares in the Durham and Northumberland District Bank, from and after the decease of his wife, a legal bequest within the stat. 9 Geo. 2?

The judges of that court certified in favour of the bequest.

The cause was now heard on the equity reserved.

Elmsley and *Faber* appeared for the plaintiff.

Renshaw for the next of kin.

Craig and *Wetherell* for the charities.

The following cases were cited:—*King* v. *Dock Company of Hull*, 1 Term Rep. 219; *Finch* v. *Squire*, 10 Ves. 41; *Attorney-General* v. *Meyrick*, 2 Ves. sen. 44; *Thompson* v. *Thompson*, 1 Coll. 381; *Hill* v. *Brent*, 2 Y. & C. 269; *Hilton* v. *Granad*, 1 Re G. & S. 183; *Ashton* v. *Lord Langdale*, 20 L. J. 284, Ch.; *Curling* v. *Flight*, 2 Phill. 613; *Attorney-General* v. *Giles*, 5 L. J. N.S. 44; *Humble* v. *Mitchell*, 11 A. & E. 205; *Tomlinson* v. *Tomlinson*, 9 Bea. 459; *Egerton* v. *Parker*, 9 Bea. 450; *Watson* v. *Milne*, 11 Bea. 307; *Baxter* v. *Brown*, 7 Man. & G. 198; *Flint* v. *Warren*, 14 Sim. 554; *Howse* v. *Chapman*, 4 Ves. 542; *Knapp* v. *Williams*, 4 Ves. 430, *n.*

The LORD CHANCELLOR.—In this appeal cases have been cited bearing on either side of the question; but there can be no doubt that anything which is dedicated to a charity and which savours of realty is within the Act of Parliament. The words are very express: "interest in real estate." You cannot dedicate any interest in, or any charge or incumbrance on, any real estate. Anything that savours of realty is within the Act. In the case of the Skerries lighthouse, the lighthouse was the service for which payment was made, and that was in the nature of an interest. In many of the cases there was an interest in land,—an interest in an easement dedicated to the charity; and beyond all doubt that is a gift which falls directly within the terms of the Act of Parliament. Some of the cases have gone a considerable length; for instance, that of the security on poor rates, and also of the security on tolls. In the one case they were mere loans—personal estate—and could hardly be considered as savouring much of realty; but in the other there is an actual assignment of the very tolls, and of the turnpike gates; so that there is real property, which is vested in the trust, under which the money has been raised; and therefore in those cases there is something more than a savouring of realty. Then we come to the cases in which, by construction, it may be said there is an interest in real estate, such cases as that now before the court, where the difficulty arises. Now it is impossible to deny that the current of modern authority has set against the old cases. There was an inclination to carry the provisions of the Mortmain Act beyond even the intention of the framers. Perhaps the inclination is now setting in a little stronger the other way; but my inclination would be neither one way nor the other, but to put as plain and sensible a construction as I can upon the terms of the Act of Parliament, as far as to obey, as the court is bound to obey, the provisions of the Act; but not to give it an enlarged construction; that is not the province of the court. The province of the court is to give it a construction which satisfies the framers of the Act itself, and which meets the real intention of the Legislature. Now take this case independent of the authorities. Did or did not this Act of Parliament intend to strike at an interest of this nature? If we look at the intention of the man who buys the shares—the purchaser—we shall have no doubt that he no more intended to obtain an interest in real estate than he intended to buy part of the property for his own immediate use. That is perfectly clear; because his interest is simply an interest in all respects personal estate by the very constitution of the partnership itself, which might go and remain in him as personal estate, and would go to his executors as personal estate, and his real representatives never could take the slightest interest in any portion of the real estate which might be acquired by this partnership. I am not at all impressed with the argument that a case might arise in which a surviving partner in a very large company might buy up the shares and might become possessed of the whole real property as it then existed. What if he did so acquire it? it would be in a new right: that is—the partnership being at an end—he would find himself in possession of the real property, an owner of real estate; and I am not impressed at that moment with the distinction of real estate, everybody in this court and in the country knows that such an owner might elect to take it as real estate even as between his real and personal re-

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representative. Now while this case was argued, the learned counsel was under the necessity of admitting that property for the purpose of carrying on the partnership trade would not fall within the Act of Parliament; and why not? Is real estate more obnoxious to the principle contended for because it happens to be one of the subjects of investment? It might again be sold, and so changed from realty into personality, and from personality into realty, just as often as it suited the purpose of accumulation, that is, with a view to profit, and not with a view to hold it. The property purchased to carry on the trade must at least be coexistant with the carrying on of the trade. Take for instance the case of a dock company: beyond all question the dock itself is real estate, that is, the dock itself, the property which has been excavated and formed into a dock, is the solid earth, although it is covered with water; that is real estate, and so it must remain as long as the partnership exists. Now it is not denied that the offices, and the land belonging to the offices, would be property not falling within the Act of Parliament. Why is that excepted? There is but one reason for it, because the subject itself is an interest in trade, and in trade only, and these things are the necessary adjuncts or incidents to the carrying on of that trade. In that view therefore there is an exception. Now suppose, for example, this banking company had purchased a real estate under the provisions of their deed; that, no doubt, they were at liberty to do, but at liberty to do so only for the purpose of a *quasi* investment—not to purchase it as real estate, and retain it as real estate, but to purchase it as they would a vessel or anything that was the subject of value in order to sell it to advantage at a future period, and they are bound to sell it by the term of the deed. If they did sell it, what were they to do with the money? Why, invest it in the funds. Therefore it is not property as real estate as regards any partner. The true way to try it would be this—let there be a real estate bought by the trustees, or the persons in whom the right was vested by this partnership deed, and let us see what the interests and rights of any partner would be in that real estate. Could any one member enter upon it and claim any portion of it? Clearly not. Suppose there was a house upon it, and that the house was empty: could he say, I will go and reside in it—I am a partner—I have a right as a tenant in common to make use of this property in common—this house is empty, and I will take my family and pass my summer recess there—could he do that? He could not. Could any two or more of them against the rights of others do so? Clearly not. He has not a right to step upon the land, as land. His whole interest is in the shares which he has purchased generally in the Banking Company—representing the dividends and profit to which he is entitled in respect of those shares. Would any incumbrance of his affect that real estate so bought? Clearly not. Would any interest in that real estate descend to his real representative? Clearly not. What is his interest beyond that of its being property which represents for the time being a portion of the capital out of which his profit is to come? This partner has not any higher interest, and never can obtain any higher interest, in respect of his shares, than as an individual partner seeking profit out of the property of the partnership in whatever shape that property may be found. Observe what the difficulty would be. If he dies at one moment, you find no real property, but you find the same interest, the same capital to be disposed of, and the same beneficial interest neither more nor less. If he dies at another moment, you find some real property. Could that alter the destination, or could it alter either the quantum of interest or the nature of the property to be given by him? Clearly not; because his legatees would take neither more nor less than just the same interest, if there was no real property purchased, which they would take if there was real property purchased. Therefore, upon all principle, I should hold it to be perfectly clear that this is not a property within the Act of Parliament. Now, the authorities are certainly difficult to reconcile; but all the later authorities tend no doubt one way. The case of probate duty, for example, introduces no difficulty on my mind any more than the case cited out of 1st Term Rep. 219. The land does not cease to be liable to its rateability to poor rates and any other rates; you cannot exempt it, except by an express Act of Parliament. But that does not alter the question at all of what your interest is in a fund composed of other property as well as that, out of which your interest arises. It may be liable just the same as a stock-in-trade is liable by law, except so far as it is annually exempted from the liability by law. Stock-in-trade is as much liable as real estate is; we do not think so, generally speaking, because we know it is not rated: but it is equally rateable; and it is only because Parliament exempts it by special Act of Parliament from time to time that it is not rated. That will not touch it; probate duty touches it, because that is a simple fiscal law. The question is, in what respect is property charged? Its being charged for the sake of revenue can in no respect touch the rights of parties independent of the revenue. Now, I think those questions do not touch this case. A more difficult question, if there be one, was with respect to the cases in which, notwithstanding a similar declaration, the Court of C. P. held that partners had still an individual right of voting in respect of the property. I admit there is considerable difficulty in reconciling that with the other authorities, because the Act of Parliament (I am speaking of the Act of Parliament as to the right of voting) merely says, the equitable right shall be as good as the legal right; and the Court of C. P. was of an opinion that, notwithstanding the clause in the partnership deed declaring the property should be considered as personal estate only, yet real property which they had purchased for the purpose of carrying on their trade, and vested in two trustees, was property in which they had all an equitable interest and in respect of which they had a right of voting. That is touching the point very closely no doubt, but it turned upon this, or else it is inconsistent with the other cases,—that you cannot take away that right of voting in respect of property except by Act of Parliament. It is an inherent right while the property remains, of which you cannot divest yourselves. It is either that, or it is not distinguishable from the other cases. But that very same Court of C. P. which held that doctrine has now by its certificate told me that it holds the case now before the court does not fall within the principle of that case. I am relieved, therefore, from that authority, so far as it is supposed to bear upon that case, because the same court has certified to me that they are of opinion that the case does not fall within the Mortmain Act. Therefore, although they were of opinion, upon grounds which they deemed satisfactory, that the right of voting remain under the Acts relating to elections, yet they were of opinion that doctrine did not extend to a case in respect of a right of property beyond the right of voting. Looking then at the current of authorities, I must say I entirely agree with them as to the general principles, although some of them have gone a good deal further than that which is now before me; I think that even the last case before Lord Langdale went further. There there was, as regards the bonds, an actual assignment of the undertaking and of the rates, and therefore that case no doubt clashes with other cases, and has to be maintained upon the authority of that learned judge. I am not called upon to express any opinion about that, because this case is not open to the same observations. This is a case in which I consider the interest simply that of a partner in a general concern, part of which concern they had at the time as real property, but not as real property in which it could be predicated of any partner that he had any interest. Properly speaking, he has his interest only in the partnership, the property of which may or may not, according to the circumstances, consist partly of real estate. My opinion, therefore, clearly is that the certificate of the Court of C. P. rightly tells me what the law is, and in conformity with that certificate I must hold that in this case the property was well given to the charity.

Jan. 16 *and* 21.

(Before Lord CRANWORTH, L. C. and the Lords Justices.)

STORRS *v.* BENBOW.

Practice—Chancery Amendment Act—Hearing of appeal.

An application to enlarge the period for a re-hearing or an appeal under the provisions of the 6th Order of the 7th July, 1852, *concerning appeals, the five years limited by the 1st of such orders having elapsed before such orders were made, was directed to be made by petition, and not by motion.*

In Jan. 1833 William Townsend Storrs, the plaintiff in this suit, then an infant, filed his bill by his next of kin against the executors of Wm. Townsend, claiming a legacy of 500*l.* under the will of the said Wm. Townsend, as being a child born to a child of one of the testator's brothers. By a decree of Sir John Leach, dated the 8th July, 1833, it was declared that the children *in esse* only at the time of the death of the testator were entitled to the legacies of 500*l.* each bequeathed by the testator's will to each of the children of either of his brothers; and it was referred to the Master to inquire whether the plaintiff was *in esse* at the time of the testator's death.

The Master made his report, dated the 20th Nov. 1833, whereby he found that the plaintiff was *in esse* at the time of the testator's death. The report was, by an order dated the 23rd Jan. 1834, absolutely confirmed. No further proceedings were taken until the 21st Dec. 1852, when a supplemental order to the effect of a supplemental decree was obtained under the 52nd sect. of the Chancery Amendment Act, whereby the present defendants, the trustees of the testator's will, were made parties to the suit.

The plaintiff is still an infant, and will not have attained twenty-one until the 29th Oct. in the present year.

Shebbeare, on behalf of the defendants, applied to the court by motion on the 16th instant that, the period of five years, limited for appeal by the 1st of the orders of the 7th Aug. 1852, concerning appeals, having elapsed before such orders were made, the Lord Chancellor would enlarge the period for appeal under the provisions of the 6th of such orders.

COURT OF APPEAL.

The Court was of opinion that the application should be made by petition.

Jan. 21.—*Shebbeare*, on behalf of the defendants, now presented a petition stating the circumstances above mentioned, and praying that the time for a re-hearing or an appeal from the decree of the 8th July, 1833, might be enlarged until the first day of next Easter Term.

Rogers appeared on behalf of the infant plaintiff, and did not oppose.

An order was made accordingly.

Wednesday, Jan. 19.

(Before Lord CRANWORTH, L.C.)

THE ATTORNEY-GENERAL *v.* WYGGESTON HOSPITAL.

A petition had been presented in the name of the Attorney-General. On the hearing, the Attorney-General appeared, and asked that it might be dismissed—it had been presented without his consent. The Court, regarding that officer as any other party making a similar request, granted the application.

A petition in the name of the Attorney-General was preferred before the Master of the Rolls, for the purpose of making certain inquiries before the Master as to certain leases which had been granted, of land belonging to the charity, and as to certain other matters, for the purpose of carrying into effect a decree made on the hearing of the cause. The Master of the Rolls, on the hearing of the petition, which had stood over in order that the Attorney-General might be served, refused to make any order, but directed certain inquiries to be instituted under the direction of the Attorney-General.

This was an appeal from that order.

Wickens, on behalf of the Attorney-General, who had not been served, objected to the petition being heard, and asked that it might be dismissed.

Lloyd, *Follett*, and *Morris*, for the petitioner, contended that after a decree was pronounced in a cause, no consent on the part of the Attorney-General was necessary for the prosecution of ulterior proceedings. The relators were then *domini litis*, and at liberty to prosecute the decree without his concurrence. They cited *The Attorney-General* v. *Ironmongers' Company*, 2 Bea., 313; *Attorney-General* v. *Corporation of Galway*, 1 Moll. 97; *Attorney-General* v. *Earl of Stamford*, 2 Ph. 737; *Corporation of Ludlow* v. *Greenhouse*, 2 Bligh. N. S. 44; *Attorney-General* v. *Mayor of Exeter*, 2 Russ. 45; *Attorney-General* v. *Compton*, 1 Y. & C. C. C. 425.

Roupell and *Metcalf* appeared for the Charity Corporation, and *R. Palmer* and *Freeling* for the master and wardens of the hospital.

The LORD-CHANCELLOR.—There can be no doubt as to the manner in which I must act. This petition is professed to be presented in the name of the Attorney-General. The Attorney-General repudiates it; he asks that it may be dismissed, and as the case of that officer is not different to that of other parties who petition the court, it must, therefore, follow the ordinary fate of applications asked to be dismissed by the persons preferring them. This, it has been said, is an attempt on the part of the Attorney-General to control the court. In suits instituted by that officer he must be considered as the party who carries it on. He is the real party, though of late the relator has been considered too much, and the Attorney-General too little. As a general rule, when the Attorney-General appears and asks that a petition which is presented in his name may be dismissed, I shall give great weight to what he asks.

Petition dismissed.

COURT OF APPEAL IN CHANCERY.

Reported by OWEN DAVIES TUDOR, Esq. of the Middle Temple, Barrister-at-Law.

Dec. 16 *and* 17.

(Before the LORDS JUSTICES, assisted by MAULE, J.)

JONES *v.* BEACH.

Principal and surety—Promise to pay—Whether joint liability made several.

A surety, on notes for which he was jointly liable, on being written to for a fresh note for the amount, payable jointly and severally, in reply stated by his solicitor that he would pay the amount and interest due on the joint security in the course of a post or two:

Held, overruling the decision of the court below, that the surety, neither in equity nor at law, had thereby rendered himself severally liable.

This was an appeal from the M. R. under the following circumstances:—A claim had been filed by Andrew Jones against M. Beach, the executrix of John Beach, to obtain payment out of his estate of the sum of 800*l.* secured by three joint promissory notes, given and signed by J. Beach, deceased, and W. Stubbs, for the sum of 100*l.* each, bearing date respectively the 2nd June 1842, the 1st Aug. 1842, and the 2nd March 1846, upon which interest had been paid to A. Jones down to the 8th July 1850. The notes had been signed by Beach as a surety only. On the 20th June Mr. Pumphrey, the plaintiff's solicitor, wrote to J. Beach as follows:—"Sir, Mr. Stubbs is bad, and I am about making him a bankrupt, but I find I cannot proceed against

him without troubling you in the affair. I have no desire to proceed against either; and, in order to avoid this, I ask you whether you will join Mr. Stubbs in a fresh note for 300*l.*, payable jointly and severally. As the notes in my possession are made payable on demand, and are not jointly and severally, you had better see your solicitor hereon immediately. I shall await your reply a post or two, and if I have no reply I shall at once proceed against both of you." Thereupon Mr. Gwillim, the solicitor of Mr. Beach, wrote to Mr. Pumphrey the following letter: "Sir, Mr. Beach, of this city, has brought me your letter, and has instructed me to inform you, that it is his intention to pay off the 300*l.* due to your client on the joint note of himself and Mr. Stubbs. I shall be glad if you will let me know the amount due for interest, and Mr. Beach will be prepared to remit the money in the course of a post or two. I presume you have the notes." The death of Mr. Beach shortly afterwards put an end to the negotiation, and, Mr. Stubbs having become insolvent, the claim was filed either to obtain payment of the debt, or for the administration of the estate of Mr. Beach. The M. R. held that the plaintiff was entitled to a decree upon the letter, without further reference to the original notes, and that the forbearance to sue was a sufficient consideration for the promise.

J. Hinde Palmer, in support of the decree of the M. R. contended, in the first place, that even if in law it should be held that the liability was joint, still in a court of equity it would be held to be several, so as to support the claim.

Willcock and *Charles Hall*, for the appellants, were not called upon by the court on this point.

Lord Justice KNIGHT BRUCE said that if the separate liability at law was established, the equitable right would follow; but supposing no such legal liability to exist, the question of liability in equity would depend on whether there was evidence direct or circumstantial that the joint note did not accurately express the intention of the parties concerned in the transaction, and that there was a contract, independent of the note, binding Beach in equity. His Lordship was not prepared to say that the circumstance of a joint security led to the inference that it was meant to be joint and several. Beach had agreed to be surety for Stubbs to Jones; but there were two ways of his being so, and the evidence did not show that a joint and several liability was the way intended. It had been said that the transaction was equivalent to a joint loan, and that therefore a several as well as a joint liability was created. This was a point not needful to be now decided, but his Lordship would not be disposed to adopt the view suggested unless after great consideration. On the materials in the case, and on general principle, there did not appear to be any equitable liability distinct from the legal liability, and therefore, if there was no separate liability at law, the claim must fail.

Lord Justice Lord CRANWORTH concurred.

Dec. 17.—The cause having stood over until this day in order that their Lordships might have the assistance of Maule, J. in deciding whether Mr. Beach, under the letters which have been set out, had at law become jointly and severally liable with Mr. Stubbs for the 300*l.*

Counsel were heard on both sides.

MAULE, J.—In this case it is alleged that Mr. Beach being liable on certain joint promissory notes with Stubbs, who has become bankrupt, his estate is to be charged in respect of a several liability not arising out of the promissory notes. Under the notes the estate of Mr. Beach could not be liable; that has not been contended; but the liability is alleged to arise on certain letters. (His Lordship here read the letter from the plaintiff's solicitor above set out.) This letter contains an offer to change the joint debt into a joint and several debt, but this offer was not accepted. (His Lordship here read the answer as above given.) This seems to me to contain nothing more than a statement by the solicitor of the intention of his client to pay, and the question is whether this is any acceptance of a new contract. I do not think it amounts to that. These two letters then do not make out a contract—the first contains an offer, and the second does not accept it. The second states an intention to pay, and admits a joint liability, which of course might be enforced. Another and subsequent letter has been read by counsel, which, as far as I gathered its contents, seemed quite to confirm this view of the case, and to show that the parties did not consider that any new contract had been made. I therefore think that the estate of Mr. Beach is not chargeable.

The LORDS JUSTICES concurred, and the plaintiff's claim was therefore ordered to be dismissed with costs.

Thursday, Jan. 27.

Re THE JOINT-STOCK COMPANIES WINDING-UP ACTS, 1848 AND 1849, AND THE DIRECT EXETER, PLYMOUTH, AND DEVONPORT RAILWAY COMPANY, *ex parte* WOOLMER AND OTHERS.

Joint-Stock Companies Winding-up Acts, 1848, 1849—Official manager—Payment of costs.

Proceedings having been instituted improperly in the Master's office by the official manager, on which he obtained an order which was reversed on appeal;

Held, that the official manager must pay the costs in the Master's office, but that he was entitled to his costs out of the estate of supporting the Master's decision in the court above, which it was overruled.

This was an application of Messrs. Woolmer, Bastard, and Kingdon, to discharge an order of the Master dated 29th Nov. 1852, directing them to lay before him a statement, in writing, of the application of a sum of 225*l.*, an item in the account of allowances of Mr. Tanner, as paid by him to Messrs. Woolmer, Bastard, and Kingdon, on account of the debts and claims on the company, and which sum had been previously allowed by the Master.

It appeared that the order now appealed from was made at the instance of the official manager, who objected to the allowance in question on the ground of a certain agreement which had been entered into between Mr. Tanner and Messrs. Woolmer, Bastard, and Kingdon, and in consequence of which it was contended that the sum of 225*l.* had never been in reality applied towards the debts of the company, as it was believed to have been when allowed by the Master. Their Lordships, however, discharged the order of the Master.

The question then arose as to the payment of costs.

Follett and *J. V. Prior*, who appeared for the appellants, argued that, as the proceedings before the Master turned out to have been improper, the official manager ought to bear the costs, although he had succeeded in persuading the Master to make the order which their Lordships had reversed, and that the same rule ought to apply both to the costs before the Master and on the appeal.

Roxburgh, for the official manager, contended that the official manager had only done his duty by bringing the matter before the Master, and that, as the Master had made an order, it was to be assumed that the application was a proper one. That it would be a great hardship if, in coming to support the decision of the court below, a person in the position of an official manager was held personally liable for costs, and it would be the first case in which such was ever held to be law. [Lord Justice TURNER referred to the case of *The Grand Trunk Stafford and Peterborough Railway Company (Official Manager of)* v. *Brodie*, 16 Jur. 678, where his Lordship as Vice-Chancellor had held that the suit being improperly constituted in its inception, and the evidence not justifying the institution of the suit on the merits, the bill should be dismissed with costs as against the official manager, although the official manager had obtained an order to carry on the suit in the place of a subscriber by whom it had been originally instituted.] Moreover the court had jurisdiction only over costs in matters before it, and not in those which were before the Master. This was clear from the 59th, 96th and 103rd sections of the Winding-up Act of 1848, and from the 12th section of the Winding-up Act of 1849. Lord Cottenham also had so decided in the case of *Ex parte Marsh, re The Cambridge and Colchester Railway Company*, 1 Mac. & Gord. 302; and that the official manager was not personally responsible for costs. [Lord Justice TURNER.—But what business had the official manager to originate proceedings in the Master's office for which there was no foundation?] That observation does not apply to this case, as the Master thought proper to make an order.

Lord Justice KNIGHT BRUCE.—We do not mean in this case to impute blame to the official manager; but the argument used in his behalf goes to the length of contending that, however oppressive or vexatious his proceedings may have been, he is not to be liable for costs. I can give no further weight to this argument than merely listening to it, for I cannot go with it. He has instituted proceedings before the Master, which we think he ought not, and that he ought to pay the costs; and this we order him to do. We do not, however, prejudice anything which the Master may direct as to his being indemnified out of the estate. I was disposed to deal in the same way with the costs here; but my learned brother thinks that would be a hardship, and I defer to his opinion, and direct that these costs be paid out of the estate.

Lord Justice TURNER.—I do not impute any blame to the official manager, further, at least, than this—that he has not exercised a discretion I think he was bound to do. There was no ground for the proceedings before the Master; and, although he obtained an order from the Master, if he had exercised his discretion he would not have applied for it. I think he must pay the costs incurred in the Master's office; but, having got an order, although indiscreetly, it would perhaps be hard upon him to make him pay the costs of having to come here to defend it; and therefore I think he must have his costs before this court out of the estate.

ROLLS COURT.

Reported by J. MACAULAY, Esq., of the Inner Temple, Barrister-at-Law.

Thursday, Jan. 20.

LOVELL *v.* GALLOWAY.

Practice—Injunction on bill of discovery for want of answer.

This was a motion for an injunction on a bill of discovery on the ground of the want of the answer of the defendant. The plaintiff had not exhibited interrogatories according to the new rules, the defendant not having appeared.

R. Palmer and *Bruce*, for plaintiffs.

Roupell and *H. Clarke*, for defendants.

The MASTER of the ROLLS held that, as the plaintiff might have filed interrogatories along with his bill, but had not done so, and therefore had not called on the defendant to answer anything, the defendant was not in default; and he refused the motion with costs.

ROBY *v.* SCHOLES.

Practice—Old and new rules as to orders nisi, four-day—Substituted service.

Where a decree had been made and served on a party, requiring him to do a particular act, and he did not comply, an order was obtained requiring him to do the act in a given time, and if he still refused, an order nisi, usually a four-day order, was made requiring him to comply, or, in case he did not, that an attachment should issue. That is the practice still, notwithstanding the order since 1841 requiring the act to be done in a limited time has an indorsement on it that if not obeyed the party is liable to be arrested.

An attempt must be made to serve the four-day order personally in the first instance; and if it cannot be done, then application must be made to the court for substituted service.

This was a suit for specific performance, which was decreed by the court, the thing required to be done being to pull down a part of a house which projected over a street in the town of Rochdale. The decree was served by substituted service, for which leave was given by the court. The decree not being made, an order was made requiring the party to obey the decree in three weeks from the service of the order. This order was attempted to be served, but without success, and an application was made to the court for substituted service, which was refused. The plaintiff then employed the sheriff's officer, who, after much difficulty, succeeded by stratagem in serving the order personally. On the order, requiring the act to be done in the three weeks, there was an indorsement, that "if you do not obey the order in the given time, you are liable to be arrested," &c.

Rogers now moved to commit the party for disobeying the order. The old practice required the order *nisi* or four-day order to go before the order to commit; but now, as the order to obey in a limited time has the indorsement as to liability to commitment, stated as the immediate result of disobedience, he submitted the four-day order was unnecessary.

The MASTER of the ROLLS thought there must be an order *nisi* to do the act in the time, or, if not, then you must come for an order to commit.

Rogers.—The last order was served by stratagem, your Honour having refused to make an order for substituted service; and we apprehend equal difficulty now in serving this order. Will your Honour give us an order for substituted service?

The MASTER of the ROLLS.—You must try to serve the four-day order, and if you cannot do so, you must come back and apply for substituted service.

Monday, Jan. 31.

GORDON *v.* JESSON.

Death of official assignee before answer—Substitution of new assignee—No affidavit is necessary in such a case, and the order may now be obtained as of course.

The defendant, Richard Valpy, the official assignee of a bankrupt, died before answer, and Thomas Bittleston was appointed official assignee in his place.

Bevan moved, under the 15 & 16 Vict. c. 86, s. 51, that the usual supplemental order might be made. He said there might be a question whether, under the Bankrupt Act. 12 & 13 Vict. c. 106, s. 157, the new assignee ought not to be substituted; but observed that it had been held that this only applied to a plaintiff assignee: (1 Younge, 386; 1 Myl. & K. 217; 7 Beav. 484.) He also observed that no affidavit had been made in support of the application, inasmuch as the Act provided that "the usual supplemental decree might be obtained as of course, upon an allegation of the abatement."

The MASTER of the ROLLS.—No affidavit is necessary; the usual order may be made in this case; but it must be understood, for the future, that these orders may be obtained as of course.

V. C. TURNER'S COURT.

Reported by J. HENRY COOKE, Esq., Barrister-at-Law.

Nov. 11, 16 *and* 25.

CHAFFERS *v.* HEADLAM.

Practice—Equity Jurisdiction Improvement Act—Personal representative.

Where a debtor executed a deed of composition with his creditors, by which he vested property in trustees for the benefit; he then made his will, appointing his wife and two others his executrix and executors, and gave all his property to his wife; the executrix alone proved the will, and died; a bill was filed against the trustees for an account, of the estate received by them; There was no personal representative of the widow,

and no one could be found to undertake the office, and the debtor's estate was insufficient to pay the creditors under the deed:

Held, that this was a case within the 44th section of the stat. 15 & 16 *Vict. c.* 86, *and that the suit might be prosecuted without a personal representative of the deceased debtor.*

This was a creditor's suit brought under the following circumstances:—Thomas Wheldon, by a deed executed before 1850, conveyed and assigned certain real and personal estate to W. Headlam and another person, upon trusts for the benefit of the other parties to the deed, who were his creditors, and who thereby agreed to accept a stated composition on their several debts due from Mr. Wheldon. Mr. Wheldon by his will gave, devised, and bequeathed all his real and personal estate whereof he might die seised or possessed unto his wife, her heirs, executors, administrators, and assigns, and appointed her executrix, and two other persons executors of his will. He died in 1850; and the widow alone proved the will. She died on the 19th June, 1852; and ten days afterwards Mr. Chaffers, one of the creditors of Mr. Wheldon, filed a bill against Mr. Headlam and the other trustee of the composition deed, on behalf of himself and all other creditors interested under that deed, for an account of assets Mr. Wheldon possessed by the defendants, and for the due application of the same. The stat. 15 & 16 Vict. c. 86 having come into operation, a motion was made on behalf of the plaintiff that some person might be appointed to represent the estate of Thomas Wheldon, the debtor, under the provisions of the 44th section, which enacts as follows:—"If in any suit or other proceeding before the court, it shall appear to the court that any deceased person who was interested in the matters in question has no legal personal representative, it shall be lawful for the court either to proceed in the absence of any person representing the estate of such deceased person, or to appoint some person to represent such estate for all the purposes of the suit or other proceeding, on such notice to such person or persons, if any, as the court shall think fit, either specially or generally, by public advertisement; and the order so made by the said court, and any orders consequent thereon, shall bind the estate of such deceased person in the same manner in every respect as if there had been a duly-constituted legal personal representative of such deceased person, and such legal personal representative had been a party to the suit or proceeding, and had duly appeared and submitted his rights and interests to the protection of the court."

De Gex, for the plaintiff, moved *ex parte* upon affidavits, the substance of which were, that no probate or letters of administration to the estate of Mrs. Wheldon could be found to have been granted by the Prerogative Courts of Canterbury or York, or by the Diocesan Court of the Bishop of London: that she was living in the county of Middlesex up to her death; that it was believed she died intestate, and that no personal representative of her existed; that application had been made to persons who were akin to Mrs. Wheldon, who refused to have anything to do with her affairs; and that the solicitor to the defendants, the trustees, had omitted to make any reply to applications made to him for information as to any will, if any, left by her. By another affidavit, it was sworn "that the estate of the said Thomas Wheldon will be insufficient to pay the creditors interested in the aforesaid deed of composition the amount of their respective claims under the same, and that there will be no surplus arising to the estate of the said Thomas Wheldon; that the expense of obtaining letters *de bonis non* of the estate of the said Thomas Wheldon will, over and above the stamp on the same, amount to the sum of 25*l.* or more." Counsel submitted that, under these circumstances, the present was a case contemplated by the Act, and moved accordingly.

The Vice-Chancellor.—I am opinion that this is one of those cases for which the 44th section of the statute was intended to provide, and if there be no valid objection raised by the defendants, I think the order may be made. If notice has not already been given to the defendants, the motion must stand over for that purpose.

Notice was subsequently served on the defendants, the trustees, and

Nov. 25.—*De Gex* renewed the motion, but in the form "that the cause might proceed in the absence of the personal representative of Thomas Wheldon, the debtor."

Elderton, for the trustees, submitted to the order; but as it was in the nature of an indulgence, the plaintiff ought to pay the costs.

The Vice-Chancellor.—The case is one contemplated by the Act; the application is reasonable, and for the benefit of all parties, and is properly supported; and the costs must be made costs in the cause.

V. C. WOOD'S COURT.

Reported by J. Hume Coote, Esq., Barrister-at-Law.

Jan. 11 *and* 15.

FORBES v. FORBES.

Practice—further examination of witnesses.

Where an order was obtained for the further examination of witnesses out of the jurisdiction, which was not restricted by the words "not before examined on the same subject-matter," the Court Held that the order was not irregular.

In this case witnesses had been examined, and the plaintiff obtained the common order for the examination of witnesses in Scotland on a commission, without there being contained in the order the restrictive words, "not before examined on the same subject-matter."

Bolt and *Bevir* now moved to discharge the order for irregularity, by reason of the omission of the words of restriction.

Anderson and *A. J. Lewis* supported the order, observing that these words were never used excepting in orders issued from the Rolls, and argued that the matter was quite regular.

The Vice-Chancellor.—I see no reason, in principle, for the introduction of these words; but it is very inconvenient to have two different forms of an order of course. I will inquire into the practice, and mention the matter again.

Jan. 15.—The Vice-Chancellor.—In this case a motion was made to discharge an order for the further examination of witnesses, upon the ground that it was informal, by reason of its not containing words restricting the examination to witnesses who had not been before examined in the same matter. I have communicated with the usual authorities upon this point of practice, and it appears that the order for the further examining of witnesses is of course, without any restrictive words. Up to 1840 the orders were given out at the Rolls without any restrictive words, but it seems that shortly afterwards such words were introduced. The gentleman whom I have consulted has not the least recollection of the manner in which the restrictive words have been used, although he thinks it may have been probably from some direction which he has received. But he is quite unable to say positively that it is so. Under these circumstances I cannot, after the recent practice, hold that it is irregular to issue the order in the form in which it has been issued from the registrar, for all the other officers, except the gentleman at the Rolls, say that it does not appear to them that it should be varied at all. I therefore cannot discharge the order for irregularity. As to the costs, although I refuse the motion, it is not unreasonable that it should have been made, as the order may reasonably have been supposed to be irregular. The costs of the motion must be costs in the cause. I can only say this, that if the party moving feels himself aggrieved by this practice of the court, I am willing and perfectly ready to give an order in the form in which it is thought it should be given out.

Jan. 18, 23, *and* 24.

HARFORD v. REES.

Practice—Evidence—Examination of party under Lord Campbell's Act.

Under the authority conferred by the 2nd section of the Law of Evidence Amendment Act (14 & 15 *Vict. c.* 99), *a plaintiff may compel a defendant to give evidence, and may take a decree against him.*

The bill in this case was filed for obtaining the restitution of a sum of 6000*l.* A testator, named Ivyleaf, bequeathed the residue of his personal estate to the Bristol Royal Infirmary, at Bristol, the treasurer of which charity had been appointed an executor of the will. The bill charged that the testator lived in the house of Mr. Rees, and where he died; and that the plaintiffs, who were the treasurer and vice-president and two of the trustees of the infirmary, were told by Rees that Mr. Ivyleaf had no property of which the hospital could have the benefit; and that upon this representation, which was false, the treasurer who was so appointed executor had renounced probate of the will; and that subsequently Rees took out letters of administration with the will annexed, and by this means obtained possession of large property, part of which consisted of 6000*l.* standing in the testator's name. Part of the property was alleged to have been made away with to the other defendant in the suit, Lloyd. The evidence in the cause was taken subsequently to the passing of the Law of Evidence Amendment Act, 14 & 15 Vict. c. 99, and under the 2nd section of this statute the plaintiffs examined the defendant Rees, the administrator, as a witness on their behalf, to prove the participation of the other defendant, Lloyd, in the fraudulent misappropriation of the assets, with a full knowledge of the trusts of the will. That section of the statute enacts, that "on the trial of any issue joined, or of any matter or question, or on any inquiry arising in any suit, action, or other proceeding in any court of justice, or before any person having by law or by consent of parties authority to hear, receive, and examine evidence, the parties thereto and the persons on whose behalf any such suit, action, or other proceeding may be brought or defended shall, except as hereinafter excepted, be competent and compellable to give evidence, either *viva voce* or by deposition according to the practice of the court, on behalf of either or any of the parties to the said suit, action, or other proceeding." The case now coming on for hearing,

Toller and *Pirie*, for the plaintiffs, prepared to read the evidence of Rees.

Selwyn, for the defendant Lloyd, objected, that the plaintiff having examined Rees as a witness could not have any decree against him, and as he could have no decree against him he could not have any decree against the other defendant, Lloyd, who was only charged with receipt through Rees. He cited the cases of *The Attorney-General* v. *Dew*, decided by Lord Justice Knight Bruce, when V.C., 2 De G. & S. 418; *Rowland* v. *Witherden*, before Lord Truro, 3 Mac. & Gord. 568, and a recent case, unreported, before the present M. R. He argued that before Lord Denman's Act (6 & 7 Vict. c. 85), to amend which Lord Campbell's Act was passed, a defendant could not have been examined at all by a plaintiff without an order from the court permitting him to do so. Lord Campbell's Act, however, rendered the order not necessary; but neither of these Acts altered the rule of the court as to the consequence of a plaintiff examining a defendant, namely, that he thereby waived any decree against him. It was admitted that the statute removed the objection of interest in the parties examined, but left the other wholly untouched.

Forster, for the defendant Rees, was willing to submit to a common decree for an account, if the bill were dismissed against him as to the charges of fraud. He cited *Champion* v. *Champion*, 15 Sim. 101; and *Barbel* v. *Allen*, 21 L. J. 155, Ex.

Toller, for the plaintiff, in answer to the objection to the reception of the evidence, and also to the argument raised as to the consequence of its reception, submitted that the two Acts of Parliament mentioned had removed, as they were intended to remove, all objection whatever to a decree founded on the examination of a defendant.

The Vice-Chancellor.—The case had better stand over for the present, and the plaintiffs can then consider whether they will take the course offered by the counsel of the defendant Rees.

Jan. 24.—No arrangement was made, and the Court now decided the point on the objection.

The Vice-Chancellor.—This is the first time the question has arisen since the passing of the Act, which renders defendants not only competent, but compellable, to give evidence on behalf of either or any of the parties to the suit; and, looking at the words of that statute, I think it removes the only obstacle to examining a defendant, and taking a decree against him. I have been, however, desirous to delay my judgment, for the purpose of looking into the older practice. Under Lord Denman's Act (6 & 7 Vict. c. 85), the objection arising from interest was removed; but still it was decided in *Attorney-General* v. *Dew*, that a decree could not be taken against a defendant who had been examined; and though the statute was not cited in that case, the judge must be taken to have had it in his mind; and in *Rowland* v. *Witherden* Lord Truro referred to it. It appears to me that these cases were rightly decided, because the interest of the defendant was not the only objection. There were, in fact, two objections; the one arising from the interest of the defendant, and that was an objection which co-defendants had a right to insist on, because it naturally induced a witness to attempt to throw the burden off his own on to their shoulders. The second objection was one which the party himself might insist on, and might say, You shall not take a decree against me founded on my own evidence; and he might demur to the interrogatories. This was settled in very early times. In *Kildesley* v. *D'Fisher*, Moseley, 195, Lord Chancellor King allowed the demurrer of a defendant to interrogatories, on the ground that as witness she need not answer when her interest was concerned; and so in *Nightingale* v. *Dodd*, Ambler, 688, Lord Hardwick said, "Suggestions in orders of this kind, viz., 'that the defendant is not interested,' must relate to the matters whereto he is examined; if he is examined to other matters in which he is interested, he may demur." Mr. Daniel, in his book, refers to *Weymouth* v. *Boyer*, 1 Ves. jun. 420, where it is laid down that a man cannot be examined for his own interest or against it; and the Act 46 Geo. 3, c. 37, which prevented witnesses refusing to answer on the ground of their own interest, was held not to apply to defendants in the suit. A defendant, therefore, when examined, had two courses; he might refuse to answer, or he might say, "You have chosen to examine me—you cannot now have a decree against me." But the Act of 1851 has changed the whole matter. That Act expressly referred to Chancery, and says that a party shall be not only competent, but compellable, to give evidence; and from the moment he was compellable, his sole ground of objection was taken away. To put any other construction on the Act would render it a nullity in all cases where there is only one defendant. It has been said that the Act was only intended to apply to cases at common law, and to repeal the proviso in Lord Denman's Act which was recited in it; and that cases at common law are different in principle, because the matter is brought to a single issue between a plaintiff and defendant: but that is not always so, and in many cases it is necessary to enter a *nolle prosequi* for the purpose of examining a co-defendant. On these grounds, I consider that the plaintiff has a right to take a decree against the defendant Rees, and the case will accordingly go on.

Common Law Courts.

COURT OF QUEEN'S BENCH.

Reported by A. and H. Hamilton and John Thurman, Esqrs. Barristers-at-Law.

Wednesday, Jan. 19.

Bessell v. Wilson.

Protection of magistrates—Stat. 11 & 12 Vict. c. 44, s. 2.—Conviction—Warrant—Summons to appear—Appearance by counsel or attorney.

Sect. 2 of stat. 11 & 12 Vict. c. 44, which provides that no action shall be brought against a magistrate for anything done under a warrant issued upon disobedience of a previous summons, applies only to warrants issued previous to a conviction or order, for the purpose of compelling appearance, and not to warrants issued after conviction for the purpose of enforcing payment of penalties.

Where a person, who had been convicted by a justice and ordered to pay penalties, neglected to pay, and was summoned for that neglect to appear before the justice to show cause why he should not be further dealt with according to law:

Held, that an appearance by counsel and attorney was an appearance according to the exigency of that summons.

Trespass for assault and false imprisonment.

Plea, not guilty by statute.

At the trial which took place before Lord Campbell, C. J. in London, during the sittings after last Trinity Term, the following facts were proved:—

The plaintiff had been convicted by an alderman of London for an infringement under the Copyright of Designs Act, and ordered to pay two penalties. Upon nonpayment, he was summoned to appear before the alderman to show cause why he should not be further dealt with according to law. This summons he attended by his counsel and attorney, but refused to attend personally. Thereupon the alderman issued his warrant for the apprehension of the plaintiff, requiring him to be brought in custody before a justice to answer the complaint, and be dealt with according to law. Under that warrant he was apprehended and imprisoned, with some circumstances of hardship and indignity, one of them being that his person was searched in compliance with a general rule acted upon at the police station. For that imprisonment (the conviction having first been quashed by the Court of Q. B.) he brought the present action, and the jury found a verdict for the plaintiff. In the following term a rule to enter a verdict for the defendant was obtained, on the ground that he was protected from that action by sect. 2 of 11 & 12 Vict. c. 44, which provides, "that for any act done by a justice of the peace in a matter of which by law he has not jurisdiction, or in which he shall have exceeded his jurisdiction, any person injured thereby, or by any act done under any conviction or order made or warrant issued by such justice in any such matter," may maintain trespass; "provided nevertheless, that no such action shall be brought for anything done under such conviction or order until after such conviction shall have been quashed either upon appeal or upon application to her Majesty's Court of Q. B.; nor shall any such action be brought for anything done under any such warrant which shall have been issued by such justice *to procure the appearance* of such party, and *which shall have been followed by a conviction or order in the same matter*, until after such conviction or order shall have been so quashed as aforesaid; or if such last-mentioned warrant shall not have been followed by any such conviction or order, or if it be a warrant upon an information for an alleged indictable offence, *nevertheless if a summons were issued previously to such warrant*, and such summons were served upon such person, either personally or by leaving the same for him with some person at his last or most usual place of abode, *and he did not appear according to the exigency of such summons*, in such case no such action shall be maintained against such justice for anything done under such warrant."

Jan. 18. (a)—*O'Malley* and *Lush* showed cause. —First: Statute 11 & 12 Vict. c. 44, s. 2, does not apply to this case. The part of the section which is relied upon here applies only to warrants issued for the purpose of compelling appearance previously to any adjudication; and it was introduced to meet the case where the magistrate ultimately dismisses the complaint, but has previously caused the defendant to be brought in custody before him to answer the charge. It was clearly not intended to enable a magistrate, who has made an illegal conviction, to protect himself from all consequences by issuing a summons before issuing a warrant. In this case there was no necessity for any warrant of arrest, nor any right to issue it. The magistrate, under statute 5 & 6 Vict. c. 100, s. 9, was authorised upon nonpayment to issue a distress warrant for recovery of the penalties; and that without any summons. [Wightman, J.—That is questionable. *Procter* v. *The Liverpool Gas Company*, 6 Ad. & El. 466.] At all events, after summons issued, the neglect to appear would be equivalent to saying—"I have no cause to show,"

(a) Before Lord Campbell, C.J., Coleridge, Wightman, and Crompton, JJ.

and then a warrant of distress might be issued against the goods of the defaulter, but not a warrant of commitment against his person. Secondly: In this case the plaintiff did appear according to the exigency of the summons; because his appearance by counsel and attorney was sufficient. The statute 5 & 6 Vict. c. 100 gave no remedy against the person at all; but by 11 & 12 Vict. c. 43, s. 22, there is a power of imprisonment in default of distress. In this case there was no evidence that any distress warrant had issued; and therefore the only object of the summons was to call upon him to show cause why a distress warrant should not issue; and for that purpose personal attendance was quite unnecessary. *R.* v. *Simpson*, 1 Stra. 44; *R.* v. *Haddock*, 2 Stra. 1100; and *R.* v. *Wyatt*, 2 Ld. Raym. 1196, are authorities to show that personal appearance was not necessary; and statute 11 & 12 Vict. c. 43, s. 13, particularly recognises the right to appear by attorney.

Hugh Hill and *Willes*, contrà.—First: This case falls within the very words of sect. 2 of 11 & 15 Vict. c. 44. The imprisonment took place under a warrant, which had been preceded by a summons that was disobeyed, and the warrant has not been followed by a conviction or order. [Lord Campbell, C. J.—Does not that language imply that the Legislature is speaking of a summons and warrant leading to a conviction or order not subsequent to the conviction?] This warrant might have been followed by an order to pay. [Lord Campbell, C. J.—Is it not quite novel to bring a man in custody to shew cause why he should not pay a sum of money?] Not since stat. 11 & 12 Vict. c. 43, s. 13, which authorises the proceeding. There must be a process of hearing, before the penalty can be enforced: (*Ex parte Kinning*, 10 Q. B. Rep. 730, 4 C. B. 507; *Buchanan* v. *Kinning*, 20 L. J. 252, C. P.; *In Hammersmith Rent-charge*, 19 L. J. 66, Exch.; *Painter* v. *Liverpool Gas Company*, cited *supra*; and *Hammond* v. *Bendyshe*, 18 L. J. 219, M. C.) In order to enforce the summons necessarily issued for that purpose the defendant was authorised to issue his warrant by sect. 13 of 11 & 12 Vict. c. 43. Secondly: Personal appearance was necessary. Although sects. 12 and 18 of the last-mentioned Act allow parties the assistance of counsel and attorney, they do not dispense with the presence of the party; and there is no authority for saying that in such a case as the present appearance by attorney is sufficient: (Com. Dig. "Attorney," B., 4, 5, 6.) The real object of the summons was to call upon the plaintiff to show why he should not be committed to prison; because distress warrants had in fact been previously issued, and returned *nulla bona*. They were not proved at the trial, because the point now taken was not then made; but there is upon the notes of the learned judge some evidence that an ineffectual attempt had been made to levy upon the plaintiff's goods. (a) *Cur. adv. vult.*

JUDGMENT.

Jan. 19.—Lord Campbell, C. J.—This was an action against Mr. Alderman Wilson for false imprisonment. In this case the action is *primâ facie* maintainable; the warrant granted by the defendant under which the plaintiff was arrested and imprisoned was illegal; the conviction had been quashed by this court, and

(a) At the close of the argument Lord Campbell, C. J. made the following observations in reference to the practice of searching prisoners:—"I wish," said his lordship, "to take this opportunity of correcting a misapprehension as to what is my opinion with respect to the practice of searching persons who are charged with offences. At the conclusion of the trial of this case, I expressed my disapprobation of the manner in which the plaintiff had been searched when taken to the station-house. I repeat the disapprobation which I then expressed, for there is no right in a case of this kind to inflict the indignity to which the plaintiff had been subjected. But I have been informed that an erroneous impression of what I said has gone abroad. It was supposed that I had said that there was no right in any one to search a prisoner at any time. I have not said so. It is often the duty of an officer to search a prisoner. If, for instance, a man is taken in the commission of a felony, he may be searched to see whether the stolen articles are in his possession, or whether he has any instruments of violence about him; and, in like manner, if he be taken on a charge of arson, he may be searched to see whether he has any fire-boxes or matches about his person. I take this opportunity of correcting the error, because I have received from that most useful officer, Sir Richard Mayne, to whom the country is much indebted for a most excellent discharge of his public duties, a communication stating that an idea has gone abroad that to search any person charged with an offence is forbidden by law. No such doctrine has been stated by me, nor would it be stated by any one who has the honour to occupy the seat which I now occupy. It may be highly satisfactory, and indeed necessary, that the prisoner should be searched. I have never said that searching a prisoner was always a forbidden act. What I said applied to circumstances such as existed in this case. If a tradesman should be charged with an offence such as that with which the plaintiff was charged in this case, and he appeared before the magistrate by counsel and not in person, and a warrant issued against him not charging him with any crime, but merely to make him appear in person, the act of searching him was contrary to law. It is said that the search here was justified, because the person in custody might have some instrument about him with which he might make away with or injure himself, or the alderman before whom he was brought. This does not appear a satisfactory reason; it assumes that when a man is apprehended, because he has in the first instance appeared by counsel, and not in person, he will take with him the means of committing suicide or murder. This is a most absurd supposition."

the defendant had clearly exceeded his jurisdiction in requiring the plaintiff to be arrested and brought before him in custody to answer the complaint stated in the warrant. The defendant pleaded not guilty by statute, and relies for protection on the 11 & 12 Vict. c. 44, s. 2. (His lordship referred to the words of the section.) The defendant contends that, although this illegal warrant was not followed by any such conviction or order, a summons had been issued previously to such warrant, and such summons was served on the plaintiff, and the plaintiff did not appear according to the exigency of such summons; and therefore this action is not maintainable against the justice for arresting him under the warrant. But we are of opinion that the summons and warrant referred to by the enactment must be a summons and warrant before conviction; and that it does not apply to a summons and warrant issued after the conviction with a view to the levying of penalties. The warrant here, which was issued after the conviction, recites that John Bessell had unlawfully neglected and refused to pay the two penalties with costs, as directed to be paid by him, and that a summons had been issued commanding him to appear to answer to the said complaint, and that he had neglected to be or appear at the time or place appointed by the summons, although proof was given that the summons had been duly served. The warrant then concludes in these words: "These are therefore to command you, in her Majesty's name, forthwith to apprehend the said John Bessell, and to bring him before me, or some other of her Majesty's justices of the peace in and for the said city of London, to answer to the said complaint, and to be further dealt with according to law." Now this is not any proceeding pointed out by the preceding statute of the 11 & 12 Vict. c. 43, to facilitate the performance of the duties of justices of the peace with respect to summary convictions and orders, or by any other statute, nor a proceeding which the Legislature could well have had in contemplation when it indemnified the justices for what was done under a warrant preceded by summons to appear. Supposing it to be fitting that after a conviction imposing a penalty, which justices may issue a distress-warrant to levy, they shall issue a summons calling on the party convicted to answer a complaint that he had neglected and refused to pay, it never could have been supposed that a justice, on a default to appear, instead of issuing a distress-warrant, might issue a warrant to arrest and imprison the party, and to bring him in custody before the justice to answer for not appearing. This is not a warrant granted by the justice to procure the appearance of the party with a view to a future conviction or order, and therefore there would be no indemnity to the justice for what was done under it, although a summons to appear had been previously served even, if the party had not appeared according to the exigency of such summons. We are further of opinion that if this summons and warrant did come within the 2nd section of the 11 & 12 Vict. c. 44, it could not be justly said that the party did not appear according to the exigency of the summons. The object of the summons may reasonably be taken to be that he might show cause why a distress warrant should not issue. During the argument there was a suggestion that distress warrants had been issued; but, at the trial, such prior distress warrants were not given in evidence, or even alluded to. At the time and place appointed by the summons, the plaintiff did appear by his counsel and attorney; and his counsel urgently pressed that he might be heard to show cause, on the ground that the conviction was illegal and void; but the alderman refused to hear him because the party was not personally present. We think that in so refusing the alderman was wrong in point of law. The legitimate object of the summons did not render necessary the personal appearance of the party, and that object might be better answered if he appeared by his counsel and attorney. In criminal cases, after a verdict of guilty, this court requires the personal appearance of a party; but, generally speaking, the judges are contented to have any question of fact or law discussed by counsel without the personal appearance of the client. It is unnecessary to consider the general law respecting occasions where the party in the course of legal proceedings is privileged to appear by attorney or counsel, as the Legislature has plainly intimated in such a case as that which we are here considering, that an appearance by counsel or attorney is sufficient. The statute of the 11 & 12 Vict. c. 43, which is *in pari materiâ* with chapter 44, not only by section 12 allows, on the hearing of an information and complaint, that the parties may plead by counsel and attorney, but by section 18, which specifies what is to be done first at the return of the summons, when the complaint is to be heard, and the complainant or defendant do not appear, goes on to say: "But if both parties appear, either personally or by their respective counsel or attorneys, before the justice or justices who are to hear and determine such complaint or information, then the said justice or justices shall proceed to hear and determine the same." Upon the whole, it seems to us that the defence set up has entirely failed, and that the verdict which the plaintiff obtained ought not to be disturbed, and the rule, therefore, will be discharged. *Rule discharged.*

QUEEN'S BENCH.

Saturday, Jan. 29.

Reg. v. The Mayor and Assessors of Harwich.

Municipal corporation—Burgess list—Notice of objection.

The notice of objection required by 5 & 6 Will. 4, c. 76, s. 17, to be given to the person objected to, need not describe his place of residence; and when the mayor and assessors in revising the burgess list had held that objection good, the Court issued a mandamus to compel them to adjudicate upon the case.

A rule *nisi* had been obtained for a *mandamus* to compel the mayor and assessors of Harwich to proceed with the revision of the burgess list for that borough, and to adjudicate upon the objection of one Joseph Gaup, who had objected to the name of James Broome being retained on that list.

The notice of objection was in the following form:—"To Mr. James Broome,

"I hereby give you notice that I object to your name being retained on the burgess list of the borough of Harwich. Dated, &c. "Joseph Gaup."

(Adding his place of abode and the property for which he was said to be rated in the burgess list.)

Upon the revision of the list by the mayor and assessors it was held that this notice of objection was insufficient, and the name of James Broome was therefore retained in the list.

Bliss, Serjt. now showed cause, and contended that that decision was right. The statute required that the notice should be in the form given in schedule D. form No. 3, or to the like effect. Now the form in the schedule was this:—"I hereby give you notice that I object to the name of Thomas Bates, of Brook's Farm, in the parish of (describe the person objected to as described in the burgess list,)" &c. [Lord Campbell, C.J.—That is the form of notice to the town-clerk.] The same form is given for the notice to the town-clerk, and also for the notice to the person objected to. [Lord Campbell, C. J.—Can it be necessary to tell the person objected to where he lives?] The statute prescribes the form.

Coleridge, J.—It is enough if the form is "to the like effect.

O'Malley and *Lush*, contrà, were not called upon.

Lord Campbell, C. J.—The form used substantially complies with the requirement of the statute. (*a*)

Rule absolute.

Thursday, Jan. 27.

Reg. v. The Town Council of the City of York.

Regulation of borough gaols—Appointment of keeper of house of correction—Jurisdiction of justices and town council as to salary—Stat. 1 Vict. c. 78, s. 38.

The proviso to sect. 38 of stat. 1 Vict. c. 78, gives to the town council of a borough a control over the decision of the justices as to the amount of salary to be paid to the keeper of the gaol or house of correction, the word "confirmed" in that proviso being equivalent to "approved of."

Where, therefore, the justices had appointed a keeper of the house of correction at a salary of 120l. per annum, and made an order on the borough treasurer for payment of one quarter's salary, which was in arrear, and the treasurer and town council refused to pay so large an amount, the Court discharged a rule for a mandamus to compel them to do so.

A rule had been obtained calling upon the town council of the city of York to show cause why a writ of *mandamus* should not issue commanding them to confirm an order made by the justices of the said city in quarterly gaol session assembled, for the payment of 30*l.* by the treasurer of the said city to the keeper of the house of correction.

The rule was obtained upon affidavits, which disclosed that at the Easter gaol sessions of 1852 the justices had resolved that the salary of the keeper of the house of correction should be 120*l.* per annum; that they subsequently appointed Mr. Raper governor and keeper of the house of correction at that salary; that he entered upon his duties on the 1st June; that after the 1st Sept. when the first quarter's salary became due, he applied to the council for payment, but was refused on the ground that the council were not willing to give more than 90*l.* a year; and that at the December gaol sessions he applied to the justices, who made the order now in question.

Cowling showed cause.—This case depends upon the construction to be put on sect. 38 of 7 Will. 4 & 1 Vict. c. 78, which enacts "that all the powers of regulation which before the passing of the said Act for regulating corporations (5 & 6 Will. 4, c. 76) were possessed by the justices having the government or ordering of any such gaol or house of correction; and all things by any Act of Parliament provided to be done at any general or quarter sessions of the peace in relation to the regulating of any such gaol or house of correction shall, subject to any such alteration as aforesaid, be exercised or done by the justices of the city or borough to which such gaol or house of correction shall belong, and for that purpose the justices shall hold a quarterly session at the usual times of holding quarterly sessions of the peace; *provided that no order made by the justices in pursuance of these powers which shall require the expenditure or payment of any money shall be of force until confirmed by the council of that city or borough.*" The authority, therefore, as to the regulation of gaols which the justices had under stat. 4 Geo. 4, c. 64, and which was transferred to the council by 5 & 6 Will. 4, c. 76, s. 116, is by the above section restored to the justices, but with this qualification, that the town council may still exercise a control over the expenditure of the money: (*R.* v. *Lancaster*, 10 Q. B. 962.) The proviso to sect. 38 was clearly intended to give a discretion to the council; and that being so, they cannot be compelled by *mandamus* to confirm the order of the justices. Secondly, the order of the justices is bad, because it is made upon the treasurer of the city to pay, which is certainly *ultra vires*.

Bliss, contrà.—The power of framing the gaoler's salary belonged to the justices by the 6 Geo. 4; and the very object of the statute, 1 Vict. c. 78, ss. 37, 38, is to restore to them all the powers of regulation which had been taken by the 5 & 6 Will. 4, c. 76, still leaving to the town council the powers relating to the building of gaols; but if the argument on the other side is successful, all the most important powers of regulation will, in spite of the express provision of the Act, be transferred to the council. Almost every important step involves some expenditure of money; and it is contended that no effectual order which does involve the expenditure of money can be made by the justices without the sanction of the council. [Lord Campbell, C.J.—It may have been the intention to restore to the justices the powers of 6 Geo. 4, *sub modo*.] Practically, that would be a most inconvenient construction; for in many places it would operate to prevent the administration of justice altogether. It is clear that the town council have no power to order what is necessary to be done in regard to the regulation of gaols; and if their consent is necessary to give effect to the orders of the justices, it may be utterly impossible to make any provision for the proper custody of offenders. [Coleridge, J.—In the University of Oxford the same thing exists. The heads of houses originate measures, which Convocation can only negative or accept. However, it has sometimes been found inconvenient.] A power of confirmation is sometimes held to be ministerial only; and convenience requires that it should be so held in this case. (He referred to *Reg.* v. *Bishop of London*, 13 East; S.C. 15 East; *Hammond* v. *Peacock*, 1 Exch. 41.)

Lord Campbell, C. J.—This question is one depending entirely on the construction of the 38th sect. of 1 Vict. c. 78. This order was made under powers conferred by that section on the justices. May it not be that these powers were conferred *sub modo*? I see nothing absurd in such a construction, and it would appear as if such was the intention of the Legislature when it says that the orders are to be confirmed. "Confirm" may sometimes mean "verify" only, as in the case of auditors; but here, I think, "confirmed" means "approved of," so that the council are not bound to confirm what the justices have ordained; but they are to exercise a discretion. No doubt they could not absolutely refuse without any reason, but here they state that in their opinion a salary of 90*l.* a year only should be paid. I think that as to the propriety of the salary they have that power conferred on them, and here they may have had reason to think that a proper gaoler could be obtained for 90*l.* a year. It is necessary in all municipal or other corporations, such as the universities, for instance, that certain powers should be exercised, which are liable to abuse; but we cannot infer from the possibility of powers being unduly exercised, that they do not exist.

Coleridge, J.—The interpretation of the words of this section, as suggested by Mr. Cowling, is their natural and grammatical meaning, which is always to be preferred, if it satisfies the apparent intention of the Legislature, and is reasonable in itself. What is there unreasonable in saying in this case, that the powers given to the justices of making orders for the payment of money should not be of force unless confirmed by the council? Mr. Bliss contended that an order once made by the justices for the payment of money must be obeyed by means of orders to the treasurer issued by the council; but this is not the direct meaning of the Act, and I see no inconvenience in following its natural meaning.

Wightman, J.—By the Municipal Corporation Act all the powers of 4 Geo. 4 were transferred to the town council, and if there had been no subsequent alteration, the gaoler would have been appointed by them; but by 1 Vict. c. 78, all powers of justices under 4 Geo. 4 are to a certain extent taken away from the council, and the question is, what is the limit of this extent? Under the proviso, no order for the expenditure of any money shall be of force until confirmed. Now this is an order for the payment of money, and I think that something more than a mere indorsement of the order is meant by the word "confirm." It amounts, as my Lord has said, to "approved of." I cannot see that any inconvenience is likely to ensue from our giving this interpretation to the word. *Rule discharged with costs.*

(*a*) See a contrary opinion expressed by Crompton, J. in *Reg.* v. *Mayor of Harwich*, 20 L. T. Rep. 72.

QUEEN'S BENCH.

Friday, Jan. 28.

Conyers v. Hoskyns.

Practice—Amending indorsement on pluries writ—2 Will. 4, c. 39, s. 10—15 & 16 Vict. c. 76, s. 222.

The original writ of summons was dated the 13th Oct. 1849, and was regularly continued till the 28th May, 1851, when a pluries writ was issued and served on the defendant. The indorsement of the date of the first writ on the pluries served was by mistake the 22nd Oct. 1849, instead of the 13th Oct. The defendant pleaded the Statute of Limitations, whereupon the plaintiff applied to amend the indorsement of the date of the first writ on the pluries and on the copy served, by altering the 22nd Oct. 1849, to 13th Oct. 1849:

Held, that as to the pluries writ the amendment might be made; but that as to the copy served it could not:

Semble, that defendant could not at the trial take advantage of the erroneous indorsement on the copy pluries served, after the amendment according to the truth on the pluries writ itself.

A rule *nisi* was obtained on a former day calling upon the defendant to show cause why the plaintiff should not be at liberty to amend the indorsement on the *pluries* writ of summons and copy thereof served, by altering the memorandum of the date of the original writ of summons from the 22nd Oct. 1849, to the 13th Oct. 1849, the latter being the correct day of the *teste* of the original writ, and the former being a mistake of the plaintiff's attorney's clerk. The object of the amendment was to prevent the operation of the Statute of Limitations.

Crowder and *Phinn* showed cause.—Before the Common Law Procedure Act this amendment could not have been made. The 2 Will. 4, c. 39, s. 10, required that the *pluries* served should have on it at the time of the service, a memorandum of the date of the first writ of summons. Here the first writ was dated the 13th Oct. 1849; that was regularly continued; and on the 28th May, 1851, a copy *pluries* writ, with a memorandum that the first writ was issued on the 22nd Oct. 1849, was served. If the 22nd Oct. remains as the date of the first writ, the Statute of Limitations is a bar, but not if the 13th Oct. 1849 is substituted. It is now too late to cure the defect; for the copy pluries served was not indorsed as required by the 2 Will. 4, c. 39, s. 10. That was expressly decided in *Medlicott* v. *Hunter*, 5 Ex. 34, and *Pritchard* v. *Bagshawe*, 20 L. J. 161, C. P. The following cases were also referred to on this point: *Roberts* v. *Bate*, 6 A. & E. 778; *Campbell* v. *Smart*, 5 C. B. 196. Secondly, the 15 & 16 Vict. c. 76, s. 222, does not apply to this case, as the writ was served long before that Act was passed; and the defendant had acquired a right to plead and had pleaded the Statute of Limitations. The maxim *nova constitutio futuris formam imponere debet, non præteritis*, applies: (*Moon* v. *Durden*, 2 Ex. 22; *Pinhorn* v. *Sonster*, 21 L. J. 396, Ex.; *Reg.* v. *Cronsan*, 19 L. J. 20, M. C.; 14 Q. B. 221.) Then the 2 Will. 4, c. 39, is repealed by 15 & 16 Vict. c. 76, s. 10, except for the purpose of supporting any writs issued under 2 Will. 4, c. 39. Thirdly, if this amendment were made now, it would not prevent defendant producing the copy served at the trial, and showing the original indorsement.

By the Court.—The amendment when made would be a substitution of the correct date of the first writ, instead of the erroneous date indorsed; and after that, it must be taken as if the amended date had always been on the writ. However, we should not refuse to amend on that ground merely.

M. Chambers, in support of the rule.—Before the Common Law Procedure Act there was a conflict of decisions as to the cases in which an amendment should be allowed in a writ of summons to prevent the operation of the Statute of Limitations. In *Williams* v. *Williams*, 10 M. & W. 476; *Galsworthy* v. *Nugee*, 15 M. & W. 559; and *Carne* v. *Malins*, 20 L. J. 434, Ex., the amendment was allowed. Then the 15 & 16 Vict. c. 76 came into operation on the 24th Oct. 1852, and from that day the courts had power to exercise its provisions on all proceedings then existing, and they are bound by it to exercise the power of amendment in the words of the preamble, so as to prevent "the failure of justice by reason of mistakes and objections of form." Sect. 222 enables the court "*at all times* to amend all defects and errors in any proceeding in civil causes, whether there is anything in writing to amend by or not . . . and all such amendments as may be necessary for the purpose of determining in the existing suit the real question in controversy between the parties shall be so made." This section applies to these proceedings which were existing when the 15 & 16 Vict. c. 76, came into operation. Besides, sect. 10 of that Act prevents the 2 Will. 4, c. 39, being now used to defeat this amendment, as it is repealed thereby for every purpose but that of supporting any writs issued under it.

Lord Campbell, C. J.—In this case I feel considerable difficulty in making this rule absolute in the terms in which it is drawn up; for it enables us to amend the copy of the writ served on the defendant, and that would be to indicate that the writ was served with the amended indorsement upon it. There-

fore that part of the [illegible] discharged; but I am of opinion that the [illegible] ought to be made absolute. I do not feel it necessary to analyse the several authorities that have been cited; one or two of them seem to support the power to amend in this case, particularly that of *Williams* v. *Williams*. I place my judgment on section 222 of the 15 & 16 Vict. c. 76, which seems to me clearly to reach this case. Here the debt, for the recovery of which the action was brought, would have been barred on Oct. 22, 1849, by the Statute of Limitations; and on Oct. 18, 1849, a writ of summons was regularly issued and continued by *alias* and *pluries* writs down to May 28, 1851, when a *pluries* writ, regular in point of time, but having the memorandum of the date on the first writ of summons, by a clerical mistake as of Oct. 22, 1849, instead of Oct. 18, 1849, which was the true date of the first writ. If the *pluries* writ stands with its present indorsement, the plaintiff cannot take advantage of it, although regularly sued out in point of time, as a continuation of the first writ, so as to take the debt out of the operation of the Statute of Limitations. If we may amend it according to the fact, then the Statute of Limitations will be no defence, and the plaintiff can recover his debt. Under these circumstances, can it be said that the 15 & 16 Vict. c. 76, does not give us power to amend our own records according to the truth, by something that appears on our own records? The preamble to the amending clauses of the Act shows the intention of the Legislature. Between these parties there is a suit depending, and the real question in controversy is, whether the Statute of Limitations is a bar to the debt or not. Are we then not to order an amendment so as to make that issue to be determined according to the truth? There is nothing said about service of the writ in the 2 Will. 4, c. 39. As at present advised, I think that the defendant will in vain at the trial attempt to show that this amendment is a forgery, or to show as a defence what has been erased by this rule from the writ, for the amendment we make will show what was the original date of the first writ.

COLERIDGE, J. concurred.

WIGHTMAN J. concurred.

ERLE, J.—I am of opinion that we had the power of making this amendment before the statute; and if we had the power of amending the indorsement of the writ according to the truth before the 15 & 16 Vict. c. 76, *à fortiori* we have it now. This is an amendment in the common form; but it is said that if we allow it, we shall take away a vested right of the defendant to avail himself of the Statute of Limitations. It seems to me that every amendment takes away such a vested right of the opposite party to avail himself of a fatal defect. There is no need to amend the copy of the plurics writ served; and if we were to amend it we should be stating something that was not according to the fact. In *Williams* v. *Williams* and *Culverwell* v. *Nugee*, it was held that the courts had the same power to amend in cases like the present as in other cases. And, in some of the cases, I may observe, that a distinction has been made between an amendment according to the truth, and stating something in writing not according to the truth.

Rule absolute to amend the indorsement on the pluries writ.

Saturday, Jan. 29.

REG. *v.* CHURCHWARDENS, &c. OF HESTON.

Order of sessions—Estoppel—Order for maintenance of lunatic.

An order of sessions was made quashing an order of removal from B. to H. on ground of a subsequent settlement in I. Subsequently an order of sessions was made quashing a second order of removal from B. to I., on the ground of a settlement gained in H. by hiring and service subsequently to that in I:

Held, that the removing parish B. was estopped by the first order from setting up the settlement by hiring and service in H. subsequent to that in I., as the same point was in dispute between the removing parish B. and H. when the first order was quashed, and such subsequent settlement might then have been set up in answer to the settlement in I., on which that order was quashed.

This was a case stated under 12 & 13 Vict. c. 45 for the opinion of this court, by justice's order, after notice of appeal. The material facts are as follows:—On the 7th of February 1852 an order was made for the removal of Harriet Turner and her five children from the parish of St. Bride's to the parish of Heston, in Middlesex, the ground of removal being the birth settlement of the pauper's husband, William, and his father, John. This order was appealed against, and quashed by the Court of Quarter Sessions, on the ground that William had acquired a settlement by hiring and service in Isleworth parish in 1822. Another order was made in May 1852, at the instance of St. Bride's, on Isleworth parish, for the maintenance and expenses of William, the husband, a lunatic pauper, the ground of the order being the above-mentioned settlement by hiring and service in Isleworth in 1822. This order was also appealed against, and quashed by the Court of Quarter Sessions, on the ground of a subsequent settlement by hiring and service in Heston in 1851. In October 1852 a third order was obtained, at the instance of St. Bride's, upon Heston, for the maintenance and expenses of William, the lunatic, on the ground of the last-mentioned settlement by hiring and service in Heston in 1851. The question for the court was whether, on the hearing of the last order in Oct. 1852, the order of the 7th Feb. 1852 was an estoppel, and prevented St. Bride's from relying on the settlement by hiring and service in Heston in 1851.

Huddleston, in support of the order of sessions.—The real question is, whether an order adjudicating the settlement of the wife, quashed on appeal against an order of removal, is conclusive by way of estoppel, when an order is subsequently made for the maintenance and expense of the lunatic husband. [Lord CAMPBELL, C. J.—The question comes to this—Is this an adjudication on the same facts, between the same parties, by a competent tribunal? COLERIDGE, J.—The point in the first order was the settlement of the husband.] The first order was as to the settlement of the wife; the last was for the maintenance and expense of her lunatic husband. There is a distinction between the two cases; and the first order is not conclusive: (*Rex* v. *Wye*, 7 A. & E. 761.) As to the effect of quashing an order, *Rex* v. *Wick St. Lawrence*, 5 B. & Ad. 526, is an authority. "An order of sessions quashing an order of removal is also conclusive between the contending parishes as to the point decided by it. Then the question is, what that point really is. It is that the parish to which the removal was directed to be made was not bound to receive the pauper. The court may have come to that decision either on the ground that the pauper was not settled in the parish to which he was sent, or that he was not chargeable, or was irremovable when the order was made." [COLERIDGE, J.—Here the first order was quashed on the ground that the husband had a settlement in Isleworth, by hiring and service; and the second order was quashed on the ground that the husband had gained a settlement in Heston by hiring and service, subsequent to that in Isleworth; and now you seek to show that the order of sessions, quashing the order of Feb. 7, was wrongly made, by reason of some fact since discovered, viz.—a settlement in Heston by hiring and service in 1851.] The Pauper Lunatic Act, 8 & 9 Vict. c. 126, s. 58, gives the justices power to inquire *at any time* into the settlement of a pauper lunatic sent to an asylum. This distinguishes the case from that of a common order of removal, as observed in *Reg.* v. *St. Peter's, Droitwich*, 9 Q. B. 886. If the order of Feb. 7 is held to be conclusive, the object of the above provision will be defeated.

Clarkson, contrà, was not called upon.

Lord CAMPBELL, C. J.— The question here is, whether the order of the 7th Feb. with the additional evidence before us upon which it was made, estops the parish of St. Bride's from contending that at the time when the adjudication took place, in Oct. 1852, the pauper's husband was settled in Heston. The law on this subject is exceedingly well laid down in *Rex* v. *Wick St. Lawrence*, 5 B. & Ad. 526. I concur in that decision. It appears here that the point respecting the settlement of the husband on the 7th Feb. 1852 was adjudicated upon between the same parties before a competent tribunal, and that tribunal determined that the husband was not settled in Heston. Now the very same question arises on the order made in October, whether the husband was settled in the parish of Heston, and that was adjudicated upon when the order of removal of Feb. 7 was quashed, and it was adjudged that the husband was not settled in Heston. Mr. Huddleston allows that if the subsequent order had been an order of removal there would have been an estoppel, but distinguishes this as being an order of maintenance under the Pauper Lunatic Acts. The same question, however, arises on both orders. The validity of the order of maintenance depends on whether the husband was settled in Heston on the 7th Feb. 1852. That very same question between these same parties has been already adjudicated upon by a competent tribunal, and therefore the order of the 7th Feb. is an estoppel.

COLERIDGE.—I am of the same opinion. The first point is an elementary one pervading the whole law, and is not confined to orders of removal, viz:—That the same point between the same parties when once adjudicated upon is conclusive between them. But it is said that the order in this case is distinguishable because it is an order of maintenance of a lunatic pauper, and that by sect. 58 of 8 & 9 Vict. c. 126, this point may be raised "*at any time.*" Looking at the Act and the preceding section 57,—by which it is enacted that every pauper lunatic shall be deemed to be settled in the parish from whence sent to the asylum, until such parish shall in due course of law have established that such lunatic is settled in some other parish,—the object contemplated was the case of a poor lunatic, who can give no evidence on the point; and it may be an indefinite time therefore before it can be established where the pauper is settled. Consequently sect. 58 goes on to say that two justices at any time may inquire into the last legal settlement of any pauper lunatic confined in an asylum. The case of *Rex* v. *Droitwich* has nothing to do with this question. There the order was quashed on the ground that it ordered a repayment of the expenses of the lunatic to the wrong party. And we held that the grounds upon which the order was quashed might be given in evidence. We did not meddle with anything that had been already decided.

WIGHTMAN, J.—The grounds of distinction between this case and *Rex* v. *Wick St. Lawrence*, and for which the Pauper Lunatic Act is relied upon, do not appear to me to have the effect contended for. By the Act the justices may, at any time, inquire into the last legal settlement of the pauper; and, giving full effect thereto, this can only relate to the period at which the inquiry may be entered upon. But when once instituted, the question always remains the same as to the effect of the evidence; and what is conclusive at one time is so at another.

Order quashed.

R. *v.* EARNSHAW.

Quo warranto—Practice—Costs.

Where a rule for a quo warranto is made absolute by consent, the defendant undertaking to resign the office, the court will not exonerate him from the costs of a disclaimer if it should be necessary.

A rule *nisi* had been obtained for an information in the nature of a *quo warranto*, requiring the defendant to show by what authority he exercised the office of councillor of Oldham.

Cowling now appeared for the defendant, and stated that he did not wish to defend his title; but he asked that the rule should be absolute, the defendant paying the costs of this application, but not the costs of a disclaimer, if it should become necessary. Those were the terms imposed in *Reg* v. *Morton*, 4 Q. B. 149; and *R.* v. *Appleyard*, not reported; but in *R.* v. *Sidney*, 2 Pract. Rep. 144, Erle, J. in the Ball Court, refused to sanction that course.

Sir *F. Thesiger*, contrà, was not heard.

Lord CAMPBELL, C. J.—The latter case, before Erle, J. quite accords with my impression. Why should the costs of the disclaimer be thrown upon the relator?

Rule absolute generally.

BUSINESS OF THE WEEK.

Thursday, Jan. 27.

Lord CAMPBELL, C.J. delivered judgment in the following cases:—

HAYLOCKE *v.* SPARKE. *Rule discharged.*

MELLOR *v.* LEATHER. *Rule absolute.*

REG. *v.* THE ALDERGATE RAILWAY COMPANY.

Judgment for defendants on the principal point.

REG. *v.* KAY DINSDALE.—The *Attorney-General* moved for a rule for a criminal information against the defendant for writing a libellous letter to a clerk in the office of the secretary to the Master of the Horse. *Rule nisi.*

REG. *v.* A. WILSON.—*Hugh Hill* showed cause against a rule to set aside the side-bar rule requiring the defendant to pay the costs of the prosecution, pursuant to 5 & 6 W. & M. c. 11, he having removed the indictment into this court by *certiorari*, and having been subsequently convicted. The prosecution was for ill treating a child, and had been conducted by the City solicitor at the express request of the Lord Mayor. *R.* v. ——, 15 Q. B. 1060, and cases there cited, were referred to; but it was admitted in this case that the Lord Mayor would not be personally liable for the costs of the prosecution, which would be defrayed by the City. Sir *F. Thesiger*, contrà, was not called upon. By the COURT.—The Act was intended to indemnify a prosecutor from payment of costs to which he would otherwise be liable; but that is not this case. In a case where the costs of prosecution were to be defrayed by a subscription, it was held that the defendant could not be required to pay the costs under this Act. *Rule absolute.*

BIBBY *v.* LARPENT.—*Paterson* moved to set aside an order of Coleridge, J. allowing the defendants to take proceedings in error without putting in bail, and staying execution till a final decision in the House of Lords, on the ground of an improper exercise of discretion, and also excess of authority. The judge had no power to stay execution until decision in the House of Lords. Under the new Procedure Act, the record leaves this Court. By the COURT.—Still, after judgment in error the execution would proceed from this Court; and as the question raised in this case has been already decided in the Ex. Ch. the proceedings in that court would be formal only, and the case would go at once to the House of Lords. It is of course implied in the order that due diligence should be used in obtaining the decision of that tribunal. The Court will never interfere with the exercise of a judge's discretion at chambers; and there was clearly no excess of authority. *Rule refused.*

REG. *v.* NEW SARUM.—*Crowder* and *M. Smith* showed cause against a rule for a *mandamus* to the town council to pay to the county treasurer a sum of money for the expenses of conveying city offenders to the county gaol and maintaining them therein, including costs of repairing the gaol. The latter item was disputed by the borough; and the question now was, whether there had been a "special contract" between the city and the county, by which the payments were to be governed, within the meaning of 5 & 6 Vict. c. 98, s. 18. *Smirke*, contrà, was not called upon. By the COURT.—This case is too important to be decided upon the rule. We think therefore the writ ought to issue; and our present impression is, that there was no special contract, and that the city is liable. *Rule absolute.*

REG. *v.* THE LONDON AND NORTH-WESTERN RAILWAY COMPANY.—*J. Brown* moved for a rule for a *mandamus* to enforce payment of a sum of money, pursuant to the verdict of a compensation jury. *Rule nisi.*

REG. *v.* CARR.—*J. Brown* showed cause against a rule for a *quo warranto* to try the defendant's right to the office of councillor of the city of Oxford. He admitted that Mr. Carr was disqualified, but the person who had allowed the use of his name as relator was not the person really moving in the matter. *Welsby*, contrà, was not heard. *Rule absolute.*

DOE *v.* ACKLAND.—*J. Brown* showed cause against a rule for a new trial herein. The question was as to the identity of the premises sought to be recovered. *Channell*, Serjt. and *Lush*, contrà. *Rule absolute on payment of costs.*

[illegible] Chronicle.

Friday, Jan. 28.

The Chelmsford Archbridge Company.—The Court delivered judgment herein; Coleridge, J. and Erle, J. in favour of making the rule absolute for arresting the judgment; and Lord Campbell, C.J. and Wightman, J. contrà.

Rule discharged.

Tidd v. Briggs.—*Rose* moved for a *quo warranto* calling on the defendant to show by what authority he exercised the office of town councillor of Trinity Ward in the borough of Blackburn. *Rule nisi.*

Reg. v. Coates.—The *Attorney-General* showed cause. The Court, without calling on the other side, made the rule absolute.

Baker v. Benson.—Tried before Crompton, J. when the plaintiff was nonsuited. *E. James* now moved for a new trial. *Rule nisi.*

Theobald v. Cotterell.—Action against the Sheriff of Middlesex for a false return. Tried before Erle, J. Verdict for the defendants. *E. James* moved for a new trial.

Rule refused.

Reg. v. The Mayor of Newwick.—*Willes* moved for a *mandamus* to fill up a vacancy in the office of alderman, the statutable period having been allowed to elapse.

Rule absolute in the first instance.

Re The Bishop of Chichester and Dr. Phillpotts.—*Queany* moved for a prohibition to restrain any further proceedings in a case of *Bastiaen* v. *Bodwin* in the Consistory Court at Chichester. *Cur. adv. vult*

Doe d. Parkinson.—*Whateley* showed cause against a rule *nisi* for a new trial on the ground of misdirection. The point turned on the construction of a will, but it is too clear to demand a report. *Keating*, in support of the rule, was not called upon. *Rule absolute.*

Kaye v. Powell.—Rule *nisi* for a new trial. *Whateley* showed cause. *Part heard.*

Saturday, Jan. 29.

Reg. v. Day.—*Bramwell* and *Lush* showed cause against a rule for a *quo warranto* as to the office of coroner; and the substantial question was whether certain votes had a legal freehold, so as to qualify them to vote, under the provisions of a local Act called the Bowmoor Act. *T. Campbell Foster*, contrà. *Rule absolute, that the question may be raised in a special case, or upon a return.*

Reg. v. Barnet.—No cause shown. *Rule absolute.*

Howard v. Hudson.—Trespass for false imprisonment in the Remand Ward of the Queen's Prison. The defendant justified under a commitment of the plaintiff under the Insolvent Debtors' Act. The plaintiff now assigned a detention for three days after he was entitled to his discharge pursuant to the warrant of the County Court judge. The defendant pleaded that he did not receive the warrant; and issue was joined upon that plea. At the trial before Erle, J. the evidence was that the defendant never received the original warrant, but that he received a certified copy and acted upon it as if it were an original, and led the plaintiff to believe that he had the original. The learned judge directed a verdict for the defendant, but gave the plaintiff leave to move. *Parry* now moved accordingly to enter the verdict for the plaintiff on the above issue, or for plaintiff *non obstante veredicto*. *Rule nisi*

Re Davey.—This was an application against an attorney, but the Master's report exonerated the defendant from the charges made against him. *Rule discharged*

Reg. v. The Judge of the County Court of York.—*R. E. Miller* moved for a rule for a *mandamus* requiring the defendant to issue his warrant to bring up a prisoner for redearing under the Insolvent Act. *Rule nisi*

Lord Cawdor v. Beresford.—*Alexander* and *Willes* showed cause against a rule to set aside an award *Hugh Hill* and *Bullivant*, contrà. *Rule discharged with costs*

Huntley v. Russell.—*Mellor* moved for a rule to set aside an award on the ground of a refusal to receive evidence. *Rule nisi.*

Taylor v. Hill.—*Paterson* moved for a rule to set aside an award. *Rule refused.*

Chapters v. Hunter.—*Needham* showed cause against a rule to set aside a writ of *exgn. facias*, and all subsequent proceedings, on the ground that the writ was tested on the return day of the *capias* instead of the *quarto die post*. The defendant knew of the irregularity as long ago as the 1st Nov. and made no application until the 6th Dec. *Prideaux*, contrà. By the Court.—The application is too late.

Rule discharged without costs

Re The Town Clerk of Hull.—*Hugh Hill* moved for a rule for a *mandamus* requiring the overseers of a parish in Hull to pay to the town clerk a sum of 48*l.* 9*s.* 2*d.* as the contribution of the said parish towards the expenses of the town clerk in carrying into execution the Registration of Electors Act (6 Vict c. 18), according to the certificate of the council, under s. 55. *Rule nisi*

Re Blackwell.—*Cowling* moved for a rule for a *mandamus* to the corporation of Newcastle-upon-Tyne to permit Mr Blackwell to exercise the office of alderman. He was entitled to the office, judgment of ouster having been entered upon informations against the other candidates. *Rule nisi.*

Ex parte The Pinner and Rickmersworth Turnpike Trustees.—*Wells* moved for a rule for a writ of *certiorari* to bring up an order of justices, made under sect. 94 of the Highway Act, requiring the trustees to repair a turnpike-road. The objection was that there ought to have been a previous order upon the parish. *Rule nisi*

Reg. v. The Justices of Durham.—*Cowling* moved for a writ of *certiorari* to remove an order of quarter sessions, on the ground that an interested justice had taken part in the decision. *Writ granted.*

Re Hartley.—*Paterdorff* showed cause against a rule calling upon Mr. Hartley to deliver up a will. *Kingdon*, contrà. *Rule absolute without costs.*

Kitts v. Powell. (Argument continued.) *Keating* and *Orby* showed cause. *Adjourned.*

Monday, Jan. 31.

Reg. v. Newman.—The defendant was brought up for judgment for a libel on Dr. Achilli.

Fined 100*l*, *and to be imprisoned until paid.*

The Commissioners of Lynn Harbour v. The East Anglican Railway Company.—*Sir F. Kelly* moved for a rule calling on the defendants to perform certain works in pursuance of an award. *Rule nisi.*

Howard v. Brown.—This was a rule for an injunction and an account in an action for infringement of a patent. *Atherton* (*Quain* with him) appeared to show cause; and *Sir F. Thesiger* (*Webster* with him) contra.

Rule absolute for an account from date of writ.

Re The Bishop of Winchester and Dr. Phillpotts.—The Court gave judgment herein. *Rule refused.*

Court of Common Pleas.

Reported by Daniel Thomas Evans and R. Vaughan Williams, Esqrs. Barristers-at-Law.

Monday, Jan. 16.

Quartermaine and others v. Bittleston and another, Assignees of a Bankrupt.

Bankruptcy—12 & 13 *Vict. c.* 106. *ss.* 125, 126, 127, 128—*Goods of Bankrupt*—"*Goods in his order and disposition*"—*Order of the Court of Bankruptcy.*

An order under the 125*th section of the Bankruptcy Act authorising the sale of goods, which the bankrupt has in his possession at the time of the bankruptcy as the reputed owner, with the consent of the true owner, must be specific, that is, must be so worded as to show what goods they are that in the Court of Bankruptcy ought to be dealt with by the assignees, and disposed of by them as bankrupt's property in respect of reputed ownership.*

Semble, that such order may be made by the Commissioner on an ex parte application.

Semble, also, that in some cases it would not be necessary that the owner of the goods should be specified, but only the goods themselves.

Semble, also, that the Commissioner, before making such order, ought to require a good prima facie case to be made out by the assignees.

Per Maule, J. "*Reputed ownership*" *must be inferred from outward appearances.*

This was an action of trover, tried at the Leicestershire Spring Assizes, before Maule, J., in which, upon the pleas of not guilty and not possessed, a verdict was found for the plaintiffs for 621*l.* 16*s.* 10*d.* subject to a special case. The defendant Bittleston was the official assignee under the bankruptcy of F. G. Cuff, formerly the landlord of the Bell Hotel, Leicester, who was adjudicated a bankrupt on the 29th July 1851. The question for the court to decide was whether the plaintiffs, who were trustees for the children of the late Mrs. Cuff, or the assignees, were entitled to certain goods remaining on the premises of the Bell Hotel at the time of the bankruptcy. There were several points raised during the argument, but the case turned upon the effect of an order of the Commissioner of Bankruptcy in the following terms: "It is hereby ordered that all the goods and chattels which at the time the said E. G. Cuff became bankrupt were by the consent and permission of the true owner thereof in the possession, order, or disposition of the said E. G. Cuff, whereof the said E. G. Cuff was reputed owner, or whereof he had taken upon him the sale, alteration, or disposition as owner, shall be forthwith sold and disposed of by the assignees of the estate and effects of the said E. G. Cuff for the benefit of the creditors under the bankruptcy."

Bramwell, Q. C. *Hayes*, and *Willes* for the plaintiffs.—The question here mainly turns upon sections 125 and 128 of 12 & 13 Vict. c. 106. It is submitted that these goods were not "in the possession, order, or disposition of the bankrupt," and that the order of the Commissioner is inoperative. The plaintiffs were, in point of law, the owners of these goods, subject to an equity of redemption. They had power to carry on the business; and as the house was an hotel, there was an obligation on them to keep it open and the business moving. They kept possession through Barton, though he appeared a mere guest in the house. [Cresswell, J. referred to *Toussaint* v. *Harcourt*, Holt's N. P. Cas. 335.] Even if a case of reputed ownership were made out by the assignees, that is not enough; the statute requires something more. Firstly, they must be in the possession, order, or disposition at the time of the bankruptcy; secondly, they must be in his possession, order, or disposition, as reputed owner. So that it will be seen mere reputed ownership is not sufficient; the bankrupt may be the reputed owner, and not have the goods in his possession, order, or disposition. Furthermore, it is intended by the statute that the bankrupt, in addition, must also have the goods in his possession as true owner. Here, as appears upon the facts, the goods were not in the order and disposition of the bankrupt, but in that of the plaintiffs. It was found, as a fact, that Barton was in the house, and he was the only person who had the order and disposition of the goods. (*Toussaint* v. *Harcourt*, *supra*; *Jackson* v. *Irvine*, 2 Camp. 48.) Those cases proceeded upon the ground that the possession was colourable and not real. As to whether Cuff was the reputed owner of the goods, it ought to have been shown and stated as a fact on the case that Cuff was the reputed owner. There is no presumption of ownership. [Maule, J.—The opinion as to reputed ownership is what may be inferred from outward appearances, and, in the case of an hotel-keeper, unless people have the means of knowing that he is no longer owner, they will infer from the house being kept open as usual that he is.] As to the circumstance of being an hotel-keeper, there is the case of *Mulling* v. *Green*, 1 Car. & P. 382. [Maule, J.—You need not argue the point any further; we are all of opinion that Cuff was the "reputed owner."] (He argued on other points, upon which however, as above-stated, the case did not eventually turn, citing numerous authorities.) *Lastly*, as to the sufficiency of the order. Under the 125th section, certain words which were in the [illegible] [illegible] [illegible] fault. The [illegible] [illegible] [illegible]

this case is entitled to satisfy the provisions of the Act. If [illegible] is entitled to answer [illegible] the Act requires, [illegible] the assignees [illegible] of all property of which the bankrupt was [illegible] possession, or which he has had the disposition with the consent of the true owner, at the time of the act of bankruptcy, does not satisfy the requisites of the statute. The Act of Parliament says (and we must assume an order is necessary for this purpose) that if any bankrupt at the time he becomes bankrupt shall, by the consent and permission of the true owner thereof, have in his possession, order, or disposition any goods or chattels whereof he was reputed owner, or whereof he had taken upon him the sale, alteration, or disposition as owner, the court shall have power to order the same (that is the goods of which he shall be in possession as reputed owner, or have the order and disposition of with the consent of the true owner) to be sold; and I think, in accordance with the decision of the Lords Justices, that an *ex parte* order is sufficient for the purpose. But, at all events, the order which is to be made in respect of the goods of which the bankrupt is in possession as reputed owner, with the consent of the true owner, must be specific. If that is necessary, this order does not comply with the requisite of the statute, because it in general terms authorises the assignees to sell and dispose of any goods of any kind, and at any time, of which this bankrupt might, at the time of the bankruptcy, have been in possession. And that that is the fair effect of the section I think may be gathered from the subsequent sections which follow immediately upon this section; all are governed by the general introduction with respect to the power of the court over certain descriptions of property; and if we see in the sections that immediately follow anything that would not be satisfied by a general order, but for which a specific order is required, and if the same words are used as are used in the other sections of the Act which require a specific order, it seems to follow that a specific order must be given to satisfy the words of the statute. Now that, for the purposes of some of the sections, a specific order is required, is manifest, because, if you look at the 126th section, you find it authorises the court to make a specific order "if any bankrupt, being at the time insolvent, shall (except upon the marriage of any of his children, or for some valuable consideration) have conveyed, assigned, or transferred to any of his children, or to any other person, any hereditaments, offices, fees, annuities, leases, goods, or chattels, or have delivered or made over to any such person any bills, bonds, notes, or other securities, or have transferred his debts to any other person or into any other person's name, the court shall have power to order the same to be sold and disposed of for the benefit of the creditor under the bankruptcy." Now it is plain in that case what they are to order to sell are the hereditaments and goods transferred, bonds assigned, and debts made over; but no one can say the assignees shall sell and dispose of any hereditaments transferred, all debts assigned, all bonds handed over; it must be that, upon petition (on *ex parte* application, possibly, according to the decision of the Lords Justices) the Commissioners must be satisfied that some property has been assigned, some bills made over, or that some debts have been transferred, and the order must be to sell the same, that is, the property assigned or bills transferred, which are the subject of the application to the Commissioner. So in sect. 127, where the bankrupt has any personal or real estate extended by a fraudulent extent, if the extent were made under certain circumstances, the court shall have power, and may recover the same against the person claiming under it. It is plain, therefore, that the power and authority of the court are directed to the specific article extended, and must be confined to that. Then, in the following section, the 128th—"If any bankrupt shall have any government stock, funds, or annuities, or any of the stock of any public company either in England, Scotland, or Ireland, standing in his name in his own right, it shall be lawful for the court by writing to order all persons whose act or consent is thereto necessary to transfer the same into the name of the assignees, and to pay all dividends upon the same to the official assignee"—there must be a specific order directing the subject-matter of the property which is brought before the Commissioner by a specific though an *ex parte* application. It seems to me, therefore, when you view this section in connection with the subsequent sections, taken with the interpretation put upon it in *Heslop* v. *Baker* in the Court of Ex., inasmuch as there must be an order to vest the property in the assignees, it must be a specific order, though made on *ex parte* application, directed to the particular goods, to satisfy the provisions of the statute; and I think it is not at all inconsistent with the view taken by the Court of Ex. of the section. They say the section is not for the mere purpose of authorising the sale, but that an order to sell and dispose of is an order to vest, those words comprehending everything which the assignees, when they get the property, can by possibility do with it, because if they get that they must dispose of it in some way, and that order to sell and dispose of vests, by implication, the property in the goods. If an order to sell be necessary, it seems to me that an order to sell must be an order to sell the particular property which is the subject-matter of the order. It is unnecessary to inquire whether these words were inserted by design, or accident, or negligence and inadvertence; I do not know how that is; those who have anything to do with framing an Act of Parliament are, of all others, the worst persons to put a construction on it. We must take it as it is in the enactment. If they were inserted by design, there is much to be said in favour of their introduction, because, if you recollect, the goods are to be taken as goods that are, by admission, the property of another person; and it is not unfair to suppose that at least a *primâ facie* case should be made before the Commissioner before the real owner of the goods be put to litigation to test the right of property. There is much to be said (and possibly by accident a great good may have been done) in favour of the beneficial amendment of the law of bankruptcy by these words. The words being there, we are bound to put a construction on them; and, taking them in connection with the case of *Heslop* v. *Baker*, the order does not satisfy the provisions of the Act, and the plaintiff is entitled to our judgment.

MAULE, J.—I am of the same opinion. It appears that the provision of this Act of Parliament varies from the provisions in former Acts. In effect (though it might have been doubtful at first, and we doubted it), the provisions in the former Acts vested at once, without anything more, in the assignees all property of which the bankrupt was reputed owner, or had or took upon himself the order and disposition. In those cases the former Acts at once vested the property in the assignees, from the time of the act of bankruptcy, as much as if the property had been the property of the bankrupt. Now, certainly, that was a provision in the Act of Parliament in which the interests of a bankrupt's creditor appear to have been more considered than those of the true owner. That was natural enough in those who were distributing the property of the bankrupt, and whose main object it was to cause a distribution of all property that ought to be distributed among the creditors of the bankrupt. Now there was danger under that, that property which ought not to be distributed might come to be distributed; and though that might not happen often, yet there was danger that the true owner might suffer considerable vexation if that state of things were allowed to exist; and when the assignees seized goods that belonged to a third person, that third person had no means of knowing whether they claimed them as the bankrupt's, in all time and independent of the bankruptcy, or whether they claimed them as being subject to the same distribution as the bankrupt's property, and therefore vested in the assignees by virtue of the reputed ownership. There was nothing to give the true owner any notice or warning as to whether it would be set up or not, and, indeed, it very constantly happened that the question was, whether a certain property was that of the person who was the true owner of it. The assignees would make a case, in which they would say, this is the property of the bankrupt; or if not, at any rate it was in his possession before the bankruptcy, and it came into the possession of the assignees as if the bankrupt was the true owner. Now, depriving a man of his undoubted property under these circumstances was a very harsh measure as far as he was concerned, and more particularly as it was put and considered as a sort of delinquency on his part, namely, as enabling a bankrupt to obtain false credit by passing for the owner of goods of which he was not the owner, so that in that state of things the assignees might, at their election, seize the property, and take on themselves the whole responsibility of proving it was in the reputed ownership of the bankrupt, with the consent of the true owner, without any control over it. Now, the object of this section, I think, is, that they shall not do that unless they are in a condition to make (it means not only to a jury, but to a competent court) such a *primâ facie* case that such a court can see they have authority over the case in which those goods have been seized. In order to that purpose being effectuated, it shall be considered what sort of order there ought to be. Now, I observe the order is something like, and has some sort of analogy to, the finding of a bill by a grand jury, that before a person's liberty be affected, or he shall be tried for a supposed offence, a *primâ facie* case must be made to a competent tribunal to show that he is a person in respect of whom a case exists that is fit to be tried by a jury. Now I think it is a similar function that is intended to be conferred upon the Court of Bankruptcy, and that, in order duly to execute that, you must go beyond showing simply what is suggested ingeniously by the learned counsel, when I objected to the order, supposing it to be an order in this form, namely, to take all the goods that were in the order or disposition of the bankrupt, at the time of the bankruptcy, which would be quite inoperative. He said it might just as well have left that to the assignees (or nearly as well), without showing anything more than such an order: but it was answered thus,—still there would be something to inquire into, whether there were assets arising out of the actual property of the bankrupt, whether or not sufficient to pay all his debts in full. That is a very rare case, I allow, though not an impossible one. I do not think the Commissioner would have taken the trouble to enter a new species of dealing with such a contingency as that; but I think the true object of the Act would effectuate that—that the Commissioner of the Court of Bankruptcy ought to have an opportunity (*ex parte*, indeed, as held by the Lords Justices, but still to have an opportunity) of deciding on all the matters which the assignees would have to prove before a jury, in order to entitle them to take away the property from the person whose property it was. It seems to me not unreasonable, and seems to be gathered from the Act of Parliament, particularly with reference to what had gone before in the way of legislation, that the court ought to inquire as to all that a jury would have to inquire into on a trial, or that you are in the habit of inquiring into before certain functionaries; and if the assignees are not in a situation to make (in the absence of any opposition before the Court of Bankruptcy, or if they should dismiss their application before a Court of Appeal) a case for taking away certain goods, I think they ought not to be allowed to try the question before a jury. Now I do not think this order comes within the scope and intention of the Act. I do not think this order is sufficient. If the matter were tried before a jury, particular goods must necessarily be the subject of the trial. Upon a trial before a common jury they would have the power, and must necessarily inquire into the question whether certain particular goods were in the order and disposition of the true owner. Now this order does not apply to any particular goods, and it does not mention any particular owner; and I do not say it would be necessary absolutely in all cases that the goods of a particular owner must be specified; but it should be so worded as to show what goods they are that in the Court of Bankruptcy ought to be dealt with by the assignees, and disposed of by them as bankrupt's property in respect of reputed ownership. The order does not do that unless it does specify the things or the goods intended to be taken. Now this order entirely remits that to the assignees, to determine on their own inquiry, upon grounds not laid before the commissioners (or whether it had been laid before them or not)—leaves it to the assignees to seize any goods belonging to any person, whether or not they have been at all mentioned or put in question before the Court of Bankruptcy; and therefore I think it does not give to the true owner of the goods the benefit the Act of Parliament intended to give. One advantage would be this, that the true owner might always, by inspecting the proceedings in bankruptcy or by proper means, see whether any such order had been made; he would have some notice of the way in which his goods were sought to be taken away from him, whether as being in the order and disposition of the bankrupt, or in respect of their belonging to the bankrupt himself; and it would give notice and information on that subject, and he would have a remedy which he is intended to have. I therefore think that the plaintiff is entitled to the judgment.

CRESSWELL, J.—I am of the same opinion, for the reasons that have been so fully assigned by my Lord and my brother Maule. I do not think it necessary to add anything. I think the order is not sufficient.

WILLIAMS, J.—I am quite of the same opinion; it is unnecessary to decide more than that the order must point to the specific goods which are the subject of investigation.

JERVIS, J.—The order must be specifically directed to the goods which are the subject of the order,

Judgment for the plaintiffs.

Thursday, Jan. 27.

MITCHELL AND WIFE *v.* CRASWELLER, AND ANOTHER.

Negligence of servant—Liability of master.

A master is not liable for the negligence of his servant, unless the servant is at the time actually engaged in the business of his master.

A.'s servant, after going with his master's horse and cart about the business of his master, on his return, before putting up the horse and cart, took another person home in the cart. On his way back he ran over a person:

Held, that A. was not liable.

This was an action in which it was sought to recover damages from the defendants for the injury caused to the plaintiff's wife by the negligent driving of the servant of the defendants. The first count of the declaration was for the injury done to the wife personally. The second count claimed damages for the husband

Plea, not guilty. Jervis, C.J. at the trial, allowed a plea to be added traversing the allegation "that the defendants were possessed of the cart and horse."

The facts were that the driver had been sent with the cart to deliver goods in the city, and upon his return the foreman asked him to take him home in the cart. This he did without the permission of the defendants, and on his way back he threw the plaintiff Mrs. Mitchell down, and did the injury complained of. The Lord Chief Justice directed the jury to find for the plaintiffs, and they assessed the

damages at 30*l.* under the first count, and 10*l.* under the second.

Byles, Serjt. showed cause against a rule which had been obtained by *Shee*, Serjt.—It was the duty of the servant upon his returning from the city to take the horse to the stable; and, instead of doing so, he drove the horse elsewhere. He was therefore not engaged upon any business of his masters, and they are not responsible for his negligence: (*Joel* v. *Morrison*, 6 C. & P. 501; *Sleath* v. *Wilson*, 9 C. & P. 607; *Lamb* v. *Polk*, 9 C. & P. 629.)

Shee, Serjt. and *Garth*, in support of the rule.—The cart was under the care of the servant, and his business was not over until the cart was put up. The master is not relieved from liability by the servant going *extra viam*. The principle is that he is responsible to the public for employing a negligent servant (*M'Manus* v. *Crickett*, 1 East, 106.) Secondly, the judge had no power to allow the plea to be added, and the plea of not guilty admits the matter of inducement, that the defendants were possessed of the horse and cart (*Faverner* v. *Little*, 5 Bing. N. C. 286); and therefore the evidence as to this should not have been admitted.

By the COURT.—The evidence that the defendants were not possessed of the cart and horse at the time when the accident happened was properly admitted under the plea of not guilty. Whether the judge had power to allow the amendment may be a matter for further consideration; but it is not necessary to be decided now. With respect to the main point, the servant could not be considered as engaged in the performance of his master's business; and the defendants are not liable for his negligence.

Rule discharged.

Saturday, Jan. 29.

DALLOWAY *v.* TAYLOR.

A writ of distringas was received by the sheriff, who sent a warrant to his officer by post. The warrant was lost, and the plaintiff delayed:

Held, that it was the duty of the sheriff to send the warrant, and, it being lost, he ought to pay the expenses incurred by the plaintiff.

In this case a rule had been obtained by *Bayley* calling on the plaintiff to show cause why a warrant should not be renewed. It appeared that a *distringas* issued, and was returnable on the 2nd Dec. last. On writing to the sheriff's officer, the plaintiff's attorney learnt that the warrant from the sheriff, which had been sent to him by post, had not come to hand, and had, in fact, been lost. The application for a renewal of the warrant was opposed, on the ground that the *distringas* being now taken away by the Common Law Procedure Act, the plaintiff would be delayed till May; and would get judgment sooner by beginning *de novo* under that Act; and moreover, the writ of summons having run out, proceedings on it could not be taken.

Bayley, for the sheriff of Essex.—The *distringas* issued before the Act came into operation, and unless it can be shown that the sheriff was to blame, he ought to be relieved.

JERVIS, C. J.—But you ask us in fact to issue a new *distringas*, and that we cannot do. The plaintiff is entitled to have the expenses to which he has been put repaid to him. The sheriff received the writ, and the duty was upon him to send the warrant. Let it be referred to the Master to ascertain what costs have been reasonably incurred by the plaintiff and lost, and *This rule is discharged with costs.*

Where the sheriff seizes goods under a writ of fi. fa. and before removal of the goods an interpleader order is obtained, for the purpose of ascertaining the ownership of the goods, the sheriff ought not to pay the rent due to the landlord.

Stat. 8 Anne, c. 14, s. 1, was intended to apply to cases only where the landlord has lost his chances of distraining upon goods by their removal; and the Interpleader Act does not affect this.

In this case *Watson*, Q.C. had obtained a rule calling upon the defendant to show cause why an order of Cresswell, J., that the sum of 25*l.* should be paid over by the plaintiffs to the defendant, should not be set aside.

The plaintiffs, as sheriffs, had seized under a *fi. fa.* certain goods which were claimed by the defendant as belonging to him. An interpleader order was granted to ascertain to whom the goods in question belonged. The goods were sold by the sheriffs, but remained upon the premises. The landlord claimed 25*l.* for rent: this the sheriffs paid to him. Upon the trial of the issue the verdict was for the claimant.

[illegible], Serjt. showed cause.—The sheriffs had no power to pay the 25*l.* to the landlord. Stat. 8 Anne, c. 14, *s.* 1, enacts that no goods or chattels whatsoever lying or being in or upon any messuage, &c. shall be liable to be taken by virtue of any execution on any pretence whatsoever, unless the party at whose suit the said execution is sued out shall, before the removal of such goods from off the said premises by virtue of such execution or extent, pay to the landlord of the said premises or his bailiff all such sum or sums of money as are or shall be due for rent." Here there has been really no execution; for, until the interpleader issue was tried, it was uncertain whether the sheriff should hold for the execution creditor or for the claimant, and that issue was found for the claimant. He has paid the rent with another's goods. [JERVIS, C.J.—In granting the rule we understood the goods were removed, and the question intended to be raised was whether, whatever goods were removed the sheriff could say he ought not to pay the rent to the landlord, because the goods were the goods, not of the tenant, but of somebody else; and we were referred to *Forster* v. *Cookson*, 1 Q. B. 419.] That case does not apply here, the goods not having been removed, and the landlord being able to distrain at any time: (*Smalman* v. *Pollock*, 6 M. & G.)

Watson, Q. C. in support of the rule.—The meaning of the statute is, that where the sheriff seizes what the landlord might have the right to distrain, he must pay the rent. The sheriff was under a positive order to sell. [JERVIS, C. J.—But there is nothing in the interpleader order to alter the rights of parties. You might have gone to the judge to alter the order.] The claim for rent comes after the order to sell. [WILLIAMS, J.—The sheriff did not sell under the execution, but under the judge's order.] But the order was given on the foundation of the execution.

JERVIS, C. J.—This rule must be discharged. Until after the interpleader issue was tried, it was uncertain whether there would be an execution or not. After the order for the interpleader, a claim for rent is made by the landlord. The sheriff takes upon himself to pay 25*l.* to the landlord, in disobedience to that order. The order of Cresswell, J. was merely to place the parties in the same state they were in before. I think his order was right. This matter cannot be affected by the Interpleader Act, which does not propose to deal with the claim of the landlord under the statute of Anne, and that statute was only intended to apply to cases where the landlord has lost his chances of distraining on the goods by their removal. *Rule discharged with costs.*

BUSINESS OF THE WEEK.

Friday, Jan 28.

The Court sat to-day in the Exchequer Chamber, hearing errors from the Court of Q. B.

Saturday, Jan. 29.

DUNNETT *v.* HOWARD.—*Byles*, Q.C. and *Couch*, showed cause against a rule obtained by *Honeyman*, calling upon the defendant to show cause why an award should not be set aside, on the ground that the award was bad, the arbitrator having awarded one entire sum as due to the said defendant in his own right, and as administrator of Geo. Howard, without specifying how much was due to him in his own right, and how much in his representative capacity. *Bramwell*, Q.C. and *Honeyman*, appeared to support the rule. JERVIS, C.J.—The submission refers all matters in difference between the plaintiff and defendant, either in the defendant's own right, or as administrator of Geo. Howard, and the arbitrator awards a lump sum. I should say the parties had consented to the award being made in this form, it being natural that one lump sum should be awarded. What the plaintiff complains of is, that the arbitrator has not given him the means of distinguishing what is awarded to the defendant in his own right, and what in his representative capacity. But if he says the whole sum there will be no difficulty.

Rule discharged with costs.

LIVERPOOL AND LONDON FIRE AND LIFE INSURANCE COMPANY *v.* PRICHARD.—*M. Smith* showed cause. *Byles*, contrà. *Cur. adv. vult.*

Monday, Jan 31.

MOFFATT *v.* DIXON.—The COURT intimated that they would postpone giving judgment in this case till next term.

LIVERPOOL INSURANCE, &c. *v.* ———. The COURT delivered judgment in this case. *Rule discharged.*

CLOTHIER *v.* GANDELL.—*Lush* moved for a rule to show cause why the Master should not be directed to review his taxation in this matter. The Master had allowed the defendant full costs of proving the first issue. As to the conclusion the Master came to in taxing the plaintiff's costs, it cannot be resisted. But he went wrong on the other items: he disallowed the costs of inspection and copies of documents by the defendant. Application had been made by the other side for vouchers and copies of accounts, which we gave them at their request. The Master thought there was no difference between the plaintiff's costs of proving his issues and those costs. The COURT, after consulting with the Master, said the Master was quite right, and the rule therefore must not go. *Rule refused.*

Ex parte HAWKE.—*F. James*, Q. C. obtained a rule calling on E. Goatley, one, &c to show cause why Hawke, his articled clerk, should not be discharged from his articles of clerkship, and why he should not be re-assigned to one Julius Lawrence. The discussion of this case lasted a considerable time, the affidavits on both sides were very long and recriminatory; and as no point of interest or substance was decided in the case, and as the publication of the facts can serve no useful purpose, we withhold them. *Wordsworth* supported the rule. Ultimately the COURT, by consent of parties, disposed of the rule without making it absolute in its full terms. It ordered the surrender and cancellation of the articles, which was done in court. It further intimated that after Hawke had served with Lawrence the applicant must apply to Goatley for a certificate of service; it would then be for the Law Institution to come and oppose his admission as an attorney, and open the merits of the entire case, if it should be thought he was not a fit person to be admitted. Upon that point the Court would not express an opinion. *F. James* then stated that a question arose as to costs. The affidavits on Hawke's side extended to ninety-eight folios, and it was now asked of the court to order the Master to read the affidavits, ascertain how much is relevant, and report to the court what ought to be done with regard to costs. JERVIS, C. J.—After referring to the Master, we think that the costs of those parts only which he shall say are relevant should be allowed. *Rule accordingly.*

HAKEMAN *v.* FREEMAN.—This cause was tried before Talfourd, J., at the sittings in London, for the present term. Verdict for plaintiff 30*l.* The declaration alleged that plaintiff and defendant bargained to buy and sell a large quantity of currants, to be delivered in reasonable time; breach, non-delivery. *Hawkins* now moved for a rule calling on the plaintiff to show cause why the verdict should not be set aside and a new trial had, on the ground that the learned judge had misdirected the jury as to the component of damages, and that the verdict was against the evidence. The sum of 30*l.* had been allowed by the jury as the special damage. The Court said they would speak to Talfourd, J., on the question, and would intimate through the Master whether there should be a rule *nisi* or not. *Stands over.*

MESSITER *v.* ROSS.—*Quain* showed cause against a rule *nisi* to set aside the judgment signed in this case, obtained by *M. Smith*. The case will be duly reported.

POWER *v.* THE AUSTRALIAN STEAM NAVIGATION COMPANY.—*Needham* showed cause against a rule obtained by *Lush* why the trial of this cause should not be postponed till the sittings after Trinity Term, in order to enable defendants to produce material evidence. He contended that the rule had been moved solely for the purpose of delay, and of driving the plaintiff, who is a poor man, to a compromise. The COURT, without hearing the other side, said the rule must be absolute to postpone the trial. The defendants were entitled to that course in order to enable them to produce their witnesses.

Rule absolute.

Re THE ARBITRATION BETWEEN WILLIAM LAPPS AND EDWARD TODD.—*Hugh Hill*, Q. C. showed cause against a rule obtained herein by *J. Addison*. *Addison* was heard in support of the rule. The case will be duly reported.

Rule discharged with costs.

Re BECKETT in the cause of EVERETT *v.* WILLIAMS.—This was a motion to set aside an order of Talfourd, J. to revive judgment herein, on the ground that Beckett the attorney had appeared to the action without authority of the defendants. It was an action of ejectment, and there were four defendants. *Watson*, Q. C. showed cause against a rule in the above terms, obtained by *Bramwell*, Q. C. The first objection is, that they have taken the wrong party; they should have called on defendants to show cause, and not on Mr. Beckett. The court cannot call on Beckett to show whether he had authority or not: (*Haddock* v. *Phillips*, 13 M. & W. 702.) *Bramwell*, Q. C. in support of the rule. No reportable point arose.

Rule absolute, unless Ward the landlord will come and enter an appearance; the costs to be costs in the cause.

LEROUX *v.* BROWN.—*Allen*, Serjt. applied for leave to amend the rule herein; but as he was not furnished with affidavits, the COURT, acting on the general rule, refused to entertain the application. *Leave refused.*

DIXON *v.* MALCOLM.—*Hyde* showed cause against rule obtained herein by *Baddeley* for a rule to send out a commissioner abroad to examine witnesses. JERVIS, C. J.—It is a common right, and we cannot refuse it. *Rule absolute.*

COURT OF EXCHEQUER.

Reported by FREDERICK BAILEY and C. J. B. HERTSLET, Esqrs. Barristers-at-Law.

Monday, Jan. 31.

CROUCH *v.* THE LONDON AND NORTH-WESTERN RAILWAY COMPANY.

Pleading several matters—Common Law Procedure Act. It is necessary on obtaining leave to plead several matters that an affidavit should be made by the party or his attorney in accordance with the terms of 15 & 16 *Vict. c.* 76, *s.* 81, *to the effect that he advised and believes that he has just grounds to traverse the several matters proposed to be traversed by him, and that the several matters sought to be pleaded by way of confession and avoidance are respectively true in substance and in fact.*

Bovill moved, on behalf of the defendants in this case, for leave to plead several matters without an affidavit. The 81st section of the New Common Law Procedure Act enacts, that the plaintiff in any action may, by leave of the court or a judge, plead in answer to the plea, or the subsequent pleading of the defendant, as many several matters as he shall think necessary to sustain his action; and the defendant in any action may, by leave of the court or a judge, plead in answer to the declaration or other subsequent pleading of the plaintiff as many several matters as he shall think necessary for his defence, upon an affidavit of the party making such application or his attorney, if required by the court or judge, to the effect that he is advised and believes that he has just grounds to traverse the several matters proposed to be traversed by him, and that the several matters sought to be pleaded as aforesaid by way of confession and avoidance are respectively true in substance and in fact; provided that the costs of any issue either of fact or law shall follow the finding or judgment upon such issue, and be adjudged to the successful party, whatever may be the result of the other issue or issues.

This was an action for the non-delivery, not forwarding by the next train, and refusing to carry, certain parcels stated in the declaration to have been delivered to the defendant at different times and at different places, some of them so long since as June and September, 1851. The defence was that these parcels were what is called "packed parcels;" but in pleading such a plea as would meet the supposed facts this difficulty arose, that, although they might suspect, yet they could scarcely swear, that these parcels were packed. The company were anxious without making an affidavit, and under the circumstances they ought to be at liberty to compel the plaintiff to prove his case in the first instance; they would then have the opportunity of proving their plea on cross-examination. [PARKE, B.—You mean that the only affidavit you can produce is that you desire to make the plaintiff produce a witness whose evidence on cross-examination will be material to your defence.] That we could do. The clerk at the station acts according

[illegible] Court, [illegible] and [illegible] certain parcels of land [illegible] "messuages," but be deemed generally to [illegible] those words referred to mean 40*l.* a year.

Lord Cranworth, C.—We are all of opinion that there should be some limit, but it is not usual for the court to say what it is. It must be such as the parties can make with some consistency. *Rule refused.*

BUSINESS OF THE WEEK.

Saturday, Jan. 29.

Hobson *v.* Neale.—This was a case sent to this court by the Court of Chancery prior to the 1st Nov. 1852, on which day the Chancery Practice and Course of Procedure Amendment Act (15 & 16 Vict. c. 86) came into operation, the question being, whether certain property was liable to legacy duty. The court referred it back to the Court of Chancery to say whether certain decrees for the sale of certain real estate were made pursuant to the powers of sale contained in the will, or whether such decrees were made in the exercise of the jurisdiction of the court; as, in the one case, the legacy duty would be payable, and in the other it would not.

In the Stamp Duty on a Conveyance from Lord Mount Edgcumbe and Thomas Gill to the Plymouth Great Western Dock Company.—This was a case stated under the provisions of the 13 & 14 Vict. c. 97, for the purpose of ascertaining the opinion of the court on the amount of *ad valorem* stamp duty payable. The consideration was 10,000*l.* paid down, a rent-charge of 750*l.*, redeemable on payment of 15,000*l.*, and a rent-charge of 600*l.* redeemable on payment of 12,000*l.* It appeared that the payment of the latter sum could be enforced on giving a certain notice, but no such claims was inserted with respect to the other sum.

Judgment for the Inland Commissioners as to the 12,000l. only.

Re Taylor. *Rule absolute for payment of the legacy duties.*

Dickenson *v.* Rogers. *Cur. adv. vult.*

Monday, Jan. 31.

Smith *v.* Peat.—*Phipson* showed cause against a rule to plead several matters. *Clarke* contrà, was not called on.

Rule absolute.

Evans *v.* Mathew.—*Crowder*, Q.C. showed cause against a rule calling on the plaintiff to show cause why an attachment should not issue against him for not delivering up a bill of exchange for 110*l.* pursuant to the order of Martin, B.

Referred to the Master to report to a judge, who is to decide.

Holland *v.* Morley.—*Aspland* moved for a rule to rescind an order of Martin, B. for further particulars. *Hayes*, contrà.

Rule refused.

Nash *v.* Hedger.—Tried before Platt, B. in Middlesex, this term. Verdict for the plaintiff, damages, 100*l.* *Wilkins*, Serjt. moved for a new trial, on the ground that the verdict was against the weight of evidence and the damages excessive. *Rule refused.*

Parsey *v.* Parry and another.—*Watson*, Q.C. moved in this case, tried before Platt, B. to set aside the verdict for a new trial, on the ground of misdirection, and that the damages were excessive. It was an action for an excessive distress, with a count in trover.

Rule nisi upon the model being restored in the same state it was, and upon terms referred to a judge at chambers.

Lee *v.* Cotterell.—*James*, Q.C. showed cause against the rule for a new trial herein.—*Watson*, Q.C. contrà.

Rule absolute by consent, on payment of all costs within a fortnight.

EXCHEQUER CHAMBER.

Reported by C. J. B. Hertslet, Esq. Barrister-at-Law.

(Before Alderson, B. sitting alone.)

Saturday, Jan. 29, 1853.

Staff *v.* Howlett.—In this case a rule had been obtained to set aside an award. *Hawkins* showed cause. *O'Malley*, Q.C. and *Couch*, contrà. *Rule discharged.*

Buck and another *v.* Peart.—*Huddlestone* showed cause against a rule, calling on the plaintiffs, to show cause why the verdict entered for them should not be set aside or a new trial had. *Bull*, in support. *Rule absolute.*

Bebbington *v.* Griffith.—*Atherton* applied for a rule to set aside an attachment against the plaintiff and discharge him out of custody, where he now is for not obeying an award. After consulting with the court,

Rule nisi returnable at chambers.

Monday, Jan. 31.

Marsh *v.* Carter.—*Kinnaly* moved for a prohibition to the judge of the County Court of Worcestershire to restrain him from proceeding with a plaint, on the ground that the title to land was in question. *Rule nisi granted.*

Young *v.* Michael. *Rule enlarged.*

Gladding and others *v.* Robinson.—*Bramwell* showed cause against a rule to set aside the final judgment herein, and to discharge the defendant out of custody on payment of costs. *Lush*, contrà.

Rule absolute. Defendant to pay costs and plead on or before Friday next, and to change venue to London. This rule to be taken as notice of trial for the adjourned sittings after this term; in default, rule discharged with costs.

BAIL COURT.

Reported by T. W. Saunders, Esq., of the Middle Temple, Barrister-at-Law.

Friday, Jan. 28.

(Before Erle, J.)

Knight and others *v.* Gaunt.

Practice—15 & 16 Vict. c. 76, s. 101.—Motion to set aside a notice to proceed.

Ball moved for a rule calling upon the defendant's attorney to show cause why the twenty days' notice to proceed to trial, given in this case under sect. 101 of the 15 & 16 Vict. c. 76, should not be set aside for irregularity, or why the time for proceeding to trial should not be extended, and why the said attorney should not pay the costs of this application.

It appeared that this action was commenced in the year 1845, and that the defendant pleaded in the month of January 1846; that shortly afterwards the defendant absconded from this country under a charge of forgery, and has never returned, which is the reason that no further steps have been since taken in the action.

By rule 176 of the New Common Law Rules, it is ordered that "in all causes in which there have been no proceedings for one year from the last proceedings had, the party, whether plaintiff or defendant, who desires to proceed shall give a calendar month's notice to the other party of his intention to proceed," &c.

Upon these facts it was contended that the notice in question was irregular, for that, as no proceedings had been had in the action for more than a year, the defendant's attorney should have given a calendar month's notice of his intention to take the present proceedings. It was also urged that, as all the preceding facts were known to the defendant's attorney, he should be called upon to pay the costs of this application. *Rule nisi.*

Ex parte Dr. Chadwick.

Summary conviction.

When a justice has jurisdiction to enter into a question, he has jurisdiction to decide upon it; and this Court will not in such a case interfere with his decision.

Field moved for a rule for a *certiorari* to remove into this court a conviction of Dr. Chadwick by the stipendiary magistrate of Manchester for an encroachment upon a public footpath, contrary to the provisions of a local statute.

It appeared that Dr. Chadwick is owner of a house, No. 20, Marsden-square, Manchester, and that, having made some alteration in a cellar-grate, he was, pursuant to the local Act, summoned before the stipendiary magistrate for an obstruction under the Act. At the hearing, Dr. Chadwick was convicted and fined 20*s.* The Act itself contains a clause providing that no order, &c., shall be removed by *certiorari*. It was now contended that the alleged obstruction was not within the meaning of the Act, and that the magistrate had no jurisdiction to convict.

Erle, J.—To support that proposition, it must be shown that the subject-matter was not within his jurisdiction. If the magistrate had a right to entertain the question, he had a right to decide upon it.

Field.—It is shown that the cellar-door never was on the footway, and therefore not within the terms of the Act.

Erle, J.—The prosecutor says this is a part of the footway; the defendant says it is not. I think the justice was bound to entertain that question, and that his decision upon it is not to be questioned in this way. The Legislature has constituted him the proper tribunal to consider such questions, and I cannot interfere with his decision. *Rule refused.*

Saturday, Jan. 29.

(Before Erle, J.)

Reg. *v.* Henry Blackburn.

Murder—Admitting to bail.

The prisoner, who with three others was charged before justices with the crime of murder, was committed to take his trial. Subsequently an inquest was held by the coroner, when additional evidence was produced, the effect of which was to exculpate the prisoner, and the jury returned a verdict of not guilty as to him.

Upon these facts this Court admitted the prisoner to bail.

In this case *Scotland*, on a previous day (20 L. T. Rep. 227) obtained a rule for a *certiorari* to remove into this court the depositions taken before the committing magistrates on a charge of murder against the defendant, and for an order that he may be admitted to bail in the country, the coroner's jury (whose investigation took place subsequently to that before the justices, and before whom additional evidence was adduced, which went to exculpate the prisoner) having returned a verdict of not guilty as regards him. The depositions having now been returned, and an affidavit being produced of the service of the rule upon the two committing magistrates, the prosecutor and the attorney for the prosecutor, who was also the clerk to the justices:

Scotland moved that the prisoner may be admitted to bail in the country.

Erle, J. ordered that he might be admitted to bail in his own recognisance for 400*l.* with four sureties in 100*l.* each, or six sureties to the amount of 400*l.* in all. *Rule accordingly.*

Nutting *v.* Nutting.

County Court—New trial with a jury, where the former one was before the judge alone.

A plaint was tried in the County Court before the judge alone, who gave judgment for the defendant. Subsequently a new trial was granted in general terms. Upon this the plaintiff gave notice of his intention of having a jury, and at the trial a jury appeared, when the judge refused to try the cause by such jury, as he had given no leave for a jury, and the case was accordingly struck out. Upon an application to this court for a mandamus to compel the judge to try the case by a jury:

Held, First, That if the amount of the debt was under 5l. (whereby the judge would have a discretion in granting a jury), it was for the party opposing the rule to show it, as the fact was within his knowledge.

Secondly, That under the 79th rule of the new County Court Rules, a party has an absolute right to a jury, notwithstanding a former trial without a jury.

Thirdly, That it was no answer to this application that no legal jury could be obtained.

In Michaelmas term (Nov. 29) *Lush* obtained a rule *nisi* for a *mandamus* commanding the judge of the County Court of Kent, holden at Margate, to try this cause by a jury.

It appeared from the affidavits that this cause had been tried before the judge himself, and without a jury, in July last, when the judge gave judgment for the defendant. Subsequently, the plaintiff applied for a new trial, which was granted. Upon this the plaintiff gave notice of his intention to try the cause by a jury, and on the day of trial a jury was accordingly in attendance. The judge however objected to try the cause before a jury, inasmuch as he had given no leave for one, and he directed the cause to be struck out, which was accordingly done. In the affidavits used upon showing cause it was stated that the judge assigned also as a reason for refusing to try by a jury, that there was no legal jury panel from which the jury could be selected.

By the 9 & 10 Vict. c. 95, s. 72, it is enacted, "that the sheriff of every county, and the high bailiffs of Westminster and Southwark, shall cause to be delivered to the clerk of the court a list of persons qualified and liable to serve as jurors in the Courts of Assize and Nisi Prius in their county, city, and borough respectively, within fourteen days from the receipt of the jury-book from the clerk of the peace of the county or other officer, each list containing only the names of persons residing within the jurisdiction of the court; . . . and whenever a jury shall be required, the clerk of the court shall cause so many of the persons named in the list as shall be needed in the opinion of the judge to be summoned to attend the court at a time and place to be mentioned in the summons," &c.

Margate, it appeared, is within the district of the Cinque Ports, and is attached to Dover, and the sheriff of Kent makes no return of jurors from that district, which is exempt, and therefore the clerk of the Margate County Court had no list of jurors. On account of this defect in the Act it has been customary, when a jury has been required, to obtain the consent of the other side, in which case a jury has been summoned from the persons composing the last grand jury at Dover. In the present case such consent was given, and the jury were accordingly so summoned.

Chambers Q. C. and *Simons* now showed cause, and contended, first, that it did not appear upon the affidavits that the matter in dispute exceeded 5*l.*, which it must exceed in order to give a party an absolute right to a jury, it being in the discretion of the judge if it does not exceed that amount: (sect. 70, 9 & 10 Vict. c. 95.) Secondly, that as the judge had not given any leave for the second trial to be before a jury, the party was not entitled to have one; the 89th section enacting that the judge shall have the power, "if he shall think fit, to order a new trial to be had upon such terms as he shall think reasonable," &c. Thirdly, that the judge was right in refusing to try with the jury who attended, such jury not being obtained in the manner pointed out by the Act, and therefore not a lawful one.

Lush, in support of the rule, argued against the first objection, that it sufficiently appeared that the amount sought to be recovered exceeded 5*l.* [Erle, J. You need not trouble yourself as to that, for, as it is a fact within the knowledge of the other side, they should have denied it if it were so. I take it therefore that there is no doubt that the sum exceeded 5*l.*] Secondly, that although by the old County Court rules a second trial, as in this case, could not be had before a jury, inasmuch as rule 20 required that "every notice of a demand of a jury . . . must be made in writing to the clerk of the court *two clear days before the return of the summons*," yet under the 79th rule of the new rules the demand of a jury need only be made "*two clear days before the day of hearing.*" [Erle, J. You need not argue further upon that point; I am with you upon it.] Thirdly, that it is no answer to this application, that the party will not be able to get a jury, it not being for the judge to speculate upon whether or not, when the cause comes on for trial, a proper jury will be present.

Erle, J.—I think that the judge had no right, on the second trial, to refuse hearing the case before a jury. Upon such a trial I am of opinion that the party had a right to have a jury. *Rule absolute.*

Monday, Jan. 31.

(Before Crompton, J.)

Ex parte W. A. Smith.

Insolvency—New security for old debt.

An insolvent debtor was adjudged to be entitled to the benefit of the Act, but was to be detained in custody as to the debt of A. and B. until the expiration of twenty months. Whilst so in custody it was agreed between the insolvent and A. and B. that the latter should discharge the former out of custody upon his giving them a warrant of attorney for the payment of their debt

three instalments. Upon this, the warrant of attorney was given, and the insolvent was liberated:

Held, that such warrant of attorney was void; and upon an application to this court for the purpose, it was set aside.

On a former day *Lush* obtained a rule, calling upon Messrs. Humphreys and Thirst to show cause why a warrant of attorney, given to them by William Andrew Smith to secure the payment of a sum of money, should not be set aside.

It appeared that on the 24th Sept. 1851 Smith (who was then in prison at the instance of Messrs. Humphreys and Thirst and other creditors) petitioned the Insolvent Debtors' Court for his discharge. On the 29th the vesting order was made; and on the 8th Nov. following his petition was heard and adjudicated upon; and the adjudication was that the insolvent should be discharged from custody forthwith as to certain debts; but as to four debts due to certain creditors he was to be discharged as to them when he had been in custody six months from the date of the vesting order; and as to a debt due to another creditor after he had been like manner in custody eleven months; and as to the debt of Messrs. Humphrey and Thirst after he had been in custody for twenty months, which last-mentioned period will expire in May next. The period of imprisonment with respect to all the debts, except that of Messrs. Humphreys and Thirst, expired in Aug. last, at which period, therefore, he was in custody at the suit of the two last-mentioned creditors alone. Subsequently it was agreed between the insolvent and Messrs. Humphrey and Thirst that they should give him his discharge upon his giving them a warrant of attorney for their debt for 80*l.*, payable by three instalments of 10*l.* each, payable respectively on the 30th Jan., 30th April, and 30th July in the present year, which warrant of attorney was accordingly given, and the insolvent was discharged out of custody.

By sect. 31 of 1 & 2 Vict. c. 110, it is enacted "that, after any person shall have become entitled to the benefit of this Act by any such adjudication as aforesaid, no writ of *fieri facias* or *elegit* shall issue on any judgment obtained against such prisoner for any debt or sum of money with respect to which such person shall have so become entitled, nor in any action upon any new contract or security for payment thereof, except upon the judgment entered up against such prisoner according to this Act," &c.

J. Browne now showed cause, and contended that under the circumstances the warrant of attorney was lawfully given, for that the restriction applies only to cases where the insolvent is, at the time he gives the security, *entitled to the benefit of the Act*, which in this case he was not, as his term of imprisonment had not expired; and that, according to the proper construction of the Act, these words have reference alone to the period when the insolvent is entitled to be discharged *out of* custody—a construction which is borne out by the language in sects. 78 and 85.—and not to any period prior thereto. He also argued that the cases upon the subject are those only where the security has been given to buy off an opposition, or after the insolvent has actually become entitled to the benefit of the Act: (*Hall* v. *Dyson*, 20 L. J. 224, Q. B.; *Murray* v. *Rowse*, 8 B. & C. 421.)

Lush, in support of the rule, contended that the distinction contended for on the other side had no foundation, for that the rule is general that where an insolvent is remanded at the suit of a particular creditor, and he buys off that creditor by giving him a security for his debt, that security is void, for the reason that before his adjudication he gives a warrant of attorney to the assignee, who has precedence for the sake of the creditors at large, and which would be liable to be defeated if the insolvent were to be allowed to give another security to a particular creditor. *Ashley* v. *Killick*, 5 M. & W. 509, was precisely in point. He also contended, that *being entitled to the benefit of the Act* means being relieved from being sued, and not being discharged out of custody. *Ex parte Hart*, 2 Dow. & L. 778, 14 L. J. 92, Q. B. is precisely in point, and cannot in principle be distinguished from this case.

Crompton, J.—The case of *Ex parte Hart* is distinctly in point, and shows that the court will interfere to set aside a warrant of attorney under such circumstances, where it is given after the adjudication has taken place. I quite agree with my brother Wightman in *Hart's* case, and I think, therefore, that this rule should be made absolute. *Rule absolute.*

ARNOTT v. MARSHALL AND ANOTHER.

Costs—Right to, by a plaintiff who remains in this country to be a witness.

The rule allowing the costs of residence in this country of a seafaring man, pending an action in which he is a material witness, is applicable to other classes of witnesses.

The plaintiff had engaged with the defendants, who were ship-brokers, for a berth in a vessel about to proceed to Australia, and paid his passage-money. However, through a mistake of the defendants' clerk, such payment was not credited, and a message was sent to the captain of the vessel, then off Deal, to that effect, and the plaintiff was turned out of the ship. The vessel then sailed without him, and he brought his action. Upon the trial a verdict was taken by consent for 40l. and costs. Upon the taxation of costs there was an item of 30l. for the maintenance of the plaintiff as a witness for fourteen weeks, being the period between the sailing and the day of trial. This item the Master disallowed, on the ground that such an allowance was confined to the case of a seafaring man. Upon a motion to review the taxation:

Held, that the Master was wrong in principle, and that if the plaintiff was bonâ fide detained as a witness, and it was reasonable under the circumstances to detain him, he was entitled to such costs.

This was a rule calling upon the defendants to show cause why the Master should not review his taxation of the costs in this case. The plaintiff, who was a general dealer in this country, had arranged with the defendants, who were ship-brokers, for a berth in a vessel proceeding to Australia, and had paid the whole fare for the voyage. Through a mistake of a clerk of the defendants it did not appear in their books that the plaintiff had paid his passage money, and a message to that effect was sent to the captain of the vessel, which was then off Deal, and the plaintiff was turned out of the ship; he then commenced an action against the defendants. The vessel in which the plaintiff had taken his passage sailed on the 7th Sept.; and the defendants had offered him a free passage in another vessel which sailed on the 14th Sept. This offer, however, was refused, and after some further negotiations between the parties the cause went to trial, when it was settled by the defendants agreeing to pay 40*l.* with the costs of the action. The declaration contained no averment of special damage. In the plaintiff's bill of costs there was an item of 30*l.* for the maintenance of the plaintiff as a witness for fourteen weeks, the period between the sailing of the vessel and the day of trial. The Master disallowed this item, and the present rule was then obtained.

Prentice showed cause.—There are three points:—First, whether the plaintiff, not being a seafaring man, is entitled to these expenses; secondly, whether they were not a part of the damages recovered in the action; and, thirdly, whether the plaintiff ought not to have been examined on interrogatories. The rule which allows expenses to witnesses who are kept in this country for the purposes of a trial only extends to those persons whose avocations are upon the sea. There would be much inconvenience and great expense occasioned by extending a rule which has hitherto applied only to seafaring men: (*Howes* v. *Barber*, 21 L. J. 254, Q.B.) It would apply to all witnesses, and not merely plaintiffs or defendants. Again, these expenses were clearly included in the amount of damages agreed to be paid by the defendants. Although no special damage was alleged in the declaration, yet the defendants had agreed to pay a large sum of money, which they considered sufficient to cover all expenses, except, perhaps, the actual costs of the proceedings. Lastly, where a person can be examined upon interrogatories, he is not justified in staying in this country and putting the parties to expense for the whole of the time up to the trial. If his character is impeached he may stay (*Evans* v. *Watson*, 4 Dowl. & L. 198); but the only question to be proved in this case was the contract, for which the defendant's own letters would have been quite sufficient.

Crompton, J.—Is not this a matter within the discretion of the Master? And if he has exercised that discretion I ought not to interfere.

Pulling, in support of the rule.—The cases show that the court will interfere. In *Evans* v. *Watson*, Coltman, J. said, "I think that the court ought to grant all reasonable expenses." So in *Lemergan* v. *The Royal Exchange Assurance*, 7 Bing. 725, the Court of Common Pleas did interfere, and allowed expenses. *Sturdy* v. *Andrews*, 4 Taunt. 697; *Tremain* v. *Barrett*, 6 Taunt. 88. [Crompton, J.—Unless the Master went wrong in some principle we should not interfere.] (He was then stopped by the court.)

Crompton, J.—I cannot see how these expenses could possibly be recovered as damages in the action. The plaintiff's case is that he was damaged up to the time that he could have obtained a passage in another vessel, and he could not therefore recover in an action for being delayed for the purpose of becoming a witness. The damage the plaintiff suffered was his being delayed four days, namely, from the 7th Sept. to the 11th, when the defendants offered him another passage. My difficulty is in seeing whether the keeping the plaintiff here was a real *bonâ fide* transaction. I think it had better go back to the Master, for him to see upon the new matters brought forward in the affidavits whether the witness was *bonâ fide* kept here for the purposes of the cause. In *Howes* v. *Barber* it was held that the successful party in a cause may be allowed his expenses in the same manner as any other witness. If the Master decided that the rule for allowing the expenses of a witness only applies to seafaring men, he was wrong, as the rule cannot be so limited; and this was the opinion of the full court when the rule *nisi* was moved. (*a*) If a person going to Australia is kept in this country for the purpose of an action, his expenses should be paid. But whether his actual presence could or could not, in the circumstances, be dispensed with, or whether he might not as well have been examined upon interrogatories, is a matter always to be taken into consideration. In cases of personal examination, parties might be justified in staying for the trial; but all these are questions for the Master to decide upon whether the party was necessarily detained. Let this go back to the Master to say whether the plaintiff was bonâ fide detained as a witness, and whether it was reasonable, under the circumstances, so to detain him.

Rule absolute accordingly.

(*a*) The rule *nisi* was obtained in the full court

BUSINESS OF THE WEEK.

Saturday, Jan. 15.

Watson, Q. C. moved for a rule calling upon an attorney to answer the matters of an affidavit, and pay over a sum of money. *Rule nisi.*

Re An Attorney.—*Sir F. Thesiger, Miss, Serjt. Ludlow* showed cause against a rule calling upon an attorney to answer the matters of an affidavit. The *Attorney-General, James*, Q. C. and *Philpot*, contra. *Cur. adv. vult.*

Monday, Jan. 31.

Knight v. Gauvet.—This was a rule calling upon the defendant to show cause why the notice to proceed given under sect. 101 of the 14 & 15 Vict. c. 76 should not be set aside for irregularity, or why the plaintiff should not have further time for proceeding to trial, and why the defendant's attorney should not pay the costs of the application. *Keane* showed cause. *Bell*, contrà.

Rule discharged without costs; the plaintiff to go to trial within six months.

Garth moved for a rule calling upon an attorney to deliver a bill of costs. *Rule nisi.*

Pashley, Q. C. moved for a rule calling upon two justices of Middlesex to issue their distress-warrant to remove the amount of a poor-rate assessed upon the building of the Great Globe in Leicester-square, the property of Mr Wylde. *Rule nisi.*

Re Moxon.—*Hawkins* showed cause herein. *Lush*, contrà. *Rule discharged with costs.*

Newman moved on affidavits to strike an attorney off the roll. Crompton, J.—You cannot move for such a rule on the last day of term, and for this reason: an attorney is not to lie under such an imputation during the whole of the succeeding vacation. *Rule refused.*

Re Moss.—*Lush* showed cause against a rule calling upon an attorney to pay a sum of money pursuant to his undertaking. *Barnard*, contrà. *Rule discharged with costs.*

Wood v. Moyes.—*Hawkins* showed cause against the rule for a new trial herein, unless the plaintiff would consent to a reduction of damages. *F. Edwards*, contrà.

Rule absolute to reduce the damages.

Nisi Prius.

COURT OF QUEEN'S BENCH.

Reported by W. J. Metcalfe, Esq., Barrister-at-Law.

FIRST SITTINGS IN LONDON IN HILARY TERM.

(Before Crompton, J.)

Monday, Jan. 17.

Sherrell v. Casper.

Execution—Affidavit.

To obtain execution in less than fourteen days an application must be made to the judge, stating special circumstances, and supported by an affidavit.

This was an undefended action on a bill of exchange.

Hawkins, on behalf of the plaintiff, applied for immediate execution. The judges had laid down, as a general rule, that execution should be granted in fourteen days, and not less; but in the present case the defendant had filed a declaration of insolvency, which, it was submitted, was sufficient ground for earlier execution.

Crompton, J.—The general rule is, that execution will issue in fourteen days; and if there are in this case facts upon which it is proposed to except it from that rule, they must be laid before me upon affidavit. I shall upon that affidavit say whether a proper ground is laid for the exception.

Application subsequently granted.

Crossley v. Lord Talbot.

Habeas corpus—Penalty—31 Car. 2, c. 2—Contempt.

Contempt of the Court of Chancery is not a criminal charge within the meaning of the Act 31 Car. 2, c. 2, and, therefore, if a judge refuses a writ of habeas corpus to a person who is a prisoner for such contempt, he is not liable to the penalty under sect. 20 of that Act.

Debt for a penalty of 500*l.* for not granting a writ of *habeas corpus* to bring up the plaintiff, who was a prisoner in the Queen's prison, for a contempt of the Court of Chancery.

The plaintiff in person contended that contempt of the Court of Chancery was a criminal charge within the meaning of the statute. 31 Car. 2, c. 2, s. 3, enacts that a *habeas corpus* shall issue "if any person or persons shall be or stand committed or detained for any crime, unless for felony, or treason, &c." And sect. 10 provides that "it shall and may be lawful to and for any prisoner and prisoners as aforesaid to move and obtain his or their *habeas corpus*, as well out of the High Court of Chancery or Court of Exchequer, as out of the Courts of King's Bench or Common Pleas, or either of them. And if the said Lord Chancellor, or Lord Keeper, or any judge or judges, baron or barons, for the time being, of the degree of the coif, of any of the courts aforesaid, in the vacation time, upon view of the copy or copies of the warrant or warrants of commitment, or detainer

LORD [illegible]'S COURT.

on mere oath made that such copy or copies were handed as aforesaid, shall duly pay writ of *habeas corpus* by this Act required to be granted, being moved for as aforesaid, they shall severally forfeit to the prisoner or party grieved the sum of 500*l.*" &c. &c.

Cleasby, Q. C., and Gantly, of opinion that contempt of the Court of Chancery is not a crime within the meaning of this statute, and therefore the defendant is entitled to a verdict (*a*).

Verdict for defendant.

Equity Courts.

LORD CHANCELLOR'S COURT.

Reported by C. H. Knapp, Esq. of Lincoln's-inn, Barrister-at-Law.

Thursday, Jan. 20.

(Before Lord Cranworth, L.C. and the Lords Justices.)

Berman v. Preston.

Concurrent jurisdiction.

This Court, in the exercise of its discretion, refused a motion to dissolve an injunction restraining an action at law, upon the plaintiff's in equity undertaking to give judgment to be dealt with as the Court should think fit.

If a suit is pending in respect of a matter in which a court of equity has concurrent jurisdiction with another court which, from its constitution and form, cannot give relief until a comparatively distant period, with respect to a subject which, in its nature, requires speedy remedy, the Court will not, in general, allow the defendant in equity to proceed at law in respect of the same matter.

This was an appeal motion to discharge an order made by the Vice-Chancellor Wood.

The plaintiffs and defendants were joint owners of the ship *Phœbe*. The latter had been appointed ship's-husbands and brokers under an agreement, by which it was among other things stipulated that if they were removed from their office by the plaintiffs they should receive from them the sum of 1,500*l.* by way of liquidated damages. The charge made by the plaintiffs against the defendants was, that they, owning certain shares of the vessel in question, of which the other shares belonged to the plaintiffs, and being the ship's-husbands, brokers, and agents, acted in fraud of their partners and principals, by making clandestinely, from the employment of the ship, a profit for the peculiar and exclusive benefit of the defendants themselves, beyond and independently of any advantage properly incident to the character of ship's-husbands, agents, or brokers, and appropriating accordingly that profit to their private purposes; and even assuming that that charge could not be fully established, the defendants were still open to the imputation and complaint of not having duly accounted to the plaintiffs, and of having improperly withheld from them, if not their fair share of the net earnings of the vessel received by the defendants in their fiduciary character, at least that information which an agent was bound to give to his principal.

The bill prayed for the removal of the defendants, as ship's-husbands, &c., and for an account; and by an additional motion, they asked for the delivery up of the machinery of the vessel. The plaintiffs had the actual possession of the vessel; but the machinery, which had been removed from her for the purpose of being repaired, was in the possession of the defendants.

The Lords Justices, before whom the motion came, were doubtful whether, if the Court of Admiralty would, at the instance of the plaintiffs, interfere to compel the defendants, either upon security to be given to them or otherwise, to deliver the machinery to the plaintiffs, they ought to interfere concerning it. Their Lordships, therefore, granted an injunction in the words of the first part of the original motion, and directed the residue of that and the whole of the additional motion to stand over without prejudice to any question, and gave the plaintiffs leave to take such proceedings in the Court of Admiralty with respect to the machinery, or otherwise, as they might be advised.

An application was made to the Court of Admiralty, but, for the reasons which are subsequently mentioned in this report, it refused to interfere.

On the matter being again brought before the Lords Justices, Lord Justice Knight Bruce, who, in order to avoid any chance of assuming jurisdiction properly belonging to the Court of Admiralty, had directed an application to be made to that court, said that the matter appeared to stand in one of two positions—either that by reason of the possession of the hull by the plaintiffs, that court could not interfere with respect to the machinery; or that, according to the constitution and forms of that court, relief could not be given until a comparatively distant day with respect to a subject which in its nature required speedy remedy. Whichever of those views might be

(*a*) The 56 Geo. 3, c. 100 applies to such a case, but under it the writ is grantable only by the judges of the Superior Courts of Common Law.

COURT OF APPEAL.

the correct one, he was of opinion that this court had clear jurisdiction. This was not merely a new equity. It was an ancient head of the jurisdiction of this court that it will interpose to assist the jurisdiction of other courts. The manner in which it interfered with respect to executions under judgments at law, the manner, more closely analogous, in which it interfered with respect to suits in the Ecclesiastical Court, as to probate or administration, by appointing a receiver *pendente lite*, and in numerous other instances which it was unnecessary to multiply, this court had most usefully interposed. He was of opinion that, even if the Court of Admiralty had jurisdiction, that this was a case of that description. Independently of that, there was evidence before the court to show that there had been breach of duty, and abandonment of trust; namely, not merely withdrawing the machinery from the place where it had been deposited for the purpose of repairs, but withdrawing it before those repairs were completed, for the single purpose of obtaining an improper possession, to the unjust prejudice, and to the undue disadvantage of the partners of these defendants. Their conduct appeared to be without apology and without excuse, and it would indeed be to be lamented if there was no jurisdiction in this country capable of remedying such flagrant injustice.

The defendants having subsequently commenced actions against several of the plaintiffs, to recover the liquidated damages under the agreement, the plaintiffs moved for an injunction to restrain the proceedings at law. V. C. Wood granted the injunction, and this was a motion to dissolve it.

Rolt, J. V. Prior, and *Burnie*, in support of the motion, cited *Jones* v. *Geddes*, 1 Ph. 724; *Hodgson* v. *Murray*, 2 Sim. 515; S. C. 3 Sim. 283.

Follett and *W. M. James* appeared for the plaintiffs, but were not called on. They submitted to be bound by such order as the court should make. They offered to give an undertaking to allow judgments to be entered up in all the actions, the defendants undertaking to enter satisfaction should the court require it.

The Lord Chancellor, who delivered the judgment of the court, said that upon the undertaking which had been given there was no reason to disturb the judgment of the V. C. The bill involved the whole of the questions at issue between the parties, and among them those sought to be determined by the actions. It was always a question of discretion in this court when to stay legal proceedings. His Lordship, having referred to the case of *Jones* v. *Geddes*, said that the whole of the questions of law were involved in those which were considered to be clearly equitable. All those questions could be more satisfactorily dealt with in this court than by a jury. They had better be decided here than at law; the court had jurisdiction. The decision of the V. C. need not, after the undertaking which had been given, be disturbed. The undertaking to give judgment was to be considered as given without prejudice to any question. The Court refused to make any order as to costs.

COURT OF APPEAL IN CHANCERY.

Reported by Owen Davies Tudor, Esq. of the Middle Temple, Barrister-at-Law.

Wednesday, June 30.

Re Barnard and *re* the Stat. 6 & 7 Vict. c. 73.

Ex parte Wetherell.

Taxation of solicitor's bill—Right to tax after judgment in action for—6 & 7 Vict. c. 73.

An attorney and solicitor, having been employed by W. in conducting an action and a suit in equity, delivered his bills to him, and brought an action upon them. W. afterwards obtained an order to tax the bills from one of the judges of the court of common law in which the action was brought; but the judge subsequently ordered the summons to tax the bills to be dismissed, unless W. within a week withdrew all the pleas which he had put in to the action except the plea "never indebted:" this he did, and thus was entitled to tax the bills. W. afterwards withdrew his remaining plea, and the plaintiff signed judgment in the action of debt. W. then again applied to a judge at chambers for taxation of the bills, which was refused with costs, and he did not appeal to the full court:

Held, that the decision of the Master of the Rolls which ordered the taxation of the bills ought, in the absence of special circumstances, to be reversed, although in this case a judgment, and not a verdict or writ of inquiry according to 6 & 7 Vict. c. 73, had been obtained.

A solicitor may make several charges for different attendances on the same day.

A mere overcharge, in the absence of fraud, does not amount to a special circumstance for the taxation of a bill:

Semble, per Lord Cranworth, that an application to tax a bill under the 6 & 7 Vict. c. 73, s. 37, cannot be made to this court after judgment has been obtained upon it in an action in a court of common law.

And semble, per eundem, that after judgment in an action for costs, the special jurisdiction to direct taxation given by 6 & 7 Vict. c. 77 is gone.

COURT OF APPEAL.

This was an appeal by Mr. Barnard, an attorney and solicitor, from the decision of his Honour the Master of the Rolls, who had made an order for the taxation of certain bills which he had delivered to his client, a clergyman of the name of Wetherell; an application for that purpose having been refused by a judge of a common law court, subsequent to a judgment having been signed by Mr. Barnard against Mr. Wetherell, for the full amount of his bills, on the latter withdrawing all the pleas put in to the action. These facts are sufficiently stated in detail in their Lordships' judgment, as also the circumstances which were relied upon as special by the respondent.

Stuart and *J. V. Prior*, for the appeal, insisted, first, that proceedings for taxation having been taken before a common law judge, this court had no jurisdiction to take cognisance of the application—that the matter was *res judicata*; secondly, that there was an absence of all special circumstances; and, lastly, that after judgment the court had no jurisdiction to direct taxation. They cited *Meredith* v. *Gittings*, 19 L. T. Rep. 29; *Megoe* v. *Megoe*, 2 C. P. Coop. 213; *In re Whicher*, 13 Mee. & W. 548; *In re Hair*, 10 Ileav. 187.

Lovell, for the respondent, cited *Re Gedye*, 17 L. T. Rep. 149; 14 Beav. 56.

Lord Justice Knight Bruce.—In this case Mr. Barnard, a solicitor and attorney, being employed by Mr. Wetherell, a clergyman, in various matters including proceedings at law and in equity, (a state of things which gives the client a right to have the bills taxed either at law or in this court,) the bills were delivered previously to December last, and an action of debt was brought upon them. That action having been brought, the client (the defendant) obtained an order from one of the judges of the court of law in which the action was brought to tax the bills; but afterwards this order was made on the subject, the client having filed several pleas, I think four, and on the application by the attorney of the plaintiff to the judge of the court, the judge ordered the summons to tax the bills of costs to be dismissed with costs, unless within a week the defendant should consent to withdraw all pleas, except "never indebted;" and in that case all the bills were ordered to be taxed, with the costs of the application. We are informed, and understand, that he consented to that order, and that he so withdrew all his pleas but one—"never indebted." The consequence was that the client remained in the possession of the order to tax the bills from the court before which the action was brought, and which was the court of proper jurisdiction for the purpose. The client, instead of proceeding on that, thinks fit to withdraw his only remaining plea in the action whereupon this order was made."—On hearing the attorneys, agents, and counsel on both sides, and by consent, order that the defendant be at liberty to withdraw the plea herein mentioned;" whereupon the plea was withdrawn, the necessary consequence of which was that the plaintiff was enabled to sign judgment in the action of debt. The judgment was therefore completed, and, being completed, was final; and after judgment thus obtained, completed and final, the client again applies to a court of common law for taxation, which he might have had before, and from which he had receded. The application was refused, with costs, by the judge at chambers, from whom there is a right of appeal to the full court, which right of appeal was not exercised. Instead of taking that course, a special petition was presented to this court, which at least originally had equal jurisdiction with the court of law for that purpose. Now the first question raised in this case is one of great importance indeed, namely, the question whether, the jurisdiction having been equally in this court and the court of law, and the latter being first applied to, this court has any jurisdiction to deal with taxation. I think that question cannot be affected by the result of the proceedings at law, in which the learned judge seems to have been of opinion that there were no grounds for an order to tax—an opinion not founded, it is said, on the merits of the case. That, however, cannot affect the mode of dealing with the case here, as affecting the jurisdiction. I pass by that point, however, because I do not think it necessary to decide it here, merely saying, avoiding an expression of opinion on it beyond this, that it is, to repeat an expression already used, of great importance. Independently of the objection as to jurisdiction, and assuming that it does not bar an application, the next question is, whether the application is one which can be supported here without *special circumstances*. I am of opinion that it is an application which can only be supported by special circumstances. It is true the language of the Act of Parliament—the letter of the Act of Parliament—only mentions the case of a verdict and execution of a writ of inquiry, whereas this was a judgment obtained in an action in which there was no writ of inquiry, and in which there was no trial or verdict whatever. However, whatever the letter of the statute may be, I am of opinion it will not exceed the bounds of just interpretation to hold that, according to the spirit of the statute, the enactment includes this case, although there has been no verdict and no writ of inquiry or damages. There has been much more than that—this is necessarily included in the enactment according to a reasonable construction of it; and, therefore, without special

circumstances there can be no taxation. In the present instance there is an absence of special circumstances, except the complaint of the charges in the bills with respect to the fees of counsel charged and not paid; that, if no explanation were offered, might be a very serious matter indeed. It might be a matter not ending in the question of taxation, but might lead to placing the professional position of the attorney in jeopardy. Here, however, there is an absence of dishonesty; it was understood between client and attorney (which I would not believe counsel understood), that counsel's fees should be charged in the bill without their having been paid, and that when the bill was paid, the fees were to be paid to counsel. There is also another irregularity as to charges in another bill which is complained of. It would have been better if the bill had represented the transaction as it really was. But in this case there appears to have been on the evidence an absence of bad intention—no want of good faith. I collect, therefore, the attorney not only meant to do nothing improper, but he also has not charged more than he was fully entitled to. The only other point is as to the alleged multiplication of the charges; but on looking through the bills, and judging from the history of this client, so far as is known from the evidence, and considering the nature of the business done for him, my opinion is, that although there are repeated charges for attendances in the same day professionally, the attorney did not charge too much; and if he had, I do not think that a mere overcharge can, in the absence of fraud, amount to a special circumstance to tax a bill after all that has been done. I differ from the court below on the taxation. If the petition had been originally brought before me, I should have dismissed it with costs.

Lord Justice Lord CRANWORTH.—I have arrived at exactly the same result. The first point is of great importance. I think this case presents a great anomaly in our law, if, where a party proceeding in one of two tribunals adversely of co-ordinate jurisdiction is defeated, he is at liberty to apply to another. I know of nothing similar to that, because, on a mere suggestion that a party is proceeding at law and equity for the same matter, it is of course to stop one proceeding. It is true that there are cases which seem to show that a person may go from one court to another; but those are only in *ex parte* applications, as in the case of *Re Gorham* v. *The Bishop of Exeter*, where the bishop was refused a rule by the Q. B. (15 Q.B. 52) and C. P. (19 L.J. 200, C.P.), and it was granted by the Ex., when I had the honour of being a judge of that court, which was the first court which granted the rule *nisi*, but which was afterwards discharged on full argument: (5 Exch. 630.) So with regard to the well-known case of the Canadian prisoners taken at Liverpool, an application for a *habeas corpus* was refused by one court, and an application was made to another: (see Fry's report of the case of the Canadian prisoners.) However, the writ of *habeas corpus* differs from all other writs, as being in favour of the liberty of the subject, and there is no analogy between such a case and the present, which is a mere question of costs. So in cases under the Imprisonment for Debt Act. Though it is not necessary to decide the question, I confess I think I should have come to the same conclusion as my learned brother, on the want of jurisdiction alone. It makes no distinction in my mind, that the order of the judge at common law was wrong, if the way to set it right was to appeal to a full court. If the notion that such an order is wrong is to be a ground to go from one jurisdiction to another, it would substantially make courts of co-ordinate jurisdiction appeal courts the one from the other; it would follow that a person dissatisfied with the order of the Lord Chancellor might go to Mr. Justice Talfourd. I am disposed to think that this alone would be a sufficient objection to the order. I go beyond my learned brother in one thing,—I doubt whether the Act meant to leave jurisdiction at all after judgment. After judgment the question is *res judicata*. There may be a remedy upon a bill filed or otherwise, but not under the statute by which the bills are taxed. I doubt whether the statute meant to give jurisdiction after judgment. Assuming, however, that I am wrong in the opinion I have expressed, still there are no special circumstances. If special circumstances are allowed to be argued after a lapse of time, they must be circumstances which the party must show that he could not reasonably have availed himself of before. It is not of course to listen to matters which might have been brought forward before. Another objection is this—it is a well-known rule in courts of common law, that after you have brought an action, and there is an application to tax bills, the costs of taxation then become costs in the cause, and the court exercises the functions of a jury; in consequence, costs fall on the party to pay the bill. The rule here however is, that if, according to the order of taxation, more than one-sixth is struck off, the costs would fall on the other party; that is another reason against the applicant. The attempt is, in fact, to come from one court, in which, being successful, he would have to pay the costs, to another court by way of appeal, in which, if successful in taxing off one-sixth of the costs, he would throw the costs on the other party. In my opinion, the order at the Rolls must be reversed, and the petition to tax costs be dismissed, with costs.

Lord Justice KNIGHT BRUCE.—I wish to be understood that I do not differ from Lord Cranworth as to the construction to be put upon this statute; but I reserve to myself the faculty of deciding, when it shall be necessary to decide, that where judgment has been obtained upon a question of taxation of bills of costs, there the right to have them taxed under the statute is gone.

ROLLS COURT.

Reported by J. MACAULAY, Esq., of the Inner Temple, Barrister-at-Law.

BUTTERFIELD v. HEATH.

Voluntary deed—Post-nuptial settlement—Purchaser for valuable consideration — Conveyance by married woman.

A married woman, entitled in fee, to certain property, together with her husband conveyed it to trustees in trust for her for life, then for her husband, then for their children as they should jointly appoint, and in default of appointment for all the children, and in default of such children to the husband in fee. Afterwards she and her husband mortgaged the same property to secure a sum of money. The mortgage contained a power of sale. She and her husband soon after conveyed the property to trustees to sell and distribute the proceeds amongst the creditors of the husband. All the deeds were duly acknowledged by the married woman. The trustees sold, and, the purchaser objecting to the title:

Held, on exceptions to the Master's report, that a good title was shown, that the first conveyance was voluntary and void as against the subsequent purchaser, and that it would be so even with notice on his part of the conveyance.

The claim in this case was filed to compel specific performance of a contract for the purchase of certain freehold property comprised in articles of agreement, bearing date the 14th Aug. 1850, and entered into between the three plaintiffs, the vendors, with the defendant, the purchaser. A decree having been made in the cause referring it to the Master to inquire whether a good title could be made, the Master made his report and thereby found that a good title could be made. To this finding the purchaser took exceptions, which now came on to be argued. The title of the plaintiffs, it appeared, was of the following description:—On the death of the father of Mrs. Deborah Phillips in 1823 (she being then married to Mr. Phillips) she became the owner in fee simple of the property contracted to be purchased, and in the month of Feb. 1839, she being then under coverture, an indenture dearing date the 7th of that month was executed by and between her husband, Mr. Phillips, and herself on the one part, and the three plaintiffs trustees for sale of the other part, whereby, after reciting that Mr. and Mrs. Phillips were mutually desirous of settling the property in the manner thereinafter mentioned, it was witnessed in pursuance of this desire, and in consideration of the marriage heretofore solemnised between them, they and each of them granted, bargained, sold, released, and confirmed all the property in question to the trustees in fee, in trust for the husband, Mr. Phillips, for life, remainder to Mrs. Phillips for life, and after the decease of the survivor for all the issue of the marriage in such manner as the husband and wife should jointly appoint, and in default of such appointment, to all the children of Mrs. Phillips as tenants in common in fee simple, with cross remainders between them, and in default of such children to the husband, Mr. Phillips, in fee. This deed was duly acknowledged by Mrs. Phillips under the statute on the same day on which it was executed. On the 24th May, 1848, Mr. and Mrs. Phillips mortgaged the same property for a sum of 2500*l.* in favour of Mr. Heath, with a power of sale; and on the 29th Dec. 1848, Mr. and Mrs. Phillips conveyed this property to the plaintiffs as trustees upon trust to sell and distribute the proceeds of such sale amongst the creditors of Mr. Phillips. All the deeds were duly acknowledged by the wife under the Act for the Abolition of Fines and Recoveries. The plaintiffs accordingly, in execution of the trust reposed in them, entered into the contract in question in the cause to sell this property to the defendant, who objected to the title on the ground of the conveyance of Feb. 1839. The claim was accordingly filed, and a decree was made referring it to the Master in the usual way, to inquire whether a good title could be made. The Master reported that a good title could be made, and to this report the purchaser took exceptions which now came on to be heard.

Haddon, for the exceptions, insisted that a very slight consideration would support a marriage settlement; and in this case there was sufficient to constitute valuable consideration.

Roupell and *Younge*, contrà, insisted that the conveyance of Feb. 1839 was voluntary and void against a purchaser for valuable consideration, even though he had notice of the prior conveyance.

They cited *Parker* v. *Carter*, 4 Hare, 400; *Goodright dem. Humphreys* v. *Moss*, 2 W. Bl. 1019; *Currie* v. *Nind*, 1 Myl. & Cr. 17; *Colwell* v. *Brewer*, 18 Sim. 503; *Hill* v. *Bishop of London*, 2 Taunt. 98; *Johnson* v. *Legard*, Taml. & Turn. 281; *Scott* v. *Bell*, 2 Swanst. 70; 3 Sugd. V. & P. 2; *Jones* v. *Powell*, 1 Vern. 48; *Holden* v. *Hearne*, 1 Bligh, 444; *Lavender* v. *Blackstone*, 2 Lev.; *Clark* v. *Nethaway*, 2 Lev.; *Doe dem. Otley* v. *Manning*, 9 East, 59.

The MASTER of the ROLLS.—The first question is, whether the deed of Feb. 1839 is void as against subsequent purchasers for value. The authorities cited for the purpose of showing that a good title can be made, are the cases of *Goodright dem. Humphrey* v. *Moss*, 2 W. Bl. 1019, and *Currie* v. *Nind*, 1 Myl. & Cr. 17, and those cases appear to me to support the propositions for which they are cited. It is not nor can it be reasonably questioned that a voluntary conveyance is void against a purchaser for value, even though he had notice of the prior conveyance. But then it is contended that a married woman is not within the statute of the 27th of Elizabeth. This point is settled by the case in Blackstone, which, as Lord Cottenham observes, expressly decides that the circumstance that the settlement was made during the coverture does not prevent the statute from operating upon it. In truth, if it had been decided otherwise, it would have been to hold that although a married woman can, with the assistance of her husband, and by complying with the terms provided by the statute, make a good title to a purchaser for a valuable consideration of the land of which she is seised in fee simple, yet that she cannot make a voluntary conveyance of such land. A distinction, however, is endeavoured to be taken with considerable ingenuity between this case and that of *Currie* v. *Nind*, which latter case, unless it can be distinguished from the present, must be considered as determining the point in issue. It was urged that in the case of *Currie* v. *Nind*, the wife acted under a power and that by exercising it she gave up nothing, and that consequently it was there rightly held to be merely voluntary; for that unless she did some act to exercise the power, she could never gain anything: but that here, as the wife was the owner of the estate in fee simple, a different principle applies; for that if she did no act the property must, subject to the husband's right, remain hers. But I am of opinion that this distinction is not material for the present purpose. There is no doubt a very material distinction in law between the interest possessed by the donee of an absolute power of appointment over an estate, and the interest possessed by one seised in fee simple of an estate; and very important consequences may flow from the distinction. But so far as the validity of the settlement or the validity of the conveyance of the estate depends upon the consideration of such appointment or conveyance being valuable or voluntary, no such distinction exists. What would amount to a valuable consideration in one case would be so in the other. Nor could it be contended with reason that the consideration for the execution of a power which is simply voluntary, would have become valuable if the donee of the power had been seised in fee of the property conveyed. It was suggested indeed by Mr. Haddon that very slight considerations would support a post-nuptial settlement, and he referred to various cases for that purpose, such as *Scott* v. *Bell*, where the concurrence of the wife in destroying an existing settlement on her was held to be sufficient to support a subsequent settlement, which would otherwise have been voluntary, and other cases of that description; but there is an absence of all such consideration in the present case. Whether the destruction of the settlement of the 7th Feb. 1839 would have constituted a consideration sufficient to have supported a subsequent settlement on Mrs. Phillips, varying in its terms within the principle of *Scott* v. *Bell*, 2 Swanst. 70, I give no opinion; that case does not arise here; but I am of opinion that the settlement of the 7th Feb. 1839 was itself voluntary, and that as such it is void as against a purchaser for valuable consideration. It was further suggested that, considering that subsequent considerations would make good a previous voluntary settlement, a purchaser would not be compelled to take a title depending upon such a deed being void; but the contrary was decided in *Buckle* v. *Mitchell*, 18 Ves. 112. I do not understand that any question arises on the deed of conveyance to the plaintiff. I have not had a copy of it before me, but I understand it to be a conveyance to certain creditors of Mr. Phillips in trust to sell and divide the proceeds amongst his creditors, and that the trustees, themselves being creditors of Mr. Phillips, have executed the deed of trust. I am clearly of opinion therefore that as against the purchaser this deed of the 7th Feb. 1839 does not impair the title of the plaintiffs, and that the exceptions must be overruled.

Roupell.—We are entitled to the costs of the exceptions. The Master's report standing there is a good title.

The MASTER of the ROLLS.—I must give the costs of the exceptions in the usual way.

Roupell.—This comes on upon a claim, and if it was set down now for hearing we might take a decree.

The MASTER of the ROLLS.—You may put it in the paper on any morning you please for that purpose. The decree will be quite a matter of course.

Tuesday, Jan. 11.

In Forma.

Practice—Suing in forma pauperis—Next friend.

A married woman allowed to sue in respect of her separate estate, without the intervention of a next friend.

Ferrall moved on behalf of a married woman in this case that she might be allowed to sue *in formâ pauperis* in respect of her separate estate, without the necessity of having a next friend appointed. The application was founded upon an affidavit, which stated that the woman was living separate from her husband, and that he was unable to support her, and that she had no property except that which she claimed in this suit. He cited *Wellesley* v. *Wellesley*, 16 Sim. 1.

The MASTER of the ROLLS granted the application on the authority of the case cited.

Jan. 13 and 15.

EATON *v.* LEWIS.

Practice—Production of documents.

A defendant admitted the possession of certain documents set forth in two schedules to his answer, for one of which he claimed privilege, but submitted to produce the other. Two of the letters however in this schedule when produced had two passages sealed up, which the defendant in an affidavit stated were irrelevant to the matters in issue, and had relation to private family matters only. On motion to commit for contempt, the Court, having inspected the concealed passages, asked the counsel for the defendant himself to examine them, and say whether he could resist production; and on his intimating that he could not, the Court refused to commit the defendant, but ordered production of the concealed passages: the defendant to pay the costs of the motion.

This was a motion to commit the defendant for contempt in disobeying an order for production of documents. The bill had been filed against a trustee by one of the *cestuis que trust* for the purpose of charging him with a breach of trust, and removing from his office. The defendant to the usual interrogatory as to books, papers, &c. admitted the possession of certain documents, which he set out in two schedules, for one of which he claimed privilege, but submitted to produce the other. The plaintiff obtained the usual order for the production accordingly of the unprivileged documents, and the defendant produced them; but among them were two letters, in each of which certain parts were sealed up, and the defendant refused to allow those parts to be inspected.

The plaintiff now moved to commit the defendant for contempt for disobeying the order for production; and in defence the defendant filed an affidavit, in which he stated that the parts of the letters sealed up related to some private family matters, and were irrelevant to the matters in issue in the suit.

R. Palmer and *Greene*, for the plaintiff.

Selwyn, on behalf of the defendant, contended that, inasmuch as the defendant had denied upon oath that the sealed-up passages were material, the plaintiff ought to be satisfied with that denial; and there was no reason why the defendant should not have protection now just as much as if he had claimed it by his answer.

The MASTER of the ROLLS was desirous, if the parties agreed to it, of unsealing the portions of the letters in question himself, and see whether they related to the matters in issue. This being agreed to, his Honour, after examining the parts of the letters, could not say that they might not bear upon the matters in question. The first part of the sealed-up matter in one, and the last in the other, were entirely relative to private family matters. He would propose that the defendant's counsel should examine the letters, and say whether he thought he could resist production.

Selwyn accordingly examined them, and said he was not prepared to say he could.

The MASTER of the ROLLS thereupon expressed his opinion that the plaintiff was entitled to production. He would not, however, order the defendant to be committed, but would merely order the whole of the letters to be produced to the plaintiff. The costs of the motion to be paid by the defendant.

Tuesday, Feb. 8.

ANON.

Practice—15 & 16 Vict. c. 86—Course with respect to applications to vary minutes.

Bere applied to have the minutes of an order made in the cause varied; the variations were not opposed.

The MASTER of the ROLLS granted the application, but said, that under the new practice the application to vary minutes should be made in chambers, in cases in which the proposed variations were formal, or not opposed; but that, in cases in which the variations were opposed, the application must be made to the court by motion, as before.

Wednesday, Feb. 9.

In Forma, ex parte KEATES.

Practice—Order nisi, or four-day order to commit—11th General Order of 11th April, 1842.

Horsey in this case applied for an attachment against a solicitor, for disobeying an order of the court requiring him to pay a sum of money within a week. The 11th General Order of the 11th April 1842 requires an indorsement on any order or decree that if the party on whom it is made disobeys it he is liable to an attachment, &c.; and therefore the old practice requiring an order *nisi*, or four-day order, was no longer the practice of the court; for, if so, the General Order in question would be useless.

The MASTER of the ROLLS said he could not alter the practice of the court.

Horsey then asked for the four-day order now, but

The MASTER of the ROLLS would not entertain the application unless upon notice of motion for that purpose, and the same must be personally served.

Feb. 8 and 10.

SENIOR *v.* PRICHARD.

Practice—15 & 16 Vict. c. 86.

Injunction to restrain proceedings at law in default of answer still granted.

Palmer moved, upon affidavit verifying the facts stated in the bill, to restrain the defendant Prichard, the assignee of Messrs. Davis & Co., sharebrokers, who had been made bankrupts, from proceeding in an action to recover the balance alleged to be due from the plaintiff upon a series of sharebroking transactions between the plaintiff and Messrs. Davis in the years 1846–7.

The defendant had not answered the interrogatories filed by the plaintiff under the new practice.

Kinglake objected that; under the new act, the old practice of granting injunctions in default of answer was abolished, and referred to the 58th section, which enacts that the practice in cases of injunction to restrain proceedings at law shall be assimilated to the practice in cases of special injunction, as far as the nature of the case will admit.

The MASTER of the ROLLS said his strong opinion was that it was not intended by the new Act to deprive the plaintiff in such a case of his old right to an injunction in default of answer, though, in form, the common injunction was thereby abolished. He recollected the strong observations of the late V.C. Sir J. Parker, on this point, who was very anxious that this right should be preserved; but he stated that, as the point was a new one, he would communicate with the other judges, in order that the practice might be settled.

Feb. 10.—The MASTER of the ROLLS stated that he had seen two of the judges upon this question, and they concurred with him in the view which he had taken when the case was argued before him. He observed that the 58th section did not discharge the defendant in suits of this nature from the obligation to make full discovery in aid of plaintiff's defence in the action at law, and only assimilates the practice "so far as the nature of the case will admit." This section made it necessary that the application for the injunction should be supported by affidavit; but where a *primâ facie* case is made by the bill supported by affidavit, which is not met by any answer from the defendant, although he may have filed affidavits stating facts sufficient to displace the case made by the bill, yet, as it was quite possible that new facts might be brought out and fuller discovery made by the answer to the interrogatories, he was of opinion that the plaintiff was entitled to an injunction until answer. Unless this course were taken it would practically put an end completely to the power of obtaining discovery in these suits. He would not say that a strict rule was laid down, from which the court in its discretion would not depart under any circumstances; but in this case he thought that an injunction must be granted until defendant put in his answer, or until the further order of the court.

Kinglake asked whether upon the defendant putting in his answer the injunction would drop?

The MASTER of the ROLLS said that the defendant must move to dissolve the injunction in the *old* mode, viz. "unless the plaintiff show cause," &c.

V. C. KINDERSLEY'S COURT.

Reported by P. M. LEONARD, Esq. Barrister-at-Law.

Monday, Jan. 17.

Re KINCAID'S TRUSTS.

Wife's equity to a settlement—Whole fund directed to be settled on the wife and children, against the claims of husband's assignees.

By indenture of settlement, dated the 8th day of Feb. 1839, a policy of assurance, effected with the Economic Life Assurance Society on the life of Sophia Kincaid, was assigned to trustees upon trust for the payment of certain debts, and subject thereto upon trust for Caroline Kincaid and Mary Anne Kincaid (two daughters of the settlor), as tenants in common. In the year 1844 Caroline Kincaid intermarried with Archibald Mouat, but no settlement was executed on that occasion. In Nov. 1851 her husband was declared bankrupt. Mrs. Kincaid died in Oct. 1851, and the trust fund, amounting to the sum of 307*l.* 12*s.* 11*d.*, was paid into court under the Trustee Relief Act. Two petitions were now presented for the payment out of the fund to Mrs. Mouat and Mary Anne Kincaid.

Eddis appeared upon the petition of Mary Anne Kincaid, upon which no question turned.

Walford, in support of the petition of Mrs. Mouat, applied to have a settlement of the whole of her moiety (which would not exceed 130*l.* after the payment of costs) upon her and her children. Her husband's assignees claimed the fund, it being under 200*l.*, in his right. The impression that the wife was not entitled to a settlement where the fund was under 200*l.* had its origin in consequence of an order made by Lord Erskine in 1806 (Beames Orders, 464), directing that if any unmarried woman to whom any sum under 200*l.* in principal money, or to the sum of 10*l.* in annual payment, were directed to be paid, married before she received the amount, the Accountant-General, upon receiving a proper affidavit by such woman and her husband, stating her marriage, and that no settlement, or agreement for a settlement, affecting or relating to such sum or such annual payment, should draw a draft for the amount, payable to her or to her husband (*Foden* v. *Finney*, 4 Russ. 428); but that opinion has now been altered by the decision in the case of *Re Cutler* (14 Beav. 220), in which case the Master of the Rolls observed it would be quite inconsistent to hold that if the fund be 202*l.* the wife would be entitled to have the whole fund settled, and yet that if it were 199*l.* the husband's assignees would take all. Then, as to what amount (if any) the assignees would be entitled, he submitted that it was in the discretion of the court as to whether it would settle the whole of the fund in question on the wife, or only a portion. According to the old practice of the court the fund was usually divided nearly equal between the wife and the assignee; but now the court, under circumstances where it thought proper, gave the whole fund: (*Dunckley* v. *Dunckley*, 16 Jur. 767.) Each case depends upon its own circumstances; and he submitted that there was sufficient in this case (the husband being bankrupt and the fund so very small) to entitle the petitioner to a settlement of the whole fund upon her and her children.

J. H. Palmer, for the assignees of the husband, contended that, as the fund was under 200*l.*, and the husband might obtain payment of it without the consent of the wife (*Elworthy* v. *Wickstead*, 1 Jac. & W. 69), the assignees were entitled. The only special circumstance in this case was the smallness of the fund. In any case the wife was only entitled to have half settled.

KINDERSLEY, V. C.—I will not trouble counsel to reply. I am of opinion that the wife is entitled to have a settlement of the whole fund. As to the question whether she is entitled to a settlement, the sum being under 200*l.*, the rule of equity, which entitles a married woman to a settlement out of a fund to which the husband is entitled *jure maritî*, is independent of the old form of order (which is one of practice), dispensing with examination of the wife in court in certain cases. The two rules do not stand upon the same ground. The rule which entitles the wife to a settlement is one independent of the question of amount. I do not see why a wife is not entitled as much to a portion out of a small amount as out of a large. The sum, though small, may be of great importance; but the rule which required generally that a wife should give her consent in court, and be examined separately, was instituted in order that the court might satisfy itself that she perfectly knew her rights and thought fit to waive them. The Court has thought, and no doubt that has been the feeling of the Profession, that where the sum is under 200*l.* it is not necessary to require the consent of the wife in court; but that does not exclude the wife from insisting on having a settlement out of the fund. I never heard that the rule would be different in a case of small amount from what it would be in one of large amount. I fully concur with the Master of the Rolls, that where the wife insists on a settlement, the fund being under 200*l.* is no reason why that right should not continue. No doubt there was for some time an impression that the two rules stood on the same ground; but the Master of the Rolls has disabused the Profession of that idea, and I have no hesitation in following that decision (founded as it is on good reason), though contrary to the general impression. I am of opinion that the amount of the sum does not affect the right; the common course (not the rule) is to say half to the wife and children and half to the assignee; but if there is any special circumstance, the rule is different,—an aliquot part may be given. Here there is the special circumstance that the husband is by misfortune unable to provide for the wife and children, and she has no other means of support than this fund, which will not amount to more than 130*l.* It would be a mockery to call it a settlement, if I were to give half to the assignees and settle the other half. I shall therefore direct that the whole fund shall be settled, by order, on Mrs. Mouat for life, and then for such of her children as shall attain twenty-one years or marry. The dividends to be paid to Mrs. Mouat for life, with liberty to apply on her death.

Thursday, Feb. 10.

WASTELL *v.* LESLIE.

Practice—Supplemental order.

Forster applied under the 52nd section of the

Equitable Jurisdiction Improvement Act for a supplemental order in an administration suit. There were three plaintiffs in the original suit. One of them, in May 1851, assigned his interest to one Brown. In October, 1851, the surviving trustee and executor of the testator's will died. Nothing had been done since October. He therefore asked on behalf of the assignee of one of the plaintiffs for the order to revive, and the usual supplemental decree under the 52nd section. He referred to a case decided by the Lords Justices, in which the order was made at the instance of a creditor; and another case before Vice-Chancellor Stuart, where the suit became defective by the marriage of a female plaintiff.

His HONOUR made the order.

V. C. STUART'S COURT.

Reported by GEO. S. ALLNUTT, Esq., of the Middle Temple Barrister-at-Law.

Wednesday, Jan. 26.

BARNES *v.* FORSYTH.

Will—Construction—Separate use.

A bequest to a married woman for her sole use and benefit:

Held to be a bequest for her separate use.

Mary Ann Tayett, by her will dated the 9th June, 1852, bequeathed her residuary personal estate in the following terms: "After all my debts are paid and funeral expenses, I give to my sister Elizabeth Jane Barnes, for her sole use and benefit, all my moneys in the funds, household property, and all my effects, excepting the case of Ann Jupp; I give to her twenty-five pounds;" and the testatrix appointed James Forsyth and Alexander Russell executors of her will. The testatrix died on the 19th June, 1852. Mrs. Barnes filed a claim in the common form against the executors, and therein she was stated to be residuary legatee for her separate use.

Speed appeared for the plaintiff, and contended that the gift was to her separate use, and referred to *Ex parte Ray*, 1 Mad. 199. The husband did not dispute the plaintiff's claim to have the property to her separate use. [The VICE-CHANCELLOR said that this was a claim in the common form with no statement of the will, and he could not decide the question upon such imperfect materials.] The affidavits filed in support of the claim contained the words of the bequest.

Cottrell, for the executors.

The VICE-CHANCELLOR said he perceived there was an averment in the claim that the plaintiff was entitled as residuary legatee to her separate use; and as the words of the bequest appeared upon the affidavit, he considered that the question might be disposed of without requiring an amendment of the claim. Upon the construction of the words of the will, his Honour thought that the bequest was to the plaintiff's separate use.

Saturday, Jan. 29.

HOLLOCOMBE *v.* HOLLOCOMBE.

Practice—Taxation of costs—Solicitor's attendances.

Notice of motion to dismiss a bill was given by a defendant on the 24th April, 1851, but an order thereon was not made until the 27th May, 1852, when the bill was ordered to be dismissed with costs. During the intervening period another motion of the plaintiff's was pending, and during part of the period negotiations for a compromise were being carried on. Upon the taxation of costs the Taxing Master allowed the defendant's solicitor for attendances in court upon the motion to dismiss only upon such days as he could swear that he attended bonâ fide in expectation that the motion would come on. A petition to review this taxation was dismissed with costs.

This was a petition presented by William John Mills, one of the defendants, praying that it might be referred back to the Taxing Master to review his taxation of the petitioner's costs of this suit, under the following circumstances:—The bill was filed on the 15th March 1850 for the purpose of administering the estate of William Hollocombe deceased, and the petitioner was made a defendant, as the administrator of John Painter deceased, one of the executors of William Hollocombe. On the 22nd May 1850 the petitioner, at the request of the plaintiffs' solicitor, appeared by counsel, and consented to a motion for a receiver, but the order was not drawn up. The plaintiffs afterwards served a fresh notice for a receiver, and the petitioner appeared by counsel on such motion for the purpose of obtaining from the plaintiffs the costs of the former motion. On the 7th Nov. 1850, the second motion was brought on, when, after discussion, V. C. Knight Bruce held that the petitioner was entitled to be paid the costs of one of the motions; but, at the request of the plaintiffs' counsel, the matter was ordered to stand over for fourteen days, upon a representation that the suit would be compromised. The motion not having been brought on, the petitioner gave notice of motion for the 19th of April 1851 to dismiss the bill; but upon the plaintiffs' counsel representing that the arrangements for compromise were nearly completed, the motion was ordered to stand over until the second motion day in the then next term (5th June 1851), and that then the plaintiffs should either dismiss the bill or proceed with the cause, and that the motion for a receiver should be disposed of at the same time. The motions, however, were not brought on until the 29th of April 1852, when the V. C. Parker, at the instance of the plaintiffs' counsel, directed the same to stand over to the first day of the then next term (22nd May 1852). On the 27th of May the motion to dismiss was brought on by the petitioner's counsel, and an order made thereon, but the plaintiffs' counsel declined to bring on the motion for a receiver. The petitioner's costs of suit had been taxed at 57*l.* 10*s.* 5*d.*, exclusive of subpœna for costs. In such taxation the Taxing Master disallowed the whole of the petitioner's costs of the second motion for a receiver, and also refused to allow to the petitioner the usual fee for attending court upon the motion to dismiss upon more than ten of the fifty-three several motion days upon which the same might have been brought on during the time the same was pending, from the 24th of April 1851 to 27th May 1852, on the ground that the petitioner's solicitor (Mr. Steele) was unable to swear that he attended on such days in court *bonâ fide* in expectation that the motion would come on.

Daniel and *Nalder* appeared in support of the petition, and referred to the General Order of 1807, and *Lucas* v. *Pearock*, 8 Bea. 1.

The VICE-CHANCELLOR (without hearing *Bacon* and *Terrell*, who appeared for the respondents) said, that this was a complaint by a solicitor that his bill of costs had been taxed in such a way as to deprive him of his proper professional charges. No doubt it was of the highest importance that adequate remuneration should be awarded to professional men; but the rules were, or ought to be, so acted on as not to operate injuriously upon the suitors in the cause. The first complaint made by this petition was, that upon the motion for a receiver, this solicitor had been wholly deprived of his costs attending that motion. He had been allowed the costs of one motion for a receiver; and he had obtained those costs where his client was a defendant all but formal with regard to this motion, and who might properly have not objected, but allowed the order upon the motion to be drawn up upon an affidavit of service. However, he instructed counsel to appear upon the motion, and this could not be considered as an indiscreet thing to do. There being an irregularity in the service of the notice of this motion, the solicitors for the plaintiffs served a fresh notice of motion. The petitioner's solicitor knew that this notice of motion was for the same purpose as the former, and did not pretend that it was necessary for him to attend upon it; but he instructed counsel to appear, in order to ask for the costs of the other motion. The Vice-Chancellor then said that the petitioner ought to have his costs of one motion, but not of the other, and therefore upon that ground there was no foundation for the complaint made by the petition. But the petitioner complained that he was a loser, because the motion stood over for many days. But this gentleman, having obtained a taxation of costs, must know that that order included all costs properly costs in the cause; and it would be unreasonable if, upon such a taxation, the plaintiff were saddled with the costs of two notices of motion, when this defendant might have at once consented to the order. The next complaint was, that the motion to dismiss stood over fifty-three times, and the solicitor had been allowed for ten attendances only. It was a wholesome rule that, where notice of motion to dismiss with costs had been given, the costs of those days upon which the motion could have been made, but was not, should not be given. There was a scandal in the very mention of such a claim as the present. The Taxing Master did no more than his duty in a liberal way, when he allowed ten attendances; even those were a great tax upon the plaintiffs. But it was said that there was, during the pendency of this motion, an attempt to compromise; and if so, there was scarcely an excuse for the attendances even on the ten days, when the compromise was going on. His Honour therefore considered there was no reasonable ground for the complaint, and he deeply regretted to find that it was thought proper by any one to bring forward this claim. The Taxing Master had said, Make an affidavit that you attended on such days in court *bonâ fide* in expectation that the motion would come on; but if the compromise were going on, how could he make such an affidavit. He considered that the Taxing Master had made a wide and liberal allowance, and he should dismiss this petition with costs.

Thursday, Feb. 10.

FINCH *v.* SOUTHEE.

Practice—15 & 16 Vict. c. 86, s. 44.

Appointment of a representative to a deceased defendant for the purposes of the suit.

In this suit the infant plaintiff was entitled to the fund, the subject of the suit, in the event of his attaining the age of twenty-one; and one of the defendants, to whom a portion of the fund would belong in case the plaintiff did not attain twenty-one, had recently died. The cause was not at issue.

Welford, on behalf of the plaintiff, now moved *ex parte* for the appointment of a representative to the deceased defendant for the purposes of the suit. The 44th section of the 15 & 16 Vict. c. 86 provided that, "if in any suit or other proceeding before the court it should appear to the [illegible] who was interested in the [illegible] legal personal representative, it should be lawful for the court either to proceed [illegible] personal representative [illegible] or to appoint some person [illegible] estate for all the purposes of the suit or proceeding," &c.

The VICE-CHANCELLOR said that the impression was that this was not the case to deal with the matter. If the appointment were to be made now proposed, it ought to be by a motion [illegible] handed to the registrar. His Honour added that the question should be further considered by the learned counsel, and mentioned again if it was considered necessary.

V. C. WOOD'S COURT.

Reported by J. HANEY COOPER, Esq., Barrister-at-Law.

Thursday, Jan. 15.

KEYSE *v.* HAYDEN.

Vendor and purchaser—Specific performance—Title.

A purchaser bought an estate under conditions, one of which was that the purchaser should take such title as the vendor had:

Held, that this did not relieve the vendor from the duty of showing a bonâ fide title, and the best title he could produce from the materials within his power.

The claim in this case was filed for the specific performance of a contract for the purchase of a leasehold estate. The facts were that Mr. Brennan had contracted to sell the property to Mr. Keyse, the present plaintiff, and on that occasion one of the conditions of sale was that Mr. Brennan should give Mr. Keyse a good and marketable title. This conveyance was not completed; but Mr. Keyse advertised the estate for sale; and Mr. Hayden, the defendant, having offered to buy, a contract was executed, which, among other things, stipulated that the vendor should deliver an abstract of the title to the purchaser, who should make all requisitions of title and objections thereto within seven days from the delivery of the abstract; and then, after other terms of agreement, the contract proceeded, "and the purchaser shall take such title as the vendor has." Disputes arose between the parties, and at length the claim was filed, and on the 2nd Dec. 1851 Lord Justice Turner, then a Vice-Chancellor, decreed the specific performance of the agreement, but ordered the case to stand over until the objections to and requisitions of title should be made. The purchaser required the ordinary length of title to be shown; but the vendor relied upon the condition that the purchaser should take such title as he had, and therefore he refused compliance with the requisitions.

Bolt and *Wright*, for the plaintiff.

Russell and *Schwyn*, for the defendant.

The VICE-CHANCELLOR.—My predecessor has decided that this contract is to be performed, subject to inquiry as to title. The question now is, whether the defendant is to have an absolute title, or whether any and what effect is to be given to the words, that the purchaser shall take such title as the vendor has. It is contended by the defendant that the words are inconsistent with the rest of the contract, and also with the order to inquire into the title. I cannot see the inconsistency. It appears to me quite consistent for a vendor to say, "I have a *bonâ fide* title, and will do the best I can, but you must take what title I have;" and the condition also appears consistent with the order to inquire. He said *bonâ fide* title, because if, with such words in the contract, the vendor has no title at all, the court will not interfere. There may be some irremediable defect, or it may appear that the property is gone altogether. *Shepherd* v. *Keatley*, 1 C. M. & R. 117, shows that if the purchaser [illegible] *aliunde* show that the vendor's title is bad, the court will not enforce the contract, although by the condition of sale the vendor is not to be called on to produce that part of his title. Then it is said that *Southey* v. *Butt*, 2 M. & C. 207, shows that the court will not give effect to these stipulations. I think that case goes to no such extent. All Lord Cottenham there says is, if a vendor stipulates that the purchaser is to take such title as he, the vendor, has, he is bound to make such stipulation clear and intelligible to the purchaser; if therefore the stipulation is clear and intelligible, and the title, when produced, is not [illegible] title the vendor can make, the purchaser will [illegible] to accept it. I think the words "shall take such title as the vendor has," mean, shall take such title as the vendor can make out from the documents in his possession. But next the defendant says, I am not bound to take such title as the vendor has; I answer again; and the point which strikes me [illegible] tion is, that at the time when [illegible] his contract with the purchaser, [illegible] Brennan for the purchase of the property [illegible] and Brennan is bound to make him a good and marketable title; and if the [illegible] thing to recover his right [illegible] it may be said that [illegible] plaintiff can give him a [illegible] contract. But it does not follow that [illegible] make a good and [illegible]

contracted, so to do; and then, if the plaintiff has first his bill against Brennan, knowing at the time of filing it that Brennan cannot give him such title, the bill would have been dismissed. That what is the evidence of waiver? Insists upon the advertisement of sale, which, though not conclusive, is strong evidence of the waiver. In Hughlan's Vendors and Purchasers (p. 348 of the late condensed edition), it is said that attempting to resell the estate is an important circumstance upon this question of waiver, but like other acts, it may be explained; an actual resale, indeed, so far as title is concerned, can seldom be deemed an acceptance of it, because, unless the first purchaser has bound the second to take the title as it stands, the former must intend to obtain a good title himself, in order to confer it on the latter. I think this case comes within the exception, and there is no reason to suppose that at the time of entering into this contract the plaintiff can get more from Brennan than he has offered to the defendant. I think, therefore, the defendant is not entitled to an absolute title.

Decree for specific performance.

Common Law Courts.

COURT OF QUEEN'S BENCH.

Reported by Adam Brereton and John Thompson, Esqrs. Barristers-at-Law.

Thursday, Nov. 11.

Hutton *v.* Cruttwell. (*a*)

General deed of assignment—Antecedent debt—Act of bankruptcy.

A. being pressed by a creditor, borrowed of B. 200l., upon an agreement that the money should be paid to the creditor, and that A. should execute to B. an assignment of all her effects by way of security for the loan. A. afterwards executed the assignment, which, upon default in payment, gave B. power to take all the effects of A. which were on the premises at the time of entry. A. sold the goods, and out of the proceeds paid B. 200l., and afterwards became bankrupt; but the deed was not executed with intent to delay creditors, nor was the payment made in contemplation of bankruptcy.

Held, that the deed was not necessarily in point of law an act of bankruptcy.

Assumpsit by plaintiffs as assignees of Elizabeth Yandall, a bankrupt, for money had and received, and on an account stated. Plea, *non assumpsit*, and issue thereon. The particulars claimed 207*l.* 10*s.* part of the proceeds of the sale of the bankrupt's effects, paid over to the defendant by or on behalf of the bankrupt on or about the 17th March 1852.

On the trial before Platt, B. at the last assizes for the city and county of Bristol, it appeared that the bankrupt, E. A. Yandall, who was a widow, in March 1851 kept an hotel, of which she was lessee, and was then indebted to a person named Lansdell, in 227*l.*, for securing which she had executed a bond and warrant of attorney, upon which Lansdell entered up judgment. In April 1851 Thomas Cruttwell, the defendant, who was Lansdell's attorney, agreed to pay 200*l.* to Lansdell, which Lansdell agreed to accept in liquidation of the whole 227*l.*, on the understanding that Mrs. Yandall should execute a bill of sale of her effects to the defendant, to secure the repayment to him of the 200*l.*

Accordingly, on the 12th June, 1851, she executed an indenture between herself, of the first part, and defendant, of the second; which recited that she was indebted to defendant in 200*l.* for moneys lent, and that, to secure the repayment thereof with interest by the instalments after mentioned, it had been agreed that she should execute and give to defendant "a bill of sale of all and singular the household furniture and personal effects of her the said E. A. Yandall, in, about, and belonging to the said hotel and premises, with and under such covenants, powers, and provisions as are hereinafter contained;" and it was witnessed "that, in pursuance of the said agreement, and in consideration of the 200*l.* so as aforesaid due and owing from the said E. A. Y. to the said Thomas Cruttwell, the said E. A. Y. doth hereby assign unto the said T. C., his executors, administrators, and assigns, all and singular the household furniture, fittings, decorations and effects, stock-in-trade, wines, liquors, stores, plate and plated articles, linen, glass, china, hardware, culinary and other utensils, implements, goods, and things, being of the nature of personal chattels, which are now in, about, or belonging to the said hotel and premises called, &c. and all the right, title, property, claim and demand whatsoever, at law and in equity, of the said E. A. Y. in and to the said chattels and premises hereby assigned, or intended so to be, and every of them and parcel thereof; to have, hold, take, receive, and enjoy the same unto the said T. C., his executors, administrators, and assigns, as his and their own property, chattels, and effects." Provise that in case of payment by E. A. Y. to defendant by instalments of 50*l.* each on 12th Dec. 1851, 12th June 1852, 12th Dec. 1852, and 12th June 1853, with interest at 5*l.* per cent. on the sum due for the time being, the presents were to be void. Covenant for payment of the money by the instalments, with interest. Covenant that if default should be made in the payment "it shall be lawful for the said Thomas Cruttwell, his executors, &c. peaceably and quietly to receive and take unto his and their possession, and thenceforth to hold and enjoy as well all and every the goods, chattels, and premises hereinbefore assigned, or intended so to be, as also all other goods, chattels, and effects of the said E. A. Y. which shall or may then, or at any time or times thereafter during the continuance of this security, be or be found in, upon, about, belonging or appertaining to the said hotel and premises, or any other premises which the said E. A. Y. may occupy for the purpose of her said business, or otherwise; and also to sell and dispose of the same goods, chattels, and effects respectively, every or any part or parts thereof, either by public auction or private contract," &c. and to receive the moneys arising from the sale, and retain in the first place the costs and charges, and in the next place so much of the 200*l.* and interest as should be due, and pay the surplus to E. A. Y. Proviso, that until default shall be made in payment of some or one of the said instalments of the said sum of 200*l.*, or in some payment of the interest thereof, at the times and in the manner hereinbefore appointed for payment thereof respectively, contrary to the form and effect of the proviso and covenant hereinbefore contained, it shall be lawful for the said E. A. Y., her executors, &c., "to hold, make use of, and possess the said goods, chattels, and premises hereby assigned, or intended so to be, without any manner of hindrance or disturbance of or by him the said T. C., his executors," &c., anything hereinbefore contained to the contrary thereof notwithstanding.

Mrs. Yandall continued in possession of the hotel and all her effects until March, 1852, when she offered her effects for sale by public auction. The defendant gave notice to the auctioneer of his bill of sale, and of his claim under it. The effects were sold on 1st March, 1852, for 56*l.*, out of which she paid to defendant 20*l.* 10*s.*, principal and interest; and she applied the residue to payment of other debts and other purposes of her own. Shortly afterwards she became and was duly adjudicated bankrupt.

On these facts the counsel for the plaintiffs contended, that the deed of 12th June 1851 was an act of bankruptcy, and fraudulent, and that the defendant was not entitled to retain the 20*7l.* 10*s.* paid to him in pursuance of the deed. The jury, in answer to questions from the learned judge, found that the deed was not executed with an intent to defeat or delay creditors, and that the payment to the defendant was not made by Mrs. Yandall to the defendant in contemplation of bankruptcy. The learned judge then directed a verdict for the defendant.

Nov. 6.—Kinglake, Serjt. moved for a new trial on the ground of misdirection, citing *Graham* v. *Chapman*, 21 L. J. 173, C. P., as an authority for the plaintiffs.

Cur. adv. vult.

Lord Campbell, C.J. now delivered the judgment of the court.—We think that there ought not to be any rule granted in this case. The jury found that the deed relied upon as an act of bankruptcy was not fraudulent, nor executed in contemplation of bankruptcy. The verdict ought to stand, unless the judge was bound to rule at the trial that the execution of the deed was necessarily in point of law an act of bankruptcy. There having been an agreement before the money was advanced that the security should be given, and the money having been advanced under this agreement, the deed is to have the same effect with respect to creditors as if it had been executed in April 1851 instead of the month of June following. We think it cannot be impeached by the circumstance of the money being paid directly by the defendant to Lansdell, the creditor of Mrs. Yandall; for it was in truth an advance to her to enable her to satisfy a pressing demand; and the defendant was her agent in making the payment, in the same manner as if the money had remained some time in her actual possession. So far this is the common case of a bill of sale *bond fide* given to secure an advance made on the faith of the security to enable a trader to carry on his business; and it is well-established law that such a bill of sale is not an act of bankruptcy, although it would be an act of bankruptcy if the consideration were either wholly or partly an antecedent debt contracted without security. But reliance is chiefly placed by my brother Kinglake upon a clause in this deed which authorises the defendant to enter and sell after-acquired property; and he refers us to *Graham* v. *Chapman*, 21 L. J. N. S. 173, C. P. as an authority to prove that a deed with such a clause is necessarily an act of bankruptcy. On referring to the case, we do not find any such doctrine laid down in it. There the deed expressly recited that it was given not only for a further advance, but for an old unsecured debt; and Jervis, C. J. several times over points this out as the chief foundation of his judgment. He likewise remarks upon the power to take after-acquired property, which then might have prevented the trader from deriving any benefit whatever from the further advance: But that cannot apply to a case like the present, where the trader did derive the full benefit of the whole sum advanced by its being applied at the time to satisfy the demands of an importunate creditor. Therefore, without impeaching the authority of that case, we think that the rule applied for should be refused.

Rule refused.

Saturday, Jan. 15.

Plant and Davis, Appts., and the Mayor, Aldermen, &c. of Manchester, Respts.

Highways—Liability on township to repair—Local Act.

Under the 14 & 15 Vict. c. cxix, the council of a borough were appointed surveyors of all highways within the borough, with all the liabilities and powers of surveyors of highways, and were liable to indictment for refusing or neglecting to repair any such highway, and were empowered to make a highway-rate on the occupiers of all kinds of property liable to the highway-rate, within the township within such highway was situate.

Beswick is a township within the limits of the Act, and a road was made under previous local Acts passing through Beswick; but Beswick had never repaired or contributed to the repair of such road.

A rate was made by the council, for the repair of the road within Beswick, upon the occupiers of rateable property within the township of B.

Held, that the rate was properly made, and that the occupiers of rateable property within B. were liable to it.

An appeal against a highway-rate, made by the council of the borough of Manchester, under the Manchester General Improvement Act 1851, was respited by the Court of Quarter Sessions from time to time, and the following case stated by consent for the opinion of this court under the 12 & 13 Vict. c. 45, s. 11.

CASE.

The 6 Geo. 4 c. li. (local) for making and maintaining a road from Great Ancoats-street in the town of Manchester, to join a diversion of the Manchester and Salters Brook road in Audenshaw, in the parish of Ashton-under-Lyne, and two branches of road communicating therewith, authorises the making, amending, widening, &c., and keeping in repair a road from Great Ancoats-street, through Beswick, Bradford, and certain other townships therein mentioned, to Audenshaw, and two branches from such road as therein described, and also authorises the erection of toll-gates and the taking of tolls for (amongst other things) keeping the said roads in repair. And it was thereby declared that such Act should continue in force twenty-one years from the passing thereof, and from thence to the end of the next session of Parliament.

The trustees under the said Act made the main road of which the highway forms a part, for the repair of which in the township or extra-parochial place of Beswick the highway-rate in question is required, and the road has become, and has been since used, as the common thoroughfare from Manchester, through Beswick and Bradford, to its termination at Audenshaw; but the branches therefrom were never made.

By the 14 Vict. c. xli. (local), "To continue the Term of the Act 6 Geo. 4, c. li. so far as relates to the Turnpike Road between Manchester and Audenshaw, and to make better Provision for the Repair of the Road, and for other Purposes," after reciting that the road authorised by the 6 Geo. 4, c. li. had been made, but that neither of the said branches had been made, the 6 Geo. 4, c. li. is repealed, and it is enacted that the now reciting Act should be put in execution for more effectually improving, maintaining, and keeping in repair the road so made, but should not extend to either of the said two branches; and tolls are, by the now reciting Act, authorised to be taken to be applied as in the Act directed.

It is also enacted that the trustees should not repair any part of the public streets in Manchester which were then or at any time thereafter should be pitched and paved by the surveyors of the highways in Manchester, or which should be under the control of any commissioners or other body having, under any other Act, the management thereof. The Act is to continue in force for twenty-one years.

By the Manchester General Improvement Act, 1851 (Aug. 1, 1851), sect. 93, it shall not be lawful for the trustees of any turnpike-road to collect any tolls, or to expend any money in paving, repairing, or improving any of the streets or public places within the limits of that Act. And by sect. 94, the council, and none others, shall be the surveyors of all highways within the borough, and shall have all such powers and authorities, and be subject to all such liabilities, as surveyors of highways are invested with and subject to, by virtue of the laws for the time being in force relating to highways. And, by sect. 96, the mayor, aldermen, and burgesses shall be deemed guilty of a misdemeanour, for refusing or neglecting to repair any public highway within the borough, and be liable to be indicted for such misdemeanour in the same manner as the inhabitants thereof, or of any township therein, would have been liable if that Act had not been passed. And by sect. 97, for the purpose of maintaining and repairing the highways within the borough, the council, when and as often as they shall think necessary, may make and levy a highway-rate on all the occupiers of all such kinds of property as, by the laws in force for the

(*a*) This case was accidentally omitted.

time being, might be assessed to any highway-rate within the township in which the highways to be maintained and repaired are situated, according to the full net value of the same respectively. The section then directs the mode in which the highway-rate may be made, levied, and recovered. And by sect. 100 parties aggrieved by any rate may appeal against the same to the quarter sessions.

By the same Act, sect. 15, if any street, or part of a street (not being a highway repairable by the inhabitants at large), which then was, or should at any time thereafter be, formed or set out within the borough, shall not be sufficiently sewered, drained, levelled, flagged, and paved, to the satisfaction of the council, the council may, in the manner therein mentioned, order the same to be completed as therein directed by the owners of the adjoining houses and ground. And by the 12th and subsequent sections, in case the owners should neglect to complete, the council may do so, and call upon the owners for the expense thereof.

And by section 27, when any street shall be sewered, drained, levelled, flagged, and paved, or otherwise completed pursuant to such order of the council, or to their satisfaction, the council shall certify the same by writing under the hand of the town clerk, and such street shall thereafter be a public highway, and repaired and repairable by the township or townships in which the same shall be situate, in such and the same manner as the highways therein were or might be repaired or repairable by law, and that every such certificate shall, within two months next after the making thereof, be transcribed and recorded amongst the proceedings of the council, and deposited with the clerk of the peace.

And by section 28, if any street then already made or thereafter to be made within the borough, had then already been under any powers in that behalf, or should at any time thereafter, together with the footways therein, be drained and paved, or put into good order to the satisfaction of the council, then and in such case, on the application of the persons being the owners of the lands lying alongside, or contiguous, or adjoining to such street, on both sides thereof, or being the owners of the greater portion in extent of such lands, by writing under their hands made to the council, the council may, by writing under the hand of the town clerk, certify and declare the same to be a public highway, and after such declaration the same shall be a public highway, and for ever afterwards repaired and repairable by the township or townships in which the same shall be situate, in such and the same manner as public streets and highways are repaired and repairable by law therein, and that within two months next after the signing of every such certificate and declaration, the same shall be transcribed and recorded amongst the proceedings of the council, and deposited with the clerk of the peace.

The limit of the last recited Act is the parliamentary borough of Manchester, which comprises the townships of Manchester, Chorlton-upon-Medlock, Ardwick, Hulme, Cheetham, and Beswick; the first five of which townships are (with many other townships) comprised within the parish of Manchester. Beswick, although surrounded by other townships, is extra-parochial.

On the 8th April, 1819, the 59 Geo. 3, "An Act for providing that the several Highways within the parish of Manchester shall be repaired by the Inhabitants of the respective Townships within which the same are situate," was passed, in which amongst other things it is enacted, that the inhabitants of the several townships within the said parish shall be liable to repair and amend all highways within such townships respectively, as fully and completely as the inhabitants of every parish by the laws of this realm are liable to repair the several highways within the same.

Beswick is not included in the enumeration of the townships of which the parish is by the said Act stated to consist. Beswick is little more than half a mile in length, and lies between Manchester and Bradford.

It is admitted that there is not any, and never has been any, highway in Beswick other than the turnpike-road hereinbefore mentioned; and that, before the rate now appealed against, no highway-rate had ever been made or assessed within Beswick, and that the inhabitants of Beswick have never repaired the road in question, nor have they in any manner contributed to any highway-rate; and that before "The Manchester General Improvement Act, 1851," no surveyor of highways had ever been appointed for or within Beswick.

No tolls have been taken within Beswick either before or since the 6 Geo. 4, c. li.; nor have any legal steps been taken by or on the part of the inhabitants to compel the trustees to put the road into repair, although the same was often out of repair.

The road is now much out of repair, and will require a large outlay to put it into proper condition. Except as may appear from the previous statement, there has never been any dedication to or adoption by the inhabitants of Beswick of the said road, nor has any statute duty ever been done or performed in respect thereof.

No proceedings whatever for having the said road

paved, sewered, or completed at the expense of the owners of the adjoining houses and ground, under the powers referred to, in the Manchester General Improvement Act, have been taken by the council, who contend that the same road is a highway repairable by the inhabitants at large.

Upon the above facts and provisions of the said Act the appellants contend that they are not liable to be rated; but the said mayor, alderman, and burgesses contend that the appellants are liable to be rated; And if the court should be of that opinion, the rate is to be confirmed; but if of a contrary opinion, then the rate is to be quashed.

H. Hill (in support of the rate).—The part of the road in question which passes through Beswick is a highway liable to be repaired by the parish: (*Reg.* v. *Lordsmere*, 15 Q. B. 689.) Beswick is within the borough of Manchester, and, therefore, within the Manchester Improvement Act, 1851 (14 & 15 Vict. c. 119), although it is not within the parish of Manchester. The definition of the word "township" is given in the interpretation clause, and shows Beswick to be within the Act. Then, by sect. 93, the trustees are forbidden to collect tolls or expend money in repairing any street or public place within the limits of the Act; that embraces the part of the road in question. And by sect. 94 the council of the borough alone are to act as surveyors of all highways within the Act, and therefore of the road in question. And for the repair of the road, the council are, by sect. 97, to make a rate on the occupiers of all such kinds of property as by the laws in force for the time being might be assessed to any highway rate within the township (therefore within Beswick), within which the highways are situate. The council are subject to indictment for refusing or neglecting to repair any highway within the borough, and therefore that part within Beswick. The rate, therefore, was properly made, and the words of the statute are clear.

Pashley, contrà.—The right might be valid, if Beswick had been liable to repair this highway before the local Act; but it was not. This distinguishes the case from *Reg.* v. *Lordsmere*, where a prescriptive liability was laid and proved. The local Act was not intended to impose a liability upon Beswick that was not previously imposed. This township is so small, and the traffic on this, one of the leading roads to Manchester, is so great, that the burden of repairing will be almost ruinous to the township. The local Act was intended merely to create a new machinery for repairing the highways within the borough; the clauses relied on are consistent with this. There must be clear words of intention to create a new liability if such were intended.

By the COURT.—This rate is clearly within the words of the local Act.

Rate confirmed.

Thursday, Jan. 27.

REG. *v.* THE AMBERGATE, &c. RAILWAY COMPANY.

Railway—Mandamus to complete—Return—Non-subscription of capital—Enforcement of compulsory powers—Estoppel.

Mandamus to make and complete a portion of a railway. Return that the whole of the capital required by the company's Act had not been subscribed for, and that the company were unable to procure the subscription.

Plea, that the company were estopped from saying that the capital had not been subscribed according to the statute, because, on another part of the line, they had exercised their compulsory powers.

Held, upon demurrer to the plea—First, that the return was a good answer to the writ, because the statute 8 Vict. c. 18, s. 16, prohibited the defendants from exercising the compulsory powers until the capital had been subscribed.

Secondly, that the exercise of the compulsory powers on another part of the line was res inter alios acta, and therefore no estoppel.

Mandamus at the instance of the Grantham Canal Company to the defendants to make and complete a portion of their line of railway from Ambergate to Bulwell, in the county of Nottingham, as authorised by 9 & 10 Vict. c. clv. Return, *inter alia*, that the capital of one million required to be raised by that Act had not been subscribed for, and that the company had never been, and were not, able to procure the same to be subscribed according to the statute 8 Vict. c. 18, s. 16. 12th plea in answer to that part of the return—that the defendants ought not to be admitted to make that return, because the defendants had given notice to a landowner in another part of the line for the compulsory purchase of his lands for the purposes of the undertaking, and had entered into an arbitration with him under the Lands Clauses Act for the purpose of settling the amount of compensation to be paid by the defendants to him.

Demurrer thereto.

There was also a demurrer on technical grounds to other pleas; but the material question arose on the demurrer to the 12th plea.

Saturday, Nov. 20. (*a*)—*Willes*, in support of the demurrer.—First: The writ cannot be sustained; because the making of the line to its present extent

(*a*) Before Lord Campbell, C. J., Coleridge, Wightman, and Erle, JJ.

entitles the canal company to be paid for its shares; and the canal company, therefore, has no interest in the completion of the line. (*The Grantham Canal Company* v. *The Ambergate Railway Company*, 21 L. J. 322, Q. B.) [Lord CAMPBELL, C. J.—The statute creates a *prima facie* obligation to make the line, which any landowner may enforce. *R.* v. *The York and North Midland Railway*, 1 El. & B. 178; *R.* v. *The Lancashire and Yorkshire Railway*, 1 El. & B. 228.] However ruinous may be the consequences? [Lord CAMPBELL, C. J.—The ruinous consequences can only appear by the return. As to the validity of the writ, this is substantially the same as *R.* v. *The York and North Midland Railway*.] Secondly: The return is an answer. The stat. 8 Vict. c. 18, s. 16, enacts, that "where the undertaking is intended to be carried into effect by means of a capital to be subscribed by the promoters of the undertaking, the whole of the capital or estimated sum for defraying the expenses of the undertaking shall be subscribed under contract, binding the parties thereto, their heirs, executors, and administrators, for the payment of the several sums by them respectively subscribed, before it shall be lawful to put in force any of the powers of this or the special Act, or any Act incorporated therewith, in relation to the compulsory taking of land for the purposes of the undertaking." That being so, the return, which alleges the non-subscription of the required capital, shows that the defendants cannot lawfully do the thing commanded by the writ. But the twelfth plea sets up a supposed estoppel, as if the illegal and void act of giving notice to other landowners prevented the defendants from averring the truth that the capital was not subscribed. Whatever may have been done in relation to the compulsory taking of land is altogether nugatory; and the owners may recover back possession. [ERLE, J.—In *Doe dem. Payne* v. *The Bristol and Exeter Railway Company* 6 M. & W. 840, it was said that this provision is in the nature of a defeasance. COLERIDGE, J.—The plea assumes the point in your favour if you are at liberty to take advantage of it.] What has taken place between the company and another landowner elsewhere cannot operate at all by way of estoppel in this proceeding. [Lord CAMPBELL, C. J.—You say say it is *res inter alios acta*. ERLE, J.—This is not technically an estoppel; but it is put upon the doctrine of *Pickard v. Sears*, 6 Ad. & Ell. 469.

Sir F. Kelly, Solicitor-General (*Knowles* with him), contrà.—The company, having exercised their compulsory powers, cannot now say that it is illegal for them to do so. The plea shows that they have acted as if the capital had been subscribed; and it does not lie in their mouth to say that it has not. Besides, the subscription of the capital is a requirement introduced chiefly for the protection of the shareholders. [Lord CAMPBELL, C. J.—But for the benefit of the landowners also.] In this case a great portion of the line has been made and opened for traffic. [Lord CAMPBELL, C. J.—Is not the arbitration with another landowner *res inter alios acta*?] No; because the point is that land was compulsorily taken, and whose land is quite immaterial. [ERLE, J.—You say that, because the company have acted illegally in exercising their compulsory powers between Grantham and Bulwell, therefore they are bound to act illegally by exercising their compulsory powers between Bulwell and Ambergate.] No; they are prevented from asserting that they have acted illegally. It would be a fraud upon the landowners and the public to exercise the compulsory powers before the capital was subscribed; and the company might purposely avoid having the whole capital subscribed. The return here is insufficient, because it does not show what efforts were made to procure the subscription.

Willes, in reply.—To show the efforts made would be pleading evidence. The return sufficiently shows the act to be impossible. He referred to *R.* v. *The London and North-Western Railway*, 20 L. J. 399, Q. B.

Cur. adv. vult.

JUDGMENT.

Jan. 27.—Lord CAMPBELL, C. J. now delivered the judgment of the court.—Assuming the writ of *mandamus* in this case to be good on the face of it, we are of opinion that there is a sufficient answer to it in the return that the whole of the capital, or sum of one million,—the sum here specified,—has not been subscribed for, and that the company have never been able, and are not able, to procure the whole of the said capital or sum to be subscribed for, and that it has not all been subscribed for according to the statute in such case made and provided: with other allegations to the same effect. This *mandamus*, in substance, commands the company to exercise the compulsory powers conditionally conferred upon them to purchase land, and thus to make and complete that portion of the line of railway between Ambergate and Bulwell. They answered by their return that they are forbidden to exercise these powers by the 8 Vict. c. 18, s. 16, and show that, without any default on their parts, they have never been and are not in a situation lawfully to exercise these powers; if so, they are as little able to obey the writ as if by the effluxion of time their compulsory power had expired, in which case it has been determined that a *mandamus* to make and complete the railway ought not to be granted. That was held in *Reg.* v. *The London and North-Western Railway*

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Compton. The only answer to this part of the return is the 12th plea, which is pleaded by way of estoppel, that the defendants ought not to be admitted to make so much of the return, because the company have acted in another part of the line, in an instance set out, where an arbitration had taken place in the form prescribed by the statute. But this was *res inter alios acta*, and cannot operate as an estoppel between the prosecutors and the defendants. If the peremptory *mandamus* were to go it would order that to be done which is illegal. The landowners between Ambergate and Bulwell might clearly contest the right of the railway company to give the notices, or to take any compulsory proceedings for the purpose of obtaining the land necessary for making and completing the railway. It has been supposed that a landowner might question the title of the company under the 8 Vict. c. 18, s. 46, even after the company have got possession of the land; and there can be no doubt that, until the whole of the capital has been duly subscribed in the manner required, they might treat the notices of the company requiring the land as null. Under these circumstances we think there ought to be judgment on the demurrer to the 12th plea for the defendants. With respect to the demurrer to the 3rd, 11th, and 15th pleas pleaded to other parts of the return, we think there ought to be judgment for the prosecutors, as these pleas are under the 4 Anne, c. 16, and 1 Will. 4, c. 21, and as they may be considered pleas in confession and avoidance; but as the judgment already given is a bar to the prayer for a peremptory *mandamus*, we do not think it necessary to enter more at length into these pleas, and we give judgment upon them for the prosecutors.

Judgment for defendants as to 12th plea; for prosecutors as to residue.

Saturday, Jan. 29.

REG. *v.* THE INHABITANTS OF HOUGHTON.

Indictment for nonrepair of highway—Judgment upon former presentment—Estoppel.

Upon an indictment against a parish for the nonrepair of a highway, and "Not guilty" pleaded, a former judgment upon a presentment against the inhabitants of the same parish for nonrepair of the same road is conclusive evidence of the defendants' liability to repair, no fraud being imputed; and any evidence to show that the road is not situate in the parish indicted is inadmissible, even though it should be recited in a local Act of Parliament as a fact that the road was in another parish, and though the presentment may, upon the face of it, show some defect which would have been fatal on demurrer or in arrest of judgment, and the fine imposed upon the inhabitants was not proved to have been paid.

Indictment for nonrepair of a highway.

Plea.—Not guilty.

At the trial, which took place before Wightman, J. at Liverpool, during the last Summer Assizes, the prosecutors gave in evidence a former conviction of the defendants upon a presentment for the nonrepair of the same road in 1791, with the judgment thereon imposing a fine. No evidence was given that the fine had been paid, and the defendants offered evidence to prove that the road in question was not in their township. They also relied upon a recital in a local Act (59 Geo. 3, c. xxii.) stating as a fact that the road in question was situate in the parish of Denton. All this evidence was objected to on the part of the prosecution, but received by the learned judge, and a verdict was found for the defendants.

In the following term a rule *nisi* was obtained to enter the verdict for the Crown, on the ground that the judgment on the presentment was conclusive.

Wednesday, Jan. 19. (*a*)—*Cowling* and *Holland* showed cause.

Atherton, Monk, and *Russell,* contrà.

The following authorities were referred to: *R.* v. *Blakemore,* 21 L. J. 207, M. C.; *R.* v. *St. Pancras,* Peake, N. P. C. 219; 2 Smith's L. C. 427, in notes to the *Duchess of Kingston's case*; *R.* v. *Stoughton,* 2 Wms. Saund. 130; *Street* v. *Bovington,* 5 Esp. 57; *R.* v. *Earlisland,* 2 Camp. 494; *R.* v. *Denton,* 21 L. J. 207, M. C.; *R.* v. *Whitney,* 3 Ad. & Ell. 69; *R.* v. *Middlesex,* 1 B. & Ald. 64, n. *Cur. adv. vult.*

JUDGMENT.

Jan. 22.—Lord CAMPBELL, C. J. now delivered the judgment of the court.—In this case we are first to consider the general question, whether upon the trial of an indictment against the inhabitants of a parish or township for not repairing a highway, with the plea of not guilty, a prior judgment upon a presentment against the same defendants for not repairing the same highway to which they pleaded guilty, is conclusive evidence to prove that the highway is situated within the parish, and that the inhabitants are liable to repair it. Mr. Cowling very properly admitted that, as the prosecutor had no opportunity of putting the former judgment upon the record, it would not be less operative as an estoppel because not pleaded as such, if it would operate as an estoppel being pleaded, on the doctrine clearly established by the authority cited (*Reg.* v. *Blakemore*). In *Rex* v. *St. Pancras,*

(*a*) Before Lord Campbell, C. J., Coleridge, Wightman, and Crompton, JJ.

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Peake N. P. Cases, 219, it was laid down by Lord Kenyon that, under substantially the same circumstances, a prior judgment is conclusive evidence. This doctrine has been stated as clear law by every text writer who has since written upon it, and has been since particularly recognised by the judges; but it has never been the foundation of any solemn decision, and Mr. Cowling was at full liberty to controvert it. He begins very properly by pointing out that a former judgment would not have operated as an estoppel in *Rex* v. *St. Pancras,* as the former judgment there was upon an indictment against the parish of Islington; but Lord Kenyon said it may be conclusive evidence against the parish of Islington on another indictment against the same parish for not repairing the same part of the same highway, and it would not be competent to the defendants to contend that that part of the road mentioned in the indictment was not in their parish. We do not find that this doctrine is contradicted by any of the authorities cited by Mr. Cowling. In the *Duchess of Kingston's* case, the judgment of the Ecclesiastical Court was held not to be conclusive to disprove the first marriage, because it was only in a suit of jactitation of marriage, and that, if final, it was fraudulently obtained. In *Rex* v. *Whitney,* as this question did not arise, it can hardly be considered affected by the allusion to it in the judgment of Lord Denman. *Rex* v. *Earlisland* only shows that a judgment on a former indictment against a parish may be impeached on the ground of fraud, if the defence to an indictment against the parish be collusively conducted by the inhabitants of a particular township by whom the road ought to have been repaired, and the liability of the whole parish to repair the roads ought not to be established. The case of *Rex* v. *Denton,* before my brother Cresswell, is entitled to no weight, for, though the evidence may be said to have been produced to rebut the effect of the former words, the point of estoppel was not taken. On principle, Mr. Cowling objects to a judgment following conviction being conclusive against the parish, although the judgment would not have been evidence for the parish had there been an acquittal. This, however, does not proceed on the point of mutuality which ought to exist with respect to an estoppel, but only because the verdict of not guilty might have proceeded on the ground that the road was not out of repair; whereas, there could not have been a verdict of guilty, without a finding that the defendants were bound to repair the road, as well as that it was out of repair. The liability to repair being in issue, and they being bound by the verdict, followed by the judgment, on a subsequent indictment against the same parish for not repairing the same highway, the same question of liability again coming into issue,—according to the general doctrine of estoppel, on the former judgment being given in evidence, no fraud being imputed (which I hope will always be attended to, because in the case of a particular presentment there is danger of fraud, and very slight evidence would weigh with me to show it was collusive and fraudulent, and of no avail; but here no fraud is imputed, and that is one of the conditions of the proposition which is laid down)—no fraud being imputed, the defendants ought not to be allowed to give any evidence for the purpose of disproving the liability. Mr. Cowling has called upon us to respect the consciences of jurymen, who may thus be required to find a verdict contrary to what they know to be the fact; yet the oath taken by the jurymen is to "find a true verdict according to the evidence." Now the former judgment is allowed to be evidence, and, according to the doctrine of estoppel, no other evidence can be laid before them; so that their finding, according to the judgment, is a true verdict in exact conformity to the oath they have taken. In *Reg.* v. *Blakemore,* though the doctrine was not in question, at least four of the judges expressed their entire assent to it; and the only doubt that existed was whether the former judgment could operate as an estoppel without being put upon the record. With respect to the general doctrine, therefore, we are all against Mr. Cowling. But then he objects that in this case there should be no estoppel, because the presentment was bad upon the face of it in not stating how the inhabitants of Houghton were bound to repair the highway. We think, however, that, though the presentment might have been held bad for this defect on demurrer or in arrest of judgment, the defendants, having acquiesced in it, cannot now make the objection. The presentment aptly describes the road, and states it to be in the township of Houghton, and avers that the inhabitants of this township were bound to repair it; and these are the facts which are now again to be established. Mr. Cowling next objects that there was no evidence of the fine imposed being paid, as there was in *Reg.* v. *Blakemore.* Execution upon a judgment cannot be necessary to give effect to it as an estoppel if it were duly pronounced; and the non-payment of the fine might have been some evidence of collusion, but where no fraud is imputed it is wholly immaterial. Lastly Mr. Cowling relies on the two Acts of Parliament. Now this road is described as being in the township of Denton; but this is a mere recital in the first Act of Parliament, which is repealed by the second. At most therefore it can only be considered as evidence that

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the road is in Denton, which, against the estoppel, cannot be admitted. Had there been anything amounting to an enactment that the road should be considered in Denton, this would be considered enough to prevent the estoppel; but a mere recital in an Act of Parliament, either of fact or law, is not conclusive, and we are at liberty to consider the fact or the law different from the statement in the recital. These objections being overruled, it follows that the judgment on the presentment was conclusive evidence against the defendant, and that the rule must be absolute to enter the verdict for the crown. *Rule absolute.*

COURT OF COMMON BENCH.

Reported by DANIEL THOMAS EVANS and R. VAUGHAN WILLIAMS, Esqrs. Barristers-at-Law.

Wednesday, Jan. 26.

SHARMAN *v.* SANDERS AND OTHERS.

Truck Act—1 & 2 *Will.* 4, *c.* 37—*What is an "artificer." An "artificer" within the meaning of the Truck Act, is a person who contracts for the use of his own personal services.*

Where, therefore, a man was employed at iron works in unloading and burning ironstone at so much per ton, to be paid monthly; and he hired men to work under him at weekly wages, he not being bound by his contract to give his personal services:

Held that, although he did part of the work himself, he was not an artificer within the meaning of the Truck Act, and consequently could not recover back from his employers the amount of wages which had been paid in goods, either to himself or the men under him.

Assumpsit for work and labour as an artificer, workman, and labourer, in and about the manufacturing of iron, and the carting, tipping, and unloading iron and ironstone.

Pleas—1. Payment of 10*l.* into court. 2. As to the residue *non assumpserunt.* 3. Payment. 4. Payment in goods. 5. Set-off of goods bargained and sold, and sold and delivered, money paid, money lent, and on an account stated.

Replication—1. Taking 10*l.* out of court. 2. Issue joined. 3. Traverse. 4. That before and at the time of doing the work in the declaration mentioned plaintiff was an artificer, workman, labourer, and person engaged and employed in the performance of certain work in and about the getting of ironstone, &c. within the meaning of the stat. 1 & 2 Will. 4, c. 37; and that the money in the declaration was wages contracted to be paid to plaintiff as such artificer, &c. for such work; and that the goods in the 4th plea mentioned were delivered by defendants to plaintiff by way of payment for the wages so earned, &c. contrary to the form of the statute, &c. 5. After stating as above that the plaintiff was an artificer, &c. and the action brought for wages—that the sum of money so sought to be set-off is claimed by the defendants in respect of goods, wares, and merchandise sold and delivered by defendants, being such employers as aforesaid to the plaintiff, being such artificer as aforesaid, whilst the plaintiff was in their employ, at a shop kept by the defendants, contrary to the statute, &c.

Rejoinder—1. Issue joined upon replication to 3rd plea. 2. As to replication to 4th plea that plaintiff was not such artificer, &c. as alleged; and that the said work was not done by plaintiff as such artificer; and that defendants were not such employers; and that the money in the declaration was not wages, &c. *modo et formâ.* 3. As to the replication to 5th plea, *de injuriâ.*

At the trial, which took place before Talfourd, J. in Middlesex, during the sittings after last Trinity Term, it was proved that the plaintiff, a labouring man, was employed from June 1850 to June 1851 by the defendants, at the Stanton-by-Dale Ironworks, in Derbyshire, in carting, tipping, and burning ironstone. By the contract with the plaintiff he was to be paid 1½*d.* per ton, and to employ men under him. He hired the men who worked under him at 2*s.* per day, to be paid weekly; but the defendants settled with the plaintiff himself once a month. The number of men hired by the plaintiff varied according to the quantity of work; but it was generally about nine or ten. The plaintiff stated that he was to work as a labourer with the other men, and was liable to be dismissed at a month's notice. On the part of the defendants it was sworn that the personal service of the plaintiff formed no part of the contract, and that if the work was properly done they had no right to make any complaint of the plaintiff, though he was continually absent. In point of fact, it appeared that the plaintiff did sometimes work with the other men, but that he was irregular in his attendance. It was admitted that the plaintiff had been fully paid, either in money or in goods; but the plaintiff sought to recover so much as had been paid to him or to the men under him in goods, on the ground that such payment was rendered illegal and void by the Truck Act (1 & 2 Will. 4, c. 37). It appeared that the defendants kept upon their works a shop for the sale of goods, adjoining to which, and under the same roof, is the cashier's office. The plaintiff was supplied with a sort of cheque-book, containing printed orders addressed to the cashier, and requiring him to pay the amount of money named therein. These cheques or

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tickets, were signed by the plaintiff, and delivered to any of the workmen who wanted an advance, and were by them taken to the cashier to be cashed; but it was proved that the men were expected to lay out a large portion of the money received from the cashier in the adjoining shop; and if they failed to do so, their names were entered in what was called a black book, and the cashier would afterwards refuse to cash their tickets until they had been into the shop and ordered of the shopman goods to the necessary amount, which in that case was usually indorsed by the shopman in pencil on the back of the ticket as a kind of authority to the cashier to pay the money. The learned counsel for the defendants at the trial confined his evidence to the question whether the plaintiff was an artificer; and upon that question the learned judge directed the jury, upon the authority of *Riley* v. *Warden*, 2 Exch. 59, that the plaintiff was not an artificer within the meaning of the Truck Act, unless it was an ingredient in his contract that his personal services should be given; that if he might fulfil his contract and yet be personally absent altogether, he was not entitled to the protection of that Act. The jury found that the plaintiff was not an artificer; adding that they deeply regretted that the wholesome provisions of the Truck Act could be so easily evaded.

In the following term a rule *nisi* for a new trial was obtained on the ground of misdirection.

Bates, Serjt. (*Willmore*, Q.C. and *Wilks* with him) showed cause. There was no misdirection in this case of which the plaintiff can complain; for the summing up was, if anything, too favourable for the plaintiff. The question put by the learned judge was whether it was an ingredient in the contract that the plaintiff's personal service should be given; and according to *Riley* v. *Warden*, 2 Exch. 59, confirmed by *Floyd* v. *Weaver*, 21 L. J. 151, Q. B., that was the proper question to leave. There may be a doubt whether the learned judge ought not to have confined it to mere manual labour; but he gave the plaintiff the advantage of supposing that personal superintendence would be sufficient. *Riley* v. *Warden* is supported by an examination of the statute 1 & 2 Will. 4, c. 37, (a)

(a) The following are the material sections:—1 & 2 Will. 4, c. 37, An Act to prohibit the Payment, in certain Trades, of Wages in Goods, or otherwise than in the current Coin of the Realm.—1. Whereas it is necessary to prohibit the payment, in certain trades, of wages in goods, or otherwise than in the current coin of the realm: be it enacted, &c. that in all contracts hereafter to be made, for the hiring of any artificer in any of the trades hereinafter enumerated, or for the performance by any artificer of any labour in any of the said trades, the wages shall be made payable in the current coin of the realm, and not otherwise; and that if in any such contract the whole or any part shall be made payable otherwise than in the current coin, such contract shall be and is hereby declared illegal, null and void.—2. That if in any contract hereafter to be made between any artificer, in any of the trades hereinafter enumerated, and his employer, any provision shall be made, directly or indirectly, respecting the place where, or the manner in which, or the person or persons with whom any part of the wages due or to become due to any such artificer shall be laid out or expended, such contract shall be, and is hereby declared, illegal, null and void.—3. That the entire amount of the wages earned by or payable to any artificer in any of the trades hereinafter enumerated, in respect of any labour by him done in any such trade, shall be actually paid to such artificer in the current coin of this realm, and not otherwise; and every payment made to any such artificer by his employer of or in respect of any such wages, by delivering to him of goods or otherwise than in the current coin aforesaid (except as hereinafter mentioned), shall be and is hereby declared illegal, null and void.—4. That every artificer, &c. shall be entitled to recover from his employer, &c. in the manner by law provided for the recovery of servants' wages, the whole, or so much of the wages earned by such artificer in such trade, as shall not have been actually paid to him by such his employer in the current coin, &c.—5. That in any action against the employer for the recovery of any sum of money, due as the wages of his labour, the defendant shall not be allowed to make any set-off, nor to claim any reduction by reason or in respect of any goods, wares, or merchandise had or received by the plaintiff, as and on account of his wages, or in reward for his labour, or by reason or in respect of any goods, wares, or merchandise sold.—6. That no employer shall have or be entitled to maintain any suit or action in any court of law or equity against any such artificer, for or in respect of any goods, wares, or merchandise, sold, delivered, or supplied to any such artificer, by any such employer whilst in his employment, as or on account of his wages or reward for his labour, or for or in respect of any goods, wares or merchandise, sold, delivered, or supplied to such artificer, at any shop or warehouse kept by or belonging to such employer, or in the profits of which such employer shall have any share or interest.—25. That in the meaning and for the purposes of this Act: All workmen, labourers, and other persons, in any manner engaged in the performance of any work, employment, or operation of what nature soever, in or about the several trades and occupations aforesaid, shall be deemed and be taken to be artificers. All masters, bailiffs, foremen, managers, clerks, and other persons engaged in the hiring, employment, or superintendence of the labour, shall be deemed employers. Any money or other thing had, or contracted to be paid, delivered, or given, as a recompence, reward, or remuneration for any labour, done or to be done, whether within a certain time, or to a certain amount, shall be deemed and taken to be wages of labour. Any agreement, understanding, device, contrivance, collusion, or arrangement whatsoever, on the subject of wages, whether written or oral, whether direct or indirect, to which the employer and artificer are parties, or are assenting, or by which they are mutually bound to each other, or whereby either of them shall have endeavoured to impose an obligation on the other of them, shall be a contract,

which clearly contemplates the case of mere labourers, who are to receive wages for their own labour. Thus, sect. 8 speaks of the wages of any artificer, "in respect of the labour *by him done*;" sect. 4, of the wages earned by such artificer; and sect. 5, of the "wages of his labour." Nor does the interpretation clause interfere with this construction; because it draws a clear distinction between "artificers" and "employers," and so defines the two terms that the plaintiff would clearly fall under the latter class. Even if this were not so, the plaintiff cannot complain of his own illegal mode of paying his own men.

(He was stopped.)

Macaulay, Q.C. and *Bittleston*, contrà.—Sect. 25 of the statute extends the term "artificer" to all persons "in any manner engaged in the performance of any work, employment, or operation of what nature soever in or about the several trades and occupations aforesaid;" and it is submitted that those words are large enough to include the plaintiff. It is a fallacy to say that the plaintiff was "an employer," and therefore could not be an "artificer." He might be both;—as between himself and the men whom he hired he would be an employer; but his relation to the defendants would not the less on that account be that of artificer. If it be not so, the Truck Act is virtually a dead letter; because, by letting out the work to one man, as was done here, the easiest contrivance for evading the statute is provided. In the case of *Riley* v. *Warden*, there are some observations of the judges which show that the effect of the interpretation clause was not fully considered by them; and it is moreover distinguishable from the present in this—that the plaintiff's contract there was not for mere labour. The contract there was to make a certain portion of a railway, involving the supply of all the necessary materials and implements for that purpose. Here it was a contract to do certain labour upon the defendant's premises, to be paid for according to the quantity done. Upon the whole it is submitted that, as the plaintiff in fact worked himself, and as there was nothing in his contract to prevent his so working, he was an artificer within the meaning of the statute; and that the learned judge was wrong in telling the jury that in order to render him an artificer it must be an ingredient in his contract that he should give his personal service.

JERVIS, C. J.—Although it may be possible to point out some distinctions between this case and that of *Riley* v. *Warden*, I think they are in principle the same, and that, according to that case, the ruling of the learned judge was quite correct.

MAULE, J.—I am of the same opinion; and I quite concur in the judgment in *Riley* v. *Warden*. The intention of the statute was to protect a class of persons who were deemed incapable of protecting themselves; because, by the general law, people are at liberty to contract as they please; but there are certain classes who seem to be regarded as perpetually *in statu pupillari*, and who can only bind themselves by contracts of a particular kind—such as seamen, whose contracts for wages are subject to special laws. Now, with reference to the Truck Act, it seems to me that the normal instance of an artificer under that Act is a person hired to labour with his hands; and that a person who merely contracts to procure labour to be done, either by himself or others, is not within the intention of the statute. A person entering into such a contract is a speculator, who necessarily calculates the price of labour at the time, and is very different from the mere workman, who is paid for his own labour. Nor does the letter of the Act include such a person; because sect. 25, upon which reliance is placed, provides, that it shall be a person "in any manner engaged in the performance of the work;" and I think the performance of the work must mean the doing of the work, not the procuring it to be done; and the fact of his doing something does not, in my opinion, bring him within the words "engaged in the performance of the work." He must be bound by his contract to do the work in order to come within the statute. Therefore, both the letter and spirit of the Act appear to me to be consonant with the decision in *Riley* v. *Warden*; and I cannot distinguish that in principle from the present case.

CRESSWELL and WILLIAMS, JJ. concurred.

Rule discharged.

COURT OF EXCHEQUER.

Reported by FREDERICK BAILEY and C. J. B. HEMSLEY, Esqrs. Barristers-at-Law.

Nov. 10 and Jan. 12.

TAYLOR *v.* LOST AND OTHERS.

Sewers rate—New commission—Fresh presentment of a jury.

In 1818 a level was taken and a survey made of certain lands liable to be rated to the sewers rate on a certain public drain called the "Boy Grift," and a precept was directed to the sheriff to summon a jury. The jury appeared and the court was adjourned to May 1819, when a presentment was duly made by them that the "Boy Grift" was ruinous, and certain lands ought to bear the charges of repairing it. No appeal was made against this presentment, or against the assessment made under it. In June 1828 a special

law of sewers was made and registered, continuing the said presentment. In the year 1837 a new commission of sewers was issued, and at the first court under it it was ordered that all laws, rules, constitutions, and orders of former Courts of Sewers enacted, ordered, and decreed, but such as had been repealed, altered, &c. should be continued and stand in full force. In 1845 the dykereeve had applied to the commissioners to authorise him to collect rate in respect of this "Boy Grift," which the commissioners had done without any special presentment, and further rates were made in the years 1847 and 1848:

Held, that the presentment of 1819 still remained operative, and that the rates made by virtue of it in 1845, 1847, and 1848, were valid.

This was an action of trespass *de bonis asportatis*. The defendants pleaded not guilty, and a justification by the authority of a certain commission of sewers of our Lady the Queen before, and at the said time when, &c. being in full force according to the tenor, purport, and effect of a certain Act of Parliament made in that behalf in the twenty-third year of the reign of his late Majesty King Henry the Eighth. To the plea of justification the plaintiff replied *de injuriâ*, and on this replication, as well as on the plea of not guilty, issue was joined. The cause came on to be tried before the Right Honourable Sir John Jervis, Knight, at the Summer Assizes in and for the county of Lincoln, on the 19th July 1850, when a verdict was found for the plaintiff for 11*l.* 7*s.* 10*d.* damages and costs of suit, but subject to the opinion of the court on the following

CASE.

The plaintiff is the owner and occupier of certain lands lying in the parish of Bilsby, in the county of Lincoln.

The defendants, before and at the time of the making and assessing of the rates, and of the issuing and executing of the warrant hereinafter mentioned, were and still are commissioners of sewers for the said county, acting for the district in which the said parish is situate under a commission issued and dated the 25th Nov. in the year of our Lord 1840. The said parish is interested by a certain public drain called the "Boy Grift." The defendant Rowell then was and thence hitherto hath been, and still is also, the owner and occupier of lands situate in the said parish, and liable to be rated and assessed to the rates made in respect of the said "Boy Grift" drain. The lands of which the defendant Rowell so was and is such owner and occupier are of the clear yearly value of 40*l.* and upwards.

The plaintiff has sustained damages to the amount of 11*l.* 7*s.* 10*d.* in respect of the trespasses complained of in the declaration. Those trespasses were committed by the command of all the defendants, and under and by virtue of the following warrant, under their respective hands and seals, issued and executed by them, bearing date the 28rd Feb. 1849:—

"To Robert Portington, bailiff of the wapentake of Coleswerth, in the county of Lincoln, and the dykereeve of the parish of Bilsby, in the said county, and to each of them, greeting. Whereas complaint hath been made on oath unto us, her Majesty's commissioners of the sewers for the said county of Lincoln, whereof three of them are of the quorum, that John Taylor, of Bilsby aforesaid, who is duly rated and assessed at the sum of 8*l.* 19*s.* 7*d.* being three proportion rates on lands lying in Bilsby aforesaid in the occupation of the said John Taylor, for and towards the works of sewers, hath refused to pay the same; and whereas the said John Taylor hath been duly summoned to show cause why he refuses to pay the same, and having appeared to the said summons, but not shown any sufficient cause why he refuses to pay the same: These are therefore to authorise you, or one of you, to levy the said sum of 8*l.* 19*s.* 7*d.* upon the goods and chattels of the said John Taylor by distress and sale thereof, and pay the overplus (if any) to the said John Taylor, the charges of distraining, keeping, and selling the same being first deducted. Hereof fail not upon your peril.—Given under our hands and seals at Alford the 28rd day of February 1849."

The said three alleged rates in the said warrant mentioned were rates made for the years of our Lord 1846, 1847, and 1848 respectively, on the said lands of the plaintiff, situate in Bilsby aforesaid, and within the level drained by the said drain under the circumstances hereinafter mentioned.

On the 3rd April, A.D. 1846, the commissioners of sewers for the district in which the said lands are situate held an annual meeting.

At this meeting the dykereeve for the time being of the parish of Bilsby was present and attended in his capacity of dykereeve, and then and in that capacity demanded and required that such commissioners should authorise him, the said dykereeve, to make and assess according to a certain survey by level hereinafter mentioned, a rate for the year 1846, for and in respect of the hereinbefore-mentioned public drain called the "Boy Grift."

The said commissioners, as aforesaid, on their said meeting, thereupon then directed the said dykereeve to make and assess such rates hereinafter mentioned, without any presentment of a jury other than as hereinafter mentioned.

The said dykereeve thereupon afterwards, on the

[illegible]

said 3rd April, A.D. 1846, in pursuance of the aforesaid authority, made and assessed a certain rate for and in respect of the said Boy Grift drain, upon, among other persons, the plaintiff, in respect of the occupation of his lands within the said level.

The total assessment for the year 1846 in respect of the said Boy Grift drain was made upon 1581 acres and 1 rood of land. The amount of the proportional rate so rated and assessed upon the plaintiff for the year 1846 in the said rate was 4l. 19s. 7½d., being at the rate of 6d. an acre for 79 acres and 1 rood of land.

In the year 1847 a rate of 2s. 6d. per acre was made by the dykereeve by the authority of the commissioners then assembled, precisely in the same form and manner as the above rate of the 3rd April, 1846, also without any presentment of a jury other than is hereinafter mentioned, which said rate of 1847 is also one of the said rates mentioned in the said warrant, and forms part of the said sum of 8l. 19s. 7d.

The total assessment for the year 1847 in respect of the said Boy Grift drain was made upon 1536 acres and 1 rood of land. The amount of the proportional rate so rated and assessed upon the plaintiff for the year 1847 in the said rate was 6l. 15s. 6d., being at the rate of 2s. 6d. per acre for 53 acres 3 roods and 29 perches of land.

In the year 1848 another rate of 4d. per acre was made by the dykereeve, by the authority of the commissioners then assembled, precisely in the same form and manner as the above rate of the 3rd April, A.D. 1846, also without any presentment of a jury other than as hereinafter mentioned, which said rate of 1848 is one of the rates mentioned in the said warrant, and forms part of the said sum of 8l. 19s. 7d. The total assessment for the year 1848 in respect of the said Boy Grift drain was made upon 1505 acres of land. The amount of the proportional rate so rated and assessed upon the plaintiff for the year 1848, in the said rate for that year, was 17s., being at the rate of 4d. per acre for 53 acres 3 roods and 20 perches of land. From the year 1840 until the year 1846 inclusive, the plaintiff was assessed upon 79 acres 1 rood of land in respect of the said Boy Grift drain since the year 1840; and during the three years for and in respect of which the above-mentioned three rates for the year 1846, 1847, and 1848, and in the said warrant mentioned, were made and assessed, the lands occupied by the plaintiff were and continued the same in situation and quantity, the quantity and extent being considerably less than 79 acres and 1 rood.

The three rates referred to on the said warrant are the rates for the year 1846, 1847, and 1848, and the said sum of 8l. 19s. 7d. mentioned in the said warrant is to be taken as the total amount of the said rates for the years 1846, 1847, and 1848, and the variance between the said sum and the actual total amount is for the purpose of this case to be considered as immaterial. No jury was summoned or empannelled for or at the making of any or either of the aforesaid three rates for 1846, 1847, or 1848, but those rates were all made without any presentment of any jury other than as hereinafter mentioned.

In the year 1818, upon the petition of several proprietors and occupiers in Bilsby of lands drained by the Boy Grift, a level was taken, and survey made, of the land in Bilsby liable to be rated to the Boy Grift drain; and at a court of sewers for the said district, holden on the 22nd Sept. in the year of our Lord 1818, the said court did order that a precept should be directed to the sheriff of the said county, requiring him to summon a sufficient number of good and lawful men of the county of Lincoln, in nowise concerned in the said drainage by Bilsby Boy Grift gout and outfall, or either of them, or any of the lands draining through the same by whom the truth might be best known, to be and appear at the then next court of sewers to be holden at Mablethorpe, in the said county, on Thursday, the 15th Oct. then next, at ten o'clock in the forenoon, then and there to be empannelled, sworn, and charged to inquire and present such things as should be then and there given them in charge. At a court of sewers for the said district, holden at Mablethorpe aforesaid, on the said 15th Oct. in the year of our Lord 1818, a jury appeared, and was empannelled by the said court. The said jury was summoned from the hundred of Colesworth, in the said county. The said last-mentioned court was adjourned to the 15th May, A.D. 1819. At a court of sewers holden by adjournment at Alford, on Saturday, the 15th May, in the year of our Lord 1819, the said last-mentioned jury again appeared. On the said 15th May 1819, a presentment was made by a jury of the hundred of Colesworth, in the county of Lincoln, whereby it was presented, in substance, that the Boy Grift gout and outfall was in a very ruinous and dangerous state, and insufficient for the drainage of the lands applied to be drained thereby; that certain works therein mentioned were absolutely necessary; and the jury did thereby find the several quantities of land in the occupation of persons named in the schedule recited, benefited or avoided danger by such drainage, and ought therefore to bear the charges thereof; and that thereby and thereby it was the proportion and occupier in Bilsby of 21a. 3r. 36p. of land.

It further found in Bilsby 1274 a. 3 r. 3 p. liable to the rate, and assessed it rateably per acre payable by instalments. Afterwards, at a court holden on the 2nd June, 1819, a rate, calculated in the proportions in the said schedule named, was made and ordered to be affixed on the doors of the churches of the parishes affected thereby. No appeal was made against the said last-mentioned rate or assessment; and at a special court of sewers holden on the 27th June, 1828, a special law of sewers was signed and sealed, and ordered to be registered on the rolls of the said court, containing the said presentment and proceedings touching the said works, which said law was accordingly registered; and from that time to the year 1837, each of the rates made was founded on the presentment of a jury in the proportions settled by the survey and levels so made in the year 1819, and comprised in the said law of sewers.

No level has been taken or survey made since the year 1819; no presentment of any jury has been made nor any jury empannelled since the year 1837; but at a court held at Alford on the 16th April, 1841, being the first court holden after the issuing of the last commission, the following order was made: "Ordered that all laws, acts, deeds, constitutions, and ordinances of sewers heretofore made, enacted, ordained, and decreed by the court of sewers held in and for the said County of Lincoln, and which have not been repealed, altered, or superseded, be confirmed and stand in full force." All rates made subsequent to 1837 were made in the same manner as those for the years 1846, 1847, and 1848 above mentioned.

It is agreed between the parties that either party shall, subject to objections, if any, appearing on the face of the hereinafter-mentioned documents, be at liberty to refer to the pleadings, action, and also the warrant and the said rates for the respective years 1846, 1847, and 1848, hereinbefore mentioned, and also to the said presentment and verdict of the 15th May, in the year of our Lord 1819, and to the said law of sewers of the 27th June, 1828.

The question for the opinion of the court is whether, under the above circumstances, the defendants were legally justified in taking the goods of the plaintiff, and whether they are liable to an action of trespass *de bonis asportatis* for so doing.

If the defendants were not legally justified in taking the goods of the plaintiff, and are liable to an action of trespass *de bonis asportatis* for so doing, the verdict is to stand, otherwise the verdict is to be entered for the defendants.

Willes (with him *Cockle*) for the plaintiff.—The question in this case is whether an assessment can be made by commissioners of sewers without a presentment. No presentment has here taken place since the year 1819, and there is nothing to connect that presentment with this rate: (Callis on Sewers 107, orig. ed.) In *Rex* v. *Somerset* (*Commissioners of Sewers*) 9 East 105, 3 Smith 109; it was held, that a decree made by commissioners under a former commission, which had expired by lapse of ten years, directing a sea-wall to be refounded which had been destroyed by a violent tempest and inundation, and the sum necessary for its construction to be advanced by those who were before bound to sustain it, *ratione tenura* (and who did advance the money accordingly), and that a rate should be made on the level for their disbursement, could not be enforced by commissioners under a new commission, as to so much of it as remained unexecuted, though good to the extent to which it had been executed; and therefore in that case the court refused a *mandamus* to the new commissioners to direct a rate to be levied on the level for the reimbursement directed by the decree. And in *Wingate* v. *Waite*, 6 M. & W. 739, a parish, which consisted of two districts, had immemorially been assessed to the repairs of a sea-bank (which was necessary for the protection of lands from the sea in both districts), by one assessment collected by one dykereeve. The commissioners of sewers, without any presentment of a jury, appointed two dykereeves, one for each district, and made a rate on one district exclusively for the repair of the sea bank. And it was held that the rate was void for want of a presentment; and that the commissioners were without jurisdiction, and were liable in trespass for the taking of the plaintiff's cattle under a distress warrant issued by them for arrears. A presentment is not necessary for the application of funds, but it is for an assessment; and in this case the presentment of 1819 was confined to new works. The commission can only act upon a presentment made within its own time. The introduction to the 13th section of 3 & 4 Will. 4, c. 22, recites that before the passing of that Act doubts had arisen whether a presentment of a jury is not necessary on each and every occasion to repair defences and works within the jurisdiction of the commissioners of sewers, and then goes on to enact that a presentment of a jury shall not be necessary upon each occasion to repair; but that section was not intended to apply to another and subsequent commission; and in the present case, for the purpose of this assessment, there has been no presentment at all. He also referred to sect. 17. [PLATT, B.—This is not assessing the persons—it is assessing the lands, and the presentment to one commission may be sufficient for the purposes of their successors.] In the case of *St. Catherine's Docks Company* v. *Higgs*, 12 Q. B. 643, there was a special verdict; and it is there shown the constant changes that were taking place and the necessity of fresh presentments from time to time. A presentment is not a matter of superfluity, but essential to the valid exercise of the power of the commissioners. What is the nature of a commission of sewers? By the 23 Hen. 8, c. 5, the persons named in the commission are to exercise certain duties; and the doubt expressed in the 13th section of the 3 & 4 Will. 4, c. 22, is, whether there should not be a fresh presentment—there is no question that, there should be a presentment for each separate commission. The irregularity here complained of runs through the whole proceeding. How could this presentment of 1819 be traversed? It would be preferable that there should be no presentment rather than a presentment not pointed to the particular works in question. [MARTIN, B.—Does it appear that this assessment was to do anything directed by the presentment? There is nothing to connect the assessment with the presentment. The presentment of 1819 is speculative and prospective. There is no statement of any *actual* benefit from the works made.] The commission must act on a presentment made *in its own time*. The commissioners of 1846 profess to assess for the whole level; "these and all other needful works." There is nothing in the presentment of 1819 to show the authority on which it goes, or whether or not the jury was summoned from the hundred over which the commissioners had jurisdiction, in which case it would be bad. It would appear that this jury was summoned from the hundred of Colesworth: (*Burkett* v. *Crosier*, 3 C. & P. 66; Woolryeh on Sewers, 131, 132; 3 & 4 Will. 4, c. 22, s. 11, were also cited.)

Mellor, contrà.—When a presentment has once been made, no new presentment is necessary by the same commission. *Non constat* that any good arising to a person in 1810 should also do so in 1815, yet it might be within the same commission. What is the object of a presentment? The works themselves need not be presented; first, it is necessary to show that from some cause the drainage is insufficient, and then the jury must find what lands will receive benefit or avoid danger by view or otherwise. The finding of the jury in this case is within the terms of the judgment in *Stafford* v. *Hunston*, 2 Bro. Ping. 691; Callis, 108–10. The jury is to ascertain who will benefit; the commissioners may decide on the character of the works and the nature of the repairs. The survey of 1818 comprises the land of the plaintiff, and, at a subsequent court of sewers, was ordered to be made a law of sewers, and this law is indented and enrolled as required by the Act of Parliament; and an order was made confirming the same, and that law is to the effect that the lands mentioned in the presentment are liable to the rate in certain proportions.

Cockle was heard in reply. *Cur. adv. vult.*

JUDGMENT.

POLLOCK, C. B.—In this case we are of opinion that the judgment of the court must be for the defendants. The question was as to the validity of certain rates made in 1846, 1847, and 1848 on the plaintiff's lands. The dykereeve in 1846 having applied to the commissioners to authorise him to make a rate, according to a survey by level in respect of the Boy Grift (a drain intersecting the parish of Bilsby), the commissioners authorised him to do so without any special presentment of a jury previously being made on that occasion. And the same thing happened in 1847 and 1848. It was for these rates that the distress warrant of the commissioners was issued, and the plaintiff's goods seized. There is no doubt that according to the law which governs in these cases, a previous presentment is necessary to justify such a rate. It is unnecessary to cite authorities to show this. But the question here is, whether there has not been a sufficient previous presentment by a jury. The case states that in the year 1818, on the petition of the occupiers in Bilsby of lands drained by the Boy Grift, a level was taken and a survey made of the lands in Bilsby liable to be rated to the Boy Grift; and on Sept. 22, 1818, the court of sewers directed a precept to the sheriff requesting him to summon jurors *de corpore comitatûs* of Lincoln to appear and inquire; and that on the day of appearance, the sheriff having under this precept summoned a jury out of the hundred of Colesworth, the jurors appeared, and the court was adjourned to May 15, 1819, when a presentment was duly made by that jury that the Boy Grift was ruinous; and they also found certain lands in the occupation of various persons (included in a schedule), received benefit or avoided danger by the drainage through the Boy Grift, and ought, therefore, to bear the charges of repairing it. The plaintiff's lands were included in this schedule and presentment. No appeal was made against this presentment, or the assessment made under it; and on the 27th June, 1828, a special law of sewers was made and registered in the rolls of the court containing the said presentment, touching the said works, under which special law of sewers all rates up to the year 1837 have been since from time to time made without objection. In the year 1837, however, a new commission of sewers was issued; and at the first court under it it was ordered that all laws, acts, deeds, constitutions, and orders of sewers theretofore made, enacted, ordained and decreed

by courts of sewers held for the county of Lincoln, and which had not been repealed, altered, or superseded, should be confirmed and stand in full force. At the time of the argument it was conceded that it was not necessary to have any fresh presentment during the continuance of the commission under which the presentment was first made, that being clearly provided for by the 3 & 4 Will. 4, c. 22, s. 13; but it was said that this could not apply to another and subsequent commission, the Act being limited expressly by the words "during the continuance of such commission." There might have been some difficulty if the case turned on the proper construction to be put on this clause. But here the law of sewers made on 27th June, 1823, and confirmed by the act of the commissioners in the year 1837, makes it unnecessary to examine into that question. For after that act, against which no appeal has ever been made, we think that the presentment of the 15th May 1819 remains still operative, and that the rates made upon and by virtue of it in 1846-7-8 were therefore valid. Probably, upon a representation of a change in circumstances arising since such presentment, it would be competent for the commissioners to inquire into the facts by a new jury, and a fresh presentment, just as if no previous presentment had been made; and for this purpose it is probable that the 17th sect. of 3 & 4 Will. 4, c. 22, was framed. But here, in 1837, there was an existing ordinance or decree of sewers valid and continuing during their continuance, and this is confirmed by the new commission; and we think this virtually makes the ordinance or decree under the old, an ordinance or decree under the new commission also. Now it is clear that, according to the law of sewers (Callis, 281), the commissioners have power to constitute and ordain laws, ordinances, and decrees,—as Callis says, not only *jus dicere* but *jus facere*. These laws must, however, be for the safeguard, conservation, redress, and reformation of the matters committed to their charge, and necessary and behoveful, and chiefly (as Callis afterwards says) *pro publico bono, non pro privato alicujus*. Now we think this decree or ordinance, whichever it may be, fulfils all these requisites. It is made *pro publico bono*—it is necessary and behoveful that all decrees in force should remain in force, and that parties should not, by the issue of a new commission, be altered in their previous rights and liabilities. And it is clearly applicable to the conservation and reformation of the Hoy Grift, one of the matters committed to the new commissioners to preserve and repair. We think, therefore, that this resolution of the new commissioners was legal and valid, and that its effect really is to make the presentment of May 1819 a continuing and valid presentment, applicable to the rates in question, and that these rates were therefore valid. It was suggested, but not much argued, that the first presentment was bad, as the jury was summoned by the sheriff from the hundred of Colesworth. This is a mere mistake of fact. The precept to the sheriff was to summon *de corpore comitatûs*, and was therefore right even according to *Burbett* v. *Crozier*, Moody & Malk. 119. The sheriff in his discretion, as he well may, in obedience to this precept, summoned jurors who resided in a particular hundred. But, in law, they are jurors *de corpore comitatûs* still under these circumstances. He has had an unlimited discretion given him; but, like a wise man, has exercised it in the most convenient way.

Judgment for the defendants.

Friday, January 14.

ANDERSON AND OTHERS *v.* THORNTON.

Policy of insurance—Wilful misrepresentation—Fraud—Recovery of premium.

This was an action upon a policy of insurance on goods from Baltimore to London. The sixth plea was that there was a wilful misrepresentation as to the time of the sailing of the vessel; and the seventh, that of having on board other goods, packages of lard, uninsured, known to the plaintiffs. The cause was tried before the Lord Chief Baron at the Guildhall, London, when the defendant obtained a verdict on the sixth and seventh pleas; and

Sir F. Kelly, on behalf of the plaintiffs, now moved to set that verdict aside, on the ground of its being against the evidence and for misdirection. He referred to *Williamson* v. *Allison*, 2 East, 449; 2 Duar on Insurance, 689; Arnold on Insurance; 5 Car. & P. 86 and 885. He contended also that at all events the premiums were recoverable, and must be returned: (*Fyse* v. *Parkinson*, 4 Taunt. 640; *Penson* v. *Lee*, 2 B. & P.; and *Dalzell* v. *Mair*, 1 Campb. 532.) The facts sufficiently appear in the judgment.

Cur. adv. vult.

JUDGMENT.

Wednesday, Jan. 26.—POLLOCK, C. B.—This was an action on a policy of insurance for the amount of premium on a voyage from Baltimore to London, in which a rule was moved for by Sir Fitzroy Kelly. The grounds of the application were two-fold; first, that on the principal question in the cause there was a miscarriage upon the subject of the policy—that part of the claim; secondly, that the plaintiff was entitled to recover the amount of the premium. The Court has taken time to consider, very much in consequence of what was said by Sir Fitzroy Kelly, when the rule was moved for, that the point which was very much pressed in argument when the application was made, had been presented to the judge at the trial, and notwithstanding that, and notwithstanding the jury made some inquiry about the amount of the premium, the jury were told that the amount of the premium was unimportant, was immaterial; it being contended on behalf of the plaintiff that the amount of the premium was very material, for the purpose of corroborating the testimony on behalf of the plaintiff in respect to the question that arose, of whether there had been or not the communication, the want of which was complained of — namely, first, whether the ship had sailed on a particular day or not; and, secondly, whether the plaintiff was himself an insurer to the like amount with that which he was insuring with the defendant. The shorthand writer's notes were referred to, for the purpose of enabling the court to ascertain whether this view had been presented to the jury by the learned counsel in his reply at the trial. I had taken a very full note of the address of the then Solicitor-General—a very full note—expressly with the view of not omitting, in directing the jury, any portion of that which might be urged by the Solicitor-General as the ground of his application to the jury for their verdict. When the rule was moved for, Sir Fitzroy Kelly—who ceased to be Solicitor-General in the meantime—certainly I will not say he directly stated that he had used that argument; I must say I certainly understood him so, and I believe it was so understood in court at the time. I pointed out that upon my note; there was no such point, nor did it appear that any such argument was used. And, before the court took time to consider, I read through the whole of the shorthand writer's notes; and, in the course of a very able, certainly not a very short address, but the length of which no one can complain of in a matter of so much importance, I was unable to find one solitary syllable that has the slightest reference to the view that was presented to the court as the ground on which a new trial ought to be granted. My learned brothers have since taken time to consider, chiefly with a view to read over the shorthand writer's notes to see if there was a ground for a motion for a new trial on the point presented to the court. My learned brothers concur with me in the opinion that no such matter was ever urged to the jury at all. There is no such argument to be found in the whole compass of the learned Solicitor-General's speech; and therefore on that principal point, (as to that, a sort of personal appeal was made to me; I believe the learned counsel said he was quite sure that I should be satisfied that a new trial ought to be granted), it appears to me that that entirely fails, and on that ground there ought to be no rule. The motion was made upon several grounds; first it was said that the verdict was against evidence. At the trial, I very much considered the evidence that had been offered on the one side and on the other. I have since during the motion, and subsequent to that period, looked over the evidence with considerable care; and I find on the part of the defendant that there is his own testimony, there is the testimony of the clerk, there is the testimony of the nephew; and they all concur and support each other, and they are supported by the documents that are in writing produced at the trial to the jury, especially one of the papers on which was to be found a statement distinctly stating, "sailed on the 12th." (That was the ship.) That must mean, if not explained otherwise, that she sailed from the port mentioned in the policy on the 12th, and it certainly turns out that that was not true. With respect to the communication of the letter, the evidence of the witness produced on the part of the plaintiff (and there was no other witness)—that evidence is not exceedingly clear and distinct; for one of his expressions is, that on a particular time, when it certainly was his duty to have shown the letter, he did not; and no doubt he positively states that he did show the letter, and as positively on the other side, by all the other witnesses on one occasion, and one of them on another occasion, it is as distinctly denied. Mr. Thornton said—and certainly there was no denial of it—that it was his invariable habit when a letter was produced to him, as a matter upon which the insurance was to be based, invariably to put his initials upon it; and I do not find any particular reason for supposing that that might not be strictly true. It was said that he was certainly mistaken in one respect; and I think he was, with respect to a visit or his being present on a particular period; a contemporaneous note written by the insurance broker, to which it is impossible, I think, not to give full credit, and in consequence of that, to believe Mr. Thornton was at the place at a period, when according to his evidence he was not; but that very note contains no communication beyond the having seen Mr. Thornton. It certainly does not communicate that the letter had been shown to him, which it was, according to the testimony of the witness, the special object of that meeting that that should take place. Looking over the whole of the evidence, I must say that I am perfectly satisfied with the verdict that the jury found. With reference to the other ground mentioned when the rule was moved for, I must say that it appears to me that a new trial ought not to be granted upon this ground; for this is the ground upon which at last it stands, that when the jury came in, an observation was made to them by the presiding judge, which was not an observation in point of law, but an observation in point of fact, and who did not notice a certain view of the case that had been presented to the attention of the jury and in the mind of the judge during the progress of the cause. My opinion is, if that were true, if that were correct, and a new trial was granted upon that ground, it would be difficult to say on what occasion a new trial might not be granted; but it turns out, when the shorthand-writer's note is looked at, that no such point was made in the course of the learned Solicitor-General's (as he then was) address, and that, if the judge presiding at the trial had made any such observation as it was said that he ought to have made, he would have anticipated that which for the first time was presented to the attention of any one when the rule came to be moved for. With respect to the amount of premium, this is to be observed: the ordinary premium was 25*s.*; the premium proposed at last to Mr. Thornton was, I think, 40*s.* or 50*s.*; 40*s.* I think was offered, and he declined to take it; and I think the next day it was done at 50*s.* at the suggestion that they would give him 50*s.* if he would take the whole, which he did. The contract was not between the ordinary premium of 25*s.* and the increased premium, but between one premium and the other, each of them being considerably more than the ordinary premium. And when it was put (and which, if it could be put with truth, would, in my opinion, be a very strong point), that Mr. Thornton must have supposed that the vessel sailed from the Capes on the 12th—because, unless the vessel sailed on the 12th from the Capes, she was already a ship in some danger; and if she had sailed from Baltimore on the 3rd, and it had not been known that she sailed from the Capes on the 12th, there would have been no difficulty about it—that is not correct. The plaintiff, who gave his evidence most fairly, distinctly stated that when he effected this policy he had already been anxious about the vessel for one week. Now the ordinary time of sailing from Baltimore to the Capes does not amount to a period of one week. Whether the communication was made or not, inasmuch as the distance between Baltimore and the Capes is not more than a week, if the plaintiff,—who knew that the vessel sailed from the Capes on the 12th—if he knew that, and had been already one entire week in a state of anxiety, there is no foundation for the argument that Mr. Thornton must have known that the vessel was in no danger at all, if he had supposed that the vessel had sailed on the 12th from Baltimore instead of from the Capes. The argument is this: Mr. Thornton says in his defence, "I supposed that she sailed from Baltimore on the 12th, and you concealed from me that she sailed on the 3rd or the 5th." "Now," says Sir Fitzroy Kelly, "if you suppose that she sailed from Baltimore on the 12th, there could have been no alarm at all, not the slightest reason for an increased premium." I say the fact is not so. Mr. Anderson, the plaintiff, distinctly stated that he had been already a week in a state of anxiety, and a week being much more than the average voyage,—the average was said to be from twenty-four hours to five days, that was the average,—a whole week (which I need not say is more than five days), the owner of the vessel had been himself in a state of anxiety, who knew she had sailed from the Capes on the 12th. If she had sailed from Baltimore on the 12th, Mr. Thornton, who, it appears, was as well acquainted with that voyage as Mr. Anderson himself, might well have supposed it was important whether she sailed on the 12th or on the 3rd; inasmuch as, whether she sailed from one place or the other, she was in a condition of being—if not called a missing ship—of having already gone beyond the average period of the voyage. But all these questions were presented to the jury; and I must say that I endeavoured to give the fullest effect, as it appeared to me ought to be given, to the conflicting evidence which appeared on the one side and on the other; and I certainly am not surprised that the jury ultimately found their verdict in favour of the defendants, because when a very young man, who had not been many months in the business of an insurance broker, and who gave a very confused account, in my judgment, of what took place, and when he was not too harshly cross-examined, but merely asked whether he would pledge himself to a particular statement, which was the statement of Mr. Thornton, refused to say that he would take on himself to say that it was not the truth, and went the length of saying that for anything he could swear or distinctly remember it might be so,—he believed it was not,—but it might be. I am not surprised that the jury found that to be truth which two or three persons on the other hand swore distinctly was the truth, upon a conflict of evidence. Therefore, it appears to me that there ought not to be any new trial. I am perfectly satisfied with the verdict, and I think if there was to be any number of new trials the result ought to be the same. I am not aware that there was any other point that it is necessary for me to mention, except the question of the return of the premium. Now that matter stands thus: After the jury had retired,

then, for the first time, the return of the premium was claimed at the suggestion of the defendant's counsel. I then asked Mr. Thornton whether the premium had ever been paid; he said no—that he had refused to receive it; and from the moment that question was put, and was so answered, I heard no more of the point that was then for the first time made. Had I been requested I would have saved the point. I was not asked to put any fresh point to the jury, and I was not again asked to tell them that they might find a verdict for the amount of the premium, and no further notice was taken of it. On the whole therefore, on this part of the case, we are of opinion the proper mode of dealing with this point is this—not to deprive the plaintiffs of the right to recover the premium, but, as I have no doubt the other side will consent—that the count for money had and received should either be struck out of the declaration, or the jury discharged from giving a verdict on it. The plaintiff may recover by another action the premium, if he be entitled to it under the circumstances, and then we believe justice will be done between the parties. The plaintiff will recover the premium, and the defendant will have an opportunity of paying it if he ought to pay it; and whatever (if any) question of law should arise on the subject can be determined. There is no doubt it has been long decidedly understood among mercantile men, that the underwriter signs the receipt, by which he is prevented from denying that he has received the premium; and there is no doubt that there is a case before Lord Eldon which decided that if that claim were made it ought to be attended to; and on the present occasion evidence being given, as I said, I certainly considered the point was done with and waived. The court, however, will take care that no injustice shall be done. This rule will be refused, the defendant consenting. [*Watson.*—As counsel for the defendant I consent to that.] Very well: you understand that the count for money had and received should be struck out of the declaration. [*Watson.*—Yes, my Lord.]

PARKE, B.—I concur with my Lord Chief Baron in the observations he has made, and I have very few to add to them. With respect to the verdict being against evidence, my Lord has pronounced his opinion that the verdict was satisfactory to him; and in looking through my Lord's notes, and also referring to some other notes with which I have been furnished, there can be no doubt it was a question entirely for the jury; and the jury might, with propriety, find either one way or the other: the question being this, whether they gave credit to Mr. Powell, the witness for the plaintiff, or Mr. Thornton, the defendant himself. I think, therefore, there is no ground to disturb this verdict because it is a verdict contrary to evidence; but the only reason that induced me to ask for a little time to consider, was that I thought an observation was made by Sir Fitzroy Kelly, which I thought was well deserving of attention, and possibly some observation my Lord made in answer to the interruption of the jury, which might have withdrawn a question from the consideration of the jury. The matter was this: Sir Fitzroy Kelly, in the argument the other day, here, insisted that the amount of the premium was one criterion by which the jury might judge whether Mr. Powell told the truth, or Mr. Thornton told the truth—for that it was a large premium, a premium on a missing ship; and Mr. Thornton would have been likely to ask that premium if he had been told the vessel sailed from the Cape on the 12th instant, but not if he had been told the vessel sailed from Baltimore on the 12th. In one point of view the ship was a missing ship, and the other not,—at least, less a missing ship. That was an observation well deserving consideration; and if I thought the jurymen had asked the question, whether they might look to the amount of the premium in order to enable them to judge whether Mr. Thornton or Mr. Powell told the truth, and the Chief Baron had told the jury they had nothing to do with that question at all, I was inclined to think, and still am, that there would have been good ground for a motion for a new trial, because the observation is well entitled to weight: but I wished to look through all the documents with which we have been furnished; and from the beginning to the end of the elaborate reply of Sir Fitzroy Kelly there is not one word mentioned of that argument. And the mode in which the shorthand writer describes the interruption to have been made by the juryman is extremely obscure, whether the juryman meant any such thing in the form in which he put the question as to the amount of the premium. My Lord Chief Baron returned an answer which is perfectly correct, that they had nothing to do with the amount of the premium. Therefore it appears to me that this point was not made on the trial as a criterion to enable the jury to determine who told the truth, Mr. Powell or the defendant. Therefore I think it would be extremely wrong to grant a new trial on a supposed failure of justice from a defect in the observations on the material facts and the law by the Lord Chief Baron. That is the only ground on which I was induced to ask for further time to consider. With regard to the other points made by Sir Fitzroy Kelly as to the motion for a new trial, I think none of them are well founded. He placed great reliance on the form of the pleas, the fifth and sixth—that in both of them, from the form of the plea, it is necessary, in order to sustain them, to prove the plaintiff had been guilty of a fraudulent misrepresentation, for the terms of the pleas are both of them said to be a fraudulent misrepresentation; and Sir Fitzroy Kelly urged very strongly it was a great hardship on the plaintiff being obliged to combat such pleas, and to go into evidence at considerable length by examining witnesses abroad in order to disprove the matter of fraud, where, as it turned out at the trial, there was no imputation of fraud on the plaintiff, but the pleas were supported on the ground that they were material communications, which, in an insurance case, whether they are fraudulently made a concealment or not, is wholly immaterial, except in reference to the return of the premium. Now, looking at the form of the pleas, it is perfectly clear, it is unnecessary in order to support the plea to prove the fraud, because you may strike out of the plea all the allegations of fraud, and leave a perfectly good plea on the ground of concealment or misrepresentation not fraudulent. It has been acted upon in some cases, and more particularly in two cases which lately occurred in the C. P., of *Southall* v. *Riggs*, and *Forman* v. *Wright*, in 20 L. J. 145. It appears to be perfectly well known and established, if you can strike out the allegations and leave what is material in the plea, the defendant can prove the plea, and it is perfectly good, and you may prove the material parts. With respect to the costs which Sir F. Kelly states the plaintiff has been put to in order to repel the charge of fraud, I apprehend that would be a question for the Master, who would not allow all the expenses as to the fraud, as the plea is supported on different grounds. But that would not be a ground for a new trial, because my Lord was perfectly right in saying these pleas would be supported by the simple fact of concealment. With regard to the fact that my Lord had not left the materiality of the representation to the jury clearly, it was idle for him to do so, because the fact speaks for itself; the representations were material, and they are admitted to be so by the counsel on both sides. Then, with respect to the return of the premium, there is no doubt, in my mind, the plaintiff is entitled to recover the premium, because, inasmuch as there was no fraud in the representation, if it had been a fraudulent misrepresentation without fraud, he would not have been entitled to recover; but it is only a mere misrepresentation without fraud; the insurance never bound the defendant, and consequently the plaintiff is entitled to the return of the premium. The old law, as old as the time of Lord Mansfield, is, that the defendant is estopped, by signing the policy, from saying he has not received the premium. The whole matter is settled, as we know, in point of practice; it is settled between the broker and the underwriter. It seems to me, inasmuch as this was never mentioned until the jury had gone out to consider the verdict, that the justice of the case will be amply satisfied by allowing the plaintiff an opportunity to recover that premium hereafter, which, according to my notion, he would certainly do in another action for money had and received; and probably that will be rendered unnecessary by the defendant paying the amount of the premium. I am not aware there is any other circumstance in the case that requires any other observations from me. On the whole, I am perfectly satisfied the rule ought to be refused.

ALDERSON and MARTIN, BB. concurred.

Rule refused.

COUNTY COURT APPEAL.

Monday, Jan. 17.

AVARDS AND WIFE, App. v. RHODES, Resp.

County Court—Jurisdiction—Plaintiff crediting a set-off to reduce balance below 50l.—Abandonment at the trial of excess above 50l.

A plaintiff claimed as due to him a sum exceeding 50l. but reduced it below that amount by giving defendant credit for a set-off, and sued in the County Court for the balance. The defendant had never agreed to the set-off, or allowed it as part payment, or to the balance of any account reducing the plaintiff's claim below 50l. The County Court judge thought at the trial he had no jurisdiction. The plaintiff then agreed to abandon the excess above 50l. to give jurisdiction; but the learned County Court judge thought it was too late then to do so, and the plaintiff was nonsuited.

Held, that the County Court judge had no jurisdiction under the circumstances, and, having no jurisdiction at the commencement of the suit, the plaintiff could not at the trial abandon the excess to give jurisdiction.

This was an appeal from the County Court of Kent, holden at Tunbridge Wells, and arose from an action brought in that County Court to recover compensation for services rendered by Mahala Avards, the wife of Thomas Avards, to the defendant.

The particulars of the plaintiff's demand, which were annexed to the summons issued in this cause, were as follows:—

In the County Court of Kent, at Tunbridge Wells.
Particulars of plaintiff's demand—

	£	s.	d.
To thirteen weeks service of Mahala Avards, from Oct. 11, 1841, to Jan. 11, 1842, at 4s. per week	2	12	0
To three years service from Jan. 11, 1842, to Jan. 11, 1845, at 5s. 6d. per week ...	27	6	0
To three years and a half service from Jan. 11, 1845, to July 18, 1848, at 5s. per week	27	6	0
	57	4	0
Paid by defendant on plaintiff's behalf, at different times 15	0	4	
Received by cash at different times... 4	0	0	
	19	0	4
	£38	3	8

An objection was taken on the part of the defendant that the amount of the plaintiff's claim exceeded the sum of 50*l.*, and that, therefore, the court had no jurisdiction to try the cause. In answer to this objection, it was suggested that the defendant had given notice of the set-off stated in the particulars of demand in a former action, which had been brought in the same court by the said Mahala Avards alone against the said defendant, in which action the plaintiff was nonsuited, on the ground that she was a married woman; but there was no evidence tendered of an account stated, or of any settled and agreed balance between the parties. The judge decided that he had no jurisdiction to try the cause, the plaintiffs not being at liberty to introduce matter of set-off to bring their claim within the jurisdiction of the court. The plaintiffs then offered to abandon so much of the said sum of 57*l.* 4*s.* as exceeded the sum of 50*l.* so as to bring their claim within the jurisdiction of the said court; but the judge decided that this was not a case in which the plaintiffs were at liberty to abandon the excess at the trial, and nonsuited the plaintiffs. The questions for the opinion of the Court of Exchequer are: first, whether the plaintiffs could, by the admission of payments, and by introducing matter of set-off, bring the case within the jurisdiction of the court; secondly, whether the plaintiffs ought to have been allowed, at the trial of this cause, to abandon so much of the said sum of 57*l.* 4*s.* as exceeded the sum of 50*l.* so as to bring their claim within the jurisdiction of the said court.

Macnamara, for the appellants.—The County Court had jurisdiction, as the *balance* which it sought to recover was within 50*l.* The objection that it was reduced by set-off ought not to prevail, there being evidence that it was due on a settled account; therefore the County Court had jurisdiction. The judge should have inquired into the fact whether it was such a balance or a mere matter of set-off, in order to determine whether he possessed jurisdiction: (*Kempton* v. *Willey*, 1 L. M. & P. 280; S. C. 19 L. J. 269, C. P.) Secondly, if the items for which credit is given cannot be taken into account, so as to reduce the claim within 50*l.*, there was an abandonment of the excess, and by such abandonment the demand was reduced to an amount of which the County Court might take cognisance within the meaning of the 63rd section of 9 & 10 Vict. c. 95, and the 13 & 14 Vict. c. 61, s. 1, extending the provisions of the former Act to all debts, damages, and demands which may be sued for in the said courts, or any of them, not exceeding the sum of 50*l.* The abandonment was made at the hearing; and that, it would seem from the case of *Isaac* v. *Wyld*, 7 Ex. 168, is a proper time to make it. (*Vines* v. *Arnold*, 8 C. B. 632; *Woodhams* v. *Newman*, 7 C. B. 654; and *Bremskill* v. *Powell*, 19 L. J. 362, Ex. were also cited.)

Bovill, contrà.—This was a claim for an amount exceeding 50*l.*, and the County Court has no jurisdiction. There no evidence of there being any settled balance or agreed amount; and the only items for which credit is given in the particulars of demand which, if allowed, could reduce it below 50*l.*, are items which are in operation for that purpose, and which do not in effect reduce it at all, being counter claims. The party summoned in a claim like this is not bound to go to the court. In *Isaac* v. *Wyld* it was necessary that the defendant should obey the summons, because there there was an apparent jurisdiction; here there is not. It would be productive of great inconvenience to hold that in such a case a defendant must go to the court; it might fix a man with costs who was not bound to attend. It is clearly a ground for prohibition if the plaint be for more than 50*l.*: (*Berwick* v. *Capper*, 7 C. B. 669.) Instead of applying for a prohibition, he may if he choose appear at the hearing, and object to the judge's jurisdiction, as was done in this case; and the judge did right in saying he had no jurisdiction.

Macnamara, in reply.—*Isaac* v. *Wyld* was subsequent to *Berwick* v. *Capper*, and decides that the mere amount mentioned in the plaint does not oust the jurisdiction of the County Court.

Cur. adv. vult.

JUDGMENT.

POLLOCK, C. B.—The questions submitted by the learned judge of the County Court are—whether the plaintiffs could, by the admission of payments, and on introducing matter of set-off, bring the case within the jurisdiction of the court; secondly, whether the

EXCHEQUER.

plaintiffs ought to have been allowed at the trial of this cause to abandon an excess of a sum of 17*l.* 4*s.* so as to reduce the sum of 50*l.*, so as to bring the cause within the jurisdiction of the court. We are of opinion that the learned judge was right on both points. The jurisdiction of the County Court, by the 58th section of the 9 & 10 Vict. c. 95, extends to "all pleas of personal actions, where the debt or damage claimed is not more than 20*l.*, whether on balance of account or otherwise." The term "balance of account" means after payment of part,—after the allowance of set-off as an item in account in the agreement of the parties, which is equivalent to payment of part, and not when the plaintiff claims more than 20*l.* after a simple set-off. This was so held in *Woodhams* v. *Newman*, 7 C. B. 854; 6 Dowl. & L. 189; and *Bendick* v. *Capper*, 7 C. B. 869; and in the latter case, where the plaintiff sued for 20*l.* only, as the balance of an account originally of 175*l.*, but reduced by a supposed set-off, the C. P. granted a prohibition. Since that time the 13 & 14 Vict. c. 61, s. 1, has extended the jurisdiction to 50*l.*, subject to the same limitations. In the case now under consideration the plaintiffs claimed more than 90*l.* Their demand was for 57*l.* 4*s.*, subject to a reduction by payment of 4*l.*, which diminished it to 53*l.* 4*s.*, and against which they proposed to allow, what on the face of the particulars was no doubt a mere set-off, 15*l.* 0*s.* 4*d.* But this set-off had never been allowed before action by the defendant, so as to constitute a part payment; nor did the defendant offer to admit it on the trial. At least nothing of that sort is stated in the case, consequently it was really a demand for 53*l.* 4*s.*, and a demand on the face of the summons, which the plaintiffs would have to prove; and this is a demand which the County Court had no jurisdiction to try. It was, however, contended that the case of *Kimpton* v. *Willey*, 19 L. J. 202, C. P.; 1 L. M. & P. 280, laid down a different doctrine from that in which the above cited cases proceeded, and decided that a person might sue for more than 50*l.*, and reduce his claim afterwards by allowing a set-off, or abandoning the excess beyond 50*l.* From the report in both the Law J. and L. M. & P., as to the opinions of Wilde, C. J., and my brothers Williams and Talfourd, it would appear that the ground for which the rule for a prohibition was discharged was, that the affidavits were not sufficient to show that there was an excess of jurisdiction. My brother Maule is reported to have added that, with respect to claims above 20*l.*, there was only an implied prohibition from *giving judgment* for more than that amount, arising from the enabling clauses of the 58th and 68rd sects. But this is probably incorrectly reported; it seems to us at variance with the decision in *Bendick* v. *Capper*, and the words of the Act (sect. 58), that all pleas of personal actions where the debt or damage *claimed* is not more than 20*l.* may be holden in the County Court. It cannot be that the judge may investigate claims to any amount, provided his judgment does not exceed the limit of 50*l.* But, no doubt, where the plaintiff claims a balance of 50*l.* only, it may happen that the judge may have to investigate demands to a much larger amount; and if there be any part payment or set-off agreed to, it may be required that the plaintiff shall prove a sum which will out-top that payment or set-off, and which may much exceed 50*l.*; but that is made necessary by the introduction into the Act of the terms "balance of accounts," that is, over and above all payments; and is a very different case to a claim of a greater sum, with an offer of a set-off of one, reducing the amount to or below 50*l.* We think therefore that, according to the decision in these cases, the demand originally exceeding 50*l.*, being only reduced below it by offering to allow a set-off never agreed to as a part payment, was one over which the court had no jurisdiction. The offer to abandon the excess at the trial appears to us to make no difference, as the claim from the first was one over which the County Court had no jurisdiction. In that respect the case differs from *Isaac* v. *Wyld*, 7 Exch. 103, where the sum on the face of the summons and particulars did not exceed 50*l.*, but was taken out of the jurisdiction by the proof that it was a portion of a debt originally exceeding 50*l.*; and then the plaintiff was permitted to abandon the excess beyond 50*l.*

Judgment affirmed.

Jan. 25 and 26.

TAYLOR *v.* PULLEN.

Promissory note—Post-dating—Bankruptcy.

The defendant signed a blank stamp in July 1846; in May 1851 he obtained his certificate from the Court of Bankruptcy; and in Oct. 1852 the stamp was filled up and indorsed to a third person:

Held a good note, on which an action might be brought by a bona fide indorsee for a good consideration.

This was a case which was tried before Martin, B. at the sittings in Hilary Term, when a verdict was returned for the plaintiff.

Hodgson now moved for a rule calling on the plaintiff to show cause why the verdict should not be entered for the defendant on the 4th plea or a new trial had on the ground of misdirection.

The action was on a promissory note for the sum of 24*l.* 18*s.* 6*d.* dated 20th Oct. 1852, payable at one month after date, made by defendant to H. C. Robinson, and indorsed by Robinson to the plaintiff. The defendant pleaded, thirdly, his bankruptcy and certificate.

It appeared that in July 1846 the defendant was under arrest at the suit of one Officer, and was at that time negotiating for his liberation, when he received intelligence of the dangerous illness of one of his children, and he then gave to Pierpoint, the clerk of Robinson, who was the attorney of the execution-creditor, 5*l.* and a blank stamp for a promissory note, with his name to it. On the 12th May 1851 the defendant obtained a third-class certificate from the Bankruptcy Court; and on the 20th Oct. 1852, the stamp was filled up at one month's date, being made payable at a place where the defendant resided in 1846; and the first intimation that it was still in existence that the defendant received was the writ in this action.

Aude v. *Dickson*, 20 L. J.; *Mulhall* v. *Neville*; 12 & 13 Vict. c. 106, s. 172, were cited.

Cur. adv. vult.

POLLOCK, C.B.—In this case, which was moved yesterday by Mr. Hodson, we are of opinion that there ought to be no rule. The rule was moved for on the ground that it ought to have been the direction given to the jury that it was unreasonable that the blank paper should be filled up after so long an interval; and, secondly, that the plea of bankruptcy was an answer to the action, inasmuch as this paper had been executed by the bankrupt before his bankruptcy, and therefore he ought to be protected by the certificate. We are of opinion there really is no foundation on either of these grounds for a new trial. The matter was left to the jury. It was entirely a question for them what was reasonable under the circumstances, and they found in favour of the plaintiff; and correctly enough, especially and rather because the plaintiff was undoubtedly an innocent indorsee, who had no notion whatever that there was any fraud, or any irregularity that could be imputed to the document. With respect to the bankruptcy we are of opinion, looking to the clauses referred to by Mr. Hodson, that there is no foundation for a rule either on that point, inasmuch as this was a cause of action arising after the bankruptcy; and although—if there had been any collusion between the parties, or any attempt to violate the spirit of the bankrupt laws, by getting them to do an act with a view to create a debt that should be barred by the certificate—although, in that case, there might be some argument used to induce the court to come to a different conclusion, even in such a case my impression, at present, is that we should not be administering law, but making law. There is in this case no foundation for such an argument at all. There is no evidence of any collusion; and it does not appear that there was any attempt to make up this instrument for the purpose of avoiding the effect of the bankrupt laws or any other law. In the usual course of business a debt had accrued; the creditor wished to be paid, and the debtor said, here are five pounds, and here is a piece of paper which you may use when necessary—for, in substance, that was what passed; and then the person who is the creditor who received the paper kept it for a considerable time by him—whether the object might not be to make use of it when the debtor had the means of paying or not—he kept it for a considerable time, and when the debtor got into difficulties, and was discharged by the Bankruptcy Court, he filled it up and paid it away for a good consideration to a person who was an innocent indorsee for value. Under these circumstances we think certainly there should be no new trial.

Rule refused.

BAIL COURT.

Reported by T. W. SAUNDERS, Esq., of the Middle Temple, Barrister-at-Law.

Wednesday, Jan. 26.

(Before CROMPTON, J.)

Re THE TRUSTEES OF THE BAWLBY AND WORKSOP TURNPIKE-ROADS.

Turnpike-roads—Mortgage of Tolls—Administration—Mandamus.

The trustees of a turnpike-road in the province of York mortgaged the tolls, the mortgage deed containing no covenant for repayment. The mortgagee died within the province of Canterbury, the deed being in his house at the time, and administration was taken out in Canterbury. Twelve months' interest being in arrear, an application was made by the administrators to this court for a mandamus to the trustees, to compel them to pay such arrear:

Held, First, that the administration should have been taken out in the province of York.

Secondly, that a mandamus would not lie in such a case.

This was a rule calling upon the trustees of the Bawlby and Worksop turnpike-roads to show cause why a *mandamus* should not issue, commanding them to pay to the administrators of Mr. John Thomas Dawson the sum of 20*l.* being the amount of one year's interest upon a mortgage of the tolls of such roads.

The trustees were constituted under a local Act, and they had power to mortgage the tolls of the road, which they accordingly did. The deed contained no covenant for repayment. The mortgagee died within the province of Canterbury, and at the time of his death the mortgage deed was in the house in which he so died. Administration to his estate and effects was granted to the Archbishop of Canterbury, out of the Prerogative Court of Canterbury. The road itself was wholly within the province of York.

Cowling showed cause against the rule, and contended first, that the administration should have been taken out in the Prerogative Court of York, and not of Canterbury; secondly, that a *mandamus* would not lie in such a case.

Pearce in support of the rule. *Cur. adv. vult.*

His LORDSHIP to-day delivered the following

JUDGMENT.

This was a rule for a *mandamus* to compel the trustees to pay the representatives of a mortgagee the interest upon his mortgage. Upon the argument before me, at the end of the last term, it was agreed that two points should be left for my consideration. The first was, whether the administration was properly taken out in the province of Canterbury, or whether the administration should have been taken out in the province of York, in which province the roads were situate; and secondly, whether a *mandamus* in such a case would lie. The deed of assignment of the tolls to the original mortgagee, contained no covenant for repayment, but was a mere conveyance. This gave a chattel interest in the tolls to the mortgagee which would pass to the administrator. This seems to fall within the same rule as is stated in Comyn's Digest, B. 4. I think therefore the administration should have been taken out where the roads were situate, in York, and not in Canterbury. It must be taken that such a security gives no legal right to the mortgagee to demand either principal or interest: (*Pardoe* v. *Price*, 16 M. & W. 451.) I feel bound by that authority to hold that the applicant has no legal right, but that his remedy is in equity. We held that no *mandamus* would lie when it was merely an equitable right (1 El. & Bl. 92): it was said by Lord Campbell that the remedy was in equity, and that therefore a *mandamus* would not lie. Taking the general rule to be so, as stated in *Reg.* v. *the Marquis of Stafford*, 3 T. R. 646, and finding no particular circumstance to take this case out of the general rule, my opinion is against the applicant, and the rule must be discharged, upon the terms agreed upon between the parties.

Rule discharged.

INSOLVENT DEBTORS COURT.

Reported by DAVID CARR MACRAE, Esq., of the Middle Temple, Barrister-at-Law.

Wednesday, Feb. 2.

(Before Mr. Commissioner LAW.)

Re H. E. FAIRDELL.

Creditor omitted from schedule—New detainer before the period of discharge specified in the adjudication expired—Fresh debts contracted during the period of imprisonment.—Rehearing—New petition.

An insolvent was remanded for two years by the County Court, and had a detainer lodged against him while imprisoned in the county gaol by a creditor who had been omitted from the schedule. The insolvent's wife had also during the same period contracted fresh debts. He then procured his removal to the Queen's prison, when the period arrived for his discharge, pursuant to the adjudication in the County Court.

Quære, how is he to proceed to get rid of the detainer lodged by the creditor omitted from the schedule, and to protect himself in respect of the new debts contracted?

Held, that as the insolvent had removed himself, thereby throwing difficulties in the way of a rehearing by order of the judge of the County Court, he might file a petition in the Insolvent Debtors' Court, and include in the new schedule both the old debt and those subsequently contracted by his wife during his imprisonment.

Semble, the County Courts have power to direct a rehearing.—Per Mr. Commissioner Law.

Nichols applied for leave to file a petition under somewhat peculiar circumstances. It appeared that the insolvent, who had been a lieutenant in the army, had been imprisoned since Nov. 1849. He was formerly in Reading Gaol, and while there he was heard at the County Court at Reading and declared to be entitled to the benefit of the Act after he should have been imprisoned two years at the suit of a certain creditor. Subsequently he removed himself to the Queen's prison, and in May last would have been discharged; but a creditor who had lodged a detainer while he was in Reading gaol, had not been inserted in the schedule added to which his wife had, since his imprisonment, contracted some debts. Under these circumstances the insolvent was anxious to file a new petition, and to include the omitted debt and the new debts incurred by his wife without his knowledge. The affidavit also stated that there had been a sentence of divorce lately pronounced by the Consistory Court in a suit instituted by him against his wife. He was aware the Court had held that where a debt was omitted from a schedule there should be a rehearing; but the man, in this case, had

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removed himself from the country, and knew if he had a rehearing to insert the old name, he could not get rid of the new debts.

Mr. Commissioner Law said, that they differed as in this case the petitioner, on rehearing, as the insolvent had removed himself from the jurisdiction of the County Court, before which he was heard. He was of opinion that the County Court could direct a rehearing, although he was not aware whether it had ever been done, neither was he aware whether the other commissioners of the court had given their opinion as to whether the County Court could direct a rehearing. He, however, doubted whether the County Court could exercise the power of ordering a rehearing in this case; he should, therefore, grant leave to file another petition. *Motion granted.*

Equity Courts.

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Reported by C. H. Knox, Esq. of Lincoln's-inn, Barrister-at-Law.

(Before Lord St. Leonards, L. C., and the Lord Justice Knight Bruce, and the Lord Justice Lord Cranworth.)

Wednesday, Dec. 15.

Re The Monmouthshire and Glamorganshire Banking Company, *ex parte* Cape's Executors.

Joint-stock Companies Winding-up Acts, 1848 *and* 1849 *—Contributory—Contract—Period of commencement of liability considered.*

A purchaser of shares in a joint-stock company takes them subject to all existing as well as future liabilities, unless a very strong case to the contrary appears upon the deed of settlement.

By the deed of settlement of a joint-stock banking company, every person being a purchaser in respect of any shares in its capital, and every person being an executor or administrator of any deceased proprietor, was, as to all duties, obligations, claims, and demands upon or against him in respect of shares so to be purchased by him, or which should become vested in him as such executor or administrator to be considered a proprietor in the company from the time of the shares being so purchased, or being so vested in him, and when and, by any means whatsoever, any shares in the capital of the company were duly and effectually transferred to a new proprietor, then and in such case, and not before, the responsibilities of the previous owner, as a proprietor in the company in respect of such shares, were to cease and determine, and such previous owner was to be exonerated and discharged from all subsequent claims, demands, and obligations in respect of the same shares, and from all future observance and performance of the covenants, conditions, stipulations, and agreements of the partnership deed. A reserved surplus fund was created, for the purpose, amongst other things, of meeting any unforeseen emergencies, losses, or extraordinary demands on the company; and every transfer was to carry with it the profits and share of capital, and reserved surplus fund, in respect of the transferred shares. The company was directed to be wound up under the Winding-up Act, when it was discovered that losses had been incurred, and that there were outstanding liabilities.

Held, that under the terms of the deed a transferee of shares was, in respect of the transferred shares, subject to all the liabilities of the company, as well those incurred before as those after the date of the transfer.

A motion by the executor of a deceased shareholder to discharge or vary the order of the Master, who, under the order for winding-up the company, had placed his name on the list of contributories, and had made a call upon him in respect of the shares held by his testator, on the ground that some of the debts and liabilities in respect of which the call had been made were incurred before the transfer of the shares to his testator, was on appeal, affirming the decision of the Court below, refused.

This was an appeal to discharge two orders of the Master of the Rolls, the one directing the name of John Ebenezer Davies, as the executor of John Cape, to be retained on the list of contributories of the above-named company for 105 shares, without any limit as to his responsibility; the other authorising a call of 60*l.* per share. In both instances the Master of the Rolls had affirmed the decision of the Master.

The facts were in effect these:—Mr. Cape was the transferee of 105 shares, in respect of which his executor had been made a contributory. Some of the debts which had been proved against the company under the Winding-up Act had been incurred previous to the dates of the different transfers to Mr. Cape; and the objection raised by the appeal was, that the liability of Mr. Cape only extended to debts and liabilities of the company which had been incurred subsequent to the transfers of the several shares.

The following are, in effect the clauses in the company's deed upon which the question rested:—

The 52nd clause declared that so much of the profits of the company as should be made for the period ending the 31st Dec 1836, as the directors in their discretion might deem expedient, should be retained and form part of a fund to be called "the Reserved Surplus Fund," and

in each succeeding year, the net profits, after setting apart a certain proportion for maintaining the said surplus fund, should be divided among the proprietors in proportion to their respective shares; that the surplus fund for the time being should be carried to a separate account in the books of the company; and was declared to be as well a reserved fund of capital, to meet any unforeseen emergencies, losses, or extraordinary demands upon the company, as also a reserved fund of profits, for the purpose of supplying any deficiency which from unforeseen circumstances might arise in the profits of any year, and of preventing a fluctuation in the amount of the dividends of successive years; and that such surplus fund should, on the dissolution of the company, belong to and be divided among the persons then entitled to the capital, in the same shares as they should be entitled to such capital.

The 54th—That the executor or administrator of any deceased proprietor should not as such be a proprietor in respect of such shares as should be vested in him, in either of such capacities; but any such executor or administrator should either be at liberty to dispose of such shares, or at his option to become a proprietor upon giving certain notice; and upon complying with the provisions therein contained, he should be admitted a proprietor in the company in respect of such shares, and have the same transferred accordingly, and should be personally charged with the duties and liabilities incident to the ownership of the same; that no dividend, which should have become due on the same shares since his title should have accrued, should be receivable or commandable by him, but, till some person should have become a proprietor in respect of the same shares, should remain in suspense; and every transfer should carry with it the profits and share of capital, and reserved surplus fund, in respect of the shares transferred, so as to close all the right and interest of the party or parties making such transfer in respect of such sold share or shares.

The 57th—That every person who, being a purchaser of any shares in the capital of the company, should take a transfer or assignment of such shares, and should not previously to such purchase have executed or otherwise acceded to these presents, and every person who, being the executor or administrator of any deceased proprietor, should become a proprietor of the company in respect of the shares vested in him in such capacity, and should not at the time that the said shares vested in him in such capacity by the means aforesaid, be a recognised proprietor in the company in respect of any other shares in the capital, should, as to all duties, obligations, claims, and demands upon or against him in respect of such shares, be considered a proprietor in the company, from the time of the shares being so purchased by, or being so vested in him as aforesaid; but as to all profits, rights, privileges, benefits, and advantages to arise from the said shares, no such person should be considered a proprietor in respect of the same until he should have executed or otherwise acceded to these presents.

The 60th—That whenever, by any means whatsoever, any shares in the capital of the company should become actually forfeited, or should be duly and effectually transferred to a new proprietor, then and in such case, and not before, the responsibilities of the previous owner, as a proprietor in the company in respect of such shares, should cease and determine, and such previous owner should be exonerated and discharged from all subsequent claims, demands, and obligations in respect of the same shares, and from all future observance and performance of the covenants, conditions, stipulations, and agreements of these presents in respect of the same shares.

The transfer deed which was in use in the said company on the occasion of the transfer of shares in the company was as follows:—"This indenture, made the day of , between (the assignor of the shares hereinafter mentioned) of the first part, (managing director of the Monmouthshire and Glamorganshire Banking Company) of the second part, (the assignee of the same shares) of the third part, and and (trustees on behalf of the company of proprietors of the said banking company) of the fourth part, witnesseth that the said assignor, in consideration of the sum of £ to him paid by the said assignee, doth, with the consent and approbation of the general board of directors of the said company, testified by the execution of these presents by the said managing director, hereby grant, assign, and transfer unto the said assignee all those shares of him, the assignor, in the capital stock of the said Monmouthshire and Glamorganshire Banking Company now standing in the name of the said assignor in the books of the said company, and all dividends, benefit, and advantage accruing from or incident to the same shares, to hold the same unto the said assignee, his executors, administrators, and assigns, subject to the covenants and stipulations contained in the deed of settlement of the company, bearing date the 1st Aug. 1836; and the said assignor doth, for himself, his heirs, executors, and administrators, covenant with the said assignee that, subject as aforesaid, the said assignee, his executors, administrators, and assigns, shall henceforth hold and enjoy

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the hereby transferred shares to his lordship here stated deeds and profits thereof, [illegible] containing the from the said assignor, or any other person.) It is clear and the said assignee and all other who may die under him, shall, on the request [illegible] of a covenant said assignee, his executors, administrators, and assigns, execute to him or them any [illegible] further able assurances of the same shares [illegible] it assignee doth, for himself, his heirs, [illegible] administrators, covenant with the [illegible] parties hereto, that the said assignee, his executors, administrators, and assigns, will observe and perform all covenants, articles, and stipulations contained in the said deed of settlement on the part of the proprietors of shares in the said company to be performed, as fully as if the said assignee had been party to and executed the same, and will, whenever thereto required by the [illegible] general board of directors for the time being of the said company, execute the said deed of settlement or any supplemental deed, to be prepared under the authority thereof, and any counterpart or duplicate of the same respectively. In witness whereof," &c.

The Master of the Rolls considered the question as resting on the construction of the contract between the parties. The 57th clause meant, that the purchaser of shares should be considered a proprietor as to all duties, obligations, claims, and demands in respect of the shares purchased from the time of his purchase; but as to all profits or benefits or advantages in respect of such shares, that he should not be considered a proprietor until he should have either executed the deed or have assented to it in some way or other. The proper construction of the clause was to construe it as specifying the time at which the purchaser's liability commenced, and when his right to the profits commenced, but not as specifying what the liability of such purchaser was. The clause left such liability untouched; and, without doing violence to the language, it could not be construed as specifying that the purchaser was not to be liable to debts and liabilities in respect of the purchased shares except from the time of transfer. By the 54th clause a purchaser was to have all the benefit of the reserved surplus fund in respect of his purchased shares. That was a fund which was liable to the debts and liabilities of the company previous to such transfer, and the transferor was entitled to be exonerated by this fund from such liabilities; and by the transfer he was to lose all interest in it. By the 60th section the responsibilities of the transferor were to cease and determine from the time of the transfer; and it was the intention that the exoneration should be as complete as by law it could be made. His Honour therefore thought that, as between the partners themselves, the transferor was completely exonerated from the date of the transfer, although as to creditors he would not be exonerated until three years after the transfer. By the deed of transfer, the purchaser had covenanted that he would observe all the covenants, &c. contained in the settlement deed on the part of proprietors of shares in the company to be performed, as fully as if he had been party to and had executed the same deed; and looking at the terms of the covenant in the deed of transfer, and at the terms of the different clauses of the partnership deed, and considering that the purchaser had the full benefit of the reserved surplus fund, he refused the motion. From that decision the executor appealed.

Roundell Palmer and *W. D. Lewis*, for the appellant, contended that the company was an ordinary partnership, and in the absence of any special contract must be bound by the ordinary rule of law relating to partnerships, which was that a new partnership was created every time a new partner came in; and, therefore, no shareholder could be liable for any of the debts contracted before he became a member of the company; and there was nothing in the deed of settlement which altered that rule. They referred to the above-mentioned clauses, and argued that no such alteration was made; and that the 60th section only released the outgoing proprietor from future, but did not exonerate him from past, liabilities. Wherever a shareholder had been held liable for debts or losses contracted before he joined the company, there had been an express stipulation in the deed of settlement that he should be so held liable. No such exemption was to be found in the present case. The words "subsequent" and "future" in the 60th clause clearly implied that the intent and meaning of the partnership deed was that the previous owner should not be discharged from previous liabilities. They cited *Shaw* v *Fisher*, 2 De G. & S. 11, *Wynne* v. *Price*, 3 De G. & S. 310; *Humble* v *Langston*, 7 M. & W. 527; *Harthorn's* case, 1 Mac. & Gor. 49; *Sanderson's* case, 3 De G. & S. 66, *Holmes's* case, 19 L. T. Rep. 260; *Croston's* case, 19 L. T. Rep. 57; on appeal, 209; *Dodgson's* case, 3 De G. & S. 85.

Bethell and *W. M. James*, for the official manager, contended that the partnership was not an ordinary one, being, in fact, formed under the provisions of the Banking Act (7 Geo. 4, c. 46), by the 13th section of which the legal liabilities of partners were altered. The 52nd clause of the deed of settlement vested the surplus fund of the company in the new shareholders, which was a fund expressly applicable for the payment of the debts of the company, and it could not be maintained that an incoming shareholder was to have

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...plaintiff ought to h... the same time, not be liable in this cause to share ... the responsibility of a previous proceeded the sale, and determine upon a transfer of within the limits ... proprietor.

...opinion that it ... to reply.—The surplus fund was points. The ... when that fund was exhausted, and 58th section ... up and disposed of, a shareholder pleas of past ... said liable for debts and losses ... claimed in ... he had any interest in the company.

...account of ... CHANCELLOR.—It is quite clear that the ...count" ... no difference between a common partnership of ... people and one of one hundred. This is of the ... partnership; but one formed under ... part ... stock Banking Act. Under that Act the ...20*l.* ... officer of the company can alone be sued. ...re difference between a joint-stock banking ...any taking the benefit of that Act, and a com... partnership. That statute, however, does not ...exclude from consideration the provisions of this ...scription-deed. Now, if nothing appeared on the face of that deed whereby the liabilities of purchasers and vendors were defined and concluded, I should certainly decide that purchasers of shares must take those shares subject to the state of the concern just as it might happen to stand at the time of the purchase. In this bank the capital consisted of 500,000*l.* divided into 25,000 shares of 20*l.* each. If the contention is right, any single purchaser of any one of these shares would have a right to have an account taken at the time of his purchase, to ascertain whether any future call could be made upon him; to see whether a future call would be made for past or future liabilities. And this might go on for ever; for it could have no reference as to time so long as the concern was being carried on. It would require a strong case to make the court say that a man buying such shares as these did not buy them subject to all liabilities. A man goes into the stock-exchange and purchases them through his broker at the price of the day, and that price is valued according to the state of the concern. The state of solvent reputation of the company fixes the value of the shares. A man buys twenty shares, he has a right to say, in a capital of 500,000*l.*; suppose there was a loss of 400,000*l.* at the time ascertained, and written off, he could not complain. The price he gave for them would have been proportionately less than they would have been had they gained that sum; does it not therefore follow that if the liability to a loss of 400,000*l.* existed, and had to be provided for, he must necessarily furnish his quota. In this case a reserve fund is provided for, and it is not disputed that a purchaser would have a right to a portion of that fund. There must be one simple general rule—a party buying a share in the company must take his share in the rights and liabilities of the company just as he finds them. Unless, therefore, there are clauses in the deed creating a new contract and liability, a purchaser must be considered liable for his share in the debts and liabilities of the company. Now the clauses of the deed appear to lead to the conclusion which I have just expressed. The 60th, which is the principal clause bearing upon the question, is open to no doubt. That clears "a proprietor" from liabilities so long as he was "a proprietor;" and it was whilst "a proprietor" that this responsibility was incurred. Now "subsequent" claims might arise on a previous responsibility, or a subsequent contract; but by that clause *all* responsibility is removed from the outgoing shareholder in respect of his shares so transferred. It is then provided that no man is to come into this partnership unless he has executed the deed. He comes in then as from the beginning, bound by the covenants in the deed; he executes a deed which embraces the original deed, and from the moment of his execution he becomes bound from the very commencement of the partnership. If this court were to hold a doctrine contrary to what has been decided by the court below, there would be an impossibility of dealing with shares of this nature, and it would make shares in all joint-stock companies almost unsaleable. Such is not the law. The cases do not touch this point. *Croxton's* case depended upon peculiar words, and was so free from doubt that I did not hear counsel but on the opening side. I have the concurrence of the Lords Justices in disposing of this case, and they agree with me in thinking that the appeal must be dismissed with costs. I think the form of the transfer is in favour of the view which the court has taken.

Appeal dismissed with costs.

Saturday, Jan. 15.

(Before Lord CRANWORTH, L.C. and the LORDS JUSTICES.)

IN RE MIDLAND UNION, BURTON-UPON-TRENT, DERBY-DE-LA-ZOUCH, AND LEICESTER RAILWAY COMPANY, ex parte PEARSON'S EXECUTORS.

Winding-up Acts—Provisional committeeman—Member of provisional committee—Contributory—Winding-up order.

A member of the committee of management, who was also a member of the provisional committee of a railway company which was being wound up, had concurred in contracting certain debts on behalf of the company, and had paid 100l. as his share in respect of those liabilities. After his death other claims were made upon the company for debts, for the payment of which also he had (with others) given orders; held, affirming the decision of the Master, but reversing that of the Vice-Chancellor, that his executors were rightly placed on the list of contributories.

This was an application by way of appeal from an order of Stuart, V. C.

This company had abandoned its project, and its affairs were directed to be wound up under the Act.

The Master had placed the names of the executors of the late Sir William Hyde Pearson on the list of contributories; their testator having, as a member of the committee of management and one of the provisional directors of the company, concurred with others in contracting certain debts at the time the scheme was abandoned. There were outstanding debts, to the amount of 5000*l.* and upwards, which it had been agreed should be discharged, by the directors paying the sum of 160*l.* each. Sir William Pearson paid his quota—after his death other claims were made against the company, for the payment of which a call had been authorised. A list of contributories was settled by the Master, which included the names of the executors of Sir William Pearson. Stuart, V. C., on appeal from the order of the Master, directed their names to be struck off: (*vide* 20 L. T. Rep. 123.)

This was an appeal from that decision.

The case was originally heard before the Lords Justices, but stood over for the reason which is alluded to in the Lord Chancellor's judgment.

Daniel and *Selwyn*, who appeared for the executors, cited *The Great Western Extension Atmospheric Railway Company, Ex parte Wrysht*, 19 L. T. Rep. 342, on the question of liability. They contended that unless a debt was proved to exist to the payment of which Sir William Pearson would have been personally liable, the names of the executors ought to be struck off the list of contributories. On the payment of the 160*l.* he was released from all claims as between himself and the company.

Roxburgh for the official manager.

The Lord CHANCELLOR.—The question before the Lords Justices was upon an application to discharge an order of Stuart, V. C., by which he had ordered the names of Sir William Pearson's executors to be removed from the list of contributories. The ground on which the V. C. acted was, that a certain transaction, which took place in July 1846, had released Sir William Pearson in his lifetime from all liabilities, whatsoever those liabilities had been. In that view of the case the Lords Justices did not concur, and consequently the names of the executors would have to be replaced according to what had been done by the Master. In the course of the argument a doubt was suggested, whether there was evidence that there had been any original liability on the part of Sir William Pearson at all, and in respect of that debt on which the parties had theretofore relied; the court seemed to think, and probably I may say did think, there was no debt at all. I allude to the debt of Mr. Vignoles. But then it was said, although that had been relied upon, there were plenty of other debts in respect of which it was clear Sir William Pearson would have been liable; and among others, the official manager, by his counsel, placed his hand on a debt due to a Mr. Bailey, the advertising agent: as to that debt, it was said there could be no doubt of Sir William Pearson having been liable jointly with others. That debt amounted to 1000*l.*, and Sir William Pearson had actively concurred in giving the orders under which it was contracted, not perhaps in every item, but in a large portion. What the Lords Justices said was this: We do not inquire now whether the debt, in respect of which Sir William Pearson was liable to the company, and his executors are now liable, is a larger or a smaller debt—if he was liable, and if his executors are now liable to anything, that is a sufficient justification for placing his name on the list of contributories. At the moment Mr. Daniel was unable to explain; the transaction and, as it was thought that the matter of this new debt had taken the parties by surprise, the Lords Justices allowed these parties an opportunity of bringing it before the court after they should have had an opportunity of more fully investigating it. They have now done so; and I am of opinion that these are debts of the company in respect of which Sir William Pearson was, and of which his executors are now, liable. The orders under which this and the like companies are directed to be wound up are, as I often had occasion to observe when Vice-Chancellor, and which I mentioned while I was one of the Lords Justices, in nine cases out of ten loosely and inaccurately worded. They purport to be orders to wind up the affairs of the company, by which everybody will understand that which was intended to be constituted a company; but in truth that which is wound up are the affairs of the association which embodied itself for the purpose of forming the company, an object which was not accomplished in this, as in many other cases. That being so, was Sir William Pearson a member of the company—a member of the association which endeavoured to form this company? In other words, was he a member of the managing committee? That is not disputed. Then having been such a member, the only question is, whether this—which is certainly a debt as to him, for he gave

LORD CHANCELLOR'S COURT.

COURT OF APPEAL.

...in fact, the moment of which the com... was jointly ... the ... there can ... committee, called the ... it they took on ... company. They ... the meetings Sir ... concurred ... A ... probably was ... not ... saw what ... dealing ... in the minds of the court, ... acting as a body, that he concurred in the proceedings ... meetings, as well those at which he was ... present as those at which he was not. The debt, therefore, incurred by Sir William Pearson and the others in ordering the advertisements, was a debt of the whole body of the managing committee—the body whose affairs are now ordered to be wound up. It appears to me, therefore, that Sir William Pearson's executors are rightly placed on the list of contributories.

Lord Justice KNIGHT BRUCE.—Perhaps the order for winding up in this case might not to have been made; I know not. Perhaps it ought to be discharged; neither that do I know. Perhaps the ground on which the V. C. proceeded ought not to have been removed; but it has been removed, and I am of opinion, with great deference to him, rightly removed. The order for winding up, however, standing, and not being questioned, and the ground upon which his Honour the V. C. proceeded being, in fact, removed, I cannot doubt that Sir William Pearson's executors must remain where they are.

Lord Justice TURNER.—This matter, which is, in truth, entitled in the case of the Midland Union Railway Company, is in substance no more than the winding up of a body which is associated for the purpose of endeavouring to form a company. Of that body I must say Sir William Pearson was one, and must be considered to have authorised all the acts of that body. The simply remaining question is, is or is not this a debt due from that body. It may be true, as was stated, that for some parts of that debt, when contested, Sir William Pearson might not be liable; but it is equally clear that, in the present state of the evidence, it would be unsafe to assume he was not liable for other parts of the debt. His name, therefore, must remain on the list.

COURT OF APPEAL IN CHANCERY.

Reported by OWEN DAVIES TUDOR, Esq. of the Middle Temple, Barrister-at-Law.

IN BANKRUPTCY.

Dec. 7 and 17.

(Before the LORDS JUSTICES, assisted by MAULE, J.)

Re JOB BROADHURST, *ex parte* JOB BROADHURST.

Petitioning creditor's debt.

A. being about to enter into partnership with B. and C. stipulated that D. should enter into a covenant, which he accordingly did, whereby he covenanted with A. that the debts due to the partnership would realise a certain sum, and if they did not, he would, on the demand of A., pay the deficiency to B., C., and A.; and he also covenanted that the debts owing by B. and C. did not exceed a certain sum; and if they should, he would, on the demand of A., pay to B., C., and A., or to the person or persons to whom the same might be due, the sum which the debts had aforesaid might exceed such last-mentioned sum. B. made a demand for a sum under both branches of the covenant, and took proceedings against D., under which he was duly adjudicated bankrupt, and the adjudication affirmed:

Held, that the covenant was not to pay a specific or liquidated sum, but only by the damages, and that the default did not therefore constitute a sufficient petitioning creditor's debt.

This was a petition of the bankrupt, Job Broadhurst, to annul the adjudication in bankruptcy against him, on the ground that there was not a sufficient petitioning creditor's debt to support it. It appeared that in March 1852 Josiah Perry and William Knight Broadhurst, who carried on business in partnership as earthenware manufacturers at Fenton, in the county of Stafford, entered into negotiations with Mr. Walker for the purpose of taking him into partnership. By an account and valuation made by an appraiser, by which it appeared that the gross amount of the partnership debts due and owing by Messrs. Perry and Broadhurst amounted to the sum of 1109*l.* 12*s.* 2½*d.*, and of debts owing to them the sum of 981*l.* 16*s.* 3½*d.*, and the balance in their favour on such account and valuation amounted to the sum of 127*l.* 16*s.* 0½*d.* On the examination between [illegible] and the accounts by Edward [illegible] it appeared that there were some debts owing to the firm that had not been included in such account, and Walker gave a guarantee that the debts stated in the account to be due to them would realise the amount there set forth, and an indemnity against any debts owing by the said firm exceeding the amount mentioned in the said account; and accordingly the appellant was, at the request of Josiah Perry and W. K. Broadhurst, induced to enter

COURT OF APPEAL.

into the covenant in the articles of partnership hereinafter set forth. [illegible] dated the 6th [illegible] Josiah Perry of the first part, [illegible] hurst of the second part, [illegible] third part, [illegible] fourth part, [illegible] that it was part of the [illegible] which the said Edward Walker agreed [illegible] with the said Josiah Perry and W. K. Broadhurst that Job Broadhurst [illegible] W. K. Broadhurst) should [illegible] that the said Edward Walker that the debts owing to the said late firm of Perry and Broadhurst, included in the valuation made of the effects thereof on the admission of the said Edward Walker into the partnership, and accounted at their full value, would realise so much money to the said Josiah Perry, W. K. Broadhurst, and Edward Walker, and that the debts owing by the said firm of Perry and Broadhurst would not exceed the amount charged to the account thereof in the said valuation, and that he would pay the deficiency in the former case and the excess in the latter,—the said Job Broadhurst did thereby, for himself, his heirs, executors, and administrators, covenant with the said Edward Walker, his executors and administrators, that the debts then owing to the said Josiah Perry and W. K. Broadhurst would realise to the said Josiah Perry, and W. K. Broadhurst, and E. Walker, in the whole the sum of 99*l.* 16*s.* 8½*d.*, being the amount or sum at which the same had been valued on the admission of the said E. Walker into the said copartnership concern as aforesaid; and that if the same did not realise the said sum, the said Job Broadhurst, and his heirs, executors, and administrators, should and would, on the demand of the said Edward Walker, his executors and administrators, pay the deficiency thereof to the said Josiah Perry, W. K. Broadhurst, and Edward Walker; and also that the debts owing by the said Josiah Perry and W. K. Broadhurst did not exceed the sum of 1199*l.* 12*s.* 2½*d.*, at which sum they had been taken in the account on the occasion aforesaid; and that if they should exceed the said sum, the said Job Broadhurst, his heirs, executors, and administrators, should and would, on the demand of the said E. Walker, his executors or administrators, out of his or their own private funds, pay to the said Josiah Perry, W. K. Broadhurst, and E. Walker, or to the person or persons to whom the same might be due, the sum which the said debts last aforesaid might exceed the said sum last aforesaid.

On the 26th May and the 17th June 1852, Edward Walker served two notices on the appellant demanding certain sums under the covenant under the partnership, and on the 26th of the same month of June he served the following notice on the appellant: "I the undersigned E. Walker of Uttoxeter, in the said county of Stafford, but now residing in Fenton, in the parish of Stoke-upon-Trent, and carrying on the trade or business of an earthenware manufacturer, at a place there usually called or known by the name of the Park Works, do hereby demand from you the sum of 1062*l.* 16*s.* 11*d.* now due from and payable by you to me on the accounts after mentioned, upon or by virtue of and secured by a covenant entered into by you with me, and contained in a certain indenture or articles of copartnership, dated the 6th March, 1852, between Josiah Perry of the first part, William Knight Broadhurst of the second part, myself of the third part, and you the above-named Job Broadhurst of the fourth part, which said sum hereby demanded is made up as follows (*videlicet*):

	£	s.	d.
"The sum of 36*l.* 5*s.* 8½*d.* being debts and moneys comprised in and forming part of the sum of 99*l.* 16*s.* 8½*d.* in the said indenture or articles alleged or stated to be at the date thereof due and owing to the said J. Perry and W. K. Broadhurst as copartners, and which said sum of 36*l.* 5*s.* 8½*d.* has not nor has any part thereof been realised; the particulars of this sum are set forth in the first schedule hereto annexed	36	5	8½
"The sum of 1026*l.* 11*s.* 2½*d.* being the excess of debts now ascertained to have been due and owing on the said 6th March, 1852, from or by the said Josiah Perry and W. K. Broadhurst as copartners as aforesaid, over and above the sum of 1199*l.* 12*s.* 2½*d.* in the same indenture or articles mentioned: the particulars of this sum are set forth in the second schedule hereto annexed	1026	11	2½
	£1062	16	11

"And I hereby give you notice that I shall attend at my counting-house at the Park Works in Fenton aforesaid, on Monday, Tuesday, Wednesday, and Thursday the 28th and 29th June [illegible] between the hours of ten and twelve of the clock in the forenoon, and between the hours of one and four of the clock in the afternoon of each of the same days, for the purpose of receiving the said sum hereby by me demanded, and that unless the same is paid to me at or before the time lastly hereby for that purpose appointed, I shall commence legal proceedings against you for recovery thereof without further notice or delay. Dated 20th June, 1852."

On the 30th June 1852, a petition of adjudication in bankruptcy was filed against the said Josiah Perry and W. K. Broadhurst, under which they were on the 29th July 1852 adjudged bankrupts. The appellant not having complied with the demands of the said E. Walker, he, on the 5th Oct. 1852, filed a petition in bankruptcy against the appellant. On the 16th Oct. 1852, the said E. Walker deposed upon oath before Mr. Commissioner Balguy (sitting for Mr. Commissioner Daniell) that the appellant was justly and truly indebted to him in the sum of 441*l.* 7*s.* 10*d.* under the indenture of the 6th March 1852, inasmuch as the debts due and owing by the said Josiah Perry and W. K. Broadhurst at the time at which they were taken as aforesaid amounted to a greater sum than the aforesaid sum of 1,195*l.* 12*s.* 2½*d.*, to wit, the sum of 1,637*l.*, being more than the sum of 1,195*l.* 12*s.* 2½*d.* by the aforesaid sum of 441*l.* 7*s.* 10*d.* and that the appellant did not pay the said sum to the said E. Walker, or to the said J. Perry and W. K. Broadhurst, although the same was demanded of him by the said E. Walker, and that he had received no security or satisfaction whatsoever for the said sum of 441*l.* 7*s.* 10*d.* or any part thereof, save and except the said indenture of the 6th March.

On the 16th Oct. Mr. Commissioner Balguy adjudged the appellant bankrupt; and, upon his applying to Mr. Commissioner Daniel to annul the adjudication, on the ground of there not being a sufficient petitioning creditor's debt, the same was confirmed. The case was argued before their Lordships on a former occasion, when,—their Lordships having asked counsel for the appellant whether, in the event of their Lordships not coming to the same conclusion, they would prefer to have the case argued before a common law judge as well as themselves, or whether they would prefer to bring an action,—counsel thereupon elected that the appeal should be heard before their Lordships and a common-law judge. The appeal now came on, and, according to the practice now adopted under similar circumstances, one counsel only was to be heard on each side.

Holt (with whom was *Roxburgh*) contended that Mr. Walker's claim against the appellant, Mr. Job Broadhurst, was not a debt upon which an adjudication of bankruptcy could be supported; that it was a claim for unliquidated damages, the amount of which might depend upon a variety of circumstances, and which could not be ascertained without the assistance of a jury; that the covenant contained in the partnership deed was merely a covenant to indemnify, not against the payment of a sum certain, but of uncertain sums, dependent upon the amount of debts due to the old firm, which might eventually be realised, and on the amount of debts due from the old firm, which might be ultimately chargeable to or recoverable from them,—both of which were necessarily contingent, and therefore not constituting debts on which proof might be made. Moreover, the notice to pay to Walker alone was not proper, as the covenant was to pay to Perry, Broadhurst, and Walker, or to the person or persons to whom the same might be due. Again, in such a covenant, nominal damages only would be recovered at law. (*Paterson* v. *Person*, 8 T. R. 570, *Green* v. *Bucknell*, 8 Ad. & Ell. 701, *Taylor* v. *Young*, 3 B. & Ald. 521; and *Loosemore* v. *Radford*, 9 Mee. & W. 657), were cited.

Quain (of the common law bar), in support of the decision of the commissioner, contended, that there was no uncertainty as to the sum for which the respondent claimed to prove, that it might be ascertained without the aid of a jury. It was no objection that the covenant to pay to Perry, Broadhurst, and Walker, was entered into with Walker alone, as it made no difference in a court of law that a covenant was made with a bare trustee. This covenant, moreover, was to pay the deficiency in one case, and the excess in the other, and not to indemnify. The Statute of Limitations would have run from the time of demand by Walker. With regard to the alleged uncertainty of the demand, it might be said that every debt was uncertain; for instance, a debt for goods sold and delivered might be cut down on account of the quality of the goods being bad. So a solicitor's bill might be cut down below 50*l.* yet it could not be argued that on that account such debt might not be proved as a petitioning creditor's debt. If the debt was sufficiently certain in the first instance, it did not render the fiat invalid that it was afterwards reduced below 50*l.* even if it went before a jury. At all events, there had been, as we contend, a breach of the covenant on the part of Job Broadhurst, rendering the debt certain, and in fact reducing it to this, that it was the same as if the covenant had been to pay the sum claimed. *Ingledew* v. *Cripps*, 2 Lord Raym. 814; *Barber* v. *Brother*, 6 Q. B. 868; *Ex parte Moffatt*, 2 Mont. Deac. & D. 770; *Ex parte Tindal*, 1 Mont. & M. 462; *Lethbridge* v. *Myston*, 2 Barn. & Adolph. 775; *Ex parte Hudden*, 4 Deac. 106; 3 C. Mont. & Ch. 346, 656; *Young* v. *Taylor*, 8 Taunt. 315, were cited and commented on.

Holt, in reply.

MAULE, J.—My Lords Justices having requested me to give judgment in this case, I now proceed to do so. This demand is not one which will sustain a petitioning creditor's debt. (His Lordship here stated the facts, and the deed of partnership containing the covenant on which the bankrupt relied.) It is clear from the recitals that the covenant was only for the benefit of Walker. [illegible] covenant with Walker on the one part, and Broadhurst; they had no interest in Walker alone was the party threatened. That being so, it seems to me impossible to turn it into a covenant to pay a liquidated sum, or any sum, to Walker, the covenant could not be performed by doing [illegible] object being to put the firm in the position [illegible] they would be if the debts, active and passive, were the amount stated in the covenant, and there was the specific sum engaged to be paid to Walker; it could not be treated at law as a specific sum of money to be received; the right to receive would be discretionary only with the damage sustained, and this could not be so made the subject of computation as to be a fit ground for a petitioning creditor's debt. I do not mean to say that a covenant to pay to A. for the benefit of A., B., and C. may not make a good petitioning creditor's debt. In the present case that might not be a sufficient damage to constitute the debt; or, suppose that damage to the amount of 200*l.* was shown, still it does not follow that the money could have been recovered, as anything to be recovered must be in the shape of damage, and such damage is not of a character to amount to a petitioning creditor's debt. The question, therefore, of the sufficiency of the debt ought to be answered in the negative.

The Lord Justice KNIGHT BRUCE.—My learned brother and myself are deeply indebted, as well as the bar, to the learned judge on my right hand for his valuable assistance on this occasion. One of us two has, from the first, entertained the same view of the case as that which has been just expressed. The other has entertained a doubt; but, considering the nature of the question and the authorities now brought to bear on it, he deems it his judicial duty to withdraw his doubt, and not to give effect to it, as it amounted to a doubt and not to a dissent.

The adjudication was therefore annulled; and, Mr. Holt having on behalf of J. Broadhurst undertaken not to bring an action, E. Walker was ordered to pay the costs before the commission, there being no costs of the appeal.

SUBCOMBE *v.* PHENIGER, and *Re* KING'S COLLEGE HOSPITAL ACT, 1851.

Wednesday, Feb. 9.

Parol agreement before marriage—Statute of frauds—Part performance of agreement.

A., previous to the marriage of his daughter with B., agreed verbally to give certain leasehold premises to A. and his daughter. The marriage took place, and A. gave the deeds relating to the premises to B., and delivered up possession to him, whereupon B. laid out considerable sums thereon for repairs and otherwise:

Held, that the parol agreement was taken out of the Statute of Frauds by acts of part performance.

This was an appeal by the administrator of the intestate in the cause, William Aylwin, from the decision of Sir John Stuart, V. C. ordering that the sum of 269*l.* 8*s.* 11*d.* in the bank on the credit "*Ex parte* the President and Governors of King's College Hospital in the matter of the King's College Hospital Act, 1851," should be paid to Mr. George Chartres. That sum was the price of certain leasehold premises in Carey-street, taken by the president and governor of King's College Hospital under their Act, and which Mr. George Chartres, whose right to the property was controverted by the administrator of the intestate, claimed under the following circumstances.

It appeared that the intestate, William Aylwin, was possessed of leaseholds in Carey-street, Lincoln's-inn-Fields, for the term of twenty-one years. In the month of October, 1843, Mr. George Chartres became acquainted with his present wife, Amelia Ann Chartres (then Amelia Ann Aylwin, the daughter of the intestate), and made an offer of marriage, which was accepted by her father. On the 2nd Jan. 1844, and before his marriage, Mr. William Aylwin, at an interview he had with Mr. George Chartres in the house of a Mr. Hayter, in the course of conversation informed him that he was entitled to the said leasehold premises, and that *it was his intention to give the same to him and his said daughter on his marriage with her.* On the 12th March 1844 the marriage took place, and *soon afterwards Mr. W. Aylwin, in performance of his said agreement, gave up possession of the leasehold premises* to Mr. Chartres, and directed the tenants thereof to pay their future rents to him, and in consequence thereof Mr. Chartres went with his wife to reside at the premises in Carey-street, and *expended out of his own moneys thereon considerable sums in the repairs* thereof, and received from the tenants the rents of those parts of the premises which he did not occupy himself, and he thenceforth let the said premises, and treated the same as his own property, and continued in the undisturbed possession and the receipt of the rents and profits thereof until the time when the premises were required for the purposes of the hospital.

It was also proved that whilst Mr. Chartres resided on the premises Mr. W. Aylwin gave him the undu-

[illegible]

Roberts, 3 Ch. & Fin. 310, and Baker v. Baker, 13 C. B. 241.

Bovill, for the defendant, cited no cases, and relied upon the distinctions taken before the full Court of Exchequer in the case of *Rex* v. *Middlesex Hospital* (Law J. Rep. 1843, arguing that the annuities or rent-charge in this instrument were within the principle laid down in that case, and were personal and not for life only. He also relied upon the Wills Act, 7 Will. 4 & 1 Vict. c. 26, the 3rd section of which enacts, "That no devise shall be valid unless it shall be executed in manner hereinafter required; that is to say, it shall be in writing, and signed by the testator, or by some other person in his presence and by his direction, in such manner as hereinafter mentioned, or shall be made by such testator's last will, in pursuance of a power of appointment, and shall be executed as aforesaid, or shall be made by a soldier or mariner in actual military service, or by any person being at sea, and shall be executed as aforesaid." [illegible]

The Court [illegible]

The Vice-Chancellor [illegible]—I am of opinion that upon this will the gift of the 100*l.* annuities is for life only; and with respect to the annuities attempted to be appointed by the testator to the trustees of the Wills Act, I [illegible] because the section which has been [illegible] only to the estate which the testator [illegible] he makes his will, and not to estates which [illegible] before the will, being in that respect [illegible] this instrument. I am of opinion, for I have already said, that these are life annuities only; and the consequence is that the plaintiff is right, and the purchaser is bound to complete his contract.

Common Law Courts.

COURT OF QUEEN'S BENCH.

Reported by Arthur Wrightson and John Thompson, Esqrs., Barristers-at-Law.

Monday, Jan. 17.

Ex parte HAWLEY.

Attorney—Commitment in bankruptcy for refusing to answer—Privileged communications.

An attorney is not justified in refusing to disclose matters communicated to him by a client on the ground of privilege, if not relating to a suit or business which he is conducting for the client as attorney, even though he has promised secrecy to the client.

Where an attorney refused to answer whether the bankrupt told him the name of the port from, or the vessel in, which he intended to sail from this country, or whether he intended to leave the country, it was

Held, that the Court of Bankruptcy might commit him for such contempt in refusing to answer; and that he was not prohibited from answering either by professional privilege or a promise of secrecy to the client.

Bompas moved for a *habeas corpus* to the keeper of the Queen's Bench Prison to bring up H. J. T. Hawley, an attorney of this court, with a view to his discharge from custody. The prisoner had been committed by Mr. Commissioner Fonblanque under 12 & 13 Vict. c. 106, s. 260, for refusing to answer certain questions put to him as a witness on the hearing of a petition for adjudicating one Grant a bankrupt. Hawley had acted as the bankrupt's attorney in some matters previous to the 21st Dec. and on that day the bankrupt called on him, when Hawley persuaded the bankrupt not to disclose where he was going. The questions which Hawley declined to answer in the Court of Bankruptcy were—

1. Did the bankrupt tell you the name of the port whence he intended to sail?
2. Do you believe he has left this country?
3. Did the bankrupt tell you on the 21st Dec. the name of the vessel by which he intended to sail?

The case of *Cranenburgh* v. *Gaskell*, 1 Myl. & K. 98, was referred to.

Lord Cottenham, C. J.—No ground whatever is shown for this application, until the commissioner only acted in the discharge of his duty in committing Mr. Hawley for refusing to answer the questions put to him. An attorney's privilege to refuse to answer such questions must be in respect of his professional employment as attorney. Mr. Hawley had been previously employed by the bankrupt as his attorney; but what was he to say for his business as attorney, in respect of which alone he was entitled to the protection? Mr. Hawley refused to give this information in [illegible] the promise of secrecy could [illegible] relating to any suit, or to any [illegible] the bankrupt's attorney [illegible] employ [illegible] defraud [illegible] that the [illegible] conducting [illegible] The rule must be discharged.

Rule refused.

Wednesday, Jan. 19.

Queen's Prison [illegible]

Habeas Corpus Act, 31 Car. 2, c. 2, s. 3 [illegible] commission of rebellion [illegible] Court of Chancery is not a criminal matter within the *Habeas Corpus Act*, 31 Car. 2, c. 2, so as to entitle the party committed to the benefit of the provisions contained in that act for discharging persons committed for such matters in the Queen's prisons.

Hawley v. Cobbett & Slowman, 4 Ex. 767.

Debt upon 31 Car. 2, c. 2, s. 10, for a penalty alleged to have been incurred by the defendants, as Lord Chancellor, in refusing a *habeas corpus* to the plaintiff, who was in the custody of the keeper of the Queen's prison, under a commission of rebellion, for a contempt of the Court of Chancery.

At the trial before Crompton, J., in London, during the sittings in this term, the defendant had a verdict under the direction of the learned judge, on the ground that the plaintiff was not a prisoner in custody upon a criminal charge within the 31 Car. 2, c. 2, s. 3.

By the 31 Car. 2, c. 2, s. 3 (the *Habeas Corpus* Act), any person committed or detained in prison "for any crime," unless for felony or treason, plainly expressed in the warrant of commitment, may appeal and complain to the Lord Chancellor, &c. And the said Lord Chancellor, &c., upon view of the copy of the warrant of commitment, &c., are hereby authorised and required, &c., to award and grant a *habeas corpus*, &c.

Sect. 10 provides that it shall and may be lawful to and for any prisoner as aforesaid to move and obtain his and their *habeas corpus*, as well out of the High Court of Chancery as, &c. And if the said Lord Chancellor, &c. shall deny any writ of *habeas corpus* by this Act required to be granted, &c. they shall severally forfeit to the prisoner or party grieved the sum of 500*l.*, to be recovered in manner aforesaid.

Cobbett (in person) now moved for a rule *nisi* for a new trial, on the ground of misdirection. The test whether a commission of rebellion is in the nature of a criminal proceeding is whether a person could be arrested under it on a Sunday, and it is submitted that he could. Contempts are criminal in their very nature, and attachments were formerly considered purely criminal (*Cecil's* case, 12 Mod. 348; *Ex parte Whitchurch*, 1 Atk. 55); but latterly attachments have been considered of a mixed character, partly criminal, and partly civil: (*Rex* v. *Myers*, 1 T. R. 265.) The following cases were also referred to:—*Cobbett* v. *Slowman*, 4 Ex. 747; *Lewis* v. *Morland*, 2 B. & Ald. 56; 3 Bl. Com. 136.

Lord Campbell, C. J.—I am of opinion that there is no ground for granting this rule. The 31 Car. 2, c. 2, s. 3, is confined to the case of persons in custody on some supposed criminal matter; and the question here is whether the plaintiff was in custody on a charge of a criminal nature. In the view I take of the Act he was not. A commitment under a commission of rebellion may be a criminal proceeding for some purposes, and may authorise the taking the party into custody on the Lord's day; but the question is whether it is a criminal proceeding within the 31 Car. 2, c. 2, s. 3. I think that Act only applies where a party is in custody on a charge of a criminal nature, in which a trial is afterwards to take place, and not where he is in custody under a process of the court like this. That was decided in *Cobbett* v. *Slowman*, and I entirely approve of that decision. The Act must be considered to apply to crimes where a trial is afterwards to take place, and a commitment for contempt is not of that nature, as for that reason was admitted in *Hobhouse's* case, 3 B. & Ald. 420. No authority to the contrary has been cited, and those referred to turn on a different matter, being writs of *habeas corpus* grantable at common law.

Coleridge, J.—I am clearly of opinion that this commitment was not for some supposed criminal matter within the meaning of the 31 Car. 2, c. 2, s. 3. The mischief to be remedied by that Act is pointed out in the preamble; and sect. 8, by its language, points more clearly to the same object. Section 8, on which this action is founded, is more limited and pointed in its language—"for any crime." Now, applying these expressions to the language of the writ of rebellion, they don't square with it. The charge is not treason or felony, or one in which the party can be admitted to bail. I think, therefore, *Cobbett* v. *Slowman* was rightly decided.

Wightman, J. concurred. *Rule refused.*

Wednesday, Jan. 26.

Reg. v. the Inhabitants of Stowmarket.

Poor—Irremovability—Marriage during residence—9 & 10 Vict. c. 66, s. 1.

A pauper resided for more than five years continuously in a parish, and then married, and she and her husband continued to reside in the same parish; but at the time of his death, the husband had resided only three years and a half in the parish, his place of settlement being in another parish.

Held, nevertheless, that the pauper was irremovable by reason of the 9 & 10 Vict. c. 66, s. 1; the marriage not affecting her residence in any way.

Certiorari to the Suffolk Quarter Sessions. [illegible] quarter 1852, against an order of [illegible] removing Hannah Rosier and her four children from the parish of Ufford, in Suffolk, to the parish of Stowmarket. The Court of Quarter Sessions confirmed the order, subject to a case for the opinion of this Court.

Case.

The pauper, Hannah Rosier, was born in or about 1812, in the parish of Ufford, and resided there con-

[illegible]

[illegible] 1841 [illegible] 1846 [illegible] 1846 [illegible] 1846

Criminal Court, [illegible] sentence to [illegible] error having [illegible] it now come [illegible]

Hodgson, [illegible] In any of the [illegible] or cheques [illegible] obtained, [illegible] 14 & 15 Vict. [illegible] the [illegible] on the [illegible] as to be [illegible] of *asking* for [illegible] larceny on the [illegible] 7 & 8 Geo. 4, c. 29, s. 53, it is [illegible] an indictment for [illegible] afterwards prosecuted for larceny upon the same state: *Rex* v. *Nosten*, 6 C. & P. 195; *Reg.* v. *Martin*, 9 A. & E. 213. [illegible] and it was [illegible] 14 & 15 Vict. c. 100 would be relied upon. The 14 & 15 Vict. c. 100, s. 1, only applies to [illegible] in the name or description of [illegible] the owners of property, or the ownership of any property named or described in the instrument, and that the amendment must be made before verdict. Then sect. 8 enacts that it shall be sufficient in an indictment for false pretenses to allege that the defendant did the act with intent to defraud, without alleging the intent to be to defraud any particular person. That leaves the *corpus delicti* untouched; and it is material to state the ownership of the property, for that is the act which constitutes the offence; and the 7 & 8 Geo. 4, c. 29, s. 53, meant obtaining the goods of another person by false pretences (per Patteson, J. in *Reg.* v. *Martin*); and, for aught that appears on this indictment, the property obtained may have been the prisoner's own.

Metcalfe, contrà.—This objection cannot be taken now, it ought to have been taken on demurrer or on motion to quash the indictment: (14 & 15 Vict. c. 100, s. 2.) That section enacts that every objection to any indictment for any formal defect apparent on the face thereof, shall be taken by demurrer or motion to quash such indictment before the jury shall be sworn, and not afterwards. This a formal defect within that section. The gist of the offence is the fraud; it does not matter whose the property obtained may be

[CROMPTON, J.—The formal defect intended in sect. 2 seems, from the latter part of the section, to be one which may be amended by the court.] In *Reg.* v. *Fowler* 8 Q. B. 292, Lord Denman, C.J. seems to have thought the ownership of the property no part of the offence charged.

Hodgson, in reply.—If *Reg.* v. *Martin* was well decided, the ownership of the property obtained is a part of the offence, for the omission to state to whom the property obtained in that case belonged, was held a fatal omission after verdict.

LORD CAMPBELL, C.J.—I am very reluctantly obliged to yield to this objection. It is admitted that before the 14 & 15 Vict. c. 100, it was necessary to state, in indictments for obtaining goods by false pretences, in whom the property in the money or goods obtained was, and whatever our decision might have been had the point come before us for the first time, we are now bound by the cases cited. No injustice could possibly have been done in dispensing with such a mere [illegible] and we have therefore to see whether the law is altered by the 14 & 15 Vict. c. 100. After looking at the various enactments of that statute, I think none of them meets this case. The first section applies only to variances: this is not a variance. Then comes sect. 8, on which it may be most plausibly argued that the averment is no longer necessary; but from that we can only fairly conclude that it is no longer necessary to specify who was defrauded, for that provides that it shall be sufficient to allege that the defendant did the act with the intent to defraud, without alleging the intent of the defendant to be to defraud any particular person, and it proceeds to say that on the trial it shall not be necessary to prove an intent on the part of the defendant to defraud any particular person; but it will still be sufficient to prove that the defendant did the act charged with an intent to defraud. That [illegible] does not meet this case. Then we come to sect. 25, which enacts that every objection to any [illegible] for any formal defect apparent on the face thereof shall be taken by demurrer or motion to quash such indictment before the jury are sworn. If that were a formal defect it could not be taken advantage of after writ of error; but how can we say that [illegible] must be proved to belong to [illegible] proved to belong to [illegible] there would be a variance [illegible] amended under sect. 1, but [illegible] prisoner could not [illegible] such an allegation [illegible] we may say that the omission [illegible] perty is a [illegible] for remaining in it was [illegible] c. 100 passed [illegible]

COLERIDGE, J. [illegible] the recent statute [illegible] longer necessary to [illegible] party of which the [illegible] said that in consequence of sect. 8 it is no longer necessary to make any such statement at all. By

[illegible] subsequent to the 1st enacting [illegible] that construction of [illegible] will operate. The first section assumes that [illegible] is assuming there appears on the trial to be a variance between the statement in the indictment, and the evidence in proof thereof, in the name or description of any person alleged to be the owner of any property named therein; and enacts that such amendment shall only be made when it is not material to the merits of the case. Now, if it is unnecessary to make any statement of the ownership of property at all, there was no necessity for the 1st section empowering an amendment of a variance in such case. Looking, therefore, at the 1st and 8th sections together, I am of opinion that it is still necessary in an indictment for false pretenses to state the ownership of the property obtained by means thereof, and that the ownership must be proved as stated. The statement, therefore, cannot be a mere formal defect within sect. 25.

WIGHTMAN, J.—It is agreed that the whole question arises under the 14 & 15 Vict. c. 100, and that we are bound by the decisions that have been cited. I have entertained doubt whether since sect. 8 it is any longer necessary to make a statement of the ownership of the goods obtained in an indictment for false pretences, and even now I entertain some doubt whether that section does not virtually include this case; for it must appear in the course of the proceedings that the property obtained belonged to some person, else it would be difficult to support the allegation of the intent to defraud. However, after the decisions that have been come to, I feel bound to concur with the rest of the court.

CROMPTON, J.—I think that this omission is not cured by the 14 & 15 Vict. c. 100. Before that Act it was necessary to state two things in such an indictment, first the property in the chattels obtained, and secondly, the intent to defraud some particular person. In all cases of larceny it has been held necessary to state the ownership of the property taken. And even if those decisions that have been referred to had not taken place, I should have had no difficulty in holding this statement to be a matter of substance. Section 8 appears to me to have been framed to cure any defect in the statement of the intent to defraud, but it does not touch the allegation of the ownership of the property. Sect. 25 applies only to formal defects, and sect. 1 shows that this was not a formal defect.

Judgment reversed.

SITTINGS AFTER HILARY TERM.

Friday, Feb. 4.

(Before WIGHTMAN, J., ERLE, J., and CROMPTON, J.)

REG *v* CAMBERWELL.

Removal—Apprenticeship—Indenture—Deceased attesting witness.

Where the attesting witness to an instrument that has been destroyed is dead, it is unnecessary to give any evidence of his handwriting in order to let in secondary evidence of the contents of the instrument.

On appeal against an order of two justices, whereby Jane White was removed from the parish of Camberwell in Surrey to the parish of Nuneaton in Warwickshire, the sessions quashed the order, subject to the opinion of the court upon the following case:—

The ground of removal was the settlement of the pauper in Nuneaton, by the apprenticeship of her husband in Nuneaton. The evidence of the apprenticeship was as follows:—A witness was called to prove the apprenticeship deed, and its destruction by the pauper's husband; he also proved the execution of it by the parties, and that there was an attesting witness to it, but that he had heard that he was dead. It was objected that, assuming the death of the attesting witness to have been proved, secondary evidence of the contents of the deed was not admissible, as proof had not been given of the alleged attesting witness's handwriting. The sessions allowed the objection, and quashed the order of the justices.

If this court should be of opinion that secondary evidence of the contents of the deed was rightly rejected, the order of the sessions is to be confirmed; otherwise to be quashed.

Joyce, in support of the order of sessions.—The general rule is, that a subscribing witness must be called to prove the execution of a deed. And in Taylor on Evidence, 1198, it is said, "so inexorable is this rule that it applies even to a cancelled or a burnt deed:" (*Gillies* v. *Smither*, 2 Stark. 528.) [WIGHTMAN, J. referred to *Keeling* v. *Ball*, Peake's Evid. App. xxvii. where it was held, that in the case of a bond and an unknown attesting witness, another person might be called to prove its execution; either, if it appears who the attesting witness is.]

Bovill and *Maxwell*, contrà.—Here the deed was destroyed, and the attesting witness dead; and this case therefore differs both from *Gillies* v. *Smither* and *Keeling* v. *Ball*. It was unnecessary here to prove the handwriting of the witness who was dead; and the execution of the deed by the parties to it was proved, which was quite sufficient under the circumstances. In *Adams* v. *Kerr*, 1 B. & P. 360, 361, it was held, per J. Gould, "Where a witness is dead, the parties to prove the handwriting;" but there the instrument was destroyed. And where an instrument is in possession of a third person, who refuses to produce it, secondary evidence is admissible without calling the attesting witness. Proof of the execution of an instrument by calling the attesting witness is required, on the ground that the attesting witness is usually invoked by the parties; that which he is dead that reason ceases. (In Taylor on Evid. 1198, it is said that "It has been held in *American* cases, where the absence of the attesting witness was proved duly accounted for, the instrument may be read upon proof of the handwriting of the [illegible] was executed; but it seems to be still [illegible] country whether such proof will be sufficient without first showing an inability to [illegible] of the witnesses. (*Valentine* v. *Piper*, 22 [illegible] 12 Vin. Abr. A. pl. 30; *Swire* v. *Bell*, 5 T. R. 371.

WIGHTMAN, J.—I do not think that [illegible] we have come to will at all touch on any of those [illegible] in the argument. It seems to me that the [illegible] which raises the objection in the case furnishes that answer to it, for we must take it that the sessions were satisfied that the attesting witness was dead, and it was not necessary to go further. Both [illegible] evidence went further, and proved the handwriting of the parties to the deed executing it. The order of sessions must, therefore, be quashed.

ERLE, J.—I also think the order of sessions must be quashed, and upon the same ground. Our decision, in my opinion, goes the full length of deciding that in no case where an instrument is lost, and the subscribing witness is dead, is it necessary to give evidence of the handwriting of the party attesting it, and that where, as in this case, it was proved that the witness is dead, nothing further is necessary. When the attesting witness is unknown, proof of the handwriting cannot be necessary. As to the proof, it was rather a question of the sufficiency of proof, for the consideration of the court as a jury, than a question of admissibility for the court as judge. The tendency of modern decisions is to admit whatever may be evidence, and allow the jury to judge of its value; and it is against that principle to shut out evidence on the ground that, by possibility, some one may be found to speak to the handwriting of a deceased attesting witness to an instrument.

CROMPTON, J. concurred.

Order of sessions quashed.

Saturday, Feb. 5.

WILTSHIRE *v.* COTTERELL.

Vendor and vendee—Conveyance—Fixtures.

Under a conveyance of land, a farm house and fixtures Held, First, that rick straddles, which consisted of stone pillars mortised to a brick foundation let into the earth, and stone caps mortared on the pillars, passed either as part of the land or as fixtures.

Secondly, that a threshing-machine fixed by bolts and screws to posts let into the ground, so that the machine could not be got out without disturbing some of the soil, also passed under the deed.

Thirdly, that a granary which rested upon a wooden foundation, supported by straddles, and capable of being lifted by sufficient power from the straddles without disturbing them, was a mere chattel; and that, even if under the circumstances of the case it would pass as a chattel, the word "fixtures" being large enough to include moveable chattels,—still the removal of it during an outstanding term could not be made the subject of a count for injury to the plaintiff's reversionary interest, or a count in trover, the possession being in the tenant.

Case for injury to the plaintiff's reversionary interest in certain premises, whereof one May was tenant, by removal of a granary, threshing-machine, and rick-straddles; with a count in trover.

Pleas—1. Not guilty; 2. A denial of May's tenancy, 3 Not possessed.

At the trial, which took place before Williams, J. at the last assizes for Oxfordshire, a verdict was found for the plaintiff, and the damages assessed separately for the granary, 25*l.*; for the rick-straddles, 5*l.*, and for the threshing-machine, 5*l.* In the following term a rule *nisi* was obtained to enter the verdict for the defendant, or to reduce the damages. The material facts are stated in the judgment of the court.

Thursday, Jan. 13.(*a*)—*Phipson* showed cause.—The plaintiff ought to be prevented from saying that these things did not pass by the deed; because, when the defendant went on the farm, no exception of any of these things was made: (*Pickard* v. *Sears*, 6 A. & E. 469.) [Lord CAMPBELL, C.J.—Can the deed be affected by any previous negotiation between the parties?] The conduct of the parties may be looked at, upon the question of parcel or no parcel. At all events, the worth of the deed are large enough to pass the granary as well as the threshing-machine and the rick-straddles. The last two are fixtures in the strictest sense, or part of the freehold (*Leach* v. *Thomas*, 7 Car. & P. 327); and the granary, even though a chattel, might pass under the word "fixtures," that being the evident intention of the parties. (Amos on Fixtures, 243; *Hellen* v. *Hunter*, 1 Cr. M. & R. 227; *Mackintosh* v. *Trotter*, 3 M. & W. 186; *Elton* v. *Brady*, 5 M. & W. 178.) A fixture is so far

(*a*) Before Lord Campbell, C.J. and Coleridge, Wightman and Crompton, JJ.

QUEEN'S BENCH.

from being an irremovable thing, that Parke, B. describes it as a right to remove. [CROMPTON, J.—The right to remove is the interest which the tenant has in the fixture.] It may be admitted here that a tenant putting up his granary would have a right to remove it during the term; but this is a case between vendor and vendee; and the defendant having sold the farm with all fixtures, the granary (which is indicated by a red mark on the plan) passed by the conveyance to the plaintiff. (He referred also to *R. v. Otley*, 1 B. & Ad. 161; *Wansbrough* v. *Maton*, 4 A. & E. 884.) (a)

Keating and *Hodgson*, contrà.—The reversioner cannot maintain trover; and as to the other count, there is no injury to the reversion. [COLERIDGE, J. referred to *Gordon* v. *Harper*, 7 T. R. 9. *Phipson* mentioned *Stewart* v. *Thompson*, 5 B. & Ald. 502, and other cases, cited in note to *Wilbraham* v. *Snow*, 2 Saund. 47 b as to the right of a landlord to maintain trover during the term.] The deed intended only irremovable fixtures to pass; and at all events not mere chattels, such as the granary. But even if they did pass, the action is not maintainable. These were things removable as between landlord and tenant, and therefore the removal was no injury to the reversion, and, as they had been demised by the plaintiff, he could not maintain trover. They referred to *Davis* v. *Jones*, 2 B. & Ald. 165; *Minor* v. *Mears*, 2 Smith, L. C. 99, *Culling* v. *Tufnell*, Bull. N. P. 34; *Penton* v. *Robart*, 2 East, 88; 11 Vin. Ab. 154, "Executors (L.) pl. 71, *Hallstead* v. *Eastwood*, 6 Exch. 812.) *Cur. adv. vult.*

JUDGMENT.

COLERIDGE, J. now delivered the judgment of the court.—This was an action for an injury to the reversionary estate of the plaintiff in premises occupied by a tenant of the name of J. May, by removing some straddles and threshing-machines and a granary. There was also a count in trover. The defendant pleaded, first, not guilty, secondly, to the first count, that the chattels were not in the occupation of the tenant, the reversion belonging to the plaintiff; and thirdly, to the count in trover, a denial of the possession. It appeared that the plaintiff had purchased the premises in question from the devisee, in trust for one Thomas Cotterel deceased, the father of the defendant, and the premises had been conveyed to the plaintiff by a deed, dated the 25th March, 1852, to which the defendant was a party as one of the devisees. The plaintiff demised the premises to May immediately after the conveyance, and the defendant had removed the straddles, threshing-machines, and granary from the premises after the demise to May. The defendant had been in the occupation of the farm at the time of the conveyance, and an attempt was made to set up the right to remove by him as out-going tenant, and some evidence of a custom to remove such articles was given. This claim on the defendant's part appeared, however, to be without foundation. The deed which the defendant had executed as a conveyancing party conveyed the land and all the fixtures; and it appeared that the erections had been put on the land by the defendant's father, who had subsequently become owner in fee, and under whom will the title had come to the defendant. The defendant therefore clearly could not set up any right to remove any of the articles as fixtures removable by an agricultural tenant. The land, and everything attached to the land, passed by the deed, and there was no tenant-right to remove any of the articles in question. The real question in the case, therefore, was whether all or any of the articles in question passed by the conveyance. This must be determined by reference to the words of the conveyance, and the nature of the respective articles. The words used in the conveyance are *prima facie* applicable to real property only. They convey "all the land, messuage, tenement, or farm-house, with the barns and other appurtenances thereto belonging, and all the several conveniences which are afterwards enumerated, all which farm lands, hereditaments, and premises are known by a description contained in a schedule to the deed annexed, and the site thereof shown in a plan on the deed, with the rights, members and appurtenances thereto belonging, and all fixtures, trees, ditches, fences," &c. The straddles were erections for the purpose of supporting ricks, and were stone pillars mortised to a foundation of brick and mortar let into the earth, with stone caps mortared on the pillars. And it is clear that such erections would pass under the conveyance either as part of the land or as fixtures. The threshing-machine was fixed by bolts and screws to posts which were let into the ground, and the machine could not be got out without disturbing some of the soil, and, being so attached to the land, would clearly pass under the conveyance. It was contended by Mr. Keating that the first count was inapplicable to the removal of these articles, as he said they could be removed without real injury to the inheritance, and therefore there was no injury to the reversionary estate; but as they were really attached to a part of the land, their removal was clearly an injury to the reversionary estate, as a removal of so much of the land. The question as to the granary involves more difficulty. It appeared to be laid on a wooden foundation, supported by straddles, and it lay upon them in the same manner that the bricks lay upon the foundation. The part above the stone caps was wood, with a tile roof. In removing this granary the caps of the straddles and the upright stones were taken away; but it appeared that it was not attached except by its weight to the straddles, as it was proved that by sufficient power it might have been lifted from the straddles without disturbing them. We think we are bound by the authorities to consider such an erection as a mere chattel, and neither as part of the land or as affixed to the freehold. In *Culling* v. *Tufnell*, Buller N. P. 34, a barn erected on pattens or blocks of wood, not themselves fixed in or to the ground, was held to be removable. The custom of the country was relied on in that case as making such erections removable by an outgoing tenant, but Lord Ellenborough, in the great case of *Elwes* v. *Maw*, 3 East, 38, in referring to *Culling* v. *Tufnell*, speaks of it as having been clearly removable without any custom, because it was not a fixture at all, it not being fixed in or to the ground. In *Wansbrough* v. *Maton*, 4 A. & E. 884, it was decided that a barn resting by its mere weight on a brick foundation was not a fixture but was a mere chattel, for which trover might be brought. Patteson, J. referred in that case to *Rex* v. *Otley*, 1 B. & Ad. 161, where it was held that a windmill resting by mere weight upon a foundation of brick was not a part of the freehold so as to contribute to the value of the tenement. In *Rex* v. *The Inhabitants of Londonthorpe*, 6 E. R. 377, it was held that a windmill not attached to the ground but constructed on cross trees, laid upon brick pillars, but not attached or affixed thereto, was a mere chattel. On these authorities we think that the granary in question must be treated as a mere chattel and not as a part of the land, nor as so fixed to the freehold that its severance would give a cause of action for injury to the reversionary estate in the land the subject of the first count. It has been suggested, however, that it might pass as a chattel under the word "fixture" in the conveyance, and it is said that a red mark in the plan, showing the site of the granary, tends to prove that it was intended so to pass. The word "fixture," though properly applicable to something annexed to the freehold, is sometimes used in a larger sense. See *Sheen* v. *Rickie*, 5 M. & W. 182, where it is said by Parke, B. "It does not necessarily follow that the word 'fixtures' must import things affixed to the freehold, nor has the word necessarily acquired that legal sense. It is a very modern word, and is generally understood to comprehend any article which a tenant has a power of removing." It may be doubtful whether the word "fixture," as used in this conveyance, immediately followed by the words "trees, ditches, and fences," and without there being any other words in the conveyance denoting any intention of passing chattels, can be construed as sufficient to pass the granary as a mere chattel. The plan is said in the deed to show the site of the premises, and the site of the granary was stated in the argument to be marked in red ink, and no doubt the permanent erection and the straddles on which the granary rested would pass, but it is not so clear that a mere chattel, resting on such a site, would pass. Considering, however, that this article was put up so long ago by a party who became owner of the freehold that it seems to have been always demised with the freehold, and remembering that the word "fixture" is capable of the larger meaning pointed out in the case we have referred to from the 5 M. & W. and considering that the red mark seems to include the granary, we should have been disposed to hold that it might have passed as a chattel if we had found that either count could be supported on that supposition. The first count for injury to the reversionary estate in the land is clearly not applicable to the abstraction of a chattel, and the count in trover seems inapplicable according to the case of *Gordon* v. *Harper*, as the possession of the chattel for the term was in May at the time of the removal. We think, therefore, that the verdict should be reduced by the value of the granary, which was separately assessed by the jury at 2*l*. The rule will be absolute for reducing the verdict from 35*l*. to 10*l*.

Rule absolute.

(a) See *Fisher* v. *Dixon*, 12 Cl. & Fin. 312.

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supported by straddling, and it lay upon them in the same manner that the bricks lay upon the foundation. The part above the stone caps was wood, with a tile roof. In removing this granary the caps of the straddles and the upright stones were taken away; but it appeared that it was not attached except by its weight to the straddles, as it was proved that by sufficient power it might have been lifted from the straddles without disturbing them. We think we are bound by the authorities to consider such an erection as a mere chattel, and neither as part of the land or as affixed to the freehold. In Culling v. *Tufnell*, Buller N. P. 34, a barn erected on pattens or blocks of wood, not themselves fixed in or to the ground, was held to be removable. The custom of the country was relied on in that case as making such erections removable by an outgoing tenant, but Lord Ellenborough, in the great *case of Elwes* v. *Maw*, 3 East, 38, in referring to *Culling* v. *Tufnell*, speaks of it as having been clearly removable without any custom, because it was not a fixture at all, it not being fixed in or to the ground. In *Wansbrough* v. *Maton*, 4 A. & E. 884, it was decided that a barn resting by its mere weight on a brick foundation was not a fixture but was a mere chattel, for which trover might be brought. Patteson, J. referred in that case to *Rex* v. *Otley*, 1 B. & Ad. 161, where it was held that a windmill resting by mere weight upon a foundation of brick was not a part of the freehold so as to contribute to the value of the tenement. In *Rex* v. *The Inhabitants of Londonthorpe*, 6 E. R. 377, it was held that a windmill not attached to the ground but constructed on cross trees, laid upon brick pillars, but not attached or affixed thereto, was a mere chattel. On these authorities we think that the granary in question must be treated as a mere chattel and not as a part of the land, nor as so fixed to the freehold that its severance would give a cause of action for injury to the reversionary estate in the land the subject of the first count. It has been suggested, however, that it might pass as a chattel under the word 'fixture' in the conveyance, and it is said that a red mark in the plan, showing the site of the granary, tends to prove that it was intended so to pass. The word "fixture," though properly applicable to something annexed to the freehold, is sometimes used in a larger sense. See *Sheen* v. *Rickie*, 5 M. & W. 182, where it is said by Parke, B. "It does not necessarily follow that the word 'fixtures' must import things affixed to the freehold nor has the word necessarily acquired that legal sense. It is a very modern word, and is generally understood to comprehend any article which a tenant has a power of removing." It may be doubtful whether the word "fixture," as used in this conveyance, immediately followed by the words "trees, ditches, and fences," and without there being any other words in the conveyance denoting any intention of passing chattels, can be construed as sufficient to pass the granary as a mere chattel. The plan is said in the deed to show the site of the premises, and the site of the granary was stated in the argument to be marked in red ink, and no doubt the permanent erection and the straddles on which the granary rested would pass, but it is not so clear that a mere chattel, resting on such a site, would pass. Considering, however, that this article was put up so long ago by a party who became owner of the freehold that it seems to have been always demised with the freehold, and remembering that the word "fixture" is capable of the larger meaning pointed out in the case we have referred to from the 5 M. & W. and considering that the red mark seems to include the granary, we should have been disposed to hold that it might have passed as a chattel if we had found that either count could be supported on that supposition. The first count for injury to the reversionary estate in the land is clearly not applicable to the abstraction of a chattel, and the count in trover seems inapplicable according to the case of *Gordon* v. *Harper*, as the possession of the chattel for the term was in May at the time of the removal. We think, therefore, that the verdict should be reduced by the value of the granary, which was separately assessed by the jury at 2*l*. The rule will be absolute for reducing the verdict from 35*l*. to 10*l*.*

Rule absolute.

COURT OF COMMON BENCH.

Reported by DANIEL THOMAS EVANS and R. VAUGHAN WILLIAMS, Esqrs. Barristers at-Law.

COUNTY COURT APPEAL.

Monday, Jan. 24.

GIBSON, App., GIBSON, Resp.

County Court—Construction of will—Mortgage—Arrears of interest—Question of title and jurisdiction—Insurance of mortgaged property, liability of general estate for.

Testator by his will bequeathed as follows:—"I, my son William I give all my interest and claim on household property in Percy-street, &c., belonging to the successors of the late J. H., on which I have a mortgage of 1500l.; also all my claims on the shops and houses situated, &c., occupied by, &c.; likewise all moneys that I may have advanced for him at any time, to him, his heirs, and assigns for ever." At the time of the testator's death there were certain arrears of interest

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outstanding on the mortgage of 1500l., which were claimed from the [illegible] by the defendant as executor. The plaintiff [illegible] a sum for insurance of the mortgaged premises, due to the testator's executors.

Held, on appeal, that the [illegible] of interest on the mortgage was at the [illegible] passed with the [illegible] to the son, and not to the defendant as executor.

Secondly, that the defendant as executor could not the plaintiff, was liable for the [illegible] of the testator.

This was an appeal from the County Court of Durham, held at [illegible]. The following is the case as stated by the learned judge for the opinion of this court:—

This is an action brought by the plaintiff to recover from the defendant the sum of 80*l.* for money had and received by the defendant for the use of the plaintiff. The claim of the plaintiff amounted originally to 89*l.* 18*s.* 10*d.*, but he abandoned the excess over 50*l.* in order to bring the case within the jurisdiction of the County Court. It appeared at the trial that one William Gibbon, deceased, the late father of the plaintiff and husband of the defendant, was, at the time of making his will, and also at the time of his death as hereinafter mentioned, in possession of certain freehold houses, situated in Percy-court, Newcastle-upon-Tyne, under a mortgage deed, dated in the year 1834, whereby one Joseph Hedley, since deceased, conveyed the said houses to plaintiff's father William Gibbon, deceased, in fee, for securing the sum of 1500*l.* lent by him to the said Joseph Hedley, deceased, with interest after the rate of 5*l.* per cent. per annum. The testator made his will on May 27, 1845, of which the following is a copy:—

"This is the last will and testament of William Gibbon, of the Windmill-hill, in the parish of Gateshead, miller. First, I give to my daughter, Margaret Coleman, 850*l.* secured by way of mortgage on household property situated at Bowden Pans, belonging to the late James Charlton's family. I also give to my said daughter Coleman 200*l.* of lawful money of this realm, to be paid to her or her heirs out of the proceeds of my effects as soon as convenient after my demise. To my son William Gibbon I give all my interest and claim on household property in Percy-street, Newcastle-on-Tyne, belonging to the successors of the late Joseph Hedley, gentleman, on which I have a mortgage of 1500*l.*; also all my claims on the shops and houses situated on the side of Newcastle, occupied by Wilson, Perry, and others, likewise all moneys that I may have advanced for him at any time, to him, his heirs and assignees for ever. To my daughter Mary Gibbon I give the sum of 2000*l.* of lawful money of the realm; also all my houses situated in Saville-court, Newcastle-upon-Tyne, to her and her heirs. I also do order that she shall have the privilege of living in the house which we at present occupy, as long as Miss Beeson remains in the house she occupies at present belonging to me in Saville-court, free from any charge for board and lodging. The residue of whatever property I may die possessed of I give in trust to my wife, Maria Gibbon, for the use of herself and son James Henry Gibbon, until he attains the age of twenty-two years: at the expiration of that time she shall give up all to him or his heirs, with the exception of 80*l.* a-year which he shall pay to her during her natural life, by quarterly instalments,—that is, four times in the year. Should my son James Henry die before, &c. without issue, then shall his mother enjoy the whole during her natural life, after her demise the property remaining shall go to my surviving children or their heirs nearest of kin. My widow shall pay my funeral expenses and all my just debts, without interfering with the legacies to my family. I do also order, that, within one month after my death, my son William Gibbon receive 200*l.* to be paid by my widow and trustees, for whom I appoint John Goldart, wine merchant, Newcastle, Mr. James Smith, Gateshead, Low Fell, and Mr. John Coleman, chymist, Gateshead. My widow shall be principal treasurer, that is to say, shall receive and pay all, subject to the inspection of my trustees: should anything occur that may be considered an improvement to the property, my widow, with the consent of two of my trustees, shall be at liberty to make any alterations as aforesaid, if by sale, the money to be invested in some public security for the benefit of the family. This I declare to be my last will and testament, revoking and making void all former wills made by me. Signed, sealed, and declared this 27th May, 1845, and I do hereby subscribe my name to [illegible] of the following witnesses whose names are hereto written, and in the presence of each other. [illegible] Gibbon witnesses, Luke Blackinston, [illegible] Thomas Clark."

This will was [illegible] on the 8th Feb. 1847, by the defendant [illegible], the sole executrix according to the tenor of the said will, to whom administration was granted, she having been duly sworn under 4000*l.* Testator died possessed of [illegible]. At the time of testator's death there was [illegible] as such mortgagee in possession, the sum of 89*l.* 10*s.* 10*d.*, of which the sum of 39*l.* 10*s.* 1*d.* was for interest which had become due in his lifetime, and the

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sum of 21*l.* 6*s.* 9*d.* was then owing and owing by the testator to the defendant, on the said mortgage in possession, for the benefit of the mortgaged property. The personal estate of the testator not specifically bequeathed was more than sufficient to liquidate his debts, and the defendant, as executrix, paid sundry other debts due by the testator for work and labour done to the said property, and the other debts of the testator. The plaintiff, William Gibbon, entered into possession of the said property as tenant-at-will immediately on the testator's death, or into receipt of the rents thereof, and he received for his own use the said sum of 38*l.* 10*s.* 1*d.* which had accrued due in the testator's lifetime as aforesaid. The defendant, as executrix, being in possession of the mortgage deed and the other deeds relating to the mortgaged property, refused to give them up to the plaintiff unless and until she was paid the sum of 38*l.* 10*s.* 1*d.* for arrears of interest, and the sum of 21*l.* 6*s.* 9*d.* paid and incurred for repairing the mortgaged property, making together the sum of 59*l.* 16*s.* 10*d.*; and after some negotiation between the parties and their solicitors, the plaintiff, in order to obtain possession of the deed, and protesting against the right of the defendant to such payment, and in consequence of the defendant's refusal to give up the deed, paid to the defendant the said sum of 59*l.* 16*s.* 10*d.* and thereupon received his deed.

The following is a copy of the account, showing the items claimed by the defendant, and paid by the plaintiff:

Mr. Joseph Hedley, Dr.

To Maria Gibbon.

1846	£	*s.*	*d.*
Dec. 26.—To balance of interest - -	38	10	1
Mr Grant's bill for joiner's work	10	5	3
Mr. W. Hymer, for grate- -	1	2	6
Weatherland's bill, mason work, &c. - - - - -	4	4	0
Ormston's bill for painting -	5	15	0
	59	16	10

This action was brought to recover back the sum of 50*l.*, being the unabandoned part of the payment so made by plaintiff to the defendant.

On behalf of the defendant, it was contended at the trial in the County Court,—First, that the bequest made by the testator of his interest in the mortgaged property to the plaintiff, was a specific bequest of 1500*l.* and no more, and that in point of law the bequest of a debt or sum of money due upon a particular security passed only the capital, and not any arrears of interest owing at the testator's death. Secondly, that, as to the arrears of interest, there had been no assent of the defendant, as executrix, to such arrears being a bequest or legacy, and that consequently the plaintiff's remedy, if any, was in equity and not in law. Thirdly, that as to the money paid or incurred for repairs, the amount was a debt due to the testator, and was secured by the mortgage, and that consequently the defendant, as executrix, was entitled to hold and retain the deed until she, as executrix, was repaid the money so paid and incurred for the repairs of the mortgaged property.

The learned judge was of opinion that the arrears of interest did not pass under the bequest contained in the will, and moreover that, without the assent of the defendant as executrix, the County Court had no jurisdiction over this part of the plaintiff's demand; and that, as to the money paid for repairs, the defendant as executrix was entitled to retain the deed until the money so paid was reimbursed to her as such executrix. He therefore directed judgment to be entered for the defendant or a nonsuit, at the election of the plaintiff. The plaintiff refused to be nonsuited, and judgment was entered for the defendant.

The plaintiff appeals against this judgment.

The question for the opinion of the C.P. is, whether the judgment of the County Court judge is correct or not.

Milward for the plaintiff.—The main question in this case arises on the construction of the will of the testator, William Gibbon; if that be disposed of, the other points will follow. [MAULE, J.—Did not the point on the will raise a question of title?] Nothing of the kind arose at the trial. [CRESSWELL, J.—But you raise it now; you say your client is entitled to the land, and not to the mere 1500*l.* raised on the mortgage.] The testator had no estate in the land. [MAULE, J.—He was seised in fee of the land.] He had, no doubt, an equitable estate in fee, but he had no legal estate in the land. The main question discussed at the trial was that which is raised here—whether the arrears of interest passed under the bequest in the will as well as the land. It is submitted that they did, and that is plaintiff's first point. The 55th sect. of 9 & 10 Vict. c. 95 extends to the Co. C. jurisdiction "to the recovery of any legacy under a will." The other side will oppose to this the words of sect. 58 in the same statute, which says the Co. C. "shall not have cognizance of any action in which the validity of any devise, bequest, or limitation under any will or settlement may be disputed;" but here, in fact, the devise is not disputed, therefore title to land does not come into question. If, however, any point as to the jurisdiction of the Co. C. there arise here it cannot now be taken, as it was not raised in the court below. The only questions raised before the Co. C. judge are stated in the case (*ubi supra*), and the case is silent as to this question being mooted. As to the question whether or not the language used by the testator passed the arrears of interest we must look to the Wills Act, which says that the will shall speak as of the moment before the testator's death; by this the plaintiff will take those arrears. (*Cox* v. *Scott*, 19 L. J. 63, Ch.) Very strong words indeed are necessary to show that the testator intended to shut out the operation of the Wills Act. Then with regard to this point, there is a case which will be relied on by the other side, *Roberts* v. *Cuffin*, 2 Ath. 112. On that case the Co. C. judge acted. But the terms of the bequest are so different that that case has no bearing on the present case. Here the bequest is of "all my interest and claim on household property situated," &c.; whereas in that case the bequest is one of a specific sum. *Hawley* v. *Cutts*, 2 Freem. Ch. Rep. 28; *Harcourt* v. *Meryan*, 2 Keen, 274. This last case is a strong authority in favour of the point here contended for. *Hunt* v. *Tipley*, 11 Jur. 904. Those are the only cases which bear on the first point. The Co. C. judge held that the language of the bequest did not pass the arrears of interest; and in that, it is submitted, he was wrong. The second question is whether the amount due to tradesmen for repairs of the mortgaged property, done before the death of the testator, were chargeable on the plaintiff, or on the defendant as executrix of the testator. They were debts incurred by the testator in his lifetime, and he was as much bound to pay them as to pay his grocer's bill. Besides this, the mortgagee has his remedy from the mortgagor for improvements done to the property, and any reasonable sum laid out in such manner could be recovered as for work done, though not as for money paid. [JERVIS, C.J.—If the testator had paid these debts before his death, the devisee would have a right to recover from the mortgagor.] Yes, that is so. The remaining question is as to the necessity of assent from the executrix, in order to give jurisdiction. This point is by no means clearly stated in the case, and must be given in its own terms (*ubi supra*). The Co. C. judge seems to have overlooked the 65th section of the original Act, already cited, and to have forgotten that he sat as an equity as well as a common law judge. [JERVIS, C.J.—He seems to have thought that plaintiff's right to the legacy did not arise before him, except through the assent of the executrix.] She has consented to the bequest of the whole legacy of 1500*l.*, and where a party assents to the bequest of the principal, the latter carries the incidents along with it. On these three grounds, the plaintiff, it is submitted, is entitled to the judgment of the court.

Udall, for the defendant.—The decision of the Co. C. judge was right. The court is here asked to set aside a judgment given for the defendant, and to enter it for the plaintiff, and therefore to do this, the case must show that there were sufficient materials before the court below to enable it to give judgment for the plaintiff. This case does not show enough for this, and, from what appears on it, even if it were sent down again, the judgment must be the same. Before the plaintiff can succeed, he must satisfy the court that he was entitled to the title-deeds as well as the arrears of interest, and that the money he paid to get the deed was paid under duress; without doing this, he cannot have judgment. The question in reality resolves itself into this:—Who was entitled to the mortgage-deeds? At the testator's death, the estate, if not devised, goes to the heir-at-law, and the contract to the executor. What is the onerous duty which devolves upon the executor? The mortgage deed being the security for the debt, it goes to the executor and not to the heir. It is so laid down in Bac. Abr. tit. "Exec." H. C.; 2 Williams' Executors, 506. The title-deeds were delivered up upon a good consideration. [MAULE, J.—You say that the 1500*l.* being a debt, went to the executrix; and that the title-deeds, being incident to that debt, passed also with it; and that the arrears of interest went to the executrix.] Yes, in effect that is so. Then comes the question of assent. [MAULE, J.—I think the conduct of the defendant amounted to an assent.] Then it must be an assent to something on behalf of the whole. It is clear the defendant never assented, because she never parted with the title-deeds. [*Milward*.—I am not in a condition, as the case stands, to ask judgment for the plaintiff, but only for a new trial.] We contest the right of the plaintiff to the title-deeds. The defendant if she pleased was justified in keeping them, whatever sum the plaintiff might have offered for them. They were as much her property as the plaintiff's, and nothing has since been done to deprive her of that right. She was also entitled to the interest. *Spode* v. *Smith*, 6 Rep. 811. That case shows that the assent of the executrix is a valid consideration for the money she received. The case cited from Atkyns (*supra*) also shows that arrears of interest did not pass under this will. *Shelmerdine* v. *Dean*, 15 Jur. 802; *Gulliver* v. *Cousins*, 1 C. B. 788. Then comes a question, is this a bequest or a devise? It seems to be a devise of land; if that be so, what right had plaintiff to sue in the Co. C. in this case? Title to land arises here. There being no jurisdiction in the court below, the defendant, even if she had consented, could not by such assent give jurisdiction. The validity of the devise also came into question; judgment therefore should be for the defendant.

JERVIS, C.J.—It appears to me that in this matter the appellant is entitled to all that he asks for—a new trial, but not to full judgment on the case. There are here undoubtedly several points which were not raised at the trial; it is enough, however, to answer the objections there taken. The first point was, whether the arrears of interest did or did not pass under the bequest contained in the will. The learned judge held that they did not so pass. With respect to this point, it is sufficient to say that the bequest was a specific bequest, as the judge determined; but the judge was wrong in holding that the arrears of interest did not pass under the will at the testator's death. According to my view, the judge was wrong in the construction he put upon the will. It is similar to the case of a claim on a bond, under a will containing like terms, where the interest passes. Then as to the next point, that there was no assent on the part of the defendant, and that a question of title was raised, I think the judge was right, and that he had no jurisdiction. It is an action for money had and received, and without the assent of the executrix the plaintiff was not entitled to proceed in the Co. C., and the judge had not jurisdiction. But it was only as to the sum of 38*l.* 10*s.* 1*d.*, which formed one portion of the claim, that that question was raised before the judge. As to the last point, that the defendant was entitled to be reimbursed the money expended in repairs of the mortgaged property, I think the learned judge was wrong. The testator incurred the debt during his lifetime, and his executrix was therefore liable. The judge having been wrong in his judgment as to a portion of the case before him, we think the appellant is entitled to a new trial.

MAULE, J.—I am entirely of the same opinion as to the question whether the arrears passed by the bequest in the will. The appellant's claim comprehends the interest. If the testator had merely bequeathed, say a sum of 200*l.* that would have been all that passed; but in a case, where the testator gives, as in this will, "all my interest and claim on household property situated, &c. belonging, &c. on which I have a mortgage of 1500*l.*," it must be held that arrears of interest pass with the principal. As to the question of assent by the defendant, the negotiations between the parties seem to have led to a sort of *quasi* assent. They seem to have agreed to try whether the plaintiff was entitled to the deeds without paying the money—a very convenient and proper mode of deciding the real question. But that point is not material, as the court is clear upon the other questions. I think the defendant is entitled to receive the money outlaid in repairs. The judge ruled otherwise; and as there has been a miscarriage here, the plaintiff is entitled to all he asks for, namely, a new trial.

CRESSWELL, J.—I am of the same opinion. As to the arrears of interest, I think the judge was wrong in deciding that they did not pass to the plaintiff under the will. As to the judgment on the second point, I do not exactly know what it means, whether it goes to part or to the whole legacy. But in either case I think the plaintiff entitled to what he asks for now, as the defendant could have no right to detain the title-deeds for a debt due from the testator.

WILLIAMS, J.—I am also of the same opinion. There were two points in dispute, on both of which I think the plaintiff was in the right and the defendant in the wrong. The testator bequeathed to the plaintiff all that was due on the mortgage, and that included interest in arrear. As to the second point, namely, the liability of the plaintiff to pay for repairs to the mortgaged property, I think he was not, and that those expenses ought to fall upon the general estate. Much confusion has prevailed in the argument as to what took place at the trial with regard to the assent of the defendant. That question is material; but I cannot gather from the case what the judge, as to this point, meant to decide at the trial. It is to be regretted that the plaintiff cannot have final judgment at once; but there are difficulties in the case which prevent it. He is, however, entitled to a new trial, and must have judgment to that effect.

New trial granted.

(As to whether costs should follow, JERVIS, C. J. intimated that the court would consult the other judges on the point.)

COURT OF EXCHEQUER.

Reported by BRENDAN RALEY and C. J. B. HEDGLEY, Esqrs. Barristers-at-Law.

November 22 and 23.

WATSON *v.* WARD.

Landlord and tenant—Distress—New demise.

Defendant agreed to let to the plaintiff certain tenements from a time mentioned at a specified rent, payable half-yearly; it was subsequently found that possession of one of those tenements could not be obtained by the defendant to give to the plaintiff. Before the first half-year's rent became due, the plaintiff and defendant

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met, when it was agreed that plaintiff having received possession of all he had taken, except the one tenement of which the possession could not be obtained, plaintiff should pay the rent of the whole, less the rent of that tenement, to the defendant.

Held, that the new agreement come to between plaintiff and defendant operated as a demise, and that defendant had the right to distrain, as there was an agreement by defendant to permit the plaintiff to continue to occupy for a certain rent, payable on a certain day, and on the plaintiff to occupy, which constituted a demise and release of the original bargain.

The plaintiff was defendant's tenant, and a distress having been levied for half a year's rent, this action was brought for an excessive distress; there was also a count in trover. The action was tried before Lord Campbell, at York, and a verdict returned for the plaintiff, subject to a point reserved; and a rule was subsequently obtained to set aside that verdict, and to enter it for the defendant.

Watson, Q. C. and *Raw* showed cause.

Hill, Q. C. *Joyce*, and *Pearce*, in support of it.

The facts are fully set out in the judgment.

Cur. adv. vult.

POLLOCK, C. B.—This was a motion for a new trial in a case tried before Lord Campbell at York, when the verdict passed for the plaintiff, subject to a point reserved, on which a rule *nisi* was granted. The action was brought with one count in trover, and another for an excessive distress. The question arose upon the count in trover alone, and it was whether one of the defendants, who was the plaintiff's landlord, had a right to distrain for half a year's rent, payable on the 14th Nov. 1851. The facts were these:—The defendants advertised a public-house and some cottages and five acres of grass to let, all of which one Whalley occupied as tenant from year to year, under a tenancy expiring on the 13th May, 1851, the cottages being occupied by an under-tenant. These tenements had been previously occupied by one Clayton. Whalley gave notice to quit on that day to all the under-tenants except a Mrs. Richardson. On the 15th May the defendant agreed with the plaintiff to demise to him all the premises occupied by Clayton, including, of course, Mrs. Richardson's cottage, from that day at a yearly rent of 145*l.* payable on the 14th of November and the 14th of May, until the six months' notice to quit, expiring at any time of the year, might be given. Mrs. Richardson, whether rightly or wrongly, chose to continue her possession of this cottage let to her at 5*l.* a year, and possession could not be given to the plaintiff pursuant to the defendant's agreement to let, and the endeavours to get her out by the plaintiff were ineffectual. The plaintiff, however, entered and enjoyed all the rest of this property; and in October, 1851, before the first half-year's rent became due, the plaintiff and defendant met together. The plaintiff complained that he could not get Mrs. Richardson out, and desired the defendant to bring an ejectment against Whalley, the prior tenant; but the defendant declined, alleging that he had given possession of all he had let to the plaintiff. To settle this dispute, the defendant and the plaintiff agreed that the defendant should receive from Mrs. Richardson the rent of two half-years, and deduct therefrom the 5*l.* that was to be paid for the whole, and the plaintiff should pay 70*l.* to the defendant on the 14th Nov. 1851, and the 14th May, 1852. On this state of facts, an objection was taken on the part of the plaintiff to the defendant's right to distrain, on the authority of *Neale* v. *Mackenzie*, 1 M. & W. 747; the rent of 145*l.* reserved for the whole, and the demise to Mrs. Richardson of the cottage, being either void because the defendant had no title to demise it, or if he had, the defendant had not given possession. The whole rent had, therefore, not become due, and he never had consideration, and the rent of the residue not having been fixed at a certain sum, there was no right of distress, and Lord Campbell appears to be of that opinion. He thought that what occurred in October 1851 was not a new demise of the tenements, but only an arrangement how the rent under the old agreement should be paid; Mrs. Richardson's cottage being still considered part of the demised premises. On the other hand, the defendant contended that it operated as a new demise at a fixed payment of rent, which, under the old agreement, was uncertain as to the day for payment, and gave a right to distrain for it. Lord Campbell reserved this point; and, after much consideration, we think that the latter view is the correct one, and that what passed did operate as a demise, and that the defendant had a right to distrain for 70*l.* on the 14th Nov. It is quite clear that, if no new agreement had been come to, then the case of *Neale* v. *Mackenzie* would have applied, and the defendant could not be entitled to distrain, because the plaintiff, not having had all that he bargained for, for which he was to pay a rent of 145*l.*, was not bound to pay it, and the law would not apportion the rent and make him liable to pay rent proportionate to the part occupied, as it does in the case of eviction by title paramount. But, here the parties come to a fresh agreement, and the question is what is the legal effect of that agreement? It appears there was a dispute between the plaintiff and the defendant as to what the actual bargain was. The defendant insisted that Mrs. Richardson's cottage was not included in it; the plaintiff on the contrary that it was ultimately agreed that it was. But if the agreement was that, the effect of it was that the plaintiff has not had what he bargained for, and so was not bound to pay 145*l.* a year, but only for so much of the residue as he enjoyed to 1851. It was then agreed that he should pay for that part 145*l.* a-year, 70*l.* payable on the 14th May 1851, and 70*l.* payable on the 14th Nov. 1851; and this amounts to a demise for that period for a certain rent, as no particular words are necessary to constitute a demise. Here is an agreement to permit one to continue to occupy on the one hand for a certain rent payable on a certain day, and on the other to occupy, and this constitutes a demise and release of the original bargain. The original agreement did not operate as an actual lease, for the tenancy had not been bargained for. There are several cases analogous to this of occupation under an agreement for lease, but where there was no power to distrain until a certain rent was paid or settlement in account the right to distress by the landlord has been held contingent. *Cox* v. *Bent*, 5 Bing. 186; *Knight* v. *Bennett*, 3 Bing. 361; and *Regnart* v. *Porter*, 7 Bing. 451. where Tindal, C. J. says: "It may be conceded if a party entered under an agreement for a lease pays or proposes to pay a rent certain, or settles it in account, a new agreement may be presumed, under which the landlord may have a right to distrain." Here a new agreement was actually made. We are therefore of opinion that the rule ought to be made absolute to enter the verdict for the defendant.

Rule absolute.

Wednesday, Jan. 26.

WATSON v. MIDDLETON.

Bankrupt Act, 12 & 13 *Vict. c.* 106, *s.* 224.—*Prospective operation of*—*Arrangements by deed between debtor and creditor.*

The 224th section of the Bankrupt Act, 12 & 13 *Vict. c.* 106, *passed* 1*st Aug.* 1849, *came into operation after* 11*th October following, and which provides that every deed or memorandum of arrangement now or hereafter entered into between any debtor and his creditors, and executed by six-sevenths in number and value of the creditors whose debts amount to* 10*l. and upwards, shall be binding on all the creditors, is not retrospective in its operation.*

Cowling appeared for the plaintiff in support of a demurrer to the defendant's plea, which stated in effect that a deed of arrangement had been entered into by more than six-sevenths in number and value of the defendant's creditors whose debts amounted to 10*l.* and upwards; that such deed was binding on all the creditors pursuant to the Bankrupt Act, 12 & 13 Vict. c. 106, s. 224, and a bar therefore to the claim of the plaintiff. The deed in question was executed in April 1847; the Act of Parliament referred to passed 1st Aug. 1849, and by the 4th section was directed to come into operation from the 11th Oct. 1849. The question was whether the 224th section of the Act was retrospective in its effect, so as to bring the deed referred to within the 224th enactment of the Bankrupt Act before mentioned. *Marsh* v. *Higgins*, 1 L. M. & P. 253, was referred to, and the other provisions of the same Act, to show the whole were intended to be prospective only.

Manisty, contrà, in support of the defendant's plea, contended that, according to the words of the 224th section and the proper and ordinary grammatical construction of them, the clause must have a retrospective effect. *Cur. adv. vult.*

POLLOCK, C. B. delivered judgment.—This case was argued before us yesterday upon a demurrer. The declaration was by the plaintiff as a public officer on a money count; the plea was a plea of arrangement, which was, under the 12 & 13 Vict. c. 106, s. 224, pleaded as a bar to the action on the ground that the deed of arrangement, which was executed in 1847, two years before the passing of the Act in question, was made an answer to the claim by the retrospective effect of the 224th section. The words of the section are these, "that every deed or memorandum of arrangement now or hereafter entered into between any such trader and his creditors, and signed by or on behalf of six-sevenths in number and value of those creditors whose debts amount to 10*l.* and upwards, touching such trader's liabilities and his release therefrom, and the distribution, inspection, conduct and management, and mode of winding-up of his estate, or all or any of such matters, or any matters having reference thereto, shall (subject to the conditions hereinafter mentioned) be as effectual and obligatory in all respects upon all the creditors who shall not have signed the deed or memorandum of arrangement as if they had duly signed the same." It was contended by Mr. Manisty, on behalf of the defendant, that this clause was completely retrospective in its operation, so as to take up any deed that had theretofore been executed, entered upon, signed, executed, and completed, although the property had been completely divided among a certain class of creditors, and those who had not signed had no possibility of having any portion or share of the effects; and he contended this upon the ground that this was the grammatical construction of the Act, and that we were bound to give effect to it according to that grammatical construction. The rule of construction to which Mr. Manisty referred has been frequently the subject of notice in this court. I am not sure that the grammatical meaning of a sentence will very frequently be much more difficult than the legal meaning. I am far from being of opinion that what you lay down a rule that the grammatical construction shall prevail, you lay down by any means a more certain rule than when you say that the legal meaning shall prevail. The grammatical and philological doubts,—indeed, all that belongs to the history of language, is about as obscure, in my judgment, and leads to about as many doubts and disputations, as any question of law whatever; and I am not sure, therefore, that the rule, much as it has been commended, is on all occasions a sure and certain guide; but certainly I think it must be conceded that where there is no doubt about the grammatical construction—where it is quite plain and manifest that the language used by the Legislature admits of no duplicity of construction whatever,—there, unless there be some strong and obvious reason to the contrary, the grammatical construction ought to prevail. But the rule that has been adverted to has always this clause or condition as a part of it, that however plain may be the apparent grammatical construction or meaning of it, if it be perfectly clear from the contents of the same document (and the rule, I believe, applies not merely to an Act of Parliament, but to a deed, to a will, or to any subject that comes before the court for construction and elucidation),—if the same instrument contains within itself clear and unanswerable arguments, that satisfy those who are called upon to give a meaning to the document, that the apparent grammatical construction cannot be the true construction (the rule, I say, contains that condition), that then, that which is upon the whole the judgment of an intelligent person, as to the real and true meaning of the entire matter, shall prevail in spite of the grammatical construction of a particular part of it. Now, there is no doubt that the word "now" certainly imports "the present time," and some reference to the present time; and, assuming the word "*now*" to be used in its ordinary sense, it would refer, according to the old regulations of Parliament, and the old rules of common law, to the first day of the sittings; but, according to the recent statute, it would refer to the 1st Aug. 1849; and if we were to take that construction, and adopt it, the consequence would be, not merely that a deed executed in the year 1847,—at which time, or about which time, and since which time, this question of giving to creditors the power, by a large number, of releasing their debtors in spite of the resistance and opposition of a certain small and inconsiderable number who oppose it, no doubt prevailed,—but, if the argument is to prevail, this would just as much apply to a deed executed among creditors five, ten, twenty, or forty years ago; and although it may not be right to look at extraneous matters for the purpose of construing a deed, yet one must look at this, that when you refer to the history of legislation upon the subject of bankruptcy, when you take this construction of the word "now" as giving effect to these arrangements for a great many years past, it is really difficult to believe, except under the strongest compulsion of language, that the Legislature could have meant to enact a clause apparently so inconsistent with its general course of decision, and of determination in and out of Parliament ever since law has been a study in this country. Mr. Manisty was quite right, therefore, in his observations. There was nothing disrespectful to the court in his intimating, as he very plainly did, that we were endeavouring to see whether there were not some means of getting rid of the apparent effect of the word "now." In other words, we were so struck with what appeared to us to be the injustice and absurdity of the view presented to us by Mr. Manisty, that we were looking through the whole compass of the clauses in the Act of Parliament, to see whether we were compelled to adopt that which appears to us to be repugnant to reason and justice, and to the course of legislation on almost all other occasions; and I believe that I am expressing an opinion that I entertain in common with the rest of the court, that we are not compelled to read the word "now" in the sense (for that it would be) of "heretofore;" for that really is the conclusion. If we are to adopt Mr. Manisty's meaning, we must read "now" exactly as if the Legislature had used the word "heretofore." It is a very strong reason for not coming to a conclusion that the Legislature intended the word "now" in that sense, that, as I think my brother Alderson observed in the course of the argument yesterday, if this was what was intended, it was so plain and obvious certain expressions could have been used that should leave no possible doubt on the mind of any one who was desirous of ascertaining what the Legislature in its wisdom intended. There are no expressions that distinctly and clearly indicate the intention of giving effect to every deed that had theretofore been entered into and concluded by the parties who were parties to it, so as to bind a number of other persons who were not parties to it; and in the absence of these expressions, so obvious, which might have been so easily used, undoubtedly grave doubt may be entertained whether this could have been the meaning; and it may be observed that one is not bound to adopt that which appears to be repugnant to the general usage of Par-

liament, because an expression has been used which, if it do mean this, certainly means it by the smallest quantity of expression that can be used to convey it. We, however, are of opinion that the Legislature contemplated by the word "now" nothing more than this, that whereas there may already have been certain negotiations or arrangements commenced and entered into already, and before the passing of this Act, those that are in a condition shall (although they may have been so far entered into as that in equity they would be considered as complete engagements, binding perhaps upon the parties to them), still come within the compass and purview of this Act; and that the Legislature, if this matter were in reality seriously considered, and the subject distinctly brought under the notice of those who are to decide upon these matters in Parliament,—that the Legislature meant nothing more than this: all arrangements of this description that shall hereafter be entered into and completed shall operate as the statute provides, and all those that already have been entered into, they shall also come within the scope and operation of the Act, provided they are in such a condition that the three months' notice may be given which the Act provides as one of the conditions necessary for the purpose of effectually doing justice between those who have been the moving parties in the arrangement, and those who have opposed it in order that all may get the common benefit which is ever intended in an arrangement under a bankruptcy, and that then they will have an opportunity in common with others of seeing that their interests are attended to, and they may share in the distribution, inspection, conduct, and management, and the mode of winding-up the estate. We have considered the subject with the deliberation which is due to a matter, certainly of some importance; and pressed as we were yesterday by the argument of Mr. Manisty, we have certainly taken pains to ascertain,—at least, according to our view of the subject, we have made no mistake in ascribing to the word "now" the limited effect which I have adverted to, and no other effect—no effect beyond that, and certainly not to give effect to those arrangements of this description which have been already not merely entered upon, but signed, completed, and in every respect effected; the property having been completely disposed of, so as to make it an impossibility for any one now to derive the least benefit under deeds of that sort. This being the conclusion to which I have already come, I believe I am expressing not only my own opinion, but the opinion of the rest of the court. That being the case, the present deed, which not only was entered into but completed long before the passing of this Act of Parliament, does not come within the scope and object of the section of the statute; the deed therefore is no bar—the plea is a bad one—the demurrer must be allowed, and the plaintiff is entitled to our judgment.

ALDERSON, B.—It would be a monstrous thing to say the Legislature compelled the remaining creditor, when a deed of arrangement had been signed by six-sevenths, to be bound by the deed, when those remaining creditors could not by possibility have the protection which the Act of Bankruptcy for the first time gives to them, as a consideration why they should be bound. That is so monstrous a proposition, that one cannot, by the mere operation of the word "now," give such an effect to the Act. I quite agree that the modified construction of the word "now," making it apply to an inchoate and not perfect arrangement—inchoate at the time of going forward, at the time the Act passed, would, to give the full effect to the word "now", make the Act reasonable and just.

POLLOCK, C.B.—I may add, in the case adverted to of *Marsh* v. *Higgins*, 1 L. M. & P. (this part of it), in page 263, my brother Talfourd, in giving his judgment, expressed the very same opinion with respect to this clause of the Act of Parliament, that it is an Act not *quoad hoc* retrospective, notwithstanding the use of the word "now."

PARKE, B.—And there must be three months' notice after the Act of Parliament where a party is cognisant of his rights.

ALDERSON, B.—That condition is binding, that he must have three months' notice to do those things which are for the protection of his interests under the Act of Parliament. *Judgment for the plaintiff.*

JUDGMENTS DELIVERED.

SITTINGS AFTER HILARY TERM.

Saturday, Feb. 12.

PEARSON v. BECK. *Rule discharged.*

BULL and ANOTHER v. CHAPMAN. *Judgment for defendant.*

CRAY v. CROWE. *Judgment for plaintiff.*

ARNOLD v. GAUSSEN. *Judgment for the defendants.*

v. WOOD. *Rule discharged.*

MONTAGUE v. KATER. *Judgment for the defendant.*

SIMMONS v. LILLYSTONE. *Verdict for the plaintiff on the first count for 1s. damages—Verdict for defendant on plea of not guilty to count in trover—Jury discharged by consent on plea of justification.*

DICKENSON v. ROOKES. *Reference back to the arbitrator to reconsider his award, and amend it if necessary.*

MARTIN v. BENARY; RENAUX v. TEAKLE; PIERON v. GOUSSE; HILLS v. MITSON. *Stand over.*

SCOTT v. AVERY.—This was a demurrer to certain pleas. *Atherton* (*Pollock* with him), in support of the demurrer. The action was on a policy of insurance on a ship, and it was provided that the rules and regulations of the office were to be as binding as if included in the policy. These rules provided for settling disputes on policies by arbitration, and, as the court were of opinion, were framed for the purpose of ousting the jurisdiction of the court of law; and the pleas in question set out these rules, and averred that the committee had ascertained and decided the amount due. *Harris* v. *Reynolds*, 2 Q. B. 71, Co. Litt. 83, b; *Kell* v. *Hollister*, 1 Wilson, 129; *Mitchell* v. *Harris*, 2 Ves. Jun. 129, Shep. Touch. 373; *Thompson* v. *Charnock*, 8 T. R. 139; *Tattersall* v. *Grant*, 2 B. & Pul. 131; *Goldstein* v. *Osborne*, 2 C. & P. 550; Watson on Awards, 7, n. 2; *Harrison* v. *Douglas*, 3 Atk. 396; Russell on Awards, 64; Arnold on Ins. 1245, were cited. *Manisty*, contrà, was stopped by the court.

Judgment for the plaintiff.

INSOLVENT DEBTORS COURT.

Reported by DAVID CATO MACRAE, Esq., of the Middle Temple, Barrister-at-Law.

Monday, Feb. 14.

Re GEORGE JOY.

Surplus—Dividend—Interest.

The Insolvent Debtors' Act, properly so called, allows interest on debts only under special circumstances, and in the discretion of the court; but the judgment entered up after adjudication carries interest, like any other judgment, from the time of its being entered up.

The question raised in this case, and the argument of counsel (*Cooke*) is so clearly stated in the judgment of the court, that it is unnecessary to do more than note the authorities cited by the learned counsel:—6 Geo. 4, c. 16, s. 132; *Ex parte Morris*, 1 Ves. Jun. 132; *Ex parte Goring*, 1 Ves. 169; *Ex parte Mills*, 2 Ves. 295; *Re Sir Stephen Evans*, 3 Brown's C. C. 506; *Ex parte Paton*, 1 Glyn & J. 332; *Ex parte Clarke*, 4 Ves. 677; *Ex parte Reeve*, 9 Ves. 588; *Ex parte Hill*, 11 Ves. 654; *Re Best*, 11 L. T. 8, 27, 70.

THE COURT having taken time for consideration, to-day delivered its judgment.

Mr. Commissioner LAW said.—This most distressing case is at last approaching its termination. The unfortunate gentleman who is the subject of the insolvency has died at the advanced age of ninety-one, almost at the same moment when his protracted Chancery suit came to an end in the House of Lords. He was taken in execution in June 1841. His inability to discharge his debts at that time arose from the resistance made to the large claim which is now at last enforced. The detaining creditor promptly filed a petition; but unfortunately Mr. Joy did not proceed to seek his discharge from custody. No one would have opposed it. On the contrary, it must have been an object to all that the assertion of his claims, which he had by want of funds become unable effectively to prosecute, should be renewed, or have the chance of being renewed, under the auspices of this court. The creditors took no steps for promoting this object; and the benefit that is now arrived at is owing to the enterprise and good sense of the provisional assignee, who was not content to be brought in as a nominal party to the suit, nor to submit to terms which would have given little to the creditors, and nothing to the insolvent; but went actively forward, with help from no one, to accomplish what was due to the interests of both. Unhappily the old man delayed the filing of his schedule for more than nineteen months. At one time he was led astray by bad advice, and taught to believe that he would be benefited by appealing to the Court of Bankruptcy. Nothing could be more fallacious; and the encouragement given to him in this expectation served only to protract his imprisonment. When, at last, after a delay more injurious to himself than his creditors, he sought his discharge from custody in this court, he was promptly liberated. The provisional assignee, confident in the result, had before that time embarked in those proceedings, which have now, through his most commendable perseverance, brought into this court a sum more than sufficient to pay all debts with interest. The representatives of Mr. Joy raise the question, whether it is competent to allow interest; and the subject is brought to my notice on a motion made by Mr. Cooke for certain creditors, in which he has contended that it ought to be allowed on those debts which in their nature legally would carry interest. His argument is this: that, prior to 1825, while the Bankruptcy Statutes were silent on such subject, the practice was established under the authority of the great seal; that, in case of a surplus, interest should be given on debts bearing interest, and the residue only be handed over to the bankrupt. On this ground he has contended that a similar practice should be adopted here; and, as his clients are parties whose debts were such as to bear interest, he duly urges it on their behalf. I am not satisfied that the practice should be adopted only because it prevailed in bankruptcy; and, in truth, I do not desire, if I may avoid it, to give the advantage which is sought to one sort of debt rather than another. I must do my best to follow the laws which regulate this court and its jurisdiction. If I might venture upon regulating such a subject without that control, I should be well pleased to reject the usual distinction in favour of bills of exchange and special contracts, saying that, on the event of a public insolvency, every ascertained balance definitely becomes on account stated, one as much as another; that the compulsory suspension of individual effort to obtain payment is a hardship shared by all claimants; so that all are with equal fairness entitled to benefit from an eventual capacity in the estate to pay interest in addition to principal. When I am urged to follow the practice of another court, I must observe, first, that there is by no means a perfect analogy between the position of creditors in bankruptcy and creditors in insolvency; the common law judgment which stands for the latter alone exemplifies their difference. Secondly, that the bankruptcy practice is pressed on my notice as it prevailed when the Bankruptcy Statutes were silent on interest. But I do not find that at any time the Insolvent Acts have been silent on interest, though the provisions on that subject have been very different at different periods. Prior to the year 1820, the insolvent law dealt with the subject of interest in the following manner:—There was statutable provision for the exercise of that very power which was exercised in bankruptcy without statute. In 53 Geo. 3, c. 102, there is a clause by which a discretion is permitted to the court to allow interest on debts bearing interest in the case of a party whose debts are fully paid, and who is clear of new debts, and who has besides ample estate for his future subsistence. There is also another clause giving similar discretion against the assets of a deceased insolvent which shall remain after payment of all debts subsequent as well as prior to the insolvency. Besides these provisions concerning interest in the event of a surplus, there is a clause which empowers the court in certain cases to allow interest on all debts; namely, in cases where the court may specially interpose to restrain the sale of property, or to raise a fund by mortgage; proceedings which are attended with a delay of payment operating upon all creditors. As to the debts which are to have this advantage, the words of the clause (53 Geo. 3, c. 102, s. 12) are, "upon such terms and conditions with respect to the allowance of interest on debts not bearing interest, or other circumstances, as to the said court shall seem just." No one, I think, will contend that debts not bearing interest were here intended to have advantage over those which do bear it: and the necessary interpretation is, that the clause applies to all debts whatever. Thus till the year 1826 the Insolvent Acts provided that, in case of a surplus, interest might be allowed on debts carrying interest; and that, under peculiar specified circumstances, interest might be allowed on all debts. In the Acts since that time the former provisions have been omitted, while the latter has been retained just as it was forty years ago; and the only instance at this moment in which the Insolvent Act, properly so called, mentions interest, is the case of restraining sales or other special management, according to that which is the 48th section of the present Act: and in this case, as I have said, all creditors whatever are equally capable of receiving interest on their debts. If all the Acts from the first had been wholly silent upon interest, I should still lean to the construction that none was to be allowed. But I am fortified in this, when, on looking back, I find that there has not been that silence. The repeal, as it may be called, of the earlier provisions in favour of certain debts over others, and the fact that the one surviving provision does not favour certain debts over others, tend to justify the principle of equality. And this principle I think to be sound in itself, when applied to the case of public insolvency. Though the law recognises a distinction on this subject of interest, while the debtor is without restraint and without privilege, I cannot perceive that such distinction ought to be revived, when the law of insolvency has established a totally new state of rights and liabilities between him and his creditors as a mass. Indeed, the new security which the law provides, namely the judgment, appears to be intended for the equal benefit of those, from all of whom their individual powers were finally and similarly taken away by the insolvency. But now there arises another question. The debts, in the absence of enactment to the contrary, cease to carry interest on the event of insolvency; and thus cannot receive it where there is a discharge from custody without adjudication. But, when there has been adjudication, and judgment entered up, this question arises, whether interest shall not run upon the judgment? By the Act of 1838, every judgment debt shall carry interest from the time of entering up the judgment. Judgment is to be entered up in one of the superior courts, in pursuance of the warrant of attorney which an insolvent executes at the time of adjudication. Is not the carrying of interest an incident of this, as of all other common law judgments? I recognise no ground for deeming it to be an exception. The subject once arose before, in one of the other courts here; and I was asked to assist in the discussion of it. Much observation was made upon that occasion, upon the circumstance of the present insolvent law making part of an Act which contains other things. I will, therefore, first notice this circumstance. The Act 1 & 2 Vict. c. 110, is, by its title first, An Act for abolishing Arrest; secondly, An Act for extending Remedies against Property;

thirdly, An Act for amending the Insolvent Law. The first ten clauses relate to the first subject; the clauses 11 to 22 relate to the second subject; and from the 23rd to the 123rd we have an Insolvent Act. It would have been much better that this had been quite a distinct statute. But I know by what accident it was not so. Till a day or two before the bill was printed, with a view to its introduction, there was no intention to make a new Insolvent Act at all; but only to continue the Act of 7 Geo. 4, with one or two amendments; and these were to be introduced in this bill, which concerned arrest and some other things. This was the instruction to him who prepared the bill; and it was quite at the last moment that his task was enlarged on the subject of insolvency, and this was done for the purpose of admitting the improvement, which had previously been rejected, of enabling the creditor to petition. This improvement suggested the substitution of vesting order for assignment; and, verbal alterations becoming necessary in very many clauses of the subsisting Act, the whole needed to be re-enacted. If this explanation were wanting, one still could not read the statute without seeing that the last 101 clauses constitute essentially a distinct Act, as much as the 91 clauses which express the code of the year 1826. Accordingly I do not intend to view the provisions by which every judgment debt is to carry interest, as making part of a code of insolvent law, although it occurs in the same Act with the insolvent law; but I will treat it as if it stood in a perfectly separate statute. In the 17th section of the Act in question, which belongs to the second subject of it, namely, "to enlarge the remedies against property," we have these words: "And be it enacted, that every judgment debt shall carry interest at the rate of four pounds per centum per annum from the time of entering up the judgment, or from the time of the commencement of this Act, in cases of judgments then entered up, and not carrying interest, until the same shall be satisfied; and such interest may be levied under a writ of execution on such judgment." This gives a new attribute to every judgment debt. There is no exception; and, while I do not insist that the attribute attaches the more to insolvency judgments, because this provision is found in the same statute with the insolvent law, I cannot allow that it attaches the less on this account. The case which on a former occasion brought this subject forward was a case of subsequently-acquired property; the discharge having taken place in the year 1827: and one reason was dwelt upon by my late colleague, Mr. Commissioner Harris, which was fairly deserving of attention, but which cannot be applied in the present case. The judgment had been entered up in 1829; and he pointed out that the new Act of 1838 (sect. 23) required all things concerning past cases of insolvency to be done henceforth as they would have been done under the laws then in force. As the case of Mr. Joy has arisen altogether since the Act of 1838, I need not now examine the force of that argument. The other arguments, which I heard on that occasion, rested wholly on the silence of the Insolvent Act. It was urged that the Act which constantly speaks of debts would also have spoken of interest, if it had been intended that the interest in question should be allowed. Many illustrations were offered from various clauses, which seemed to me utterly untenable. It was urged that this insolvency judgment did not appear in a certain enumeration of things, found in the 18th section, which follows that which gives interest on judgments. It could not make part of that list. That section is for giving to certain decrees, orders, and rules, the effect of judgments. The instrument in question is itself a judgment. It was urged that the 87th section only requires judgments against an insolvent to be entered up for the amount of debts, not mentioning interest. What then? The very meaning of the enactment in sect. 17 is, that interest need not be mentioned; but may, in the words of the Act, "be levied under a writ of execution on the judgment." Then it was urged that this judgment is peculiar and *sui generis*. Its peculiarities are, that the warrant of attorney need not, like others, be filed in a Superior Court; that it need not be executed in presence of the defendant's attorney; that *scire facias* is not wanted to revive it; that this court is to direct the issuing of execution; and that such execution shall not be against the person, but only against property. These peculiarities seem to me to furnish, not an argument for excluding interest, but an argument for allowing it. The exclusion of interest would be an additional peculiarity, for it would be an exception to the general law, which gives interest on all judgment debts; and, as nothing appears in the Act to warrant that exception, we are not to presume that it was intended. Those who contend that interest does not attach to these judgments as to other judgments in Westminster-hall, because the insolvency clauses do not talk of interest, ought by like reasoning to exclude every other new attribute and faculty which by the same Act is brought within the scope of a judgment. Lands, moneys, negotiable securities, government stock, and shares in public companies, are brought within the grasp of a judgment by the same statute which gives to it the right of interest. These things are not repeated in the enactments of

insolvency; are they therefore not applicable to the judgment entered up in the name of an assignee? I think they are; and, if they are, why are you to exclude the right to interest only because that is not repeated? Another argument was founded on sect. 93, by which it was urged the provisions of the Act in favour of creditors were to be for the actual amount of debt, "neither more nor less." This was put forth as conclusive against any addition of interest. Now, if you look for the meaning of that clause, it will be found to mean only that a mistake in the schedule, as of entering a debt at 40*l.* instead of 50*l.*, is not to damage the personal privilege of the debtor, nor the dividend of the creditor. This provision first appeared in the Act of 1826 as a piece of common sense, and has not the smallest bearing on the subject of interest. Finally, it was urged that the 92nd section, by speaking of "*debts in respect of which adjudication was made*," and not mentioning interest, excludes the allowance of interest; and, as the 17th section says plainly that every judgment debt shall carry interest, Mr. Harris found it necessary to contend that this 92nd section so clearly excluded interest, as to operate a repeal *pro tanto* of the judgment interest clause. This is but another way of saying that the non-expression of interest is equivalent to the prohibition of it, and this is the proposition which I deny throughout. It is not necessary for entitling such a judgment to carry interest that the word *debt* should, in the Insolvent Act, be accompanied by the word *interest*. The 92nd section deals with satisfaction of the judgment, and restitution of the surplus, and speaks of "debts in respect of which such adjudication was made." Here is the same idea which we find in the 90th section, as "debts with respect to which such person shall have become entitled to the benefit of the Act." So in the adjudication clauses themselves we read, "persons as to whose *debts* such discharge is adjudicated;" and again, "such prisoner shall be discharged and so entitled as to such *debts*." In none of these instances is interest alluded to. So also in the provision for creditors to vote according to the amount of their *debts*, and in the provisions for proof of *debts*, interest is never mentioned. If a new Insolvent Act were to be passed to-morrow, the word "debts" would stand as now in every place where it is required, without introducing the idea of "interest." But this silence does not prevent that interest should be carried by the judgment. It is not more necessary for authorising this result, that the law should specially provide for interest on *this* judgment, than that a special contract for interest need have been made for authorising interest on another judgment. The judgment now carries interest because it is a judgment. I concede, therefore, to the utmost, that the insolvent law itself has no terms which express this right to interest. Debts alone, that is to say, claims as they justly stand at the date of the vesting order, are spoken of throughout. Neither do I say that the insolvent law itself expresses the right to interest in the case of a surplus, though this is the result of what I do contend for, namely, that the judgment debt, as such, carries interest. This judgment is to be satisfied if ever there shall appear the means of satisfying it; and the point for consideration is, whether, since the law was passed giving interest, any judgment can be deemed satisfied until interest has been obtained. Satisfaction of the judgment is spoken of in the 88th section, where the court is empowered to commit the contumacious man who has acquired property, "until he shall convey, assign, and transfer to the assignees such property, or so much thereof, as the court shall direct, towards the satisfaction of the judgment." When judgment has been entered up, the creditors claim under it. Funds obtained under it are expressed to be "for the general benefit of the creditors entitled to claim under such judgment." This judgment is to stand until the court shall order satisfaction to be entered up; and the question is still this—what is satisfaction? The Act says, as it always did, without alluding to any case of interest, that the court shall make this order, when all *debts* have been discharged and satisfied. Still the question remains, what is satisfaction? I believe there are those who would say, that if an insolvent cares not to have satisfaction entered, interest on the judgment cannot be taken; that it is only claimable as the condition of entering up satisfaction on the judgment; and that, if the debtor waives this thing, the creditors cannot insist on the other. But the insolvent or, as in this case, his representatives, even if they should be indifferent to the entering up of satisfaction, are not indifferent to that which the 92nd section prescribes as the next thing for the court to do in a case like this: namely, to restore to them any property which may still remain in the hands of an assignee. This is the very thing which they are a[illegible]ying for under the 92nd section; and I find myself called upon by the statute, not to make this restoration, until I can find that all the debts to which the adjudication applies are duly satisfied; till I have first appropriated so much of the property as, in other words of the statute, "is sufficient to satisfy the judgment,"—till I have secured it to the creditors, who are (as also expressed in the statute) "entitled to claim under the judgment,"—in short, till I can relieve the assignee himself from the burthen

of the trust. I cannot assent to the notion that "creditors entitled to claim under the judgment" imports *the body of creditors when the judgment has been put in force through an execution*, in contradistinction from the same list of persons *at an earlier period, and under other circumstances*. Though the Act in different places uses different terms to express the creditors and their debts, sometimes referring to the judgment, sometimes to the adjudication, sometimes to the benefit of the Act, I consider that the same thing is always meant; namely, creditors and debts duly recognised as affected by the insolvency of the debtor: being distinguished only from those to whom his insolvency does not apply. And, although the whole fund now in court has been realised by means of the title under the vesting order, and not by putting the judgment in force, I find myself equally bound to see that judgment satisfied, before I destroy that title. If a case never receives a final hearing and adjudication, there can be no judgment: and, then, if debts are paid in the amount at which they stood at the date of the vesting order, an insolvent is, in my opinion, entitled to a revesting order. But, where judgment has been entered up, that judgment must be satisfied before a surplus can be restored to him: and still the question is, what is satisfaction of the judgment? I have tried in vain to find that it can be satisfied without interest. I hold that it is not competent to this court to order satisfaction to be entered, and make a revesting order, till interest has been paid from the time of entering up the judgment. I will only add those general observations:—That the new law, which gives interest in every judgment, seems to accord in principle with that view of justice which would place all creditors under an insolvency on an equal footing. A judgment between A. and B. clenches the account. There is no longer a voluntariness of credit; the time has come after which interest, as a penalty for non-payment, is due with perfect fairness, whatever was the original transaction. So it is after an insolvency. And, now that a judgment debt carries interest, the relation of an insolvent to his creditors when this has been entered up is placed on a footing still more just and equitable than it was before. In the case before us, the justice of applying this principle is of the most marked kind. Twelve years ago the creditors of Mr. Joy were debarred from the payment that was due to them, not by the want of property on his part, but by the accident which kept from him the possession of it. His debtor sought to pay him without interest. A litigation for enforcing a just claim has at last exacted that interest, and it now comes forth as an accumulation upon his property. Nothing can be more obviously just than that, in this resulting competency of the estate, the creditors should have recompense for their long procrastination. The means of payment to which they looked on lending their money were not only substantial in appearance, but have proved to be substantial in fact. The lapse of time which aggravated their loss has also provided the remedy for it, by enlarging those means of payment, and it would be thoroughly unjust if the compensation should be denied to them. The equity here is too clear to need illustration; but if I should seek for illustration, I would find it in that very clause, now forty years old, which allows interest in cases where an insolvent "is entitled to an uncertain interest, or to property under such circumstances that the immediate sale might be prejudicial to him;" a clause, be it remembered, which may be acted upon as soon as a petition has been filed, and may operate if adjudication does not follow. An immediate conversion of Mr. Joy's rights into money, in 1841, might have been made, by a submission to the miserable terms to which his opponent in the Chancery suit sought to drive him. Such submission would have been analogous to a sudden and injurious sale. The circumstance for consideration here, namely, that such timid concession would have given short payment to creditors and nothing to the insolvent, was equivalent in merit to any "circumstance affecting property," which can be suggested as meeting the terms of that special clause. No case can be imagined within this clause in which "an expediency not to sell" can show itself more pressing and persuasive than was here the expediency of not abandoning a cause so full of eventual promise, for want of indemnity against present danger. Neither can any case be conceived in which the course pursued has more strictly fulfilled the duty, as that same clause expresses it, of "considering the future benefit of an insolvent after payment of his debts." If Mr. Joy's executors are dissatisfied, they may apply for a *mandamus* requiring me to order satisfaction to be entered up without interest, and the interest can, in the meantime, be retained, as the parties may agree.

Ecclesiastical Courts.

PREROGATIVE COURT.

Reported by Dr. Waddilove, of Doctors' Commons.

Wednesday, Dec. 8.

In the goods of Wm. Hinds (deceased).

Will—Alterations—Initials of testator and attesting witnesses opposite thereto—1 Vict. c. 26, s. 9.

LORD CHANCELLOR'S COURT.

A will was, in the month of October 1847, duly executed in the presence of two witnesses. Two years afterwards the testator, having in the meantime made some alterations in his will, sent for the attesting witnesses thereto, and pointed out to them the alterations in question, consisting of four interlined lines; he then in their joint presence placed his initials in the margin opposite thereto, and they thereupon at his request and in his presence placed their initials below his. After his death the interlined lines were found obliterated, but the other alterations appeared in the will.

Curtis moved the court to decree probate of the will, with the alterations proved to have been made before the first execution, and with the first interlineations. In support of this part of his motion he cited *In the goods of Amiss*, 2 Robert. 136, in which the word "signature" in the Wills Act had been held to be satisfied by a mark or initials; *In the goods of Wingrove*, 16 L. T. Rep. 347, in which an alteration was held to be well made where the names of the testator and witnesses appeared in the margin; and *In the goods of Christian*, 2 Robert. 110, where the will was signed by the witnesses with their full names in length, but in the codicil executed immediately afterwards, to supply an omission in the will, although it was subscribed by the same witnesses, their initials only appeared, and probate of the codicil was notwithstanding decreed.

Sir J. DODSON, upon the authority of *The goods of Christian*, decreed probate of the will, with the interlineation, and also with the alterations made before the first execution; but without the erasure of the interlineation and the other obliterations.

Equity Courts.

LORD CHANCELLOR'S COURT.

Reported by C. H. KERR, Esq. of Lincoln's-Inn, Barrister-at-Law.

Saturday, Jan. 22.

(Before LORD CRANWORTH, L.C. and the LORDS JUSTICES.)

WILKINSON *v.* CUMMING.

Distribution of dividend—"Shares" in a joint-stock banking company—"Bonus," "interest," or "dividend"—Acquiescence.

An unincorporated banking company by its deed of settlement was authorised to increase its capital from 500,000l. to a sum not exceeding one million, by the issue of new shares. Shares of 25l. each (No. 1) were issued, and the capital was increased by the issue of 25l. shares (No. 2); the amount of which shares respectively was immediately paid up in full. The capital was again increased by the issue of 25l. shares (No. 3), which were distributed among the holders of shares Nos. 1 and 2, upon which only 2l. 10s. had been paid. The directors refused to make any further call, although by the company's deed it was provided that, with the consent of the directors, any proprietor might pay in advance any part of the money which should remain unpaid in respect of his shares, and which should not have been called for under the provisions, &c. The directors were to declare dividends, and "to apply them either as a bonus to be added to the respective shares, or as interest or dividend upon such shares, or upon the amount paid up in respect of such shares, or as part bonus and part interest, or dividend, or otherwise, as they might deem most expedient; and to divide such dividend or bonus into as many equal parts as there should be shares then held in the capital of the company." The directors had for ten years past divided the profits among the shareholders, according to the amount of capital paid up, and not according to the number of shares held in the company. A motion by a shareholder (No. 3) to restrain the directors from so dividing the dividends, was refused.

The directors of the above company were authorised to buy and sell shares for the benefit of the company. They purchased shares and offered them to the shareholders in proportion to the stock held by them respectively. A motion by a shareholder (No. 3) to restrain the directors from so dealing with them, was also refused.

This was an application, by way of appeal from a decision of Wood, V.C. to regulate the division of the dividends and profits of a joint-stock banking company, and the manner in which shares, which the directors had purchased for the benefit of the company, should be distributed among the shareholders.

The facts were shortly these:—In the year 1837 a joint-stock company or partnership called the Union Bank of Australia was formed for the purpose of carrying on the business of banking, as a bank of issue and deposit in the Australian colonies. The company was unincorporated, and was established by a deed of settlement, dated Oct. 26, 1837. The capital was to consist of 500,000l. divided into 20,000 shares of 25l. each, with power for the directors, with the consent of two-thirds in value of the proprietors, to increase the capital to any amount not exceeding 1,000,000l. by the issue of new shares of 25l. each therein. In the event of the capital being increased, the holders of the then existing shares were to have the option of taking all or any of the new shares before they were offered to the public. 2000 shares of 25l. each were first issued, and the sum of 500,000l. subscribed for. These were called shares of the first series. In 1839 the directors, with the necessary assent, increased the capital to 800,000l. by issuing 12,000 new shares of 25l. each, which were called shares of the second series: these were taken up by the then proprietors, who paid up the full amount of 25l. In 1840 the directors again increased the capital by issuing 8000 additional new shares of 25l. each, which were called shares of the third series; and were allotted to and accepted by the proprietors of the then existing shares, in the proportion of one new share in respect of every four shares, but so that no fractional part of a share was created.

The company carried on their business with great profit; and in each and every year, up to and including the year 1841, declared a dividend of 6l. per cent. upon the amount of the paid-up capital. In 1849 they declared a like dividend of 6l. per cent. and also a bonus of 2l. per centum; in 1850 a dividend of 6l. per cent. and a bonus of 3l. per cent.; in 1851 a dividend of 6l. per cent. and a bonus of 1l. per cent.; and in 1852 a dividend of 6l. per cent. and a bonus of 6l. per cent.

These several dividends and bonuses the directors paid to the several proprietors of shares in proportion to the amount of capital paid up in respect of each share held by them respectively. The directors so divided them in pursuance of the 33rd clause of the company's deed of settlement. That clause declared "that it should be lawful for the board of directors to declare a dividend or dividends from time to time out of the profits of the company, to be calculated on a statement to be laid before the proprietors on the annual general meeting; and that it should be optionable with the said board to apply such dividend either as a bonus to be added to the respective shares, or as interest or dividend upon such shares, or upon the amount paid up in respect of such shares, or as part bonus and part interest or dividend or otherwise as they might deem most expedient; and to divide such dividend or bonus into as many equal parts as there should be shares then held in the capital of the company. In the year 1842 the plaintiff purchased seventy-five of the shares of the third series, which were duly transferred to him in the books of the company, in the manner required by the deed of settlement, upon which shares one call only of 2l. 10s. had been paid.

The 54th clause of the deed of settlement declared "that any proprietor should from time to time, with the consent of the board of directors, be at liberty to pay in advance all or any part of the sums or sum of money which should from time to time be unpaid in respect of the share or shares held by him, and which should not have been called for under the provisions therein for that purpose contained, and should be allowed out of the funds of the company interest at such rate as should be agreed upon, not exceeding 5l. per cent. per annum, on such sum or sums of money which should be so paid or advanced, or so much thereof as should not from time to time be due in respect of any calls which should have been made on the proprietors as therein provided, to be computed from the respective times of advancing such sums or sum of money; but that such sum or sums of money so paid or advanced as aforesaid, or on any part thereof, might be recalled by the proprietor in respect of whose share or shares the same shall have been paid or paid off by the directors," on certain notice, &c.

By the deed of settlement the directors were authorised to buy and sell the company's shares for its benefit: and, in the years 1847 and 1848, when the shares were much depressed in value, the then directors bought for the benefit of the said company 4551 shares, upon which 25l. per share had been paid, and 824 shares, upon which only 2l. 10s. per share had been paid. Such several shares subsequently greatly increased in value, and the directors sold the greater part of them, and the amount of the capital paid up in respect of the shares which they did not sell was equal to the amount of the capital paid up on 2500 paid-up 25l. shares. The directors proposed that such unsold shares should be offered to the then proprietors in proportion to the stock held by them respectively at the respective prices of 42l. and 41. 4s. per share.

The plaintiff subsequently purchased 100 additional shares of the third series, and being advised that as a partner in the concern, he was liable with the shareholders of the first and second series to contribute to the losses of the company, not in proportion to the amount each shareholder had paid, but in proportion to the number of shares he held, and that he and the other shareholders of the third series were entitled to share equally in the profits of the company, with the proprietors of the other shares, according to the number they held respectively. The directors insisted that, upon the terms of their deed, they were not justified in dividing the profits in any other mode than that which they had adopted.

The plaintiff filed his bill on behalf of all other the shareholders of the third series against the directors, who were holders of shares of the first and second series, praying a declaration that the dividends and bonuses which might be thereafter declared in respect of the profits might be divided into as many equal parts as there were shares, and not in proportion to the amount of capital paid up in respect of each share; that the said several shares reserved for the proprietors might be allotted and apportioned amongst the plaintiff and the other proprietors of shares of the third series, and all the other proprietors of shares in the said company in the same manner; and that the defendants might be restrained by injunction from making or declaring any division of the profits of the said company, and from transferring or causing to be transferred the said several reserved shares in the said company, amongst the proprietors of shares in the said company, otherwise than in proportion to the number of shares held by such proprietors respectively.

Wood, V.C. refused the motion, and this was an appeal from his decision.

Bolt and *Speed* appeared for the plaintiff, and in answer to the court as to the acquiescence of the plaintiff in the manner which the directors had adopted, said that the plaintiff's attention was not called to the principle upon which the profits of the company were divided by the directors until the year 1852: he received the several dividends and bonuses which were declared in respect of the seventy-five shares which he purchased in the year 1842, up to and including the dividend and bonus declared in the year 1851, in ignorance of his rights. When the last dividend and bonus were declared, he had purchased and became the registered proprietor of 236 shares; and in consequence of his increased interest in the said company, he was induced to examine more carefully than he had previously done the principle upon which they had declared the several dividends and bonuses, and he then discovered for the first time the manner in which the profits of the said company had been divided by the said directors amongst the several proprietors of shares therein. They contended that such principle was erroneous, and contrary to the provisions contained in the deed of settlement, and much to the prejudice of the plaintiff and the other proprietors of the shares of the third series. The amount of capital paid upon each share was not the basis on which the division of profits ought to have taken place. The liability to losses was limited in proportion to the number of shares. The directors ought either to call up the unpaid portion of the shares of the third series, or charge the proprietors of such shares with interest at 5l. per cent. on such unpaid portion, and to give them an equal dividend and bonus with the other shareholders, less the amount of such interest.

The *Solicitor-General*, *Russell*, *Selwyn*, and *Hobhouse* appeared for the company, in support of the V.C.'s order.

The LORD CHANCELLOR.—The plaintiff in this case is seeking to obtain an injunction to prevent the defendants from dealing with the funds of this partnership in the mode in which they have been in the habit of dealing with them for the last ten years—I say ten years,—because that is the period only during which the plaintiff has been interested in the concern; but they have so dealt with them since its institution in 1837. Now if that were all, the plaintiff must make a very strong case to induce this court to interfere. It is asked to disturb that which all parties—and with a capital of a million there must be shareholders to a vast amount here and abroad—have supposed to be the correct and proper course, and which has been acted upon for so long a period of time. But I confess I do not rely entirely upon that. In spite of all that has taken place, if there had been, as there has been, this acquiescence of ten years, and if there had been more acts showing the perfect cognizance of the plaintiff in what has been done, if the plaintiff could have made a very strong case to satisfy us that all that which has been done, has been done in error—of course, it would have been still stronger if it had been done improperly, or with any corrupt motive—this court might have been considerably unwilling to permit that clear and manifest error to be persevered in. But not only am I not satisfied that the defendants are wrong in the construction they have put upon the deed, but the strong leaning of my mind is, that they are perfectly right: so that what we are asked to do is in effect not only to restrain the parties from acting in the mode in which they have so long acted, but to force them to act in that which, as at present advised, I believe is not in conformity with the terms of their deed. Now there is no doubt that in the absence of express contract parties entering into a partnership, although the one brings in a large capital, and the other only a small one, or nothing at all, if nothing is said, when the profits come to be divided, those profits will be divided equally. That is the general rule of partnership, in the absence of express contract: but here there is an express contract. The parties do stipulate as to the mode in which the profits are to be divided, and the question is upon the construction of the instrument whereby the mode is provided, in which those profits are to be divided amoug the different shareholders. Now they stipulate, as is the case in these and the like undertakings, for a rateable division of profits according to the amount of their shares: if one man has 100 shares he is to receive 50l. profit; if another has 200 he is to receive 100l. profit. That is the principle upon which the provision is introduced, and there can be no doubt as to what the parties must have meant

LORD CHANCELLOR'S COURT.

to stipulate. I ascertain what they meant, only from what they have said. Now what is the language that they have used? That which relates to the making of the dividend is to be found in the 33rd section. Now up to that section there was no possibility of there being any difference in the amount of any one share from another; because up to that period the stipulation had been that the capital was to consist of 500,000*l.* in shares of 25*l.* each; all of which was to be immediately called up, so that every shareholder must necessarily be a shareholder in equal amount up to that point. In the other and subsequent clauses, power is given at some future period to increase the capital by adding new shares. If that had been done after all the shares of the former capital were paid up, there is no doubt that state of things might arise which has arisen, namely, that there would be one class, the whole of whose capital had been paid up; and, as to the other, only a part. Now, what is contended for is this, that that class of shareholders who have for the last ten years only been in advance 2*l.* 10*s.* in respect of the last increase of capital, the amount of a small call, are each of them entitled to receive an equal amount of dividend with those who have paid up the whole amount. If that is the stipulation, *ita lex scripta est*. Is there any construction we can put upon this deed that would lead to a result more in conformity with what must have been the intention of the parties, I think it is easy so to construe it; it was to be optional with the directors to apply the profits either as "bonus," or "interest," or "dividend," "upon such shares or upon the amount paid up in respect of such shares." What does that mean? Why, upon such shares of which the whole has been paid up; or upon the amount that has been paid up if only part. That construction does no violence to the language, and it harmonises with what is the universal course in such cases. Now it was said that the capital was to be divided into so many "equal parts and shares." I think that is merely an inaccuracy of expression arising from the fact that, up to a certain point in the deed, they must have been all equal parts, because there was only one distribution of capital, and there would therefore have been only one class of persons claiming a dividend. Whatever explanation may be given, it seems to be impossible to override the other words which declare that it shall be divided "upon such shares, or upon the amount paid up in respect of such shares." By so construing the deed, justice is done to all parties. It must be borne in mind what in the Companies Clauses Consolidation Act, which regulates joint stock companies incorporated by Act of Parliament, is the mode of dealing with the dividends there; it is expressly said that the directors, &c. are to apportion "the same or so much thereof as they may consider applicable to the purpose of dividend among the shareholders, according to the shares held by them respectively, the amount paid thereon, and the periods during which the same may have been paid." That is not the precise language here introduced: but there seems enough to lead me judicially to say that such is what the parties must have contemplated. The directors are to pay this as "bonus, or dividend, or interest." What is the meaning of interest? Equal sums of interest presuppose an equal amount of capital: interest is something that, according to the universal understanding of mankind, always has to bear a given ratio to the capital in respect of which the interest accrues due. How can that, then, be the same with respect to a capital upon which 2*l.* 10*s.* is paid, and one upon which 25*l.* is paid? The very name seems to import that it must be something that is in proportion to the capital on which it is payable. There might be no inaccuracy of language in calling it a "dividend on the shares," the share being sometimes the share, upon which only 2*l.* 10*s.* has been paid, and sometimes the share upon which 25*l.* has been paid; but interest upon it seems to be a very absurd expression, if you speak of the same sum—the same amount of interest at the same rate not referring to the same amount of capital. I have given this opinion of my construction of the Act, because I think the parties are entitled to know the view I take of it. It is not necessary to come to any decision upon that for the reason I set out with saying,—because even if it were more doubtful than it appears to me to be, I should still have thought this motion ought to have been refused.

Lord Justice KNIGHT BRUCE.—I agree; reserving to myself, as I understand the Lord Chancellor has reserved to himself, the faculty of deciding at the hearing of this cause, according to a different view of the construction, if a different view shall then be satisfactorily presented.

Lord Justice TURNER.—If it were necessary now finally to determine this, I should rather have desired more fully to have examined the provisions of the deed; but in my opinion this is not necessary now. The directors, ever since the year 1839, when the first increase of the capital was made, have gone on acting in this course with the parties who have dealt with shares in this company, and who have held the shares in the company, and have been in possession of their income derived from their shares, according to the construction which has been acted upon, from 1841 at least, and probably from the year 1839. Now I must take the plaintiff to have been in possession of these facts, because, although he may not have carefully examined this deed, he had undoubtedly just the same power as he has at the present time, at any time from 1841, to have made the examination of this deed. His attention was called to this question on the first occasion of this bonus being declared. I do not think that this court, upon an interlocutory application, ought to interfere to disturb the rights of the parties who have been in possession of this income, unless indeed there be a perfectly clear case in favour of the plaintiff who applies to the court for this relief. It might be done in a perfectly clear case, where the court was fully satisfied that the plaintiff was right,—and that no other reasonable construction than that which the plaintiff has contended for could be put upon the deed, I do not in the least degree propose to question; but in the present case, so far from, as at present advised, agreeing with the construction that has been put upon this deed by the plaintiff, my strong impression is, that the construction that has been put upon it by the plaintiff is a wrong construction, and that the true construction of this deed, coupled with the increase of capital in the year 1841, is this,—that the new shareholders who were to come in upon the terms of the resolution of 1841 were to come in, *inter se*, upon the same terms as the original shareholders had come in upon the original deed of 1837. That seems to be a reasonable and fair construction of the deed; but I do not mean to bind myself by that construction. I think that is a point that must be decided at the hearing of the cause. All that I say on the present occasion is, that the right of the plaintiff is not so clear as to warrant the court in disturbing the enjoyment of the parties who have been in receipt of the interest ever since 1839.

IN BANKRUPTCY.

Saturday, Jan. 29.

Ex parte HUME, *re* Lord HUNTINGTOWER.

A defendant to a bill which sought to set aside certain deeds, as fraudulent and void as against creditors under a bankruptcy, had been examined, and his examination filed in the Court of Bankruptcy. An application by him to refer to that examination, preparatory to his putting in his answer, was refused.

This was an application by way of appeal from a decision of Mr. Commissioner Fonblanque to refer to an examination under a bankruptcy before putting in an answer to a bill in Chancery.

The official and creditors' assignees under Lord Huntingtower's bankruptcy filed a bill against Mr. Hume, praying that a certain indenture, by which this bankrupt had assigned certain real and personal estate to Mr. Hume as a security for 8000*l.* might be set aside as fraudulent and void as against the creditors. Mr. Hume was required to set forth the minute particulars of these deeds, and to state the several circumstances under which they were executed, and enter minutely into certain matters of account which took place in the years 1841 and 1842.

It appeared that in the year 1849 Mr. Hume was examined before Mr. Commissioner Fonblanque touching the same transactions as were referred to in the bill, and again in 1850 and 1851. The examinations on each occasion were taken down in writing, and filed in the Court of Bankruptcy. Mr. Hume, at the same time, produced his books and papers relating to the same transactions, and gave all the explanation that he was able to do. As the matters were of so complicated a nature, and had occurred so long ago, in order to prepare a truthful answer to the bill in Chancery, an application was made to Mr. Commissioner Fonblanque for liberty to inspect and take a copy of his examinations. His Honour refused the request.

T. H. Terrell now made a similar application to the Court of Appeal. He thought it right to state that, on a similar application being made to Lord Eldon, his lordship decided that a party had no right to take a copy of his examination for the purpose, perhaps, of fabricating an answer to a bill in Chancery, for, if he had told the truth once, he could tell it again.

The LORD CHANCELLOR.—This is a most extraordinary application. It must be refused.

Lord Justice KNIGHT BRUCE.—The only doubt I had was whether, under the new bankruptcy orders, we had jurisdiction. *Application refused.*

COURT OF APPEAL IN CHANCERY.

Reported by OWEN DAVIES TUDOR, Esq. of the Middle Temple, Barrister-at-Law.

(Before the LORDS JUSTICES.)

Wednesday, Nov. 17.

Re RUTTER.

Lunacy—Receipt of rents—Committee.

Where a lunatic's income consisted of rents payable weekly, the committee was allowed to receive them before perfecting his securities, he undertaking to perfect them within a given time.

COURT OF APPEAL.

E. W. Collins appeared in support of a petition, praying the confirmation of the Master's report, approving of a particular person as committee of the lunatic's estate, and for other purposes.

Rogers, for the person approved of as committee, stated that he could not perfect his securities before six weeks had elapsed; but that it would be desirable, as the property of the lunatic consisted of houses let out to weekly tenants, that he should be at once allowed to receive the rents, otherwise a considerable loss might accrue to the lunatic's estate.

Lord Justice KNIGHT BRUCE.—We think the report should be confirmed, and, the committee undertaking to perfect his securities within six weeks from the present time, let him be at liberty to receive the rents.

Dec. 17 *and* 22.

Ex parte BRADSHAW, *re* DENNISON'S TRUSTS.

Trustee Act, 1850—*Right to transfer—Executrix—Married woman.*

A testator bequeathed property to A. and B. equally, and appointed an executor and an executrix. The executrix married, and the property was laid out in stock in the name of the executor and executrix (the wife of C.) C. the husband, in 1839, *went abroad and had, down to* 1852, *never been heard of, and it was not known whether he was alive or dead. A. attained twenty-one, and the executor and executrix petitioned, under the stat.* 18 *&* 14 *Vict. c.* 60, *for a declaration that C. was a trustee within the meaning of the Act, and a direction that the right to transfer was vested in the executor and executrix and an official of the bank, and that half of the fund might be transferred by them into the name of A. The Court declared C. to be a trustee, and that the right to transfer was vested in the husband alone.*

This was the petition of William Bradshaw, John Hodgkin Pearl, and Elizabeth Jolly, the wife of Youngman Charles Jolly, whereby it appeared that William Dennison, deceased, by his will, dated 15th Feb. 1835, bequeathed to William Bradshaw (the petitioner) and John Bradshaw "all the property he was possessed of at the time of his death, subject to the payment of his debts, funeral expenses, and a few legacies, and appointed J. H. Pearl and Elizabeth Jolly, then Elizabeth Bradshaw (the petitioners), executor and executrix of his will. The testator died the same month, and the executor and executrix proved the will in April following. In 1836 Elizabeth Bradshaw married Mr. Y. C. Jolly. In 1838 the clear residue of the testator's estate was ascertained, and was invested in the purchase of 150*l.* Three-and-a-half per cent. Reduced Annuities in the names of the petitioners, Mr. J. H. Pearl and "Elizabeth Jolly, the wife of Youngman Charles Jolly," which was afterwards reduced to 137*l.* 10*s.* Three-and-a-quarter per cent. Reduced Annuities, and was at the time of the petition standing in those names in the bank books. The dividends had been applied for the maintenance of the two children. In Sept. 1839 Mr. Y. C. Jolly left his wife and sailed to the West Indies, and had never since been heard of by the executor and executrix, and it was not known whether he was alive or dead. The petitioner, William Bradshaw, on the 2nd Nov. 1852, attained the age of twenty-one years, the other child, John, being still an infant. The executor and executrix were unable to transfer one moiety of the stock to William Bradshaw, in consequence of the absence of Mr. Y. C. Jolly. The petition then prayed a declaration that Mr. Y. C. Jolly, was a trustee within the meaning of the Act, and a direction that the right to transfer the fund might be vested in Mr. Pearl and Mrs. Jolly, and the secretary, deputy-secretary, or accountant-general of the Bank of England, and that therefore they might forthwith transfer 68*l.* 15*s.*, one half thereof, into the name of the petitioner William Bradshaw.

Hetherington, for the petitioners, stated that the matter had been brought before Kindersley, V. C.; but his Honour considered that, as the case did not come in words within the 22nd section of the Trustee Act, 1850 (18 & 14 Vict. c. 60), it had better be mentioned to their Lordships. The case contemplated by the 22nd section was of the absence of a party entitled, whereas in the present case the husband was entitled by reason only of his wife being an executrix. The words of the section were: "When any person or persons shall be jointly entitled with any person out of the jurisdiction of the Court of Chancery, or who cannot be found, or concerning whom it shall be uncertain whether he be living or dead, to any stock or chose in action upon any trust, it shall be lawful for the said court to make an order vesting the right to transfer such stock, or to receive the dividends or income thereof, &c. either in such person or persons so jointly entitled as aforesaid, or in such last-mentioned person or persons together with any person or persons the said court may appoint;" so that the court would perceive that in its terms it did not include the case of a married executrix. The petition was wholly unopposed, and the sole object was to obtain the opinion of their Lordships on the point.

Their LORDSHIPS made inquiries as to the extent of the evidence, and it appearing that it was in some degree defective, they directed further affidavits to be produced; and, subject to this,

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Lord Justice KNIGHT BRUCE said that both his learned brother and himself were of opinion that the further evidence could be more easily completed before the judge's clerk; that course had better be adopted. With regard to the propriety of making an order on this petition, they were both of opinion that, upon the evidence being completed—but with great deference to the opinion and doubts of the learned V. C.—the husband, Mr. Jolly, was "entitled" within the meaning of the Trustee Act, 1850, without overstraining the language of the 22nd section. Still, however, if after this statement of opinion the V. C. still preferred that their Lordships should make the order, or objected to make it himself, their Lordships would do so. The matter had better be again brought under Sir Richard Kindersley's attention.

Dec. 22.—The note made by the V. C.'s chief clerk was that the affidavit of, &c. had been produced, and sufficient evidence produced of Jolly being out of the jurisdiction.

On application being made the same day to Kindersley, V. C., his Honour made an order which, after stating the facts, and that, "it appearing that Y. C. Jolly, husband of the petitioner Elizabeth Jolly, was trustee within the meaning of the Trustee Act, 1850, and that he is out of the jurisdiction of this court, declare that he is a trustee of 137*l.* 10*s.* Three per cent. &c. standing in the names of J. H. Pearl and the said Elizabeth Jolly, in the books of the governor, &c. within the intent and meaning of the said Act of Parliament. And it appearing that the petitioner Wm. Bradshaw is entitled to one moiety, order that, pursuant to the said Act of Parliament, the right to transfer the said sum of 137*l.* 10*s.* Three per cent. &c., and the right to receive the interest and dividends thereof, do vest in the said J. H. Pearl alone." Then the order directed the transfer of one moiety.

Friday, Dec. 17.

Ex parte BAYLY, *re* WILLIAM LOUGHER, THOMAS LOUGHER, AND DAVID LOUGHER, Bankrupts.

3 & 4 *Vict. c.* 42—*Distress—Arrears of rent—Bankrupt.*

Prior to an act of bankruptcy by the tenant a landlord had levied a distress for rent, but previous to the sale under the distress the tenant was adjudicated a bankrupt:

Held, overruling the decision of the Commissioner, that the landlord was entitled to retain six years' arrears of rent out of the proceeds arising from the sale of the goods distrained.

This was an appeal from the decision of Mr. Commissioner Bere, on a special case submitted to him pursuant to the powers contained in 12th section of the Bankrupt Law Consolidation Act, 1849, which was as follows:—

In the year 1836 George Bayly, Esq. late of Plymouth, entered into a verbal agreement with William and Thomas Lougher for leasing certain premises called the Barbican Foundry to them for a term of twenty-one years, at the rent of 70*l.* per annum. He instructed his attorney to prepare a lease. A lease was accordingly prepared, and dated the 10th Jan. 1837, by which the premises were purported to be demised to William and Thomas Lougher for the term of twenty-one years, from the 25th Dec. 1837, at a yearly rent of 70*l.* The lease, however, though engrossed, was never executed by either of the parties to it.

The Messrs. Lougher had transactions in business with Mr. John Bayly, and in the year 1837, under an assumption that the lease from Mr. George Bayly had been duly executed by him, an arrangement was made for transferring the supposed interest of William and Thomas Lougher in the premises to Mr. John Bayly.

On the 2nd Oct. 1837, in consideration of 260*l.*, an assignment was executed by William and Thomas Lougher, of their interest in the premises, to Mr. John Bayly, together with certain fixtures, fittings, and effects, pertaining to the property; and Mr. John Bayly, by an indenture dated the 15th Dec. 1837, demised the premises to William Lougher, Thomas Lougher, and David Lougher, for the term of twenty-one years from the 24th Dec. thence next ensuing, at the rent of 99*l.* 19*s.* 10*d.* per annum, payable quarterly. This lease was executed by Mr. Bayly, and by William, David, and Thomas Lougher.

The Messrs. Lougher continued from time to time, with more or less regularity, to pay to Mr. George Bayly, upon his requiring the same, the rent of 70*l.* per annum, reserved to him as aforesaid.

On the 8th Aug. 1851, there was owing to Mr. George Bayly, on account of the rent of 70*l.* per annum, the sum of 105*l.* 5*s.* 3*d.*; for this sum he, Mr. George Bayly, distrained (he having previously employed Messrs. Pridham as his solicitors from time to time to require payment of the rent.) A part of the amount was paid, and the distress was withdrawn. On the 20th Nov. 1851 Mr. George Bayly died, leaving Mr. John Bayly his heir-at-law.

On the 24th Dec. 1851 Mr. John Bayly signed two warrants of distress. Under the one for the rent claimed under his lease to Messrs. Lougher, chattels of the value of 599*l.* were distrained. Under the other, for rent claimed to be due to Mr. John Bayly, as the heir-at-law of Mr. George Bayly, or his representatives, property of the value of 84*l.* was taken. Mr. John Bayly continued in possession by his bailiffs; but, at the request of the Messrs. Lougher, delayed to sell under the expectation of an arrangement being made as to the rent; but on the 22nd Jan., prior to a sale of the effects having been effected, Messrs. Lougher were adjudged bankrupts. Mr. John Bayly's possession was still continued, under an arrangement that the sale should be made by the assignees, and the proceeds, less the expenses, be invested in the joint names of Mr. Bayly and the assignees, to abide the result of the opinion of the Commissioner in Bankruptcy on a case stated.

Subsequently to the bankruptcy a sale of the property taken in distress was had, together with the fittings and fixtures included in the assignment of the 10th Oct. 1837, and the sum realised was paid into the banker's hands to abide the determination of the Commissioner. It was alleged by Mr. John Bayly that the Messrs. Lougher were indebted to him in a very large amount beyond the sum claimed by him for rent, after having, as he alleged, given credit in his account for the amount paid by them to Mr. George Bayly, on account of moneys reserved by the original but unexecuted lease. No account had been furnished by Mr. John Bayly to Messrs. Lougher or to their assignees, and they denied that any balance was due so as to justify such debts. The points reserved for the judgment of the Commissioner were—1st. For what amount of rent (if any) had Mr. John Bayly a right to distrain, either in his own right, or as the heir-at-law of Mr. George Bayly? 2nd. Were the Messrs. Lougher entitled to require that their payments to Mr. George Bayly be carried by Mr. John Bayly to the credit of the rent reserved by the latter? 3rd. Had the bankruptcy of Messrs. Lougher affected Mr. John Bayly's right as landlord; and if so, to what extent? There was indorsed on the special case the following judgment by the learned Commissioner:—"Pay J. Bayly one year's rent, and apply the rest of the money arising from the sale of the goods on which the distress was levied to the credit of the estate.—M. B. BERE. Oct. 14, 1852."

Swanston and *Roxburgh*, for the appeal, contended that the whole of the arrears ought to be retained by the landlord, or at all events he was entitled to retain six years' arrears.

Rolt, for the assignees, argued that even if the view taken by the Commissioner were wrong, six years' arrears of rent only ought to be recovered. The observations of Maule, J. in *Humfrey* v. *Gery*, 7 C. B. Rep. 580, and Sug. Real Prop. Stat. 133, 144 were commented on.

THEIR LORDSHIPS held that, under 3 & 4 Will. 4, c. 42, it was clear that the landlord was entitled to distrain for six years' arrears of rent, but for no more; and he was therefore entitled to retain out of the proceeds of the sale rent to that amount.

Wednesday, Dec. 22.

PIDCOCK *v.* BOULTBEE.

Guardian ad litem—Jurisdiction to appoint—Lunatic not found such by inquisition.

An application by a plaintiff for the appointment of a guardian ad litem to a lunatic defendant not found such by inquisition, ought to be made in Chancery, and not in lunacy. An application, therefore, to the Lords Justices for such purpose was refused, as it ought to have been made to a Vice-Chancellor.

W. H. Terrell, by the leave of Kindersley, V. C. made an application to their Lordships, as exercising jurisdiction in lunacy, on behalf of the plaintiff, for the appointment of a guardian *ad litem* to a defendant of unsound mind, not found so by inquisition. He stated that in the case of the same defendant in another suit, a similar application had been made to Turner, V. C. who directed the matter to be mentioned to Lord Truro, who made the order. He also stated that Kindersley, V. C. had not given any opinion as to whether he had jurisdiction or not to make the order; but he thought that, as the L. C. had on the former occasion been applied to, an application to their Lordships, who had now jurisdiction in lunacy, should be made.

H. Fox Bristowe, for other parties.

Lord Justice KNIGHT BRUCE.—I think the V. C. has jurisdiction. The proper jurisdiction to make the order asked is in Chancery and not in Lunacy.

Cairns (*amicus curiæ*).—The 32nd of the Orders of 1845 applies to such a case where the application is made by a plaintiff.

Lord Justice Lord CRANWORTH.—That order only extended the case to a plaintiff, showing that before that time such an application could be made by a defendant.

Lord Justice KNIGHT BRUCE.—We are willing to do anything which the V. C. may wish; but our objection here is, that if we make the order it might possibly be considered that we have any doubt of the jurisdiction of the Court of Chancery, and therefore of the jurisdiction of the V. C. I have always understood the appointment of a guardian in such a case was *cursus curiæ* as to a defendant applying, and was, by the order Mr. Cairns has been so good as to refer us to, extended to an application of a plaintiff.

COURT OF APPEAL.

Jan. 26 and Feb. 15.

IN BANKRUPTCY.

Ex parte BALL AND OTHERS, *re* BYROM.

Bankrupt Law Consolidation Act, 1849, sect. 169—Whether colliers' drawers are within 169th section.

On the bankruptcy of occupiers of a colliery, it was Held, affirming the decision of the Commissioner, that the drawers in the mine, being employed by the colliers and not by the occupiers, could not prove under the 169th section of the Bankrupt Law Consolidation Act, against the bankrupt's estate, for the wages due to them at the time of the bankruptcy.

This was an appeal by the petitioners, Ball, Eckersley, and Hurst, from the decision of Mr. Commissioner Skirrow, disallowing their claim to prove for wages alleged to be due to them from the bankrupts, who worked the coal mines in which they were employed. The question was, whether the petitioners, who acted in the capacity of "drawers," were the labourers or workmen of the bankrupts, within the terms of the 169th section of the Bankrupt Law Consolidation Act, 1849, and as such entitled to claim payment of their wages to the extent of 40*s.* under the provisions of that section. It is as follows:—

"That when any bankrupt shall have been indebted at the time of the issuing of the fiat, or filing of the petition for adjudication of bankruptcy, to any *labourer* or *workman* of such bankrupt in respect of the wages or labour of such labourer or workman, it shall be lawful for the court, upon proof thereof, to order so much as shall be so due, not exceeding 40*s.* to be paid to such labourer or workman out of the estate of such bankrupt; and such labourer or workman shall be at liberty to prove for any sum exceeding such amount."

The petitioners stated, that at the time of the adjudication they were labourers and workmen employed and working for and by the bankrupts in getting coal from mines in their occupation, and worked by them for the purposes of their trade and business; and at the time of the adjudication there was owing to Ball 30*s.*, to Eckersley 81*s.*, and to Hurst 40*s.*; that at the same time there was owing to seventy-five other persons, labourers and workmen similarly employed, a sum of 150*l.* and upwards for wages, for the most part in small sums, varying from 30*s.* to 50*s.* each; that the claims of the petitioners and of the seventy-five other persons were duly proved under the bankruptcy, and the proofs of their claims were duly presented at a meeting of 24th Dec. 1852; that the assignees objected to the proofs, on the ground that the petitioners and the seventy-five were not employed by the bankrupts, but were employed by and were labourers and workmen of the colliers working at the mines in the occupation of the bankrupts, and that the colliers were the persons bound to pay the petitioners and the seventy-five; that Mr. Commissioner Skirrow decided in favour of the objection, and the claim of proofs was disallowed. The petition prayed that the decision of the Commissioner might be annulled, and that the proofs might be allowed.

Mr. Taylor, a partner of Mr. Brown, deposed, that he was in the habit of employing a large number of colliers; that the partners let off work to the colliers at the rate of so much per score of baskets, counting twenty-four to the score, and that the colliers employed the drawers; that the colliers paid the drawers, but he did not recollect entering the names of drawers in his books; the colliers had power to discharge the drawers; never recollected having paid a drawer engaged by a collier for work done for him; did not even know the terms of the engagement made by the colliers with the drawers; the partners employed the colliers, and the colliers employed the drawers; the colliers were our servants; if I saw a drawer destroying or injuring property of the firm, I should turn him off.

John Houghton, the underground manager of the colliery, deposed: all the men and lads working under ground were under my control; the men so employed are colliers and drawers; the amount paid for work done is paid to the colliers, and they pay to the drawers as they agree among themselves; I consider that both colliers and drawers are my servants; I can discharge either colliers or drawers when I think they behave improperly; I tell the colliers and the drawers what work they are to do; I sometimes hire drawers myself; I keep them at labourers' work until I know of a collier who wants one to do the drawing; when I hire a collier he usually has a drawer; when I hire a collier I always ask him who is his drawer; the work when colliers and drawers are employed together in all cases is paid for according to the amount actually done by both of them; the whole of the wages is paid to the collier; the collier divides with him as they have agreed; in all other respects except this division of payment the collier and drawer are the same to me; I treat them all alike as my servants, and they all behave to me as my servants; it would make no difference in this respect if, instead of paying the collier the whole sum earned, a part was paid to the collier and a part to the drawer; it makes no difference to the master how division is made; they are all alike his servants; I never interfere between the collier and drawer as to the wages; when a collier has not a drawer I sometimes find him a lad who has worked as a labourer for me; for the moment a

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drawer goes to the colliery I have nothing to do with paying his wages; a collier could discharge his drawer, but if I thought he was discharging him without just cause I would not allow him to do so; if he persisted I should discharge the collier himself; sometimes I have ordered a drawer to leave his collier and mend a road, but I have paid the collier for the drawer's time; when a collier comes and has not a drawer, sometimes I have refused to employ him, and sometimes I have engaged him and sent a drawer to him; I leave them to make their own arrangements; there are printed rules posted about the collieries to regulate the mode in which to work, the using of lamps, and other matters to be done, and all persons are to observe them; if a drawer broke these rules I should consider I had power to discharge him.

Rogers, for the appellants, contended that although the drawers were to a certain extent under the control of the colliers, they were the workmen and labourers of the occupiers of the mine, and therefore entitled in such capacity to prove for the full amount of the wages not exceeding forty shillings due to them.

J. V. Prior, in support of the judgment of the Commissioner.

Lord Justice KNIGHT BRUCE.—It is difficult to avoid wishing to decide in favour of the petitioners if it were possible to do so; but I have not been able to convince myself that the decision of the learned Commissioner is erroneous. I think there was not such a contract between the bankrupts and the drawers as, on the bankruptcy of the former, could bring the case of the latter within the section in question of the Bankrupt Law Consolidation Act. The opinion of Sir John Paterson, whom we have consulted on the legal point, and which, coming from such a man, is very weighty, is, that the drawers have no right of action against the bankrupts. My learned brother thinks with the Commissioner as to the law and equity of the case, and therefore the judgment would stand even if I dissented, which I do not. The petition must be dismissed.

Lord Justice TURNER.—This question depends entirely upon whether the bankrupts were indebted to the drawers. I think they were not. It appears from the evidence before us (which is the same as was before the Commissioner) that when the colliers were hired they brought the drawers with them, and that they were paid by the colliers out of their earnings, in accordance with an agreement entered into between the colliers and the manager of the mines, independently of the drawers. It appears also, that if the manager withdrew the drawers from the colliers he paid the colliers. The colliers could discharge the drawers; but neither the bankrupts nor the manager had that power, and they could only discharge the collier if he acted unjustly. Both the colliers and the drawers might be discharged by the manager for transgressing the rules of the mines. Under these circumstances, I am satisfied—with the able assistance which has before been referred to—that no action at law would be possible by the drawers against the bankrupts. It has been said that there is an equity on the part of the drawers to be paid out of the wages of the colliers; but, assuming that to be the case, it would not alter the position of the drawers, or enable them to stop the money of the colliers in the hands of the bankrupts. I agree, therefore, that the petition must be dismissed. As the Commissioner recommended that the point should be brought here, it seems right that the costs should be paid out of the estate.

Lord Justice KNIGHT BRUCE.—It is highly proper that the whole costs of both sides of this appeal should be paid out of the estate.

ROLLS COURT.

Reported by J. MACAULAY, Esq., of the Inner Temple, Barrister-at-Law.

Monday, Nov. 22.

MELLERS v. THE DUKE OF DEVONSHIRE.

Lease of coal mines, construction of—Covenants—Demurrer.

The construction of a lease is a question which may be properly determined on demurrer, and as conveniently as in any other mode, and at any other stage of the cause.

A lease for a term of coal mines contained a covenant by the lessee to dig and excavate every year during the term two acres of one kind of coal and two acres of another kind, both comprised in the lease, or to pay for such respective quantities every year after the rates therein-mentioned, whether the same could be got or not; and if he could not sell the whole of the one kind of coal, he was to be at liberty to get so much of the other as would make up the yearly rent reserved at the rates specified; and if the coal should all be worked out before the expiration of the term, he might determine the lease by notice. It was not alleged that the coal was worked out at the end of the lease, but it was alleged that the lessee had paid too much; and he filed a bill to be recouped the amount so overpaid, and to set aside a mortgage he had given for the balance returned by himself (as stipulated by the lease) as due. A demurrer to the bill was allowed.

This case came on upon demurrer to the plaintiffs' bill for want of equity. The plaintiffs are the legal personal representatives of Mr. John Mellers, a lessee of coal mines belonging to the Duke of Devonshire and Lady Carnarvon; and the object of the bill was to recover a sum of money alleged to be overpaid to the Duke, and to set aside a mortgage given by Mr. Mellers to the Duke for the balance so alleged to be overpaid. It appeared that on Sept. 26, 1825, the lease in question was granted to Mr. Mellers for a term of twenty-one years, to commence from June 25 then last, at a certain rent, defendant depending upon the quantity of coal which might be got, but absolutely subject to a proviso for cesser of the lease, on giving notice in the circumstances therein mentioned. The lease contained a covenant in these words, "that he, the said John Miller, his executors, administrators, and assigns, would in each and every year during the said term thereby granted, dig and excavate, or cause to be dug and excavated within the said colliery thereby demised, not less than two acres of Blackwell hard coal, and two acres of Dunshill coal, or would pay for such respective quantities in each and every year after the rates aforesaid, whether the same could be got or not." The rates alluded to were 120*l.* an acre for the Blackwell or hard coal, and 60*l.* an acre for the Dunshill or soft coal. Another covenant was in these words, "that if the said John Mellers, his executors, administrators, and assigns, could not sell the whole of the Blackwell hard coal hereinbefore covenanted to be gotten, he or they shall be at liberty to get so much more of the Dunshill coal as would make up the said yearly rent of 860*l.*, after the rates of 120*l.* an acre for the hard coal, and 60*l.* an acre for the soft coal." There was also a provision that if the lessee should work out all the coal before the expiration of the term, he might determine the lease upon giving notice of his intention so to do. Under this state of things the lessee continued to work the coal mines down to the end of the lease, without giving any notice of cesser as provided. The bill was filed on 22nd June, 1852, after the expiration of the lease, and it alleged that Mr. Mellers had not got as much coal as he ought to have got, and that he paid a sum much beyond what he ought to have paid by way of rent. In 1827, by his own accounts, which he had undertaken to make out yearly, he returned himself as above balance, and having adjoining property, he gave security to the Duke for the balance then due and unpaid. The bill now alleged that this was a mistake, and the rent ought to be in proportion to the coal obtained, and sought to recover the sums alleged to be overpaid, and to set aside the mortgage. To this bill two demurrers were put in, one by the Duke, the other by Lady Carnarvon and her trustees.

R. Palmer and *Currie*, for the first demurrer.

Lloyd and *Townsend*, for the second demurrer.

Rompell and *Busk*, in support of the bill.

The case of *Morris* v. *Smith*, 3 Dougl. 279, and other cases were cited.

The MASTER of the ROLLS.—I am of opinion that these demurrers must be allowed. The question upon which I propose to determine these demurrers, is simply a question of the construction of the lease, without considering any other questions at all: and that question, it is manifest, may not only be properly determined on demurrer, but is as convenient a time and mode of determining it as any other; in fact, it is the right time for determining a question of that description. Now it is admitted on all sides, that the obligations which persons have entered into must be carried into effect; that they must be bound by the obligations which they have entered into. But then it is argued on behalf of the plaintiff, that in fact the real construction of the lease is, that it was a demise of a certain quantity of coal, and a payment only in respect of coal which should be gotten, and that the demise was made in a mistake of the amount of coal; and that therefore it is a case in which the court will relieve; and that the fact could not be discovered until after the determination of the lease. Now I do not concur in this view of the case. That the lease was granted in ignorance of the amount of coal which might be gotten under it is no doubt true; but that is the case in every instance of a mining lease. It is a sort of speculation in which the lessor and lessee are equally ignorant of the amount of coal which may be gotten under it, and provide for those circumstances. Now I am of opinion, therefore, that there is no question of mistake, but that you must look exactly at the terms of the lease that was granted. It is not, as I read the lease, a lease which only compels, or only induces, the plaintiff to covenant to pay for the amount of coal which he shall get, but expressly covenants that he shall pay for coal for a certain amount, whether he gets the coal or not; and the clause to which I refer for that purpose is this:—a covenant "that he the said John Mellers, &c. will in each and every year during the term hereby granted dig and excavate within the colliery hereby demised not less than two acres of Blackwell hard coal, and two acres of Dunshill coal, or will pay for such respective quantities in each and every year after the rates aforesaid, *whether the same could be got or not.*" It is manifest that there is no covenant to compel them to work two acres of hard coal, or two acres of Dunshill coal; and that if an action had been brought for breach of the covenant because they had not worked two acres of Blackwell coal, or two acres of Dunshill coal, affirming it had been possible to do so, it would have been sufficiently answered by saying that the plaintiff had paid after the rates of that coal in the latter branch of the alternative of the covenant, whether he worked it or not; and he might, if he thought fit, avoid working it altogether. There is no covenant in this lease that he shall work the coal; but there is a covenant that he shall pay for that amount of coal whether he works it or not; and if that be so, it is not necessary to look any further in the lease to see whether he really has worked it, or could have worked it, or not: there is an express covenant that he shall pay for this whether he works the coal or not. But this is made clearer by another covenant, which seems to anticipate that it is possible that the amount of the Blackwell coal covenanted to be demised may not be possible to be gotten; for though the word is a singular one, the words of the covenant are these: "If the said John Mellers, &c. cannot *sell* the whole of the Blackwell hard coal hereinbefore covenanted to be gotten, he or they shall be at liberty to get so much more of the Dunshill coal as will make up the said yearly rent of 860*l.* after the rates of 120*l.* an acre for the hard coal and 60*l.* an acre for the soft coal as aforesaid." It is manifest that if he could not get the coal he could not sell it, and if he could not sell it this clause would not arise. I do not see, I admit, the advantage of giving him this express clause, to be at liberty to get so much more of the Dunshill coal; for, as I read the lease, he was already at liberty to get as much as he pleased of that coal, provided he paid for it at the rate of 60*l.* per acre. Then the next clause which continues makes the matter also perfectly clear; for it provides for the case, and the only case, in which the lease is to cease—which is, that in which the amount of coal intended to be demised should be exhausted before the expiration of the term. It is not asserted in the bill that the coal was exhausted before the expiration of the term; therefore the lease was to continue; and the covenant in the lease was, that the lessee was to pay at the rate of 360*l.* a year whether he got the coal or not. The result is that it appears to me perfectly clear and distinct that this is a case in which the lessee is bound by that covenant to pay that amount. Being bound to pay that amount, he does not allege that he has paid more than that amount of acres in the course of the year, and therefore no question can arise as to the amount to be repaid. This does not appear to me to be a case at all resembling the case of *Morris* v. *Smith*. The case of *Morris* v. *Smith* was a case of an actual covenant to work a mine for the purpose of giving the benefit to the lessor arising from the amount of the coal which might be gotten, whereby the lessee says,—"I will give you all the benefit, just as if I had had the benefit of the coal; but do not compel me to work the lease in a manner which is perfectly ruinous to me, because I have entered into a covenant for that purpose." But this is not a case of that description; this is not a case, as I have already stated, in which there is a positive covenant to work the coal; but, on the contrary, it is at the option of the lessee to work it or not, provided he pays. But here it is to be observed, that this is not a question whether, before the expiration of the lease, the lessee could, on the principle of *Morris* v. *Smith*, have come and said:—"The expense of working this mine is so great that I am willing to pay the total amount which might be got by the working according to this lease, but I require not to be compelled to work it." But he waits until after the expiration of the lease; he runs the chance of the amount of the coal which he may get during every year of the term; and then at the end of the term he says:—"This has turned out differently from what I expected, and therefore I ask now to be recouped." It might as well be said that the Duke of Devonshire, on the other hand, might have said:—"This mine has become more profitable than I expected, and the working has been much more easy than I expected, and therefore you must give me something which you would have given me, if I had known how easy the working would have been, and how profitable the result of it." It is obvious to me that both parties have precluded themselves from entertaining any question of that description: and that they entered into a covenant which provided how much was to be paid, and also took the chance whether the lease should be profitable or not. The result is, that the demurrer will be allowed in both cases in the usual way.

Tuesday, Feb. 8.

BROWN *v.* OAKSHOTT.

Practice—15 & 16 Vict. c. 86.

Course with respect to applications for appointment of receiver and of a like nature.

The plaintiffs had presented a petition praying a reference to the Master to appoint a fit person to be appointed receiver in the cause.

Lloyd, for the petitioners, now asked for an order appointing a particular person receiver without reference, on affidavits of the fitness of the party proposed.

Rogers objected that the court would not make this order on this petition, which only prayed a reference, and at all events that the other parties should have an opportunity of proposing a party to receive.

V. C. KINDERSLEY'S COURT.

The Master of the Rolls observed that he should not make any order on any application of this or the like nature, but a reference to the Master, but that he should dispose of them himself either at chambers, or, if there was any contest between the parties, upon argument in court upon proper materials. The present petition might stand over, to enable the parties for whom Mr. Rogers appeared to propose any person as receiver, and to file affidavits in support.

Saturday, Feb. 19.

Re Page.

Married woman—Suing in forma pauperis.

E. Clarke applied to the court in this case, on behalf of the defendant, for leave to enter an appearance, with a view to move to discharge the order obtained in this case, as reported *supra*, p. 248. The order being irregular, an appearance could not be entered without waiving the irregularity; hence the application to the court. The case of *Wellesley* v. *Wellesley* was not an authority for the order.

The Master of the Rolls said the order made by him was quite irregular, and must have been made by him through inadvertence. The case of *Wellesley* v. *Wellesley* was no authority. He would not, however, add to the irregularity, by making another irregular order.

Feb. 22.—E. Clarke now applied to the court again, stating that he had looked into the cases, which were conflicting; but he proposed this course, viz. to move to discharge the irregular order, and the other side could then take the objection that no appearance had been entered, by the defendant, and the whole case might then be disposed of.

The Master of the Rolls did not, of course, advise that or any other course to be adopted; but he seemed to assent to the view taken by counsel.

Terrell, on the same day and soon after, applied to the court for leave to amend the bill in this same case; but

The Master of the Rolls refused the application, on the ground that it was intended to move to discharge the order for irregularity, and he would not give leave to amend the bill for the filing of which an irregular order had been obtained.

Tuesday, Feb. 22.

Prince *v.* Cooper.

Practice—15 & 16 Vict. c. 86, s. 55—Application under sect. 55, for an order for sale of real estate.

Roupell (*T. C. Simpson* with him) moved, under the 55th section of the 15 & 16 Vict. c. 86, for an order for the sale of the real estate of the testatrix in the cause, in which the plaintiffs and other parties in the suit (some of whom were infants) were interested. The will of the testatrix (made under an absolute power of appointment contained in a settlement dated in 1832) had directed a sale of the property, in the events which had happened.

The suit was one for the administration of the estate of the testatrix; and, from the facts stated upon the application for the order, it appeared that there was a contest in the suit between the parties interested in the property and the trustees of the settlement with respect to their management of the estate, and also amongst themselves.

The Master of the Rolls refused the application, observing that the 55th section was intended to apply to cases where, for the protection of the property, or for any other cause, it was necessary to come to the court for an order for a sale; but not to enable any party in a contested suit, upon such an application, to obtain a decision of the questions in the cause before the hearing; and he should discourage any such attempt.

V. C. KINDERSLEY'S COURT.

Reported by W. H. Bennet, Esq. of Lincoln's-Inn, Barrister-at-law.

Feb. 14, 15, and 16.

Penniall *v.* Roy.

Injunction—Jurisdiction—Restraining proceedings in a Scotch court—Breach of an undertaking.

A creditor who, instead of proving his debt under a fiat in bankruptcy in England, proceeds in the Court of Session in Scotland to establish such debt, and to attach property belonging to the bankrupt, which it was admitted was vested in the assignees under the bankruptcy in England as assets for distribution amongst all the creditors coming in under the bankruptcy, will be restrained from prosecuting such action in the Court of Session in Scotland.

An undertaking given by counsel in court is to be as scrupulously observed as if the terms of the undertaking were embodied in an order of the court.

This was a motion for an injunction in the terms hereafter mentioned. On the first coming on of the motion the defendant's counsel asked for time to answer the affidavits until the following seal, and gave an undertaking that no step should be taken by the defendant in the mean time.

The facts of the case, both as relates to the undertaking and on the merits, are fully stated in the Vice-Chancellor's judgment.

Anderson and *Kemplay*, for the motion.

Bacon and *Giffard* opposed it.

The principal cases cited in argument were *Pym* v. *Wilson*, 2 Phill. 653; *Halford* v. *Gallow*, 13 Sim. 44; *Kennelly* v. *Earl Cassilis*, 2 Swan. 313; *Bushby* v. *Munday*, 5 Medd. 297; *McLaren* v. *Stainton*, 20 L. T. Rep. 150; *Attwood* v. *Banks*, 2 Beav. 192; *Harrison* v. *Gurney*, 2 Jac. & W. 563; *Frewin* v. *Lewis*, 4 Myl. & Cr. 249.

JUDGMENT.

The Vice-Chancellor.—There are two motions before me. One is to commit Mr. Roy for a breach of an undertaking, which was entered into by his counsel upon the occasion of the other motion being attempted to be brought on, and it being ordered to stand over upon the terms of the undertaking. The second motion is one asking for an injunction to restrain Mr. Roy from continuing certain proceedings which have been taken by him in the Court of Session in Scotland against the assignees. Now the facts of the case, so far as they are necessary to be considered with reference to these questions, are these: an action was brought in the Court of Session in Scotland, in the year 1846, by Mr. Roy, against a Mr. Campbell, contending that Mr. Campbell was his debtor to the amount of upwards of 3,000*l.* in respect of certain transactions with regard to a bill of exchange. The particulars of the claim of Mr. Roy it is not necessary to enter into; it is sufficient to say that he claimed this 3,000*l.* and upwards from Mr. Campbell. Mr. Campbell had previously carried on business in England, and had become bankrupt in England, and a commission of bankruptcy was pending against him when the action was brought; but being an uncertificated bankrupt, of course the bankruptcy did not prevent the right of a creditor to sue Mr. Campbell. That action went on for a considerable time; proceedings were had; and that action is still pending. In the course of that action the plaintiff, Mr. Roy, was desirous, if possible, of getting the assignees to be made parties to the action, and therefore gave them notice that they might, what is called, suit themselves,—that is, intervene in the action as if they were parties to it, make themselves *quasi* parties defendants to that action. They declined to accept that offer, and accordingly, in the early part of December 1852, Mr. Roy commenced a separate action against the assignees; and the prayer of the summons in the court in Scotland was in effect this:—it asks a declaration of the Court of Session that in the event of Mr. Roy establishing his claim in his action against Campbell, that he, Campbell, was a debtor to Roy in respect of the transactions connected with this bill of exchange, then that Mr. Roy was entitled to receive a dividend from the estate of the bankrupt Campbell, equal to the dividend or dividends drawn or which he drawn by the other creditors of Campbell; and that the plaintiffs, Kirkland and Pennell, the assignees of Campbell, should be decerned and ordained to make payment to Roy the defendant, pursuer, as he is called in Scotland, of the sum of 3000*l.* and interest thereon, or of such other sum as shall be equal to the amount of the dividend or dividends drawn by the other creditors on their respective claims, and that in the meantime the assignees should consign or deposit in bank, or otherwise secure in such manner as the court should ordain, the sum of 3000*l.*, or such other sum as should be sufficient to meet the dividend; and that the defendants, the assignees, should be decreed to make payment to the pursuer of the costs of that action. That action being brought in Dec. 1852, a summons was executed, as it is called, or served with the proper summons in the nature of a *subpœna*, to bring him before the court on Dec. 17; therefore this action is constituted as between Mr. Roy and the assignees of Mr. Campbell. On Jan. 14, 1853, this bill is filed by the assignees praying an injunction—and praying nothing else—to restrain Mr. Roy, his mandatories and agents, from prosecuting the action against them, the assignees, in the Court of Session, or against the real estate of Campbell, or the rents thereof; and from continuing, or permitting to continue or remain in force, the arrestments laid on as in the said bill mentioned; and from laying any further or other arrestments upon the rents hereafter to become due from the tenants of the estate of Lockuell in the said bill also mentioned, or suing out execution or any other diligence or process against the real or personal estate of Campbell, the bankrupt. The arrestments there referred to are arrestments which every pursuer in an action is entitled to take, not merely for the purpose of compelling appearance, but for the purpose of providing a fund to answer the demand of the plaintiff, if he should succeed in establishing it; and the arrestments have the effect of laying a sort of interdict upon the real and personal estate of the defender. Any real or personal property in Scotland within the jurisdiction of the court may be arrested and is arrested by virtue of the arrestments, so that the owner of the property, the defender, cannot touch his own property, unless indeed by certain proceedings he gives security to answer the demand; and those arrestments were issued in the present case, and, as it appears, the particular arrestments had issued under a special Act of Parliament which had recently passed, and which gave a particular efficacy, and put particular terms and conditions upon those arrestments not necessary to be now noticed. But the effect of the arrestments here put is this—that they prevent the assignees, until they give security to answer the pursuer's demand in the action, from uplifting—that is, from receiving or getting in any portion of the real or personal estate vested in the assignees, as assignees, within the jurisdiction of the courts in Scotland. Now—this bill being filed on Jan. 14, 1853, asking for this injunction—on Jan. 17, which was a Monday, notice of motion was served for an injunction in the terms of the prayer of the bill, which motion would have come on to be heard on the 20th Jan. in the ordinary course. That was a seal day. On that day the counsel for the plaintiffs in the suit in equity moved the motion; the counsel for the defendants stated that there had not been time to meet the case stated—and stated with perfect justice and reason. Here is Mr. Roy, who lives at Chester, who was not served until the 17th; he wrote immediately on the 18th to his solicitor in London, Mr. Milne, telling him that he really knew nothing about the matter, but that he had written off at once to Mr. Ross, the Writer to the Signet who acted as his agent and mandatory in Scotland, and urging Mr. Milne to get him time to meet the case. It was a clear case in which there ought to be time, provided the giving of time did not prejudice either party; and that was the view which the counsel on all sides took of it. Accordingly, when the motion was thus attempted to be moved, and when the suggestion was made that the defendant really had not had time to meet the case and ought to have time, that suggestion was yielded to on the terms of an undertaking, which was readily given in substance, though there seems to have been a little discussion whether it meant "to do nothing" in the Scotch sense, or to do nothing in the English sense, or whether the two senses were the same; but still it was settled that that undertaking should be given; and accordingly the undertaking which was given was this—that the motion was to stand over until the next seal, and nothing was to be done in the mean time. Of course, whatever had been done up to that time was not to be affected by this undertaking; but whatever had not been done was to remain undone, to remain *in statu quo*. And I am not only of course perfectly satisfied that the undertaking was given in good faith; but Mr. Roy himself (who seems, though not to have been present as I really thought he was from the accurate view which he had got of the nature of the undertaking,) was so completely informed by Mr. Milne, his solicitor, who was present, of what took place, that Mr. Roy immediately, most properly, on that same day wrote down to Mr. Ross, the Scotch agent, telling him what the undertaking was, urging him that the summons should not be called; pointed that out particularly to him as a thing that was not to be done,—the summons not to be called in the to be done,—the summons not to be called in the action in Scotland, which I shall advert to presently, and saying that things must come to a dead stand,—"Be very careful about this, nothing must be done." Nothing could be more right or proper than the view and conduct taken and adopted by Mr. Milne, the solicitor of Mr. Roy, or by Mr. Roy himself in that matter. Now it appears that according to the course of proceedings in Scotland, and having regard to the arrestments which had issued arresting the real and personal estate of the assignees in Scotland, unless a certain proceeding was taken in the Scotch Court of what is called "calling the action," or calling the summons, on the 27th Jan.—unless it was done on that day the arrestments would fall to the ground, by virtue of the Act of Parliament under which the arrestments on this particular case were issued. It is stated to me, and it appears to be the case, that the proceedings taken for the purpose of getting an action called are these: that if the action is to be called on the 27th Jan., a certain number of days before that call-day the Writer to the Signet—call him the solicitor for the plaintiff,—who wishes to have the action called, leaves with an officer of the court, a certain clerk—I understand there are five of them, five seats of these clerks—leaves with one of these clerks, selecting which he pleases, a notice, which is a direction to him to call the summons or action on the following call-day; that the usual interval of time before the call-day at which this notice to the clerk is usually given is to be two clear days—that is, from the Monday to the Thursday,—the Monday being the day on which the notice is usually left with the clerk, and the following Thursday being the call-day. But there is nothing of course to prevent a party, if he pleases, from leaving his notice with the clerk a week before, or perhaps any time before, except the danger that the clerk might forget it, if it were left too long before the call-day—there is nothing to prevent his leaving it at any time before the call-day, provided he leaves it in time, that is, two clear days, according to the practice of the court in that respect. I should also mention, that it appears that by the practice of the Court of Session, unless the action be called, on the one hand the arrestments will fall, and if the action be called on the call-day, and no appearance be entered, the plaintiff is entitled to judgment or decree. It is in the nature, I presume, of a decree by default—the defendant is considered as making default. Now, it appears in this case, that although Monday, 24th Jan.

would have been early enough to have left the notice with the clerk for the call on the 27th day, in fact the notice had been left on the 20th, that is, the day-week preceding the call-day, being itself a call-day. The notice was left on that call-day of the 20th, to be called on the call-day of the 27th—that is, it had been left with the clerk on the very day on which the undertaking was given here, and, of course, before notice of that undertaking could possibly have reached Mr. Ross in Scotland, for it reached Mr. Ross in Edinburgh—it might perhaps have reached him by telegraph earlier, but no complaint is made, or could be justly made, that it did not reach him until the 21st. On the 21st, then, Mr. Ross is informed, by the letter of Mr. Roy, of all that had taken place in this court; and he was informed particularly, that one of the things he must take especial care not to allow to be done, was the calling of the summons on the 27th, or on any other day. Mr. Roy knew perfectly well that the summons would be called unless he informed Mr. Ross that it must not be called. Now the view which Mr. Ross took of the matter was this: It is excessively lucky, he says, extremely lucky, that I had left the notice with the clerk yesterday, because now, by doing nothing, the summons will necessarily be called on the 27th; the clerk, of course, will perform his duty, which is, the notice having been left with him for the next call-day, he will make the call on that day; it is extremely fortunate, considering that I am put upon the terms of doing nothing, that I have done this act on the 20th. He accordingly writes to that effect, on the 22nd, to Mr. Roy, in London, saying, How very lucky it is, how very fortunate I had done this act the day before I had got the notice—there, it is done, and now we shall have the call go on, and although you are under an undertaking that nothing shall be done, something will be done by your doing nothing. That is the effect of it. Now, it appears to me, and it seems to be admitted, that if the not calling the action on the 27th would have been unattended with any inconvenience or mischief to the plaintiff in the action, it was quite right that this call should have been stopped—that the notice should have been instantly given to the clerk, "Although I gave you notice on the 20th to make a call on the 27th, please to withhold your hand, and do not make it. I withdraw the notice." In that respect the clerk acts entirely under the control and direction of the person giving the notice. If the person giving the notice chooses to withdraw it at any time before the call is made, he may withdraw it; and beyond all question, if there had been no mischief resulting from not making the call on the 27th, it would have been the bounden duty of Mr. Ross, and it was the bounden duty of Mr. Roy, acting by the agency of Mr. Ross, to have taken the step necessary to prevent the call being made on the 27th; and if I were to yield to the argument that the doing nothing was really obeying, I will not say the order of the court, but the undertaking, which is to be observed as religiously and as strictly as the order,—if I were to yield to the suggestion that, because the undertaking was that nothing should be done, the allowing this call to be made on the 27th, by virtue of the notice given on the previous call-day, was a compliance with that undertaking,—I should yield to a suggestion which would be nullifying the meaning, the real honest meaning of such an undertaking, or the meaning of such an injunction, if it had been put in the form of an injunction, and not an undertaking. Suppose it had been thus: that an attachment had been issued against a party unknown to the party, and had been lodged in the hands of the sheriff, to be executed unknown to the individual against whom it was issued, and a certain motion was pending in this court, and there was an undertaking that nothing should be done by the party who had issued the attachment,—in that case would it be no breach of that undertaking for the party to say: "I will let the sheriff go on and execute the attachment. Luckily, I lodged the attachment with him yesterday; and therefore, though I am under an undertaking that nothing shall be done—although I can by a single word of mine prevent any thing being done—still, I have been so lucky as to have lodged the attachment yesterday, the day before I gave the undertaking, or before the party got notice of it, and I will allow it to be executed"?—could the court ever allow itself to be baffled in such a way as that, by allowing a party to say: "Although I have done an act which directs a person acting under my directions to do a thing; although I have given an undertaking that nothing should be done; because I am quiescent, I am not guilty of a breach of the undertaking"? But then it is said, with great truth, that Mr. Ross was in an awkward predicament. That is true, no doubt; he might instantly have told the clerk not to let the call be made; but he felt this: "If the call is not made on the 27th, our arrestment will drop to the ground, and we shall be damnified." No doubt he was in a strait there—I can quite enter into his feeling on the subject; but then, what should he have done? He should have done that which he did, except that he should have done it a day earlier. He received the notice on the 21st; he should on the 21st have written up to Mr. Roy to say,—"Only see what the effect of this is; our arrestment will drop to the ground if this call is not made. You never thought of this when the undertaking was given; you should have been prepared for that. Instantly apply to the court to get the matter set right, or make an application to the parties to set this right." He should have written on the very day. I do not find much fault with him for not writing on the very day; but the next day he wrote, and he does tell Mr. Roy how lucky it was the notice had been given to the clerk, because otherwise, if it had not, the arrestments would drop by reason of the summons not being called. So that Mr. Roy is well informed on the 22nd or 23rd—he might have received a letter on the 21st or the 22nd—but at all events on the 23rd Mr. Roy is informed of the position of things; that he has given an undertaking which I say Mr. Roy ought to have felt, and Mr. Ross ought to have felt, would have been broken in substance in fair and honest meaning, by allowing the call to be made. He should immediately have communicated to the parties, or applied to this court to vary or modify the undertaking in such a way as to prevent that mischief, and I have no doubt that this court would have done it. If it had been asked that the motion might stand over on the 20th, to give Mr. Roy time to meet the application—if it had been suggested, There has been a notice left with the clerk of the Court of Session in Scotland this very day, under which notice he will proceed to call this action on the 27th; surely you do not mean that that is to be done,—I am quite sure the counsel would have said, "We do not mean it to be done, except for this: we are told that if it is not done mischief will ensue; that is, the arrestments will drop." The thing would have been taken into consideration by the court there, and the court would have taken such steps as would prevent the arrestments from dropping, or put the parties under some terms or other which would have preserved to each other all the benefit of the *status quo*. I am of opinion that Mr. Ross quite erred in his view of the matter, and that Mr. Roy was unfortunately misled by Mr. Ross's view. Now I am far from attributing to Mr. Roy an intention to violate the undertaking. He was misled in the matter by Mr. Ross's view; and I am not attributing to Mr. Roy any personal intention of being guilty of a contempt of the court, or of a violation of his counsel's undertaking at all. I am persuaded he was not; but he considered, according to the view which Mr. Ross had put into his head, that this was a right and fair view of the case. I think he was entirely wrong in the matter. I think he has been clearly guilty of a breach of the undertaking, and I should have expressed this opinion as soon as I had heard that motion, except that, inasmuch as a motion to commit is a motion merely made for the purpose of getting right done, and as I could not quite see my way as to what ought to be done until I had heard the motion for the injunction, I abstained from expressing the opinion I have now expressed until I had heard that motion. The question now comes, what ought to be done with respect to the breach of the undertaking, what ought to be done with reference to this call, and what ought to be done with reference to the arrestment. But then I must take that in conjunction with the question what ought to be done with reference to the injunction that is asked. Not having called for a reply is a sufficient intimation of my opinion that injunction ought to be granted, and therefore I proceed to state the grounds on which I consider the injunction ought to be granted. There is a case in which a trader carrying on business in England, in London, is in respect of that trade made a bankrupt in England. Under the proceedings in bankruptcy assignees and an official assignee in England are appointed, and all the property of the bankrupt, real and personal, is vested in those English assignees to be distributed under the direction of the Court of Bankruptcy among all the creditors who may think fit to come in and prove debts, assuming that they have debts which they can prove; and every person, be he whom he may, who was an actual creditor of the bankrupt at the time of the bankruptcy, may come in and establish and prove his debt under that bankruptcy, and, if he does so, will receive a dividend rateably with the other creditors out of all the assets of the bankrupt. Among other property which the bankrupt was entitled to, it appears that he was what we should call a remainderman, that he had an estate in remainder in a real estate in Scotland, called the "Lochnell Estate." His remainder fell into possession, or, to use the language of the Scotch courts, the succession opened to him, I think in May 1846, and that estate was also vested in the assignees; and it is not disputed on the part of Mr. Roy, or by his counsel. On the contrary, their whole argument, and the whole of their defence, and the whole of the proceedings in their action in Scotland, assume that the Lochnell estate and all the other property of the bankrupt is property, and duly vested in the assignees, for fair and equal division among all the other creditors. Mr. Roy says that he is a creditor of Mr. Campbell, the bankrupt; but his debt is a debt which he thinks requires some proceedings to be taken in Scotland against Mr. Campbell for the purpose of establishing it. If Mr. Campbell, the bankrupt, were resident in this country, doubtless the action would be brought against Mr. Campbell in this country, because he would be amenable only to the jurisdiction here; and I presume the reason why the action (I am speaking now of the action of 1846) was brought against Mr. Campbell in the Court of Session in Scotland was that Mr. Campbell is a Scotchman, resident in Scotland, and subject to the jurisdiction of that court, and therefore very properly brought there. Now I do not know whether, by the Scotch law, the establishment of a debt in an action against the bankrupt himself would be sufficient to establish that debt against assignees; I do not know how that is by the Scotch law. If it be so it seems strange; because it might be that there might be collision between the alleged creditor and the bankrupt, so that in an action against the bankrupt, the creditor would have no difficulty in establishing the debt against the bankrupt; and therefore I can hardly suppose that, as a mere matter of course, a judgment or decree in an action against Mr. Campbell would necessarily establish the debt against the assignees. But it was probably with that view that the plaintiff in the action, Mr. Roy, gave a notice or summons, whatever the nature of the proceedings be, to the assignees, calling on them to sist themselves in that action, in order that there might be a decree binding them in that action, that if the debt were established as a debt against Mr. Campbell, it might also be established as a debt against the assignees as assignees, or against the estate of Mr. Campbell in the hands of the assignees. That not being done, and the other action being brought in December last against the assignees, I do not know whether, as a mere matter of course, if the plaintiff could recover at all, or get any decree in the action against the assignees; it would follow as a matter of course that he could get a decree in the action against the bankrupt. I should rather infer that the plaintiff in those actions considers that it would, because what he prays by the summons and condescendence in the second action is this,—he asks the Court of Session to declare that if he succeeds in the action against Mr. Campbell, then, whatever is the amount which is determined in that action to be the amount of the debt due to him, he may be considered as a creditor entitled to a dividend on that amount as against the estate. It may be, for aught I know, that by the Scotch law,—although the mere action against Mr. Campbell alone would not entitle the parties to treat the assignees as bound by it,—that having given them the summons by which they might have sisted themselves, if they pleased, as defenders in that action; that may, for aught I know, according to the Scotch law, make the final decree in the action against Mr. Campbell binding against the assignees. But however it be, the effect of the action which is brought against the assignees is simply this, that it is a creditor of the bankrupt,—who, if he be a creditor, might if he pleased come in and establish his debt in the bankruptcy, and receive what he says is all that he ever wishes or attempts to receive, or thinks himself entitled to receive, a dividend rateably with other creditors out of the general assets, including the Lochnell estate. Such a creditor, I say, instead of taking that course, instead of coming in, goes to the Court of Session in Scotland, and asks that Court, when once he has determined to be a creditor, itself to take a part in the administration of the bankrupt's assets, by first declaring that he is entitled to stand as a creditor *pari passu* with the others, and by decreeing the assignees actually to make the payment to him by virtue of that decree of a dividend *pari passu* with the other creditors, who are to be paid under the proceedings in bankruptcy. Now, from the outset I have felt and have suggested whether, according to the law of Scotland, such an action was maintainable. Judicially I can know nothing about it. Perhaps I am bound judicially to assume that the law of Scotland is a law which, to a great extent,—to as great an extent as the law of England—proceeds according to the dictates of common sense and common reason. Perhaps I ought to assume so much; but I cannot assume that, according to the law of Scotland, this action would not be successful. I cannot assume in favour of Mr. Roy that the action would not be successful. Mr. Roy, in bringing the action, and praying as he does pray in the prayer of this summons and condescendence, must be taken at least to assume and assert that he will and may, that he has a right to succeed in the action, and to get the decree which he asks the Court of Session to give him. Now it has been felt by the learned counsel for Mr. Roy in this case that it did seem very monstrous when you come to work out the result of the success of that action; so monstrous would be the result, that the learned counsel is loth to press upon me this view of this action, that what is here prayed is to be treated merely as the verbiage of counsel and draftsman; but that we are not to consider this as an action asking the Court of Session to decree that the assignees shall make any payment at all. That is very singular, considering that they ask that the assignees should pay the costs of the action; but it is to be taken, they say, merely as an action asking that court to do what is almost a matter of course if there is a debt, and which any court would say ought to be done, that if there be a debt, it is to be at liberty so as to ascertain that that debt

the bankruptcy. Now, whether such an action,—an action of simple declaration to the effect that is prayed by the summons in the Court of Session in the action against the mortgagee, that if a debt should be established as against Mr. Campbell in the action against him, the Court of Session would decree in this action that the mortgagee, that establishing his debt should be at liberty to go in and establish his debt under the bankruptcy, and get a dividend rateably with the other creditors,—whether such an action would lie, again I am obliged to say I do not know. I do not judicially know; I do not see what could be the possible use of it. If the Court of Session were to make a decree ten thousand times over that A. was entitled to go in and prove a debt under an English bankruptcy, the Court of Bankruptcy in England could take no notice of that. It has been said by the learned counsel for Mr. Roy very truly that if I were to make an order—if the Lord Chancellor were to make an order in the Court of Chancery in England, declaring the right to go in and prove, or to do anything which should appear to have any control over the proceedings in the Court of Bankruptcy, the Court of Bankruptcy could not be bound by it. Not only the commissioners would not be bound by it, whatever respect they might feel for the decree of the Lord Chancellor; but the assignees would not be bound by it, unless you had some terms to bind them; and even if you could bind them, you could not bind the creditors who had proved. And therefore I do not see, even supposing it to be assumed that an action of declaration in Scotland, such as here suggested is the view to be taken of this action—if such an action would lie, I do see the use of it. *Cui bono?* What would be the result of such a declaration? I quite see that if an action would lie by which the plaintiff could get a declaration of his right to be paid, and also the rest of what is asked by this summons in the Court of Session in Scotland, a decree that the assignees shall actually make the payment, and that the Lochnell estate shall, if necessary, be a caution or security, or means of working out the payment—I can quite understand that to be something effective. Now then, let us follow out the result of this action, supposing it succeeds. I suppose, in accordance with the prayer of this summons, the decree is made in the Court of Session, binding of course on the assignees—it is said not in the least binding on them personally, not affecting their personal liability, not at all affecting their own personal or real estate in Scotland, which it is not pretended this is meant to affect; but the decree against them ordering that they as assignees, and only in the character of assignees, shall, when a dividend is declared by the Court of Bankruptcy in England declaring a dividend of so much in the pound, say *5s.*, is to be paid to all the creditors who have proved debts under the bankruptcy—that they the assignees *qua* assignees, not out of their own assets, that is, of course it must mean out of their assets to be administered in bankruptcy, are to pay to Mr. Roy a similar dividend of *5s.* in the pound, on the debt which he shall have established. Now what is the Court of Bankruptcy to do with that, supposing such a decree made? The assignees would say to the Court of Bankruptcy—"Here we find that we have got new assets to take, which will give just *5s.* in the pound to all the creditors who have proved. If you go and make a dividend of *5s.* in the pound, you will exhaust all that, and here the Court of Session in Scotland has made a decree binding upon us, which we are bound to obey, by which, if we do not pay *5s.* in the pound to Mr. Roy, we shall be guilty of disobedience of the decree of that court. Surely we ought to have *5s.* in the pound to make that payment out of the assets, for it is only meant against us out of the assets of the bankrupt." Surely the commissioners would say "Really, gentlemen, we know nothing about the Court of Session in Scotland; we are not bound by it—you should carry that to the House of Lords; it is intolerable, it is absurd, you cannot do it." Well, but then it is said, supposing you cannot touch the assets in England, you have got the Scotch assets, you have got the estate of Lochnell,—then the Court of Session has power over these assets. To be sure it has; but then it is admitted by the whole frame of the record in the Court of Session that there are assets which are to be administered in the bankruptcy, and it is out of this very Lochnell estate, combined with the other assets, that Mr. Roy by his argument here insists that he is entitled to be paid. But what he does by his proceeding in Scotland is this: the arrests the Scotch assets,—he says, "Do not let the assignees get the possession of their Scotch assets, do not let them have the means of applying those Scotch assets, to distribute them among all the creditors who are entitled to be paid under the commission; but whenever there is a distribution of English assets which will give *5s.* in the pound, then give me *5s.* in the pound out of the Scotch assets". Now how that is to be worked out if such a decree were made, I am at a loss, I confess, to understand. But let me take this additional view of it. If Mr. Roy may do this in Scotland, where there happens to be Scotch assets, suppose Mr. Campbell in the course of his dealing had had to do with an estate in Demerara—an English creditor not a Demerara creditor may go or send there, have proceedings instituted in the courts there by which he might say, "I quite recognise the propriety of the bankruptcy; I quite recognise the character of these assignees, as persons who under that English bankruptcy are bound to distribute the assets, including these Demerara estates, among all the creditors who are entitled to be paid a dividend on their debt; I admit all that, I admit this Demerara property is vested in those assignees; but I say that I have a right to call on the Demerara court just as much as Mr. Roy is doing in the Court of Session in Scotland, to call on the Demerara court to say the Demerara assets should be administered there, not by letting them go into the hands of the assignees to administer, though I quite admit that they belong to them—I quite admit that they are assets to be administered by the assignees in the bankruptcy; but hold them; give me a decree that whenever in the English Court of Bankruptcy a dividend is paid to the other creditors, I shall, out of these Demerara assets, unless I get it in some other way out of the English assets, by arresting these Demerara assets be paid my dividend." I will go a little further and suppose, what would be an extremely probable thing, that this trader also had dealings with regard to property, real or personal, in France; just the same process may be taken by a third creditor by sending to France. Now the suggestion of these things merely puts the matter in a very strong light with reference at least to what I may call the abstract moral justice of the case. I do not mean to say that I can act upon what is called abstract moral justice. I must act upon the rules and principles which prevail in the courts in equity—that is what I must act upon. But what I have suggested, and what I think is obvious on the whole case, puts the thing in this light: that here is a party who has admitted by the whole course of his proceedings in Scotland, and by the whole course of his argument in this court, that these English assignees under the English bankruptcy have properly vested in them all the property of the bankrupt, for the purpose of distribution, according to the principles of the English court of bankruptcy, among the creditors,—he is admitting all that; and then comes this question, Is it or is it not equitable that his founding his rights upon that very case should be be entitled to say, "I will not have my case dealt with by the particular court in bankruptcy, which will deal with it quite as fairly as I insist it ought to be dealt with; I ask for nothing in priority to any other creditor; but I insist it shall be dealt with in a court in another country, and not only dealt with by another court, so as to determine that there is a debt, but I insist upon it that that court shall determine in what way the assets shall be administered by the English assignees, for the purpose of paying me *pro rata* with the other creditors?" If there be no equity in this case, I confess I think it is time that an equity should be created. I admit that there is no case precisely on all-fours with this; but it appears to me that the principle of the cases is clearly applicable. First of all I reject entirely—I do not mean to say they are not perfectly good law; I only reject them because they have nothing to do with the present question—cases in which a certain creditor takes some proceedings in a foreign court, insisting on this: "This property does not belong to the assignees; I have a right of priority or superiority over the creditors generally." Then, if he has succeeded in getting some of the assets into his hands by proceedings in a foreign court, and the English courts consider that he had no right to retain those assets as against the assignees, that is, as against the general body of creditors represented by the assignees, the courts of England will allow the assignees to recover them from him in an action. It does not appear to me that these cases affect the question one way or the other; nor does it appear to me that the cases entirely govern this case, such as *Graham* v. *Maxwell*, and *M'Laren* v. *Stainton*, where this court, administering to an estate, says a creditor shall not sue after a decree for administration, either in the courts of law in this country or in any court of any other country. That stands upon a footing of its own. But those cases go to this: although they do not govern this case, they establish at least this principle, that where a party has not chosen to come in when he might have come in, and when he would by coming in get his rights duly acknowledged and effectuated according to the law of the country which was administering the estate, although he has not chosen to come in, still the court will not let him exercise the option of going elsewhere to try that right. It is true that there are cases in which the court granting the injunction is itself administering the equities, and administering justice among the different parties. In this case the court is not doing so. In that respect the case which is now before me is, I believe, a new case. I consider, therefore, that I am extending what I conceive to be a clear principle to a case to which it has not yet been extended. But it appears to me that there is equity enough in this, that the creditor here is admitting himself to be, and assuming himself to be, a creditor entitled to no other right whatever, as between him and the assignees, but a right to receive a dividend in the administration of the bankrupt's assets by those assignees, by virtue of the Court of Bankruptcy. He is admitting that throughout his whole proceeding and argument; and it appears to me that upon just the same principles, if he had come and proved his debt, got his debt allowed, or attempted to prove it and got it rejected, that there is just as much equity to restrain him now from proceeding as he is now proceeding, as there would be if he had come in and attempted to prove his debt, and that debt had been rejected, or even if that debt had been allowed. He might, if he had come in and proved his debt, have withdrawn his proof. Would this court allow him to withdraw his proof and say: "I prefer having a certain portion of the assets which are in Scotland, as far as I am individually concerned, not as far as the creditors generally are concerned—but as far as I am individually concerned, I should wish that a particular isolated portion of the assets should be distributed by another court for me only"? Now it appears to me that this court will not only restrain the proceedings of parties who ought to come into this court and have their rights administered, but that it will, on the grounds of equity, lend its assistance to the courts of competent and, as far as their jurisdiction extends and in respect of which it does extend, supreme jurisdiction, which have not of themselves the means of granting a similar injunction. Now if I thought that by restraining the action I were doing any sort of mischief to Mr. Roy—that is to say, if there were any impediment in the way of his establishing his debt as any other creditor would establish his debt—I should be bound of course to take care that those impediments were removed out of his way; or if they could not be removed, I certainly would not put him in a position in which he would be made subject to these impediments; and it was properly suggested to me, how do I judicially know that there may not be many impediments to his proving his debt in the bankruptcy? True, I do not know; but surely, if there be any such impediments, it is for Mr. Roy to show me that there are such. I know this, and this I am bound to know, that, as far as any impediments exist in the Court of Bankruptcy to a person who is really a creditor, and who was a creditor at the time the commission issued, he can and will be allowed to prove his debt, and get a dividend *pari passu* with the other creditors. Now no impediments have been here suggested. An intimation has been thrown out of something of an impediment with reference to the law of Scotland. I cannot conceive how the law of Scotland has anything to do with the matter of whether he can prove his debt under the commission. It is to be recollected that this is not even a Scotch debt; it is not a debt which may be a good debt in Scotland and not in England; this was a debt constituted in the case of an English transaction—an English bill of exchange, which it is said Mr. Campbell having in his possession, and having no right to treat otherwise than as a bill, to stand as security or accommodation, having no right to be treated as a creditor on the bill, discounted it, and used the money for his own purposes, and the persons with whom he discounted it being holders for value, without notice, recovered against the acceptors of the bill, whom Mr. Roy now represents. What is to prevent that being established as a debt in any court of this country, or of any other part of the world, and how does the existence or the nature of that debt prevent Mr. Roy, when that is once established to be a debt, from proving it in the Bankruptcy? Nay, before it is established as a debt, what is to prevent his going into the Court of Bankruptcy for the very purpose of getting it established. We know perfectly well that if he goes into the Court of Bankruptcy, and the question arises whether there be any debt, there are the means of having those questions determined, if not in the Court of Bankruptcy itself, by a court of competent jurisdiction, it may be by the Court of Session in Scotland even. Mr. Campbell, it is true, was resident in Scotland; but the assignees are not resident there—they are English assignees, resident in England, and could only be made amenable to the jurisdiction of the Scotch courts by reason that part of the bankrupt's assets happen to be in Scotland—this Lochnell estate—and by reason that the plaintiff using the arrestments may prevent the assignees from touching one farthing of the rents of that estate until they do appear, and not only until they appear, but until the action is decided; and if the plaintiff is successful in his action he will be entitled to have payment of whatever he may recover out of that estate. There is no difficulty in Mr. Roy coming in and proving his debt. I admit that that alone would not be a sufficient ground for saying, "If you have a right to go elsewhere you shall not go elsewhere." What I have to determine is whether, under existing circumstances, he has a right to go elsewhere; whether he has a right to go in the manner in which he is going by suing the assignees in Scotland. It appears to me that he is violating, not only a principle of abstract justice, but a principle of justice as administered by the Court of Equity; and, except that a court of law does not grant injunctions,—does not proceed by the same machinery,—the justice would be as much recognised in a court of law as it would be in a court of equity. The only remaining point is, it is said that Mr. Roy is only a trustee,—that it was

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the merest accident which made him the person in whose name these actions, the one against Campbell and the other against the assignees, are brought in the Court of Session, and that the persons who are really interested are the representatives of General M'Gregor—whose money paid the holders of the bill; and it is said that to-morrow the *cestui qui trusts*, that is, the executors of General M'Gregor, may compel me, Mr. Roy, whether I like it or not, to assign over to any other nominee of theirs my right in all this matter; and the moment they have got that done, they may get that nominee of theirs *sisted* in the action in my place; and then where are you? How will you be the better for having stopped me? That may be perfectly true, but that is no reason why Mr. Roy is to go on. He must do what he pleases in that respect, if it be not a going on with the action on his part. I must treat Mr. Roy here, because he has so treated himself throughout, as a person entitled to sue in Scotland, and entitled to come in and prove the debt, either in his own name or in the names of or for the benefit of the persons for whom he is trustee. There is no difficulty in his proving merely because he is trustee. If necessary that can be done by him, whether as trustee or actual owner he can, if he thinks fit, prove the debt without the slightest difficulty. He is the *dominus litis*. He is the only person whom I can restrain. The fact that my restraining him will not prevent the other persons from taking some other course from putting their assignees in a new state of difficulty, is no reason why I am to let Mr. Roy go and keep them in the existing state of difficulty. I think I am proceeding upon the principles which the courts have adopted in this respect also; but, irrespective of any other view of the case, the mere arrestment of the property which it appears, and I have no doubt it is the case, that the plaintiff has the right to issue, if it be only for the purpose of compelling appearance,—that very arrestment is an interference with the property which is admitted to be the property of the assignees, preventing the assignees from getting in and uplifting those assets, which the plaintiff in Scotland admits they ought to be at liberty to uplift for the purpose of distribution. Now it appears to me, for the reasons I have stated, that, though I am extending to a new case as I believe the principles established in the other cases, I am not establishing a new principle. It appears to me I am only carrying out those principles already established to a case that comes within the mischief of those cases, although I am not aware that the precise case has ever been made the subject of decision. Being of opinion that the injunction ought to be granted, and having also expressed my opinion that there has been a breach of the undertaking—in short, that the matter should be set right in that respect, I believe that the granting the injunction as prayed will work out all that is asked by either motion, or wanted for the purpose of either motion; of course it is not wanted that I should commit Mr. Roy, and I do not see the least reason for committing him if what is right is done. If right were refused to be done, of course I should commit; but, being of opinion that the injunction should issue, the injunction will have the effect of restraining any proceeding whatever in the action; and it appears to me that that is all that is necessary to be made as the order on both motions, except this, that as I think on the motion for committal Mr. Roy has been guilty of a breach of the undertaking, not from any wilful motive, but from a false view of the case, I think he must pay the costs of that motion.

Bacon.—Then as to the terms of the injunction, let us have no undertaking.

The VICE-CHANCELLOR.—What are the terms of the notice of motion?

Anderson.—The terms of the notice of motion are in the terms of the prayer of the bill, that the defendant may be restrained by the order and injunction of this honourable court from prosecuting or proceeding with the said action so as aforesaid commenced by him against the plaintiffs as such assignees as aforesaid and from taking any other proceedings in the said Court of Session in Scotland against the plaintiffs, as such assignees as aforesaid, against the real estate of the said Archibald Campbell, or the rents thereof, and from continuing or allowing to continue or remain in force the arrestments so laid on as aforesaid, and from laying any further or other arrestments upon the rents hereinafter to become due from the tenants of the estate of Lochnell, or suing out execution or any other diligence or process against the real or personal estate of the said Archibald Campbell in Scotland.

Order in the terms of the notice of motion.

Wednesday, Feb. 23.

SIMMONS *v.* BATES.

Practice—Order 32 of 1845—Guardian ad litem.

Daniel applied to the court for an order to appoint a guardian *ad litem* under the 32nd Order of 1845 to appear and answer the plaintiff's bill. The defendant was of unsound mind, but had not been found so by inquisition, but he had been some time in a lunatic asylum. He produced the affidavit of a gentleman who had known the defendant many years, and who swore to the state of his health, &c.

The VICE-CHANCELLOR said he had made it a rule not to grant an application of this kind without having also the affidavit of a medical man—in addition to one made by a member of the family of the defendant, or some other person who had known the party for some time. So also the affidavit of a medical man alone was not sufficient.

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Reported by J. HENRY COOKE, Esq., Barrister-at-Law.

Saturday, Nov. 6.

CHADWICK *v.* CHADWICK.

Discovery—Answer exposing a defendant to criminal proceedings—Exceptions—Protection in answering.

Where a bill made allegations of fraud in the defendant in obtaining the legal estate of certain estates, and the procurement of a Master's report by false evidence, and then interrogated on these matters, the defendant refused to discover the particulars, but admitted that the legal estate had been vested in him under an order of the Court of Chancery, but denied all fraud, and that the plaintiff had any beneficial title, and asserted his own. At the bar he insisted that the discovery of documents would, even upon the showing of the plaintiff himself, expose him to a prosecution for perjury; but the Court held the answer on both points to be insufficient.

This suit was instituted for the purpose of setting aside certain proceedings taken in the court. The facts were, that in 1714 a lease of property in Golden-square was made (subject to an existing term) by the owner of the fee simple to two persons, named Allington and Maddox, for the term of forty-nine years from Christmas 1798, at which time the existing term would expire. One of the lessees died, and then the survivor died, leaving executors, who, in 1791, demised the property to Sir Andrew Chadwick for forty-nine years less ten days from Christmas 1798, and at the same time the then owner of the fee simple conveyed the inheritance, subject to the term, to Mr. Horsey as a trustee for Sir Andrew Chadwick. Sir Andrew Chadwick died intestate as to his real estate, never having had issue or brother or sister. His nearest relations were on the maternal side, also named Chadwick, four of whom were uncles, the eldest of whom was James Chadwick, and the second Robert Chadwick. In Christmas, 1847, the forty-nine years' term expired, and claimants came forward for the beneficial interest in the reversion in fee, which was outstanding in Mr. Horsey or his heir-at-law. The plaintiff in the present suit claimed as heir-at-law of Robert Chadwick, and the defendant claimed as heir-at-law of James Chadwick, and the proceedings in this suit arose out of these circumstances. The defendant in 1840 presented a petition under Sir Edward Sugden's Acts, alleging that he was heir-at-law of James Chadwick, and that Horsey was then dead and his heir-at-law was unknown, and praying that a conveyance might be made to him vesting the fee simple in reversion in him, his heirs, and assigns. On this petition a reference was made to the Master, and evidence was adduced in the Master's office, on which a report was made in favour of the defendants, and, the report being confirmed, conveyance of the reversion was ordered and made accordingly.

The plaintiff filed his bill seeking to set aside the proceedings under this petition; and it alleged that the plaintiff was the heir-at-law of Robert Chadwick the second uncle, who (by reason of the death of James his elder brother, who was of unsound mind, and who died intestate and without issue,) was the heir-at-law of Sir Andrew Chadwick; that the report and order were obtained by fraud and misrepresentation; and it prayed that the defendant might be declared to be a trustee of the property of the plaintiff, and that he might be decreed to execute a conveyance of the legal fee to him. The charges in the bill were "that the defendant knew that the statements in the petition of 1840 were false; that the whole of the evidence adduced before the Master on behalf of the defendant in support of his alleged pedigree was untrue and fraudulently concocted, and not strictly and legally admissible, that the evidence adduced by the defendant (then the petitioner) of the death and marriage of James Chadwick related, as the defendant well knew, to some other person of the same name; and that so it would appear if the defendant would set forth the evidence adduced by him on these points before the Master." To the answer two exceptions were taken. The first was to the answer to part of the fourth interrogatory in the bill; "whether the said six messuages are not now in the occupation of various persons, and whom by name, and whether or not as tenants to the said defendant John Chadwick, and at what rents, and under what tenancies, and by what leases or agreements in writing or by parol, and made between what parties." To this the defendant by his answer had submitted that he was not bound and refused to set forth, these particulars, but admitted that the same messuages were in the occupation of various persons as tenants to himself.

The second exception was as to the answer to the 16th and 17th interrogatories, inquiring as to whether the defendant had not presented a petition and evidence as charged in the bill. The defendant refused to answer, and submitted that he was not

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bound to answer, save that he admitted that under an order of this court the interrogatories in Horsey had been conveyed to him and he might to protect himself by the statements in his answer, "that he claims to be, and is, heir-at-law of Sir Andrew Chadwick; that all the documents and evidence required about were prepared with a view to litigation that after adverse claims had been put forward" (but he did not say that the plaintiff had then put forward any claim); "that the documents &c. did not support or tend to support the plaintiff's pedigree or title, but that they did support the defendant's title;" and then denied the allegations of fraud.

Batten, for the exceptions, opened and supported the first.

Elmsley and *Bird*, for the defendants.—As the interrogatory points to relief to which the plaintiff can only be entitled after he has made out his own title, and is consequential on his succeeding in doing so, the defendant is not bound to answer. (*Stainton* v. *Chadwick*, 3 Mac. & Gor. 562.) The discovery moreover is immaterial, for the facts inquired after relate solely to the plaintiff's own title, and do not and cannot support him; but, on the contrary, it protects the defendant's own title, and he is not bound to make it: (*Donegal* v. *Stewart*, 3 Ves. 468; *Phillips* v. *Carey*, 4 Ves. 107; *Jacobs* v. *Goodhues*, 2 Cox, 272; *Bolton* v. *The Corporation of Liverpool*, 1 Myl. & K. 88.) The defendant has lawfully obtained possession, and did so under the former lease.

The VICE-CHANCELLOR.—It is not merely consequential relief which is sought. Here the defendant is receiving the rents. Supposing you die, how is the plaintiff to know to whom you have let the land, or for what rents, or whether they have been paid or not? There would in case of your death be no one who could give the information. Take the case of a suit against an administrator by one of the next of kin for an account. If the administrator denies the title of the next of kin, can he thereby excuse himself from giving an account? There is no doubt that the earlier cases, such as those which have been quoted, may be so quoted in favour of your view; but a vast number of decisions since have fully established this, that if the defendant answers at all he must answer fully, or avail himself of his being protected from answering (if he have a protection) in whole or in part, by plea. As to the case of *Stainton* v. *Chadwick*, I do not think it applies to the present case. The effect of the doctrine contended for by the defendant, if allowed, would be that in many instances the plaintiff, though he succeeded in establishing his right, might find himself without a remedy; as in the case which I put before of a bill against an administrator by one of the next of kin for an account and discovery and administration, the administrator puts in an answer denying the title, and declining to give an account. If that is to be sufficient, in the event of the administrator dying, though the next of kin ultimately makes out his pedigree, he is for ever unable to find out what the estate consists of to which he has established his claim. I do not think that Lord Truro intended some of the expressions in the report to be taken at their fullest extent; because he modifies them by the passages which he quotes from Lord Redesdale's treatise. The exception must be allowed.

Batten, for the second exception.—The object of the plaintiff is to have the fraud he says the defendant has committed made manifest, and he has a right to a discovery of all documents which will show the existence of the fraud: (*Smith* v. *The Duke of Beaufort*, 1 Phil. 209; *The Attorney-General* v. *Thompson*, 8 Hare, 110.)

Elmsley.—All this discovery is quite immaterial; and the end of the discovery, assuming the statements in the bill to be true, would be to expose the defendant to a prosecution for perjury or subornation of perjury. [The VICE-CHANCELLOR.—If the answer were in the affirmative, would it be immaterial to the plaintiff? His case is, that you presented a petition in 1847 which was fraudulent, and then he asks you the question, did you not present a petition? Suppose you answer in the affirmative, is not this one step towards establishing the fraud?] The only equitable relief suitors can obtain here in cases like this concerning land is, to put aside all legal estates which would prevent the real merits from being tried. As to the exemption on the score of exposing the defendant to criminal prosecution, he is entitled to resist every discovery which can furnish a link in a chain leading to that point. A prominent part of the case made by the bill is, that the defendant knew that the state of facts taken before the Master was false; the plaintiff charges that the whole of the evidence, the certificates of burial, &c. were untrue and fraudulently concocted. We are exempted from answering these interrogatories: (*Paxton* v. *Douglas*, 19 Ves. 225; *Thorpe* v. *Macauley*, 6 Madd. 226.)

Bird followed on the same side, insisting that the discovery would be immaterial to the plaintiff's case.

The VICE-CHANCELLOR.—In *Gresley* v. *Mousley*, 1 Sim. 404, Sir Anthony Hart, at p. 410, thus explains what is said in *Paxton* v. *Douglas*:—"Some of the dicta in that case perplexed me extremely, for Lord Eldon goes the length of saying not only that a man should not make a discovery that would subject himself di-

rectly to a penalty or criminal prosecution, but that every question leading immediately to that conclusion would be equally objectionable. But every statement in the bill ought to be incidentally leading to the same conclusion ultimately as the prayer of the bill; it is either conclusive to the general result, or unimportant and irrelevant. But I take Lord Eldon to have meant, not that every fact which may lead to the effect of subjecting a defendant to a penalty is objectionable, but that, where the sole gist and object of a suit are to convict a man in a penalty, where there could be no other purpose than to have relief in a court of equity on the footing of a penalty, as a court of equity does not relieve on a penalty, it will not give any such incidental discovery." In the case now before the court it is argued for the defendant that a full answer to the interrogatory would be immaterial to the plaintiff's case. The test as to immateriality is this: suppose the answer to be in the dry affirmative; would that answer be of no service to the plaintiff? The first step of the plaintiff, in support of the allegations in his bill, is to prove that these proceedings took place: he cannot move a step without that. An admission that they did take place would be material, and save him expense and trouble. Then it is said that, if the facts were proved, all the plaintiff would do would be to remove the legal estate out of the way of a fair trial of the real right. But I do not agree that this is the only decree which the court will make. He rests his argument on this, that he is charged with fraud. I am by no means sure that if the case were made clear, the court would think it necessary to send an issue to be tried by a jury; and that all the court would think it necessary to do would be to restrain the defendant from availing himself of his legal estate in a trial at law. But if this were so—if the parties were sent to law,—after having established their rights one way or the other they would come back here for further relief; and then would it not be a material circumstance, in dealing with the facts of all the proceedings, to consider how the parties had conducted themselves with regard to the production of evidence, &c.? But then, it is said, the bill charges acts and dealings which amount to perjury or subornation of perjury on the part of the defendant, and the plaintiff is entitled to no discovery which will form a link in the chain attaching to the defendant the weight of a criminal prosecution. But on looking at the allegations of the bill I see nothing in them entitling the defendant to claim exemption from the discovery now sought, which would not equally entitle every defendant charged with fraud to say, "I am charged with fraud, and the discovery now asked would expose me to be indicted for fraud." I must therefore make the usual order, allowing the exception, with costs.

V. C. STUART'S COURT.

Reported by Geo. S. Allbutt, Esq., of the Middle Temple, Barrister-at-Law.

Nov. 17, 19, 22, 23, 24, *and Dec.* 1.

James *v.* Lord Wynford.

Will—Construction—Period of vesting—Remoteness.

A testator devised certain freehold and leasehold property to trustees, upon trust for his daughter B. for life, and after her decease to apply the rents to and for the use and benefit of B.'s son, R., and all and every other son and sons she might happen to leave, until he and they should attain the age of twenty-five years, and on his and their attaining that age, in trust for the heirs, executors, administrators, and assigns of the said R., and all and every other son and sons as B. should happen to leave and to attain the age of twenty-five: but in case B. should leave no son or sons, and they should all happen to die without attaining twenty-five, then over:

Held, that the devise to R. and the other sons was well vested in them, although liable to be divested and go over in case of death under twenty-five.

A testator devised freehold and leasehold property to trustees, in trust for his daughter B. for life, and after her decease to apply the rents, or so much as necessary for the maintenance of B.'s son, R., and all and every other son and sons as she might happen to leave, until he or they attained twenty-five, and on his and their attaining that age, in trust for R. and such other son and sons, for life, as tenants in common, and after their decease, then in trust for the eldest son of R., and the eldest of all and every of the sons of R., and the heirs male of his and their body and bodies as should survive B.:

Held, that the effect of these words was to give an estate in tail male in remainder to the eldest son of R., and other estates in tail male in remainder to the eldest brother of R.

Robert Taylor, the testator in this cause, by his will dated April 6, 1796, after reciting that by his marriage settlement he had a power to dispose of lands in Crewkerne, appointed the same unto his daughter Mary Ann Taylor, her executors, administrators, and assigns, for all the residue of such term, estate and interest as he could give or dispose of thereby by virtue of the said settlement or otherwise. The testator then proceeded as follows:—"I give and devise unto William Draper Best, Esq., and Mr. Thomas Best, his brother, their heirs, executors, and administrators, all those my freehold and leasehold estates not hereinbefore mentioned, lying within the parish of Crewkerne, my dwelling-house included, upon this special trust, that they my said trustees, and the survivor of them, and the executors and administrators of such survivor, do and shall from time to time set and let my said estates for any term of years, not exceeding seven years, and receive and take the clear yearly rents and profits thereof, and pay the same into the hands of my said daughter, Mary Ann Taylor, and to no other, whether she may be married or sole, and whose receipt shall be a discharge for and during the term of their natural life, or permit my said daughter to receive the rents and profits thereof for and during the term of her natural life; and from and after the decease of my said daughter" [upon trusts for Mary Ann Taylor's children as therein mentioned.] "But in case my said daughter Mary Ann shall happen to die leaving no child or children, then I will that the said William Draper Best and Thomas Best, and the survivor of them, and the executors and administrators of such survivor, do and shall receive the rents and profits of my said estate, and pay or apply the same to and for the sole and only use of my said daughter Bridget, whose receipts alone shall be discharges for and during the term of her natural life; and from and after her decease, then in trust to receive the clear yearly rents and profits and pay and apply the same to and for the use and benefit of my daughter Bridget's son Robert, and all and every other son and sons as she shall happen to leave, until he and they shall attain his and their age and ages of twenty-five years; and, on his and their attaining that age, in trust for the heirs, executors, administrators, and assigns of the said Robert and all and every other son and sons as my said daughter Bridget shall happen to leave and to attain the age of twenty-five years, for all such terms, estate, and interest, both freehold and leasehold, as I can give therein. But in case my said daughter Bridget shall leave no son or sons, and they shall all happen to die without attaining the age of twenty-five years, then in trust for all and every the daughter and daughters of my said daughter Bridget that shall attain the age of twenty-five years, her and their heirs, executors, administrators, and assigns. But in case my said daughter Bridget shall leave no son or daughter at her decease living that shall attain the age of twenty-five years, then and in such case I give and devise my said freehold and leasehold estates lying in Crewkerne aforesaid unto my three nephews, Henry, William, and John Higgins, and to the survivor of them, his and their heirs, executors, administrators, and assigns, equally between them, as tenants in common, and to the heirs, executors, and administrators of such survivor, and to, for, and upon no other trust whatsoever. Also I give, devise, and bequeath all that my freehold estate lying within the parish of North Perrott, in the county of Somerset, with the several closes of land thereto belonging, and my leasehold estate in the parish of Misterton, unto the said William Draper Best and Thomas Best, their heirs, executors, and administrators, in trust that they, my said trustees, and the survivor of them, and the heirs, executors, and administrators of such survivor, do and shall from time to time set and let my said estates for any term not exceeding seven years, and receive the clear yearly rents and profits thereof, and pay the same into the hands of my said daughter Bridget, and to no other, whose receipts (notwithstanding her coverture) shall be discharges for and during the term of her natural life; and from and after her decease I will that my said trustees, and the survivor of them, and the heirs, executors, and administrators of such survivor, do and shall receive and pay and apply the rents and profits of my said estates, or so much thereof as shall be necessary to and for the support, education, and maintenance of my said daughter's son Robert, and all and every other son and sons as she may happen to leave, until he or they shall attain the age or ages of twenty-five years; and on his and their attaining that age, then in trust for the said Robert and such other son and sons, and their assigns, for and during the term of his and their natural lives, as tenants in common; and from and after their decease, then in trust for the oldest son of the said Robert, and the eldest of all and every of the sons of my said daughter Bridget, and the heirs male of his and their body and bodies lawfully to be begotten as shall survive her; and for want and in default of such issue, then in trust for all and every the daughter and daughters, and the heirs male of the body and bodies of such daughter and daughters, as my said daughter Bridget shall leave behind her at her decease; and for want and in default of such issue male or female, then in trust for my said daughter Mary Ann Taylor and her assigns for life, and after her decease to and for the issue male and female, and the heirs of the body and bodies of such male and female issue, of my said daughter Mary Ann, his, her, and their heirs and assigns for ever; and for want of such issue, then in trust for my said three nephews, Henry, William, and John Higgins, and the survivor of them, his and their heirs and assigns for ever, as tenants in common, and to and for no other trust whatsoever." . . . . The testator afterwards gave all the residue of his personal estate and effects, and all his messuages, lands, and tenements of which he was any ways possessed or entitled, in possession or reversion, terms of years or otherwise not hereinbefore disposed of, subject unto and chargeable with the payment of his debts, legacies, and funeral expenses unto his said daughter Mary Ann Taylor, her heirs, executors, administrators, and assigns absolutely for ever; and he appointed his said daughter Mary Ann Taylor sole executrix of his will. The testator died in Dec. 1801, leaving his daughters Mary Ann Taylor and Bridget, the wife of the Rev. Richard Abraham, his only children. Bridget Abraham survived her husband, and died intestate in March 1840, having had three children—Richard, Bridget, and Robert. Of these three children Richard and Bridget died in their mother's lifetime, the former an infant, the latter aged 28, unmarried and intestate. In Aug. 1843, Mary Ann Taylor died unmarried. Robert Abraham attained twenty-five in the lifetime of his mother, and died on the 28th Nov. 1843, leaving two daughters his only children.

The present suit was instituted by the persons interested under the will of Mary Ann Taylor, the residuary devisee and legatee of the testator; and the question raised was, whether the limitations subsequent to the life estates in the Crewkerne property, and also in the North Perrott and Misterton property, were not void for remoteness.

Malins and *Sandys* appeared for the plaintiffs.

Walker and *Bates* for one of the daughters of Robert Abraham.

J. Baily for the other daughter of Robert Abraham.

Campbell and *Karslake*, *Giffard*, *Follett*, *Kenyon*, *Parker*, *Lean*, and *C. M. Roupell*, for other parties.

Malins, in reply.

The following authorities were cited:—*Porter* v. *Fox*, 6 Sim. 485; *Leake* v. *Robinson*, 2 Mer. 363; *Venebry* v. *Geddes*, 1 Russ. & Myl. 203; *Watson* v *Hayes*, 5 Myl. & Cr. 125; *Batsford* v. *Kebbell*, 3 Ves. 363; *Horseman* v. *Abbey*, 1 J. & W. 381; *Dodd* v. *Wake*, 8 Sim. 615; *Newman* v. *Newman*, 10 Sim. 51; *Festing* v. *Allen*, 12 Mees. & Wels. 279; 5 Hare, 573; *Bull* v. *Pritchard*, 1 Russ. 213; 5 Hare, 567; *Cambridge* v. *Rous*, 8 Ves. 24; *Morris* v. *Howes*, 4 Hare, 599; *Marquis of Bute* v. *Harman*, 9 Bea. 320; *Boreham* v. *Bignall*, 8 Hare, 131; *Vanderplank* v. *King*, 3 Hare, 1; *Monypenny* v. *Deering*, 16 Mees. & Wels. 418; 7 Hare, 568; *Doe* v. *Scott*, 3 Man. & Sel. 300; *Doe* v. *Weatherley*, 11 East, 322; *Church* v. *Mundy*, 15 Ves. 403; *Glover* v. *Spendlove*, 4 Bro. Ch. C. 337; *Attorney-General* v. *Vigor*, 8 Ves. 256; *Morgan* v. *Surman*, 1 Taunt. 291; *Williams* v. *Goodtitle*, 10 B. & C. 895; *Doe* v. *Sheffield*, 13 East, 526; *Burston's case*, 3 Rep. 19; *Doe* v. *Lea*, 3 T. R. 41; *Edwards* v. *Hammond*, 3 Lev. 132; *Phipps* v. *Ackers*, 9 Cl. & Fin. 589; *Doe* v. *Ward*, 9 Ad. & Ell. 582; *Jones* v. *Mackilwain*, 1 Russ. 221; *Bland* v. *Williams*, 3 Myl. & K. 141; *Farmer* v. *Francis*, 2 S. & S. 505; 2 Bing. 151; *Murray* v. *Addenbrooke*, 4 Russ. 407; *Riley* v. *Garnett*, 14 Jur. 236; *Doe* v. *Hopkins*, 5 Q. B. 223; *Torres* v. *Franco*, 1 R. & M. 649; *Halifax* v. *Wilson*, 16 Ves. 168; *Fry* v. *Sherborne*, 3 Sim. 243; *Sparke* v. *Sparke*, Cro. Eliz. 666; *Griffiley* v. *Rumpage*, 1 Bea. 46; *Cole* v. *Sewell*, 4 Dru. & War. 1; *Wright* v. *Atkyns*, 19 Ves. 299; *Doe* v. *Underdown*, Willes, 293; *Turner* v. *Ogden*, cited by Sir W. Grant in *Pickering* v. *Lord Stamford*, 3 Ves. 333 (see 15 Ves. 417); *Watson* v. *Lord Lincoln*, Amb. 325; *Upjohn* v. *Upjohn*, 7 Bea. 59, 152; *Amesbury* v. *Brown*, 2 H. Bl. 299; *Genery* v. *Fitzgerald*, Jac. 468; *Davis* v. *Fisher*, 5 Bea. 201; *Saunders* v. *Vautier*, Cr. & Ph. 240; *Mogg* v. *Mogg*, 1 Mer. 654; *Jackson* v. *Merrymbanks*, 12 Sim. 93; and other cases.

Wednesday, Dec. 1.—The Vice-Chancellor said that the argument in support of the proposition that all the limitations of the Crewkerne estate freehold and leasehold under the will of Robert Taylor, after the life estate to the testator's daughter Bridget, were void for remoteness, was supported by an appeal to various authorities. But notwithstanding the difficulty of reconciling some of the decisions, it must be considered as well established that an immediate gift of the whole rents and profits or enjoyment of the estate real or personal to one until he attained the age of twenty-five, and on his attaining that age, to him absolutely, conferred an immediate vested interest, and did not postpone the vesting until the age of twenty-five was attained. Even in the case of a mere legacy, which would upon the terms of the gift be contingent upon the legatee's attaining a certain age, it might become vested by the gift of the income or interest in the meantime; and this, to use the language of Lord Cottenham in *Watson* v. *Hayes*, "whether the gift of the income in the meantime be direct or in the form of maintenance, provided it be for the whole interest." No doubt there was difficulty in reconciling the decision in *Batsford* v. *Kebbel*, with this now well-established principle; but the doctrine in *Bergeon's* case, followed in many others, and acted upon in the House of Lords in *Broomfield* v. *Crowder*, carried the principle still further as to devises of real estate, where words clearly importing a contingency, and which, taken by themselves, would make the grant of the devisee attaining a particular age clearly a condition

precedent, did not prevent the vesting, even where there was an intermediate gift of the rents for other purposes. In all these cases the court had struggled with the words to effect the intention. In the present case the intention of the testator, that Robert and all the other sons of his daughter should on her death take immediate beneficial interests in the whole rents and income, which on attaining the age of twenty-five were to become absolute and indefeasible, but which were defeasible in the case of death under twenty-five, appeared clear and beyond all doubt. If this were so, the suggestion made at the bar that the gift of the income until twenty-five must be considered void, as part of a general scheme to postpone the vesting till twenty-five, was merely fanciful and a contradiction to the words of the will, which, however inaccurate in many respects, left no doubt of an intention the very reverse of this suggestion. It had, however, been urged that the words which referred to the event of Robert and the other sons attaining twenty-five did not give the estate as an absolute estate to Robert or the other sons at all, but created a trust for the heirs, executors, administrators, and assigns of Robert and the other sons who might happen to attain that age. This view of the case treated the words "heirs, executors, administrators, and assigns," not as words of limitation or as enlarging the estate of Robert and the sons, but the gift to the heirs of a living person, and therefore wholly void. It was said that the previous gift of the rents and income till twenty-five was a mere chattel interest, and that therefore the rule in *Shelley's* case did not apply. If it were reasonably clear on the construction of the words of the will that the testator intended the devisees to take an absolute interest on attaining twenty-five, there needed no resort to the rule in *Shelley's case*, which was framed in order to effectuate, and not to defeat, an intention clearly expressed. Upon the language of this will, inaccurate as it was, as to the disposal of the estate on the sons attaining twenty-five, there appeared no reasonable doubt. To impute to this testator an intention that on attaining twenty-five the estate and interest of each of the sons, instead of being enlarged to an absolute interest, should entirely cease, was to impute an intention contrary to the whole scheme of the will, and to the obvious meaning of the testator in using the words, "heirs, executors, administrators, and assigns," of his sons. There appeared no other rational construction of these words than that which treated them as enlarging, and not destroying, the estate and interest of those sons who should live to attain the age of twenty-five. Upon the whole, therefore, his Honour was of opinion, as to the Crewkerne estate, that upon the true construction of this will, the gift in remainder to Robert and the other sons of the testator's daughter Bridget was well vested in them, although liable to be divested and go over in case of death under twenty-five; and as Robert was the only son, and lived to attain twenty-five, his estate and interest previously vested became then absolute and indefeasible, and the Crewkerne estate, both freehold and leasehold, passed by his will. This view of the case rendered it unnecessary to consider the argument urged on the authority of *Leake* v. *Robinson* and *Porter* v. *Fox*, to show that if the gift to the other sons were too remote, as not giving any vested interest till twenty-five, it must also fail as to Robert, who was associated with a class as to which the devise failed, because it might include some of the class as to whom it would be too remote. If it had been necessary to deal with that argument, his Honour felt that he should have some difficulty in following the decision in *Porter* v. *Fox*, which appeared to him not sustainable, on an accurate view of what was said by Sir William Grant, in *Leake* v. *Robinson*. That great judge carefully drew the distinction between a gift to an individual and a gift to a class; and in his observations which preceded his notice of the case of *Gee* v. *Audley*, as well as in the remarks in *Routledge* v. *Dorrell*, his Honour could not see enough to convince him that he would have held that a gift to an individual named and known to the testatrix should wholly fail, because there were words superadded by the testator including a class to take with him, as to which class the gift must wholly fail, because as to some it might be too remote. He did not wish to be understood as doing more than suggesting that, if the question should occur for decision, it should not be considered as concluded by authority. It was to be regretted that the appeal against the decision in *Porter* v. *Fox* was not prosecuted, so that the question might have been more satisfactorily settled. The Vice-Chancellor of England supported his judgment in that case, by referring to the peculiar expressions which he considered as showing that the gift to the individual was so mixed up with the gift to the class, that if separated from a member of the class, there was no gift to him as an individual at all. But here there was a clear gift to an individual, and a gift to a class of persons who were to take along with him, the individual and each member of the class to take as tenants in common, what remained to be known was, how, if the class were so described as that the gift to them could not take effect, the gift to the individual should therefore also fail; any more than if, instead of the gift being to an individual and to a class of persons to take along with him, the gift were to the individual and any other number of individuals to take with him as tenants in tail, as to which other individuals the gift might happen to fail, or be given in an ineffectual manner. If his Honour were right in holding that Robert took an immediate vested interest, and that the other sons of Bridget, if any, would have taken an immediate vested interest in the Crewkerne estate, the application of the same principle would guide the construction of the will as to the estates in North Perrott and Misterton. As to these the peculiarity was that the gift to Robert, on attaining twenty-five, was only of a life estate, and that the intermediate trust of the rents and profits until twenty-five was for support, maintenance, and education, and was not an absolute gift of the whole rents and profits, but of the whole or so much as should be necessary. But the principle of *Hornston's* case was that an intermediate interest carved out did not prevent the vesting, whether it were so carved out for the benefit of the devisee or any other purpose, and whether it exhausted the whole rents and profits or only a part. No doubt if it were a gift of personal estate merely, and the intermediate income were not given to the legatee, the words importing a condition precedent would prevent the vesting. But it was well settled that, as to the real estate, the purpose for which the intermediate rents and profits were given or carved out did not prevent the vesting; and it had been well decided by the authorities cited at the bar, ending with *Tapscott* v. *Newcombe*, that where there was a freehold and leasehold estate, and there was a vested estate in the freehold, the leasehold must be considered as vested also. It had, however, been argued that upon the construction of the words the estates given to the other unborn sons of Bridget, as well as Robert, were life estates only, with remainder to the sons of unborn sons in tail, and, therefore, too remote. There was considerable inaccuracy and obscurity in the language, but the more natural and obvious construction of the words seemed to his Honour to be that which gave an estate in tail male in remainder to the eldest son of Robert, and also an estate in tail male in remainder to the eldest brother of Robert, and not to the son of any brother of Robert. If so, the remainder over in fee to the testator's three nephews, Henry, William, and John Higgins, was a good remainder; and in the events which happened, of the failure of all the antecedent estates to it after the life estate of Robert, took effect.

Tuesday, Feb. 22.

LODGE v. PRICHARD.

Practice—15 & 16 *Vict. c.* 86, *s.* 54.

Semble, that where, before the passing of the above Act, a reference had been made to the Master to take accounts, the Court will not direct that certain books of account shall be taken as primâ facie evidence of the truth of the matters therein contained.

W. M. James, on behalf of two of the defendants, moved that in taking the account of the dealings and transactions between Adam Lodge, the testator in the pleadings named, and the defendants, R. W. Prichard and W. R. Coulbourn, and in making the inquiries as to what the partnership property consisted of at the time of the death of the said testator, and what was the share and interest of the testator therein (which account and inquiries were directed by the decree made in this cause on 23rd July 1851), the several partnership books of account, in which the accounts of the said dealings and transactions had been kept (viz., the cash-book, waste-book, and ledger, used in keeping the partnership accounts between the said testator, A. Lodge, and the said defendants, R. W. Prichard and W. R. Coulbourn) might be taken as *primâ facie* evidence of the truth of the matters therein contained. He referred to the 15 & 16 Vict. c. 86, s. 54.

Mr. Lodge, the plaintiff in person, opposed the motion, and contended that as the reference had been made before the 15 & 16 Vict. c. 86, came into operation, the court could not interfere. He cited *Booth* v. *Tomlinson*, 17 Jur. 29; and *Morrell* v. *Tinkler*, 9 Hare App. 50.

The VICE-CHANCELLOR said that he did not think he ought to make the order which was asked. He understood that the plaintiff was willing to have the whole matter transferred from the Master's office to his Honour at chambers; and if that were done, it might be disposed of.

W. M. James said that, if that transfer were made, all that had been done in the Master's office hitherto would be lost.

The VICE-CHANCELLOR.—Then this might come before him on further directions, and he might then consider it necessary to be taken at chambers, where he would have the power of dealing with it under the new practice. If the result of transferring the matter now was to be the loss of what had already been done, the question was whether that loss might not be increased before the cause came on upon further directions.

An order was afterwards made, with the consent of both parties, for transferring the matter to the V. C. at chambers.

WISE v. HAWKINS.

Practice—Production of documents.

Summons by plaintiff in a claim for production by defendants of documents, which, in an affidavit, the plaintiff's solicitor stated he believed to be in their possession. An affidavit by the defendants' solicitor shewed that they had some of the documents in their possession. The application was refused.

The plaintiff in this claim obtained a summons at chambers for the production by the defendants upon oath of certain classes of documents therein described. The application was supported by an affidavit of the plaintiff's solicitor that he believed that the society represented by the defendants had in their possession the various documents described. The defendant's solicitor, by an affidavit, admitted the possession of a great quantity of documents relating to the business of the society, but whether any of them related to one of the classes mentioned he could not say; but he stated that, in a letter to the plaintiff, he had expressed his willingness to produce "all reasonable documents." The summons was adjourned by the chief clerk to be heard in court.

Fooks, in support of the motion, cited *The Rochdale Canal Company* v. *King*, 15 Beav. 11.

Rogers, for the defendants.

The VICE-CHANCELLOR considered that the evidence was insufficient for the purpose of this application. The plaintiff should have filed an affidavit with interrogatories, which was a practice now sanctioned; or should have proceeded by bill, and obtained an answer making a case for the production; and ought not to rely only on his own affidavits and letters from the defendants on the subject of the documents, the production of which he sought.

HOWELL v. WILLIAMS.

Practice—15 & 16 *Vict. c.* 86—*Evidence—Answer of defendant used as an affidavit.*

Hare, on behalf of all the defendants excepting one, moved that the evidence in this cause might be taken pursuant to the 15 & 16 Vict. c. 86, and that the answers of the defendants on whose behalf the motion was made might be read as affidavits, they submitting that the plaintiff should be at liberty to cross-examine them in the same manner as if they had made affidavits. It was also asked that publication might stand enlarged until the first day of Trinity Term. The application was made with the view of saving expense. Replication had been filed on the 3rd July last.

Tripp contended that the court had no jurisdiction to make the order, and referred to the 15th section of the Act.

The VICE-CHANCELLOR said that, although there was nothing in the Act in express terms enabling him to receive these answers as affidavits, yet the application was reasonable, and one which he considered that he had authority to grant, as it was within the power of the defendant to reswear his answer as an affidavit. He should therefore make the order as asked, the defendants submitting to any order the court might make as to their examination or otherwise previous to it at the hearing of the cause.

V. C. WOOD'S COURT.

Reported by J. HENRY COOKE, Esq., Barrister-at-Law.

Jan. 29 *and* 31.

WOLLASTON v. OSBORN.

Joint contract—Specific performance—Evidence of witnesses at the hearing—Chancery Practice Amendment Act.

A bill was filed by a purchaser for the specific performance of a contract, he alleged to have been jointly entered into by the owners and mortgagees of a house, but at the hearing a contract by the owners only was proved:

Held, that a joint contract being alleged, must be proved, or the claim be dismissed. The 39th section of the 15 & 16 Vict. c. 86 permits the examination at the hearing of a cause "of any witness or party to the cause," wherefore in the above case the plaintiff could not examine any other witnesses but those already examined, and having declined the offer of examining the witnesses orally who had been already examined, the claim was dismissed without costs, without prejudice to the filing another claim.

This was a claim filed by a purchaser for the specific performance of a contract. From the claim and affidavits, it appeared that the property in question, a house, belonged to three ladies, the Misses Broughton, and that they had mortgaged it to Mr. Osborn, Mr. Edward Duke, and another gentleman. The house was put up to sale by auction, and in the printed particulars the intended sale was stated to be "by order of the proprietress," and the particulars were signed with the name "Edward Duke, solicitor," who was in fact the solicitor for the owners. The plaintiff bid for the house and was declared the purchaser, and conformed to the conditions of sale. At the time also, according to the conditions, Mr. Edward Duke delivered to Mr. Wollaston, the plaintiff, the abstract of title; and on the title having been approved, and the draft conveyance prepared, Mr. Duke also ap-

proved of it on behalf of the vendors. A correspondence passed between Mr. Williston and Mr. Duke respecting the amount of interest due to the mortgagees, and a communication also had with Mr. Otway, the solicitor for those ladies, from which it appeared they disputed the amounts alleged to be owing by them for interest on the mortgage. This point remaining unsettled, the mortgagees, Mr. Osborn, Mr. Duke, and the other, refused to execute the conveyance, whereupon Mr. Williston filed his claim for specific performance against both the owners and the mortgagees. The claim alleged a joint contract by the six for the sale of the property; and in his affidavit he stated his belief that the sale was ordered as well by the owners as the mortgagees, and that Mr. Duke had so offered the property for sale, and that the whole of them concurred. The auctioneer had not been made a witness. Mr. Duke made an affidavit in opposition to the claim, in which he admitted his concurrence in the sale, but denied that (although he was in fact a mortgagee) his name appeared in the particulars of sale in that character.

Bolt and *Shebbeare*, for the plaintiff.—The contract is alleged and sufficiently proved to have been made by the whole of the six defendants. The evidence is reasonably and properly so to be understood. It was only when the question of the amount of interest due from the owners was disputed that the mortgagees showed unwillingness to be bound by the contract; but even if the evidence were not strictly plain against them, still the court would hold them to have concurred, they having stood by and permitted the sale to go on, and with the name of one of them stated in the particulars of sale. And it is to be remarked, that all the defendants but Mr. Duke abstain from any denial of concurrence in the sale.

Boyle, for the mortgagees.—It is plain that there is no evidence against Mr. Osborn and his co-mortgagees; and from the case of *Lindsay* v. *Lynch*, 2 Sch. & Lef. 1; and *Denton* v. *Little*, Id. ib. 11, note, it is incumbent on a plaintiff alleging a joint contract to prove it. Independently of this, the Statute of Frauds would be a bar to relief in this case.

The VICE-CHANCELLOR.—The case of *Maclean* v. *Dunn*, 4 Bing. 722, shows that an agent may be appointed to sell without writing; and here the auctioneer might have been the agent, so that the statute would not apply. The other question is the important one.

Stevens, for the Messrs. Broughton, relied upon *Hale* v. *Noyes*, 3 B. C. C. 483; and *The Mayor of London* v. *Levy*, 8 Ves. 398; and submitted that the claim should be dismissed.

Bolt, in reply.—The Court will permit the plaintiff to examine witnesses *viva voce* under the Chancery Procedure Amendment Act, 15 & 16 Vict. c. 86, on the disputed point, under the 37th section, which permits this to be done at the hearing. In the case of *Wilkinson* v. *Stringer*, 22 L. J. 107, Ch., V. C. Turner laid it down that such a course would be permitted where, under the old practice, the court would have directed an issue. In the case now before the court such would have been the case under the old system, and therefore proper to be adopted under the amended course of proceedings. That a contract which is found not to be exactly that which the bill or claim alleges, does not induce the court to refuse all relief, is shown from the case of *Chadwick* v. *Maden*, 9 Hare, 188, before the same learned judge, who decreed specific performance against one where the prayer was against two. There the plaintiffs alleged that Maden and Lees were the purchasers; but it turned out that there was but one purchaser, and Maden and Lees each by his answer sought to throw the burthen on the other, Maden saying he bought as a trustee for Lees, and Lees asserting that he never made Maden his agent in the matter; but ultimately the V. C. made the decree against Maden, dismissing the bill as against Lees.

Jan. 31.—The VICE-CHANCELLOR.—This case comes before the court in a very unsatisfactory manner, and is not creditable to the defendants. I can have no doubt that the sale was originally intended to be *bona fide* by all parties, as well the owners as the mortgagees; but they now refuse to disclose who entered into the contract, and the court must deal with the case on the materials before it, unless further testimony can be had. The plaintiff alleges a joint contract, but upon the evidence no such contract is proved. As to the mortgagees, it rests on the plaintiff's affidavit as to his belief of their concurrence, which does not prove the fact, though it is sufficient to raise an issue, and will entitle him to have the witnesses examined in court. But, owing to the wording of the 39th section of the Act 15 & 16 Vict. c. 86, the court can only examine the witnesses who have been examined before, or who are parties to the claim; because that section says,—"Upon the hearing of any cause depending in the said court, whether commenced by bill or by claim, the court, if it will see fit so to do, may require the production and oral examination before itself of any witness or party in the cause." Such being the words of the section, the plaintiff will therefore be unable to examine the auctioneer, who is not a witness in the cause nor a party in the cause; and it may be that the examination of the witnesses, the plaintiff may still find himself in a difficulty from having alleged a joint contract. I cannot find any case in which a joint contract has been alleged and a separate contract enforced. *Chadwick* v. *Maden*, which has been cited as an authority, was decided on a different ground. There the claim alleged that one party entered into a contract as the agent of the other; and on the other hand the words of Lord Elton, in *Mortlock* v. *Buller*, 10 Ves. 316, are an authority the other way. If the plaintiff thinks he can prove a joint contract, I will give him an opportunity of examining the witnesses in court; or I will dismiss the claim without costs, and without prejudice to the filing another claim or a bill.

The claim was dismissed without costs, without prejudice to the plaintiff's right to file a new claim or to file a bill.

Thursday, Feb. 24.

Re ——

Setting down special case—Feme coverte—Sir George Turner's Act—13 & 14 *Vict. c.* 35, *s.* 13.

It is necessary to ask leave of the court to set down a special case, under 13 & 14 *Vict. c.* 35, *where the defendant is a feme coverte.*

H. Prendergast moved for leave to set down a special case for argument, under Sir George Turner's Act, the defendant being a married woman. He stated that it was, in his opinion, a proper case to be set down for argument, and that the statement of facts was verified by affidavit. It had been doubted whether the motion was to be made in court, or whether it was sufficient to hand the case in to the registrar, with counsel's certificate, and the affidavit.

The VICE-CHANCELLOR.—The statute says, the "Court" shall be satisfied, which rather implies that the case should be mentioned to the court. As you appear in court, Mr. Prendergast, and say that it is a proper case to be set down for argument, and produce an affidavit verifying the statements in it, I think that is sufficient.

Common Law Courts.

COURT OF QUEEN'S BENCH.

Reported by ADAM BITTLESTON and JOHN THOMPSON, Esqrs Barristers-at-Law.

Wednesday, Jan. 26.

REG. *v.* THE GUARDIANS OF THE WORCESTER UNION.

Poor-rate—Workhouse—Local Act—Exemption from liability.

By a local Act for the relief of the poor several parishes were united, and directors of the poor of the said united parishes were to be elected; and power was given to the directors to purchase land and build thereon for the purposes of the Act, and it was provided that in all future rates such land or buildings should not be assessed at a higher value or improved rent than the same were at the time of purchase, nor should the buildings to be purchased or erected in pursuance of the Act ever be assessed to the window-tax, or any other tax that the same premises had not been charged with previous to the Act.

Directors were duly appointed under the Act, and in 1796 *purchased land and built a workhouse thereon, which was used for the purpose of the united parishes until* 1889.

By an order of the Poor Law Commissioners, Nov. 1836, *the above union of parishes was dissolved, and another formed by the name of The Worcester Union, consisting of the several parishes united under the local Act, together with four other parishes; and, by another order, the Commissioners directed the guardians of the Worcester union to purchase the said workhouse and ground from the directors of the said united parishes under the local Act; and, by a third order, empowered the directors to sell the same to the said guardians.*

The purchase was accordingly made in 1839, *and the premises have ever since been used by the Worcester union solely as a workhouse under* 4 & 5 *Will.* 4, *c.* 76, *for the Worcester union.*

Held, that the premises, being no longer used under the local Act, were liable to be rated at their improved rateable value, and that the exemption in the local Act ceased.

Appeal against a rate for the relief of the poor of the parish of St. Martin, which is situate partly within the county of the city of Worcester and partly within the county of Worcester, made July 8, 1852. By this rate the guardians of the Worcester Union are assessed in respect of their "union workhouse and land." The property so described comprised the union workhouse, outbuildings, gardens, yards, drying-ground, land, and other hereditaments, occupied by them for the purposes of such union, and is situate in that part of the said parish of St. Martin which is within the city of Worcester. The said property is assessed at a gross estimated rental of 150*l.* and a rateable value of 127*l.* 10*s.* The grounds of appeal against this assessment stated, in substance, that the appellants were overrated in respect of their said property, inasmuch as they were assessed according to the improved value of their said property instead of the value at which the same was rated at the time of the original purchase thereof in 1796.

In 1792 a local Act of Parliament was passed, intituled "An Act for the better Relief and Employment of the Poor of the several Parishes within the City of Worcester and of the Parishes of St. Martin and St. Clement, which are part within the City of Worcester and part within the County of Worcester, and for providing a Burial-Ground for the use of such Parishes." By this Act the several parishes of St. Nicholas, St. Swithin, St. Helens, All Saints, St. Andrew, and St. Alban (which were wholly within the city of Worcester and the liberties thereof), and the parishes of St. Martin and St. Clement (part of which two last-mentioned parishes respectively were within the said city of Worcester and the liberties thereof, and other parts of which respectively were in the county of Worcester), were united for certain purposes in the said Act mentioned, including, amongst other things, the relief of the poor of the said several parishes; and certain persons inhabiting in and rated to the said parishes so united were incorporated for ever by the name of "The Wardens of the Poor of the several Parishes within the City of Worcester, and of the Parishes united therewith," and were *enabled to purchase lands, tenements, &c hereditaments*, and also to convey, assign, release, transfer, and dispose of any lands, tenements, or hereditaments which they might thereafter purchase for the purposes of the Act, as there should be occasion.

In the Act were provisions for the election of twelve persons from the said wardens, who, together with the mayor of the said city for the time being, should be called "The Directors of the Poor of the several Parishes within the City of Worcester, and of the Parishes united therewith;" and a mode was provided for the election annually of four new directors, in the room of four of those previously elected, who were to retire in rotation in the mode specified in the Act; and the first twelve directors so to be chosen and elected, and all other directors to be chosen and appointed in pursuance of the Act, were thereby empowered to put in execution all the powers and authorities of the Act. The directors were, amongst other things, authorised and empowered to purchase such land or ground within the city of Worcester or the liberties thereof, or within any part of the parishes of St. Martin and St. Clement, *as to them should appear necessary*, and to erect and build thereon any house or houses and buildings whatsoever for the purposes of the Act, and also to purchase such other land within the said city and liberties of Worcester, or within any part of the parishes aforesaid, as they should think proper, and to *convert the same into a burial-ground* for the general use of all the parishes. And it was enacted that all such lands, when so purchased, should be conveyed to and vest in the directors, or such person as they should direct, in trust for the said corporation, for the purposes of the said Act.

In the Act is contained the following proviso: "Provided always and be it further enacted that, in *all future rates*, taxes, and levies to be made for any parishes or place wherein any lands, grounds, or buildings *which shall be purchased for the purposes of this Act* shall be situate, such lands, ground, or buildings shall not be assessed to any such rates, taxes, or levies at a higher value or improved rent than the same were at the time of such purchase; nor shall the buildings to be purchased or erected in pursuance of this Act ever be assessed to the window-tax, or any other tax that the same premises had not been rated or charged with previous to the time of passing this Act. And it was further enacted that, after such house and buildings were purchased or erected, the directors should have, and they were thereby vested with, the care, control, and management of the poor of the several parishes aforesaid, with power to apprehend and discover all poor persons in and belonging to the said several parishes, and to provide for their relief.

Under that Act certain directors were duly appointed, who, about 1793, duly purchased eighteen and a half acres of land in the part of the parish of St. Martin situate within the city of Worcester. This land was duly conveyed, by indenture, to the directors, their heirs, and assigns, in trust for the said corporation, for the purposes of the said Act. About 1794, the directors for the time being erected and built, upon a portion of the land so purchased, a workhouse and other buildings, with a yard and garden ground contiguous thereto. From the year 1794, up to the conveyance of these premises in 1839 as hereinafter mentioned, the said workhouse, buildings, yard and gardens, were always used and occupied as a house of industry or workhouse, for the purposes of the said Act, and for the relief, employment, and maintenance of the poor in or belonging to the said several parishes united by the said Act, and by those only. The same premises have, ever since the conveyance thereof in 1839, been used and occupied by the present appellants, as a workhouse, for the relief, employment, and maintenance, both of the poor of the said several parishes, and of the poor of the other parishes now united therewith as hereinafter mentioned. The directors appointed under the said local Act converted another portion of the said eighteen

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and a half acres so purchased by them into a burial-ground, for the general use of the eight parishes aforesaid; and such last-mentioned portion has always continued to be *and still is used and occupied by the directors for the time being as such burial-ground.* From the time of the passing of the said Act, up to the present time, directors have been and *still are appointed* annually, and such directors for the time being have always continued to use and occupy, manage and superintend the said burial-ground; and it is used not only for the purposes of the local Act, but also as a general cemetery, where any corpse may be interred upon payment of certain fees fixed by the directors, and the moneys arising therefrom are now annually audited and distributed under the provisions of the local Act.

The burial-ground, until the rate of July 8, 1852, was never assessed upon a higher value than its value at the time it was purchased; but by the said rate of July 8, 1852, it was assessed at its present improved value, according to the provisions of the "Act to regulate Parochial Assessments." The residue of the said 18½ acres so purchased by the directors aforesaid in 1793 has been sold by the directors from time to time previously to 1836 in different lots, and to private individuals; and the whole of the said lots have since such sales been assessed to the poor-rate at their full rateable value, under the "Act to regulate Parochial Assessments."

By an order of the Poor Law Commissioners for England and Wales duly issued in pursuance of the Poor Law Amendment Act, dated Nov. 22, 1836, reciting (amongst other things) that, by an instrument under the hands of a majority of not less than two-thirds of the said directors of the poor of the said parishes, the said directors consented and concurred in the dissolution of the said union as formed by the said local Act upon the following terms (amongst other things), viz.—That the right, title, and interest in and to the house of industry, land, and other premises be preserved to them inviolate; the said commissioners directed and declared that from and after Dec. 13, 1836, the said union of the several parishes aforesaid should, in so far as the administration of the laws for the relief of the poor is concerned, *be dissolved:* and that the twelve parishes and places in the 3rd schedule to the said order annexed mentioned should on Dec. 14, 1836, be and thenceforth should remain united for the administration of the laws for the relief of the poor by the name of The Worcester Union; and that the right, title, and interest of the said directors in and to the said house of industry, land, and other premises aforesaid should be preserved to them inviolate.

The twelve parishes mentioned in the third schedule to the order consisted of *the eight parishes* which had been united and incorporated by the local Act, together with four other parishes situate partly within the said city of Worcester, and partly within the county of Worcester: namely, St. Peter the Great, St. Michael, St. John in the Bedwardine, and the tything of Whistones.

By another order of the Poor Law Commissioners, dated Sept. 14, 1837, the commissioners ordered and directed that the guardians of the said Worcester union *should purchase* of the said directors the *said house of industry*, land, and premises aforesaid, at a sum not exceeding 4,850*l.*; and that the said *premises should be conveyed* to the guardians of the said union and their successors, and should be appropriated when so conveyed to such purposes relating to the relief of the poor of the said union, as the said guardians should direct.

By another order of the Poor Law Commissioners, and dated July 13, 1838, the commissioners ordered and empowered the persons who, at the time of the dissolution thereof, were the directors of the poor of the several parishes incorporated under the Local Act, to proceed to the sale of the before-mentioned house of industry, land, and premises, to the guardians of the poor of the said Worcester union: and the commissioners further ordered that the sum of 2500*l.*, part of the purchase-money, should be paid to certain persons therein *named in discharge of* certain mortgages therein mentioned, and that the residue of such purchase-money should be paid to the treasurer of the dissolved incorporation, and placed to an account to be entitled, "The dissolved incorporation of Worcester, in the matter of the sale of the property thereof;" and that the said purchase-monies should be applied to such purposes and in such manner as the said commissioners should direct.

By indenture dated Feb. 21, 1839, the last-mentioned [illegible] together with the said house of industry [illegible] buildings erected thereon, was in consideration [illegible] 4,850*l.* conveyed and assured by the direct[illegible] under the local Act to the guardians of the Worcester union, to hold to the said guardians, their successors and assigns, for the purposes of the said Worcester union. This indenture contains no reservation of any right, title, or interest of the said directors in or to the said house of industry, or the building or land thereby conveyed. Since the 21st Feb. 1839, the present appellants have considerably enlarged the buildings so purchased by them, and have thereby increased *the value of the land* and premises so conveyed to them.

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The said land and premises, since the 21st Feb. 1839, have always continued to be and now are used and occupied by the guardians of the said Worcester union, solely as a workhouse, for the purposes of the relief of the poor under the 4 & 5 Will. 4, c. 76, of the twelve parishes comprised in the said Worcester union; and the said land, together with the said buildings so erected thereon, partly before and partly since the said 21st of Feb. 1839, are the union workhouse, outbuildings, gardens, yards, drying-ground, land and hereditaments, in respect of the occupation of which the appellants are assessed in the rate appealed against.

The lands included in the aforesaid purchase by the said directors under the powers of the aforesaid local Act, before and at the time of such purchase, were used as pasture land, and until the 6th July 1837 were assessed to the relief of the poor, at the yearly rent or value of 19*l.* 5*s.*; and from and after the 6th July 1837 until the 8th June 1852, the said land and the buildings so as aforesaid erected thereon were assessed to the relief of the poor at the yearly rent or value of 74*l.* It is admitted by the appellants, that if they are properly rateable in respect of the said land, with the said workhouse, buildings, and premises erected thereon, according to the present improved value thereof, the sum at which they are assessed in respect thereof, in the rate appealed against, is a fair and reasonable estimate of the present net annual value of the said hereditaments, according to the meaning of the "Act to regulate Parochial Assessments." But they contend that, under the local Act, they are liable only to be assessed in respect of the said land, with the said workhouse, buildings, and premises erected thereon, at the same value at which they were assessed at the time they were purchased by the said directors as aforesaid in the year 1789. The respondents contend, that the 5a. 2r. 29p. in question originally purchased for the purposes of the local Act, having ceased to be used for the purposes of *the local Act only*, being no longer the property of the directors under the local Act, are no longer entitled to be rated at their reduced value.

If the court shall be of opinion that the appellants are liable to be rated in respect of the said land, with the said workhouse, buildings, and premises erected thereon, according to the improved value thereof at the time of levying the said rate, then the said rate is to be confirmed.

Selfe, for the respondents.—The question is whether land purchased under the local Act, and exempted from being rated at a higher value than it was at the time of purchase, so long as it is used for the purposes of the Act, can continue to claim such exemption after it has ceased to be used for such purposes. (The Court called upon the other side.)

Huddleston (*Hodgson* with him).—This land is not liable to be rated at a higher value than it was at the time of the purchase in 1793. The exemption in the local Act is express, and the Act has not been altered or repealed. [Lord CAMPBELL, C. J.—You must contend that if buildings had been erected, and afterwards sold to and occupied by a wealthy nobleman, they would be exempt from the window tax.] The argument must go that length. (The following cases were then cited: *Perchard* v. *Heywood*, 8 T. R. 486; *Williams* v. *Pritchard*, 4 T. R. 4; *Rex* v. *The London Gas Company*, 8 B. & C. 54.) [Lord CAMPBELL, C. J.—The object in creating the exemption, was the application of the land to the purposes of the Act.] It is not enacted that the exemption is to continue only so long as the land shall be so used: the exemption, therefore, still continues: (*Chatfield* v. *Ruston*, 3 B. & C. 863; *Mitchell* v. *Fordham*, 6 B. & C. 274; *Rex* v. *St. Peter's the Great, Worcester*, 5 B. & C. 473; *Reg.* v. *St. Leonard's, Shoreditch*, 19 L. J. 71, M. C.) The order of the Poor Law Commissioners had not the effect of dissolving the union; it exists for almost all the purposes of its original creation. It still has the management of the burial-ground: (*The Guardians of Woodbridge Union* v. *The Guardians of Colneis*, 13 Q. B. 269; 4 & 5 Will. 4, c. 76, s. 32; 5 & 6 Will. 4, c. 69, s. 37.)

Lord CAMPBELL, C. J.—We have no doubt whatever that the exemption given by the local Act no longer exists. We must put a reasonable construction on that Act; and though some Acts have words which guardedly point that exemptions like these are to continue only for a particular time, yet we must suppose that such words are impliedly contained in this Act, and that the exemption was only to continue so long as the premises should be used for the purposes of the local Act.

COLERIDGE, J.—This exemption was clearly made with reference to the premises being used for the purposes of the Act, and such uses having ceased, the exemption ceases also.

The rest of the Court concurring:

Judgment for the respondents.

Thursday, Jan. 27.

HAYLOCK v. SPARKE, Clerk.

Justice of the peace—Warrant—Jurisdiction—Notice of action—Construction of 11 & 12 *Vict. c.* 44.

An information having been laid before a magistrate, charging A. B. with having written libellous matter on C. D. on the walls and pavements of E., the magistrate

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ordered A. B. to find sureties to keep the peace, and in default committed him to prison for three months, without adjudicating on the charge preferred against him. The Court of Q. B. having discharged A. B. on habeas corpus, after six days' imprisonment, on the ground that the warrant was invalid, he gave notice of action, and having subsequently quashed the warrant on motion, A. B. caused a writ to be issued in trespass on the same afternoon on which the warrant was so quashed:

Held, First, that the notice of action was not premature, and was well given before the warrant was quashed.

Secondly, that the warrant reciting the information was evidence that the magistrate, in granting the warrant, was acting within his jurisdiction, if by law he had jurisdiction to require sureties for good behaviour in a charge of libel against a private individual.

Thirdly, that in some cases of libel against a private individual, a magistrate has, for the safety of the public, jurisdiction to require sureties for good behaviour, and therefore the action was ill brought in trespass.

Fourthly, that evidence was not admissible at nisi prius to show, under the 11 & 12 *Vict. c.* 44, *s.* 9, *that the plaintiff has actually written the libellous words.*

Trespass, for assault and false imprisonment.

Plea, not guilty by statute.

At the trial before Pollock, C. B. at the last assizes for Cambridgeshire it was shown that the defendant was a magistrate of the Isle of Ely, and that this was an action brought to recover damages for an imprisonment of the plaintiff for six days in the house of correction for the city of Ely under the following circumstances:—The plaintiff lives in Ely, and it appears that during the early part of the present year, certain offensive and libellous inscriptions had been chalked on the walls and pavements of that city, tending to bring into ridicule a person of the name of Watt, who was the superintendent of the railway station at Ely. Suspicion having fallen on the plaintiff and his brother as the authors of these inscriptions, Mr. Watt, on the 30th April, caused an information to be laid before the defendant, charging the plaintiff with having written some of the offensive passages; and upon the hearing, the defendant called upon the plaintiff to find sureties to keep the peace, and for his future good behaviour. The plaintiff, however, refused to comply with the requisition of the magistrate, who thereupon committed him to prison in the house of correction of the city of Ely, for default of such sureties, in the following form:—

"To the constable of the parish of the Holy Trinity, in Ely, in the said Isle, and to the keeper of the house of correction at Ely, in the said Isle.

"Isle of Ely, } Whereas John Haylock, of the parish
to wit. } of Saint Mary, in the said Isle, farmer, hath this day been brought before me, the Reverend John Henry Sparke, clerk, one of her Majesty's justices of the peace for the said Isle, charged, on the oath of Thomas Palmer, a porter in the employ of the Eastern Counties Railway Company, residing in the said parish of the Holy Trinity, in Ely, with having, about one o'clock on the morning of yesterday, written on the pavements in a lane called Chapel-lane, in the said parish of Saint Mary, the following offensive words, reflecting on the character of Mr. Robert Johnstone Watt, station-master of the Ely railway station (that is to say), 'Donkey Watt, the Railway Jackass,' and it having been stated to me, on the oath of the said Thomas Palmer, that the continued writing for some time past of these offensive words was calculated to produce a breach of the peace, and the said Thomas Palmer having prayed that the said John Haylock might be required to find sufficient sureties to keep the peace towards her Majesty and all her liege subjects, I therefore, the said justice, have ordered and adjudged, and do order and adjudge, that the said John Haylock shall enter into his recognisance in the sum of 30*l.* and two sufficient sureties in the sum of 15*l.* each, to keep the peace towards her Majesty and all her liege subjects for the space of three calendar months now next ensuing. And inasmuch as the said John Haylock hath refused to enter into such recognisance and to find such sureties as aforesaid, I do hereby require and command you, the said constable, forthwith to convey the said John Haylock to the said house of correction, and to deliver him to the said keeper thereof there, together with this warrant. And I do require and command you, the said keeper, to receive the said John Haylock into your custody in the said house of correction, and him there safely to keep for the space of three calendar months, unless he in the meantime enter into such recognisance with such sureties as aforesaid, to keep the peace in the meantime and for the term aforesaid.—Herein fail not.

"Given under my hand and seal the 30th day of April, 1852.

"J. H. SPARKE."

The defendant applied for a writ of *habeas corpus* to the Q. B.; was discharged from imprisonment on the 6th May; and the warrant was eventually quashed by the same court at the sittings in banc after last Trinity Term. On the afternoon of the same day, the writ was issued, the notice of action required by the same statute having been given to the defendant immediately after the discharge of the plaintiff from custody on the 6th May. The plaintiff

now sought and gave evidence of the amount of the costs of procuring his discharge, and those also of quashing the warrant, as well as damages for the illegal imprisonment.

It was then submitted, by *Byles*, Serjt. (with him *Wells*), for the defendant: First, That the magistrate had acted within his jurisdiction, because he may hold to bail and require sureties to keep the peace in cases of libel. Secondly, That though the magistrate might have ill exercised his jurisdiction, he had not exceeded it, within the meaning of the 11 & 12 Vict. c. 44, s. 2, because he might well have done what he did, if only he had done it correctly. Thirdly, That the warrant was good. Fourthly, That the action was premature, a month not having expired from a notice given after the warrant was quashed. On these grounds a nonsuit was prayed, inasmuch as the action was in trespass. It was also opened for the defendant that he would give evidence to show that the plaintiff was guilty of the offence for which he was committed, so as to bring the defendant within the protection of the 11 & 12 Vict. c. 44, s. 13.

After hearing *O'Malley*, Q.C. and *Couch*, in answer, the learned judge consulted Parke, B. who was sitting in the Crown Court, and then directed a nonsuit to be entered, with leave to the plaintiff to move to set aside the nonsuit, and enter a verdict for himself for such damages as the jury should contingently assess; with leave to the plaintiff to bring forward, on a rule for setting aside the nonsuit, the points now made for him which were all overruled, except that which rested on the prematurity of the action. The damages were accordingly assessed at 43*l*. In Michaelmas Term a rule *nisi* to set aside the nonsuit and enter a verdict for the plaintiff for 43*l*. was obtained, against which cause was shown by

Wells (with him *Byles*, Serjt.)—First, There is no complete cause of action while anything remains to be done before the action may be brought. There is, therefore, no complete cause of action until the instrument of committal has been quashed. The difficulty that, under sect. 8 of the 11 & 12 Vict. c. 44, there may in many cases be no possibility of bringing any action, if notice cannot be given before quashing, is got rid of by reading the word "act" in that section as if it meant "cause of action." He cited *Smith* v. *De Burgh*, 2 Camp. Secondly, The magistrate was acting within his general jurisdiction, and therefore trespass will not lie. The difficulty is this: the warrant recites the libellous act of the plaintiff, and that it had been stated to the magistrate on oath that the continued writing of the libellous words might lead to a breach of the peace, without any finding that it would do so, or that the plaintiff was connected with the person writing; and it is said that the plaintiff was committed to gaol for what somebody else stated. That was not so. The magistrates considered the plaintiff a libeller, and, exercising their general jurisdiction on a charge of libel, held him to bail, and committed him for want of sureties: (Dalton's Justice, 408; 5 Burn's Justice, 1212; *Ratt* v. *Parkinson*, 4 N. S. C. 67; *R.* v. *Tregarthen*, 5 B. & Ad. 678; *Wells* v. *Bridge*, 2 B. & Ad. 287.) Thirdly, The judge ought to have received evidence of the plaintiff's guilt.

Lord CAMPBELL, C. J.—If you propose to show that the plaintiff was guilty of libel, the evidence was properly refused. If you propose to show that he was guilty of contumaciously abstaining from giving bail, I don't think that an offence within the statute. For that, moreover, you must assume that he was able to find sureties.

O'Malley, Q. C., *Couch*, and *Prentice*, contrà.—First, as to the jurisdiction. There was no evidence of the facts necessary to give any jurisdiction except the warrant, which was quashed and not subsisting at the time of the trial, and therefore no evidence of any facts mentioned in it: (*Leary* v. *Patrick*, 15 Q. B. 280; *Burton* v. *Brickwell*; *Stephens* v. *Clarke*, 2 M. & R. 493; *Bessey* v. *Wyndham*, 6 Q. B. 166; *White* v. *Morris*, 21 L. J. 185, C. P.; *Harrison* v. *Turner*, 10 Q. B. 482.) If it were evidence, the matter is one in which the magistrate had not jurisdiction to require sureties of the peace: (*R.* v. *Dunn*, 12 A. & E. 599; *Rudyard's* case, 2 Ventris; Vin. Abr. "Good Behaviour," B.; Bac. Abr. "Surety for Good Behaviour;" 4 Bl. Com. 255; *R.* v. *Shackbergh*, 1 Wils. 29; 5 Burn, "Surety;" *R.* v. *Wilkes*, 2 Wils. 151.) As to the notice it was well given; quashing is a condition of the remedy, not a part of the cause of action.

Cur. adv. vult.

JUDGMENT.

Lord CAMPBELL, C. J.—In this case we are of opinion that the notice of action was sufficient, although given before the warrant was quashed. Supposing this warrant to be in the nature of a conviction, so that the action could not have been maintained if the warrant had been in force, we think the notice of action was regularly given on the 18th May. The quashing of the warrant was no part of the cause of action; before the warrant was quashed all the requisites of the notice of action enumerated in the 8th section of the 11 & 12 Vict. c. 44, might be and were complied with, and it was in force. If, in a case of a conviction, a magistrate receives such a notice before the conviction is quashed, he may, at his peril, rely upon the validity of the conviction, and obtain from tendering amends; but if he does so, and the conviction is quashed, an action may be commenced against him one calendar month after the service of the notice. Were not this so, the party injured might be barred of his remedy altogether; for, by the 8th section of the same statute, the action must be commenced within six calendar months next after the act complained of shall have been committed. During the argument it was contended that the six months' notice might be construed to run from the quashing of the conviction; but the commitment is "the act," not the quashing of the conviction on the application of the party injured. The quashing of the conviction is only a condition to the prosecution of the action, like the delivery of an attorney's bill, or receiving a notice of action; and there is nothing to determine in what order the condition shall be complied with. We have next to consider a much more difficult question—whether upon the evidence the defendant is to be taken to have done an act in a matter in which by law he was not justified, or in which he exceeded his jurisdiction. We are of opinion that the warrant obtained by the plaintiff was evidence for the defendant of the information on oath therein recited having been given. Without considering whether, since the case of *White* v. *Morris*, the case of *Bessey* v. *Windham* can be supported to its full extent, we think that, as the information was a fact within the defendant's knowledge, and the foundation of his act in granting the warrant of commitment, his recital of it must be considered part of the warrant, and admissible evidence for the defendant. In the same manner, the warrant being held admissible, and it appearing therefrom that sureties of the peace were required by reason of the charge of libel, it remains to be considered whether that is a matter in which the defendant, as a justice of the peace, has jurisdiction within the meaning of the 11 & 12 Vict. c. 44. We do not refer to the cases relating to articles of the peace exhibited by a complainant, as these are subject to regulations different from those which prevail in respect of sureties for good behaviour required by a justice for the safety of the public. The latter is in our opinion the jurisdiction which the defendant intended to exercise, although sureties of the peace are mentioned. The law upon this subject is founded on the stat. 34 Edw. 3, c. 1, by which justices of the peace were first appointed. This statute, entrusting these magistrates with a wide discretion, authorises them to take of all them that be not of good fame sufficient surety for good behaviour towards the King's people. In the 4th Inst. 181, Lord Coke, remarking on this clause, says (the offences against the peace having been provided for): "Now followeth an express authority, given to the justices for the prevention of such offences before they be done; viz. and to take of all them that be not of good fame (that is, that be defamed and justly suspected that they intend to break the peace where they shall be found), sufficient surety and mainprize of their good behaviour towards the king and all his people." In *Lee's* case, 12 Mod. 514, the question whether insulting language to the mayor of a borough was ground for disfranchising an alderman was decided in the negative; but it is there said the words of contempt, though void as *contra bonos mores*, although they be against the chief or his brethren, are good causes to punish him, and to commit till he has found sureties for good behaviour; but not on the statute. In *Stampe* v. *Hyde*, Rolle Rep. one question was whether calling another a name was a breach of recognisances of good behaviour: the court held that it was, and cases were cited there where a person, having been committed for not finding good sureties for good behaviour for calling an alderman a name, was discharged, such alone being not sufficient. It appears from this and other cases turning on simple words, that aggravated defamation was a ground for requiring sureties of good behaviour. In Hawk. P. C. b. 1, 21, the learned author says: "It seems the better opinion of this day that a man cannot be indicted for any scandalous or contemptuous words spoken of or to such officers not being in the actual execution of their office: for such an offence seems rather to proceed from ill-breeding than from a contempt of the government. However, I am inclined to think (says he), the magistrate has a discretionary power to take such sureties of all those of whom he shall have just grounds to expect to be dangerous, quarrelsome, or scandalous." In Com. Dig. "Forcible Entry," b. 25, it is said: "Sureties for good behaviour may be required of all not of good fame, if he does that which tends to a breach of the peace;" and libellors are specified of whom sureties may therefrom be required. For this he cites Dalton, ch. 124, where it is said: "Libellors may be bound to good behaviour as disturbers of the peace, whether they be the contrivers, the procurors, or the publishers of the libels; for such libelling and defamation, tendeth to the raising of quarrels." Against these authorities cases before Pratt, C. J. afterwards Lord Camden (*Rex* v. *Shuckbury*, 1 Wils. 29; *Rex* v. *Wilkes*, 2 Wils. 151) were cited. In the first it is doubted whether a surety should be required from a libellor, and in the second it is declared that it is not lawful; but in both cases the prisoners were brought into the K. B. on a warrant from the Secretary of State, the question being raised whether the Secretary of State was a conservator of the peace; and the observations may be confined to those warrants, without having reference to the power given to justices of the peace under the stat. 1 Edw. 3. I likewise observe that those were very heated times, and Lord Camden at that time certainly went to very great length; and if there be any shade on his fame, it is that in what he did he sacrificed a little for popularity in that year. In *Butt* v. *Conant*, 1 Brod. & Bing. 548, a warrant of commitment for want of bail to answer an indictment for libel was held valid, and the authority of Lord Camden as applicable to the justices of the peace was denied. On the whole it appears to us that a justice of the peace has jurisdiction to require sureties for good behaviour in some cases of libel against private individuals. If that be true, the defendant had jurisdiction in the matter out of which this cause of action arises, and that the proceedings were within the information, although there was, in our opinion, a great want of discretion in requiring sureties on such an application. It follows, an action of trespass would not lie; and the verdict for the plaintiff must remain. Therefore the rule will be discharged.

Friday, Jan. 28.

REG. *v.* BRIGGS.

Municipal corporation—Quo warranto—Misconduct of relator.

It is no ground for discharging a rule nisi for a quo warranto calling on defendant to show by what authority he exercises the office of town councillor of a municipal corporation, that it is alleged, in the affidavits on the part of the defendant, that the relator was guilty of bribery at the election in question for town councillors.

J. A. Russell showed cause against a rule *nisi* calling on the defendant to show by what authority he claimed to exercise the office of town councillor of the borough of Blackburn. It was admitted that the rule *nisi* for the *quo warranto* must be made absolute, unless the misconduct of the relator, as imputed by the affidavits on the defendant's part, disentitled the relator to the writ. The power of the court to interfere by writ of *quo warranto* is discretionary; and if the relator has been guilty of bribery at the very election at which the defendant was chosen, this court will discharge this rule *nisi*: (*Rex* v. *Parry*, 6 A. & E. 810; *Rex* v. *Davies*, 4 Burr. 2120, per Lord Mansfield, C. J.)

W. H. Watson, and *Boden*, contrà, were not called upon.

Lord CAMPBELL, C. J.—This court has a horror of bribery, but it cannot try that question in this proceeding; and as it is admitted that there is no other ground for showing cause against the rule, it must be made absolute.

Rule absolute.

SITTINGS AFTER TERM.

Friday, Feb. 4.

(Before COLERIDGE, WIGHTMAN, ERLE, and CROMPTON, JJ.)

MOUNTENEY *v.* COLLIER.

Landlord and tenant.

In an action for rent, the tenant, although he has not quitted possession of the premises, may show that his landlord's title has expired, by notice to quit given by the rightful claimant to the landlord, and notice to tenant not to pay further rent; and he may further show the right of the party claiming by the declarations of the deceased person through whom the landlord came into possession as personal representative.

This was an appeal against the decision of the judge of the Uttoxeter Co. C., Staffordshire.

The action was brought to recover a year's rent (32*l*. 10*s*.) of a messuage and land called the Shoulder of Mutton, due at Lady-day 1852. The defendant paid 14*l*. 2*s*. 5*d*. into court.

It appeared that the plaintiff let to the defendant the premises, consisting of a house and ground, land and outbuildings, shortly before Michaelmas-day 1850, at 32*l*. 10*s*. a year. The defendant paid half a year's rent when due at Lady-day 1851, and had continued in possession down to the present time, but had paid no further rent.

The plaintiff succeeded, as personal representative, one Cotton, his father-in-law, in the occupation of the premises. Cotton had rented other premises of one Ingram, for which he paid rent; and he paid also 1*s*. annually as for a sill of land, which was subsequently increased to 10*s*. per annum. This latter sum the plaintiff continued to pay to Ingram; but what that sill of land was, or where situate, there was no satisfactory evidence.

The plaintiff alleged that the 10*s*. were paid for an encroachment made by reason of an enlargement, about 1830, of the house called the Shoulder of Mutton, when a part of the said house and cellar were extended and built upon land belonging to the said Ingram.

Ingram, in right of the said payment, claimed the Shoulder of Mutton and the rest of the premises, and gave notice to the defendant not to pay any more rent to plaintiff; whereupon the defendant refused rent to the plaintiff.

Ingram, previously to Michaelmas 1850, served plaintiff with a notice to quit "all and every the

QUEEN'S BENCH.

cottage called the Shoulder of Mutton and cottage Raven's Nest, with buildings, lands, and appurtenances thereunto belonging," &c.

The plaintiff thereupon gave up possession of the cottage called Raven's Nest, but retained the Shoulder of Mutton, and let it, as aforesaid, to the defendant.

Evidence of the declarations of Cotton, as to what the payment of 10*s.* had been for, was tendered, but rejected by the judge.

The defendant also contended that Ingram's claim to the Shoulder of Mutton, and his own recognition of it, brought the title of the premises in question, and excluded the jurisdiction of the Co. C.; but the judge held that the defendant could not dispute the title of the plaintiff, by whom he had been let into possession of the premises. The judge also stated in the case that he gave judgment for the defendant on the ground that the rent, being entire and issuing from the whole of the premises, and the notice to quit having determined the plaintiff's tenancy in respect of the part for which the 10*s.* were paid, viz. the enlarged part of the Shoulder of Mutton, he could not apportion the rent in respect of the remainder.

Baddeley, for the appellant.—This was a mere question between landlord and tenant. The plaintiff let the premises to defendant; the claim is solely for a year's rent; and the defendant has paid 11*l.* 2*s.* 6*d.* into court. This admits the tenancy. The notice to quit from Ingram ought not to have been received in evidence, because it amounts to *nil habuit in tenementis*, and it was not competent to the defendant to set up such a defence; "he could not controvert the continuance of the title of the person under whose demise he continued to hold:" (*Balls* v. *Westwood*, 2 Camp. 12.) There was no evidence here of commencing a fresh holding under any other person, or of any eviction of the defendant.

Gray, for the respondent.—This is a case in which the landlord's title had expired during the term. The plaintiff, as the personal representative of Cotton, took possession of the premises on Cotton's death: the declarations of Cotton therefore as to the payment of the 10*s.* were receivable. They would have shown that the payment was for the Shoulder of Mutton, and that Cotton held those premises under Ingram. Then Ingram's notice to quit determined the plaintiff's title to the Shoulder of Mutton. The defendant also had notice not to pay rent to the plaintiff. It was competent to defendant, therefore to show that the plaintiff's title had so expired, and that Ingram was the proper party to receive the rent. The case of *Balls* v. *Westwood* is not law. The modern cases are inconsistent with it; and it is now well settled that a tenant may show the expiration of his landlord's title: (*England d. Syburn* v. *Slade*, 4 T. R. 682; *Grosvenor* v. *Woodhouse*, 1 Bing. 38; *Doe d. Jackson* v. *Ramsbottom*, 3 M. & S. 516; *Waddilove* v. *Barnett*, 2 Bing. N. C. 538; *Newport* v. *Hardy*, 2 Dowl. & L. 921; *Doe* v. *Seaton*, 2 C. M. & R. 728; Com. Dig. "Estoppel," E. 8.)

Baddeley, in reply.—Cotton's declarations were not admissible. Ingram's title is no defence unless something was done under it, or the tenant was evicted. The defendant should have shown that his occupation was not by the sufferance of the plaintiff. There must be a substantial and *bonâ fide* claim of title to oust. The jurisdiction of the Co. C. and the proposed evidence here was not sufficient for that purpose: (*Lilley* v. *Harvey*, 11 L. T. Rep. 273.)

COLERIDGE, J.—It is conceded on the part of the respondent that the judgment cannot be sustained; and the point that has been mainly argued turns on this, whether a tenant may show that the title of his landlord has expired during the tenancy, though he has remained in possession till the end of his term. I think it is clear that, under certain circumstances, he may show that; and that he is at liberty to do so when the circumstances are such as, although not an actual eviction, yet are tantamount to it. It would be hard on a man who assents to the new title if he might not assent to a new arrangement with the party claiming, without going out. Another point in this case is, whether or not the declarations of Cotton are receivable in evidence, to show that in the first instance there was a holding under Ingram as to the premises called the Shoulder of Mutton and the other premises, and that some rent was paid for them by Cotton to Ingram. Upon Cotton's death the plaintiff comes into possession as his personal representative, and makes a contract with the defendant, and at the same time Ingram gives the plaintiff notice to quit the premises. The plaintiff thereupon goes out of a certain portion of them, and, according to the language of the judge, the notice to quit had determined the plaintiff's tenancy as to the premises, for which he paid the 10*s.* What, therefore, has been done between Ingram and the defendant is this: contemporary with or preceding the notice to quit, Ingram had gone to him and said, I forbid you any longer paying rent to the plaintiff, and thereupon the defendant refused to pay any rent to the plaintiff. The judge found that this determined the tenancy as to some part of the premises. The defendant then proposed to supply the gap by Cotton's declarations, that the rent was paid for the Shoulder of Mutton. Now declarations of a deceased tenant, as to the party under whom he held, have always been admissible in evidence, and I cannot see why they are not receivable to let in that part of the case as proposed here. Suppose a tenant in fee lets for a term, and the lessee underleases, and then the tenant in fee determines the term, may not the underlessee holding on show the termination of the *mesne* tenancy? That seems to me no more than showing that his landlord's title has expired. If, then, the declarations of Cotton ought to have been received in evidence, they might have gone to raise a question of title between Ingram and the plaintiff, when it would have been the duty of the judge to surcease and go no further into the matter. As a general rule, we think that a tenant may show that his landlord's title has expired, and that if the case then resolves itself into a question of title, the judge of the Co. C. has no further jurisdiction.

WIGHTMAN, J.—The more important question is, whether or no the title to these corporeal hereditaments come in question? Undoubtedly the precise circumstances do not appear very clearly; but there is enough stated to show that both parties really intended to make this a question of title, viz. whether the defendant was at liberty to set up that the title of his lessor had expired and vested in some one else? If this is so, no doubt the title would come in question. Several matters are agreed on which make this a question of title. It was contended by the plaintiff that the 10*s.* was paid for a part of the house only; and by Ingram, who claimed the whole house, that it was paid for the whole house. Cotton was not a mere stranger; but he occupied the premises, and paid 10*s.* a year to Ingram. There was no sufficient ground, therefore, for excluding the declarations of Cotton.

ERLE, J.—The question in dispute was, whether the tenant was at liberty, without giving up possession of the demised premises, to show that his landlord's title had expired. I think that such a defence was admissible. Since *Balls* v. *Westwood* there have been several decisions to the contrary of what was there laid down, and such decisions have reason on their side. If this were not so, a tenant would be liable to pay to his landlord and also to the party entitled to the premises, and it is not right to make a tenant pay twice. If that defence was admissible, it is for the judge to say whether the defence is raised *bonâ fide*; and if it is, the question of title at once arises. Cotton's declarations were admissible, and tended to show that the title was in Ingram; for the evidence was that he had paid rent for these very premises to Ingram, and the plaintiff is the representative as executor of Cotton. Then, if this was a question of title, the jurisdiction of the Co. C. is at an end.

CROMPTON, J.—I do not know whether it has yet been decided whether, when the tenancy has expired as to part, that is answer to an action for the rent *pro tanto*. But, without saying whether there should have been an eviction or not, I agree with the rest of the court that the question of title arises, and that would prevent the judge of the Co. C. from going on with the case. *New trial ordered.*

COURT OF COMMON BENCH.

Reported by DANIEL THOMAS EVANS and R. VAUGHAN WILLIAMS, Esqrs. Barristers-at-Law.

COUNTY COURT APPEAL.

Monday, Jan. 24.

FULLER, App. CHEVELEY, Resp.

County Court—Contract by letter—Stamp—Nonsuit.

In the County Court the plaintiff tendered in evidence certain letters as proof of the contract sued upon, and the judge admitted them, though they were not stamped; and the question whether they amounted to a contract between the parties was left by the judge to the jury:

Held, on appeal, that this was a question of law for the judge, and not of fact for the jury, and the judgment, therefore, must be reversed.

Held, also, that if the letters amounted to a contract, they were inadmissible for want of a stamp.

Under 13 & 14 *Vict. c.* 61, *s.* 14, *the Court of Appeal has power to order a nonsuit to be entered, because in effect a nonsuit is a judgment for the plaintiff.*

This was an appeal from the Co. C. of Essex, held at Chelmsford; and the case stated for the opinion of the C. B. was as follows:—

This was an action brought by the plaintiff, who is a draper's assistant, against the defendant, who is a draper, under the following particulars of demand:—"This action is brought to recover 50*l.* damages for breach of contract, by reason of the defendant not taking the plaintiff into partnership in the month of July, August, or September last. Dated this 15th Oct. 1852." The action was tried by a jury in the Co. C. of Essex at Chelmsford on 28th Oct. 1852, when a verdict was found for the plaintiff, with 30*l.* damages. On behalf of the plaintiff a correspondence by letters between the plaintiff and defendant was put in evidence; and the following are those which were relied on by the plaintiff as forming the contract:

From the plaintiff to the defendant.

"Chelmsford, June 15, 1852.

"Dear Sir,—Almost ever since you left Chelmsford my brother's health has been declining, and for the last nine months he has been but little in the business; he has now, I believe, quite made up his mind to leave it, and that as soon as possible, and unfortunately I think I never was more needed. Do you happen to know a first-class man that would suit my trade—one that I could place the utmost confidence in. If I met with such a man I should, after a short time, give him a share in the business; in fact, I do or shall almost immediately require some one to manage the house. It is a good opportunity for any young man that has no means of his own. I am very glad to hear you are so well and happily settled, and I hope and wish you may quickly make a fortune. We are not busy. The trade in the town generally has decreased; market-days are bad. If you can recommend any one, shall be obliged.—Yours, truly, C. CHEVELEY."

From plaintiff to defendant.

"Margate, June 16, 1852.

"Dear Sir,—I received yours in due time: in answer I beg to say, that I do not know of any one likely to suit you; young men of the class you want are not often to be met with.

"If you will make it answer my purpose, and like to re-engage me, please write by return of post.—Yours respectfully, W. FULLER."

From defendant to plaintiff.

"Chelmsford, July 15, 1852.

"Dear Sir,—I have been from home, or should have replied sooner. I never supposed your last was intended as rudeness; therefore will pass it over and reply to yours (of the 9th instant); and as you appear anxious to start as a partner, I make the following proposal to you:—To give you for the first two years one-third of the business; at the end of that time, if we go on pleasantly, to give you an equal share. You may consider one-third share worth to you from 150*l.* to 200*l.*,—all our other arrangements will be the same as my brother's,—rent of premises 60*l.*, capital employed 3000*l.*, allowance for young men and a servant 10*s.* a week per head, which includes coal, beer, and wear and tear; that is all. The furniture in the house to be yours, taken of course as you and my brother agree upon. The buying and paying accounts I reserve to myself, although I shall at any time be glad to get rid of it: the stock to be taken fairly between my brother and yourself.

"I find our [his brother's] agreement is drawn so, that we could at any time have separated by either party giving the other three months' notice; I think that is too short, and ought to be six months, or forfeit 50*l.* or 100*l.*; of course I do not anticipate such a thing, but I believe such clauses are always introduced. Now the next thing is the time. I certainly should wish it by the end of August, for of course we must take stock, and after that time we shall be buying autumn goods. I have written in haste to save the day mail, and also in the greatest noise from the election; but if this is satisfactory to you it will be better to have a copy of agreement drawn first.—Yours truly, C. CHEVELEY."

From plaintiff to defendant.

"Margate, 16th July, 1852.

"Dear Sir,—In reply to yours of this morning, I beg to state I am ready to accede to your proposal. With regard to time, if you could possibly defer my coming until the second week in September it would suit much best, as our season is at the height. Perhaps when you forward the agreement you would name the latest time.—I remain, yours obliged and respectfully, W. FULLER."

From defendant to plaintiff.

"Chelmsford, July 19, 1852.

"Dear Sir,—Mr. Veley is in London; but I will see him to-morrow, and get him to draw a copy and forward to you. The time is very important, and ought not to be later than August; for harvest will then be over, and there will be a little more doing: besides, I shall want to be buying a few autumn goods.—Yours truly, C. CHEVELEY."

From defendant to plaintiff.

"Chelmsford, July 21, 1852.

"Dear Sir,—If you have not named your leaving to Mrs. Goaling you had better not do so for a few days, or until you hear from me again, as a circumstance, quite unexpected and very important, has occurred, which may compel me to alter my circumstances.—Yours truly, C. CHEVELEY."

From plaintiff to defendant.

"Margate, 22nd July, 1852.

"Dear Sir,—I have made every arrangement to leave at the end of August; have engaged a young lady, also a young man; expect him on Saturday next. I thought it would be better to have him as soon as possible, to get used to the business before I left. Must say was very much surprised at the contents of your last.—Yours respectfully, "W. FULLER."

A letter of 23rd July, from defendant below to plaintiff, in which the defendant Fuller stated that circumstances had occurred which prevented him from carrying out the proposed arrangements with the plaintiff below, was put in at the trial, and closed the correspondence.

The questions for the opinion of the court are—

1st. Whether the letters forming the alleged agreement should have been admitted in evidence by the court without being first duly stamped.

2nd. Whether a determination of the said court, not to nonsuit the said plaintiff on the ground that the said letters so admitted in evidence formed no valid and binding agreement upon which the said action could be maintained, was wrong in point of law.

3rd. Whether the determination of the said court, to leave the decision of the question whether the said letters formed such an agreement as last mentioned to the jury, and whether the direction of the court to the jury thereon, was wrong in point of law.

Honeyman, for the appellant.—If there was any contract between the parties in this case, it is contained in the letters before the court. But there was in fact no contract; for the letters of the appellant did not amount to an acceptance of the offer of the plaintiff below, and the terms were not finally adjusted; and particularly this is so with reference to a material consideration, that is to say,—the period when the partnership was to commence: (*Wontner* v. *Shurey*, 17 L. J. 36, C. P.; *Vollans* v. *Fletcher*, 16 L. J. 173, Ex.; *Routledge* v. *Grant*, 4 Bing. 653.) Furthermore, the question as to whether there was a valid acceptance of the terms offered, so as to constitute a contract, was not one for the jury, but a question of law for the judge: (*Neilson* v. *Harford*, 8 M. & W. 806; *Morrill* v. *Frith*, 8 M. & W. 402; *Phillips* v. *Affalo*, 4 M. & G. 846.) Lastly, if the letters did amount to a contract, as they had no stamp, they were inadmissible, and the plaintiff below ought to have been nonsuited.

Channell, Serjt. for the respondent, was not called on.

JERVIS, C. J.—It seems to me that in this case the judge was wrong. It is a simple question of the construction to be put on written documents, and as such was for the decision of the judge, and not for that of the jury. However, as it has now come before us, we must reverse the judgment, for the plaintiff below is in this dilemma: either the letters stated in the case amount to a contract, or they do not; if they constitute a contract, they are inadmissible because they require a stamp; if they do not amount to a contract, then the plaintiff's case failed, and judgment should have gone for the present appellant. Unless we have power to enter a nonsuit, there must therefore be a new trial.

Honeyman, after referring to the 13 & 14 Vict. c. 61, read sect. 61, which enacts as follows:—"that the Court of Appeal may either order a new trial on such terms as it thinks fit, or may order judgment to be entered for either party, as the case may be, and may make such order with respect to the costs of the said appeal as such court may think proper, and such orders shall be final." The question that arises on this clause is, whether judgment of nonsuit can be said to be a judgment for "either party."

By the COURT.—We think that judgment of nonsuit is, in effect, a judgment for the defendant. A nonsuit will therefore be entered. *Judgment accordingly.*

COURT OF EXCHEQUER.

Reported by FREDERICK BAILEY and C. J. B. HERTSLET, Esqrs. Barristers-at-Law.

Jan. 11 *and* 26.

HUTHERSETT *v.* WARD.

Bill of lading—Authority of captain.

Seventy-five quarters of wheat having been shipped, the plaintiffs made an advance thereon, and a bill of lading was signed. Seventy quarters more were then shipped, and a bill of lading made and pledged in the same manner to the plaintiffs. The captain had also been fraudulently induced to sign another bill of lading for the whole 145 *quarters:*

Held, that when a captain has once signed bills of lading for cargo on board his vessel his power is exhausted; and that therefore the plaintiffs were entitled to recover.

This was an action of trover for wheat, tried at Liverpool before Wightman, J., when a verdict was returned for the plaintiff.

It appeared that 229 quarters of wheat were put on board the ship *Celerity*, a bill of lading having been previously made out; afterwards seventy-five quarters were shipped by Pottorell; and he then applied to the plaintiffs for an advance on that shipment, and an advance was made and a bill of lading made out. Seventy quarters more were then shipped, and a bill of lading made and likewise pledged in the same way to the plaintiffs. This latter transaction took place about the 16th or 17th April; and on the 16th, before its completion, Hans, Marker and Co. were applied to for an advance on the 145 quarters, viz. the 75 and 70 (the 229 quarters having been previously pledged to them). Hans, Marker and Co. made out a bill of lading, and applied to the captain to sign it, who refused, on the ground that he should be signing for more than he had on board; but on the following day Pottorell imposed on the captain by pretending to destroy the bill of lading for 75 quarters, and so then induced him to sign a bill of lading for 145 instead of for the 70 quarters as he supposed. The question now was as to the 70 quarters only. A rule having been obtained for a new trial,

Unthank now showed cause, and argued that by the act of the captain, and the evidence showed that the plaintiffs had acquired a property in the goods. He cited *Howard* v. *Tucker*, 1 B. & Ad. 712; *Hawes* v. *Watson*, 5 B. & C. 540; *Gillatt* v. *Hill*, 2 Cr. & Mee. 551; *Ex parte Thornton*, 1 Myl. & Kee.

Jones, in support, contended that the fraud was sufficient to destroy the validity of the second bill of lading; and cited *Bates* v. *Todd*, 1 M. & Rob. 106; *Caldicell* v. *Ball*, 1 T. R. 205. *Cur. adv. vult.*

Wednesday, Jan. 26.—POLLOCK, C.B.—This was a motion for a rule for a new trial, and was argued before us this term. We are of opinion that the rule ought to be discharged. It appears to me, that when a captain has signed bills of lading for a cargo that is actually on board his vessel his power is exhausted; he has no right or power, by signing other bills of lading for goods that are not on board to charge his owner. On the present occasion, it appears that the action was brought in respect of bills of lading which had clearly a priority of claim; and we think the verdict was right, and that the rule for a new trial must be discharged. *Rule discharged.*

EXCHEQUER CHAMBER.

(Reported by R. VAUGHAN WILLIAMS, Esq. Barrister-at-Law.)

ERROR FROM THE COMMON PLEAS.

Friday, Nov. 26.

(Before PARKE, PLATT, and MARTIN, BB., and COLERIDGE, WIGHTMAN, ERLE, and CROMPTON, JJ.)

STEVENSON *v.* NEWNHAM.

Pleading— Effect of the word "maliciously" in a count—Bankruptcy—Fraudulent preference—Rights of preferee against a wrongdoer as between the preferee and the assignees—Retrospective effect of disaffirmance by the assignees of a fraudulent transfer, where a trader was adjudicated a bankrupt on his own petition, under 7 & 8 *Vict. c.* 96, *s.* 41.

A. purchases from the sheriff goods which had been seized under a writ of fi. fa. issued by himself against the goods of B. C. distrains upon those goods for rent due from B. On the same day B. filed a declaration of insolvency, and thereby committed an act of bankruptcy, upon which, three days afterwards, the 8*th Oct.* 1849, *a fiat issued and assignees were appointed. The adjudication was made upon the bankrupt's own application under* 7 & 8 *Vict. c.* 96, *s.* 41. *A. brings an action against C. The first count of the declaration was for distraining for more rent than was due, with an allegation that it was done maliciously, but without any allegation of damage. There were four other counts, one being in trover. Verdict for the plaintiff on the* 1*st,* 2*nd,* 3*rd, and* 4*th counts, with entire damages of* 28*l.* 12*s.; on the* 5*th, verdict for the defendant. At the trial evidence was given to show that A. obtained and procured the goods by way of fraudulent preference, and that B. caused the goods to be taken in execution with intent to defeat or delay his creditors, being at the time indebted to an amount sufficient to constitute a good petitioning creditor's debt; and that, after the commencement of the action, the assignees gave notice to A. that they meant to treat the execution and purchase of the goods as void; and also gave notice to C. not to pay the value of the goods distrained by him to A.:*

Held, first, that an act which does not amount to a legal injury cannot be actionable because it is done with a bad intent, and that therefore the insertion in a count of the word "maliciously" does not make it good, if without such allegation it would be bad (a count similar to the first count in all respects, with the exception of the allegation of malice, was held to be bad by the Ex. Ch. in Tancred *v.* Leyland, 20 *L. J.* 316, *Q. B.*), *and that, the first count being bad, and damages being assessed generally, there must be a venire de novo.*

Secondly, that, where a trader, under statute 7 & 8 *Vict. c.* 96, *s.* 41 (*the statute* 12 & 13 *Vict. c.* 106 *not having come into operation till the* 11*th Oct.* 1849), *filed a declaration of insolvency, and was adjudicated a bankrupt on his own application and not on the petition of a creditor, the act of bankruptcy on which the petition was to proceed was the declaration of insolvency, and that there could be no relation back further than to that act; and the assignees could not treat the alleged fraudulent preference or taking in execution as an act of bankruptcy; and although they might, if they chose to do so, treat the transaction as fraudulent, yet the fact of it being fraudulent did not make it absolutely void, but voidable only, at their option. That the property therefore in the goods passed to A., and that he was entitled to sue for all injuries done to them up to the time of the interference of the assignees, unless that subsequent interference had relation back to the original delivery, and made the transaction void ab initio.*

Thirdly (Dissentiente Erle, J.), *that the subsequent interference by the assignees did not take the property out of A. at the time of the distress, and that the issue on the plea of not guilty should have been found for him.*

Quære, whether, if the adjudication had taken place on the petition of creditors, though the fiat had issued on the petition of the bankrupt, there would not have been a relation back to the time of the fraudulent preference?

Semble, that a fraudulent preference may be impeached as voidable by the assignees, though at the time there was no petitioning creditor's debt.

Semble, also, that under 12 & 13 *Vict. c.* 96, *ss.* 98, 101, *where a trader files a declaration of insolvency, and is adjudicated a bankrupt on his own petition, there can be no relation back to any prior act of bankruptcy.*

Quære, whether the assignees could not sue A. for the fraud, as a party defrauded can a party guilty of the deceit?

This was an action of trespass on the case. The declaration contained five counts. The first was against the defendants for maliciously distraining for more rent than was due; the second, for an excessive distress; the third, for selling before the expiration of five days; the fourth, for selling for less than the best price; the fifth was in trover. The defendants (plaintiffs in error) severed in their pleading. Stevenson pleaded not guilty by statute to the whole declaration. Wood, the other defendant, in addition to that plea, pleaded to the count in trover that the plaintiff was not possessed. The case was tried before Jervis, C.J. sitting at Westminster after Trinity Term 1851. The jury found for both defendants on the trover count, and on the four first counts for the plaintiff, giving 28*l.* 12*s.* as the entire damages on those counts. It appeared from the evidence given at the trial for the plaintiff, that on May 24, 1849, one Samuel Watkins Saunders was indebted to one Richard Matthew Marshall in the sum of 62*l.* 6*s.* and upwards, and to the plaintiff below in a sum of 60*l.* and upwards; and being so indebted to the plaintiff, gave to the plaintiff, to wit, on Feb. 8, 1849, a warrant of attorney for securing the payment of his debt; that an action was commenced by Marshall to recover his said debt of 62*l.* 6*s.*, and that judgment therein was signed, and a writ of *fi. fa.* thereupon, on May 29, 1849, issued to the sheriff of the county of Surrey, and was on the same day duly lodged with the sheriff, and that judgment was also duly signed on the said writ of attorney, and a writ of *fi. fa.* thereupon duly issued on May 25, 1849, founded on the said judgment, and was on the same day lodged with the said sheriff; and that on May 25, 1849, the sheriff seized the goods then in the possession of the said Samuel Watkins Saunders, and on the 21st day of June, by bill of sale, in consideration of 60*l.*, sold the said William Newnham, the plaintiff below, the said goods, which had been appraised at the said sum of 69*l.*; and that at the time of the execution of the said bill of sale, the said William Newnham paid to the said sheriff the sum due to the said Richard Matthew Marshall under the said writ of *fi. fa.* And that on the 5th Oct. following, the defendants (plaintiffs in error) distrained upon and seized the goods. The defendants gave evidence to prove that Saunders, being a trader, and subject to the bankrupt laws, and being indebted as such trader in a sum sufficient to constitute a petitioning creditor's debt, and to other persons in divers sums of money; the then plaintiff, Newnham, obtained and procured the goods from Saunders as and by way of a fraudulent preference, in contemplation of the bankruptcy of Saunders: and that Saunders procured the said goods to be taken in execution with the intent of defeating and delaying his creditors: and the counsel for the said defendants contended that the defendant would be entitled to the verdict of the jury, should they be of opinion that Newnham obtained and procured the goods by way of a fraudulent preference, or if Saunders had procured the goods to be taken in execution with intent to defeat or delay the creditors. There was also evidence that on the 5th Oct. 1849, Saunders filed a declaration of insolvency, and petitioned the Lord Chancellor, and that a fiat in bankruptcy was thereupon awarded against him on the 8th Oct. 1849, under which fiat he was duly adjudged and declared a bankrupt; and that afterwards, and after the commencement of this suit, to wit, on the 8th April, 1850, John George Graham and John Cottrell were duly appointed assignees; and on the 14th June 1851, as such assignees, served on Newnham a notice in writing that they elected to treat the warrant of attorney of the 16th Feb. 1849, as void as against them as assignees, as also the judgment and execution thereon, and that they should claim against Messrs. Stevenson and Wood, any goods which they had wrongfully or improperly taken under their distress, and the value of which goods were not included in the damages given by the jury in an action against them at the suit of the assignees tried on or about the 22nd Feb. 1851. And it was also proved that the assignees served the defendants with a notice to the like effect. It was contended on behalf of the plaintiff that the *primâ facie* case of the plaintiff was not answered by the defendants, and that under the circumstances of the case, and on the facts proved, the defendants could not set up the title which the assignees of Saunders might have to the goods. The Lord Chief Justice, in summing up, directed the jury that the *primâ facie* case of the plaintiff was not answered by the defendants, and that under the circumstances of the case, and on the facts proved by the defendants, could not set up the title which the assignees of Saunders might have to the goods, whether they claimed the same upon the ground that Newnham obtained the said goods and

messuage called the Shoulder of Mutton and cottage Raven's Nest, with buildings, lands, and appurtenances thereunto belonging," &c.

The plaintiff thereupon gave up possession of the cottage called Raven's Nest, but retained the Shoulder of Mutton, and let it, as aforesaid, to the defendant.

Evidence of the declarations of Cotton, as to what the payment of 10*s.* had been for, was tendered, but rejected by the judge.

The defendant also contended that Ingram's claim to the Shoulder of Mutton, and his own recognition of it, brought the title of the premises in question, and excluded the jurisdiction of the Co. C.; but the judge held that the defendant could not dispute the title of the plaintiff, by whom he had been let into possession of the premises. The judge also stated in the case that he gave judgment for the defendant on the ground that the rent, being entire and issuing from the whole of the premises, and the notice to quit having determined the plaintiff's tenancy in respect of the part for which the 10*s.* were paid, viz. the enlarged part of the Shoulder of Mutton, he could not apportion the rent in respect of the remainder.

Baddeley, for the appellant.—This was a mere question between landlord and tenant. The plaintiff let the premises to defendant; the claim is solely for a year's rent; and the defendant has paid 14*l.* 2*s.* 5*d.* into court. This admits the tenancy. The notice to quit from Ingram ought not to have been received in evidence, because it amounts to *nil habuit in tenementis*, and it was not competent to the defendant to set up such a defence; "he could not controvert the continuance of the title of the person under whose demise he continued to hold:" (*Balls* v. *Westwood*, 2 Camp. 12.) There was no evidence here of commencing a fresh holding under any other person, or of any eviction of the defendant.

Gray, for the respondent.—This is a case in which the landlord's title had expired during the term. The plaintiff, as the personal representative of Cotton, took possession of the premises on Cotton's death; the declarations of Cotton therefore as to the payment of the 10*s.* were receivable. They would have shown that the payment was for the Shoulder of Mutton, and that Cotton held those premises under Ingram. Then Ingram's notice to quit determined the plaintiff's title to the Shoulder of Mutton. The defendant also had notice not to pay rent to the plaintiff. It was competent to defendant, therefore to show that the plaintiff's title had so expired, and that Ingram was the proper party to receive the rent. The case of *Rules* v. *Westwood* is not law. The modern cases are inconsistent with it; and it is now well settled that a tenant may show the expiration of his landlord's title: (*England d. Syburn* v. *Slade*, 4 T. R. 682; *Grosvenor* v. *Woodhouse*, 1 Bing. 38; *Doe d. Jackson* v. *Ramsbottom*, 3 M. & S. 516; *Waddilove* v. *Barnett*, 2 Bing. N. C. 538; *Newport* v. *Hardy*, 2 Dowl. & L. 321; *Doe* v. *Seaton*, 2 C. M. & R. 728; Com. Dig. "Estoppel," E. 8.)

Baddeley, in reply.—Cotton's declarations were not admissible. Ingram's title is no defence unless something was done under it, or the tenant was evicted. The defendant should have shown that his occupation was not by the sufferance of the plaintiff. There must be a substantial and *bonâ fide* claim of title to oust. The jurisdiction of the Co. C. and the proposed evidence here was not sufficient for that purpose: (*Lilley* v. *Harvey*, 11 L. T. Rep. 273.)

COLERIDGE, J.—It is conceded on the part of the respondent that the judgment cannot be sustained; and the point that has been mainly argued turns on this, whether a tenant may show that the title of his landlord has expired during the tenancy, though he has remained in possession till the end of his term. I think it is clear that, under certain circumstances, he may show that; and that he is at liberty to do so when the circumstances are such as, although not an actual eviction, yet are tantamount to it. It would be hard on a man who assents to the new title if he might not assent to a new arrangement with the party claiming, without going out. Another point in this case is, whether or not the declarations of Cotton are receivable in evidence, to show that in the first instance there was a holding under Ingram as to the premises called the Shoulder of Mutton and the other premises, and that some rent was paid for them by Cotton to Ingram. Upon Cotton's death the plaintiff comes into possession as his personal representative, and makes a contract with the defendant, and at the same time Ingram gives the plaintiff notice to quit the premises. The plaintiff thereupon goes out of a certain portion of them, and, according to the language of the judge, the notice to quit had determined the plaintiff's tenancy as to the premises, for which he paid the 10*s.* What, therefore, has been done between Ingram and the defendant is this: contemporary with or preceding the notice to quit, Ingram had gone to him and said, I forbid you any longer paying rent to the plaintiff, and thereupon the defendant refused to pay any rent to the plaintiff. The judge found that this determined the tenancy as to some part of the premises. The defendant then proposed to supply the gap by Cotton's declarations, that the rent was paid for the Shoulder of Mutton. Now declarations of a deceased tenant, as to the party under whom he held, have always been admissible in evidence, and I cannot see why they are not receivable to let in that part of the case as proposed here. Suppose a tenant in fee lets for a term, and the lessee underlesses, and then the tenant in fee determines the term, may not the underlessee holding on show the termination of the *mesne* tenancy? That seems to me no more than showing that his landlord's title has expired. If, then, the declarations of Cotton ought to have been received in evidence, they might have gone to raise a question of title between Ingram and the plaintiff, when it would have been the duty of the judge to surcease and go no further into the matter. As a general rule, we think that a tenant may show that his landlord's title has expired, and that if the case then resolves itself into a question of title, the judge of the Co. C. has no further jurisdiction.

WIGHTMAN, J.—The more important question is, whether or no the title to these corporeal hereditaments come in question? Undoubtedly the precise circumstances do not appear very clearly; but there is enough stated to show that both parties really intended to make this a question of title, viz. whether the defendant was at liberty to set up that the title of his lessor had expired and vested in some one else? If this is so, no doubt the title would come in question. Several matters are agreed on which make this a question of title. It was contended by the plaintiff that the 10*s.* was paid for a part of the house only; and by Ingram, who claimed the whole house, that it was paid for the whole house. Cotton was not a mere stranger; but he occupied the premises, and paid 10*s.* a year to Ingram. There was no sufficient ground, therefore, for excluding the declarations of Cotton.

ERLE, J.—The question in dispute was, whether the tenant was at liberty, without giving up possession of the demised premises, to show that his landlord's title had expired. I think that such a defence was admissible. Since *Balls* v. *Westwood* there have been several decisions to the contrary of what was there laid down, and such decisions have reason on their side. If this were not so, a tenant would be liable to pay to his landlord and also to the party entitled to the premises, and it is not right to make a tenant pay twice. If that defence was admissible, it is for the judge to say whether the defence is raised *bonâ fide*; and if it is, the question of title at once arises. Cotton's declarations were admissible, and tended to show that the title was in Ingram; for the evidence was that he had paid rent for these very premises to Ingram, and the plaintiff is the representative as executor of Cotton. Then, if this was a question of title, the jurisdiction of the Co. C. is at an end.

CROMPTON, J.—I do not know whether it has yet been decided whether, when the tenancy has expired as to part, that is answer to an action for the rent *pro tanto*. But, without saying whether there should have been an eviction or not, I agree with the rest of the court that the question of title arises, and that would prevent the judge of the Co. C. from going on with the case. *New trial ordered.*

COURT OF COMMON BENCH.

Reported by DANIEL THOMAS EVANS and R. VAUGHAN WILLIAMS, Esqrs. Barristers-at-Law.

COUNTY COURT APPEAL.

Monday, Jan. 24.

FULLER, App. CHEVELEY, Resp.

County Court—Contract by letter—Stamp—Nonsuit.

In the County Court the plaintiff tendered in evidence certain letters as proof of the contract sued upon, and the judge admitted them, though they were not stamped; and the question whether they amounted to a contract between the parties was left by the judge to the jury:

Held, on appeal, that this was a question of law for the judge, and not of fact for the jury, and the judgment, therefore, must be reversed.

Held, also, that if the letters amounted to a contract, they were inadmissible for want of a stamp.

Under 13 *&* 14 *Vict. c.* 61, *s.* 11, *the Court of Appeal has power to order a nonsuit to be entered, because in effect a nonsuit is a judgment for the plaintiff.*

This was an appeal from the Co. C. of Essex, held at Chelmsford; and the case stated for the opinion of the C. B. was as follows:—

This was an action brought by the plaintiff, who is a draper's assistant, against the defendant, who is a draper, under the following particulars of demand:—"This action is brought to recover 50*l.* damages for breach of contract, by reason of the defendant not taking the plaintiff into partnership in the month of July, August, or September last. Dated this 15th Oct. 1852." The action was tried by a jury in the Co. C. of Essex at Chelmsford on 28th Oct. 1852, when a verdict was found for the plaintiff, with 30*l.* damages. On behalf of the plaintiff a correspondence by letters between the plaintiff and defendant was put in evidence; and the following are those which were relied on by the plaintiff as forming the contract:

From the plaintiff to the defendant.

"Chelmsford, June 15, 1852.

"Dear Sir,—Almost ever since you left Chelmsford my brother's health has been declining, and for the last nine months he has been but little in the business; he has now, I believe, quite made up his mind to leave it, and that as soon as possible, and unfortunately I think I never was worse manned. Do you happen to know a first-class man that would suit my trade—one that I could place the utmost confidence in. If I met with such a man I should, after a short time, give him a share in the business; in fact, I do or shall almost immediately require some one to manage the house. It is a good opportunity for any young man that has no means of his own. I am very glad to hear you are so well and happily settled, and I hope and wish you may quickly make a fortune. We are not busy. The trade in the town generally has decreased; market-days are bad. If you can recommend any one, shall be obliged.—Yours, truly, C. CHEVELEY."

From plaintiff to defendant.

"Margate, June 16, 1852.

"Dear Sir,—I received yours in due time: in answer I beg to say, that I do not know of any one likely to suit you; young men of the class you want are not often to be met with.

"If you will make it answer my purpose, and like to re-engage me, please write by return of post.—Yours respectfully, W. FULLER."

From defendant to plaintiff.

"Chelmsford, July 15, 1852.

"Dear Sir,—I have been from home, or should have replied sooner. I never supposed your last was intended as rudeness; therefore will pass it over and reply to yours (of the 9th instant); and as you appear anxious to start as a partner, I make the following proposal to you:—To give you for the first two years one-third of the business; at the end of that time, if we go on pleasantly, to give you an equal share. You may consider one-third share worth to you from 150*l.* to 200*l.*—all our other arrangements will be the same as my brother's,—rent of premises 60*l.*, capital employed 3000*l.*, allowance for young men and a servant 10*s.* a week per head, which includes coal, beer, and wear and tear; that is all. The furniture in the house to be yours, taken of course as you and my brother agree upon. The buying and paying accounts I reserve to myself, although I shall at any time be glad to get rid of it: the stock to be taken fairly between my brother and yourself.

"I find our [his brother's] agreement is drawn so, that we could at any time have separated by either party giving the other three months' notice; I think that is too short, and ought to be six months, or forfeit 50*l.* or 100*l.*; of course I do not anticipate such a thing, but I believe such clauses are always introduced. Now the next thing is the time. I certainly should wish it by the end of August, for of course we must take stock, and after that time we shall be buying autumn goods. I have written in haste to save the day mail, and also in the greatest noise from the election; but if this is satisfactory to you it will be better to have a copy of agreement drawn first.—Yours truly, C. CHEVELEY."

From plaintiff to defendant.

"Margate, 16th July, 1852.

"Dear Sir,—In reply to yours of this morning, I beg to state I am ready to accede to your proposal. With regard to time, if you could possibly defer my coming until the second week in September it would suit much best, as our season is at the height. Perhaps when you forward the agreement you would name the latest time.—I remain, yours obliged and respectfully, W. FULLER."

From defendant to plaintiff.

"Chelmsford, July 19, 1852.

"Dear Sir,—Mr. Veley is in London; but I will see him to-morrow, and get him to draw a copy and forward to you. The time is very important, and ought not to be later than August; for harvest will then be over, and there will be a little more doing: besides, I shall want to be buying a few autumn goods.—Yours truly, C. CHEVELEY."

From defendant to plaintiff.

"Chelmsford, July 21, 1852.

"Dear Sir,—If you have not named your leaving to Mrs. Gosling you had better not do so for a few days, or until you hear from me again, as a circumstance, quite unexpected and very important, has occurred, which may compel me to alter my circumstances.—Yours truly, C. CHEVELEY."

From plaintiff to defendant.

"Margate, 22nd July, 1852.

"Dear Sir,—I have made every arrangement to leave at the end of August: have engaged a young lady, also a young man; expect him on Saturday next. I thought it would be better to have him as soon as possible, to get used to the business before I left. Must say was very much surprised at the contents of your last.—Yours respectfully,

"W. FULLER."

A letter of 23rd July, from defendant below to plaintiff, in which the defendant Fuller stated that circumstances had occurred which prevented him from carrying out the proposed arrangements with the plaintiff below, was put in at the trial, and closed the correspondence.

The questions for the opinion of the court are—

1st. Whether the letters bearing the alleged agreement should have been admitted in evidence by the court without being duly stamped.

2nd. Whether a determination of the said court, not to nonsuit the said plaintiff on the ground that the said letters so admitted in evidence formed no valid and binding agreement upon which the said action could be maintained, was wrong in point of law.

3rd. Whether the determination of the said court, to leave the decision of the question whether the said letters formed such an agreement as last mentioned to the jury, and whether the direction of the court to the jury thereon, was wrong in point of law.

Honeyman, for the appellant.—If there was any contract between the parties in this case, it is contained in the letters before the court. But there was in fact no contract; for the letters of the appellant did not amount to an acceptance of the offer of the plaintiff below, and the terms were not finally adjusted; and particularly this is so with reference to a material consideration, that is to say,—the period when the partnership was to commence: (*Wontner* v. *Shortz*, 17 L. J. 36, C. P.; *Vollans* v. *Fletcher*, 16 L. J. 178, Ex.; *Routledge* v. *Grant*, 4 Bing. 653.) Furthermore, the question as to whether there was a valid acceptance of the terms offered, so as to constitute a contract, was not one for the jury, but a question of law for the judge: (*Neilson* v. *Harford*, 8 M. & W. 806; *Morrill* v. *Frith*, 3 M. & W. 402; *Phillips* v. *Allatt*, 4 M. & G. 846.) Lastly, if the letters did amount to a contract, as they had no stamp, they were inadmissible, and the plaintiff below ought to have been nonsuited.

Channell, Serjt. for the respondent, was not called on.

JERVIS, C. J.—It seems to me that in this case the judge was wrong. It is a simple question of the construction to be put on written documents, and as such was for the decision of the judge, and not for that of the jury. However, as it has now come before us, we must reverse the judgment, for the plaintiff below is in this dilemma: either the letters stated in the case amount to a contract, or they do not; if they constitute a contract, they are inadmissible because they require a stamp; if they do not amount to a contract, then the plaintiff's case failed, and judgment should have gone for the present appellant. Unless we have power to enter a nonsuit, there must therefore be a new trial.

Honeyman, after referring to the 13 & 14 Vict. c. 61, read sect. 61, which enacts as follows:—"that the Court of Appeal may either order a new trial on such terms as it thinks fit, or may order judgment to be entered for either party, as the case may be, and may make such order with respect to the costs of the said appeal as such court may think proper, and such orders shall be final." The question that arises on this clause is, whether judgment of nonsuit can be said to be a judgment for "either party."

By the COURT.—We think that judgment of nonsuit is, in effect, a judgment for the defendant. A nonsuit will therefore be entered. *Judgment accordingly.*

COURT OF EXCHEQUER.

Reported by FREDERICK BAILEY and C. J. B. HERTSLET, Esqrs. Barristers-at-Law.

Jan. 11 *and* 26.

HUBBERSTY *v.* WARD.

Bill of lading—Authority of captain.

Seventy-five quarters of wheat having been shipped, the plaintiffs made an advance thereon, and a bill of lading was signed. Seventy quarters more were then shipped, and a bill of lading made and pledged in the same manner to the plaintiffs. The captain had also been fraudulently induced to sign another bill of lading for the whole 145 *quarters:*

Held, that when a captain has once signed bills of lading for cargo on board his vessel his power is exhausted; and that therefore the plaintiffs were entitled to recover.

This was an action of trover for wheat, tried at Liverpool before Wightman, J., when a verdict was returned for the plaintiff.

It appeared that 229 quarters of wheat were put on board the ship *Celerity*, a bill of lading having been previously made out; afterwards seventy-five quarters were shipped by Potterell; and he then applied to the plaintiffs for an advance on that shipment, and an advance was made and a bill of lading made out. Seventy quarters more were then shipped, and a bill of lading made and likewise pledged in the same way to the plaintiffs. This latter transaction took place about the 16th or 17th April; and on the 16th, before its completion, Hans, Marker and Co. were applied to for an advance on the 145 quarters, viz. the 75 and 70 (the 229 quarters having been previously pledged to them). Hans, Marker and Co. made out a bill of lading, and applied to the captain to sign it, who refused, on the ground that he should be signing for more than he had on board; but on the following day Potterell imposed on the captain by pretending to destroy the bill of lading for 75 quarters, and he then induced him to sign a bill of lading for 145 instead of for the 70 quarters as he supposed. The question was then as to the 70 quarters only. A rule having been obtained for a new trial,

Unthank now showed cause.—The cases are all

by the act of the captain; and the evidence showed that the plaintiffs had acquired a property in the goods. He cited *Howard* v. *Tucker*, 1 B. & Ad. 712; *Hawes* v. *Watson*, 5 B. & C. 540; *Gillett* v. *Hill*, 2 Cr. & Mee. 581; *Ex parte Thornton*, 1 Myl. & Kee.

Jones, in support, contended that the fraud was sufficient to destroy the validity of the second bill of lading; and cited *Bates* v. *Todd*, 1 M. & Rob. 106; *Caldwell* v. *Ball*, 1 T. R. 205. *Cur. adv. vult.*

Wednesday, Jan. 26.—POLLOCK, C.B.—This was a motion for a rule for a new trial, and was argued before us this term. We are of opinion that the rule ought to be discharged. It appears to me, that when a captain has signed bills of lading for a cargo that is actually on board his vessel his power is exhausted; he has no right or power, by signing other bills of lading for goods that are not on board to charge his owner. On the present occasion, it appears that the action was brought in respect of bills of lading which had clearly a priority of claim; and we think the verdict was right, and that the rule for a new trial must be discharged. *Rule discharged.*

EXCHEQUER CHAMBER.

(Reported by R. VAUGHAN WILLIAMS, Esq. Barrister-at-Law.)

ERROR FROM THE COMMON PLEAS.

Friday, Nov. 26.

(Before PARKE, PLATT, and MARTIN, BB., and COLERIDGE, WIGHTMAN, ERLE, and CROMPTON, JJ.)

STEVENSON *v.* NEWNHAM.

Pleading—Effect of the word "maliciously" in a count—Bankruptcy—Fraudulent preference—Rights of preferee against a wrongdoer as between the preferee and the assignees—Retrospective effect of disaffirmance by the assignees of a fraudulent transfer, where a trader was adjudicated a bankrupt on his own petition, under 7 *&* 8 *Vict. c.* 96, *s.* 41.

A. purchases from the sheriff goods which had been seized under a writ of fi. fa. issued by himself against the goods of B. C. distrains upon those goods for rent due from B. On the same day B. filed a declaration of insolvency, and thereby committed an act of bankruptcy, upon which, three days afterwards, the 8th Oct. 1849, *a fiat issued and assignees were appointed. The adjudication was made upon the bankrupt's own application under* 7 *&* 8 *Vict. c.* 96, *s.* 41. *A. brings an action against C. The first count of the declaration was for distraining for more rent than was due, with an allegation that it was done maliciously, but without any allegation of damage. There were four other counts, one being in trover. Verdict for the plaintiff on the* 1*st*, 2*nd*, 3*rd, and* 4*th counts, with entire damages of* 289*l.* 12*s.*; *on the* 5*th, verdict for the defendant. At the trial evidence was given to show that A. obtained and procured the goods by way of fraudulent preference, and that B. caused the goods to be taken in execution with intent to defeat or delay his creditors, being at the time indebted to an amount sufficient to constitute a good petitioning creditor's debt; and that, after the commencement of the action, the assignees gave notice to A. that they meant to treat the execution and purchase of the goods as void; and also gave notice to C. not to pay the value of the goods distrained by him to A.:*

Held, first, that an act which does not amount to a legal injury cannot be actionable because it is done with a bad intent, and that therefore the insertion in a count of the word "maliciously" does not make it good, if without such allegation it would be bad (a count similar to the first count in all respects, with the exception of the allegation of malice, was held to be bad by the Ex. Ch. in Tancred *v.* Leyland, 20 *L. J.* 316, *Q. B.*), *and that, the first count being bad, and damages being assessed generally, there must be a venire de novo.*

Secondly, that, where a trader, under statute 7 *&* 8 *Vict. c.* 96, *s.* 41 (*the statute* 12 *&* 13 *Vict. c.* 106 *not having come into operation till the* 11*th Oct.* 1849), *filed a declaration of insolvency, and was adjudicated a bankrupt on his own application and not on the petition of a creditor, the act of bankruptcy on which the petition was to proceed was the declaration of insolvency, and that there could be no relation back further than to that act; and the assignees could not treat the alleged fraudulent preference or taking in execution as an act of bankruptcy; and although they might, if they chose to do so, treat the transaction as fraudulent, yet the fact of it being fraudulent did not make it absolutely void, but voidable only, at their option. That the property therefore in the goods passed to A., and that he was entitled to sue for all injuries done to them up to the time of the interference of the assignees, unless that subsequent interference had relation back to the original delivery, and made the transaction void ab initio.*

Thirdly (dissentiente Erle, J.), that the subsequent interference by the assignees did not take the property out of A. at the time of the distress, and that the issue on the plea of not guilty should have been found for him.

Quære, whether, if the adjudication had taken place on the petition of creditors, though the fiat had issued on the petition of the bankrupt, there would not have been a relation back to the time of the fraudulent preference?

Semble, that a fraudulent preference may be impeached as voidable by the assignees, though at the time there was no petitioning creditor's debt.

Semble, also, that under 13 *&* 14 *Vict. c.* 96, *ss.* 93, 101, *where a trader files a declaration of insolvency, and is adjudicated a bankrupt on his own petition, there can be no relation back to any prior act of bankruptcy.*

Quære, whether the assignees could not sue A. for the fraud, as a party defrauded can a party guilty of the deceit?

This was an action of trespass on the case. The declaration contained five counts. The first was against the defendants for maliciously distraining for more rent than was due; the second, for an excessive distress; the third, for selling before the expiration of five days; the fourth, for selling for less than the best price; the fifth was in trover. The defendants (plaintiffs in error) severed in their pleading. Stevenson pleaded not guilty by statute to the whole declaration. Wood, the other defendant, in addition to that plea, pleaded to the count in trover that the plaintiff was not possessed. The case was tried before JERVIS, C.J. sitting at Westminster after Trinity Term, 1851. The jury found for both defendants on the trover count, and on the four first counts for the plaintiff, giving 289*l.* 12*s.* as the entire damages on those counts. It appeared from the evidence given at the trial for the plaintiff, that on May 24, 1849, one Samuel Watkins Saunders was indebted to one Richard Matthew Marshall in the sum of 62*l.* 6*s.* and upwards, and to the plaintiff below in a sum of 600*l.* and upwards; and being so indebted to the plaintiff, gave to the plaintiff, to wit, on Feb. 8, 1849, a warrant of attorney for securing the payment of his debt; that an action was commenced by Marshall to recover his said debt of 62*l.* 6*s.*, and that judgment therein was signed, and a writ of *fi. fa.* thereupon, on May 29, 1849, issued to the sheriff of the county of Surrey, and was on the same day duly lodged with the sheriff, and that judgment was also duly signed on the said writ of attorney, and a writ of *fi. fa.* thereupon duly issued on May 25, 1849, founded on the said judgment, and was on the same day lodged with the said sheriff; and that on May 25, 1849, the sheriff seized the goods then in the possession of the said Samuel Watkins Saunders, and on the 21st day of June, by bill of sale, in consideration of 600*l.*, sold the said William Newnham, the plaintiff below, the said goods, which had been appraised at the said sum of 695*l.*; and that at the time of the execution of the said bill of sale, the said William Newnham paid to the said sheriff the sum due to the said Richard Matthew Marshall under the said writ of *fi. fa.* And that on the 5th Oct. following, the defendants (plaintiffs in error) distrained upon and seized the goods. The defendants gave evidence to prove that Saunders, being a trader, and subject to the bankrupt laws, and being indebted as such trader in a sum sufficient to constitute a petitioning creditor's debt, and to other persons in divers sums of money; the then plaintiff, Newnham, obtained and procured the goods from Saunders as and by way of a fraudulent preference, in contemplation of the bankruptcy of Saunders; and that Saunders procured the said goods to be taken in execution with the intent of defeating and delaying his creditors; and the counsel for the said defendants contended that the defendant would be entitled to the verdict of the jury, should they be of opinion that Newnham obtained and procured the goods by way of a fraudulent preference, or if Saunders had procured the goods to be taken in execution with intent to defeat or delay the creditors. There was also evidence that on the 5th Oct. 1849, Saunders filed a declaration of insolvency, and petitioned the Lord Chancellor, and that a fiat in bankruptcy was thereupon awarded against him on the 8th Oct. 1849, under which fiat he was duly adjudged and declared a bankrupt; and that afterwards, and after the commencement of this suit, to wit, on the 8th April, 1850, John George Graham and John Cottrell were duly appointed assignees; and on the 14th June 1851, as such assignees, served on Newnham a notice in writing that they elected to treat the warrant of attorney of the 16th Feb. 1849, as void as against them as assignees, as also the judgment and execution thereon, and that they should claim against Messrs. Stevenson and Wood, any goods which they had wrongfully or improperly taken under their distress, and the value of which goods were not included in the damages given by the jury in an action against them at the suit of the assignees tried on or about the 22nd Feb. 1851. And it was also proved that the assignees served the defendants with a notice to the like effect. It was contended on behalf of the plaintiff that the *prima facie* case of the plaintiff was not answered by the defendants, and that under the circumstances of the case, and on the facts proved, the defendants could not set up the title which the assignees of Saunders might have to the goods. The Lord Chief Justice, in summing up, directed the jury that the *prima facie* case of the plaintiff was not answered by the defendants, and that under the circumstances of the case, and on the facts proved by the defendants, could not set up the title which the assignees of Saunders might have to the goods, whether they claimed the same upon the ground that Newnham obtained the said goods and

EXCHEQUER CHAMBER.

chattels from Saunders as and by way of fraudulent preference in contemplation of bankruptcy, or upon the ground that Saunders procured the goods to be taken in execution, with the intent of defeating and delaying his creditors; and to this ruling of his Lordship the counsel for the defendant Stevenson excepted.

This cause was originally tried before the late Lord Chief Justice Wilde at the sittings after Trinity Term, 1850. On that occasion his Lordship allowed the defendants (the plaintiffs in error) to set up the *jus tertii* of the assignees of Saunders (the assignees assisted the defence as much as they could), and the defendants obtained a verdict. This was afterwards set aside by the C. P., reported in 20 L. J. 111, C. P. As the C. P. in their judgment held that the mere fact of the assignees of Saunders having brought an action against Newnham was no evidence of their election to treat as void the warrant of attorney given to Newnham, on the ground that the same was given by way of fraudulent preference (or in contemplation of bankruptcy), the assignees gave specific notice of such their intention subsequent to the issuing of the writ. The cause went down for trial a second time at the sittings after Trinity Term, 1851; and Jervis, C. J., holding that the service of the notices by the assignees made no substantial difference, refused to allow the defendant's counsel to go into evidence of the warrant of attorney having been given either by way of fraudulent preference, or in contemplation of bankruptcy.

H. Hill, Q. C. for the plaintiff in error. The first point is, the judgment for entire damages is erroneous: the first count being bad: (*Leyland* v. *Tancred*, 20 L. J. 316, Q. B. overruling *Taylor* v. *Hemmeker*, 12 Ad. & Ell. 486.) The only difference between the first count in this case and the count in *Leyland* v. *Hemmeker* is that it contains the word "maliciously." But the insertion of the word "maliciously" in a count for doing a thing not unlawful *per se* does not make the count good. Legal damage must be alleged: (Per Williams, J. in *Cottered* v. *Jones*, 21 L. J. 2, C. P.) Secondly, the plaintiff (in error) is entitled to judgment on the bill of exceptions. When this case was before the C. P. (20 L. J. 111, C. P.) the facts were different. There is now the additional fact of the interference of the assignees. But without that their title to the goods would relate back to the fraudulent preference; and if the defendant below was a wrongdoer, the right of action was in the assignees. The assignees represent the creditors, and may claim all goods which have been disposed of by the bankrupt contrary to the Bankrupt Laws: and the fact of the trader having been made a bankrupt upon his own petition makes no difference. They are in the same position as if a petitioning creditor had made him a bankrupt. If that were not so, and any goods, as in this case, had been obtained by way of fraudulent preference, they might be sold to another person knowing all the circumstances, and he would be protected against the assignees. *Hancock* v. *Caffin*, 8 Bing. 358, is all-fours with this case. *Leake* v. *Loveday*, 4 M. and G. 972: *Hardman* v. *Wilcock*, 9 Bing. 382, n. I submit that where a party takes goods by way of fraudulent preference, and an injury is done to those goods by which their value is diminished, if the assignees elect afterwards to avoid the transfer, the party doing the injury is liable to an action at the suit of the assignees; and if the party is sued by the person to whom the fraudulent transfer was made, he may set up the *jus tertii* of the assignees. *Hall* v. *Wallace*, 7 M. & W. 353. *Ex parte Phillpott*, 1 De Gex, 346. Though a trust deed cannot be impeached under a bankrupt's own fiat, if there had been a petitioning creditor it might. Here the assignees do not stand in the position of the bankrupt, but represent the creditors, and may avoid the transfer. (It was upon the suggestion of Crompton, J., taken by consent, that Newnham on the 11th Sept. placed a man in possession of the goods, and was entitled to sue if the assignees were not, and also that an action of trover was brought by the assignees against Newnham on the day after the fiat.)

Pashley (with him *Prentice*).—There were two writs with the sheriff. [PARKE, B.—The only point is whether the disaffirmance and demand by the assignees has operation back under the old Act of Parliament, the transaction between the bankrupt and Newnham not being an act of bankruptcy under that Act, so as to divest the property in the goods from the beginning.] There is no authority for carrying back the operation of disaffirmance so far. In *Hardman* v. *Willcock* notice was given to the defendant before the sale, and he was the mere agent of the plaintiff. *Leake* v. *Loveday* is distinguished by the C. P. Suppose judgment had been recovered before disaffirmance, would not the plaintiff below be entitled to execution? The grievance of the plaintiff below might not be coextensive with that of the assignees, for he might be entitled to possession of the goods until disaffirmance, and the measure of damages might be different. [ERLE, J.—Suppose a wrongdoer has obtained damages, can he be allowed to keep the amount of the damages, or could the assignees recover it from him?] I don't see how they could.

H. Hill, Q.C. in reply, referred the court to *White* v. *Garden*, 10 C. B. 919; *Butler* v. *Baker*, 2 Coke's Rep. part 3, fol. 253, p. 26; *Mansell's* case, 6 Coke, part 13, fol. 19, p. 416. [PARKE, B. referred to 1 Summer (American Reports), 509.]

JUDGMENT.

Friday, Jan. 28.—PARKE, B.—I have to deliver judgment in the case of *Stevenson* v. *Newnham*, which was argued before my brothers Coleridge, Wightman, Erle, Platt, Martin, Crompton, and myself. In this case we have already intimated our opinion that there must be a *venire de novo*. The doubt is on the four first counts. It is first necessary to state what the pleadings were. It was an action on the case by the defendant in error, Newnham, against the plaintiff in error, Stevenson; the declaration stating that the plaintiff Newnham, the plaintiff in that action, being entitled to certain premises, seized the goods in question for a distress, on an allegation that more rent was due than really was due. The second count is for taking an unreasonable distress; the third count for selling before five days had elapsed; the fourth count for not selling at the best price; and the fifth count is in trover. Pleas, the general issue by statute, and also to the count in trover that the plaintiff was not possessed, on which issue was joined, and a verdict was found on all the pleas for the plaintiff; and the question comes before the Court on a bill of exceptions. In this case we have already intimated our opinion that there must be a *venire de novo*; the damages on the four first counts having been assessed generally, and the first count being bad. This count can only be distinguished from that which was held bad by the Ex. Ch. in the case of *Tancred* v. *Leyland*, 20 L. J. 816, Q.B. by the immaterial circumstance that it contains an averment that the distress for too much rent was "maliciously" made. An act which does not amount to a legal injury cannot be actionable because it is done with a bad intent; but though it would be sufficient for us to decide this point, we think it right, in order to save the expense of another trial, and a further discussion of the important question in the case upon another bill of exceptions, to give our opinion upon the principal point which was argued before us. That opinion is in favour of the defendant in error. The material facts are these: The plaintiff below brings his action for an excessive and also for an irregular distress upon his goods, made upon the 5th Oct. 1839. The plaintiff below obtained them by a purchase from the sheriff under a writ of *fi. fa.* at his own suit, founded on a warrant of attorney for 600*l.*, given by one Saunders to him. The writ was put into the hands of the sheriff on the 25th May, 1839, and a bill of sale given by the plaintiff to the sheriff on the 21st June for 600*l.* On the 29th May another writ against Saunders was put into the sheriff's hands at the suit of one Marshall for 62*l.*, and the plaintiff paid him off; and the assignment to the plaintiff was under both writs. In the view, however, that we take of the question, that circumstance need not be considered. The plaintiff took possession of the goods, and, on the 5th Oct. 1849, the distress of those goods of which the plaintiff complains, for rent due from Saunders and another to the defendant, took place; and, on the same 5th Oct. Saunders filed a declaration of insolvency, and thereby committed an act of bankruptcy; and, on the 8th Oct. 1849, a fiat was obtained on that act of bankruptcy, under which assignees were appointed. Evidence was given to show that the plaintiff obtained and procured the goods by way of fraudulent preference, and that Saunders caused the goods to be taken in execution with intent to defeat or delay his creditors, being then indebted to some in a sufficient sum to constitute a good petitioning creditor's debt; and, on the 14th June, 1851, long after the commencement of this suit, the assignees appointed under the fiat gave notice to the plaintiff that they meant to treat the warrant of attorney, judgment, and execution as void, and should claim the goods against the defendant as being wrongfully taken under a distress. They also gave a notice to the defendant stating that they had brought an action against the plaintiff to try the validity of the warrant of attorney, and had recovered 230*l.*, being the value, with certain deductions, of the goods seized under the plaintiff's writ of execution, and requiring the defendants not to pay the value of the goods distrained by them to the plaintiff, and claiming from them the damages for the illegal distress, the subject of this action. The Lord Chief Justice, in summing up the evidence given in the cause to the jury, gave his opinion that the *prima facie* case of the plaintiff was not answered by proof as above set forth, and that under the circumstances of the case and on the facts proved, the defendant could not set up the title which the assignees of the said bankrupt might have had in the said goods, whether they claimed the same upon the ground that the said plaintiff obtained the said goods and chattels from the said bankrupt, by way of fraudulent preference of the said plaintiff, in contemplation of the bankruptcy of the said bankrupt, or upon the ground that the said bankrupt procured the said goods to be taken in execution with the intent of defeating and delaying his said creditors. This summing up was according to the decision of the court on a motion for a new trial in this case, as reported in 10 C. B. 913; the additional matter given in evidence on the second trial not making any difference in the opinion of the Chief Justice. We think that this summing up was perfectly correct. The first question in this case is, whether the receipt of the goods by the plaintiff under the circumstances stated would have been a mere fraudulent preference, to be treated simply as such in this action, or as an act of bankruptcy. A fraudulent delivery of goods, or the causing them to be taken in execution, with intent to defeat or delay creditors, is an act of bankruptcy; and if in this case the assignees under this fiat could have resorted to such an act of bankruptcy, we should have thought that their title would have related back to the delivery of the goods, or the fraudulent execution itself, as an act of bankruptcy; and the property in the goods would thereby have vested in the assignees from that moment, and so the plaintiff would not have been entitled to sue for the part of his alleged cause of action, the loss of the temporary possession, or for the excess in taking more than ought to have been taken as a distress; and if the fiat had been issued upon the petition of any of those creditors to whom the bankrupt was indebted at the time of the transfer of the goods to the plaintiff, in a sufficient sum to make them good petitioning creditors, the assignees under that fiat would have had a title to the goods by that very transfer. But on the 8th Oct. 1849, when the fiat issued, the old bankrupt law, 7 & 8 Vict. c. 96, was in force—the new statute, the 12 Vict. c. 106, did not come into operation until the 11th Oct. 1849, and under the former statute, sect. 41, the L. C. can grant a fiat on the petition of the trader himself only when he has filed a declaration of insolvency, which is made an act of bankruptcy by 6 Geo. 4, c. 16, s. 6. A very important question in the case arises upon the construction of that clause. It provides, "That the L. C. shall have power upon petition made to him in writing, by any trader who shall have filed a declaration of insolvency in manner and form prescribed by the statute in that case made and provided, &c. to issue a fiat in bankruptcy against such trader, and to authorise the prosecution thereof in the Court of Bankruptcy in London or in any District Court of Bankruptcy, and that it shall and may be lawful for such court, so authorised as aforesaid, upon the application of such trader, and upon the proof of the trading, and of the filing of such declaration, or upon the application of any creditor or creditors of such trader to such amount as by the said statute required for a petitioning creditor's debt, and upon proof of the matters requisite to support a fiat issued upon the petition of the creditors, to make the adjudication of bankruptcy under such fiat; and all other further proceedings under such fiat shall be thenceforth prosecuted and carried on in like manner as if such fiat had been issued and adjudicated upon on the petition of a creditor of the bankrupt." It may be collected from the bill of exceptions in this case that the adjudication was made upon the bankrupt's own application, not on that of creditors, to the amount sufficient to constitute a petitioning creditor's debt, who might have obtained that adjudication. It seems to us that, in such a case the act of bankruptcy on which the petition is to proceed is the declaration of insolvency, and that there can be no relation back further than to that Act. It possibly might have been otherwise if the adjudication had taken place on the petition of the creditors, though the fiat had issued on the petition of the bankrupt, for then, as in the case of an ordinary commission or fiat, there may perhaps be a relation back to any act of bankruptcy which can be proved to have been committed previous to the petitioning. The provision at the close of the section, that the proceedings may be prosecuted and carried on in like manner as if the fiat had been issued and adjudicated upon on the petition of a creditor, was merely added for the purpose of providing that all the meetings, examinations, &c. should take place in the same way as any ordinary fiat or commission, this section being the first by which a fiat can issue on the bankrupt's own petition. It would appear from the report of the case in 1 De Gex, 528, *Ex parte Norton*, that Lord Justice Knight Bruce, then V. C., expressed an inclination of opinion that fraudulent preferences might be impeached under a fiat on a bankrupt's own petition, if there was a sufficient creditor's debt at the time of such fraudulent preference. They certainly might be so impeached, even without the circumstance of there being such a creditor, as voidable, but whether as an act of bankruptcy is a different question; and the cautious manner in which the V. C. expressed himself shows that he had formed no decided opinion upon the subject. Whether it would be otherwise under the recent stat. 12 & 13 Vict. c. 106, we need not inquire; from the sections 98 and 101, it would rather seem not. Under the stat. 7 & 8 Vict. c. 96, s. 41, we think that the declaration of insolvency, at all events where the adjudication proceeds upon the plaintiff's application, is the only act of bankruptcy to which there can be a relation. Our opinion being such upon this somewhat doubtful point, it follows that the assignees under the fiat in this case could not treat the alleged fraudulent preference or taking in execution as an act of bankruptcy; but they were en-

tified in treating it as a fraudulent preference or an act of bankruptcy procured by the bankrupt in contemplation of bankruptcy under the old law, 6 Geo. 4, c. 16. Such acts, when voluntary and in contemplation of bankruptcy, cannot be valid against the assignees if they choose to avoid them: they are on the same footing as the obtaining goods by one person from another person by fraud and deceit. Though in cases of fraudulent preference, they may be avoided where the party obtaining them may be perfectly innocent. The right of the assignees to avoid such a transaction is founded on the policy of the bankrupt law, which favours the equal division of the bankrupt's property. But we entirely agree with the learned Lord Chief Justice and the court of C. P. that the effect of this, as in the case of an ordinary fraud, is not absolutely to avoid the contract or transaction which has been caused by that fraud, but to render it voidable at the option of the party defrauded; the fraud only gives a right to rescind. In the first instance, the property passes in the subject-matter. An innocent purchaser from the fraudulent possessor may acquire an indisputable title to it, though it is avoidable between the original parties. This was decided in the recent case of *White* v. *Gordon*, 10 C. B. 919, and had been so before in the case of *Parker* v. *Patrick*, 5 T. Rep. 175; in 1 Sum. Rep. (Mr. Justice Story's decision), page 309; by Lord Kenyon, in *Wright* v *Lewis*, 4 Esp. 82; and in *Lord* v. *Green*, 5 M. & W. 219, 221; and *Campbell* v. *Fleming*, 1 A. & E. 41. It must be considered, therefore, as established that fraud only gives a right to avoid a contract or purchase; that the property vests until avoided; and that all the mesne dispositions to persons not parties, or at least not conversant of the fraud, are valid. The property having passed, the person in possession is, until the party defrauded interferes, entitled to sue for all injuries to his property, and the plaintiff in this case has an undoubted right of action, unless the subsequent interference of the assignees has relation back to the original delivery, and avoids the transaction *ab initio*, so that they would have a right to bring an action against third persons for the same unlawful distress for which the plaintiff has recovered. In the ensuing part of this opinion Mr. Justice Erle does not concur. I must, therefore, be considered as speaking the opinion of the other judges who heard the case. We cannot find any authority for the position that there is a relation back, and we are at a loss to discover any principle upon which it can rest. On the other hand, we have the authority of the decision in *Nixon* v. *Jenkins*, 2 H. Bl. 135, where the court held that the assignees could not recover in trover goods, fraudulently sold by the bankrupt, in order to cheat his creditors, without a demand and refusal. They held that the parties when the sale was made were competent to contract. There was no unlawful taking of the goods, though the transaction was liable to be impeached by the assignees; they might either affirm or disaffirm the contract, and if they thought proper to disaffirm it they ought to have demanded the goods, and then a refusal to deliver would have been evidence of the conversion. It may be inferred that the mere bringing the action of trover was not considered as having any relation back. In this case, the goods at the time of the seizure by the defendant were the plaintiff's property, and nothing has occurred to divest that property, and make the goods at that time the property of the assignees; and therefore the issue of not guilty, involving the plaintiff's title at that time, ought to be found for the plaintiff. Whether the assignees could not sue the plaintiff for this fraud, as the party defrauded could the party guilty of the deceit, is another question, with which we need not trouble ourselves in this inquiry.

ERROR FROM THE EXCHEQUER.

Wednesday, Feb. 2.

(Before Coleridge, Wightman, Erle, Williams, Talfourd, and Crompton, JJ.)

The London and South-Western Railway Company *v.* The South-Eastern Railway Company.

Railway company—Agreement for use of line by another company—Assignment of the benefit of that agreement to a third company.

The Reading, Guildford, and Reigate Railway Company and the London and South-Western Railway Company applied to Parliament for leave to make certain lines of railway, both companies requiring six miles thereof in the same direction; both companies obtained Acts of Parliament for their respective lines of railway on the same day, the Reading Company's Act giving power to them to lease their line to the South-Eastern Railway Company, and the six miles required by both the Reading and South-Western Companies the South-Western Company were to make, &c.; but they were to agree with the Reading Company for the use by the Reading Company of that six miles portion of the line required by the Reading Company, upon terms to be agreed upon by the Reading Company and the South-Western Company, and, in case of difference, the terms were to be settled by arbitration. An agreement (16th April 1847) was entered into between those accordingly, upon terms of paying thirty-five per cent. calculated upon the gross amounts to be received by the South-Western for such part of the traffic of the Reading Company as should pass over all or any part of the continuous line. Subsequently (15th March 1850) the Reading Company leased their line to the South-Eastern Railway Company for 1000 years, together with all benefit and advantage of the agreement of the 16th April 1847 made by them with the South-Western Company. The South-Western Company declined to give the advantage of their agreement with the Reading Company to the South-Eastern Company, but claimed to be paid differently, a much larger sum than would be payable to them under that agreement:

Held, that the South-Eastern Railway Company were, under the terms of the Acts of Parliament and their lease, entitled to the benefit of the agreement (16th April 1847) by the Reading Company with the South-Western Company; and that the South-Eastern Company could maintain an action of debt for the money received by the South-Western Company for the South-Eastern Company, allowing such deductions only as would accord with the terms of that agreement.

This was an action in debt for money had and received, brought against the London and South-Western Railway Company to recover 4740*l.* 16*s.* 10*d.* alleged to be due to the South-Eastern Railway Company for passenger-money in respect of tickets sold to passengers for the latter company by the London and South-Western Railway Company at the Guildford railway station, and also in respect of certain charges for the carriage of goods, &c.

The defendants below pleaded—first, never indebted; and, secondly, a set-off of 5798*l.*, the amount of toll claimed to be payable by the plaintiffs below to the defendants below.

The cause came on for trial before Pollock, C.B. at the sittings in London after Hilary Term 1852, when a verdict was returned for the plaintiffs for the whole amount of their claim, with leave to the defendants to move to enter a verdict for them instead, or a nonsuit, or to reduce the damages; with leave also to either party to tender a bill of exceptions; it having been agreed that the question should be argued before the court below, and that their view should be taken as that of the ruling of the learned judge at the trial, and that either party might then tender a bill of exceptions.

The case was accordingly argued before the court below; and their opinion being that the defendants below were indebted to the plaintiffs, and that the set-off pleaded ought not to be allowed, and that consequently the plaintiffs were entitled to the judgment of the court, the defendants below, in pursuance of the above arrangement, tendered a bill of exceptions.

The facts were these:—After the passing of the Reading, Guildford, and Reigate Railway Act (9 & 10 Vict. c. clxxi. &c.), the London and South-Western Farnham and Alton Branch Act (9 & 10 Vict. c. clxxiii.), and the Guildford Extension of Portsmouth and Farnham Railway Act (10 & 11 Vict. c. cxlv.), an agreement was entered into on the 16th April, 1847, between the Reading, Guildford, and Reigate Railway Company and the London and South-Western Railway Company (the plaintiffs), by which, after reciting several Acts of Parliament, and the powers conferred by them upon the respective parties to the agreement, it was contracted or agreed that the Reading Company should have the rights to use and work over in perpetuity, with their own engines and carriages, the continuous line between the actual point of junction in Worplesdon and the point of junction in Arlington, and to use the station in Guildford of the continuous line, and all other stations and warehouses, works and conveniences between such points of junction, for the purpose of carrying and accommodating all the traffic of the Reading Railway requiring to pass over the continuous line, and also over all or any part of the Reading Railway. For this use of their line the Reading Company were to pay the plaintiffs a sum equal to 35 per cent. calculated upon the gross amounts to be received by the former for such part of their traffic as should pass over all or any part of the continuous line. It was further agreed that, in every case of difference between the parties to the agreement as to the foregoing stipulations, or any of them, either in regard to construction or otherwise, such difference should be referred to arbitration, as provided by the Railway Clauses Consolidation Act, 1845. On the 15th March, 1850, the Reading Company leased their line to the defendants, the South-Eastern Company, on the usual terms, for a period of 1000 years, at the annual sum of 33,000*l.* all benefit and advantage of the agreement of 16th April, 1847, being also by the lease demised and granted to the defendants. The amount of the plaintiffs' set-off was calculated at the rate of 2*d.* per mile for each passenger, which they charged under their account, by which they have power to charge for six miles where the traffic passes over a less distance; whereas if they were only entitled to charge the defendants under the agreement of April 1847, their claim would be limited to 35 per cent. upon the gross amounts.

The Reading Company were incorporated by 9 & 10 Vict. c. clxxi., for making a railway from the Great Western Railway at Reading, to join the London and Brighton and South-Eastern Railway at Reigate. At the time the Reading Company were applying to Parliament for leave to make the railway, the plaintiffs were also applying to make a branch railway to Farnham and Alton; and, inasmuch as the Reading Company would, for a distance of six miles, pass over nearly the same ground as the plaintiffs' branches, Parliament directed, by the South-Western, Farnham, and Alton Act, 9 & 10 Vict. c. clxxiii., that the latter alone should make the railway over these six miles, and that the Reading Company should run over that portion upon such terms and conditions as might be agreed upon between the two companies. The agreement of April 1847 was accordingly entered into.

Butt, for the plaintiff in error, contended that the agreement of 16th April 1847 was not mutually binding upon both parties to it; and that the plaintiffs were entitled to charge the defendants the full toll authorised by the statutes. He referred to the several Acts of Parliament of the two companies; the Railway Clauses Consolidation Act (8 Vict. c. 20) particularly sects. 112 and 113, which Act was incorporated into their special Acts; the lease by the Reading company to the South-Eastern company; and to the *Lancashire and Yorkshire Railway Company* v. *The East Lancashire Railway Company*, 21 L. J. 62, Ex.

Sir *F. Kelly*, for the defendants in error, argued that the plaintiffs were not, in any view of the case, entitled to more than 729*l.* by way of set-off, and that only by virtue of or under the agreement of April, 1847; that if not so entitled in that way, they could not claim any set-off, no settlement of the amount by arbitration having taken place; and that the intention of the Legislature was to give the defendants the same rights as were given to the Reading, Guildford, and Reigate Company, under whom the defendants claimed. *The West London Railway Company* v. *The London and North-Western Railway Company*, decided by the Court of Error from the Common Pleas a few days since only, upon a bill of exceptions tendered to the ruling of Jervis, C. J., was in principle precisely similar to the present case, and was conclusive upon that part of it. (He was then stopped from arguing the other point.)

Butt in reply. *Cur. adv. vult.*

Feb. 7.—Wightman, J. delivered judgment.—The question for the decision of the court in this case was whether the plaintiffs in error had an available set-off against the defendants in error to a greater amount than 729*l.*; and there was no doubt that they had not, if the plaintiffs in error were bound as between them and the defendants in error, by an agreement made between the plaintiffs in error and the Reading, Guildford, and Reigate Railway Company, and if the defendants in error were entitled to stand in the place of the Reading, Guildford, and Reigate Railway Company in respect to that agreement, and to insist on the fulfilment with them of the terms and conditions contained in it, although they were not originally parties to it. It appears by the bill of exceptions, and the statutes therein referred to, that in 1846 a projected company, called the Reading, Guildford, and Reigate Railway Company, to make a railway from Reading to Reigate through Guildford, was formed; and that the Reading, Guildford, and Reigate Railway was to join the London and Brighton, the London and South-Western, and the South-Eastern Railways; and at the same time the London and South-Western Railway Company proposed to make a branch railway to Farnham and Alton. It also appeared that the line proposed to be made by the Reading, Guildford, and Reigate Railway Company ran so nearly in the same direction with part of the branch line then proposed to be made by the London and South-Western Railway Company, that it was proposed that the Reading, Guildford, and Reigate Railway Company should for that space adopt the line to be made by the London and South-Western Railway Company. Both parties obtained Acts of Parliament on the same day, the 16th July, 1846. The Act for making the railway from Reading through Guildford to Reigate is the 9 & 10 Vict. c. clxxi.; and, by sect. 50, the company are empowered to lease their railway to the South-Eastern Railway Company upon such terms and conditions as should be or may have been agreed upon between them. The Act for enabling the London and South-Western Railway Company to make a branch to Farnham and Alton is the 9 & 10 Vict. c. clxxiii.; and by section 17, after reciting that between certain points mentioned in the Act it had been proposed that the traffic of the Reading, Guildford, and Reigate Railway should adopt the line authorised by that Act, it was enacted that it should be lawful for the Reading, Guildford, and Reigate Railway Company to use the railway by that Act authorised to be made between the stated points, and the station, warehouses, works, and conveniences belonging thereto, for the purpose of accommodating the traffic of the Reading, Guildford, and Reigate Railway requiring to pass between those points, subject to such reasonable regulations, and upon such terms and conditions, as might from time to time be agreed on, or as might have been already agreed on between the London and South-Western Railway Company and the Reading, Guildford, and Reigate Railway Company. The Railway Clauses

Consolidation Act, 8 Vict. c. 20 (which is by reference incorporated into both the special Acts), sections 112 and 113 say, where a railway company shall be authorised by a special Act to lease the railway or any part thereof to any company, "such lease shall entitle the company or person to whom the same shall be granted to the free use of the railway or portion of the railway comprised therein; and during the continuance of any lease all the powers and privileges granted to and which might otherwise be exercised and enjoyed by the company by virtue of the special Act, with regard to the possession or enjoyment and management of the railway, or of the part thereof comprised in such lease, and tolls to be taken thereon, shall be exercised and enjoyed by the lessee and/or such regulations and restrictions as are by the Act or the special Act imposed on the company." After the two special Acts had been passed, an agreement was made on April 16, 1847, between the Reading, Guildford, and Reigate Company of the one part, and the London and South-Western Railway Company of the other part, by which the terms and conditions on which the Reading, Guildford, and Reigate Company should have the right to use for their traffic the part of the line of the London and South-Western Railway Company before referred to, and the stations, warehouses, &c. belonging thereto, were settled and adjusted; and it was agreed that the Reading, Guildford, and Reigate Railway Company should have such right in perpetuity. On the 15th March 1850 the Reading, Guildford, and Reigate Railway Company, by an indenture of that date between them and the South-Eastern Railway Company, reciting all the Acts of Parliament relating to that railway, and the agreement with the London and South-Western Railway Company, demised to the London and South-Eastern Railway Company for a thousand years the Reading, Guildford, and Reigate railway, and all the undertaking of the Reading, Guildford, and Reigate Railway Company, with the free use of the railway and stations, &c. and all the powers and privileges which might be exercised and enjoyed by the Reading, Guildford, and Reigate Railway Company, and all the benefit and advantage of the agreement of the 16th April, 1847, and subject to the obligations and liabilities imposed upon the Reading, Guildford, and Reigate Railway Company. Now, the London and South-Eastern Railway Company contend that the London and South-Western Railway Company are bound to fulfil to them the terms and conditions of the agreement of the 16th April, 1847, though not made with them, but with the Reading, Guildford, and Reigate Railway Company; and that, by the lease and the Acts of Parliament before referred to, the rights and privileges of the Reading, Guildford, and Reigate Railway Company, as well as their liabilities under that agreement, are transferred to and vested in the London and South-Eastern Railway Company. Upon consideration of the clauses in the statutes referred to, and of the lease and agreement, we are of opinion that the ruling of the learned judge is right, and that the plaintiffs in error are not entitled to a greater amount of set-off than 729*l.*; and that the defendants in error were entitled to all the privileges given to the Reading, Guildford, and Reigate Railway Company under the agreement of the 16th April 1847. At the time of the making of the agreement the Reading, Guildford, and Reigate Railway Company had obtained their Act of Parliament, with a clause authorising them to lease their railway to the London and South-Eastern Railway Company; they had, however, no continuous line of their own; but for a certain distance were empowered by the 17th section of the 9 & 10 Vict. c. clxxiii. to use that part of the line which the London and South-Western Railway Company were authorised to make under that Act, and subject to such regulations and upon such terms and conditions as might be agreed on between the two companies. Accordingly, in order to make their line continuous and available for the purpose of traffic, the Reading, Guildford, and Reigate Railway Company, and the London and South-Western Railway Company, in pursuance of the Act for making the branch to Farnham and Alton, entered into the agreement of the 16th of April 1847, for allowing the use of that portion of the railway of the latter, and of their stations, &c. in perpetuity, on the terms and conditions therein contained; for without the agreement and the powers and privileges given by it, the Reading, Guildford, and Reigate Railway would be comparatively useless and of little value; and the 17th section of the last-mentioned statute removes the disability, by expressly authorising the making of the agreement, and providing a mode at the end of the section by which the terms may be settled, in case the companies do not agree. The agreement, which, when made under the authority of the Act of Parliament, bound the two companies as to the right to use that portion of the line of railway of the London and South-western Railway Company, by the Reading, Guildford, and Reigate Railway Company, in perpetuity, on the terms and conditions agreed on between them both, neither could the traffic be carried over it, because it was only by force of that agreement that the rights and privileges contemplated by the 17th section of the 9 & 10 Vict. c. clxxiii. could be effected. Unless the rights and privileges given by the agreement, with all its terms and conditions, went with the railway, the leasing power would hardly be consistent with the 17th section of the last-mentioned statute, or the Railway Clauses Consolidation Act; and the lessees would not have the power or privilege which was clearly contemplated by the 36th section of the Special Act, which would be necessary for the proper and efficient working of the line. It is not necessary to consider how far the agreement and the terms of it would be binding on the parties to this suit at common law, as we are of opinion that the effect of the clauses in the statutes before referred to is to vest in the lessees of the Reading, Guildford, and Reigate Railway, all the rights and privileges granted by the agreement, without which their lease would be of little value, and, indeed, could not be carried into full effect at all until the South-Eastern Railway Company had effected some new arrangement with the London and South-Western Railway Company. The case depends so entirely on the effect to be attributed to the Acts of Parliament to which reference has been made, that it is scarcely to be expected that any case can be found in the books sufficiently in point upon all the circumstances to assist us in coming to a conclusion on the point in question in this case. The opinion we have formed is upon the consideration of the Acts of Parliament, and the documents themselves. There was another question proposed to be raised by the defendants in error, in case our judgment should be against them on the first point; to which we do not think it necessary to advert, as on the first point we think the judgment of the court below should be affirmed.

Judgment below affirmed.

CROWN CASES RESERVED.

Reported by ADAM BITTLESTON, Esq. of the Inner Temple, Barrister-at-Law.

Saturday, Jan. 22.

REG. v. DALE.

Stat. 9 *Geo.* 4, *c.* 61, *s.* 26—*Application of penalties under the Alehouse Act—Conviction by borough justices—When penalty to be paid to county treasurer, and when to borough treasurer.*

By sect. 26 *of* 9 *Geo.* 4, *c.* 61, *it is provided, that so much of any penalty imposed under that Act, as is not awarded to the prosecutor, is to be paid to the treasurer of "the county or place" for which the justice was acting when the penalty was imposed:*

Held, that the word "place" in that section means a place for which a court of quarter sessions is held.

Where, therefore, a penalty was imposed by two justices of a borough, which had a commission of the peace, but no court of quarter sessions, and a moiety only was awarded to the prosecutor, the treasurer of the county was held entitled to the remaining moiety.

At the General Quarter Sessions of the Peace of our Lady the Queen held at Alnwick, in the county of Northumberland, on the 20th Oct. in the sixteenth year of the reign of our Sovereign Lady Victoria of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, and in the year of our Lord 1852, before her Majesty's justices of the peace assigned to keep the peace of the said county, the following case was agreed upon (that is to say):—

At the last Midsummer Quarter Sessions, an indictment, of which the following is a copy of the first count, and an extract from the second, was found by the grand jury to be a true bill.

"Northumberland, } The Jurors, &c. present that
to wit. } on the 19th May, in the year of our Lord 1851, in the borough of Tynemouth, in the county of Northumberland, one Joseph Gibbon was convicted, before Alexander Bartleman and Solomon Mease, Esqrs., then and there being two of her Majesty's Justices assigned to keep the peace in and throughout the said borough of Tynemouth, for that on, &c. he, the said Joseph Gibbon, being then and there an alehouse-keeper, and duly licensed to sell exciseable liquors by retail in his house and premises there situate, did wilfully permit disorderly conduct in his house and premises by then and there suffering persons, to the number of twenty and more, to remain fighting, drinking, and making a great noise and disturbance there at a late hour in the night, to wit, at twelve o'clock at night, against the tenor of his said licence, and contrary to the form of the statute in such case made and provided; and the said Alexander Bartleman and Solomon Mease in and by the said conviction then and there adjudged the said Joseph Gibbon, for his said offence, to forfeit and pay the sum of 2*l.* 10*s.*, to be paid and applied according to law; and also to pay to Robert Mitchell, the complainant, the sum of 10*s.* for his costs in that behalf; and the said Alexander Bartleman and Solomon Mease did by the said conviction then and there order that if the said several sums were not paid forthwith, the same should be levied by distress and sale of the goods and chattels of the said Joseph Gibbon; and, in default of sufficient distress, the said Alexander Bartleman and Solomon Mease did, by the said conviction, then and there adjudge the said Joseph Gibbon to be imprisoned in the house of correction at Morpeth, in the said county of Northumberland, there to be kept to hard labour for the space of one calendar month, unless the said several sums, and all costs and charges of the said distress, and of the commitment and conveying of the said Joseph Gibbon to the said house of correction, were sooner paid. And the jurors aforesaid upon their oath aforesaid do further present that the said Alexander Bartleman and Solomon Mease did, at the time of making the said conviction, award one moiety of the said penalty to the use of the said Robert Mitchell, the said complainant, and the prosecutor of the said Joseph Gibbon for the said offence. And the jurors aforesaid upon their oath aforesaid do further present that the said Joseph Gibbon did thereupon afterwards, to wit, on the day and year first aforesaid, pay the said sum of 2*l.* 10*s.* to one Henry Dale, late of the borough aforesaid, in the county aforesaid, gentleman, and who then was and still is clerk of her Majesty's said Justices assigned to keep the peace of our said Lady the Queen, in, for, and throughout the said borough; and the sum of 2*l.* 10*s.* was so paid to the said Henry Dale, and he then received the same as such clerk as aforesaid, and for the purpose and in order that it should forthwith be paid by him to the parties to whom the same was to be paid, in pursuance of and according to the said conviction, and the statutes in such case made and provided, to wit, one moiety to the said Robert Mitchell as such prosecutor as aforesaid, and the remainder to the treasurer of the said county. And the jurors aforesaid on their oath aforesaid do further present that the justices of our said Lady the Queen assigned to keep the peace of our said Lady the Queen, in and throughout the said borough, were at the time of making the said conviction, and thence hitherto have been, acting and empowered to act within the said borough by and under a commission of the peace from our Lady the Queen, which said commission did not nor does contain any grant of a court of quarter sessions of the peace for the said borough, and our said Lady the Queen had not then, or at any time since, granted that a separate court of quarter sessions of the peace for the said borough should be holden in and for the said borough, nor were there then or at any other time any separate general or quarter sessions of the peace holden in or for the same. And the jurors aforesaid, on their oath aforesaid, do further present that, after the said sum of 2*l.* 10*s.* was so paid to the said Henry Dale as aforesaid, it became and was his duty to pay one moiety of the said sum of 2*l.* 10*s.* to one William Fenwick Blackett, Esq. who at the time of the making of the said conviction was, and from thence hitherto hath been and still is, treasurer of the said county of Northumberland, according to law, and to the statutes in that case made and provided. And the jurors aforesaid, upon their oath aforesaid, do further present that the said Henry Dale, well knowing the premises, although a reasonable time for his paying the said moiety of the said sum of 2*l.* 10*s.* to the said treasurer had elapsed long before the day of taking this inquisition, and although the said treasurer hath at all times been ready and willing to receive and give him a receipt for the same, hath yet hitherto unlawfully and contemptuously neglected and refused to pay, and still neglects and refuses to pay, the said moiety of the said sum of 2*l.* 10*s.* or any part thereof to the said treasurer, and he wrongfully and unlawfully detains the same and every part thereof from him, contrary to his duty in that behalf, against the form of the statute in that case made and provided, and against the peace of our Lady the Queen, her crown and dignity."

There is a second count in the indictment, the same with the first, word for word, with this addition: "And the jurors aforesaid, upon their oath aforesaid, do further present that the said Alexander Bartleman and Solomon Mease, in the making of the said conviction, acted as such justices as aforesaid for the said county."

The usual process for that purpose having been issued, the defendant entered into a recognizance to appear at the next quarter sessions to try and answer to the said indictment.

At the Michaelmas Quarter Sessions, held 20th Oct. 1852, the said indictment was tried, and the jury found the defendant guilty. Whether the defendant is guilty or not depends upon the construction which may be put upon the public Acts of Parliament relating to this question, and which are to form part of this case.

The borough of Tynemouth was incorporated by royal charter, dated 5th August, in the year of our Lord 1849, and a commission of the peace was granted to certain persons therein named, dated 20th March, in the year of our Lord 1850; but no court of quarter sessions was thereby granted. It is admitted for the purposes of this case that the defendant had paid over the moiety of the said fine to the treasurer of the borough of Tynemouth. Upon this counsel for the defendant moved in arrest of judgment, contending that, upon the true construction of the statutes, he had duly discharged himself by paying over the money to the treasurer of the borough of Tynemouth. On the other hand, counsel for the prosecution contended that he had not discharged himself, as it was his duty to pay the moiety of the said fine to the

treasurer of the county of Northumberland, the borough of Tynemouth being part and parcel of the county, and there being no grant of a court of quarter sessions to that borough.

Accordingly no judgment was passed, and the court postponed all further proceedings to the next sessions, and granted a case for the opinion of the Justices of either Bench or the Barons of the Exchequer under the statute. The question for the opinion of the court is:

Whether the defendant is properly found guilty upon the indictment for neglecting and refusing to pay over one moiety of the said fine to the treasurer of the said county of Northumberland. If he is, the court will at the next sessions pronounce judgment against him. If he is not, he will be discharged from the said indictment.

The 26th section of 9 Geo. 4, c. 61 (the Alehouse Act), enacts that it shall be lawful for any justice before whom any penalty shall be recovered under the provisions of this Act to award, if he shall think fit, any portion of the same, not in any case exceeding one moiety thereof, to the use of the prosecutor, and the remainder to the treasurer of the county or place for which such justice shall then act; and the said treasurer shall place the same to the credit of such county or place, and shall duly account for the same.

By section 83 of the same Act it is enacted, "That every justice before whom any such conviction shall have been made, shall return the same, or cause it to be returned, to the general or quarter sessions of the peace holden for the county or place wherein the offence shall have been committed, and it shall be then and there delivered to the clerk of the peace or other person acting as such, to be by him filed or enrolled amongst the records of the said court; and the certificate of the clerk of the peace of such conviction, which he is hereby required to grant, on demand, upon payment of a fee of one shilling, shall be legal evidence of every such conviction.

By sect. 87 (interpretation clause), reciting—"And in order to remove doubts as to the meaning of certain words in the Act, be it enacted that the word 'justice' shall be deemed to mean justice of the peace, and that the words 'treasurer of the county or place' shall be deemed to include any officer acting in such capacity, or charged with the receipt and expenditure of moneys from and out of which the cost of public prosecutions have been usually defrayed; and the words 'clerk of the justice' shall be deemed to include any person acting as such; and the words 'county or place' shall be deemed severally to include any county, riding, division of the county of Lincoln, hundred, division of a county, liberty, division of a liberty, county of a city, county of a town, city, cinque port, or town corporate: and the words 'division or place' shall be deemed to include any division of a county or riding, liberty, division of a liberty, county of a city, county of a town, city, cinque port, or town corporate."

By the 126th sect. of 5 & 6 Will. 4, c. 76, "An Act to provide for the Regulation of Municipal Corporations in England and Wales," passed 9th Sept. 1835, it is enacted, "That when by any Act any penalties or forfeitures are or shall be hereafter made recoverable in a summary manner before any justice or justices of the peace, and by such Acts respectively the same are or shall be limited and made payable to his Majesty, or to any body corporate, or to any person whomsoever, save and except the informer, who shall sue for the same, or any party aggrieved, in every such case the same, if recovered and adjudged before any justice of any borough in which a separate court of quarter sessions of the peace shall be holden as aforesaid, shall, notwithstanding anything in such Act respectively contained, be recovered for and adjudged to be paid to the treasurer of such borough for the time being, to the credit and on account of the borough fund of such borough; and no such penalty or forfeiture, or share of such penalty or forfeiture, shall in any case be recovered by, or adjudged to be paid to, any other person than the said treasurer, unless such person be the informer, or the party aggrieved.

By sect. 81 of 11 & 12 Vict. c. 43, it is enacted, "That in every warrant of distress to be issued as aforesaid, the constable or other person to whom the same shall be directed shall be thereby ordered to pay the amount of the sum to be levied thereunder into the clerk of the division in which the justice or justices issuing such warrant shall usually act; and if any person convicted of any penalty or ordered by a justice or justices of the peace to pay any sum of money shall pay the same to any constable or other person, such constable or other person shall forthwith pay the same to such clerk; and if any person committed to prison upon any conviction or order as aforesaid for nonpayment of any penalty, or for any sum thereby ordered to be paid, shall desire to pay the same and costs before the expiration of the time for which he shall be so ordered to be imprisoned by the warrant for his commitment, he shall pay the same to the gaoler or keeper of the prison in which he shall be so imprisoned, and such gaoler or keeper shall forthwith pay the same to the said clerk, and all sums so received by the said clerk shall forthwith be paid by him to the party or parties to whom the same respectively are to be paid according to the directions of the statute on which the information or complaint in that behalf shall have been framed; and if such statute shall contain no such directions for the payment thereof to any person or persons, then such clerk shall pay the same to the treasurer of the county, riding, division, liberty, city, borough, or place for which such justice or justices shall have acted, and for which such treasurer shall give him a receipt without stamp; and every such clerk and every such gaoler or keeper of a prison shall keep a true and exact account of all such monies received by him, of whom and when received, and to whom and when paid in the form (T) in the schedule to this Act annexed, or to the like effect, and shall once in every month render a fair copy of every such account unto the justices, who shall be assembled at the petty sessions for the division in which such justice or justices shall usually act, to be holden on or next after the first day of every month, under the penalty of forty shillings, to be recovered by distress in manner aforesaid; and the said clerk shall send or deliver every return so made by him as aforesaid to the clerk of the peace for the county, riding, division, liberty, city, borough, or place within which such division shall be situate, at such times as the court of quarter sessions for the same shall order in that behalf.

Saturday, Nov. 13. (*a*)—*Pashley* for the defendant.—This question turns upon the meaning of the words "county or place" in 9 Geo. 4, c. 61, s. 26; and it is submitted that "place" includes a town corporate, and that the penalty mentioned in the case was consequently payable to the treasurer of the borough of Tynemouth, and not to the treasurer of the county of Northumberland. In other parts of the statute "place" evidently has that meaning (he referred to ss. 1, 3, 4, 7, 21); and there is no reason for supposing that it has not an equally extensive sense in sect. 26. The interpretation clause, sect. 37, still uses the same words "county or place," and only extends the enactment to persons acting in the capacity of treasurers, though not so called. [JERVIS, C. J.—It is obvious from that clause that the intention was that the penalty was to go to a fund, out of which the costs of public prosecutions are defrayed; and that would be the county rate, where the borough has no court of quarter sessions.] If the borough has no quarter sessions, it contributes to the county rate; and Tynemouth was *the place* for which the justices who imposed the penalty in this case were acting. (He referred to 13 & 14 Vict. c. 91, s. 9; and *R. v. Stainsbury*, 4 T. R. 451.)

Otter, contrà.—The defendant could only discharge himself by paying over the penalty to the county treasurer. The word "place" in sect. 26 must mean a place having a separate court of quarter sessions; and no difficulty is created by the words "for which the justice is acting," because in truth the borough justices within the borough have the same jurisdiction as the county justices, and may be described as acting for the county. It is supposed, that if the conviction is made by borough justices the penalty goes to the borough—if by county justices, then to the county; but in Tynemouth, the borough and county justices have concurrent jurisdiction; so that the conviction might be by one borough and one county justice. In that case, where would the penalty go? (sects. 101 and 111 of 5 & 6 Will. 4, c. 76.) The difficulty is avoided if the place is held to be a place of exclusive jurisdiction: (*R. v. Amos*, 2 B. & Ald. 533; *R. v. Taylor*, Salk. 343.) In other parts of the statute "place" must mean a place having a separate court of quarter sessions: (sects. 4, 7, 22, 27, 29.)

Pashley, in reply. *Cur. adv. vult.*

Saturday, Jan. 22.—JERVIS, C. J. now delivered the judgment of the Court.—Whether the defendant is guilty or not guilty in this case depends upon the construction of the 9 Geo. 4, c. 61; and we are of opinion that, upon the proper construction of that statute, the defendant is guilty, and was properly convicted. The penalty, for the nonpayment of which to the treasurer of the county of Northumberland the defendant has been convicted, was in this case imposed under the Alehouse Act, 9 Geo. 4, c. 61, by justices acting for the borough of Tynemouth, which has a commission of the peace, but no court of quarter sessions; and the question is, whether that penalty ought to be paid to the treasurer of the county, or to the treasurer of the borough on account of the borough fund. By the 26th section of the Alehouse Act, so much of the penalty as is not awarded to the prosecutor is to be paid to the treasurer of the "county or place" for which the justice was acting when the penalty was imposed. The defendant's counsel contends that the word "place" must be understood in its ordinary sense; and that, inasmuch as the justices were acting for the borough of Tynemouth when the penalty was imposed, the treasurer of that borough is the person who ought to receive the penalty, and that it ought to be applied to the borough fund, under the provisions of the stat. 5 & 6 Will. 4, c. 76, s. 126. On the other hand, the prosecutor asserts that the word "place," as used in that section, means a place for which a court of quarter sessions is held. This, we think is the right construction. In many of the sections in which the words "county or place" are used, it is manifest that the latter word applies only to places where quarter sessions are held. For instance, by the 27th section, parties aggrieved may appeal to the next general or quarter sessions of the peace of the "county or place" wherein the cause of complaint arose; and by the 83rd section the conviction is to be returned to the next general or quarter sessions of the peace of the "county or place" wherein the offence shall have been committed. The interpretation clause shows further, that it was intended that these penalties should be applied towards the costs of public prosecutions, and not to a borough fund, because it explains the words "treasurer of a county or place" to mean an officer acting in such capacity, or charged with the receipt and expenditure of moneys from and out of which the costs of public prosecutions have been usually defrayed. The person to receive the penalty is to be an officer acting in the capacity of treasurer of moneys for and out of which the costs of public prosecutions have been usually defrayed. In the same spirit the justices in quarter sessions are, by the 29th section, authorised to indemnify the justices from their costs upon an appeal in certain cases, and to order the treasurer of the "county or place" in and for which the justices acted to pay the amount. At the time the Alehouse Act passed corporations had private property, but no borough fund, properly so called, over which the Legislature could with justice exercise a control. The treasurer of the place meant in this section must clearly be the treasurer of a place having a court of quarter sessions—an officer under the control of the justices making the order, with a fund under their control. It would be strange that the same words should give to one fund, the borough fund, all the penalties for good convictions, and charge upon another fund, the county rate, all the costs for convictions which could not be sustained. For these reasons we think the conviction right. *Conviction affirmed.*

(*a*) Before Jervis, C. J., Alderson, B., Coleridge, J., Cresswell, J., and Platt, B.

INSOLVENT DEBTORS COURT.

Reported by DAVID CATO MACRAE, Esq., of the Middle Temple, Barrister-at-Law.

PROTECTION CASE.

Monday, January 31.

(Before Mr. Commissioner PHILLIPS.)

Re ROBERT LOCKWOOD.

Trader debtor.

Held, that debts barred by the Statute of Limitations must be included in reckoning the amount of a trader debtor's liabilities, and if together with the debts not so barred, the amount is above 300l. there is no jurisdiction.

This insolvent came up for his examination upon his interim order.

Jones opposed for a creditor who had a County Court judgment. The debts in the schedule, and in respect of which the insolvent required protection, amounted to 67*l.* odd; but, it appearing that there were other debts owing by the insolvent, who was a trader, which he had omitted from the schedule, as they were barred by the Statute of Limitations, he was ordered to prepare an amendment to the schedule, in which these debts were set forth; and, it appearing that the debts which were barred by the Statute of Limitations, being added to the debts in the schedule, amounted to above 300*l.*, the petition was dismissed.

Petition dismissed.

PROTECTION CASE.

(Before the CHIEF COMMISSIONER.)

Re STEPHENS.

Petition filed without jurisdiction—Practice as to dismissal before hearing.

A petition having been filed in this court, and it being subsequently discovered that it had been filed in the Metropolitan district by mistake, and should have been filed in an adjoining County Court district:

Held, that the Court may dismiss the petition forthwith, direct the petitioner's books and papers to be handed out of court, and order the provisional assignee and the broker of the court to be restrained from selling or disposing of the property of the petitioner.

Although an insolvent's residence be within twenty miles of the General Post-office, yet, if the parish church of the parish within which it is situated be beyond that distance, an insolvent must petition in the County Court district in which the parish church is situate.

Insolvent resided at Warley, in Essex, and filed his petition in London, believing that he resided within the Metropolitan District. Subsequently it was deemed prudent to have the distance of the parish church of Warley from the Post-office measured, when it was discovered that the parish church was nearly twenty-two miles from the Post-office, and therefore that the petitioner did not reside within the London District.

Dowse now moved that the petition be dismissed, the papers be handed to petitioner's attorneys, and that the provisional assignee and the broker of the court be restrained from selling or disposing of the property of the petitioner; and submitted that the application was reasonable, as upon the hearing the petition would be dismissed for want of jurisdic-

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tion. In that event an execution creditor would step in and seize upon property which the petitioner was anxious should be for the benefit of all the creditors, as he would now file a petition in the proper district.

The CHIEF COMMISSIONER granted the application.

Wednesday, Feb. 2.

(Before Mr. Commissioner LAW.)

Re JANE TROTTER.

Prisoner arrested on mesne process—1 & 2 Vict. c. 110, s. 36—Creditor's petition.

Held, that a vesting order upon a creditor's petition under 1 & 2 Vict. c. 110, s. 36, obtained against a prisoner who is only in custody upon mesne process upon a capias, is void ab initio.

This insolvent had been arrested and lodged in Whitecross-street prison on the 17th Oct. 1852 by virtue of a writ of *capias* issued out of the Exchequer. On the 14th Oct. Mr. William Unwin, a creditor of Mrs. Trotter, obtained a judge's order to hold her to bail, upon the ground that she was about to quit England, under 1 & 2 Vict. c. 110, ss. 3, 4. Mrs. Trotter was, as already stated, arrested thereunder and taken to the debtors' prison in default of giving bail. Mr. Unwin proceeded no further with his action, but on the 4th inst. last filed the usual petition and affidavit, and obtained a vesting order under 1 & 2 Vict. c. 110, s. 36. The prisoner, having found bail, had been since discharged, and now wished to get rid of this creditor's petition.

Cooke applied, under these circumstances, for a rule upon the creditor to show cause why the vesting order should not be pronounced null and void, the same having been obtained on a false affidavit that Jane Trotter was charged in execution, whereas she was only arrested on *mesne process*, at the suit of W. Unwin. It was true the Act of Parliament declared that the vesting order upon a creditor's petition should not be vacated without the consent of the creditor; but he apprehended that referred to a vesting order duly obtained according to the statute, from which it appeared that a vesting order upon a creditor's petition could only be legally granted as against a prisoner "charged in execution for any debt, damages, or any costs or sum or sums of money, or committed for or by reason of any contempt of any court whatsoever, for nonpayment of any sum or sums of money, or of costs, taxed or untaxed, either ordered to be paid or to the payment of which such prisoner would be liable in purging such contempt, or in any manner in consequence or by reason of such contempt." Mrs. Trotter did not come within this definition; and therefore he submitted that the creditor's proceedings in this court were void *ab initio*.

Mr. Commissioner LAW was clearly of this opinion, and indorsed the following order upon the proceedings:—"The vesting order drawn up and issued in this case was a nullity *ab initio*, the debtor not being in custody in execution at the suit of the petitioner."

Rule absolute, there being no jurisdiction ab initio.

PROTECTION CASE.

Monday Feb. 14.

(Before Mr. Commissioner PHILLIPS.)

Re JOSEPH AILKINS.

Trader debtor.

Debts, although secured by a mortgage, must be reckoned in the amount of a trader debtor's liabilities.

This insolvent came up for his first examination, and was opposed by *Macrae*, for a creditor.—The amount of debts in the schedule was 268*l.* 8*s.* 10*d.*; but it appeared that he had mortgaged two leasehold houses at Hoxton in 1851, to a Mr. Hocker, for 450*l.* Being unable to pay the interest agreed upon, he assigned the houses to a relative for 150*l.* subject to the mortgage.

Macrae submitted that although the debt of 450*l.* was secured, it was still a debt until it was paid or released, consequently his debts were above 300*l.*

Mr. Commissioner PHILLIPS dismissed the petition.

Note.—See also *Re J. Smith*, 1 C. C. Chron. 374; 5 L. T. Rep. 153; 12 L. T. Rep. 427: *Re C. Twyman*, before Law, Com. 11 L. T. Rep. 112: *Re W. Quin*, 15 L. T. Rep. 96; 2 C. C. Chron. 23.

PROTECTION CASE.

Sat. Feb. 19.

(Before Mr. Commissioner PHILLIPS.)

Re GEORGE MEANDER.

Parting with property within three months of the date of the petition.

Held, that a petitioner, who has assigned all his property to a trustee for his creditors generally within three months of the date of the petition, has no locus standi under the Protection Acts.

The insolvent appeared for his first examination upon his interim order, when he was opposed by *Cooke* upon the ground that he had parted with his property within three months of the date of his petition. The learned counsel gave, in support of the opposition, evidence that the insolvent had assigned all his property to a trustee for his creditors on the 30th Nov. 1852, and that the date of the petition was 28th Jan. 1853. That was clearly a parting with property not within the exceptions in the form of the petition.

Dowse, for the petitioner, admitted the truth of the evidence offered, but submitted that it was done to prevent one creditor seizing it under an execution.

Mr. Commissioner PHILLIPS said the reason alleged was not one of the exceptions admitted in the petition, which must therefore be dismissed. He ought at once to have petitioned the court.

Petition dismissed.

Nisi Prius.

COURT OF QUEEN'S BENCH.

Reported by W. J. METCALFE, Esq. Barrister-at-Law.

THIRD SITTINGS AT WESTMINSTER IN HILARY TERM.

Wednesday, Jan. 26.

(Before ERLE, J.)

HOWARD *v.* HUDSON.

Prisoner—Discharge—Warrant.

A. was taken under a ca. sa. and confined in York Castle, and another detainer was lodged against him. He petitioned the Insolvent Court, and a warrant of remand for twelve months was granted. He was afterwards transferred by habeas to the Queen's Prison, but a copy of the warrant only was sent. At the end of the twelve months, the defendant, the Governor of the Queen's Prison, refused to discharge him without a judge's order. For this detention an action was brought; the defendant pleaded detention under the writs of ca. sa.; the plaintiff now assigned, stating the warrant of the Insolvent Court and the detention after its expiration; the defendant traversed that the warrant was lodged with him:

Held, that the defendant was entitled to a verdict, unless a lodging of the original warrant was proved.

The action was in trespass for false imprisonment. Plea, that the defendant, as Governor of the Queen's Prison, detained him under two writs of *ca. sa.*

New assignment, that the plaintiff petitioned the Insolvent Court, and that the court remanded the plaintiff for twelve months, which expired on the 12th April 1852; and that the warrant for the remand was lodged with the defendant, averring a detainer subsequent to the expiration of the remand. The defendant traversed that the warrant was lodged with him *modo et formâ*.

The plaintiff being in York Castle petitioned the Insolvent Court, and a warrant, remanding him for twelve months from April 12th, 1851, was made and was lodged at the Castle. The plaintiff was afterwards transferred by *habeas* to the Queen's Prison, and the Governor of York Castle, retaining the original warrant, sent with the prisoner a copy; under this copy the defendant received and detained him in the Queen's Prison, and upon this copy he had always acted. The plaintiff, shortly before the expiration of the twelve months, was told by the Deputy-Governor that it would be necessary for him to have a judge's order before he could obtain his discharge. The plaintiff accordingly applied to a judge at chambers, but was told that the order was not necessary; he was still advised by the Deputy-Governor to apply again, but he said that he should take no further steps: he was, in consequence, detained for three days after the expiration of the twelve months. For this detainer the action was brought.

Watson, Q.C. contended that the defendant was entitled to a verdict, as it was clear that the original warrant had never been lodged with him; without it he could not judge of the nature of the commitment or of the proper time for the plaintiff's discharge. Besides, a judge's order had usually been considered necessary; and he was therefore justified in acting as he had done in requiring it.

Parry, for the plaintiff, urged that the defendant having received the plaintiff under the copy, and having always acted upon it as the warrant, was now concluded from saying that it was not the warrant.

The facts were left to the jury, and they returned a verdict for the plaintiff. Damages 20*l.*

ERLE, J. said,—I shall direct the verdict to be entered for the defendant, on the ground that there was no legal warrant in his hands; but the plaintiff has leave to move to enter the verdict as found by the jury.

Parry and *Macnamara*, for the plaintiff.

Watson, Q.C. and *Unthank*, for the defendant.

COURT OF COMMON BENCH.

Monday, Jan. 17.

(Before TALFOURD, J.)

ROBINSON *v.* DEAR.

London—Small Debts Act—Jurisdiction—Certificate.

The Small Debts Court for the City of London has, by its Act, exclusive jurisdiction to the amount of 50l.; at least, a person suing in the Superior Courts, and recovering not more than 50l. in assumpsit, will be deprived of costs unless he obtains a certificate from the presiding judge.

The action was in assumpsit for the price of a horse, and the plaintiff recovered a verdict for 42*l.* 15*s.*

Hawkins, on behalf of the plaintiff, asked for a certificate that this was a proper cause to be tried in the Superior Court. The Small Debts Act for the city of London, 15 & 16 Vict. c. lxxvii. deprived the plaintiff of costs when the debt recovered by him did not exceed 50*l.* It was a departure from the general County Court Act, and doubtless a mistake, but the enactment was clear upon the point. Sect. 118 enacted "that all actions and proceedings which before the commencement of this Act might have been brought in any of her Majesty's Superior Courts of Record, where the plaintiff dwells more than twenty miles from the defendant, or where any officer of the court holden under the provisions of this Act shall be a party, except in respect of any claim to any goods and chattels taken in execution of the process of the court, or the proceeds or value thereof, may be brought or determined in any such Superior Court, at the election of the party suing or proceeding, as if this Act had not been passed". And sect. 119 provided "that if any action shall be commenced after the commencement of this Act in any of her Majesty's Superior Courts of Record, for any cause other than those lastly hereinbefore specified, for which a plaint might have been entered in the court holden under the provisions of this Act, and a verdict shall be found for the plaintiff for a sum not more than 50*l.*, if the said action is founded on contract, or less than 5*l.*, if it be founded on tort, the said plaintiff shall have judgment to recover such sum only, and no costs," &c.

TALFOURD, J., granted the certificate.

SECOND SITTINGS IN MIDDLESEX IN HILARY TERM.

Thursday, Jan. 20.

(Before TALFOURD, J.)

LEVY *v.* HOOK.

Bill—Insolvent—Discharge—Schedule—Mistake.

A. in his schedule filed in the Insolvent Court, described a bill as drawn by B. and accepted by himself:

Held that, if he knew who was then the holder of the bill, this was an insufficient description, and he was not discharged from the claim of the holder.

If he knew that it had left the hands of the drawer, and was at the time of filing the schedule out in the world, he is bound to show some effort to ascertain the holder, otherwise he is not discharged.

The bill was described as for 58l. instead of 50l.:

Held, that if the jury were of opinion that the error was in consequence of the culpable negligence of A. he was not discharged from liability on the bill.

This was an action by the indorsee of a bill of exchange for 50*l.* against the acceptor.

Plea, that the defendant was discharged under the Insolvent Debtors Act.

The defendant had obtained his discharge from the Insolvent Court; but in his schedule he described John Collette as holding bill of exchange dated 5th May 1847, drawn at three months for 58*l.* by John Collette on the insolvent, accepted by the insolvent—due August 8, 1847.

The schedule was filed July 1, 1848, and the defendant was discharged on July 22 in the same year. The bill was for 50*l.*

Peterdorff, for the defendant, contended that, as the defendant did not know at the time of filing his schedule that the bill had left the hands of the drawer, he was discharged. 1 & 2 Vict. c. 110, s. 75, provides that the discharge should extend to debts, &c. due "to the several persons named in his schedule as creditors, &c. and as to the claims of all other persons, not known to such prisoner at the time of such adjudication, who may be indorsees or holders of any negotiable security set forth in such schedule so sworn to as aforesaid." The plaintiff was a holder not then known to the insolvent. As to the misdescription of 58*l.* for 50*l.* it was cured by sect. 93, unless there was "any culpable negligence, or fraud, or evil intention" on the part of the defendant in so misdescribing it.

Wilkins, Serjt. for the plaintiff, urged that, as the defendant had accepted the bill in order that it might be negotiated, he must be presumed to have known that it was so used, and that it had left the hands of the drawer; if so, he incorrectly described him as the holder, and was not discharged. *Lambert* v. *Smith*, 20 L. J. 195, C. P., showed that where the insolvent described the bill as drawn by A., but did not name the payee, or allege that the holder was unknown, he was not discharged as to the payee; and *Pugh* v. *Hookham*, 5 Car. & P. 370, was to the same effect. The insolvent might easily have ascertained from the drawer who was the holder, but he did not take the trouble to inquire.

Temple, on the same side.—He had good reason to believe that the drawer was not the holder; and if so, he was wrong in so describing him.

Evidence was then given for the plaintiff, to show that the defendant knew that the drawer had indorsed it over, and that the plaintiff was the holder.

Hance, in reply, urged that *Lambert* v. *Smith* did not apply to the present case, because there the name of the plaintiff was in the body of the bill, which was sufficient notice to the insolvent.

TALFOURD, J.—I shall ask the jury whether the defendant knew that the plaintiff was the holder? If not, whether he knew that John Collette was not the holder? for if he thought that the bill was out in the world, he should have taken some pains to ascertain the holder, and should not have described John Collette as the holder. I shall ask them a third question, whether the misdescription of 58*l.* for 50*l.* was in consequence of any culpable negligence of the insolvent?

LORD CHANCELLOR'S COURT.

Hance cited *Rayner* v. *Lambert*, 1 Beav. & Cross. 214, as to the first point, and, as to the last, contended that the insolvent must be shown to have been guilty of culpable negligence, and in a matter which would mislead the creditor.

TALFOURD, J.—To the jury.—Is the defendant discharged by his insolvency from the claim of the plaintiff upon this bill? It is admitted that he described in his schedule John Collette as the holder of the bill, and that it is misdescribed as a bill for 58*l*. Now the insolvent is bound to give fully and truly the information which he possesses, in order that the proper notice may be given to the creditors. The defendant has inserted Collette as the holder, and he now swears that he believed Collette to be the holder. The question for you will be, what was the state of mind of the defendant when he made his schedule? In the first place, did he know that Levy, the present plaintiff, was the holder? The defendant swears he did not; but evidence has been given on the other side to show that he did know it. If he knew it, he clearly cannot succeed in protecting himself by the schedule against the plaintiff's claim. But if you should be of opinion that he did not know of the plaintiff's holding, you will then consider whether he knew that the bill had left the drawer, and that it was out in the world. Now would not that be likely? The bill was accepted for the accommodation of Collette, and the very object would be to negotiate it. The defendant could hardly think that Collette would shut it up. If then the defendant knew that the bill had been negotiated and was out in the world, he should have made some inquiry for the holder, and has improperly described Collette as the holder. The third question which you will consider is whether, inasmuch as the bill is incorrectly described as a bill for 58*l*. there was culpable negligence in so misdescribing it. If there was, your verdict will be for the plaintiff.

Verdict for the defendant.

Wilkins, Serjt. and *Temple*, for the plaintiff.
Peterdorff and *Hance*, for the defendant.

Equity Courts.

LORD CHANCELLOR'S COURT.

Reported by C. H. KEENE, Esq. of Lincoln's-inn, Barrister-at-Law.

(Before Lord CRANWORTH, L.C. and the LORDS JUSTICES.)

Thursday, Jan. 20.

NEATHWAY v. REED.

Construction—Surviving children.

A. bequeathed to B. for life the interest of her funded property, after certain legacies were paid, and after her death to be equally divided between her surviving children; and, after providing for the payment of the legacies out of a particular fund, declared that the remainder of such fund should be made use of to her said sister, and to her surviving children as before-mentioned:

Held, that such only of the children as were surviving at the death of B. were entitled to take under the bequest.

This was an appeal from a decree made by the V.C. Stuart on a claim.

The testatrix, after bequeathing certain pecuniary legacies to her sister's surviving children, gave and bequeathed unto her sister, Catherine Neathway, "the interest of her funded property, whatsoever might be remaining after those legacies were paid, for and during her natural life; and after her decease such property to be equally divided between her surviving children. She also desired that the money which would be derived from the funds at her decease by the will of her late husband, with the money she might have at the savings bank at Southampton, should be first used in paying the before-mentioned legacies, and which moneys her executors were thereby authorised and empowered to take for that purpose: and if those moneys should not be sufficient to do so, then they were to sell out from the Three per cent. Consols. enough to defray that expense; the remainder then left in the Three per cent. Consols. was to be made use of to her sister Catharine Neathway and to her surviving children as before mentioned.

The point was, whether the "surviving" children at the death of the testatrix, or those at the death of her sister, were to take under the bequest.

The V. C. decided in favour of the latter construction, and this was an appeal from his decision.

Cairns appeared for the plaintiff.

Their LORDSHIPS, who delivered their judgments *seriatim*, confirmed the decree of the Court below, and dismissed the appeal with costs.

Friday, Jan. 21.

MORGAN v. MORGAN.

Specific performance—Powers, defective execution of—Contract—Railway company—Price of land to be ascertained by "arbitration or by a jury."

Lands were settled to such uses as A. and B. should, by a joint deed, executed in the presence of witnesses, appoint, and, in default of appointment, to uses in strict settlement, A. and B. being the first tenants for life in succession. In 1845 the South Wales Railway Company contracted with A. and B. for the sale of certain parts of the lands; but the price was not fixed. In 1846 the company advanced part of the consideration money to them on their joint receipt, in which it was stated that the money was "in respect of the lands part of our estates required for the South Wales Railway." Before any formal exercise of the joint power by A. and B., A. died. After A.'s death other parts of the settled lands were contracted to be sold to the company. The price, including as well those parts of the land which had been contracted to be sold before, as those after the death of A., was agreed upon at 20,000l. On a bill filed by B. against the railway company for the specific performance of their contract:

Held, that the contract was such an one as could not be enforced against B.

Held, also, that the receipt was not such a defective execution of the power as would be aided by a court of equity.

The court will aid the performance of an agreement to sell at a fair valuation; but where parties have agreed that the price shall be ascertained by a particular arbitrator or by arbitration generally, in either of those cases, if the arbitration does not proceed, and the price is not so ascertained, the court will not make a contract different from that which the parties have entered into, or compel them to ascertain the price in a different mode.

A valid contract to sell, which can be enforced against a donee of a power independent of any conduct on his part, will in equity be binding on the remainderman.

A mere intention to sell under a power cannot, in the absence of a contract binding the donee, by force of contract prevail against a remainderman.

This was an appeal from a decree of the late V. C. Turner.

The suit was instituted by Sir Charles Morgan Robinson Morgan for the specific performance of a contract entered into with the South Wales Railway Company.

The facts were briefly these:—By a settlement dated 1844 the estates of Sir Charles Morgan were settled to such uses, &c. as Sir Charles and his son (the plaintiff) should jointly appoint, and in default to trustees for 500 years; then to the late and present Sir Charles Morgan successively for life, with remainder to the sons of the present Sir Charles Morgan in tail. There was a power in the settlement for the trustees, with the consent of the late and present Sir Charles Morgan, or the survivor of them, to agree with any canal or railway company for the sale of any part of the settled estates, and for the consideration to be paid for taking the same, and as to any compensation for the loss or damage that might be caused thereby. The settlement also contained the usual power of sale and exchange, and the moneys to arise from such sale were to be laid out in the purchase of other lands to be settled to the same uses as the settled estates; so also as to the purchase-moneys of lands to be taken by any such companies under the above power. In December 1845, the South Wales Railway Company being about to pass through these estates, the late Sir Charles Morgan authorised his solicitor to negotiate with the company for any part of the land it might require for the undertaking. In March 1846 the company gave the usual notices to take part of the land. A surveyor valued the part proposed to be taken at 8000*l*., but the company offered only 7500*l*. Pending this valuation Sir Charles Morgan's solicitor wrote to the company's solicitor as to the title which the company would require, and he stated in such letter the joint power of appointment, and said "he hoped, therefore, there would be no objection to the late and present Sir Charles Morgan receiving the purchase-money without it being requisite to obtain the consent of any mortgagee thereto." The company in answer required a full abstract to be furnished, and shortly afterwards requiring possession of the land, it was agreed that they should deposit in the bank of Messrs. Glyn and Co. the sum of 8000*l*. as a security for the ultimate payment of the sum which should be awarded or agreed; and that thereupon they should be let into possession: the total amount of the purchase-money was to be afterwards settled either by arbitration or by a jury. The company subsequently required other parts of the estates, which were valued; but, as to the amount to be paid the parties could not agree. Sir Charles claimed 15,500*l*., and, being desirous of having part of the purchase-money paid to him, his solicitor requested that the sum of 8000*l*. which had been so deposited might be paid at once to Sir Charles Morgan and the plaintiff. This the company refused to disturb, but afterwards intimated that 7500*l*. would be paid to him on his receipt. Accordingly the following receipt (signed by the late Sir Charles Morgan and the plaintiff) was delivered to the company, viz.:—"Received this day, of the South Wales Railway Company, the sum of 7500*l*. on account of the compensation-money to be ultimately fixed, and to be paid by the said company in respect of the lands, part of our estates, required for the South Wales Railway." The 7500*l*. was then placed to the credit of the late Sir Charles Morgan at the bank of Coutts and Co. The abstracts of the title to the lands were afterwards delivered.

LORD CHANCELLOR'S COURT.

Sir Charles and the plaintiff had intended to exercise the joint power of appointment in their own favour, with the view of requiring the fee in such parts of the land as the railway company required.

Nothing further was done anterior to the death of Sir Charles in December 1846. After his death the company required other parts of the settled estates, and it was agreed that the sum of 20,000*l*. should be paid as well for those contracted to be sold before as those after Sir Charles's death.

The company refused to complete except under a decree of the court. The plaintiff, as the executor of his father and one of the donees of the joint power of appointment, contended that, notwithstanding there was no formal exercise of the joint power of appointment, the estate was bound, and that he was entitled to have the purchase completed against the company and against the parties interested in remainder under the limitations of the settlement. The question was, was he so entitled or not? or was there at any time in the lifetime of the late Sir Charles Morgan a contract for the sale of the lands in question, which could have been enforced against him and against the plaintiff independently of the company's possession of the land, by virtue of the delivery up of possession which might have operated as a part performance of the contract, if the two parties had been seised in fee?

Turner, V. C. decided that there was not a binding contract. The nearest approach to a contract, his Honour added, was the receipt for 7500*l*., and there was some difficulty in founding a contract upon that document, from the lands which were intended to be referred to not being described in it. Whether the words, "in respect of lands, part of our estates, required for the South Wales Railway," meant any lands which the company might at any time require, or the lands only for which the notices had been given, or all the lands comprised in the agreement, was a matter of uncertainty. No parol evidence was receivable; and the receipt was so connected with the notices, that the notices could not be brought in aid of the receipt, for the purpose of explaining the meaning of that expression. Without reference to that difficulty, the contract evidenced by the receipt was to sell at a price to be ultimately fixed; that price was not fixed in the lifetime of Sir Charles Morgan; and at no time during his lifetime could a bill have been maintained against him or against the plaintiff merely for specific performance. The remainderman therefore could not be bound by the contract. From that decision the plaintiff now appealed.

Rolt, *Elmsley*, and *Woolley*, appeared for the appellant, and cited *Coles* v. *Trecothick*, 9 Ves. 284; *Blagden* v. *Bradbear*, 12 Ves. 466; *Campbell* v. *Leach*, Amb. 749.

Glasse and *Milman* appeared for the parties claiming under the settlement.

The LORD CHANCELLOR.—The equity which is sought in this case is an equity, in substance, calling upon the court to aid the defective execution of a power, against parties who are entitled in default of that execution. That is a jurisdiction which the court does exercise, in many cases which are well ascertained, and amongst others in favour of purchasers for value. In order to entitle the court to interfere, there must have been an execution or an intended execution, though defective. One question, and that of great nicety and importance, is whether, if there has been no execution at all other than that which is to be declared from the conduct of the parties,—a parol contract evidenced, or at least supported by subsequent acts, which, as against an owner in fee, would have entitled the court to interfere,—that is such a defective execution as entitles this court to interfere in favour of a purchaser. I do not think it necessary to give any distinct opinion upon that subject; indeed, if it had been necessary to have done so, I should have required further time to look into the authorities; but I must say that I think there is a great deal of force in the doubt (to put it no stronger) expressed upon that subject by Sir William Grant, by Lord Redesdale, and subsequently by Lord Plunkett, because when the principle upon which the court interferes in such cases is considered,—namely, that it would be a fraud upon the part of the person insisting, upon the statute of Frauds, to insist upon it,—I think it is extremely doubtful whether such a case is applicable to the doctrine of enforcing such a parol contract against remainderman. However, I do not think, for the reasons I will now proceed to state, that it is necessary to decide that point. The ground upon which I proceed here is this, that there has been no contract proved, either written or parol. There is no complete contract, the terms of which had ever been ascertained. No doubt it has been ascertained that certain lands were required by the company for the purpose of their railways, all of which they were entitled to take, and would be taken; all that remained therefore to be ascertained was, that which alone had been left in doubt, namely, the sum of money to be paid for them. Now was that so? The original agreement states that the company, within one month after they had first taken possession, were to proceed without any delay to get the amount of compensation settled, "either by arbitration or a jury," as Sir Charles Morgan should choose. Now Sir Charles

never made his election either for the one or the other of those modes of proceeding, and therefore it is quite clear that the amount of the purchase-money never was ascertained by either of the modes which were pointed out. It has been suggested that that was immaterial; for it was in the power of the court to ascertain it; or that some other step might be taken different from that which the parties stipulated as the mode of ascertaining what the amount of the purchase money should be. I confess that upon principle, as well as upon all the authorities, the court cannot take upon itself to do so. If there is an agreement that the price shall be that which is to be ascertained upon a fair valuation, then the court may interfere. All the authorities—the cases of *Milnes* v. *Gery*, 14 Ves. 400; *Blundell* v. *Brettargh*, 17 Ves. 232; and *Gourlay* v. *Duke of Somerset*—enunciate, the proposition in the strongest language, that where the parties have stipulated that the price shall be ascertained—in *Blundell* v. *Brettargh* it was by a particular arbitrator; in *Milnes* v. *Gery*, it was not by a particular arbitrator, but by arbitration generally—that in such cases, if the arbitration does not proceed and the price be so ascertained according to the mode in which the parties have stipulated, this court has no right to make a different contract than that which the parties have entered into, and ascertain it for them in some different mode. That being so, it appears to me to put an end to this case; because the stipulation was that the price—putting it in the most favourable way for the plaintiff—should be ascertained by arbitration. The arbitrator was to proceed in a particular mode; he never was named during the life of one of the parties, during whose lives the contract must have been enforced; they never took any steps to ascertain that, and without ascertaining it the contract could not be made available. There is this difficulty here. The price was to be ascertained "either by arbitration or by a jury;" that is, by the lands clauses jury—which was the meaning of the words, "or by a jury." What else could they mean? It shall either be ascertained by contract, which means arbitration, or by a proceeding *in invitum*. The parties might not object to a jury; but a jury was the machinery which was in the hands and under the sole control of the defendants. They might insist upon having the price ascertained by that means, quite independent of the contract on the part of Sir Charles Morgan and his son. It was idle to say, You shall have the land. The company was entitled to it, and in truth such parts were pointed out as it wished to have. They said, If the price to be given for them can be settled by contract or by arrangement, so let it be; if not, we must proceed to take it in the mode in which the Legislature has authorised us to take it, whether you consent, or whether you do not. This, therefore, brings us to this important consideration. The purchasers in this case are not rendering the interference of this court important in aid of the defective execution of the powers. The court interferes, because it is unjust on a purchaser not to give him the benefit of his contract; but here it is perfectly indifferent to the company, who are the vendors; whether the court interferes or not, they are certainly entitled to the land: they are entitled to take it by one of the alternative modes fixed as the method of ascertaining the value, though not entitled to insist on the other. What they say therefore, is this—having the right to take land, we mean to take it: if you choose to have the value ascertained by arbitration, it shall be done; if not, we shall proceed to a jury. That being so, it seems to me—even if there had been much more amounting to a contract than I can discover upon the face of the evidence of what took place in writing, or the parol evidence—that we should be going much further than any case has yet gone, if we were to say that parties who have the power of defeating those in remainder shall be allowed to do so, not for the benefit of the purchaser, but of themselves as put in contradiction to the interests of those whose rights the exercise of the power was to defeat. I am of opinion therefore, that the decision of the V. C. was correct.

Lord Justice KNIGHT BRUCE.—It is essential to the success of the plaintiff upon this appeal, that a binding and enforceable contract, a contract at least in equity binding, and in equity enforceable, was made between himself and his deceased father, on the one hand, and the railway company on the other; whether necessarily a written agreement I decline saying; for the evidence is very far from satisfying me that there was any contract, except indeed a contract formed only by the Railway Acts—an exception which substantially for every present purpose is no exception at all. As to a portion of the lands in question, neither was any price put, nor, according to my view of the evidence, was any mode of fixing it provided in any sense. And with regard to the expression "arbitration or a jury," the present case falls far short of *Gregory* v. *Mighill*. Had the railway company filed a bill during the late Sir Charles Morgan's life, against him and the present plaintiff for specific performance, and they had resisted the decree and required the bill to be dismissed, could a decree have been made against them upon the footing of a contract either written, or in part performed? I am of opinion certainly not; for, as I view the matter, it is wholly uncertain what the words "arbitration or a jury" mean. If they are to be construed as explained by the Railway Acts, then it would be necessarily in the power, I suppose, of the railway company, in case of default on the vendor's part, to appoint an arbitrator for them. Did they intend this? I conceive not. What jury? how to be obtained? or chosen? or appointed? The words are, I repeat, to my mind inexplicable. I am sorry to say that I think the decree right; probably, not alone on the ground I have mentioned, though I consider that ground sufficient.

Lord Justice TURNER.—I have already given my opinion upon this case, after having very carefully examined all the evidence in it; and it is not necessary for me to say more than that I entirely concur in the judgment which has been given.

Appeal dismissed.

COURT OF APPEAL IN CHANCERY.

Reported by OWEN DAVIES TUDOR, Esq. of the Middle Temple, Barrister-at-Law.

(Before the LORDS JUSTICES).

IN BANKRUPTCY.

Monday, November 8.

Ex parte COPELAND, re COPELAND, a bankrupt.

Bankrupt Law Consolidation Act, 1849, sect. 201—Loss on purchase of railway shares, whether within Act.

A bankrupt having lost within a year next preceding the petition of adjudication, by the purchase of railway stock, (the original contract being carried over by means of a continuation contract,) a sum without the broker's commission less than 200l., but with it more than 200l.;

Held, to be disentitled under the 201st section of the Bankrupt Law Consolidation Act, 1849, to a certificate of conformity.

Semble, also per Lord Cranworth, that the transaction was a gaming or wagering within the first clause of the section.

Under that section, although the word "contract" only is used, it will be held to include the plural word "contracts," so as to bring a loss arising from several contracts, amounting in the whole to 200l., within the meaning of the statute.

Semble, that railway shares, as distinguished from railway stock, are within the meaning of the 201st section, disentitling a bankrupt to a certificate of conformity who has lost, within a certain period, 200l. by any contract for the purchase or sale of any Government or other stock.

The bankrupt in this case presented an appeal from the decision of the Commissioner, refusing him his certificate of conformity under the 201st section of the Bankrupt Law Consolidation Act, 1849, on the ground of his having lost 200*l.* within a year next preceding the filing of the petition for adjudication, by a contract for the purchase of railway stock, in which the contract was not to be performed within one week after the contract. The 201st section of the Bankrupt Law Consolidation Act, 1849, is as follows: "That no bankrupt shall be entitled to a certificate of conformity under this Act, and any such certificate, if allowed, shall be void, if such bankrupt shall have lost by any sort of gaming or wagering in one day twenty pounds, or within one year next preceding the issuing of the fiat or filing of the petition for adjudication of bankruptcy, two hundred pounds; or if he shall, within one year next preceding the issuing of the fiat, or the filing of such petition, have lost two hundred pounds by any contract for the purchase or sale of any Government or other stock, where such contract was not to be performed within one week after the contract, or where the stock bought or sold was not actually transferred or delivered in pursuance of such contract; or, if such bankrupt shall, after an act of bankruptcy, or in contemplation of bankruptcy, or with intent to defeat the object of this or any other statute relating to bankrupts, have parted with, concealed, destroyed, altered, mutilated, or falsified, or caused to be concealed, destroyed, altered, mutilated, or falsified, any of his books, papers, writings, or securities, or made or been privy to the making of any false or fraudulent entry in any book of account or other document, with intent to defraud his creditors, or shall have concealed any part of his property; or if any person having proved a false debt under the bankruptcy, such bankrupt being privy thereto, or afterwards knowing the same, shall not have disclosed the same to his assignees within one month after such knowledge."

The facts of the case are briefly these. On the 27th Feb. 1851, the bankrupt contracted for the purchase of 60 shares in the Manchester, Sheffield, and Lincolnshire Railway Company, upon which 100*l.* had been paid up, which were described in the broker's notes as shares on which 100*l.* had been paid up, but in his books of account as *stock* of the railway company. In the year 1850, a resolution was passed at a half-yearly meeting of the shareholders, that, agreeably to the Act of incorporation of the company and the provisions of the Companies Clauses Consolidation Act, such of the shares of the capital of the company as were paid up should be converted into capital stock of the company, to be denominated *consolidated stock*. On the 26th April 1851, the contract was carried over by a continuation contract by which the time for payment of the purchase money was extended, in consideration for which the bankrupt paid a commission to the broker, called contango. On the 24th May following, the bankrupt sold the shares and lost by the transaction, as was estimated by the assignees, the sum of 390*l.* including therein the sum of 7*l.* 10*s.* being the amount of the commission. The bankrupt, however, contended that a sum of 202*l.* 10*s.* only, including the commission, had been lost by him in the transaction. On the 27th March 1852 the petition of adjudication was filed.

J. Russell and *Martindale*, for the bankrupt, in support of the appeal, argued, first, that deducting the commission of 7*l.* 10*s.* from the 202*l.* 10*s.*, the bankrupt would have lost under 200*l.* and would not therefore come within the 201st section. Secondly, the loss arose out of two contracts, the original and the continuation contract, the separate loss under each of which would not amount to 200*l.* Thirdly, that the contract was not within the statute, as it was entered into twelve months before the bankruptcy. Fourthly, that it was not shown by the assignees that the subject-matter of the contract which the bankrupt contended was railway shares and not "stock" was within the meaning of the Act, which particularised "Government or other stock."

Bacon and *Selwyn* for the assignees, the respondents, urged that the word "contract" in the 201st section included the plural word "contracts," and that the time at which the loss arose was at the time of the sale. Moreover that after this resolution passed at the meeting of the shareholders, the railway shares must be presumed to be stock, unless the bankrupt showed to the contrary, which he had not, and in fact was not able to do. They cited and commented on *Ex parte Matheson*, 1 De G. M. & G. 446.

Martindale, in reply.

Lord Justice Lord CRANWORTH.—The first question is whether, assuming for the present that the contract complained of was for the purchase of stock within the Act, there has been a loss thereon within the year of 200*l.* and upwards. There is no doubt that there has been such a loss of 202*l.* 10*s.* upon the transaction if, as part of the loss, is to be included the commission paid on the contract; and we are clearly of opinion that the commission must be included as part of the necessary costs of accomplishing the contract. If, in carrying the contract into execution, the necessary expense is added to the loss otherwise occasioned, the gross amount is the measure of the loss. That amount is at least 202*l.* 10*s.*, which but slightly exceeds the amount fixed by the Act; but if it does exceed that amount by the smallest fraction, that is sufficient, not only to justify what the Commissioner has done, but to make it his positive duty so to act. The next question is, whether the transaction amounts to a contract within the meaning of the statute. One objection made by the petitioner is, that the contract was not one, but that the loss was occasioned by different contracts, namely, an original contract, with a subsequent renewal thereof. I see nothing in that objection, for I think the word "contract" used in the statute includes "contracts." It would be absurd to impute such carelessness to the Legislature as to leave the law open to be defeated by merely splitting the transaction. Upon that, however, it is unnecessary to speculate; for by the interpretation clause of the Act it is provided that words in the singular number are to include the plural; but even if there had been no such clause, it would be absurd to construe the language otherwise than to hold that it includes contracts. That being so, the next question is, whether this is "Government or other stock" within the meaning of the section. It is perfectly clear that the subject-matter of the contract was stock, and not shares—if there be a distinction. True it is that it is described in the broker's notes as shares upon which 100*l.* had been paid. That, however, is capable of easy explanation. The beneficial interest in this company, as in all others, while the affair is in progress, goes in the form of shares, on which calls are from time to time made, while there is only part of the capital paid up. When, however, the whole capital has been paid up, then it becomes unimportant that the beneficial interest should remain in the form of shares. It may be, and in most cases will be, convenient to the holder, and to the company also, that it should be converted into stock; the difference being merely that, when converted into stock, it becomes capable of easier subdivision than while in the form of shares. That being the usual course, we find that on a certain date in Feb. 1850, the shares having been all paid up—that is to say, with the exception of some which by default had not been paid up, but the full amount of calls having been made upon all—the resolution came to was, that the shares might be now converted into stock. I think the meaning of that necessarily is, that those which were then paid up should be *instanter* converted; and that, as to the others, the shareholder, on paying up the remainder, might have his converted into stock. That being so, what is sold here is stock or shares, on which the whole 100*l.* has been paid up. It is indifferent then whether the purchase is of a share on which 100*l.* has been paid, or of 100*l.* stock. That is so immediately after the shares

COURT OF APPEAL.

have been converted into stock if not before. What this gentleman dealt in, was obviously stock of the company. That is proved by this,—that it never occurred to the parties to think of the difference between one state and the other. The broker in his account calls it stock. The only circumstance calculated to raise a doubt is, that in the bought and sold notes the subject-matter of the contract is described as shares upon which 100*l.* has been paid up. The reason of this, however is, that these notes are prepared in the shape of a printed form, adopted in all railway companies, and adapted to all shares, whether fully paid up or not; therefore it is called a share upon which 100*l.* has been paid up, instead of 100*l.* stock. But it is abundantly clear that this gentleman understood that he was purchasing stock, and in truth there was nothing else but stock that he could purchase. The broker calls it stock, and it was stock no doubt. If that is so, this case is governed by that of *Ex parte Mathews*, where it was held that railway stock was clearly "other stock," within the meaning of the Act of Parliament. On the grounds, therefore, that "contract" in the Act includes "contracts;" that the loss was of the amount, and practically within the period mentioned in the Act; and that the subject-matter of such contract was railway stock,—it is clear that the Commissioner was right. I go merely upon that narrow ground; but, speaking for myself, I do not suppose that if this had been shares as distinguished from stock, I should have decided otherwise than I have decided. It is difficult to see such distinction between the two sorts of misconduct, so as to take one out of the language of the Act. Moreover, though it is unnecessary to rely upon it as a ground of my decision, I am strongly inclined to think that this transaction was a sort of gaming or wagering within the prior clause of the 201st section of the Act.

Lord Justice KNIGHT BRUCE.—Assuming merely the legal question upon the construction of section 201 to be with the bankrupt, and not imputing to him unfairness or absence of honesty, as those words are used and understood in private life, I still doubt very much, to say the least of it, whether the dealing and conduct of this gentleman have been of such a nature as possibly to authorise a certificate. So much in passing. I will take the question as it arises on the narrow and restrictive view of the construction of section 201. As to that, if there is a distinction, a substantial distinction, which ought for the present purpose to weigh between railway stock and railway shares, my opinion upon the evidence before the Commissioner, and upon the additional matter which I have heard to-day, is, that the property in question, on which a loss has taken place within a year, was *railway stock*, as distinguishable from shares, and thought, intended, and known by the bankrupt to be so. Let me assume that, however, to be in the bankrupt's favour, and then I will say, that on the merely legal question, still I am not satisfied that the bankrupt is free from the operation of section 201 of the statute. The words of the section are, "Government or other stock;" but the Act of Parliament is one which is within and forms part of the same system with the 5 Geo. 2, c. 30, though that Act is now repealed. The language of section 12 of that Act is, "shall, within one year before the bankruptcy, have lost the sum of 100*l.* by one or more contracts for the purchase, sale, refusal, or delivery of any part or parts, share or shares of any Government or *public funds or securities*." Now if there had been such a thing as railway stock, distinguishable as it now is distinguished from railway shares, I am not by any means satisfied that, had such Act of Geo. 2 continued in force, railway shares would not have been stock within the meaning of that statute; and, upon a question of construction arising upon a subsequent statute on the same branch of the law, it is perfectly legitimate to use the former Act, though repealed. It is not necessary, however, to decide that question, and therefore I reserve myself upon it, merely saying that, according to the present inclination of my opinion, if the subject-matter of the contract had been shares, the bankrupt is still within the operation of sect. 201, properly construed in the manner applicable to all statutes, namely, the manner of suppressing the mischief and advancing the remedy. I am of opinion also that, if there is a distinction between railway stock and railway shares, the matter here in question was railway stock, as distinguished from railway shares, and that it was so intended and known to be by the bankrupt. I am of opinion that the decision of the learned Commissioner was plainly right.

Thursday, Nov. 11.

BLAKEMORE *v.* DUDAIN.

Costs, security for—Plaintiff out of jurisdiction—plaintiff going to reside abroad for a purpose which is likely to keep him there for such a length of time that there is no reasonable probability that he will be forthcoming when the defendant may have to call upon him to pay the costs of the suit, may be required to give security for costs pending the suit.

This was an appeal from the order of the M.R. directing that the plaintiff, who was out of the jurisdiction, should give security for costs, and that in the meantime all further proceedings in the suit should be stayed. In support of the application at the Rolls for the plaintiff to give security, affidavits had been filed, from which it appeared that, when the suit was instituted in March 1850, the plaintiff resided in London, at Queen's-road, Regent's-park; that he afterwards went to lodgings in Jermyn-street, and afterwards to Chiswick. The plaintiff had presented a petition to the Court of Bankruptcy unsuccessfully, under the creditor and debtor arrangement clauses of the Bankrupt Law Consolidation Act, 1849. In the meantime the defendant and persons employed by him, after various attempts, were unsuccessful in finding out the plaintiff. The plaintiff, however, some months after, returned to England, and took up his residence at Feltham Cottages, and then went to lodge at the same place at Jermyn-street, and then at Vauxhall. About the end of May 1852 the plaintiff left England, and arrived at Jersey on the 3rd June, where he still continued to reside. On the 16th July notice of motion for security was given for the 29th July to the plaintiff's solicitor. An affidavit was filed by the plaintiff's solicitor in opposition to the motion, which, without denying the facts appearing in the affidavits filed in support of the application, stated merely that the plaintiff had gone to Jersey to visit his sister, and that he believed it not to be his intention to reside there permanently, inasmuch as he, the deponent, had seen a letter, written by the plaintiff, in which he expressed an intention to return shortly to London.

Elderton for the appellant, contended that it had not been sufficiently shown that the plaintiff intended permanently to reside abroad; and that the mere fact of his having gone out of the jurisdiction was not sufficient, according to the authorities, to render it justifiable for the court to require the plaintiff to find security for costs: (*Hoby* v. *Hitchcock*, 5 Ves. 699.)

Smythe for the defendant, relied upon the various circumstances under which the plaintiff went abroad, his constantly keeping out of the way of the defendant, and his embarrassments, as showing that his residence abroad was likely to be of a permanent character. [Lord Justice KNIGHT BRUCE.—The plaintiff arrived in Jersey early in June, and has been there ever since. It is now November, and although the notice of motion was given for July last, it is not irregular nor unjust to look at subsequent events for the purpose of assisting ourselves in arriving at a just conclusion as to the intention of an act that took place before.] This case clearly is one which comes strictly within the rule which requires security to be given (*Weeks* v. *Cole*, 14 Ves. 518); and in all probability the defendant would never be able to get his costs unless the plaintiff was now compelled to give security for them.

Lord Justice Lord CRANWORTH.—It is a proposition upon which there cannot be a doubt, that a person will not be allowed to institute a suit who is permanently resident abroad, without giving security for costs; and the same rule holds where a plaintiff goes abroad with the intention of permanently residing there. Whenever security is asked for, the question arises whether the party is resident abroad or not; and the answer to that question depends in each case upon the interpretation to be put upon the phrase "resident or permanently resident abroad." If it is imagined to mean that in no case is a person to give security for costs unless it is shown that he intends to end his days abroad, I entirely dissent from such an interpretation. That is not the meaning of the phrase. A party goes to reside abroad within the meaning of the rule who goes for a purpose which is likely to keep him abroad for such a length of time that there is no reasonable probability that he will be forthcoming when the defendant may have to call upon him to pay costs in the suit. A question of this sort cannot be easily dealt with by laying down a general rule, it being impossible to define the extent of circumstances necessary in every case to bring it within the rule. In the report of the case before Lord Loughborough (*Hoby* v. *Hitchcock*, 5 Ves. 699) all that appears is, that the party had gone on a voyage to the West Indies, and there was no evidence, one way or the other, as to his intention to return. Lord Loughborough, inferring, I presume, that the party had gone merely with the temporary object of seeing to his affairs, and that he intended shortly to return, refused to order security. So courts of common law constantly refuse to require security to be given where the absence abroad of the party appears to be for a purpose only temporary. It is obvious that, considering the modern facilities for travelling, such orders, if made in those cases, would be a gross oppression. The party must go abroad under circumstances rendering it highly improbable that he can return within the time when he is likely to be called upon for costs in the suit. If, for instance, it were shown that he had gone abroad for some object which would keep him there for ten years, he would probably be held to be obnoxious to the rule. The question in the case now before us is, whether the plaintiff has gone to Jersey under circumstances bringing him within the rule. I think he must be held to have done so. Being evidently in embarrassment, he went from one house to another, and was not forthcoming when sought for. He left for Jersey in May, and arrived there on the 3rd June. An application was then proposed to be made by the defendant for security for costs. On July 16, notice of motion for this purpose was given for July 29. In support of that motion a statement is made in the defendant's affidavit to the effect that he believed the plaintiff was resident in Jersey. To this no answer was given by the plaintiff during the thirteen days' interval between the notice and the motion, and during which there was ample time to communicate that statement to the plaintiff at Jersey, and to obtain from him an affidavit contradicting it if he could. That step, however, was not taken; but the solicitor in London of the plaintiff merely states in his affidavit, filed in opposition to the motion, that he believes it not to be the intention of the plaintiff permanently to reside at Jersey, because he has seen a letter written by him (which, however, is not produced), in which he says he intends to return to England. That is not a satisfactory way of surmounting a difficulty which it would have been so easy to clear up by means of a direct communication with the plaintiff at Jersey. I am far from thinking that the evidence of the defendant was answerable on July 29; but, as my learned brother has suggested, if the evidence is to be discussed some months afterwards, we may, in dealing with it, regard the circumstances of the case as they now exist. Now it is quite clear that the question, whether the plaintiff was resident in Jersey on July 29, must be answered in the affirmative.

Lord Justice KNIGHT BRUCE.—It is not suggested that this gentleman is in any public service, civil or military. He left London to go to Jersey in May; he arrived there early in June; we are now in November; and there is no evidence that in the interval he has ever been at any other place. I am of opinion that, within the meaning of the rule, there has been a permanent change of residence to a place out of the jurisdiction.

Appeal dismissed with costs.

ROLLS COURT.

ROLLS COURT.

Reported by J. MACAULAY, Esq., of the Inner Temple, Barrister-at-Law.

Jan. 21 and 22.

PAGE *v.* COOPER.

Settlement—Trust for sale—Mortgage.

An estate was conveyed to trustees in trust "as and when it should seem to them meet to sell and dispose of the said hereditaments and premises," and to pay and apply the proceeds of the sale to purposes which exhausted the entire:

Held, that such a trust authorised a sale only, and not a mortgage of the premises.

The suit being for foreclosure of a mortgage created by the trustees under the trust to sell, a demurrer was put in on the ground that the trust did not authorise a mortgage, and it was allowed; but the plaintiff was nevertheless allowed to amend his bill for the purpose of establishing a lien on the interest in the property of a cestui que trust, who was a party to the deed.

By marriage articles dated 26th Sept. 1832, made in contemplation of a marriage between the defendant Frederick Cooper and Hannah Steward, it was agreed that certain property including an estate called the Spennells estate, in the county of Worcester, to which Hannah Steward was entitled under the will of her former husband, should be conveyed and assured to the use of John Cole, Thomas Cooper, and James White, and their heirs, upon trust that they and the survivors and survivor of them, and the heirs and assigns of such survivors, "should, as and when it should seem to them meet, sell and dispose of the said hereditaments and premises" in manner therein mentioned; and should by and out of the moneys to arise from such sale or sales in the first place pay and discharge the costs and expenses of such sale or sales; and should in the next place, by and out of the same, levy, raise, and pay to the several persons entitled to receive the same, such sum or sums of money as should be necessary to pay off the several debts then due by the said Hannah Steward, or to pay off any sum or sums of money which should have been borrowed to pay and apply in payment of the same debts, provided that the sum or sums so to be raised and applied should not exceed 150*l.*; and should also levy and raise such a sum of money, not exceeding 100*l.*, as the said Frederick Cooper should by writing direct or require, and pay the same to him, his executors, administrators, or assigns, for his and their own use; and, subject to the payment of the several sums thereinbefore mentioned, should lay out and invest all the residue of the money to arise from such sale or sales as therein mentioned, and should stand possessed thereof upon trust for Hannah Steward during her life, and, after her decease, upon trust to pay one equal moiety to the said Frederick Cooper during his life, and, subject and without prejudice to the interest for life of the said Frederick Cooper in one moiety, should stand possessed of the said trust-moneys, funds, and securities, and the interest, dividends, and annual produce thereof, upon trusts which did not take effect: and in case there should be no child of the intended marriage (an event which happened), upon such trusts, and for such intents and purposes as the said Hannah

ROLLS COURT.

should by her will, executed as therein mentioned, notwithstanding coverture, direct or appoint; and, in default thereof, upon certain trusts therein mentioned. The marriage took effect soon after; and by indentures of lease and release of 22nd and 23th June 1838 the estates were conveyed to trustees upon the trusts of the settlement. Mrs. Cooper, by her will, dated 24th July 1854, and made in pursuance of the power reserved to her, directed that in case of failure of issue of the marriage (which happened), the trust funds directed by the settlement to be invested should be transferred into the names of her husband, the said Frederick Cooper, John Cole (since deceased), and Richard Groom, and she directed that they should, by and out of the said trust moneys, stocks, funds, funds, and securities, levy and raise the sum of 2000*l.* for her husband, Frederick Cooper, and 100*l.* for John Cole, and also certain other sums therein mentioned; and the testatrix appointed the residue among five of her relations in equal shares. Mrs. Cooper died without issue in 1857, leaving her husband her surviving. The property comprised in the settlement was never sold under the trusts for sale; but by indenture, bearing date the 4th June 1860, the Spencelin estate was demised by the trustees of the settlement and of Mrs. Cooper's will to Henry Ottewmore for a term of 500 years, by way of mortgage to secure the repayment of 3100*l.* borrowed to satisfy the legacy of 100*l.* to John Cole and the balance then due to Frederick Cooper in respect of the two sums of 1000*l.* and 2000*l.* to which he was entitled respectively under the marriage settlement and his wife's will. On the 21st June 1841 the mortgage was conveyed to Caroline Page, who died on the 28th July 1860, having appointed the plaintiff, Matilda Page, her executrix. Matilda Page now filed her bill against the trustees and the parties beneficially interested under Mrs. Cooper's will, to enforce payment of the mortgage debt or for foreclosure in the usual way. To this bill a demurrer was put in by some of the defendants, on the ground that the marriage settlement did not authorise a mortgage, but only a conversion out and out; and the demurrer now came on to be argued.

Roupell and *Haynes*, for the demurrer, contended that it was now the settled rule of the court that a power of sale does not authorise a mortgage, unless where the power is for raising a particular charge, and the estate is settled or devised subject to that charge, in which case a mortgage will be supported as a conditional sale: (*Stroughill* v. *Anstey*, 1 De Gex, Mac. & G. 635.) But here the power is to sell out and out, and has an object beyond raising a particular charge, and does not, therefore, authorise a mortgage. The plaintiff, therefore, is entitled to no relief on this bill. As far as concerns Frederick Cooper's interest, it is true she has a lien on the trust funds to that extent, as he joined in the mortgage, but she cannot enforce that claim by the present bill.

R. Palmer and *C. S. Law*, contrà.—It is clear on the face of the deed that there are grounds for contending that the settlor intended the power to include a mortgage as well as a sale. It is a trust for sale out and out, so that some time or other it must take place; but there is no intention of making it obligatory on the trustees to sell immediately for the purpose of raising, and the settlor, foreseeing that there might not be sufficient money for the purposes required, uses the words, "as and when to them it shall seem meet." And to raise the money they might mortgage, and not injure the property by selling by piecemeal. If, however, the claimant cannot have the relief prayed, she ought to be allowed to amend, and claim a lien on the trust funds when raised.

The MASTER of the ROLLS.—I am of opinion that the power of sale in the marriage settlement does not authorise a mortgage. The trust was clearly one for conversion out and out, and not intended for the performance of a particular trust, with a direction to sell for that purpose, but it is a trust to sell out and out, and pay the proceeds on certain trusts. The case comes within the distinction taken by Lord St. Leonards in *Stroughill* v. *Anstey*, and is not a case for raising a particular charge, and a particular power for that purpose, but an absolute conveyance. I must therefore allow the demurrer; but the question is whether, the plaintiff having prayed for relief by foreclosure, she can now be allowed to amend her bill, so as to get relief which she cannot get in the form of a foreclosure.

Roupell.—The claim of the plaintiff is put upon her right as mortgagee; and how could any amendment be made, except by leaving out the whole bill and making another case?

The MASTER of the ROLLS.—I must give leave to amend in a reasonable time, and the plaintiff must pay the costs of the demurrer.

Saturday, Feb. 20.

FORD v. LORD CAVENDISH.

Practice—Foreclosure suit—Disclaimer by a defendant, a puisne incumbrancer—Costs.

A judgment creditor, made defendant to a foreclosure suit, who had not before the institution of the suit offered to release his claim, but by his answer disclaimed, is not entitled to his costs from the plaintiff.

The plaintiff, a second mortgagee, filed his bill against the first mortgagee (who had sold under a power of sale), to obtain payment of his debt out of any surplus proceeds of the sale of the mortgaged premises, after satisfaction of the debt of the first mortgagee, and to foreclose the puisne incumbrancers.

A judgment creditor, made a defendant to the suit, put in an answer and disclaimer, whereby he alleged that he did not then claim, nor ever had claimed, any interest in the mortgaged premises, and that no application had been made to him to disclaim before the filing of the bill.

At the hearing of the cause,

H. R. E. Forster, for the disclaiming defendant, asked to be dismissed with costs, to be paid by the plaintiff, and added to his debt. He relied on *Silcock* v. *Roymon*, 2 Yo. & Coll. C. C. 376; *Ablett* v. *Edwards*, 10 Sim. 568 (n.); and a case of *Gurney* v. *Jackson*, decided by Stuart, V. C. on the 9th Dec. last (reported in the *Weekly Reporter*, p. 93), upon a review of all the cases. He contended that those cases restored the old practice, which was, as Knight, V. C. said, in *Oberly* v. *Jenkins*, 2 Yo. & Coll. C. C. 548, to give a *puisne* incumbrancer, who disclaimed, his costs.

Willcock and *Southgate*, for the plaintiff, contended that *Silcock* v. *Roymon*, and *Gurney* v. *Jackson*, were at variance with all the other recent decisions; and that, according to the rule settled by these cases, the defendant was not entitled to his costs: (*Buchanan* v. *Greenway*, 11 Ben. 58; *Oberly* v. *Jenkins*, 2 Yo. & Coll. C. C. 548.) In *Locke* v. *Lomax*, 15 Jur. 162, where costs were given to defendants who disclaimed, they stated in their answer that they had offered, before the filing of the bill, to disclaim their interest (if any) in the subject-matter of the suit, which offer had been declined by the plaintiffs. Here the defendant's claim was on record at the time of the institution of the suit, so that he could not allege that he had not claimed any interest in the mortgaged premises (or the proceeds of the sale), and he had not alleged that he had offered to release his claim. They asked for a decree of foreclosure against the disclaiming defendant: (*Perkins* v. *Stafford*, 11 Sim. 562.)

The MASTER of the ROLLS said that since the case was first before him, he had looked into the authorities, and he found that the rule laid down in all the cases was what he had always supposed it to be. In suits for foreclosure or redemption of mortgages, where a defendant disclaimed, who never had any interest, or who, having had some interest, had assigned his interest, or offered to disclaim or release it prior to the filing of the bill, he was entitled to his costs: but where a defendant disclaimed for the first time, by his answer, though he stated that no application had been made to him to disclaim, he could not claim his costs. This was the principle of all the modern cases except the case of *Gurney* v. *Stuart*, before the V. C. Stuart, which had been cited in the argument; but in the report of that case, the facts were not fully stated, and he thought it could not be held to overrule the general current of authorities. The plaintiff was entitled to a decree of foreclosure against the defendant.

Note.—In a subsequent case of *Pemberton* v. *Read*, which was a foreclosure suit commenced by claim, a judgment creditor, who disclaimed, appeared at the hearing, and asked for his costs. The M. R. postponed any argument on the point until after his decision in *Ford* v. *Chesterfield*, but said that it was a question whether, in a suit commenced by claim, a defendant who disclaimed ought, under any circumstances, to have his costs of appearing, because he might have let the case go against him by default.

V. C. KINDERSLEY'S COURT.

Reported by W. H BENNET, Esq. of Lincoln's-inn, Barrister-at-law.

Tuesday, Jan. 18.

SWEETING v. SWEETING.

Legacy duty—Rent-charge—Dower.

A testator by his will, after giving a life-interest to his son in certain real estates, enabled the son by any deed to be executed on his marriage to settle a sum not exceeding 400l. per annum by way of jointure on any woman he might marry, and to be in bar of all dower, &c. The son, on his marriage, charged the estates with a rent-charge of 300l. per annum in favour of his wife, and subsequently died, leaving his wife surviving him.

Held, that under the Legacy Duty Act (55 Geo. 3, c. 28), legacy duty was payable on the value of the rent-charge so created.

The point raised in this cause was by way of petition by the Attorney-General, praying that a sum of 450*l.* by way of legacy duty, after the rate of ten per cent. might be paid to the Crown in respect of the value of a rent-charge created under the following circumstances.

The question turned upon the construction to be put upon the 4th section of the 45 Geo. 3, c. 28.

A testator by his will, after giving a life-interest in certain of his real estates to his son, enabled him, by any deed to be executed on his (the son's) marriage, to settle any sum not exceeding 400*l.* per annum by way of jointure on his intended wife, to be secured on such real estates, and that such rent-charge should be accepted by the wife in bar of all dower to which she might become entitled on the death of the son. On his marriage the son settled a rent of 300*l.* per annum by way of rent-charge on those estates in pursuance of the power given him by the testator's will. The wife had survived her husband, and from the time of his death to that had been in the receipt of the annual rent-charge of 300*l.* The estates had been under the protection of the court, a receiver of the rents having been appointed, and orders had been from time to time made for payment to the widow of certain sums by way of allowance for maintenance of the children of the marriage.

The application now was to have it declared that this rent-charge was liable to legacy duty at ten per cent. on its value.

The clause of the Act of Parliament under which the question arose was to the following effect:—45 Geo. 3, c. 28, s. 4: "And be it further enacted, that every gift by any will or testamentary instrument of any person dying after the passing of the Act which, by virtue of any such will or testamentary instrument, shall have effect or be satisfied out of the personal estate of such person so dying, or out of any personal estate which such person shall have power to dispose of as he or she shall think fit, or which shall have been charged upon or made payable out of any real estate, or be directed to be satisfied out of any moneys to arise by the sale of any real estate of the person so dying, or which such person may have the power to dispose of, whether the same shall be given by way of annuity or in any other form, shall be deemed and taken to be a legacy within the true intent and meaning of this Act: provided always that nothing herein contained shall be construed to extend to the charging with the duties by this Act granted any specific sum or sums of money, or any share or proportion thereof, charged by any marriage-settlement or deed or deeds upon any real estate, in any case in which any such specific sum or sums, or share or proportion thereof, shall be appointed or apportioned by any will or testamentary instrument under any power given for that purpose by any such marriage settlement or deed or deeds."

W. M. James, for the Attorney-General, relied upon two cases—*Attorney-General* v. *Pickard*, 8 Mees. & W. 552; afterwards affirmed on error, 6 Mees. & W. 348; and *Attorney-General* v. *Hewitter*, 19 L. T. Rep. 144, and 21 L. J. 293, Ex., and affirmed on error 20 L. T. Rep. 130—as having decided the question; and that the wife having accepted the rent-charge in bar of dower, she had taken it as a gift under the power in the will of the original testator, and not by purchase.

Follett and *Kinglake*, contrà, contended that the above cases ought not to govern the present question, as in these cases the power to jointure was permissive, and not obligatory, on the wife to accept the rent-charge in bar of dower. That those cases being before the Court of Exchequer, which it was to be presumed had a bias in favour of the revenue of the Crown, the decisions were to be strictly examined; and if the present case were not within the strict letter of the section, such decisions should not be favoured. They contended that the form of the gift was different; here it was a power to enable the tenant-for-life, in consideration of marriage, to create the rent-charge *by deed* only; whereas in the other cases it was an absolute power *by any instrument* to create the same; and that here it was not a conditional legacy, but a present consideration by way of marriage, and by which the widow did not take as of the gift of the original testator, but as a purchaser under the marriage settlement. That at all events the widow ought to pay only the lesser duty as wife, and not ten per cent. as a stranger in blood, because it was manifest she could not take immediately from the original testator. They cited *Blower* v. *Morret*, 2 Ves. Sen. 420; *Dorcashill* v. *Fletcher*, Amb. 244; *Heath* v. *Dendy*, 1 Russ. 543; *Burridge* v. *Bradyl*, 1 P. Wms. 127, and referred to the Acts 36 Geo. 3, c. 52, and 55 Geo. 3, c. 184.

James in reply, said the argument that the widow should pay only the lesser duty was a plausible one, but that the decided cases had concluded that question,—she being a stranger in blood to the original testator, through whom she derived the benefit she had.

The VICE-CHANCELLOR, in the course of the argument said, it appeared to him to be immaterial whether the power given by the testator's will was to be executed by deed or any other legal instrument.

JUDGMENT.

The VICE-CHANCELLOR observed that the whole question turned upon the 4th section of the 45 Geo. 3, c. 28. After reading the section he said that, in order to take a full view of the case, it might be advisable to consider what the case would have been were it a case affecting personalty alone—how in the case of a gift of personalty or legacy on condition to take a certain name and arms. In such a case he apprehended there could be no doubt that such a legacy would be liable to duty. So in a legacy to A. on condition that he should convey a certain estate of his to a third party; here also he considered the legacy would be liable to duty if the legatee accepted it. So in the case, which not unfrequently happened, of a testator having a daughter with children, and he

were to give her a security on condition that she maintained the children. The daughter, being obliged to bear the burden of maintaining her children without any legacy, it was discovered the moment the duty was payable upon it. What effect should be given to a case where the annuities almost absorbed the value of the legacy, and whether duty was only to be paid on the difference between the two, might be an important question; but that was not the case here, and he therefore expressed no opinion upon it. Now if he (the V. C.) was right in what he had said in an early part of his judgment, that a case of personalty would be clearly liable to legacy duty, he thought its being real estate made no difference, as it was not the less a gift; and therefore the same decision would apply to both real estate and personalty: the gift of money charged on real estate was not the less a gift because it was coupled with a condition. In a case where a testator did not make the gift direct to A., but to such one of his children as he should afterwards name by deed or additional will, and he names A., on the plainest principles, if A. took under the exercise of that power reserved by the testator, the legacy duty must be paid. The party comes in under the person exercising the power, if not under the testator in his original character of donor. So if it were a bequest to a son that he should do a particular thing, the same principle would apply. Here the condition that the intended wife should release her dower was a condition to do a particular act; and he (the V. C.) did not see how this condition varied the case of the more simple one which he had just put. And as to whether the exercise of the power was to be so exercised by deed or will, he thought, made no difference in principle. The judgments in the two cases in the Ex. were affirmed on appeal; and therefore he (the V. C.) was almost bound by those decisions, and in fact he thought they only carried out general principles to their legitimate result. He must therefore decide the present petition in favour of the Crown. As to those cases which had been relied upon by the respondents, which were cases of deficiency of assets and where legacies had abated, the decisions in those cases were based upon a different principle.

Order for payment of the legacy duty on the value of the rent-charge, at ten per cent.

V. C. PARKER'S COURT.

Reported by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.

Saturday, July 10.

Re THOMPSON'S TRUST.

Will—Construction—Period of vesting.

A testator bequeathed the residue of his personal estate to trustees, upon trust after the death of his wife to pay the interest of 2000l. to his daughter M. for life, and after her decease to pay the said sum unto and amongst all and every the child and children of M. when and as they should severally attain twenty-one; and in case any of them should die before their shares should become payable, leaving issue, then the shares should be paid to such issue; but in case any child should die before his or her share should become payable, leaving no issue, the share of such child to go to the survivors or survivor of the said children; but in case M. should leave no child or children, or, leaving such, all should die under twenty-one and without issue, then over. M. had one child, E. M. who attained twenty-one, and died in her mother's lifetime unmarried.

Held, that E. M. took a vested interest in the sum of 2000l. which passed to her personal representative.

Thomas Thompson, by his will dated 18th Feb. 1818, bequeathed all his personal estate to Moses Mitchell Silvester and his son Thomas Thompson, upon trust to permit his wife to enjoy all and singular his household goods and furniture, or such part thereof as they should think proper, during her life; and upon trust to sell such parts of the said furniture and household goods as his wife should not think proper to take, and all other his effects, and to sell after the decease of his wife all that should be so taken by her, and to invest the proceeds and all other the testator's personal estate when got in, and to pay the dividends and interest thereof to his wife for life. The testator then proceeded as follows: "And from and after the decease of my said wife upon trust that they my said trustees or the survivor of them, his executors or administrators shall, and do pay to, or otherwise permit and sufficiently empower my daughter Martha Oliver to receive and take, all the dividends, interest, and annual produce which shall arise and be made from 2000*l.* part of the said trust monies, during her natural life, to and for her own sole and separate and peculiar use and benefit, without being subject or liable to the debts, engagements, intermeddling, power or control of James Oliver, or any future husband with whom she may intermarry, and the receipts or receipts of the said Martha Oliver under her hand alone shall, notwithstanding her coverture, be good and sufficient discharges to my said trustees; and from and after the decease of the said Martha Oliver, upon trust that they my said trustees or the survivor of them, his executors or administrators, shall and do pay, apply, assign, and transfer all and singular the said sum of 2000*l.* and the dividends, interest, profits, and pro-

duce thereof, unto and amongst all and every the child and children of the said Martha Oliver, if more than one, share and share alike, as tenants in common, when and as he, she, or they shall severally attain his, her, or their respective ages of twenty-one years; and in case any of the said children shall happen to depart this life before his, her, or their share or shares shall respectively become payable, leaving issue of his, her, or their body or bodies lawfully begotten, then I direct that the share or shares of him, her, or them so dying, whether original or accruing by survivorship, shall go and be paid unto and amongst such his, her, or their respective issue, equally share and share alike, as tenants in common, when and as they shall respectively attain the age of twenty-one years; but in case any of the said children shall happen to die before his, her, or their share or shares shall become payable, leaving no lawful issue, then I direct that the share or shares of him, her, or them so dying shall go and be paid to and amongst the survivors and survivor of them, at such time and times as his, her, or their original share or shares shall respectively become payable; and so as often as any such child or children shall happen to die before his, her, or their share or shares shall become payable, leaving no lawful issue, such share or shares, whether original or accruing by survivorship, shall go and be paid to the survivors and survivor of the said children, at the time aforesaid: but in case the said Martha Oliver shall leave no child or children, or, leaving such, all of them shall happen to die under age and without issue, then I direct that my said trustees, or the survivor of them, his executors or administrators, shall and do pay, apply, assign, and transfer the interest, dividends, profits, and produce of the said sum of 2000*l.* and also the said sum, in such manner as the sum of 2000*l.* hereinafter next mentioned is directed to be applied, with the interest, dividends, profits, and produce thereof respectively." The trusts of the 2000*l.* next mentioned were similar trusts for the testator's daughter, Agnes Shaw, and her issue, with a like executory bequest in favour of Martha Oliver and her issue; and in case both his said daughters should happen to die leaving no child or children, or, leaving such, all of them should happen to die under age, and without issue, the testator directed the said 4000*l.* to fall into the residue which the testator gave, upon trusts for the benefit of his son Thomas Thompson and his issue, with an ultimate trust for the testator's next of kin. The testator died in 1821, and his widow died in 1832. Martha Oliver died on the 7th Oct. 1851, without leaving any issue surviving her, but having had one child, Elizabeth Martha Oliver, who attained twenty-one, and died unmarried in her mother's lifetime. The 2,000*l.* bequeathed in favour of Martha Oliver, and her issue, was invested in Consols. James Oliver, the petitioner in the present case, took out letters of administration to the estate of Elizabeth Martha Oliver. The trustees transferred the amount of Consols, into the name of the Accountant-General, under the Trustees Relief Act (10 & 11 Vict. c. 96); and the question raised upon the present petition was, as to the right of the representative of Elizabeth Martha Oliver to the fund.

Malins and *Rudall*, for the petitioner, cited *Jones* v. *Jones*, 18 Sim. 561; *Re Williams*, 12 Bea. 317; and *Butterworth* v. *Hervey*, 9 Bea. 130.

J. V. Prior, for some of the parties claiming under the gift over, referred to *Woodcock* v. *The Duke of Dorset*, 3 Bro. Ch. Ca. 569; and *Swift* v. *Swift*, 8 Sim. 168.

The VICE-CHANCELLOR called attention to the case of *Maitland* v. *Chalie*, 6 Madd. 243.

Craig for other parties in the same interest.

The VICE-CHANCELLOR (without hearing a reply) said he thought that the case came within the authorities cited. The will gave a life estate, and then clearly a vested interest to the children, and, if any child died under twenty-one leaving issue, to the issue of that child. Thus far everything vested, and then occurred the clause, "In case the said Martha Oliver shall leave no child or children, or, leaving such, all of them shall happen to die under age and without issue, then" he gave the fund over. It was said that if the word "leave" were understood in its natural sense the gift over took effect, for Martha Oliver had no child who survived her. It appeared to his Honour that the testator's intention was to give this fund over in case the previous limitations failed; but—an observation that might always be made in cases where there was this kind of question—the testator never contemplated the event which had happened, of a child attaining twenty-one, and dying in the lifetime of the tenant for life. It was assumed that the children, if any, would all survive the tenant for life, and then the testator provided for the event of their being infants at her death. His Honour considered that the construction was clear according to the authorities. *Maitland* v. *Chalie* appeared to him so closely in point. There was also a case of *Cass Meyer* v. *Strode*, 8 Jur. 14, in which the gift was to certain persons for life, and on their respective deaths to their children, to be paid to sons at twenty-one, daughters at twenty-one or marriage, and in case of the death of any of the tenants for life "without leaving any children or child," the share to go over; and there the Vice-Chancellor of England said: "Nothing can be more clear than that this gives a vested interest to the children upon their attaining twenty-one or marriage. The testator then goes on—'And I further will and direct that in case any or either of the said six children of the said Levine Fowler shall die without leaving any children or child, that the share or shares of them, him, or her so dying shall survive and go over to the survivors or survivor of them for their, his, and her lives and life, and the child or children of such of them as should be then dead leaving issue, &c. Now Mr. Parker says that that clause prevents an absolute indefeasible interest from vesting in any child until it survives the parent. But that is begging the question; and I think that that is not the meaning of the testator is clear from the subsequent words—'And the capital of the share or shares of such survivor or survivors shall, upon their, his, or her death or deaths, become divisible among their children, equally in the same manner as their own single shares,' &c. which lets in all the previous provisions which he had used with reference to the original shares.' It seems to me that this case is not distinguishable from the case of *Maitland* v. *Chalie*, and that it requires very strong words to take away the effect of a prior clear vested gift." *Marshall* v. *Hill*, 2 Mau. & S. 608, was a case to the same effect. His Honour, therefore, held, that the petitioner was entitled to have a transfer of the fund to him as the representative of the deceased child of Martha Oliver.

V. C. STUART'S COURT.

Reported by GEO. S. ALLNUTT, Esq., of the Middle Temple, Barrister-at-Law.

Friday, Jan. 28.

WEBSTER *v.* WEBSTER.

Husband and wife—Separation deed—Plea.

A widow, claiming to be a creditor upon her deceased husband's estate in respect of an annuity granted to her by a deed of separation, instituted a creditor's suit for the administration of the estate, and in her bill averred the payment of the annuity up to the husband's death, and afterwards. To this bill the executors pleaded that subsequent to the deed of separation there had been a reconciliation and cohabitation between the husband and the plaintiff:

The Court allowed the plea, but gave leave to amend the bill.

This was a bill filed by Ann Webster, widow, on behalf of herself, and all other the creditors of William Granville Webster, deceased, for the administration of W. G. Webster's estate. The following circumstances appeared from the statements in the bill. On the 27th Sept. 1843, the plaintiff was married to W. G. Webster, and in the year 1844 they mutually agreed to live separate, and thereupon the indenture hereinafter stated was executed. The indenture was dated the 4th Dec. 1844, and made between W. G. Webster, of the first part, the plaintiff, of the second part, and Thomas Summers, of the third part; and thereby, after reciting the agreement to live separate, and that it had been agreed that W. G. Webster would allow and pay Ann, his wife, during the term of her natural life, for her better support and maintenance, an annuity of 65*l.*, it is witnessed that W. G. Webster, for himself, his heirs, executors, and administrators, covenanted with Thos. Summers, his executors, administrators, and assigns, that it should be lawful for the said Ann, his wife, and that he would permit and suffer her, the said Ann, from time to time and at all times from thenceforth during her natural life, to live separate and apart from him, notwithstanding her present coverture, and as if she were then sole and unmarried; and that the said W. G. Webster would not, at any time or times thereafter, sue her in the Ecclesiastical Court or any other court, for living separate and apart from him, or compel her to cohabit with him, nor would, without the consent of the said Thos. Summers, visit her or knowingly come into any house or place where she should or might dwell, reside or be, or send or cause to be sent any letter or message to her, &c. And lastly, that the said W. G. Webster, his heirs, executors, or administrators, or some or one of them, should and would well and truly pay or cause to be paid unto the said Ann, his wife, or her assigns, during the term of her natural life, for and towards her better support and maintenance, one annuity or yearly sum of 65*l.* free and clear of all taxes, charges, and deductions whatsoever; the said annuity or yearly sum of 65*l.*, to be paid and payable to her the said Ann and her assigns, during her natural life, by two half-yearly payments in each and every year, on the days and times thereinafter mentioned, and which said sum of 65*l.* per annum she the said Ann Webster did thereby agree to take in full satisfaction for her support and maintenance, and all alimony whatsoever, during her coverture. The bill then stated "that the said separation did take place, and continued until the decease of the said W. G. Webster, and that the said indenture was acted upon in all respects by all the parties thereto, until such decease." W. G. Webster, by his will, dated the 24th Dec. 1845, gave all his real and

V. C. STUART'S COURT.

personal estate to Frederick Taylor Webster, his heirs executors, administrators, and assigns; subject, as therein mentioned, and appointed Louisa Webster and John Fox executrix and executor of his will. On the 26th Jan. 1846 W. G. Webster died, and his will was proved by L. Webster and J. Fox on the 18th June following. The annuity of 85*l.* was duly paid by the testator up to the time of his death, and after his decease the payment was continued by P. Webster and J. Fox, and F. T. Webster, up to the 25th March 1850. The further payment of the annuity being refused, and Thos. Summers having refused to sue for the same, the present suit was instituted against F. T. Webster, P. Webster, J. Fox, and T. Summers. To this bill F. T. Webster pleaded "that, subsequently to the date of the execution of the indenture in the said bill mentioned, the said plaintiff and her late husband W. G. Webster were mutually reconciled to each other, and again cohabited and slept together as husband and wife." This plea, which was not accompanied by an answer, now came on for hearing.

Malins and *Macqueen* appeared in support of the plea.

C. Hall, for the plaintiff, objected to the plea in point of form, as there were several averments in the bill on which the plaintiff was entitled to discovery. If the plea were replied to, such discovery would be material for the plaintiff's case. He referred to Mitf. Pleading 239, 242; *M'Gregor* v. *East India Company*, 2 Sim. 182; *Cross* v. *Tyrrell*, 2 Mad. 397; *Emerson* v. *Barlow*, 3 Sim. 490; 2 Bligh, 85.

The VICE-CHANCELLOR said he did not consider the objection to the form of the plea could be sustained. He could not hold that the averments in the bill were so framed as to anticipate the defence, and thus entitle the plaintiff to an answer.

Malins and *Macqueen*, in support of the plea, cited *Hindley* v. *Earl of Westmeath*, 6 B. & C. 200; *St. John* v. *St. John*, 11 Ves. 526; *Westmeath* v. *Westmeath*, 1 Dow. N. S. 519; and Roper's Husband and Wife, 272.

C. Hall, for the plaintiff, cited *Gawden* v. *Draper*, 2 Vent. 217; *Wilson* v. *Mallett*, 3 B. & Ad. 752; *Fletcher* v. *Fletcher*, 2 Cox, 99; and *Jee* v. *Thurlow*, 2 B. & Cr. 547.

Malins, in reply.

The VICE-CHANCELLOR (after stating the facts of the case) said that the right of the plaintiff to a decree depended upon the question whether she was a creditor. She asserted her right as a creditor under the deed of separation, and averred distinctly that the separation took place and continued up to the time of the husband's death; that was followed by an averment that the annuity was paid up to the time of the husband's death and afterwards. The question was one of great difficulty. That a deed of separation, by which a husband covenanted with trustees to pay an annuity for the maintenance of the wife, and the trustees covenanted to indemnify him against her debts during the separation, was valid, was unquestionable; and it was equally unquestionable that if in an ordinary case, after the execution of the deed of separation, and the separation, facts were shown amounting to a reconciliation and subsequent cohabitation, they would annul the deed. That was the settled law, and not to be disturbed but by a higher authority than his Honour's. The difficulty here was that the bill averred payment of the annuity up to the death of the husband. Now if there were simply a deed of separation, and an annuity payable under it and a subsequent reconciliation, there would be an end of the deed: but the husband might have so conducted himself subsequently to the reconciliation as to lead the court to give effect to the provision for the wife, under the deed of separation. But his Honour could only deal with facts and circumstances appearing on the pleadings. The allegation of the plea was, that there was a subsequent reconciliation and cohabitation; and if that allegation were true the deed of separation was annulled; but his Honour did not find any averments in the bill sufficient to shew that by any subsequent acts of the husband such a consequence as the annulling the deed would not ensue; and the relief was sought on the ground of the validity of the deed. Now no doubt in this case there was great hardship upon the plaintiff. His Honour thought that if it were taken as a fact that the annuity was paid up to the death of the husband, and that he made his will after the deed of separation, and so dealt with the wife on the footing that she had a right to the annuity under the deed, the case was one in which, although the plea was a sufficient answer to the bill as it stood, an opportunity should not be refused to amend the bill.

Plea allowed, with leave to amend the bill within three weeks, if the plaintiff did not undertake to reply to the plea.

Friday, Feb. 11.

HOUGH *v.* COLEMAN.

Will—Construction—Next of kin.

A testator gave personal estate to trustees upon trust for A. for life, and afterwards for B. for life, and after the decease of the survivor of them, upon trust for "such person or persons as should at the time of the decease of A. be entitled thereto as the testator's next of kin under the statutes made for the distribution of the effects of intestates." B. survived A., and at A.'s death two persons were next of kin to the testator. Held, that these two persons took as tenants in common.

Charles Horn, by his will dated the 19th July 1825, after giving certain pecuniary legacies, bequeathed the residue of his personal estate unto Thomas Coleman and Geo. Soulby, upon the trusts thereinafter declared as to the proceeds of his real estate, and he devised all his real estate unto the said Thomas Coleman and George Soulby, upon trust, for sale and investment of the proceeds, and he directed them to stand possessed thereof upon trust for Jane the wife of Thomas Bing for her life, and after her decease upon trust for Thomas Bing for his life, and after the decease of the survivor of them, upon trust, that they "should stand possessed of all and singular the said trust moneys, stocks, funds and securities, and the interest, dividends, and annual produce thereof, in trust for, and to pay, assign, and transfer the same unto, such person or persons as should at the time of the decease of the said Jane Bing be entitled thereto as the testator's next of kin under the statutes made for the distribution of the effects of intestates." The testator died on the 12th March 1837. Jane Bing died on the 4th July 1846, and at that time George Horn and Sarah Culmer were the only next of kin of the testator. George Horn died on the 29th October 1846, having by his will devised and bequeathed all his real estate, and the residue of his personal estate, to Ann Horn, and Jane Horn, and Ann Horn, the three plaintiffs, as tenants in common. The suit was instituted for the administration of the testator's estate, and the only question which arose was as to the mode in which the next of kin took this property.

Malins and *Speed*, for the plaintiffs, contended that the words used by the testator not only described the class, but regulated the rights of the parties: (*Martin* v. *Glover*, 1 Coll. 269.) They distinguished the case from *Withy* v. *Mangles*, 4 Bea. 358, 10 Cl. & Fin. 215; and *Elmsley* v. *Young*, 2 Myl. & K. 780.

Glasse and *Bagshawe*, for the representatives of Mrs. Culmer, contended that this was a joint tenancy, and that by the death of George Horn the whole property had survived to Mrs. Culmer: (*Phillips* v. *Garth*, 3 Bro. Ch. Ca. 64; *Kilner* v. *Leech*, 10 Ves. 362; *Baker* v. *Gibson*, 12 Ves. 101; *Minton* v. *Wreaks*, 13 Sim. 52; *Richardson* v. *Richardson*, 14 Sim. 526.)

Teed, for Thomas Bing.

Daniel and *Eddis*, for the trustees.

Malins, in reply.

The VICE-CHANCELLOR said that the question raised was certainly one of difficulty. It was, however, the duty of the court to construe the will according to the language used by the testator; and if his Honour found an intention expressed as to who were to take, and the mode of taking, he must abide by that intention. Looking at the words of the will the difficulty appeared considerable, for the testator said "such person or persons as should, at the time of the decease of Jane Bing, be entitled thereto as his next of kin under the statutes made for the distribution of the effects of intestates." This at least was clear that the testator intended the persons to be his next of kin at that time, not in a technical sense, but under the statute, and as entitled thereto under the statute. It was said that the reference to the statute was to define the class, and not the interest or the nature of the title of the class. But if his Honour found that the testator said he was to look to the statute, not only for the class but for the title, he must do so. When he looked at the statute he found that the next of kin to take were "the next of kindred to the dead person in equal degree or legally representing their stocks *pro suo cuique jure*." These latter words created the difficulty. Upon the construction contended for by the plaintiffs, his Honour must extend the right to those representing the next of kin, and he considered that he was bound to do so. In *Phillips* v. *Garth*, Buller, J. said "if it had pleased the court originally to say that next of kin should take in the same manner as under the statute, I should not have objected to it, for it seems to me they should take *per stirpes*." Here the testator said "next of kin under the statute," and therefore this case came within the proposition to which Buller, J. said that he would not have objected. His Honour therefore considered that the next of kin took as tenants in common, and that he was bound to come to that decision. *Kilner* v. *Leech* was not an authority against this, and he considered that upon the authorities the case was quite unprejudiced.

Feb. 12 and 18.

Re OVERHILL'S TRUSTS.

Will—Construction—Illegitimate children.

A testatrix bequeathed a sum of stock equally to be divided between the children of A. B. and the children of C. the wife of D. E. At the date of the will C. was married to D. E., but for eighteen years previously she had cohabited with him, and she had six children by him. The testatrix was well acquainted with all the children, and did not know of their parents not having been married. C. had no legitimate children. At the date of the will C. was forty-nine years of age:

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Held that the illegitimate children were excluded from the bequest.

Mary Overhill, by her will dated 22nd Nov. 1834, bequeathed the sum of 800*l.* Consols, in trustees upon trust to pay the interest thereof to William Garratt for his life, and after his decease she gave "the said capital stock equally to be divided between all the children of the said William Garratt and the children of Mary, the wife of William Bentley," &c. The testatrix died on the 11th Feb. 1837. William Garratt died in April 1841. On the 25th May, 1848, the sum of stock was transferred by the trustees into the name of the Accountant-General, under the Trustees Relief Act (10 & 11 Vict. c. 96). Mary Bentley died on the 21st July, 1852. The present petition was presented by the children of William Garratt, praying the transfer to them of the said sum of stock. By an affidavit of William Bentley, the husband of Mary Bentley, it appeared that he was married to Mary Bentley on the 15th Jan. 1821; that his wife was sixty-seven years of age at the time of her death; that for upwards of eighteen years previous to their marriage they had cohabited together and were always considered as man and wife, and no person in his own or his wife's family, or any person whatsoever to his knowledge (save themselves), was aware of the fact of no marriage having taken place between them; that during such cohabitation and before the marriage there was issue six children; that the testatrix was aunt to his wife, and was well acquainted with all his children, who were in the habit of visiting her, and particularly his eldest daughter, who lived with her on various occasions for many months at a time; that the testatrix was in the habit of calling at his residence for the purpose of seeing his children and making inquiries after their health and welfare, and always expressed a strong interest in them, and showed them much attention and kindness; and that the testatrix often during her life expressed to him her intention of providing by will for his said wife and the said children.

Shapter appeared for the petitioners.

The VICE-CHANCELLOR said he should wish to hear the counsel who contended that illegitimate children could take under this bequest.

H. Stevens, for the illegitimate children of Mary Bentley, proposed to read the affidavit before mentioned to shew that the testatrix had these children in her intention. At the date of the will Mary Bentley was of such an age as to render it impossible that the testatrix contemplated future children. The affidavit besides clearly established that the testatrix desired to benefit these particular persons, in whom she took an interest, and of whose illegitimacy she was not aware. He referred to *Dove* v. *Alexander*, 2 Hare, 275; *Beachcroft* v. *Beachcroft*, 1 Mad. 430; *Fraser* v. *Pigott*, 1 Younge, 854; and *Metham* v. *Duke of Devonshire*, 1 P. Wms. 529.

Shapter, for the petitioners, referred to *Jones* v. *Smith*, 14 Sim. 214; *Owen* v. *Knight*, 22 L. T. 45; *Evans* v. *Davies*, 7 Hare, 496; *Gill* v. *Shirley*, 2 R. & M. 336; *Bagley* v. *Mollard*, 1 R. & M. 581; and *Durrant* v. *Friend*, 16 Jur. 55. He objected to the reception of extrinsic evidence, there being no ambiguity in the will.

H. Stevens, in reply.

Cairns, for the executors of the trustee.

The VICE-CHANCELLOR said that the question was whether he could receive evidence to shew that these children had acquired the reputation of being the children of this woman. Upon the authorities he did not think that he could. The will plainly imported legitimate children; and from the circumstance that at her time of life she was unlikely to have children, and the knowledge of the testatrix of that fact, his Honour did not think that he should be justified in admitting evidence. In *Wilkinson* v. *Adam*, 1 Ves. & Bea. 463, Lord Eldon said: "In all the cases that I have seen having relation to this question, the illegitimate children, if they were to take, must have taken, not by any demonstration arising out of the will itself, but by the effect of evidence *dehors* read, or attempted to be read, with a view to establish, not out of the contents of the will, but by something extrinsic, who were intended to be the devisees; and if my judgment upon this case is supposed to rest upon any evidence out of the will except that which establishes the fact that there were individuals who had gained by reputation the name and character of his children, that conclusion is drawn without sufficient attention to the grounds on which the judgment is formed; my opinion being that, taking the fact as established that there were children who had gained the reputation of being his children, it does necessarily appear on the will itself that he intended these children. If that principle is just, and this case falls within its reach, all the cases cited are inapplicable to this." Now that was a case where the testator had devised to his children by Ann Lewis. In the present case there was no doubt that the persons were well described if there had been legitimate children, and his Honour was not justified in looking at evidence to show that illegitimate children were intended. He must therefore make the order asked by the petition, though he regretted very much that those persons should be excluded.

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Feb. 16.—This case was, by the desire of the V. C. reargued. At the conclusion of the argument,

The VICE-CHANCELLOR said, that when this case was before him on the previous Saturday, he had decided it on the ground that the evidence tendered on the part of those who claimed under this description was not admissible, and he had also held that these children were not entitled, and, upon the true construction of the will, could not have the benefit of this bequest which it was suggested was for them. Upon further consideration, and referring to the cases, he thought that upon the words of the will, and consistently with the true principles on which this court proceeded with respect to questions of this kind, he was bound to receive this evidence, and bound to look at everything which would give him an opportunity of knowing all that the testator knew at the time when he made his will, so as to enable the court, in construing it, to place itself in the position which the testator occupied at that time. To that extent, therefore, his opinion varied from that which he expressed when the case was before him last week. But, even with the assistance of the evidence in the case, it unfortunately happened that the rule of law was too strong—one established on the highest authority—but not in perfect uniformity, for he thought that the case of *Southcroft* v. *Bouchcroft*, decided by Sir Thomas Plumer, was not reconcilable with the other decisions which had been cited. It was entirely contradicted by the case of *Harris* v. *Lloyd*, decided by Lord Eldon. The principle of the decision of Sir Thomas Plumer was, that by the description "children" the testator meant "present children." This was not the first occasion that that decision had been commented upon as being inconsistent with principle and authority. Indeed, it was fortified by the decision of Lord Lyndhurst in *Fraser* v. *Piggott*; but what he was bound to follow was the well-established doctrine that, if there were a gift to children as a class, unless there were words of clear description to make the class apply to illegitimate children, or would clearly exclude any but those designated by the testator, upon the true construction of the will he must hold that the description would include only legitimate children. The only doubt in the case arose from the fact that the testatrix, when she made her will, knew that Mrs. Bentley had children, and believed her to be the wife of William Bentley, whom she mentioned as her husband. This lady might have had legitimate children, and it was impossible not to see that in that case the illegitimate children would have been excluded from the benefit of the gift. However improbable it might have been that she might have had other children, according to the contention of the petitioners, they would have taken with the legitimate children. Such a course was forbidden by the rule of law, as well as by public policy; and, therefore, though with the greatest reluctance and regret, he must decide that these children could not take.

Monday, Feb. 21.

KING v. ISAACSON.

Will—Construction—Vested interests.

A testator gave real and personal property to trustees, upon trust for A. B. for life, and after her decease, upon trust to convey, pay, assign, transfer, and make over the same property, unto and among all and every the child and children of A. B., as and when they should severally and respectively attain twenty-one, for their own use as tenants in common, and if there should be but one child, then to such only child, his or her heirs, executors, administrators and assigns, according to the nature and quality of such estates, and to whom the testator gave, devised, and bequeathed the same accordingly:

Held, that each child, as it came into esse, took an interest vested, and not contingent, in the whole property.

Walter Norton, the testator in this cause, by his will dated the 21st of July 1828, after making certain specific devises and bequests, and providing for the payment of two annuities, gave the residue of his real and personal estate to trustees, upon trust to convert into money and invest his personal estate, and to stand possessed of the securities, and of the real estate, upon trust for the testator's wife for her life, and after her decease, to pay two-thirds of the interest, dividends, and annual produce, rents, issues, and profits to his niece, Mary Travis, for her separate use for her life, and the remaining third of the same to his niece, Latona Norton Travis, for her separate use for her life; and after the decease of either or both of the said nieces, then upon further trust that they the said trustees, or the survivor of them, or the heirs, executors or administrators of such survivor, should, as soon as conveniently might be after the decease of his said nieces, or either of them, convey, pay, assign, transfer, and make over all the residue of his real estate, and all the residue of the said trust moneys and premises, after fully providing for and answering the trusts and purposes hereinbefore expressed in that his will, in the shares and proportions following, that is to say, upon the decease of the said niece, Mary Travis, to convey, pay, assign, transfer, or make over, two equal third parts or shares of the said residuary real estates, and also of the residue of the said trust moneys and premises, unto and among all and every the child and children of his said niece, Mary Travis, as well daughters as sons, as and when they should severally and respectively attain their several and respective age and ages of twenty-one years, to and for their own absolute use and benefit, as tenants in common, and not as joint tenants, and to their several and respective heirs, executors, administrators, and assigns, according to the nature and quality of such estates; and if there should be but one child of his said niece, Mary Travis, then to such only child, his or her heirs, executors, administrators, and assigns, according to the nature and quality of such estates, and to whom the said testator gave, devised, and bequeathed the same accordingly; and upon the decease of his said niece, Latona Norton Travis, to convey, pay, assign, transfer, or make over the other or remaining equal third part or share of his said residuary real estates, and also of the residue of the said trust monies and premises, unto and among all and every the child and children of his niece Latona Norton Travis as well daughters as sons, and when they should severally and respectively attain their several and respective age and ages of twenty-one years, to and for their own absolute use and benefit as tenants in common, and not as joint tenants, and to their several and respective heirs, executors, administrators, and assigns, according to the nature and quality of such estates; and in case there should be but one child of his said niece Latona Norton Travis, then to such only child, his or her heirs, executors, administrators, and assigns, according to the nature and quality of such estates, and to whom the said testator gave, devised, and bequeathed the same accordingly." The testator died in November 1837, and his widow died in 1846. Latona Norton Travis was married to James King in 1832, and died in May, 1844, leaving three infant children. Of these three children, William James, who was born on the 18th of Feb. 1844, died on the 26th April, 1845, and Matilda Mary died in May, 1848, and James King their father took out letters of administration of their effects. The third of Latona Norton King's children was Henry Walter King, the infant plaintiff. The question arising in the cause, which now came on for further directions, was as to the nature of the interests taken by the children of the testator's nieces under the will.

Walker and *Giffard*, for the plaintiff, contended that the children of the nieces took vested interests liable to be divested on their dying under the age of twenty-one years. They cited *Doe* v. *Lee*, 8 T. R. 41; *Re Bartholomew*, 1 Mac. & G. 354; *Saunders* v. *Vautier*, Cr. & Ph. 240; *Harrison* v. *Grimwood*, 12 Bea. 192; *Tapscott* v. *Newcombe*, 6 Jur. 755; *Genery* v. *Fitzgerald*, Jac. 468; *Gibson* v. *Lord Montfort*, 1 Ves. 485; *Phipps* v. *Ackers*, 9 Cl. & Fin. 583; and *Hunter* v. *Judd*, 4 Sim. 455.

Selwyn appeared for the trustees.

The VICE-CHANCELLOR said that before hearing *Russell* and *Allnutt*, who appeared for James King the administrator and heir-at-law of the deceased children, he desired to hear the counsel for the heir-at-law and next of kin of the testator.

Follett and *Rossiter*, for the heir-at-law and next of kin, of the testator, contended that no estate of inheritance passed to the children until they respectively attained the age of twenty-one.

Alderson and *Bovins* appeared for other parties.

The VICE-CHANCELLOR said that although the words of the will created very great difficulty, and it was important to be quite sure of the real meaning of the testator, yet he was, on the whole, satisfied as to the true construction of the will. The question was whether *Hanson* v. *Graham*, 6 Ves. 239, and that class of cases were to apply, or whether he was to hold that none of the children could take a vested interest until they attained the age of twenty-one. Notwithstanding the difficulty upon the words used here as to attaining twenty-one, yet looking at the whole will from the direction to convey upon the death of the nieces up to the ultimate gift of an absolute interest to one child, his Honour considered that every child on being born acquired a vested interest. Immediately on the death of each niece there was a direction to "convey, pay, assign, transfer, and make over." There was no doubt that on the death of each it was the intention that something should be done, that something should accrue: there was a difficulty as to the attaining twenty-one, but that the testator directed an immediate conveyance, was certain. There was no doubt that if such a conveyance was to be made, it was to be to the whole class of children, and there was no doubt that the conveyance was to be to them as tenants in common in fee. There was also no doubt that if there was only one child, the conveyance was to be without any words importing that he was to take nothing unless he attained the age of twenty-one. There was no doubt that on attaining twenty-one, severally and respectively, they were to take absolute interests as to the personal estate, and there was also no doubt as to this being a mixed fund. With all these matters certain, the difficulty arose from the words "as and when they shall severally and respectively attain their several and respective age and ages of twenty-one years to and for their own absolute use and benefit," &c. These words imported that when and as the children should attain twenty-one, they should take absolute interests as tenants in common. When his Honour found a direction that immediately on the death of the mother, the trustees were to convey, he could only hold that the testator, when referring to twenty-one, meant an enjoyment in possession, and not a vested interest. Lord Langdale had justly observed in *Harrison* v. *Grimwood*, that where there is a gift to a class, it is a stronger reason for holding that it vests before attaining twenty-one than where the gift is to an individual. *Hunter* v. *Judd* was decided on a sound principle of construction. The present was the converse of that case, and afforded a stronger application. It was a far wiser rule to hold that children took vested interests than contingent, for the hardship was enormous where a child died under twenty-one leaving issue. The present case was relieved of great difficulty by the ultimate gift to one child. Looking then at the whole will, his Honour held that each child as it came into esse took an interest vested, and not contingent, in the whole property.

V. C. WOOD'S COURT.

Reported by J. HENRY CREASY, Esq., Barrister-at-Law.

Tuesday, Jan. 18.

OPPENHEIM v. HENRY.

Will—Construction—Evidence of testamentary paper—Costs, where two suits instituted for the same matter.

A testator directed the produce of the sale of his property to be for the benefit of all his grandchildren equally among them at the end of twenty years after his death:

Held, that all the grandchildren living at the death of the testator took vested interests, subject only to let in after-born grandchildren within the given time. The court will not order the original will of personalty to be produced to contradict the probate.

Where two suits were instituted by claim for administration of an estate, on behalf of infants, and on a reference a report was made in favour of the latter suit, the costs only of filing the original claim were allowed to the plaintiff, but not of the inquiry or of the affidavit.

A testator made his will, the paper whereon it was written being erased in various parts, and was the subject of litigation in the Ecclesiastical Court; but at length probate was granted of it, and, as set forth in the probate, was as follows:—"I hereby release my three sons from all claims due to me by bonds or moneys advanced by me. I give all the household furniture, &c. (fully described) to my daughters, and to survivor of them, during their natural lives, if they shall remain unmarried; and, in the case of the death of either of them, to the survivor and survivor of them; and after all their deaths, I direct the same to be sold, and the proceeds to be and form part of the residue of my estate. I direct all my property to be sold as soon as conveniently may be after my decease, and the proceeds of such sale to be brought into the funds in the names of my daughters hereinafter named, and to be held by them in trust for all my grandchildren, to be equally divided among them at the end or expiration of twenty years after my decease." He then appointed the defendant Mr. Henry and another executors, who proved the will. For the administration of the trusts of this will two suits by claim were filed, one by a relative of the family, but which suit was, after a reference, stayed; and a second suit, instituted by the mother of some of the grandchildren, who were infants, was directed to be proceeded with. The plaintiff in the first suit had filed affidavits in support of it after the second suit was commenced, and it was on the hearing of both that the reference was made.

Chandless and *J. H. Palmer*.—The first question for the court to consider is whether all the grandchildren born and to be born within the 20 years of the testator's death are to take shares in the produce of the sale. The plaintiff, the mother of the infant grandchildren, submitted it to the court on their behalf.

Russell and *Cole*.—The grandchildren now in existance are the only parties entitled to the residuary bequest to the grandchildren of the testator. *Horsley* v. *Challoner*, 2 Ves. jun. 66. In *Butler* v. *Lowe*, 10 Sim. 317, a testator gave legacies to each of the children of his nephews and nieces, begotten and to be begotten; and it was held that the children of the nephews and nieces born after the testator's death were not entitled to participate in the legacies, the V.C. there observing that if there is a bequest to the children of A., begotten and to be begotten, it has generally been held that the words "to be begotten" show only that the testator contemplated children to be born after the date of his will, and before his death.

Shapter, for the executors.—The executors are only anxious that they should be right, first, as to the parties among whom they make the division, and on that subject merely submit to the court the case of *Burrell* v. *Baskerfield*, 11 Beav. 525, and *Chamney* v. *Ainslabie*, 18 Sim. 71. They also submit to the judgment of the court the effect of the bequest of the furniture, as also do the daughters in whose favour the bequest is made, and for whom I appear. It appears also that there is a third point which it is neces-

sary should be decided, namely, whether the original will is to be looked at to see whether the words of release relate to "bonds on moneys," as stated in the probate, or are really, as one of the sons has insisted, "bonds or moneys," so as to effect a release to him of the sum of 240*l* due from him to the testator on promissory notes, and which, if not released, the executors will be bound to recover for the benefit of the estate. The rule laid down in the 2nd vol. of Turner's Chancery Practice, 855, is this: "If any stress be laid on the *handwriting* of a will, it seems it cannot be made use of, if only the probate be in evidence; but, on motion and notice, an order will be made upon the registrar of the court where the will is to deliver the original will for the purpose of being produced at the hearing, upon giving security;" and then, referring to 2 Atkyns, 30, the author says: "Where there was a variance between the original will and the probate, Lord Hardwicke directed the cause to stand over, with liberty to apply to the Spiritual Court, to make the proper alterations in the probate." * * "The proper course would be for the officer of the Spiritual Court to attend with the original will at the hearing, and the court would order the executor to correct the probate at his own expense, and the cause to stand over in the mean time." And in *Crompton* v. *Bloxam*, 2 Coll. C. C. 221, Lord Justice Knight Bruce, then V.C. said there was great difficulty in deciding on the exact words of the will, or rather whether certain words commenced a new sentence or were part of a former paragraph of the will; and his Honour said that before deciding the matter, so far as it depended on this question, he might think it necessary to look at the original will; and on a future day, when he gave his judgment, he said: "I beg to have it observed that although this is a will of personalty, I sent for and examined the original will, and have been influenced by it in my construction."

Wolry, for other parties.

E. Cambell (one of the defendants who is indebted to the estate) in person contended that where there was so much on the face of the original will of erasure, obliteration, and alteration, the court ought not to be bound by the copy which the Ecclesiastical Court might issue as the probate, but would send for the original, and examine it to see whether the word was "on," or, as he contended, "or."

Dickinson, for the plaintiff in the claim which had been discontinued by order of the court, asked for the costs, citing *Whittaker* v. *Marlar*, 1 Cox, 285, where Lord Thurlow says, speaking of a next friend, "whoever will stand forward in that character is to be encouraged to every possible extent to which he can be supposed to intend the infant's benefit." Here the next friend believed the property of the infant was not safe, and he acted on that belief accordingly. The learned counsel also cited *Nalder* v. *Hawkins*, 2 Myl. & K., 349, in which Lord Brougham said: "No discouragement ought to be thrown in the way of persons bona fide suing as next friends. * * While they appear to act *bona fide* they will be protected; the presumption will rather be in their favour; the proof will rather be thrown upon those who impeach the motives; the leaning will be more for than against them." He submitted that if the plaintiff, who had no personal interest in the matter, and who had acted for the benefit of the infants, were not allowed his costs, it would be a very great discouragement to persons likely so to act for the protection of infants.

Chandless, for the present plaintiff, opposed the title to costs, relying on *Anderton* v. *Yeates*, 5 De G. & Sim. 202.

The VICE-CHANCELLOR.—The cases in which the original will has been looked at are cases where the question in dispute is whether a particular word forms the commencement of a new sentence, or whether a stop is omitted, or matters of that description, and not where it is sought, as here, to contradict the probate. I cannot look at the will for such a purpose, unless I am prepared to say, which I am not, that this court is to become a court of probate; and the more so as the will, in the present case, has formed the subject of litigation in the Ecclesiastical Court already. But I am willing to give the party objecting an opportunity of raising the question if he pleases, and will stay the suit, so as to enable him to take such proceedings as he may be advised in the Ecclesiastical Court. If that offer is not accepted, the probate must be considered as conclusive, and the defendant must be considered as a debtor to the estate for the amount claimed. With respect to the costs of the plaintiff in the first claim, it was argued that the refusal of them would be a great discouragement to persons to bring the case of infants before the court. I should be sorry to do that; but it is equally my duty to take care that the friend of an infant's estate is not loaded with unnecessary costs. An inquiry has taken place, at the instance of the plaintiff, as to which suit should go on, and on that inquiry he has failed. I cannot, therefore, allow him the costs of that inquiry. Then, as to the costs of the affidavits which he has filed after the institution of the second suit, that must stand on the same footing; but as this is admitted to be an estate which it is quite proper should be administered by the court, and as he has made the first move, he is entitled to the costs of filing the original claim. Then, as to the furniture, that part of the will is very absurd; but it is the sort of gift that might be expected to be given to daughters during the time they remained single. The direction for sale is "after their deaths," and not after their "death or marriage." I cannot enlarge the words. Then, as to the gift to all the grandchildren, it must be taken as a gift to all the grandchildren who should be in esse at the time of the division of the fund, and the grandchildren would, therefore, take vested interests, subject to be opened to let in any grandchildren who may be born after the testator's death, and before the expiration of the twenty years, which is the period fixed for distribution of the fund.

COURT OF EXCHEQUER.

Reported by FREDERICK BAILEY and C. J. B. HEATHLEY, Esqrs. Barristers-at-Law.

Wednesday, Jan. 19.

ARNOLD *v.* GAUSSEN AND ANOTHER.

Justice of the peace—Jurisdiction of a county magistrate over an offence in a liberty within the county—Committal to the liberty gaol.

An assault was committed in the liberty of St. Alban, in the county of Hertford, by the plaintiff, who resided in the county, but not in the liberty. He was summoned to appear out of the liberty, but in the county, before county justices, to answer the charge, which he neglected to do. He was then and there convicted upon the evidence given, and fined with costs, which not having been paid, he was ordered to be committed to the liberty gaol and imprisoned; whereupon he brought this action of trespass against the justices, alleging, first, that they had no jurisdiction over the matter; secondly, no jurisdiction to commit to the liberty gaol.

The justices committing were appointed justices for the county under a commission which gave them authority to act as such within the liberty as well as without. The commission under which the justices of the liberty acted did not give them exclusive jurisdiction within the liberty, but the charter 2 Edw. 4 granted to the abbot and convent of St. Alban and their successors right to constitute within the liberty justices to preserve the peace, &c., with a clause prohibiting the justices within the county and other justices within the kingdom from interfering. The 27 Hen. 8, c. 24, s. 2, put an end to the powers of all grants of liberties to make justices, and enacted that all such should thereafter be made by letters patent under the great seal. The 27 Hen. 8, c. 24, s. 17, only protects the inhabitants from being called on to appear out of the liberty, but does not prohibit county justices from inquiring whether the offence was committed within the liberty. The 31 Hen. 8, c. 13, gives all the privileges appertaining to the then, or thereafter to be, dissolved monasteries to the King, to be under a Court of Augmentation. Subsequently the dissolution of the abbey of St. Alban took place, and then the 32 Hen. 8, c. 20, gave the powers previously existing, which the abbots might have lawfully exercised within three months before, to the King and Court of Augmentation: this Act did not limit the jurisdiction of, or apply to justices appointed by, the Crown after the passing of that Act, as abbots were then prohibited by the 27 Hen. 8 from giving jurisdiction to justices:

Held, that the defendants, as county magistrates, had jurisdiction over the offence, though committed in the liberty.

Held also, that under the 27 Geo. 3, c. 11, they were justified, having jurisdiction over the offence and offender, in committing him to the house of correction for the liberty.

Trespass against the defendants, (two of her Majesty's justices of the peace for the county of Hertford.)

Plea, Not guilty by statute.

The action was tried before Lord Denman at the Spring Assizes for Hertford in 1848, when a verdict was found for the plaintiff, damages 500*l*., subject to the opinion of the court upon a special case, which, in substance, stated that—The defendants were two of her Majesty's justices of the peace for the county of Hertford, and also for the liberty of St. Alban in the same county. The plaintiff was a resident and inhabitant of the parish of Wheathamstead, in the county of Hertford, which parish is not in the liberty of St. Alban. On Aug. 16, 1845, the plaintiff was summoned to appear on Aug. 23 then instant, at the Town Hall, in the town of Hertford, in the county of Hertford, and out of the liberty of St. Alban, before the defendants, to answer a charge of assault upon one Thomas Wakefield, committed at the parish of Sandridge, in the liberty of St. Alban, in the county of Hertford. The plaintiff did not appear according to the exigency of that summons, and, on proof of due service thereof, the defendants, in the absence of the plaintiff, on Aug. 23, 1845, at the Shire Hall, in the town of Hertford aforesaid, and out of the liberty of St. Alban, heard the evidence in support of the said charge; and then and there of the assault so committed within the said liberty convicted the plaintiff in a penalty of 2*l*. 10*s*. and a further sum of 11*s*. 6*d*. for costs: which fine and costs not having been paid immediately after such conviction, the said defendants, then being such justices as aforesaid, afterwards, on the same day, before any notice thereof had been given to the plaintiff, committed the plaintiff to prison, under a commitment signed and sealed by them, on the said 23rd Aug. at the Shire Hall aforesaid. The proceedings were under stat. 7 Geo. 4, c. 64, s. 27. The commitment recited the conviction, and that the defendants had directed that the penalty should be paid to one of the overseers of the poor of the parish of Sandridge, in which the said offence was committed, and that the plaintiff had made default in payment of the penalty and costs. It then required the constables of the police of the county of Hertford to apprehend and convey the plaintiff to the house of correction at St. Albans, and to deliver him to the keeper thereof under this commitment, and in obedience to it the plaintiff was arrested and taken to the common gaol at St. Albans, in the liberty of St. Alban, in the said county, and was there imprisoned for the space of six weeks then next following. The conviction was drawn up according to the form of the 9 Geo. 4, c. 31, s. 35. Due notice of action was given to the defendants. The liberty of St. Alban was originally created by a charter of King Henry I. to the sixteenth abbot. By a charter of King Edward IV. to the abbot and convent of St. Alban, there was conceded to them and their assigns, among other privileges, a power to appoint justices for the liberty. By statute 27 Hen. 8, c. 24, s. 2, it is provided that no person shall have any power to make justices of the peace, and that justices shall only be made by letters patent under the King's great seal. By stat. 31 Hen. 8, c. 13, intituled "An Act for the Dissolution of all Monasteries and Abbies," monasteries, abbies, and other ecclesiastical houses, which had been or should at any time be dissolved, or by any other means come to the King, are vested in the Crown to hold in as ample a manner as the late abbots, priors, &c. And by sect. 4 of that statute, the order, survey, and governance of dissolved abbeys and monasteries are appointed in the Court of Augmentation of the Revenues of the Crown. Statute 32 Hen. 8, c. 20, after reciting that items not fully declared by the statutes vesting the order and disposition of the dissolved abbeys and monasteries in the Court of Augmentation of the Revenues of the Crown, how the liberties, privileges, and franchises, which the late owners of the same had used and exercised, should be ordered and put in execution, provides that all such liberties, privileges, franchises, and temporal jurisdiction, should be revived and be in the King's Highness, his heirs and successors, and should be in the order and governance of the King's said Court of Augmentation of the Revenues of his Crown. By charter of the ninth year of James I. his then Majesty granted to George Whitmore and Thomas Whitmore (*inter alia*) "all that our liberty to the late monastery of St. Alban appertaining, relating, incident, or belonging, in our counties of Hertford, Bedford, and Buckingham, or any of them, with all and singular its rights, &c. in so ample a manner and form as any abbot or prior, &c. of any late abbey or priory ever had, held, used, or enjoyed." The premises comprised in the last-mentioned charter were, shortly after the date thereof, conveyed to Robert, the then Earl of Salisbury, and from him they have descended to the present Marquis of Salisbury. There are and always have been separate commissioners of the peace for the county of Hertford and for the liberty of St. Alban. The justices appointed under the county commission during all the time last aforesaid were authorised generally to keep the peace in the said county of Hertford, and the commission contains these words "as well within liberties as without;" and those appointed under the liberty commission were authorised generally to keep the peace within the liberty. The question for the opinion of the court was whether, under the circumstances, the plaintiff was entitled to recover in this action against the defendants.

Willes (*Hawkins* with him) appeared for the plaintiffs.—There are two questions in this case: first, whether the defendants, justices of Hertfordshire, had any right to proceed at all, or any jurisdiction over the matter, the assault having been committed within the liberty, and they were exercising their jurisdiction as county justices out of the liberty. He referred to the several statutes herein mentioned, and cited Year Book, 20 Hen. 7, fo. 6-9; Viner's Abr. "D." tit. "Justice of the Peace," pl. 1. The liberty had been treated entirely as out of the county; at one time it was asked to contribute to a repair of roads, but did not. The county justices make their rate on the 12 Geo. 2, c. 29, not including the liberty, and the liberty make theirs on the 58 Geo. 2, c. 18. Secondly, suppose the defendants had power to hear the case, they could not commit to the house of correction for the liberty; the 7 Geo. 4, c. 64, s. 17, must intend the common gaol in the jurisdiction in which the justices are acting. He also referred to 3rd vol. of Stephen's Commentaries, 240; and *Rex* v. *Amos*, 2 B. & Ald. 838.

Channell, Serjt. (*Cobb* with him) contra, cited Com. Dig. "Justice of the Peace," A. 1; Bac. Abr.; *Hawkins* v. *Whitaker*, 3 T. R. 279; *Rex* v. *Saunsbury*, 4 T. R. 451; and *Bates* v. *Winstanley*, 4 M. & Sel. 429, which decide that jurisdiction must be taken away by express words; and upon the second point, assuming the defendants had concurrent jurisdiction, whether

they could not commit to the liberty gaol for an offence committed within the liberty: *Jones* v. *Williams*, 3 B. & C. 762.] *Cur. adv. vult.*

Feb. 12.—Parke, B. delivered judgment. This case stated the commission under which the charter, in the first place, was granted to the abbey of St. Alban in the reign of Edward IV., and the commission under which justices of the peace for the county could then hold under the Crown, and the commissions they also held for the liberty under the grantor, and a great number of other documents; also a great number of instances of the exercise of jurisdiction of the magistrates within the liberty. It is not necessary more particularly to advert to them, as I will explain by the judgment of the court, and the reasons on which that judgment is founded. . . . There are two questions in this case: first, whether the defendants, as justices of the county of Hertford, had jurisdiction over an offence committed in the liberty of St. Albans; secondly, whether, on the conviction for the offence, they had power to commit to the liberty house of correction. We are of opinion in favour of the defendants on both points. The defendants were appointed justices for the county under a commission which gave them authority to act as such within the liberty as well as without: therefore they had authority within the liberty of St. Alban's, unless that authority was taken away by the express provisions of the charter constituting the liberty, or some Act of Parliament. That is the principle laid down in *Bleakley* v. *Winstanley*, 5 T. R. 279; *Rex* v. *Sainsbury*, 4 T. R. 451; *Bates* v. *Winstanley*, 4 M. & S. 429. The commission under which the justices of the liberty acted, and which was not set out in the case, does not give them exclusive jurisdiction within the liberty; but the charter of the 2 Edw. 4. granted to the abbot and convent of St. Alban's (*inter alia*) that they and their successors, by their letters patent, might constitute and assign (for ever, within the towns, hundred, and liberty aforesaid) justices to preserve the peace within their liberty, with a clause "prohibiting the justices of the peace within the county, and all other justices within the kingdom, in any way to interfere with the justices so appointed. The justices of the peace appointed by the abbot and convent under the charter would undoubtedly have had exclusive jurisdiction within the liberty. Then comes the statute 27 Hen. 8, c. 24, s. 2, which put an end to the powers of all grants of liberties to make *inter alia* justices of the peace, and enacted that all such justices should thereafter be made by letters patent under the great seal; and the powers, therefore, of the abbot and convent ceased. After this Act the justices constituted by the crown by letters patent would have no exclusive jurisdiction unless their patent gave it to them, which the patent of the justices of the liberty does not, or unless there is some legislative provision expressly or impliedly to that effect. The 17th section of the statute 27 Hen. 8 is suggested, on the part of the plaintiff, to have this effect. The 16th section had provided that the justices appointed by the crown should have power to hold their session and to do and execute all other things within the liberty, as any other justices of the peace within any shire. This clause gave them no exclusive jurisdiction. The 17th section provides, that all justices of the peace thereafter to be made by the Crown shall sit and hold their sessions in the same places as the justices of the liberty commonly used, and that no person or persons within the said liberties, or any of them, should thereafter in anywise be compelled, by authority of this Act, to appear out of the said liberties before any other justice of assize, gaol delivery, or of the peace, than before such justices as shall be named and assigned to sit and be by the King's Highness, his heirs and successors, within the said liberties, in form aforesaid." This clause, according to its express terms, only protects the inhabitants from being called on to appear out of the liberty; but it does not prohibit county justices from inquiring, as the charter of King Edward IV. did, whether the offence was committed within the liberty, neither by express words nor by necessary implication. After the passing of this Act, then, the Crown might clearly appoint justices for the county, who might exercise jurisdiction over the liberty so long as the provisions of the 27 Hen. 8 were not violated. Then follows the statute 31 Hen. 8, c. 15, which enacts, that the king shall enjoy all the privileges and franchises that shall be appertaining to the then dissolved monasteries or those that should thereafter be dissolved, in as large and ample a manner and form as the abbots have held or ought to have held the same at the time of their coming to the King's hands; and it was enacted that they should be under the order of a court of augmentation. After the passing of this Act, namely, on the 5th Dec. 1539, the dissolution of the abbey of St. Alban's took place, and then, by an Act passed in the 32 Hen. 8, c. 20, after reciting the liberties, &c. of divers monasteries in divers counties that had been assigned to the King's Court of Augmentation, by which statutes it is not fully declared how and in what wise, and by what special officers, &c. the liberties, privileges and franchises which the late owners of the same sites, &c. had used and exercised, should be ordered, used, and exercised, it was enacted "that the same liberties, privileges, and temporal jurisdictions which the said late owners had used and exercised lawfully by themselves, or by their officers or ministers, or might have used or exercised within three months next before the same sites, &c. came to the hands of the King, should be revived in the King's hands, and be in the rule, order, and governance of the Court of Augmentation; and that the same liberties, franchises, privileges, and temporal jurisdictions, &c. should be used, exercised, and occupied to all intents and purposes by such stewards, bailiffs, and other officers and ministers as the King should appoint, in like manner as they were lawfully exercised by the ministers before they came to the hands of the Crown, and that the same steward should account for the revenues in the Court of Augmentation." No question arises in this case whether the right of appointing justices of the peace for the liberty was at the time, by the operation of the Act 31 Hen. 8, and 32 Hen. 8, in the grantee of the Crown of the liberties, namely, to Whitmore first, and afterwards the Marquis of Salisbury, as no such question could be made; for the stat. 32 Hen. 8 revived those rights only in the Crown which the abbots had lawfully exercised within three months before the site of the abbey of St. Alban's came to the Crown, and the right of the abbot to appoint justices was taken away by the 27 Hen. 8. Then it was said the effect of the later statute, the 32 Hen. 8, is to give to the justices of the liberty, when appointed by the Crown, the same exclusive jurisdiction as those appointed by the abbot had whilst they lawfully exercised the power of appointment. But we are all of opinion that this statute does not apply to justices of the peace appointed by the Crown after the passing of that Act; for the Act applies only to such privileges, franchises, and temporal jurisdictions as the abbots had used and exercised, or might have lawfully done, within the said limits of three months; and the abbots did not and could not lawfully exercise, or the justices appointed by them, any jurisdiction within the liberty, inasmuch as they were prohibited by the statute 27 Hen. 8. The only object of the Act appears to have been the collecting of revenue, and applies to officers concerned in its receipt. The defendants, sitting therefore as county magistrates, and having jurisdiction over the offence, though committed in the liberty, the only remaining question is, whether they can lawfully commit for an offence to the liberty house of correction. By the 9 Geo. 4, c. 31, s. 27, under which Act the information is laid, the justices might commit, provided the fine and costs are not paid as ordered, to the gaol or house of correction. No reliance, however, was placed on these precise words by Serjt. Channell in his argument for the defendants; but he contended that the power was given by the Act 27 Geo. 3, c. 11, which provides "that it shall be lawful for any justice or justices of the peace within his or their respective jurisdictions to commit either to the common gaol or to any house of correction within his or their respective jurisdictions, as to such justice or justices shall seem most proper, such vagrants and other criminal offenders and persons charged with or convicted of small offences, as by any law now in force or hereafter to be made he or they is or are or shall be authorised to commit to the common gaol." We think the defendants were justified under this enactment. The house of correction for the liberty is locally within the jurisdiction of the county magistrates, for they have concurrent jurisdiction over the liberty with the liberty magistrates; therefore the case falls within the words of the Act. And, besides, it is highly reasonable that those who have committed offences within the liberty should be punished at the expense of the liberty. We see no reason to believe that the Legislature meant to confine the power of commitment to those houses of correction over which the sitting justices have superintendence and control. The county magistrates have performed their duty by hearing and deciding the case, and as soon as a conviction took place they were *functus officio*. For these reasons, we think that the defendants, the county justices, had jurisdiction over the offence and the offender, and were justified in committing him to the liberty house of correction. Therefore, the verdict must be entered for them. It will be observed that we place no reliance on the several instances of the exercise of jurisdiction by the county magistrates over matters arising within the liberty. It is unnecessary to advert to them, as they are set out at some length in the special case, and do not form the ground of our judgment. *Verdict to be entered for the defendants.*

EXCHEQUER CHAMBER.

Reported by Frederick Bailey, Esq. Barrister-at-Law.

ERROR FROM THE EXCHEQUER.

Monday, Nov. 29.

(Before Coleridge, Maule, Cresswell, Wightman, Erle, Williams, Talfourd, and Crompton, JJ.)

Hayling *v.* O'Key and another.

Pleading—Assault—Trespass.

Declaration in trespass for an assault and injury to the plaintiff's clothes.

Plea, justifying the trespass in defence of the possession and quiet enjoyment of a dwelling-house of one Walter de Winton, and by his command.

New assignment, alleging the trespass to have been committed, not at the dwelling-house, but in and upon a certain bridge, in a certain farm, called Bengrove farm, and in divers, to wit, two yards, two fields, and two folds, parcel of the same farm; and for another and different purpose.

Plea to new assignment, stating the possession of the whole of the before-mentioned premises in De Winton, and justifying the trespass newly assigned by removing the plaintiff therefrom, and that they did then remove him from and off the said bridge, yards, fields, and folds, and did then take him by the nearest and most direct way to a certain public highway near to the said dwelling-house, bridge, yard, &c. as they lawfully might; and because defendants could not conveniently take the plaintiff to such highway without passing over and across the said bridge, yards, &c. defendants did at the same time, when, &c. necessarily and unavoidably, for the purpose aforesaid, lead the plaintiff over and across the said yards, fields, and folds, and thereby then unavoidably committed the said several trespasses so newly assigned.

Replication, stating the seisin in fee of De Winton of the said farm, and a demise thereof to one Wm. James as tenant from year to year, determinable at the pleasure of either; and James being possessed and indebted to one Brewer, and desirous of a further advance, James, by indenture, granted to Brewer all the growing and other crops there, and all other articles of the same description as those enumerated, which might be subsequently acquired therein, or found in or about the same premises from time to time thereafter, until and before the indenture should be put in force, that Brewer on default, after notice, might take possession; and default being made and notice given, it showed a right as between James and Brewer for the latter to put the deed in force, and averred that the bridge, yard, field, and fold in the new assignment mentioned, and also a certain garden, was parcel of the farm demised to James; the only way of access to and from the garden, and to and from the highway, was by and over the bridge, and there was a way from the highway across the said yard, field, and fold from and to the said bridge, and from and to certain other fields, parcel of the said farm, and that this was the more direct and convenient way to and from the highway, from and to the same bridge, and from and to the said fields; that at the time in the new assignment mentioned, De Winton was also possessed of the garden and the last-mentioned fields, in which there were growing and other crops belonging at the execution of the indenture to James, and included in the indenture, and also other crops unpaid for and belonging to James after the date of the indenture; that during the continuance of the term, whilst James was in possession, and before De Winton was possessed, plaintiff, as Brewer's servant, entered and took and continued in possession of the growing crops until and after De Winton became and was possessed of the bridge, yard, &c. in the plea mentioned, and the garden and other fields last mentioned; that he was removed by defendants from the bridge as in the plea mentioned before a reasonable time had elapsed, and while the debt remained due, though he produced the indenture, and gave defendants notice of the purpose for which he was in possession.

Demurrer to the replication.

Held, that the replication was bad, as it did not state how the tenancy had terminated, nor show the kind of crops, nor allege any continuing title to them in the tenant after the expiration of the tenancy; nor did it show, supposing Brewer was entitled to them after the interests of the tenancy in the premises had determined, that they were ripe or fit for harvesting, or that in their then state they needed any care or cultivation, for which the plaintiff continuing in possession was necessary,—and unless Brewer was entitled to remain on the premises, and retain possession against the will of the owner, which he was not, after James's tenancy had ended, independently of these special circumstances, the replication showed no sufficient title.

A party who insists upon remaining on the land of another against his will, and therefore prima facie against right, ought to show all the circumstances which make such possession lawful and abridge the general rights of property.

Macnamara appeared for the plaintiff in error (the plaintiff below) in support of the replication, he contended also that the plea was bad.

H. J. Hodgson, for the defendant, in support of the demurrer.

The facts and circumstances of the case, together with the pleadings in the action as well as the effect of the arguments by the learned counsel thereon, are so fully set forth in the following judgment, that it becomes unnecessary here to repeat them.

Cur. adv. vult.

Feb. 2.—Coleridge, J. delivered judgment. In this case judgment passed for the defendant below, upon the replication to the plea to a new assignment: and upon the argument before us in error, it was contended, first, that the plea itself was bad. The declaration was in trespass for an assault and injury to the plaintiff's clothes: the plea justified the trespass,

EXCHEQUER CHAMBER.

in defence of the possession and quiet enjoyment of a dwelling-house of one Walter De Winton, and by his command. The new assignment stated the trespass to have been committed out of and in a different place from the dwelling-house, to wit, in and upon a certain bridge, in a certain farm called Bengrove farm, in the parish of Sandhurst, in the county of Gloucester, and in divers, to wit, two yards, two fields, and two folds, parcel of the same farm; and for another and different purpose. The plea to the new assignment on which the first question arose, states the possession by the said Walter De Winton of the dwelling-house, and also the said bridge, yards, fields, and folds in the new assignment mentioned, which belonged and appertained to the said dwelling-house, and were adjacent thereto. It then justifies the trespass newly assigned, and in defence of the possession of the dwelling-house, bridge, yards, fields, and folds, by removing the plaintiff from them. If it had stopped there, no objection, as we are aware of, except perhaps in point of form, could have been made to it; but it goes on to allege—"And also then gently laid their hands upon the plaintiff for the purpose of removing, and did then remove, from and off the said bridge, yards, fields, and folds, and did gently lead him by the nearest and most direct way to a certain public highway near to the said dwelling-house, bridge, yards, fields, and folds, as they lawfully might for the cause aforesaid; and because the defendants could not conveniently take and remove the plaintiff to such highway as aforesaid without passing over and across the said bridge, and over and across the said yards, fields, and folds, the defendants did, at the same time, when, &c. in the said new assignment mentioned, necessarily and unavoidably, and for the purpose aforesaid, lead the plaintiff over and across the said yards, fields, and folds, and thereby then unavoidably committed the said several trespasses above newly assigned." The objection relied on by the plaintiff is this: that the places in which the trespasses are alleged by the new assignment to have been committed, are immaterial (being laid under a *videlicet*); that the plea, by introducing a new trespass in taking the plaintiff to a highway, has made that a part of the cause of action, which it was necessary to justify, and that the plea shows no justification extending to that, because it was not shown the highway adjoined either the dwelling-house, bridge, yards, fields, or folds, or that, in order to the removal from them, it was necessary to take the plaintiff up the highway. Assuming the new assignment does not make the places mentioned in it material except so far as it excludes the place mentioned in the original plea (that is, the dwelling-house), and that the places are made material for the first time by the plea to the new assignment, which relies on the local justification, it is plain that the plea only intends to confess the trespass committed on the bridge, yards, fields, and folds, and to justify them as committed in defence of Walter De Winton's possession of them; and this removal to the highway upon the face of the plea has no necessary connection, and the confession of it may be regarded as surplusage. Suppose, instead of replying, as he has done, in the matter, the plaintiff had replied *de injuriâ*, all that would have been in issue would have been so much of the justification as applied to the trespass in and upon the bridge, fields, yards, and folds, which shows that that is the only material part of the plea. For this *Atkinson* v. *Warren*, 1 C. M. & R. Rep. 627, is an authority, where the declaration charged one assault, and the plea confessed and justified that and also a second; and the plaintiff replied *de injuriâ*: on the trial the justification to the first assault was proved, but no evidence was offered in support of that of the second; and it was held that the plea was sustained. *Dicas* v. *Chapman*, 2 M. & G. 921, is in point to the same effect; nor do we think, material to the plea, the allegation of taking over the place named in it, as done in order to remove the plaintiff to the highway, without stating any necessity for such removal, because the plea alleges a good cause for all the trespasses of which the plaintiff complains. It is necessary, therefore, to consider the goodness of the replication. This commences with stating the seisin of Walter de Winton in fee of the Bengrove farm, and the demise of it to one William James, as tenant from year to year, determinable at the pleasure of either. James then had become possessed, and being so possessed and indebted to one Brewer in a certain sum, and being desirous of a further advance, by indenture granted to him among other things all the growing and other crops there in and about Bengrove farm, and all other articles of the same description as those enumerated, which might be subsequently acquired by him, or which might be [illegible] or upon or about the same premises from time to time and at all times, until, and before the indenture should be put in force. The grant was the security for principal and interest, and the instrument contained a power for Brewer on default in payment, after notice, peaceably to take them into his own possession, and the subsequently acquired property and the growing and other crops being specially included. The replication then showed a default in him and a right, as between James and Brewer, for the latter to put the deed in force, and averred that the bridge, yard, field, and folds in the new assignment mentioned, and also a certain garden, was in and upon and parcel of the farm demised to James. The only way of access to and from the garden, and from and to the same highway, was by and over the bridge, and then there was a way from the highway across the said yard, field, and folds from and to the said bridge, and from and to certain other fields parcel to the said farm, and that this was the more direct and convenient way to and from the highway, from and to the same bridge, and from and to the said fields. It then states, that at the time of the new assignment mentioned, De Winton was also possessed of a garden, and the last-mentioned fields, in which there were growing and other crops belonging at the execution of the indenture to James, and included in the indenture; and also other subsequent growing and other crops acquired by and belonging to James after the date of the indenture. It then states that, during the continuance of the term, and while James was in possession, and before Walter de Winton was possessed, the plaintiff, as Brewer's servant, entered and took possession, and continued in possession of the said growing crops until and after Walter de Winton became and was possessed of the bridge, yard, fields, and folds in the plea mentioned, and the garden and other fields last-mentioned; and that he was removed by the defendants from and off the bridge as in the plea mentioned, before a reasonable time had elapsed, and while the debt remained unpaid, and though he produced the indenture, and gave the defendant notice of the purpose for which he was in possession. This replication, therefore, stands upon the right of a person claiming under a tenant from year to year, who had entered during the tenancy in order to possess himself by grant from him of growing crops, the property of the tenant at the time of the entry, and to remain on the premises, and to retain possession of such crops after the tenancy has expired, and after the landlord has resumed possession; but it does not state how the tenancy had come to an end, and there is no presumption of a determination by the landlord rather than the tenant. Nor does it show the kind of crops, nor allege any continuing title to them in the tenant after the expiration of the tenancy; nor does it show, supposing that Brewer was entitled to them, after the interests of the tenant in the premises had determined, and that they were right or fit for harvesting, or that in their present state they needed any care or cultivation for which the plaintiff's continuing in possession was necessary. If, therefore, his right to be on the premises depended on any circumstance of this kind, the replication is defective for not stating it, because it is clear that a party who insists on remaining on the land of another against his will, and therefore *prima facie* against right, ought to show all the circumstances to make such possession lawful and abridge the general rights of property. Unless Brewer was entitled to remain on the premises and retain possession against the will of the owner after James's tenancy had ended, independent of such special circumstances as we have alluded to, without expressing any opinion whether these or any of them would have availed, the replication shows no sufficient title, and we are clearly of opinion he was not. We think, therefore, the judgment of the court below was right, and ought to be affirmed.

Judgment below affirmed.

ELECTION COMMITTEES.

Election Committees.

Reported by JAMES PATERSON, Esq. Barrister-at-Law.

TAVISTOCK, 1853.

(*Chairman*—LORD ROBERT GROSVENOR.)

This was a petition against one of the sitting members (Samuel Carter, Esq.) on the ground of want of qualification.

Practice—Ordering member out of court.

The committee will not order the sitting member petitioned against out of court during the hearing of the petition against him, but will allow him to use his own discretion in remaining.

Alexander, Q. C. (*Lopes* with him) stated, that as Mr. Carter was liable under the recent Evidence Act to be called as a witness, he must be treated as other witnesses, and ought to leave the room. This was the rule in courts of law, as was seen in a recent case (*R.* v. *Newman*) in the Q. B. It was usual since the recent Evidence Act for the plaintiffs and defendants to be excluded. There was no ground for making the present case an exception.

Thomas, Serjt. (*Jenkins* and *Lawrence* with him), contrà.

The CHAIRMAN.—The Committee do not wish to lay down any special rule on the subject, but decide that Mr. Carter might use his own discretion, whether he ought to remain in court or withdraw.

[In subsequent cases other committees have followed this example, and the member petitioned against is always allowed to remain in court.]

The petition stated that the petitioner and Mr. Carter and another were candidates for Tavistock at the last election, and that on the nomination day petitioner required Mr. Carter to subscribe a declaration of qualification pursuant to 1 & 2 Vict. c. 48. On the day of the poll, before the polling took place, petitioner circulated amongst the electors, and posted on the Guildhall and polling place due notice, that Mr. Carter's qualification had been questioned, and would be impeached before a committee of the House of Commons. Mr. Carter, on the same morning, circulated and handed to the portreeve and returning officer the following signed declaration:

I, A. C. do solemnly and sincerely declare, that I am to the best of my knowledge and belief duly qualified to be elected as a member of the House of Commons, according to the true intent and meaning of 1 & 2 *Vict. c.* 48, *and that my qualification to be so elected doth arise out of leasehold houses and tenements, annuities, and shares in joint-stock companies, moneys, goods, and chattels as hereunder set forth, leasehold houses, tenements, tan-yards, and premises in the parish of Tavistock, of which not less than thirteen years are unexpired, an annuity in the Plymouth Tontine, shares in the Tavistock Gas Company, an annuity for life secured by deed, moneys, goods, and chattels in Tavistock and London.*

SAMUEL CARTER.

That some of the first voters for Mr. Carter, on coming to the poll, were personally cautioned that their votes would be thrown away if they voted for Mr. C., and that thereupon Mr. Carter agreed with petitioner that the same notice should be held to be given to all the subsequent voters. That previously to the portreeve announcing the result of the poll, petitioner protested against Mr. Carter being declared elected. That the declaration of qualification is vague and insufficient, and untrue, and that the election of Mr. C. was void, and petitioner ought to be declared duly elected.

Burden of proof of qualification.

A declaration of qualification by a candidate, made under 1 & 2 *Vict. c.* 48, *stated vaguely the nature of the property out of which the qualification arose:*

Held, nevertheless, that it lay on the petitioner to impugn the qualification, before any proof could be demanded from the sitting member.

Alexander objected that the onus lay on the sitting member to prove his qualification. The objection to the qualification here lies on the face of the petition, which sets forth the declaration. Since the repeal of the standing order of 1717, the whole subject of qualification is now regulated by 1 & 2 Vict. c. 48. This declaration is clearly an evasion of the statute. It gives no information whatever. Thus one item is said to be an annuity on the Plymouth Tontine, but it does not state in whose name the annuity stands, nor to whom, or how, or when it was granted. So with the other items. In the *West Gloucestershire* case, P. R. & Dew. 10, the most ample and minute information was given. The present proceeding is analogous to that at law under the Apothecaries Act, where it is held that the association are not bound to prove that the party has no qualification.

Thomas, Serjt. contrà.

The CHAIRMAN.—The committee are of opinion that the petitioner must go on with his case and impugn the qualification before any proof is required of the sitting member.

Petition, form of.

It is no objection to a petition that it mis-states that there were three candidates, while there were in reality four.

Thomas, Serjt. objected that the petition was invalid, inasmuch as it set forth that there were only three candidates, whereas it appeared from the poll-books that there were four. It was of vital importance that all the names of the candidates should appear.

Alexander, contrà. *Overruled.*

Petition, form of.

It is no objection that the petitioner omitted to allege in his petition that he himself was duly qualified.

The CHAIRMAN.—The objection cannot be sustained.

Notice to electors of meeting's non-qualification.

A notice posted on the Guildhall and polling-place before the polling takes place, coupled with notoriety, is a sufficient notice to the electors that their votes will be thrown away if given to the candidate alleged to be non-qualified.

Jenkins objected that there was no sufficient proof of notice to the electors in this case, without which their votes could not be held as thrown away. It had been alleged that some of the voters were personally served with notice, and that Mr. Carter agreed to hold this as notice to all the rest; but there was no proof of the fact, and even if there were, he could not bind the electors by his assent.

Lopes, contrà.—The notice was sufficient. Printed handbills were posted on the Guildhall and on the polling-place, and were circulated amongst the electors, besides which the subject was the common talk of the town. After such notice, the votes given for Mr. Carter were clearly thrown away: (*Pyle* case, 1 Lud. 455; *Horsham* case, P. R. & Dew. 257; *R.* v. *Hawkins*, 10 East, 211; *Clough* v. *Evelyn*, 5 Barn. & Ald. 81.) [THE CHAIRMAN.—It is a question of law whether a personal service on each elector is necessary.] It appears from the authorities that there is no necessity for a personal service: (Rogers on Elect.; Clerk on Elect.) Notices publicly given have been often held good: (2nd *Canterbury* case, Cliff. 353;

Flintshire case, 1 Peck, 326; *Wakefield* case, Bar. & Aust. 270; *Belfast* case, Flin. & Kale. 595; *Cork County*, K. & C. 598; *Newcastle*, Bar. & Aust. 576; *Horsham*, P. R. & Dew. 255.)

The CHAIRMAN.—We think the notes in this case was sufficient.

Mr. Carter's election declared void. Petitioner seated.

BRIDGNORTH, 1853.

Friday, Feb. 18, at seq.

(*Chairman*—Hon. E. P. BOUVERIE.)

Hearsay evidence.

The statement made by a voter in the course of the day on which he had given his vote, as to how he came by a sum of money in his possession, is admissible in evidence for the purpose of showing that he had received money for his vote.

A. was a voter alleged to be bribed, and B. was his master, who was called as a witness for the petitioners. Witness was about to be asked what account A. gave of how he had come by a sum of money which he had shortly after he had voted, when

J. Clerk, for the sitting member (Sir R. Pigot), objected. The statements of A. after the transaction as to what took place are inadmissible. The committees have greatly varied as to the admissibility of this kind of evidence. The voter is not the agent of the sitting member, and yet it is now attempted to give in evidence his account of something that had taken place, in order to affect the sitting member. Anything said by the voter before the election was, no doubt, admissible to show the corrupt contract on which he acted; but, after the election, the case was different. The object is to make the voter's story be believed. Why then ought not the voter himself to be called? To allow this evidence violates the well-known principle, that no evidence is to be admitted except upon oath. It is said it is admissible because it is part of the *res gestæ;* but in such cases it is essential that the statement accompanying some act of the party should not only be relevant, but be such as to explain the act, as one which would otherwise be doubtful: (Taylor on Evid.) It is well established in law that, in cases of conspiracy, the account which A., B., or C. may give the day after of the share which he had in the conspiracy is inadmissible.

E. James, Q. C. (with whom *Hawkins*), contrà.—Evidence of this kind has generally been admitted by committees. The present is not a case at all analogous to one of conspiracy, where there are necessarily only two parties—prosecutor and defendant; but here there are a variety of parties. The real issue here is, what number of votes were bribed? Now what a voter said on producing a sum of money with which he had been bribed, is not only material evidence, but it is the most cogent proof of the fact that can possibly be offered. We do not seek to affect the sitting member by such evidence; as against him it cannot be received; but we offer it under the issue, which is, was this voter bribed? *Cur. adv. vult.*

The CHAIRMAN.—The Committee are of opinion that the evidence proposed is admissible for the purpose of showing that A. had received money for his vote.

CHATHAM, 1853.

Saturday, Feb. 19, at seq.

(*Chairman*—T. W. BRAMSTON.)

Evidence—Broken promise—Bribery.

A witness, who was a voter alleged to be bribed, had promised candidate A. his vote, but afterwards candidate B. promised him a situation, and ultimately he was out of the way and did not vote at all:

Held, he may be asked "What induced you to break your promise to candidate A.?"

This was a petition on ground of bribery.

Witness, Hogg, stated that some time before the election, he promised his vote to Admiral Stirling (the defeated candidate), but afterwards Sir Frederick Smith (the sitting member petitioned against) promised him a situation; and, at the time of the election, witness had been sent to look after a situation at a distance, and did not vote at all.

Kinglake (and *Romaine*) for the petitioners, then asked, "What induced you to break your promise to vote for Admiral Stirling?"

Bodkin, for the sitting member, objected to the question.

Kinglake.—The question is proper. No one can answer it but the voter. It is essential to this inquiry to know under what state of mind it was that the voter acted as he did. The Committee will then be able to form an estimate as to whether it was not the understanding between witness and Sir F. Smith, that witness should not vote for Admiral Stirling. It is clearly bribery, if the promise of a situation operated on the mind of the voter, so as to induce him to forbear voting for an opposite candidate: (Rogers on Elect. 99.)

Bodkin, contrà.—The question is illegal and dangerous. It is said the witness is the proper person to answer it, but the proper persons to answer it are the Committee themselves. We must not probe the motives of the witness. All that we have to do is to ascertain facts, and leave the Committee to draw their inferences. It is not the duty of the witness to put his construction on the facts. *Cur. adv. vult.*

The CHAIRMAN.—We think the question may be put.

Witness then answered that he was induced to break his promise because Sir F. Smith, who had promised him a situation, told him it would be better for him not to vote at all.

FROME, 1853.

Saturday, Feb. 26.

(*Chairman*—Mr. G. A. HAMILTON.)

Disqualification—New place of profit under Crown.

The Secretaryship of the Most Illustrious Order of St. Patrick is a new office or place of profit under the Crown, created since 1700, within the meaning of 6 Anne, c. 7, and disqualifies the holder for being elected a member of Parliament.

This was a petition against the sitting member, the Hon. Robert Edward Boyle, on the ground of disqualification from holding a new office or place of profit under the Crown, within 6 Anne, c. 7, and praying that the petitioner should be declared duly elected. The petition stated that R. E. Boyle and Robert Westley Hall Dare, the petitioner, were the two and only candidates for Frome in July 1852. They were duly put in nomination, and a show of hands took place, when the majority was declared in favour of R. E. Boyle. But before the returning officer had so declared the majority, a notice, signed by the petitioner and two of the electors, was publicly and on the hustings delivered to the returning officer. This document purported to be a public notice that R. E. Boyle was incapable of being elected, or sitting, or voting as a member of the House of Commons, inasmuch as he then held the office of Secretary of the Most Illustrious Order of St. Patrick, which was a new office or place of profit under the Crown, within 6 Anne, c. 7, and, accordingly, that all votes given in favour of R. E. Boyle would be absolutely thrown away. The petitioner at the same time also showed the returning officer a list of the officers of the Order of St. Patrick, under the hand of the Ulster King-at-Arms, in which list Mr. Boyle's name appeared as secretary. The petitioner and an elector then protested against the show of hands being declared in favour of the said R. E. Boyle, and petitioner claimed to be declared duly elected. Before Mr. Boyle was declared elected, he made a speech to the electors, in which he admitted that he held the office in question. The returning officer, thereafter, nevertheless declared R. E. Boyle to be duly elected, and no poll was demanded by the petitioner.

The petition also alleged that the disqualification, incapacity, and ineligibility of R. E. Boyle was at and before the election a matter of notoriety amongst all the electors, and at the time of the show of hands the electors had notice of the same. That therefore the show of hands in favour of R. E. Boyle ought to be treated as a nullity, and the petitioner ought to have been declared duly elected.

The first question was, whether the Secretaryship of the Order of St. Patrick was a place of profit under the Crown? It was proved that the Order of St. Patrick was created in 1783; but not that any fiat of the Crown ever existed, or at least was signed, or that letters patent ever were granted. The Sovereign of the Realm is the Sovereign of the Order, and the Lord Lieutenant is the Grand Master. Mr. Boyle was appointed secretary by sign-manual of the Sovereign in 1837. He took an oath, and was duly invested by the chapter of the order. There is no salary attached to the office; but the secretary is entitled, under the statutes of the order, to about 50*l.* in name of fees on the creation of each knight. There had been two or three such creations since 1837; and the fees had been duly paid to Mr. Boyle.

Wrangham, Serjt. and *Montagu Smith*, for the petitioner.—This is a new office within the meaning of 6 Anne, c. 7, because it was created in 1783. It is also a place of profit. The amount of profit is immaterial, nor is a salary necessary, provided the secretary be entitled (as he is here) to certain fees. It is not material that the fees are paid by individuals, and not by the Crown. Thus an appointment of steward to a Crown manor is not the less a place of profit under the Crown, though the fees are paid by the tenants. It is therefore immaterial from what source the profit comes, provided the Crown appoint to the office. The appointment here is directly under the Crown, and flows from the Sovereign as Sovereign of the Realm, and not merely as Sovereign of the Order. The appointment is by virtue of the prerogative of the Crown. The ordinances of the Order direct certain fees to be paid to "our secretary of our Order of," &c. showing clearly that the secretary is an officer of the Crown. Those who were disqualified to be elected in the Irish Parliament were by 41 Geo. 3, c. 52, s. 1, rendered equally disqualified for election in the Imperial Parliament, and there has been no enabling statute passed since.

H. S. Wilde (with whom *Kinglake*, Serjt.) for the sitting member.—Of the last four secretaries of the Order, three have sat in Parliament unchallenged, and the present secretary has also sat several years, which raises the presumption, that it is not a disqualifying office. The secretary of this Order is not an officer of the Crown, but merely an officer of the Order. The individual only is designated by the Crown, but it is the chapter of the Order who invests him with the office. Besides, the Crown acts not as Sovereign of the Realm, but merely as Sovereign of the Order, and it is a mere accident that the two characters are united in one individual. The sole object and policy of the disqualifying Acts, including those prior to 6 Anne, c. 7, was to prevent those in the public service and receiving public money, from being concerned in voting the taxes out of which the money was to be paid. But this is not a public office or connected with the public service, and even if it were a public office, the profit comes from individuals, and not from the public: (Rogers on Elect. 58.) The Order of St. Patrick is a strictly private society. The society merely invests the secretary with the office, in obedience to the nomination of the Sovereign of the Order, who is acting under the statutes of the Order. It cannot be said, because the Crown has the nomination, that therefore it is a public place of profit under the Crown. If so, any professor appointed in a university, or an officer appointed by the Crown as visitor of an eleemosynary institution, would be disqualified. The mere nomination by the Crown therefore does not make the appointee an officer of the Crown. Many cases in the journals of the House of Commons confirm this. Thus a governor of Greenwich Hospital (16 H. of C. Jour. 486), one appointed a commissary by the Crown, (17 Id. 374), an envoy to Vienna, (18 Id. 285), a secretary to the Court of the Naval Officers' Widows' Association (23 Id. 473), a governor of the Isle of Wight (18 Id. 27, 30) were not disqualified. But the stat. 6 Anne, c. 7, applies only to offices held under the Crown of England, whereas this office is held under the Crown of Ireland. It is an Irish dignity and an Irish office, the effect of which distinction was seen in the *Reading* case, Corb. & Dan. 114. The stat. 41 Geo. 3, c. 52, was passed after the union, to show the exact class of persons disqualified to sit in the Imperial Parliament; but while the Irish Parliament had passed a similar Act to the English Act 6 Anne, c. 7, yet the secretary of the Order of St. Patrick was not disqualified to sit in the Irish Parliament; and that stat. 41 Geo. 3, c. 52, merely renders those who had been disqualified to sit in Ireland also disqualified in the Imperial Parliament. Further, this is not an office under the Crown, otherwise the office would be at an end by the demise of the Crown. Thus at common law the judges would cease to be so by the demise of the Crown, but for a special statute.

Montague Smith replied.—It is said this is not an office under the Sovereign of the Realm, but only under the Sovereign of the Order; but the Sovereign is Sovereign of the Order *qua* Sovereign of the Realm. The very form of the document appointing the secretary is signed "Victoria Regina," and countersigned by "J. Russell," then Home Secretary. The Crown directs the chapter to invest the secretary; but the case does not differ from directing a bishop to induct a clergyman into a benefice, or what takes place when a dean is constituted. In each of these cases the appointment is by the party making the nomination. The cases cited from the Journals of the House of Commons, when examined, do not apply; but there are others which do. Thus the Gaster King-at-Arms was found disqualified in 1717. It is said that it is the Crown of Ireland, and not of England, under which the office is held; but it may be as well said that the Attorney-General of Lancaster holds his office not under the Crown, but under the Duchess of Lancaster, which her Majesty is. There is no separate Crown of Ireland at all. The Imperial Crown existed long before the Legislatures of the two countries were united, as the Act of Union (39 & 40 Geo. 3, c. 67, s. 2) clearly shows. The stat. 6 Anne, c. 7, applies to all offices held under the Crown, wherever those offices were held, and made no distinction between the Crown of Ireland and that of England. Thus the Attorney-General for Ireland, when appointed in 1711, became disqualified to sit for Derby (17 H. of C. Jour. 6), under the 6 Anne, c. 7, s. 26.

Cur. adv. vult.

The CHAIRMAN.—The committee are of opinion "that the office of secretary to the most illustrious Order of St. Patrick is an office or place of profit under the Crown, created since 21st Oct. 1705, and that Colonel the Hon. Edward Boyle, by reason of holding such office, was not capable of being elected a burgess for the borough of Frome at the last election."

Monday, Feb. 28.

Disqualification—Going to the poll.

A candidate cannot petition for the seat made vacant by reason of the sitting member holding a disqualifying office, unless he allege that he went to the poll.

Semble, the nomination of a candidate holding a disqualifying office cannot be treated by the legal candidate as a mere nullity.

As regards the qualifications of candidates, the returning officer acts ministerially and not judicially.

Counsel for petitioners were then about to proceed with the second branch of the case, when

Kinglake objected.—This inquiry was divided into

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two branches. First, Whether Mr. Boyle was disqualified. Secondly, If so, whether the petitioner is entitled to the seat. The first point having been determined, we object to the second being gone into, for three reasons; first, no poll was demanded by the petitioner, and therefore there was no means of prosecuting the inquiry. Secondly, it appears on the face of the petition, that no notice was given of Mr. Boyle's disqualification till after the view of hands was taken, which is the same thing in effect, as if no notice had been given till after the polling was over. Thirdly, because this is substantially an inquiry affecting the votes of the electors. Each vote is a separate case, and requires a separate decision, and we have not been served with any list of the votes alleged to be thrown away.

Montague Smith objected, that this was going into the merits of the petition, which ought not to be allowed till he had finished his case.

The CHAIRMAN.—We think, as the objections go to the question whether this petition can be carried further, they ought to be disposed of in the first instance, and we desire the counsel for the sitting member to confine themselves as much as possible to the first point, viz. that the petitioner ought to have demanded a poll.

Kingdale and *Wilde*.—An election by a view, *i. e.* by a show of hands, was the primitive mode, and is perfectly good in the absence of a poll being demanded: (Rogers on Elect. C., and notes.) Before the Reform Act, the returning officer had it in his power to enter into a scrutiny if there was a poll, but not if no poll was ever demanded. It is now imperative on the returning officer to grant a poll whenever it is demanded; but before that Act a scrutiny was never demanded except in a case where a poll was demanded. He has, however, no judicial power whatever in the matter, but acts merely ministerially. A poll is the only way of ascertaining with precision the exact number of voters. Now, the petitioner here not having demanded a poll, he has no means of making out his title to a seat except by satisfying the Committee that the number of those who showed their hands for Mr. Boyle in a legal way, *i. e.* who had no notice of his disqualification, was less than the number of those who showed their hands for the petitioner. A vote cannot be destroyed or set aside, unless you can prove a notice to the voter. The returning officer, acting only ministerially, had no power to determine the qualification of a candidate any more than he had power to scrutinise the votes of the electors. It cannot, therefore, be said, that he was bound to know that Mr. Boyle was disqualified for election. What means, therefore, can exist for now reviewing the view taken at the hustings? The law allows the candidate every means of carrying out the election to a poll, which is the only certain test by which he can try his right. No doubt it was intended in the present case to go to the poll, but this step was not taken. Then it will be said that the notice here was sufficient, because the fact of Mr. Boyle being disqualified was quite notorious. But all that notoriety can do is merely to supersede the necessity of express personal notice, and is no more than an equivalent to it; and it is equally clear that the notice or the notoriety must exist before the votes are given, otherwise it cannot be held that the votes are thrown away. All the cases show that, before a vote can be set aside, notice, or its equivalent, notoriety, must be proved: (*Flint* case, 1 Peck. 526; *Fife*, 1 Lud. 455; 2nd *Southwark*, Cliff. 180; *Cork County*, K. & D. 391; *Drogheda*, Id. 211; *Leominster*, Corb. & Dan. 15; *Wakefield*, Bar. & Aust. 270; 2nd *Newcastle-under-Lyme*, Bar. & Aust. 576; *Belfast*, F. & F. 593; *R.* v. *Bridge*, 1 M. & S. 76; 2nd *Horsham*, P. R. Dew. 257.) Here the notice, according to the petition itself, was not given till after the view of hands, which, in the absence of a poll, means that it was not given till after the election, and therefore the votes could not be thrown away: (Rowe on Elections.)

Montagu Smith, contrà.—This is a demurrer to the petition and a pure point of law. The effect of the argument for the petitioner resolves itself into this, Can a candidate be seated in any case where no poll has been demanded? We admit an election may well be by a show of hands; and if no poll be demanded, the show of hands before the return is the election; but this is only the case where there are a number of qualified candidates. But we maintain here, that there was only one candidate in the eye of the law who was duly qualified, and the case must be treated exactly the same as if there had been no opponent. The electors, therefore, being present—for those who choose to absent themselves are bound by those who are present—it was the duty of the returning officer to return the only candidate who appeared. The returning officer is only bound to grant a poll where there are two or more candidates before him: but when there is one candidate only, he is bound to declare the result of the view to be in favour of that one. Now, when notice was given to the electors that Mr. Boyle was disqualified, it was the same thing as if he had not been present. This is not a case of scrutiny at all. We do not ask who had the majority, for even if Mr. Boyle had the majority, we say it was no majority at all, by reason of his disqualification; but the question is simply this, whether the petitioner, being the only qualified candidate, ought not to have been declared duly elected. It is said the returning officer has no discretion at all, but must treat the candidate as a good legal candidate, however notorious may be the fact of his disqualification. But to test this argument, can it be said, that if a woman, or a minor, pretended to be a candidate, the returning officer was bound to allow a poll? Why should the farce and expense of a poll in such a case be unnecessary? [The COMMITTEE.—It appears, however, that the show of hands here was before the notice was given.] Yes, but we are only on the abstract point now, and we must, for the sake of argument, here assume that the disqualification was notorious. In the *Leominster* case, Corb. & Dan. 1, it was decided that a poll was unnecessary: (Rogers on Elect. C. 274; *Cullen* v. *Morris*, 2 Stark. N. P. 577; 1 Bl. Com. 348.) These authorities show that the returning officer is not a mere automaton, and it cannot be held that a poll is necessary where a woman or child is a candidate; indeed a returning officer who wilfully makes such a return may be punished: (Wordsworth, Elect. 165.) The Committee are now sitting, as if they were returning the member whom the returning officer ought to have returned. It is no doubt safer to demand a poll, and then give notice to individual electors; but it is not necessary, and in one respect it is inconsistent: for where there is only one legal candidate, why should there be a necessity of going into a needless ceremony? It is said the Committee are asked here to decide upon the voices of the electors and make a scrutiny; but that is not so. All that is asked is to say whether there ought to have been a show of hands or a poll at all, seeing there was only one legal candidate. [The COMMITTEE.—Your argument in fact goes to this extent, that the returning officer acts judicially, and not merely ministerially.] Yes, in a certain sense it does.

Wilde in reply.—If it be true that, where a candidate holds a disqualifying office under the crown, there is no necessity for going to the poll at all, then why has it always hitherto been deemed necessary to do so? If the returning officer was bound to decide on the qualifications of the candidates, some one ought to have started up and protested against Mr. Boyle being put in nomination; instead of this, they allowed him to be first elected. It is said it is not necessary to go to a poll, where a candidate is notoriously disqualified; but how is the notoriety to be measured? In short, if the other side be right, there would be no necessity for going to the poll in any case.

Cur. adv. vult.

The CHAIRMAN.—The Committee are of opinion that no poll having been demanded by the petitioner, or on his behalf, and none having taken place at the last election for Frome, this inquiry should proceed no further.

Nisi Prius.

COURT OF QUEEN'S BENCH.

Reported by W. J. METCALFE, Esq., Barrister-at-Law.

SECOND SITTINGS IN LONDON IN HILARY TERM.

Wednesday, Jan. 26.

CHATTERIS v. DARTER.

Bill—Notice of dishonour.

In an action by the indorsee against the indorser of a bill, proof that the plaintiff, on the day after the dishonour of the bill, endeavoured without success to obtain from the other parties to the bill, one of whom was the defendant's brother, the address of the defendant, that he sent a notice by post addressed to him at his brother's house, where the bill was payable; and that the letter was not returned—is evidence for the jury that the defendant had due notice.

This was an action on a bill of exchange for 84*l.* drawn by one George Adamson, accepted by William Darter, a brother of the defendant, and indorsed by Adamson to the defendant, by the defendant to Richard Field, and by Field to the plaintiff. The defendant pleaded, amongst other pleas, that he had not due notice of the dishonour of the bill.

The bill became due on Oct. 30, which was a Saturday: it was presented at the residence of the acceptor (the defendant's brother), where it was made payable, and was dishonoured. On Monday the plaintiff went to Field for the addresses of the parties; Field gave him the address of the drawer, but said he did not know the address of the defendant. The plaintiff then went to Adamson, who said that he did not know the address of the defendant, but that he was a respectable man, and he would procure it for him. On the same day the acceptor called to ask the plaintiff to allow it to stand over, which the plaintiff refused, and asked him for his brother's address; the acceptor refused to give it. The plaintiff then wrote a letter, containing notice of dishonour, and addressed to the defendant at the acceptor's residence, where the bill was payable. The letter was put in the post-office, and was not returned.

Pulling contended that no notice of dishonour to the defendant was proved.

Macnamara contrà, submitted that it was a question for the jury to say whether the defendant had received notice. The plaintiff had done all in his power; he had endeavoured without success to find the defendant's address, and he had sent him a notice to the place where the bill was payable. This was not returned, which afforded some evidence for the jury that it had come to the hands of the defendant. In *Burmester* v. *Barron*, 17 L. J. 135, Q. B. it was held sufficient to send a notice to the drawer addressed "London" only, that being the address given on the bill, though his address might have been ascertained by inquiry of the acceptor, and though the notice did not in fact reach him; and Wightman, J. said that he should, if he had been asked, have left it to the jury.

Pulling said that the present case was different from *Burmester* v. *Barron*, inasmuch as there the defendant was the drawer who had given an address "London," and would be taken as against himself to have given a proper one. Here the defendant was an indorser, who had given no address, nor was it customary for an indorser to give any address.

TALFOURD, J.—After the case which has been cited, I shall certainly leave the case to the jury. I shall ask them to say whether the plaintiff has given to the defendant due notice of the dishonour of the bill, and whether he used due diligence in finding his address.

The jury answered both these questions in the affirmative. *Verdict for the plaintiff.*

Macnamara, for the plaintiff.

Pulling, for the defendant.

COURT OF COMMON BENCH.

Reported by D. T. EVANS, Esq., Barrister-at-Law.

SITTINGS AFTER HILARY TERM IN LONDON.

(Before TALFOURD, J.)

Tuesday, Feb. 22.

GERMAN v. LOCKHEAD.

Evidence of partnership—Liability of participator in the profits of a patent right to the expenses of working it.

A., the owner of a patented invention, gave a share to B. in consideration of B. advancing capital to bring it into use. C., an engineer, manufactured on the credit of B. certain machinery to work the invention, which A. superintended. The account of C. was made out to B. and a bill for a part of the cost was drawn by C. on B., and indorsed by A. at C.'s express request. This bill was paid; and, B. becoming insolvent, A. was subsequently sued by C. for the balance due for the work done:

Held, that A. and B. were partners, and liable as such to C. for the whole amount, and that, there being no plea in abatement, the action against A. alone could be maintained.

This was an action brought by the plaintiff, an engineer and machinist, against the defendant, the proprietor of a patent for manufacturing ventilating window glass, for work and labour and materials in the making certain machinery for working of the defendant's invention. The defendant pleaded the general issue.

Byles, Serjt. and *Needham*, for the plaintiff.

Shee, Serjt. and *Pulling*, for the defendant.

It appeared that in the year 1851 the defendant, who had obtained a patent for a new description of ventilating window-glass, agreed with a Mr. Richardson to give him one-third share of the patent in consideration of Richardson advancing money to work it. Richardson had an office in the Royal Exchange, over the door of which was written "Richardson and Co.," and the defendant published, on making the arrangement with Richardson, a description of his patent in a pamphlet, entitled "Homes to be Happy must be Healthy," and he there stated that the ventilating glass was to be obtained at Richardson and Co.'s. In August 1851 the defendant visited the plaintiff's factory at Blackwall, and, producing a copy of the pamphlet, requested that a certain cylinder and machine for rolling the glass should be made by the plaintiff, and referred the plaintiff for payment of the expenses to Mr. Richardson, who he stated was the party to supply the capital. The plaintiff then applied to Richardson by letter, and, receiving a satisfactory answer, commenced the necessary machinery under the defendant's direction. The machine was sent to certain works taken by Richardson and the defendant at Kennington, and subsequently returned by the defendant's directions for alterations. The account of the expenses was then made out by the plaintiff in the name of Richardson, and several applications were made to the latter for payment; at last a bill was drawn by the plaintiff for a part of the amount on Richardson and Co., which was accepted by Richardson in his own name, and dishonoured. The plaintiff then requested that the same bill for the same amount should be accepted by Richardson and Co. and indorsed by the defendant. This was done, and the amount was paid by the defendant out of certain advances made by Richardson on account of the patent, and paid into the Commercial Bank in the name of Lockhead & Co. Richardson some short time afterwards became insolvent, and the present action was brought against the defendant for 54*l.* 1*s.* the balance due to the plaintiff for making the machinery. The inven-

tion did not turn out successful, and no evidence was given of any profits having been received by the defendant.

TALFOURD, J. said that if the jury should be of opinion that the defendant had held himself out as a partner in the firm of Richardson and Co. or that he was to participate with Richardson in the profits, if any, of the patent worked by the plaintiff's machinery, he would be liable as a partner in the present action, notwithstanding the credit was expressly given to Richardson in the first instance.

Verdict for plaintiff for full amount.

HOUSE OF LORDS.

(Reported by W. H. Bateson, Esq. of Lincoln's-Inn, Barrister-at-Law.)

Dec. 7 and 9.

(Present—The LORD CHANCELLOR (ST. LEONARDS), Lords TRURO and CAMPBELL, Earl of BANDON, and other Peers. Judges: LORD CHIEF BARON, PARKE, PLATT, MARTIN, and ALDERSON, BB.; and ERLE, MAULE, WILLIAMS, and TALFOURD, JJ.)

THE MIDLAND GREAT WESTERN RAILWAY COMPANY OF IRELAND *v.* LEECH.

THE SAME *v.* JOHNSTON.

THE SAME *v.* EDMOND.

Railway amalgamation—Companies' Clauses Consolidation Act 1845—Contributary.

On the treaty for the amalgamation of two railway companies, at a special general meeting of the company into which the other was to be merged or amalgamated, it was resolved that 4000 shares of the last company should be taken by the amalgamated company, and that a deposit of 2l. 10s. per share should be made,—that the line of the merged company was to be surrendered to the amalgamated company on payment of certain expenses which had been then incurred, and upon other terms. A list of the parties to whom the 4000 shares of the merged company was to be allotted was forwarded to the secretary of the amalgamated company, and the name of the defendant was included for 170 shares. He subsequently applied for and obtained thirty more shares. He paid the deposit on the whole 200 shares, signed the subscription contract and deed. By a subsequent meeting of the shareholders the general terms of the treaty were confirmed, and the amalgamation recommended to be carried into effect:

Held, that as no acts had been done which constituted a complete amalgamation of the two companies, but only a recommendation that such amalgamation should be carried into effect, the defendant was not a shareholder of the company, and was not liable to the calls which had been made upon him in respect of the 200 shares upon which he had paid the deposit and signed the contract.

Held also, that the list of registered shareholders, although it might be proved not to have been a faithful register, was prima facie evidence that the contributory therein named was a shareholder, which fact, however, might be displaced by other evidence.

This was a writ of error brought from the Court of Ex. Ch. by the Midland Great Western Railway Company of Ireland, the plaintiffs in error, against Joseph Leech, an alleged contributory and shareholder of that company. The two other writs of error against the other parties, which were also appealed, were to abide the judgment in the first.

The *Solicitor-General (Kelly)*, *Goldsmid*, and *Borrill*, for the plaintiffs in error.

The *Attorney-General (Thesiger)*, *Anderson*, and *Rochfort Clarke*, for the respondent in error.

The facts of the case appeared to be the following:—The action upon which the writ of error had been brought was in debt, brought by the railway company in the Court of Ex., under the Companies' Clauses Consolidation Act 1845, and the special Act entitled "The Midland Great Western Railway of Ireland Act, Mullingar to Athlone, 1846," against the defendant in error, as a shareholder in the plaintiffs' company, to recover the sum of 1500*l.*, the amount of three "calls" of 2*l.* 10*s.* each in the said company. To that action the defendant pleaded, first, that he never was indebted; and, secondly, that he was not a holder of shares in the plaintiffs' company: and issue was joined thereon. The cause was tried at the Spring Assizes for the county of Surrey, at Kingston, in the year 1849, when a verdict was found for the plaintiffs, and damages were assessed separately in respect of each of the said three calls. A bill of exceptions was tendered by the defendant to the direction of the learned judge. From the evidence set forth in the bill of exceptions, it appeared that the plaintiffs, the Midland Great Western Railway Company of Ireland, were incorporated by the 8 & 9 Vict. c. 119, for the purpose of making a railway from Dublin to Mullingar and Longford, and were also thereby authorised to purchase and hold the Royal Canal. Shortly after the passing of the Act, viz., on the 31st of July, 1845, two of the directors of the company proceeded to register themselves provisionally under the Joint Stock Companies Act (7 & 8 Vict. c. 110), as promoters of a company to be called "The Galway and Mullingar Junction Railway Company," and obtained a certificate of provisional registration thereof. The capital proposed to be raised was 800,000*l.* in 32,000 shares of 25*l.* each. About May 9, 1845, another railway was projected, to be called "The Galway and Belfast Junction Railway," and a company was provisionally registered with a view to an application to Parliament for powers to make such railway. The defendant in this action was one of the firm of Johnston, Farquhar, and Leech, who were solicitors to the last-mentioned company. It was, however, subsequently considered that it would be imprudent to apply to Parliament for powers to carry that scheme into effect; and Mr. Blake, the deputy-chairman of that company, with the concurrence of the defendant and his partners, opened a negotiation with the plaintiffs' company on the subject of a proposed amalgamation; and on Aug. 18, 1845, at a meeting of the provisional committee of the said Galway and Belfast Junction Railway Company, it was resolved to unite with the Midland Great Western Railway Company of Ireland, then proposing to extend their line from Mullingar to Galway; and on Aug. 28, 1845, a letter was sent by the defendant's firm to Mr. Blake, leaving it to him to arrange the amalgamation on the following terms, viz.: that the holders of scrip in the said "Galway and Belfast Junction Railway Company" were to have the option of taking an equal amount of shares in the "Midland Great Western," or to have their deposit returned free of expense, upon condition of the expenses incurred by the "Galway and Belfast Junction Railway Company" being defrayed by deposits on the "Midland Great Western;" and among other expenses enumerated at the foot of the said letter, as the expenses incurred by the Galway and Belfast Junction Railway Company, was a sum of 200*l.* stated to be due to the said Messrs. Johnston, Farquhar, and Leech, for professional charges and rent of offices. On Sept. 4, 1845, a resolution was come to by the directors of the "Midland Great Western Company of Ireland," of which the following is a copy:—

"Mr. Perry having reported that he had this day had a further interview with Mr. M. J. Blake, M.P., deputy-chairman of the proposed Galway and Belfast Junction Railway, on the subject of the expenses incurred in the formation of that company, amounting to the sum of 1,277*l.*, and that he (Mr. Blake) is prepared, on behalf of that company, to pay the deposit of 2*l.* 10*s.* each on 4000 shares in the extension to Galway, to merge the project of that company therein, and give the undertaking all the support in their power, provided the above sum of 1,275*l.* be allowed. That, under the peculiar circumstances of the case, it appears desirable that the Galway and Belfast Junction Company should merge in the extension from Mullingar to Galway, on the terms above stated, and that Mr. Blake's proposal be agreed to."

A copy of this resolution was inclosed by Mr. Blake in a letter to the defendant, dated the 6th Sept. 1845. An announcement of this arrangement was made by the Galway and Belfast committee to their shareholders by public advertisement, in which it was stated that an arrangement had been made with the Midland Great Western Railway Company of Ireland, in accordance with which that portion of the Galway and Belfast line between Galway and Longford was to be surrendered to the Midland and Great Western Railway Company on payment of certain expenses which had been incurred; and that the shareholders in the Galway and Belfast Company had the option of receiving two new shares of 25*l.* each in the Midland Great Western Railway Company's proposed extension from Mullingar to Galway for each share of 50*l* in the Galway and Belfast Company on payment of a further deposit of 2*l.* 10*s.* for such two shares, in order to comply with the recent standing orders of Parliament; and after certain instructions to the said shareholders as to the exchange of their scrip, it was stated, that the said extension to Galway, as well as another to Sligo, promoted by the same company (the plaintiffs), was proposed to be amalgamated with the plaintiffs' company, the Midland Great Western Railway Company of Ireland, and that the proprietors would participate in the profits of the undertaking, and in all the advantages of the company's Act of incorporation, and that the funds raised would form part of the capital stock of the company. In the said advertisement it was also stated, that shareholders who should not avail themselves of the option thus secured to them on or before the 1st Oct. then next would be considered as declining the same. This announcement was published by the secretary of "the Galway and Belfast Company" in the public papers about the 17th Sept. 1845. On the 12th of that month, after the arrangement had been made between Mr. Blake and the directors of the plaintiffs' company, the name of the Galway and Mullingar Junction Railway Company was changed at the registration office to that of the "Midland Great Western Railway Company (Extension from Mullingar to Galway)," and the names of the remaining thirteen directors of the plaintiffs' company, together with the names of Mr. Blake and another director of the Galway and Belfast Company, were added to the registry as promoters of the undertaking. On Oct. 16, 1845, a letter of allotment was sent to the defendant, by which he was informed that he had been allotted 170 shares in the extension, and that upon his lodging 2*l.* 10*s.* per share, amounting to 425*l.* with the bankers of the company, to the credit of the Midland Great Western Railway of Ireland (Extension to Galway), and upon his executing the usual parliamentary contract and shareholders' agreement, the necessary scrip certificates would be issued to him. Underneath the said letter of allotment was a note—that the above extension would be amalgamated with the existing incorporated company. On Oct. 30, 1845, the defendant paid the deposit to Messrs. Masterman and Co., and received from them a receipt. The defendant afterwards applied for and received a further allotment of thirty shares, upon which he paid a similar deposit and received a similar receipt. On Jan. 15, 1846, the defendant executed the parliamentary subscription contract, to satisfy the standing orders of Parliament, as a subscriber for 200 shares in the undertaking, and also the shareholders' agreement. The said contract and agreement were respectively in three parts, and the defendant executed the English part of each of the deeds. On Jan. 17, 1846, the defendant's firm inclosed the banker's receipts for the deposits on the 200 shares in a letter of that date, and requested that the scrip certificates for such shares should be sent to them. The scrip certificates for the defendant's 200 shares were accordingly sent to the defendant's firm. The scrip certificates were headed "Midland Great Western Railway of Ireland, Extension from Mullingar to Galway," and they certified that the holder, having paid the first deposit of 2*l.* 10*s.* per share, and signed the parliamentary agreement, was entitled to 200 shares, and was registered as the owner thereof "in the books of this company." The parliamentary subscription contract was executed by the defendant, and set forth the amount of his subscription to be 5000*l.*, and the amount paid up 500*l.*, in conformity with the requirements of the standing orders of Parliament. This contract provided for the amalgamation of the two companies, and authorised the directors, if the Bill passed, to consolidate their stock; and powers for such purposes were given to the directors by the shareholders' agreement. On Feb. 16, 1846, an extraordinary general meeting of the shareholders of the "Midland Great Western of Ireland, Extension from Mullingar to Galway," was held in Dublin, when a resolution was passed confirming the above arrangements. After some difficulty in raising the sum necessary to go to Parliament, which difficulty was overcome by the plaintiffs' company subscribing for 11,191 shares, the Bill was brought before Parliament, and the proposed extension was reduced in the House of Lords to a line from "Mullingar to Athlone," and the capital reduced from 800,000*l.* to 400,000*l.* The bill passed as the 9 & 10 Vict. c. 224. Pending the passing of the bill, a resolution was come to by the directors, amalgamating the number of shares for the "Athlone Extension" with the shares of the "incorporated company," which was sanctioned by a special general meeting held on Sept. 18, 1846; and on 1st Oct. following a first call of 2*l.* 10*s.* per share, which had been authorised at a previous general meeting, was made on the extension shares, and notice was sent to the defendant in due course thereof. The defendant's name was registered as the holder of 200 shares in the registry of plaintiffs' company, which registry-book was sealed at a general meeting on March 16, 1849, and in all subsequent registers. The defendant, however, ultimately refused to pay the calls, and the action at law for their recovery was the result.

The learned judge directed the jury that the parliamentary subscription contract and shareholders' agreement, if proved to the satisfaction of the jury, gave ample powers on behalf of the subscribers thereto, to the directors mentioned in the shareholders' agreement, in such number and assembled as therein mentioned, to obtain an Act of Parliament to incorporate the subscribers thereto, or to amalgamate them with the plaintiffs' company without an Act of Parliament for that special and express purpose, or any other Act of Parliament than that which was obtained; and if the said contract and agreement were so proved, that they were authorised to adopt the course which was adopted by them, and that the nine directors present at the meeting of the 18th Sept. 1846, were competent to exercise such powers in the manner in which they did, so as to bind the defendant to pay calls on 200 shares of 2*l.* 10*s.* each in the plaintiffs' company, and that the defendant was bound by the exercise of the powers, as they were exercised, to pay such calls as a holder of the said 200 shares in the plaintiffs' company, and thereby became a holder of the said 200 shares in the plaintiffs' company without any act of acceptance by him of the terms contained in the resolution of the 18th Sept. 1846.

The counsel for the defendant tendered a bill of exceptions to this ruling.

The jury found for the plaintiffs.

A writ of error was subsequently brought on this bill of exceptions, and was argued in the Court of Ex. Ch. on the 18th and 19th June, 1850. In this court judgment was pronounced setting aside the judgment of the court below, and directing that there should be a *venire de novo*. The company, however, thought it the better course at once to bring the case to the House of Lords.

HOUSE OF LORDS.

The argument in support of the writ of error having been concluded,

The *Attorney-General* and *Anderson*, on behalf of the respondent, contended that the writ of error ought to be dismissed, or the judgment of the Ex. Ch. be affirmed, upon these grounds: "Because the Midland Great Western Railway of Ireland Act, Mullingar to Athlone, 1846, did not incorporate the subscribers to the Extension Company, nor did it amalgamate or authorise the amalgamation of the Incorporated Company with the Extension Company, or entitle the plaintiffs in error to register the subscribers to the Extension Company, without their consent, as shareholders of the Incorporated Company. Because the subscription contract and shareholders' agreement of the Extension Company did not empower the directors of such company to amalgamate or to agree to an amalgamation of the said company with the Incorporated Company, unless an Act or Acts of Parliament, incorporating the said subscribers and authorising such an amalgamation, should be first obtained; and because such powers as the directors of the Extension Company had, expired on the 31st July, 1846, in consequence of the certificate of provisional registration of that company never having been renewed. Because the nine persons who had been directors of the Extension Company who were present at the meeting of the 18th Sept. 1846, had no power to amalgamate or to agree so as to bind the defendant in error to any amalgamation of the said subscribers with the said Incorporated Company, or to bind the defendant in error to pay the calls claimed in the action."

The *Solicitor-General* replied.

The LORD CHANCELLOR submitted the following question for the opinion of the judges:—"Adverting to the record and the proceedings in this case, ought the exceptions therein recorded, or any and which of them, to have been allowed?"

Dec. 9.—POLLOCK, C.B. said, that in answer to the question which had been submitted to the judges by that House on Tuesday—namely, "Adverting to the record and the proceedings in this case, ought the exceptions thereto recorded, or any and which of them, to have been allowed?" he had to report to their lordships that, although the judges were not agreed as to some of the points argued before the House, yet they were unanimously of opinion with regard to one of the grounds of exception, that it should be allowed—namely, that the nine directors of the extension company who were present at the meeting of the 18th Sept. 1846 were not competent to amalgamate, or to agree so as to bind the shareholders to any amalgamation with the incorporated company; and that the defendant had not therefore become the holder of the 200 shares in the plaintiffs' company. The defendant in error was therefore not bound by what had been done by the directors in the exercise of their powers; for it appeared to the judges that what was actually done at the meeting of the 18th Sept. 1846 was only a recommendation to the general body of the company which was incorporated by the first Act of Parliament, and assembled on that occasion, and was not an amalgamation by the nine directors in pursuance of the power of amalgamation, assuming they had such a power.

The LORD CHANCELLOR then said that the answer their lordships had just received on the part of the learned judges, if their lordships adopted the law as by that answer laid down, at once disposed of this case; for although that reply did not answer in all respects the question which their lordships had submitted to the learned judges, yet it did sufficiently answer that question in order to enable their lordships to dispose of the case before them. He entirely concurred in the opinions which their lordships had just heard from the learned judges. It appeared to him perfectly clear that there had not been, even supposing that the directors did possess the power to bind the persons who had subscribed to the project, which was not originally an extension—that, supposing they had possessed that power, yet that that power had not been assumed to be exercised. The whole matter amounted, in truth, only to an offer, to a recommendation of the terms offered. Why, the very bonus which had been offered by that recommendation was an inducement—an inducement to the parties, who were not bound to accept the terms which were offered; and there was not the slightest evidence to show that the persons against whom the company had proceeded ever did accept those terms. The Grand Junction Company, for instance, who stood upon precisely the same ground, had rejected the terms; and therefore with that company a compromise had been made.

Lord CAMPBELL entirely concurred in the opinion which had been given in this case by his noble and learned friend, the Lord Chancellor. It was certainly not necessary to consider whether the directors had possessed the power, inasmuch as it was perfectly clear that they had not exercised it; and upon that question, therefore, whether the directors had had the power or not, he would upon the present occasion give no opinion. But it did appear to him that their lordships were bound to express an opinion upon the other question which had been argued at their lordships' bar—namely, whether by the Act of 1846 the subscribers were made shareholders. For, if they were, then the direction of the learned judge who had tried the case which was founded upon this would be immaterial, and if it was wholly immaterial, then their lordships would not direct a *venire de novo*. That being so, then he was bound to give his opinion on the question whether the Act of 1846 had bound the subscribers shareholders to the extension company. In his opinion it clearly did not make the subscribers shareholders in the extension company, because, whatever the equity of the case might be, their lordships must look distinctly to see what had been enacted, and therefore, looking at the 4th sect. of the 9th and 10th Vict. c. 224, it appeared to him that it was left especially to the directors, after the Act was passed, whether it would bind the subscribers shareholders or not. Now, what was the language of that section? It was this: "That it should be lawful to the said company to raise, by contributions among themselves, or by the admission of other parties, or in part by each of those means, 400,000*l.* by creating 16,000 shares of 25*l.* each, in addition to the capital which they are at present authorised to raise." Now, that section seemed to him to be wholly permissive; and if the company had had funds of their own, without requiring any additional sum to be subscribed, he apprehended that from those funds they might have completed the railroad from Mullingar to Athlone. If that were so, then it was quite clear to his mind that the subscribers were not *ipso facto* shareholders when they acted, and, if that were so, then the direction of the learned baron upon the trial was erroneous.

Lord TRURO also concurred.—This case, indeed, supplied many topics in support of that opinion; but it was quite unnecessary at that moment to go over them, as the learned judges were unanimous in their opinion, which opinion perfectly coincided with that of the two noble and learned lords near him. He must say at the same time that he thought it was perfectly clear that the Act of Parliament did not amalgamate, and that no idea had ever been entertained that it should have that effect, but that it was left, as his noble and learned friend had said, entirely open; and that all that was done after the Act had been obtained was the recommendation which had been referred to, which recommendation in its very terms utterly excluded the inference that it was considered as an amalgamation. But the effect of the resolution which had been come to, and that which had been done subsequently, also went to show that at no subsequent time had it been considered an amalgamation until it had become necessary to make a call for money, and then it appeared to have occurred to the parties, after Oct. 1846, when, he thought, the first registry-book had been sealed, that that book did not include the extension subscribers. It seemed to him, therefore, that the judgment of the Court of Ex. Ch. was perfectly correct in point of law.

The LORD CHANCELLOR said that he had not touched upon the question to which his two noble and learned friends had alluded, simply because he had considered that the opinion which had been delivered to their Lordships by the learned Chief Baron on behalf of the learned judges had implied that that question could not be maintained. That was a point upon which he had never for one moment entertained the slightest doubt. It was perfectly clear that the Act of Parliament gave power to the directors of the original company, if they pleased, and could agree with the directors of the extension subscribers,—it gave the former the power to admit the latter, and if they had been admitted they would have then formed part of the original company. But the very recital of the Act was, that they, the Midland Company, proposed to execute the extension at their own expense, and then that power was granted to them which had been referred to by his noble and learned friend in order to enable them to execute that purpose. He thought, therefore, that it was perfectly clear that the sum to be raised did not tally with the sum even to be paid by the extension company without reference to the other subscribers. He fully concurred in the opinions expressed by his noble and learned friends. He believed that it had been understood by all parties that this and the two following cases rested on the same points and depended on the same arguments, and therefore that the judgment in the present case would also be judgment in those other two cases.

The judgments of the Court of Exchequer Chamber affirmed, and the writs of error dismissed.

Equity Courts.

LORD CHANCELLOR'S COURT.

Reported by C. H. KERR, Esq. of Lincoln's-inn, Barrister-at-Law.

Jan. 17, 18, *and* 27.

(Before Lord CRANWORTH, L.C. and the LORDS JUSTICES.)

EDDLESTON *v.* COLLINS.

Copyhold—Married woman—Infancy of deputy-steward—Ministerial and judicial offices—Surrender—Pleading—Practice.

LORD CHANCELLOR'S COURT.

A surrender of copyholds, the property of a married woman, by herself and her husband, was taken by a deputy-steward who was a minor:

Held, that the surrender was valid, the office of a deputy-steward being merely ministerial and not judicial.

How far relief can be refused in a foreclosure suit upon a defence of fraudulent execution of the mortgage, there being no cross-bill?—Quære.

The Court will not stop the progress of a cause to enable parties to file a cross-bill, except under particular circumstances.

This suit was constituted to obtain a decree of foreclosure in respect of a mortgage debt of 600*l.* with an arrear of interest.

The facts were briefly these:—In the year 1843 Mary Ann Smith, then unmarried, was admitted as devisee of her father to a copyhold estate of inheritance holden of the manor of Lyson, in the county of Cambridge, to her and her heirs according to the custom of the manor. She married a Mr. Collins, and on the 20th May 1844 she and her husband concurred in making a valid surrender of the copyhold estate in question to a Mr. Stephen Adcock by way of mortgage to secure to him the sum of 50*l.*, whose assignee, by the circumstance of the transaction which is afterwards adverted to, the plaintiff became. In 1846 Mr. Collins and his wife made a further surrender to Mr. Adcock. The terms of that surrender were of an unusual nature. It was as follows:—"Be it remembered that on the 3rd day of Dec. &c. Thomas Collins and Mary Ann his wife, formerly Mary Ann Ward, spinster, customary or copyhold tenants, or one of them a customary or copyhold tenant of the said manor, came before John Gillam Bell the younger, gentleman, deputy-steward of Clement Francis, gentleman, chief steward of the said manor, and in consideration of 100*l.* to the said Thomas Collins and Mary Ann his wife, paid by Stephen Adcock (the said Mary Ann Collins being first privately examined by the said deputy-steward separately and apart from her said husband, and freely and voluntarily consenting), did out of court surrender, &c. to the lord, &c. all that messuage, &c. and all the estate, &c. to such uses, upon such trust, and to and for such estates, ends, intents, and purposes in favour or for the benefit of Collins, his heirs and assigns, and with, under, and subject to such powers of sale and other powers, provisoes, declarations, and agreements, and charged and chargeable with the payment of such sum and sums of money, as Adcock, his heirs, executors, administrators, or assigns, by any deed or deeds in writing to be by him, them, or any of them legally executed, shall, at the request and by the direction in writing of the said Thomas Collins, his heirs, executors, administrators, or assigns, at any time direct, or in default to the use of Adcock, his heirs and assigns for ever," subject to the former conditional surrender for 50*l.*, and with a proviso that if Collins, his heirs, &c. should pay or cause to be paid to the said Stephen Adcock the said principal sum of 100*l.* with interest on the 3rd June then next, the surrender was to be void. The surrender was entered on the court rolls on the 14th April 1847. Subsequently to its execution Mr. Adcock, as by the direction of Collins, directed that it should enure from time to time to secure further sums of money, ultimately making up the sum of 600*l.*, which was all advanced and paid by the present plaintiff; part was actually paid to Collins, and part in paying off the advances, which then amounted to 542*l.* The four first advances made after the original advance of 1846 were made by deeds, to two of which Mr. Adcock was a party, and to two of which he was not a party; but they all recited the former advance; and to the last transaction, by which Miss Eddleston made the final advance of 600*l.* to pay off the whole amount, Mr. Adcock was a party; he executed the deed, and in form executed the power contained in the surrender, and so treated it as a valid surrender; and, in conformity to the language of the surrender, the estate became vested in Miss Eddleston to secure the sum of 600*l.*

Thomas Collins died intestate, leaving two infant daughters, his co-heiresses. Mrs. Collins afterwards married the defendant Smith. The bill was filed for the purpose of foreclosing the mortgage, and was resisted by the defendants, Mr. and Mrs. Smith, on the grounds following:—First, That the deputy-steward who took the surrender of December 1846 was under age at the time, and could not therefore take the surrender of a married woman. Secondly, That the surrender of December 1846 was not one which, upon a proper construction, would be held to transfer the equity of redemption to the husband, but would be held valid only as a surety for 100*l.* Thirdly, That upon the circumstances of the case, as proved in evidence, Adcock being himself the only solicitor in these transactions, and the deputy steward appointed for the occasion was his articled clerk, the transaction of the surrender of 1846 was fraudulent, and could be supported only as a security for 100*l.*

The case, as argued before the Vice-Chancellor, is reported 19 L. T. Rep. 270.

Elmsley and *Smythe* appeared for the plaintiff.

Glasse and *Beales*, for the defendants Smith.

J. W. Stephen, for the infant defendants.

The following authorities were cited on the first point:—Co. Copyh. ss. 45, 46; Co. Litt. 3 *b*, n. (4);

2 Inst. 514; *Scambler* v. *Waters*, Cro. Eliz. 590; *Young* v. *Fowler*, March. 38; S. C. Cro. Car. 556; *Crosby* v. *Barley*, 1 Ale. & N. 461; *Young* v. *Stowell*, Cro. Car. 279; Bacon's Abr. "Infancy," E; Co. Litt. 78 *b*; Com. Dig. "Infant," C., and "Officer," D. 2; 9 Vin. Abr. "Infant," div. 1; Gilbert on Tenures, Watkins's ed. 320; *Howard* v. *Wood*, 2 Show. 23; Scriven on Copyholds, 3rd ed. 134—145, as to the form of an order for taking the examination of a married woman; Seton on Decrees, 257; *Tunbury's case*, 1 Ves. & B. 507; *vide* 2 Turn. & Ven. Ch. Pr. 85, as to whether the office of steward is ministerial or judicial; *King* v. *Chairdwardens of Kingsclere*, 2 Lev. 18; and *Eyle's* case, 1 Ventr. 158. And on the second point, *Rascombe* v. *Hare*, 6 Dow. 1; S. C. 2 Bligh, N. S. 122; *Innes* v. *Jackson*, 16 Ves. 356; *Jackson* v. *Innes*, 1 Bligh, 104; *Woods* v. *Woods*, 7 Ben. 183; *Clark* v. *Burgh*, 2 Coll. 221; *Plowden* v. *Hyde*, 21 L. J. 797, Ch.; *Hazel* v. *Greenbanks*, 1 Ves. sen. 308.

The LORD CHANCELLOR.—In order to support the proposition which has been contended for, several old authorities were referred to. They receive additional weight from the fact that those who followed Lord Coke saw no reason to doubt their validity. Lord Coke, in the 46th section of his Treatise on Copyholds, says, "If an office of stewardship descend unto an infant, he may make a deputy, because the law presumeth he is himself incapable to execute it." And then there are other passages which go to this effect, "that an infant, it is said, cannot be a steward." Now what is the meaning of those words "cannot be a steward?" In *Scambler* v. *Waters*, in Cro. Eliz. 637, the decision is unintelligible, as collected from the report; but it means no more than that an infant cannot maintain an assize or real action for that office, as an office; whatever, however, be its meaning, the law, supposing it to be stated distinctly that he cannot be a steward or a deputy-steward, must be read with the qualification that Lord Coke sets out at length, and which is adopted in all subsequent writers, in these words—"The law is not very curious in examining the imperfection of the steward's person or the unlawfulness of his authority; for be he an infant or *non compos mentis*, an idiot or lunatic, an outlaw or an excommunicate, yet what things soever he performeth as incident to his place, can never be avoided for any such disability, because he performeth them as a judge, or at least as custom's instrument, and for his authority, though it prove but counterfeit, if it come to exact trial, yet if in appearance or outward show it seemeth correct, that is sufficient." An argument was adduced at the bar that a steward, though an infant, might be perhaps allowed to do ministerial acts, but that the separate examination of a married woman was an act requiring discretion, and to which Lord Coke could not have intended it to advert. I think Lord Coke meant absolutely to include every act of the steward; he makes no distinction whatever, and there is scarcely any act a steward does that does not require some discretion; and in the case of most surrenders there is always one important act that requires very great discretion, which is the assessment of the fines, that is to be done actually by the lord, but really by the steward. Another case of discretion which continually occurs is that, suppose one claims as heir, and another as devisee, it is common to admit them both, and let them litigate altogether. It is competent for the steward to say that is a false will—a forgery—I will not admit you. It has been thought it was for him to do that at his peril. I do not think the distinction can be sustained. Having that distinct authority of Lord Coke's—an authority so much in conformity with the convenience of mankind, that even if there were doubts cast upon it, which I do not find, I should be very reluctant to listen to any such suggestion, because the danger to titles would be enormous if it could be said that a transaction as to which parties have no means of inquiring, except by looking in the court rolls, is absolutely void by reason of infancy or idiocy, or *non compos mentis*, or lunacy, or outlawry, or excommunication attaching to some person as to which there is no evidence that any such disability did attach—finding that authority distinctly stated in that elaborate way by Lord Coke, I have no difficulty in coming to the conclusion that that as a legal objection cannot be sustained. Then, if that be so, what is the effect of the surrender? The defendants say, that, even supposing that the difficulty as to the steward be got over, still it ought to operate only as a surrender to secure the sum of 100*l.*, which was all that was then advanced. What is its legal meaning? It is a very complicated and a very artificial mode of effecting the object which it attempted to effect. I give no opinion whether the lord was bound to accept such a surrender. Probably he might not. That question was discussed in the case of *Glasse* v. *Richardson*, in which there were some authorities quoted of a recent date in the Court of Q. B. Very likely the law might be that the lord would not be bound to accept such a surrender; but, having done so, I confess it appears to me that the surrender operated, as the language imports, "to such uses as Adcock, by the direction of Collins, should from time to time appoint." If, therefore, Adcock did afterwards appoint, with the consent of Collins, that that surrender should enure to particular uses, it would so enure. But then, supposing there could be no objection by reason of the infancy of the plaintiff, and that the power given by the surrender had been from time to time properly executed—that still it had only been properly executed in form; for in truth Mrs. Collins says, "I was imposed upon; I did not know what I was executing; this surrender was never explained to me; I never meant to do more than to authorise the raising of the additional 100*l.* beyond the first 50*l.* which was *ex concessis* a good advance,—if that were so, though, perhaps, the more strict course would have been to file a cross bill to set aside the transaction, yet I conceive it may be raised by way of defence, by saying for what sum the plaintiff is to be considered as a mortgagee; and in that view it is, that upon the evidence it must be inferred Mrs. Collins knew nothing of all those subsequent transactions—that, in truth, she thought only she had surrendered in 1846 to secure the 100*l.* then advanced to her husband, as she had surrendered in 1844 to secure the 50*l.* advanced, and that all the rest was a mere fraud—that, in truth, the deed was framed in fraud of her, and so as to rob her of her estate. Now, for that purpose one must look at what the evidence in the cause is. His Lordship here went through the evidence, and, having done so, said, it was strongly corroborative of the truth that all that which had been done was with the entire privity of that lady, and that everything was explained to her; because, unless that be true, her conduct, as appeared by the evidence, was irreconcilable with the conduct of a rational person. On this point, therefore, the defendants have failed. There is nothing on which I can find anything leading to fraud. The plaintiff is entitled to be treated as a mortgagee for 600*l.* and therefore the decree below was perfectly correct.

Lord Justice TURNER.—At the request of my learned brother, I have next to state my opinion upon this case. Having already, in the court below (*vide* 19 L. T. Rep. 370), fully entered into the question of the capacity of an infant deputy-steward, of competent understanding, to take the surrender of a copyhold estate, and determined that he was capable of doing so, it is unnecessary for me to say more upon that point, than that that opinion has not been altered by anything which I have heard in the reargument, or by the further consideration which I have given to the question. In the course of the argument upon the appeal, however, two or three points have been brought forward, which were not adverted to in the court below, and I think it right, therefore, to make a few observations upon those points. It has been argued, on the part of the appellant, that this case falls within the principle of the cases in which it has been held that, upon mortgages of the estates of married women, the old uses were not altered by the equity of redemption being reserved to parties who would not be entitled under those uses; those cases do not appear to me to apply to the present, or in any degree to assist the appellant's case. They proceed upon this principle: that the purpose of the deed being to create a mortgage, the court will not, from more trifling and partial alterations in the reservation of the equity of redemption, imply an intention not merely to create the mortgage, but also to alter the uses. The court is to collect what was the intention of the parties in the transaction. The nature of the transaction distinctly evidences one intention, and the court will not, from trifling circumstances, impute another; but, in the present case, it distinctly appears by the surrender that the intention was not merely to create a present mortgage, but to give power to create further charges; and nothing which I can find in the cases referred to would warrant the extension of them to such a case. The case of *Jackson* v. *Innes*, in the House of Lords, seems to be very strongly opposed to this argument on the part of the appellants. The question here is on the right to create the further charges, and not on the right to the ultimate equity of redemption, subject to the charges when created. The appellants then attempted to impeach the securities upon the evidence taken in the cause; but the appellants are defendants in this cause, and I feel great doubt whether it is competent to them to do so. The plaintiff's security is, I must now assume, well created by deed, and I rather apprehend such a security, if impeached at all, must be impeached by cross-bill. The security is good until impeached; and to allow the defendant to impeach it by her answer and by evidence on her part, would be to make a decree in favour of the defendant upon the application of the plaintiff. If the defendant were at liberty thus to impeach the plaintiff's title, she must equally be at liberty wholly to subvert it; and the consequence of allowing this would be that plaintiffs, coming to this court for relief, might find themselves in the position of being decreed to convey to the defendants. The objection to decreeing relief upon the answers to defendants is, perhaps, founded upon deeper reasons than may at first sight appear. It may be the medium of compelling defendants to do justice to plaintiffs by putting any legal rights they may have under the control of the court, and of thus giving effect to the rule, that he who comes into equity must do equity. The only other point to which I think it necessary to advert is the offer now made, on the part of the appellant, to file a cross-bill, the court in the meantime suspending the decree. It is, I apprehend, within the power of the court to grant this indulgence; but what is asked of the court is clearly indulgence. The ordinary course of the court is not to stop the progress of the cause unless the cross-bill is filed in due time. Upon a motion to adjourn a cause upon the ground of a cross-bill having been filed in *Coates* v. *Pearson*, 4 Mad. 262, Sir John Leach says, "If the cross-bill had been filed in due time you might have moved to stay publication in the original cause, but you cannot now stop the progress of the cause." Has then the appellant made a case entitling her to the extraordinary indulgence of suspending the decree in the original cause, not at the original hearing, but at the rehearing? I am of opinion that she has not. I think it clear upon the evidence that this lady well knew that her late husband was borrowing money on the estate, and was herself instrumental to the borrowing it. This I think is fully proved by the plaintiff's evidence, and the lady does not in her evidence assert the contrary. I think the case set up by this lady of fraud upon her in procuring the surrender is entirely an afterthought upon her part. The evidence seems to me to prove that the original dispute in this case was whether more than 450*l.* was due on the securities, not whether there had been any fraud in the surrender, and that at a later period of the dispute the question raised by this lady's solicitor on her part was not whether there had been fraud in the surrender, but whether the lady could not defeat it upon the legal ground of the infancy of the deputy-steward. These are circumstances which might not defeat the right of the appellants to relief in equity; but in my opinion they are circumstances which disentitle them to any extraordinary indulgence from the court, and I therefore concur in the opinion that this appeal ought to be dismissed.

Lord Justice KNIGHT BRUCE.—In the present case there are questions of law, of equity, and of fact, which, with or without sufficient reason, have appeared, and still appear to me, of difficult solution and doubt. While my mind was in this condition on the matter, I found from the Lord Chancellor and Lord Justice Turner that they had made up their minds and were agreed as to the proper mode of dealing with the case, a circumstance which rendered it necessarily unimportant what my view of the case might ultimately be, and I thought it consequently better for the parties that they should not be kept longer in suspense by reason of my undetermined state of opinion, a state which might not soon end, or which might possibly be never wholly removed. I requested their Lordships accordingly not further to postpone disposing of the appeal. This their Lordships have now done, the judgment of the court being one to which possibly a more prolonged consideration of the questions in dispute between the parties might bring me to assent, though at present I do not do so.

IN LUNACY.

Jan. 26 *and* 31.

(Before Lord CRANWORTH, L. C.)

Re SARAH THOMAS, a Lunatic.

Lunatic mortgagee—Costs—Practice.

The costs of an order vesting the estate of a lunatic mortgagee in the mortgagor, directed to be paid by the mortgagee. An order was at the same time made directing the committee to convey at the expense of the lunatic's estate, except that the cost of the stamp of the vesting order was to be borne by the mortgagor.

This was a petition presented by the committee of a lunatic mortgagee for payment of the mortgage money into court, and an order vesting the estate in the mortgagor.

Rushout, for the petitioner, cited *Ex parte Wheeler*, supra, 57; *Ex parte Richards*, 1 Jac. & W. 264. He submitted that the stamp imposed upon the vesting order by the 15 & 16 Vict. c. 55, ought to be paid by the mortgagor.

Scott, for the parties interested in the equity of redemption.

Jan. 31.—If this had been a *res integra*, I should not have given any costs out of the lunatic's estate. To give the costs of the vesting order would be going beyond the authorities. You may have an order for the committee to convey, the costs to be paid out of the lunatic's estate, or you may have a vesting order at the costs of the mortgagor.

Renshaw.—I appear for the committee, who is the petitioner, and only ask that the cost of the stamp of the vesting order should be paid for by the mortgagor.

The LORD CHANCELLOR.—I don't know whether I ought to accede to this request; but in this instance you may take an order vesting the estate in the mortgagor; the estate of the lunatic paying all the costs, with the exception of the stamp.

IN LUNACY.

Wednesday, Feb. 9.

(Before Lord CRANWORTH, L. C.)

[illegible] SARGASURIOLA.

[illegible] was entitled to 600*l.* Consols, [illegible] dividends not having been received [illegible] and were transferred to the [illegible] Bank.

LORD CHANCELLOR'S COURT.

On the petition of the curator of the lunatic, the fund was ordered to be transferred into the name of the Accountant-General in trust, and the dividends paid to him.

This was a petition presented under the 56 Geo. 3, c. 60, s. 5, for the retransfer from the Commissioners for the Reduction of the National Debt of the sum of 600*l.* Consols, and the dividends which had been unclaimed since the year 1839. The fund, when transferred, was standing in the name of the lunatic, who was a resident of Genoa. She had been found a lunatic in that state, and the petitioner had been appointed the "curator" of her person and property by the proper judicial authorities. The petition also asked, that the accumulated dividends might be paid to the petitioner.

Lloyd appeared in support of the petition.

Wickens, for the Attorney-General and the Commissioners, objected that there was not sufficient evidence of identity; that there was a question of jurisdiction; and that the Commissioners would not be sufficiently protected by the unconditional transfer of the fund to the "curator."

The LORD CHANCELLOR.—The 5th section of the Act declares "that it shall be lawful for the governor, &c. of the Bank of England, to direct the proper officer to retransfer any stock which shall have been transferred to the Commissioners for the Reduction of the National Debt, into the names of any person or persons who shall show to the satisfaction of such governor, &c. his or their right or title thereto, and to pay the dividends due thereon; but in case such governor shall not be satisfied of the justice or legality of the claim which shall have been made to any stock so transferred, then and in every such case the claimant or claimants shall by petition in a summary way state and verify his claim to the Court of Chancery, &c.; and the court was thereby authorised to make such order thereon, either for the transfer of the stock and for payment of the dividends which shall have accrued or become due and payable thereon, as it shall think fit." The petition has been served according to the provisions of that section, and therefore I do not question that I have jurisdiction. The Act authorises me to direct transfer and payment in such a manner as shall appear just. The identity of this party must be established, and, subject to that being sufficiently made out, I shall direct the principal of the stock to be transferred into the name of the Accountant-General in trust in this matter, and the arrears of dividends to be paid to the "curator," and that the accruing dividends shall be paid from time to time to the "curator," so long as he should continue to be the "curator."

Wickens asked that the fund might not be retransferred without notice to the Commissioners.

The LORD CHANCELLOR.—That I do not apprehend to be necessary. The Act sufficiently indemnifies them. The costs of all parties must come out of the arrears of the dividends.

IN BANKRUPTCY.

Saturday, Feb. 12.

(Before Lord CRANWORTH, L. C. and the LORDS JUSTICES.)

Re TURNER, *ex parte* CROSTHWAITE.

Bankrupt's estate—Increased value of—Sale of. Creditors, trustees of a fund, allowed the conduct of a sale of part of the bankrupt's estate, although an order directing it to be sold by the commissioner had been drawn up.

Since the date of a bankruptcy certain shares, part of the estate, had greatly increased in value. The bankrupt's estate was ordered to be credited with one half of the increased produce, including the dividends which had been received upon them, with liberty for the creditors to prove for the residue of their demand.

This was a motion to vary the minutes of an order which had been drawn up by the registrar. The question arose as to the value of certain shares in the Carron Company, which had very much increased in value since the bankruptcy. For the purpose of ascertaining their value, the order, as drawn up, directed the shares to be sold by the commissioner in bankruptcy. To this the respondent objected, and insisted that he ought to sell them himself, and thereby to save the costs which would be incurred, and the fees of the official manager.

Daniel and *Morris*, in support of the motion, asked whether the bankrupt's estate ought to be credited with the whole amount which the shares might realise on the sale, or only with the value of them at the time of the bankruptcy?

Bacon and *Selwyn*, for the respondent.

The COURT decided that the respondent should sell the shares, and that he should give the bankrupt's estate credit for one half of the produce, including any dividends which he might have received, and that he should prove for the residue of his demand. The costs were ordered to come out of the bankrupt's estate.

COURT OF APPEAL.

COURT OF APPEAL IN CHANCERY.

Reported by OWEN DAVIES TUDOR, Esq. of the Middle Temple, Barrister-at-Law.

Wednesday, Jan. 28.

Ex parte MANICO, *re* MANICO.

Bankrupt Law Consolidation Act—250th sect.—Certificate.

A young man, with little capital except what was borrowed, carried on business as a wine merchant, and in many instances bought parcels of wine, which he immediately pledged, and failing to redeem, they were sold by the brokers, at a considerable sacrifice; but as it was not proved that he bought the wines with an intention of pledging them, or with dishonest intention, and had not been guilty of uttering an untruth as to his affairs, and had been moderate in his personal expenses, it was held, overruling the decision of the Commissioner, who had refused to grant a certificate or protection, that as the conduct of the bankrupt did not come within the meaning of the term "offences" in the 256th sect. of the Bankrupt Law Consolidation Act, and it was not a case which, in the opinion of the court, should be visited with so much severity, a suspension of the certificate for two years from June 14 last, and giving him then a third-class certificate, and depriving him of protection for six months, would be a sufficient punishment for his imprudent conduct.

This was an appeal by the bankrupt from the decision of Mr. Commissioner Evans, refusing to grant him any certificate, or any protection from arrest, upon the ground that the bankrupt had for a series of years bought goods, pledged them, and allowed them to be sold for half their value. The learned Commissioner, in delivering judgment, said: "It is very difficult to understand why the bankrupt has taken this course. He is either one of the most fraudulent men that ever lived, or he is mad. I have my suspicions which."

The evidence contained in the affidavit on both sides was of a somewhat conflicting character.

By the affidavit of Mr. George, the managing clerk to the solicitors of the assignees, it was sworn that the bankrupt, who, from Jan. 1846 to Aug. 1849, carried on the business of a retail wine merchant, disposed of such business, and the stock and implements of trade, to Mr. W. R. Carter for 290*l.* 17*s.* 9*d.*, secured by three bills of exchange. From that time he commenced business as a wholesale wine merchant. That it appeared, by the books and accounts rendered by the bankrupt to his assignees, that, in the years 1848 and 1849, he speculated largely in time bargains for the purchase and sale of Consols and railway shares to the amount of upwards of 100,000*l.*, in respect of which he lost the sum of 700*l.* or thereabouts, but as against such losses, he made a profit on some of his transactions in Consols, to the amount of 238*l.* or thereabouts. That, from extracts from his balance-sheet and accounts, it appeared that during the twelve months next preceding his bankruptcy, the bankrupt borrowed various sums to the amount of 1043*l.* 8*s.* 8*d.* upon the pledging of goods. That the bankrupt previous to the 9th June 1851 had been in the habit of obtaining advances upon the deposit of wines purchased by him to a considerable amount. That from extracts from the balance sheet and accounts of the bankrupt it appeared that the bankrupt from the 30th July 1851 to the 24th May 1852 (on about 55 transactions) made losses to the amount of 5303*l.* 0*s.* 1*d.*; that, as far as could be discovered, most of the goods upon which the aforesaid losses were made were purchased by the bankrupt for credit for 14,678*l.* 2*s.* 9*d.* and were still unpaid for by him, and were pledged by him on or subsequently to his obtaining advances thereon, and appear ultimately to have realised the amount of 9,141*l.* 12*s.* 4*d.* only. That he could not discover that the bankrupt at any time repaid to the persons with whom he pledged the aforesaid goods the advances obtained thereon, otherwise than by allowing such person to sell and sacrifice the goods so pledged with them, at enormous losses, by public auction or otherwise. That the losses made by the bankrupt prior to the month of Dec. 1851, in consequence of his pledging goods which he had bought on credit, and the sale thereof by reason of his inability to redeem the same, amounted to a very considerable sum. (An account is then given of various losses, arising from the sale by public auction of goods and purchases pledged by the bankrupt, and sacrificed by reason of his non-payment of the advances.) That at the time of the bankruptcy, goods purchased for 1803*l.* 14*s.* 4*d.* were deposited with Mr. Norris, for advances to the amount of 689*l.* 10*s.*, and were afterwards sold by public auction by Mr. Norris, and realised little more than the amount due from the bankruptcy to Mr. Norris thereon. That it was stated by the solicitor for the assignees at the sitting, at the hearing of the bankrupt's application for his certificate before Mr. Commissioner Evans, and was not denied by the bankrupt, that he frequently pledged the warrants for wine purchased by him on credit immediately after he had received the same, and that he never kept a warrant in his possession for more than a week, but either sold the wine or pledged the warrants within that time. That by the stock account of the bankrupt it appeared that such of his purchases as resulted in a profit between Dec. 14, 1851, and the time of the bankruptcy, amounted to 540*l.* or thereabouts only; the losses on sales during the same time having been 8745*l.*, besides the loss on goods in the hands of Mr. Norris and others at the time of the bankruptcy, and the loss of 1452*l.* 4*s.* 8*d.* on the stock in hand on Dec. 14, 1851. That during the last three months of the year 1852, the purchases of wine and brandy made by the bankrupt of Mr. R. Carter, who was himself a retail wine merchant, amounted to the sum of 228*l.* 12*s.* 7*d.* or thereabouts. That during the year 1850, such purchases amounted to the sum of 1098*l.* 8*s.* 7*d.* or thereabouts; that during the year 1851 such purchases amounted to 8529*l.* 9*s.* 4*d.* or thereabouts; and that during the first six months of the year 1852 such purchases amounted to the sum of 3991*l.* 3*s.* 8*d.* That the bankrupt moreover made losses by time bargains in the purchase and sale of tallow, prior to Jan. 1, 1850, of 587*l.* 7*s.* 1*d.*

Two wine merchants who were creditors of the bankrupt also, by their joint affidavit, charged him with having fraudulently obtained and pledged wines and spirits, and allowed them to be sold and sacrificed by the lender, and that they would not have trusted him, and would have refused him all credit, had they believed him to be guilty of such practices.

The bankrupt, by his affidavit in answer to the last-mentioned affidavit, stated that the earlier sales of wines made by public auction on his account were not made by reason of his inability to redeem goods which had been pledged; but he admitted that wine was subsequently sacrificed at public sale by the brokers in consequence of his being unable to redeem the same. The bankrupt also swore that each parcel of wines sold at sales could be clearly identified, and that merchants and others engaged in the trade knew or have the means of knowing by whom such wine was imported, and upon whose account it was being sold; that all his creditors could have become acquainted with the sales, and that he never concealed or endeavoured to conceal the same, and he believed that most of his creditors were well aware of the same; and that they were frequently mentioned in conversation between his creditors and himself. That it was prudent sometimes to sell the low-priced wines by sale, as they would deteriorate by being kept too long. That the bankrupt had not the slightest difficulty in purchasing wine to any extent, and was continually pressed by those in the trade to purchase large quantities of wine upon credit.

With reference to the affidavit of Mr. George, the bankrupt swore that he had not had time to examine or test the accuracy of all the various figures and statements in the said affidavit. He admitted the speculations in railway shares and Consols, and his losses thereby, but that before the close of the year 1849 he became fully convinced of the impropriety of such transactions, and determined wholly to discontinue the same, and did so, and he had not since entered into any such speculations. That with regard to the sales of wines by the brokers, at least fourteen of the sums mentioned in the account were not loans made to him, but payments for wine sold by brokers on his account; that no mention was made of the goods on which he had made a profit; but he admitted that the losses made by him were exceedingly great, and caused his complete ruin. That, however, many of the goods which were stated to have been pledged or sold by the bankrupt had been sold after his bankruptcy. That the statement that the bankrupt never kept a warrant for wine in his possession more than a week, was altogether incorrect, as he had frequently warrants of a very considerable value in his possession for long periods together; and that he was never without many such warrants in his possession. And, upon his bankruptcy, he gave up to his assignees property to the amount of 1584*l.* 7*s.* 6*d.* besides that upon which he had obtained advances; and that the property so given up by him consisted principally of wine warrants, upon which he could easily have obtained an advance of several hundred pounds. And the bankrupt swore that his conduct in the purchase and pledging, and sale of goods did not arise from fraudulent and dishonest motives; and that he did not know, when he pledged most of the wines and spirits which he had purchased upon credit, that he should be unable to redeem the same; and that he hoped to be enabled to retrieve his position and pay for the said goods.

The bankrupt appeared to have commenced business with little except borrowed capital, but his personal expenses and that of his family appeared to have been very moderate.

Bacon and *Bagguley*, for the bankrupt, in support of his appeal, urged that the refusal of a certificate and all protection to the bankrupt was too severe a punishment; for, although his conduct was improper, it arose in a great measure from his inexperience and youth, and the position in which he was placed by the credit that had been given to him. [illegible] undertook this business [illegible] it had not been successful, he would have been [illegible] with the [illegible] Bankruptcy Act, and [illegible] of the Bankruptcy Court, the

COURT OF APPEAL.

petition, and insisted that the bankrupt had bought the wine for the purpose of pledging it; that it was unnecessary, and indeed impossible, to prove what might have been his intention when he made each particular purchase; but his systematically buying goods, and then pledging them, and allowing them to be sold by the person advancing him money, was sufficient to enable the court to presume that his intention was fraudulent, and that his conduct and dealings amounted to offences within the meaning of the 256th section of the Act. They referred to *Ex parte Holthouse*, 18 L. T. 84.

Baggallay, in reply.

Lord Justice KNIGHT BRUCE.—The conduct of the petitioner has been with great propriety admitted by his counsel to have been in several respects of a blameable description—I mean his conduct as a trader. The case, however, (to say nothing of the difference which existed in point of age between the bankrupt in the case of *Holthouse* and the present) is not one which deserves, in our opinion, to be visited in the same way as was done in *Ex parte Holthouse*, (18 L. T. Rep. 84,) a case which I then thought, and still think, was rightly decided. A question has been raised whether this case has been brought within the 256th section of the Act, as to which we must recollect that it contains the words "offences," and that there is absent from this Act a provision that the Act shall be construed beneficially to creditors. The 256th section, therefore, must receive rather a strict than a loose construction, and I am of opinion, though there was some degree of impropriety in the conduct of the bankrupt, it has not been proved to us that there was a contracting of debts by fraud or false representation, within the terms of the 256th section; and there is no other ground for bringing him within that section. The case, therefore, falls within the discretion of the court; it is one of a young man without capital, or nearly so, and known by his creditors so to be, not brought up to business, and probably known by his creditors not to be brought up to business, who has acted rashly and imprudently in many respects, who bought goods, and very soon after pledged them; but I am not satisfied that it would be right to attribute to him having bought them with the mere view of pledging, or with a dishonest intention. His books have been kept regularly; I am not aware of any instance of untruth uttered by him; and to this I add, that, being a married man with two children, his personal expenses have been kept within the bounds of moderation and economy, in a manner highly commendable; and there is no instance of ostentation or selfish expenditure. Taking these things together, my impression is that a milder sentence than was awarded by the commissioner may be consistent with the interests of society, to which regard is to be had in these cases. The demands of justice will, I think, be satisfied by suspending the certificate for two years from the 14th June last, and, when granted, letting it be one of the third class; and by depriving him of protection for six months from this day, and for no longer time.

Lord Justice TURNER entirely coincided with the judgment of his learned brother, and observed that the case did not fall within the 256th section of the statute; that if it had, he should have entertained doubt whether the principle had not here gone too far; for if, where only one of the offences specified in that section had been committed, the Commissioner was bound to inflict the extreme penalty, it would be difficult to see what would be done if the bankrupt had been guilty of all the offences. Looking at the facts of the present case, one was bound to say that the conduct of the bankrupt had been blameable; but then there were other circumstances which deserved the consideration of the court; and the measure of justice awarded by the Lord Justice Knight Bruce seemed well adapted to meet the merits of the case.

Wednesday, March 2.

STANSFIELD *v.* HOBSON.

Mortgagor and mortgagee—Statute of Limitations, 3 & 4 Will. 4, c. 27, s. 28—Redemption.

A mortgagee had been upwards of twenty years in possession of the mortgaged premises, when, in answer to a letter of the mortgagors' solicitor, requesting to know when he could see him as to his claims on the property, he replied that he did not see the use of a meeting "unless some party is ready with the money to pay me off;"

Held, affirming the decision of the court below, that it was a sufficient acknowledgment in writing of the title of the mortgagors to their solicitor, acting as their agent, to take the case out of the general provisions of the Statute of Limitations, 3 & 4 Will. 4, c. 27, under the 28th section of that statute.

[illegible] was filed by the plaintiff James [illegible] on behalf of themselves and [illegible] scheme, called the [illegible] against one Robertson, [illegible] Hobson, &c. the [illegible] mortgagee of John Hobson, [illegible] which [illegible] a letter given by him to [illegible] the mortgagors, or one of the mortgagors, in March 1850, after twenty years had elapsed from the time when he had entered into possession, was such an acknowledgment as to take the case out of the 28th section of the new Statute of Limitations, 3 & 4 Will. 4, c. 27, whereby it is, amongst other things, enacted, "that when a mortgagee shall have obtained the possession or receipt of the profits of any land, or the receipt of any rent comprised in his mortgage, the mortgagor, or any person claiming through him, shall not bring a suit to redeem the mortgage, but within twenty years next after the time at which the mortgagee obtained such possession or receipt; unless in the meantime an *acknowledgment* of the title of the mortgagor, or of his right of redemption, shall have been given to the mortgagor, or some person claiming his estate, or to the *agent* of such mortgagor or person, *in writing signed by the mortgagee*, or the person claiming through him.

It appeared that on the 2nd Feb. 1850, Mr. Radcliffe, the solicitor of the plaintiff, wrote a letter to the defendant John Hobson, requesting to know when he could see him in Bakewell or Manchester as to his claims upon the said property; and that, in answer to his letter, he received the following letter from the defendant Hobson:—

"Sir,—I received yours of the 2nd inst. I do not see the use of a meeting, either here or at Manchester, unless some party is ready with the money to pay me off.—I am your obedient servant, JOHN HOBSON.

"Bakewell, Feb. 5, 1850."

Sir J. Romilly, M.R. held that this letter was a sufficient acknowledgment to take the case out of the Statute of Limitations, and made a decree for redemption; and from this decision the defendant now appealed.

Elmsley and *Osborne*, for the plaintiff, in support of the decree of the M. R. relied upon *Trulock* v. *Robey*, 12 Sim. 402, where it was held that an acknowledgment in writing of the right of the mortgagor made to his agent was sufficient to take the case out of the statute. That in this case the acknowledgment of the title of the mortgagors to redeem was sufficiently clear.

Rondell Palmer and *Hamilton Humphreys* endeavoured to distinguish the case from *Trulock* v. *Robey*, and contended that there was not a sufficient acknowledgment of the title of the mortgagors; that, according to the proper construction to be put upon the 28th section, the acknowledgment, assuming it to be in other respects a valid one, not having been made within twenty years next after the mortgagee obtaining the possession or the receipt of the profits of the land, was of no effect: (*Morrell* v. *Frith*, 3 M. & W. 403; *Haydon* v. *Sutton*, 7 Bing. 163; *Hodle* v. *Healey*, 6 Madd. 181, were cited and commented on.)

Lord Justice KNIGHT BRUCE.—Perhaps we ought to feel some difficulty about this case; but I for my part have no doubts. It appears to me that the letter of the 5th Feb. acknowledged that the writer of the letter, Mr. Hobson, holds the estate to which it relates on a title which is redeemable, that is to say, by a mortgagee's title. It is said, however, that this does not answer the requisitions of the statute, as not being an acknowledgment of the plaintiff's right to redeem. It certainly is an acknowledgment of some person having a right to redeem: and it seems to me, according to the true construction to be put upon the letter, to acknowledge a title to redeem in the person on whose behalf the letter was written to which the letter of the 5th Feb. was an answer. I am of opinion that the decision of the M. R. was correct, and that this appeal ought to be dismissed with costs.

Lord Justice TURNER.—I am of the same opinion. When Mr. Hobson, in his letter, makes use of the terms—"I do not see the use of meeting here or at Manchester unless some party is ready with the money to pay me off," that is clearly an admission of some party having a right to redeem. But then it is assumed that it is not an admission of the right of these parties to redeem. I think, however, that it is, according to the reasonable construction to be put upon the letter of the 5th Feb., and taking into consideration that it was addressed to the solicitor, or agent of the mortgagor's, making an offer to redeem. Again, it is said that the offer is conditional "on some one having the money ready to pay the mortgage off." But that is not so, as time would necessarily be allowed to the parties for procuring the money, and for the accounts to be settled and the balance ascertained. The result is, that the appeal must be dismissed with costs.

ROLLS COURT.

Reported by J. MACAULAY, Esq., of the Inner Temple, Barrister-at-Law.

Friday, Jan. 14.

ATTORNEY-GENERAL *v.* SMYTHIES.

Charity—Apportionment of income—Costs.

A charitable institution was established for the support and maintenance of a master and five poor persons, who were incorporated and entitled to a certain amount of the income of the charity property for their support and maintenance. The master having died in the month of March, his representatives were

ROLLS COURT.

Held entitled to an apportionment of the dividends on stock (not within the Apportionment Act) accruing due in the July following.

The costs of the petition on the subject held payable not out of the charity fund, but out of the half-year's income, the residue of which was to be apportioned.

By letters patent, dated 9th Oct. in the eighth year of the reign of King James I. reciting that a certain college or hospital was then lately discovered to have been founded in the suburbs of the town of Colchester in Essex by Eudo Dapifer, formerly seneschal of King Henry I. after the conquest, commonly called the Hospital of St Mary Magdalene, in the suburbs of the town of Colchester, for the habitation of lepers and infirm persons, that the said college or hospital was fallen into decay and its property alienated and converted from its proper uses, and that his Majesty was desirous to provide for the foundation and perpetual relief and support of that college or hospital, and of the master and poor who should be and be maintained in the same; it was thereby ordained and granted that from thenceforth and for ever there should be one college or hospital of the poor in the suburbs of the town of Colchester for the relief or maintenance of the poor, that should exist for ever, and be called the the College or Hospital of King James, in the suburbs of the town of Colchester; that it should consist for ever of one master and five poor; and in order that the goods, lands, tenements, incomes, revenues, and other hereditaments which had been granted and assigned for the perpetual support of the said college or hospital, might be better governed and expended for the support and maintenance of the master and poor of the said college or hospital, and for the preservation of the said college or hospital for ever, it was thereby further ordained that thenceforth and for ever there should be one master of the said college or hospital, and of the goods, chattels, lands, and other possessions thereof, and that he should have the cure of the souls of the parishioners of St. Mary Magdalene in the said town of Colchester, and he should there celebrate divine service; and further, that there should be five poor persons who alone, either men or women, should be supported, relieved, and maintained in the said college or hospital, and they should be called the poor of the College or Hospital of King James, in the suburbs of the town of Colchester, and for their support, relief, and maintenance they should have, enjoy, and receive through the hands of the said master for the time being, or of his assignees, annually 52*s.*, which should be paid to the same poor by the same master for the time being, or by his assignees, by equal quarterly payments of 13*s.* each at the four usual feasts; and the persons so appointed poor persons of the college or hospital were to continue so for life, unless for reasonable cause they should be removed by the master; and in case of death or removal of any one or more of such poor persons the master was authorised to elect one or more others in their place; and the master and poor of the said college or hospital were thereby created and constituted a body corporate and politic by the name of "The Master and Poor of the College or Hospital of King James, in the suburbs of the town of Colchester;" and the Chancellor or Keeper of the Great Seal of England was thereby appointed visitor of the college or hospital, and he was authorised, on the death or removal of the master, to appoint a fit person in his place; and the master was thereby authorised and empowered, with the consent of the Attorney-General and Solicitor-General for the time being, or either of them, to make, ordain and establish good, useful, and wholesome statutes, laws, and ordinances in writing touching the government, election and expulsion, punishment, order, and direction of the master and poor of the college, and to appoint any other things whatsoever concerning the college, and the ordering and disposal of the goods, rents, revenues, and possession thereof; and it was thereby further ordained that the income and revenues of all the manors, lands, hereditaments, and possessions, which had been theretofore or should thereafter be given to the perpetual support and maintenance of the said college or hospital, should be disposed of and expended for the support of the master and poor of the college or hospital for the time being, and for the support, maintenance, and repairs of the houses, tenements, and possessions of the college or hospital, according to the statutes, laws, and ordinances aforesaid. A body of laws and statutes was accordingly drawn up for the regulation of the hospital and its members, relating principally to the powers and duties of the master, and partly also to the conduct and obligations of the poor, who were to be resident, and not to lodge a night elsewhere without the licence of the master. At the time the information was filed the annual income derived from the property and possessions of the hospital had greatly increased, and amounted to upwards of 350*l.* a year; but no increase had at any time been made in the yearly payment of 52*s.* to each of the five poor persons; but the whole of the residue, after satisfying those five yearly payments, had from the establishment of the hospital been uniformly received and taken by the master for the time being for his own use. On the years 1796 and 1797 respectively, two leases of parts of the charity lands were granted by the then master of the

college to the Board of Ordnance for the terms of twenty-one years each, on certain terms, for the purpose of building barracks; and on the 18th May, 1818, an agreement was entered into between the Rev. John Robert Smythies, the then master of the college, and the comptroller of the barrack-office, that the whole of the barrack-buildings should be sold by auction, and that one moiety of the proceeds of the sale should be applied in paying to Mr. Smythies two fines amounting to about 115*l.* and the residue should be received by Mr. Smythies in consideration of restoring the ground to its former state. This residue amounted to upwards of 5000*l.*, which Mr. Smythies treated as his own private property; but on the hearing of the information it was held, among other things, that this sum was not a profit personal to the master, but received by him in trust for the charity. The money was accordingly paid into court, and the income was received by Mr. Smythies in the same manner as the income of the other charity property. The sum so paid in, though over 5000*l.* at first, was subsequently reduced by sales of the Consols. In which it was invested from time to time, for payment of costs, &c. so as to amount now to only 2801*l.* 18*s.* 5*d.* Consols. Mr. Smythies died on the 24th March, 1852, and John Kinnersley Smythies and George Smythies are his executors. On the death of Mr. Smythies, the petitioner, the Rev. Barton Lodge was appointed master of the college or hospital; and he now presented his petition, praying that the costs might be taxed and paid, and that the income of the fund in question should be paid to him. The executors of Mr. Smythies, however, claimed to be entitled to a portion of the income of the half-year ending 5th July, 1852, corresponding to the time between the 6th January and the 24th March, and that the income should be apportioned accordingly.

Howe, for the petitioner, Mr. Lodge, said, it was admitted that the case did not come within the Apportionment Act (4 & 5 Will. 4, c. 22), but it is contended that there ought to be apportionment on the terms of the charter; but there is no foundation for any such construction. The only exceptions to the rule against apportionment, in cases not coming within the Act, are those of infants, and married women living separate from their husbands. In *Rashleigh* v. *Master*, 3 Bro. C. C. 101, it was held that the dividends of stock were not apportionable, though money invested in land might have been.

Smythe, contrà, contended that, the charity being intended for the maintenance and support of poor persons, the case came within the principle of the rule as to infants; and the same reason would apply to the case of successive incumbents of a benefice, the proceeds of which are apportionable. This is not an annuity, but only a case of a man having an office to discharge, and the corporation being a trustee of the money.

The MASTER of the ROLLS.—I think there must be an apportionment. The question does not rest on the general ground of cases not coming within the Act, but upon the principle of the rule in cases of infants and married women who have no other support; and I think this is so, on the ground of the construction of the language of the charter. This is an eleemosynary establishment, the funds of which, upon a proper construction of the letters patent, are to be applied for the support and maintenance of poor persons, and that must be *de die in diem*, for otherwise the almspeople could not get what would support them during the year, and, if persons who supplied them could not recover what was owing for supplies, they would be deprived of payment altogether. The same principle applies to the master; and, therefore, there must be an apportionment of the dividends to the representatives of the late master. The costs as to this petition are to come, not out of the fund, but out of the half-year's income, and the residue of the payment thereof to be apportioned.

ATTORNEY-GENERAL *v.* HALL.

Charity—Setting aside long lease—Notice of charitable trusts—Grant of new lease in consideration of surrender of previous lease.

Charity lands were let in the year 1730 *at a rental of* 4*l.* *per annum. The indenture of demise was made between the three then surviving trustees of the charity and the lessee, but no notice was therein taken of the trusts to which the property was subject. In* 1800 *the assignees of the lessee surrendered it, and in consideration of the surrender and a fine of* 300*l.* *obtained a new lease at the same rent as the old. The new lease was made by the trustees of the property (who had been newly appointed) with the consent of the party for the time being beneficially interested under the trusts, and it contained a clause empowering the lessee to erect such buildings as should be necessary, and at the expiration of the lease to remove and carry away the then or thereafter to be erected buildings. The lessee afterwards sub-let the property:*

Held, that the lease was improvident, and both it and the under-leases must be set aside, and an account of the rents and profits must be taken since the filing of the information; but without costs.

Held also, that the fact of the lease being granted in consideration of the surrender of the previous lease made no difference.

Held also, that as none of the grantors of the new lease were the same as those who granted the old lease, this should have put the lessee on inquiry as to their title, which would have disclosed the trusts:

Held also, that both the last-mentioned circumstances, and the fact that the lease was made with the consent of one who turns out to be the party for the time being beneficially interested, constituted sufficient constructive notice of the trust.

This was an information to set aside certain leases of charity property. It appeared that Robert Stephenson, by lease and release, bearing date the 14th and 15th Aug. 1711, conveyed a piece of meadow land with a cottage and windmill standing thereon, situate at Drypool, Yorkshire, to trustees upon trust after the death of the grantor for the use and behoof of the nonconforming Protestant preaching minister or ministers for the time being, at the chapel or meeting-house in Lair Gate in Beverley, for ever. By indenture bearing date the 10th March, 1730, and made between the three then surviving trustees of the charity of the one part, and John Birkett of the other part, the property was demised to John Birkett for the term of ninety-nine years at a rent of 4*l.* In this lease no notice was taken of the trust. The original trustees being all dead in 1800, seven new trustees were appointed, and by lease and release of the 30th and 31st July 1800, and made between the heir-at-law of the last surviving trustee of the first part, Peter Feast, the then nonconforming Protestant preaching minister at Beverley of the second part, and the seven new trustees of the third part, the property was conveyed to the new trustees to hold upon the trusts of the original grant. Soon after their appointment the trustees, being desirous of raising money for the purpose of repairing the chapel, agreed with Mrs. Elizabeth Stickney, in whom the lease of 1730 had become vested, to grant a renewed lease of the property in consideration of her surrendering the old lease and paying a fine of 300*l.* An indenture of lease, bearing date 6th Sept. 1800, was accordingly executed by the seven new trustees of the first part, Peter Feast, described as the nonconforming Protestant preaching minister of Beverley of the second part, and Mrs. Stickney of the third part, and thereby the trustees, with the consent and approbation of Peter Feast, demised the property to Mrs. Stickney for a term of ninety-eight years at a rent of 4*l.* per annum. This lease contained a clause empowering the lessee to erect such buildings as should be necessary for her use: and at the expiration of the lease to remove and carry away such buildings as were then standing thereon, and also such other buildings as might be so built during the term. The clause as to the buildings, and the joining of the minister in the lease, constituted the only difference between it and the surrendered lease, which, in other respects, was expressed in precisely the same terms. On the 24th March, 1807, Mrs. Stickney granted an underlease of part of the premises to George Thompson, who died several years since, and his representative is the defendant John Hall. On the 2nd Oct. 1840, Mrs. Stickney granted an underlease of the residue of the property to the defendants Blaine and Ridsdale. Mr. William Young, the present minister of the chapel, having filed an information to set aside the lease of 1800, and the underleases, as improvident and injurious to the charity, the cause now came on to be heard.

R. Palmer and *Humphreys* for the information.

Roupell and *Ellis*, for the defendant Hall, contended that the lease was valid, and ought not to be set aside. The length of the term was not, *per se*, a ground for setting it aside; and, as to its being an improvident lease, it was sufficient to say that the property was of little value, and 300*l.* was an adequate consideration for the renewed lease. Besides, the lessee, Mrs. Stickney, had no notice of the charitable trust on which the land was held, nor was there any constructive trust; for the mere fact of the dissenting minister joining as a consenting party in the execution of the lease was not sufficient to raise any suspicion of the trust.

Lloyd and *J. H. Palmer*, for the devisees of Mrs. Stickney, insisted that the view of the case taken on the part of Hall was correct.

Cookrin for the trustees of the charity.

The following cases were cited: *Attorney-General* v. *Owen*, 10 Ves. 555; *Attorney-General* v. *Backhouse*, 17 Ves. 283; *Attorney-General* v. *Green*, 6 Ves. 452; *Attorney-General* v. *Griffith*, 13 Ves. 565; *Attorney-General* v. *Magwood*, 18 Ves. 315; *Attorney-General* v. *Brooke*, 18 Ves. 319; *Attorney-General* v. *Wray*, T. & R. 507; *Attorney-General* v. *Morgan*, 2 Russ. 306; *Kenny* v. *Brown*, 3 Ridgw. P. C. 512; *Attorney-General* v. *Kerr*, 2 Beav. 420; *Attorney-General* v. *Purgeter*, 6 Beav. 150; *Attorney-General* v. *South Sea Company*, 4 Beav. 453; *Attorney-General* v. *Pilgrim*, 12 Beav. 57; *Jones* v. *Smith*, 1 Hare, 55; S. C. 1 Phill. 244; *Nest* v. *Reid*, 2 Hare, 227; Sugd. V. & P. (11th edit.) 1040.

The MASTER of the ROLLS said, there were two questions to be considered in the present case, first, whether the lease in question was an improvident lease, and secondly, whether the lessee had notice of the trust. Now, as to improvidence, it was true the mere inadequacy of rent was not of itself sufficient to set aside a lease unless the inadequacy was excessive; but that rule applied only to cases in which the inadequacy of the rent was the only question. In the present case, there were other important considerations besides mere inadequacy to be taken into account. The lease was for a long term of ninety-nine years, though it was a mere husbanding lease, and, moreover, the covenants contained in it were very unusual, for it is thereby provided, among other things, that the lessee may remove any building on the premises at the end of the term. All the authorities concur in making it necessary for me to hold that a lease of such a kind is improvident, and in establishing the principle that the burden of proof rests on the lessee to show there was no notice of the land being charity property. The fact that the lease in this case was granted in consideration of the surrender of a previous lease made no difference, and even suppose it did, the fine paid for it was of very inadequate value; and, besides, there still remained the difficulty as to the length of the term. If, notwithstanding, it could be shown by the lessee that there was no notice of the trust, he (the M. R.) would not have made a decree to cancel the lease, unless, indeed, the lessee could have been put in the same situation as if it had not been executed; but in this case he was of opinion that Mrs. Stickney must be considered as having had notice. She was the owner of the lease of 1730, and she agreed to surrender it and take a new lease on payment of a premium. In carrying out this agreement, it was obvious, at first sight, that none of the persons who professed to grant the new lease were the same as those who made the lease of 1730; and this naturally ought to put Mrs. Stickney upon inquiry as to their title; and by that inquiry she would learn that their title must have been derived from the heir of the last surviving lessor or trustee of the charity property. This would lead her to a knowledge of the deed of July 31, 1800, in which she would find the trusts fully set out. That would be in itself sufficient notice of the trusts; but that is not all, for Mr Feast was made a consenting party to the lease, and that must clearly have been in respect of some interest in the property; and the question would naturally arise, what that interest might be; and the answer to that question would disclose the trust. Now a lessee must be supposed to know what interest a party who consents to or concurs in a lease has in the property demised; and Mrs. Stickney must in this case be fixed with constructive notice of the charitable trust. The lease must therefore be set aside, and an account must be taken of the rents and profits since the information was filed; but there will be no costs.

V. C. KINDERSLEY'S COURT.

Reported by W. H. RENNET, Esq. of Lincoln's-inn, Barrister-at-law.

Dec. 18 *and* 20.

SCOREY *v.* HARRISON.

Domicile—What effects pass under the words "property in a colony," in a will.

A person at the Cape of Good Hope was indebted to a testator's estate in England, who by his will bequeathed "all his property which he should leave in the said colony" to A. B. The debt was secured by a promissory note.

Held, that the promissory note passed under the word "property" in the testator's will.

The testator, James Scorey, who had been a master mariner, by a codicil to his will, after giving his widow a life estate in the income of his property and effects, upon the decease of his wife, "gave and bequeathed all his property which he should have in the said colony (the Cape of Good Hope) to his said child or children, if more than one, in equal shares." A suit had been instituted for the administration of the testator's estate, and the Master had found under the usual reference that the testator, at the time of his death, possessed a promissory note in the following words, "London, 11th Sept. 1845. 500*l.* Seven years after date, I promise to pay to Jas. Scory, Esq. or order, 500*l.* with interest from the date hereof, at the rate of 4*l.* per cent. per annum, payable quarterly; the said sum to be paid before the said seven years at my option. Payable at J. M. Boyer's, St Michael's Alley, Cornhill. James Falconer." A question arose on the further directions whether the note passed under the words of the above bequest.

Russell and *Martelli* contended that the note did not pass. They cited *Brook* v. *Turner*, 7 Sim. 671, and Story's Conflict of Laws, 2nd edit. 416.

Giffard, contrà, contended that as Falconer was domiciled at the Cape, and the testator at the time of the making of the codicil was also there, the locality of the debt followed the domicile of the debtor. No presentment of the note in London was necessary. He relied on *Williams* v. *Wentworth*, 19 L. J. Ch. 2; *Tyler* v. *Bell*, 2 My. & Cr. 105.

Selwyn and *Druce*, for other parties.

Russell, in reply.

The VICE-CHANCELLOR said, The effect of the statements in the Master's report is this: Mr. Scorey was resident at the Cape of Good Hope; he made this codicil there, and after the day aforesaid, Falconer, the maker of the note, was also a resident at the

Cape. What did the testator mean by the words of his codicil? Did he mean to include this property—this promissory note,—or did he not? If I could find in the codicil anything to lead me to say that he had not regard to probate or *bona notabilia*—if I could find any expression of what was his intention, whatever was the law of *bona notabilia*—I should decide according to such intention; but I have nothing to guide me except the words of the codicil. I have therefore only to consider what is the law with regard to the locality of such property. Perhaps, strictly speaking, it has no locality; but the law says that, for certain purposes, it shall have a locality when the party dies. The first question is as to probate: in what court is probate to be taken out? and that depends upon the question whether he had or had not property in such a diocese or province. If he had property only in a particular diocese, probate must be taken out there; if in more than one, then in the province; if more, then in both provinces. The law, therefore, has said that for determining in what court to take out probate there shall be observed certain rules with respect to the locality or supposed locality of the property; and where there is a simple contract debt upon a promissory note, the court has said that, for the purpose of probate, that debt shall be considered as having its locality in the place where the maker of it or the debtor resided. Now if Mr. Falconer, at the time of the testator's death, had been resident in England, for instance, in the diocese of Winchester, then it would have been necessary to have taken out probate or letters of administration, as the case might be, in the diocese of Winchester—but if property in more dioceses, then in the province of Canterbury. If that had been the case, in this instance the property would not have been within the terms of the will. Now what other indication can I have of the testator's meaning than that which I have already referred to—that which the law defines to be the locality? I have no other resource than to decide that this debt, which was due from a person resident at the Cape of Good Hope to the testator at the Cape, is to be treated as intended by him to be included in this property so designated by him, and must be included and treated as property comprised in this bequest. *Order accordingly.*

Friday, Feb. 25.

MELLING *v.* BIRD.

Lands Clauses Consolidation Act—Investment—Costs.

A sum of money having been paid into court by a company as the consideration money for part of an estate taken by them, a petition was presented that the amount might be taken as part of the purchase money of that estate and carried over to the account in the suit:

Held, that the transfer from the one account to the other was a payment out of court within the meaning of the Lands Clauses Consolidation Act.

The company is not bound to pay the costs of all the parties beneficially entitled if they do not join in the application to the court.

The petitioner in this case was entitled to one-tenth part of a sum paid in by the London and North-Western Railway Company as consideration money for lands taken by them. The estate was in the course of administration in this court. The land, together with other land, had been directed by the testator in the cause to be sold and distributed in certain shares.

The petition prayed that the money paid in by the company might be transferred by the Accountant-General from the account to which it stood to the credit of the cause. The petitioner had served the trustees under the will and the other nine parties beneficially interested in the produce of the sale of the estate.

Bailey, Follett, and *Eddis,* and other gentlemen, for the petitioner and the other parties.

Speed, for the railway company, contended that the company ought not to pay all the costs of the application. The 70th section of the Lands Clauses Consolidation Act authorises persons entitled to the rents so to apply. The owners of the other nine-tenths were not necessary parties to the petition, unless indeed they had been made co-petitioners, when the company could not have objected to pay the costs of the one application. This was not a payment out of court, but a simple transfer from one account to another. He cited *Re Isaac,* 4 Myl. & Cr. 11; *Hare v. Smith,* 14 Jur. 55.

THE VICE-CHANCELLOR said: No doubt the petitioner had power under the Act to present this petition. He was entitled to one-tenth of the proceeds of the sale, which would of course include one-tenth of the income of the estates. As to the question whether the court possessed jurisdiction under the Act to direct payment of the costs of a transfer from one account to another, he thought it had; as one of the cases pointed at by the Act was a payment of money out of court. Now, although this was not literally a payment out of court, it was a payment out of one account to another, and he thought came within the court's jurisdiction as to costs. The other question was,—whether these parties ought not to pay their own costs. Now it appeared to him, that upon the authorities, as well as upon the common sense of the matter, the company was bound to pay the costs of all parties that ought to be served; but upon an application of this sort consistently with that rule, if there be a great number of persons entitled to aliquot parts, and one of them petitions and serves the others, it was by no means of course that the company should pay their additional costs incurred by such service. Here the petitioner is entitled to one-tenth, and nine others appear, many of them separately. In his, the Vice-Chancellor's opinion, the petitioner ought to have applied to the other persons having the same interest as himself, and asked them to join in the petition. There might have been some good reason why they could not so join; and there might in that case have been a reason why the company might have been obliged to pay their costs. As to the trustees they could not properly join in the petition, and they must have their costs. The company would therefore only have to pay the costs of the petitioner and the trustees. *Order accordingly.*

Friday, March 4.

FREEMAN *v.* CHICHESTER.

Apportionment Act, 4 *Will.* 4, *c.* 22, *s.* 2.

A decree or order of the court which directs the payment of moneys to parties is not such an "instrument" mentioned in the 2nd section as comes within the operation of the Apportionment Act.

In the course of the hearing of a petition for the arrangement and payment of certain funds amongst parties entitled thereto, a question arose as to whether a deed of settlement, by virtue of the provisions of which the parties derived their interests in certain funds, was or was not executed before the Apportionment Act (which received the royal assent on the 16th June 1834) came into operation.

C. Hall, in support of the petition, said that, whether that were so or not various orders of the court had been made since that time, which he submitted had the effect of making the dividends of some of the funds apportionable under the 2nd section of the Act. The words of the first part of the section are: "And be it further enacted that from and after the passing of this Act all rents-service reserved on any lease by a tenant in fee, or for any life interest, or by any lease granted under any power (and which leases shall have been granted after the passing of this Act), and all rents-charge and other rents, annuities, pensions, dividends, moduses, compositions, and all other payments of every description in the United Kingdom of Great Britain and Ireland made payable or coming due at fixed periods, under any instrument that shall be executed after the passing of this Act, or (being a will or testamentary instrument) shall come into operation after the passing of this Act, shall be apportioned so and in such manner that, on the death of any person interested in any such rents, annuities, pensions, dividends, moduses, compositions, or other payments as aforesaid, shall," &c. &c.

The VICE-CHANCELLOR held that a decree or order of the court which was pronounced after the passing of the Act, and by which the rights of parties in funds or the dividends thereon might be declared, was not such an "instrument" as was contemplated by the Legislature in the above section.

V. C. TURNER'S COURT.

Reported by J. HENRY COOKE, Esq., Barrister-at-Law.

April 17, 19 *and May* 28.

SMITH *v.* HURST.

Trust deed for creditors—Voluntary deed—Power of revocation—Writ of fieri facias—No return.

A. B. was indebted to several creditors, and among them to C. D. He conveyed and assigned freehold, leasehold and personal estate to C. D. (without prejudice to the mortgage C. D. had over part of the property, and without prejudice to his character of receiver over the whole), upon trust for sale and to pay the produce among such of the creditors of A. B. as C. D. in his uncontrolled discretion should think fit; and there was an ultimate trust for A. B. his heirs, administrators, and assigns. The deed contained powers of compromise of debts, cutting timber, and that C. D. might at any time resign the trusts. C. D. was not described as a creditor, and was a party only as trustee, and no other creditor even knew of the existence of the deed. E. F. obtained a judgment against A. B. but no return was made by the sheriff on the fi. fa. E. F. filed a bill to impeach the deed:

Held, that the deed was revocable and therefore void; that the sheriff having made no return to the writ of E. F., no elegit could issue, and therefore E. F. could not maintain the suit as against the freehold estates: and that where property is vested in trustees for the benefit of creditors named, the grantor cannot revoke it; but where the deed is professed to be made for the benefit of unnamed creditors generally, the question whether it is revocable or not depends in each case on its own particular circumstances.

In this case the suit was instituted for the purpose of questioning the validity of, and setting aside, a deed of trust, professed to have been executed by Mr. Robert Henry Hurst for the benefit of creditors. The plaintiffs were Messrs. Smith, Payne, and Smith, bankers; and the defendants were Mr. Hurst, Mr. Henry Padwick, his solicitor and receiver, and Mr. Francis O'Byrne, creditor by judgment of Mr. Hurst. The bill stated that in the month of Oct. 1844, the defendant Mr. Hurst was tenant for life under the will of his father of considerable freehold, copyhold, and leasehold estates, subject to incumbrances, and was entitled absolutely to other freehold, copyhold, and leasehold estates, and was possessed of considerable personal estate; that, being then largely indebted to Messrs. Smith, Payne, and Smiths, the plaintiffs and to other persons, he determined to make a conveyance to the defendant Mr. Padwick, his solicitor and confidential agent, under the pretence of making provision thereby for the payment of his debts, but, in reality, for his private convenience, and for the purpose of hindering, delaying, and defeating his creditors, and particularly the plaintiffs; and that accordingly a conveyance and assignment were made by him to the defendant Mr. Padwick, by a deed dated the 29th Oct. 1844: that this deed was kept secret from the plaintiffs and the other creditors; that the defendant Mr. Hurst, notwithstanding the execution of it, continued in possession of the property, but that he soon afterwards went abroad; that after he had gone abroad, it was for the first time communicated to the plaintiffs by Mr. Padwick's agent, that the conveyance and assignment had been made to him, Mr. Padwick, in trust for creditors, but that the deed was not produced; and that the plaintiffs consequently, on the 28th Nov. 1844, brought an action against the defendant Hurst for 12,000*l.* and upwards, the balance due to them on a banking account: that a correspondence ensued pending the action, in the course of which it appears that an offer was made on the part of Mr. Padwick to give to the plaintiffs security on the defendant Mr. Hurst's life interest, and upon a life interest in remainder, to which the son of that defendant was entitled; and that in one of the letters which passed in the course of this correspondence, it was stated that no creditor was party to the deed except Mr. Padwick, and that he was not a party in the character of a creditor; that a consent was given to judgment being signed in that action, in default of the debt being paid, on or before the 21st Jan. 1845, and that, the debt not having been paid, judgment was signed on the 22nd of January, and a *fi. fa.* issued, but that the execution of the *fi. fa.* was prevented by Mr. Padwick, who was in possession of the property, and had produced the deed to the sheriff's officer, and told him that the sheriff must return *nulla bona;* and that under those circumstances the sheriff had not yet made any return,—the plaintiffs being in this difficulty, that on the one hand no writ of *elegit* could be issued until some return to the *fi. fa.* was made; and, on the other hand, if a return of *nulla bona* were made, other creditors of the defendant Mr. Hurst, who had obtained judgments and issued executions, would acquire a prior right at law against the personal effects of the defendant Mr. Hurst. That all the freehold, copyhold, and leasehold estates were in mortgage, and the legal estate outstanding in the mortgage, and that the plaintiffs' judgment had been duly registered. The bill then charged that no creditor of Mr. Hurst was at the time of the execution of the deed of 1844, or at any time since, party or privy thereto, or assented thereto, and that the same was entirely for the convenience of Mr. Hurst, and revocable at his sole will and pleasure, and that Mr. Padwick was merely a trustee for him; and that the deed and conveyance was fraudulent and void in equity, and ought to be set aside as against the plaintiffs, Messrs. Smith, Payne, and Smith. The bill then prayed a declaration that the conveyance and assignment of 1844 were fraudulent and void as against the plaintiffs, and that it might be set aside accordingly; that the plaintiffs might be declared to have a lien for the amount of the judgment debt and interest upon all their beneficial interest of Mr. Hurst in the real estates and personal effects comprised in it, and to have an equitable execution against the same, and for an account of the real and personal estates, and of the plaintiff's debt and interest; that, if necessary, the plaintiffs might be at liberty to sue out one or more writ or writs of *elegit* against the real estate, and might have equitable execution thereupon; that the defendants might be restrained from selling or removing any of the property, and from cutting any timber, and from receiving the rents of the real and leasehold estates, or intermeddling with the chattels, until the plaintiffs' debt and interest should be paid; and that a receiver might be appointed.

Mr. Padwick put in his answer, by which he admitted, that at the date of the deed of 1844 Mr. Hurst was indebted to Messrs. Smith, Payne, and Smith; that he (Padwick) was the confidential solicitor and agent of the defendant Mr. Hurst; that the defendant Mr. Hurst left this country on the 31st Oct. 1844, under the impression that the arrangement of his affairs would be facilitated by his absence, and that he would be thereby saved from personal annoyance, and from being served with process in the suit of the plaintiffs, or any of his creditors. He also admitted the action brought by the plaintiffs, and the correspondence which passed during the pendency of

it, the judgment, and the issuing of execution. He also fully stated the deed, and gave an account of the circumstances relating to it. He denied that it was kept secret, and said that the plaintiffs had reason to know that such a deed had been executed as early as the 5th Nov. following; and he also denied that any part of the property remained in the possession of the defendant Mr. Hurst after the deed was executed, except some small part of it, which was retained under an arrangement made before the date of the deed. He admitted the estates to be in mortgage, and submitted that the indenture of the 29th Oct. 1844 was not revocable, and that the trusts of it were still subsisting; and as to the personal estate, he stated that some portion of it formed part of the estate of the defendant Mr. Hurst's father, some of whose debts and legacies still remain unpaid, and to whom the defendant Mr. Hurst was residuary legatee.

The evidence on the part of the plaintiffs proved their judgment debt and the correspondence. On the part of the defendant Mr. Padwick, a Mr. Philpotts was examined, who, after deposing to his having been a large creditor of Mr. Hurst, and having obtained a mortgage for his debt, stated that he did not suggest any trust deed for the benefit of himself or other creditors, but advised Mr. Hurst to place his affairs in the hands of some gentleman who should be empowered to act in his absence; and that he himself declined to act as such trustee, and was ignorant of the contents of the deed. Several other witnesses were examined on the part of this defendant, who proved that they were creditors of the defendant Hurst in and before Oct. 1844, and employed Mr. Padwick to recover and obtain security for their debts, &c.; that he afterwards told them that the defendant Hurst had executed a deed of conveyance and assignment in trust for his creditors to him, the defendant Mr. Padwick; and some of them stated that they abstained from suing for their debts upon the faith of the deed. It was also proved on the part of this defendant that, independently of his mortgage debt, he was a creditor of the defendant Mr. Hurst at the time when the deed in question was executed to a considerable amount; and that immediately upon the deed being executed he acted as the trustee and in the trusts thereof. The arguments lasted the greater part of two days, and will be found sufficiently referred to in the judgment.

Sir *W. P. Wood* and *Cotton* for the plaintiffs.

Bethell and *Terrell* for Mr. Hurst.

Bolt and *Greene*, for Mr. Padwick.

Sir W. P. Wood in reply.

May 28.—The VICE-CHANCELLOR, after stating in minute detail the facts of the case, the allegations of the bill, the statements and admissions in the answers, and the effect of the evidence in the cause, proceeded as follows:—In this state of circumstances the principal question appears to me to be whether the deed of the 29th Oct. 1844 is fraudulent and void against the plaintiffs. For I think that, independently of the questions as to the validity of the deed, and as to the right of the plaintiffs under stat. 1 & 2 Vict. c. 110, which do not arise upon the original bill (*a*), further than as the court might be bound to interfere for the protection of the property with a view to the future right arising under the statute, the bill hardly states a case for the interposition of a court of equity, independently of the remedies given by the statute referred to. The rights of judgment creditors, as I conceive, are purely legal rights, and the interposition of this court in their favour rests, as I apprehend, upon the principle of aiding the legal right. Thus the court may be called upon to interpose its aid for the purpose of removing out of the way any impediments which may exist to the exercise by judgment creditors of their legal rights, or it may, as I apprehend, be called upon to interfere for the preservation of the property pending disputes at law as to the rights of judgment creditors; and the court, in the exercise of its original jurisdiction in the administration of assets, may also have occasion to deal with the legal rights of judgment creditors; but the province of this court is to aid, and not to supply or to extend the legal right. Those principles were laid down by Lord Cottenham in *Neate* v. *The Duke of Marlborough*, and in the principles there laid down I fully concur. I proceed, therefore, to examine the question as to the validity of this deed, and it will be convenient to consider the question in two points of view; first, as to the validity of the deed without reference to the circumstance of Padwick's being a creditor of Hurst, and to the dealings which are alleged to have been had under the deed; and, secondly, to what extent, if at all, the deed ought to be upheld with reference to the position of Padwick, and what has taken place since the deed was executed. As to the first point, it is unnecessary, I think, to say much upon it. There can, I apprehend, be no doubt that this deed, taken by itself, and without reference to the position of Padwick, and to the dealings with other creditors, was a mere deed of management, which it was competent to Hurst at any time to alter or revoke; and as little doubt can, I think, be entertained that such a deed could not be permitted to be set up against creditors, but would be fraudulent and void against them. A deed, which the debtor has power to revoke, and attempts to use as a shield against his creditors, cannot, I think, be otherwise than fraudulent and void against the creditors. The true question in the original case must therefore, as I think, depend upon the second point. How is the validity of the deed affected by Padwick's having been a creditor of Hurst at the time of its execution, and by the dealings which have been had with creditors under it? And, first, with reference to Padwick? Subject to the statutory rights in case of bankruptcy or insolvency, and other statutory remedies, every debtor has, as I apprehend, according to the law of this country, a perfect right to deal with his property in any mode which he may think best, provided he acts honestly in the disposal of it. He may dispose of it in favour of all or of any one or more of his creditors; and the law does not, so far as I am aware, interfere with his power and right to do so, if it be exercised *bonâ fide*; but I am not prepared to hold that the law of this country will permit a debtor to vest his property in one of his creditors for the mere purpose of protecting himself against the claims of his other creditors, or that a deed executed for such a purpose can be otherwise than fraudulent and void against the creditors whose interests are affected by it. Such a deed, although upon the face of it for the benefit of the creditors, is, in truth, a deed for the benefit of the debtor; and the creditor who accepts it takes not for his own benefit, but for the purpose of carrying out the views and objects of the debtor in fraud of his other creditors. He becomes a party to the fraud of the debtor, and, being a party to the fraud, he cannot, I think, be in any better position than the debtor who has perpetrated it. What then was the purpose and object of this deed? Was it executed for the purpose of securing the debt due to Padwick, or for the purpose of hindering and delaying the creditors of Hurst, and compelling them to come to such terms for his benefit as Padwick should think proper to dictate? The deed itself, and the conduct of the parties under it, must determine this question. The deed purports by the recital to be for the better arrangement of Hurst's affairs, and for the liquidation of his debts and engagements. It is left to the discretion of Padwick in favour of what creditors, and in what order of priority, the proceeds of the property should be applied. Power is given to him to negotiate and enter into compromises and arrangements, and to apply the proceeds of the property for the purpose of carrying them into effect. The trust is personal to him, and is to terminate with his death or resignation, and he has an unqualified power to resign. A salary is also reserved to him for collecting the income, and there is no mention throughout the deed of any unsecured debt being due to him. All these provisions seem to me to show that this deed was not framed for securing any debt due to Padwick. Could it be intended that he should exercise a discretion as to the application of the proceeds in payment of his own debt? Was his death to deprive his executors of all claim under the instrument? Was he to receive a salary for collecting the rents for his own benefit? Such could not I think have been the purpose of the deed. But, on the other hand, these considerations all tend, I think, to show that the object of the deed was to compel the creditors to come to such arrangements as Padwick should propose for the benefit of Hurst, and the conduct of the parties confirms this view; for immediately after the execution of the deed Hurst goes abroad, under the impression, as is avowed by his answer, that the arrangement of his affairs would be facilitated by his absence, and Padwick proposes terms of compromise with the plaintiffs; and in the course of the correspondence which ensued there is an admission by Padwick's agent that he had not become a party to the deed in the character of creditor. I am of opinion, therefore, that this deed cannot be maintained so far as its validity depends on any debt having been due to Padwick. It was said, however, that other creditors had abstained from suing upon the faith of this deed, and that the deed ought to be supported upon that ground; but those creditors are not parties to this suit, and no objection was raised at the hearing, or is raised by the answers, upon the ground of their not having been made parties; and I think that sufficient justice will be done to them and to Padwick in this case by reserving their rights, and directing such inquiries as may enable the court to give Padwick and them any protection in respect of their claims to which he or they may justly be entitled. I have thought it right to examine the cases upon voluntary deeds; and the authorities upon the subject appear to me to result in this: that in cases of deeds vesting property in trustees upon trusts for the benefit of particular persons, the deed cannot be revoked, altered, or modified by the party who has created the trusts; but that, in cases of deeds purporting to be executed for the benefit of creditors, the question whether the trusts can be revoked, altered, or modified, depends upon the circumstances of each particular case. It is difficult, at first sight, to see the distinction between the two classes of cases; for in each of the classes a trust is purported to be created, and the property is vested i the trustees. But I think the distinction lies in thi —that in cases of the trusts for the benefit of partion lar persons, the party creating the trust can have n other object than to benefit the persons in whos favour the trust is created; and, the trust being wel created, the property in equity belongs to the *cestui que trust*, as much as it would belong to them, at law if the legal interest had been transferred to them But, in cases of deeds purporting to be executed fo the benefit of creditors, and to which no creditor is a party, the motive of the party executing the dee may have been either to benefit his creditors or t promote his own convenience; and the court, there fore, has to examine into the circumstances, for th purpose of ascertaining what was the true purpose o the deed. And this examination does not stop with the deed itself, but must be carried on to what ha subsequently occurred; because the party who ha created the trust may, by his own conduct, or by th obligations which he has permitted his trustee to con tract, have created an equity against himself. Eac case of the latter description being thus governed by its circumstances, any further examination of th authorities would, I think, be useless. It would lea to the ascertainment of no principle, and would only involve the question, whether the principle has been rightly applied. Under the circumstances of thi case, I think the application of it must be such as have before stated. A further objection was raise on the part of the defendants to any decree being made in this case, upon the ground that no *elegit* ha been issued; and upon looking into the cases on this subject, I think that, so far as respects th freehold estates, this objection is good; but am of opinion that the plaintiff is entitled to a decree in the original suit, but only as regards lease holds and other personal estates. I think he is als entitled to the usual decree in the supplemental suit It was insisted that, the deed being set aside in th original suit, Padwick would not be a necessary party to the supplemental suit; but, the deed being set aside only as to creditors, I think there must be the usua decree in that suit against him as well as against Hurst. The decree, therefore, which I shall make will be in the original suit, to declare the deed fraudu lent and void against the plaintiff as to the leasehold and personal estate. Injunction to restrain defendan Padwick and Hurst from setting up the deed, so as i any manner to defeat or hinder the plaintiff's execu tion upon or against the leasehold and personal estate Direct an account against Padwick of his receipts, i respect of the personal estate, and rents and profits o the leasehold, and how applied and disposed of: in quiring whether at any times or time, and when afte the execution of the deed, any communications o communication were or was had by Padwick with any and which of the creditors of Hurst respecting the deed, and what was the nature and purport and effect of such communications or communication, and which of such creditors at any times or time, and when, in any and what manner, adopted or acted upon the deed, with liberty to state special circumstances. Continue the order for the receiver; dismiss the rest of the original bill. Decree to be without prejudice to the rights of any of the creditors or creditor who may be found to have adopted or acted on the deed. In the supplemental suit, usual decree against Padwick and Hurst. Reserve further directions and costs.

(*a*) Held, upon this passage it is necessary to remark that a supplemental bill had been filed, setting forth the fact of a year having elapsed since the registration of the plaintiff's judgment. Held that, upon the issue raised in the original bill.

V. C. STUART'S COURT.

Reported by Geo. S. ALLCOTT, Esq., of the Middle Temple Barrister-at-Law.

Monday, Feb. 14.

ROBINSON *v.* BRIGGS.

Evidence—Examination of a defendant.

A plaintiff examining a defendant as a witness in support of his case is not now prevented from taking a decree against him.

In this case the defendant William Briggs, against whom relief was sought by the bill, was examined as a witness on behalf of the plaintiff.

Malins and *H. Stevens* appeared for the plaintiff, and proposed to read Mr. Briggs's evidence.

Walker and *Selwyn*, for the defendant Briggs; and *Bacon* and *Rogers*, and *Daniel*, *Rawlins* and *Bagshawe*, jun. for other defendants, objected to the evidence being read.

Elmsley, *Allnutt*, *Boyle*, *Glass*, and *Dart*, appeared for other parties.

Rowland v. *Witherden*, 3 Man. & Gran. 568; *Attorney-General* v. *Dee*, 3 De Gex & Smale, 556; *Bessy* v. *Donegal*, 3 Dow. 125; *Cunliffe* v. *Parker*, 2 Salk. 691; *Alcock* v. *Alcock*, 16 Jur. 852; *Bayford* v. *Rees*, 20 L. T. Rep. 282; and the 6 & 7 Vict. c. 85, and 14 & 15 Vict. c. 99, were referred to.

The VICE-CHANCELLOR said, that his view of this question, independently of the authorities which had been cited, coincided with that of Wood, V.C., and was founded upon the same principle. What was relied upon by the defendants was the old rule, according to which, if a plaintiff examined a defendant as a witness in order to prove his case, he lost all

right of a decree against him. It was said, further, that the principle of the rule must be taken to be, that the plaintiff had released his interest against the defendant whom he examined. Then it was contended that by the examination the release must still be presumed. That rule was perfectly intelligible; but his Honour never could think it just. It was perfectly well established; but being, as he conceived, inconsistent with justice, he rejoiced that it had been rescinded by the Legislature. The impolicy of the rule was obvious, because the same practice allowed a plaintiff in the first instance to examine a defendant on oath, and to found a decree upon his evidence; and yet held that, if a defendant was examined on interrogatories, the case was different. The Legislature had since thought fit to enact that a plaintiff might now examine a defendant in equity as a witness; and his Honour must infer that when the Legislature directed that to be done, it conferred a right upon a plaintiff which did not before exist, and that the right so given was unqualified, unless there was something expressed in the Act to qualify it. He could find nothing in the Act to qualify that right. Then it was said, that as the whole thing proceeded upon the principle of interest, and that as that right was not taken away under Lord Denman's Act, it still existed, and decisions had been cited under that Act in which the right had been treated as existing. But that circumstance arose from qualifications in that Act, which, however, no longer existed. He was then asked to construe an Act, in which no such provision existed, by decisions upon an Act in which it did exist. He was of opinion that the Act was intended to advance the purposes of justice; but if he were to put the construction upon it which had been urged at the bar, the Act would be worse than useless. Suppose the case of a single defendant; then, if he were examined, upon the construction contended for, the Act would be altogether inoperative. His Honour was therefore of opinion that he could not entertain this objection to Mr. Briggs's evidence.

Saturday, Feb. 26.

Re S. Long's Estate.

Lands Clauses Consolidation Act, 1845—*Costs.*

A company taking leasehold land under the powers of their Act ordered to pay the costs of the annual sales of stock representing the purchase-money, for the purpose of distributing the fund.

This was a petition by Lady Sydney under the following circumstances:—Leasehold lands in Rotherhithe were bequeathed to trustees for the separate use of Lady Sydney for her life, with remainders over. The Commercial Dock Company, under the powers vested in them by their Act, took these lands, and, by an award, dated in Sept. 1852, the purchase-money for the leases was ascertained to be 735*l.* This sum was accordingly paid into court, and invested in Consols. Sixteen years and a half of the term were unexpired when the purchase was made, and the petition prayed that 22*l.* 5*s.* 5*d.*, being two thirty-thirds of the 735*l.*, might be paid to the petitioner, for her separate use, and that one thirty-third of the fund might be paid to her half-yearly during her life, and that the dividends from time to time becoming due on the remainder of the fund should also be paid to her during her life.

Burton, for the petitioner.

G. L. Russell, Gifford, and *Roche* for other parties.

Druce, for the company, objected to the payment of the costs of the sales of stock from time to time.

The Vice-Chancellor made the order asked by the petition, and directed that the company should pay the costs of all parties, and the costs of the sale of stock, such being incidental to the distribution of the fund.

V. C. WOOD'S COURT.

Reported by J. Henry Cooke, Esq., Barrister-at-Law.

Jan. 21 and 28.

Cousins *v.* Varey.

Chancery Practice Amendment Act—Evidence—General Orders of August 7, 1852.

Upon a motion for a decree under the 15th section of the stat. 15 & 16 Vict. c. 86, the plaintiff gave notice, under Order 23 of Aug. 7, 1852, of reading one affidavit, but at the hearing proposed to read that and another affidavit, and the defendant's answer: a defendant in the same interest as the plaintiff proposed to read the answer of a co-defendant:

Held, that no affidavit but that one could be used; that the defendant's own answer could be read without notice, but that a defendant cannot, under any circumstances, read a co-defendant's answer.

This suit in this case was commenced by bill; and it prayed an account of a testator's estate, and the performance of the trusts of it. All the defendants had put in their answers. The plaintiff gave a notice under the 15th section of the statute amending the procedure in the Court of Chancery (15 & 16 Vict. c. 86) for a decretal order, and, pursuant to the General Order No. 23 of Aug. 7, 1852, which directs that "the affidavits to be used in support of such motion are to be filed before the service of such notice, and a list of such affidavits is to be set forth at the foot of such notice," he had stated one affidavit, which he particularised as intended to be read; and the cause on these materials came on for hearing. On behalf of the plaintiff it was proposed to read the answer of the principal defendant, that is, he against whom the decree was asked. For another defendant in the same interest as the plaintiff counsel proposed to read a co-defendant's answer, and in support of doing so cited that part of the 15th section of the statute which directs that "if such motion shall be made after an answer filed in the cause, the answer shall, for the purposes of the motion, be treated as an affidavit." On behalf of the principal defendant it was objected that the plaintiff had no right to read more than the affidavit of which he had given notice; and, not having given notice of reading his answer, it was not to be read, as the 26th Order of Aug. 1852 showed, that order directing that "no further evidence on either side is to be used upon such motion for a decree or decretal order, without leave of the court;" and no such leave had been obtained. Even if the reading by one defendant of a co-defendant's answer were not universally prohibited by the settled practice of the court, it could not be used as an affidavit under the 15th section, as no notice had been given; but it was against all settled rule to do so.

Prendergast, for the plaintiff.

Smythe, for a defendant in the same interest.

Rusk, for the principal defendant.

Jan. 28.—The Vice-Chancellor.—I have consulted the other judges of the court upon the points of evidence in this case. We are of opinion, and I therefore hold, that the plaintiff is at liberty to use the answer of a defendant without any notice. The object of notice being given is obviously to enable a defendant to know what evidence is to be used against him. This does not apply to his answer, for that must be fully within his knowledge. Of course no affidavits can be read of which no notice has been given. It is plain that the 15th section was not intended to, and does not, give one defendant a right to read the answer of a co-defendant either with or without notice.

The evidence was read pursuant to the above decision, and the decree was taken.

Friday, March 4.

The Official Manager of the Grand Trunk or Stafford and Peterborough Union Railway Company *v.* Brodie and others.

Joint-Stock Companies Winding-up Acts—Suit by official manager—Form of decree—Costs.

A suit was instituted against a company. The company was ordered to be wound up. The official manager, by direction of the Master, prosecuted the suit, which on the hearing was dismissed with costs, to be paid "by the official manager." The decree was subsequently altered by the insertion of "W. Turquand," before the words "official manager." Defendants issued a subpœna for the costs against W. Turquand personally, and an attachment thereon was issued. On motion to discharge the subpœna and to quash the attachment, the Court directed all proceedings to be stayed, on the ground that the decree was against the official manager as such by the use of these words.

Semble, that the Court has jurisdiction to award costs personally against an official manager.

The bill in this case was filed by Mr. Warren, on behalf of himself and others, against Mr. Brodie and others, directors and officers of the Grand Trunk or Stafford and Peterborough Union Railway Company. Various charges of fraud and misconduct were contained in the bill. After the suit had been instituted, a petition was presented under the Winding-up Acts, and an order was made for the dissolution of the company, and for the winding-up its affairs. After this Mr. Turquand was appointed the official manager of the company, and he made an application to the Master charged with the winding-up, who, under the 60th sect. of the Joint-Stock Companies Winding-up Act, 1848, which enacts, that no action or suit in any of the Superior Courts shall be commenced or proceeded with by the official manager without the leave or special direction of the Master, and he directed that the suit should be continued and prosecuted. Under this authority Mr. Turquand went on, and brought the suit to a hearing before V. C. Turner, (*a*) who, however, dismissed the bill, on the ground that the suit was not properly constituted; that fraud had not been proved; that the other charges of misconduct were not warranted; and that the suit ought not to have been proceeded with by the official manager. His Honour then directed that the dismissal should be with costs, to be paid by the official manager. Subsequently an application was made on behalf of the defendants to the court, that the costs should be paid by Mr. Turquand personally, and that the decree should be altered in that respect. Upon this application an order was made that Mr. Turquand should pay the costs of the suit; but it appears that, although Mr. Turquand's name was inserted in the decree, the words "official manager" were suffered to remain. Upon this order, Mr. Turquand not having paid the costs, the defendants Brodie, Brown, and Carter, issued a *subpœna* for the payment of them; but Mr. Turquand still neglecting to pay, an attachment was issued at the instance of the same parties against him.

Daniel and *Little* now appeared in support of a motion made on behalf of Mr. Turquand, that the *subpœna* issued against him might be set aside, and that the attachment issued thereon might be discharged or quashed. They relied on the fact, undisputed, that the official manager had submitted the matter to the Master, who, in the exercise of his discretion under the 60th sect., had sanctioned the official manager in proceeding with the suit, so that, if its termination were not of advantage to the company, the official manager was not to blame. Had the Master considered that the suit ought to be compromised, he might have acted under the 55th sect., which enacts, that such a course may be adopted by the official manager, if the Master is of opinion that it is advisable. Then, the suit having been prosecuted with the approbation of the Master, the official manager is, by the 59th sect., held harmless of all losses in the following words: "that no judgment, decree, or order to be obtained or entered up against the official manager of any company, as representing the same, shall affect or be executed against the person or the property of the party who may for the time being be such official manager, otherwise than as a contributory, and that every official manager shall always be fully reimbursed and indemnified out of the assets of the company, or out of the credits thereof, and, if necessary, by calls to be made on the contributories, for all losses, costs, charges, damages, and expenses, without deduction, save and except such, if any, as shall have been unduly or improperly sustained or incurred by any such official manager." That the Master had authority to give leave for the prosecution of the suit there could be no doubt, for by the 53rd sect. the official manager is authorised to prosecute pending suits against a company ordered to be wound-up. The learned counsel submitted, therefore, that as Mr. Turquand had acted under the orders of the Master in prosecuting the suit, and as the Act of Parliament directed him to be indemnified in his character of official manager, and as the order of the court had directed the costs to be paid by Mr. Turquand as official manager, the *subpœna* calling on him personally to pay the costs, and the attachment thereupon, were wholly wrong, and the motion ought to be granted even supposing the court should be of opinion that there was any jurisdiction at all to visit an official manager with costs, seeing the large expressions contained in the 59th sect.

The Vice-Chancellor.—I have no doubt as to the jurisdiction of the court to order the official manager to pay costs personally, and I have also no doubt that the intention of the court was that the costs in this case should be paid personally by Mr. Turquand. I have, however, to deal with the language of the decree, which, unfortunately, contains the words "official manager of the company," and may import something more than a personal remedy against Mr. Turquand. I wish the counsel for the defendants to address themselves to the effect of those words in the decree. The defendants must be entitled to their costs against the official manager personally, or against the contributories and assets of the company, but not against both.

Selwyn, for the defendant Mr. Brodie.—It is perfectly plain that the V. C. intended Mr. Turquand to pay these costs personally, and therefore the proceedings on the *subpœna* and the attachment are perfectly regular. The mere fact that the decree contains the words "official manager of the company" is of no importance against the defendants, for those words are merely descriptive of the person who is meant to be identified as "Mr. Turquand." It was at the original hearing that the words "official manager of the company" were used in the decree by the registrar, and he so used them because they followed the title of the cause; but they were not struck out when, upon a subsequent application, the name "Mr. Turquand" was inserted, although the name was so inserted by order of the court with the express view and intention of charging him personally with the costs.

The Vice-Chancellor.—It is asserted that the words "official manager of the company" were left in by an inadvertence, or is it represented that the court designedly allowed them to remain?

Counsel stated that the court's attention was not drawn to the words.

The Vice-Chancellor.—If it were an inadvertence, that might form a ground for applying to the court to rectify the decree by expunging them.

Kenyon, for the defendants Brown and Carter.—It is abundantly plain that the court intended the costs to be paid by Mr. Turquand personally, and not by him as the official manager,—that is, by himself, out of his own money, and not out of the funds of the company,—because it has used his name, and by way of identity has added the words which designate the office such a person held. Had it been intended that the company should bear the loss, the word "as" would have been adopted thus: "as official manager;" or "as representing the company," or in some such manner; but clearly not as the decree stood.

The Vice-Chancellor.—The question before me is whether Mr. Turquand, being [illegible] "official

(*a*) See 19 L. T. Rep. 336.

manager" in the order makes it appear less the intention that the official manager is meant because the name of this gentleman is also used. It would have been as well that I should have known the form of orders or judgments at common law against official managers. It is perfectly clear that I cannot attend in any way to what has been the conduct of the parties, nor to what was the intention of the court in making the order, further than that, if the words of the order are consistent with the intention of the court, it is my duty to carry that intention into effect. No doubt, from the judgment, it appears that the court intended that Mr. Turquand should pay the costs personally. The original order directed them to be paid by the official manager of the company. There was a subsequent application to insert Mr. Turquand's name, that he might pay the costs personally. But the attention of the court was not drawn to the fact that the words "official manager" remained on the order. Is the court now to treat the words "official manager" as having no legal effect or operation? I cannot reject the words "official manager" as mere surplusage. The description of a person by his name without more seems to be very unusual, unless where it is intended that he should pay personally. If I cannot reject the words "official manager," I have to ask what effect is to be attributed to them? And in order to decide that, the court must resort to the 55th and 59th clauses of the Act. This is an order pronounced by a court of equity against an "official manager." It is so *eo nomine*; and, if so, it may be made effective against all or any of the contributories of the company. That would be against the avowed intention of the court. But so stands the order. No allegation of the intention of the court can prevent the order from being carried into effect, except that it may induce the court, on an application to alter or vary it, to do so. I regret being compelled to come to this conclusion, because I see, from the reported judgment, what was the intention of the court; but being of opinion that the order cannot have two meanings or aspects, I am bound, under the 56th section, to hold that there is in this case, under this order, no personal remedy against the official manager; and I must comply with the motion which asks that the *subpœna* should be set aside, and further proceedings stayed as against Mr. Turquand personally.

Daniel applied for costs.

His Honour thought that it was not a case for costs.

Common Law Courts.

COURT OF QUEEN'S BENCH.

Reported by ADAM BITTLESTON and JOHN THOMPSON, Esqrs. Barristers-at-Law.

Nov. 12 *and Jan.* 20.

The MAYOR, &c. of BERWICK-UPON-TWEED *v.* OSWALD.

Municipal corporation—Treasurer—Sureties—5 & 6 Will. 4, c. 76, s. 58—6 & 7 Vict. c. 89, s. 6.

A treasurer to a municipal corporation, elected annually in pursuance of the 5 & 6 Will. 4, c. 76, s. 58, entered into a deed with sureties for the due execution of his office, and for duly accounting for all moneys that should be received in virtue of the said appointment as treasurer, during the whole time of his continuing in the said office, in consequence of the said election, or under any annual or other future election to the said office. The treasurer continued in the office till the 6 & 7 Vict. c. 89 passed, when he was elected under that Act to the office of treasurer during the pleasure of the council:

Held, that the nature and duties of the office were not so changed as to discharge the sureties, and that the words of the deed, "or other future election to the said office," were sufficient to charge the sureties of the treasurer for defaults after the election under the 6 & 7 Vict. c. 89.

A subsequent deed for a larger amount given before breach of a former deed cannot be pleaded in accord and satisfaction of such former deed, though for a smaller amount; nor is it any answer to it, unless there are words of release in the subsequent deed.

Debinet upon a bond in the Scotch form against a surety of the treasurer of the corporation of Berwick-upon-Tweed, for the default of the principal in paying over moneys received.

The declaration stated,—That, before the 6 & 7 Vict. c. 89 ("An Act to amend the Act for the Regulation of Municipal Corporations in England and Wales") to wit, on the 15th day of Jan. 1842, a certain deed poll was made by the defendant, and sealed and delivered to the plaintiffs, which said deed poll is in the words and figures following:—

"We David Murray, John Campbell Renton, James Jeffreys Oswald, William Murray, and John Johnston, considering that, at special meetings of the council of the borough and town of Berwick-upon-Tweed, held &c. for the purpose (amongst other things) of electing a treasurer, it was agreed that the salary of the future treasurer should be, &c., and that the treasurer should find sureties to the council in the sum of 2000*l.*; and that at every quarterly and adjourned meeting of the council, and also at any special meeting, if then required to do so, the treasurer should present a correct account of the cash in his possession; and, lastly, that the treasurer should be appointed for the remainder of the year ending the 9th Nov. next, if it should so long please the council; and considering that, at such meetings of council as aforesaid, they nominated and elected me the said D. Murray to be their treasurer upon the conditions aforesaid; and seeing that it was agreed that I the said D. Murray should find security or caution for the payment of all such sums of money as I might receive in consequence of my said appointment as treasurer aforesaid; therefore the condition of this obligation is such that I the said D. Murray, and we the said J. C. Renton and J. J. Oswald, W. Murray, and J. Johnston, as cautioners, sureties and full debtors, with and for the said D. Murray, hereby become firmly bound and obliged, as we do hereby bind and oblige ourselves, our and each and every of our heirs, &c. jointly and severally, well and truly to pay unto the mayor, aldermen, and burgesses of Berwick aforesaid, or to their successors in office, all such rents, sum and sums of money, principal, interest, and penalties, and other moneys whatsoever as I the said D. Murray shall or may recover or receive in virtue of my said appointment as treasurer as aforesaid during the whole time of my continuing in the said office in consequence of the said election, or under any annual or other future election of the said council to the said office, I the said D. Murray shall and will duly execute my said office, and be honest and faithful therein, and that I shall carefully attend to my duties as treasurer aforesaid during my continuance in office, and do everything relating thereto to the best of my knowledge and skill, and shall and will truly and faithfully account to the said mayor, &c. for all matters committed to my charge, and also for all rents and money with which I shall from time to time be intrusted in the manner above specified. And whatsoever loss, damage, or expense shall be sustained or incurred through the negligence, fraud, default, or intromissions of me the said D. Murray, we the said D. Murray, J. C. Renton, J. J. Oswald, W. Murray, and J. Johnston, under the declaration after mentioned, hereby bind and oblige ourselves and our foresaids, jointly and severally, to content and pay the same to the said mayor, &c. and that immediately upon such default, with a fifth part more of liquidate penalty over and above the said loss and damage, and together therewith. But declaring always, and it is hereby provided and declared, that this present bond and obligation is, so far as concerns us the said J. C. Renton, J. J. Oswald, W. Murray, and J. Johnston, and shall be limited to the sum of 2000*l.* sterling, to which our security is hereby restricted, and to be no further extended, without prejudice nevertheless to the said mayor, &c. in the events above mentioned, to have access and recourse against me the said D. Murray, my heirs, executors, and successors whomsoever, and my estate and effects, for the whole sums of lawful money, interest, penalties, loss, damage, and expenses, which they shall or may happen to sustain or incur through my default or intromission in any manner of way whatsoever."

And the plaintiffs, in fact, say that the said person in the said deed poll or writing obligatory described as J. J. Oswald, was and is the defendant. And the plaintiffs further say that the said D. Murray, in the said deed poll or writing obligatory mentioned, was and continued treasurer of the said borough of Berwick-upon-Tweed, and held the said office of treasurer of the said borough, in consequence and under and by virtue of the said election of the said council in the said deed poll or writing obligatory mentioned, and under and by virtue of other future elections of the said council to the said office, to wit, an election of the said council, at a meeting of the said council, duly holden on the 9th Nov. 1842, and at another election of the said council, at a meeting of the said council, duly holden on the 9th Nov. 1843, from the time of the making the said deed poll or writing obligatory, until and at and after the respective times of the recovery and receipt by him, as such treasurer as aforesaid, of the moneys next hereinafter mentioned, to wit, from the day and year first aforesaid, until the 24th June 1848; and the plaintiffs further say, that while the said D. Murray was such treasurer as aforesaid, to wit, on, &c., the said D. Murray as such treasurer recovered and received divers sums of money, to wit, 100,000*l.*, and although a reasonable time for the said D. Murray to pay the same and every part thereof to the plaintiffs had elapsed, yet he hath not yet paid a large part thereof, to wit, the sum of 5000*l.* to the plaintiffs. And the plaintiffs further say, that although a reasonable time for the said defendant to pay to the plaintiffs the sum of 2,000*l.*, parcel of the said last-mentioned sum of money, and which he was so liable to pay to the plaintiffs as aforesaid, had elapsed—*Breach*, non-payment thereof. And the plaintiffs further say, that after the receipt by the said D. Murray as such treasurer as aforesaid of the said sums of money as aforesaid, and before it became and was the duty of the said D. Murray truly and faithfully to account to the plaintiffs for the said sums of money so recovered and received by him, nevertheless the said D. Murray did not nor would account to the plaintiffs for a large part thereof, to wit, for 5000*l.* so received by him as such treasurer as aforesaid, although a reasonable time for him so to do had elapsed after the receipt of the said moneys, but therein made default; and the plaintiffs further say that, although a reasonable time for the defendant to pay to the plaintiffs the sum of 2000*l.* for and on account of the said loss, and which he was so liable to pay as aforesaid had elapsed—*Breach*, nonpayment thereof.

Sixth plea.—That the said election of D. Murray to be treasurer in the said deed mentioned, and also the election of the said D. Murray to be such treasurer under and by virtue of the said election, by the said council at the meeting of the said council holden on the 9th Nov. 1842, as in the said declaration mentioned, were made under and in pursuance of the 5 & 6 Will. 4, c. 76; and that on the 9th Nov. 1843 the said D. Murray ceased to be such treasurer as aforesaid under and by virtue of the said elections or either of them; and the defendant further says that *after* the 6 & 7 Vict. c. 89, to wit, on the 9th Nov. in the said year 1843, the said D. Murray was, in pursuance of the 6 & 7 Vict. c. 89, elected by the said council to be the treasurer of the said council, to hold the said office of treasurer during the pleasure of the said council, the said election in this plea last-mentioned being the same election of the said D. Murray as in the declaration is alleged to have been made on the said 9th Nov. in the said year 1843. That the said D. Murray, to wit, on the 16th Jan. 1842, and afterwards, accounted for and paid to the plaintiffs all the money by him as such treasurer in the declaration mentioned, and by virtue of his said office of treasurer of the said borough recovered or received before the said 9th Nov. in the said year 1843, or whilst he was such treasurer as aforesaid under and by virtue of the said election in this plea first and secondly assigned, and that the whole of the money for the nonpayment of or nonaccounting for which this action was brought and is now attempted to be maintained was recovered and received by the said D. Murray after the said 9th Nov. in the said year 1843, and after the said election of the said D. Murray in pursuance of the said statute made and passed in the seventh year of the reign of her present Majesty as in this plea aforesaid, and this the defendant is ready to verify, &c.

Seventh plea.—That after the making of the deed in the declaration, and after the death of the said J. Johnston therein named, and during the lifetime of the said W. Murray, and before the committing of any of the breaches of covenant in the declaration mentioned and complained of, to wit, on the 13th Nov. 1847, the said D. Murray, the said W. Murray, and the said J. C. Renton made and sealed and delivered as their deed to the said mayor, aldermen, and burgesses of the said borough of Berwick-upon-Tweed, and the said mayor, aldermen, and burgesses then accepted and received from the said D. Murray, W. Murray, and J. C. Renton, a certain other writing obligatory hereinafter mentioned of great value, to wit, of the value of 5000*l.* in full satisfaction and discharge of the said deed in the declaration mentioned, and of all the covenants, clauses, and things therein contained. The plea then set out the deed for 5000*l.* and concluded with a verification.

Demurrers to the sixth and seventh pleas.

Manisty, in support of the demurrers.—As to the sixth plea, the sureties are to be bound by the deed during the whole time of D. Murray's continuing in office in consequence of the said election in 1842, or under any annual or other election of the said council to the said office. The other side will contend that the office of treasurer of a municipal corporation has been changed in its nature since the 5 & 6 Will. 4, c. 76, s. 58, by the 6 & 7 Vict. c. 89, s. 6, and that the words in the deed, "or other election to the said office," are not sufficient, as the office is no longer the same as it was when the deed was executed. The 5 & 6 Will. 4, c. 76, s. 58, directs that the council or every borough shall in every year appoint a treasurer of the borough, and shall take such security for the due execution of his office as the said council shall think proper; and by sect. 60 the treasurer shall at such times during the continuance of his office or within three months after the expiration of his office, and in such manner as the council shall direct, deliver a true account of all matters committed to his charge, and of all moneys received and paid by him, &c. Then the 6 & 7 Vict. c. 89, s. 6, changes the term of the office from an annual one to one during pleasure. The change so made is no change in the essential character of the office, and the deed contemplates another than an annual election. The words are: "under any annual or other future election." The sixth plea, therefore, is no answer to the action. Secondly, as to the seventh plea. This is a plea of accord and satisfaction before breach of the covenant, attempted to be pleaded in bar to an action after breach. Before breach a deed can only be discharged by release under seal, and the deed in the seventh plea has not the effect of a release: (*Snow* v. *Franklin*, 1 Lutw. 558; *Blake's* case, 6 Co. Rep. 43 b; *Allen* v. *Edgar*, Bro. Jac. 29; *Neale* v. *Sheffield*,

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Cro. Jac. 284; *Kaye* v. *Waghorn*, 1 Taun. 428; *The Mayor of Ludlow* v. *Charlton*, 6 M. & W. 815.)

H. Hill, contrà.—Whilst the office was an annual one under the 5 & 6 Will. 4, c. 76, the treasurer was bound to account from time to time, &c. And the sixth plea avers, that D. Murray duly accounted for all moneys up to his election under the 6 & 7 Vict. c. 89, and that the default was subsequent thereto. The deed must be read as if the 5 & 6 Will. 4, c. 76, was incorporated therewith. Though the office is the same in one respect, it is very different in point of tenure, being during pleasure by the 6 & 7 Vict. c. 89. Besides, in the latter Acts there is no definite time for accounting, as under the 5 & 6 Will. 4, c. 76, s. 60. The words "*other* future election" in the deed must be construed with reference to a year, or any less part thereof. The effect of this alteration in the office is to discharge the sureties under this deed: (*Lord Arlington* v. *Merricke*, 2 Wms. Saund. 414; *London Assurance Company* v. *Bold*, 6 Q. B. 514; *Barker* v. *Parker*, 1 T. R. 291; *The Liverpool Waterworks* v. *Atkinson*, 6 East, 507; *Whitcher* v. *Hall*, 5 B. & C. 275; *Collins* v. *Gwynne*, 9 Bing. 444.) Then, as to the seventh plea, this is not strictly a plea of accord and satisfaction, but one of discharge. In the deed of 1842, the sureties were bound to the extent of 2,000*l.* only; in the deed pleaded their liability is extended to 5000*l.* In *Clarke* v. *Henley*, 8 You. & C. 187, A. gave a bond to secure the repayment of a debt due by B. A. died, and the creditor, proceeded against his estate upon the bond, but afterwards took a fresh bond from B. and from A.'s representatives, conditioned for paying the debt by instalments, the creditor retaining at the same time the original bond; and it was held that the original bond was discharged, because the second bond was considered as having been given in satisfaction of the first. The deed pleaded was given in substitution of the first. Or if it is to be considered as a security from its date, the remedy should have been on the deed pleaded, and not on the original one.

JUDGMENT.

Jan. 20.—Lord CAMPBELL, C. J.—We begin with considering the validity of the sixth plea. It is quite clear, according to *Lord Arlington* v. *Merricke*, and many subsequent cases, that the liability of the sureties of David Murray would have ceased on the 9th Nov. 1843, however long he might have continued in the office of treasurer, if to the words "during the whole time of continuing in the said office in consequence of the said election," there had not been added the words, "or under any annual or other future election of the said council to the said office." There appears to be no objection in point of law to the council taking prospectively a security for the good conduct of the treasurer, to remain in full force while he should continue in the office of treasurer under any number of successive elections. The question, therefore, comes to this short point, whether, after the change in the tenure of the office made by the 6 & 7 Vict. c. 89, the office is or is not to be considered the same office as that to which he had been elected when the security was given. A mere change in the tenure of the office would not, we think, discharge the sureties; for such a change is contemplated by the instrument which they have executed. As the law stood in 1842 the office of treasurer was an annual office, and they have stipulated that the liability should continue while David Murray continues in his office, "under any annual or other future election of the council to the said office." From being an annual office, under the 5 & 6 Will. 4, c. 76, it became, under the 6 & 7 Vict. c. 89, an office to be held during pleasure, or for an indefinite time, the council being required to appoint a fit person to be treasurer, who should henceforth hold the office during the pleasure of the council for the time being. When David Murray was subsequently appointed under this statute, we think he must be considered as continuing in the office, although not under an annual, yet under a future election to the office, within the meaning of the deed. The sureties seemed to have contemplated the possibility of the Legislature changing the tenure of the office, and no objection existed in point of law to their stipulating for continuing the liability notwithstanding such a change. If the nature and provisions of the office had been altered by the 6 & 7 Vict. c. 89, though its name remained the same, still it would not be "*the said office*" within the meaning of the deed; but we cannot find that such an alteration has been made. The duties of the office are defined by the 5 & 7 Will. 4, c. 76, ss. 59, 64, 92, 126. Although some of these duties are expressly altered by the 6 & 7 Vict. c. 89, it is contended there is a consequential alteration in the duty of accounting by reason of the treasurer now holding the office for an indefinite time. However, on examining the manner in which he is directed to account under the 5 & 6 Will. 4, c. 76, we think it may be, and ought to be, substantially and effectually followed when he holds the office for an indefinite time, so that the risk of the sureties is not increased by the alteration, and the office must be considered as remaining the same. We do not think it necessary to refer more particularly to the numerous cases which have been cited in the argument on this head, as the principles they establish are not in dispute, and none of them would assist in construing the Act on which the case arises. On the demurrer to the sixth plea we give judgment for the plaintiffs. The defendant's counsel admits that the seventh plea cannot be supported as accord and satisfaction being pleaded to the covenant before breach, and the authorities are many and uniform to this effect. But, if not by way of accord and satisfaction, how can the seventh plea be a bar to an action in the first deed? It contains nothing that can operate as a release as to the first deed: and the two deeds may stand together concurrently. We have no difficulty therefore in giving judgment for the plaintiffs upon the demurrer to this plea. The objection to the declaration, suggested on the ground that the security taken was not in conformity to the statute, was abandoned during the argument.

Judgment for the plaintiffs.

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(Reported by R. VAUGHAN WILLIAMS, Esq. Barrister-at Law.)

ERROR FROM THE COMMON PLEAS.

Saturday, Nov. 26.

(Before PARKE, PLATT, MARTIN, and CROMPTON, BB., and COLERIDGE, WIGHTMAN, and ERLE, JJ.)

THE WEST LONDON RAILWAY COMPANY *v.* THE LONDON AND NORTH-WESTERN RAILWAY COMPANY.

Railway lease under an Act of Parliament—Meaning of covenant "to efficiently work"—Powers, rights, and liabilities of lessees under agreements between third parties and the leasing company.

The W. L. Railway was constructed under an Act of Parliament in which was a clause providing that, if after the railway should be completed it should for three years cease to be used as a railway, the lands purchased under the Act should revest in the owners of the adjoining land. An agreement was afterwards entered into by the W. L. with G. W. Railway Company, reciting that a piece of land had been conveyed to the W. L. subject to the right of the G. W. to construct their railway across it, in which the G. W. covenant to construct a station upon that piece of ground and to stop their trains at it. That agreement was confirmed by an Act of Parliament, which also provided that, if the W. L. Railway should cease to be used as a railway for three years, the piece of land should, upon tender to the W. L. Company of the purchase-money, vest in the G. W. Company. An Act was afterwards passed, which in the preamble stated that it had been found that the W. L. Railway could not be worked with advantage as a separate and independent line, but might be advantageously worked in connection with the L. and B. and the G. W. or either of them, and which authorised a lease from the W. L. to the L. and B. of their railway, &c., and all their rights, powers, and privileges. A lease of the line and the piece of land above mentioned was accordingly executed. The L. and B. were to pay to the W. L. one-fourth of the gross earnings on the W. L. line for passengers, goods, and other things carried thereon. And the L. and B. Company covenanted that they "would, at their own expense, during the continuance of the lease efficiently work and repair the railway and works demised, and indemnify the W. L. against all liabilities, loss, charges, and expenses, claims and demands, whether incurred or sustained in consequence of any want of repair, or in consequence of not working, or in any manner connected with the said railway and works." The N. W. Company worked the W. L. line for goods traffic only, and upon the above covenant an action was brought by the W. L. against the N. W. (formerly the L. and B.), one of the breaches assigned being that the L. and B. "did not efficiently work the said railway."

Held, first (*dissentientibus Platt and Martin, BB.*), *that the N. W. are not bound to work the W. L. line for passenger traffic, if so much gross profit could be obtained by working it for goods only.*

Secondly, That they are not bound to carry passengers even if passengers present themselves, if by working the railway efficiently for goods they produce as much gross profit as they would by working it for passengers and goods or for passengers alone.

Thirdly, That under the statute authorising the lease, and the lease itself, the right to sue the G. W. Company on their covenant with the W. L. to stop their trains passed with the railway to the N. W., and that they had power to compel the G. W. to stop their trains.

Semble, also, that they might sue on that covenant, being one which affects the temporary enjoyment of the estate, and beneficial to the owners pro tempore, by the common law.

Fourthly, That the N. W. were not bound necessarily to work the W. L. line in connection with trains on the G. W. line.

Fifthly, That they were not necessarily bound to stop the G. W. trains where necessary for the purpose of working in connection with the W. L. line.

Sixthly, That they were not necessarily bound to work the W. L. line in connection with the trains on their own line.

Seventhly, That they were not necessarily bound to stop their own trains where necessary for the purpose of working in connection with the W. L. line.

Eighthly, That the N. W. Company were not to be treated by the jury, for the purpose of considering their liability, as if they were the lessees of a separate and independent line, having no control over the G. W. and N. W. lines; and that the covenant "to work efficiently" must be construed with reference to the subject-matter and the character of the covenantors; and that the construction of the word "efficient" would be different in a covenant by a person armed with very limited or very extensive powers. And that, therefore, although the N. W. are certainly not bound to make a sacrifice of their own concern for the purpose of efficiently working the W. L. line, so as to produce the greatest gross profits, yet, having greater facilities for increasing the traffic on the W. L. line than a lessee of that line only would have, they are bound to do more than such a lessee in order to perform their covenant to work efficiently.

The Court observed also in their judgment, with respect to the first, second, fourth, fifth, sixth, and seventh of the above questions, that it is difficult to see how the N. W. Company could practically work the W. L. line effectively, so as to produce the greatest gross profits without working it for passenger traffic, and in connection with the G. W. and their own line. But that that was a question for the jury.

And further, in answer to a suggestion of Maule, J. in the Court of C. P., that the covenant was not to be construed as merely binding the N. W. Company to work the line so as to avoid a forfeiture of it to the G. W. Company, or to the adjoining landowners.

The declaration in this case set out the agreements between the West London Railway Company and the London and Birmingham Railway Company, the substance of which is stated in the judgment, and therefore need not be repeated here.

There was also given in evidence an agreement between the plaintiffs and the London and Birmingham Railway Company, dated March 11, 1845, for a lease of the line, in which it was, *inter alia*, agreed that the West London Railway Company should, from time to time, at the cost, charges, and risk of the London and Birmingham Railway Company, exercise and put in force the powers of their Acts of Parliament, when and in such manner as the London and Birmingham Railway Company should require for any purpose or purposes connected with, or arising out of, or required for, giving effect to those presents. That the London and Birmingham Railway Company should, at their own expense, during such times as they should be tenants or lessees or in the possession of the West London Railway and other works agreed to be leased as aforesaid, or in the receipt of the rates and tolls arising therefrom, or from any part thereof, efficiently work and repair the same railway and works. That the London and Birmingham Railway Company should indemnify the West London Railway Company against all liabilities, losses, charges and expenses, claims and demands to be incurred or sustained in consequence of any want of repair, or in consequence of not working, or in any manner connected with the working, of the same railway and works; but the West London Railway Company should have no control whatever over the working or management, by the London and Birmingham Railway Company, of the West London Railway or works, except and subject nevertheless to the stipulation contained in the last preceding article. And there was also given in evidence the indenture of March 10, 1846, being the indenture declared on by the plaintiffs; and the counsel for the plaintiffs proved that the Great Western Railway, at a point between the termini thereof, crossed the said West London Railway on a level, being the crossing mentioned in the agreement with the Great Western Railway Company; and that there was, and had always been since the commencement of the working of the said West London Railway, a balk or stop kept across the said West London Railway by the Great Western Railway, except at certain periods during each day; and that the said West London Railway ran into and joined the said London and North-Western Railway (formerly the said London and Birmingham Railway), at a point on the said last-mentioned line between the termini thereof, being at Harlesden Green, in the county of Middlesex, about five miles and three quarters of another mile from London; and also that the said West London Railway was about three miles in length, and was laid down with a single line of rails only, though a double line of rails might have been laid down, and there was sufficient land for that purpose included in the lease to the London and Birmingham Railway Company; and that before the said demise of the West London Railway and works to the defendants, the plaintiffs worked the said demised railway and works themselves, both for passengers' traffic and goods traffic, and ran trains on the said line, and carried on the said line both passengers and goods, though to a very trifling extent; and that the said plaintiffs had only

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two locomotive engines, two carriages, and five or six waggons; and that the whole receipts were about 2*l.* per week; and that before the making of the said first-mentioned agreement, the said West London Railway had been worked by the plaintiffs at a great loss to themselves, and that they had ceased to work the same; and that, at the time of making the said indenture of March 10, 1846, and thence to the commencement of this action, there were four stations on and belonging to the said line; and at the said stations respectively there were booking offices and accommodation for booking and receiving both passengers and goods to be carried on and along the said railway; and that on the said demised railway and works there was accommodation for receiving both passengers and goods, and carrying the same along the said railway. And the said counsel for the plaintiffs gave evidence before the said jury to prove that in the neighbourhood of the said line and the stations thereof a large population resided, and to show that many of them would have become passengers upon the line if passenger trains had been run through and worked in connection with trains on the said London and Birmingham, and London and North-Western and Great Western Railways, or some or one of them; and evidence to show that large quantities of goods might, after the making of the said lease, have been carried on the said West London line if the same had been worked in connection with trains on the said other railways, or some or one of them. And the said counsel for the plaintiffs gave evidence before the said jury that the said London and Birmingham Railway Company, before their dissolution by the said Act of the session of Parliament of the ninth and tenth years of the reign of her present Majesty, and the defendants since their incorporation by the said Act, did not, nor did either of them, nor did any body or person, at any time run or provide passenger trains or carriages, or carry passengers along or upon the said West London Railway, or keep open the stations or booking-offices of the said railway, or any of them, for the purpose of receiving passengers to be conveyed on the said line, or advertise or in any way make known to the public that passengers might travel or be carried on the said line. And the plaintiffs' said counsel then contended that the said London and Birmingham Railway Company and the defendants had not nor had either of them efficiently worked the said West London Railway and works, and had not performed the said covenant on which the said sixth breach was assigned. And the said counsel for the plaintiffs also then contended before the said Chief Justice and jury, that under the said covenant on which the said sixth breach was assigned, and in order to perform the same, it was necessary that the said London and Birmingham Railway Company and the defendants should work the said West London Railway and works (or that the said railway and works should be worked) for passenger traffic as well as for goods traffic, or that the said London and Birmingham Company and the defendants should so work the said West London Railway and works (or that the same should be worked) for passenger traffic as well as for goods traffic, if such traffic presented itself; and that the said London and Birmingham Railway Company and the defendants respectively could and ought to have enforced, against the Great Western Railway Company the said stipulations of the said last-mentioned company with the Birmingham, Bristol, and Thames Junction Railway Company, and could and ought to have compelled the said Great Western Railway Company for the purpose of working in connection with the said West London Line; and that the said London and Birmingham Railway Company and the defendants respectively were bound to work the West London Line (or that the same should have been worked) in connection with trains on the Great Western Railway; and that the London and Birmingham Railway Company and the defendants were bound to compel the Great Western Railway Company to stop trains on the Great Western Railway, where necessary, for the purpose of working in connection with the West London Line; and that the said London and Birmingham Railway Company and the defendants respectively were bound to work the West London Line (or it was necessary that the said line should be worked) in connection with trains on the line of the said London and Birmingham Railway Company and the defendants respectively; and that the said London and Birmingham Railway Company and the defendants were bound to stop the trains of them the said London and Birmingham Railway Company and the defendants respectively, on the line of the London and Birmingham and London and North Western Railway, where necessary for that purpose. And the counsel for the plaintiffs also then contended that the said London and Birmingham Railway Company and the defendants respectively were not to be treated, for the purpose of considering their liability under the said covenant on which the said sixth breach was assigned, as if they were lessees of a separate and independent line, and having no control over the Great Western, and London and Birmingham, and London and North-Western Railways, or any of them. And the said counsel for the plaintiffs then prayed the said Chief Justice to direct the said jury in accordance with the said contentions of them the said counsel for the plaintiffs. And the said counsel for the defendants then disputed and denied the said contentions. And the said chief justice, after hearing the evidence aforesaid, and certain other evidence in the said cause on the said trial, as to the capabilities of the said railway, and the mode in which the said railway had been worked for goods traffic, did then and there submit and leave the issue joined on the said sixth breach to the jury aforesaid, and, in so doing, did declare and deliver his opinion to the jury aforesaid—that, under the said covenant on which the said sixth breach was assigned, and in order to perform the same, the said London and Birmingham Railway Company and the defendants respectively were not bound to work the said West London line (nor was it necessary that the same should be worked) for passenger traffic as well as for goods traffic; and that it was not necessary that the said London and Birmingham Railway Company and the defendants should work the said West London Railway and works, or that the same should be worked, for passenger traffic as well as for goods traffic, if such traffic presented itself; and that the said agreement of the 4th Feb. 1837 was not transferred to the London and Birmingham Railway Company or the defendants, or made binding between them and the Great Western Railway Company, and that, therefore, the said London and Birmingham Railway Company and the defendants respectively had no power to compel the Great Western Railway Company to stop trains on the line of the Great Western Railway; and that the said London and Birmingham Railway Company and the defendants respectively were not bound to work the West London Line (and that it was not necessary, that the same should be worked), in connexion with the trains of the Great Western Railway; and that the said London and Birmingham Railway Company and the defendants respectively were not bound to compel the Great Western Railway Company to stop trains on the Great Western Railway, where necessary for the purpose of working in connexion with the West London Line; and that the said London and Birmingham Railway Company and the defendants respectively were not bound to work the West London Line (and that it was not necessary that the same should be worked) in connexion with trains on the line of the said London and Birmingham Railway Company and the defendants respectively; and that the said London and Birmingham Railway Company and the defendants respectively were not bound to stop the trains of the said London and Birmingham Railway Company and the defendants on the line of the London and Birmingham and London and North Western Railways respectively, where necessary for that purpose; and that the said London and Birmingham Railway Company and the defendants respectively must be treated by the jury, for the purpose of considering their liability under the said covenant, as if they were lessees of a separate and independent line, having no control over the Great Western, and London and Birmingham, and London and North-Western Railways, or any of them; and with those directions the Chief Justice left the matters of the issue on the said sixth breach to the jury.

Assignment of errors.—That the said Chief Justice ought not at the said trial to have declared or delivered such opinion to the jury as aforesaid, or to have directed the jury as aforesaid, or to have left the said issue to the said jury, with his direction aforesaid, and ought to have declared and delivered and left to the jury the contrary thereof.(*a*)

(*a*) The following portions of Acts of Parliament were dwelt upon in the argument:—

6 Will. 4, c. 79, s. 1.—"Whereas the making a railway from the point of junction of the London and Birmingham and Great Western Railways, at Harlesden Green, in the county of Middlesex, to the basin of the Kensington Canal, at Kensington, in the said county, would be of great public advantage, by opening an additional certain and expeditious communication between the said last-mentioned railways and the South-western districts of the metropolis and the river Thames."

6 Will. 4, c. 79, s. 85, by which it was enacted that in the event of the said railway (*i. e.* the present West London Railway) being at any time abandoned or disused by the said company for the space of three months, the roads under which it passed were to be reinstated, and the railway company was not to be discharged from their liabilities to the trustees of the roads until such reinstatement.

6 Will. 4, c. 79, s. 210.—And be it further enacted, that if the said railway, or any part thereof, shall at any time hereafter be abandoned or given up by the said company, or after the same shall have been completed shall, for the space of three years, cease to be used and employed as a railway, then and in such case the lands so purchased or taken by the said company for the purposes of this Act, or otherwise the part thereof over which the said railway or any part of such railway, which shall be so abandoned or given up by the said company, shall pass, shall vest in the owners for the time being of the land adjoining that which shall be so abandoned or given up, in manner following (that is to say), one moiety thereof in the owners of the land on the one side, and the remainder thereof in the owners of the land on the other side thereof.

3 & 4 Vict. c. 105, ss. 34, 35, 36 and 37.—Sect. 34 recites a portion of the agreement dated 4th Feb. 1837, between the Great Western Railway Company and the Birmingham, Bristol, and Thames Junction Railway Company, and makes certain provisions with respect to the one line crossing the other.

Sect. 35 enacts: And whereas by the said recited agreement it is provided, among other things, that the said Great Western Railway Company shall, and they are thereby authorised to maintain and keep in repair the lines of railway and other works at the point of crossing of the said two railways, and it is essential for such purpose, and for the security of the public using the said two railways, or either of them, that the said Great Western Railway Company should, after the completion and opening for use of the said Birmingham, Bristol, and Thames Junction Railway, continue to have the exclusive management and control of the said lines of railway at the point of crossing, and of the rails, switches, and other apparatus and machinery connected therewith, as hereinbefore described, subject to the ownership of the soil of the land at the point of crossing aforesaid being vested, as in this Act mentioned, in the said last-mentioned railway company, and subject to the performance by the said two companies of the several provisions in the said agreement contained, so far as the same may remain unmodified by any future agreement in writing between the said two companies, or any Act of the Legislature: be it therefore enacted, that when the said Birmingham, Bristol, and Thames Junction Railway shall have been completed, the management and control of the lines of the said two railways at the point of intersection thereof, and of the rails, switches, and other apparatus and machinery connected with such lines at the said point of intersection as aforesaid, which have been or may be hereafter constructed and made, and which by the said agreement are required to be maintained and kept in repair by the said Great Western Railway Company, shall remain vested in the said Great Western Railway Company, but subject to the performance by the said two companies respectively of the several stipulations in the said recited agreement of the 4th Feb. 1837 contained, or to such other stipulations or arrangements as may be hereafter agreed on in writing by the said two companies; and in default, by either of the said two companies, in the performance of any of the said stipulations which may be necessary for the protection of the public using the said two railways or either of them, the company so making default shall, for each and every offence, forfeit and pay to the other company 10*l.*, to be recovered before any magistrate for the Metropolitan District of Police, or before any two justices of the county of Middlesex in petty sessions assembled, and all such penalties shall be recoverable as is provided by the said recited Act in regard to any penalties thereby imposed: provided always, that if, upon due service of such summons as therein mentioned, the said companies respectively shall not, by their secretary or other agent, appear before such magistrate or justices, in compliance with such summons, then in such case it shall be lawful, and the said magistrate or justices are hereby authorised, empowered, and required to hear and proceed to adjudicate upon such complaint *ex parte*: provided also, that such magistrate or justices shall, upon the hearing of any such complaint, direct by which of the parties the costs of, and attending on, such summons and hearing shall be paid.

Sect. 36 saves the rights of the Birmingham, Bristol, and Thames Junction Railway Company, under the agreement of Feb. 4, 1837, as to the working the railways at the point of crossing.

Sect. 37 enacts: "That the said Great Western Railway Company, and all persons duly authorised by them, shall at all times, whether before or after the completion of the said Birmingham, Bristol, and Thames Junction Railway, have full liberty to construct, maintain, use, alter, and repair their line of railway, and all necessary works and conveniences connected therewith, on and across the land referred to in the said recited agreement of Feb. 4, 1837, and on which, by the said agreement, they have a right to enter and to make and maintain upon the said lands, to cleanse, alter, and repair thereon or therein all such cuts, drains, embankments, and other works, being the property of the said Great Western Railway Company, as may be necessary or convenient for the purposes of the said Great Western Railway; and to pass upon and across the said lands with engines, carriages, and otherwise, without hindrance or interruption by or on the part of the said Birmingham, Bristol, and Thames Junction Railway Company, and without being subject or liable to the payment of any toll or other sum to the said Birmingham, Bristol, and Thames Junction Railway Company, or any person claiming under them, but subject to the provisions in the said agreement and in this Act contained, and also, except as hereinafter mentioned, to the ownership of the soil in the said land being vested in the said Birmingham, Bristol, and Thames Junction Railway Company: Provided always, that if the said Birmingham, Bristol, and Thames Junction Railway shall not be completed so as to be used as a public communication across the said Great Western Railway within five years from the passing of this Act, or if the said line shall be abandoned or cease to be used as a railway for the space of three years after the completion thereof as aforesaid, then and in either of such cases, upon payment or tender at any time thereafter by the said Great Western Railway Company to the said Birmingham, Bristol, and Thames Junction Railway Company of the sum paid by them for the purchase of the lands mentioned in the said recited agreement, and hereinbefore referred to, the said lands shall thereupon absolutely vest in and become the property of the said Great Western Railway Company, freed from all right or interest of the said Birmingham, Bristol, and Thames Junction Railway Company, or of any person claiming under them in reference thereto, in like manner as though the Act authorising the construction of the said Birmingham, Bristol, and Thames Junction Railway had never passed, and the said lands had been originally purchased by and conveyed to the said Great Western Railway Company; and the said Great Western Railway Company shall be thenceforth freed and discharged from all obligations in respect of the said agreement hereinbefore recited, or any enactments consequent thereon, or in relation thereto.

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Byles, Serjt. (with whom was *Aspland*), for the plaintiffs.—The covenant "to efficiently work" means that the defendants are to use ordinary means to secure and increase the traffic; or, that they are to work up to the requirements of the public, or up to the best powers of the workmen. First, the defendants were bound to work for passenger traffic. The West London company, at the time of the lease,

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were carriers both of passengers and goods; and so also were the lessees. The railway was constructed for the carrying of passengers, as shown by the provisions of their Act, 6 Will. 4, c. 79, which prescribes the tolls to be taken for passengers. The evidence shows that passenger traffic was to be had. The agreement provides for the exchange of passengers from one railway to another; and the lease provides for the payment to the West London of a certain proportion of the rates and tolls taken in respect of passengers. The terms of the lease therefore clearly contemplate passengers being carried, and the defendants were bound to take means for producing passenger traffic. [ERLE, J.—Is your test what a prudent owner would do?] Yes; one who had no inducement to throw it on another line. Secondly, the defendants had power to compel the Great Western to stop their trains. The fee-simple of the land at the point of intersection belonged to the plaintiffs; and the Great Western had only an easement over it in a particular manner; and the plaintiffs, before the lease to the defendants, could stop the Great Western trains. This right passed by the demise to the defendants. It runs with the land. The benefit of the easement continues to the Great Western; and so also does the burden. All the rights of the plaintiffs pass by the demise to the defendants. This would be so by the common law. But 3 & 4 Vict. c. 105, ss. 34, 35, 36, 37, and 10 & 11 Vict. c. 91 (passed after the lease) sanction the agreement, and, in fact, enact it. The leasing Act, 8 & 9 Vict. authorises the leasing of the rights of the West London. This was one of those rights, and passes under the general words in the operative part of the lease, by which the plaintiffs grant their line, &c. together with all their rights, powers, and privileges. The defendants therefore may bring actions against the Great Western in respect of such right, either in their own names or in the name of the plaintiffs; or they may file a bill for a specific performance. Thirdly, the defendants are bound to work the trains of the West London line in conjunction with the trains of the London and North-Western and Great Western Railways. The leasing Act recites in the preamble that the railway cannot be worked separately with advantage, but might be in connexion with the other railways; and no other mode of effectually working the line can be suggested. Fourthly, the defendants are not to be treated merely as lessees of a separate line, but regard is to be had also to their possessing another railway; and they are to be regarded as the lessees of a line connected with other railways. In ascertaining the meaning of a day's work, regard must be had to the ability of the workman: Bacon's maxims, rule 10, *verba generalia restringuntur ad habilitatem rei vel personæ*; as in the case of a grant of an annuity *pro consilio impendendo*, you must consider the ability of the person who is to give it. There are several objections urged against our construction of the covenant; first, it is said (this having been suggested by Maule, J.) that the covenant to work efficiently is merely a covenant to indemnify against a forfeiture of the lands taken by the company under sect. 210 of 6 Will. 4, c. 79, to the owners on either side of the line; or, under 3 & 4 Vict. c. 105, s. 37, to the Great Western. But this cannot be so; for, looking at the first branch of the covenant, if it had been framed on the forfeiture clause it would have run—"The railway shall not during the term be abandoned or given up, but shall be used during the term." But they covenant not only to work but to repair; and in the forfeiture clause there is nothing about repairs. The covenant contains no allusion to forfeiture; but is a positive covenant to efficiently work and repair, and so to work as to effectuate the objects of the lease, and give gross proceeds to the lessors by using reasonable means to do so. Nor does the latter branch of the covenant control the first: (*Seward* v. *Anstey*, 2 Bing. 519.) It is not in the alternative to work or indemnify; but to work and indemnify. The second branch itself contemplates far more than the forfeiture clause. For what is to become of the word "loss?" We might assign good breaches, and yet stop far short of the forfeiture clause. Another objection is that there is one case in which the defendants are not bound to carry passengers; namely, where the railway would produce more by merely carrying goods. But we answer that we have nothing to do with the net profits; and that it is impossible that the gross profits should not be greater if passengers were carried. [CROMPTON, J.—Is not "efficiently" a question for the jury? Do the exceptions hit it?] We say in the bill of exceptions that we contended that the defendants were bound to carry on both trades. [CROMPTON, J.—Suppose it were more profitable to the lessors that goods only should be carried?] To that we do not object; but it will be said that if the carrying of goods only is more beneficial to the lessors, they need not carry passengers. [COLERIDGE, J.—If in any supposable case they are not bound to carry passengers, is the direction of the Lord Chief Justice wrong upon that point?]

Channel, Serjt. (with whom was *Boyle*), for the defendants.—The defendants are not bound in all possible events to run passenger trains; and the direction of the Lord Chief Justice on that point is right. Suppose the breach relied upon had been that the defendants had not run any passenger trains, and we had demurred: could the plaintiffs have succeeded? If not, then the omission to run passenger trains does not constitute a legal breach. [MARTIN, B.—The second exception is to the ruling that the defendants are not bound to provide passenger trains, if passengers present themselves.] We say the lease does not show the necessity of passenger trains. The clauses relied upon by the other side only show what we are to pay to the plaintiffs if we carry them; but do not show that we are bound to carry them. The gross proceeds may be greater by our carrying goods only; and if so, we should not be bound to carry passengers in order to work the line efficiently. Suppose the carrying of passengers would so impede our goods traffic as to diminish the gross proceeds. If the covenant is to indemnify against loss by forfeiture or against actual loss, we are entitled to succeed. The case of *Seward* v. *Anstey* is distinguishable. The covenant there is to pay absolutely; but the indemnity goes beyond it. In construing the covenant, it is not to be taken in reference to the public at all, but merely as a contract between the parties themselves. It cannot mean that the defendants are to work the line in a manner not only not beneficial to themselves, but in a manner in which the plaintiffs could not beneficially have worked it. We are entitled, unless they can show that we have lessened the gross proceeds by indiscreet working. As to stopping the trains of the Great Western, the Act of Parliament only notices the agreement in order to provide for omissions of what might benefit the public. And as to the leasing Act and lease, penalties are imposed on both parties; and it must be shown, not only that we acquired rights, but also had liabilities imposed upon us by the demise. The powers in the agreement with the Great Western are very special; and if it had been intended that they should pass they would have been more particularly alluded to. The rights intended to pass under the general words were those which were required for the purpose of completing or extending the line. [COLERIDGE, J.—Is the power of the Great Western to enforce the agreement extinguished by this demise?] New arrangements were at the time contemplated, and about being entered into, between the London and North-Western and Great Western; and, in fact, the Great Western became part owners of the line. As to our being bound to stop our own trains, the covenant taken by itself can only operate on the land demised. It is only by looking at the preamble of the leasing Act that it can be inferred that we are bound to stop our trains. But the statement in that preamble that the West London trains might be advantageously worked in conjunction with the London and North-Western, was inserted for the purpose of satisfying the Legislature that the London and North-Western were justified in asking powers to take what was then a failing line; and it was left to the parties themselves to agree to any terms which might be beneficial to themselves, if not inconsistent with the Act. The London and North-Western, in fact, paid their money and took the powers under the Act for the chance of working the line advantageously. And I submit that this covenant is to be looked at exclusive of the Act. One ruling assumes that we have no power to stop; and we should like, for the final determination of the case, that that question should be decided.

Aspland, in reply.—As to the form of the exceptions, the first is to the ruling that "the London and North-Western are not bound to work for both traffics." That means, if passenger traffic should present itself, and there was evidence that passenger traffic might have been had. It is said that the leasing Act was only for the purpose of enabling the parties to contract; but it does more, for it confirms the agreement previously entered into, which contains the same words as the covenant in the lease, that the London and North-Western shall efficiently work. The power to stop the Great Western is transferred by the demise; for the agreement made between the West London and the Great Western is now in operation; and, if it were not, the trains of the Great Western could not get to London. Indeed, by reason of the statute giving, in certain events, the land to the adjoining landowners, the Great Western might be altogether stopped. If, therefore, they can enforce the agreement, it can be enforced against them by the London and North-Western. The word "indemnify," in the covenant, means that the London and North-Western will put us in the same position, if they do not efficiently work, as if they did.

Cur. adv. vult.

JUDGMENT.

Jan. 28.—PARKE, B.—The case of the *West London* v. *The London and North-Western*, heard by myself, Mr. Justice Coleridge, Mr. Justice Wightman, Mr. Justice Erle, my brothers Platt and Martin, and Mr. Justice Crompton, comes before us upon a bill of exceptions to the ruling of the Lord Chief Justice of the C. P. in the trial of an action of covenant brought by the plaintiffs against the defendants. The question arising on the construction of that covenant, we are informed, had been before the C. P. upon cross motions by the plaintiffs and the defendants, and the ruling was in conformity with, or rather was, the ultimate opinion of the court, though necessarily in the record it is treated as the ruling of my Lord Chief Justice. The questions arising on the record were fully and most satisfactorily argued on both sides before us, and I have now to state the opinion of my brethren and myself on each of them. The action is brought on a covenant contained in a lease by the plaintiffs to the London and Birmingham Railway Company, which has since been incorporated with, and had its liabilities transferred to, the defendants. The lease was made on the 11th March 1846, pursuant to an Act of the 9 Vict. for enabling the London and Birmingham to take a lease of the West London. The West London had, under its then name of the Birmingham, Bristol, and Thames Junction, and under an Act of the 6 Will. 4, c. 79, made a railway from the basin of the Kensington Canal at Kensington to join the defendants' railway near Harlesden Green; and there was in that Act of Parliament a clause, the 210th, providing that, if the railway or any part should be abandoned or given up, or if after it was completed it should for three years cease to be used as a railway, the lands purchased for the purposes of the Act should revest in the owners of the adjoining land. In the progress of the works of the plaintiffs and the Great Western they became competitors for the purchase of a small piece of land belonging to the Bishop of London, over which both railways would have to pass, and an agreement, under the seal of both companies, was executed, dated the 4th Feb. 1837, which recited the above fact, and also that the bishop had conveyed the land to the company, now the plaintiffs, subject to the right of the Great Western to construct their railway across it; and the deed contains mutual covenants regulating the right of each company in respect of such piece of land so conveyed. The Great Western covenant with the company now the West London to construct a railway station at the point of junction, for the purpose of transferring passengers and goods from the one railway to the other, and to stop the trains, for the purpose of meeting corresponding trains of that company, in the manner particularly detailed in that deed. In the year 1840 another Act, the 3 & 4 Vict. c. 105, passed, giving further powers to the company now the plaintiffs; and, in the 34th section of that Act, it recites the agreement of the 4th Feb. 1837, regulates the mode of crossing until the plaintiffs' railway should be completed, saves the plaintiffs' rights under the agreement by section 36, and, by section 37, provides that if the plaintiffs' line is abandoned or cease to be used as a railway for three years after its completion, then, on payment or tender to them of the purchase-money of the piece of land mentioned in the agreement, that land should vest in the Great Western. In July, 1845, the London and Birmingham, having previously agreed with the plaintiffs to take a lease of their railway, obtained an Act of Parliament (the 8 & 9 Vict. c. 156) to enable them to take that lease. It recites that it had been found that the West London, which name was given to the plaintiffs' railway by the 3 & 4 Vict. c. 105, could not be worked as a separate and independent undertaking with advantage to the proprietors thereof: but the same might be advantageously worked and used in connection with the London and Birmingham and the Great Western, or either of them, by either of the companies to whom those railways belong. Power is given to the West London to lease to the London and Birmingham their railway, stations, &c. and all their rights, powers, and privileges in relation thereto; and it is declared to be lawful for the London and Birmingham to accept such lease, and to use, exercise, and enjoy all such powers, rights, and privileges as aforesaid, subject to the provisions of that Act, and to the performance of the conditions in the lease. Pursuant to the Act, the lease from the plaintiffs to the London and Birmingham was executed on the 10th March, 1846, upon a covenant in which the present action is brought against the London and North-Western. This indenture recites the Act, and witnesseth that, in consideration of 60,000*l.* paid by the London and Birmingham to the plaintiffs, in pursuance of the said power, did grant, demise, and lease unto the London and Birmingham the West London, and all the stations, wharfs, buildings, and appurtenances thereto belonging or held, used, and enjoyed therewith, and to the rates and tolls payable in respect thereof, together with all the rights, powers, and privileges of the West London in relation thereto, and also the free and uninterrupted use of the Kensington Canal, for the purposes of the traffic of the London and Birmingham and the West London. And it was agreed that, during the continuance of the lease, the London and Birmingham should, within twenty-one days after the 30th June and the 31st Dec. in every year, carry to the credit of the West London such a sum of money as should be equivalent to one-fourth of the gross sums received by the London and Birmingham during the period of six calendar months next preceding the said 30th June and the 31st Dec. in respect of passengers, goods, and other things carried or landed on the West London, or the lands and appurtenances thereto belonging, or on or over any alterations and improvements in any of the premises demised, or in lieu of, or by way of substitution for, any part thereof, and also such a sum of money

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as should be equivalent to one half of the net profits arising from the rates, tolls, and duties, to be received for the use of the same respectively, from persons providing their own locomotive or other moving power or carriages. Here follows the material covenant upon which this question turns. It is in these terms, "That the London and Birmingham should, at their own expense, during the continuance of the lease efficiently work and repair the railway and works demised, and indemnify the West London against all liabilities, loss, charges, and expenses, claims and demands, whether incurred or sustained in consequence of any want of repair, or in consequence of not working, or in any manner connected with the working of the same railway and works;" but the West London were to have no control whatever over the working or management by the London and Birmingham of the West London or works. Several breaches were assigned, to which it is not material to advert. The sixth was that the defendants did not efficiently work the said railway, to which the defendants pleaded that they did efficiently work it; and on that issue the Lord Chief Justice directed the jury. The only question for us to decide is, whether the direction of my Lord Chief Justice was right in all the particulars pointed out in the bill of exceptions. There were several objections, and we propose to give our opinion on each, though if we decided that one only was wrong, a *venire de novo* would be granted, but that would leave the case in a very unsatisfactory condition, and prolong a litigation which it is very desirable, if possible, to terminate by laying down a rule which may lead the parties to settle the proper damages to be paid by arbitration. The exceptions are that the Lord Chief Justice was wrong in stating his opinion to the jury on the following eight particulars:—First, that under the said covenant, and in order to perform the same, the defendants were not bound to work the said West London line, nor was it necessary that the same should be worked, for passenger traffic as well as for goods traffic. Secondly, that it was not necessary that the defendants should work the said West London and works, or that the same should be worked, for passenger traffic as well as for goods traffic, if such traffic presented itself. Thirdly, that the said agreement of the 4th Feb. 1889 was not transferred to the defendants or made binding between them and the Great Western, and that, therefore, the said defendants had no power to compel the Great Western to stop trains on the line of the Great Western. Fourthly, that the defendants were not bound to work the West London line, and that it was not necessary that the same should be worked, in connection with trains on the Great Western. Fifthly, that the said defendants were not bound to compel the Great Western to stop trains, on the Great Western where necessary, for the purpose of working in connection with the West London line. Sixthly, that the defendants were not bound to work the West London line, and that it was not necessary that the same should be worked, in connection with trains on the line of the said defendants. Seventy, that the said defendants respectively were not bound to stop the trains of the defendants on the line of the London and Birmingham, and London and North-Western respectively, where necessary for that purpose. Eighthly, that the defendants must be treated by the jury, for the purpose of considering their liability under the said covenant, as if they were lessees of a separate and independent line, having no control over the Great Western, and London and Birmingham, and London and North-Western Railway, or any of them. It was suggested to us on the argument that, in giving this opinion, the Lord Chief Justice acted in some degree on the principle which is stated to us to have been sanctioned by most of the judges of the C. P., and of whose opinions we have been furnished with a printed report, but not from the regular reporters of that court. The principle suggested is that, taking the whole of the covenants together, the main object of it was that the railway was to be worked so as to prevent any loss or forfeiture, or injury to the plaintiffs, in consequence of not working; but as long as that is done, it might be worked in any way that the lessees pleased; that the lessees merely took on themselves the obligation of the lessors, and undertook to relieve them from the obligation cast on them by the Acts of Parliament. But the able argument of my brother Byles satisfied us that this was too narrow a view of the construction of the covenant in question, and we so intimated our opinion in the course of the argument. Had the object been merely to protect the plaintiffs from the forfeiture of the line under one of the clauses already referred to, either under the 6 Will. 4, c. 75, s. 210, by abandoning or giving up or ceasing to use it as a railway, or under the 3 & 4 Vict. c. 105, s. 87, by abandoning or ceasing to use it for three years, it would have been unnecessary to do more than to covenant not to abandon, give up, or cease to use the railway: the covenant to indemnify against all liabilities, losses, charges, and expenses, claims, and demands, in consequence of any want of repair, or in any manner connected with the working of the railway and works, and more especially the covenant to work efficiently, would have been quite unnecessary if the object had been merely to preserve the railway to the plaintiffs' company. We must give effect to all the words of the covenant if we can; and in so doing we do not think that the obligation can be limited in the way which has been suggested. The railway is to be worked efficiently, and efficiently repaired; and if the plaintiffs are to share in the gross profits in the proportion of one-fourth, and in half the net profits of the rates and tolls payable by others using their own locomotive power, this shows that the object of the covenant to work efficiently was to secure the stipulated benefit to the plaintiffs on the gross profits, and efficiently to repair, to give them a chance of the share of the net profits. But we agree with the reported judgment of my brother Maule that it never could have been intended that the defendants' company were to work the railway in such a manner as to produce the largest quantity of gross proceeds. That might entail a ruinous loss on themselves; they were not bound to lay down a double railway where a single one was before, or to apply a part of their large capital to the erection of new stations, or to disarrange all their plans, so as to make the plaintiffs' line of railway productive at the expense of their own. A fair and reasonable mode of working the railway, so as to make it productive, is all that can be required. We now proceed to consider the eight points made by the bill of exceptions, keeping these observations in view. The first of these depends upon the question whether the defendants were, under all the circumstances, in order to perform the covenant "to work efficiently," bound to work the line for passenger traffic. We think that this proposition cannot be maintained—at least all of us think, with the exception of my brothers Platt and Martin, who are not satisfied to concur on that particular part of the judgment, although they concur in the other parts. A satisfactory criterion of the truth of it was offered by my brother Channell, when he asked, whether it would be a good breach of such a covenant to state simply that the defendants did not work the railway for passenger traffic. We think, with the exception of my brothers Platt and Martin, it clearly would not. If as much gross profit could be obtained by efficiently working the railway for goods only, or for passengers only, or for both passengers and goods—and there is no evidence stated in this case that it could not—surely the plaintiffs had no right to complain. We therefore think that the first objection cannot be maintained. The second is of the same nature: it seems a strange thing to assert that they are not bound to carry passengers even if passenger traffic presented itself; but in truth the same answer is to be given, that if they work the railway efficiently for goods, so as to produce as much gross profit as the railway when worked for passengers and goods, or passengers alone, would produce, they perform their covenant. The mode of working the railway is certainly in their discretion. The third question is, whether the Chief Justice was right in his opinion that the agreement of Feb. 4, 1837, was not transferred to the defendants, and that therefore the defendants had no power to compel the Great Western to stop trains on their railway, pursuant to their covenant contained in that agreement. We think that this covenant to make a station on certain land, and to stop the trains there, which affects the value of the land, and of the whole of the plaintiffs' railway, is one which runs with the estate in the plaintiffs' railway (the cases being collected in *Spencer's* case, in the first volume of Smith's Leading Cases); and that the assignee of the whole estate in the railway could sue upon the covenant at common law. Whether the assignee of that estate for a term of years, as the defendants are, could sue at common law, is not a point which has been settled, the cases on the subject being generally those of covenants for title which pass with the entire estate; but as this is a covenant affecting the temporary enjoyment of the estate, and consequently beneficial to the owners of it *pro tempore*, there is no reason why it should not, as in the case of covenants affecting the reversion which are transferred with part of the reversion, or the reversion of part by operation of the statute of 32 Hen. 8, c. 34: (Coke Littleton, 215 *a*; *Farquhar* v. *Pickard*, 2 B. & Al. 105. At all events, we think that the words of the statute 8 & 9 Vict. c. 105, and of the lease, are sufficient to vest the rights under the agreement in the defendants, as not only the railway, but all the *rights*, powers, and privileges of the plaintiffs in relation thereto, are demised by the plaintiffs to the defendants; and this is a power and privilege which does relate to the railway. For these reasons we do not agree in the opinion of my Lord Chief Justice on the third question, that the defendants had not power to compel the Great Western; that part of his direction we think wrong. The fourth and fifth objections admit of a different answer, and the direction is right, on the same principle that the first and second were. Though they had power, they were not bound to exercise it necessarily as part of the efficient working of the railway by the defendants; and the defendants were not bound necessarily to work the West London in connection with trains on the Great Western, as a part of their obligation to work effectively. It would not have been a good breach of their covenant to allege simply that they did not so work the line. Precisely the same observation is to be made on the sixth and seventh objections; there is no covenant in the lease obliging the defendants to work their line in connection with either in particular, or with both the Great Western and London and North-Western lines together, though it is difficult to see how practically they could work the lines effectively without some connection with one or the other. This would be for the jury; and if the jury found that they could work the line effectively without, so as to satisfy the covenant, that would be sufficient. The last position laid down by the Chief Justice is that the defendants must be treated by the jury, for the purpose of considering the liability of the defendants, as if they were the lessees of a separate and independent line, having no control over the Great Western and London and North-Western. We do not think that this proposition is correct. The covenant to work efficiently must be construed with a reference to the subject-matter and the character of the defendants. The word "efficient" must admit of a different construction in a covenant by a person armed with very limited or very extensive powers. If this railway had been leased to a simple individual or company without any connection with any other railway, and leased alone, the measure of efficient working, we cannot help thinking, would be very different from what would be required from a company whose line was connected with it, who had the entire control over their own line, and were armed with the power of adding to the traffic of the railway by the control possessed over another line, and whose capabilities and powers in this respect were reasons which disposed Parliament to permit the lease to be made to them. It is difficult, indeed almost impossible, to define the precise nature and degree of efficient working which such a company ought to apply under the covenant,—not so difficult to say that it ought to be different and greater than would be required from a company or an individual who had nothing but the railway leased. They would only be required to supply convenient accommodation and attendance for the receipt, and sufficient means of carriage, of such goods and passengers as might be offered at one terminus, or an intermediate station, and this however small the gross profits might be. But that would be too small a measure of efficient working in the case of the defendants, who have the power of supplying more goods and passengers themselves, by facilitating the transit of both from Harlesden to the Kensington terminus, or Great Western Station, or by increased facilities for receiving them at the Kensington terminus, by arrangements within their power, without any serious injury to their own concern. They are certainly not bound to make a sacrifice of their own concern for the purpose of efficiently working this line so as to produce the greatest profits for the plaintiffs and themselves. The covenants have a reasonable construction in this respect; but they are, we think, bound to do more than a lessee of merely the railway in question would do unconnected with any other: therefore there must be *venire de novo*.

Reported by C. J. B. Hertslet, Esq. Barrister-at-Law.

ERROR FROM THE EXCHEQUER.

Tuesday, Feb. 1.

(Before Coleridge, Wightman, Cresswell, Erle, Williams, and Crompton, JJ.

James and others *v.* Cochrane and others.

Lease of coal mine—Construction.

A lease of a coal mine gave a power to the lessees to drive and use outstrokes, drifts, and other communications not exceeding the breadth of four yards each within and through the barrier covenanted to be left unworked of the said colliery thereby demised, lying contiguous to or adjoining any other colliery which they were or should at any time during the said demise, become possessed of or entitled to, or in which they or any of them had or should have any interest, as should be thought necessary or convenient by the said lessees for the effectual mining of such adjoining colliery, and for the purpose of bringing and leading underground the coals which should be wrought or gotten by them within such adjoining colliery, and which should be thought fit and convenient to be brought and conveyed underground from such adjoining colliery into the colliery thereby demised, or the shafts or workings thereof, and by such outstrokes, drifts, &c. to bring lead, &c. from such adjoining colliery into the demised colliery or the shafts or workings thereof, and from thence to convey and carry away all such coals as should by them be wrought within or out of such adjoining colliery:

Held, that this clause authorised the lessees to break through such barrier for winning coal of the demised mine, and for winning coal of the adjoining mines in the occupation of the lessees, though the coal of such demised or adjoining mines when won was not to be nor was brought to the surface through a pit or shaft in the land of the lessors above the demised mine, and although no such pit or shaft in fact existed.

The lease also contained a covenant by the lessees that they, their executors, &c. should once in every month

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or oftener during the said term, at their own expense, draw to bank at some of the pits or shafts of the said collieries demised (provided the same should be pits or shafts from which coals of the thereby demised collieries should not be worked by an outstroke), and lay in some convenient place upon the said lands of the lessors for them, &c. all the manure, &c. to be made by the horses employed underground in working the said demised collieries, and should spend and bestow so much thereof as might be necessary for that purpose in dressing or manuring any land which the said lessees might, during the said term thereby granted, occupy as tenants to the said lessors. The lease further spoke of pits and shafts to be sunk in the demised premises, but did not contain any express covenant binding the lessees to sink a pit:

Held (affirming the judgment of the court below), that no covenant could be implied which bound the lessees, upon the mines being worked and manure made within them, to make a pit or shaft on the demised premises.

The lease further contained a provision that the lessors should not do or commit, &c. any act in the working the said demised coal mines, whereby the same or any part thereof should be damnified, drowned, or overburthened with water or styth, or which might occasion or bring any creep or thrust upon the workings, shafts, aircourses, or watercourses of such colliery; and should and would keep the levels and drifts, and the necessary staples for air, clear and in good repair, order, and condition, from the surface of the earth down to the levels or drifts, during the continuance of the said demise; and should and would, during the continuance of the said demise, raise all the water to come forth and out of the said colliery and coal mines by means of fire and other engines. The evidence in support of the breach of this covenant went to show that, long prior to the commencement of the plaintiffs' title, and thenceforward continuously down to, and at the time of, the commencement of this action, the part of the High Main seam, where workings had formerly been carried on, had been and was filled with water, and thereby the aircourses in the said workings in that seam were interrupted, but that had no effect on the aircourses or workings in the Hutton seam:

Held, that this was properly left to the jury, and that the judge at the trial was right in directing them that the facts proved with reference to the water in the High Main seam did not entitle the plaintiffs to a verdict on that issue.

In this case a writ of error had been sued out against the judgment of the court below, on a demurrer to the declaration, and also a bill of exceptions against the ruling of Cresswell, J. who tried the cause at the Durham assizes.

The action was in covenant. The declaration stated that the plaintiffs on the 5th Oct. 1824, by indenture, demised to the defendants a certain estate called Eppleton, in the parish of Houghton-le-Spring, in the county of Durham, and all the collieries and seams of coal within and under that estate. This deed contained clauses by which full liberty and power was given to the lessees to dig, sink, rid, win, work, and make pit and pits, trench and trenches, grove and groves, staple and staples, and to drive drift and drifts, and to make watergates and watercourses, as well for the searching for and winning, working, obtaining, and getting coals from forth and out of the said collieries or coal mines, seam and seams of coal, thereby demised, as for the avoiding and carrying off water, foul air, and styth, or for the conveying of air into, through, and out of the same, and also sufficient and convenient groundroom, &c. and also sufficient and convenient wayleave or liberty of passage over the lands to carry away the coals, and also to erect cabins for the workmen and all needful engines, &c.; and also full power and liberty to the lessees, their executors, &c. from time to time and at all times during the continuance of the demise, to make, drive, and use such outstroke or outstrokes, drift or drifts, or other communications not exceeding the breadth of four yards each, within and through the barrier, bulk, or warren of coal, thereby covenanted as thereinafter mentioned to be left unworked of the said colliery, adjoining to any other colliery which they then were or should at any time thereafter during the continuance of the demise become, possessed of, or in which they should have any interest, as should be necessary or convenient by the lessees, their executors, &c. for the effectual winning of such adjoining colliery, and for the purpose of bringing and conveying underground the coals which at any time during the continuance of the demise should be wrought or gotten by them out of such adjoining colliery, and which should be thought fit or convenient to be brought and conveyed underground from such adjoining colliery unto and into the colliery demised, or the shafts or workings thereof, and thereby and by such outstroke or outstrokes, drift or drifts, or other communications, to bring and convey underground from such adjoining colliery into the colliery demised, or the shafts or workings thereof, and carry away, all such coals as should by them be wrought or gotten within or out of such adjoining colliery; and also to draw to bank at any of the pit or pits sunk or to be sunk by them in any of the lands aforesaid, coals out of such adjoining colliery, in such manner as the lessees should think fit, such outstrokes to be stopped up (if practicable) at the end of the term, saving to the lessors the right to pass over the waggon-ways on the demised premises, &c.: *Habendum* for the term of forty-two years from the date of the lease. The lessees to pay to the lessors yearly for the first two years of the term the rent of 20*s.* for every ton of merchantable coals of the High Main and Hutton seams; and 17*s.* 6*d.* per ten of every other coal, except coal used in the engines, &c. which should be gotten during the first two years, not exceeding 1000 tons a year; and 22*s.* and 17*s.* 6*d.* a ten (as before) for each ten gotten exceeding that amount; and also paying yearly during the remainder of the term the sum of 1000*l.* yearly for such number of tens of merchantable coal, to be gotten out of the demised collieries, as at the rate of 20*s.* and 17*s.* 6*d.* a ten respectively would amount to 1000*l.*, whether the coal should be gotten or not; and also paying yearly during the remainder of the term above the certain yearly rent of 1000*l.* the further rent of 22*s.* and 17*s.* 6*d.* a ten respectively (as before mentioned) above the number of tons for which the yearly rent of 1000*l.* was reserved, payable half-yearly, and also paying the further clear rent of 7*s.* 6*d.* per ten of coal which by the lessees should during the term be gotten from and out of any collieries adjoining the demised colliery by virtue of all or any of the liberties, powers, and privileges granted by the indenture, and which should be drawn to bank in any of the said lands of the lessors, the rent or sum of 7*s.* 6*d.* per ten to include outstroke rent, shaft rent, and wayleave rent; but in case the coals to be gotten out of such adjoining collieries should be gotten by means of pits in such adjoining collieries, and the water should be conveyed therefrom through the demised collieries, the lessees were to pay the lessors a watercourse rent of 2*s.* 6*d.* per ten annually. And the lessees covenanted to pay 40*s.* annually per acre for ground taken for or injured by pit room, &c. with a proviso that, in case the rent after demand should be for forty days in arrear, the lessors should have the power to distrain all coals that should be found at or in any of the pit or pits of the demised colliery, and all horses, gins, waggons, &c. which should be at or used on the premises. The deed, after various clauses, contained a covenant by the lessees that they, their executors, &c. should and would, in working and carrying on the colliery and coal mines, and seam of coal thereby demised, leave unwrought sufficient square walls or pillars of coal for the support of the roof, and for the working and preserving of the remaining part of the coal in the said colliery and coal mines thereby demised, and for the keeping open the drifts and watercourses thereof, and for preventing any thrust or creep from damaging the shafts, aircourses, and watercourses of the said coal mines thereby demised; and should and would, at all times during the said term thereby demised, work all and every the said colliery and coal mines, seam and seams of coal thereby demised, in and according to the best and most approved method then adopted and used in the working of the collieries and coal mines; and should not nor would at any time or times during the continuance of the said term thereby demised work the walls or pillars of coal so to be left unwrought as aforesaid; and should not commit or suffer to be committed any act, matter, or thing in the working the said mines whereby the same might be damnified, drowned, or overburthened; and should and would keep the levels and drifts, and the necessary staples for air, clear and in good repair, order, and condition, from the surface of the earth down to the levels or drifts, during the continuance of the said demise; and should raise and draw all the water, to come forth by means of engines, to the surface; and also should and would, in the working of the said colliery and coal mines thereby demised, and all and every seam and seams of coal, leave unwrought a barrier or warren of whole coals of forty yards in breadth or thickness, in all or any parts next to and adjoining each and every other colliery and coal mine not belonging to the said lessors, to prevent any communication of water; and should not at any time during the continuance of the said term work or take away the barriers, bulks, or warrens of coal so agreed to be left, or any part thereof, or by any ways or means open a communication between the said coal mines thereby demised, and any adjoining mine, the coals of which should not be won or wrought by them the said lessees, their executors, &c. by virtue of the liberties and powers aforesaid, or make or suffer any outstroke, drift, or watercourse into or through the same except by virtue of those liberties; and should not permit or suffer any person to lead coals, cinders, &c. from or to any other colliery along the waggon-way to be made on the said lands, save and except such coals and cinders as should be won, wrought, and gotten by the lessees from any adjoining collieries, and which should be brought to bank on the said lands. The deed also contained a covenant, by which the lessees covenanted that they, their executors, &c. or their servants or workmen, should and would once in every month, or oftener during the said term, at their own expense, draw to bank at some of the pits or shafts of the said collieries or coal mines thereby demised (provided that the same should be pits or shafts from which the coal of the thereby demised colliery should not be worked by an outstroke), and lay in some convenient place in that behalf upon the said lands and premises of the said lessors, for the said lessors, their heirs, or assigns, all the manure, compost, and dung to be made and bred by the horses employed under ground in working the said demised collieries; and should spend and bestow so much thereof, and of all such dung, &c. as should be made or bred or arise in, under, or upon the said estate, lands, and premises of the said lessors, or any part thereof, as might be necessary for that purpose in dressing and manuring any lands or grounds which the said lessees, &c. might, during the said term, occupy as tenants to the said lessors; and further, that the lessees should and would, from time to time, and at all times during the demise, sufficiently fence the pits and shafts to be sunk in any of the demised lands, and also that the lessees would deliver up to the lessors, at the end of the term, all such pits, &c.; also, after the determination of the said demise, at their costs, use their best endeavours to stop up the drifts, outstrokes, watercourses, and other communications which should be made by virtue of any powers given, through any barrier, warren, &c. belonging to the said coal-mine, by making and fixing in each of the said drifts, &c. one or more frame dam, so as effectually to prevent any further communication of water or air between the said demised colliery and any adjoining colliery. And the lessors covenanted that the lessees might work any of the seams of coal they might think fit; and also that the lessees might during the demise, by such outstroke, or drift or drifts as might be so made as aforesaid, bring and carry underground from the demised colliery unto any adjoining colliery, of which the lessees might then or thereafter be possessed or have an interest in, or to the shafts or workings thereof, all coals, &c. as should be gotten by the lessees within the demised colliery, without paying to the lessors any outstroke rent for the same, such rent (if any) being payable to the owners of the adjoining colliery. The declaration then set out another deed between the parties of the 11th March 1825, whereby, after reciting the covenant to leave unwrought sufficient square walls of coal to support the roof, &c. it was witnessed that such recited parts of the said first-mentioned indenture should from thenceforth be null and void. And the lessees did by the said second indenture covenant with the lessors that, in working the said colliery, they would leave unwrought sufficient walls or pillars for the support of the roof, and for the working and preserving the remaining part of the coal, and for keeping open the drifts, aircourses, and watercourses thereof, and for preventing any thrust or creep from damaging the shafts, aircourses, and watercourses of the said mines, and should during the said term work all the said collieries in and according to the best and most approved method adopted in the neighbourhood of and on the rivers Tyne and Wear, &c., so as to obtain the largest possible quantity of merchantable coal; and in case it should be expedient to work the walls and pillars, and in case the same could be worked without prejudice to the colliery, the lessees, at the request of the lessors, should work such of the said walls and pillars as might be worked without prejudice to the said colliery. And by the said second deed, the lessees were empowered, in case they should have expended 5000*l.* in sinking a pit or pits wholly in the said lands of the said lessors, or in case the demised collieries should become incapable of being worked at a profit, to determine the lease at the end of the fourth, seventh, tenth, &c. years of the said term.

The fourth breach alleged that, after the making of the said indentures, and during the continuance of the said term, and after the plaintiffs had become and whilst they were so seised as aforesaid, and before the commencement of this suit, the said lessees did not nor would keep the levels and drifts, and the necessary staples for air, of the said demised colliery and coal mines, clear and in good repair, order, and condition, from the surface of the earth down to the levels or drifts; but, on the contrary thereof, after the making of the said several indentures, and during the continuance of the said term, and after they the plaintiffs had become and whilst they were so seised as aforesaid, and before the commencement of this suit, to wit, &c. they the said lessees suffered and permitted the said lands and drifts and necessary staples for air to be, and the same then became, and were, and thence hitherto have been, and still are, stopped up, and in bad repair, order, and condition, from the surface of the earth down to such levels and drifts as last aforesaid, contrary to such covenant of the said lessees in the said first-mentioned indenture in that behalf contained.

The sixth breach alleged that, although the defendants, after the making of the said several indentures, and during the continuance of the said term, and after they the plaintiffs had become and whilst they were so seised as aforesaid, and before the commencement of this suit, to wit, on the days and at the times last aforesaid, worked the said demised colliery and coal mines, and divers seams thereof; and, although divers parts of the said demised colliery and coal mines, and of the said seams thereof, so worked as last aforesaid, were, at and during all the times last aforesaid, next to and adjoining divers other collieries

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and coal mines not belonging to the said lessors, as hereinbefore in that behalf is mentioned, to wit, a certain colliery and coal mine, called the Hetton Mine, a certain other colliery and coal mine called the Lyons Mine, a certain other colliery and coal mine called the Jane Pit, otherwise the Downs, a certain other colliery and coal mine called the Little Eppleton Mine, a certain other colliery and coal mine called the Warden Law Mine, and a certain other colliery and coal mine called the Sharperly Mine, yet the defendants did not, in so working the said demised colliery and coal mine, and the said seams thereof as last aforesaid, leave unwrought in each and every of the said seams so worked as last aforesaid, a barrier or warren of whole coals of the breadth or thickness in the said first-mentioned indenture and hereinbefore in that behalf mentioned and provided, in all and every part or parts next to and adjoining each and every of the said other collieries and coal mines not belonging to the said lessors as aforesaid, according to the said covenant in that behalf, but on the contrary thereof, the barriers or warrens of coal so agreed to be left unwrought as aforesaid, and next to and adjoining the said other collieries and coal mines so not belonging to the said lessors, were, at and during all the times last aforesaid, wrought and hollowed out, abstracted, and carried away by them the defendants in so as aforesaid working the said demised collieries and coal [illegible] for winnings and purposes other than and different from all and every of the winnings and purposes in that behalf authorised by the said indentures, or either of them, and without and contrary to the power, liberty, and authority to the said lessees in that behalf granted by the said indentures, or either of them, contrary to the said covenant of the said lessees in the said first-mentioned indenture in that behalf contained.

The seventh breach was of a like nature, and alleged that the defendants worked and took away barriers, bulks, and warrens of coal. The eighth, that defendants opened and kept open divers communications between the demised colliery and other collieries not belonging to the plaintiffs, &c. The ninth, that defendants made divers outstrokes, drifts, &c. through the said barriers, &c. covenanted to be left, into other collieries not belonging to the plaintiffs. The tenth, that defendants used, for winnings and purposes other than and different from the winnings and purposes in that behalf authorised by the said indentures, divers outstrokes, &c. and other communications before then made through the said barriers into other collieries not belonging to the plaintiffs; but these four last, it was admitted, depended on the sixth.

The eleventh breach alleged that, after the making of the indentures, and during the continuance of the term, and at times respectively more than a month before the commencement of the suit, certain manure, &c. was made and bred under the said estate in the demised colliery by horses employed by the defendants underground in working the above collieries; and that the said manure, &c. could not be drawn to bank, &c. on the said lands otherwise than by means of some pit or shaft: and that there was not any pit or shaft of the said colliery from which the coal of the said demised colliery were not worked by an outstroke: and that although, after the said manure, &c. had been bred, a reasonable time had elapsed, &c. for the defendants to have made a pit or shaft on the said demised colliery from which the coals thereof would not have been nor would be worked by an outstroke, yet the defendants had not made such pit or shaft, &c. by reason whereof the said manure so made, &c. could not be and was not at any time drawn to bank, &c.

The defendants traversed the fourth, sixth, seventh, eighth, ninth, and tenth breaches, and demurred to the eleventh breach on the ground that neither of the indentures contained such a covenant as that alleged to have been broken: and on the demurrer the court below (Jan. 21, 1852) gave judgment for the defendants, and on this judgment the plaintiffs now brought their writ of error. At the trial before Cresswell, J. at the assizes at Durham, the learned judge directed the jury "that the liberties to break through the barrier covenanted to be left as in the pleadings mentioned extended to authorise the lessors to break through such barrier for winning coal of the demised mine, and for winning coal of the said adjoining mines in the occupation of the defendants, though the coal of such demised or adjoining mines, when won, was not to be brought to the surface through a pit or shaft in the land of the lessors above the demised mine, and although no such pit or shaft in fact existed."

The evidence on the fourth breach in the declaration went to show that, long prior to Aug. 1848, when the plaintiffs' title commenced, thenceforward continuously down to, and at the time of, the commencement of this action, the part of the High Main Seam of the Eppleton Mine, where workings had formerly been carried on, had been and was filled with water, and thereby the aircourses in the said workings in that seam were interrupted with the water: but that had no effect upon the aircourses or working in the Hutton Seam, and the learned judge directed the jury that "the facts proved with reference to the water in the High Main Seam did not entitle the plaintiffs to a verdict on that issue."

And as to the other breaches, the evidence went to show that the lessees held certain mines under other lessors adjoining the demised mines on both sides, and that the barriers had been broken through; that the communications so made had been used for various purposes for winning the coals of the demised mines, and also for taking coals won in the adjoining mines through the demised mine. And to the above rulings of the learned judge the plaintiffs excepted.

Atherton, Q.C. (with him *Knowles*, Q.C. and *Aspland*), for the plaintiffs in error, the plaintiffs below. —The question here turns upon the construction of the liberties granted by these indentures. Stripped of unnecessary verbiage, the power to drive and use outstrokes, drifts, &c. not exceeding four yards through the barrier covenanted to be left, amounts to this: first, there is a statement of things permitted to be done; and, secondly, the purpose for which they are to be permitted; and that purpose is to make such outstrokes as may be necessary for winning the coal from the adjoining mines, and the words "and also to draw to bank," &c. are a part of that purpose, —and if there is any ambiguity in the liberties reserved, they will be found to be explained by the other parts of the deed. An outstroke is a pit or *shaft* on the surface of the adjoining land; and the parties clearly contemplated the establishment of a pit or shaft on the demised premises, and never contemplated that the demised mines should be used as a passage for working the adjoining mines. As to the demurrer to the 11th breach, the true meaning of the covenant was, that upon the manure being bred within the demised mines, the lessees were bound to make a pit. The nonpayment of rent for two years of the term showed that that time was allowed for getting at the coal; and as there was no power given to the lessees to work the mines by outstroke, it was clearly the intention that they should be worked by a pit on the demised premises.

Feb. 2. (*a*)—The COURT called upon the defendants to speak as to the direction on the 4th breach.

Manisty (*H. Hill* with him), for the defendants.—The evidence referred to by the plaintiff, as supporting the 4th breach, would, if it were worth anything, support the other breaches; but taking that evidence in the strongest possible light, it cannot support this breach in the declaration; and the ruling of the learned judge at the trial was therefore right.

The judges retired a few minutes to their private room for deliberation, and then pronounced the following

JUDGMENT.

COLERIDGE, J.—In this case the first question arises upon the direction of the learned judge upon the issues raised upon the 6th, 7th, 8th, 9th, and 10th breaches—the four last, as it was said, depending upon the 6th; and the propriety of his direction depending upon the proper construction of that clause in the lease by which the lessees were empowered to break through barriers of coal which, by a covenant in the same lease, they were bound to preserve generally unbroken between the demised mines and the adjoining mines. The learned judge had ruled that this clause authorised the lessees "to break through such barrier for winning coal of the demised mine, and for winning coal of the said adjoining mines in the occupation of the defendants, though the coal of such demised or adjoining mines when won was not to be nor was brought to the surface through a pit or shaft in the land of the lessors above the demised mine, and although no such pit or shaft in fact existed." The question divides itself into two parts. Might a breach be made through the barrier for the purpose of introducing coal won in the adjoining mine into the demised mine, to be carried through it and passed through another breach to be made in another adjoining mine, and so to be lifted to the surface? And might a breach be made through the barrier for the purpose of carrying coal won in the demised into an adjoining mine, and through that mine, and lifted up to the surface through a pit in that mine? As to the first part the affirmative seems to us clearly to follow from the language of the liberty. It gives full power and liberty to make, drive, and use such outstroke or outstrokes, drift or drifts, or other communications, not exceeding the breadth of four yards each, within and through the barrier, bulk, or warren of coal thereby covenanted as hereinafter mentioned to be left unworked of the said colliery and coal mines thereby demised, lying contiguous or adjoining to any other colliery or coal mines which they then were, or should at any time thereafter during the continuance of the said demise become, possessed of or entitled to, or in which they or any of them then had or should have any share or interest, as should be thought necessary or convenient by them the said lessees, their executors, administrators, or assigns, for the effectual winning of such adjoining colliery or coal mines, and for the purpose of bringing, leading, and conveying underground the coals which at any time during the continuance of the said demise

(*a*) Before Coleridge, Wightman, Erle, Williams, Talfourd, and Crompton, JJ.

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should be wrought or gotten by them within or out of such adjoining colliery and coal mines, and which should be thought fit or convenient to be brought and conveyed underground from such adjoining colliery and coal mines, unto and into the colliery or coal mines thereby demised, or the shafts or workings thereof, and by such outstroke or outstrokes, drift or drifts, or other communications, to bring, lead, and convey underground from such adjoining colliery and coal mines unto the colliery or coal mines thereby demised, or the shafts or workings thereof, and from thence to convey and carry away all such coals as should by them be wrought or gotten within or out of such adjoining colliery or coal mines. These words provided for three things being done: first, the introducing of coal into the demised mine by a breach made for that purpose; secondly, to give the power generally of carrying them away, including, we think, in this general language the power to pass them into another mine; thirdly, and distinctly, to give the power of raising them to the surface through a pit sunk, or to be sunk, in the demised land. Unless we give that extended meaning to this part of the lease, we shall leave an important part of the sentence without any meaning at all. As to the second of these things, that is, the making a breach for the purpose of taking the coal of the demised mine into an adjoining mine, it is true that this part of the lease does not in terms convey this power; but if the coal of adjoining mines might be brought through the demised mine without being raised to the surface through any pit sunk in the demised mine, but might be raised through pits in adjoining mines, it is difficult to say that the coal of the demised mine itself might not also be so raised. It is clear, from more than one provision in the lease, that that was really contemplated; thus, in the covenant regarding manure, upon which the last breach is assigned, the manure is to be brought up "at some of the pits or shafts of the said colliery or coal mines demised: provided that the same should be pits or shafts from which the coal of the demised colliery should not be worked by an outstroke," leaving a clear inference that it was intended rather that the coals of that mine might be worked by an outstroke, that is, brought to bank by being carried into and raised up through pits in some adjoining mine. In the lessors' covenant a provision is made that this may be done without any outstroke rent. Then there is a provision "that it might be lawful to and for the said lessees, their executors, administrators, and assigns, from time to time, and at all times during the continuance of the said demise, by such outstroke or outstrokes, drift or drifts, as might be made as aforesaid, to bring, lead, and carry underground from the said colliery and coal mines thereby demised unto any adjoining collieries and coal mines which they the said lessees, their executors, administrators, or assigns, then were or should at any time thereafter during the continuance of the said demise become possessed of or entitled to, or in which they or any of them then had or should have any share or interest in or to the shafts or workings thereof, all such coals and cinders as should by them be wrought or gotten within or out of the said colliery and coal mines thereby demised, without paying to the said lessors, their heirs, or assigns, any outstroke rent for the same, such rent, if any, being payable to the owner or owners of such adjoining colliery or collieries. When, therefore, we find the language clear that through breaches made in the barrier the coal of the demised mine might be carried, and we find that provision in the same instrument which specifies that breaches might be made, the just conclusion is that breaches might be made for that purpose. The other question which was discussed yesterday was on the demurrer to the last breach; and here we think the judgment of the court below ought to be affirmed. It is admitted that in the covenant upon which this breach is founded there is nothing which admits it was the usage to sink a pit on the demised premises, nor can we collect from the language anything which binds them to do so by implication. We agree in the reasoning to be found in the judgments of the members of the court below, though hardly perhaps going so far as to say that the sinking of a pit was anticipated when the lease was framed. We should think it more correct to say that it was considered a possible, and perhaps a not unlikely event, and provisions were made to meet that event in case it should come to pass. There still remains a question upon the direction of the learned judge upon the plea to the fourth breach, which breach is assigned upon one of the covenants of the lease, which I am now about to state. Taking the whole of it together, it is a provision "that the lessees should not do or commit, or wittingly or willingly suffer to be done or committed, any act, matter, or thing in the working and carrying on the said coal mines, seam and seams of coal thereby demised, whereby the same or any part thereof should or might be damnified, drowned, or overburthened with water or earth, or which might occasion or bring any creep or thrust upon the workings, shafts, air-courses, or watercourses of such colliery or coal mines, and [and these are the material words upon which the breach is assigned] should and would keep the levels and drifts, and the necessary staples for air, clear and in good repair, order, and condition, from the surface of the earth down to the

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levels or drifts, during the continuance of the said demise, and should and would, during the continuance of the said demise, raise and draw all the water to come forth and out of the said colliery and coal mines, by means of fire or other engines." This covenant is capable of being divided into three parts, and it has been so treated by the plaintiffs in this action; and they have assigned breaches upon all three of these parts. At the same time it is very material, in order to the right understanding of any part, to take the whole into consideration; and without expressing any absolute opinion upon this point, I must confess it seems to me that the part upon which the breach in question is assigned was not addressed to a stoppage by water, which seems to me to have been sufficiently provided for, both by what went before and what came after; and the true meaning of this (not, however, that this will be the foundation of our judgment: I am merely stating a probable opinion respecting it) is, that this part was rather confined to preventing stoppages by rubbish and other things, so as to keep what, in ordinary understanding, the parties would know to be a level, or drift, or air-course, in good repair, order, and condition, not carrying it so far, as Mr. Atherton suggested, as to say that a stoppage with water might not, under certain circumstances, be a breach of the covenant, because a stoppage by water might put the levels or the drifts or aircourses entirely out of condition, and occasion a stoppage by reference to other things. Taking it simply, it seems to me it was not addressed to a mere filling up by water, such as is found to have taken place here. Now that being the covenant, the breach upon this part of it was assigned in this way: "That the plaintiffs further complain that the defendants did not nor would keep the levels and drifts, and the necessary staples for air, of the said demised collieries and coal mines clear and in good repair, order, and condition, from the surface of the earth down to the levels or drifts; but, on the contrary thereof, after the making of the said several indentures, and during the continuance of the said term, and after they (the plaintiffs) had become, and whilst they were, so seised as aforesaid, and before the commencement of this suit (to wit) on the days and at the times last aforesaid, they, the said lessees, suffered and permitted the said levels and drifts and necessary staples for air to be, and the same then became and were, and thence hitherto have been, and still are, stopped up and in bad repair, order, and condition, from the surface of the earth down to such levels and drifts as last aforesaid." And I cannot help observing, with reference to what I have just been saying, that the expression "stopped up," which the plaintiffs themselves have made use of, seems to me to be not immaterial; it rather confirms the view which I had before taken of this covenant; and it is also right to notice what I omitted before, that this covenant is to be observed by doing something or preserving a state of things from the surface of the earth down to the "levels and drifts as last aforesaid," implying, I think, there the same thing, that it is looking to material stoppages rather than a stoppage by water. That being the breach, the plea is: "and, for a further plea, the defendants say that they did keep the said levels and drifts, and the necessary staples for air of the said demised colliery and coal mines clear and in good repair, order, and condition, from the surface of the earth down to the levels or drifts, according to the defendants' said covenant, and they did not suffer or permit the said levels and drifts and necessary staples for air, or any or either of them, to be, nor were the same, nor any or either of them, stopped up or in bad repair, order, or condition, in manner and form as allegod." These being the covenant, the breach, and the plea, let us see what the evidence is. In the first place, with regard to that which has reference to the High Main seam, the evidence is that this seam had been partly worked to a small extent by the defendants, but had not been worked for many years before, since the 14th Aug 1848, when the plaintiffs' title commenced. That is the statement; and a very certain statement it is undoubtedly, as regards either the extent or nature of the workings; and the jury further find—"That, long prior to Aug. 1848, and thenceforward continuously down to and at the time of the commencement of this action, the part of the said High Main seam of the said Eppleton Mine, where workings had so as aforesaid formerly been carried on" (not condescending upon any particulars at all, but leaving it in the same uncertainty as it had been by the former part of the evidence), "had been and was filled with water, and thereby the aircourses in the said workings in that seam were interrupted with the water; but that had no effect upon the airsources or workings in the Hutton seam." Now, upon this covenant, this breach, this plea, and this evidence, the plaintiffs' counsel contended that the facts proved in reference to the water in the High Main seam entitled the plaintiffs to a verdict on the said issue, and the direction was, that the facts proved with reference to the water did not entitle the plaintiffs to a verdict upon that issue. Now, the first question is, what was the contention of the plaintiffs' counsel, and what was the answer to it by the learned judge? We are all of opinion that the plaintiffs' counsel contended before the learned

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judge at the trial, and he affirms to-day, that if these facts which I have now stated were believed by the jury, all the deliberative functions of the jury were at an end, and that they had nothing to do but to find a verdict for the plaintiffs; and the answer of the learned judge was simply a negative to that proposition. He does not say "there is nothing to go to a jury upon for a verdict for the plaintiffs;" he simply says that it was not a necessary consequence from this evidence, so as to deprive the jury of all choice or deliberation in the matter. Now that, we think, was rightly said by him; the jury, as it seems to us, had to consider this evidence with reference to the fair meaning of the covenant, the breach, and the plea, and, more materially still, with reference to the workings which had been spoken of, their nature and their extent; and, probably, there might have been other things stated with reference to them in the course of the evidence than is now set down upon this record; but if not, if there was nothing more than that there had been some workings, without the least specification of their nature or extent, the jury must have considered the question as well as they could. These workings might have been such that the evidence as to the water might, if believed, conclusively support the breach; but, on the other hand, they might be such, so trifling, so unimportant, that even if, with regard to them all, the facts found were literally true, still there had been no breach at all. This, therefore, was a matter for the jury to consider, and if there was anything for the jury to consider, the ruling of the learned judge was correct. Upon the whole, therefore, we are of opinion that the judgment of the court below must be affirmed.

Judgment generally for the defendants.

ERROR FROM THE EXCHEQUER.

Monday, Feb 7.

(Before COLERIDGE, WIGHTMAN, CRESSWELL, MAULE, ERLE, WILLIAMS, and TALFOURD, JJ.)

OLDFIELD *v.* DODD AND ANOTHER.

Bankrupt Law Consolidation Act (12 & 13 *Vict. c.* 106, *ss.* 78-82—*Act of bankruptcy—Admission of part of demand—Bond.*

Where proceedings had been taken under the Bankruptcy Law Consolidation Act, upon appearance to a creditor's summons is, the trader-debtor summoned admitted a part only of the demand, and made an affidavit as required by the Act that he believed that he had a good defence upon the merits as to the residue; but the Commissioner dispensed with his entering into the bond to pay the disputed residue:

Held (reversing the judgment of the Court below), that no bond having been entered into, no act of bankruptcy had been committed.

This was an action of trespass which was tried before Martin, B. at Guildhall, on Dec. 31, 1852. The action had been directed by the Court of Bank. to be tried, for the purpose of ascertaining the construction to be put upon certain sections of the Bankruptcy Law Consolidation Act; or, in other words, whether, under the circumstances proved on the trial, the plaintiff had committed an act of bankruptcy. The action was in trespass. The declaration contained two counts; the first for breaking and entering a messuage of the plaintiff, and seizing his goods; the second, for breaking and entering another messuage of the plaintiff, expelling the plaintiff and his servant, and converting and seizing the plaintiff's goods therein. The defendants pleaded, first, not guilty by statute; secondly, that the house was not the house of the plaintiff; thirdly, that the goods taken were not the goods of the plaintiff; and the fourth and fifth pleas also denied the plaintiff's property in the messuages and goods mentioned in the declaration. Upon these pleas issues were joined. At the trial, on the part of the plaintiff, it was proved that the defendants broke and entered the messuages and seized the goods, as alleged in the declaration. The plaintiff admitted that he was a trader within the meaning of the bankrupt laws; and that 112*l.* 10*s.* was due from him to the defendant Dodd; he also admitted that such sum had never wholly or in part been satisfied or released. The defendants admitted the seizure of the goods. For the purpose of proving the second, third, fourth, and fifth issues, the defendants proved that the plaintiff was on Sept. 4, 1852, served with particulars in writing of the defendant's demand, containing items of a debt amounting to 122*l.* 8*s.*, together with a notice requiring immediate payment of the same, according to the provisions of the Bankruptcy Consolidation Act (see 12 & 13 Vict. c. 106, s. 78, sch. G.); that on Sept. 14 the defendant Dodd duly filed an affidavit of the truth of such debt; that on Sept. 17 the plaintiff was served with a summons in the form contained in sch. H. of the said Act; that on Sept. 24 the plaintiff appeared before Mr. Commissioner Evans, and made a deposition on oath, which was afterwards filed in the Bankruptcy Court, in the form in sch. J. of the said Act; that he verily believed that he had a good defence to the said demand upon the merits as to the sum of 10*l.*, part of the said demand of 122*l.* 8*s.*; and at the same time signed and filed an admission that he was indebted to the

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defendant in the sum of 112*l.* 8*s.*, the residue of the said demand; and that the said Commissioner thereupon dispensed with the bond with sureties, which he was authorised by the statute to require the plaintiffs to enter into, to pay such sums as should be recovered in any action to be brought for the recovery of the said balance of the said demand, with costs. It was further proved that the plaintiff never paid or tendered the said sum so admitted to be due, nor did he at any time either secure or compound for the same. On Oct. 15, 1852, the defendant Dodd presented a petition to the Court of Bank. stating that the plaintiff was indebted to him in more than 100*l.*, and that he had been informed and believed that the plaintiff did lately commit an act of bankruptcy; and the petition then proceeded to pray adjudication of bankruptcy against the plaintiff; that the said petition was filed and entered of record on the same day, and was verified by affidavits that the said Commissioner found that the plaintiff became a bankrupt before the date of the filing of the said petition, and adjudged him a bankrupt accordingly; that on the 15th Oct. 1852 the defendant Pennell was appointed official assignee, and the defendant Dodd was chosen creditors' assignee; that the plaintiff was on the 16th Oct. served with a duplicate of the adjudication of bankruptcy (*s.* 104); that the alleged trespasses were committed by the defendants as such assignees; and that no other alleged act of bankruptcy than that above-mentioned was proved. It was then contended, on the part of the defendants, that an act of bankruptcy had been committed by the plaintiff on the eighth day after the filing of the admission of the residue of the said demand; and the learned judge, Martin, B. directed the jury that the evidence produced on the part of the defendants was, upon the whole, sufficient to show that the plaintiff had committed an act of bankruptcy on the eighth day after the filing of the said admission of debt; and the jury thereupon found a verdict for the defendants. The plaintiff's counsel then tendered a bill of exceptions to the above ruling.

Pearson, for the plaintiff in error (the plaintiff below.)—In this case there was no proof of an act of bankruptcy having been committed; if a trader signed an admission for a part only of the creditor's demand, the Court of Bank. has no power under the Bankruptcy Consolidation Act to dispense with the bond there provided for being given for the residue; and to support this point, he cited the several enactments on the subject, showing how from time to time it had been treated by the Legislature. 6 Geo. 4, c. 16, s. 5; 1 & 2 Vict. c. 110, s. 8; 5 & 6 Vict. c. 122, ss. 11-16, these sections being kept in view, would materially help to interpret the sections of the Bankruptcy Consolidation Act. Sect. 15 of 5 & 6 Vict. c. 122, is the same as sect. 82 of the Bankruptcy Consolidation Act, except that it gives no power to the court to dispense with the bond. This may be compared to the giving bail under the old mesne process, and not being in prison for twenty-one days: (*Anon.* 1 Fonbl. 65.) Until the action on the bond is at an end, the trader cannot be called upon under sect. 82 to pay the sum admitted to be due. The costs recovered in that action might exceed the debt admitted. The question is to be tried as to the whole debt; that is shown by the provision in sect. 86: (*Smith* v. *Temperly*, 10 M. & W. 278.) From what time is the act of bankruptcy to date? sects. 80 and 82 state, from the filing of the admission; sect. 81, from the service of the summons. This is in the nature of a criminal proceeding, and therefore the court will lean to a strict interpretation of the enactment.

H. Hill, Q.C., for the defendants in error (the defendants below.)—The words in the 82nd sect. "then and in such case," must be read distributively; and if not so read, the Act contains no provision for such a case as this. [MAULE, J.—If a man admits a part of the demand, and disputes a part, but does not pay the part admitted, then there is no clause to meet that case. I see no incongruity. You may say that it is inconvenient that a man is not to be made a bankrupt if he do not pay; but that is the act of the Legislature. We cannot alter the provisions of a statute, and strike out certain words and substitute others.] The Act contained many mistakes. In the title of Schedule K. "Form of Bond to pay admitted demand" is printed instead of "Form of Bond to pay disputed demand."

Pearson replied.

COLERIDGE, J.—We are all agreed that the ruling of the learned judge in the court below was not right, and that the plaintiff was not guilty of an act of bankruptcy. The reasons for our judgment stand on the plain wording of the Act. The terms of the 82nd section have not been followed. The section is not so clearly expressed as it might have been; but if it be insufficient for the purpose intended, we cannot make it better.

Judgment reversed.

INSOLVENT DEBTORS COURT.

IRISH INSOLVENT DEBTORS' COURT, DUBLIN.

Reported by JOHN LEVY, Esq. Barrister-at-Law.

Jan. 1853.

Re MURRAY.

Making away with property—Vexatious opposition.

Defending proceedings to try a right, although a verdict be against the defendant, is not a vexatious defence to an action.

Where an insolvent possesses himself of money belonging to the trustees of his marriage settlement, and purchases property with it in a foreign country, which property he returns on his schedule, he will be deemed to have been guilty of a making away, although the trustees do not oppose.

The insolvent had been a cloth manufacturer in a small way in the neighbourhood of Dublin, and a dispute having arisen between him and a person named Edgar, who had a mill adjoining his, with regard to the right of water, proceedings were taken by the latter, which ended in a verdict against the insolvent for nominal damages; but the costs were enormous, the matter having been first before the L. C. and afterwards before a jury in the shape of an issue. The insolvent, finding that the suit terminated against him, sold out 400*l.* worth of Bank Stock that was standing to his credit in the Bank of Ireland, but which belonged to the trustees under his wife's marriage settlement. With this and some small sum in addition he proceeded to America, where he purchased a farm and a mill in the state of Wisconsin. He then returned for the purpose of taking out his family, and soon after his arrival at Dublin he was arrested at the suit of Edgar under an execution for the costs incurred during the litigation between them; and having filed his petition and schedule he now came up to seek his discharge. The mill and farm in America were returned in his schedule, and said to be full value for the money he had taken out with him there.

Walker now opposed for the detaining creditor, on two grounds. First, a vexatious defence to the proceedings taken against him; and, secondly, a making away with his property and putting it beyond the reach of his creditors. Both grounds were sufficiently proved by the schedule and the execution for the costs under which the insolvent was in custody.

The COURT intimated that the ground of vexatious litigation was not tenable; such ground only applied when an action was brought for a debt to which there was no fair ground of defence. In the present case the proceedings terminated in an issue to try a right, and the insolvent defending that right could not subject himself to an adverse decision on the ground of a vexatious defence to an action.

Coates, for the insolvent, contended that the second ground was equally untenable. In the first place, the money of which the insolvent possessed himself legally belonged to the trustees of his marriage settlement, and he had only a contingent interest in it as *cestui que trust*. Had he not laid hands on the money, the trustees would have been entitled to call on him to transfer it to them for the purposes of the trust, so that the opposing creditor lost nothing by his taking it. In the second place, the property which was purchased with it was returned for the benefit of his creditors, and although it was in another country, it could be disposed of there for their benefit. The trustees did not oppose, although the money legally belonged to them; and even if the property which was purchased with it was not forthcoming, the opposing creditor had no right to complain; but as the property was forthcoming, there could be no ground for saying that there had been a making away. Under all the circumstances of the case, he thought the insolvent entitled to a free discharge.

Mr. Commissioner BALDWIN could not agree with the view taken by the insolvent's counsel as to the one ground of remand that exists in the case. Although the trustees upon whom, by their own account, he committed a fraud did not choose to oppose, that was no reason why the court would not take all the circumstances of the case into their consideration. It appeared from the schedule that the trustees had sold all the insolvent's chattel property under an execution immediately after his leaving the country, and that it was after he was served with a *scire facias* to revive the judgment that he possessed himself of the proceeds of the bank stock and absconded; the trustees had a legal right to sell under that execution, and no complaint had been made about it, but so far that got priority over the other creditors, or rather creditor, for there appeared to be no creditor to any amount worth notice but the opposing creditor. The bank stock was in his power and control, and should be looked upon as if it were his own absolute property—that property he removed from the reach of his creditors, and it was absurd to talk of its being returned for their benefit—he would be glad to know what value would be set upon the authority of an assignee of the Irish Insolvent Court in the wilds of Wisconsin? The court would consider the case further as to the period for which he ought to be remanded, and would adjourn their decision for a week; and, in the meantime, his protection should be withdrawn.

The insolvent came before the court on a subsequent day with medical evidence as to the state of his health, and judgment was further postponed; but the court intimated that it was their intention to have remanded him for seven months from the date of his vesting order.

Re WATT.

Penalty—Breach of trust.

A poor-rate collector who is sued for, and pays, a penalty imposed by the Poor-law Act for not paying in his collection weekly, may be remanded for a breach of trust, for any balance that remains in his hands on foot of the same collection.

The insolvent was a collector of poor-rates for the Baileberro union, and had omitted to return to the guardians a sum of about forty pounds which appeared due on the foot of his collection. For this omission he was sued under the Poor-law Act for a penalty for not paying in his receipts weekly, which he paid; he was afterwards sued for the defalcation as a debt, and being taken in execution, he came up to be heard on his petition.

Penefather, for the guardians, opposed on the ground of the insolvent having committed a breach of trust. That fact was admitted by the insolvent's schedule; he admitted having received the money, and that the balance in question was due on the foot of his account.

Maher, for the insolvent, contended that the guardians having sued for the penalty (ten pounds), which the insolvent paid, was a bar to their right to oppose him on the ground of a breach of trust. It was a well-known principle of law that a man could not be punished twice for the same offence, and the guardians had no right to first enforce the penalty and then ask the court to incarcerate the insolvent.

The court were of opinion that the enforcing of the penalty was no bar to their jurisdiction under the Insolvent Act, and remanded the insolvent for eight months.

Re EGAN.

Contracting debts when in a state of insolvency.

Although a trader may contract a debt when in a state of insolvency, yet, if it appear that within the last six or twelve months of his trading he had greatly reduced his liabilities, he will not be held to have contracted the debt without the probable expectation of paying it; and it will be considered a very favourable circumstance in his case to have kept regular books.

The insolvent was a trader in Longford, and was opposed by *Phillips* and *Mooney*, on the part of a creditor named Hannon, on the ground of having contracted the debt when in a state of insolvency, and without reasonable expectation of paying it. It appeared that in October 1851, the insolvent paid the opposing creditor a balance of about 30*l.* which he owed him, and in November and December following he got two parcels of flour, amounting to 72*l.* which was still due to this creditor. In January, the insolvent being suddenly pressed for payment by parties from whom he expected indulgence, he called a meeting of his creditors, and having submitted to them a statement of his affairs, they all but Hannon agreed to the execution of a trust-deed, assigning all his property over for their benefit. By the statement then submitted, it appeared that when the debt with Hannon was contracted he had not assets equal to half his liabilities; and upon these grounds it was contended that he clearly came under the penal section of the Act for having contracted the debt when in a state of insolvency, and without reasonable expectation of being able to pay it; and a remand was called for at the suit of Hannon. The whole current of decisions in the English Insolvent Court run in favour of the trader who submitted his affairs to his creditors as soon as he found he was insolvent and unable to meet his engagements; and against the trader who continued to contract debts when he knew he had not the means of paying all his creditors.

Levy, for the insolvent, submitted that, upon two grounds, the point raised against the insolvent did not apply. In the first place the credit for the flour was purchased by the payment made in October; it was then the flour was bought, although not delivered until November and December; and at the time of the purchase the insolvent had a fair expectation of going on and paying for the goods purchased, on which he reasonably calculated he would have made a fair profit. In the second place it would be found, on reference to his book, that within the last twelve months of his trading he reduced his liabilities from upwards of 2000*l.* to 1000*l.*; it was therefore for the advantage of his creditors that he remained in trade up to the period at which he stopped.

A reference to the chief clerk was then ordered by the court to ascertain if that statement was borne out by the insolvent's books; and on the report coming back it appeared that the fact was precisely as stated by counsel; namely, that the insolvent had, within the last six months of his trading, reduced his liabilities to the amount of 500*l.*, and within the last twelve months he had reduced them to the extent of 1000*l.* The opposition was still pressed.

Mr. Commissioner CURRAN delivered judgment.—He said the Court was at first disposed to remand the insolvent; for there was no doubt, that at the time the flour was delivered he was unable to pay any thing like the amount of his liabilities, and, being insolvent, he ought not to have gone on increasing them. But the issue raised by his counsel could not fail to make a most favourable impression on the mind of the court when found in his favour. In the first place his books appeared to have been extremely well kept, which was a favourable circumstance; and the chief clerk, without any difficulty whatever, was able to report that he had within the last twelve months lessened his liabilities to the extent of 1000*l.* It would be too bad then to remand a man for contracting a debt without reasonable expectation of paying it, who, instead of increasing his liabilities, went on decreasing them until he was unable to go any further. If he had not been suddenly pressed by other creditors, the probability was, that the greater portion of the flour would be paid for. The insolvent was discharged.

Ecclesiastical Courts.

PREROGATIVE COURT.

Reported by Dr. WADDILOVE, of Doctors' Commons.

Friday, Jan. 14.

KNIGHT *v.* RICHARDS.

Will—Codicil thereto made when testator was non compos mentis.

John Knight made and duly executed a will bearing date the 29th May 1828. He afterwards became of unsound mind, and was transferred to a lunatic asylum, in which he died on the 4th Oct. 1852. On the 10th May, 1852, before he became an inmate of the lunatic asylum, he made a codicil, in which he gave the whole of his property to his housekeeper. This codicil had the names of three attesting witnesses subscribed to it. The deceased acknowledged his signature in their presence. From the affidavit of one of these attesting witnesses it appeared that the deceased was, at the time he so acknowledged his signature, of unsound mind; and the witness explained his having subscribed his name to the will as having done so with a view to pacify and calm the deceased. It also appeared, from the affidavits of two other persons, that before the day of the execution of the codicil the deceased had shown unequivocal symptoms of madness; and that he had consequently been removed to the lunatic asylum, where he died, having continued of unsound mind till his death.

A decree had issued citing the universal legatee, there being no executor named therein, to propound the codicil, or show cause why probate of the will alone should not be granted to R. K. as the surviving executor thereof. This decree was personally served upon M. R., the universal legatee named in the codicil. She appeared by her proctor, and exhibited a proxy, in which she declared she would not propound the codicil, but consented to probate of the will alone being granted to the said R. K.

Sir *J. D. Harding*, Q. A., moved for probate of the will alone under the circumstances detailed above. He cited *Palmer and Brown* v. *Dent and others*, 2 Robert. 284.

Sir JOHN DODSON.—The universal legatee named in the codicil having consented to the probate of the will alone by reason of the deceased having been *non compos* at the time the codicil was made, and such being the fact from the affidavits, I have no hesitation in granting the motion. There is in fact no one who will propound the codicil, that is, adopt it as a valid instrument.

Nisi Prius.

COURT OF QUEEN'S BENCH.

Reported by W. J. METCALFE, Esq., Barrister-at-Law.

SITTINGS AT WESTMINSTER AFTER HILARY TERM.

Friday, Feb. 4.

(Before Lord CAMPBELL, C.J.)

HARMAN *v.* JOHNSON.

Attorney—Partners—Liability.

One partner in a firm of attorneys is not liable upon a bill of exchange or promissory note given by another in the name of the firm for money left with such partner to be placed out on mortgage, unless there has been a course of dealing between the partners of drawing and accepting bills or notes.

But such other partner is liable for the money, though paid to his partner without his knowledge, and appropriated by him.

The action was brought to recover 1775*l.* upon a promissory note given by William Henry Smith, in the name of his firm of Smith and Johnson, attorneys; and in a second count to recover the same sum as money deposited with the firm to be placed out on mortgage.

It was proved that Mrs. Harman, a widow, having money which she wished to invest, was introduced to Smith, then a partner in the firm of Smith and John-

son, for that purpose; that in May 1850 she went to the office of Smith and Johnson,—the name of the firm being over the door; that she saw Smith, the head partner; that she told him she had money which she wished to be invested on good security, and that she should prefer mortgages; that Smith said the firm would be able to do it. That he then introduced her at the Commercial Bank, where she paid in 1775*l.*, and that he appointed the 27th May for her to call again at the office, when she was to hear of the mortgages. That on May 27th she went and again saw Smith, when Smith told her he had two mortgages, one for 1000*l.* the other for 570*l.*, with five per cent. interest; that she, at Smith's request, then gave him two cheques on the Commercial Bank for those sums; that Smith said the mortgages would be ready shortly, and gave her, until completion, an acknowledgment that he had received 1570*l.* to place out on mortgage, with an undertaking that it should bear interest from that time; that Smith afterwards invited her to stay with his family in Sussex, and that while she was there he said the firm had an opportunity of investing 200*l.* more on good security; that he handed her a cheque, which she signed; that on July 1st she went to the office to inquire about the mortgages; that Smith said he had an opportunity of investing another 100*l.*, handing her a cheque, which she signed, Smith saying the mortgage would be ready Aug. 10; that she went to the office on that day, when Smith said that there had been further delay, but that she need not be uncomfortable, as the money was in the firm and carrying interest; that he then handed her the note in question signed "Smith and Johnson," saying that he would give her an acknowledgment in the name of the firm; that she then said she would greatly prefer a mortgage; that Smith said the note was just as good as a mortgage. That she went again to the office in October, to inquire about the mortgages; that Smith said, nothing had been done, but that the money was equally safe in the firm; that she called repeatedly afterwards, seeing sometimes Smith, and sometimes Robinson, then a clerk, now a partner with Johnson; that she received money, as interest, from Smith, from Robinson, and from Ward, another clerk, in sums of 10*l.*, amounting to 160*l.* from Dec. 1850 to the latter part of 1851, but that during that time she from time to time inquired for the mortgages; that in Dec. 1851, she saw Johnson, the defendant, and his son, at the office; that Smith went abroad in 1851, and never returned; that Johnson the defendant was abroad in 1850.

Macaulay, Q. C. applied for a nonsuit on the ground that there was no evidence of authority given by the defendant to Smith to give the promissory note; nor any proof of such a mode of dealing as would confer authority; and as to the second count, that there was no evidence of any interference by the defendant, and this was not a part of the legitimate business of attorneys.

LORD CAMPBELL, C. J.—I am of opinion that there is abundant evidence to support the second count; but I shall tell the jury that there is no evidence upon which they can find for the plaintiff upon the first count.

LORD CAMPBELL, C. J., in summing up the case to the jury, said: It may be very hard for Mr. Johnson to be liable for the acts of Mr. Smith; but he entered into partnership with him, and, though the defendant may have been enjoying himself at Naples, he is certainly liable for every act done by Smith within the scope of their business. There is no evidence upon which you can properly find a verdict for the plaintiff as to the promissory note. The evidence fails to show that there has been any course of dealing between Smith and Johnson as to drawing and accepting notes or bills. But upon the second count, which charges that the money was given to Smith and Johnson for the purpose of being invested by them on mortgage, there is abundant evidence. If you believe it, and draw the inference that the money received was deposited with Smith and Johnson for the purpose of being laid out on mortgage, the plaintiff is entitled to your verdict. There was formerly a distinct profession of scriveners; one was the father of Milton, the poet: the last was Jack Eddis, mentioned by Johnson; but the race is now extinct,—and placing out money on mortgages or otherwise usually now forms part of the business of an attorney.

Verdict for the plaintiff.

Hugh Hill, Q. C. and *Bovill*, for the plaintiff.
Macaulay, Q. C. and *Phipson*, for the defendant.

Election Committees.

Reported by W. MARSHALL, Esq. Barrister-at-Law.

CLITHEROE, 1853.

Saturday, Feb. 19, et seq.

(*Chairman*—MILNE GASKELL, Esq.)

This petition, presented by three electors, alleged that corruption, bribery, and treating had been practised at the election by the sitting member and his agents; that his return had been procured thereby; and that his election was void.

Previous to the proceedings the committee agreed upon the usual resolutions; amongst which were the following:—

1. "That counsel be not allowed to go into matters not referred to in their opening statement, without a special application to the committee to do so."

3. "That the committee do not expect the counsel for the petitioners to state the facts respecting the individual cases of bribery which he intends to bring forward, merely with a view to invalidate the particular votes; but they do expect that, with respect to cases of bribery which it is intended to bring home to the sitting member or his agent, the counsel will now state the names of the electors bribed, and those of the persons who actually gave the bribes."

4. "The committee, however, reserve to themselves a power, on the special application of counsel, to proceed with any case which tends to inculpate any principal or agent, the knowledge of which case has been brought out before the committee in the progress of the investigation, with the circumstances of which the parties could not be reasonably supposed to have been previously cognisant."

Wrangham, Serjt. (with whom *F. James*, Q. C. and *T. Webster*) opened a general case of bribery and treating. He specified one case of bribery, in which an elector named Taylor was the person bribed, and he particularised four persons as having participated in administering the bribe; and he handed in, in compliance with the third resolution, a list containing the names of the electors who it was alleged had been bribed, and of the persons who had given the bribes. In this list about forty persons were specified as having been bribed, and opposite each of such names were placed the names of several, in some cases of as many as ten, persons who were alleged to have given the bribe; and after such last-mentioned names, the words "or some or one of them" were in each case written.

Practice—List of voters bribed, and by whom.

Where the names of several persons are mentioned in the list as having given a bribe, the words "or some or one of them" will not be allowed.

A list specifying the persons as having bribed an elector, held unobjectionable.

Piggott (with whom *Kinglake*, Serjt. and *Power*), for the sitting member, submitted that the petitioners must confine their proof of bribery to the single case which had been opened. The list does not comply with the third resolution, the object of which is, that the sitting member should be supplied with specific information of the precise cases which it is intended to bring against him, in order that he may be prepared to rebut them. This list altogether fails in complying with that requirement, and should be sent back to be amended. That was the course which was pursued in the *Derby* case, Pow. Rod. & Dew. 100.

Wrangham, Serjt. contrà.—The list is unobjectionable. The petitioner is not bound to furnish only the name of the person who manually gave the bribe. An act of bribery is frequently a complicated transaction. It may be a corrupt agreement, and many persons may be concerned besides the individual who actually hands over the money. It is not easy to tell the hands through which the bribe may have passed in its transition to the pocket of the voter, and several may be engaged as principals. It would therefore be unreasonable to confine the statement to one name. The case mentioned in the opening illustrates the complicated nature of the transactions at this election, and it was avowedly given as a specimen. That was not done in the *Derby* case. In the *Canterbury* case 1853 (then going on), the committee held that a statement of three names, as those of the persons who had bribed by means of coloured tickets, was sufficient. The rule was never intended to be applied strictly.

Kinglake, Serjt. in reply.—The list is merely a substitute for the statement in the opening speech; it should therefore be no less explicit. In the *Canterbury* case, which has been referred to, the *mode* of bribery was specified. Where several persons have joined in bribing, their names may be specified, but that is not done here; the words "or some or one of them" are appended, and the petitioners will seek to prove an act of bribery by any one of the ten persons. They may under these words prove a joint, a several, or an individual case of bribery. The list complies neither with the letter nor the spirit of the resolution.

THE CHAIRMAN.—The Committee are of opinion that the words "or some or one of them" are not admissible; but they are not inclined to fetter the discretion of the petitioners with regard to the statement of the number of persons alleged to have given the bribe.

A witness is not entitled to demand his necessary expenses before being sworn.

A witness called for the petitioners stated that he had not been reimbursed the expenses he had been put to in coming to give his evidence; and refused to be sworn until they were paid.

Piggott, for the sitting member.—The witness is entitled to refuse to be sworn. It was laid down in the *Southampton* case, Barr. & Aust. 379, "that the necessary expenses to enable a witness to appear before the committee shall be paid before he gives his testimony; but with regard to all other expenses, the witness must apply to the Speaker under 4 & 5 Vict. c. 58, s. 89." That resolution was acted upon in the *Lyme Regis* case, Barr. & Aust. 460; and it is generally consonant with the practice in all judicial tribunals.

Webster, contrà.—The witness is here under the order of the House, and must consent to be examined if required.

THE CHAIRMAN.—The witness must be sworn.

The statement of an agent of the sitting member to a voter whom he bribed, that the votes of many depended upon his, is receivable in evidence.

A witness named Taylor, on examination, said that he had received 30*l.* from one Whalley to vote for the sitting member. In answer to a question he further said, that Whalley told him the votes of many depended upon his.

Kinglake, Serjt.—This conversation is not admissible in evidence. The statement of Whalley has no reference to the particular case of bribery at present under consideration. It refers to the votes of other parties, and those parties whose names, for aught that appears, may not be included in the list.

James, Q.C., contrà.—The question is admissible. It is this,—did Whalley, while bargaining for the witness's vote, say something about other votes; and the object of the inquiry is to learn what he reckoned to be the value of the vote which he bargained for. It is part of one transaction. Whalley, in effect, says, "Your vote is worth 30*l.*, because others depend upon it."

THE CHAIRMAN.—The answer may be received in evidence.

LANCASTER, 1853.

Saturday, Feb. 19, et seq.

(*Chairman*—EDWARD DIVETT, Esq.)

Hearsay evidence.

What an elector, whose vote is impeached on the ground of bribery, said to a third person, with reference to what candidate he intended to vote for, is not receivable in evidence.

This was a petition against the sitting Member for the borough of Lancaster, charging him with bribery and corruption.

A witness was asked by the counsel for the petitioner, whether he had inquired of two electors, who had polled for the sitting member, and whose votes were impeached on the ground of bribery, for whom they were going to vote? To this question an affirmative answer was returned. He then proposed to ask what the voters replied to the inquiry of the witness. This question was objected to by the counsel on the other side, and the Committee decided that it could not be put.

Wrangham, Serjt. and *Mereweather*, for the petitioners.

Monk and *Wheeler*, contrà.

GUILDFORD, 1853.

(Reported by JAMES PATERSON, Esq. Barrister-at-Law.)

Saturday, March 5, et seq.

(*Chairman*—LORD SEYMOUR.)

Practice—List of persons bribed, and by whom.

The counsel for petitioner, after opening one or two cases of bribery, handed a list to the opposite counsel of all the persons alleged to be bribed, and by whom. In some cases as many as six persons were named as having bribed one voter:

Held, this was an evasion of the usual preliminary resolution, and time (one day) was given to amend the list, by striking out all names except of those who, petitioners were prepared to prove, had actually administered the bribe in question.

This point was similar to that reported *supra*, at Clitheroe, 1853. After the counsel for the petitioners, in a petition alleging bribery and treating, had opened a few individual cases of bribery, he, according to the usual practice, handed to the opposite counsel a list of all those voters whom the petitioners alleged to have been bribed, and of the persons who bribed each respectively. The numbers of persons bribing were therein set forth as varying from two up to six.

E. James, Q. C. (with whom *Power*) for the sitting member, objected to this list on the ground of vagueness, and as being an evasion of the usual preliminary resolution agreed to by all committees. The petitioners ought to be called upon to state the person or persons who actually bribed the voter. Unless this is done, we have really no sufficient information given us, according to the spirit of the third resolution: (see *Clitheroe* case, *supra*.) The list is drawn up obviously as a fishing list, with a view to fix one or other of the six individuals by the aid of information extracted in the course of the examination of the witnesses.

Farrer (with whom *Kinglake*, Serjt., and *R. Clarke*, contrà. The list is sufficient. It is impossible to state exactly the one individual who may have actually administered the bribe. If there are several persons in a room, they may all in some degree contribute, at one stage or another of the transaction, to the common purpose in view, and yet it would be difficult to say which of them actually gave the bribe. It is therefore competent in such a case to put down all the names of the persons who seemed to

have taken part in the transaction at different stages. [The COMMITTEE.—Then do you mean to say that, in all the cases in the list, where there are several names given as those of the persons bribing, those persons were all sitting in a room, and took part in the bribery?] No; we are not prepared to say that. Still, it would practically defeat the end of such inquiries as the present, if we were called upon to single out one of these persons as the one we are prepared to prove guilty of the act of bribery.

Cur. adv. vult.

The CHAIRMAN.—The Committee are of opinion that the list is not sufficient, and that it must be amended, for which time will be given till Monday morning (March 7); in the meantime counsel for the petitioners must go on with those cases in which they have set forth the name of one or two individuals as the persons bribing, and which cases they are prepared to prove in reference to those individuals.

[It will be seen from the above case, taken along with the *Clitheroe* case, *supra*, that the committees have laid down no rule on the subject. As a further illustration of variety of practice, it may be stated that, in the *Wigton* case, 1853 (opened March 9), a similar objection was raised, that the list was insufficient, inasmuch as there were seven or eight names set forth of those alleged to have bribed one voter: but the committee overruled the objection, and did not order any amendment.]

Circuit Reports.

OXFORD CIRCUIT.

Reported by J. E. DAVIS, Esq., Barrister-at-Law.

BERKSHIRE SPRING ASSIZES.
Reading, March 2.
(Before WILLIAMS, J.)

BUCKMASTER *v.* MERRIJOHN.

Secondary evidence—Notice to produce documents relating to the cause—Staying execution—Practice under the Common Law Procedure Act.

In a declaration in debt, the defendant, after having previously pleaded a set-off and payment, pleaded a plea puis darrein continuance of an agreement between the plaintiff and the defendant, whereby the set-off was admitted, and all accounts settled between the parties. To this plea the plaintiff replied that the agreement was obtained by fraud and covin; on which issue was joined:

Quære, whether the contents of an account-book containing the items of the defendant's set-off, were relevant to the issue so as to enable the plaintiff to give secondary evidence after notice to produce all books, &c. in anywise relating to, touching, or concerning the matters in question in the cause.

Where there appears to be a bonâ fide intention to dispute a verdict at the assizes, and to move to set it aside, the judge will stay the execution on bringing the debt or damages into court.

Declaration, June 22, 1852, in debt for money had and received, money lent, money paid, and on an account stated.

Pleas, in the first instance, set-off and payment. After issue joined on those pleas, and on the eve of trial, the defendant pleaded a plea *puis darrein continuance*. The plea set out an agreement, bearing date July 12, 1852, between the plaintiff and the defendant, reciting that the plaintiff had commenced the action against the defendant to recover the sum of 290*l.* or thereabouts, to which action the defendant had pleaded a plea of set-off to a large amount, and reciting that the plaintiff admitted the set-off so pleaded as aforesaid, as well as other sums to be due to the defendant for money expended by him in and about the erection of a cottage for the plaintiff, and in respect of other transactions; and that the defendant was indebted to the plaintiff upon another contract in 158*l.* 1*s.*; and then alleging that the defendant had agreed to pay, and the plaintiff to receive, that sum by certain specified instalments, the first of which, amounting to 25*l.*, the defendant had agreed to pay down, and had paid in pursuance thereof.

To this plea the plaintiff replied that the agreement was obtained by the fraud and covin of the defendant, and issue was joined thereon.

To prove that the agreement was fraudulently obtained, the plaintiff and other witnesses were called to shew that he had signed the agreement, believing that it had been approved of by his own attorney, and had been misled by other false representations of facts.

On the part of the defendant, it was sworn that, previously to the agreement being drawn up, the claims were fully investigated.

Upon cross-examination, the defendant's attorney stated that the accounts on each side were entered in a book, and *Whateley*, Q. C., was about to question the witness with reference to some of the items forming the alleged set-off, when

Allen, Serjt. objected to questions being asked as to the contents of the book.

Whateley submitted that he was entitled to give secondary evidence under a notice to produce given by the plaintiff to the defendant. The notice was to produce the agreement of the 12th July 1852; an original subpœna issued in the cause; the original will of the plaintiff; a book of account of alleged claims of the defendant against the plaintiff, in which book the defendant, on or about the 14th April 1852, made a memorandum to the effect that all claims of the defendant upon the plaintiff had been paid or satisfied; also the pass-book between the defendant and his bankers since the 1st of January 1851; "also all other books, papers, writings and documents in your custody, possession, or power, in any wise relating to, touching, or concerning the matters in question in this cause." The notice was dated the 25th Feb. 1853.

Allen, Serjt. contrà.—This notice did not include the book in question. It was not particularly described, and it could not be said to be within the general words at the end of the notice, for it did not relate to the matters in question in the cause. The only issue, as the cause now stood, was that of fraud or no fraud, and any question as to particular items of account was not relevant to that issue. The notice therefore did not point to this book.

WILLIAMS, J. said it was a very nice point whether the question was relevant to the issue. The cases bearing on it run so very fine, that he had a difficulty in deciding; but according to his usual practice he should admit the evidence, and give the defendant leave to move upon it.

Whateley said if his Lordship had any doubt on the point he would not press it.

WILLIAMS, J. said he had great doubt, and accordingly the questions were withdrawn.

The jury returned a verdict for the plaintiff for the amount claimed.

Allen, Serjt. applied to the judge to stay the execution until the fifth day of Easter Term, to give the defendant an opportunity of moving for a new trial on a question which arose during the trial, as to the admissibility of a document tendered in evidence on the part of the plaintiff, and which point was ruled against the defendant.

WILLIAMS, J. said the question was whether before the Common Law Procedure Act, he should have granted speedy execution? As this application was one likely to be made frequently, and no rule had been yet laid down with reference to the trial of cases at the assizes, he would consult Talfourd, J. and endeavour to arrive at some general rule.

On the following morning WILLIAMS, J. said he had conferred with Talfourd, J. and they had come to the determination to stay execution on the debt or damages brought into court, whenever there was apparently a *bonâ fide* intention to dispute the verdict and take ulterior proceedings. Execution would be therefore stayed in the above case on the amount of damages being brought into court.

Whateley, Q. C. and *Bros*, for the plaintiff.
Allen, Serjt. and *Skinner*, for the defendant.

SOUTH WALES CIRCUIT.

(Reported by D. T. EVANS, Esq., Barrister-at-Law.)

GLAMORGANSHIRE LENT ASSIZES, 1853.
(Before WIGHTMAN, J.)

DAVIES *v.* PRITCHARD.

Evidence.

The rule excluding the evidence of the wife in actions by or against the husband does not prevent the widow of a testator giving evidence, in an action against his executor, of conversations between the testator and the plaintiff, a third party.

This was an action brought by the plaintiff against the defendant, as executrix of one Thomas Davies, for the balance of an account for work and labour, and materials and money lent. The defendant pleaded the general issue, payment, and the Statute of Limitations. The plaintiff was the nephew of Thomas Davies, and had lived with his uncle for many years, assisting in the management of his farm, and receiving board and lodging in the uncle's house. There were various money transactions between them which had never been balanced; but the plaintiff claimed remuneration for his services; and if that claim was correct, there would be a balance due to him, not covered by the Statute of Limitations, of 46*l.* To prove that the plaintiff was entitled to such remuneration, the plaintiff deposed to the performance of the services, and also an express verbal agreement made between himself and the testator for remuneration. To confirm the plaintiff's evidence on this point the widow of the testator was called, who distinctly deposed to conversations between the testator and the plaintiff in her presence, in which conversations the testator promised the plaintiff to pay him for his services at a specified rate.

Gifford, for the defendant, objected that the evidence of the widow of the testator was inadmissible, and referred to *O'Connor* v. *Marjoribanks*, 4 M. & Gr. 435, and *Barlow* v. *Allen*, 21 L. J. 155, Ex.

Grove and *Dolling*, for the plaintiff, contrà, argued that the case of *Barlow* v. *Allen*, only decided that the evidence of the wife during her husband's lifetime was inadmissible, the object of the exclusion being to secure domestic happiness, which could not be endangered by the wife deposing, after her husband's death, to conversations between him and a third party.

WIGHTMAN, J. said, he was of opinion that neither of the cases cited excluded the evidence of a widow under the circumstances disclosed in this case, and he was of opinion that the widow was a competent witness. *Verdict for the plaintiff, damages, 46l.*

Irish Reports.

COURT OF QUEEN'S BENCH.

(Reported by P. J. M'KENNA, Esq. Barrister-at-Law.)

HILARY TERM, 1853.
Monday, Jan. 17.

REG. *v.* JAMES CREAGH.

Mandamus—Duty of magistrate—Signing conviction.

A. being summoned under the 6 Geo. 4, c. 43 (Pound-keepers' Act), for a penalty under that Act, the magistrates at petty sessions adjourned for a fortnight, instead of a month as usual. At the adjourned sessions, A., having been convicted in his absence, came into court and stated that the arrangement for an adjournment for a fortnight was not known to him, and protested against the conviction. One of the two magistrates who had presided refused to sign the conviction, which had been entered on the 12th Dec. 1850, although several times applied to for that purpose by the prosecutor. The court refused to issue a mandamus directing the magistrate to sign the conviction, under the above circumstances, and, a conditional order having been obtained on the part of the prosecutor, allowed the cause shown with costs.

In this case *E. Lawless*, under the following circumstances, obtained a conditional order for a *mandamus* to issue to be directed to James Creagh, Esq., Justice of the peace for the county of Clare, requiring him to sign a conviction for a penalty under the 6 Geo. 4, c. 43 (the Pound-keepers' Act). The first section of that Act imposes a penalty of 10*l.* on any pound keeper who has not renewed his security for the due execution of his office. The 11th section provides for the manner in which the penalty is to be recovered, viz., before two justices of the peace at petty sessions. A pound-keeper, William Halpin, had neglected to renew his security, and a summons had been served on him by another pound-keeper of the name of Hynes; and, the case having been gone into on the 29th Nov. 1850, before two of the magistrates at petty sessions, Messrs. Franks and Creagh, Halpin was convicted of the offence, and the penalty prescribed by the Act, 10*l.*, was imposed on him. The prosecutor afterwards stated that the warrant to levy and the conviction were properly made out, and that Mr. Franks had signed the conviction, but that Mr. Creagh refused to do so in Sept. 1851, when applied to for that purpose; and charged that Mr. Creagh was influenced by motives of favouritism to Halpin, and that he therefore refused to sign the conviction, and that consequently the prosecutor was unable to levy the 10*l.* to which he was entitled under the 13th section of the Act.

Brereton, Q. C. now showed cause.—From the affidavits which have been filed on our side, it appears that there was an adjournment of the petty sessions held on the 29th Nov. 1850, to the twelfth of the following month, December; that on the latter day the justices proceeded with Halpin's case, and that a conviction was then entered against him; that afterwards, before the rising of the court, Halpin came into the Court-house and complained of the case having been disposed of in his absence, and that he thought the court had adjourned for a month and not a fortnight as they had done, and that the arrangement to adjourn the sessions on the first day for a fortnight, and not as usual for a month, was not made in his presence. The conviction was sought for a trifling breach, namely, two days having elapsed in the new year without Halpin having entered into the recognisance directed by the Act. The words "Irish Currency" were not in the conviction or in the book of the sessions clerk; and when the conviction was brought to Mr. Franks for his signature, he put in these words with his initials after them. [LEFROY, C. J.—Did the magistrate apprise the prosecutor of those objections to the conviction?] He did, and in his answers to the Lord-Lieutenant and the Lord Chancellor, to whom complaints were made of him, he set forth these objections in full, and that he considered it was not a wilful infringement of the Act, and that it was not fair to Halpin to proceed in his absence.

MOORE, J.—I entertain a doubt whether this conviction as it stands is legal. It directs the bailiff to levy 10*l.* Irish, leaving it to him to ascertain what the correct sum in the present currency is.

LEFROY, C. J.—I confess it appears to me that Hynes seeks to take advantage of an irregularity; he induces the magistrates to prosecute the case and convict in Halpin's absence; he then turns round and insists on their putting in force this irregular conviction, and seeks to compel them to carry out the proceeding.

E. Lawless, in support of the rule.—It does not appear that Halpin made any affidavit that he did not know of the adjournment to the 12th Dec. The court should not go behind the conviction; and Mr. Creagh, having been one of the magistrates who con-

victed Halpin, should not be heard here saying the conviction was bad. The charge we make of favouritism is not contradicted. Mr. Creagh merely says that he is not actuated by any unfair or improper motive in refusing to sign this conviction. We charge, and it is not denied, that at one time Mr. Creagh had told the prosecutor that he had signed the conviction; and again, when refusing, had not given any reason for his refusal. Mr. Creagh, if he left himself open to an action by signing this conviction, might be excused from doing so; but the 12 & 13 Vict. c. 16, s. 1, provides that magistrates acting within their jurisdiction shall not be liable to an action for anything so done by them, unless it shall be alleged to have been maliciously and without probable cause. [CRAMPTON, J.—If the court should make this order for you, would there be anything to prevent Halpin from applying to quash the conviction?] He neglected to appeal, and he is therefore estopped by that. [LEFROY, C. J.—Why should he be put to the expense of an appeal when the conviction was improper?] It will be for us to consider whether we shall act on our conviction or not; we have a right to have this conviction signed by Mr. Creagh, who acts as a partner all through this matter.

LEFROY, C. J.—Allow the cause shewn, with costs.

Equity Courts.

LORD CHANCELLOR'S COURT.

Reported by C. H. KEENE, Esq. of Lincoln's-inn, Barrister-at-Law.

Jan. 18, 27, *and Feb.* 8.

(Before LORD CRANWORTH, L. C. and the LORDS JUSTICES.)

In THE DOVER AND DEAL RAILWAY COMPANY, *ex parte* MOWATT and *ex parte* ELLIOTT.

Winding-up Acts—Liability—Parties primarily and secondarily liable—Gay's case considered.

The directors of a railway company, on the faith of a guarantee contained in a circular letter, induced shareholders to sign the subscribers' agreement for a large number of shares. The guarantee could not be enforced:

Held, that the directors by whose authority the letter was sent were primarily liable as between themselves and the shareholders who so signed the deed; and an order made by the Master and confirmed by the Vice-Chancellor for a call rateably on all the shareholders was discharged.

Where one class is primarily and another secondarily liable, the Court will not sanction a call on the latter unless it clearly appear that a call on the former would be fruitless.

Where a man has two debtors, of whom as between themselves one is bound to indemnify the other, the creditor may proceed against both or either, and leave them to settle the matter between themselves.

This was a motion by way of appeal from an order of Kindersley, V. C. refusing to discharge an order of Master Brougham, directing a call to be made on the contributories of a company whose affairs were being wound-up under the provisions of the Winding-up Acts.

The facts were briefly these. An association for the purpose of forming a company was established in the year 1845, and provisionally registered under the Joint Stock Registration Act for the making of a railway from Dover to Deal. A subscribers' agreement and a Parliamentary contract were prepared; and a committee of management and a board of directors chosen. In the beginning of the year 1846 shares were allotted by the company to the public. A Mr. Mowatt and Dr. Elliott signed the deed in respect of 200 shares which had been allotted to each of them. At the time of the allotment an agreement had been come to by the directors, or a negociation had been entered into by them with the South-Eastern Railway Company, the object of which was to obtain from them an indemnity or guarantee against all the expenses incurred by this company if it did not succeed in its application to Parliament for its Bill; and if it did so succeed, then the line was to be leased on certain terms to the South-Eastern Railway Company, or the stock of the projected company converted into South-Eastern Railway stock.

The directors subsequently published an advertisement in the daily newspapers; and a copy of that advertisement, in the form of a circular letter (which is set out in the Lord Chancellor's judgment), was sent by the secretary, by the direction of the directors, to each allottee of shares with the letter of allotment. One of these letters was sent to Mr. Mowatt, and another to Dr. Elliott, and, as appeared by the evidence of the secretary, a copy was intended to be sent to all the allottees of shares.

The directors proceeded with the scheme; but, the deed not having been signed by such a number of shareholders as would enable them to go to Parliament, they, by their solicitors, prevailed upon Mr. Mowatt to again subscribe the deed for 1575 additional shares, upon the representation of the solicitors that he could incur no responsibility, inasmuch as the directors had guaranteed the return of the entire deposit if the Act of Parliament were not obtained; and if the Act of Parliament were obtained, then he would get stock in the South-Eastern Railway Company which would be a beneficial investment. On the faith of their representation Mr. Mowatt executed the subscribers' deed and the Parliamentary contract in respect of 1575 shares, and paid the deposit.

The directors then proceeded with their application to Parliament, but did not obtain their bill. Application was then made to the South-Eastern Railway Company for the performance of their guarantee and indemnity by paying to the directors of this company the expenses which they had incurred. Pending the negociations consequent upon that application, the directors of this company returned 1*l.* to the shareholders out of the two guineas, the amount of the deposit paid. An order was afterwards obtained to wind up this company under the provisions of the Winding-up Acts. The Master proceeded to settle the list of contributories, and placed upon that list the names of Mr. Mowatt and Dr. Elliott as contributories, they having executed the subscribers' agreement and the Parliamentary contract.

The directors of the South-Eastern Railway Company having refused to perform their guarantee, the directors of this company brought an action against them; and on the order for winding-up being obtained, the official manager, as representing the company, was substituted for the plaintiff. That action proceeded, and a verdict was obtained by the plaintiff, which was afterwards set aside by the court. Some formal proceeding was taken, by which the plaintiff failed to recover any money from the South-Eastern Railway Company. Having failed to recover that money, the official manager applied to the Master for an order for a call, first for the purpose of paying the debts of the company, of which none were proved before the Master or allowed, except a sum of 180*l.* The costs of the action and of the proceedings resulting from it were the main object for which the call was made. The Master ordered a call of 5*s.* per share, which, with the outstanding balance of the deposit, virtually amounted to a call of 1*l.* 7*s.*

The question was whether the call ought to have been so made or not.

The present appellants moved before Kindersley, V.C., to discharge the order. This his Honour refused, and the present was an appeal from that decision.

Roxburgh (in the absence of *Daniel* and *Willes* of the Common Law Bar) submitted that he was entitled to use the same arguments in respect of the call as would apply to the question whether the appellants were or not contributories to the company. The ground upon which the Master proceeded to make the call was this—that, inasmuch as the proceedings in the action against the South-Eastern Railway Company had been for the benefit of the subscribers to this association, it was just that they should pay a rateable proportion of the expenses of that proceeding. He submitted that it was not for their benefit; that the directors were the persons to be benefited by that trial; they had undertaken with the public that they would, if they did not get their bill passed, return the deposits untouched. If they made that guarantee on the faith of the South-Eastern Railway Company, they, and not the subscribers to the deed, were interested in getting that question disposed of. The subscribers were not made aware of the benefits which they would receive from the agreement, though they had heard and been informed that there were some. This case differed altogether from *Gay's* case. There a call for costs was supported upon the ground that the official manager sought to recover back a sum of money which had been misapplied by the directors, in which sum of money all the contributories were directly interested: and there the parties personally liable were insolvent, and but for that circumstance the order for the call would not have been upheld. Here the directors were bound to give back the money without the slightest deduction whatever. The shareholders had no interest whatever in the action which the directors brought against the South-Eastern Company on their indemnity. The liability or non-liability was a question between the directors of this and of the South-Eastern Railway Company. The directors of this company were primarily liable for the payment of those costs for which the call was made. They were solvent parties; and until their insolvency had been proved it was premature to call upon parties who were only secondarily liable to contribute.

Glasse and *Selwyn* appeared for the official manager.

The following cases were referred to:—*Ex parte Gay*, 18 L. T. Rep. 282; *Hulton* v. *Bright*, 19 L. T. Rep. 289, 249; *Ex parte Markwell*, 19 L. T. Rep. 177; *In re North of England Banking Company, ex parte Bernard*, 18 L. T. Rep. 283; *M'Gregor* v. *Official Manager of the Dover and Deal Railway Company*, 19 L. T. Rep. 125, 316.

JUDGMENT.

The LORD CHANCELLOR.—But for the very high authorities that there have been pronounced in favour of the present decision—first that of the Master, and then that of V. C. Kindersley,—we should, probably, have thought it prudent to have heard the matter fully out, and have taken time to consider the subject; but, from the opportunities which we have had during the time this case has been before us of reflecting on its merits, we do not think any further consideration would be of any use. From the cursory view that I have been able to take of the case before V. C. Kindersley, I confess a doubt has crossed my mind whether the precise point was ever very distinctly brought before the mind of that very learned and accurate judge. However, I need not speculate upon that, because I believe we are unanimous in opinion that the case is nearly free from any doubt or difficulty. This company being unable to get a sufficient number of people to take shares, by reason of its being thought that a railway from Dover to Deal was not likely to answer, and in order to induce people to come in more readily and take shares, they entered into an arrangement—whether they had authority or not seems utterly immaterial—with the directors or the proper functionaries of the South-Eastern Railway Company, by which they thought they would be put on a good footing; and that they might make certain sacrifices in inducing others to take shares in this company, by reason of advantages they would themselves derive from the South-Eastern Railway Company, and with that view, on 24th Jan. 1846, the persons who were then exercising the functions of directors of this company—the Right Honourable Lord Albert Conyngham, Henry Beauclerk, Esq. and the Honourable H. M. Gore, passed the particular resolution in pursuance of which the letter to which I shall presently allude was sent. The solicitors having reported the result of their negociations with the South-Eastern Railway Company, and having read the letter which had been settled and approved of by them which was proposed to be addressed to each applicant for shares; it was resolved that the letter be adopted and sent accordingly." That letter, which was meant to be a circular to every one whom they thought might be likely to take shares, was in these words: "14th Jan. 1846. Sir—Dover and Deal Railway—In forwarding you the accompanying letter of allotment, the directors desire to explain that they have delayed issuing any shares until the standing orders of both Houses of Parliament have been complied with, and certain arrangements entered into with the South-Eastern Railway Company had been brought to a conclusion. The directors have now the greatest satisfaction in stating that arrangements with the South-Eastern Railway Company have been concluded: and they are fully justified in asserting that the company will be placed in such a position as to ensure its proprietory against loss, and in the event of the passing of the Bill, shares in the South-Eastern Railway Company will be allotted to the proprietors in lieu of stock in this company. The directors in making this announcement feel that the affairs of the company as now settled are on such a basis as to secure important advantages to its proprietors, and to warrant the directors in proceeding to Parliament with the undertaking with every expectation of success. In the event of the Act not being obtained, the directors undertake to return the whole of the deposits without deduction." The letter was written "by order," and signed "S. P. Hook, G. T. Thompson, joint solicitors." Now, under any construction, that letter amounts to this—that the directors undertake to indemnify the parties against all loss from taking shares, provided they do not obtain an Act of Parliament. That took place on Jan. 24, and it is in evidence uncontradicted, that on the 26th of the same month that announcement appeared in the form of an advertisement in the newspapers. There was an authority from the directors to the solicitors to send and circulate the letter, in order to obtain the shares. It appears that Mr. Hook, one of the solicitors, being, I suppose, a friend of Dr. Elliott, and thinking that this was, or likely to be, a very profitable thing, sent him very early a copy of it—one of those circulars—and announced to him what the advantages would be, pointing out of course that it was a very great advantage, because the parties taking shares were taking the chance of gain, with an indemnity, or what necessarily amounted to an indemnity, against loss,—against loss at least if the Act of Parliament were not obtained. And then he adds: "I shall have much pleasure in allotting you 100 shares, and some friends of yours the same number, each to a limited extent; but as our deed must be executed in the course of the ensuing week, I should like to receive your list by Monday." That was exactly in conformity with the directions which had been given by the resolution of the meeting. In endeavouring to circulate that intelligence as effectually as possible, the solicitor sends the letter to Dr. Elliott, and, in truth, substantially desires him to circulate it amongst others. That this letter had never been sent to Mr. Mowatt would be a point that it would be impossible seriously to argue. The object was that that intelligence should be circulated among persons who were likely to purchase shares; and it is sent with that express object to Dr. Elliott, in order that he might shew it, the expression is, "to his friends." Now Mr. Mowatt being one of his friends, it was shown to him on the 26th, and, being called upon to act immediately, he instantly goes, and, as he states, not only with the semblance of truth, but demonstrably what must be the truth, fresh from the reading of that letter, and

subscribes for a larger number of shares than by the terms of the letter he is allowed; for the letter mentions "100 shares," or "shares to a limited extent," and not an unlimited number. On the faith of that letter he executed the deed on the 29th Jan. and Dr. Elliott executed it on the 2nd Feb. The company were still unable to dispose of their shares: and then a day afterwards, on the 4th Feb., Mr. Hook, the solicitor, evidently acting on the authority given to him, and discharging the duty which that authority imposed upon him, of endeavouring to dispose of shares on the footing of that letter, sees Mr. Mowatt, has a conversation with him, and, without perhaps urging, rather pressed him to take more shares. To this Mr. Mowatt says: "You must write me a letter; I must have a letter from the committee itself, saying these are the terms upon which I am to take the shares." Mr. Hook rather remonstrates against that; he says: "I do not think the committee is sitting; but it does not signify." Nor did it. The committee had authorised him to send a printed letter to those persons; he goes back, and, finding the committee had broken up and was no longer sitting, he sends a letter to Mr. Mowatt urging him to take the shares, and inclosing him a printed copy of the letter. Upon the faith of that Mr. Mowatt signs the deed, and in both cases pays his deposit according to the terms of the instrument. In what relation did Mr. Mowatt, when he executed that deed, stand as between himself and those who had given him that which I call a guarantee? It is useless to speculate what would be his obligation as to other persons; whether, under any possible circumstances, he would be liable to creditors, or how he would be liable to other parties. The question here is—the whole body being brought before the court, including those who had agreed to indemnify Mr. Mowatt, and those who had not,—it being needful to raise money for the purposes of what I may call the common concern, who are the parties primarily liable to pay that demand? Can there be the least doubt, as between Mr. Mowatt and Lord Albert Conyngham and the two other gentlemen who caused the letter to be sent to him, on the faith of which he took the shares and signed the deed, that, even if Mr. Mowatt is liable to other of the contributories, they are liable to indemnify him? It is impossible to reason upon it. The statement of the proposition makes it as clear as any reasoning could. The persons primarily liable are those who induced Mr. Mowatt to subscribe the deed, upon the assurance that, if he did so, he should be indemnified. Some argument was pressed that he signed the deed after he had entered into the agreement. When there is an agreement, and, in order to carry it into effect, the party executes the deed, the deed, no doubt, is that which is *primâ facie* to be taken as speaking the intention of the parties; but that was never what was meant here. It never was meant that the deed should be an embodiment of the agreement; on the contrary, the agreement, the guarantee, was something entirely collateral to the deed. "If you will execute the deed, then we will indemnify you." He did execute the deed, and now they say, "We are not the persons to indemnify you." I think they entirely fail in that argument. With respect to *Gay's* case, which it is alleged is the authority on which they have been acting, the distinction is manifest. In *Gay's* case there was, in the first place, no express agreement to indemnify; but, perhaps, there was something that amounted to the same thing. The directors there had deposited with them, by the great body of the shareholders, sums of money to be applied to the purposes of the inchoate concern. That fund had not been exhausted, or, if properly applied, would not have been exhausted. Then the affair was wound-up; and it was said, and truly said, "The first fund applicable to the payment of these outstanding demands, applicable to the payment of the winding-up, including the costs, is the fund made by the contributories, placed in the hands of the managing directors." It would have been hard to have called upon those who were not liable till that fund had been exhausted. So far from *Gay's* case having decided the contrary of that, the court, consisting of Lord Justice Knight Bruce and myself, felt and admitted the force of that reasoning; but in the course of the argument it was said that, although we were called upon to exercise a sort of administrative duty, we must take some practical step for getting back the money; it was able to make a call first on seven persons, most of whom have gone abroad, and all of them totally insolvent. There was no use in going through that ceremony,—and, feeling that, we directed an affidavit to be made on the subject. That affidavit was made, and satisfied us that there was no reasonable chance of recovering anything from any of the persons primarily liable. The directors had, I do not say fraudulently, but imprudently, wasted the whole of the fund, and there was no chance of recovering it. Now the money was to be raised: and all the contributories were liable; the proportions in which they were liable were all ascertained. If it should turn out that any of those primarily liable are solvent, there would be a remedy against them. Now in this case the fund must be raised—nobody suggests insolvency on the part of Lord Albert Conyngham, now Lord Londesborough, or on the part of the two other gentlemen. They are the persons primarily liable, and therefore that decision in *Gay's* case seems to me to have no practical application to this. It appears to me the call, as far as Mr. Mowatt and Dr. Elliott are concerned, must be discharged, and the proper directions given for that purpose.

Lord Justice KNIGHT BRUCE.—I assume in favour of the respondents, that the costs and expenses incurred by the official manager, of which the main object of the call is to procure payment to him, were properly incurred, and that they ought to be repaid to him, and must be so. But the question is, how they are to be repaid. I assume also in favour of the respondents, but without deciding, that in a certain order and in a certain sense the appellants before us are liable to him for those costs and expenses. The question is, in what order and in what manner. I agree also that generally, where a man has two debtors of whom, as between themselves, one is bound to indemnify the other, the creditor may proceed against both or either, and leave them to settle the matter between themselves. This, however, is not exactly that case. It is a question under the Acts of Parliament called the Winding-up Acts, and the Master has before him the official manager and all the contributories. The contributories stand, as between themselves, in distinct classes, as some of them at least allege; one class, in the present instance, may be considered as represented by the appellants; the other class may, for the present purpose, be considered as represented by Lord Londesborough, Mr. Beauclerk, and Mr. Gore; and as between the two classes it is asserted by the appellants that the other class ought to bear everything, and to indemnify them from all the consequences of having become associated with this company or undertaking. Have they given evidence of that before the Master? In my opinion strong *primâ facie* evidence; and such evidence as in my judgment to make it a proper course of proceeding, fully to investigate the matter and to adjudicate between the classes as to which in that stage of the matter, the stage of a call, ought first or alone to be made liable; whether first or alone is for the present purpose immaterial. That matter does not appear to me to have received sufficient investigation. It would be premature—it would be impossible, I think, now to decide that, as between the two classes, whether the one was liable conclusively before the other. If the matter were to rest here I should have no hesitation what answer to give to the question upon the evidence before us. The course taken must be, I think, to remit the whole case to the Master, in order that he may investigate the claims of these appellants more fully than he has done, either to be discharged wholly, or not to be charged until persons of undoubted solvency have been well ascertained to be or not to be liable in preference to them as between themselves. The truth I believe to be that these appellants, rightly or erroneously, I say not which, have been so possessed with the notion that they were in no order, in no rank, in no sense, in no event liable, that the other view of the case has not been presented with the force and clearness with which otherwise it might have been presented either to the Master or to the V. C. I am of opinion that the case is not at present in such a state as that, without a probable or certain failure of justice, the call, as it is, can be acted upon against these appellants.

Lord Justice TURNER.—I agree entirely in the conclusions that have been expressed in this case. This is a call for the purpose of recovering debts which are alleged to be due from the company, and for recovering costs said to have been incurred for the benefit of the common fund belonging to the company. It is not pretended, and has not been urged, that as to creditors Mr. Mowatt is under any liability; and as the case stands as to costs, I am clear upon the evidence as it stands, that, as between Mr. Mowatt and the directors of this company, the directors are primarily liable. There are two views which strike my mind upon that point. The one is that, on the terms of the agreement which is entered into between these parties, and upon which Mr. Mowatt signed the deed, the directors agreed that if the Act of Parliament did not pass they would repay the whole amount of the deposit, which, in truth, is an agreement that they will not charge the shareholders who signed upon the faith of that letter any deduction in respect of the costs which might be incurred. The other whether, supposing Mr. Mowatt to have been sued upon a covenant contained in that deed in respect of the costs incurred by the directors, it would not be a perfectly clear case for a court of equity to restrain the proceedings in that action upon the contract entered into with Mr. Mowatt, and upon the faith of which he had signed. I think, therefore, it is perfectly clear that, as between Mr. Mowatt and the directors of this company, the directors are primarily liable in respect of these costs; I am speaking, of course upon the evidence as it stands before us at the present time. Now these calls must be made according to the Act of Parliament, according to the liabilities of the parties at law and in equity. Now it is said that there may be other parties in respect of whom Mr. Mowatt may be under some liability to

contribute. I am not satisfied, upon the evidence as it stands, that there are any such parties. But, assuming that there are, still, upon the evidence as it stands, there is a primary liability of the directors. The case stands thus: there are parties primarily liable and parties secondarily liable; and the question is, in what mode the call ought to be made, in a case where there are parties primarily liable, and as to whom there is no doubt of the power of recovering calls, and the parties secondarily liable. Nothing would be more inconvenient in carrying out the provisions of the Act of Parliament than to call upon parties who are secondarily liable, to pay at a time when there are parties who are primarily liable; because the consequence of that would be, that in further working out the provisions of the Act of parliament, it would be necessary that further calls should be made for the purpose of indemnifying the parties upon whom the first call had been made, against the payments which they had been compelled to make in the place of the parties primarily liable to that first call. I think, therefore, resort ought not to be had, in working out this Act of Parliament, to parties who are secondarily liable only, unless it is clear that there is a difficulty in recovering the calls against the parties primarily liable.

COURT OF APPEAL IN CHANCERY.

Reported by OWEN DAVIES TUDOR, Esq. of the Middle Temple, Barrister-at-Law.

Jan. 14 *and* 19.

THORNTON *v.* COURT.

Vendor and purchaser—Covenant for quiet enjoyment—Compensation for breach of, in equity.

A. purchased property which was conveyed to him in fee, with a covenant only for quiet enjoyment, by B. the vendor. Within a month A. mortgaged the property to C. to secure a sum of money and interest, but was afterwards, after an action of ejectment, evicted by D., who claimed by a title paramount to A. and B. A. defended the action without consulting B., and incurred costs thereby. A. then brought an action against B. upon his covenant; but was stopped by a plea that at the date of the eviction the legal estate in the premises was not in A., but C. B. afterwards paid off the mortgage, C. the mortgagee handing him over the mortgage deed, and signing an acknowledgment by indorsement thereon, of the receipt of the mortgage money and interest from the defendant B., and that the same was in full satisfaction and discharge of the mortgage debt, and of all right of action or demand on the part of the mortgagee against B. under the covenant for quiet enjoyment. A bill having been filed by A. against B., praying that A. might be declared entitled to the benefit of the covenant for quiet enjoyment, and for a reference to the Master to assess the damage sustained by A. the plaintiff, in consequence of the breach of such covenant:

Held, reversing the decision of the court below, that A. had clearly a right to have the damages assessed; and leave was accordingly given to him to bring an action upon the covenant within a time mentioned in the order, B. being at the same time restrained from setting up, in defence to the action, the mortgage deed or the indorsement thereon.

This was an appeal from the decision of the M. R. who dismissed the plaintiff's bill, which was filed in March 1851 under the following circumstances:—On the 9th April 1842 the plaintiff purchased certain freeholds for 180*l.* from the defendant, who conveyed the same to the plaintiff by an indenture, in which the only covenant was that for quiet enjoyment by the plaintiff and his heirs. On April 25 the plaintiff mortgaged the premises to Bolshaw, to secure 200*l.* and interest. In July 1846 Lord Delamere, who claimed by a title paramount to the defendant and plaintiff, commenced an action of ejectment against the plaintiff, which was defended by the plaintiff without consulting Court, being tried in April 1847, and a verdict delivered for Lord Delamere, who signed judgment, and taxed the costs therein at 145*l.* and evicted the present plaintiff. Shortly afterwards 59*l.* 8*s.*, part of the costs of Lord Delamere, were levied of the goods and chattels of the present plaintiff, the defendant in the action. In June 1847 Thornton commenced an action against Court to recover damages for breach of the covenant for quiet enjoyment; and Court thereupon put in a plea that, at the time of the eviction, Thornton had conveyed the legal estate in the premises to Bolshaw, and had not any estate or interest in such premises remaining in him. This plea prevented Thornton from proceeding with his action on the covenant. In the year 1848 Court paid Bolshaw the money due to him on the mortgage, and Bolshaw at the same time handed over the mortgage deed to Court, having previously signed a memorandum indorsed thereon, dated Oct. 7, 1847, by which he acknowledged the receipt of the mortgage money and interest from Court, and that the same was in full satisfaction and discharge of the mortgage debt and interest, and all right of action or demand which Bolshaw might have against Court under the covenant contained in the deed of sale and conveyance to Thornton.

COURT OF APPEAL.

The bill prayed that the plaintiff might be declared entitled to the benefit of a covenant for quiet enjoyment as against the defendant; for a reference to the Master to assess the damage sustained by the plaintiff, or to which he was liable by reason of a breach of covenant; and for payment by the defendant to the plaintiff of such sum as the Master might award in respect of compensation for such damage, after deducting therefrom what the Master should find to have been properly paid by the defendant, in satisfaction of the mortgage to Bolshaw.

Roundell Palmer and *Nicholson*, for the plaintiff, in support of the appeal contended that the defendant ought not to be allowed by his own wrongful act, viz., by the payment of the mortgage debt, and by taking the receipt in full for all demands under the covenant, to be enabled to take away the remedy of the plaintiff under the covenant for quiet enjoyment. At law it was true the remedy had been either entirely taken away, or was altogether inadequate; the plaintiff was, therefore, compelled to come to this court in order that he might obtain a remedy, viz., compensation by way of damages for the breach of covenant for quiet enjoyment: (*Ranelaugh* v. *Hayes*, 1 Vern. 189; *Smith* v. *Compton*, 3 B. & Ad. 404.)

Lloyd and *Trevlis*, for the defendant, contended that upon a purely legal covenant there could not be a legal and equitable breach; that the bill was founded upon the assumption of the existence of both; that it was a mere attempt to obtain damages in equity, which, although at one time it seemed to have been considered to fall within the province of this court, yet the cases of *Denton* v. *Stuart*, 17 Ves. 276, n., and *Greenaway* v. *Adams*, 12 Ves. 395, which countenance the doctrine, have been disapproved of, or at any rate not followed in subsequent cases: (*Todd* v. *Gee*, 17 Ves. 273; *Sainsbury* v. *Jones*, 2 Beav. 462; 5 Myl. & Cr. 1.) At all events, as the plaintiff did not in any way consult the defendant in the action, which he was unsuccessful in defending, he ought not, at any rate as against the defendant, to be allowed the costs of his defence. *Dryden* v. *Frost*, 3 Myl. & Cr. 670; *Williams* v. *Burrell*, 1 C. B. 402; *Lord Portarlington* v. *Graham*, 5 Sim. 416; and *Gillett* v. *Rippon*, Moo. & M. 406, were cited and commented on.

Lord Justice KNIGHT BRUCE.—The defendant in this case entered into a covenant for the peaceable enjoyment by the plaintiff of an estate which the defendant sold to him. The plaintiff, having paid his purchase money, entered into possession accordingly. The plaintiff then mortgages his property, once or twice, as he was entitled to do, so parting with the legal estate, and with it the legal right to bring an action for damages; but he became entitled to redeem the property, and to reinstate himself in the fulness of his original right. In this state of things an adverse or paramount title is asserted, and the plaintiff, being in possession, defends himself at law unsuccessfully. The paramount claim, which was adverse to all the plaintiff's rights, succeeds, and the plaintiff is evicted. No man can doubt that, in that state of circumstances, the plaintiff has a right to recover some damages, some substantial damages, from the covenantor whose covenant has thus been broken. The defendant, the covenantor, being aware of this, applies to the mortgagee, in whom was the legal estate, as I have said—a legal estate carrying with it, of course, the whole right to sue on the covenant—and pays him off, acquiring thereby the rights that the mortgagee had, and takes at the same time an acknowledgment from the mortgagee that the payment is in full of all demands upon the covenant, thereby creating, according to my present opinion—though it is not very material whether he did or did not—according to my present opinion a case of accord and satisfaction, rendering it impossible for him ever to be sued on the covenant. The plaintiff, therefore, is left entirely without remedy in a court of law by the act of the defendant, and he comes to this court asking (whether in a perfect form or not is a matter unimportant) for an assessment of damages either here or in a court of law, which he would have plainly had a right to have assessed in a court of law, but for the right acquired by the defendant. I confess, if that be, as I believe it is, the true state of things, there appears to be only one course to be taken. There is a right in the mortgagee, or the person to whom the mortgage has been transferred, to payment of every shilling of his advance, with interest, and there must also be assured to the plaintiff a right to ascertain the amount of damages to which he is entitled at law. The amount of damages cannot, I think—and that seems to be the opinion of my learned brother also—be ascertained by us without the consent of both parties to the litigation. Perhaps, even if both parties consented, we might decline to take upon ourselves such a jurisdiction; but I am rather disposed to think that, upon the request of both parties, we might take upon ourselves the burden of so doing. Unless they do so, there must be an action to ascertain the amount of damages sustained by the plaintiff.

Lord Justice TURNER.—In Oct. 1847, the defendant pays off Bolshaw, in whom the legal estate of the premises had become vested under a mortgage from the plaintiff in 1842, and takes from him an acknowledgment that the sum so paid is in satisfaction of all damages incurred under the covenant. The first observation is, had Bolshaw any right, as between him and the plaintiff, so to deal with the plaintiff's rights under the covenant? I am of opinion he had not. Bolshaw, as mortgagee, was charged with this duty—on payment of the mortgage money by the plaintiff, he was bound to reconvey to the plaintiff, giving the plaintiff the benefit of the covenant vested in the plaintiff. Therefore the act of Bolshaw, thus acknowledging satisfaction on the covenant, was, in effect, a breach of his duty towards the plaintiff; and, in point of fact, the transfer of the mortgage was a sale by Bolshaw to Court of the benefit of the covenant, which he was not authorised to make, and which was therefore not binding upon the plaintiff. Then, it was said that, to support a case of fraud, fraud between Bolshaw and Court should have been alleged and proved. But, in truth, it is apparent that Bolshaw, in transferring the mortgage to Court, exceeded his authority; and it is quite sufficient to have made out that he acted in excess of his authority. It is said, also, that the plaintiff should not have defended the action without first applying to Bolshaw. The answer to that is, that the defendant dealt with Bolshaw in October, and it does not lie in the mouth of the defendant to say that the plaintiff should have applied to Bolshaw, inasmuch as the defendant knew he was dealing with Bolshaw as mortgagee, and should himself have given notice to the plaintiff of his intention to deal with the mortgagee as he did. It was then said, that no damages can be recovered; but it is impossible not to see that damage has been sustained in respect of the covenant; and the question here is, whether the plaintiff is or not entitled to an action-at-law, and to all that is necessary to secure a trial of the question of damages. I concur with my learned brother in thinking that he is.

The order made was the following: The plaintiff, by his counsel, undertaking to bring, in his own name, such action-at-law as he shall be advised on the covenants in the pleadings mentioned, and to deliver the declaration in such action within three weeks from the date of this decree, and to proceed to the trial of the said action at Chester with due diligence, it is ordered that the defendant be restrained from setting up, in his defence to such action, by pleading, or in evidence, or otherwise, the deed or deeds of mortgage executed by the plaintiff, or the memorandum indorsed on the mortgage deed of 25th April, 1842, in the pleadings mentioned; and it is ordered that execution in the said action do not issue without the leave of this court. Reserve further directions and costs till after the trial of the said action. Liberty to apply.

Jan. 15 *and* 17.

RODGERS *v.* NOWILL.

Trade marks—Breach of injunction—Motion to commit—Acquiescence.

A defendant settling up, on a motion to commit him for breach of an injunction restraining the use of a trade mark, the defence of acquiescence on the part of the plaintiffs, must show that the acquiescence is such as to amount to a licence almost entitling the party complained of to file a bill.

This case came on by way of appeal from the decision of Stuart, V. C. refusing to commit William Rodgers, one of the defendants, for an alleged breach of an injunction granted in the cause, forbidding the use by the defendants, on cutlery manufactured and sold by them, of the trade mark commonly used by the plaintiffs on cutlery manufactured by themselves. The motion now renewed before their Lordships was to commit William Rodgers for breach of the perpetual injunction granted by Wigram, V. C. restraining him from using the mark "V. (crown) R., J. Rodgers and Sons" upon pen-knives, pocket-knives, and other articles of cutlery, and any other mark or marks so contrived as, by colourable imitation or otherwise, to represent that the pen-knives, &c. manufactured or sold by the defendants John Nowill and William Rodgers were the same as the pen-knives, &c. manufactured by the plaintiffs; and that William Rodgers might pay the costs of the application. The injunction, the infringement of which was complained of, was granted in the year 1844, and the case is reported in 6 Hare, 325, where the facts are very fully set forth. It appeared, by affidavits made on behalf of the plaintiff, that the defendant William Rodgers had been in the habit, since the decree, of making and selling cutlery, stamped with the trade mark the use of which had been prohibited by the injunction; but underneath the words "J. Rodgers and Sons" there was stamped, a merely colourable addition of the words "celebrated cutlery;" that the prohibited trade mark was generally known as the trade mark of the plaintiffs, and that the words "celebrated cutlery" would in general be supposed to mean the cutlery of the celebrated Rodgers, viz. the plaintiffs.

On the part of the defendants it was sworn in the affidavits that he had been about five years in partnership with his father, John Rodgers, and his brother, George, as manufacturers of cutlery; and that the goods of the plaintiffs were distinguished from theirs by the addition to the said trade mark, on the opposite side of the blade, of a star and cross—a mark which had been granted to the defendants by the corporation of cutlers in Sheffield—and by their address added; that the defendants had been for five years manufacturing the goods with the mark in question, without the star and cross; and that there had been several firms of Rodgers who stamped that name on their cutlery.

The defendant W. Rodgers swore that he had not disobeyed the injunction; that he had carried on business with his father and brother for five years, under the name of "John Rodgers and Sons," and that his firm had used the stamps "V. (crown) R., J. Rodgers and Sons," and "V. (crown) R., John Rodgers and Sons," with or without some addition; but that they had never used the distinguishing marks of the firm of Joseph Rodgers and Sons; and that William Rodgers had never, since the injunction was granted in the year 1847, manufactured or sold goods alone on his own account. Upon the case being heard before Stuart, V. C. his Honour was of opinion that, although the defendant had by his conduct acted in violation of the letter of the decree granting the perpetual injunction, yet, considering all the circumstances, and particularly the acquiescence by the plaintiffs for so many years, and their own low estimation of the value of the right protected, and that they had not proceeded against the defendant's alleged partners, that the motion to commit ought to be refused; but, as the defendant's conduct was improper, without costs.

Malins and *Shee*, in support of the appeal, contended that the defendant had been clearly guilty of a contempt of court, and that the trade mark which the defendants now used was substantially the same as that of the plaintiff, the difference being merely colourable.

Lord Justice TURNER referred to *Croft* v. *Day*, 6 Beav. 66, 418.

Bacon and *Osborne*, for the defendants.

Lord Justice KNIGHT BRUCE.—I think this as clear a case of a contempt of an injunction as ever was brought before the court. The injunction granted in terms forbids the use of the mark "V. R." on each side of a crown, and the words "J. Rodgers and Sons." That very mark, accompanied by those very words, has been, since the injunction, used by the defendants, which was restrained by the injunction. With regard to the additional words sometimes or frequently used (it is indifferent which), "celebrated cutlery," instead of varying the case, or making it better, they make it, in my opinion, if possible, worse. Now, if there had been the great delay on the part of the plaintiffs, after being aware, as it is suggested, of the fact, unless it amounted to a licence, I know not that it would make the breach of the injunction better. But upon the evidence, I do not believe that they have been aware of it. I do not believe that, if they had been aware of it, they would not have proceeded sooner, as they have proceeded now. Upon the evidence, I have no doubt whatever that this mark and these letters have been used for the purpose of increasing the sale of the defendants' cutlery, by enabling them or assisting them to pass it off as the cutlery of the plaintiffs. I am of opinion, therefore, that unless a mark can be now suggested to be used in future, which we shall think reasonable, there must be an order for committal.

Lord Justice TURNER.—The case appears to me to be quite as clear as it appears to my learned brother. The injunction granted is to restrain the defendants from using a particular mark, or any other mark or marks so contrived or expressed as, by colourable imitation or otherwise, to represent that the pen-knives, pocket-knives, or other articles of cutlery manufactured and sold by the defendants, are the same as the pen-knives, pocket-knives, or other articles of cutlery manufactured by the plaintiffs. Now, it is first said, on the part of the defendants, that the plaintiffs have abandoned the mark "J. Rodgers and Sons," and have used a different mark; but, upon the evidence in this case, I entertain no doubt whatever that the plaintiffs have not abandoned the mark "J. Rodgers and Sons:" for it stands thus: On the one side the affidavit says that the mark "J. Rodgers and Sons" has been since the injunction extensively used, or usually used (I am not certain of the terms), by the plaintiffs; and on the other side, we have only the affidavits of two workmen, one of whom says he made pen-knives for the plaintiffs for a period, I think, of four years, and has been since working for his own benefit for the period of four years more; and that he made those pen-knives, and that he never made any for the plaintiffs with the mark "J. Rodgers and Sons:" which is perfectly consistent with the other people having made them for the plaintiffs with the same mark, "J. Rodgers and Sons." Another witness says, "I manufactured and worked for the plaintiffs: I never made, and I never saw made, for the plaintiffs;" not that he never saw penknives made or manufactured by the plaintiffs with that mark upon them; but that he never saw them actually made. That is the expression contained in the affidavit; and therefore, on the balance of the evidence in this case, I entertain no doubt that the plaintiffs have used the mark "J. Rodgers and Sons," and that there has been no abandonment of it. Then, on the question of acquiescence, I take it that where, in a case of this description, there has been an injunction granted by this court, acquiescence, to be admitted as a de-

V. C. STUART'S COURT.

Reported by Geo. S. Allnutt, Esq., of the Middle Temple, Barrister-at-Law.

March 3 and 4.

Fiber *v.* Hesse.

Vendor and purchaser—Judgments—Satisfied terms.

A., against whom two judgments were registered, mortgaged to B. with power of sale B. contracted to sell to C. The five years from the date of the original registration were allowed to expire without a re-registration. About two years afterwards, and before the contract with C. was completed, the judgments were re-registered, and they were held void as against B. and C.

A satisfied term was, prior to 31st Dec. 1845, assigned in trust for a mortgagee to secure his mortgage debt, and subject thereto in trust to attend the inheritance. In 1846 the mortgagee, under a power of sale in his mortgage deed, contracted to sell the property.

Semble, that, under the 8 & 9 Vict. c. 112, the term would be a protection to the purchaser, without any further assignment or declaration.

This suit, which was instituted for the purpose of compelling specific performance of a contract to purchase real estate, now came on upon further directions. The plaintiff was a mortgagee, with power of sale under a mortgage dated the 30th Jan. 1844. The contract for purchase was made on the 10th Dec. 1846, under certain conditions of sale, under which a sale by auction had previously been attempted without success. One of the conditions provided for compensation if any mistake or omission should be discovered in the description of the property. The purchase-money was 1150*l.*, and the property was described as a dwelling-house and outbuildings, with land adjoining, containing 24A. 0R. 27P., more or less, being freehold, except about twenty-six perches of copyhold. The purchaser was let into possession on the 25th Dec. 1846, but did not pay the purchase-money; and he refused to complete the contract, as there were two judgments, registered on the 6th May and the 25th Nov. 1843, against the mortgagor. The mortgagee, however, had no notice of these judgments, and by the deed of the 30th Jan. 1844, a satisfied term of 1000 years, created in 1818, in the freehold portion of the property, was assigned to a trustee for the mortgagee, for the better securing the mortgage debt and interest, and subject thereto, in trust to attend the inheritance. The suit was instituted in 1848, and the bill was amended in that year; on the 24th May 1850 specific performance was decreed, and it was referred to the Master to inquire as to the title, having regard to the terms of the contract. The Master made his report on the 24th May 1852, that a good title was shown on the 7th May 1852 to all the estate except the copyhold portion, comprising about 3A. 29P. To this report no exceptions were filed. On the 9th Nov. 1850 the two judgments were re-registered, and notice of them given to the defendant.

Malins and *Hallett*, for the plaintiff.

H. Stevens (with whom was *Bacon*), for the defendant, objected that the judgments were a charge as against the mortgagee, and all persons claiming under him by conveyance executed during the time the judgment stood on the register, as the registration under the 2 Vict. c. 11 bound all persons purchasing within five years after such registration, although the judgment might not be re-registered immediately after the expiration of the five years. The re-registration revived the judgment as against persons purchasing during the previous registration. The 8 & 9 Vict. c. 112 extinguished terms satisfied and attendant on the 31st Dec. 1845, but stated that they should afford the same protection as they would have afforded if they had continued to subsist, but had *not* been assigned, &c. (See Sugd. V. & P. 777, 11th edit.) The term, therefore, could be no protection against these judgments. The copyhold portion, the title to which was defective, was essential to the enjoyment of the freehold portion, and the condition as to compensation was applicable to description only, and not to a defective title.

Malins, in reply, referred to *Seconus* v. *Morrell*, 1 Bea. 251; and *Long* v. *Collier*, 4 Russ. 269, on the subject of the costs of the suit.

The Vice-Chancellor said that he had no doubt the title was good, he being of opinion in favour of the plaintiff on all the points raised. The objection as to the copyholds was a subject for compensation. Although the language of the 2 Vict. c. 11 was vague, his Honour thought it would be highly dangerous to accede to the argument urged on behalf of the defendant; and to mark his sense of the construction of the Act, although he would give the defendant the costs up to the amendment of the bill, he should give the plaintiff the costs of the suit subsequent to that date.

Tuesday, March 15.

Re Osbaldiston, Osbaldiston *v.* Crowther.

Practice—Appointment of guardian ad litem to a person of unsound mind, not found so by inquisition, to appear upon summons at chambers.

Roberts applied for the appointment of a guardian *ad litem* to Benjamin Crowther, who was a person of unsound mind, but not found so by inquisition. Proceedings had been taken by summons before the V. C. at chambers against B. Crowther and his wife for the administration of the estate of Mr. Osbaldiston, of whose will Mrs. Crowther was the executrix. The wife had appeared separately, and it was proposed to appoint Mr. Chas. Crowther, the defendant's brother, his guardian. Affidavits as to B. Crowther's state of mind, and as to his brother being a proper person to act as guardian, had been filed.

The Vice-Chancellor made the order.

V. C. WOOD'S COURT.

Reported by J. Henry Cooke, Esq., Barrister-at-Law.

Feb. 14 and 16.

Bague *v.* Dumergue.

Will—Construction— Annuity paid out of stock—Loss on the conversion of Four per cents. into Three-and-a-half and Three-and-a-quarter per cents.

A testator, by his will, directed a sum to be invested in stock which would produce a stated amount per annum, and gave that annuity to A. B.; and, subject to the annuity, he gave the capital to C. D. There were other bequests in the will, some contingent and some vested. He directed that if, before the expiration of the trusts, the funds should be paid off or reduced so that any deficiency or loss arose, the persons interested should bear the loss rateably out of the interests on becoming entitled thereto upon the contingencies thereupon expressed. Money was invested in Four per cents. for securing the annuity, and that Stock was successively reduced to Three-and-a-Half and to Three-and-a-Quarter per cent. and there was a deficiency.

Held, that the annuitant must bear the loss, and that it could not be made up out of the capital

This was a suit instituted for the appointment of new trustees of the will of John Andrè, and also under the will of Frances Andrè. The present matter came on upon a motion for a decree declaring the plaintiff entitled to have the half-yearly payments of a certain annuity of 125*l.* made up from time to time out of so much of the capital of a sum of 3125*l.* as the dividends thereof should be insufficient to pay. It appeared that John Andrè, by his will, among other things, directed his wife, whom he appointed his sole executrix, within twelve months after his death, to invest the principal sum of 5100*l.* in such of the public stocks as she should think proper, in the names of herself and Charles Dumergue, upon trust as to the dividends for herself for life; and after her death, the testator directed Charles Dumergue to stand possessed of the capital upon trust, as to so much as cost 1000*l.* at the time of investment, to transfer the same to Louis Calcas, if he should be then living, and should have then, or should afterwards attain, the age of twenty-one years. The remainder of the same fund was similarly disposed of, and it was provided that such part as should not absolutely vest under such trusts should fall into his residuary estate. The testator then directed his wife also to lay out and invest in such of the public stocks or funds as she should think proper, in the names of the same trustees, so much other part of his property as by the dividends or interest would raise the sum of 125*l.* per annum, and directed the trustees to stand possessed of the same as to the dividends, to pay the same from time to time to the proper hands of Susannah Yarrow, for her own use, and without power of anticipation, and directed the trustees to pay a due proportion of the said annuity up to her death. The testator directed the annuity to be forfeited in case of sale or charge, and on her death, or a forfeiture by her, the capital was to form part of his residuary estate. The testator then declared as follows:—"And I do hereby declare that if it shall happen that the stock or fund, stocks or funds, in or upon which both or either of the said trust moneys shall be invested pursuant to the directions contained in this my will, shall afterwards, and before the trusts, ends, interests, and purposes hereinbefore declared as to the same respectively shall be lawfully performed and executed, be paid off or reduced, by which any loss or deficiency may arise, then that the person or persons respectively who shall or may be interested therein shall rateably bear and sustain such loss or deficiency out of their respective interest aforesaid, upon their becoming entitled thereto upon the contingencies hereinbefore expressed and declared." After the testator's death, the widow and Mr. Dumergue invested the 5100*l.* in the Four per cent. Bank Annuities, and for the purpose of meeting the annuity, they invested cash in the purchase of 3125*l.* like stock. Susannah Yarrow married Mr. Bague, and the suit was instituted by them for the appointment of new trustees. Mrs. Andrè by her will bequeathed the 3,125*l.* Four per cents. to a Miss Parish, subject to the life annuity of Mrs. Bague, and she bequeathed her residuary estate to Mrs. Bague. The Four per cents. were successively reduced to Three-and-a-Half and Three-and-a-Quarter per cents. so as not to leave sufficient to pay the 125*l.* out of the dividends; and the motion now made on behalf of the plaintiff was for a decree as before mentioned.

Rolt and *Eddis*, for the plaintiff.—Where the gift is of an annuity, the legatee of it is entitled to be paid in full; and as the dividends are not now sufficient, the annuitant is entitled to have the deficiency made up by successive sales of the capital for the purpose. Independently of this, the testator has himself contemplated the case which has arisen; and as the gift even of this fund depends upon the expiration or forfeiture of the annuity, there is sufficient contingency within the words used by him in his will, and the loss is to fall upon the party who will take the fund. The expression "rateably" applies to the loss, if any, on the sum of 1000*l.* and other sums, part of the 5100*l.*, and cannot apply to the annuity; for, if the loss be charged on that, it must fall wholly upon it, which the testator could not intend.

Webb, for Miss Parish, the legatee of the 3,125*l.* subject to the annuity, argued that the loss must either fall upon the annuitant out of the dividends, or, if not, must be made good out of the residuary estate of Mr. Andrè; and as that estate formed the residuary estate of Mrs. Andrè, which she had bequeathed to Mr. Bague, the loss under any circumstances would come out of her property.

C. M. Roupell, and *Taylor*, for the other defendants.

The following cases were cited:—*May* v. *Bennett*, 8 Russ. 370; *Davies* v. *Wattier*, 1 Sim. & Str. 468: *Kendal* v. *Russell*, 3 Sim. 424; and *The Commissioners of Charitable Bequests* v. *St. Lawrence*, 3 Jo. & Lat. 560.

Rolt, in reply.

Feb. 16.—The Vice-Chancellor.—This case comes on as a motion for a decree, the object of the suit being the appointment of new trustees under the will of John Andrè, and under that of his wife Frances Andrè, and to have a declaration of the rights of the plaintiff, who claims to have the deficiency in the income of 125*l.* which she is entitled to under John Andrè's will made up out of the capital stock set apart to secure the annuity. The case does not much depend on authorities. The interest of the plaintiff is mentioned by the testator in his will sometimes as annuity, and at other times as income; but I do not place much reliance on that. The plaintiff relies on the peculiar phraseology of the will, which, as I have said, speaks sometimes of "annuity" and sometimes of "income." The capital or interest may either be reduced by the change in the stocks, and then the testator said the persons should rateably bear the loss out of their respective interests; and then follows the words which were commented on in the argument. "upon their becoming entitled thereto on the contingencies hereinbefore expressed." But it is too much to say that the remaindermen are to lose what is lost by the annuitant. The tenant for life does not become entitled on a contingency; that creates one obscurity. But there is an equal difficulty in giving those words the construction contended for by the plaintiff, because the parties who are to bear the loss are to bear it rateably, and the widow is entitled to the fund solely, and therefore the word "rateably" creates another difficulty. It appears to me a most forced construction, when the testator has said that all should bear the loss equally, to say that one shall bear the whole loss. I shall therefore decide against the relief asked by the plaintiff, and the only decree made will be for the appointment of new trustees.

Common Law Courts.

COURT OF EXCHEQUER.

Reported by Frederick Bailey and C. J. B. Hemsley, Esqrs. Barristers-at-Law.

Monday, Jan. 17.

Bull and another *v.* Chapman and another.

Railway company—Pleading—Joint-Stock Companies Registration Act.

Action for plans, sections, &c. with common counts. Plea, upon the Joint-Stock Companies Registration Act (7 & 8 Vict. c. 110, s. 23), that the defendants entered into the contract, as promoters of a company, with plaintiffs, as promoters of a company; that such companies were not duly registered under the Act, and that the services, &c. for which the action was brought were not necessary to the establishing the company. Demurrer thereto, on the ground that it amounted to the general issue.

Held, that the plea was good; where the thing is positively forbidden by an Act of Parliament (as in this case it is), the plea setting out the circumstances specially does not amount to the general issue.

Action for goods sold, services rendered, money paid, and account stated.

Plea—That the plaintiffs were promoters of the Plymouth and North Cornwall Railway Company, and defendants members of the managing committee of a provisionally-registered company called the Cornwall and Devon Central Railway Company; and at the time of the making of the contract and promise in the plea and last count mentioned, each of the said companies was a joint-stock company within the meaning of the Joint-Stock Companies Registration Act (7 & 8 Vict. c. 110), that a contract was entered into between the said parties as such promoters for the performance of services by the plaintiffs for the defendants on behalf

of the company, which said services and the payment of reward were not, nor was any part thereof, necessarily required for the constituting the said companies or either of them (bringing the case within the provisions of the Act), and alleging that the work was done by the plaintiffs for the defendants in their character of promoters. An account stated also in the same character, and averring that neither of the said companies was completely registered as required by the Act, or incorporated or authorised to sue in the name of any officer; that the goods sold were not necessary for the establishing of the company, of all which the plaintiffs had notice at the time of making the said contract, doing the said work, providing the said materials, selling and delivering the said plans, &c., paying the said money, and so stating the said accounts, contrary to the statute.

Demurrer thereto, on the ground that it amounted to the general issue, and that the effect of the statute is merely to prevent an act of the promoters binding all the subscribers.

Quain appeared for the plaintiff in support of the demurrer, and referred to the 7 & 8 Vict. c. 110, s. 23; *Rayner* v. *Wright*, 3 Q. B. 922; *James* v. *Donovan*, 4 Q. B.; *Jenkins* v. *Hutchinson*, 18 L. J. 271; and *Lewis* v. *Nicholson*, 21 L. J. 311, Q. B.

Rock. Clarke, contrà, referred to the preamble of the Act, the 3rd section, the 5th provision of the 4th, and the 23rd and 24th sections. 5 C. B. 271, and 11 Vesey, jun. 642, were also cited.

Cur. adv. vult.

Feb. 12.—PARKE, B. delivered judgment.—This was an action brought by Messrs. Ball and Moore against Messrs. Chapman and Williams; the plaintiffs being promoters of an undertaking called the Plymouth and North Cornwall Railway Company, and the defendants members of the managing committee of, and interested in, a provisionally-registered company, called the Cornwall and Devon Central Railway Company, also provisionally registered. There are two counts in the declaration to which this plea demurred to does not apply. The third count is a count—"Whereas the defendants were indebted to the plaintiffs in 3000*l.* for certain plans, sections, and books of reference, then sold and delivered by the plaintiffs to the defendants at their request, and for certain plans, sections, and books of reference, then deposited by the plaintiffs with the defendants at their request, and by them appropriated and used, and for work then done, and materials for the same provided by the plaintiffs for the defendants at their request." Then there is a plea to the last count—"That at the time of the making of the contract and promise in this plea and in the said last count mentioned, each of the said companies was a joint-stock company within the true intent and meaning of the said Act of Parliament for the registration, incorporation, and regulation of joint stock companies (that is, the Act 7 & 8 Vict. chap. 110), and not being a banking company," and so bringing the case within the provisions of that Act. It was a joint-stock company, consisting of more than twenty-five members, bringing it clearly within the provisions of the Act of Parliament. "And the defendants further say, that after the 1s. day of Nov. 1844, and before the commencement of this suit, a contract was made and entered into between the plaintiffs, then being the promoters of the said first-mentioned company, as such promoters of the said first-mentioned company, on behalf of the same company of the one part, and the promoters, of whom the defendants then were two, of the said secondly-mentioned company of the other part, whereby the plaintiffs, as such promoters as last aforesaid of the said firstly-mentioned company, in consideration of certain reward to be therefore paid to them by the said promoters for the said secondly-mentioned company, as such promoters, for and on behalf of the said secondly-mentioned company undertook and agreed that they, the plaintiffs, and the said first-mentioned company, should and would perform certain services for the said secondly-mentioned company, which said services, and the said payment of which said reward, were not, nor was any part thereof, necessarily required for the constituting or establishing of the said companies, or either of them." And then it alleged that the work was done by the plaintiffs for the defendants in their character of promoters; an account stated also in the same character; and then it goes on to aver that "neither of the companies was completely registered as required by the same Act of Parliament, or incorporated by statute or charter, or authorised by statute or letters patent to sue and be sued in the name of any officer or person; and that the said plans, sections, and books of reference, at the time of the making of the said contract, and at the time of the said sale and delivery, depositing, appropriating, and using of the said plans, sections, and books of reference, were stores not necessarily required for the establishing of the said company, of all which premises the plaintiffs had notice at the time of the said making of the said contract and promise in this plea and in the said last count above mentioned, and at the time of the said doing the said work, and providing the said materials, and so selling and delivering, depositing, appropriating, and using the said plans, sections, and books of reference, and so paying the said money, and so stating the said accounts, contrary to the statute." Then there is a demurrer to that plea, and the demurrer is that this plea amounts to the general issue, and that the effect of the statute is merely to prevent the act of the promoters binding all the subscribers. Now this plea would amount to the general issue, because it would simply mean that they had no authority to bind their principal to the contract alleged in the last count; but if the act is positively forbidden by the Act of Parliament, it does not amount to the general issue: it is a voidable contract, and bad; but it is a voidable contract, as being illegal according to the terms of the Act of Parliament. Now on reference to the Act of Parliament 7 & 8 Vict. c. 110, and construing it according to the ordinary meaning of the language used, we are of opinion that the act is itself forbidden and made illegal, not saying in so many words "they shall not bind their principals," but the act is forbidden. By the 23rd section the projectors or promoters of a company have the right to use the terms and name of the company registered provisionally, to open subscription lists, to allot shares, and perform such other acts only as are necessary to constitute the company, or obtaining letters patent, charter, or Act of Parliament: they are not to make sales, nor to enter into any contracts for any service, or for the execution of any work; that is positively forbidden by the Act of Parliament; and, being positively forbidden by the Act, we think it was an illegal act. And we think the ordinary construction is to be put on the Act, that the act was illegal, and consequently the objection fails.

Judgment for the defendant.

CLAY *v.* CROWE.

Bill of exchange—Negotiable and due—Lost bill.

If a negotiable bill or promissory note be lost at the time a party to it is called on to pay, the loss constitutes a good defence; otherwise, if the bill or note be not in its original state negotiable.

The loss of the bill not arrived at maturity is immaterial if found before it is due.

Action for goods sold.

Plea.—As to part, that defendant accepted and gave a bill of exchange drawn by the plaintiff on defendant, payable to the plaintiff's order at five months after date; that plaintiff lost the bill, and ceased to have any power over it; and the defendant had not found it, nor possessed any power or control over it.

Demurrer to the plea.—It does not show the bill to have been negotiable, nor say that it was indorsed; nor does it state that, at the time of the loss, it was an overdue instrument.

Atherton, Q. C. in support of the demurrer.

Macnamara, in support of the plea.

Raynes v. *Crowe*, 1 Ex. 167; *Hansard* v. *Robinson*, 7 B. & C. 90; *Woodford* v. *Whitely*, M. & Malk. 517; *Price* v. *Price*, 16 M. & W. 232; and Byles on Bills, were referred to. *Cur. adv. vult.*

Feb. 12.—PARKE, B. delivered judgment.—This action was brought by the plaintiff for money payable by the defendant to the plaintiff, the declaration being in the new form for goods bargained, sold, and delivered by the plaintiff to the defendant. Then, "for a second plea, as to the said 42*l.* 5*s.* 2*d.*, parcel of the sum demanded, the defendant says that before action the plaintiff, by his bill of exchange directed to the defendant, required the defendant to pay to the plaintiff's order 12*l.* 5*s.* 2*d.* five months after date. And the defendant accepted and delivered to the plaintiff, who took and received such bill for and on account of the said sum of 42*l.* 5*s.* 2*d.*, parcel &c. And the plaintiff afterwards lost such bill out of his possession, and from thence hitherto the same has remained so lost. And the plaintiff has been unable to produce it, and ceased to have any power or control over it. And the defendant has never since such loss found such bill, nor known where it was to be found, nor had any power or control over it." The plaintiff says the second plea is bad in substance. We are of opinion that the plea in this case is bad in substance. The law upon the subject of lost bills may be considered to be settled by the decided cases to be this:—If a negotiable bill or note (that is, a bill payable in its original state, "to bearer or order") be lost at the time a party to it is called on to pay, the loss constitutes a good defence; otherwise, if it be not in its original state a negotiable bill or note, as where it is payable to the payee only. The former of these propositions is supported by the well-considered judgment of the K. B. (*Hansard* v. *Robinson*, 7 B. & C. 90), which does not confine the necessity of the production of the bill or note by the plaintiff to cases where it is payable to bearer originally or becomes so by indorsement in blank, as indeed the bill in that case in point of fact did. And Lord Tenterden, in giving the judgment of the court, lays down the position generally, that the law merchant requires the production of the instrument before the party to it can be called on to pay. This case was followed by *Raynes* v. *Crowe*, 1 Exch. 167. The case of *Wain* v. *Bailey*, 10 A. & E. 616, however, decides that this doctrine applies only to negotiable bills. The loss of a note or bill payable to the plaintiff only is no answer to an action by him. The bill given in the present case was a negotiable bill, and therefore its loss at maturity or afterwards, when the plaintiff should sue upon it, would have been an answer to an action at his suit on the bill, and probably to this action, on the consideration for which the bill was given; but the loss of the bill not arrived at maturity is immaterial: the bill may be found before it is due: and the intermediate loss is of not the least consequence. This plea must be taken most strictly against the defendant, if we assume the bill to be still running, which we ought to do, the loss of it in no way affects the plaintiff's right to sue. For these reasons, in our opinion, judgment should be for the plaintiff. *Judgment for plaintiff.*

Monday, Jan. 24.

MONTAGUE AND OTHERS, Executors, &c. *v.* KATER.

Marriage settlement—Appointment—Revocation—New appointment.

A power with or without revocation and new appointment was given by a marriage settlement to the intended husband and wife to jointly appoint for the benefit of their child or children, and in default of joint appointment, the survivor to appoint by deed or will. A joint appointment was subsequently made by deed, which contained a power of joint revocation and new joint appointment. That appointment was afterwards jointly revoked, and no other made by them. The wife died before the husband, and the husband by will appointed to his son.

Held, that the power was well exercised by the husband as the survivor, and his appointment to the son good, under the original marriage settlement. The joint revocation of the joint appointment restored the powers of the original settlement.

The facts and arguments sufficiently appear in the judgment of the court.

Watters appeared for the plaintiff and relied upon *Ward* v. *Lenthall*, 1 Siderfin, 343. *Moody* v. *King*, 2 Bing. 447; 1 Sugden on Powers (6th edit.) 460, 480; Fearne on Contingent Remainders (9th edit.) 42, where the cases are collected; *Bunney* v. *Philcock*, 5 Mvl. & C. 72; and *Penny* v. *Turner*, 2 Phill. 492.

Willes, contrà, for the defendant. *Cur. adv. vult.*

Feb. 12.—ALDERSON, B. delivered judgment.—This was a special verdict, stating that the defendant, under a contract made with Montague and others, had delivered to his solicitor on the 30th Sept. 1843 an abstract of his title to certain lands and premises. The question is whether the defendant could, supposing the facts stated in the abstract to be true, make a good title to these premises. The title depended on a settlement made on the 28th and 29th May 1810 by lease and release. It appeared that the premises in question were at the time limited to Frances Elizabeth Reeve, widow, for her life, with remainder in fee to Mary Frances Reeve, spinster, and by the settlement before mentioned, which was made on the marriage of Mary Frances Reeve and Henry Kater, settled to the use of Henry Kater for life without impeachment of waste, remainder to the use of Mary Frances Reeve for life in like manner, with remainder "to the use of all or any one or more of the children of the marriage, either exclusively or in such parts, shares, or proportions, and for such estate or estates, interest or interests, and with such limitations and remainders over and charged or chargeable with the payment of such yearly or other sum or sums of money, such limitations or remainders over and charges nevertheless to be for the benefit of some or one of the same children, and at such age or ages, time or times, and in such manner and form, as they the said Henry Kater and Mary Frances Kater should from time to time, by any deed or deeds, writing or writings, with or without power of revocation and new appointment, to be by them respectively sealed and delivered in the presence of, and to be attested by, two or more credible witnesses, direct, limit, and appoint, and in default of such joint direction, limitation, or appointment, or in case any such should be made which should not be a complete disposition of the said hereditaments thereby granted and released, or intended so to be, then as the survivor of them, the said Henry Kater and Mary Frances Kater should by any such deed or deeds, writing or writings to be executed as aforesaid, or by his or her last will and testament in writing, or by any codicil thereto to be by him or her signed and published in the presence of three witnesses, should direct, limit, and appoint." The settlement then proceeded, and in default of such appointment, jointly or severally, to limit the hereditaments in a way which, under the circumstances of this case, would give a title to the elder brother of the present defendant. It is not material to state the limitations more at length, because nothing turns upon them. There were two children of this marriage, Henry Herman Kater, and Edward Kater the defendant. The abstract then proceeded to state that by deed, dated the 15th Oct. 1832, properly executed, Henry Kater and Mary Frances Kater, after reciting that they had resolved to exercise the several powers given to or vested in them by virtue of the settlement, did, in the exercise and execution of the powers and authorities reserved to them by the settlement, and of every other power and authority therein in that behalf enabling, direct, limit, and appoint the premises, subject to their own life estates, to Edward Kater the defendant in fee. This deed contains a power of joint revocation

of the uses therein limited, and a power of joint appointment of the whole or any part of the hereditaments to new uses; and with like powers of revocation and new appointment reserved to Henry Kater and Mary Frances Kater as they might think proper, subject, however, to the same restrictions as were contained in the original settlement in favour of the children of the marriage. The abstract then set out another deed dated 4th Feb. 1835, by which Henry Kater and Mary Frances Kater jointly revoked the uses contained in the deed dated 15th Oct. 1832, but made no new appointment at all. On 19th Feb. 1835 Mrs. Kater died, and upon 24th May, 1839 Henry Kater, the survivor, duly made his will and published it in the presence of three witnesses, and, after limiting the powers reserved to him by the deed of settlement of 28th and 29th May 1810, did, in execution of the powers vested in him, limit, direct, and appoint the hereditaments in question to Edward Kater the defendant in fee. Henry Kater died, and his will was proved on 12th May, 1835. The question now arises upon these facts, whether Edward Kater the defendant has the fee simple of these hereditaments vested in him? if he has, the judgment should be given for the defendant; if not, it should be given for the plaintiff. and this question depends on the validity of the appointment made by Henry Kater's will. After much consideration, we have arrived at the conclusion that the appointment was valid, and the defendant is entitled to our judgment. It was contended by the counsel for the plaintiff that, by the execution of the power jointly by Mr. and Mrs. Kater, the whole power was executed, and that any valid limitation afterwards must arise out of the exercise of those powers which they chose to reserve to themselves in that deed; and that, as they had not exercised them except by revoking the appointment, the original power was exhausted and gone altogether, and no power remained in the survivor to appoint at all: and for this purpose the leading case of *Ward* v. *Lenthal*, 1 Sid. 313, and 2 Keb. 269, was cited. In that case a man who levied a fine to new uses, with power of revocation and limitation to new uses, by a second deed revoked the same and limited to new uses, but therein reserved to himself only a power to revoke; by a third indenture he revoked the uses of the second indenture and limited new uses. The court there resolved, where powers of revocation and new appointments are given, the donee may revoke and limit to new uses, and all the estates shall be raised out of the first seisin. But if in any indenture by which he thus declares new uses he reserves the power to revoke, and does not reserve expressly a power to limit new uses, he can only revoke, and cannot limit new uses by virtue of the estate first raised. Lord St. Leonards, in observing on this case, says: "This seems to depend upon the ground of the decision in *Hele* v. *Bond*, the principle of which is, that the instrument for exercising the power must expressly reserve the very power intended to be retained. But, we think, after much consideration, this case does not govern the present question. There the uses originally limited by the settlement were revoked by the power, and the new uses appointed in the exercise of the power, but with only a power of revocation reserved: and it is unnecessary to say what would have been the effect if the second deed had been simply revoked. Possibly, the original revoked uses might have been revived: but this was not done, for the deed of revocation appointed new uses, showing clearly that the revocation was not for the purpose of reviving the old uses and new uses named, because there was no power reserved by the second deed for that purpose. But that is not the case here. Here, by the settlement, the power of appointment is given to the husband and wife jointly, to limit the estates amongst the children; they are not to revoke any of the uses of the settlement at all, nor have they done so: having made this joint appointment, they have revoked it simply. We think that in so doing they restored the original settlement entirely, and we found it thus stated by Lord St. Leonards in his Treatise on Powers, vol. I. 459, citing as his authority with approbation Mr. Preston's very learned book on Abstracts, p. 277, that "when a man has a power of appointment, and he exercises that power with the addition of a power of revocation, this power of revocation is annexed to the uses introduced into the appointment; and by revoking the uses contained in the deed of appointment, there will be a revival of the original uses, and amongst them of the power of appointment." The effect of the revocation will be to revive the original power, so that it may be exercised again and again. Lord St. Leonards afterwards states (and we cannot do better than quote his very words): "If the original power be a general primary one, the estate by settlement only in default and until its execution (which is the case here), a new appointment, with power of revocation only, and a subsequent exercise of that power would, it is apprehended, restore the original settlement, and with it the general power of appointment, which would effectuate the intention. For in such a case the original power of appointment in its creation overrides all the uses, and comes in lieu of the fee. It cannot be treated as a mere power to defeat a settlement, for it is in itself the immediate and leading object of the settlement." We think this distinction between this case and that of *Ward* v. *Lenthal* decides the question in favour of the defendant. By the execution of the joint power the estate was limited to the defendant in fee; the revocation of that appointment, also jointly made, revived the original power of joint appointment, and with it the perfect power of appointment by the survivor in case of default. The case then stands exactly thus: as if the first joint appointment had never been made; then, if so, the subsequent non-exercise of that existing joint power of appointment was clearly a default in the exercise of such joint power, and in that event, by the very words of the settlement, the power came to the survivor, which power Mr. Kater, the survivor, has duly exercised in this case. The learned counsel for the plaintiff made another point, that, inasmuch as in the first joint appointment the husband and wife did not expressly reserve to themselves any power of appointment to the survivor, they had shown their intention of limiting the future appointment to themselves jointly, and so they had finally put an end to the power of appointing by the survivor; but even if it had been to be so construed as to show such an intention on their part (which we doubt), we still think that the settlement gave them the power to do this, and that this point therefore fails also. We are glad to be able to come to the conclusion that the appointment by the survivor is valid; for this fully effectuates the very clear primary intention of the parties in the settlement. We think, therefore, the judgment must be for the defendant.

Judgment for the defendant.

INSOLVENT DEBTORS COURT.

Reported by DAVID CAIO MACRAE, Esq., of the Middle Temple, Barrister-at-Law.

Monday, Feb. 21.

JOHN HENRY CROMWELL RUSSELL.

Fraudulent settlement—Making away with property.

A settlement made thirteen years after marriage, and three days before the trial of actions brought to recover moneys due, is to be deemed fraudulent against creditors: especially where the consideration, purporting to come from the insolvent's father-in-law (the trustee), appears not to have been bona fide *paid, nor intended to be, and the property so placed in settlement was in value two or three times the amount of the debts.*

This insolvent, an attorney, in 1846 left England to avoid judgments obtained against him by several gentlemen, who had advanced 200*l.* each for the purposes of a railway scheme, of which insolvent was projector and solicitor, and they were provisional committeemen. They said their advances were made upon the insolvent's security, while the latter insisted it was a speculation on their part, and that they looked to the success of the railway for repayment. Three days before the trial of the actions the insolvent executed a post nuptial settlement upon his wife of his reversionary interest in one-third of an estate called the Cheshunt-park estate, a property which had been bestowed by Charles II. at the period of the Restoration upon the Duke of Albemarle and his heirs for ever, but which by intermarriage has, singular to say, fallen into the possession of the insolvent's family, who are lineal descendants of Oliver Cromwell. The insolvent had been, until 1831, heir in tail to the whole estate; but in that year he executed a deed divesting himself of two-thirds, and restricted himself to one-third, the subject of the post-nuptial settlement. Under this last-mentioned settlement the insolvent's interest was sold to his father for 1550*l.*, of which 1000*l.* were invested in the funds in the name of trustees, and proceedings in Chancery had been set on foot by one of the creditors, and the question was still undecided.

Mr. Commissioner LAW now delivered the adjudication of the Court.—The complaint in this case is, that Mr. Russell, owing five sums of about 200*l.* each, for which he had given to each party his written acknowledgment, and promised to give security on his estate in Hertfordshire, being sued for the money, and defending the actions, did, just before they came into court, make over his property to his father-in-law in trust: that property exceeding the amount of his debts by many thousand pounds. He immediately went abroad, and remained out of reach of his creditors for about six years. Coming to England in 1852, they succeeded in arresting him. Mr. Russell wishes it to be understood that the claims of these parties were unjust claims; and on that ground, as well as on the duty of making a settlement, he would justify the placing his property and himself out of their reach. Now, as the questions between the parties were decided by a jury, I must consider that these are legal debts, which the defendant was bound to satisfy if he could. But I will state the circumstances on which the debts arose, so far as they are in evidence before me. A certain railway scheme was set on foot in the summer of 1845. Mr. Russell was to be the solicitor. Of those who have appeared in this court, the most active among the instigators of the enterprise seems to have been Mr. Thomas Tapping, one of the plaintiffs. Mr. Russell was evidently

the manager. He still holds the books. Mr. Tapping induced others to become provisional committeemen, by what he had to say on the responsibility of Mr. Russell the insolvent. Mr. Tapping was sworn, and in this has received no contradiction, that he was asked by Mr. Russell to influence his, Mr. Tapping's father, to be on the committee; and that he objected, until the insolvent should get his own father and his relation Mr. Hudleston to belong to it; that the insolvent showed him letters from those two parties, by which they agreed to be on the committee; and that he then assented for his father. Another fact is sworn to, and not contradicted: that, when the five parties, now complaining, had advanced their moneys, a notice appeared in the *Times*, from Mr. Russell, sen. and Mr. Hudleston, declaring that they had nothing to do with this company. In the meantime, it had become expedient to find some money; a sum of 1000*l.* was particularly wanted to pay for the surveys which had been going on; and the five plaintiffs were induced to advance to Mr. Russell about 200*l.* each, for him to discharge those claims. Mr. Thomas Tapping aided in inducing the others so to come forward. The insolvent gave to each his I. O. U. for the money so advanced. But his statement is, that they were not to look to him for repayment, but to the funds of the company, when the subscriptions should come in; and that he gave the I. O. U.'s only to secure them against a misapplication on his part of that money, which he was immediately to pay over to the engineers. On the other hand, Mr. Thomas Tapping swears that insolvent promised to give security on his interest in the Cheshunt Park estate—a promise which he afterwards declined to fulfil. Mr. William Tapping spoke positively to the insolvent's having promised a security on the estate; and said that, when afterwards it was claimed, he avoided the question. Mr. Levinge also asked the insolvent for a better security on the part of Mr. Swift, one of the parties making the advance. Mr. Goldsmith does not speak to an express promise, but swears to hearing this property mentioned, and that insolvent was tenant in tail. He states, too, that it was on account of the money being required to be laid down that very day to which he refers, that a judgment was not given at the time, but only the I. O. U.'s. Also, he says that, on seeing the remuneration advertised by Mr. Russell, sen. and Mr. Hudleston, he appealed to the insolvent, and asked how he meant to meet the claim, but could get no answer. Such is the evidence now in this court; and, as Mr. Russell defended the actions, and the claims were confirmed by verdicts, I certainly cannot relieve him from the responsibility of removing an ample property from the access of those claims, in order to defeat the creditors. The only witness called on this subject by the insolvent is a Mr. Stock, who attended a meeting, where he declined to advance his money. He says that his impression was that the insolvent was to be a temporary security to satisfy the minds of the lenders; and does not think that the subject was mooted of his being responsible. He states, however, that his own reason for not advancing any money was that he was not satisfied with Mr. Russell's security. This witness, at the most, only proves that he, who never became a party to the transaction, did not hear what those who were parties have sworn to. On this point, touching the intended responsibility of parties, as on some more important points in the case, one cannot help observing that Mr. Russell, sen. has never been brought forward. On July 15 the excuse was made for his not attending, that he had been taken ill with a feverish attack the day before. Neither he nor Mr. Hudleston have ever been brought forward to explain what was said concerning them, the court is not to suppose that any statement of theirs would vary the case. It is true that the plaintiffs were very quick in pressing their demands; but circumstances seem to show that they were warranted in the suspicions on which they took such prompt measures to enforce the undertakings given to them. The debts then are to be treated as having received legal proof and ratification. They are such as a man, having the means, was bound to pay; and I must listen to the complaints of those who show that those means did exist, and do exist, to an amount more than is necessary for their satisfaction. The property of the insolvent was a certain landed estate in reversion. I shall not here refer to the inquiries which have been made into the title, which had been in some measure complicated by family settlements. There has been much reluctance to give an intelligible account of these things; and at this moment there is a deficiency of such information as is usually expected by the court. I will advert to the evidence of value; a subject on which Mr. Russell, sen., the tenant in possession, could have given useful evidence. The insolvent's attention was called to the question of value on the 15th July: he then stated that, when he and Mr. Levealey sold his interest to his father (after the trial of the causes), Mr. Hoggart valued the estate. On the 5th Jan. there was further inquiry: and Mr. Russell spoke doubtfully of the dates of prior valuations. On the 1st Feb. he said, "I can't find the originals. I have found a copy; but have forgotten to bring it. My wife sent it me from Liège a week ago." On the 8th Feb., after some remonstrance, a copy of the valuation of 1842 was

produced; also one of the 8th Jan. 1846, which is the period of most importance in this matter Mr. Hoggart then valued the insolvent's interest at 5500*l.* or more. At that same time, as is admitted, a valuation was obtained from Mr. Morgan. This is not shown. The insolvent says, when asked for it, "My father has it; I have no copy." He certainly has shown no disposition to give the best information to the court and creditors; and we must presume the value to be rather over than under the minimum of Mr. Hoggart, 5500*l.* The circumstances of putting away this property remain to be considered. Why was it done? How was it done? And what is the justification offered? The insolvent had been married nearly fourteen years, and no settlement ever made. No one then can be so blind as not to see that the immediate motive was to defeat the claims of these creditors. But the insolvent urges that, though a settlement had hitherto been neglected, he was in duty bound to make it; and that there was also a consideration at the time, coming from his wife's father, which further justified the transaction. The way in which it was done was this; the insolvent conveyed to his wife's father Mr. Lievesley as trustee on an expressed consideration of 500*l.*; then Mr. Lievesley, with the husband and wife, conveyed to the insolvent's father, Mr Russell, for a price of 4350*l.*, and at the same time Mr. Russell conveyed, by way of mortgage, to the family solicitor, who was trustee for the younger children, and the money came from a fund of that trust. Of this sum of 4350*l.*, 4000*l.* was invested in the funds in the name of Mr. Lievesley and another. I will now refer to the evidence of the insolvent on the subject of the settlement. He states that in 1831 his intended marriage was put off on the subject of settlement; that in 1832, just before it took place, he asked Mr. Lievesley whether he would settle as he promised before, and that he declined. Accordingly, there was a marriage without settlement. The next mention of a settlement in Mr. Russell's evidence is after the lapse of more than thirteen years. He says, "In 1845 I found I must sell my interest. I could not. In September 1845 Mr. Lievesley said, 'Before you sell your reversion, you must make a settlement.' He said he would leave my wife 500*l.* at his death, and I agreed to make a settlement. This was early in Nov. He was to pay me 500*l.* at once, on my settling. I gave my father the option of purchasing. He proposed terms to which I did not accede. At the end of Nov. I gave instructions to prepare the settlement, and it was executed on the 13th Dec." This was a conveyance of the whole interest to Lievesley, as trustee. Now we know that the actions were commenced on the 6th Nov., and tried on the 16th Dec., and on this case, so standing on the insolvent's evidence, I should feel myself bound to say that the transaction was a fraud upon creditors. Here is a man who had been married nearly fourteen years, and who, to avoid paying debts of 1000*l.* with costs (he provided for other current debts), makes a family settlement of a property worth between 5000*l.* and 6000*l.*, perhaps more, receiving a consideration from the wife's father of 500*l.* I cannot believe that such a transaction would be allowed to stand. But there are further circumstances which claim to be noticed. Grave doubt has been suggested whether this alleged consideration of 500*l.* was paid. It is urged by the opposing creditors that it was a mere fiction; and, as Mr. Russell proposes by his schedule to swear to the receipt of the money and the specific appropriation of it, I cannot decline the consideration of the evidence which bears on the subject. It is a fact admitted on all sides that, whereas 4350*l.* was brought forward as the purchase-money payable by Mr. Russell, sch., 4000*l.* was invested, some in January, some in April, and that 350*l.* remained. It is admitted on all sides that in 1846, some time after the insolvent had left England, money of his was in Mr. Lievesley's hands for payment of debts. Now observe the two opposite stories. The insolvent's story is that he received that 500*l.* from Mr. Lievesley, and that that very sum, all but 116*l.* 14*s.* 11*d.*, was applied to his debts, as specified in the schedule. As to the 350*l.* he says he never knew that that sum or any balance remained uninvested, till four years afterwards; not till 1850, some time after Mr. Lievesley's death. The case on the other is, that that 500*l.* was never paid at all, and that Mr. Lievesley, by the insolvent's desire, kept the 350*l.* to pay certain debts, when the 4000*l.* was invested. The witness here in favour of the latter statement is the widow and executrix of Mr. Lievesley. She was his second wife, not the mother of Mrs. Russell. Since her husband's death in 1849, she has lent the insolvent 50*l.*, and being entered for that in the schedule, she had notice of the hearing. But she finds herself charged as executrix with large sums, and denies her liability. If her husband retained that 350*l.* to his own use, she is chargeable with it as his representative. And the insolvent charges her with 116*l.* 14*s.* 11*d.* as owing to himself for that portion of the supposed 500*l.* which is said not to have been applied to debts. She says that she knew of no money left by the insolvent in her husband's hands in Jan. 1846 for payment of debts. She remembers the settlement; and remembers hearing that the 500*l.* was mentioned in it. But she declares that it was a mere nominal thing. She brings here her husband's account-books and bankers' books. The bankers' book, Roharts and Co., shows a draft for 500*l.* in favour of Mr. Russell on the 8th Jan. 1846. She says she heard of this on her husband's coming home with Mr. Russell with a bag of gold, 500*l.*; that her husband the next day, in going to his office, gave the gold to Cubitt's cashier, getting a cheque for it, which he paid into the bankers'. This, too, appears in the pass-book on the 12th. She says she understood, at the time, that the settlement was made to meet the exigencies in which the insolvent was then placed; that the 500*l.* was but nominal, mere words; and that the object was to settle the estate on Mrs. Russell. That Mr. Lievesley had not that sum to give—that, if he had given a shilling, she would have heard of it—that large sums were in his name at the bankers', he being secretary to the Foundling Hospital—and that at that time the balance on his private account at the bankers' was hardly 100*l.* Mr. Russell admits that he got the cheque cashed in sovereigns; and says he did so, because he intended to take them to Boulogne: but that he found them too heavy to take abroad; and also remembered that he had debts to pay, which he had not considered before—and that for this purpose he took the money back to Mr. Lievesley. On these discrepancies, one may observe that, if it be true, as said by Mrs. Lievesley, that her husband had not the 500*l.* of his own to give, the restoration of it, shown by the bankers' book, is quite consistent with her story, which is not in itself an improbable one,—and I think that Mr. Russell, if he had felt that her story was false, would, with the knowledge he must have of Mr. Lievesley's circumstances, have endeavoured, by an examination of the account-books and bankers' books which she brought, find the means of detecting such a misrepresentation. He certainly showed no desire to go farther into that evidence. And now as to the 350*l.*, the residue of the 1350*l.* which certainly came to Mr. Lievesley's hands, Mrs. Lievesley states that she finds from her husband's papers that a sum of about 300*l.* was left in his hands to pay debts; but that this was not till the purchase-money was received. It was in April that this sum remained in his hands uninvested. She says that Lievesley also received a sum of 20*l.* from Briscoe, and afterwards 12*l.* 6*s.* 3*d.* from Mr. Goddard. She shows an account of payments of 326*l.* 9*s.* 1*d.*, and thinks that insolvent had the difference. She says also that in 1847 Lievesley received on insolvent's account a sum of 35*l.* from Mr. Austin, and she tells us the specific appropriation of it in six payments. There is produced also a little book of Lievesley, who was always on friendly terms with insolvent, where there is this entry in Lievesley's writing:—"What is the amount of your debts? Name them. Pressing and not pressing. The 4000*l.* is in trust, and cannot be divested. The 350*l.* I consider to be at your disposal. Dispose of 300*l.*" This minute most clearly points to the sum of 350*l.*, which was the balance remaining from the 1350*l.*; and it is not well reconcileable with the notion that Lievesley should keep back this money without the insolvent knowing anything about it; especially when we remember the correspondence which is admitted to have been going on between them during Mr. Russell's absence from England. Both sums could not be wanted; for the insolvent's case is that those debts were under 500*l.* While thus I see no probability in the assertion that he was for four years altogether ignorant of this 350*l.*, I also think the other statement very improbable, that he never sought or received from Mr. Lievesley an account of the money which he paid for him. He makes out now himself a list of payments to the amount of 383*l.* 0*s.* 1*d.*, and says that he charges 116*l.* 14*s.* 1*d.* (which would make up 500*l.*) as what ought to be returned to him. I do not see how any such list was arrived at, if Mr. Lievesley failed to render any account—indeed the statement rather imports that there must have been such account, for the expenditure concludes with this item—"Retained by Mr. Lievesley for parcels, postages, &c., 3*l.* 18*s.* 10*d.*" The list also gives the dates of payments, which must either be founded on the receipts given by the parties, or on an account from him who made the payments. Neither has been exhibited. There is one piece of evidence which tends to throw further doubt on the representation concerning the 500*l.* and payments made with it. There is a letter written to Mr. Lievesley by Mrs. Russell from Florence, under her husband's direction on 3rd Feb. 1847, in which Mr. Lievesley is requested to make a particular application of a sum of 35*l.* which is to be paid to him, on Mr. Russell's account, by Mr. Austin. The sums to be paid with it are expressed, and these same payments appear in the insolvent's statement of the application of the 500*l.* as made more than a year before that letter was written. The post-mark, as well as the writing within, gives the date of the letter. On a view of all circumstances brought before me, I find myself constrained to say, that I do not believe that sum of 500*l.* ever to have been applied to the benefit of the insolvent; but that the money was handed over only to be returned: a fictitious process, to deceive the consciences of those who were engaged in a business not fit for the broad daylight of truth. It remains to notice the trust which was made of the 4000*l.* when put into the Funds. It was placed there, part in January, part in April, 1846, in the names of Mr. Lievesley and Mr. Schomberg, who had acted professionally in drawing the settlement. This gentleman objected to the use of his name in the transaction, and refused to sign the declaration of trust. Mr. Lievesley, while he lived, received the dividends. On his death in 1849 Mr. Schomberg still refused to act; and with great propriety he refused even to transfer the stock to other persons. His resolution on the subject is expressed in a letter written the 22nd Nov. 1849, after Mr. Lievesley's death; and in March 1850 he writes to the insolvent thus:—"The fairest and most honourable course is to come to an arrangement with your creditors, and disclose all." A letter has been produced, written about the same period, from Mrs. Russell, by her husband's direction, to Mrs. Lievesley, saying this:—"Mr. Schomberg wants that we should apply to Chancery to remove him. But then the deed would be brought forward; and then our opponents would pick a hole, and well work old Mr. Russell. No, no; for God's sake never let them moot the question of the validity of your deed." At last new trustees were appointed by the Court of Chancery on the petition of the insolvent and his wife; those trustees being some client of Mr. Crouch and the clerk of Mr. Crouch, who has from the first been the insolvent's solicitor in all matters here spoken of, and has of course received considerable sums, which certainly might have been better spent. These are the facts of the case. A property, of the value, probably, of nearly or quite 6000*l.*, has been put aside in the way I have described, in order to defeat creditors of a comparatively small amount. And, inasmuch as this property can hardly now be considered as beyond the control of the insolvent, it has been suggested, and not unreasonably, that it is a case in which the court should pronounce no discharge at all. The judgments of this court range from an immediate discharge to a discharge in three years: and there is always the power to dismiss a petition, which gives the petitioner no discharge at all. When all property has irremediably vanished, as may be in the most vicious case, the adverse judgment of the court operates as a personal penalty. When property still exists, as here, an adverse judgment operates to drive the wrongdoer to surrender that which he cannot justly retain. The case before me is of this class. The means of paying all debts still exist; those means are probably somewhat diminished by the obstinate efforts which have been made in resistance of legal claim, and the debts to be paid have been somewhat increased by the same cause. But means exist in that shape which a family compact has given to them; and if I do not employ the strongest measure of all for driving the debtor to satisfaction or reasonable compromise of his debts, I am called upon still to deal seriously with the case, so as to induce some fair arrangement, and discourage a course which the law can never sanction, which daily aggravates the amount of those demands, and wastes, upon the agents for resisting them, a substance that might be better employed. If Mr. Russell does not so procure his discharge in a speedier manner, this court will discharge him in twenty-six calendar months from the present order.

BANKRUPTCY.

BRISTOL DISTRICT COURT.

(Before Mr Commissioner STEPHEN.)

Dec. 1852.

Re PHILIP JONES.

Order to redeem mortgage, out of moneys in hands of the Accountant in Bankruptcy.

The bankrupt previous to the adjudication was possessed of the equity of redemption in 100 shares in the Newport Dock Company, which he had assigned by way of mortgage to Mr. George Taylor of London, for securing the repayment of 1400*l.* and interest; and this amount, with arrear of interest, still remained due on security of the shares. The assignees had effected a sale of the shares at a price considerably above the amount due upon them on mortgage. The assets realised from the bankrupt's estate had been large, and there was a considerable sum to the credit of the estate in the hands of the Accountant in Bankruptcy.

W. Bevan, for the assignees, applied to the Court upon an affidavit stating these facts, for an order on the official assignee to obtain from the Accountant in Bankruptcy 1400*l.* out of the moneys in his hands belonging to the bankrupt's estate, and thereout to pay the principal and interest due on the dock shares to Mr. Taylor, and enable the assignees to complete the sale of the shares, and transfer them to the purchaser; and that the Court would confirm the sale.

The COURT made the order as asked, the proceeds of the sale to be paid to the official assignee.

Ordered accordingly.

Tuesday, Jan. 25.

Re ENGLISH AND SONS.

Absconding bankrupts—Expenses of proceedings to obtain their capture—Reward.

Where bankrupts do not surrender, and abscond, the Court will sanction and order allowance to be made to the assignees for expenses incurred by them in offering a reward, and endeavouring to effect the bankrupt's capture.

The bankrupts had been auctioneers and land agents at Bath, in extensive business; they had been adjudged bankrupts under a petition filed in this court, but had never surrendered, and absconded, taking with them considerable property and effects; and were charged with various frauds, including forgeries and other criminal offences. The assignees, in conjunction with some of the largest creditors, had used every exertion and caused diligent search to be made for the bankrupts, and had offered a reward of 100*l.* for their apprehension. Hitherto they had eluded discovery, and were supposed to have gone abroad. There were assets in the estate, and the assignees, in the proceedings they had adopted to apprehend the bankrupts and bring them before the court, had incurred expenses which would not come under the head of general allowances to them in passing their accounts; and the order of the court became necessary that they might be reimbursed what they had thus properly expended.

W. Bevan, for the assignees, applied to the court for a direction to the registrar to allow the expenses to the assignees on passing their accounts before him, to be vouched and taxed in the usual manner. A similar order had been made by Mr. Commissioner Hill in this court in *Re William Wood*, 19 L. T. Rep. 275. *Ordered accordingly.*

Wednesday, Feb. 9.

Re HENRY HASTINGS.

Previous bankruptcy—Not keeping cash-book.

Where creditors do not take upon themselves to oppose the allowance of a bankrupt's certificate, it must be presumed they are not dissatisfied with the bankrupt's conduct as a trader, and the Court will not place itself in the position of an opposing creditor. Therefore, where it appears the bankrupt had availed himself of the Bankrupt Laws, and had been bankrupt, and had his certificate suspended for two years for fraudulently contracting debts under a previous bankruptcy, the Court, in the absence of opposition, will not take this circumstance into consideration on the question of certificate.

But where no cash-book has been kept, this will be a ground for judicial notice by the Court, whether there be opposition or not; and, according to the universal practice in this court, the certificate will be suspended on this ground, and protection refused.

The bankrupt applied for his certificate: he was not opposed. It appeared from the files of the court that he had previously been bankrupt, and upon that occasion his certificate had been postponed for two years, on the ground of fraudulently contracting debts. There were now little or no assets, and the bankrupt had kept no cash-book, which was the only complaint reported by the official assignee.

Mr. Commissioner STEPHEN observed, that, in the absence of opposition, it must be presumed the creditors did not object to the bankrupt's conduct as a trader, and it was not a duty cast on the court to place itself in the position of an opposing creditor. This person had been bankrupt before, and had upon that occasion suffered the penalty of two years' suspension of his certificate for the offence of fraudulently contracting debts; but that would not now be considered by the court in granting the certificate. But the bankrupt had kept no cash-book; and of this the court, according to its universal practice, would take judicial notice, whether there be opposition or not, and suspend the certificate, for a short period, on this ground alone.

Certificate of second-class, suspended for three months; no protection.

Election Committees.

Reported by JAMES PATERSON, and W. MARSHALL, Esqs. Barristers-at-Law.

CHATHAM, 1853.

Monday, March 7.

(*Chairman*—T. W. BRAMSTON, Esq.)

Bribery—Proof of corrupt intention.

Elector had promised to vote for candidate A., but afterwards, having asked and been promised a situation by candidate B. (the sitting member), broke his promise to candidate A. and voted for the sitting member, but nothing was said by the latter about the vote, and no express bargain was made that the situation was to be given as a condition of the vote; and the sitting member having expressly sworn that he had no corrupt intention in procuring the situation.

Semble, it would require stronger proof of a corrupt intention to fix the sitting member with bribery.

This was a petition against Sir H. F. Smith, the sitting member, on the ground of bribery. A great variety of witnesses were called to prove acts of bribery; the sitting member also was called, who in general negatived the promises imputed to him by the other witnesses, and disavowed any intention of corrupting the voters. The general complexion of the cases was the following:—The voter had originally promised his vote for candidate A. Subsequently the sitting member, previous to the election, called on the voter, and either spontaneously, or in answer to a question, informed the latter that he (the sitting member) had influence with the Admiralty or the Government. A situation was forthwith asked, and promised to be given at some early period; but nothing passed between the parties as to the vote, and no express bargain was made that the situation was to be given in consideration of the vote. It generally happened that the voter either broke his promise to candidate A., to whom it had first been made, or did not vote at all, or voted for the sitting member. It appeared that situations had been obtained, through the sitting member, by the voters or their relations, either before or after the election. The above facts being assumed, the Committee directed one counsel of a side to argue the law which was applicable to such facts, with a view to assist the Committee in coming to a conclusion.

Kinglake, Serjt. for the petitioner.—Bribery has been described as an illegal influence of some kind acting on the voter's mind at the time of voting. This illegal influence may be produced by a gift, or a promise of money or reward, or a situation, or other valuable consideration. The question, whether the voter had antecedently promised to vote, does not at all arise; for bribery by one of the modes or inducements mentioned may well take place either before or after the promise of a vote. Further, the intention of the candidate has nothing to do with the question whether there was bribery or not; for, if the corrupt act was done, the law will conclusively fix upon the candidate the corrupt intention. The correlative proposition is also true, that the intention of the voter is immaterial in order to constitute the offence, provided only the act be done. It may be conceded that the mere giving of money, or the mere promise of a situation, or other valuable consideration, does not in itself constitute bribery, for there may be certain relations existing between the parties of prior origin, out of which the promise arises; but if it be once found that the giving of the situation *has a reference* to the vote, then the law attaches to the transaction the denomination of bribery. When the reward is given antecedently to the vote, no question can arise; but the difficulty is when the reward is given after the vote, for we must put the facts together and infer from them what was their mutual connexion. The sole inquiry, however, then is, not what was the intention of the parties, but whether the bribery was committed; for the law holds a man to have intended the consequences of his own acts. (The following cases and statutes were referred to:—*Allen* v. *Hearne*, 1 T. R. 56; *Henslow* v. *Fawcett*, 4 Nev. & M. 585; *Harding* v. *Stokes*, 2 M. & W. 233; 2 Geo. 2, c. 24, s. 7; 5 & 6 Vict. c. 102, s. 20; Taylor on Evid. 71.)

Wrangham, Serjt. contrà.—This is not a question of law at all, but solely one of fact. It is said the Committee have nothing to do with the intention of the sitting member; but it is that alone with which the Committee have to do. The mere act of getting a situation for a voter is not in itself a criminal act; it may or may not become so according to circumstances. It is said the situation must have reference to the vote in order to constitute bribery; but if there is any meaning in this phrase, it is that the situation must be given with intent to influence the vote. The connection between the vote and the situation must be such as to bring the case within the statute; in other words, the promise of the candidate must have been with a view to corrupt the vote of the elector. Now that question is for the Committee, and them alone, to determine; and they can only satisfy themselves on the point by looking at all the circumstances, and by construing an act (which, taken by itself, is simply indifferent) with reference to the context. It is for the Committee to say whether the promise of a place, or the procuring of a place after the promise of a vote, was an innocent act or not, under the whole circumstances. A material distinction must be drawn between the case where a vote is promised after the place is promised, and the case where a vote is promised before the place, because when the vote is promised before the place the candidate then knows that nothing he can do can alter the vote, it being already beyond his influence. Besides, there can be no contract at all, corrupt or otherwise, in such a case. Then the motive of the candidate must be considered; for how can a candidate do an act to corrupt, or procure the vote of the voter, unless he intended to corrupt? No doubt, if the bare facts be proved, there may be a *primâ facie* case; but the presumption may be rebutted by a variety of circumstances. Thus if it were shown that there was no necessity for the member to resort to corrupt means, inasmuch as a majority of the voters were clearly in his favour from the beginning, coupled with the fact of the member himself distinctly swearing that to corrupt the voter was never in his contemplation, as is the case here, the presumption would be rebutted. Therefore the petitioners must say not only that the Committee may come to the conclusion that bribery here was practised, but that they can come to no other conclusion. Now in no case was a sitting member ever found guilty of bribery without proof of some corrupt contract between him and the voter. (2 Douglas, 400. Clerk on Elect. C. 99.) It was said the Committee have no option but to find that the sitting member was guilty of bribery, because the law says he must clearly have intended the consequences of his own acts. But that rule has its exceptions, and applies only to cases where the act is in itself illegal. (Taylor on Evid. 72.) Here the act of procuring a place for a voter is an innocent act in itself, and only becomes criminal according to circumstances. Here the intent is of the essence of the offence; and the intent must be as clearly proved as if the Committee were a jury sitting to try an indictment against the sitting member for having procured a place for a voter with intent to corrupt the voter.

Kinglake, Serjt. replied.—It is not at all necessary to prove a corrupt intention in the sitting member. The moment you have a given state of facts, the law says that bribery exists, and no jury could avoid coming to the conclusion which the law presumes. What we say is, that if it be shown that after the vote was given, a reward or place was given to the voter, and there are no circumstances shown by which you can explain the sequence of the two facts, such as relationship, long and intimate acquaintanceship, &c. except by viewing the latter in reference to some understanding which had preceded, then that is a corrupt contract, and it would be no answer to say: "I had no corrupt intention; my purpose was quite innocent." It is said your mind must be satisfied in the same degree, as if you had been trying the sitting member on an indictment; but that is not so: (Rogers on Elect. C. 259.) It was said there was no contract here at all, and that, to make it so, the reward ought to have been offered as a condition at the time of the vote being promised. But that is not the law: (*Allen* v. *Fawcett*, *supra*; Clerk on Elect. C. 108.) If you are satisfied that at the time of coming to the poll an influence was acting on the mind of the voter, in respect of some reward to be afterwards given, that would be sufficient to fix the parties with bribery. It is said intention is of the essence of this offence. There was, no doubt, a well-known class of offences, such as assault with intent to maim, &c. where the intent is everything; but this is not such an offence, and the stat. 2 Geo. 2, c. 24, does not anywhere mention the intent as at all material. The reason is obvious; for when the facts, first of the vote given at the poll in a certain manner, and then of the reward or place following that vote, are proved, the mutual nonconnection of the two facts not being explained, the law itself draws the inference that bribery existed; for by law no candidate must at the time of an election administer a reward to a voter. The best evidence of the intent of the candidate is the act itself. *Cur. adv. vult.*

The CHAIRMAN.—The committee have come to the following resolutions:—"That Sir J. F. Smith (the sitting member) is not duly elected a burgess to serve in the present Parliament for the burgh of Chatham. That the last election is a void election. That it was proved to the committee that Joseph Greathead, an elector at Chatham, had been bribed by a situation as letter-carrier in the General Post-office obtained for his son Charles Greathead, by or through the influence of Sir J. F. Smith."

WIGTON, 1853.

Wednesday, March 9, et seq.

(*Chairman*—WILLIAM MILES, Esq.)

The petition contained allegations that the sitting member, Sir John M'Taggart, and his agents, had been guilty of bribery and treating, and also prayed for a scrutiny.

Evidence, hearsay—Declaration of bribed voter.

A witness cannot be examined as to the declaration of a voter, who it is alleged had been bribed, unless it be shown that it is impossible to call the voter himself.

The subject-matter of a conversation which took place in the presence of a voter who it is alleged was bribed, and in which many persons participated, received in evidence, although the sitting member was not present on the occasion.

Where a bribed voter equivocates as to a statement which it is alleged he had made, but does not directly deny having made it, a person who overheard the conversation may, notwithstanding the rule first above laid down, be examined as to the particulars.

The counsel for the petitioner, for the purpose of proving that an elector named Watts, whose name appeared on the poll-books as one who had voted for the sitting member, had been bribed by him, asked a witness if Watts had had any conversation with the witness about the election. The witness answered that after the election Watts spoke to him about it. Counsel then asked, "Did Watts tell you why he voted for Sir John M'Taggart?"

Rowe, Q. C. (with whom was *Power*) objected that this question could not be put. The effect of this question would be to affect the sitting member, who

is the only person concerned, with a statement made by a third person in his absence. In a scrutiny a statement made by the voter, or by another in his hearing, is admissible, because in that case the voter is a party. But where it is a case of bribery the same principle which makes it admissible in a scrutiny operates to exclude it; and in the *Ipswich* case, Knapp. & Omb. 387, the Committee rejected an admission by a person bribed. In Clerk on Elect. C. 110, this distinction is taken, where it is laid down that in cases of bribery the declarations of voters are not admissible. It is the declaration of one not a party, and not made under the obligation of an oath. It is a well-established principle that hearsay evidence of this description cannot be received; and the reason assigned by Mr. Justice Buller is that "if the first speech were without oath, another oath that there was such speech makes it no more than a mere speaking, and so of no value in a court of justice": (Bull. N. P. 294, C.) This evidence is open to the further objection that it is not the best evidence. The best evidence here is that of the voter himself, who must know why he voted as he did. This evidence would be rejected in any trial, whether civil or criminal He also referred to Taylor Ev. 363.

James, Q. C. (with him *Slade*, Q. C. and *Merewether*) contrà. — The question may be put. No analogy exists between this inquiry and the proceedings in civil or criminal trials. Here the question is complex; it consists of two distinct parts, upon which the Committee have separately to report. The Committee have first to find whether A., B. and C. have been bribed at the election; and, secondly, whether they have been bribed by the sitting member. This is expressly required by stat. 4 & 5 Vict. c. 57, which enacts that the Committee in their report "shall separately and distinctly report upon the fact or facts of bribery which shall have been proved before them; and also whether or not it shall have been proved that such bribery was committed with the knowledge and consent of any sitting member or candidate at the election." It is to the first branch of this inquiry that the question is directed; and it is admissible for the purpose of enabling the Committee to make their report upon that branch. Secondly, hearsay evidence in cases of bribery is made admissible by the enactment in the 4 & 5 Vict. c. 57, that "the Committee shall receive evidence on the whole matter wherein it is alleged that bribery has been committed." Thirdly, it is the uniform practice in Committees to receive such evidence. In the *Sudbury* case, Barr. & Aust. 215, the Committee determined, after full argument, that evidence of a conversation among voters might be received although neither the sitting member against whom it was adduced, nor any agent of his, was present at the time. In the *Second Nottingham* case, Barr. & Arn. 195, and in the *Horsham* case, 1848, cited in Clerk Elect. C. 110, the same point was determined. Mr. Bouverie, acting as chairman in the *Bridgnorth* case, 1853, 20 L. T. Rep. 295, admitted in evidence the declaration of a voter. And declarations of voters have been received in the *Canterbury* case, 1853, and in the *Blackburn* case, 1853

Rowe, Q.C. in reply.—The rule excluding this evidence is admitted. There is nothing in the statute to alter the rule: the Committee are to receive evidence "on the whole matter."—that means nothing more than evidence which lawfully may be received. They are to report separately on cases of bribery; the sitting member is not the less affected by it, or less a party to the inquiry, on that account. In the *Horsham* case the declaration accompanied an act. In the *Nottingham* case the statement of the voters was received on the ground that the subject-matter related to a corrupt transaction with an agent of the sitting member.

The CHAIRMAN.—"It is unanimously decided by the Committee that hearsay evidence ought not to be admitted, proof not having been given before the committee of the impossibility of producing the person to whom such hearsay evidence applies."

Watts himself (the elector who had conversed with the witness) was afterwards called and interrogated as to the particulars of the conversation.

For the purpose of proving that another voter, named Adamson, had been bribed, the counsel for the petitioner asked a witness as to a statement made by Adamson in a certain shop, in which he was buying cloth, and in which he stated many persons were present, and some "banter" was going on. This question was objected to as falling within the rule which the Committee had laid down in the case of Watts; and the objection was allowed by the Committee Adamson himself was thereupon called. Upon examination by the counsel for the petitioner, he was asked what the "banter" was about.

Kinglake, Serjt.—The question cannot be put. The member was absent, and the conversation does not form part of any particular corrupt transaction.

The CHAIRMAN.—This may be connected with the transaction. We think the question may be put.

Adamson, upon being pressed by the counsel for the petitioner as to whether he had not said on the occasion in question, "that he felt bound to vote for the sitting member," avoided directly answering the question, but would not swear but that he might have said so. Another of the persons who were present when the alleged statement was made was then called, and, on examination, being asked whether he had heard Adamson make any statement on that occasion, the question was objected to by

Kinglake, Serjt.—This is a declaration by the person bribed in the absence of the sitting member. It infringes the rule laid down by the Committee in the case of Watts.

Slade, Q. C., contrà.—The determination of the Committee in the case of *Watts* would rather make this evidence admissible. Although it is only under exceptional circumstances that a party is allowed to contradict his own witness, yet, if his recollection be faint and uncertain, he may confirm and strengthen it by the testimony of others. For this purpose the witness may be examined as to the particulars of the conversation.

Kinglake, Serjt. in reply.—This is to contradict, not to confirm, Adamson's evidence.

The CHAIRMAN.—Adamson makes a statement of something which he does not deny might have occurred. The examination may be continued.

At this stage of the proceedings the petition was withdrawn. *Sitting member declared duly elected.*

NEW WINDSOR, 1853.

Saturday, March 12, et seq.

(Chairman—J. M. GASKELL, Esq.)

The petition contained charges of bribery and treating against the sitting member and his agents.

Evidence, hearsay—Declaration of voter alleged to have been bribed.

Evidence of a statement made by a voter alleged to have been bribed, in the absence of the sitting member, rejected.

The same objection to the admissibility of statements by voters was made in this case, and on the same grounds as already stated in *Bridgnorth*, 1853, 20 L. T. Rep. 295; and *Wigton*, 1853, *supra*.

Wrangham, Serjt., *Merewether*, and *Farrer*, for the sitting member.

E. James, Q. C., *Kinglake*, Serjt. and *Power*, for the petitioner.

CHAIRMAN.—The Committee are of opinion that the question cannot be put.

[NOTE.—*Hearsay evidence.*—As the question of the admissibility of the statements made by voters as to their voting in the absence of the sitting member is one which arises in most of these inquiries, it is desirable to state the result of the decisions of the Committees up to the present time. We have already reported two cases fully in which contrary conclusions were come to: (see *Bridgnorth*, 1853, 20 L. T. Rep. 295; and *Wigton*, 1853, *supra*.) As it would be useless to report future cases, where the arguments must necessarily be the same, it may suffice to record in this place the result, from which it will be seen how expedient it is, that some uniform rule should be adopted and adhered to.

The Committees in the *Bridgnorth*, *supra*, the *Canterbury* case, 1853, the *Cambridge* case, 1853, the *Derby* case, 1853, and the *Blackburn* case, 1853, have admitted the hearsay evidence referred to.

The Committees in the *Guildford* case, 1853, the *Wigton* case, 1853, *supra*, the *Lancaster* case, 1853 (20 L. T. Rep. 315), and the *New Windsor* case, 1853, have rejected such evidence.]

Evidence—Direction to a house of treating.

A direction given to a voter as to his going to a certain place, by a person employed to superintend "roughs" and "boardmen" at the election, admitted in evidence to show that at the place he was sent to treating was going on.

A person named Wickens, who was employed during the election by the sitting member, to see that the "roughs" and "boardmen" performed their duty, and to protect the person of voters, and who, it appeared, as well as the "roughs," attended at the doors of the committee rooms to exclude those who were not friends of the sitting member, was examined. The counsel for the sitting member asked the witness if he said anything to White, a voter, while he was going to the poll.

Wrangham, Serjt. objected that the question could not be put. The witness was not an agent of the sitting member; this is a mere conversation between a voter and a third person; and the Committee have already decided that that is not evidence. White is not on the list of persons bribed.

The CHAIRMAN.—What is the object of the question?

James, Q.C. contrà.—Wickens being a person having authority to direct voters, says something to a voter about his conduct. The object is to show that he sent a voter to a particular house where treating was going on. The question does not trench on the rule laid down by the Committee; this not being a conversation with a voter, but a direction in pursuance of an authority.

Wrangham, Serjt.—Wickens was not commissioned to hold any conversation with voters. If what he said to the voter is received, the voter's reply must also be received.

The CHAIRMAN.—The Committee are unanimously of opinion that the question may be put.

The witness having stated what he said to the voter, he was asked what the voter replied.

The CHAIRMAN.—That cannot be put.

Power.—The answer is part of the *res gestæ*.

The CHAIRMAN.—But does not come within our decision.

HUDDERSFIELD, 1853.

Saturday, March 5, et seq.

(Chairman—The Right Hon. S. H. WALPOLE.)

The petition in this case contained charges of bribery and treating against the sitting member and his agents.

The committee agreed upon the usual preliminary resolutions, and amongst others, upon the following—"That no witness shall be examined who shall have been in the room during any part of the proceedings."

Non-professional agent—Petitioner appearing as agent—Exclusion of witnesses from committee-room.

Where the name of a person, not a professional agent, and of another who was one of several petitioners, appeared on the petition as agents for the petitioners, their names were ordered to be struck out.

Persons who might be called as witnesses allowed to remain in the room, upon the undertaking of the party at whose request leave was obtained, not to call them as witnesses, and not to object should the other side call them.

Pickering (with whom were *Alexander*, Q. C., *Kinglake*, Serjt. and *Piggott*) for the sitting member, previous to the commencement of the proceedings, objected that the name of a person, who was neither a parliamentary agent nor a solicitor, was placed on the petition along with three other names, as one of the agents of the petitioners. It may be necessary for the sitting member to call this person, who is named Heaps, and is an ironmonger in Huddersfield, as a witness. It is also objectionable to retain on the petition the name of another person who appears as agent. This person is named Jones, and he is one of the petitioners. The presence of those persons during the proceedings will preclude their being called as witnesses; and their apparent character as agents prevents the sitting member requiring that they should be excluded from the room.

James, Q. C. (with whom were *Wilkins*, Serjt. and *Wells*), for the petitioners.—The local knowledge of Heaps is useful, to assist counsel in conducting the case for the petitioners. He should be allowed to remain in the room for this purpose, and I pledge myself not to call him as a witness. Jones, who is one of the petitioners, should also be allowed to remain on the same undertaking being given.

Pickering.—It will be open for the sitting member to call them.

James, Q. C.—Unless you pledge yourself to call them, it is not fair to require that they should leave the room.

Pickering.—They are hostile witnesses, and I will not pledge myself to call them. But, as they are not agents, they should not remain as agents.

CHAIRMAN.—Supposing they are struck out as agents; then, if they remain, their presence will preclude their being called as witnesses; but if the petitioners will undertake not to make the objection should they be called by the sitting member, then they may remain. In that case the sitting member would only have to object should the petitioners call them, and their testimony would be excluded.

Counsel acting on this suggestion, the names objected to were struck from the petition as agents.

WATERFORD COUNTY, 1853.

Reported by W. P. HALE, Esq Barrister-at-Law.

Friday, March 4, et seq.

(Chairman—Hon. W. O. STANLEY.)

Irish register—Loss of qualification by eviction—Evidence.

The Committee will not receive evidence of the loss of qualification on the part of a voter between the time of making out the lists from which the register is formed, and the time of polling; but will consider the register, as framed under the Irish Act, 13 & 14 Vict. c. 69, conclusive as regards the voter's right to vote.

Calcraft, Q.C. (with him *Hadaldston*, *C. Shaw*, and *W. P. Hale*), for the petitioners, in his opening referred particularly to the class of votes given at the last election, against which it was objected "that since the time had expired for making out the list of voters from which the register was formed, and prior to the time of polling, the voter had lost, parted with, or been evicted from their qualification either wholly or in part," and submitted that according to the law as defined by the 13 & 14 Vict. c. 69, and the 59th sect. of the Irish Reform Act, 2 & 3 Will. 4, c. 88, the register was really conclusive before an Election Committee with regard to all time prior to the making out of the list from which the register is formed, but that the Committee have full power to inquire into all alterations of qualification which may have occurred

since that time, and prior to voting. It is clear, from sects. 1 & 3 of 13 & 14 Vict. c. 69, taken along with sect. 85 which connects the conclusiveness of the register with the time of polling, and also from the proviso of sect. 104, that the Committee have power to go into this class of objections. But the power for which we contend is derivable also from an old provision of the 2 & 3 Will. 4, c. 88, s. 59, which after declaring, that any person disqualified from voting, who shall presume to vote, shall be liable to a penalty of 100*l.*, and the vote shall be liable to be struck off by a Committee of the House of Commons. Is it a well-known principle of law that a clause, if not afterwards directly repented, can only be held to be repealed by the subsequent passing of directly contradictory enactments. Now the powers contained in 2 & 3 Will. 4, c. 88, s. 59, are perfectly compatible with the 13 & 14 Vict. c. 69, s. 104, and the powers conferred by the former statute are retained by the latter: nay, it is impossible to construe either Act properly without conferring on the Committee the powers we now ask them to exercise with regard to the register.

On the vote of Denis Ahearn being proposed to be gone into on behalf of the petitioner,

F. Meagher (with whom *Keogh*, Serjt.), for the sitting member, objected.—It is said a scrutiny existed at the time of polling as to the passing of the present Act; but that was abolished by the Irish Reform Act, sect. 54. The entire question, however, here is, what is the meaning of the term "legal incapacity" in 13 & 14 Vict. c. 69, s. 104? Unless it is synonymous with disqualification, the argument on the other side is worth nothing; and the term is used in a different sense in the early portion of the Act, where it means a purely personal matter affecting an individual. The first section confers a qualification for voting on every male person of full age not subject to any legal incapacity, in addition to those now entitled to vote in respect of any qualification not requiring occupation; and the 3rd section is said to be prohibitory of all other persons voting at any election. The truth is that up to this Act there existed a 10*l.* franchise, which, both with freeholders and leaseholders, required occupation. There was also a 20*l.* and a 50*l.* franchise, neither of which required occupation. The 1st section therefore of this Act preserves the 20*l.* and 50*l.* non-occupation franchises; whilst the 3rd section destroys the 10*l.* franchise—not being a disqualifying section with regard to the 1st section, but with regard to the old 10*l.* occupation franchise, for which is substituted a franchise founded on a 12*l.* annual voting. The 59th clause of the Irish Reform Act, quoted on the other side, does but beg the question, which is, "Is or is not the voter disqualified under the circumstances?" The object of 13 & 14 Vict. c. 69 was to simplify elections, by ascertaining the state of the franchise on a fixed day, and that franchise, when so ascertained, was to last for one year; in any other case the old powers of the assistant barrister to put a name on the register, if claimed at any one of his quarterly courts, would properly have been retained; and it would be unjust that a man should only have the power of registration once a year, unless he was to have the franchise, when registered, certainly for the year. The right of voting in this instance clearly depends on the possession of the qualification on the 15th Nov., the day before the lists closed, otherwise the barrister might have entertained the objection at any one of his courts; but the period for inquiry into this is by sect. 55 limited to six months previous to the day of registration or revision. The object of the Act is shown to be what has been above mentioned from other sections—sects. 15, 16, and 17—which furnish a perfect machinery for making the register. The register then is purged, and shows the persons possessing the right of voting, excluding those who have lost it; and sects. 18, 63, 85, and 86, make it quite clear that the franchise conferred by this Act is a continuous franchise for the year. If this be not so, we have an enactment making the register final at an election, but not final on an appeal from that election; whereas all rights which can exist in an appeal are also held necessarily to exist in the inferior court. But, after all, the question must be decided on the interpretation of sect. 104, which enacts that the legal incapacity, to have any effect, must exist at the time of the election, not only have existed between the time of making out the lists and that of the election. The reason of this is that a temporary incapacity to vote may arise from the tenure of office and such like; but it would be manifestly unfair to deprive a man of the franchise for good because he had become legally incapable for a time. The use of the term, as before shown, cannot be reconciled with such a construction in the first section; and what is the meaning of the term in one section must be taken to apply to it in others. The fact also of the third question, which was permitted by the Reform Act, as to the qualification at the time of voting being the same as that possessed at the time of the registration, having been abolished by this Act, is clear proof that the franchise was intended to be continuous; for we cannot suppose the Legislature to have intended to reserve for the expensive process of a petition the very powers of objection which it destroyed at the time of election, and to have intended the question then to be raised which ought not previously be raised.

Calvert, contrà.—We admit we are come to the question what is "legal incapacity," and what is the import of the term in the 104th section. The conclusion the other side have come to is at variance with the English and Irish Act. The question of continued residence is, in the English, expressly excepted from the conclusive character of the register under 6 Vict. c. 18, s. 79. Under the words "legal incapacity created by statute," English Committees have gone into the question of residence, which clearly means residence at the time of voting, and this only is in the jurisdiction of the House of Commons, and the want of it is a legal incapacity, not in the terms of sect. 1, but of sect. 104. The question arises, how far the register is conclusive; and the other side have explained the machinery for making the register; but is this the conclusive register? If so, what becomes of the 104th section? But the argument, if good for anything, must go thus far, and the vice of the argument is that it proves too much. The 20th section of the Irish Reform Act declared that the voter at the poll should swear that he had the same qualification then as that for which he was registered. Hence the Act made the register only conclusive, subject to the provisions of the statute; and one clause of this Act must be construed by another—that is, the register here is the register for the year, save so far as the other clauses of the Act prevent its being conclusive. The language of the 1st section points out, first, the conditions for voting; secondly, the conditions for registration—that is, if the man has the qualification he shall be entitled to vote. The revising barrister has power to inquire into the qualification up to the time of closing the lists; but, subsequent to that period, the inquiry must vest in some other tribunal, which is a Committee of the House of Commons. As to the 10*l.* franchise mentioned on the other side, there is not a word in the Act respecting such occupying voters, and the argument attempted to be raised confines words which are general in their meaning, and imports words not expressed, while it passes over others which are expressed. If the Committee have doubts as to their powers of inquiry under the last Irish Act, they are still bound to go into the objection under the old clause of the Irish Reform Act. [The CHAIRMAN.—Why was the oath and the third question destroyed?] Because the tribunal which carried on the scrutiny was destroyed, and the oath was therefore abolished as well. If the register, by sect. 85, is entirely conclusive, from sects. 87 and 104 it goes too far; and by sect. 104 the Committee may inquire into questions of disqualification raised and determined before the revising barrister, questions of legal incapacity arising by statute, and those of legal incapacity of any other kind. Under the last head would come questions of lunacy, minority, and such like; but those arising from offices, as mentioned on the other side, are created by statute. The sitting member, in his objections, calls this loss of qualification a legal incapacity, and the term exactly suits the requirements of the 3rd section. The revising barrister may go into questions of legal incapacity, though only empowered to inquire into qualification by the Act, but, for the purposes of this Act, legal incapacity comes under the qualification provisions; and legal incapacity by statute arises from not complying with the requisitions of the 1st section, one of which is occupation at the time of polling.

Meagher, in reply.—The 3rd clause of the 13 & 14 Vict. c. 69, if a disqualifying clause at all, must be so at the time of the election; but in such a case we find it expressly provided that the register at that time is conclusive evidence of the parties' right to vote. The fact of one party having used the term "legal incapacity" in their objections cannot possibly determine the construction of an Act of Parliament which is to govern other cases, and must be construed by itself.

Cur. adv. vult.

CHAIRMAN.—"The Committee have resolved, that they will not go into evidence in support of the objection to this class of voters."

Petition thereupon abandoned.

THE LAW TIMES,

FOR THE LEGISLATOR, THE MAGISTRATE, AND THE LAWYER.

VOL. XX.—No. 495.] SATURDAY, SEPTEMBER 25, 1852. [Price 1s.

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Sept. 1852. R. W. JELF, D.D. Principal.

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Thursday, Sep. 30.	Garraway's.	Farebrother.	Aug. 11.	The Arley Castle Estate.
Ibid.	Ibid.	Messrs. Green.	Sept. 4.	The Grazeley Lodge Estate, near Reading.

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

The Queen has been pleased to direct letters patent to be passed under the Great Seal of the United Kingdom, granting the office of a Vice-Chancellor unto John Stuart, Esq. one of her Majesty's Counsel, in the room of Sir James Parker, deceased.

The Queen has been pleased to approve of Don Bernardo Hackort as Vice-Consul at Hong Kong for the Republic of Peru.

The Right Hon. Sir John Dodson has granted to Frederick Baker, of Derby, gent. the faculty to practise as a public notary in the town of Derby and within ten miles thereof.

COMMISSIONS SIGNED BY THE LORD-LIEUTENANT OF THE COUNTY OF HERTFORD.—Sir Thomas Gage Saunders Sobright, bart.; Christopher William Puller, esq.; William John Lysley, esq.; and William Joseph Myers, esq. to be deputy-lieutenants.

BY THE LORD-LIEUTENANT OF THE COUNTY PALATINE OF LANCASTER.—Albert Hudson Royds, esq.; and John Sawrey, esq. to be deputy-lieutenants.

BY THE LORD-LIEUTENANT OF THE COUNTY OF WILTS.—Francis Alexander Sydenham Locke, esq.; James Crowdy, esq.; Simon Watson Taylor, esq.; Thomas Everett Fowle, esq.; Ambrose Awdry, esq.; Thomas Assheton Smith, esq.; and Sir John Withers Awdry, knight, to be deputy-lieutenants.

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BY THE LORD-LIEUTENANT OF THE COUNTY OF SOMERSET.—Robert Bartlett Coles, esq.; Robert Clerk, esq.; Norwich Duff, esq.; Arthur Hallam Elton, esq.; Henry Hobhouse, esq.; John Jarrett, esq.; William Henry Powell Gore Langton, esq.; Philip John William Miles, esq.; Gerard John Napier, esq.; George Norman, esq. to be deputy-lieutenants.

BY THE LORD-LIEUTENANT OF THE NORTH RIDING OF YORKSHIRE.—The Right Hon. William Orde Powlett, Lord Bolton; The Right Hon. Philip, Lord De L'Isle and Dudley; Christopher William Carter Chaytor, esq.; Thomas William Lloyd, esq. to be deputy-lieutenants.

BY THE LORD-LIEUTENANT OF THE EAST RIDING OF THE COUNTY OF YORK, AND THE BOROUGH OF KINGSTON-UPON-HULL.—The Hon. Philip Stourton; William Frogat Bethell, esq.; William Raines, esq.; Henry Willoughby, esq.; Charles Langdale, esq. to be deputy-lieutenants.

BY THE LORD LIEUTENANT OF THE COUNTY OF CORNWALL.—Richard Gully Bennet, esq.; Deeble Boger, esq.; Edward Stephens, esq. to be deputy-lieutenants.

BY THE LORD-LIEUTENANT OF THE COUNTY OF SUSSEX.—Charles Crosbie, esq.; Humphry William Freeland, esq.; Thomas Arnold Davis, esq.; Hon. John Jervis Carnegie; William Fisher, esq.; Hasler Hollist, esq.; Colonel Charles Wyndham; William Townley Mitford, esq.; George Olliver, esq.; John Napper, esq.; William Augustus Commerell, esq.; William Borrer, jun. esq.; William Robert Seymour Fitzgerald, esq.; Sir Percy Florence Shelley, bart.; Charles Spencer Serase Dickins, esq.; Sir Harry Dent Goring, bart.; Hugh Wyatt, esq.; David Lyon, esq.; Hugh Ingram, esq.; Sir Isaac Lyon Goldsmid, bart.; William Tanner, esq.; Montagu David Scott, esq.; Philip Salomons, esq.; Major George Kirwan Carr; John Manship Norman, esq.; John George Blencowe, esq.; Hon. Henry Bouverie William Brand; William Henry Blaauw, esq.; Robert Crawfurd, esq.; Hon. Henry Edward Hall Gage; John Graham, esq.; George Darby, esq.; Sir Sotherton Branthwayt Peckham Micklethwait, bart.; William Drew Lucas Shadwell, esq.; George Campion Courthope, esq.; Sir Charles Montolieu Lamb, bart.; John Roberts Dunn, esq.; Viscount Nevill; Manaton Pipon, esq. to be deputy-lieutenants.

COURT PAPERS.

THE PATENT LAW AMENDMENT NEW RULES AND REGULATIONS.—The first set of rules and regulations under the new Act for the passing of letters patent for inventions, and which come into operation on the 1st October, have just been issued under the authority of the Lord Chancellor, Master of the Rolls, and Attorney and Solicitor Generals, the four commissioners under the Act. They set forth for the information of inventors and patentees, that a commodious office is forthwith intended to be provided by the Crown as the Great Seal Patent Office, and that the Commissioners of her Majesty's Treasury have appointed such office as the office also for the purposes of the new Act. All petitions for the grant of letters patent, and all declarations and provisional specifications, are to be left at the commissioners' office, written on paper of twelve inches in length by eight and a half inches in breadth, on each side of each page, in order that they may be bound in the books to be kept in the office. Every provisional protection of an invention allowed by the law officer is to be forthwith advertised in the *London Gazette*, setting forth the name and address of the petitioner, the title of his invention, and date of application. Every invention protected by reason of the deposit of a complete specification, is also to be similarly advertised, and that a complete specification has been deposited. Where a petitioner applying for letters patent after provisional protection, or after deposit of a complete specification, gives notice at the office of his intention to proceed, he is to advertise in like manner, and any persons having an interest in opposing such application are to be at liberty to leave particulars of their objection to the application at the office of the commissioners within twenty-one days after. The charge for office or other copies of documents is to be at the rate of 2d. for every ninety words. Fees of 2*l.* 12s. 6d. to the law officer, of 12s. 6d. to his clerk, and 5s. to his clerk for summons, are to be paid in each of the following cases: by a person opposing a grant of letters patent; by a petitioner on the hearing of the case of opposition; by the petitioner for the hearing previous to the fiat of the law officer allowing a disclaimer on memorandum of alteration in letters patent and specification; by the person opposing the allowance of such disclaimer on the hearing; and of 3*l.* 3s. to the law officer, and 12s. 6d. to his clerk, by the petitioner for the fiat, allowing disclaimer or alteration. All specifications in pursurnce of the conditions of letters patent, and all complete specifications accompanying petitions and declarations before grant of letters patent, are to be filled in the Great Seal Patent Office, written on sheets of parchment 18 inches by 12, with a margin of 1½ inch, but the drawings, if any, may be made on larger sheets of parchment.

NECROLOGY

OF LEGISLATORS, MAGISTRATES, AND LAWYERS.

JOHN CAMDEN NEILD, ESQ.

A FEW days ago died in Chelsea, Mr. John Camden Neild, of Lincoln's-inn, barrister-at-law, aged 72 years. He was possessed of an immense fortune, but was of very eccentric and penurious habits. At the death of his father, thirty years since, he came into possession of about 250,000*l.* which sum had not been touched up to the period of his death. The deceased was never known to wear a great coat. He usually dressed in a blue coat, with metal buttons, which he prohibited being brushed, as it would take off the nap and deteriorate its value. He held considerable landed property in Kent and in Bucks, and was always happy to receive an invitation from his tenantry to visit them, which he occasionally did, often remaining a month at a time, as he was thus enabled to add to his savings. His appearance and manners led strangers to imagine that he was in the lowest verge of penury, and their compassion was excited in his behalf, an instance of which may be mentioned. Just before the introduction of the railway system of travelling, the deceased had been on a visit to some of his estates, and was returning to London, when the coach stopped at Farningham. With the exception of our miser the passengers all retired to the inn. Missing their coach companion, and recollecting his decayed appearance, they conceived he was in distressed circumstances, and accordingly a sum was subscribed, and a bumping glass of brandy and water kindly sent out to the "poor" gentleman, which he thankfully accepted. Many instances of a similar character might be related. A few days before his death the deceased told one of his executors that he had made a most singular will, but as the property was his own he had done as he pleased with it. The executors are the Keeper of the Privy Purse for the time being (Dr. Tattan) and Mr. J. Stevens, of Willesborough. After bequeathing a few very trifling legacies, the deceased has left the whole of his immense fortune to "Her Most Gracious Majesty Queen Victoria, begging her Majesty's most gracious acceptance of the same, for her sole use and benefit, and of her heirs," &c. The property is estimated at upwards of 500,000*l.* For some years past Mr. Neild has scarcely allowed himself the common necessaries and comforts of life, and has left a poor old housekeeper, who was with him for more than twenty-six years, without the smallest provision or acknowledgment for her protracted and far from agreeable or remunerative services.

GUTTA PERCHA TUBING.—Many inquiries having been made as to the Durability of this Tubing, the Gutta Percha Company have pleasure in drawing attention to the following letter, received

FROM MR. C. HACKER, SURVEYOR TO THE DUKE OF BEDFORD:

"Office of Works, Woburn-park, Jan. 10, 1852.

"In answer to your inquiries respecting the Gutta Percha Tubing for Pump Suctions, I find that the water has not affected it in the least, although it will eat lead through in two years; we have adopted it largely, both on account of being cheaper than lead, much easier fixed, and a more perfect job.

"Yours, &c. C. HACKER."

N.B. The Company's Illustrated Circulars, containing Instructions to Plumbers for joining tubes, lining tanks, &c. will be forwarded on the receipt of three postage stamps.

The GUTTA PERCHA COMPANY, PATENTEES, 19, WHARF-ROAD, CITY-ROAD, LONDON.

SHOOTING SEASON.—B. COGSWELL, Gun, Rifle, and Pistol Maker, of 224, Strand, near Temple bar (Established 1776), begs to inform gentlemen his Stock for the Season comprises a large variety of best Guns by the following eminent makers: Purdey, Lancaster, William Moore, Charles Moore, Forsyth, Manton, Boss, Westley Richards, and many others. A pair of very best Guns, by John Manton, in case complete. Joyces and Clays' Sporting Ammunition. Sykes' Shooting Apparatus of every description.

A large Stock of Second-hand Guns, well adapted for keepers, from five guins as each.

A liberal allowance in cash or exchange for superior work of every description.

TO FAMILIES REMOVING.—The BEDFORD PANTECHNICON and STORE-ROOMS (late Messrs. Collard and Collard's Pianoforte Manufactory), 194, Tottenham-court-road, for the WAREHOUSING of FURNITURE, PIANOS, PAINTINGS, and every description of valuable property, are fitted up into separate and well-ventilated compartments, so that each depositor can have his own lock and key, and from the great extent of the premises the Proprietor is enabled to charge much less than similar establishments. Estimates, including packing, removing, &c. free of expense.

For terms and prospectus apply on the premises; or of the Proprietor, Mr. W. TINDEY, Polytechnic Silversmith Establishment, 312, Regent-street. Advances made, if required, on very moderate terms.

RUPTURES.—BY ROYAL LETTERS PATENT.

THE MOC-MAIN LEVER TRUSS is allowed by upwards of 200 Medical Gentlemen to be the most effective invention in the curative treatment of Hernia. The use of a steel spring, so often hurtful in its effects, is here avoided; a soft bandage being worn round the body, while the requisite resisting power is supplied by the Moc-Main Pad and Patent Lever. Fitting with so much ease and closeness, it cannot be detected, and may be worn during sleep. A descriptive circular may be had, and the Truss (which cannot fail to fit) forwarded by post, on the circumference of the body two inches below the hips being sent to the Manufacturer, Mr. WILTE, 229, Piccadilly.

An Umbilical Truss on the same principle.

Every description of Riding Belts, Elastic Stockings, Spinal Corsets, Supporters, and Suspenders, on new and approved principles, with every kind of Surgical Bandages.

THE ROYAL EXHIBITION.—Valuable newly-invented very small powerful WAISTCOAT POCKET GLASS, the size of a walnut, to discern minute objects at a distance of from four to five miles, which is found to be invaluable to SPORTSMEN, GENTLEMEN, and GAMEKEEPERS. Price 1*l.* 1s. sent free.

TELESCOPES.—A new and most important INVENTION in TELESCOPES, possessing such extraordinary powers, that some 3½ inches, with an extra eye-piece, will show distinctly Jupiter's moons, Saturn's ring, and the double Stars. They supersede every other kind, and are of all sizes, for the waistcoat pocket, Shooting, Military purposes, &c.

Opera and Race-course Glasses, with wonderful powers; a minute object can be clearly seen from ten to twelve miles distant.

Invaluable newly-invented preserving Spectacles, suitable and all kinds of Acoustic Instruments for relief of extreme Deafness.

Messrs. S. and B. HOUGHTON, Opticians and Aurists, Albemarle-street, Piccadilly, opposite the York Hotel.

HOBSON, Brothers, tailors, established 1796, beg leave to acquaint their various friends and gentry, that their new PATTERNS in AUTUMN TROUSERS are now most complete; among which will be found some very choice French elastic buckskin for riding-trousers from 23s. to 28s. per pair; also the new Melton mixed cloths for shooting-jackets, 25s.; the Australian lambskin, the best waistcoats that are made for shooting, 13s. Patterns forwarded into the country on application.

HOBSON, Brothers, 4, Finsbury-place South, and 57, Lombard-street, three doors from Messrs. Barclay's, the bankers.

GLENFIELD PATENT STARCH.—Used in the Royal Laundry and Wotherspoon's Steam-made Confections. Sold by all grocers and druggists.

Glasgow—R. WOTHERSPOON and Co. 40, Dunlop-street.

London—WOTHERSPOON and Co. 40, King William-street, City.

ANOTHER CURE of FOUR YEARS' ASTHMA by Dr. LOCOCK'S PULMONIC WAFERS.—MATILDA SHAW, of Harrington, has been severely afflicted with Asthma for four years, so that she could only lie in one position in bed; after taking three boxes of Dr. Locock's Wafers, she is so far cured as to be able to lie in any posture without pain or inconvenience, and can walk any reasonable pace or distance, and carry a load into the bargain. Her testimony is, that for the relief and cure of asthma the Wafers are invaluable. Witness, E. SQUIRE, Bookseller, Louth February 28, 1852.—To singers and public speakers they are invaluable for clearing and strengthening the voice. Price 1s. 1½d. 2s. 9d. and 11s. per box. Sold by all druggists.

Also, Dr. LOCOCK'S ANTIBILIOUS WAFERS, a mild and gentle Aperient Medicine, having a most agreeable taste.

THE YORKSHIRE FIRE and LIFE INSURANCE COMPANY. Established at York, 1824, and empowered by Act of Parliament, Capital, 500,000l.

TRUSTEES.
Ralph Creyke, esq. Rawcliffe Hall.
John Swann, esq. Askham.
Leonard Thompson, esq. Sheriff Hutton Park.

BANKERS.—Messrs. Swann, Clough, and Co. York.
ACTUARY and SECRETARY.—Mr. W. L. Newman, York.

The attention of the public is particularly called to the terms of this Company for LIFE INSURANCES, and to the distinction which is made between male and female lives.

Extract from the Table of Premiums for insuring 100l.

Age next birthday.	A MALE.	A FEMALE.	Age next birthday.	A MALE.	A FEMALE.
	Whole Life Premiums			Whole Life Premiums.	
	£ s. d.	£ s. d.		£ s. d.	£ s. d.
10	1 7 6	1 5 4	46	3 11 6	3 3 8
13	1 9 3	1 7 0	50	4 1 9	3 13 3
16	1 11 3	1 8 10	53	4 11 6	4 2 6
20	1 14 4	1 11 6	56	5 4 0	4 14 0
23	1 17 0	1 13 6	60	6 6 0	5 13 6
26	2 0 3	1 16 2	63	7 4 0	6 0 6
*30	2 5 0	1 19 9	66	8 4 0	7 10 8
33	2 8 6	2 2 10	70	10 0 4	9 7 6
36	2 12 0	2 6 4	73	11 16 2	11 2 6
40	2 16 9	2 12 0	76		13 1 9
43	3 5 3	2 17 2	80		15 12 10

* EXAMPLE. A gentleman whose age does not exceed 30, may insure 1,000l. payable on his decease, for an annual payment of 22l. 10s.; and a lady of the same age can secure the same sum for an annual payment of 19l. 17s. 6d.

Prospectuses, with the rates of premium for the intermediate ages, and every information, may be had at the Head Office in York, or of any of the Agents.

FIRE INSURANCES
are also effected by this Company, on the most moderate terms.

AGENTS.
Edinburgh.—M'Intosh and Ducat, W.S. 68, Great King-street; D. S. Peddie, George-street
Glasgow.—Peter White, 20, Buchanan-street; William Lang, 20, St. Vincent place; John Carmichael, 5, Dixon-street; William Robertson, Tromgate Branch of the City of Glasgow Bank.
Agents are wanted in those towns where no appointments have been made. Applications to be made to Mr. W. L. NEWMAN, Actuary and Secretary, York.

IMPERIAL LIFE INSURANCE COMPANY, 1, Old Broad street, London.

Thomas Newman Hunt, esq. Chairman.
John Horsley Palmer, esq. Deputy Chairman.

A NEW SCALE OF PREMIUMS on Insurances for the whole term of life has recently been adopted, by which a material reduction has been made at all ages below 50 years

FOUR-FIFTHS, or 80 per cent. of the Profits, are assigned to Policies *every fifth year*, and may be applied to increase the sum insured, to an immediate payment in Cash, or to the reduction and ultimate extinction of future premiums

ONE-THIRD of the Premium on Insurances of 500l. and upwards, for the whole term of life, may remain as a debt upon the policy, to be paid off at convenience, by which means 1,000l. may be insured for the present outlay otherwise required for 1,500l

LOANS. The Directors will lend sums of 50l. and upwards on the security of Policies effected with this Company for the whole term of life, when they have acquired an adequate value.

SECURITY. Those who effect Insurances with this Company are protected by its large Subscribed Capital from the risk incurred by Members of Mutual Societies

INSURANCES without participation in Profits may be effected at reduced rates. SAMUEL INGALL, Actuary.

THE LIVERPOOL and LONDON FIRE and LIFE INSURANCE COMPANY. Established 1836.

1 and 2, Water-street, Liverpool; and 20 and 21, Poultry, London.
Capital, Two Millions Sterling. Reserved Fund, 315,000l.
Liability of Proprietors unlimited

Michaelmas Policies should be renewed within fifteen days after the 29th September, the Renewal Receipts are in the hands of the Agents

Fire Insurance at home and abroad on liberal terms.
Life Insurance in all its branches.
Life Policies when taken out under Table No 2, have fixed bonuses guaranteed to them, not contingent on profits, without any liability of partnership to the assured, and at moderate premiums.
Prospectuses, and all information, may be had on application.
BENJAMIN HENDERSON, Resident Secretary.
SWINTON BOULT, Secretary to the Company.

PROMOTER LIFE ASSURANCE and ANNUITY COMPANY, 3, Chatham-place, New Bridge-street, London. Established in 1838. Subscribed capital, 240,000l.

DIRECTORS.

The Right Hon. W. G. Hayter, M.P.	Robert Palk, esq.
Charles Johnston, esq.	John Lewis Prevost, esq.
John Townsend Kemble, esq.	Samuel Smith, esq.
John G. Shaw Lefevre, esq. C.B. F.R.S.	Le Marchant Thomas, esq.

TRUSTEES.
John G. Shaw Lefevre, esq. C.B. F.R.S.; Charles Johnston, esq.; and John Deacon, esq.

The recent investigation into the affairs of this company, shows the following to have been its financial position at the end of last year:—

Value of Assets	£528,659 10 11
Value of Liabilities	249,851 6 5
Surplus	£278,808 4 6

And there has just been declared on the beneficial policies (in addition to former bonuses) a bonus in ready money, varying from 20 to 30 per cent. on the premiums received, which is equivalent to a reversionary addition of from 40 to 60 per cent.

The Office effects assurances on most favourable terms, both on the bonus and non bonus systems.

Tables of rates, and all further particulars, may be obtained at the Office. MICHAEL SAWARD, Secretary.

FAMILY ENDOWMENT LIFE ASSURANCE and ANNUITY SOCIETY, 12, Chatham-place, Blackfriars, London. CAPITAL, 500,000l.

DIRECTORS.
William Butterworth Bayley, esq. Chairman.
John Fuller, esq. Deputy Chairman.

Lewis Burroughs, esq.	Edward Lee, esq.
Robert Bruce Chichester, esq.	Colonel Ouseley
Major Henderson	Major Turner
C. H. Latouche, esq.	Joshua Walker, esq.

The periods of Valuation are now Annual, instead of Septennial. The BONUS for the current year is Twenty per Cent. in reduction of the Premium to parties who have made Five Annual Payments or more on the Profit Scale.
Endowments and Annuities granted as usual.

INDIA BRANCH.
The Society has Branch Establishments at Calcutta, Madras, and Bombay.
*** Tables of Rates, both English and Indian, can be had on application at the office.
JOHN CAZENOVE, Secretary.

LAW FIRE INSURANCE SOCIETY OFFICES, Nos. 5 and 6, Chancery-lane, London. Subscribed Capital, £5,000,000.

TRUSTEES.
The Right Hon. the Earl of Devon.
The Right Hon. Lord Truro.
The Right Hon. the Lord Chief Baron.
The Right Hon. the Lord Justice Knight Bruce.
The Right Hon. Sir John Dodson, Dean of the Arches.
William Baker, esq. late Master in Chancery.
Richard Richards, esq. Master in Chancery.

Insurances expiring at Michaelmas should be renewed within Fifteen days thereafter, at the Offices of the Society, or with any of its Agents throughout the Country.

E. BLAKE BEAL, Secretary.

MUTUAL ASSURANCE WITHOUT PERSONAL LIABILITY. Empowered by special Act of Parliament. Established in 1837.

NATIONAL MERCANTILE (MUTUAL) LIFE ASSURANCE SOCIETY. BONUS TO BE DECLARED IN 1857.

All parties desirous of participating in the bonus to be declared in July 1857, and annually thereafter, must send in their proposals on or before the 30th September instant.

EXAMPLES OF BONUS DECLARED AND PAID.

Number of Policy.	Sum assured.	Date of Policy.	Age on effecting Assurance.	Annual Premium.	Total Amount of Premiums paid.	Amount of Bonus added to Policy.	Date of Death.	Amount paid to the representatives of the deceased.
	£			£ s.	£ s.	£ s.		£ s.
1105	400	April 18, 1843	23	8 1	173 9	67 2	Feb. 7, 1852	467 2

Being, in addition to the sum assured, a return of all the premiums received, with the exception of 5l. 7s.

ANNUAL DIVISION OF PROFITS.

The profits are divided annually amongst those policy-holders who have paid five or more annual premiums, and may be taken by way of reduction of premium, or addition to the sum assured.

JENKIN JONES, Actuary and Secretary.

LONDON and PROVINCIAL JOINT-STOCK LIFE INSURANCE COMPANY. Established 1847. Offices—17, Gracechurch-street.

The Company effect every description of life insurance, both on the participating and non-participating scales

They also lend money on the security of freehold and long leasehold property, reversions (absolute or contingent), life interests, and income legally assignable; and on personal security, accompanied by at least three unquestionable sureties, and a policy or policies of insurance effected with the Company.

If on personal security, the loan is made for periods of from one to five years, repayable by annual, half-yearly, or quarterly instalments

Covenant to use wishing to enfranchise and to convert their Copyhold into Freehold Property, under the powers given by the Act of Parliament passed last session, may obtain loans for that purpose.

In all cases of Loan the Interest is 5 per cent. per annum, and the insurance must be effected for at least double the amount borrowed. C. INGALL, Actuary and Secretary

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Act for Promoting Public Health
Act for further Amendment of Administration of Criminal Law.
Money Order Department of Post Office Act.
Regulation of Petty Bag and Common Law Side of Court of Chancery.
Police Acts Amendment Act.
Removal of Doubts concerning Transportation of Offenders Act.
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Extension of Summary Jurisdiction in Larceny Act.
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The volume for 1849 is in the press, and it is intended to issue the previous Statutes uniform with these, but excluding all the repealed Statutes and parts of Statutes, and adding Notes of all the Cases decided upon the construction of the Statutes contained in them, thus presenting the existing law with the judicial interpretation of it. Thus, the volume for 1849 will contain the New Bankruptcy Act, with all the Cases decided upon its construction.

The following Statutes will be given entire in the volume for 1852:—

Commons Inclosure Act.	Differential Dues Act.
Municipal Corporations Acts Amendment Act.	Property of Lunatics Act.
Protection of Inventions Act, 1851 (Extension of Term).	Schools Sites Acts Extension Act.
Copyright Amendment Act.	Statute Law Improvement Act.
Poor Relief Continuance Act.	Trustees Act Extension Act.
Loan Societies Act Amendment.	Pharmacy Act.
Ecclesiastical Jurisdiction Act.	Corrupt Practices at Elections.
Stock-in-Trade Act.	Excise Summary Proceedings.
Application of Highway Rates to Turnpike Roads Act.	Woods, Forests, and Land Revenues Act.
Property Tax Continuance Act.	Metropolitan Sewers Act.
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KING'S COLLEGE, LONDON.—LECTURES on the COMMON LAW PROCEDURE ACT, 1852.—The effect of the above statute on Common Law Practice will be explained to Students in evening lectures (open to non members of the College) to be given next Michaelmas Term by the Professor of English Law and Jurisprudence.
Further particulars may be obtained from J W CUNNINGHAM Esq Secretary of the College
Sept. 1852 R W JELF, D D Principal

WARWICKSHIRE SESSIONS.—Notice is hereby given that the General Quarter Sessions of the Peace for the Warwick Division of the said County will be held at Warwick, on Monday the 18th day of October next at Eleven o'clock in the morning and will continue from day to day until the business is disposed of, the Court will meet each morning at ten o'clock in the forenoon for the purpose of proceeding with the trial of prisoners and at two o'clock the trial of prisoners will be proceeded with On Tuesday 19th at ten o'clock in the morning motions and appeals will be heard
The said Quarter Sessions will be held in adjournment for the County Division of the said County at Coventry on Monday, the 25th day of October, at eleven o'clock in the morning, and as soon as the preliminary business is disposed of, the Court will hear motions and appeals. The trial of prisoners will commence in St Mary's Hall as soon as any bills are found and returned by the Grand Jury W O HUNT Clerk of the Peace.
Shakespeare Avon, Sept 29, 1852

SIXTH YEAR

On the 7th inst. will be published (for the proprietors),
THE LAWYER'S COMPANION for 1853, containing a list of the English Bar the Judges Barristers, and the Country Attorneys, with their town agents, with the appointments and offices held by the Country Attorneys, as corrected by themselves forming a complete London and Provincial Law Directory containing a digest of the practical statutes of last session, including all the Acts altering the procedure in the Courts of Common Law and Chancery Table of the Stamp Duties with authentic notes of cases recently reported on practical points and an Alphabetical Index to the Statutes from 1st Wm 4 to the present time Edited by W DINNISON, Esq Barrister at-Law of the Middle Temple, Editor of the 'Common Law Procedure Act.

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W MAXWELL 32 Bell yard Lincoln's-inn.

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DIARY OF SALES BY AUCTION, DURING THE NEXT WEEK,

ADVERTISED IN THE "LAW TIMES."

DAY.	PLACE.	AUCTIONEER.	WHEN ADVERTISED.	PROPERTY.
Thursday, Oct. 7.	Mart.	Davis and Vigers.	Oct. 2.	Freehold Building Land, Staines, Middlesex.
Friday, Oct. 8.	Chard Arms Hotel, Chard.	Warr, Richard.	Sept. 11.	Freehold Estate, Stockland, near Honiton.
Ibid.	Mart.	Hoggart & Norton.	Aug. 21.	Cottenham Park Estate, Wimbledon, Surrey.

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

COMMISSIONS SIGNED BY LORDS LIEUTENANT.

CARNARVON.—James Edwards, esq.; John Whitehead, Greaves, esq.; the Rev. John Jones; John MacDonald, esq.; Nathaniel Matthew, esq.; the Rev. Morgan Morgan; Robert Owen Mouldale, esq.; the Rev. Thomas Lloyd Owen; Charles John Sampson, esq.; the Rev. Thomas Norris Williams; John Vincent Hawkesley Williams, esq.; Cyril Williams, esq.; and Patrick Ogilvie Carnegie, esq. to be Deputy-Lieutenants.

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EAST RIDING OF YORK, AND BOROUGH OF KINGSTON-UPON HULL.—The Hon. Arthur Duncombe; Henry Boyntun, esq.; Edward Horner Raynard, esq.; Edward Clough Taylor, esq.; Henry Estoteville Grimston, esq.; Thomas Henry Preston, esq.; Marmaduke Jerard Grimston, esq.; Frederick Augustus Talbot Clifford Constable, esq. to be Deputy-Lieutenants.

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JOURNAL OF PROPERTY.

MESSRS. FAREBROTHER, CLARK, AND LYE'S SALE AT GARRAWAY'S, ON THURSDAY, SEPT. 30.—The Arley estate, situate in the parish of Arly, in the county of Stafford, consisting of the manor of Arley, with its fines, rents, heriots, &c.; the noble castle of Arley, with its battlemented towers, the seat of the late Earl of Mountnorris, deceased, and extensive undulating and picturesque pleasure grounds, park, and woods, through which the river Severn flows; also Arley Cottage, with its highly ornamental pleasure grounds, the beautiful residence of the Viscountess Valentia; eighteen compact farms, with suitable buildings, embracing together about 2,640 acres of arable, meadow, pasture, orchard and wood lands, the principal part of which is freehold, and the remainder copyhold of inheritance of the manor of Arley, situate four miles from Bewdley, six from Kidderminster, and nine from Bridgenorth, all market and borough towns; the whole of the estimated annual value of upwards of 3,000*l.* The above highly valuable and important estate was offered for sale in one lot, and sold for the sum of 70,000*l.* Valuable fee farm rents, amounting to 26*l.* 7*s.* 7*d.* issuing out of estates in the county of Durham and Lincoln, realised 4,750*l.* The next presentation (subject to the life of the incumbent, aged 67 years in November next) to the desirable rectory of Pewsey, with excellent parsonage-house, garden, &c.; also 124 acres of productive glebe land, with farming buildings, and the commuted rent-charge, in lieu of tithes, of 1,163*l.* 0*s.* 7*d.* per annum; knocked down at 9,000*l.*

KIRBY HILL ESTATE.—The manor of Kirby Hill and estate, comprising near 1,000 acres of land, the property of Lord Wellesley, was, on Thursday, the 23rd ult. sold by auction, by Messrs. Morley, of London, at the George Hotel, in York, for the sum of 54,200*l.* on the bidding by Mr. Richardson, solicitor, Knaresborough, on behalf of the Misses Rawson, of Nidd Hall.—*Leeds Mercury.*

MONEY MARKET.

ENGLISH FUNDS.	Sat.	Mon.	Tues.	Wed.	Thurs.	Fri.
Bank Stock	..	..	228†	..	..	..
3 ℘ Cent. Reduced Annuities	..	..	..	..	..	..
3 ℘ Cent. Consols Annuities	100½	100	100½	100½	100	100½
Consols for Account	100½	100½	100½	100½	100½	100½
New 5 ℘ Cent. Annuities	..	..	..	..	..	..
New 3½ ℘ Cent. Annuities	..	..	..	..	..	..
Long Annu. (exp. Jan. 5, 1860)	..	..	..	..	..	..
Do. 30 yrs. (exp. Oct. 10, 1859)	..	..	..	..	..	6
Do. 30 yrs. (exp. Jan. 5, 1860)	..	6¼	..	..	..	6¼
India Stock	..	..	277	..	..	..
India Bonds (1,000*l.*)	87	87	87	..	..	83*
Do. do. (under 1,000*l.*)	84	87	..	..	..	85*
South Sea Stock	..	..	..	111¼	..	..
Do. do. Old Annuities	..	..	..	..	..	..
Exchequer Bills, 1,000*l.* June	70*	67*	71*	74*	70*	70*
Do. do. 500*l.* June	74*	67*	71*	..	72*	70*
Do. do. Small, June	70*	67*	71*	67*	72*	70*

* Premium. † For account.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

MILWARD.—On Sunday, the 26th ult. at Lechlade-manor, Gloucestershire, the wife of George Milward, esq. barrister-at-law, of a son.

MARRIAGES.

POWELL, Henry George, of East-street, Walworth, eldest son of Mr. Charles Powell, of Vassall-road, Brixton, to Elizabeth Ann, eldest daughter of Mr. Thomas Bilton, solicitor, of Brixton-hill, on the 7th ult. at St. John's, Hackney.

BOULTON, Henry John, esq. son of the Hon. H. J. Boulton, of Toronto, late chief justice of Newfoundland, to Charlotte, daughter of Henry Rudyard, esq. of Colne-house, Iver, Buckinghamshire, on the 23rd ult. at Iver.

DEUCOT, M. Eugene, of London and Paris, to Sidney Jane Carrighan, eldest daughter of the late Terentius Carrighan, solicitor, on the 22nd ult. at St. George's, Hanover-square.

PEACHY, Francis, esq. solicitor, George-street, Hanover-square, to Elizabeth, eldest daughter of William Walker, esq. of Margaret-street, Cavendish-square, on the 23rd ult. at St. Andrew's, Well-street.

PETTY, Rev. T. E. M.A. of Wellhouse, Bardsea, to Agnes, eldest daughter of H. Remington, esq. solicitor, Ulverstone, on the 22nd ult. at the parish church of Urswick.

DEATHS.

HASTINGS, Mr. Robert, of Casey-street, on the 23rd ult. at Broadland's-farm, near Romsey, aged 75.

WILMOT, Mrs. Elizabeth, daughter of Sir Robert Wilmot, first Baronet, of Osmaston, county of Derby, on the 26th ult. at her residence, Friar Gate, aged 86.

THE NEW CHAIRMAN OF COMMITTEES.—Amongst the first duties of the new House of Commons will be that of appointing its various officers. We are not about to speculate upon the way in which this routine business will be got through, but we cannot refrain from an observation upon one appointment which the initiated say, "looms in the future." We refer to the anticipated election of the Right Hon. M. T. Baines to the post left vacant by Mr. Bernal. Mr. Baines has, indeed, been named for a higher office, and there are many well-qualified judges who believe him destined yet to fill the office of Speaker; but meanwhile his name is mentioned in connection with the chairmanship, to which we unfeignedly hope he will be elected. Mr. Baines's qualifications are in all respects such as would guarantee an efficient public service. In everything relating to precedents and questions of form, he is up to the mark; whilst the urbanity of his manners, and his general ability, are all that could be desired. We hope that the mention of Mr. Baines's name is something more than an *on dit*; or, if at present nothing more, we shall count ourselves as only discharging a public obligation by seriously recommending an appointment that could not fail to give perfect satisfaction to all parties.

On Thursday week, Richard Sill, the attorney, was brought up for judgment. He has been endeavouring since his conviction to prove by affidavits that he is innocent; but has not yet succeeded. He made a long speech on Thursday, asserting that when a motion should be made to strike him off the rolls, he should have an opportunity of proving that he had been convicted wrongly. The Recorder said he fully concurred in the verdict of the jury; and sentenced Sill to be imprisoned for two years, with hard labour.

Just published.

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THE EDINBURGH REVIEW, No. CXCVI will be published on WEDNESDAY next, the 13th inst.
CONTENTS
I JOSEPH DE MAISTRE
II. LIFE AND LETTERS OF MR JUSTICE STORY
III JAPAN
IV TRAITS OF THE IRISH PEASANTRY CARLETON
V CHOLERA AND QUARANTINE
VI REPRESENTATIVE REFORM
VII MITFORD PAUPERS MARIE DE MEDICI
VIII ARTILLERY AND SHIPS OF WAR—SIR H. DOUGLAS AND COLONEL CHESNEY
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DIARY OF SALES BY AUCTION, DURING THE NEXT WEEK,

ADVERTISED IN THE "LAW TIMES."

DAY.	PLACE.	AUCTIONEER.	WHEN ADVERTISED.	PROPERTY.
Thursday, Oct. 14.	Mart.	Hewitt.	Sept. 11.	Freehold Estate, near South Molton, Devon.
Ibid.	Ibid.	Moore, C. C.	Oct. 9.	Property at Essex and in Holborn.
Ibid.	Ibid.	Ditto.	Ibid.	Freehold Residence at Limehouse.
Ibid.	Ibid.	Ditto.	Ibid.	Freehold, &c. Investments, east end of London.
Ibid.	Ibid.	Ditto.	Ibid.	Secure Investment in Middlesex and Essex.
Ibid.	Ibid.	Ditto.	Ibid.	Valuable Leasehold Estate, Camberwell.
Friday, Oct. 15.	Wynstay Arms, Wrexham.	Johnson, R. W.	Aug. 21 and Sept. 25.	Valuable Estate called Pen-y-lan, three miles from the Ruabon Railway Station.

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

COMMISSIONS SIGNED BY LORDS LIEUTENANT.

PALATINE OF LANCASTER.—Sir James Phillips Kay Shuttleworth, bart.; and Samuel Henry Thompson, esq. to be Deputy-Lieutenants.

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EAST RIDING OF YORK AND BOROUGH OF KINGSTON-UPON-HULL.—Edward Horner Reynard, esq. to be Deputy-Lieutenant.

DENBIGH.—George Hammond Whalley, esq.; and Robert Owen Mouledale, esq. to be Deputy-Lieutenant.

ANGLESEY.—The Right Hon. Charles Crespigny, Lord Vivian; Thomas Williams, esq.; Robert Briscoe Owen, esq. M.D.; Salis Schwabe, esq.; Hugh Roberts, esq.; Henry Pritchard, esq.; Norris Matthew Goddard, esq.; Stephen Roose, esq.; Charles Stanhope Jones, esq.; John Priestley, esq.; Owen Owen, esq.; Rev. John Wynne Jones, clerk; Rev. William Williams, clerk; Rev. Charles Williams, clerk; Rev. William James Poole, clerk; Rev. Henry Owen, clerk; and Rev. Hugh Jones, clerk, D.D. to be Deputy-Lieutenants.

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NORTH RIDING OF YORKSHIRE.—William Joseph Coltman, esq.; and Simon Thomas Scroop, jun. esq. to be Deputy-Lieutenants.

The Right Hon. Sir John Jervis, knt. has appointed John Benbow Hebbert, of Birmingham, in the county of Warwick, gent. to be one of the perpetual commissioners for taking the acknowledgments of deeds to be executed by married women in and for the county of Warwick, also in and for the counties of Stafford and Worcester.

COURT PAPERS.

COURT OF CHANCERY.—On Thursday notice was given that Vice-Chancellor Sir R. Kindersley will attend on Tuesday next, the 12th inst. at the Pavilion Hotel, Folkestone, to hear motions and other urgent matters. Previous notice is to be given of the intended applications.

PROCLAMATION OF OUTLAWRY.—On Thursday, at the Sheriffs' Court, Red Lion-square, the following persons were called upon to surrender at the suit of their respective creditors, or to be severally outlawed:—J. D. Hinxman, G. Chitty, G. A. Young, Edward H. Lane, Sir John Malcolm, bart. William Thos. Thornton, William Burt, F. K. Manning, George Spiller, John Harman, Frederick Angerstein, E. Thos. Dax, Edward Addison, Algernon Massingherd, Henry Bradley, Peter B. F. C. Gilliess, and H. H. Griffin.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

BROOKBANK.—On the 3rd inst. at Adelaide-cottage, Haverstock-hill, Hampstead, the wife of James Brookbank, esq. barrister-at-law, of a daughter.

CRIPPS.—On the 3rd inst. at West Ilsley, Berks, the wife of Henry William Cripps, esq. barrister-at-law, of a son.

LEWIS.—On the 4th inst. the wife of Charles E. Lewis, esq. of New Boswell-court, Lincoln's-inn, solicitor, of twin sons, both dead.

MARRIAGES.

EATON, William, esq. solicitor, Liverpool, to Maria, daughter of the late William Geddes, esq. of Muirost, Clackmannanshire, at St. Paul's Church, Warrington, by the Rev. George Eaton, on the 6th inst.

ENELL, J. esq. solicitor, of Hackney, to Wilhelmina Whyte, eldest daughter of Mr. J. B. Whyte, of East Smithfield, on the 5th inst. at St. Jude's Church, Whitechapel.

HODGSON, Charles Harris, esq. solicitor, New-inn, London, to Eleanor Johanna, eldest daughter of Stephen Adcock, esq. solicitor, Cambridge, and of Trumpington, on the 4th inst. at Trumpington, Cambridgeshire.

TAYLOR, John H. esq. solicitor, Bowness, Windermere, to Catherine, youngest daughter of George Litton, esq. of Warrington, and niece of Miss Robinson, of Penrith, on the 6th inst. at the parish church, Penrith.

DEATHS.

MURPHY, Ellen, third daughter of Joseph John Murphy, esq. Master in Chancery, Ireland, on the 4th inst. aged 16.

SAUNDERS, James, esq. solicitor, Manchester, on the 2nd inst. at his residence, Tamworth-house, Burnage, aged 46.

SOMERS, Earl of, at his residence in Grosvenor-place, aged 64.

TURNBULL, Peter Evan, esq. F.R.S. and F.S.A. at Brighton, on the 29th ult.

CORRESPONDENCE.

THE RECENT REFORMS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Such, as stated in your leading article (pages 13 and 14) of the 2nd October, may be the "results of the recent Law Reforms"—there may be an increase of business which will produce increased emolument to the attorney. Should this be the case, there will be increased labour and responsibility, and he will require additional assistance which he must remunerate; unless, therefore, the attorney has hitherto been extravagantly paid, there ought to be a correspondent increase in the scale of charges; and as independently of the necessity for alteration in the attorney's charges, created by the changes in the practice above referred to, the system or mode of charging in attorneys' bills has long been felt unsatisfactory both by client and attorney, the present will be an excellent opportunity for effecting the desired improvement, and as your agitating the question in your widely circulated journal will be the means of eliciting opinions upon this important topic, and will assist our law societies, through which the object must be attained, I shall be glad if you can find space for this introductory letter on the subject.

Not only will the recent changes render necessary an alteration in the scale of charges as between attorney and client, but a new arrangement will likewise be required as between attorney and agent; it seems to me quite out of the question that the principle hitherto acted upon can be longer continued; in the olden time, when special originals abounded—when the great majority of actions at Common Law required special bail and justification—when there were half-a-dozen formal counts in every declaration, and upon a marine policy there were as many actions as there were underwriters, and the same could not be consolidated until after declaration filed—at almost every stage of the proceeding a motion of course, and when the end of the action only gave rise to a writ of error, it might be very well for the London agent to do all the work, and to divide the profits with his principal in the country; but that this should have been continued to be done for the last twenty years has been to me at least a matter of surprise. One consequence has been, to throw agency business into a few large offices, the profits being so exceedingly small, that unless there was a great deal of business it was not worth having. A few years ago there were many *fire* insurance offices; but for the above reason—small profits and large risks—they have fallen away; and though the business of fire insurance has increased a hundredfold, it is all swallowed up by a few leviathan offices.

"The labourer is worthy of his hire:" and as in a country like England, of great wealth and business, there is no more useful or necessary man than the attorney and solicitor, and upon his honour, respectability, and industry the security, comfort, and happiness of all are in no small degree dependent, it is most wise and politic that this labourer should be *properly* paid; and beyond a fair and reasonable remuneration, and the confidence and good opinion of his clients, no respectable professional man desires anything.

I am, Sir, yours, &c.

Oct. 5, 1852. A SUBSCRIBER.

LIFE ASSURANCE.

TO THE EDITOR OF THE LAW TIMES.

SIR,—In the *Times* of Saturday last I observe an advertisement from the Provident Life Office (one of the old ones), containing the following paragraph:

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I am, Sir, yours, &c.

Oct. 4, 1852. ANTI-HUMBUG.

ARTICLED CLERKS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—A few weeks ago, you inserted in your valuable paper a letter of mine, wherein I made a few remarks on the beneficial results that would accrue to the law students generally throughout the kingdom, from the formation of what I termed a "Mutual Corresponding Society." My proposition was, that essays should be written by the various members, and the best of such should be inserted in a magazine published for the purpose. This work should also contain essays on various branches of the law, under the heads Conveyancing, &c. &c. and they should be written in a style void of all the technicalities which so usually embarrass the young clerk on first entering upon his legal studies. Advice on choice of books, &c. should here be introduced, and I have no doubt but that the advantages of such a work would be very great as being rather under the control of articled clerks they would choose only such matter as would really be beneficial to them. They would thus have a periodical which might be truely called *The Law Students' Magazine*, a desideratum which has hitherto remained unsupplied. I propose that this work should be published quarterly, or otherwise, as might be thought best, and therefore any advice which you can give, as well as the suggestions of other articled clerks, will be thankfully received by

A LAW STUDENT.

PROFESSIONAL PROTECTION.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Professional men are dependent upon health for income. If they become incapacitated by disease or age, they lose their livelihood when they most want help. I have lately discovered a means of protecting myself against this contingency, to which all of us who work with the head are so liable. I learned accidentally that the "Law Property Assurance Office" had introduced such a form of assurance, and on application I found that by paying the trifling sum of only *four pounds* a year, I could obtain an annuity of 100*l.* a year for the rest of my life, should I at any time become incapacitated for business by disease or old age. I gladly availed myself of the protection thus cheaply bought, and it has been such a source of satisfaction to myself that I cannot refrain from making it known to my brethren in the law, that they may make themselves equally secure against the consequences of age or sickness.

Asking a corner in your excellent journal for this communication,

I am, Sir, yours, &c.

7th Oct. 1852. ONE, &c.

MONEY MARKET.

ENGLISH FUNDS.	Sat.	Mon.	Tues.	Wed.	Thurs.	Fri.
Bank Stock	..	..	220†	..	..	..
3 ℘ Cent. Reduced Annuities	..	..	..	..	..	..
3 ℘ Cent. Consols Annuities	100½	100	100½	100½	100	100½
Consols for Account	100½	100½	100½	100½	100½	100½
New 5 ℘ Cent. Annuities	..	..	..	..	..	..
New 3½ ℘ Cent. Annuities	..	..	..	..	..	..
Long Annu. (exp. Jan. 5, 1860)	..	..	..	..	..	..
Do. 30 yrs. (exp. Oct. 10, 1859)	..	..	..	..	..	6
Do. 30 yrs. (exp. Jan. 5, 1860)	..	6	..	..	..	..
India Stock	..	..	277	..	..	..
India Bonds (1,000*l.*)	67	67	67	..	..	..
Do. do. (under 1,000*l.*)	66	67	..	..	..	65*
South Sea Stock	..	..	..	311½	..	..
Do. do. Old Annuities	..	..	..	..	..	..
Exchequer Bills, 1,000*l.* June	70*	69*	71*	74*	70*	..
Do. do. 500*l.* June	74*	69*	71*	..	73*	..
Do. do. Small, June	70*	69*	71*	69*	73*	..

* Premium. † For account.

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William Baker, esq. late Master in Chancery.
Richard Richards, esq. Master in Chancery.

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R. BLAKE BEAL, Secretary.

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Age next birthday.	A MALE. Whole Life Premiums	A FEMALE. Whole Life Premiums	Age next birthday.	A MALE. Whole Life Premiums	A FEMALE. Whole Life Premiums
	£ s. d.	£ s. d.		£ s. d.	£ s. d.
10	1 7 6	1 5 4	46	3 11 6	3 3 2
15	1 9 2	1 7 0	50	4 1 9	3 13 3
16	1 11 3	1 8 10	53	4 11 6	4 3 8
20	1 14 4	1 11 8	55	5 4 0	4 14 0
22	1 17 0	1 13 8	60	6 6 0	5 12 6
25	2 0 2	1 16 2	62	7 4 0	6 3 6
*30	2 5 0	1 19 0	66	8 4 0	7 10 6
35	2 8 6	2 2 10	70	10 0 4	9 7 6
38	2 13 0	2 8 4	72	11 16 2	11 2 6
40	2 16 9	2 12 0	76		13 1 9
43	3 3 3	2 17 3	80		15 12 10

* EXAMPLE.—A gentleman whose age does not exceed 30, may insure 1,000l. payable on his decease, for an annual payment of 22l. 10s.; and a lady of the same age can secure the same sum for an annual payment of 19l. 17s. 6d.

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Poor Relief Act Continuance Act.	Enfranchisement of Copyholds.
Loan Societies Act Amendment	County Courts Improvement Act.
Ecclesiastical Jurisdiction Act.	Trustees Act Extension Act.
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105. Form of a post obit bond.
106. Defeasance of a warrant of attorney to accompany the foregoing security.
107. Post obit bond in consideration of the release of a debt.
108. Memorandum of the delivery of a post obit bond, sealed up in an envelope, into the custody of a depositary, to be kept so sealed up during the lifetime of the party upon whose decease it is to become payable, unless sooner redeemed.
109. Covenant from bankers not to sue sureties on their bond to secure the balance of the banking account of the principal, until the latter, or his executor, shall omit to pay the same after three calendar months' notice
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6. Writ of Summons.
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8. Affidavit of Service of Writ.
9. Affidavit of Attempts at Service to obtain Leave to proceed.
10. Affidavit of no Appearance being entered.
11. Appearance Pleas, on parchment.
12. Declaration in Debt (under 20l.).
13. Declaration in Assumpsit (under 20l.).
14. Declaration in Debt, common Counts, Account stated, &c.
15. Declaration on Promises, Common counts, Accounts stated, &c
16. Particulars of Demand.
17. Notice of Declaration, foolscap, half sheets, with Particulars, 4to. with fly leaf, without Particulars.
18. Notice to produce Documents.
19. Notice to inspect and admit, etc.
20. Notice to inspect and admit, foolscap.
21. Issue, where Questions are raised of Consent without Pleading.
22. Notice of Trial in London.
23. Notice of Trial for Middlesex.
23 b. Notice of Trial at the Assizes.
23 c. Notice of Trial and of Assessment of Damages.
23 d. Notice of Trial where several Defendants.
23 e. Notice of Trial where several Issues.
23 f. Notice of Trial and Assessment on Breaches in Debt on Bond.
23. Notice of Continuance.
24. Notice of Countermand.
25. Notice of Execution of Writ of Inquiry.
26. Affidavit of Service and Attendance on Summons.
27. Consent to Judge's Order.
28. Subpœna ad Test.; Parchment and Paper.
29. Subpœna before Sheriff; Parchment and Paper.
30. Subpœna duces tecum for the Assizes.
31. Subpœna duces tecum "before the Sheriff" Parchment and Paper.
32. Cognovit for Payment of Debt.
33. Ditto by Instalments.
34. Warrant of Attorney to confess Judgment.
35. Notice to Quit where Tenancy uncertain.
36. Notice to Quit, where Tenancy certain.
37. Warrant of Distress.
38. Notice and Inventory of Distress.
39. Notice of Intention to Distrain for Arrears of Tithe Rent-charge.
40. Notice by Agent of Intention to Distrain for ditto.
41. Warrant of Distress.
42. Writ of Ejectment.
43. Writ of Ejectment, Landlord against Tenant holding over.

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"These memoirs abound in matter both entertaining and instructive, and may be read with great advantage."—*Morning Post.*
"Contains much information respecting a man of no common order, drawn from authentic sources."—*Daily News.*
RICHARD BENTLEY (Publisher in Ordinary to Her Majesty).

DIARY OF SALES BY AUCTION, DURING THE NEXT WEEK,

ADVERTISED IN THE "LAW TIMES."

DAY.	PLACE.	AUCTIONEER.	WHEN ADVERTISED.	PROPERTY.
Thursday, Oct. 28	Garraway's	F. Godwin.	Oct. 16.	15-20ths of Original Share in Putney-bridge.
Ibid.	Ibid.	Ditto.	Ibid.	Two 8-room Houses in Sydney st. Fulham-rd.
Ibid.	Mart.	D. Smith and Son.	Ibid.	Several Freehold Farms near Dartmouth.
Ibid.	Ibid.	Ditto.	Ibid.	Estate of Gnaton, in the vicinity of Plymouth.

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

COMMISSIONS SIGNED BY LORDS LIEUTENANT.

STAFFORD.—The Hon. Augustus Henry Vernon; Charles Holland, doctor of physic; Herbert Taylor, doctor of physic; James Bagnall, esq; Michael Thomas Bass, esq.; John Bolt, esq.; Morton Edward Buller, esq.; Richard Croft Chawner, esq.; William Davenport, esq.; Charles Forster, esq.; Lorenzo Kirkpatrick Hall, esq; Thomas Percival Haywood, esq.; Hugo Francis Meynell Lorraine, esq.; Edward Kinnersly, esq.; Rowland Malkarrey, esq.; Tonman Mosley, esq.; Robert John Peel, esq.; Robert Philips, esq.; John William Philips, esq; Thomas Thorneycroft, esq; Thomas Fletcher Tweedow, esq; John Ayshford Wise, esq.; Thomas Edward Whitby, esq.; Philip Williams, esq.; and Francis Whitgreave, esq. to be Deputy-Lieutenants.

MONTGOMERY.—Thomas Browne Browne, esq; John Davies Corrie, esq.; John James Turner, esq.; John Offley Crewe Reade, esq.; Charles Watkin Williams Wynn, esq.; and Robert Davies Jones, esq. to be Deputy-Lieutenants.

GLOUCESTER AND BRISTOL.—George Seamosar, gun, esq. to be Deputy-Lieutenant.

YORK (WEST RIDING AND CITY).—Barnard Hague, esq.; Thomas Price, esq.; George William Tireman, esq.; and Edward Tew, esq to be Deputy-Lieutenants.

GLAMORGAN.—Charles Crofts Williams, esq. to be Deputy-Lieutenant.

SUFFOLK.—Sir Fitzroy Kelly, Knight, to be Deputy-Lieutenant.

STAFFORD.—The Honourable William Walter Legge, commonly called Viscount Lewisham; the Honourable Arthur Wrottesley; and Samuel Pole Shawe, esq. to be Deputy-Lieutenants.

CAMBRIDGE.—Robert Jones Adcane, esq.; Edward Ball, esq. M.P.; Alexander Cotton, esq.; John Edward Fordham, esq.; Major Charles Hall; Edward Hicks, esq.; Joseph Marshall, esq.; George Onslow Newton, esq.; Christopher Robert Pemberton, esq.; Joseph Sidney Thorp, esq.; Robert Gregory Wale, esq.; Henry Woodruff, esq.; Bisco Hill Wortham, esq.; Stanlake Ricketts Batson, esq.; Lloyd Salisbury Bacendale, esq.; Thomas Bowker, esq.; James Cropley, esq.; John Dobede, esq; Rowland Morris Fawcett, esq.; Thomas John Fiddian, esq.; Frederick Daniel Fryer, esq.; John Dunn Gardner, esq.; William Goddard Jackson, esq.; Henry Martin, esq.; Richard Simpson, esq.; Charles Smith, esq.; John Taylor, esq.; and John Vipan, esq. to be Deputy-Lieutenants.

CUMBERLAND.—George Head Head, esq. to be Deputy-Lieutenant.

WORCESTER.—Thomas Clowes, esq.; Edward John Beckett Marriott, esq.; Theodore Howard Galton, esq.; Joseph Yorke, esq.; Edmund Anthony Dudley Lechmere, esq.; James Palmer Woodward, esq.; Walter Chamberlain Hemming, esq.; Joseph Bennitt, esq; Henry Honeyfray, esq.; John Deakin Onley, esq.; Martin Ricketts, esq. to be Deputy-Lieutenants.

PALATINE OF LANCASTER.—John Fletcher, esq; Robert Andrews, esq; John Thomas Walshman Aspinall, to be Deputy-Lieutenant.

At the Petty Sessions, held at Worthing, on the 13th inst. Mr. William Foard Tribe was appointed Clerk to the Magistrates for the Worthing Division of Bramber Rape, in the room of Mr. Wm. Tribe, resigned.

COURT PAPERS.

THE BANKRUPTCY COMMISSIONERS.

THE following circular has been addressed by Lord St. Leonard's to the Bankruptcy Commissioners:—

"The Lord Chancellor wishes to direct the attention of the Commissioners of the Court of Bankruptcy to the provision in the 10th section of the Bankrupt Law Consolidation Act, which requires the Court to sit daily for the despatch of business. This involves the necessity, on the part of every commissioner, of residence within a convenient distance of the court; and the Lord Chancellor trusts that every commissioner will comply with this condition.

"The Lord Chancellor also wishes to draw the attention of the commissioners to the power given by the 11th section to the Lord Chancellor, whenever it shall appear to him to be expedient, to order any commissioner to hold sittings at such places within the district as the Lord Chancellor may think fit. This is a power which cannot be exercised without the aid of the commissioners themselves; the Lord Chancellor desires, therefore, that whenever a commissioner is of opinion that unnecessary delay, expense, or inconvenience will be sustained by creditors unless sittings are held at some other than the usual place within the district, such commissioner will apply to the Lord Chancellor for power to hold such sittings; and as it is inexpedient that any such sittings should be held without sufficient cause, the Lord Chancellor directs that every such application shall state the grounds upon which it is made.

"Sept. 25. "ST. LEONARD'S, C."

Court of Queen's Bench.

Sittings at Nisi Prius in Middlesex and London, before the Right Hon. LORD CAMPBELL, in and after Michaelmas Term, 1852.

MIDDLESEX.—IN TERM.

1st sitting (at 10 o'clock), Wednesday, Nov. 3.
Any Common Jury cause may be taken at this sitting.
2nd sitting (at 10 o'clock), Monday, Nov. 15.
Any Common Jury cause may be taken at this sitting.
3rd sitting (at 10 o'clock), Saturday, Nov. 20, for undefended causes only.

SITTINGS AFTER TERM.

Friday, Nov. 26.

LONDON.—IN TERM.

1st sitting (at 10 o'clock), Thursday, Nov. 11
2nd sitting (at 10 o'clock), Thursday, Nov. 18.
Any Common Jury cause may be taken in Term.

SITTINGS AFTER TERM.

Saturday, Nov. 27, to adjourn only.

The Court will sit at half past nine o'clock on every day after Term.

The causes in the list for each of the above sitting days in Term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

Court of Common Bench.

Sittings at Nisi Prius in Middlesex and London, before Sir JOHN JERVIS, Knt. in and after Michaelmas Term, 1852.

MIDDLESEX.—IN TERM.

Monday, Nov. 8 | Monday, Nov. 15.

SITTINGS AFTER TERM.

Friday, Nov. 26.

LONDON.—IN TERM.

Thursday, Nov. 11 | Thursday, Nov. 18.

SITTINGS AFTER TERM.

Saturday, Nov. 27.

N.B. The Court will sit at ten o'clock in the forenoon on each of the days in Term, and at half-past nine precisely on each of the days after Term.

The causes in the list for each of the above sitting days in Term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

On Saturday, the 27th of Nov. in London, no causes will be tried, but the Court will adjourn to a future day.

The Office of the Associate to the Lord Chief Justice's Chamber, Rolls-garden, Chancery-lane. Hours of attendance during Term and sittings after Term are from eleven to six.

Exchequer of Pleas.

Sittings at Nisi Prius, in Middlesex and London, before the Right Hon. Sir FREDERICK POLLOCK, Knt. in and after Michaelmas Term, 1852.

MIDDLESEX.—IN TERM.

1st sitting, Wednesday, Nov. 3.
2nd sitting, Friday, Nov. 12.
3rd sitting, Friday, Nov. 19.

SITTINGS AFTER TERM.

Friday, Nov. 26.

LONDON.—IN TERM.

1st sitting, Thursday, Nov. 11.
2nd sitting, Thursday, Nov. 18.

SITTINGS AFTER TERM.

Saturday, Nov. 27, to adjourn only.

The Court will sit during and after Term at 10 o'clock.

The Court will sit in Middlesex, at Nisi Prius in Term, by adjournment from day to day until the causes entered for the respective Middlesex sittings are disposed of.

BIRTHS, MARRIAGES, AND DEATHS

BIRTHS.

HORNBY.—On the 8th inst. at Weybridge, the wife of Edward Hornby, esq. of the Middle Temple, of a daughter.

WILDE.—On the 9th inst. the wife of Henry Wilde, esq. barrister, Hertford street, May-fair, of a daughter.

MARRIAGES.

GRESSEN, Frederick C. esq. of the Inner Temple, to Letitia Maria, daughter of Captain Alfred Chapman, of 7, Upper Hyde-park-street, on the 7th inst. at St. John's Church, Paddington.

LAST, Charles John, esq. of Windsor, to Maria, youngest daughter of the late William Nash, esq. of Langley, on the 13th inst. at Langley Church, Bucks.

DEATHS.

HATFIELD, Edward, esq. J. P. on the 5th inst. in St. Mary's street, Stamford, aged 56.

WICKHAM, Mary, wife of Henry Wickham Wickham, esq. M.P. on the 7th inst. at Kirkless Hall, Yorkshire.

BROOKSBANK, Mary Ann, the wife of James Brooksbank, esq. barrister-at-law, on the 11th inst. at Adelaide Cottage, Haverstock-hill, Hampstead.

GARDNER, John, esq. for fifty years one of the coroners for the county of Lancaster, at Sion-hill, Garstang, Lancashire, on the 7th inst. aged 74.

DINORBEN, William Lewis, second Lord, on the 6th inst. at Kinmel-park, St. Asaph, aged 31.

LOWLESS, Mrs. Elizabeth, relict of the late Joseph Lowless, esq. of Hatton-court, solicitor, on the 10th inst. at her residence, Gordon-street, aged 78.

PLUNKETT, Hope, the youngest child of the late William Plunkett, esq. barrister-at-law, on the 10th inst. at Cheltenham, aged 7.

SELWYN, Elizabeth, the last surviving daughter of the late William Selwyn, esq. K.C. of Richmond, Surrey, and sister of William Selwyn, esq. Q.C. of Richmond, on the 7th inst. aged 85.

SMITH, Robert Broughton, esq. solicitor, of Hemel Hempstead, Herts, on the 6th inst. aged 39.

CORRESPONDENCE.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I am a solicitor retired from London practice. For several years previously to quitting the Profession, I was the means of effecting various life assurance policies in OLD mutual offices, which bore the reputation of great wealth and safety, thereby supposing that I was rendering a service to my clients. I carefully abstained from recommending any new office until the year 1847, when a policy for 2,000*l.* of *fifteen* years' standing in a most respectable old office (and one which had been greatly supported by the Legal Profession), became a claim, the life assured having dropped.

I received the 2,000*l.* with a bonus of 227*l.*; but, on calculating the premiums actually paid at *three* per cent. compound interest, the result was astounding.

Now, Sir, I like to act fairly. It is unjust to attack old or new offices *in the aggregate*; let each stand or fall on its own merits. Is there any reason why the name of the office in question, and the result of my calculations, should not be made public through your Journal? I wait for a reply.

I have now discovered that the *offices to avoid* are those with immense capitals and large directories. The former cannot be usefully employed, and the latter are too extravagantly paid to allow of the assured having the advantages offered by other offices equally safe and respectable.

I am, Sir, yours, &c.

London, Sept. 5, 1852. INVESTIGATOR.

PROFESSIONAL PROTECTION.

TO THE EDITOR OF THE LAW TIMES.

SIR,—The Profession are indebted to your correspondent for having directed their attention to a subject of so much importance to them as protection against the frequently occurring casualty of disability by sickness or age. Life assurance has not met this want, for that only provides for those who come after us, and the payments fall heavily in the hour of infirmity. A tradesman's business can be carried on by servants if he is incompetent, but our business mainly depends upon our own capacity to conduct it personally. If *we* are disabled, we lose "the means by which we live." If, Sir, the cheap protection against the danger, to which we are all exposed, as described by your correspondent, is another of the many services which *you* have rendered to the Profession, accept the thanks of,

Sir, yours, &c. M. A.

London, Oct. 14, 1852.

LANCASHIRE COUNTY CORONERS.—The death of Mr. Gardner, one of the six coroners for the county, causes a vacancy in that office. Although the appointment of each of these officials is for the entire county, each one confines himself within a certain district; thus Mr. W. S. Rutter and Mr. J. F. Dearden officiate in the hundred of Salford, which they apportion between them; Mr. Driffield in the hundred of West Derby; Mr. Hargreaves in the hundred of Blackburn; Mr. Palmer in the hundred of Leyland and the greater portion of Amounderness; and the late Mr. Gardner acted for the hundred of Lonsdale, and for some years past also in a portion of Amounderness. Besides these there are, as at Liverpool, Manchester, Wigan, and other towns, coroners acting within those boroughs only, and a few who act for districts where the lord of the manor has a coroner's jurisdiction. The coronership held by Mr. Gardner is the least lucrative of any of the six, as the number of inquests held, and the amount received by each coroner within the two years ending May 31, 1852, will shew. The amounts paid include mileage:—

	1851.	1852.
Mr. Gardner	£106 1 7	£ 73 16 1
Mr. Palmer	232 3 2	241 1 10
Mr. Hargreaves	398 8 9	288 2 1
Mr. Dearden	637 18 3	574 10 4
Mr. Driffield and Mr. Heyes (his predecessor)	649 5 7	596 2 3
Mr. Rutter	1,148 17 9	1,012 9 2

The appointment rests with the freeholders of the entire county, and the election will be held at Preston.—*Preston Chronicle.*

DEED BOXES.
GEORGE HART, 263, STRAND, near Temple-bar, invites attention to his stock of DEED BOXES, which for quality and price cannot be surpassed. Also to his extensive assortment of LAMPS for GAS, OIL, CAMPHINE, and PALMER'S CANDLES.
DR. ARNOTT'S VENTILATING CHIMNEY VALVES, price from 4s. 6d. each.
GEORGE HART, MANUFACTURING IRONMONGER, Patent Lock maker, Bellhanger, and Gasfitter, 263, STRAND, near Temple-bar.

TO BARRISTERS, SOLICITORS, and OTHERS FURNISH your OFFICES, Counting houses, and Chambers at PRIESTS noted Furniture Mart, Nos. 1 and 2, Water-street, corner of Tudor-street, Blackfriars where may be seen the largest STOCK of New and Second-hand LIBRARY and BOARD ROOM FURNITURE, Office and Counting-house Fittings, Fire-proof Safes, Deed Boxes, Iron Doors, &c. in great variety, embracing every article from the Master in Chancery's splendid Table, to the Desk and Stool of the Copying Clerk. Also an immense stock of well-seasoned Household Furniture

"WE congratulate the Public upon the good effects which the liberal commercial policy originated by MILES, of 67, New Bond-street has had, whereby they obtain trowsers from 1,50 different patterns, at Sixteen Shillings per pair, and in the very finest that they would formerly have been charged Two Guineas. This is free-trade with a vengeance."—*United Service Gazette.*

BARON LIEBIG on PALE ALES.—"If I wished to associate with any individual brewery my remarks on the alleged adulteration of bitter beer with strychnine, it would have been only natural to have mentioned another brewery, in which alone, and not in Mr Allsopp's, I was engaged in investigating the Easton mode of brewing; and it was also in that brewery, and not in Mr Allsopp's, that the Bavarian brewers acquired all the information they obtained at Burton. The admiration I expressed of this beverage, in my letter to Mr. Allsopp, is advertised in such a manner as to lead to the inference that my praise was exclusively confined to Mr Allsopp's beer. This was not the case; my remarks referred to that *class* of beer
"Giessen, 20th July, 1852. "JUSTUS LIEBIG"
N.B. The Baron's original letter is in the hand of Mr Miller at the Jerusalem Coffee-house, Cornhill, where it may be seen by any one taking an interest in the matter.

A GREAT BARGAIN.—A Gentleman, going abroad, wishes to dispose of a splendid COMPOUND MICROSCOPE, having high powers, three large magnifying powers sometimes, and having all the recent improvements, dissecting knife animalcule cage, test glasses, &c. in a handsome mahogany case. It recently cost 9*l.* and will be sold for only THIRTEEN GUINEAS. The Advertiser has left at the Law Times Office for inspection, or will be forwarded to any purchaser, address on the Publisher of the Law Times, 29, Essex-street, Strand. It is warranted in perfect repair and condition.

PROFESSIONAL GENTLEMEN and the COMMERCIAL COMMUNITY are strongly recommended to try BLACK'S and CO'S COPYING and other WRITING INKS, contained in the registered sloam conducting bottles with bevelled cork. The copying ink combines advantages never before obtained; among others, it will give a clear impression many days after writing, and a duplicate copy if required. Blacked seal and Co's Red Indenture Inks are indispensable to all who value time, method, and neatness in keeping their letters, papers &c.
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GUTTA PERCHA TUBING. Many inquiries having been made as to the Durability of this Tubing, the Gutta Percha Company have pleasure in drawing attention to the following letter, received
COPY OF A LETTER, SENT FROM THE OFFICE OF WORKS:
"Office of Works, Woburn-walk, Jan 10, 1852
"In answer to your inquiries respecting the Gutta Percha Tubing for Pump Suction, I find that the water has not affected it in the least (although it will eat lead through in two years). We have adopted it freely, both on account of being cheaper than lead, and easier and more perfect job.
"Yours, &c. C. HACKLE"
N.B. The Company's Illustrated Circulars, containing Instructions to Plumbers for joining tubes, pipes, sheets, &c. will be forwarded on the receipt of three postage stamps.
The GUTTA PERCHA COMPANY, PATENTEES, 18, WHARF ROAD, CITY-ROAD, LONDON.

THE ONLY STOVE WITHOUT A FLUE, for which her Majesty's Royal Letters Patent have been granted. Plain, from 12s. to 25s.; Ornamented, from 30s. to 5l. 5s. Six Guineas.
Prospectuses, with drawings and report, forwarded free.
STANDS FOR STOVES, 2s. 6d. 3s. and 5s. EACH.
CAUTION An injunction having been granted by the Vice-Chancellor, in the case of *Nash v. Cormack*, restraining the defendant from making or selling any colourable imitation of the plaintiff's Stove or fuel, the public is respectfully informed, that the original "Joyce's Patent Stove without a Flue, and the prepared Fuel, can only be obtained from SWAN NASH, or his authorized Agents. Every genuine Stove has the name and address of the proprietor on a brass plate, "SWAN NASH, No. 24, Oxford street."
Joyce's Patent for Warming Halls, Passages, Greenhouse Water Closets, Shops, Store-rooms, and all places requiring artificial warmth
PATENT PREPARED FUEL for the Stoves, 2s. 6d. per bushel, only genuine with the proprietor's name and seal on the sack.
S. NASH, 259, Oxford-street, and 119, Newgate-street

TO FAMILIES REMOVING.—The BEDFORD PANTECHNICON and STORE-ROOMS (late Messrs. Collard and Collard's Pianoforte Manufactory), 181, Tottenham-court-road, for the WAREHOUSING of FURNITURE, PIANOS PAINTINGS, and every description of valuable property, are fitted up into separate and well-ventilated compartments, so that each depositor can have his own lock and key, and from the great extent of the premises the Proprietor is enabled to charge much less than similar establishments. Estimates, including packing, removing, &c. free of expense.
For terms and prospectus apply on the premises; or of the Proprietor, Mr W. TINGEY, Polytechnic Silversmith Establishment 312, Regent-street. Advances made, if required, on very moderate terms.

RUPTURES.—BY ROYAL LETTERS PATENT.
THE MOC-MAIN LEVER TRUSS is allowed by upwards of 200 Medical Gentlemen to be the most effective invention in the curative treatment of Hernia. The use of a steel spring, so often hurtful in its effects, is here avoided; a soft bandage being worn round the body, while the requisite resisting power is supplied by the Moc-Main Pad and Patent Lever, fitting with so much ease and closeness that it cannot be detected, and may be worn during sleep. A descriptive circular may be had, and the Truss (which cannot fail to fit) forwarded by post, on the circumference of the body two inches below the hips being sent to the Manufacturer, Mr. WHITE, 228, Piccadilly.
An Umbilical Truss on the same principle.
Every description of Riding Belts, Elastic Stockings, Spinal Corsets, Supporters, and Suspenders, on new and approved principles, with every kind of Surgical Bandages.

HOBSON, BROTHERS, Tailors, established 1796, beg leave to acquaint their various friends and gentry, that their new mixtures in FUR BEAVERS, milled Venetians, and Melton cloths for overcoats, are now ready, from 2*l.* 2*s.* to 2*l.* 18*s.*; their new patterns in West of England doeskins for autumn trowsers are now most complete, among which will be found some French elastic buckskins for riding trowsers, from 22*s.* to 26*s.* per pair; and the new Australian lambskin waistcoats, the best waistcoats that are made for shooting, 13*s.* Patterns forwarded into the country on application.
HOBSON, BROTHERS, 4, FINSBURY-PLACE SOUTH, and 67, LOMBARD-STREET, three doors from Messrs. Barclay's, the bankers.

A NEW DISCOVERY.—MR. HOWARD, Surgeon Dentist, 52, Fleet-street, has introduced an entirely NEW DESCRIPTION of ARTIFICIAL TEETH, fixed without springs, wires, or ligatures. They so perfectly resemble the natural Teeth as not to be distinguished from the original by the closest observer; they will NEVER CHANGE COLOUR, or DECAY, and will be found very superior to any teeth ever before used. This method does not require the extraction of roots, or any painful operation, and will give support and preserve teeth that are loose, and is guaranteed to restore articulation and mastication: and that Mr. Howard's improvements may be within the reach of the most economical, he has fixed his charges at the lowest scale possible. Decayed teeth rendered sound and useful in mastication.
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New Work.
THE PRACTICAL STATUTES of the SESSION of 1852. Edited, with Introductory Notes, copious Index &c. by WM. PATERSON, Esq. Barrister-at-Law. Price 7s. 6d. cloth; 8s. 6d. calf; 10s. calf.
Note. The Statutes, contains all the Statutes of Session that ever become Law, and by the Law Reform Act omitting the Irish, Scotch, and Colonial Statutes, and the course of the session Law of the Session is compact into a small volume which can be carried carried in the pocket or bag. It is made of little interest to the Professional Lawyer except Index.
Law Students have only to peruse the Contents of the Statutes of the Session of 1852 price 7s. 6d. and read, since the
The volume for 1853 in One Part; and it is intended to consolidate the previous Statutes mentioned in Part 1, but excluding all Local and Personal Statutes and Turnpike Statutes, and adding Notes of all the Cases decided upon the construction of the Statutes contained in them, thus bringing the existing Law with the date of interpretation of it. Thus the volume for 1853 will contain the New Bankruptcy Act, with all the Cases decided upon its construction.
The following Titles will be found to Statutes in the volume for 1852:

Commons Inclosure Act	Ecclesiastical Dues Act
Municipal Corporations Acts Amendment Act	Property of Lunatics Act.
Protection of Property Act, 18— (Extension of Term)	School Sites Acts Extension Act
Copyright Amendment Act	Militia Act.
Poor Relief Act Continuance Act	Copyholds Enfranchisement Act.
Loan Societies Act Amendment	County Courts Improvement Act.
Ecclesiastical Jurisdiction Act.	Pluralities Act Extension Act.
Stock-in-Trade Act	Chancery Act.
Application of Highway Rates to Turnpike Road Acts.	Concept Practices of Elections.
Property Tax Continuance Act.	Petty Sessions Summary Procedings
Act for Re-assembling Parliament	Woods Forests, and Land Revenues Act.
Wills Act Amendment Act.	Metropolitan Sewers Act.
Registration of Births, Deaths, and Marriages Act	Navy Pursers Officers Act.
Apprehension of Deserters from Foreign Ships Act.	Militia Ballots Suspension Act
Industrial and Provident Societies Act.	Common Law Procedure Act
Protestant Dissenters Act.	Secretary of Bankrupts' Office Abolition Act.
Appointment of Overseers Act.	Improvement of the Jurisdiction of Equity Act.
General Board of Health Act. (No 1 and No. 2)	Metropolitan Burials Act.
Disabilities Repeal Act.	Suitors in Chancery Relief Act.
Passengers Act Amendment Act	Masters in Chancery Abolition.
	County Rates Act.
	Patent Law Amendment Act.
	Metropolis Water Supply Act

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FOR THE LEGISLATOR, THE MAGISTRATE, AND THE LAWYER.

VOL. XX.—No. 499.] SATURDAY, OCTOBER 23, 1852. [Price, with Index, 2s. 6d.

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QUESTIONS FOR DISCUSSION

For Tuesday, October 26th, 1852. *President*—Mr. GALLAND.
A. devised real estate to trustees upon trusts to be performed by them and the survivor of them and his heirs. The surviving trustee devises the trust estate. Can the devisee execute the trusts? (*Cole* v. *Cranford*, 13 Jur. 25; *Wilson* v. *Bennett*, 15 Jur. 913.)

Affirmative—Mr. Curtis and Mr. Walter.
Negative—Mr. Flux and Mr. Moore.

For Tuesday, November 2nd, 1852. *President*—Mr. WARMINGTON.
B. having contracted for the purchase of the fee simple of an estate, devised the same by his will, dated in 1850, to C. in fee. Subsequently to the date of the will, the estate was conveyed to B. to the usual dower uses. Is the devise revoked by the conveyance? *Rawlins* v. *Burgiss*, 2 Ves. & B. 392; Dart's Ven. & Pur. 143)

Affirmative—Mr. Trollope and Mr. Dixon.
Negative—Mr. Maude and Mr. Ravenor.

For Tuesday, November 9th, 1852. *President*—Mr. HAYMAN.
Would it be right to admit all students in the Universities to compete for those endowments which, by the wills of the founders, are restricted to candidates born in particular districts?
Mr. Church is appointed to open the debate, and Messrs. Bedford, Emanuel, and Laxton, to speak upon the question.

For Tuesday, November 16th, 1852. *President*—Mr. MORRIS.
A lease contains a stipulation that it shall become void on breach of a condition. The condition is broken, and the lessor subsequently receives rent. Is he thereby precluded from treating the lease as determined? (1 Inst. 214; *Roberts* v. *Davey*, 1 B. & Adol. 867; 1 Smith's L. C. 19.)

Affirmative—Mr. Bower and Mr. Rhodes.
Negative—Mr Phillips and Mr. R. J. Kent.

For Tuesday, November 23rd, 1852. *President*—Mr. HOWLETT.
A flat in bankruptcy is sued against M. who absconded without surrendering, and remained abroad for many years. Whilst abroad he remitted to this country sufficient to pay all his creditors who had proved five shillings in the pound, and they executed a release to M. not referring to the bankruptcy. Can the creditors who executed the release afterwards participate in the division of any further assets which may be realised under the bankruptcy?

Affirmative—Mr. Morris and Mr. Farrer.
Negative—Mr. Miller and Mr. Prudence.

For Tuesday, November 30th, 1852. *President*—Mr. BADDELEY.
Is voting by ballot desirable in the election of Members of the House of Commons?
Mr. Gregson is appointed to open the debate, and Messrs. Winearls, French, and Robinson, to speak upon the question.
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9. Affidavit of Attempts at Service to obtain Leave to proceed.
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[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

COMMISSIONS SIGNED BY LORDS LIEUTENANT.

WARWICK.—Edward Bolton King, esq.; Matthew Wise, esq.; Haughton Charles Okeover, esq. to be Deputy-Lieutenants.

[This is substituted for that which appeared in the *Gazette* of September 7.]

MERIONETH.—Charles John Tottenham, esq. to be Deputy-Lieutenant.

CUMBERLAND.—Thomas Salkeld, esq. to be Deputy-Lieutenant.

PEMBROKE.—Morgan Jones, esq. to be Deputy-Lieutenant.

CHESTER.—The Honourable Wellington Henry Stapleton Cotton, to be Deputy-Lieutenant.

LANCASTER.—The Hon. Edward Bootle Wilbraham; and Edward Rover, esq. to be Deputy-Lieutenants.

STAFFORD.—William Fleeming Fryer, esq. to be Deputy-Lieutenant.

YORKSHIRE.—George Marwood, esq. to be Deputy-Lieutenant.

NORTHAMPTON.—The Right Hon. Charles, Earl Aboyne, to be Deputy-Lieutenant.

[This is substituted for that which appeared in the *Gazette* of September 21.]

BERWICK-UPON-TWEED.—John Pratt, esq. in the room of William Berry, esq. deceased; and George Gilchrist, esq. in the room of Mark Riddell, esq. deceased, to be Deputy-Lieutenants.

Wr. George Worthington, lately solicitor to the Trustees of the Liverpool Docks, has been appointed stipendiary magistrate at Adelaide, South Australia.

BIRTHS, MARRIAGES, AND DEATHS

BIRTHS.

KENT.—On Sunday, the 10th inst. at 1, Albion-street, Hyde-park, the wife of R. T. Kent, esq. barrister-at-law, of a daughter.

RUSSELL.—On Sunday, the 17th inst. at No. 14, Douro-place, Kensington, the wife of Francis Russell, esq. barrister-at-law, of a son.

SWIFT.—On the 26th ult. prematurely, in France, the wife of R. Lovinge Swift, esq. of Lincoln's-inn, barrister-at-law, of a son.

WARD.—On the 12th inst. at 31, Westbourne-park-villas, Paddington, the wife of Newman Ward, esq. barrister-at-law, of a daughter.

MARRIAGES.

NORTON, Thomas, esq. barrister-at-law, some time Chief Justice of Newfoundland, to Augusta Sophia, widow of the late James Hill Albony, of 4, St. George's-place, Hyde-park-corner, on Monday, the 18th inst. at the British Embassy, Paris.

SELWYN, Frederic M. of King's Bench-walk, Inner Temple, and Clapham-park, Surrey, to Elizabeth, youngest daughter of the late James Hayward, esq. of Wokingham, Berks, on the 14th inst. at Wokingham Church, Berks.

DEATHS.

Cox, Charles, third son of Samuel Cox, esq. of Beaminster, Dorset, on the 15th inst.

DAVIES, Lieut. Richard Henry, 48th Madras Native Infantry (third son of G. A. A. Davies, esq. of Crickhowell, South Wales), of inflammation of the liver (to the deep affliction of his family), beloved and sincerely lamented by his brother officers and all who knew him, on the 6th September, at Cochin, East Indies, aged 24.

GARRAWAY, Joseph, esq. son of John G. Garraway, esq. of the Island of Grenada, and Senior Justice of the Court of Appeal in the Island of Barbadoes, on the 17th inst. at the residence of Lieutenant-Colonel Hort, Greenwich, aged 47.

LOWE, Mary Harriett, widow of the late John Lowe, esq. of the Inner Temple, and of Montague-place, Russell-square, on the 16th inst. at Sussex-villa, Addison-road North, Notting-hill, aged 75.

M'GRIGOR, Mary Cusine Wedderspoon, wife of Alexander M'Grigor, esq. of Kernock, solicitor, in Glasgow, on the 18th inst. at York.

NEWBURGH, the Right Hon. Francis Earl of, on the 15th inst. at Hassop.

ROLLS, William, ninth Lord, on the 8th inst. at his seat, Dunerub, in Perthshire, aged 42.

TWYNAM, Edward, esq. formerly of King's Bench-walk, Temple, on the 17th inst. at Whitchurch, Hants, at an advanced age.

VOKES, Thomas Phillips, for upwards of thirty years Chief Magistrate of Police in Limerick, on the 12th inst. at Spa.

JOURNAL OF PROPERTY.

Public Sales.

By Mr. MARSH, at the Mart.—The Stanton Dale Iron Works, Derbyshire, 3,000 acres (and works); leasehold, 21 years unexpired—21,000*l.*

In three lots, sixteen five-roomed houses, situate 1 to 3, Nelson-street, and 1 to 13, Charles-street, Bromley, let at 20*s.* per annum; term eighty years; ground-rent, 2*l.* each house—1,160*l.*

In one lot, 2 leasehold houses, Nos. 46 and 47, Morgan-street, Commercial-road East, let at 48*l.*; term, nine years—125*l.*

MONEY MARKET.

ENGLISH FUNDS.	Sat.	Mon.	Tues.	Wed.	Thurs.	Fri.
Bank Stock	224	..	222	222½	220	221½
3 ℘ Cent. Reduced Annuities	99½	100¼	99½	99½	99⅝	99⅝
3 ℘ Cent. Consols Annuities	100¼	100¼	100¼	100¼	100¼	100¼
Consols for Account	100⅛	100⅛	100⅛	100⅛	100⅛	100⅛
New 5 ℘ Cent. Annuities	..	..	..	..	..	..
New 3½ ℘ Cent. Annuities	103½	103½	103½	103½	103½	103½
Long Annu. (exp. Jan. 5, 1860)	..	6¼	6¼	..	..	6¼
Do. 30 yrs. (exp. Oct. 10, 1859)	..	6¼	6¼	6¼	..	..
Do. 30 yrs. (exp. Jan. 5, 1860)	..	7	..	6¼	6¼	6¼
India Stock	276	..	..	..	..	276½
India Bonds (1,000*l.*)	88	88	..	85	..	..
Do. do. (under 1,000*l.*)	..	88	85	85	88	..
South Sea Stock	110⅛	..	..	..	..	..
Do. do. New Annuities	..	..	99⅛	..	..	..
Exchequer Bills, 1,000*l.* June	74*	74*	76*	78*	75*	..
Do. do. 500*l.* June	75*	..	..	78*	75*	..
Do. do. Small, June	75*	..	..	78*	75*	..

* Premium.

CORRESPONDENCE.

PROFESSIONAL PROTECTION.

TO THE EDITOR OF THE LAW TIMES.

SIR,—The Profession is certainly much indebted to your correspondent, who signs himself "One, &c." in your number of October 9, for pointing out a mode by which they may be protected against the casualties arising from disability by sickness and old age. It is very valuable if perfect reliance can be placed on the insurance society, that is, if the guarantee for the payment of the insured annuity is sufficient.

What, however, the Profession want is, a society similar, to a certain extent, to what the clerks have established for themselves. I allude to "The United Law-Clerks Society." Our clerks, as well as members of several other professions and callings, are in advance of us in that respect. "The Law Association for the Benefit of Widows and Families of Professional Men," is a good thing, but that is confined to the metropolis and its vicinity. The country solicitors possess nothing of the kind, and many deplorable cases might be mentioned where respectable Professional men have been reduced to great straits, from ill health and old age rendering them incompetent to conduct their business.

If you, Sir, who have already done so much for the Profession, could procure such a society to be set on foot, you would render an inestimable service to the Profession. Surely this ought not to be difficult in so numerous a body.

I am Sir, yours, &c.

Oct. 19, 1852. ANOTHER, &c.

COURTS OF CHANCERY.—Vice-Chancellor Sir Richard Kindersley has given notice of his intention to sit at Radley's Hotel, Southampton, on Tuesday next, to hear motions and other urgent applications. His Honour has already sat twice during the vacation, to forward matters connected with proceedings in the Court of Chancery.

THE EXPENSES of FUNERALS, so much complained of as extortionate and unnecessary, can be reduced to a moderate scale, and obvious saving of one-half, by applying in the first instance to SHILLIBEER'S office, instead of enquiring the nearest undertaker, who generally has to hire all the requisite means, and consequently inflicts two-fold profits. SHILLIBEER'S charge for a respectable hearse and coach funeral, two horses to each, coffin, pall, and every necessary article, is only 10l. 10s. A first-rate funeral, fit for a nobleman, with lead coffin, case, hearse and four, two coaches and pairs, and all needful fittings, complete for 30 guineas. Artisans' funerals from 4l.; tradesmen's, 6l., 8l. and upwards. No extra charge within ten miles of London. Patent funeral carriage, to convey deceased and six mourners to any cemetery, with two horses, 1l. 11s., 6d.; single horse, 1l. 1s.; hearse or mourning coaches, pairs, 1l. 1s. each.—City-road, next Bunhill-fields Burial-ground. Originated in 1842.

HYDROPATHIC NOTICE.—Dr. CHARLES T. THOMPSON, M.D. M.R.C.S. &c. may be consulted daily at his residence, No. 42, Sussex Gardens, Hyde Park, from TEN a.m. to TWO p.m. by part es wishing to undergo HYDROPATHIC TREATMENT, without going to a Hydropathic Establishment

CARRIAGES.—The WIDOW of DAVID IVALL, in acknowledging the patronage received since his decease, begs to assure the nobility and gentry the business is conducted in the same manner as heretofore, and invites them to inspect the extensive and modern ASSORTMENT of well-manufactured CARRIAGES, which will now be sold, owing to the decline of the season, at a considerable reduction.
At the old-established Manufactory, 158, Tottenham-court-road.

GLENFIELD PATENT STARCH.—Used in the Royal Laundry and Wotherspoon's Steam-made Confections. Sold by all grocers and druggists.
Glasgow—R. WOTHERSPOON and Co. 40, Dunlop-street.
London—WOTHERSPOON and Co. 40, King William-street, City.

DEED BOXES.
GEORGE HART, 223, STRAND, near Temple-bar, invites attention to his Stock of DEED BOXES, which for quality and price cannot be surpassed. Also to his extensive assortment of LAMPS for GAS, OIL, CAMPHINE, and PALMER'S CANDLES.
DR. ARNOTT'S VENTILATING CHIMNEY VALVES, price from 4s 6d each
GEORGE HART, MANUFACTURING IRONMONGER, Patent Lock smith, Bellhanger, and Gasfitter, 253, STRAND, near Temple-bar.

HOBSON, BROTHERS, Tailors, established 1795, beg leave to acquaint their various friends and gentry, that their new mixtures in FUR BEAVERS, milled Venetians, and Melton cloths for overcoats, are now ready, from 2l. 2s. to 2l. 10s.; their new patterns in West of England doeskins for winter trousers are now most complete, among which will be found some French elastic buckskins for riding trousers, from 25s to 26s. per pair; and the new Australian Jumbuck waistcoats, the best waistcoats that are made for shooting, 14s. Patterns forwarded into the country on application.
HOBSON, BROTHERS, 4, FINSBURY-PLACE SOUTH, and 57, LOMBARD-STREET, three doors from Messrs. Barclay's, the bankers.

"WE congratulate the Public upon the good effects which the liberal commercial policy originated by MILES, of 63, New Bond-street, has had, whereby they obtain trousers from 1,000 different patterns, at Sixteen Shillings per pair, and in the very street that they would formerly have been charged Two Guineas. This is free-trade with a vengeance." *United Service Gazette.*

RUPTURES.—BY ROYAL LETTERS PATENT.
THE MOC-MAIN LEVER TRUSS is allowed by upwards of 200 Medical Gentlemen to be the most effective invention in the curative treatment of Hernia. The use of a steel spring, so often hurtful in its effects, is here avoided; a soft bandage being worn round the body, while the requisite resisting power is supplied by the Moc-Main Pad and Patent Lever, fitting with so much ease and closeness that it cannot be detected, and may be worn during sleep. A descriptive circular may be had, and the Truss (which cannot fail to fit) forwarded by post, on the circumference of the body two inches below the hips being sent to the Manufacturer, Mr. WHITE, 228 Piccadilly, London.
An Umbilical Truss on the same principle.
Every description of Riding Belts, Elastic Stockings, Spinal Corsets, Supporters, and Suspenders on new and approved principles, with every kind of Surgical Bandages.

GUTTA PERCHA TUBING.—Many inquiries having been made as to the Durability of this Tubing, the Gutta Percha Company have pleasure in drawing attention to the following letter, received
FROM MR. C. HACKER, SURVEYOR TO THE DUKE OF BEDFORD:
"Office of Works, Woburn-park, Jan 10, 1852.
"In answer to your inquiries respecting the Gutta Percha Tubing for Pump Suctions, I find that the water has not affected it in the least, although it will eat lead through in two years; we have adopted it lately, both on account of being cheaper than lead, much easier fixed, and a more perfect job.
"Yours, &c. C. HACKER."
N.B. The Company's Illustrated Circulars, containing Instructions to Plumbers for joining tubes, lining tanks, &c. will be forwarded on the receipt of three postage stamps.
The GUTTA PERCHA COMPANY, PATENTEES, 18, WHARF-ROAD, CITY-ROAD, LONDON.

THE ONLY STOVE WITHOUT A FLUE, for which her Majesty's Royal Letters Patent have been granted. Plain, from 12s. to 35s.; Ornamented, from 31s. 6d. to Six Guineas.
Pro pectuses, with drawings and report, forwarded free.
STANDS FOR STOVES, 2s. 6d., 3s. and 5s. EACH.
CAUTION.—An injunction having been granted by the Vice-Chancellor, in the case of *Nash v. Carman*, restraining the defendant from making or selling any colourable imitation of the plaintiff's Stove or fuel, the public is respectfully informed, that the original "Joyce's Patent Stove without a Flue, and the prepared Fuel," can only be obtained from SWAN NASH, or his authorised Agents. Every genuine Stove has the name and address of the proprietor on a brass plate, "SWAN NASH, No. 253, Oxford-street."
Joyce's Patent for Warming Halls, Passages, Greenhouses, Water Closets, Shops, Store-rooms, and all places requiring artificial warmth.
PATENT PREPARED FUEL for the Stoves, 2s. 6d. per bushel, only genuine with the proprietor's name and seal on the sack.
S. NASH, 253, Oxford-street, and 110, Newgate-street.

MESSRS. POULSON and COMPANY'S REGISTERED PARDESSUS of FINE AUSTRALIAN and LLAMA WOOLS (5 & 7 Vict. cap. 65), for WALKING or RIDING.—This is an improved style of coat, of a light convenient form, which admits of its being worn either over or without the ordinary coat. It is neatly and handsomely made, care being bestowed in its construction to impart to it that graceful and appropriate character which, since its first introduction, has so greatly recommended it to public favour. It is produced in all colours, with silk sleeve linings, at the very moderate price of 2 guineas, and, for winter wear, richly lined and quilted, at 3 and 3 guineas.—The improved Winter Guinea Trousers are also ready for selection from a choice variety of patterns. In London only of S. POULSON and COMPANY, Merchant Tailors, and Sole Patentees of the Undyed Australian Wool Cloth, the best material ever invented for all Sporting, Riding, and Travelling purposes.
94, Regent-street.

WAREHOUSING FURNITURE and valuable PROPERTY.—Parties Leaving Town and Changing their Residences—Furniture, Plate, Books, and other valuable Property carefully REMOVED and WAREHOUSED at the North London Depository, Gray's-inn-road, King's-cross. Established 1829. Separate lock-up store-rooms. The building is secure from fire and damp, heated by steam-pipes. An inspection is requested. Advances if required.

HEAL and SON'S EIDER DOWN QUILTS are made in three varieties.—The BORDERED QUILT, the PLAIN QUILT, and the DUVET. The Bordered Quilt is in the usual form of bed quilts, and is a most elegant and luxurious article. The Plain Quilt is smaller, and is useful as an extra covering on the bed, or as a wrapper in the carriage, or on the couch. The Duvet is a loose case filled with Eider Down, as in general use on the continent.—Lists of Prices and Sizes sent free by post, on application at HEAL and SON'S Bedding Factory, 196, Tottenham-court-road.

EUREKA.—In FORD'S EUREKA SHIRTS are united the best material and first-rate workmanship, together with that special excellence of fit which is their distinguishing characteristic. Their superiority to all others is still maintained; and gentlemen who desire the luxury of a perfect fitting shirt are invited to try them. The prices are, for the first quality, six for 40s.; second quality, six for 30s.; coloured shirts, for hunting, shooting, and ordinary wear, 27s. the half-dozen. List of prices, and instructions for measurement, post-free, and patterns of the new coloured shirtings free, on receipt of six stamps.
RICHARD FORD, 38, Poultry (late 185, Strand).

THE SANS-PLI SHIRT, as shewn in the Great Exhibition, Class 20, No. 23, is a garment made entirely without gathers. These auxiliaries to the shirt have hitherto been considered indispensable, but, like everything else where the ingenious mind is directed to getting rid of complication, simplicity is proved to be the attribute of perfection. It may be confidently eulogised for its nicety of fit and great ease and comfort.—From the *Morning Herald*.—At WILLIAM REID'S 51, Conduit-street, Regent street. Printed flannels for dressing-gowns, cravats, and hosiery in every variety.

OUR GUINEA FRENCH LAMP, brass fittings, newest, after-relievo designs, in bronze, with stand, globe, glass, &c. warranted for twelve months. Matchless, try where you will. The brilliancy and economy of the light are unequalled, and the simplicity and durability of the Lamps sold at this house, are now fully established. Finest Paris Oil, 4s. per gallon.
SMITH'S OLD-ESTABLISHED LAMP AND OIL DEPOT, 281, STRAND (exactly opposite Norfolk-street). Lists free by post.

THE PERFECT SUBSTITUTE for SILVER, The REAL NICKEL SILVER, introduced twenty years ago by WILLIAM S. BURTON, when plated by the patent process of Messrs. Elkington and Co., is the only and all comparison the very best article next to sterling silver that can be employed as such, either usefully or ornamentally, as by no possible test can it be distinguished from real silver.

	Fiddle Pattern.	Thread or Brunswick Pattern.	King's Pattern.
Tea Spoons, per dozen	18s.	2 8s.	36s.
Dessert Forks "	30s.	42s.	56s.
Dessert Spoons "	30s.	42s.	56s.
Table Forks "	40s.	55s.	70s.
Table Spoons "	40s.	55s.	75s.

Tea and Coffee Sets, Waiters, Candlesticks, &c. at proportionate prices. All kinds of re-plating done by the patent process.

CHEMICALLY PURE NICKEL, NOT PLATED

	Fiddle.	Thread.	King's.
Table Spoons and Forks, full size, per dozen	12s.	28s.	30s.
Dessert ditto at ditto ditto ..	18s.	21s.	24s.
Tea ditto ditto ..	9s.	14s.	12s.

LAMPS of ALL SORTS and PATTERNS.—The largest, as well as choicest assortment of Palmer's Magnum and other Lamps, Camphine, Argand, Solar, and Moderateur Lamps, with all the latest improvements and of the newest and most recherché patterns, in ormolu, Bohemian and plain glass, or papier maché, in existence, is at W. S. BURTON'S, and they are arranged in one large room, so that patterns, sizes, and sorts can be instantly selected.
WILLIAM S. BURTON has Ten Large Show Rooms (all communicating), exclusively of the Shop, devoted solely to the show of General Furnishing Ironmongery (including cutlery, nickel silver, plated and japanned ware), iron and brass bed-steads), so arranged and classified that purchasers may easily and at once make their selections.
Catalogues, with Engravings, sent (per post) free. The money returned for every article not approved of.
39 OXFORD STREET (corner of Newman-street); Nos 1 and 2, NEWMAN STREET; and 1 and 5, PERRY'S-PLACE.

SCOTT and CO. FIRST CLASS MERCHANT TAILORS (from H. J. and D. Nicoll's),
Nos. REGENT-STREET (corner of Beak-street), LONDON;
and PAVILION HOUSE, BRIGHTON.
INVENTORS of the PALLIAMENT (a great improvement upon the Paletot), the DONCASTER MORNING COAT, and the TALMA, a new equestrian or walking CLOAK-COAT.
All the new styles in Over Coats for the coming season, and the greatest novelties in Angolas and Scotch Tweeds for Trowsers.
LADIES' RIDING-HABITS, LIVERIES, &c.
At the most moderate prices for cash.
On parle Français.
Qui si parla Italiano.
SCOTT and CO. 158, REGENT-STREET, LONDON; and PAVILION HOUSE, BRIGHTON.

PROFESSIONAL GENTLEMEN and the COMMERCIAL COMMUNITY are strongly recommended to try BLACKWOOD and CO'S COPYING and other WRITING INKS, contained in the registered clean conducting bottles, with durable cork. The copying ink combines advantages never before obtained: among others, it will give a clear impression many days after writing, and a duplicate copy if required. Blackwood and Co.'s Ready Reference Files are indispensable to all who value time, method, and neatness in keeping their letters, papers, &c.
Sold by SKIPPER and EAST, St Dunstan's-hill; WILSON and SON, Cheapside; WM. TEGG and Co. Queen street, City; SMITH, ELDER, and Co. Cornhill; BAILY, Brothers, Royal Exchange-build ings; W. S. ROWLAND, Cheapside; JOHN RICHARD, St. Martin's-court; JOHN SMITH, the Government Stationer, Long-acre; and all the leading Booksellers and Stationers in the United Kingdom. Shipping orders executed at the Manufactory, 26, Long-acre.

EQUITY and LAW LIFE ASSURANCE SOCIETY, No. 26, Lincoln's-inn-fields, London.
TRUSTEES.
The Right Hon. Lord Monteagle.
The Right Hon. Lord Cranworth.
The Right Hon. the Lord Chief Baron.
The Hon. Mr. Justice Coleridge.
The Hon. Mr. Justice Erle.
Nassau W. Senior, esq. Master in Chancery.
Charles Purton Cooper, esq. Q.C. LL.D. F.R.S.
George Capron, esq.
Policies in this Office are INDISPUTABLE except in cases of FRAUD. "Free Policies" are issued, at a small increased rate of Premium, which remain in force although the Life assured may go to any part of the World.
Parties assuring within Six Months of their last Birthday are allowed a proportionate diminution in the Premium.
The Tables are especially favourable to young and middle aged Lives, and the Limits allowed to the Assured, without extra charge, are unusually extensive.
Eighty per cent. of the profits are divided at the end of every Five Years among the Assured. At the first division, to the end of 1848, the addition to the amount assured averaged above Fifty per cent. on the Premiums paid.

IMPERIAL LIFE INSURANCE COMPANY, 1, Old Broad-street, London.
Thomas Newman Hunt, esq. Chairman.
John Horsley Palmer, esq. Deputy-Chairman.
A NEW SCALE OF PREMIUMS on Insurances for the whole term of life has recently been adopted, by which a material reduction has been made at all ages below 80 years.
FOUR-FIFTHS, or 80 per cent. of the Profits, are assigned to Policies *every fifth year*, and may be applied to increase the sum insured, to an immediate payment in Cash, or to the reduction and ultimate extinction of future premiums.
ONE-THIRD of the Premium on Insurances of 500l. and upwards, for the whole term of life, may remain as a debt upon the policy, to be paid off at convenience, by which means 1,500l. may be insured for the present outlay otherwise required for 1,000l.
LOANS.—The Directors will lend sums of 500l. and upwards on the security of Policies effected with this Company for the whole term of life, when they have acquired an adequate value.
SECURITY.—Those who effect Insurances with this Company are protected by its large Subscribed Capital from the risk incurred by Members of Mutual Societies.
INSURANCES without participation in Profits may be effected at reduced rates.
SAMUEL INGALL, Actuary.

THE YORKSHIRE FIRE and LIFE INSURANCE COMPANY. Established at York, 1824, and empowered by Act of Parliament. Capital, 500,000l.
TRUSTEES.
Ralph Creyke, esq. Rawcliffe Hall.
John Swann, esq. Askham.
Leonard Thompson, esq. Sheriff Hutton Park.
BANKERS.—Messrs. Swann, Clough, and Co. York.
ACTUARY and SECRETARY.—Mr. W. L. Newman, York.
The attention of the public is particularly called to the terms of this Company for LIFE INSURANCES, and to the distinction which is made between male and female lives.
Extract from the Table of Premiums for insuring 100l.

Age next birthday.	A MALE.	A FEMALE.	Age next birthday.	A MALE.	A FEMALE.
	Whole Life Premiums			Whole Life Premiums.	
	£ s. d.	£ s. d.		£ s. d.	£ s. d.
10	1 7 6	1 8 4	48	3 11 6	3 3 3
13	1 9 3	1 7 0	50	4 1 9	3 13 3
16	1 11 3	1 8 10	53	4 11 6	4 3 6
20	1 14 4	1 11 6	56	5 4 0	4 14 0
23	1 17 0	1 13 8	60	6 6 0	5 12 6
26	2 0 3	1 16 2	63	7 4 0	6 9 6
*30	2 5 0	1 19 9	66	8 4 0	7 10 8
33	2 8 6	2 2 10	70	10 0 4	9 7 6
36	2 11 0	2 6 4	73	11 16 2	11 2 6
40	2 19 9	2 12 0	76		13 1 9
43	3 5 3	2 17 2	80		15 12 10

* EXAMPLE.—A gentleman whose age does not exceed 30, may insure 1,000l. payable on his decease, for an annual payment of 22l. 10s.; and a lady of the same age can secure the same sum for an annual payment of 19l. 17s. 6d.
Prospectuses, with the rates of premium for the intermediate ages, and every information, may be had at the Head Office in York, or of any of the Agents.
FIRE INSURANCES are also effected by this Company, on the most moderate terms.
AGENTS.
Edinburgh.—M'Intosh and Ducat, W.S. 68, Great King-street; D. S. Peddie, George-street
Glasgow.—Peter White, 20, Buchanan-street; William Lang, 20, St. Vincent-place; John Carmichael, 5, Dixon-street; William Robertson, Trongate Branch of the City of Glasgow Bank.
Agents are wanted in those towns where no appointments have been made. Applications to be made to Mr. W. L. NEWMAN, Actuary and Secretary, York.
Agent for London, Mr. THOMAS S. NOBLE, Solicitor, 5, St. John-street, Bedford-row.

THE DEPOSIT and GENERAL LIFE ASSURANCE COMPANY.
Chief Office, 22, Moorgate-street, London.
Every description of Life Assurance business transacted.
Loans and Annuities granted on most liberal terms.
"Diseased" lives, and lives "declined" by other offices, taken.
Medical referees liberally remunerated for their reports.
C. W. BEVAN, Actuary and Secretary.
N.B.—Clergymen and Ministers of all denominations are particularly invited to examine the principles of the Deposit System of Assurance adopted by this Office.
Agents and Medical Referees wanted in all parts of the Kingdom.

In preparation, and shortly will be published,
FORMS of PLEADINGS and PROCEEDINGS framed in accordance with the provisions of the Common Law Procedure Acts, 1852 with copious Notes on the New System of Pleading, and on the Evidence necessary in Personal Actions, and in Ejectment. By R. A. FISHER, Esq. of the Middle Temple, Special Pleader, and Barrister-at-Law.
LAW TIMES Office, 29, Essex-street, Strand.

Now ready,
THE PRACTICAL STATUTES of the SESSION of 1852. Edited, with explanatory Notes, copious Index, &c. by WM. PATERSON, Esq. Barrister-at-Law. Price 9s. 6d. cloth; 11s. half-calf; 12s. calf.
NOTE.—This work contains all the Statutes *verbatim* that can ever be required to be used by the English Lawyer, omitting the Irish, Scotch, and Colonial Statutes, so that the entire of the practical new law of the session is comprised in a small volume, which can be easily carried in the pocket or bag. It is made of further utility to the Profession by a very copious Index.
Like volumes have already appeared containing the *Practical Statutes of the Session* of 1850 price 7s. 6d. and 1851, price 7s.
The volume for 1849 is in the press, and it is intended to issue the previous Statutes uniform with these, but excluding all the repealed Statutes and parts of Statutes, and adding Notes of all the Cases decided upon the construction of the Statutes contained in them, thus presenting the existing law with the judicial interpretation of it. Thus, the volume for 1848 will contain the New Bankruptcy Act, with all the Cases decided upon its construction.
The following Statutes will be given entire in the volume for 1852:

Commons Inclosure Act.
Municipal Corporations Acts Amendment Act.
Protection of Inventions Act, 1851 (Extension of Term).
Copyright Amendment Act.
Poor Relief Act Continuance Act.
Loan Societies Act Amendment.
Ecclesiastical Jurisdiction Act.
Stock-in-Trade Act.
Application of Highway Rates to Turnpike Roads Act.
Property-Tax Continuance Act.
Act for Re-assembling Parliament.
Wills Act Amendment Act.
Registration of Births, Deaths, and Marriages Act.
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NEAR TO CAMBRIDGE.

MR. MARSH has received instructions from the Trustees and Executors, to SELL by AUCTION, at the MART, opposite the Bank of England, on THURSDAY, 4th of NOVEMBER, at Twelve o'clock, the FREEHOLD MANOR of CROWLANDS, in Dry Drayton. Also, the MANOR of COVENTRY, in Dry Drayton. Held under renewable lease from the Bishop of Ely, for two young lives, with Policy of Insurance for 500l. on the life of the survivor. Lot 1. The Freehold Manor of Crowlands, in Dry Drayton, comprising a large extent of valuable Copyhold Land and divers Houses, all subject to arbitrary fines. There are in this manor fifteen heriots of the best chattels, payable on death. The income from fines, quit-rents, and heriots, is on an average of years, 54l. 7s. 2d. per annum, but which will increase with improvements on the copyhold estates. Lot 2. The Leasehold Manor of Coventry, in which the fines are arbitrary (but in which there are not any heriots), comprising also a large extent of valuable Copyhold Land and Buildings, producing an income from fines and quit-rents on an average of years, amounting to 55l. per annum. Further particulars may be had of Messrs. CURTON, Norwich; of THOMAS HUXLEY, Esq. Solicitor, 3, Middle Temple-lane, Temple; of J. R. MANN, Esq. Estate Agent, Cambridge, who, having valued all the Lands and Premises parcel of these Manors, will give every information to intending purchasers; and at Mr. MARSH'S Offices, 2, Charlotte-row, Mansion-house.

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Bower, George, esq. Tokenhouse-yard
Bust, George M. esq. M.P. Q.C. Temple
Chelmsley, Stephen, esq. Lincoln's-inn
Clark, John, esq. Spalding House, London
Eyre, Walpole, esq. Eyrecourton-square
Fane, William Deadwood, esq. Lincoln's-inn
Fisher, Horatio Nelson, esq. Pentonville-street
Freeman, Luke, esq. Coleman-street
Gasalee, Mr. Serjeant, Serjeants'-inn.
Hope, James Robert, esq. Q.C. Temple
Hughes, Henry, esq. Clement's-inn
Jay, Samuel, esq. Lincoln's-inn
Jones, John Oliver, esq. 4, Upper Bedford-place
Lake, Henry, esq. Lincoln's-inn
Law, Henry Shephard, esq. Bush-lane
Lefroy, George Bentinck, esq. Piccadilly
Loftus, Thomas, esq. New-inn
Marten, George, esq. Mincing-lane
Parke, James, esq. Lincoln's-inn-fields
Pickering, Edward Rowland, esq. Lincoln's-inn
Powell, John Allan, esq. Lincoln's-inn
Reeve, Phillip, esq. Lincoln's-inn
Steward, Samuel, esq. Lincoln's-inn-fields
Tilleard, John, esq. Old Jewry
Turner, Francis, esq. Lincoln's-inn
Tyrrell, Timothy, esq. Guildhall
Vizard, William, esq. 61, Lincoln's-inn-fields
White, Thomas, esq. Bedford-row
Woodroffe, William, esq. Lincoln's-inn
Wrottesley, the Hon. Walter, Lincoln's-inn.

PHYSICIAN.

H. Pitman, M.D. Montague-place.

SOLICITORS.

H. D. Warter, esq. Carey-street, Lincoln's-inn.
Robert Curling, esq. Frederick's-place, Old Jewry.

Bonus. Policies effected (on the profits scale) prior to the 31st December, 1853, will participate in FOUR-FIFTHS OF THE PROFITS to be declared at the close of the year 1863; and appropriated by addition to the policy, reduction of premium, or payment in cash, as the Assured may desire.

Extensive licence to travel.

Appearance before the Board dispensed with.

Proposals for Loans on Life Interests, &c. and for Sale of Reversions, entertained.

Prospectuses, &c. may be had at the Office, or will be forwarded on application to JOHN KNOWLES, Actuary and Secretary.

RAILWAY PASSENGERS' ASSURANCE

COMPANY. Empowered by special Act of Parliament.
Offices, 3, Old Broad-street, London.

Insurances against railway accidents can now be effected with this Company, not only for single and double journeys, and by the year, as heretofore, but also for terms of years and for life, as follows:—

To insure 1,000l. for a term of five years, premium £3 10 0
" " ten " 6 0 0

To insure 1,000l. for the whole of life, by annual premiums on the following decreasing scale:—

For the first five years, annual premium		.....	£1 0 0
" next five	"	.....	0 15 0
" next five	"	.....	0 10 0
" remainder of life	"	.....	0 5 0

To insure 100l. for the whole term of life, by single payment, according to age, viz.:—

Above 20 and under 25	Above 25 and under 30	Above 30 and under 35	Above 35 and under 40	Above 40 and under 45	Above 45 and under 50	Above 50 and under 55	Above 55 and under 60	Above 60.
£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
1 1 0	1 0 0	1 0 0	19 0 0	18 0 0	16 0 0	15 0 0	13 0 0	12 0 0

The above premiums include the stamp duty, which is payable to government by the Company.

The total amount insured by any of the above modes will be paid in case of death by railway accident while travelling in any class carriage on any railway in the kingdom, and proportionate compensation in the event of personal injury.

WILLIAM J. VIAN, Secretary.

3, Old Broad-street, September 1853.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

BICKNELL.—On the 27th inst. at the Terrace, Kilburn, the lady of Christopher Bicknell, solicitor, of Connaught-terrace, of a daughter.

FORLONG.—On the 26th inst. at Henrietta-street, Brunswick-square, the wife of Gordon Forlong, esq. advocate, of a daughter.

GODLEE.—On the 27th inst. at Lillies, Upton, the wife of Rickman Godlee, of that place, and of New-square, Lincoln's-inn, of a son.

HOLE.—On the 24th inst. at Blomfield-gardens, Westbourne-terrace, the wife of Robert Hallett Hole, of Lincoln's-inn, esq. barrister-at-law, of a son.

MARRIAGES.

CLIVE, Robert, esq. M.P. to the Lady Mary Bridgeman, youngest daughter of the Earl of Bradford, on the 20th inst. at Weston-under-Lizard, Staffordshire.

TOSE, Joseph Hooley, of No. 14, Clifford's-inn, solicitor, to Eliza, youngest daughter of the late Nicholas Roberts, esq. of Bidwell-house, Newton St. Cyres, Devon, on the 20th inst. at Westleigh, North Devon.

WILDY, Mr. Charles, law bookseller, of Lincoln's-inn-gateway, and 72, Swinton-street, to Susannah, the eldest daughter of Mrs. Reynolds, 63, West-street, Smithfield, on the 16th inst. at St. Sepulchre's, Snow-hill.

DEATHS.

CONCANEN, George, esq. solicitor, at his residence, 18, Hamilton-terrace, St. John's-wood-road, on the 24th inst. aged 57.

FREEMAN, Mr. William Deane, Q.C. Galway Assistant Barrister, of paralysis and congestion of the brain, while presiding at the Quarter Sessions, on the 26th inst.

KERSHAW, Ellen, fourth daughter of James Kershaw, esq. M.P. at Oaklands, Victoria-park, Manchester, on the 20th inst. aged 21.

NELSON, John Wesley, esq. of the Middle Temple, barrister-at-law, at 8, Church-buildings, Clapham-common, on the 26th inst. aged 27.

SOWTON, Mrs. the wife of Mr. Sowton, of Great Gower-street, Bedford-row, on the 26th inst.

STEVENSON, JOHN, of 26, Regent-square, and 3, King's-road, Bedford-row, solicitor, on the 26th inst. aged 56.

PURE COCOA.—HANDFORD and DAVIES'S pure granulated COCOA, 1s 1½ lb. Sandwich-st, is, per lb. being the best cheap cocoa ever examined by the Analytical Sanitary Commission, to be genuine out of the whole of the samples tested; vide the Lancet of May 31st, page 816; also their COMPO SOLUBLE COCOA, for parties to whom the full flavour of pure Cocoa is unsuitable. It consists of fine arrowroot, cocoa, and sugar only, and is a very superior article of its kind. It is very readily prepared by pouring boiling water on to it. Price 1s. 4d per lb

Finest Mocha Coffee, 1s. 6d; finest Jamaica ditto, 1s. 6d., Java ditto, 1s 4d., Colombo ditto, 1s. 2d.; Costa Ricardo is., Congo Tea, strong and useful, adapted for general family use, 3s. 8d per lb.

61, High Holborn.

ANOTHER TESTIMONIAL this week in favour of DR. LOCOCK'S PULMONIC WAFERS, for ASTHMA, CONSUMPTION, COUGHS, and COLDS.

From Mr A Scott, 43, Trongate, Glasgow, October 20, 1862.

"I am glad to say that the demand for Dr Locock's Pulmonic Wafers has commenced this season very briskly I believe I keep in stock every cough medicine which has been advertised either in times past or present, but there is not one of them which has gained the same popularity as your Wafers. In severe Coughs, Asthma, and where there is a tendency to Consumption, the working classes and others who cannot well afford it, prefer to pay 2s. 9d for a box of Pulmonic Wafers, to buyes of similar size which can be got for a much smaller sum. I think this is an unmistakeable proof of their efficacy.—A buyer, 43, Trongate, Glasgow"

TO SINGERS AND PUBLIC SPEAKERS

they are invaluable for strengthening and clearing the voice They have a most pleasant taste.—Price 1s 1½d., 2s. 9d. and 11s per box Sold by all medicine vendors

TO BARRISTERS, SOLICITORS, and OTHERS.—FURNISH your OFFICES, Counting houses and Chambers at PRIETT'S noted Furniture Mart, Nos 1 and 3 Water-street, corner of Tudor street, Blackfriars, where may be seen the largest STOCK of New and Se cond hand LIBRARY and BOARD ROOM FURNITURE, Office and Counting house Fittings, Fire-proof safes, Deed Boxes, Iron Doors, & in great variety, embracing every article from the Master in Chancery's splendid Table to the Desk and Stool of the Copying Clerk Also an immense stock of well seasoned Household Furniture

BERDOE'S WATERPROOF OVERCOATS and SHOOTING JACKETS.—A very large stock of superior garments, in every improved material and style, and of every degree of warmth or lightness guaranteed to resist any amount of rain, kept for selection at charges reduced to the lowest point consistent with the principle that an article to be really cheap must be good Every one also of the Waterproof Paletots, the well-known light Overcoat for all seasons, price 45s Riding and Driving Capes, Leggings, Rug Overcoats and Capes Also Cloaks Mantles, Habits &c. for ladies all thoroughly impervious to rain without obstructing free ventilation, the fatal objection to all other waterproofs.

W BERDOE Tailor and Overcoat Maker 96, New Bond street and 69, Cornhill (only)

METCALFE and CO.'S NEW PATTERN TOOTH BRUSH and PENETRATING HAIR BRUSHES — The tooth brush performs the highly important office of searching thoroughly into the divisions and cleaning in the most extraordinary manner hair never comes loose in Penetrating hair brushes with the durable unbleached Russia Bristles, which will not soften like common hair improved clothes-brush that cleans harmlessly in one-third the usual time the new Velvet Brush, and immense stock of genuine unbleached Smyrna Sponge

At METCALFE, BINGLEY, and CO.'s only establishment 130 B, Oxford street one door from Hollis street

Caution Beware of the word "from" Metcalfe's adopted by some houses Metcalfe's Alkaline Tooth Powder, 2s per box

WATCHES! WATCHES! WATCHES!

Save 50 per cent by purchasing your Watches direct from the Manufacturer at the wholesale Trade Price

GOLD WATCHES, extra jewelled, with all the recent Improvements	£3 1
Ditto, with the Three-quarter Plate Movement and shorter case	£4 10
SILVER WATCHES, with same movements as the Gold	£2 0
Ditto, with the Lever Escapement 8 holes jewelled	£3 1

And every other description of Watch in the same proportion A written warranty for accurate performance is given with every watch, and a twelvemonth's trial allowed Hands some morocco case for same 3s extra Emigrants supplied with Watches suitable for Australia.

Merchants Captains and the Trade, supplied in any quantities on very favourable terms.

Gentlemen's fine Gold Albert Chains	£1 10
Ladies' ditto, Neck ditto	£1 1

Sent carefully packed, post free, and registered, on receipt of Post office or Banker's Order, for in extra payable to

DANIEL ELLIOTT HUDDER

Wholesale Watch Manufacturer 37 City road, near Finsbury square London

TO FAMILIES REMOVING.—The BEDFORD PANTECHNICON and STORE ROOMS (late Messrs Collard and Collard's Pianoforte Manufactory), 104 Tottenham court-road, for the WAREHOUSING of FURNITURE, PIANOS PAINTINGS, and every description of valuable property are fitted up into separate and well ventilated compartments so that each depositor can have his own lock and key and from the great extent of the premises the Proprietor is enabled to charge much less than similar establishments. Estimates, including packing removing, &c. free of expense

For terms and prospectus apply on the premises, or of the Proprietor, Mr W TINGEY, Polytechnic Silversmith Establishment 318, Regent-street Advances made, if required, on very moderate terms.

WAREHOUSING FURNITURE and valuable PROPERTY.—Parties Leaving Town and Changing their Residence.—Furniture, Plate, Books, and other valuable Property carefully REMOVED and WAREHOUSED at the North London Depository, Gray's-inn-road, Kings cross Established 1849 Separate look up store-rooms. The building is secure from fire and damp, heated by steam-pipes. An inspection is requested Advances if required.

A NEW DISCOVERY.—MR. HOWARD, Surgeon Dentist, 52, Fleet-street, has introduced an entirely NEW DESCRIPTION of ARTIFICIAL TEETH, fixed without springs, wires, or ligatures. They so perfectly resemble the natural Teeth as not to be distinguished from the original by the closest observer; they will NEVER CHANGE COLOUR, or DECAY, and will be found very superior to any teeth ever before used. This method does not require the extraction of roots, or any painful operation, and will give support and preserve teeth that are loose and in a painful state to restore articulation and mastication; and that Mr. Howard's improvements may be within the reach of the most economical, he has fixed his charges at the lowest scale possible Decayed teeth rendered sound and useful in mastication.

52, Fleet-street. At home from Ten till Five.

"WE congratulate the Public upon the good effects which the liberal commercial policy originated by Messrs. of 65, New Bond-street has had, whereby they obtain from them 1 000 different patterns, at thirteen shillings per pair and in the very street that they would formerly have been obliged to pay three pounds. Their price-book, with a vengeance."—Observer Sunday Telegraph.

DEED BOXES.

GEORGE HART, 68, STRAND, near Temple-bar, invites attention to his stock of DEED BOXES, which for quality and price cannot be surpassed. Also to his extensive assortment of LAMPS for GAS, OIL, CAMPHINE, and PALMER'S CANDLES

DR ARNOTT'S VENTILATING CHIMNEY VALVES, price from 4s 6d each

GEORGE HART, MANUFACTURING IRONMONGER, Patent Lock smith, Bellhanger, and Gasfitter, 68, STRAND, near Temple-bar

HOBSON, BROTHERS, Tailors, established 1798, beg leave to acquaint their various friends and country, that their new mixtures in FUR BEAVERS, milled Venetians, and Melton cloths for overcoats, are now ready, from 2l. 2s. to 3l. 13s., their new patterns in West of England doeskins for winter trowsers are now most complete, among which will be found some French elastic buckskins for riding trowsers from 21s. to 28s per pair, and the new Australian Jumbekin waistcoats, the best waiscoats that are made for shooting, 18s Patterns forwarded into the country on application

HOBSON BROTHERS 5 FINSBURY PLACE SOUTH, and 37, LOMBARD STREET, three doors from Messrs Barclay's, the bankers.

GUTTA PERCHA TUBING.—Many inquiries having been made as to the Durability of this Tubing, the Gutta Percha Company have pleasure in drawing attention to the following letter received

FROM MR C HACKER SURVEYOR TO THE DUKE OF BEDFORD

"Office of Works, Woburn park Jan 10 1862

"In answer to your inquiries respecting the Gutta Percha Tubing for Pump Suctions I find that the water has not affected it in the least although it will eat lead through in two years we have adopted it largely, both on account of being cheaper than lead much easier fixed, and a more perfect job

"Yours &c. C HACKER"

N B The Company's Illustrated Circulars, containing Instructions to Plumbers for joining tubing lining tanks, &c. will be forwarded on the receipt of three postage stamps

The GUTTA PERCHA COMPANY PATENTEES, 18, WHARF ROAD, CITY ROAD, LONDON.

THE ONLY STOVE WITHOUT A FLUE, for which her Majesty's Royal Letters Patent have been granted Plain, from 15s to 8l., Ornamental, from 21s 6d to 20 Guineas

Prospectuses with drawings and report forwarded free

STANDS FOR STOVES 2s 6d & and 3s EACH

CAUTION.—An injunction having been granted by the Vice-Chancellor in the case of Nash v. Carman restraining the defendant from an infringement of the plaintiff's Stove or fuel the public is respectfully informed that the original "Jones's Patent Stove with not a flue and the prepared Fuel" can only be obtained from SWAN NASH or his authorised Agents Every genuine Stove has the name and address of the proprietor on a brass plate, "SWAN NASH No 254, Oxford street."

Jones's Patent for Warming Halls Passages Greenhouses Water Closets Shops, store rooms, and all places requiring artificial warmth

PATENT PREPARED FUEL for the Stoves 2s 6d per bushel, only genuine with the proprietors name and seal on the sack

S NASH 253, Oxford street, and 119 Newgate street

MESSRS. POULSON and COMPANY'S REGISTERED PARDESSUS or FINLAISON and LLAMA WOOLS (6 & 7 Vict cap 65) for WALKING or RIDING This an improved style coat of a habit movement form which admits of its being worn either over or with the ordinary coat It is neatly and handsomely made and trimmed in the centre and is compact but the graceful and appropriate character which characterises the first quality has so greatly recommended it to public favour It is particularly adapted with silk sleeve linings at the very moderate price of guineas and for winter wear richly lined and quilted Skirt guineas The improved Winter Guinea Trousers are also ready for selection from a choice variety of patterns in London only at POULSON and COMPANY Merchant Tailors and Sole Patentees of the United Australian Wool Cloth the best material ever invented for all Sporting, Riding, and Travelling purposes.

14 Regent street

THE PERFECT SUBSTITUTE for SILVER.

The REAL NICKEL SILVER introduced twenty years ago by WILLIAM S BURTON when plated by the patent process of Messrs Elkington and Co is beyond all comparison the very best article next to sterling silver that can be employed as such either usefully or ornamentally as by no possible test can it be distinguished from real silver

	Fiddle Pattern	Three of Brunswick Pattern	Kings Pattern
Tea Spoons per dozen	18s	24s	30s
Dessert forks "	30s	42s	50s
Dessert Spoons "	30s	42s	50s
Table forks "	40s	55s	70s
Table Spoons "	40s	55s	70s

Tea and Coffee pots, Waiters Candlesticks, &c at proportionate prices. All kinds of re plating done by the patent process

CHEMICALLY PURE NICKEL NOT PLATED

Table Spoons and forks full size per dozen	Fiddle Pattern 18s	Thread 28s	Kings 30s
Dessert ditto and little ditto	14s	21s	24s
Tea ditto	9s	11s	12s

LAMPS of ALL SORTS and PATTERNS The largest as well as choicest assortment of Palmer's Magnum and other Lamps Camphine Argand Moderator and Rape Lamps with all the latest improvements and of the newest and most recherché pattern in ormolu Bohemian and plain glass or papier maché in existence, at WILLIAM S BURTON'S and they are arranged in one large room, so that patterns, sizes, and sorts can be instantly selected

WILLIAM S BURTON has Ten Large Show Rooms (all communicating), exclusively of the Shop leaded solely to the show of Sterling Silver and Electro plate, Cutlery, Nickel silver, plated and japanned wares (each of which has been fitted up as a separate and classified that purchasers may easily and at once make their selections

Catalogues, with Engravings sent (per post) free The money returned for every article not approved of

39 OXFORD STREET (corner of Newman street) Nos 1 and 2, NEWMAN STREET and 4 and 5 PERRY'S PLACE

EUREKA.—In FORD'S EUREKA SHIRTS are united the best material and first-rate workmanship together with that special excellence of fit which is their distinguishing characteristic Their superiority to all others is still maintained, and gentlemen who desire the luxury of a perfect fitting shirt are invited to try them The prices are for the first quality, six for 40s, second quality six for 36s coloured shirts for boating, shooting and ordinary wear 27s the half-dozen List of prices and instructions for measurement, post free, and patterns of the new coloured shirtings free on receipt of six stamps.

RICHARD FORD 67 Pontiy (late 185 Strand)

THE SANS-PLI SHIRT, as shewn in the Great Exhibition, Class 30, No 34, is a garment made entirely without gathers These auxiliaries to the shirt have hitherto been considered indispensable, but like everything else where the ingenious mind is directed to getting rid of complication, simplicity is proved to be the attribute of perfection It may be confidently recommended for its nicety of fit and great ease and comfort.—From the Morning Herald.—At WILLIAM REID'S 81 Conduit street Regent-street. Printed flannels for dressing-gowns, cravats, and hosiery in every variety

SCOTT and CO. FIRST CLASS MERCHANT TAILORS (from H. J. and D Nicoll's),

126, REGENT-STREET (corner of Beak-street), LONDON; and PAVILION HOUSE, BRIGHTON.

INVENTORS of the PALLIAMENT (a great improvement upon the Paletot), the DONCASTER MORNING COAT, and the PALMA, a new equestrian or walking CLOAK-COAT.

All the new styles in Over Coats for the coming season, and the greatest novelties in Angolas and Scotch Tweeds for Trowsers.

LADIES' RIDING HABITS, LIVERIES, &c.

At the most moderate prices for cash.

On parle Français.

Qui si parla Italiano.

SCOTT and CO 126, REGENT-STREET, LONDON; and PAVILION HOUSE, BRIGHTON.

PROFESSIONAL GENTLEMEN and the COMMERCIAL COMMUNITY are strongly recommended to try BLACKWOOD and CO'S COPYING and other WRITING INKS contained in the registered steam condensing bottles, with durable cork The copying ink combines advantages never before obtained stamping others it will give a clear impression in many days after writing, and a duplicate copy if required Blackwood and Co's Perfect Reference Files are indispensable to all who value time method, and neatness in keeping their letters papers &c

Sold by BARNES and LANE, 88, Dunstan's-hill, WILSON and SON, Cheapside Wm TIDY and Co Queen street, City, HAINES, Strand, and Co Cornhill; BARR, Brompton, Royal Exchange-buildings; W S ROWARTH, Cheapside, JOHN E RICHARD, St. Martin's-court; JOHN SMITH the Government Stationer, Long acre, and all the leading Books llers and Stationers in the United kingdom. Stamping orders executed at the Manufactory, 28, Long-acre.

LIGHT BROUGHAMS. — Messrs. THORN beg to solicit an inspection of their improved roomy Carriage having a new principle whereby ease, lightness, and convenience are secured and the drumming noise so much complained of entirely removed Carriages lit on job, with option to purchase. 10, Hanover street Oxford street N B Inventors of the patent Adjustable Springs Carriage, Ventilators, and Self acting Steps; all of which can be fixed to old carriages

SCARLETT'S MOCK TURTLE SOUP

SCARLETT and SON respectfully inform the public in general that the MOCK TURTLE made by them, of a known well delicious quality and flavour, is by many pronounced equal to the real

N 18, KING WILLIAM STREET, near the Statue, London-bridge

A 6 The Soup is sufficiently portable to be sent to any part of the country by 6d. per quart.

PARLIAMENTARY NOTICES for SURREY.

The SURREY GAZETTE (established 1849) This genuine metropolitan and Surrey County Newspaper, has long been an acknowledged legitimate organ for Parliamentary and other official notices relating to the county During the present year, the SURREY GAZETTE affords especial facilities to parties having Notices to give its regular date of publication during the ensuing month falling as under TUESDAY, NOVEMBER 18th, 25th 2nd and 9th Thus allowing advertisers the very latest day comprising the three weeks' notice before the expiration of the month viz NOVEMBER 16th, 23rd, and 30th

Accuracy guaranteed Notices sent to the Head Office, Lewes, returned in proof within a few hours References as to accuracy punctuality, and despatch are permitted to some of the most eminent Parliamentary Agents, by whom the SURREY GAZETTE has been patronised

PARLIAMENTARY NOTICES for SURREY.

The printer of the SURREY HERALD, published at Guildford, begs respectfully to bring that Journal under the notice of Parliamentary Agents, having halls for Surrey The SURREY HERALD is the title of the old COUNTY CHRONICLE in sixty years the Surrey Paper having published the county advertisements since 1790 London Office for advertisements (where the proofs will be sent and for proofs), 30 Warwick-square Newgate street Parliamentary dates of insertion, November 16th, 23rd and 30th Printed on Monday

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A saving of at least 40 per cent may be effected by purchasing your Office Papers at PARTRIDGE and COZENS'S 127 and 128, Chancery lane The following articles mentioned can be recommended in (with standing the lowness of price), as only first class goods are kept in stock

Carriage free to any part Terms cash, the prices not a shilling of credit

Good Draft Paper 4s 6d 7s. 9d and 8s. 6d per ream	
Thick Satin ditto, 9s 6d. —The finest Draft manufactured.	
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Thick Superfine ditto 6s This is made exclusively for P and C and stands unequalled for its quality	
Good Cream laid Letter, 6d 7s 8s 6d 9s 6d and 10s. 6d	
Queen or Albert sized Cream laid Note, from 1s 9d	
Good Cream laid or Blue Wove Adhesive Envelopes, 4s. 6d. per 1,000	
Best thick Superfine ditto, stamped from crest, or with initials, 7s 6d	
Pools ap Official 2s per 100 or 18s 6d per 1,000	
Cartridge and Linen lined Foolscap for Drafts, Briefs, and Deeds, at greatly reduced prices	
Very best Pink Blotting, 3 quires for 1s or 1½. 6d per ream.	
Ditto, White 3 quires for 2s, or 1½ 6d per ream	
Ditto Large and Thick Cartridge, 5 quires for 2s 6d or 2s. per ream	
Ditto Ditto, Brown Paper, 5 quires for 2s. 3d. or 2s 6d. per ream	
"The Superfine highly finished" Blue Laid Letter, 12s 6d. and ditto Note, 6s 6d per ream	
Best Copying Paper, large for Machine, 7s. 6d.	
Very best Red or Black Wax, 3s 6d per lb, second quality ditto, 2s 6d and 2s per lb	
Good Parcel Wax 1s per lb	
Best Red Tape, 8d 1s and 1s 4d per dozen pieces	
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Copies of Writs 2s per 100, with attorney's name and address printed on	
All other Law Forms equally cheap	
Ledgers Day, Cash, Letter and other Books, in various styles and sizes very much below the ordinary prices.	

PARCHMENT—"FINEST QUALITY"

Indentures, printed and machine ruled twenty or thirty folios, 12s 6d per dozen, or 6s. per roll of sixty skins.

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Bills or Answers, to hold thirty folios, 15s. per dozen, or 8½. 6d. per roll

Records or Memorials, ruled or plain, from 5s per dozen

All other sizes of Skins at the same low rate Quality unequalled.

P and C's Steel Pens are the best, every description of point, fine medium, and broad, and are now used in almost every solicitors office, and most of the Government departments, and obtained honourable mention at the Great Exhibition, for combining the important features, superior finish, with lowness of price.

Catalogues or Specimens may be had Gratis

Observe! PARTRIDGE and COZENS, 127 and 128, Chancery-lane, London.

WARWICKSHIRE —Freehold Residence and about Eighty Acres of Land, tithe-free and land-tax redeemed.

MESSRS. ELLIS and SON are directed to SELL by AUCTION, at GARRAWAY'S, on THURSDAY, NOVEMBER 11, at Twelve, in One Lot (unless an acceptable offer should be previously made by private contract), a Genteel FREEHOLD RESIDENCE, situate at STOCKTON, a capital hunting country, two miles from Southam, nine from Leamington, nine from Rugby, ten from Warwick, and three from Marton Railway Station, consisting of a commodious freehold residence, called Stockton House, situate on an eminence commanding extensive and beautiful views of a finely-wooded country, surrounded by about ten acres of rich meadow land, and five inclosures of productive arable land—together, about eighty-two acres; the whole having a frontage to the high road, from Southam to Dunchurch. Early possession may be had. To be viewed by applying on the premises, between the hours of Ten and Four only. Printed particulars may be had fourteen days prior to the sale, of Messrs. Dawson and Pye, Solicitors, Coventry; Messrs. Birbeck and Walker, Solicitors, 29, Lincoln's-inn Fields; at Messrs. W. W. and R. Wade, Solicitors, 33, Fenchurch-street, London; at Garraway's; at the Bedford Hotel, Leamington; the George, Rugby; the Castle, Warwick; the Royal Hotel, Birmingham; and of Messrs. Ellis and Son, Auctioneers and Estate Agents, 36, Fenchurch street.

STOKE NEWINGTON —Eligible and well-secured Leasehold Investment, being a net rental of 98l. 10s. per annum for a term

MESSRS. ELLIS and SON are directed by the Executors of the late P. S. Levett, Esq. to SELL by AUCTION, at GARRAWAY'S, on THURSDAY, NOVEMBER 18, at Twelve, in one lot, a very eligible LEASEHOLD PROPERTY, situate in Nelson-terrace, Stoke Newington; comprising an excellent residence, being No. 17, with large garden and paddock, in the occupation of Mrs. Bibbins, let on lease for the whole term at 72l. 10s. per annum; an excellent residence, being No. 18, adjoining, with coachhouse, stabling, and large garden, in the occupation of the Rev. S. Harvey, let on lease for the whole term at 45l. per annum. The whole property is held for an unexpired term of nineteen years from Christmas, 1852, at 25l. per annum. To be viewed by tickets only, which may be had of Messrs. Ellis and Son. Printed particulars may be had fourteen days prior to the sale, of W. Watson, Esq. Solicitor, 33, Bucklersbury; at Garraway's; and of Messrs. Ellis and Son, Auctioneers and Estate Agents, 36, Fenchurch-street.

KENSINGTON-PARK, NOTTING-HILL —Valuable Leasehold Property, let to highly respectable tenants, at rents amounting to 230l. per annum.

MESSRS. ELLIS and SON are directed by the Executors of the late J. P. Pinto, esq. to SELL by AUCTION, at GARRAWAY'S, on THURSDAY, NOVEMBER 18, at Twelve, in five lots, the following valuable and very desirable LEASEHOLD RESIDENCES:—Lot 1, A genteel residence, 1, Hanover terrace; let to Miss Leaker, at 100l. per annum. Lot 2, A semi-detached villa residence, 7, Hanover-terrace, let to Daniel Rawlinson, esq. at 90l. per annum. Lot 3, A semi-detached villa residence, 8, Hanover-terrace; let to W. Hall, esq. at 85l. per annum. Lot 4, A detached villa residence, delightfully situate, 21, Lansdowne-crescent; let to Mr. Hodgson, esq. at 70l. per annum. Lot 5, A genteel and desirable carriage house and three stall stables, with loft and room over, 7, Lodbrooke-mews; let to Mr. Stephen Cole, at 35l. per annum. Held by separate leases for long terms at low ground-rents, amounting to 6l. 6s. per annum. To be viewed by tickets only, which may be had of Messrs. Ellis and Son.—Printed particulars may be had fourteen days prior to the sale, of Messrs. R. and W. G. Rox, Solicitors, 48, Lothbury; of Mr Charles Ellis, Upholsterer, 32, Bedford street, Covent-garden; at Garraway's; and of Messrs. Ellis and Son, Auctioneers and Estate Agents, 36, Fenchurch-street.

CITY FREEHOLD—First-class Investment, Fenchurch-street, House and Shop, let on lease at 150l. per annum.

MESSRS. CHINNOCK and GALSWORTHY will SELL by AUCTION, at the MART, on TUESDAY, NOV. 9, at Twelve, the substantial FREEHOLD HOUSE and HABERDASHER'S SHOP, 125, Fenchurch-street, with handsome plate-glass front, occupying a commanding position at the corner of Gulliam-street; let on lease to a highly respectable tenant, who has recently expended a sum exceeding 600l. in substantially and decoratively repairing, in addition to a large premium, producing a rent of 150l. per annum.—May be viewed by permission of the tenant, and particulars had of Chas. Cutler, 124, Bolt-court, Fleet-street; of Messrs. Cutler and Hine, Solicitors, 5, Bell-yard, Doctors'-commons; at the Mart, and of Messrs. Chinnock and Galsworthy, 28, Regent-street, Waterloo-place.

CITY FREEHOLD—Fenchurch-street, Fenchurch-street, let on lease at the very low rent of 45l. per annum

MESSRS. CHINNOCK and GALSWORTHY will SELL by AUCTION, at the MART, on TUESDAY, NOVEMBER 9, at Twelve, a substantial FREEHOLD HOUSE with double front, and private side entrance, occupied, in suites of chambers by merchants, and producing a large rack rental, let on lease, of which thirteen years are unexpired, at the very low rent of 45l. per annum, when the valuable reversion will fall in. May be viewed by permission of the tenants, and particulars had of Chas. Cutler, 124, Bolt-court, Fleet-street; of Messrs. Cutler and Hine, Solicitors, 5, Bell-yard, Doctors'-commons; at the Mart, and of Messrs. Chinnock and Galsworthy, 28, Regent-street, Waterloo-place.

PERIODICAL SALE established in 1825, appointed to take place the first Thursday in every month, of Absolute and Contingent Reversions, Life Interests, Annuities, Policies of Assurance, Advowsons, Next Presentations, Rent-charges in Lieu of Tithes, Post Obit Bonds, Tontines, Debentures, Improved Rents, Shares in Docks, Canals, Mines, Railways, Insurance Companies, and other public undertakings for the year 1852.

MR. MARSH begs to announce that his PERIODICAL SALES (established in 1825), for the disposal of every description of the above-mentioned property, take place on the first Thursday in each month throughout the present year, as under—

Thursday, Nov 4. Thursday, Dec. 2.

Mr Marsh has been induced to hold these sales from his experience of the heavy drawback and great difficulty to which the disposition of property has been exposed in the ordinary course of sale, and the above plan affords equally advantageous to vendors and purchasers. Notice of sales should be forwarded to Mr Marsh a fortnight previous to the above dates. Mr Marsh requests all persons desirous of being furnished monthly with the particulars of his sales to forward their address to his offices where every information respecting the disposal and purchase of this description of property may be obtained. The NEXT SALE will take place on THURSDAY, NOVEMBER 4 2, Charlotte row, Mansion-house.

PERIODICAL SALE for THURSDAY, NOVEMBER 4.—The valuable Absolute Reversion to the Sum of 4,000l. Consols

MR. MARSH has received instructions to include in his next Monthly Sale of Reversions, Policies, &c. appointed to take place at the MART, on THURSDAY, NOVEMBER 4, at Twelve, a valuable ABSOLUTE REVERSION to the SUM of 4000l. Consols, standing in the names of executors of the greatest responsibility, and receivable on the decease of a lady, aged 54, free of legacy-duty.—Particulars may be obtained at the Mart; and Mr. Marsh's offices for the Sale of Reversionary Property, 2, Charlotte-row, Mansion-house.

PERIODICAL SALE for THURSDAY, NOVEMBER 4.—A Policy for the sum of 500l. in the Law Life Assurance Society.

MR. MARSH has received instructions from the Executor to include in his next Monthly sale of Reversions, Policies, &c. appointed to take place at the MART, on THURSDAY, NOVEMBER 4, at Twelve, a POLICY of ASSURANCE for the sum of 500l. effected with the Law Life Assurance Society in August, 1808, on the life of a gentleman now in his 46th year; annual premium, 2l. 2s. 9d. The sum is advanced on the policy, and the bonus declared thereon amounts to 6l. The next Sale will take place in March, 1853.—Particulars may be obtained at the Mart; of G. G. Vincent, Esq. Solicitor, 2, Staple-inn; and of Mr. Marsh's Offices, 2, Charlotte-row, Mansion-house.

PERIODICAL SALE for THURSDAY, NOVEMBER 4.—Four valuable Policies of Assurance, effected with the United Kingdom Life Assurance Company, Waterloo place, Pall-mall.

MR. MARSH has received instructions from the Executors to include in his next Monthly Sale of Reversions, Policies, &c. appointed to take place at the MART, on THURSDAY, NOV 4, at Twelve, in lots, a POLICY of ASSURANCE for the sum of 500l. effected with the United Kingdom Life Assurance Company in January, 1845, on the life of a gentleman, now in his fifty-fifth year; annual premium 20l 12s 6d. A Policy of Assurance for the sum of 500l. effected with the United Kingdom Life Assurance Company in January, 1844, on the life of a gentleman, now in his fifty-fourth year; annual premium 20l 12s 6d. A Policy of Assurance for the sum of 500l. effected with the United Kingdom Life Assurance Company in March, 1845, on the life of a gentleman, now in his forty-fifth year, annual premium 16l 8s 9d bonus declared 30l 18s 9d.—Particulars may be obtained at the Mart, of G. G. Vincent, Esq. Solicitor, 2, Staple inn, Holborn, and at Mr. Marsh's Offices, 2, Charlotte row, Mansion-house.

NEAR TO CAMBRIDGE The Freehold Manor of Orwlands, in Dry Drayton, also the Manor of Coventry, in Dry Drayton, held under renewable lease from the Bishop of Ely for two young lives with Policy of Assurance for the sum of 650l. on the life of the survivor

MR. MARSH has received instructions from the Trustees and Executors, to SELL by AUCTION, at the MART, on THURSDAY, NOV 4 at Twelve o'clock, the FREEHOLD MANOR of CROWLANDS, in Dry Drayton Also, the MANOR of COVENTRY, in Dry Drayton, held under renewable Lease from the Bishop of Ely, for two young lives, with Policy of Insurance for 650l. on the life of the survivor Lot 1. The Freehold Manor of Crowlands, in Dry Drayton, to comprise a large extent of valuable Copyhold Land and divers Houses, all subject to arbitrary fines There are in this manor fifteen heriots of the best chattel, payable on death The income from fines quit rents, and heriots is on an average of years, 84l 7s 2d per annum, but which will increase with improvements on the copyhold estates. Lot 2. The Leasehold Manor of Coventry, in which the fines are arbitrary (but in which they are not any heriots), comprising also a large extent of valuable Copyhold Land and Building, producing an income from fines and quit rents on an average of years, amounting to 9l per annum.—Further particulars may be had of Messrs. Crisp, Norwich, of Thomas Hurry, Esq. Solicitor, 4, Middle Temple-lane, Temple, of J. R. Mann, Esq. Estate Agent, Cambridge, who, having valued all the Lands and Premises part of these Manors will give every information to intending purchasers, and at Mr Marsh's Offices, 2, Charlotte row, Mansion house

ESSEX Valuable Manorial Rights fines arbitrary within three miles of Kelvedon a station on the Eastern Counties Railway, an hour and a half's ride from town

MR MARSH has been favoured with instructions from the Executor to SELL by AUCTION, at the AUCTION MART on THURSDAY, NOVEMBER 4th, at Twelve o'clock the FREEHOLD MANOR of COGGESHALL, otherwise COGGESHALL HALL, comprising divers SHOPS, HOUSES, RESIDENCES, HOLLS, highly valuable BUILDING GROUND, near the town of Coggeshall, and also immediately adjoining the station at Kelvedon, and a large quantity of first-rate agricultural and accommodation land, in the parishes of Great Coggeshall and Kelvedon, and in the adjoining parishes of Little Coggeshall, Feering, Braxwell, Inworth, and Marks Hall, producing from fines and quit rents, on an average of the last seven years 120l per annum, but which income may be regarded as one gradually and constantly increasing with the improvements on the copyhold estates There is a large quantity of valuable timber on the copyholds, from which a considerable receipt may be expected This manor is intermixed with or contiguous to the Western, Duchess and Honeywood estates as well as the property of many smaller wealthy persons Further particulars may be had on application to Thomas Hurry, Esq Solicitor, 4 Middle Temple lane, Temple to Messrs Crisp, Norwich of Mr Harris Estate Agent, Coggeshall, who will give every information as to the Manor to intending purchasers, or to Mr Marsh, Auctioneer Surveyor, and Land Agent, 2, Charlotte row, Mansion house

English Investments.

MR. GEO. DEEKS begs to announce that he will SELL by AUCTION, at the MART near the Bank of England, on FRIDAY NOVEMBER 5 at Twelve for One precisely, in lots, FOUR very eligible semi-detached VILLA RESIDENCES, with gardens front and rear, situate in a greatly improving neighbourhood, being Nos. 14, 15, 17, and 18, St George's road, Kilburn, within two minutes walk of the Railway and Omnibus Stations, of the estimated clear annual value of 87l each. Also THREE Capital DWELLING HOUSES, arranged as Villa Residences desirably situate, Nos. 10, 12, and 25 Waverley road Westbourne-green, in addition of the estimated clear annual value of 50l each Also, FIVE compact HOUSES, Nos. 2, 4, 6, and 8, Orchard street, Waverley road, aforesaid, each let at the clear annual rent of 34l The whole are held on leases or assigns for long terms at low, round rents May be viewed those which are let, by permission of the tenants. Particulars and conditions of sale to be had (for the Villas in St George's road, of Richard Fisher, Esq Solicitor, 8 Queen square, Bloomsbury, for the remainder of the property, of Messrs Rhodes, Lane and Rhodes, solicitors, 61 Chancery lane at the Queen's Arms near Kilburn bridge, at the Bull John on Tavern, Harrow road, at the Mart, and at Mr Deeks' Offices, 26, Albion street, Hyde-park square

Very desirable Leasehold Properties.

MR. GEO. DEEKS begs to announce that he will SELL by AUCTION at the MART, near the Bank of England, on FRIDAY, NOVEMBER 12th, at Twelve for One precisely, in Three Lots, a very desirable semi-detached VILLA RESIDENCE of attractive elevation and finished in a superior manner, situate No. 2, Westbourne terrace North, near Bishop's road, Paddington, let at the low rent of 90l per annum Also, a desirable RESIDENCE with its court and garden at the rear, situate No. 13, Park terrace Westbourne-park-road, of the clear annual value of 70l Held for long terms at low ground-rents Also, very eligible BUILDING PREMISES (with possession), consisting of a dwelling house, coach house, large yard with gateway entrance, and spacious workshops, situate No. 14 Conduit street East, Paddington (opposite the new hotel of the Great Western Railway), held for about sixty nine years unexpired at the exceedingly low rent of 6l per annum May be viewed, those which are let by permission of the tenants.—Particulars and conditions of sale to be had (for the Villa of Messrs Lovell and Lomax, solicitors 14, Hollis street, Cavendish square, for No. 13, Park terrace of J. B. Holman, Esq solicitor, 15, Bedford row) at the Princess Royal, Westbourne grove, at the Mart, and at Mr Deeks' Offices, 26, Albion-street, Hyde park square

LAW BOOKS.

MR. HODGSON will SELL by AUCTION, at his GREAT ROOM, 192, Fleet street, on FRIDAY next, NOVEMBER 5th, at Half past Twelve the LAW LIBRARIES of two respectable solicitors, deceased, including sets of Barnhard's Cunningtown, and Pickering's Statutes, Law Journal Reports, complete series of Modern Reports, in Law and Equity, Treatises and Books of Practice, and a neat panelled Wainscot Library Bookcase —To be viewed and catalogues had.

In preparation, and shortly will be published,

FORMS of PLEADINGS and PROCEEDINGS framed in accordance with the provisions of the Common Law Procedure Acts, 1852 with copious Notes on the New System of Pleading, and on the Existing Practice of Personal Actions, and in Ejectment. By R. A. FITZHILL, Esq. of the Middle Temple, Special Pleader, and Barrister-at-Law

Law Times Office, 29, Essex-street, Strand.

Now ready,

THE PRACTICAL STATUTES of the SESSION 1852, being all the Statutes of a Public General Nature, passed in the Session, with Notes, Practical Observations, and Forms, by W. F. FINLASON, Esq. Barrister-at-Law. 8s. cloth; 11s. half-calf; 12s. calf.

Note.—This work contains all the Statutes relative that can ever be required to be used by the English lawyer, omitting the Irish, Scotch, and Colonial Statutes, so that the cost of the practical new law of the Session is compressed in a portable volume, which can be easily carried in the pocket of bag It is made of further utility to the Profession by a very copious Index.

The volumes have already appeared, containing also *Practical Statutes of the Session of 1850* price 7s. 6d. and 1851, price 7s.

The volume for 1849 is in the press, and it is intended to issue the previous Statutes uniform with these, but excluding all the repealed Statutes and parts of Statutes, and adding, instead, all the Cases decided upon the construction of the Statutes noted on them, thus presenting the existing law with the judicial interpretation of it Thus, the volume for 1852 will contain the New Bankruptcy Act, with all the Cases decided upon its construction.

The following Statutes will be given entire in the volume for 1852 —

Common Inclosure Act.	Differential Duty Act
Municipal Corporations Acts Amendment Act.	Property of Lunatics Act.
Protection of Inventions Act, 1851 (Extension of Term)	Highway Rates Acts Extension Act.
Copyright Amendment Act	Militia Act.
Poor Relief Act Continuance Act.	Enfranchisement of Copyholds.
Loan Societies Act Amendment	Copyhold Commissioners Act.
Ecclesiastical Jurisdiction Act	Trustees Act Extension Act.
Stock-in-Trade Act	Pharmacy Act
Application of Highway Rates to Turnpike Roads Act	Corrupt Practices at Elections.
Property-Tax Continuance Act.	Excise Summary Proceedings.
Act for Re-assembling Parliament	Woods, Forests, and Land Revenues Act.
Wills Act Amendment Act.	Metropolitan Sewers Act.
Registration of Births, Deaths, and Marriages Act.	Real Private Offices Act.
Apprehension of Deserters from Foreign Ships Act	Militia Ballots Suspended Act.
Industrial and Provident Societies Act	Common Law Procedure Act.
Protestant Dissenters Act.	Secretary of Bankrupts' Office Abolition Act
Appointment of Overseers Act	Commons Inclosure Acts Extension Act.
General Board of Health Act (No 1 and No 2)	Masters in Chancery Abolition.
Disabilities Repeal Act.	County Rates Act
Passengers Act Amendment Act	Patents Law Amendment Act.
	Metropolis Water Supply Act
	Metropolitan Burials Act.
	Improvement of the Jurisdiction of Equity Act
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The following is a list of the principal contents —

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Chap 2 The Proceedings in an Action at Law from the Issue of the Writ until the Judgment of the Hous of Lords

Chap 3 The Action of Ejectment as it was, and as it will be.

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Bail in Error

Assignment of Errors in certain Cases

Judgments of Courts of Error

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New Writ of Ejectment and Service thereof

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The Trial, and Questions for the Jury.

Execution on Verdict for Claimant

Actions not to abate Suggestion to be entered of Deaths, &c

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Ejectment by Landlord against Tenant holding over.

Provisions as to Mesne Profits.

Ejectment by Mortgagee against Mortgagor

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Injunction

New Procedure applied to Counties Palatine

New Procedure may be applied to all Courts of Record.

Schedule of Forms of Proceeding.

APPENDIX.

Forms of Petitions Affidavits, &c

Note —All the forms in ordinary and every-day use will be placed in their proper places in the Commentary upon the Statute. Forms in only occasional use will be inserted in the Appendix.

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Second Edition of

THE CONSOLIDATION ACTS, by which all Public Companies, Local Commissioners, &c. are governed with the addition of all the Cases decided upon their construction to this time, an Introduction, and copious Index. By EDWARD W. COX, Esq Barrister-at-Law. Price 12s. boards, 14s 6d. Cloth, 13s. half bound; 15s. calf.

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THE LAW TIMES,

FOR THE LEGISLATOR, THE MAGISTRATE, AND THE LAWYER.

VOL. XX.—No. 501.] SATURDAY, NOVEMBER 6, 1852. [Price 1s.

Money, Wanted and to Lend.

TRUST MONEY.—From 9,000*l.* to 12,000*l.* and several smaller Sums, ready to be advanced on approved freehold, copyhold, and leasehold security, for a term if required, at a current rate of interest.
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LAW.—Wanted, immediately, in an Office in a town in West Sussex, a Clerk, competent to draw ordinary drafts, make out bills of costs, and keep rental and other accounts. The strictest inquiry will be made as to previous conduct and ability.
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SOCIETY for PROMOTING the AMENDMENT of the LAW.—A CONFERENCE will be held at the Society's Rooms, 21, Regent-street, on Tuesday, the 16th of November (Lord BROUGHAM, the President of the Society, in the chair), to consider the propriety of Assimilating the Mercantile Laws of England, Ireland, and Scotland.
Deputations will attend from Dublin, Belfast, Edinburgh, Glasgow, Liverpool, Manchester, Leeds, Hull, Bath, Bristol, Dover, Southampton, and other places.
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TABLES, SHEWING THESE ADDITIONS TO POLICIES OF 1,000*l.* which have been thirteen complete years in existence.

Age when Assured.	Additions.	Total Sum payable in case of Death.
20	£250 1 6	£1,250 1 6
35	204 2 6	1,254 2 6
40	250 6 11	1,250 6 11
45	257 11 10	1,257 11 10
50	232 12 7	1,261 12 7

Averaging upwards of 1¼ per cent. per Annum.

EXAMPLES OF BONUS TO POLICIES OF LARGER AMOUNT.

No. of Policy.	Issued in.	Sum Assured.	Additions.	Total.
812	1834	£4,000	£1,080 14 8	£5,080 14 8
1,060	1835	5,000	1,225 8 11	6,225 8 11
1,180	1835	5,000	757 1 11	5,757 1 11
1,368	1836	5,000	1,101 13 4	6,101 13 4
1,650	1837	2,000	508 0 0	2,008 0 0

The next Division of Life Profits will take place in December 1846, being an interval of Five years.

The Bonus may be applied, at the option of the Assured, in any of the following ways:—

I. It may be added to the Sum Assured; or
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Established at York, 1824, and empowered by Act of Parliament, Capital, 500,000*l.*

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The attention of the public is particularly called to the terms of this Company for LIFE INSURANCES, and to the distinction which is made between male and female lives.

Extract from the Table of Premiums for insuring 100*l.*

Age next Birthday.	A MALE. Whole Life Premiums	A FEMALE. Whole Life Premiums	Age next birthday.	A MALE. Whole Life Premiums	A FEMALE. Whole Life Premiums
	£ s. d.	£ s. d.		£ s. d.	£ s. d.
16	1 7 6	1 8 4	46	3 11 6	3 3 2
17	1 9 3	1 7 0	50	4 1 9	3 13 3
18	1 11 3	1 8 10	53	4 11 6	4 2 6
19	1 14 4	1 11 6	56	5 4 0	4 14 0
20	1 17 0	1 13 8	60	6 6 0	5 12 6
21	2 0 3	1 16 2	63	7 4 0	6 9 6
*20	2 5 0	1 19 9	66	8 4 0	7 10 8
25	2 8 6	2 2 10	70	10 0 4	9 7 6
26	2 13 0	2 6 4	73	11 16 2	11 2 6
40	2 19 9	2 12 0	76		13 1 9
45	3 6 3	2 17 8	80		15 12 10

* EXAMPLE.—A gentleman whose age does not exceed 20, may insure 1,000*l.* payable on his decease, for an annual payment of 25*l.* 10*s.*; and a lady of the same age can secure the same sum for an annual payment of 19*l.* 17*s.* 6*d.*

Prospectuses, with the rates of premium for the intermediate ages, and every information, may be had at the Head Office in York, or of any of the Agents.

FIRE INSURANCES are also effected by this Company, on the most moderate terms.

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Policies in this Office are INDISPUTABLE except in cases of FRAUD. "Free Policies" are issued, at a small increased rate of Premium, which remain in force although the Life assured may go to any part of the World.

Parties assuring within Six Months of their last Birthday are allowed a proportionate diminution in the Premium.

The Tables are especially favourable to young and middle-aged Lives, and the Limits allowed to the Assured, without extra charge, are unusually extensive.

Eighty per cent. of the profits are divided at the end of every Five Years among the Assured. At the first Division to the end of 1846, the addition to the amount assured averaged above Fifty per cent. on the Premiums paid.

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Established 1797.

NOTICE.—The Directors are prepared to receive Proposals for Loans on approved Security, in sums of not less than 500*l.* coupled with one or more Policies of Insurance to be effected in the Pelican Office.—Applications to be made to the Secretary, at the Chief Office of the Company, No. 70, Lombard-street.

CITY OF LONDON LIFE ASSURANCE SOCIETY for General and Deposit Assurances, Indisputable and Self-protecting Policies and Loans, 2, Royal Exchange-buildings.

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Mr. Commissioner West. | The Hon. W. F. Campbell.
John Thomas, esq.

The Periodical Valuation of the Policies effected with this Society, on the Participating Scale, was announced at an Extraordinary General Meeting, held 18th June, 1845, and the following bonus then declared—viz. a sum equivalent to a cash bonus of 20 per Cent on policies of five years' standing and upwards, to be appropriated, at option, either in diminution of premiums, until the next division of profits, or as a permanent addition to the Policies.

E. F. LEEKS, Secretary.

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

LAW APPOINTMENTS IN INDIA.—We announced a short time since that the Chief Justiceship of Bombay, vacant by the retirement of Sir Thomas Erskine Parry, had been filled up by the promotion of Sir William Yardley, late puisne judge at that presidency. We have now to announce that the seat of the latter upon the bench is to be bestowed upon Mr. C. R. Jackson, the present Advocate-General of the East-India Company at Calcutta. These promotions, recommended by the President of the Board of Control, cannot fail to give general satisfaction.

The Right Hon. Sir John Jervis has appointed John Vinall Selby, of Sittingbourne, in the county of Kent, gent. to be one of the perpetual commissioners for taking the acknowledgments of deeds to be executed by married women, in and for the county of Kent.

We have reason to believe that the Lord Lieutenancy of Herefordshire, vacant by the decease of Earl Somers, will be filled by the appointment of Lord Bateman.

COMMISSIONS SIGNED BY LORDS LIEUTENANT.

BANGOR.—The Rev. James Richard Brown, the Rev. David Rodney Murray, the Rev. Oliver Ormerod, and John Vaughan, esq. to be Deputy-Lieutenants.

NORTH RIDING OF YORKSHIRE.—The Hon. Wm. Ernest Duncombe, M.P. to be Deputy-Lieutenant.

LICHFIELD.—Thomas Rowley, esq.; Richard Greene, esq.; Thomas Johnson, esq.; Thomas Ready, esq.; Major Baker Morgan, esq. to be Deputy-Lieutenants.

LINCOLN.—William Hervey Woodhouse, esq. to be Deputy-Lieutenant.

STAFFORD.—The Hon. Orlando George Charles Bridgman, commonly called Viscount Newport; Richard Fowler Butler, esq. to be Deputy-Lieutenants.

FLINT.—Thomas Griffiths, esq. to be Deputy-Lieutenant.

PALATINE OF LANCASTER.—William Gillibrand Unsworth, esq.; Nicholas Blundell, esq.; Richard Birley, esq.; John Butler Bowden, esq. to be Deputy-Lieutenants.

CUMBERLAND.—Robert Brisco, esq. to be Deputy-Lieutenant.

NORTHAMPTON.—Sir Charles Edmund Isham, bart. to be Deputy-Lieutenant.

BEDFORD.—The Right Hon. St. Andrew Beauchamp, Lord St. John; Richard William Astell, esq. Col. Grenadier Guards; John Harvey Astell, esq. M.P.; John Gibbard, esq.; Henry Hanmer, late lieut.-col. Royal Horse Guards, Knight of Hanover; Henry Littledale, esq.; Charles Moore, esq.; Sir Charles Gillies Payne, bart.; Frederick Charles Polhill, esq.; Godfrey Thornton, esq.; Francis John Thynne, esq.; Samuel Charles Whitbread, esq.; and Samuel Whitbread, esq. M.P. to be Deputy-Lieutenants.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

COCHRANE.—On the 29th ult. at Auchintoul-house, N.B. the Lady Cochrane, of a son.

FORSYTH.—On the 3rd inst. at 2, St. Andrew's-place, Regent's-park, the wife of William Forsyth, esq. of a daughter.

JONES.—On the 30th ult. at 15, Monmouth-road, Bayswater, the wife of Henry Cadman Jones, esq. of Lincoln's-inn, barrister-at-law, of a daughter.

LEIGH.—On the 30th ult. at Tettenhall, Wolverhampton, the wife of John Leigh, esq. barrister-at-law, of a daughter.

MAYHEW.—On the 1st inst. the wife of Frederick Mayhew, esq. 14, Chalcot-villas, Haverstock-hill, and Gray's-inn, of a daughter.

NORTHCOTE.—On the 2nd inst. at Pynes, Devon, Lady Northcote, of a son.

MARRIAGE.

BENNETT, William Henry, esq. of her Majesty's 30th regiment, son of George Bennett, esq. Q.C. of Sodylt-hall, Shropshire, to Fanny, younger daughter of William Keating, esq. of the Inner Temple, barrister-at-law, on the 28th inst. at Trinity Church, Tunbridge-wells.

DEATHS.

BARTON, George, esq. of the Middle Temple, barrister-at-law, on the 1st inst. at Bowdon, Cheshire.

BULLER, Thomas Wentworth, esq. commander, R.N. and one of her Majesty's Tithe and Inclosure Commissioners for England and Wales, on the 30th ult. at Strete Raleigh, Whimple, Devonshire, aged 60.

BURNABY, Mary, the wife of C. S. Burnaby, esq. of East Retford, and second daughter of F. Jessopp, esq. of Quorn, near Derby, on the 17th ult. at Derby, aged 30.

CAMPBELL, Emily Georgina, wife of John Montgomery Campbell, esq. and eldest daughter of George Chilton, esq. Q.C. on the 15th of August last, at Grafton, Canada West, aged 27.

CHILTON, George, esq. Q.C. on the 1st inst. at Boulogne, aged 56.

COLSTON, William Hungerford, D.C.L. Fellow of New College, Oxford, deputy-lieutenant and magistrate of the county of Somerset, only son of William Hungerford Colston, rector of West Lydford, D.D. on the 31st ult. at West Lydford.

FREELAND, J. B. esq. of Chichester, on the 31st ult. at the residence of the Bishop of Chichester, 43, Queen Anne-street, Cavendish-square, aged 69.

HENDERSON, Robert, esq. advocate, Edinburgh, youngest son of Robert Henderson, esq. of Allan-park, Stirling, on the 29th ult. at West-end-cottage, Ventnor, Isle of Wight.

MAWLEY, Albert Edward, second son of Henry Mawley, esq. on the 2nd inst. at Gower-street, Bedford-square, aged 17.

NICHOLSON, Anne Lucy, wife of G. P. Nicholson, Esq. solicitor, on the 29th ult. at Wath-upon-Dearn, aged 36.

PORTMAN, Mary, relict of Edward Berkeley Portman, esq. M.P. of Bryanston, in the county of Dorset, eldest daughter of the late Sir Edward Hulse, bart. of Bremore-house, in the county of Hants, on the 31st ult. at Buckland Rectory, Surrey, aged 78.

Public Sales.

By CHINNOCK and GALSWORTHY, at the Mart, Tuesday, Nov. 2.—A freehold house, 1, Cullum-street, Fenchurch-street, let on lease at 65*l.* per annum, sold for 1,760*l.*

A ditto corner house and shop in Fenchurch-street adjoining, let on lease at 160*l.* per annum—3,040*l.*

A freehold ground-rent of 13*l.* per annum, secured by a house at Barnes, value 45*l.* per annum—340*l.*

A leasehold villa, 23, Addison-road, Notting-hill, let at 50*l.* per annum; term, 90 years; ground-rent, 10*l.* per annum—465*l.*

A freehold house, 9, King-street, Drury-lane, let at 30*l.* landlord paying taxes—310*l.*

A leasehold house, 17, Carlton-terrace, Harrow-road, unlet; annual value, 36*l.* per annum; term, 90 years; ground-rent, 8*l.*—375*l.*

A ditto—370*l.*

A ditto—360*l.*

Two copyhold villas at Hounslow-heath, let at 20*l.* per annum each, in lots, at 620*l.*

Six small houses in William-street, Notting-hill, let to weekly tenants at 18*l.* per annum each; ground-rent, 4*l.* 10*s.*; term, 90 years; part sold at 120*l.* each.

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Public Baths, Spa, Messuages, and Lands.	Burnham, Somerset. Seven Messuages, and eleven acres of Meadow Land, freehold, all contiguous; let well; in fair state of repair; and bringing in a large present income.	Mr. Thomas Follett, jun. South Brent, Somerset.

DIARY OF SALES BY AUCTION, DURING THE NEXT WEEK,

ADVERTISED IN THE "LAW TIMES."

DAY.	PLACE.	AUCTIONEER.	WHEN ADVERTISED.	PROPERTY.
Thursday, Nov. 11.	Garraway's.	Ellis and Son.	Oct. 30.	Freehold Estate at Stockton.
Friday, Nov. 12.	Mart.	Desks.	Ibid.	Four semi-detached Villa Residences, Kilburn.
Ibid.	Ibid.	Ditto.	Ibid.	Desirable Residences in Paddington.

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GEORGE BOTT begs to inform professional and private gentlemen visiting London, that they will find at the above Hotel every comfort and accommodation, with moderate charges. It is most centrally situate, in the immediate neighbourhood of the Houses of Parliament, Courts of Law, Public Offices, Theatres, Parks, and all Places of Public Amusement. The private sitting and bedrooms are commodious and replete with comfort; the coffee and smoking-room is capacious and well ventilated.

Dinners always ready from One till Seven o'clock.

An excellent assortment of wines and spirits of the first quality.

Omnibuses to all parts every minute, fares, 3d. and 6d.

A night porter always in attendance.

BACON'S CENTRAL HOTEL, Great Queen-street, Lincoln's-inn-fields, London.—THOMAS BACON begs respectfully to call the attention of the Nobility, Gentry, and Public to the convenience of the Hotel, situate as it is in the centre of the metropolis, in the immediate vicinity of the courts of law, operas, theatres, &c. and at an easy distance from the railway stations. The above establishment, containing elegant suites of apartments for families, and an excellent coffee-room, with the additional security of a fire-proof staircase, will be found most advantageous to parties visiting London, being quiet, airy, and replete with every comfort. The charges are moderate, and include attendance of every description. A night porter always in readiness for the arrival of trains.

IMPERIAL HOTEL, COVENT-GARDEN.—S. A. BACON begs respectfully to inform his friends, professional gentlemen, their families, and the public, that he has taken the above HOTEL, which, from its central situation and proximity to places of business and amusement, with spacious sitting rooms, quiet and airy bed-rooms on the ground and first-floor, combined with strict attention, he trusts will command their kind support and recommendation.

N.B. A fixed charge for servants.

CHAMPAGNE, FINEST IMPORTED.

1st Quality, 63s. per dozen.
2nd Quality, 52s. per dozen.
3rd Quality, 42s. per dozen.

Choice of Ruinart's, Moet's, or Giesler's Brands, at FINDLATER, MACKIE, and CO.'S, Wine and Spirit Merchants, 1, Upper Wellington-street Strand.

THE NOVELTY of the SEASON for the FASHIONABLE WORLD.—F. B. SANGUINETTI, 89, REGENT-STREET, begs to announce that he has become SOLE WHOLESALE LICENSEE of the NEW DOUBLE-FACED CLOTH REVERSIBLE GARMENTS, protected by her Majesty's Royal Letters Patent, and for which invention was awarded the Great Exhibition Prize Medal. The overcoats and other garments, constructed with the new patented materials and according to the new patented system, are the most elegant articles for ladies, gentlemen, and juveniles, at the usual prices of ordinary costume. To be had at the only wholesale depôt, 52, Regent-street, London, next door to the County Fire-office. Agents required in several of the principal provincial towns of the United kingdom. Every description of water-proof garments for ladies, gentlemen, and juveniles. A choice assortment in every description of ladies' cloths. The trade supplied.

IF YOU DESIRE really WELL-POLISHED BOOTS, use BROWN'S ROYAL MELTONIAN BLACKING. It renders them beautifully soft, durable, and waterproof, while its lustre equals the most brilliant patent leather. Price the same as common blacking. Made only by R. Brown, the inventor and sole manufacturer of the De Guiche Parisian Polish for Dress Boots and Shoes, and Waterproof Varnish for Hunting Boots

MANUFACTORY, 25, BROAD STREET, GOLDEN-SQUARE.

Patronized by the Court and Nobility, and to be had at all the principal shops throughout the kingdom.

CAUTION.

TO TRADESMEN, MERCHANTS, SHIPPERS, OUTFITTERS, &c. Whereas it has lately come to my knowledge that some unprincipled person or persons have for some time past been imposing upon the public by selling to the trade and others a spurious article, under the name of BOND'S PERMANENT MARKING INK. This is to give notice, that I am the original and sole Proprietor and Manufacturer of the said article, and do not employ any traveller, or authorise any person to represent themselves as coming from my Establishment for the purpose of selling the said Ink. This caution is published by me to prevent further imposition upon the Public, and serious injury to myself.

E. R. Bond, sole Executrix and Widow of the late John Bond, 28, Long-lane, West Smithfield, London.

HYDROPATHIC NOTICE.—DR. CHARLES T. THOMPSON, M.R.C.S. &c. may be consulted daily at his residence, No. 42, Sussex-gardens, Hyde-park, from Ten a.m. till Two p.m. by parties wishing to undergo Hydropathic treatment at their own homes.

THE EXPENSES of FUNERALS, so much complained of as extortionate and unnecessary, can be reduced to a moderate scale, and obvious saving of one-half, by applying in the first instance to SHILLIBEER'S office, instead of employing the nearest undertaker, who generally has to hire all the requirements, and consequently inflicts double profits. SHILLIBEER'S charge for a respectable hearse and coach funeral, two horses to each, coffin, pall, and every necessary article, is only 1l. 16s. A first-rate funeral, fit for a nobleman, with lead coffin, case, hearse and four, two coaches and pairs, and all needful fittings, complete for 30 guineas. Artisans' funerals from 4l.; tradesmen's, 6l., &c. and upwards. No extra charge within ten miles of London. Patent funeral carriage, to convey deceased and six mourners to any cemetery, with two horses, 1l. 11s. 6d.; single horse, 1l. 1s.; hearse or mourning coaches, pairs, 1l. 1s. each.—City-road, next Bunhill-fields Burial-ground; and at No. 13, North-street, Quadrant, Brighton. Originated in 1842.

HEAL and SON'S EIDER DOWN QUILTS are made in three varieties.—The BORDERED QUILT, the PLAIN QUILT, and the DUVET. The Bordered Quilt is in the usual form of bed quilts, and is a most elegant and luxurious article. The Plain Quilt is smaller, and is useful as an extra covering on the bed, or, as a wrapper in the carriage, or on the couch. The Duvet is a loose case filled with Eider Down, as in general use on the continent.—Lists of Prices and Sizes sent free by post, on application at HEAL and SON'S Bedding Factory, 196, Tottenham-court-road.

BARON LIEBIG on PALE ALES.—"If I wished to associate with any individual brewery my remarks on the alleged adulteration of bitter beer with strychnine, it would have been only natural to have mentioned another brewery, in which alone, and not in Mr. Allsopp's, I was engaged in investigating the Burton mode of brewing; and it was also in that brewery, and not in Mr. Allsopp's, that the Bavarian brewers acquired all the instructions they obtained at Burton. The admiration I expressed of this beverage, in my letter to Mr. Allsopp, is advertised in such a manner as to lead to the inference that my praise was exclusively confined to Mr. Allsop's beer. This was not the case; my remarks referred to that class of beer.

"Giessen, 26th July, 1858. "JUSTUS LIEBIG."

N.B.—The Baron's original letter is in the hands of Mr. Miller, at the Jerusalem Coffee-house, Cornhill, where it may be seen by any one taking an interest in the matter.

CARRIAGES.—The WIDOW of DAVID EVANS, in acknowledging the patronage received since his decease, begs to assure the nobility and gentry the business is conducted in the same manner as heretofore, and invites them to inspect the extensive and modern ASSORTMENT of well-manufactured CARRIAGES, which will now be sold, owing to the decline of the season, at a considerable reduction.

At the old-established Manufactory, 186, Tottenham-court-road.

DESTRUCTIVE FIRE in HAYDON-SQUARE.—MILNER'S HOLDFAST SAFES—the strongest safeguards extant against Fire, Robbery, or Violence—of all sizes, at the Depôt, 47 a, MOORGATE-STREET, CITY.

96, Minories, London, July 26, 1858.

Messrs. Thos. Milner and Son,

Gentlemen,—At the destructive fire in Haydon-square, on the 15th inst. in which our entire stock of oils, turpentine, cordage, canvas, &c. was destroyed, the Books and Papers in our Milner's Safe were preserved uninjured. The Safe was only dug out of the ruins this evening, and, from the severe trial it has undergone, we expected everything within it to be consumed.

"We have great pleasure in testifying to the utility of your Safes, and in strongly recommending them to the public, and will thank you to send us another of the same size.

"We are, Gentlemen, yours respectfully,

"COURRO and POTTER."

MILNER'S PHŒNIX SAFE WORKS, LIVERPOOL, the most extensive and complete in the world. The Safe alluded to above was 11 days and nights in the ruins, and may now be seen at the LONDON DEPOT, 47 A, MOORGATE-STREET, CITY, near the Bank of England.

DEED BOXES.

GEORGE HART, 263, STRAND, near Temple-bar, invites attention to his Stock of DEED BOXES, which for quality and price cannot be surpassed. Also to his extensive assortment of LAMPS for GAS, OIL, CAMPHINE, and PALMER'S CANDLES.

DR. ARNOTT'S VENTILATING CHIMNEY VALVES, price from 4s 6d each.

GEORGE HART, MANUFACTURING IRONMONGER, Patent Lock smith, Bellhanger, and Gasfitter, 263, STRAND, near Temple-bar.

HOBSON, BROTHERS, Tailors, established 1790, beg leave to acquaint their various friends and gentry, that their new mixtures in FUR BEAVERS, milled Venetians, and Melton cloths for overcoats, are now ready, from 2l. 2s. to 2l. 18s.; their new patterns in West of England doeskins for winter trowsers are now most complete, among which will be found some French elastic buckskins for riding trowsers, from 23s. to 28s. per pair; and the new Australian Ismaskin waistcoats, the best waistcoats that are made for shooting, 13s. Patterns forwarded into the country on application.

HOBSON, BROTHERS, 4, FINSBURY-PLACE SOUTH, and 57, LOMBARD-STREET, three doors from Messrs. Blaroley's, the bankers.

GUTTA PERCHA TUBING.—Many inquiries having been made as to the Durability of this Tubing, the Gutta Percha Company have pleasure in drawing attention to the following letter, received

FROM MR. C. HACKER, SURVEYOR TO THE DUKE OF BEDFORD:

"Office of Works, Woburn-park, Jan. 10, 1852.

"In answer to your inquiries respecting the Gutta Percha Tubing for Pump Suctions, I find that the water has not affected it in the least, although it will eat lead through in two years; we have adopted it largely, both on account of being cheaper than lead, much easier fixed, and a more perfect job.

"Yours, &c. C. HACKER."

N.B. The Company's Illustrated Circulars, containing Instructions to Plumbers for jointing tubes, lining tanks, &c. will be forwarded on the receipt of three postage stamps.

The GUTTA PERCHA COMPANY, PATENTEES, 18, WHARF-ROAD, CITY-ROAD, LONDON.

THE ONLY STOVE WITHOUT A FLUE, for which her Majesty's Royal Letters Patent have been granted Plain, from 12s. to 25s.; Ornamented, from 31s. 6d. to Six Guineas.

Prospectuses, with drawings and report, forwarded free.

STANDS FOR STOVES, 2s 6d. 3s. and 5s. EACH.

CAUTION.—An injunction having been granted by the Vice-Chancellor, in the case of *Nash* v. *Carman*, restraining the defendant from making or selling any colourable imitation of the plaintiff's Stove or fuel, the public is respectfully informed, that the original "Joyce's Patent Stove without a Flue, and the prepared Fuel," can only be obtained from SWAN NASH, or his authorised Agents. Every genuine Stove has the name and address of the proprietor on a brass plate, "SWAN NASH, *No.* 253, Oxford-street."

Joyce's Patent for Warming Halls, Passages, Greenhouses, Water Closets, Shops, Store-rooms, and all places requiring artificial warmth.

PATENT PREPARED FUEL for the Stoves, 2s. 6d. per bushel, only genuine with the proprietor's name and seal on the sack.

S. NASH, 253, Oxford-street, and 119, Newgate-street.

MESSRS. POULSON and COMPANY'S REGISTERED PARDESSUS of FINE AUSTRALIAN and LLAMA WOOLS (6 & 7 Vict. cap. 65), for WALKING or RIDING.—This is an improved style of coat, of a light convenient form, which admits of its being worn either over or without the ordinary coat. It is neatly and handsomely made, care being bestowed in its construction to impart to it that graceful and appropriate character which, since its first introduction, has so greatly recommended it to public favour. It is produced in all colours, with silk sleeve linings, at the very moderate price of 2 guineas, and, for winter wear, richly lined and quilted, 2½ and 3 guineas.—The improved Winter Guinea Trousers are also ready for selection, from a choice variety of patterns. In London only of H. POULSON and COMPANY, Merchant Tailors, and Sole Patentees of the Undyed Australian Wool Cloth, the best material ever invented for all Sporting, Riding, and Travelling purposes.

84, Regent-street.

THE PERFECT SUBSTITUTE for SILVER, The REAL NICKEL SILVER, introduced twenty years ago by WILLIAM S. BURTON, when plated by the patent process of Messrs. Elkington and Co. is beyond all comparison the very best article next to sterling silver that can be employed as such, either usefully or ornamentally, as by no possible test can it be distinguished from real silver.

	Fiddle Pattern.	Thread or Brunswick Pattern.	King's Pattern.
Tea Spoons, per dozen	18s.	28s.	36s.
Dessert Forks "	30s.	42s.	56s.
Dessert Spoons "	30s.	42s.	62s.
Table Forks "	40s.	56s.	70s.
Table Spoons "	40s.	56s.	70s.

Tea and Coffee Sets, Waiters, Candlesticks, &c. at proportionate prices. All kinds of re-plating done by the patent process.

CHEMICALLY PURE NICKEL, NOT PLATED.

	Fiddle.	Thread.	King's.
Table Spoons and Forks, full size, per dozen	12s.	20s.	30s.
Dessert ditto and ditto ditto ..	10s.	21s.	26s.
Tea ditto	8s.	11s.	13s.

LAMPS of ALL SORTS and PATTERNS.—The largest, as well as choicest assortment of Palmer's Magnum and other Lamps, Camphine, Argand, Solar, and Moderateur Lamps, with all the latest improvements, and of the newest and most recherché patterns, in ormolu, Bohemian and plain glass, or papier mashé, in existence, is at W. S. BURTON'S, and they are arranged in one large room, so that patterns, sizes, and sorts can be instantly selected.

WILLIAM S. BURTON has Ten Large Show Rooms (all communicating), exclusively of the Shop, devoted solely to the show of General Furnishing Ironmongery (including cutlery, nickel silver, plated and japanned wares, iron and brass bedsteads), so arranged and classified that purchasers may easily and at once make their selections.

Catalogues, with Engravings, sent (per post) free. The money returned for every article not approved of.

39, OXFORD-STREET (corner of Newman-street); Nos. 1 and 2, NEWMAN-STREET; and 4 and 5, PERRY'S-PLACE.

EUREKA.—In FORD'S EUREKA SHIRTS are united the best materials and first-rate workmanship, together with that special excellence of fit which is their distinguishing characteristic. Their superiority to all others is still maintained; and gentlemen who desire the luxury of a perfect fitting shirt are invited to try them. The prices are, for the first quality, six for 40s.; second quality, six for 33s.; coloured shirts, for boating, shooting, and ordinary wear, 27s. the half-dozen. List of prices, and instructions for measurement, post-free, and patterns of the new coloured shirtings free, on receipt of pre-stamp.

RICHARD FORD, 38, Poultry (late 158, Strand).

THE SANS-PLI SHIRT, as shewn in the Great Exhibition, Class 30, No. 23, is a garment made entirely without gathers. These auxiliaries to the shirt have hitherto been considered indispensable, but the everything else where the ingenious mind is directed to getting rid of complication, simplicity is proved to be the attribute of perfection. It may be confidentially eulogised for its nicety of fit and great ease and comfort.—From the *Morning Herald*.—At WILLIAM RHODES, 51, Coudait-street, Regent-street. Printed flannels for dressing-gowns, cravats, and hosiery in every variety.

SCOTT and CO. FIRST CLASS MERCHANT TAILORS (from H. J. and D. Nicoll's),

146, REGENT-STREET (corner of Beak-street), LONDON; and PAVILION HOUSE, BRIGHTON.

INVENTORS of the PALLIAMENT (a great improvement upon the Paletot), the DONCASTER MORNING COAT, and the TALMA, a new equestrian or walking CLOAK-COAT.

All the new styles in Over Coats for the coming season, and the greatest novelties in Angolas and Scotch Tweeds for Trowsers.

LADIES' RIDING-HABITS, LIVERIES, &c.

At the most moderate prices for cash.

On parle Français. Qui si parla Italiano.

SCOTT and CO. 146, REGENT-STREET, LONDON; and PAVILION HOUSE, BRIGHTON.

PROFESSIONAL GENTLEMEN and the COMMERCIAL COMMUNITY are strongly recommended to try BLACKWOOD and CO.'S COPYING and other WRITING INKS, contained in the registered clean conducting bottles, with durable cork. The copying ink combines advantages never before obtained; among others, it will give a clear impression many days after writing, and a duplicate copy if required. Blackwood and Co.'s Ready Reference Files are indispensable to all who value time, method, and neatness in keeping their letters, papers, &c.

Sold by SKIPPER and EAST, St. Dunstan's-hill; WILSON and SON, Cheapside; WM. TROUP and Co. Queen-street, City; SMITH, ELDER, and Co. Cornhill; BAILY, BROTHERS, Royal Exchange-buildings; W. S. ROWSELL, Cheapside; JOHN E. RICHARD, St. Martin's-court; JOHN SMITH, the Government Stationer, Long-acre; and all the leading Booksellers and Stationers in the United Kingdom. Shipping orders executed at the Manufactory, 26, Long-acre.

LIGHT BROUGHAMS. — Messrs. THORN beg to solicit an inspection of their improved roomy Carriages, hung on a new principle, whereby ease, lightness, and convenience are secured, and the drumming noise so much complained of entirely removed. Carriages let on job, with option to purchase, —10, John-street, Oxford-street. N.B. Inventors of the patent Æquimotive Springs, Carriage Ventilators, and Self-acting Steps; all of which can be fixed to old carriages.

SCARLETT'S MOCK TURTLE SOUP.

SCARLETT and SON respectfully inform the public in general that the MOCK TURTLE made by them, of acknowledged delicious quality and flavour, is by many pronounced equal to the real.

No. 28, KING WILLIAM-STREET, near the Statue, London-bridge.

N.B. The Soup is sufficiently portable to be sent to any part of the country: 3s. 6d. per quart.

PURE COCOA.—HANDFORD and DAVIES'S pure granulated COCOA, in 1 lb. packets at 1s. per lb. being the best of the four samples pronounced by the Analytical Sanitary Commission to be genuine out of the whole of the samples tested (vide the *Lancet* of May 21st, page 610); also their COMPO SOLUBLE COCOA, for parties to whom the full flavour of pure Cocoa is unpalatable. It consists of fine arrowroot, cocoa, and sugar only, and is a very superior article of its kind. It is very readily prepared by pouring boiling water on to it. Price 1s. 4d. per lb.

Finest Mocha Coffee, 1s. 6d.; finest Jamaica ditto, 1s 6d.; Java ditto, 1s. 4d.; Colombo ditto, 1s. 2d.; Costa Ricardo, 1s.; Congou Tea, strong and useful, adapted for general family use, 3s. 8d. per lb.

61, High Holborn.

"WE congratulate the Public upon the good effects which the liberal commercial policy originated by MILES, of 69, New Bond-street has had, whereby they obtain trowsers from 1,000 different patterns, at Sixteen Shillings per pair, and in the very street that they would formerly have been charged Two Guineas. This is free-trade with a vengeance."—*United Service Gazette.*

GLENFIELD PATENT STARCH.—Used in the Royal Laundry and Wotherspoon's Steam-made Confections. Sold by all grocers and druggists.

Glasgow—R. Wotherspoon and Co. 40, Dunlop-street.

London—Wotherspoon and Co. 40, King William-street, City.

OUR GUINEA FRENCH LAMP, brass fittings, newest, ultra-relievo designs, in bronze, with stand, globe, glass, &c. warranted for twelve months. Matchless, try where you will. The brilliancy and economy of the light are unequalled, and the simplicity and durability of the Lamps sold at this house, are now fully established. Finest Paris Oil, 4s. per gallon.

SMITH'S OLD-ESTABLISHED LAMP AND OIL DEPOT, 281, STRAND (exactly opposite Norfolk-street). Lists free by post.

THE ROYAL EXHIBITION.—Valuable newly-invented very small powerful WAISTCOAT POCKET GLASS, the size of a walnut, to discern minute objects at a distance of from four to five miles, which is found to be invaluable to SPORTSMEN, GENTLEMEN, and GAMEKEEPERS. Price 1l. 10s. sent free.

TELESCOPES.—A new and most important INVENTION in TELESCOPES, possessing such extraordinary powers, that some 3½ inches, with an extra eye-piece, will show distinctly Jupiter's moons, Saturn's ring, and the double Stars. They supersede every other kind, and are of all sizes, for the waistcoat pocket, Shooting, Military purposes, &c.

Opera and Race-course Glasses, with wonderful powers; a minute object can be clearly seen from ten to twelve miles distant.

Invaluable newly-invented preserving Spectacles, invisible and all kinds of Accurate Instruments for relief of extreme Deafness.

Messrs. B. and B. Solomons, Opticians and Aurists, Albemarle-street, Piccadilly, opposite the York Hotel.

TO FAMILIES REMOVING.—FURNITURE and every description of property carefully PACKED, Removed, and Warehoused in extensive fire-proof well-ventilated Warehouses, at charges below any similar establishment. It is the most extensive depository of the kind, and the best adapted to its purpose. Estimates given free of cost. Separate rooms if desired. Every information and ample references on application to Mr. Harrison, at the Thames-bank Depository, Manalagh-road, adjoining Cubitt's Pimlico-pier. Water-side Manufacturing Premises and Cellars to be Let.

Valuable Absolute Reversion to £442 sterling, receivable on the decease of a lady, aged 72

MESSRS. CHINNOCK and GALSWORTHY will SELL by AUCTION, at the MART, on WEDNESDAY, DECEMBER 1, 1858, at Twelve, in One Lot, the LIFE REVERSION to 4,000l. part of 4,500l. Three per Cent Consolidated Bank Annuities, standing in the names of Responsible trustees.—Particulars may be had of Messrs. Lowe, 11, Waterloo-place; at the Mart; and of Messrs. Chinnock and Galsworthy, Auctioneers, 18, Regent-street, Waterloo-place.

MANOR of RAMPTON LYLES, CAMBRIDGESHIRE.—To be SOLD by AUCTION, by WENTWORTH and SON, at the LION HOTEL, Petty Cury, Cambridge, on SATURDAY, NOVEMBER 20, 1858, at Three o'clock precisely, by direction of the Executors of the late Rev. Wm. Lyles, the valuable manor or reputed MANOR of the MOTTE LYLES, in the county of Cambridge, with the quit-rents, courts, fines (arbitrary), rights, and privileges. The manor has been in the hands of the present proprietor during a period of forty years, and the finest sporting can be obtained for about 200l. per annum, and the quit-rents is about 12l. per annum.—Further particulars with conditions of sale may be had at the Auction Mart, London, and E. May, Bank-street, Bury, and also of Messrs. Nurser and Hyde, Solicitors, and of Wentworth and Son, Auctioneers, Valuers, and Estate Agents, No. 1, Rose crescent, Cambridge.

The important Estate of Gunton, in the beautiful vicinity of Horsham, comprising a capital and spacious modern Mansion, and a rich compact Domain of about 1,100 acres.

MESSRS. DANIEL SMITH and SON are commissioned to announce that unless previously disposed of by private treaty, the above most desirable and very valuable FREEHOLD ESTATE is to be COMPLETED SALE, at the AUCTION MART, on TUESDAY, NOVEMBER 23rd, at Twelve. It is delightfully situate in the county of the river Thames, about eight miles from Guildford, and comprises, with a most complete investment (time farms being well cultivated), a most desirable and capital residential property. The mansion is modern and handsome, the reception rooms spacious and elegant, and it is replete with every comfort for a good establishment, superior gardens, conservatory, pinery, hothouses, extensive stabling and other appendages, surrounded by park-like pleasure grounds and ornamental plantations. The approach to the mansion may be purchased in a fair valuation, so as to afford very early possession of the mansion and home demesne.—Further particulars may be obtained of R. T. WHITAKER, Esq., Solicitor, 13, Lincoln's-inn-fields; at Gunton Royal Hotel, Horsham; and of Messrs. Daniel Smith and Son, Land Agents, in Waterloo-place, Pall mall, where a plan of the estate may be seen.

Eligible Investments.

MR. GEO. DEEKS begs to announce that he will SELL by AUCTION, at the MART, on FRIDAY NOVEMBER 26, at Twelve for One precisely, in Lots, FOUR very ELIGIBLE SEMI-DETACHED VILLA RESIDENCES, with carriage front and rear situate in a greatly improving neighbourhood, being Nos 13, 15, 17, and 19, St. George's road, Kilburn, within five minutes' walk of the Railway and Omnibus stations, of the estimated clear annual value of 35l each. Also a SECOND capital DWELLING HOUSE, arranged as Villa Residences, desirably situate, Nos 20, 22, and 24, Waverley-road Westbourne-green Paddington, of the estimated clear sum at value of 40l each. Also FIVE compact HOUSES, Nos 2 3 4, 6, and 8, Orchard-street Waverley-road, aforesaid, each let at the clear annual rent of 32l. The whole are held under separate leases for long terms at low ground rents. May be viewed those which are let, by permission of the tenants.—Particulars and conditions of sale to be had (for the Villas in St George's road, of Richard Stanton, Esq., Solicitor, 28, Omega square, Bloomsbury, for the remainder of the property, of Messrs Andrews Lane and Rhodes, Solicitors, 64, Chancery-lane) at the Queen's Arms near Kilburn bridge, at the Ben Jonson Tavern, Harrow road, at the Mart, and at Mr Deeks's Offices, 26, Albion-street, Hyde park square.

Very desirable Leasehold Properties.

MR. GEO. DEEKS begs to announce that he will SELL by AUCTION, at the MART, on FRIDAY, NOVEMBER 26th, at Twelve for One precisely, in Three Lots, a very desirable SEMI-DETACHED VILLA RESIDENCE of attractive elevation, and finished in a superior manner, being No. 2, Westbourne-terrace North, near Bishop's road, Paddington; let at the low rent of 40l per annum. Also, a desirable RESIDENCE, with fore-court and garden at the rear, being No. 12, Park-terrace, Westbourne-park road, of the clear annual value of 70l 10s, held for long terms at low ground rents. Also, very eligible BUILDERS' PREMISES (with power to erect), consisting of a dwelling house, counting house large yard, with workshop, sawpit, and spacious workshops, situate No 14 Conduit-road East, Paddington (opposite the new hotel of the Great Western Railway), held for about sixty nine years unexpired at the exceedingly low rent of 6l per annum. May be viewed, those which are let by permission of the tenants.—Particulars and conditions of sale to be had (for the villa, of Messrs Underwood and Cotman, solicitors 14, Hollis-street, Cavendish square for No 12, Park-terrace, of J. R. Norman, Esq Solicitor, 12, Bedford row) at the Princess Royal, Westbourne grove, at the Mart, and at Mr Deeks's Offices, 26, Albion street, Hyde park-square.

TO SOLICITORS, EXECUTORS, ADMINISTRATORS, AND LANDLORDS.

E. LECONTE, Auctioneer, Valuer, and Estate Agent, begs to notify that with many years' practice he VALUES and SELLS BY AUCTION, in town or country every description of house and chattel property on reasonable terms, and twenty years' experience as a Sworn Broker for the collection and recovery of rents and possession of tenements will be a guarantee to his clients against the frequent occurrence of being involved in liability and expenses by employing incompetent persons in the branch of the business.

Offices, 6, Norfolk-street, Fitzroy-square.

TO BE SOLD, by PRIVATE CONTRACT, a compact and desirable FREEHOLD ESTATE, in the county of Somerset, comprising 321 acres of the richest Arable Meadow, Pasture, and Orchard Land, with a farmhouse, farm buildings, mill, and gentleman's residence upon it. For particulars apply to Messrs. Bolleviers and Son, Solicitors, South Petherton, Somerset.

PARLIAMENTARY NOTICES for SURREY.

The SURREY GAZETTE (established 1848) This morning, the undersigned, Surrey County Newspaper, has long been an acknowledged Parliamentary organ for Parliamentary and other official notices relating to the county. During the present year the SURREY GAZETTE affords special facilities to parties having Parliamentary notices for publication during the ensuing month. Sittings as under—TUESDAY, NOVEMBER 2nd, 9th 16th, 23rd, and 30th. Thus allowing advertisers the very latest day, compatible with fifty clear notice before the expiration of the month, viz. TUESDAY, NOVEMBER 30th, 23rd, and 30th.

Announcements received, Monday, sent to the Head Office, Lewes, corrected, and "proofs" with a few hours. References as to most respectable "agents" and "deposits," are permitted to some of the most Parliamentary Agents, by whom the SURREY GAZETTE has for years been patronised.

PARLIAMENTARY NOTICES for SURREY.

The printer of the SURREY HERALD, published at Guildford, begs respectfully to bring that journal under the notice of Solicitors, Parliamentary Agents, Bankers, Railway Companies, Bridge Trusts, Turnpike Trusts, and others, that the SURREY HERALD is the only of the old County Chronicle, for many years the Surrey Paper, having published the county advertisements since 1794. London Office for advertisements (where they should be sent, and for proofs), 28, Warwick square, Newgate street. Parliamentary dates of insertion, November 16th, 23rd, and 30th. Printed on Monday.

IMPORTANT to SOLICITORS and OTHERS.

A saving of at least 40 per cent may be effected by purchasing your Office Papers of PARTRIDGE and COZENS, 127 and 128, Chancery-lane. The following articles are constantly on hand, recommended (notwithstanding the lowness of price), as being first class goods are kept in stock

Carriage free to any part.—Terms cash, the prices not admitting of credit

Good Draft Paper 4s 6d, 7s 6d and 9s 6d per ream
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3 Letter for Payment of Debt
4 Precept for Writ of Summons.
5 Precipe for Renewal of Writ
6 Writ of Summons
7 Writ of Summons to be specially endorsed for immediate Judgment
8 Affidavit of Service of Writ
9 Affidavit of Attempts at Service to obtain Leave to proceed
10 Affidavit of no Appearance being entered
11 Appearance Pieces on parchment
12 Declarat on in blank, suitable for any cause or number of causes of action
13 Declaration in Blank, for Bills or Promissory Notes, with Counts for Money Lent, Money Had and Received, on Accounts stated &c
14 Declaration for Goods Sold and Delivered, or Bargained and Sold, and on Accounts stated
15 Declaration for Work done, Materials provided, &c and on Accounts stated
16 Particulars of Demand
17 Notice to Declare
18 Notice to produce Documents
19 Affidavit of Service of Notice to Produce
20 Notice to inspect and admit Deeds
21 Affidavit of Signature to Admission
22 Notice of Trial in London
23a. Notice of Trial in Middlesex
23b Notice of Trial at the Assizes
23c Notice of Trial and of Assessment of Damages.
24 Notice of Trial where several Defendants.
25 Notice of Trial where several Issues.
26 Notice of Trial and Assessment on Breaches in Debt on Bond
27 Notice of Countermand
28 Notice of Countermand
29 Notice of Execution of Writ of Inquiry
30 Affidavit of Service and Attendance on Summons.
31 Consent to Judge's Order
32 Subpœna and Test Parchment and Paper
33 Subpœna before Sheriff Parchment and Paper
34 Subpœna duces tecum for the Assizes
35 Subpœna duces tecum "before the Sheriff" Parchment and Paper
36 Copyrit for Payment of Debt.
37 Ditto by Instalments.
38 Warrant of Attorney to confess Judgment.
39 Notice to Quit where Tenancy uncertain.
40 Notice to Quit where Tenancy certain
41 Warrant of Distress
42 Notice and Inventory of Distress.
43 Notice of Intention to Distrain for Arrears of Tithe Rent-charge
44 Notice by Agent of Intention to Distrain for ditto,
45 Warrant of Distress.
46 Writ of Ejectment.
47 Writ of Ejectment, Landlord against Tenant holding over
48 Notice limiting the Defence in Ejectment to Part of the Premises claimed

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MANCHESTER, at DUCIE-PLACE.
DUDLEY, at BURNT TREE.
GLASGOW, at 18, ST. VINCENT STREET.
DUBLIN, at ULSTER CHAMBERS, DAME-STREET.
BIRMINGHAM, at MARKET HALL.
At either of which places a list of respectable parties who supply the beer in bottles (and also in casks, at the same prices as from the Brewery), may at any time be seen.

BARON LIEBIG on PALE ALES.—"If I wished to associate with any individual brewery my remarks on the alleged adulteration of bitter beer with strychnine, it would have been only natural to have mentioned another brewery, in which alone, and not in Mr. Allsopp's, I was engaged in investigating the Burton mode of brewing; and it was also in that brewery, and not in Mr. Allsopp's, that the Bavarian brewers acquired all the instructions they obtained at Burton. The admiration I expressed of this beverage, in my letter to Mr. Allsopp, is advertised in such a manner as to lead to the inference that my praise was exclusively confined to Mr. Allsopp's beer. This was not the case; my remarks referred to that class of beer.
"Giessen, 30th July, 1858. "JUSTUS LIEBIG."
N.B.—The Baron's original letter is in the hands of Mr. Miller, at the Jerusalem Coffee-house, Cornhill, where it may be seen by any one taking an interest in the matter.

GUTTA PERCHA TUBING.—Many inquiries having been made as to the Durability of this Tubing, the Gutta Percha Company have pleasure in drawing attention to the following letter, received
FROM MR. C. HACKER, SURVEYOR TO THE DUKE OF BEDFORD:
"Office of Works, Woburn-park, Jan. 10, 1852.
"In answer to your inquiries respecting the Gutta Percha Tubing for Pump Suctions, I find that the water has not affected it in the least, although it will eat lead through in two years; we have adopted it largely, both on account of being cheaper than lead, much easier fixed, and a more perfect job.
"Yours, &c. C. HACKER."
N.B. The Company's Illustrated Circulars, containing Instructions to Plumbers for joining tubes, lining tanks, &c. will be forwarded on the receipt of three postage stamps.
The GUTTA PERCHA COMPANY, PATENTEES, 18, WHARF-ROAD, CITY-ROAD, LONDON.

CAUTION.
TO TRADESMEN, MERCHANTS, SHIPPERS, OUTFITTERS, &c. Whereas it has lately come to my knowledge that some unprincipled person or persons have for some time past been imposing upon the public by selling to the trade and others a spurious article, under the name of BOND'S PERMANENT MARKING INK. This is to give notice, that I am the original and sole Proprietor and Manufacturer of the said article, and do not employ any traveller, or authorise any person to represent themselves as coming from my Establishment for the purpose of selling the said Ink. This caution is published by me to prevent further imposition upon the Public, and serious injury to myself.
E. R. BOND, Sole Executrix and Widow of the late JOHN BOND, 28, Long-lane, West Smithfield, London.

THE VERSATIO, or REVERSIBLE COAT.—Worthy the attention of the Legal and Clerical Professions.—EDMISTON and SON, 69, Strand, opposite the Adelphi, London.—The importance of this patented invention consists in the novelty of the material and its application, viz. the double purpose of forming two in one without trouble, one side presenting a gentlemanly morning-coat, the other a riding or shooting coat in any texture or colour desired. In over-garments or paletots this happy discovery offers still more useful advantages to the wearer, one surface exhibiting a graceful and elegant walking-coat, while its counterpart is conveniently adapted for the rougher purposes of travelling, skilfully designed in each, and perfect in both their capacities. In these varying properties the public must recognise a union of novelty and usefulness not hitherto accomplished. Gentlemen supplied, sending their height and size round the chest over the waistcoat. Price from 80s. to 70s. London, EDMISTON and SON, Tailors, 69, Strand.

HOBSON, BROTHERS, Tailors, established 1798, beg leave to acquaint their various friends and gentry, that their new mixtures in FUR BEAVERS, milled Venetians, and Melton cloths for overcoats, are now ready, from 2l. 2s. to 3l. 18s., their new patterns in West of England doeskins for winter trowsers are now most complete, among which will be found some French elastic buckskins for riding trowsers, from 22s. to 28s. per pair; and the new Australian lambskin waistcoats, the best waistcoats that are made for shooting, 13s. Patterns forwarded into the country on application.
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Qui si parla Italiano.
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"WE congratulate the Public upon the good effects which the liberal commercial policy originated by MILES, of 82, New Bond-street has had, whereby they obtain trowsers from 1,000 different patterns, at Sixteen Shillings per pair, and in the very street that they would formerly have been charged Two Guineas. This is free-trade with a vengeance."—*United Service Gazette.*

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Dessert Spoons "	30s.	42s.	58s.
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96, Minories, London, July 26, 1858.
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"We have great pleasure in testifying to the utility of your Safes, and in strongly recommending them to the public, and will thank you to send us another of the same size.
"We are, Gentlemen, yours respectfully,
"COUSED and POTTER."
MILNER'S PHŒNIX SAFE WORKS, LIVERPOOL, the most extensive and complete in the world. The Safe alluded to above was 11 days and nights in the ruins, and may now be seen at the LONDON DEPOT, 47 A, MOORGATE-STREET, CITY, near the Bank of England.

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STANDS FOR STOVES, 2s. 6d. 3s. and 5s. EACH.
CAUTION.—An injunction having been granted by the Vice-Chancellor, in the case of *Nash v. Carmen*, restraining the defendant from making or selling any colourable imitation of the plaintiff's Stove or fuel, the public is respectfully informed, that the original "Joyce's Patent Stove without a Flue, and the prepared Fuel," can only be obtained from SWAN NASH, or his authorised Agents. Every genuine Stove has the name and address of the proprietor on a brass plate, "SWAN NASH, No. 253, Oxford-street."
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PERIODICAL SALE (established in 1843), appointed to take place the first Thursday in every month, of Absolute and Contingent Reversions, Life Interests, Annuities, Policies of Assurance, Advowsons, Next Presentations, Rent-charges in Lieu of Tithes, Post Obit Bonds, Tontines, Debentures, Improved Rents, Shares in Docks, Canals, Mines, Railways, Insurance Companies, and other public undertakings for the year 1853.

MR. MARSH begs to announce that his PERIODICAL SALES (established in 1843), for the disposal of every description of the above-mentioned property, take place on the first Thursday in each month throughout the present year, as under:—

Thursday, December 2.

Mr. Marsh has been induced to hold these sales from his experience of the heavy drawback and great difficulty to which this description of property has been exposed in the ordinary course of sales, and the above plan has proved equally advantageous to vendors and purchasers. Notices of sales should be forwarded to Mr. Marsh a fortnight previous to the above dates. Mr. Marsh requests all persons desirous of being furnished monthly with the particulars of his sales to forward their address to his offices, where every information respecting the disposal and purchase of this description of property may be obtained. The NEXT SALE will take place on THURSDAY, DECEMBER 2.—3, Charlotte-row, Mansion-house.

NORFOLK.—Highly valuable Manorial Rights, fines arbitrary, between Brandon and Swaffham, the freehold manor of Gooderstone, with Oxburgh.

MR. MARSH has been favoured with instructions from the executors to SELL by AUCTION, at the AUCTION MART, near the Bank of England, on THURSDAY, 2nd of DECEMBER, at Twelve o'clock (unless an acceptable offer be previously made by private contract), the MANOR of GOODERSTONE, comprising nearly the entire village of Gooderstone, inn, mill, residences, shops, cottages, farm buildings, and about 1,000 acres of land, mostly of first-rate quality, and in the best part of the parish. The average lord's income being 200l per annum from fines, and about 14l. for quit-rents; making a total of about 214l. per annum. This manor lies amongst the estates of Sir H. P. Bedingfield, bart.; W. C. Amherst, esq.; — Caldwell, esq.; Lord Walsingham, and other wealthy owners. A very large capital sum, or heavy rent charge, may be gradually realised, under the Copyhold Enfranchisement Acts.—Particulars may be had of Mr. Marsh, Auctioneer and Estate Agent, Charlotte row, Mansion-house, London, or will be forwarded on application.

NEAR to ELY and CAMBRIDGE.—The important and extensive fine arbitrary Freehold Manor of Wicken, an Hour and a Quarter's Ride from London by the Eastern Counties Railway.

MR. MARSH has been favoured with instructions from the Executors, and in pursuance of the trusts of the will of the late proprietor, to SELL by AUCTION, at the AUCTION MART, near the Bank of England, on THURSDAY, DECEMBER 2nd, at Twelve o'clock (unless an acceptable offer be previously made by Private Contract), the MANOR of WICKEN, one of the most extensive in the County of Cambridge, comprising a great number of Houses, and a very large quantity of Copyhold Land, of first-rate quality. The average lord's annual income, from fines and quit-rents, has been about 350l. per annum. There is a valuable right of fishery. The stewardship is of considerable value, there being about 230 copyhold tenements. The manor is intermixed with the estates of Earl Hardwicke and many wealthy small proprietors.—Particulars, with conditions of sale, may be had of Mr. Marsh, Auctioneer and Estate Agent, 3, Charlotte-row, Mansion-house, London, or will be forwarded on application.

MANORIAL RIGHTS, ESSEX and SUFFOLK.—Colchester, a small fine arbitrary Manor; also near Ipswich, an extensive fine arbitrary Manor.

MR. MARSH has been favoured with instructions from the executors to SELL BY AUCTION, at the AUCTION MART, near the Bank of England, on THURSDAY, DECEMBER 2, at Twelve o'clock, in Two Lots (unless an acceptable offer be previously made by private contract).—Lot 1, the valuable MANOR of BATTLESWICK, comprising a valuable inn, several tenements, and about Forty Acres of highly valuable Building Ground in the business part of the town of Colchester, near the Hythe and River, all subject to arbitrary fines. Lord's average income 12l. a year. (A map of this manor may be seen at Mr. Marsh's offices.) Lot 2, the important MANOR of OFFTON CASTLE, about six miles from Ipswich, and a short distance from Needham Market and Hadleigh, comprising divers houses; and about 900 Acres of Copyhold Land, all fine arbitrary. The lord's average income about 62l. per annum.—Particulars, with conditions, of sale, may be had of Messrs. Cook and Sons, Stratford, St. Mary, and Colchester; and of Mr. Marsh, Auctioneer and Estate Agent, 3, Charlotte-row, Mansion-house, London, or will be forwarded on application.

MANOR of RAMPTON LYLES, Cambridgeshire.—To be SOLD by AUCTION, by WENTWORTH and SON, at the LION HOTEL, PETTY-CURY, CAMBRIDGE, on SATURDAY, NOVEMBER 20, at SIX o'clock in the evening, by direction of the Executors of the late Rev. W. Gee, the valuable Manor, or reputed Manor, of Rampton Lyles, in the county of Cambridge, with the quit rents, customary fines (arbitrary), rights, and privileges. The Manor came into the hands of the late Robert Gee, esq. in the year 1781, and the fines on admission since that time have averaged about 120l. per annum. The quit-rents amount to about 17l. per annum.—Further particulars, with conditions of sale, may be had at the Auction Mart, London, and 28, New Broad-street, City; also of Edward Sheaem, Esq. Solicitor, Stratton, Cornwall; of Messrs. Sumpter and Hyde, Solicitors, Cambridge; and of Wentworth and Son, Auctioneers, Valuers, and Estate Agents, No. 1, Rose-crescent, Cambridge.

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102. Bond from an executor to indemnify a bond debtor who pays off a bond debt due to the testator, such bond having been lost or mislaid.
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112. Bond of resignation of a living.
113. Form of assent by an executor to the bequest of a leasehold estate.
114. Assent to a bequest, and assignment of leasehold property by indenture, by an executor to a legatee, the legatee covenanting to indemnify the former against the rent and covenants of the lease.
115. Miscellaneous forms of recitals, arranged alphabetically.

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Like volumes have already appeared containing the *Practical Statutes of the Session of 1850* price 7s. 6d. and 1851, price 7s.

The volume for 1849 is in the press, and it is intended to issue the previous Statutes uniform with these, but excluding all the repealed Statutes and parts of Statutes, and adding Notes of all the Cases decided upon the construction of the Statutes contained in them, thus presenting the existing law with the judicial interpretation of it. Thus, the volume for 1849 will contain the New Bankruptcy Act, with all the Cases decided upon its construction.

The following Statutes will be given entire in the volume for 1852:—

Commons Inclosure Act.
Municipal Corporations Acts Amendment Act.
Protection of Inventions Act, 1851 (Extension of Term).
Copyright Amendment Act.
Poor Relief Act Continuance Act.
Loan Societies Act Amendment.
Ecclesiastical Jurisdiction Act.
Stock-in-Trade Act.
Application of Highway Rates to Turnpike Roads Act.
Property Tax Continuance Act.
Act for Re-assembling Parliament.
Wills Act Amendment Act.
Registration of Births, Deaths, and Marriages Act.
Apprehension of Deserters from Foreign Ships Act.
Industrial and Provident Societies Act.
Protestant Dissenters Act.
Appointment of Overseers Act.
General Board of Health Act (No. 1 and No. 2).
Dimbilities Repeal Act.
Passengers Act Amendment Act.
Differential Dues Act.
Property of Lunatics Act.
Schools Sites Acts Extension Act.
Militia Act.
Enfranchisement of Copyholds.
County Courts Improvement Act.
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Forms for Proposals and Prospectuses, containing all the necessary particulars, may be had at any of the Company's Offices, and of the Agents throughout the country.

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POLICIES are granted on the lives of persons in any station, and of every age, and for any sum on one life, from 50*l.* to 10,000*l.*

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Extract from the Table of Premiums for insuring 100*l.*

Age next birth-day.	A MALE.	A FEMALE.	Age next birth-day.	A MALE.	A FEMALE.
	Whole Life Premiums.			Whole Life Premiums.	
	£ s. d.	£ s. d.		£ s. d.	£ s. d.
10	1 7 6	1 5 6	46	3 11 6	3 3 2
13	1 9 3	1 7 0	50	4 1 9	3 13 3
16	1 11 3	1 8 10	53	4 11 0	4 2 6
20	1 14 4	1 11 6	56	5 4 0	4 14 0
23	1 17 0	1 13 6	60	6 6 0	5 12 6
26	2 0 3	1 16 2	63	7 4 0	6 9 6
*30	2 5 0	1 19 9	66	8 4 0	7 10 8
33	2 8 6	2 2 10	70	10 0 4	9 7 6
36	2 12 0	2 6 4	73	11 16 2	11 2 6
40	2 19 9	2 12 0	76		13 1 9
43	3 5 3	2 17 2	80		15 12 10

* EXAMPLE.—A gentleman whose age does not exceed 30, may insure 1,000*l.* payable on his decease, for an annual payment of 22*l.* 10*s.*; and a lady of the same age can secure the same sum for an annual payment of 19*l.* 17*s.* 6*d.*

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Copyright Amendment Act.	Militia Act.
Poor Relief Act Continuance Act.	Enfranchisement of Copyholds.
Loan Societies Act Amendment.	County Courts Improvement Act.
Ecclesiastical Jurisdiction Act.	Trustees Act Extension Act.
Hook-in-Trade Act.	Pharmacy Act.
Application of Highway Rates to Turnpike Roads Act.	Corrupt Practices at Elections.
Property-Tax Continuance Act.	Excise Summary Proceedings.
Act for Re-assembling Parliament.	Woods, Forests, and Land Revenues Act.
Will Act Amendment Act.	Metropolitan Sewers Act.
Registration of Births, Deaths, and Marriages Act.	Naval Prize Officers Act.
Apprehension of Deserters from Foreign Ships Act.	Militia Ballots Suspension Act.
Industrial and Provident Societies Act.	Common Law Procedure Act.
Protestant Dissenters Act.	Secretary of Bankrupts' Office Abolition Act.
Appointment of Overseers Act.	Commons Inclosure Acts Extension Act.
General Board of Health Act (No. 1 and No. 2).	Masters in Chancery Abolition.
Disabilities Repeal Act.	County Rates Act.
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TO TRADESMEN, MERCHANTS, SHIPPERS, OUTFITTERS, &c. Whereas it has lately come to my knowledge that some unprincipled person or persons have for some time past been imposing upon the public by selling to the trade and others a spurious article, under the name of BOND'S PERMANENT MARKING INK. This is to give notice, that I am the original and sole Proprietor and Manufacturer of the said article, and do not employ any traveller, or authorise any person to represent themselves as coming from my Establishment for the purpose of selling the said Ink. This caution is published by me to prevent further imposition upon the Public, and serious injury to myself.

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DEED BOXES. GEORGE HART, 253, STRAND, near Temple-bar, invites attention to his Stock of DEED BOXES, which for quality and price cannot be surpassed. Also to his extensive assortment of LAMPS for GAS, OIL, CAMPHINE, and PALMER'S CANDLES.

DR. ARNOTT'S VENTILATING CHIMNEY VALVES, price from 4s. 6d. each.

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DESTRUCTIVE FIRE in HAYDON-SQUARE.—MILNER'S HOLDFAST SAFES—the strongest safeguards extant against Fire, Robbery, or Violence—of all sizes, at the Depôt, 47 A, MOORGATE-STREET, CITY.

95, Minories, London, July 26, 1852.

Messrs Thos. Milner and Son.

Gentlemen,—At the destructive fire in Haydon-square, on the 15th inst. in which our entire stock of oils, turpentine, cordage, canvas, &c. was destroyed, the Books and Papers in our Milner's Safe were preserved uninjured. The Safe was only dug out of the ruins this evening, and, from the severe trial it had undergone, we expected everything within it to be consumed.

"We have great pleasure in testifying to the utility of your Safes, and in strongly recommending them to the public, and will thank you to send us another of the same size.

"We are, Gentlemen, yours respectfully,

"COUBRO and POTTER."

MILNER'S PHŒNIX SAFE WORKS, LIVERPOOL, the most extensive and complete in the world. The Safe alluded to above was 11 days and nights in the ruins, and may now be seen at the LONDON DEPOT, 47 A, MOORGATE-STREET, CITY, near the Bank of England.

THE ONLY STOVE WITHOUT A FLUE, for which her Majesty's Royal Letters Patent have been granted. Plain, from 18s. to 28s.; Ornamented, from 31s. 6d. to Six Guineas.

Prospectuses, with drawings and report, forwarded free.

STANDS FOR STOVES, 2s. 6d. 3s. and 3s. 6d. EACH.

CAUTION.—An injunction having been granted by the Vice-Chancellor, in the case of Nash v. Carmen, restraining the defendant from making or selling any colourable imitation of the plaintiff's Stove or fuel, the public is respectfully informed, that the original "Joyce's Patent Stove without a Flue, and the prepared Fuel," can only be obtained from SWAN NASH, or his authorised Agents. Every genuine Stove has the name and address of the proprietor on a brass plate, "SWAN NASH, No. 283, Oxford-street."

Joyce's Patent for Warming Halls, Passages, Greenhouses, Water Closets, Shops, Store-rooms, and all places requiring artificial warmth.

PATENT PREPARED FUEL for the Stoves, 2s. 6d. per bushel, only genuine with the proprietor's name and seal on the sack.

S. NASH, 283, Oxford-street, and 119, Newgate-street.

SCARLETT'S MOCK TURTLE SOUP.—SCARLETT and SON respectfully inform the public in general that the MOCK TURTLE made by them, of acknowledged delicious quality and flavour, is by many pronounced equal to the real.

No. 36, KING WILLIAM STREET, near the Statue, London-bridge.

N.B. The Soup is sufficiently portable to be sent by any part of the country—3s. 6d. per quart.

BASS'S EAST-INDIA PALE ALE.—The October brewings of this much-esteemed beer are now arriving from Burton, and may be had in prime from 18 gallons upwards. This ale in bottles is in good condition for home use and for shipping. It is sealed and labelled, and each cask is branded, BASS, BEDFORD and Co. a precaution necessary, as much beer brewed for Bass's which is not brewed by them. Hanbury's Stout and Porter, the strong and light Burton and Scotch Ales, and Kingdon's Cider, may also be had of

BERRY BROTHERS and Co. 3, St. James's-street.

MESSRS. ALLSOPP and SONS' PALE or BITTER ALES have been unquestionably vouched by the most eminent scientific and medical men of the day to be a very agreeable and efficient tonic, as a general beverage both for the invalid and the robust; and as tending, from the pure and simple nature of the ingredients employed, the moderate proportion of alcohol present, and the very considerable quantity of carbonic anodyne bitter derived from hops alone which they contain, to preserve the tone and vigour of the stomach, and to accelerate the restoration of that organ when in a state of weakness, debility, or irritability."

In all cases in which Malt Liquors are suitable, none meet the desired effect more certainly, none are prescribed with more confidence by the Faculty. "The careful manner in which the fermentation is conducted, causes them to assimilate to Foreign Wines more than the ordinary ales of this country; and on this account they do not occasion that acidity of stomach created by the less perfectly fermented ales." "These Bitter Beers differ from all other preparations of malt, in containing a smaller amount of extractive matter, thus being less viscid and saccharine, and consequently more easy of digestion. They resemble, indeed, from their lightness, a WINE of MALT rather than an ordinary fermented infusion; and it is very satisfactory to find that a beverage of such general consumption is entirely free from every kind of impurity."

ALLSOPP'S PALE OR BITTER ALE may be obtained in casks of 18 gallons and upwards, from the Brewery, Burton-on-Trent; and from the undermentioned Branch Establishments:—

LONDON, at 61, KING WILLIAM-STREET, CITY.
LIVERPOOL, at COBB-STREET.
MANCHESTER, at DUCIE-PLACE.
DUDLEY, at BURY TYTH.
GLASGOW, at 115, ST. VINCENT-STREET.
DUBLIN, at ULSTER CHAMBERS, DAME-STREET.
BIRMINGHAM, at MARKET HALL.

At either of which places a list of respectable parties who supply the beer in bottles (and also in casks, at the same prices as from the Brewery), may at any time be seen.

BARON LIEBIG ON PALE ALES.

MESSRS. ALLSOPP and SONS recommend parties applying to Mr. Miller, of the Jerusalem Coffee House, Cornhill, London, for any information on the above subject, to ask to see a letter from Baron Liebig addressed to Mr. Bass, and dated Giessen, 23rd August, 1851; copies of which letter are already in the possession of all the Brewers at Burton-upon-Trent.

CHAMPAGNE, FINEST IMPORTED.

1st Quality, 63s. per dozen.
2nd Quality, 54s. per dozen.
3rd Quality, 42s. per dozen.

Choice of Ruinart's, Moet's, or Giesler's Brands, at FINDLATER, MACKIE, and CO.'S, Wine and Spirit Merchants, 1, Upper Wellington-street, Strand.

"TRIED IN THE BALANCE AND FOUND WANTING."

THE Analytical Sanitary Commissioners having analysed the Cocoa of every dealer in London of any importance, whether manufactured in London or not, have declared that only four samples were genuine, ours being the best, being free from husk and all refuse. They likewise expressed regret that, in the few samples they found to be genuine, the husk or shell of the nut, which they state to be, as food comparatively worthless, should so generally be worked up with the nut.—*Vide The Lancet* of May 31, 1851.

The husk, &c. form about one-sixth of the whole nut, so that, by excluding them, as we do, we necessarily enhance the cost of the article. We request the favour of cocoa-drinkers to make a trial of our PURE GRANULATED COCOA, in packets at 1s. per pound. Their confidence will not be misplaced. It is now in drunk at the tables of the first families in all parts of the kingdom.

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BACON'S CENTRAL HOTEL, Great Queen-street, Lincoln's-inn-fields, London.—THOMAS BACON begs respectfully to call the attention of the Nobility, Gentry, and Public to the convenience of the Hotel, situate as it is in the centre of the metropolis, in the immediate vicinity of the courts of law, operas, theatres, &c. and at an easy distance from the railway stations. The above establishment, containing elegant suites of apartments for families, and an excellent coffee-room, with the additional security of a fire-proof staircase, will be found most advantageous to parties visiting London, being quiet, airy, and replete with every comfort. The charges are moderate, and include attendance of every description. A night porter always in readiness for the arrival of trains.

95, Minories, London, July 26, 1852.

IMPERIAL HOTEL, COVENT-GARDEN.—S. A. BACON begs respectfully to inform his friends, professional gentlemen, their families, and the public, that he has taken the above HOTEL, which, from its central situation and proximity to places of business and amusement, with spacious sitting rooms, quiet and airy bed-rooms on the ground and first floor, combined with strict attention, he trusts will command their kind support and recommendation.

N.B. A fixed charge for servants.

CROWN HOTEL and TAVERN, Rupert-street, Coventry-street, Haymarket.

GEORGE BOTT begs to inform professional and private gentlemen visiting London, that they will find at the above Hotel every comfort and accommodation, with moderate charges. It is most centrally situate, in the immediate neighbourhood of the Houses of Parliament, Courts of Law, Public Offices, Theatres, Parks, and all Places of Public Amusement. The private sitting and bed-rooms are commodious and replete with comfort; the coffee and smoking-room is capacious and well ventilated.

Dinners always ready from One till Seven o'clock.

An excellent assortment of wines and spirits of the first quality.

Omnibuses to all parts every minute, fares, 3d. and 6d.

A night porter always in attendance.

CARRIAGES.—The WIDOW of DAVID IVALL, in acknowledging the patronage received since his decease, begs to assure the nobility and gentry the business is conducted in the same manner as heretofore, and invites them to inspect the extensive and modern ASSORTMENT of well-manufactured CARRIAGES, which will now be sold, owing to the decline of the season, at a considerable reduction.

At the old-established Manufactory, 188, Tottenham-court-road.

PONY PHAETONS, under duty.—A choice of these elegant little Carriages, new and second-hand, of the above description, and at unusually low prices, in consequence of the lateness of the season.—At CATTELL'S (late Holman's), 128, Long-acre. N.B. A second-hand dog-cart, in first-rate order, 25 guineas.

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MESSRS. DAVIS and VIGERS are instructed by the Mortgagee to SELL by AUCTION, at the MART, on TUESDAY, the 3rd day of NOVEMBER, at Twelve for One o'clock (unless previously disposed of by private contract), a valuable FREEHOLD PROPERTY, let on lease at £8 per annum, and valued at £20 per annum, for the term of 99 years, the lessee covenanting to repair, and having recently undergone a thorough and complete repair, and comprises a capital family residence and very extensive business premises, situate in Horse-shoe-alley Wilson-street, close to Finsbury-square. It is exceedingly desirable as an investment, and as the lease will be submitted for sale at the same time, it may, if desired, be secured for occupation It occupies a large area, the buildings are sound and of the most substantial description, and with comparatively little outlay they might be converted into extensive premises, for which purpose they are suggested by the dense population of the district —The property may be viewed at any time previously to the sale, and particulars and conditions of sale may be had of Messrs. DRUMMOND, Bearnsw, and TILL, Solicitors, Croydon, at the Mart, and of the Auctioneers, 3, Frederick's-place, Old Jewry

Freehold fin the heart of London

MESSRS. DAVIS and VIGERS are instructed by the Mortgagee to SELL by AUCTION, at the MART, on SATURDAY, the 21st day of NOVEMBER, at Twelve for One o'clock (unless previously disposed of by private contract), a valuable FREEHOLD PROPERTY, let on lease at £8 10s per annum, and valued at £20 per annum, for the term of 99 years, the lessee covenanting to repair, and having recently undergone a thorough and complete repair, and comprises a capital family residence and very extensive business premises, situate in Horse-shoe-alley Wilson-street, close to Finsbury-square. It is exceedingly desirable as an investment, and as the lease will be submitted for sale at the same time, it may, if desired, be secured for occupation It occupies a large area, the buildings are sound and of the most substantial description, and with comparatively little outlay they might be converted into extensive premises, for which purpose they are suggested by the dense population of the district —The property may be viewed at any time previously to the sale, and particulars and conditions of sale may be had of Messrs. DRUMMOND, Bearnsw, and TILL, Solicitors, Croydon, at the Mart, and of the Auctioneers, 3, Frederick's-place, Old Jewry

SUFFOLK —Capital and desirable Farm for investment, in one of the best parts of the county, upon the turnpike-road, between the two large market towns of Bury St Edmunds and Sudbury

MESSRS. DANIEL SMITH and SON are instructed to OFFER for SALE by AUCTION at the MART, on TUESDAY, the 3rd day of NOVEMBER, unless previously disposed of by private treaty, a most desirable and compact estate, comprising about 185 acres of excellent arable and pasture land, pleasingly undulated and interspersed with little coppices, all FREEHOLD, except about 10 acres, and the land tax redeemed The house and buildings are all substantially and neatly built, the land is in excellent condition and in the occupation of a highly respectable yearly tenant who is desirous of continuing the occupancy —Particulars may be obtained at their offices Waterloo place, Pall mall, of Messrs COSMOND and PARKINSON, Solicitors, Ipswich, and of Messrs COSMOND and PARKINSON, Solicitors, 7, Bedford row

The Whitley Park Estates, and other valuable Farms and Lands with a Cottage Residence, and superior Farm Homesteads, within a mile of the great market and borough town of Reading, commanding very rich and extensive scenery, and, completing together upwards of 900 acres, and presenting a very important and most improvable property

MESSRS. DANIEL SMITH and SON will SELL by AUCTION, at the MART on WEDNESDAY, the 16th of DECEMBER, at Twelve (unless acceptable offers shall be previously made by private treaty) together or in lots the above very valuable FREEHOLD ESTATES, commandingly situate upon the Farnham and Basingstoke turnpike roads within a mile of the great town and railway stations of Reading, a neighbourhood yearly increasing in importance They embrace the Whitley Park Farm, Grey's, Curling's, and other Farms, with some detached meadow lands, valuable common rights and ten farm rents, arranged on some neighbouring estates On the Whitley Park Farm are some fine, handsome pastures boldly undulated, overlooking a vast expanse of rich and beautiful scenery extending into Hants and Oxfordshire, and commanding extensive frontage upon the Farnham road, offering a most inviting site for a mansion and with their contiguity to Reading, and easy access with London, Basingstoke, and other roads on all sides, these and other portions of the estate must before long be in request for buildings of various classes To the capitalist it ensures a choice landed investment, a great part being let on lease to highly respectable tenants, and the greater part to the free The rental is about £615 There is a gentleman's cottage residence or shooting-box with beautifully timbered grounds, on the property It is close to good hounds, and the Thames and Kennet are within a short walk Particulars may be obtained at their Offices, 18 Waterloo-place, Pall mall, or of Messrs. SHARP and ALLNUTT, Solicitors, Warnerford court, Throgmorton-street

Long Leaseholds, for investment or occupation, Markham square, King's-road, Chelsea.

MR. FRED. GODWIN will SELL by AUCTION, at GARRAWAY'S, on THURSDAY NEXT, the 26th inst., at One, in three lots, THREE pleasantly situate modern LEASEHOLD RESIDENCES, Nos. 6, 7, and 8, Markham square No 6 in hand No 6 let at £35 and No 7 let at £35 per annum, term seventy-five years, ground-rent £8 8s per house The houses stand only a short distance from the high road. Conveyances by land and water to the City at all hours of the day The house No 8 may be viewed daily, Nos. 6 and 7 by permission, and particulars had at the Commercial-rooms, King's-road, Chelsea, at Garraway's, of Messrs ARCHBUTT and KAYE 11, Furnival's inn, Holborn, of Mr BUTT, Agent, 56 Marlborough-road, and at Mr GODWIN'S Office, 7, Halkin terrace Belgrave square

NORWOOD and CROYDON —Freehold Villa Residences, land tax redeemed, situate near the Jolly sailor station

MR. E. PALMER will SELL by AUCTION, at the MART, on WEDNESDAY NEXT, at Twelve, in ten lots, TWO FREEHOLD semi detached VILLAS newly erected, well-built, and finished in the Elizabethan style being known as Ufton-villas, Selhurst-road, between Norwood and Croydon, annual value 50l. each Also Eight Freehold semi detached Villas Nos. 2 to 16, Selhurst-villas, near the above annual value 40l each —Particulars may be had of Messrs. JOYCE and BARRETT, Solicitors, 20, Bartlett's-buildings, Holborn, of E CHANDLER, Jun. Esq Solicitor Shaftesbury, Dorset; at the Inns near the property, at the Mart and at the Auctioneer's Offices, 20, Change-alley, Cornhill, and 24, Lower Calthorpe-street, Gray's inn road

NEAR to ELY and CAMBRIDGE —The important and extensive fine principality Freehold Manor of Wicken, an Hour and a Quarter's Ride from London by the Eastern Counties Railway

MR. MARSH will SELL by AUCTION, at the AUCTION MART, on THURSDAY, DECEMBER 9, at Twelve o'clock (unless an acceptable offer be previously made by Private Contract), by order of Executors, and in pursuance of the trusts of the will, of the late proprietor, the MANOR of WICKEN, one of the most extensive in the County of Cambridge, comprising a great number of Houses, and a very large quantity of Copyhold land, of first-rate quality The manorial lord's annual income, from fines and quitrents, has been about £40, per annum. There is a valuable right of fishery. The purchaser will be immediately in receipt of £40 per annum, and no more, at present. The manor is intersected with the canals of Messrs Lord Peake and many wealthy private proprietors —Full particulars are being prepared, and may shortly be had of Mr. MARSH, 8, Charlotte-row, Mansion house.

PERIODICAL SALE established in 1820, for the disposal of every description of the above-mentioned property, takes place on the first Thursday in every month throughout the year, as under —

Thursday, December 2.

MR. MARSH has been induced to hold these sales from his experience of the heavy drawback and great difficulty to which the description of property has been exposed in the ordinary course of sales, and the above plan has proved equally advantageous to vendors and purchasers. Notices of sales should be forwarded to Mr Marsh a fortnight previous to the above dates Mr Marsh requests all persons desirous of being furnished monthly with the particulars of his sales to forward their address to his offices where every information respecting the disposal and purchase of this description of property may be obtained The NEXT SALE will take place on THURSDAY, DECEMBER 2—2, Charlotte-row, Mansion-house

NORFOLK —Highly valuable Manorial Rights fine arbitrary between Brandon and Swaffham, the freehold manor of Goodercstone, with Osburgh

MR. MARSH will SELL by AUCTION, by order of the Executors at the AUCTION MART, on THURSDAY, DECEMBER 9 at Twelve o'clock (unless an acceptable offer be previously made by private contract) the MANOR of GOODERSTONE, comprising nearly the entire village of Gooderstone, inn, mill, residences shops cottages, farm buildings and about 1 800 acres of land, mostly of first rate quality and in the best part of the parish The average lord's income being about £90 per annum This manor lies amongst the estates of Sir JEP Bedingfield, bart, W G Amherst esq —Caldwell, esq, Lord Walsingham, and other wealthy owners. A very large capital sum or heavy rent charge, may be gradually realised, under the Copyhold Enfranchisement Acts.—Particulars are in course of preparation and may shortly be had of Mr MARSH, Charlotte row Mansion house

MANORIAL RIGHTS ESSEX and SUFFOLK —Colchester a small fine arbitrary Manor, also near Ipswich an extensive fine arbitrary Manor

MR. MARSH will SELL by AUCTION, at the AUCTION MART, on THURSDAY, DECEMBER 2, at Twelve o'clock (unless an acceptable offer be previously made by private contract), by order of executors —Lot 1, the valuable MANOR of BATTLESWICK comprising a valuable manorial tenements and about Forty ACRES of highly valuable Building Ground in the business part of the town of Colchester near the Hythe and River, all subject to arbitrary fines Lord's average income 12l a year (A map of this manor may be seen at Mr MARSH'S offices) Lot 2 the important MANOR of OFTON CASTLE about six miles from Ipswich, and a short distance from Needham Market and Hadleigh, comprising divers houses and about 500 Acres of Copyhold Land, all fine arbitrary The lord's average income about 6l per annum —Particulars are being prepared and may shortly be had of the Auctioneer, 2, Charlotte row, Mansion house, and of Messrs Cook and Sons, Stratford, St Mary, and Colchester

LAW BOOKS and MANUSCRIPTS. — By Mr HODGSON at his GREAT ROOM, 193, Fleet-street on WEDNESDAY NEXT, NOVEMBER 26th at half past Twelve o'clock the valuable LAW LIBRARY of J E Hovenden esq barrister at law, retired from the Profession, including the Statutes at Large from Magna Charta to 11 & 12 Victoria, series of modern Reports in Law and Equity, complete to the present time Treatises and Books of Practice, Manuscript Precedents, Note Books &c —To be viewed and catalogues had

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7. Writ of Summons to be specially indorsed for Final Judgment.
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9. Affidavit of Attempts at Service to obtain Leave to substitute.
10. Affidavit of the Signature of Defendant's Attorney entered.
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15. Declaration, for Work done, Materials provided, &c. and on Accounts stated
16. Particulars of Demand.
17. Notice to Declare.
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Age when Assured.	Additions.	Total Sum payable in case of Death.
20	£250 1 6	£1,250 1 6
35	254 2 6	1,254 2 6
40	250 6 11	1,250 6 11
45	367 11 10	1,367 11 10
50	261 12 7	1,261 12 7

Averaging upwards of 1½ per cent. per Annum.

EXAMPLES OF BONUS TO POLICIES OF LARGER AMOUNT.

No. of Policy.	Issued in	Sum Assured.	Additions.	Total.
812	1834	£4,000	£1,080 14 8	£5,080 14 8
1,660	1835	5,000	1,295 8 11	6,295 8 11
1,180	1835	3,000	767 1 11	3,767 1 11
1,308	1836	5,000	1,101 13 4	6,101 13 4
1,650	1837	2,500	589 0 0	3,089 0 0

The next Division of Life Profits will take place in December 1835, being an Interval of Five years.

The Bonus may be applied, at the option of the Assured, in any of the following ways:—

I. It may be added to the Sum Assured; or
II. Applied in Reduction of Future Premiums; or
III. Surrendered for a Present Payment in Cash.

Fire Insurances at the reduced rates.

LONDON BOARD OF DIRECTION.
President—Right Hon. the EARL of MANSFIELD.
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Charles Balfour, esq.	Edw. Rudd, esq.
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John Kingston, esq.	of the Company.

F. G. Smith, esq. Secretary.

Forms for Proposals and Prospectuses, containing all the necessary particulars, may be had at any of the Company's Offices, and of the Agents throughout the country.

The usual commissions to Solicitors transacting direct with the Office, 37, Cornhill. F. G. SMITH, Secretary.

RAILWAY PASSENGERS' ASSURANCE COMPANY. Empowered by special Act of Parliament.
Offices, 3, Old Broad-street, London

Insurances against railway accidents can now be effected with this Company, not only for single and double journeys, and by the year, as heretofore, but also for terms of years and for life, as follows:

To insure 1,000*l.* for a term of five years, premium £3 10 0
" " ten " 6 0 0

To insure 1,000*l.* for the whole of life, by annual premiums on the following decreasing scale:—

For the first five years, annual premium £1 0 0
" next five " " 0 15 0
" next five " " 0 10 0
" remainder of life " 0 5 0

To insure 100*l.* for the whole term of life, by single payment, according to age, viz:

Above 15, under 25.	Above 25, under 30.	Above 30, under 35.	Above 35, under 40.	Above 40, under 45.	Above 45, under 50.	Above 50, under 55.	Above 55, under 60.	Above 60.
£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
1 1 0	1 0 0	1 0 0	0 0 0	2 0 0	2 0 0	3 0 0	3 0 0	5 0 0

RUPTURES.—BY ROYAL LETTERS PATENT.

THE MOC-MAIN LEVER TRUSS is allowed by upwards of 200 Medical Gentlemen to be the most effective invention in the curative treatment of Hernia. The use of a steel spring, so often hurtful in its effects, is here avoided; a soft bandage being worn round the body, while the requisite resisting power is supplied by the Moc-Main Pad and Patent Lever, fitting with so much ease and closeness that it cannot be detected, and may be worn during sleep. A descriptive circular may be had, and the Truss (which cannot fail to fit) forwarded by post, on the circumference of the body two inches below the hips being sent to, the Manufacturer, Mr. WHITE, 228, Piccadilly, London.

An Umbilical Truss on the same principle.

Every description of Riding Belts, Elastic Stockings, Spinal Corsets, Supporters, and Suspenders, on new and approved principles, with every kind of Surgical Bandages.

SPECTACLES and EYE-GLASSES adapted to suit every condition of near and distant sight by means of SMEE'S OPTOMETER, which determines accurately the exact focal distance of the glasses required, thereby effectually preventing any injury to the sight. Barristers and public speakers will find great convenience in the use of Pantoscopic Spectacles, as they enable the wearer to look through them at near objects, and over them at those at a distance.

Telescopes of all kinds and of the best construction, combining portability with a large and clear field of view.

Opera Glasses, with improved Compensating Adjustments.

BLAND and LONG, Opticians, Mathematical, Philosophical, and Chemical Instrument Makers, 153, Fleet-street, London.

IMPERIAL HOTEL, COVENT-GARDEN.—S. A. BACON begs respectfully to inform his friends, professional gentlemen, their families, and the public, that he has taken the above HOTEL, which, from its central situation and proximity to places of business and amusement, with spacious sitting rooms, quiet and airy bed-rooms on the ground and first-floor, combined with strict attention, he trusts will command their kind support and recommendation.

N.B. A fixed charge for servants.

LIGHT BROUGHAMS. — Messrs. THORN beg to solicit an inspection of their improved roomy Carriages, hung on a new principle, whereby ease, lightness, and convenience are secured, and the drumming noise so much complained of entirely removed. Carriages let on job, with option to purchase. —10, John-street, Oxford-street. N.B. Inventors of the patent Aquamotive Springs, Carriage Ventilators, and Self-acting Steps; all of which can be fixed to old carriages.

PATENT REVERSIBLE OVERCOATS, &c. which obtained the Great Exhibition Prize Medal W BERIDGE, 86, NEW BOND-STREET, and 69, CORNHILL only!—ROYALTY, UTILITY, ECONOMY, all unite in commending this invention to general adoption. The Patent Cloth, having two perfect and totally dissimilar faces, can be worn either side outwards, thus each garment being equivalent to two at the cost of one. For Overcoats of every kind, the new Anglesea, and all other CAPES, SHOOTING, and MORNING COATS, this discovery is especially appropriate, also for LADIES' CLOAKS, MANTLES, &c. A variety of the materials and garments kept for selection; also one of the largest stocks in London of superior OVERCOATS of every description. CAPES, SHOOTING JACKETS, BOYS' OVERCOATS, &c. all guaranteed to resist any amount of rain.

THE VERSATIO, or REVERSIBLE COAT.—Worthy the attention of the Legal and Clerical Professions. —EDMISTON and SON, 69, Strand, opposite the Adelphi, London. —The importance of this patented invention consists in the novelty of the material and its application, viz. the double purpose of forming two in one without trouble, one side presenting a gentlemanly morning-coat, the other a riding or shooting coat in any texture or colour desired. In over-garments or paletots this happy discovery offers still more useful advantages to the wearer, one surface exhibiting a graceful and elegant walking-coat, while its counterpart is conveniently adapted for the rougher purposes of travelling, skilfully designed in each, and perfect in both their capacities. In these varying properties the public must recognise a union of novelty and usefulness not hitherto accomplished. Gentlemen supplied, sending their height and size round the chest over the waistcoat. Price from 50s. to 70s. London, EDMISTON and SON, Tailors, 69, Strand.

HOBSON, BROTHERS, Tailors, established 1736, beg leave to acquaint their various friends and gentry, that their new mixtures in FUR BEAVERS, milled Venetians, and Melton cloth for Overcoats, are now ready, from 2l. 2s. to 3l. 18s.; their new patterns in West of England doeskins for winter trowsers are now most complete, among which will be found some French elastic buckskins for riding trowsers, from 23s. to 28s. per pair; and the new Australian lambskin waistcoats, the best waistcoats that are made for shooting, 13s. Patterns forwarded into the country on application.

HOBSON, BROTHERS, 4, FINSBURY-PLACE SOUTH, and 57, LOMBARD-STREET, three doors from Messrs. Barclay's, the bankers.

MESSRS. POULSON and COMPANY'S REGISTERED PARDESSUS of FINE AUSTRALIAN and LLAMA WOOLS (6 & 7 Vict. cap. 65), for WALKING or RIDING.—This is an improved style of coat, of a light convenient form, which admits of its being worn either over or without the ordinary coat. It is neatly and handsomely made, care being bestowed in its construction to impart to it that graceful and appropriate character which, since its first introduction, has so greatly recommended it to public favour. It is produced in all colours, with silk sleeve linings, at the very moderate price of 3 guineas, and, for winter wear, richly lined and quilted, 3½ and 4 guineas.—The improved Winter Guinea Trousers are also ready for selection, from a choice variety of patterns. In London only of B. POULSON and COMPANY, Merchant Tailors, and Sole Patentees of the Undyed Australian Wool Cloth, the best material ever invented for all Sporting, Riding, and Travelling purposes.

94, Regent-street.

WELLINGTON SURTOUT. F. B. SANGUINETTI begs the notice of his friends and the public in general to the above Surtout, patronised by the Royal Family and principal Nobility, which is now by its style, elegance, and comfort to the wearer, universally acknowledged to be unequalled by any other coat worn. To be had only at his establishment, 52, Regent-street, London. The Best Llama Cloth, 2l. 2s.; the patent Elastic Cloth, 2l. 12s. 6d. Home Agents supplied on the shortest notice. Foreign Agents by every mail on the 20th of the month.—52, Regent-street (next door to the County Fire Office).

Also, Sole Wholesale Licensee of the new double-faced CLOTH REVERSIBLE GARMENTS, protected by Her Majesty's Royal Letters Patent.

SCOTT and CO. FIRST CLASS MERCHANT TAILORS (from H. J. and D. Nicoll's),

156, REGENT-STREET (corner of Beak-street), LONDON; and PAVILION HOUSE, BRIGHTON.

INVENTORS of the PALLIAMENT (a great improvement upon the Paletot), the DONCASTER MORNING COAT, and the TALMA, a new equestrian or walking CLOAK-COAT.

All the new styles in Over Coats for the coming season, and the greatest novelties in Angolas and Scotch Tweeds for Trowsers.

LADIES' RIDING-HABITS, LIVERIES, &c.

At the most moderate prices for cash.

On parle Français.

Qui si parla Italiano.

SCOTT and CO. 156, REGENT-STREET, LONDON; and PAVILION HOUSE, BRIGHTON.

OUR GUINEA FRENCH LAMP, brass fittings, newest, ale-relievo designs, in bronze, with stand, globe, glass, &c. warranted for twelve months. Matchless, try where you will. The brilliancy and economy of the light are unequalled, and the simplicity and durability of the Lamps sold at this house, are now fully established. Finest Paris Oil, 4s. per gallon. SMITH'S OLD-ESTABLISHED LAMP AND OIL DEPOT, 281, STRAND (exactly opposite Norfolk-street). Lists free by post.

THE ROYAL EXHIBITION.—Valuable newly-invented very small powerful WAISTCOAT POCKET GLASS, the size of a walnut, to discern minute objects at a distance of from four to five miles, which is found to be invaluable to SPORTSMEN, GENTLEMEN, and GAMEKEEPERS. Price 1l. 10s. sent free.

TELESCOPES.—A new and most important INVENTION in TELESCOPES, possessing such extraordinary powers, that some 3½ inches, with an extra eye-piece, will show distinctly Jupiter's moons, Saturn's ring, and the double Stars. They supersede every other kind, and are of all sizes, for the waistcoat pocket, Shooting, Military purposes, &c.

Opera and Race-course Glasses, with wonderful powers; a minute object can be clearly seen from ten to twelve miles distant.

Invaluable newly-invented preserving Spectacles, invisible and all kinds of Acoustic Instruments for relief of extreme Deafness.

Messrs. S. and B. SOLOMONS, Opticians and Aerists, Albemarle-street, Piccadilly, opposite the York Hotel.

AMERICAN CLOCK WAREHOUSE, 545 and 546, NEW OXFORD-STREET, where will be found the largest assortment of those superior Time-pieces, American Clocks, ever imported into this country, made by the oldest and most celebrated Manufacturers in the United States. All our clocks are warranted to keep correct time. The prices are—for Thirty-hour Clocks, 14s., 18s., and 25s.; for Eight-day Clocks, 30s. and 35s.

Also, the CHILD'S VELOCIPEDE, a new American invention for the amusement and exercise of children. It combines the Pony and Carriage, and by the graceful and easy exercise promotes muscular development of the arms and chest. It is recommended by the medical faculty, and approved by all who have seen it. Together with every variety of American Goods.

Sold wholesale and retail by the Manufacturers and Importers, ROGERS and Co. 545 and 546, New Oxford-street.

"WE congratulate the Public upon the good effects which the liberal commercial policy originated by MILES, of 62, New Bond-street has had, whereby they obtain trowsers from 1,000 different patterns, at Sixteen Shillings per pair, and in the very street that they would formerly have been charged Two Guineas. This is free-trade with a vengeance."—*United Service Gazette.*

EUREKA.—In FORD'S EUREKA SHIRTS are united the best material and first-rate workmanship, together with that special excellence of fit which in their distinguishing characteristic. Their superiority to all others is still maintained; and gentlemen who desire the luxury of a perfect fitting shirt are invited to try them. The prices are, for the first quality, six for 40s.; second quality, six for 36s.; coloured shirts, for hunting, shooting, and ordinary wear, 27s. the half-dozen. List of prices, and instructions for measurement, post-free, and patterns of the new coloured shirtings free, on receipt of six stamps.

RICHARD FORD, 38, Poultry (late 128, Strand).

PROFESSIONAL GENTLEMEN and the COMMERCIAL COMMUNITY are strongly recommended to try BLACKWOOD and CO.'S COPYING and other WRITING INKS, contained in the registered clean conducting bottles, with durable cork. The copying ink combines advantages never before obtained: among others, it will give a clear impression many days after writing, and a duplicate copy if required. Blackwood and Co.'s Ready Reference Files are indispensable to all who value time, method, and neatness in keeping their letters, papers, &c.

Sold by SKIPPER and EAST, 8, Dunstan's-hill; WILSON and SON, Cheapside; WM. TODD and Co. Queen-street, City; SMITH, ELDER, and Co. Cornhill; BAILS, BROTHERS, Royal Exchange-buildings; W. S. ROWSELL, Cheapside; JOHN E. RICHARD, 8, Martin's-court; JOHN SMITH, the Government Stationer, Long-acre; and all the leading Booksellers and Stationers in the United Kingdom. Shipping orders executed at the Manufactory, 26, Long-acre.

HYDROPATHIC NOTICE.—DR. CHARLES T. THOMPSON, M.R.C.S. &c. may be consulted daily at his residence, No. 42, Sussex-gardens, Hyde-park, from 9 a.m. till Two p.m. by parties wishing to undergo Hydropathic treatment at their own homes.

THE PERFECT SUBSTITUTE for SILVER. The REAL NICKEL SILVER, introduced twenty years ago by WILLIAM S. BURTON, when plated by the patent process of Messrs. Elkington and Co. is beyond all comparison the very best article next to sterling silver that can be employed as such, either usefully or ornamentally, as by no possible test can it be distinguished from real silver.

	Fiddle Pattern.	Thread or Brunswick Pattern.	King's Pattern.
Tea Spoons, per dozen	18s.	27s.	36s.
Dessert Forks "	30s.	42s.	58s.
Dessert Spoons "	30s.	42s.	62s.
Table Forks "	40s.	55s.	70s.
Table Spoons "	40s.	55s.	75s.

Tea and Coffee Sets, Waiters, Candlesticks, &c. at proportionate prices. All kinds of re-plating done by the patent process.

CHEMICALLY PURE NICKEL, NOT PLATED.

	Fiddle.	Thread.	King's.
Table Spoons and Forks, full size, per dozen	12s.	20s.	30s.
Dessert ditto and ditto ditto ..	10s.	21s.	28s.
Tea ditto	6s.	10s.	12s.

LAMPS of ALL SORTS and PATTERNS. The largest, as well as choicest assortment of Palmer's Magnum and other Lamps, Camphine, Argand, Solar, and Moderateur Lamps, with all the latest improvements, and of the newest and most recherché patterns, in ormolu, Bohemian and plain glass, or papier maché, in existence, is at W. S. BURTON'S, and they are arranged in one large room, so that patterns, sizes, and sorts can be instantly selected.

WILLIAM S. BURTON has Ten Large Show Rooms (all communicating), exclusively of the Shop, devoted solely to the show of General Furnishing Ironmongery (including cutlery, nickel silver, plated and japanned wares, iron and brass bedsteads), so arranged and classified that purchasers may easily and at once make their selections.

Catalogues, with Engravings, sent (per post) free. The money returned for every article not approved of.

39, OXFORD-STREET (corner of Newman-street); Nos. 1 and 2, NEWMAN-STREET; and 4 and 5, PERRY'S-PLACE.

THE ONLY STOVE WITHOUT A FLUE, for which her Majesty's Royal Letters Patent have been granted. Plain, from 18s. to 25s.; Ornamented, from 31s. 6d. to Six Guineas.

Prospectuses, with drawings and report, forwarded free.

STANDS FOR STOVES, 2s. 6d. 3s. and 5s. EACH.

CAUTION.—An injunction having been granted by the Vice-Chancellor, in the case of *Nash* v. *Carman*, restraining the defendant from making or selling any colourable imitation of the plaintiff's Stove or fuel, the public is respectfully informed, that the original "Joyce's Patent Stove without a Flue, and the prepared Fuel," can only be obtained from SWAN NASH, or his authorised Agents. Every genuine Stove has the name and address of the proprietor on a brass plate, "SWAN NASH, No. 293, Oxford-street."

Joyce's Patent for Warming Halls, Passages, Greenhouses, Water Closets, Shops, Store-rooms, and all places requiring artificial warmth.

PATENT PREPARED FUEL for the Stoves, 2s. 6d. per bushel, only genuine with the proprietor's name and seal on the sack.

S. NASH, 293, Oxford-street, and 110, Newgate-street.

DESTRUCTIVE FIRE in HAYDON-SQUARE.—MILNER'S HOLDFAST SAFES the strongest safeguards extant against Fire, Robbery, or Violence—of all sizes, at the Depôt, 47 A, MOORGATE-STREET, CITY.

26, Minories, London, July 26, 1852.

Messrs. Thos. MILNER and SON,

GENTLEMEN,—At the destructive fire in Haydon-square, on the 15th inst. in which our entire stock of oils, turpentine, cordage, canvas, &c. was destroyed, the Books and Papers in our Milner's Safe were preserved uninjured. The Safe was only dug out of the ruins this evening, and, from the severe trial it had undergone, we expected everything within it to be consumed.

"We have great pleasure in testifying to the utility of your Safes, and in strongly recommending them to the public, and will thank you to send us another of the same size.

"We are, Gentlemen, yours respectfully,

"COUBRO and POTTER."

MILNER'S PHŒNIX SAFE WORKS, LIVERPOOL, the most extensive and complete in the world. The Safe alluded to above was 11 days and nights in the ruins, and may now be seen at the LONDON DEPOT, 47 A, MOORGATE-STREET, CITY, near the Bank of England.

SCARLETT'S MOCK TURTLE SOUP.—SCARLETT and SON respectfully inform the public in general that the MOCK TURTLE made by them, of acknowledged delicious quality and flavour, is by many pronounced equal to the real.

No. 26, KING WILLIAM STREET, near the Statue, London-bridge.

N.B. The Soup is sufficiently portable to be sent to any part of the country; 3s. 6d. per quart.

BASS'S PALE ALE.—The October brewings of this much-esteemed beer are now arriving from Burton, and may be had in casks from 18 gallons upwards. This ale in bottles is in good condition for home use and for shipping. It is sealed and labelled, and each cork is branded, BERRY BROTHERS and Co. a precaution necessary, as much beer is sold for Bass's which is not brewed by them. Barclay's Stout and Porter, the strong and light Burton and Scotch Ales, and Kingdon's Cider, may also be had of

BERRY BROTHERS and Co. 3, St. James's-street.

CHAMPAGNE, FINEST IMPORTED.

1st Quality, 63s. per dozen.
2nd Quality, 52s. per dozen.
3rd Quality, 42s. per dozen.

Choice of Ruinart's, Moet's, or Giesler's Brands, at FINDLATER, MACKIE, and CO.'s, Wine and Spirit Merchants, 1, Upper Wellington-street, Strand.

"TRIED IN THE BALANCE AND FOUND WANTING."

THE Analytical Sanitary Commissioners having analysed the Cocoa of every dealer in London of any importance, whether manufactured in London or not, have declared that only four samples were genuine, ours being the best, being free from husk and all refuse. They likewise expressed regret that, in the few samples they found to be genuine, the husk or shell of the nut, which they state to be, as food comparatively worthless, should so generally be worked up with the nut.—*Vide The Lancet* of May 31, 1851.

The husk, &c. form about one-sixth of the whole nut, so that, by excluding them, as we do, we necessarily enhance the cost of the article. We request the favour of cocoa-drinkers to make trial of our PURE GRANULATED COCOA, in packets at 1s. per pound. Their confidence will not be misplaced. It is now drunk at the tables of the first families in all parts of the kingdom.

HANDFORD AND DAVIES, 61, HIGH HOLBORN.

WAREHOUSING FURNITURE and valuable PROPERTY.—Parties Leaving Town and Changing their Residences—Furniture, Plate, Books, and other valuable Property carefully REMOVED and WAREHOUSED at the North London Depository, Gray's-inn-road, King's-cross. Established 1839. Separate lock-up store-rooms. The building is secure from fire and damp, heated by steam-pipes. An inspection is requested. Advances if required.

WATCHES! WATCHES! WATCHES! Save 50 per cent. by purchasing your Watches direct from the Manufacturer, at the wholesale Trade Price.

GOLD WATCHES, extra jewelled, with all the recent Improvements	£3	15
Ditto, with the Three-quarter Plate Movement, and stouter Cases	£4	10
SILVER WATCHES, with same movements as the Gold	£2	0
Ditto, with the Lever Escapement, 8 holes jewelled	£2	15

And every other description of Watch in the same proportion. A written warranty for accurate performance is given with every watch, and a twelvemonth's trial allowed. Handsome morocco case for same, 2s. extra. Emigrants supplied with Watches suitable for Australia.

Merchants, Captains, and the Trade, supplied in any quantities, on very favourable terms.

Gentlemen's fine Gold Albert Chains £1 10
Ladies' ditto, Neck ditto £1 15

Sent carefully packed, post-free, and registered, on receipt of Post-office or Banker's Order, for 1s. extra, payable to

DANIEL ELLIOTT HEDGER,
Wholesale Watch Manufacturer, 27, City-road, near Finsbury-square, London.

A NEW DISCOVERY.—MR. HOWARD, Surgeon Dentist, 52, Fleet-street, has introduced an entirely NEW DESCRIPTION of ARTIFICIAL TEETH, fixed without springs, wires, or ligatures. They so perfectly resemble the natural Teeth as not to be distinguished from the original by the closest observer; they will NEVER CHANGE COLOUR, or DECAY, and will be found very superior to any teeth ever before used. His method does not require the extraction of roots, or any painful operation, and will give support and preserve teeth that are loose, and is guaranteed to restore articulation and mastication: and that Mr. Howard's improvements may be within the reach of the most economical, he has fixed his charges at the lowest scale possible. Decayed teeth rendered sound and useful in mastication.

52, Fleet street. At home from Ten till Five.

MERRY'S GAME of the RACE, or Steeple-Chase.—This highly amusing and exciting Game can now be procured complete from 2s. 6d. to 10s. 10s. at the Inventor and Manufacturer's Toy and Fancy Repository, 380, Oxford-street. For the country, or emigrants, &c. it is invaluable, as it makes dull hours change to merry ones. Rules forwarded to a stamp. The Trade Supplied. Also all other new and fashionable Games, consisting of Tivoli or Chinese Billiards, Cookamarco, Russian Bagatelle, German and English Billiards, Cycloidal Bagatelle, Round Hazard; or, the Devil among the Tailors; Roulette Wheels, Trou Madame, Tournament Knights, Devil on Two Sticks, The Chase, Hippodrome, Pope Joan, Cribbage, and Chess Boards; Chess and Draughts Men; Thousands of other Amusing Games for Children or Adults; also an endless variety of French, German, and English Toys; Puzzles, Dolls' Houses, Rocking-horses, Furniture, Papier Maché Articles, Work Boxes, Desks, Dressing-cases, Balloons, Theatres, Plays, Armour, Hats, Balls, Boxes of Tools, Ivory and other Letters, Peacock's Kites, Building-toys, Books, Colour Boxes, Printing Presses, Noah's Arks, Horses, Carts, and Toys on wheels of every description and size; and every kind of elegancies suitable for presents for all ages; Combs, Brushes, Cutlery, Desks, Work-boxes, Stereoscopes, Enchanted Spy-glasses, &c.

Post-office Orders to be made payable to FRANK MERRY, 380, Oxford-street, London.

All kinds of amusements provided for Evening Parties, consisting of Parlour Magic, Performing Birds, Fantoccini, Dissolving Views, &c. &c.—Christmas Trees.

PERIODICAL SALE (established in 1843), appointed to take place the first Thursday in every month, of Absolute and Contingent Reversions, Life Interests, Annuities, Policies of Assurance, Advowsons, Next Presentations, Rent-charges in Lieu of Tithes, Post Obit Bonds, Tontines, Debentures, Improved Rents, Shares in Docks, Canals, Mines, Railways, Insurance Companies, and other public undertakings for the year 1852.

MR. MARSH begs to announce that his PERIODICAL SALES (established in 1843), for the disposal of every description of the above-mentioned property, take place on the first Thursday in each month throughout the present year, as under:—

Thursday, December 2.

Mr. Marsh has been induced to hold these sales from his experience of the heavy drawback and great difficulty to which this description of property has been exposed in the ordinary course of sales, and the above plan has proved equally advantageous to vendors and purchasers. Notices of sales should be forwarded to Mr. Marsh a fortnight previous to the above date. Mr. Marsh requests all persons desirous of being furnished monthly with the particulars of his sales to forward their address to his offices, where every information respecting the disposal and purchase of this description of property may be obtained. The NEXT SALE will take place on THURSDAY, DECEMBER 2.—2, Charlotte-row, Mansion house.

NOTICE of SALE by PRIVATE CONTRACT.

MR. MARSH begs to announce that the MANOR of BATTLESWICK, near COLCHESTER, advertised to be sold by auction at the Mart on Thursday next, Dec. 2, IS DISPOSED OF by private contract.

2, Charlotte row, Mansion House, Nov. 26, 1852.

NOTICE of SALE by PRIVATE CONTRACT.

MR. MARSH begs to inform the numerous applicants, that the MANOR of OFFTON CASTLE, advertised to be sold by auction at the Mart on Thursday next, Dec. 2, IS DISPOSED OF by private contract.

2, Charlotte-row, Mansion House.

NEAR to ELY and CAMBRIDGE.—The important and extensive fine arbitrary Freehold Manor of Wicken, an Hour and a Quarter's Ride from London by the Eastern Counties Railway.

MR. MARSH will SELL by AUCTION, at the AUCTION MART, on THURSDAY, DECEMBER 2, at Twelve o'clock (unless an acceptable offer be previously made by Private Contract), by order of Executors, and in pursuance of the trusts of the will, of the late proprietor, the MANOR of WICKEN, one of the most extensive in the county of Cambridge, comprising a great number of Houses, and a very large quantity of Copyhold Land, of first-rate quality. The average lord's annual income, from fines and quit-rents, has been about £50, per annum. There is a valuable right of fishery. The stewardship is of considerable value, there being about 200 copyhold tenements. The manor is intermixed with the estates of Earl Hardwicke and many wealthy small proprietors.—Full particulars are being prepared, and may shortly be had of Mr. Marsh, 2, Charlotte-row, Mansion-house.

NORFOLK.—Highly valuable Manorial Rights, fines arbitrary, between Brandon and Swaffham, the freehold manor of Gooderstone with Oxburgh.

MR. MARSH will SELL by AUCTION, by order of the Executors, at the AUCTION MART, on THURSDAY, DECEMBER 2 at Twelve o'clock (unless an acceptable offer be previously made by private contract), the MANOR of GOODERSTONE, comprising nearly the entire village of Gooderstone, inn, mill, residences, shops, cottages, farm buildings, and about 1,000 acres of land, mostly of first-rate quality, and in the best part of the parish. The average lord's income being about £60 per annum. This manor lies amongst the estates of Sir H. P. Bedingfeld, bart.; W. C. Amherst, esq.; — Caldwell, esq.; Lord Walsingham, and other wealthy owners. A very large capital sum, or heavy rent charge, may be gradually realised, under the Copyhold Enfranchisement Acts.—Particulars are in course of preparation, and may shortly be had of Mr. Marsh, Charlotte-row, Mansion-house.

A Mortgage Debt for 2,700l. amply secured.

MR. MARSH has received instructions to SELL by AUCTION, at the MART, on THURSDAY, DECEMBER 9, at Twelve, a valuable MORTGAGE DEBT, now amounting to about 2,700l. amply eventually secured and expected to be realised in about twelve months, bearing interest at 5l. per cent. Further particulars will appear in future advertisements, and in the mean time every information may be obtained of Messrs. Cuddon, Norwich, and at Mr. Marsh's Offices, 2, Charlotte-row, Mansion-house.

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MERRY'S GAME of the RACE, or Steeple-Chase.—This highly amusing and exciting Game can now be procured complete from 2s. 6d. to 10l. 10s. at the Inventor and Manufacturer's Toy and Fancy Repository, 320, Oxford-street. For the country, or emigrants, &c. it is invaluable, as it makes dull hours change to merry ones. Rules forwarded for a stamp. The Trade Supplied. Also all other new and fashionable Games, consisting of Tivoli or Chinese Billiards, Cockamaroo, Russian Bagatelle, German and English Billiards, Cycloidal Bagatelle, Round Hazard; or, the Devil among the Tailors; Roulette Wheels, Tron Madame, Tournament Knights, Devil on Two Sticks, The Chase, Hippodrome, Pope Joan, Cribbage, and Chess Boards; Chess and Draught Men; and Thousands of other Amusing Games for Children or Adults; also an endless variety of French, German, and English Toys; Puzzles, Dolls' Houses, Rocking-horses, Furniture, Papier Maché Articles, Work Boxes, Desks, Dressing-cases, Balloons, Theatres, Plays, Armour, Hats, Balls, Boxes of Tools, Ivory and other Letters, Peacock's Kites, Building-toys, Books, Colour Boxes, Printing Presses, Noah's Arks, Horses, Carts, and Toys on wheels of every description and size; and every kind of elegant article suitable for presents for all ages; Combs, Brushes, Cutlery, Desks, Work-boxes, Stereoscopes, Enchanted Spy-glasses, &c.

Post-office Orders to be made payable to FRANK MERRY, 320, Oxford-street, London.

All kinds of amusements provided for Evening Parties, consisting of Parlour Magic, Performing Birds, Fantoccini, Dissolving Views, &c. &c.—Christmas Trees.

IMPERIAL HOTEL, COVENT-GARDEN.—S. A. BACON begs respectfully to inform his friends, professional gentlemen, their families, and the public, that he has taken the above HOTEL, which, from its central situation and proximity to places of business and amusement, with spacious sitting rooms, quiet and airy bed-rooms on the ground and first-floor, combined with strict attention, he trusts will command their kind support and recommendation.

N.B. A fixed charge for servants.

BACON'S CENTRAL HOTEL, Great Queen-street, Lincoln's-inn-fields, London.—THOMAS BACON begs respectfully to call the attention of the Nobility, Gentry, and Public to the convenience of the Hotel, situate as it is in the centre of the metropolis, in the immediate vicinity of the courts of law, operas, theatres &c. and at an easy distance from the railway stations. The above establishment, containing elegant suites of apartments for families, and an excellent coffee-room, with the additional security of a fire proof staircase, will be found most advantageous to parties visiting London, being quiet, airy, and replete with every comfort. The charges are moderate, and include attendance of every description. A night porter always in readiness for the arrival of trains.

OUR GUINEA FRENCH LAMP, brass fittings, newest, elto-relievo designs, in bronze, with stand, globe, glass, &c. warranted for twelve months. Matchless, try where you will. The brilliancy and economy of the light are unequalled, and the simplicity and durability of the lamps sold at this house, are now fully established. Finest Paris Oil, 4s. per gallon.
SMITH'S OLD-ESTABLISHED LAMP AND OIL DEPOT, 281, STRAND (exactly opposite Norfolk-street). Lists free by post.

SPECTACLES and EYE-GLASSES adapted to suit every condition of near and distant sight by means of SMEE'S OPTOMETER, which determines accurately the exact focal distance of the glasses required, thereby effectually preventing any injury to the sight. Barristers and public speakers will find great convenience in the use of Pantoscopic Spectacles, as they enable the wearer to look through them at near objects, and over them at those at a distance.

Telescopes of all kinds and of the best construction, combining portability with a large and clear field of view.

Opera Glasses, with improved Compensating Adjustments.
BLAND and LONG, Opticians, Mathematical, Philosophical, and Chemical Instrument Makers, 153, Fleet-street, London.

AMERICAN CLOCK WAREHOUSE, 545 and 546, NEW OXFORD-STREET, where will be found the largest assortment of these superior Time-pieces, American Clocks, ever imported into this country, made by the oldest and most celebrated Manufacturers in the United States. All our clocks are warranted to keep correct time. The prices are—for Thirty-hour Clocks, 14s., 19s., and 25s.; for Eight-day Clocks, 30s. and 35s.

Also, the CHILD'S VELOCIPEDE, a new American invention for the amusement and exercise of children. It combines the Pony and Carriage, and by the graceful and easy exercise promotes muscular development of the arms and chest. It is recommended by the medical faculty, and approved by all who have seen it. Together with every variety of American Goods.

Sold wholesale and retail by the Manufacturers and Importers, ROGERS and Co. 545 and 546, New Oxford-street.

WATCHES! WATCHES! WATCHES!
Save 50 per cent. by purchasing your Watches direct from the Manufacturer, at the wholesale Trade Price.

GOLD WATCHES, extra jewelled, with all the recent Improvements	£3 15
Ditto, with the Three-quarter Plate Movement, and Stouter Cases	£4 10
SILVER WATCHES, with same movements as the Gold	£2 0
Ditto, with the Lever Escapement, 8 holes jewelled	£2 15

And every other description of Watch in the same proportion. A written warranty for accurate performance is given with every watch, and a twelvemonth's trial allowed. Handsome morocco cases for same, 2s. extra. Emigrants supplied with Watches suitable for Australia.

Merchants, Captains, and the Trade, supplied in any quantities, on very favourable terms.

Gentlemen's fine Gold Albert Chains	£1 10
Ladies' ditto, Neck ditto	£1 15

Sent carefully packed, post-free, and registered, on receipt of Post-office or Banker's Order, for 1s. extra, payable to
DANIEL ELLIOTT REDGER,
Wholesale Watch Manufacturer 27, City-road, near Finsbury-square, London.

THE VERSATIO, or REVERSIBLE COAT.—Worthy the attention of the Legal and Clerical Professions.—EDMISTON and SON, 69, Strand, opposite the Adelphi, London.—The importance of this patented invention consists in the novelty of the material and its application, viz. the double purpose of forming two in one without trouble, one side presenting a gentlemanly morning-coat, the other a riding or shooting coat in any texture or colour desired. In over-garments or paletots this happy discovery offers still more useful advantages to the wearer, one surface exhibiting a graceful and elegant walking-coat, while its counterpart is conveniently adapted for the rougher purposes of travelling, skilfully destined in cash, and perfect in both their capacities. In these varying properties the public must recognise a union of novelty and usefulness not hitherto accomplished. Gentlemen supplied, sending their height and size round the chest over the waistcoat. Price from 50s. to 70s. London, EDMISTON and SON, Tailors, 69, Strand.

HOBSON, BROTHERS, Tailors, established 1790, beg leave to acquaint their various friends and gentry, that their new mixtures in FUR BEAVERS, milled Venetians, and Melton cloths for overcoats, are now ready, from 2l. 2s. to 3l. 13s.; their new patterns in West of England doeskins for winter trowsers are now most complete, among which will be found some French elastic buckskins for riding trowsers, from 21s. to 28s. per pair; and the new Australian lambskin waistcoats, the best wash coats that are made for shooting, 13s. Patterns forwarded into the country on application.

HOBSON, BROTHERS, 4, FINSBURY-PLACE SOUTH, and 57, LOMBARD-STREET, three doors from Messrs. Barclay's, the bankers.

MESSRS. POULSON and COMPANY'S REGISTERED PARDESSUS of FINE AUSTRALIAN and LLAMA WOOLS (6 & 7 Vict. cap. 65), for WALKING or RIDING.—This is an improved style of coat, of a light convenient form, which admits of its being worn either over or without the ordinary coat. It is neatly and handsomely made, care being bestowed in its construction to impart to it that graceful and appropriate character which, since its first introduction, has so greatly recommended it to public favour. It is produced in all colours, with silk sleeve linings, at the very moderate price of 2 guineas, and, for winter wear, richly lined and quilted, 2½ and 3 guineas.—The improved Winter Guinea Trousers are also ready for selection, from a choice variety of patterns. In London only of B. POULSON and COMPANY, Merchant Tailors, and Sole Patentees of the Undyed Australian Wool Cloth, the best material ever invented for all Sporting, Riding, and Travelling purposes.
94, Regent-street.

WELLINGTON SURTOUT. F. B. SANGUINETTI begs the notice of his friends and the public in general to the above Surtout, patronised by the Royal Family and principal Nobility, which is now by its style, elegance, and comfort to the wearer, universally acknowledged to be unequalled by any other coat worn. To be had only at his establishment, 5a, Regent street, London. The Best Llama Cloth, 2l. 2s.; the patent Elastic Cloth, 3l. 13s. 6d. Home Agents supplied on the shortest notice. Foreign Agents by every mail on the 20th of the month.—5a, Regent-street (next door to the County Fire Office).

Also, Sole Wholesale Licensee of the new double-faced CLOTH REVERSIBLE GARMENTS, protected by Her Majesty's Royal Letters Patent.

SCOTT and CO. FIRST CLASS MERCHANT TAILORS (from H. J. and D. Nicoll's),
156, REGENT-STREET (corner of Beak-street), LONDON;
and PAVILION HOUSE, BRIGHTON.

INVENTORS of the PALLIAMENT (a great improvement upon the Paletôt), the DONCASTER MORNING COAT, and the TALMA, a new equestrian or walking CLOAK-COAT.

All the new styles in Over Coats for the coming season, and the greatest novelties in Angolas and Scotch Tweeds for Trowsers.

LADIES' RIDING-HABITS, LIVERIES, &c.
At the most moderate prices for cash.
On parle Français.
Qui si parla Italiana.

SCOTT and CO. 156, REGENT-STREET, LONDON; and PAVILION HOUSE, BRIGHTON.

PATENT REVERSIBLE OVERCOATS, &c. which obtained the Great Exhibition Prize Medal—W. BERRIDGE, 107, NEW BOND-STREET, and 66, CORNHILL (only).—NOVELTY, UTILITY, ECONOMY, all unite in commending this invention to general adoption. The Patent Cloth, having two perfect and totally dissimilar faces, can be worn either side outwards, thus each garment being equivalent to two at the cost of one. For Overcoats of every kind, the new Angleses, and all other CAPES, SHOOTING and MORNING COATS, this discovery is especially appropriate, also for LADIES' CLOAKS, MANTLES, &c. A variety of the materials and garments kept for selection; also one of the largest stocks in London of superior OVERCOATS of every description, CAPES, SHOOTING-JACKETS, BOYS' OVERCOATS, &c. all guaranteed to resist any amount of rain.

EUREKA.—In FORD'S EUREKA SHIRTS are united the best material and first-rate workmanship, together with that special excellence of fit which is their distinguishing characteristic. Their superiority to all others is still maintained; and gentlemen who desire the luxury of a perfect fitting shirt are invited to try them. The prices are, for the first quality, six for 40s.; second quality, six for 30s.; coloured shirts, for boating, shooting, and ordinary wear, 27s. the half-dozen. List of prices, and instructions for measurement, post-free, and patterns of the new coloured shirtings free, on receipt of six stamps.
RICHARD FORD, 38, Poultry (late 185, Strand).

BEST WALLSEND SCREENED COALS,
24s. PER TON.
Newcastle Coals ..... 2 s. per ton.
Inland ..... 10s. "
E. and W. STURGE, coal-merchants, Bridge-wharf, City-road
E. and W. STURGE respectfully inform their friends and the public generally that their present prices of Coals are as above, and that the strictest attention is given to all orders intrusted to them at all times.—BRIDGE-WHARF, CITY-ROAD.
Established 1821.

RUPTURES.—BY ROYAL LETTERS PATENT.
THE MOC-MAIN LEVER TRUSS is allowed by upwards of 200 Medical Gentlemen to be the most effective invention in the curative treatment of Hernia. The use of a steel spring, so often hurtful in its effects, is here avoided; a soft band, 3s. being worn round the body, while the requisite resisting power is supplied by the Moc-Main Pad and Patent Lever, fitting with so much ease and closeness that it cannot be detected, and may be worn during sleep. A descriptive circular may be had, and the Truss (which cannot fail to fit) forwarded by post, on the circumference of the body two inches below the hips being sent to the Manufacturer, Mr. WHITE, 228, Piccadilly, London.

An Umbilical Truss on the same principle.

Every description of Riding Belts, Elastic Stockings, Spinal Corsets, Supporters, and Suspenders, on new and approved principles, with every kind of Surgical Bandages.

ROYAL UNION CIGARS.—CAUTION.—The Royal Union and Universal Cigars, 12s. 6d. per lb. differ from every other cigar made, and are equal to foreign. So many complaints are made of bad cigars sold under these names as Messrs. TOMS WILLS and CO.'S, the Public will please observe, to every box in future will be affixed their private seal and brand. The largest stock in the Kingdom of genuine Foreign Havanah Cigars, 12s. 6d. 22s. 24s. and 28s. per lb.; also, Government Manillas, 16s. 6d. per lb.; Cigars and Cheroots, 6s. 7s. 8s. 9d. and 10s. 6d. per lb.; choice Tobaccos—Latakia, 7s. 6d. and Turkey, 8s. 6d. per lb.; and all others.

TOMS WILLS and CO. Merchants and Importers, Nos. 6, 7, and 8, Pudding-lane, Eastcheap, near the Monument, London.

A NEW DISCOVERY.—MR. HOWARD, Surgeon Dentist, 52, Fleet-street, has introduced an entirely NEW DESCRIPTION of ARTIFICIAL TEETH, fixed without springs, wires, or ligatures. They so perfectly resemble the natural Teeth as not to be distinguished from the original by the closest observer; they will NEVER CHANGE COLOUR, or DECAY, and will be found very superior to any teeth ever before used. This method does not require the extraction of roots, or any painful operation, and will give support and preserve teeth that are loose, and is guaranteed to restore articulation and mastication; and that Mr. Howard's improvements may be within the reach of the most economical, he has fixed his charges at the lowest scale possible. Decayed teeth rendered sound and useful in mastication.
52, Fleet-street. At home from Ten till Five.

"TRIED IN THE BALANCE AND FOUND WANTING."
THE Analytical Sanitary Commissioners having analysed the Cocoa of every dealer in London of any importance, whether manufactured in London or not, have declared that only four samples were genuine, ours being the best, being free from husk and all refuse. They likewise expressed regret that, in the few samples they found to be genuine, the husk or shell of the nut, which they state to be, as food comparatively worthless, should so generally be worked up with the nut.—*Vide The Lancet* of May 31, 1851.

The husk, &c. form about one-sixth of the whole nut, so that, by excluding them, as we do, we necessarily enhance the cost of the article. We request the favour of cocoa drinkers to make trial of our PURE GRANULATED COCOA, in packets at 1s. per pound. Their confidence will not be misplaced. It is now drunk at the tables of the first families in all parts of the kingdom.
HANDFORD AND DAVIES, 61, HIGH HOLBORN.

THE ROYAL TURKISH TOWELS.—Under the Patronage of her Majesty the Queen, and which received the Prize Medal at the Great Exhibition. The brown Linen combines the advantages of a flesh-brush with the qualities most desirable in a towel. The white Cotton is the softest Towel ever made, and absorbs moisture without the necessity of using friction. To be had of all respectable Linendrapers.

CAUTION.
TO TRADESMEN, MERCHANTS, SHIPPERS, OUTFITTERS, &c. Whereas it has lately come to my knowledge that some unprincipled person or persons have for some time past been imposing upon the public by selling to the trade and others a spurious article, under the name of BOND'S PERMANENT MARKING INK. This is to give notice, that I am the original and sole Proprietor and Manufacturer of the said article, and do not employ any traveller, or authorise any person to represent themselves as coming from my Establishment for the purpose of selling the said Ink. This caution is published by me to prevent further imposition upon the Public, and serious injury to myself.
E. R. BOND, Sole Executrix and Widow of the late JOHN BOND, 28, Long-lane, West Smithfield, London.

THE ONLY STOVE WITHOUT A FLUE, for which her Majesty's Royal Letters Patent have been granted. Plain, from 12s. to 25s.; Ornamented, from 31s. 6d. to Six Guineas.

Prospectuses, with drawings and report, forwarded free.

MOVABLE HOT PLATES, 2s. 6d. 3s. and 5s. EACH.

CAUTION.—An injunction having been granted by the Vice-Chancellor, in the case of *Nash* v. *Carmen*, restraining the defendant from making or selling any colourable imitation of the plaintiff's Stove or fuel, the public is respectfully informed, that the original "Joyce's Patent Stove without a Flue, and the prepared Fuel," can only be obtained from SWAN NASH, or his authorised Agents. Every genuine Stove has the name and address of the proprietor on a brass plate, "SWAN NASH, No. 253, Oxford-street."

Joyce's Patent for Warming Halls, Passages, Greenhouses, Water Closets, Shops, Store-rooms, and all places requiring artificial warmth.

PATENT PREPARED FUEL for the Stoves, 2s. 6d. per bushel, only genuine with the proprietor's name and seal on the sack.

S. NASH, 253, Oxford-street, and 110, Newgate-street.

DESTRUCTIVE FIRE in HAYDON-SQUARE—MILNER'S HOLDFAST SAFES—the strongest safeguards extant against Fire, Robbery, or Violence—of all sizes, at the Depôt, 47 a, MOORGATE-STREET, CITY.

90, Minories, London, July 26, 1852.

Messrs. THOS. MILNER and SON.

GENTLEMEN,—At the destructive fire in Haydon-square, on the 15th inst. in which our entire stock of oils, turpentine, cordage, canvas, &c. was destroyed, the Books and Papers in our Milner's Safe were preserved uninjured. The Safe was only dug out of the ruins this evening, and, from the severe trial it had undergone, we expected everything within it to be consumed.

We have great pleasure in testifying to the utility of your Safes, and in strongly recommending them to the public, and will thank you to send us another of the same size.

"We are, Gentlemen, yours respectfully,
"COUBRO and POTTER."

MILNER'S PHŒNIX SAFE WORKS, LIVERPOOL, the most extensive and complete in the world. The Safe alluded to above was 11 days and nights in the ruins, and may now be seen at the LONDON DEPOT, 47 a, MOORGATE-STREET, CITY, near the Bank of England.

KEATING'S COUGH LOZENGES.—A CERTAIN REMEDY for disorders of the pulmonary organs—in difficulty of breathing—in redundancy of phlegm—in incipient consumption (of which cough is the most positive indication they are of unerring efficacy. In asthma, and in winter cough, they have never been known to fail.

Prepared and sold in boxes, 1s. 1½d., and tins, 2s. 9d., 4s. 6d and 10s. 6d. each, by THOMAS KEATING, Chemist, &c. No. 79, St. Paul's-churchyard, London. Sold retail by all Druggists and Patent Medicine Vendors in the Kingdom.

IMPORTANT TO SINGERS AND PUBLIC SPEAKERS.
"St. Paul's Cathedral, 30th Nov. 1 (5.
"SIR,—I have much pleasure in recommending your Lozenges to those who may be distressed with hoarseness. They have afforded me relief on several occasions when scarcely able to me from the effects of catarrh. I think they would be very useful to clergymen, barristers, and public orators.
"I am, Sir, yours faithfully,
"To Mr. Keating." "THOMAS FRANCIS, Vicar-Choral."

WAREHOUSING FURNITURE and valuable PROPERTY.—Parties Leaving Town and Changing their Residences.—Furniture, Plate, Books, and other valuable Property carefully REMOVED and WAREHOUSED at the North London Depository, Gray's-inn-road, King's-cross. Established 1828. Separate lock-up store-rooms. The building is secure from fire and damp, heated by steam-pipes. An inspection is requested. Advances if required.

METCALFE and CO.'S NEW PATTERN TOOTH-BRUSH and PENETRATING HAIR-BRUSHES.—The tooth-brush performs the highly important office of searching thoroughly into the divisions, and cleaning in the most extraordinary manner,—hair never comes loose. Its peculiarly penetrating hair-brushes, with the durable unbleached Russia Bristles, which will not soften like common hair: improved clothes-brush, that cleans harmlessly in one-third the usual time; the new Velvet-Brush; and immense stock of genuine unbleached Smyrna Sponge.

At METCALFE, BINGLEY, and CO.'s only establishment, 130 B, Oxford-street, one door from Hollis-street.

CAUTION.—Beware of the word "from" Metcalfe's, adopted by some houses.—Metcalfe's Alkaline Tooth Powder, 2s. per box.

PERIODICAL SALE (established in 1843), appointed to take place the first Thursday in every month, of Absolute and Contingent Reversions, Life Interests, Annuities, Policies of Assurance, Advowsons, Next Presentations, Rent-charges in Lieu of Tithes, Post-obit Bonds, Tontines, Debentures, Improved Rents, Shares in Docks, Canals, Mines, Railways, Insurance Companies, and other public undertakings for the year 1853.

MR. MARSH begs to announce that his PERIODICAL SALES (established in 1843), for the disposal of every description of the above-mentioned property, take place on the first Thursday in each month throughout the ensuing year, as under:—

Thursday, January 6th.	Thursday, July 7th.
Thursday, February 3rd.	Thursday, August 4th.
Thursday, March 3rd.	Thursday, September 1st.
Thursday, April 7th.	Thursday, October 6th.
Thursday, May 5th.	Thursday, November 3rd.
Thursday, June 2nd.	Thursday, December 1st.

Mr. Marsh has been induced to hold these sales from his experience of the heavy drawback and great difficulty to which this description of property has been exposed in the ordinary course of sales, and the above plan has proved equally advantageous to vendors and purchasers. Notices of sales should be forwarded to Mr. Marsh a fortnight previous to the above dates. Mr. Marsh requests all persons desirous of being furnished monthly with the particulars of his sales to forward their address to his offices, where every information respecting the disposal and purchase of this description of property may be obtained. The NEXT SALE will take place on THURSDAY, JANUARY 6th.

2, Charlotte-row, Mansion-house.

Valuable and important Freehold Property, in the City of London, and in the immediate vicinity of New Cannon street.

MR. MARSH has been favoured with instructions to SELL by AUCTION, at the MART, on THURSDAY next, DEC. 16, at Twelve, in Two Lots (unless previously disposed of by private contract), TWO substantially-erected and convenient Brick-built FREEHOLD HOUSES, comprising Nos. 22 and 23, Laurence Pountney-lane, within a few doors of New Cannon-street, and in the heart of the City of London. No. 23 is let on lease for a term of twenty-one years from Midsummer 1850, at the moderate rental of 85l. per annum; of No. 22 immediate possession will be given, but it is estimated to produce a rental of 70l. per annum. May be viewed; and particulars, with conditions of sale, obtained on the Premises; at the Mart; of Messrs. Parker and Sons, Solicitors, Lewisham; and at Mr. Marsh's Offices, 2, Charlotte-row, Mansion-house.

ESSEX, near COLCHESTER, and close to the Ardleigh Railway Station within two hours' ride of London.

MR. MARSH has received instructions from the Executors (and pursuant to the will of the late proprietor), to SELL by AUCTION, at the MART, on THURSDAY next, DECEMBER 16, at Twelve (unless an acceptable offer be previously made by private contract), the valuable FREEHOLD MANOR of BOVILL'S HALL, in Ardleigh. The Manor comprises an Inn and about thirty-five houses, and some land, fine arbitrary; also about ten hundred and twenty acres of land, fine certain. The lord's average income from fines and quit-rents is about 44l. per annum. There are numerous copyhold tenements, and the stewardship of this manor is more than usually valuable. The situation of the property is most desirable, and the neighbourhood being so select ensures a continuance of improvement.—Particulars and conditions of sale may be obtained of Thos. Huxley, Esq. 3, Middle Temple-lane; of Messrs Crimon, Norwich; and at Mr. Marsh's Auction and Estate Agency Offices, 2, Charlotte-row, Mansion-house.

SUFFOLK.—Near to Bury St. Edmunds.—Valuable and important fine Arbitrary Manors.

MR. MARSH has been favoured with instructions from the Executors, pursuant to the trusts of the will of the deceased proprietor, to submit to SALE by PUBLIC COMPETITION, at the AUCTION MART, on THURSDAY next, DECEMBER 16, 1852, at TWELVE o'clock (unless an acceptable offer be previously made by private contract), the extensive and exceedingly valuable FREEHOLD MANORS or Lordships of Cockfield, otherwise Cockfield Hall, and Earl's Hall, in Cockfield, with the arbitrary fines, quit and other rents. The manors comprise numerous houses, and a large tract of very fertile copyhold land, all subject to arbitrary fines. The lord's average annual income from fines is 160l. and the quit and other rents amount to 24l. making a total income of nearly 200l. per annum. The stewardship of these manors is a valuable appointment.—Particulars, with conditions of sale, may be obtained of Thos. Huxley, Esq. 3, Middle Temple-lane; of Messrs. Cudmon, Norwich; and at Mr. Marsh's Offices, 2, Charlotte-row, Mansion-house, London, or will be forwarded on application.

Chamber Property for Investment or Occupation.

MESSRS. HAMMOND and ELOART will SELL by AUCTION, at their GREAT ROOMS, 28, Chancery-lane, on THURSDAY, DECEMBER 16th, at Twelve for One, THREE SETS of excellent business or residence CHAMBERS, situate on the second and third floors of No. 5, Verulam-buildings, and on the first floor of No. 13, Gray's-inn-square, let respectively at 50l. 40l. and 42l. per annum, held of the Society in the usual way for ever by payment of a septennial fine.—May be viewed by permission, and particulars had of J. Burn, Esq. Solicitor, 1, Frederick-place, Old Jewry; at the Steward's Office; and of the Auctioneers, 28, Chancery-lane.

CITY OF LONDON.—Valuable Freehold Property.

MESSRS. ELLIS and SON are instructed by the Trustees of the Will of the late J. W. Bridger, esq. deceased, to SELL by AUCTION, at GARRAWAY'S, on WEDNESDAY, DECEMBER 22, at Twelve, in one lot (unless an acceptable offer be previously made by private contract), a valuable ESTATE, comprising two freehold houses, situate Nos 6 and 7, Aldgate, and extensive premises behind, occupying a large plot of ground, close to Fenchurch-street, and in the immediate neighbourhood of the Blackwall Railway Terminus, Custom-house, Docks, and wharfs; part let on lease, and part in hand, which may be readily let.—To be viewed by tickets only. Printed particulars may be had, fourteen days prior to the sale, of T. B. Prout, Esq. Solicitor, Lincoln's-inn-chambers, Fenchurch-street; Garraway's; and of Messrs. Ellis and Son, Auctioneers and Estate Agents, 38, Fenchurch-street.

HENLEY-ON-THAMES.—The important and beautiful Estate of Harpsden Court, in Oxfordshire, with its capital Mansion, Manors, and valuable Farms, comprising 1,400 acres, only one mile from the town, overlooking the Thames and its rich and splendid scenery, within six miles of Reading.

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LANCASHIRE EPIPHANY SESSIONS.—Notice is hereby given, that the General Quarter Session of the Peace for the County Palatine of Lancaster, will be held at the Castle of Lancaster on Monday the 3rd day of January next, at Ten o'clock in the forenoon, and by adjournment at the following places and times, viz.—
At the Court house, in Preston, on Wednesday, the 5th day of January next, at Ten o'clock in the forenoon
At the New Bailey Court-house, in Salford near Manchester, on Monday, the 10th day of January next, at Ten o'clock in the forenoon
And at the Court house in Kirkdale, near Liverpool, on Tuesday, the 18th day of January next at Twelve o'clock at noon, on which day county business alone will be transacted and the Court will then adjourn to Wednesday morning, at Ten o'clock, for the transaction of ordinary business.
And that all business relating to the assessment, application, or management of the county stock or rate will commence at such Sessions respectively at Twelve o'clock at noon of the first day thereof
All business arising within the hundred of Lonsdale is transacted at Lancaster, within the hundreds of Amounderness, Blackburn and Leyland at Preston, within the hundred of Salford, at Salford, and within the hundred of West Derby, at Kirkdale
All appeals are entered with the Clerk of the Peace, and motions made to the Court respecting them on the first morning of the sessions at each of the above-named places, except at Kirkdale, when such proceedings are to take place on the second morning And the trial of such appeals takes place, at Lancaster on the first day, at Preston, not earlier than Friday, the third day, at Salford on Wednesday the third day, and at Kirkdale not earlier than Thursday the third day
The Attorneys engaged in Prosecutions at the said sessions are requested to take notice, that all indictments are required to be sent to the Clerk of the Peace's office four days at least before the said Sessions respectively
GORRIE and BIRKHALL, Dep. C P.
Clerk of the Peace's Office Preston 14th Dec 1852

WARWICKSHIRE SESSIONS — Notice is hereby given that the General Quarter Session of the Peace for the Warwick Division of the said County will be held at Warwick on Monday, the 3rd day of January next, at Eleven o'clock in the morning, and will commence with the county business, and at two o'clock the trial of prisoners will be proceeded with On Tuesday the 4th, at ten o'clock in the morning, motions and appeals will be heard
The said Quarter Sessions will be held by adjournment, for the County Division of the said county, at Coventry, on Wednesday, the 5th day of January, at eleven o'clock in the morning; and as soon as the preliminary business is disposed of, the Court will hear and enter into recognizances with the county business, and at two o'clock the trial of prisoners will commence in Saint Mary's-hall, as soon as any bills are found and returned by the Grand Jury W O HUNT, Clerk of the Peace.
Stratford-upon-Avon, 15th December, 1852.

SCOTTISH UNION INSURANCE COMPANY (FIRE and LIFE).

Instituted 1824, and Incorporated by Royal Charter,
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TABLES, SHEWING THE ADDITIONS TO POLICIES OF 1,000l. which have been Seventeen complete years in existence.

Age when Assured.	Additions.	Total Sum payable in case of Death.
20	£220 1 6	£1,220 1 6
25	234 2 6	1,234 2 6
40	289 6 11	1,289 6 11
45	307 11 10	1,307 11 10
50	321 12 7	1,321 12 7

Averaging upwards of 1½ per cent. per Annum.

EXAMPLES OF BONUS TO POLICIES OF LARGER AMOUNT.

No. of Policy.	Issued in.	Sum Assured.	Additions.	Total.
613	1824	£4,000	£1,080 14 8	£5,080 14 8
1,020	1825	5,000	1,325 8 11	6,325 8 11
1,190	1825	2,000	727 1 11	2,727 1 11
1,722	1826	3,000	1,101 13 4	4,101 13 4
1,980	1827	2,500	500 0 0	3,000 0 0

The next Division of Life Profits will take place in December 1854, being an interval of Five years.

The Bonus may be applied, at the option of the Assured, in any of the following ways:—

I. It may be added to the Sum Assured; or
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EQUITY and LAW LIFE ASSURANCE SOCIETY, No. 26, Lincoln's-inn-fields, London.

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Policies in this Office are INDISPUTABLE except in cases of FRAUD.

"Free Policies" are issued, at a small increased rate of Premium, which remain in force although the Life assured may go to any part of the World.

Parties assuring within Six Months of their last Birthday are allowed a proportionate diminution in the Premium.

The premiums may be paid up in one sum, or in a limited number of payments, on advantageous terms.

Eighty per cent. of the profits are divided at the end of every Five Years among the Assured. At the first division, to the end of 1849, the addition to the amount assured averaged above Fifty per cent. on the Premiums paid.

The financial year closes on the 31st December; and parties effecting assurances before that date will have the advantage of an extra year's bonus.

CLERICAL, MEDICAL, and GENERAL LIFE ASSURANCE SOCIETY.

ADVANTAGES OFFERED.

EXTENSION OF LIMITS OF RESIDENCE.—The assured may reside in most parts of the world, without extra charge, and in all parts by payment of a small extra premium.

MUTUAL SYSTEM WITHOUT THE RISK OF PARTNERSHIP.

The small share of Profit divisible in future among the Shareholders being now provided for, without intrenching on the amount made by the regular business, the Assured will hereafter derive all the benefits obtainable from a Mutual Office, with at the same time, complete freedom from liability, secured by means of an ample Proprietary Capital—thus combining in the same office all the advantages of both systems.

The Assurance Fund already invested amounts to £850,000 and the Income exceeds £136,000 per annum.

CREDIT SYSTEM.—On Policies for the whole of Life, one half of the Annual Premiums for the first five years may remain on credit, and may either continue as a debt on the Policy, or may be paid off at any time

LOANS.—Loans are advanced on Policies which have been in existence five years and upwards, to the extent of nine-tenths of their value.

BONUSES.—Five Bonuses have been declared; at the last in January 1853, the sum of 131,195l. was added to the Policies, producing a Bonus varying with the different ages from 24½ to 53 per cent. on the Premiums paid during the five years.

PARTICIPATION IN PROFITS.—Policies participate in the Profits in the proportion to the number and amount of the Premiums paid between every division, so that if only one year's Premium be received prior to the books being closed for any division, the Policy on which it was paid will obtain its due share. The books close for the next division on 30th June, 1856, therefore those who effect Policies before the 30th June next, will be entitled to one year's additional share of Profits over later assurers.

APPLICATION OF BONUSES.—The next and future Bonuses may be either received in cash, or applied at the option of the assured in any other way.

NON-PARTICIPATING.—Assurances may be effected for a Fixed Sum at considerably reduced rates, and the Premiums for Term Policies are lower than at most other Safe Offices.

PROMPT SETTLEMENT OF CLAIMS.—Claims paid *thirty days after proof of death*, and all Policies are *indisputable except in case of fraud.*

INVALID LIVES may be assured at rates proportioned to the increased risk.

POLICIES are granted on the lives of persons in any station, and of every age, and for any sum on one life, from 50l. to 10,000l.

PREMIUMS may be paid yearly, half-yearly, or quarterly; but the payment be omitted from any cause, the Policy can be revived within fourteen months.

The Accounts and Balance Sheets are at all times open to the inspection of the Assured, or of *persons desirous to assure.*

A copy of the last Report, with a Prospectus and Forms of Proposal, can be obtained of any of the Society's Agents, or will be forwarded free by addressing a line to

GEORGE H. PINCKARD, Resident Secretary.
26, Great Russell-street, Bloomsbury, London.

The usual Commission allowed to Solicitors and Agents.

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CAPITAL, 500,000l.

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The BONUS for the current year is Twenty per Cent. in reduction of the Premium to parties who have made Five Annual Payments or more on the Profit Scale.

Endowments and Annuities granted as usual.

INDIA BRANCH.

The Society has Branch Establishments at Calcutta, Madras, and Bombay.

*** Tables of Rates, both English and Indian, can be had on application at the Office.

JOHN CAZENOVE, Secretary.

ALBERT LIFE ASSURANCE COMPANY.
Established 1838
Principal Office, 11, Waterloo-place, Pall-mall, London.

Indisputable policies.

Assurances, annuities, and endowments granted, and every other mode of provision for families arranged.

Half the annual premiums for the first five years may remain on credit for any period until death, on payment of interest at five per cent. per annum.

Parties allowed to go to or reside in most parts of the world without extra premium.

Naval and military lives, not in active service, assured at the ordinary rate.

Policies forfeited by non-payment of premium revivable at any time within six months, on satisfactory proof of health and the payment of a trifling fine.

Policies on the life of another secured, notwithstanding the part of the world in which the assured may go.

HENRY WILLIAM SMITH, Actuary and Secretary.

THE YORKSHIRE FIRE and LIFE INSURANCE COMPANY. Established at York, 1824, and empowered by Act of Parliament, Capital, 500,000l.

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ACTUARY and SECRETARY.—Mr. W. L. Newman, York.

The attention of the public is particularly called to the terms of this Company for LIFE INSURANCES, and to the distinction which is made between male and female lives.

Extract from the Table of Premiums for insuring 100l.

Age next birthday.	A MALE.	A FEMALE.	Age next birthday.	A MALE.	A FEMALE.
	Whole Life Premiums			Whole Life Premiums.	
	£ s. d.	£ s. d.		£ s. d.	£ s. d.
10	1 7 6	1 8 4	48	3 11 6	3 3 3
12	1 9 3	1 7 0	50	4 1 9	3 13 3
16	1 11 3	1 8 10	53	4 11 6	4 2 6
20	1 14 4	1 11 6	56	5 4 0	4 14 0
23	1 17 0	1 13 8	60	6 6 0	5 13 6
26	2 0 2	1 16 2	63	7 4 0	6 9 6
*30	2 5 0	1 19 9	66	8 4 0	7 10 6
33	2 8 6	2 2 10	70	10 0 4	9 7 6
36	2 13 0	2 6 4	73	11 16 2	11 2 6
40	2 19 9	2 12 0	76		13 1 9
43	3 5 3	2 17 2	80		15 12 10

* EXAMPLE.—A gentleman whose age does not exceed 30, may insure 1,000l. payable on his decease, for an annual payment of 22l. 10s.; and a lady of the same age can secure the same sum for an annual payment of 19l. 17s. 6d.

Prospectuses, with the rates of premium for the intermediate ages, and every information, may be had at the Head Office in York, or of any of the Agents.

FIRE INSURANCES
are also effected by this Company, on the most moderate terms.

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LAW REVERSIONARY INTEREST SOCIETY,
For the Purchase of Reversionary Property and Life Interests, and for the Sale of Life Annuities, Endowments, and Reversionary Payments.

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Provisionally registered pursuant to Act of Parliament, 7 & 8 Vict. c. 110.

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This Society is instituted for the Purchase of *Reversions, Life Interests*, and every other kind of property, whether vested or contingent, depending upon the duration of human life, and for the Grant of Life Annuities, Endowments, and Reversionary Payments.

The shares having been taken to a much larger amount than is necessary to enable the Society to be completely registered, the deed has been prepared, and notice will be given when it is ready for signature.

The Society will commence business on the 11th January, 1853. Applications for the remaining shares to be addressed to the Directors, at the Offices of the Society, 5, Lincoln's-inn-fields.

Dated the 2nd December, 1852.

NORWICH UNION LIFE INSURANCE SOCIETY; established 1808.

A bonus having been declared at a General Meeting of the Members of this Society upon the 30th of June last, copies of the Directors' and Actuary's Reports may be obtained at the Society's Offices, 6, Crescent, New Bridge-street, Blackfriars, London; and Surrey-street, Norwich.

This Society has now been established upwards of forty-four years, upon the principles of mutual assurance, during which period it has paid to claimants on terminated policies upwards of 3,000,000l. sterling, in addition to which nearly one million and a quarter sterling has been assigned by way of bonuses; while the accumulated capital, for meeting existing engagements (and which is almost wholly invested on real and Government securities), exceeds 2,100,000l.

There is no proprietary to divide with the assured the profits of this institution, which is one of the very few purely mutual insurance offices. In addition, however, to the entire profits of the Society, persons now effecting insurances will be entitled to participate in the benefits to be derived from the upward bonus, now amounting to 218.19% the 3rd and which, affording all the protection of a proprietary capital, will at the same time increase instead of diminishing their future bonuses.

The rates of premium are below those of most insurance offices, and under the age of forty-five not less so than ten per cent.—a benefit in itself equivalent to an annual bonus.

One half of the first five annual premiums may remain as a permanent charge upon policies granted for the whole duration of life.

The attention of CLERGYMEN, BENEVOLENT PERSONS, and EMPLOYERS of every description, is invited to the Prospectus and Tables of the

OAK MUTUAL LIFE ASSURANCE and LOAN COMPANY,

No. 49, Moorgate-street, London. Completely registered pursuant to Act of Parliament, 7 & 8 Vict. cap. 110.

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When the eyes water, or become so much fatigued by short exercise as to be obliged to be frequently closed or relieved by viewing different objects.

When objects cannot be seen without removing them to an increased distance.

When the letters of a book appear to blend with one another.

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When the candle is placed between the eye and the book.

When much difficulty is found in threading a needle.

When the eyes appear as if they had a mist before them.

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Boxes sent by post by enclosing postage-stamps for the amount of box required.

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Bank Stock	..	213½	213½	213½	213	..
3 ℔ Cent. Reduced Annuities	101¼	101¼	101¼	101¼	100¾	..
3 ℔ Cent Consols Annuities	.	shut	shut	shut	shut	..
Consols for Account	100¼	100¼	100¼	100¼	100¼	..
New 5 ℔ Cent. Annuities	..	..	..	..	..	..
New 3½ ℔ Cent. Annuities	104½	104½	104½	104½	104	..
Long Annu (exp. Jan 5, 1860)	6¼	6¼	6¼	6¼	7	..
Do. 30 yrs. (exp Oct. 10, 1859)	..	.	6¼	..	..	..
Do 30 yrs. (exp. Jan. 5, 1860)	..	..	..	..	..	..
India Stock	..	..	..	..	..	..
India Bonds (1,000*l.*)	80	80	.	81	79	..
Do do. (under 1,000*l.*)	..	80	81	..	79	..
South Sea Stock	.	..	..	..	..	..
Do. do. New Annuities	..	..	..	..	..	..
Exchequer Bills, 1,000*l.* June	60*	60*	63*	64*	63*	..
Do. do. 500*l.* June	60*	60*	63*	64*	..	..
Do. do. Small, June	60*	60*	63*	64*	63*	..

* Premium.

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

THE Queen has been pleased to appoint Adam Murray Alexander, Esq to be Second Puisne Judge of the colony of British Guiana.

The Earl of Eglinton has conferred the appointment of stipendiary magistrate upon Mr. Robert Bodkin, of Annagh, in the county of Galway. Mr. Bodkin is a Roman Catholic, and in politics, at all seasons, "moderate Conservative."

MEMBERS RETURNED TO SERVE IN THIS PRESENT PARLIAMENT.

BOROUGH OF LISBURN.—Roger Johnson Smyth, of 32, Castle-street, Lisburn, in the county of Antrim, esq. in the room of Sir James Emerson Tennent, who has accepted the office of steward of her Majesty's manor of Northstead.

BOROUGH OF MERTHYR TYDVIL.—Henry Austin Bruce, esq. in the room of Sir Josiah John Guest, Bart. deceased.

COMMISSIONS SIGNED BY THE LORD LIEUTENANTS.

BERKS.—Sir Claudius Stephen Paul Hunter, bart.; Courtenay Throckmorton, esq; Joseph Arnould, esq., John Hughes, esq.; William Pollett Brown Chatteris, esq; Head Pottinger Best, esq; Henry Buckworth Powell, esq; Henry Foley, esq.; John Samuel Bowles, esq.; George Willes, esq.; William George Mount, esq; and Richard Fellowes, esq. to be Deputy-Lieutenants.

[The following article is substituted for the one which appeared in the *Gazette* of Friday, Dec. 10.]

BERKS.—Frederick Augustus Carrington, esq.; Robert Gibson, esq., and the Right Hon. George William Barrington, to be Deputy-Lieutenants.

NORTH RIDING OF YORKSHIRE.—Sir John Vanden Bempde Johnstone, bart. and Harcourt Johnstone, esq. to be Deputy-Lieutenants.

WARWICK.—The Right Hon. George Augustus Frederick Viscount Villiers, and Edward Greaves, esq. to be Deputy-Lieutenants.

ESSEX.—William Jesse, esq. to be Deputy-Lieutenant.

TOWER HAMLETS.—Major William Lewis Grant to be Deputy-Lieutenant; James Scott Walker, Esq. late a Captain in the 88th Regiment of Foot, to be Captain of a Company, vice Collard, deceased.

COURT PAPERS.

CHANCERY CHAMBERS.—NOTICE.—All applications for time to plead, answer, or demur, and for enlarging publication or the time for closing evidence, are to be made, during the Christmas vacation, at the chambers of the Vice-Chancellor Kinderaley, No. 15, Lincoln's-inn Old-square.

COURT OF COMMON PLEAS.—Sittings at Nisi Prius in Middlesex and London, in and after Hilary Term, 1853.—In Term: Middlesex, January 13 and 20, in London, January 17 and 24. After Term: Middlesex, February 1; in London, February 12. The Court will sit during and after term at ten o'clock.

NECROLOGY

OF LEGISLATORS, MAGISTRATES, AND LAWYERS.

MR. BALLANTINE.

ON Tuesday, Mr. Ballantine, who was for twenty-seven years one of the magistrates of the Thames police-court, died at his residence, in Cadogan-place, Chelsea, after several months' severe illness. The deceased gentleman, who was in his 74th year, was called to the bar in 1813. He was a very intelligent and popular magistrate, and for many years had the chief control and management of the first police, a force which he left in a state of great efficiency, when it was placed under the Metropolitan Commissioners, in Scotland-yard, on the passing of the last Police Act. His urbanity, intelligence, and quick discernment, and his extensive legal knowledge, with which he combined the most perfect self-possession and general knowledge of the world, obtained him the respect and esteem of all classes of the people; and when he retired from the active duties of a police magistrate, four years ago, the loss of so able a magistrate was so keenly felt by the public. His memory will be long held in respectful remembrance by the inhabitants of the Tower Hamlets, and the people connected with the river and the trade and navigation of the port of London. The late Mr. Ballantine took a very active part in the financial and judicial affairs of Middlesex, as a county magistrate, since his retirement from the Thames Police-court, until he was attacked with the illness which proved fatal to him. The deceased gentleman has left a large family to mourn his loss, the eldest of whom is Mr. William Ballantine, the eminent barrister of the Home Circuit and the Central Criminal Court.

MR. PETER BORTHWICK.

WE regret to record the death of this gentleman, who expired on Saturday week, after a long and painful illness. Mr. Borthwick represented Evesham in two Parliaments, and was a fluent speaker and a ready political writer. Mr. Borthwick, for the last three years, filled the office of editor of the *Morning Post*.

BIRTHS, MARRIAGES, AND DEATHS.

MARRIAGES.

COPEMAN, the Rev. Arthur Charles, M.B. curate of St. James's, Bury St. Edmunds, to Mary Stephens, eldest daughter of the town clerk, James Tibbits, esq. Myton-crescent, Warwick, on the 16th inst. at St. Nicholas's, Warwick.

ERSKINE, the Right Hon. Lord, to Anna, widow of Thomas Calderwood Durham, esq. of Largo and of Polton, on the 21st inst. at St. George's, Hanover-square.

NEWMAN, Mr. Richard, solicitor, Hadleigh, Suffolk, to Emily Powell, youngest daughter of Mr. Grewcock, surgeon, of the same place, on the 21st inst. at St. Mark's, Kennington.

DEATHS

BORTHWICK, Peter, esq. at No. 11, Walton-villas, Brompton, on the 16th inst. aged 49.

GIBSON, Rowland, esq. barrister-at-law, at Gray's-inn, at Park village East, Regent's-park on the 16th inst.

MOORE, the infant son of Reginer W. of Lincoln's-inn, esq. barrister-at-law, on the 17th inst. at Gloucester-terrace, Hyde-park, aged 7 weeks.

RAWSON, John, esq. of Ash-grove, a deputy-lieutenant and magistrate for the West Riding, on the 19th inst. at Savile-place, Halifax, aged 69.

ROCHE, Maria, the wife of Mr. Roche, solicitor, Upper Wellington-street, Covent-garden, on the 21st inst. aged 74.

NOTICES OF NEW LAW BOOKS.

The New System of Common Law Procedure, according to the Common Law Procedure Act, 1852. By J. R. QUAIN, Barrister-at-Law, and H. HOLROYD, Special Pleader. Butterworths.

THIS is the ninth book, founded on the Common Law Procedure Act, which has been offered to the Profession. It is a reprint of the statute, with the forms in Schedule A. inserted after the appropriate sections, to many of which are appended, as might be expected from the authors, so well known to the legal public, several really useful notes. Reference is also made, where it appeared desirable, to the former procedure, and the latest cases have been referred to in illustration. It would have been much improved, however, if the cases decided on the new practice during last Michaelmas Term had been inserted.

BUSINESS OF THE COURTS IN THE CITY.—Lord Lampbell, at the sitting of the Court, said that he had taken into consideration a suggestion made to him a few days ago by the Attorney-general as to the Nisi Prius business beginning at ten o'clock instead of half-past nine. He had communicated with the Lord Chief Justice of the Court of Common Pleas on the subject, and they had determined that in future the Nisi Prius sittings after Term in their respective courts should begin at the same hour as that of the Court of Exchequer namely, ten o'clock. Mr. Chambers remarked that the circumstance of many of the journeymen and most of the witnesses residing out of town, would render this change a matter of general convenience.

THE ONLY STOVE WITHOUT A FLUE,
for which her Majesty's Royal Letters Patent have been granted. Public stoves for all large buildings, from 12s. 6d. to 40 guineas.
MANUFACTORY, 3, WILLIAM-STREET, LAMBETH.
Illustrations forwarded free.

PATENT PROTECTION TO TRADE.
CAUTION.—In consequence of the numerous frauds practised upon the Vice-Chancellor, Master of the Rolls, and Lords, restraining the defendants from making or selling any article in imitation of the plaintiff's, and the Vice-Chancellor having declared his intention, that the original inventor should have the benefit of his own name, and the prepared Fuel, as sold by Messrs. Wm. HARE, MARSH, or his authorised Agents, every package bearing the name of Wm. HARE, No. 293, Oxford-street, and a trade plate, "WM. HARE, No. 293, Oxford-street."

Morse's Patent for Warming Halls, Passages, Greenhouses, Water Closets, Shops, Store-rooms, and all places requiring artificial warmth.

PATENT PREPARED FUEL for the Stoves, 2s. 6d. per bushel, only genuine with the proprietor's name and seal on the sack.

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ROYAL UNION CIGARS.—CAUTION.—The Royal Union and Universal Cigars, 12s. 6d. per lb. differ from every other cigar made, and are equal to foreign. So many complaints are made of bad cigars sold under these names at 12s. 6d. per lb., that TOSSWILL and CO., the Public are requested to observe, every box is fitted with a label, their private seal and brand. The largest cigar in the Kingdom of genuine Foreign Havanah Cigars, 10s. 6d. per 25; 5s. per 12; also, Government Manillas, 15s. 6d. per lb.; Cigars and Cheroots, 6s. 7s. 8s. 9d. and 10s. 6d. per lb.; choice Tobaccos—Latakia, 7s. 6d. and Turkey, 5s. 6d. per lb.; and all others.

TOSSWILL and CO. Merchants and Importers, Nos. 6, 7, and 8, Puddling-lane, Mansion-house, near the Monument, London.

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Save 50 per cent. by purchasing your Watches direct from the Manufacturer, at the wholesale Trade Price.

GOLD WATCHES, entire jewelled, with all the recent Improvements	£3 15
Ditto, with the Three-quarter Plate Movement, and stouter Cases	£4 10
SILVER WATCHES, with same movements as the Gold	£2 0
Ditto, with the Lever Escapement, 8 holes jewelled	£3 15

And every other description of Watch in the same proportion. A written warranty for accurate performance is given with every watch, and a twelvemonth's trial allowed. Handsome morocco cases for same, 2s extra. Emigrants supplied with Watches suitable for Australia.
Merchants, Captains, and the Trade, supplied in any quantities, on very favourable terms.

Gentlemen's fine Gold Albert Chains	£1 10
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DANIEL ELLIOTT HEDGER,
Wholesale Watch Manufacturer, 27, City-road, near Finsbury-square, London.

KEATING'S COUGH LOZENGES.—A CERTAIN REMEDY for disorders of the pulmonary organs—in difficulty of breathing—in redundancy of phlegm—in incipient consumption of which cough is the most positive indication) they are of unerring efficacy. In asthma, and in winter cough, they have never been known to fail.
Prepared and sold in boxes, 1s. 1½d., and tins, 2s. 9d., 4s. 6d. and 10s. 6d. each, by THOMAS KEATING, Chemist, &c. No. 79, St. Paul's-churchyard, London. Sold retail by all Druggists and Patent Medicine Vendors in the Kingdom.

IMPORTANT TO SINGERS AND PUBLIC SPEAKERS.
"St. Paul's Cathedral, 30th Nov. 1849.
"SIR,—I have much pleasure in recommending your Lozenges to those who may be distressed with hoarseness. They have afforded me relief on several occasions when scarcely able to sing from the effects of catarrh. I think they would be very useful to clergymen, barristers, and public orators.
"I am, Sir, yours faithfully.
"To Mr. Keating." "THOMAS FRANCIS, Vicar-Choral."

WAREHOUSING FURNITURE and valuable PROPERTY.—Parties leaving Town and Changing their Residences.—Furniture, Plate, Books, and other valuable Property carefully REMOVED and WAREHOUSED at the North London Depository, Gray's-inn-road, King's-cross. Established 1828. Separate look-up store-rooms. The building is secure from fire and damp, heated by steam-pipes. An inspection is requested. Advances if required.

METCALFE and CO.'S NEW PATTERN TOOTH-BRUSH and PENETRATING HAIR-BRUSHES.—The tooth-brush performs the highly important office of searching thoroughly into the divisions, and cleaning in the most extraordinary manner,—hair never comes loose, 1s. Peculiarly penetrating hair-brushes, with the durable unbleached Russia Bristles, which will not soften like common hair: improved clothes-brush, that cleans harmlessly in one-third the usual time; the new Velvet-Brush; and immense stock of genuine unbleached Smyrna Sponges.
At METCALFE, BINGLEY, and CO.'s only establishment, 130 B, Oxford-street, one door from Holles-street.
CAUTION.—Beware of the word "from" Metcalfe's, adopted by some houses.—Metcalfe's Alkaline Tooth Powder, 2s. per box.

A NEW DISCOVERY.—MR. HOWARD, Surgeon-Dentist, 52, Fleet-street, has introduced an entirely NEW DESCRIPTION of ARTIFICIAL TEETH, fixed without springs, wires, or ligatures. They so perfectly resemble the natural Teeth as not to be distinguished from the original by the closest observer; they will NEVER CHANGE COLOUR, or DECAY, and will be found very superior to any teeth ever before used. This method does not require the extraction of roots, or any painful operation, and will give support and preserve teeth that are loose, and is guaranteed to restore articulation and mastication; and that Mr. Howard's improvements may be within the reach of the most economical, he has fixed his charges at the lowest scale possible. Decayed teeth rendered sound and useful in mastication.
52, Fleet-street. At home from Ten till Five.

TO BARRISTERS, SOLICITORS, and OTHERS.—FURNISH your OFFICES, Counting-houses and Chambers at PRIEST'S noted Furniture Mart, Nos. 1 and 2, Water-street, corner of Tudor-street, Blackfriars, where may be seen the largest STOCK of New and Second-hand LIBRARY and BOARD ROOM FURNITURE, Office and Counting-house Fittings, Fire-proof Safes, Desk-Boxes, Iron Doors, &c. in great variety, embracing every article from the Master in Chancery's splendid Table, to the Desk and Stool of the Copying Clerk. Also an immense stock of well-seasoned Household Furniture.

"TRIED IN THE BALANCE AND FOUND WANTING."
THE Analytical Sanitary Commissioners having analysed the Cocoa of every Dealer in London of any importance, whether manufactured in London or not, have declared that only four Samples were genuine, ours being the best, being free from husk and all refuse. They likewise expressed regret that, in the few samples they found to be genuine, the husk or shell of the nut, which they state to be as rich comparatively worthless, should be worked up with the nut.—*Vide* The Lancet of May 31, 1851.
The husk, &c. form about one-sixth of the whole nut, so that, by excluding them, as we do, we consequently enhance the cost of the article. We request the Sanitary Commissioners to make trial of our PURE GRANULATED COCOA, in packets at 1s. per pound. Their confidence will not be misplaced. It is now drunk at the tables of the first families in all parts of the kingdom.
HANDFORD AND DAVIES, 61, HIGH HOLBORN.

DESTRUCTIVE FIRE in HAYDON-SQUARE.—MILNES'S HOLDFAST SAFES—the strongest safeguards extant against Fire, Robbery, or Violence—of all sizes, at the Depôt, 67 A, MOORGATE-STREET, CITY.
67, Moorgate-street, London, July 28, 1852.

Messrs. Thos. Milnes and Son,
GENTLEMEN,—At the destructive fire in Haydon-square, on the 12th inst. in which our entire stock of oils, turpentine, cordage, canvas, &c. was destroyed, the Books and Papers in our Milner's Safe were preserved uninjured. The Safe was only dug out of the ruins this evening, and, from the severe trial it had undergone, we expected everything within it to be consumed.
We have great pleasure in testifying to the utility of your Safes, and in readily recommending them to the public, and will thank you to send us another of the same size.
"We are, Gentlemen, yours respectfully,
"COUSENS and POTTER."

MILNES'S PHŒNIX SAFE WORKS, LIVERPOOL, the most extensive and complete in the world. The Safe alluded to above was 11 days and nights in the ruins, and may now be seen at the LONDON DEPOT, 67 A, MOORGATE-STREET, CITY, near the Bank of England.

THE VERSATIO, or REVERSIBLE COAT.—Worthy the attention of the Legal and Clerical Professions.—EDMISTON and SON, 69, Strand, opposite the Adelphi, London.—The importance of this patented invention consists in the novelty of the material and its application, viz. the double purpose of forming two in one without trouble, one side presenting a gentlemanly morning-coat, the other a riding or shooting coat in any texture or colour desired. In over-garments or paletots this happy discovery offers still more useful advantages to the wearer, one surface exhibiting a graceful and elegant walking-coat, while its counterpart is conveniently adapted for the rougher purposes of travelling, skilfully designed in cash, and perfect in both their capacities. In these varying properties the public must recognise a union of novelty and usefulness not hitherto accomplished. Gentlemen supplied, sending their height and size round the chest over the waistcoat. Price from 30s. to 70s. London, EDMISTON and SON, Tailors, 69, Strand.

HOBSON, BROTHERS, Tailors, established 1798, beg leave to acquaint their various friends and gentry, that their new mixtures in FUR BEAVERS, milled Venetians, and Melton cloths for overcoats, are now ready, from 2l. 2s. to 2l. 10s.; their new patterns in West of England doeskins for winter trowsers are now most complete, among which will be found some French elastic buckskins for riding trowsers, from 22s. to 28s. per pair; and the new Australian lambskin waistcoats, the best waistcoats that are made for shooting, 12s. Patterns forwarded into the country on application.
HOBSON, BROTHERS, 4, FINSBURY-PLACE SOUTH, and 57, LOMBARD-STREET, three doors from Messrs. Barclay's, the bankers.

WELLINGTON SURTOUT.—F. D. SANGUINETTI begs the notice of his friends and the public in general to the above Surtout, patronised by the Royal Family and principal Nobility, which is now by its style, elegance, and comfort to the wearer, universally acknowledged to be unequalled by any other coat worn. To be had only at his establishment, 22, Regent-street, London. The Best Llama Cloth, 2l. 2s.; the patent Elastic Cloth, 2l. 12s. 6d. Home Agents supplied on the shortest notice. Foreign Agents by every mail on the 20th of the month.—53, Regent-street (next door to the County Fire Office).
Also, Sole Wholesale Licensee of the new double-faced CLOTH REVERSIBLE GARMENTS, protected by Her Majesty's Royal Letters Patent.

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INVENTORS of the PALLIAMENT (a great improvement upon the Paletot), the DONCASTER MORNING COAT, and the TALMA, a new equestrian or walking CLOAK-COAT.
All the new styles in Over Coats for the coming season, and the greatest novelties in Angolas and Scotch Tweeds for Trousers.
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Newcastle Coals	22s. per ton.
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E. and W. STURGE respectfully inform their friends and the public generally that their present prices of Coals are as above, and that the strictest attention is given to all orders intrusted to them at all times.—BRIDGE-WHARF, CITY-ROAD.
Established 1831.

ALLSOPP'S PALE ALE, in Bottle, may be had, in the highest perfection, at NATHANIEL BASTTY'S STORES, 132, UPPER THAMES-STREET. Quarts, 7s. per dozen; pints, 4s. per dozen. Also in casks of 18 gallons and upwards. The quality of these Ales may be fully relied on, as no other Pale or Burton Ales than Allsopp's are supplied from these stores.

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N.B. A fixed charge for servants.

THE ROYAL TURKISH TOWELS.—Under the Patronage of her Majesty the Queen, and which received the Prize Medal at the Great Exhibition. The brown Linen combines the advantages of a flesh-brush with the qualities most desirable in a towel. The white Cotton is the softest Towel ever made, and absorbs moisture without the necessity of using friction. To be had of all respectable Linendrapers.

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THE MOC-MAIN LEVER TRUSS is allowed by upwards of 300 Medical Gentlemen to be the most effective invention in the curative treatment of Hernia. The use of a steel spring, so often hurtful in its effects, is here avoided; a soft bandage being worn round the body, while the requisite resisting power is supplied by the Moc-Main Pad and Patent Lever, fitting with so much ease and elegance that it cannot be detected, and may be worn during sleep. A descriptive circular may be had, and the Truss (which cannot fail to be forwarded by post, on the circumference of the body two inches below the hips being sent to the Manufacturer, Mr. WHITE, 228, Piccadilly, London.
"An Umbilical Truss on the same principle.
Every description of Riding Belts, Elastic Stockings, Spinal Corsets, Suspensories, and Bandages, on new and approved principles, with every Kind of Surgical Bandage.

BRITISH COLLEGE OF HEALTH, NEW ROAD, LONDON.—"THE MORISONIAN SYSTEM OF MEDICINE" is strictly vegetable, and universally applicable to every disease to which the human frame is subject. It is a certain cure for any one of the following complaints, and has the experience of all the members of the Hygeian College to support it.
Caution.—No chemist or druggist is authorised to sell the medicine.

LAMPS of ALL SORTS and PATTERNS.—The largest, as well as the choicest, Assortment in existence of PALMER'S MAGNUM and other LONG CAMPHINE, ARGAND, SOLAR, and MODERATEUR LAMPS, with all the latest Improvements, and the Patent Duplex Burner, and many novel patterns in ormolu, Bohemian, and plain glass, or porter mounts, is at WILLIAM S. BURTON'S; and they are arranged in one large room, so that the patterns, sizes, and sorts can be instantly selected.
PALMER'S CANDLES, 7½d. a pound.—Palmer's Patent Candles, all marked "Palmer."

Single or double wicks	7½d. per pound.
Mid. size, three wicks	8½d. ditto
Magnums, three or four wicks	9d. ditto
English's Patent Camphine, in sealed cans	4s. 6d. per gallon.
Best Colza Oil	3s. 9d. ditto

THE BEST SHOW of IRON BEDSTEADS in the KINGDOM is WILLIAM S. BURTON'S. He has added to his Show-rooms TWO VERY LARGE ONES, which are devoted to the EXCLUSIVE SHOW of IRON and BRASS BEDSTEADS and CHILDREN'S COTS (with appropriate Bedding and Mattresses). Many of these are quite new, and all are marked in plain figures, at prices proportionate with those that have obtained to make this establishment the most distinguished in this country. Common Iron Bedsteads, 18s., 6d.; Portable Folding Bedsteads, 12s. 6d.; Patent Iron Bedsteads, fitted with dovetail joints and patent sacking, from 21s.; and Cots, from 21s. each. Handsome ornamental Iron and Brass Bedsteads, in great variety, from 2l. 12s. to 31l.

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	Fiddle Pattern.	Thread or Brunswick Pattern.	King's Pattern.
Tea Spoons, per dozen	12s.	23s.	26s.
Dessert Forks „	20s.	42s.	50s.
Dessert Spoons „	30s.	42s.	62s.
Table Forks „	40s.	54s.	70s.
Table Spoons „	40s.	54s.	70s.

Tea and Coffee Sets, Waiters, Candlesticks, &c. at proportionate prices. All kinds of re-plating done by the patent process.
CHEMICALLY PURE NICKEL, NOT PLATED.

	Fiddle.	Thread.	King's.
Table Spoons and Forks, full size, per dozen	12s.	23s.	30s.
Dessert ditto and ditto	10s.	21s.	28s.
Tea ditto	6s.	11s.	12s.

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Catalogues, with Engravings, sent (per post) free. The money returned for every article not approved of.
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PROFESSIONAL GENTLEMEN and the COMMERCIAL COMMUNITY are strongly recommended to try BLACKWOOD and CO.'S COPYING and other WRITING INKS, contained in the registered clean conducting bottles, with durable cork. The copying ink combines advantages never before obtained; among others, it will give a clear impression many days after writing, and a duplicate copy if required. Blackwood and Co.'s Steady Reference Files are indispensable to all who value time, method, and neatness in keeping their letters, papers, &c.
Sold by SKIPPER and EAST, 92, Dunstan's-hill; WILSON and SON, Cheapside; WM. TEGG and Co. Queen-street, City; SMITH, ELDER, and Co. Cornhill; BAILY, BROTHERS, Royal Exchange-buildings; W. S. ROWSELL, Cheapside; JOHN E. RICHARD, St. Martin's-court; JOHN SMITH, the Government Stationer, Long-acre; and all the leading Booksellers and Stationers in the United Kingdom. Shipping orders executed at the Manufactory, 26, Long-acre.

WHEN are SPECTACLES REQUIRED?—When the eyes water, or become so much fatigued by short exercise as to be obliged to be frequently closed or relieved by viewing different objects.
When objects cannot be seen without removing them to an increased distance.
When the letters of a book appear to blend with one another.
When more light is requisite than was formerly. For example—
When the candle is placed between the eye and the book.
When much difficulty is found in threading a needle.
When the eyes appear as if they had a mist before them.
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Age when Assured	Additions	Total Sum payable in case of Death
20	£290 1 6	£1 290 1 6
25	234 2 6	1,234 2 6
40	178 6 11	1 178 6 11
45	267 11 10	1 267 11 10
50	331 13 7	1,331 13 7

Averaging upwards of 11 per cent per Annum

EXAMPLES OF BONUS TO POLICIES OF LARGER AMOUNT

No of Policy	Issued in	Sum Assured.	Additions.	Total
813	1824	£4 000	£1,080 14 8	£5 080 14 8
1 000	1825	5,000	1,222 8 11	6,222 8 11
1,100	1825	3,000	727 1 11	3 727 1 11
1,262	1826	5,000	1,101 13 4	6,101 13 4
1,320	1827	2,000	508 0 0	2,008 0 0

The next Division of Life Profits will take place in December 1858, being an interval of Five years

The Bonus may be applied at the option of the Assured, in any of the following ways

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II. Applied in Reduction of Future Premiums, or

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" " ten " " 3 0 0

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" next five " "	0	15 0
" next five " "	0	10 0
" remainder of life "	0	5 0

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£ s d	£ s d	£ s d	£ s d	£ s d	£ s d	£ s d	£ s d	£ s d	£ s d
1 1 0	1 0 0	1 0 0	1 0 0	1 5 0	1 10 0	1 15 0	2 0 0	2 5 0	2 10 0

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DR. KING'S TRUE SARSAPARILLA PILLS, for purifying the blood, scurvy, and all low states of system, skin diseases, nervous complaints, Gout, Rheumatic Gout, weak nerves, loss of appetite, stomachic and liver complaints, nervous head and face ache, sore legs, and general debility. They are invaluable to the military, naval, and commercial man, and tourists, not only on account of their virtues, but their portability. Their advantages over any liquid preparation are manifold: 1stly. Because no solution of Sarsaparilla, however carefully prepared, can resist an inherent ferment-tation, which it will, and does undergo, rendering it entirely useless; 2ndly. "Two Pills contain as much Pure Sarsaparilla as a Tablespoonful of the Strongest Essence, and more to be depended upon;" 3rdly. They have been prescribed in an extensive practice for nearly sixty-seven years, and their virtues well tested. They are beneficial for both sexes, and will keep in any climate. A 2s. 9d. box is equal to a 16s. bottle of Sarsaparilla. Sold by most respectable medicine venders in the Kingdom, and by the sole Proprietor HENRY HIDER, 10, Hungerford street, Strand, in boxes at 1s. 1½d., 2s. 9d., 4s. 6d., 11s. and 22s. A considerable saving is effected by taking the larger boxes; hence, a 2s. 9d. contains three 1s. 1½d. boxes, a 4s. 6d. contains *seven*, and so on increasing.

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N.B.—Their mode of action is by really purifying the fluids of the body, and causing the poison of Gout to be driven off from the system not by violent purging, but by a gentle increase of the secretion of the kidneys. Sold in boxes at the same price as Dr. King's True Sarsaparilla Pills, by most respectable venders in the United Kingdom, and by the sole proprietor, HENRY HIDER, Hungerford-street, Strand. Neither of the Pills are genuine without the proprietor's name (in full) upon the stamp, to imitate which is libel.

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When objects cannot be seen without removing them to an increased distance.

When the letters of a book appear to blend with one another.

When more light is requisite than was formerly. For example—

When the candle is placed between the eye and the book.

When much difficulty is found in threading a needle.

When the eyes appear as if they had a mist before them.

When black specks seem floating in the sight.

When any of the above indications arise, all affectation should be laid aside, a responsible and skilful optician consulted, and a pair of "Preservers" purchased. THOMAS HARRIS and SON'S CRYSTAL SPECTACLES, if taken on the first approach of decay, will certainly retards its progress, and preserve the sight to the extreme of age.—Best Fitted Steel with Crystals, 15s.; Silver ditto, 1l.; Gold ditto, 2l. 2s.; Steel Spectacles with glasses, from 3s. Sent post free, and exchanged, if not approved of. Thomas Harris and Son, Opticians to the Royal Family, 52, Great Russell-street, London. Caution.—Opposite the British Museum Gates. Established Seventy Years.

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THE GAZETTES.

Bankrupts.

Gazette, Dec. 24.

KERRIDGE, WILLIAM JOHN, cheesemonger, Deptford, Kent, Jan. 4, at twelve, Feb. 8, at eleven, Basinghall-st. Com. Holroyd. Off. as. Groom. Sols. Pocock and Poole, Bartholomew-close. Petition, Dec. 18.

Gazette, Dec. 28.

COLLIER, GEORGE, bookbinder, Hatton-garden, Jan. 11 and Feb. 11, at eleven, Basinghall-street. Sol. Starling, Sackville-street, Piccadilly. Off. as. Bell, Coleman-street-buildings. Petition, Dec. 23.

MCGREGOR, WILLIAM, draper, 84, John-street-road, Jan 5, at one, Feb. 8, at twelve, Basinghall-street. Sols. Lawrance and Co. Old Jewry Chambers. Off. as. Stansfeld, Basinghall-street. Petition, Dec. 13.

PERCIVAL, WESTBY HAWKSHAW, publisher, Bloomsbury-square, Jan. 6, at eleven, Feb. 10, at twelve, Basinghall-st. Sol. Rose, Great Prescott-street, Goodman's-fields. Off. as. Bell, Coleman-street-buildings. Petition, Dec. 14.

SKELTON, ABRAHAM, stone delver, Mount Tabor, Halifax, Jan. 20, Feb. 18, at eleven, Leeds Court. Sols., Wavell and Co., Halifax. Off. as. Young, Leeds. Petition, Dec. 23.

TAIT, JOSEPH, and MINGAY, JOHN, mechanical tool manufacturers, Crawford-street, Bryanstone-square, Jan. 10, at eleven; Feb. 8, at twelve, Basinghall-street. Sol., Mess. Skinner's-place, Size-lane. Off. as. Edwards, Sambrook-court. Petition, Dec. 27.

TANNER, WILLIAM, draper, Alcester, Warwickshire, Jan. 11 and Feb. 2, at eleven, Birmingham Court. Sols. Lane, jun., Stratford-upon-Avon, and Hodgson, Birmingham. Off. as. Bittleston, Birmingham. Petition, Dec. 27.

Gazette, Dec. 31.

COLE, THOMAS, cabinet-maker, Newport, Isle of Wight, Jan. 11, at half-past twelve, Feb. 11, at twelve, Basinghall-st. Com. Evans. Off. as. Johnson. Sols. Messrs. Willoughby and Cox, Clifford's-inn. Petition, Dec. 15.

GRIMSHAW, JAMES, RICHARD, Coal Miner, Pemberton, Lancashire, Jan. 13 and Feb. 3, at eleven, Liverpool. Com. Stevenson. Off. as. Turner. Sol. Mayhew, Wigan. Petition, Dec. 28.

HILLMAN, THOMAS, wine and spirit merchant, Worthing, Sussex, Jan. 13, and Feb. 18, at twelve, Basinghall-st. Com. Fane. Off. as. Cannan. Sols. à Beckett and Sympson, Golden-square, W. A. Stuckley, Brighton. Petition, Dec. 29.

JENKYNS, FRANCIS, corn merchant, 24, Tyssoe-st. Clerkenwell, Jan. 14, at half-past eleven, Feb. 17, at twelve, Basinghall-st. Com. Evans. Off. as. Johnson. Sol. Glynes, 3, Crescent, America-sq. Petition, Dec. 29.

JAMES, JAMES, linen and woollen draper, High-st, Worthing, Jan. 8, at one, Feb. 11, at eleven, Basinghall-st. Com. Fane. Off. as. Cannan. Sols. Messrs. Linklater, Bucklersbury. Petition, Dec. 23.

PUGH, JAMES, tailor, 1, Lyndhurst-square, Peckham, Jan. 7, at one, Feb. 11, at twelve, Basinghall-st. Com. Fane. Off. as. Cannan. Sol. Wetherfield, Basinghall-st. Petition, Sept. 21.

ROFF, HENRY BURGESS, wharfinger, Woolwich, Jan. 10 at half-past twelve, and Feb. 12 at twelve, Basinghall-st. Com. Goulburn. Off. Ass. Nicholson. Sol. Colquhoun, Woolwich. Petition, Dec. 23.

BANKRUPTCY ANNULLED.

Pritchard, W. D. and D. coachsmiths and ironmongers, High-street, Marylebone, Jan. 20.

Dividends.

Gazette, Dec. 18.

BANKRUPT ESTATES.

Official Assignees are given, to whom apply for the Dividends.

Adams, A. hardwareman, first, 2½d. Nicholson, London.—*Ashton* and *Spriggs*, warehouseman, first, 6d. Edwards, London.—*Bateman*, J. agent, second, 2½d. Groom, London.—*Branson*, M. stationer, first, 3s. 3½d. Cannan, London.—*Dore*, J. carrier, second, 7d. Hope, Leeds.—*Gates*, E. grocer and stone merchant, final, 1s. 5d. Stansfeld, London.—*Guttins*, C. grocer and tea dealer, first, 3s. 10d. Whitmore, Birmingham.—*Hafero*, R. provision merchant, second, 3d. (in addition to 2s. 10d. previously declared). Baker, Newcastle.—*Jackson*, J. silversmith, first, 1s. 4d. Hope, Leeds.—*James*, J. ship builder, second sep. 1½d. Bird, Liverpool.—*Lackersteen*, A. A. merchant, first, 3s. Cannan, London.—*Lee*, M. woollen manufacturer, first, 8d. Hope, Leeds.—*Luxford*, J. tailor and draper, first, 2s. 6d. Carrick, Hull.—*Marsden*, J. laceman, first, 1s. 10d. Pott, Manchester.—*McCulloch*, J. S. draper and hosier, first, 1s. 11d. Bird, Liverpool.—*McKerrow*, A. draper, second, 2s. 6d. Chrrick, Hull.—*Molsworth*, H. grocer, second, 1s. 3d. Cannan, London.—*Mitchell*, J. carpenter, first, 1s. 9d. Cannan, London.—*Moon*, G. corn miller, first, 1s. 6d. Freeman, Leeds.—*Mopsey*, H. ironmonger, first, 10½d. Stansfeld, London.—*Nernacker*, L. J. laceman, second, 1½d. Groom, London.—*Padget*, S. draper, first, 3s. 6d. Lee, Manchester.—*Plummer*, H. jun. wood turner, first, 1s. 9d. Nicholson, London.—*Roberts*, J. merchant, fifth, 2-6ths of 3d. Bird, Liverpool.—*Rufford*, S. banker, first sep. 1d. Whitmore, Birmingham.—*Sleightholme*, T. S. painter, first and final, 8s. Hope, Leeds.—*Threlfall*, W. cotton spinner, second, 9d. Hope, Leeds.—*Watson*, J. draper, first and final, 8d. Freeman, Leeds.—*Whittaker*, J. draper, first, 3s. 9d. Cannan, London.—*Wicler*, W. merchant, first, 1s. 9½d. Nicholson, London.—*Wilkins*, J. builder, &c. first, 6s. 8d. Nicholson, London.—*Wilson*, J. M. bookseller, first, 3s. 9d. Groom, London.

Gazette, Dec. 25.

Beniams, S. jun., grocer and tea dealer, first, 2s. 9d. Whitmore, Birmingham.—*Brote*, J. J. K. manufacturing chemist, first, 4d. and 3-7ths of 1d. Pennell, London.—*Burt*, *Burt*, and *Watson*, commission agents, final sep. of J. Burt, 1d. and 11-16ths of 1d. Fraser, Manchester.—*Carter*, C. J. solicitor and newspaper agent, first, 6d. Stansfeld, London.—*Chadfield*, G. plasterer, painter, &c., first and final, 1s. 4d. Fraser, Manchester.—*Cowens*, A. E. baker, second, 4d. Pennell, London.—*Dalton* and *Edwards*, iron founders, final, 2½d. Whitmore, Birmingham.—*Dilke*, R. licensed victualler, first and final, 6s. 1d. Fraser, Manchester.—*Ford* and *Reeves* ship and insurance brokers, second, 5½d. Pennell, London.—*Osborne*, R. bookseller and publisher, first and final, on new proofs, 1s. 7d. Baker, Newcastle.—*Rymers*, J. inkeeper and newspaper proprietor, first and final, 3-5ths 1d. Baker, Newcastle.—*Johnson*, G. ironmonger, first, 4d. Stansfeld, London.—*Kelly*, W. L. bookseller, second, 1½d. Pennell, London.—*Kendall* and *Co.* grocers, second, 1s. 6d. Young, Leeds.—*Leader*, J. joiner and builder, first, 1s. 9d. Morgan, Liverpool.—*Loasler*, J. cabinet maker, first, 5s. Pennell, London.—*Long*, T. picture dealer, first, 1s. 4d. Stansfeld, London.—*Mitchell*, R. merchant, sixth, ¼d. Pennell, London.—*Mountcastle*, E. hatter, first, 4s. 11d. Whitmore, London.—*Patient*, T. cooper, carpenter, &c. first, 2s. 3d. Pennell, London.—*Pearce* and *Thackeray*, timber merchants, first, 2s. 8d.; second, 1d.; and first and final sep. of Pearce, 1l. Wakley, Newcastle.—*Pritchard*, W. tea dealer and rice miller, first, 2½d. Morgan, Liverpool.—*Sanford*, J. C. stationer, &c. first, 6d. Stansfeld, London.—*Stace*, A. R. ironmonger, second, 9d. Pennell, London.—*Streeter*, J. corn and coal merchant, first, 10s. 6d. Whitmore, London.—*Tomlinson*, T. corn merchant, seventh, 1d. and 5-16ths 1d. Young, Leeds.—*Weston*, R. P. surgeon and apothecary, first, 6d. Christie, Birmingham.—*Williams*, *Williams*, and *Williams*, bankers and millers, first joint, 9s. Acraman, Bristol.—*Worms*, H. boot maker, first, 1s. 3½d. Cannan, London.—Wright, J. calico printer and bleacher, final, 1d. and 15-16ths 1d. Fraser, Manchester.—*Wylam* and *Green*, merchants, second and fin. 3-20ths 1d. (in addition to 3d. and 7-12ths 1d. in the pound previously declared.) Baker, Newcastle.

INSOLVENTS' ESTATES.

Apply at the Provisional Assignee's Office, Portugal-street, Lincoln's-inn-fields, London, between the hours of eleven and three.

Gazette, Dec. 18.

Allen, J. captain in the navy, 2s. 6d. (making 13s. 10½d.)—*Burr*, E. collecting clerk, 1s. 8½d. (making 5s. 8½d.)—*Grinton*, A. clerk, 8d. (making 1s. 4d.) - *Hill*, T. office keeper, 2s. 6d. (making 4s. 2½d.) *Riddell*, T. ham and beef dealer, 4s. 2d.—*Tait*, R. saddler and harness maker, 3s. 6d. (making 8s. 7d.)

Gazette, Dec. 25.

Brackenbury, R. gentleman, 1s. 2d.—*Bulkeley*, J. F. lieut. R. N. 1s. 7d. (making two shillings and two pence farthing)—*Clode*, H. coal meter, 5s. (making twenty shillings).—*Holmes*, W. A. clerk in the ordnance office, 2s. 11d.—*Lindguist*, W, commander in the Honourable East India Company's Bengal Marine Service, 5s. 1d. (making twenty shillings).—*Wiltmoon*, J. G. landing waiter, 2s. 4d. (making eighteen shillings and eight pence three farthings).—*Bray*, J. gas fitter, 3s. 8½d. Apply to R. Worthington, official assignee, Ashton-under-Lyne.—*Giles*, J. sen. butcher, 4½d. Apply at the County Court, Lincoln.—*Hill*, J. cattle doctor, 2s. Apply to M. Hogdon, attorney, Exeter.—*Wright*, W. H. chemist and druggist, 2s. 5d. Apply to R. Worthington, official assignee, Ashton-under-Lyne.

Assignments for the Benefit of Creditors.

Gazette, Dec. 14.

Chisholm, J. innkeeper, Newcastle-upon-Tyne. Nov. 20. Trust. J. Short, agent, Newcastle-upon-Tyne. Sol. P. H. Stanton, Newcastle.—*Davenport*, F. W. silk throwster, Derby, Nov. 15. Trusts. W. Fisher, silkman, Derby; C. Stevenson, silk broker, Derby. Sols. G. H. Hudson, Bucklersbury, and J. Barber, Derby.—*Dubber*, C. builder and innkeeper, Lamborne, Berkshire, Nov. 18. Trusts. W. Batten, gentleman, Twyford; G. Barnes, gentleman, Newbury. Sol. C. J. Barnes, Lamborne.—*Lewis*, R. blacksmith and publican, Whitchurch, Glamorganshire. Trusts. E. Edwards, maltster, Llandaff; E. Evins, stone cutter, Whitchurch. Sol. R. W. Williams, Cardiff.—*Palmer*, J. baker, Billericay, Essex, Nov. 23. Trusts. R. D. Burls, miller, Battle-bridge, Raureth; R. R Green, miller, Rutland-gr. Bocking. Sol. H. Piggott, Chelmsford.—*Platt*, W. manufacturing masonic jeweller and embroiderer, Beaufort-bldg. Strand, Middlesex, Dec. 10. Trust. G. Simmons, silver wire drawer, Little Britton. Sols. Abbot and Driver, Birchin-la.—*Powell*, H. shopkeeper, Ford-st. Aldham, Essex, Nov. 19. Trusts. J. O. Car, grocer, Colchester; E. S. Sanders, grocer, Colchester. Sol. H. S. Goody, Colchester.—*Rogers*, J. bread baker and provision dealer, Ledge-hill, near Liverpool, Lancashire, Nov 27. Trusts. H. Gregg, merchant, Liverpool; J. Phillips, flour dealer, Liverpool. Sol. E. J. Kent, Liverpool.—*Whitaker*, C. and *Haigh*, G. worsted spinners, both Bradford, Yorkshire, Dec. 7. Trusts. J. Gurney, woolstapler, Manningham; B. Ferrand, woolstapler, Little Horton, Bradford, and J. Bottomley, worsted spinner, Horton. Sols. Terry and Watson, Bradford.—*Williams*, W. shopkeeper, Lyngroes, Caerhun, Carnarvonshire, Nov. 20. Trusts. O. Owens, farmer, Bryndowsin, Guffin; G. Williams, farmer, Bryngwenith, Caerhun. Sol. W. Griffiths, Dawrwst.

Gazette, Dec. 17.

Clarke, J. and *Bird*, W. H. boat-builders. Liverpool, Dec. 9. Trusts. S. Lloyd and J. Jenkins, Liverpool, timber merchants. Sols. Avison and Pritt, Liverpool.—*Exley*, J. shopkeeper, Calverley, Yorkshire, Nov. 9. Trusts. J. Hartley, Otley, corn miller, and J. Hebden, Leeds, grocer. Sol. J. Shackleton, Leeds.—*Forbes*, J. draper, Liverpool, Nov. 17. Trusts. J. A. Simpson, Manchester, merchant, and A. Robinson, Manchester, manufacturer. Sol. E. Aston, Manchester.—*Young*, S. sail-maker, Bangor, Caernarvonshire. Trust. R. Hayward, sail-cloth manufacturer and twine-spinner, West Chinnock. Sol. H. Roberts, Bangor.

Gazette, Dec. 21.

Bishop, T. G. cabinet maker and upholsterer, Chippenham, Wiltshire, Nov. 23. Trusts. W. Holmes and J. Calder, timber merchants, Bath. Sols. Payne and Bartrum, Bath.—*Higge*, T. stationer and draper, Newbury, Berks, Nov. 25. Trusts. F. B. Adams, wholesale stationer, Cannon-st., and W. Hitchcock, warehouseman, Wood-st. Sols. J. and J. H. Linklaters, Size-la.—*Laurence*, R. brewer, Ramsgate, Kent, Nov. 24. Trust. I. Abraham, draper, Ramsgate. Sol. J. R. Judge, Ramsgate.—*Little*, J. McF. draper, Kingston-upon-Hull, Nov. 30. Trusts. J. Smith, Bread-st., and I. McCutchian, warehouseman, Friday-st., and D. Little, tea dealer, Great Yarmouth, Sols. H. Cook, Hull; J. C. G. Bennett, Size-la.—*Ware*, R. draper, Ipswich, Suffolk, Dec. 2. Trusts. W. White, warehouseman, Cheapside, and S. Morley, warehouseman, Wood-st. Sols. Ashurst and Son, Old Jewry.—*Whiting*, S. shopkeeper and publican, Wrangle, Line-shi, Dec. 11. Trusts. J. Gask, grocer, and T. S. Cooke, brewer, Boston. Sols. Millington and Cooke, Boston.

Gazette, Dec. 24.

Cathrall, T. N. printer and stationer, Manchester, Lancaster, Dec. 3. Trusts. F. B. Adams, wholesale stationer, Cannon-st.-west, and J. Braid, surgeon, Manchester. Sols. J. and J. H. Linklater, Size-la.—*Jennings*, H. corn and coal merchant, Bishop Stortford, Hertford, Dec. 6. Trusts. J. Clarke, malster, Saffron Walden; J. Taylor and W. Taylor, malifactors, Bishop Stortford. Sols. Taylor and Fairman, Bishop Stortford.—*Jones*, J. E. draper, Cardiff, Glamorganshire, Dec. 18. Trusts. H. W. Castle, and J. Bradbury, warehousemen, Love-la. Sols. Sole, Turner, and Turner, Aldermanbury.—*McGeoch*, J. draper, Ely, Cambridge, Dec. 17. Trust. W. Hitchcock, warehouseman. Sols. Sole, Turner, and Turner, Aldermanbury.—*Pocock*, J. architect, surveyor and builder, Bath, Dec. 3. Trusts. J. Kerslake, plumber and glazier, and S. Cook, jun. slater and plasterer, Bath. Sol. E. King, Bath.—*Williams*, G. draper, Stoke Newington, Nov. 30. Trusts. J. Lart, jun. and J. Hanson, warehousemen, Wood-st. Sols. Davidson and Bradbury, Weavers'-hall.

Partnerships Dissolved.

Gazette, Dec. 14.

Abson, C. and *Stillings*, J. manufacturers of ginger-beer and soda-water, Knottingley, Dec. 13. Debts paid by Stillings.—*Alder*, G. and J. cornfactors and merchants, Kingston-upon-Hull, Dec. 9.—*Curtis*, S. S., H. F., and O., hide and leather factors, Coleman-st. Dec. 13. Debts paid by S. S. Curtis.—*Davis*, J. and *Saunders*, J. land agents and surveyors, Oxford and Banbury, Sept. 29.—*Davison*, H. and J. boot and shoe dealers, Liverpool, Dec. 10. Debts paid by H. Davison.—*Farrar*, R. and *James*, H. commission agents, Noble-st. Dec. 10.—*George*, W. and *Jewell*, T. farmers and brickmakers, Axford, Nov. 27. Debts paid by George.—*Humphrey*, J. and W. carpenters, builders, and undertakers, Barnes-green, Barnes, Dec. 10.—*Jones*, J. and *Sharrock*, H. sawyers and timber dealers, Manchester, Dec. 22.—*McAvelle*, J. and *English*, J. shipwrights and smiths, Liverpool, Dec. 9.—*Phillips*, W. H. and *Tandy*, W. engineers, machinists, and millwrights, Pimlico-rd. Dec. 10.—*Williams*, H. and *Dann*, E. R. lace manufacturers, Nottingham, Dec. 11. Debts paid by Dann.

Gazette, Dec. 17.

Appel, M. and *Droege*, F. anastatic printers, Gerrard-st. Soho, Dec. 8. Debts paid by Appel.—*Bennett*, J. and A. woollen cloth manufacturers and merchants, Bradley Mills and Huddersfield, Mar. 10. Debts paid by Bennett.—*Challinor*, E. jun., *Woolliscroft*, G. and *Challinor*, C. earthenware manufacturers, Landyford and Tunstall, as regards Woolliscroft, Dec. 6.—*Cranchurst*, H. W. and *Allwork*, C. brewers, Horsleydown, Southwark, June 30. Debts paid by Crowhurst.—*Dodd*, P. and *Turner*, N. gold thread manufacturers, Wheelton, Dec. 14.—*Drew*, B. and A. L. wholesale and retail chemists and druggists, Blackman-st Southwark, Dec. 5. Debts paid by Drew.—*Foll*, H. and *Turfrey*, F. brewers and maltsters, Dec. 14. Debts paid by Foll.—*Gardner*, J. M.D. and *Serocold*, G. E. S. P. Oct, 25.—*Gaskell*, J. and *Taylor*, T. F. attorneys and solicitors, Wigan, Dec. 16. Debts paid by Taylor.—*Griffin*, J. P. W. and *Saunders*, A. painters, glaziers, &c. Plymouth, Dec. 13.—*Hawkins*, R. and *Furnise*, G. watch makers, jewellers, &c. New-st., Dorset-sq., New-rd. Dec. 14. Debts paid by Hawkins.—*Higginson*, J. P. and *Parsons*, H. merchants, and at New York, Liverpool, Dec. 15.—*Kenworthy*, C. and *Ogden*, W. perchers, stiffeners, &c., Manchester, Dec. 4. Debts paid by Kenworthy.—*Knight*, W. and E. lime, cement, and gunpowder dealers, Manchester, Dec. 14.—*Knights*, J. W. Ipswich, and *Button*, M. Rushmere, near Ipswich, farmers, Dec. 10. Debts paid by Knights.—*Longridge*, M., W. S., R. B., C. J. and H. G., *Lambe*, D. and D. jun. and *Bighie*, T. S. engineers and iron founders, as regards D. Lambe and D. Lambe, jun., Beallington, Dec. 10.—*Lucas*, W. H. and *Mennie*, R. timber merchants, East Stonehouse, Dec. 11. Debts paid by J. E. Elworthy, solicitor, Plymouth.—*Meader*, G. C. and *Frost*, C. wine and spirit merchants, Idol-la, Dec. 9.—*Smith*, T. B. and *Duncan*, W. L. paper mills, Marsh Gate, Stratford, Oct. 23.—*Sparrow*, F. and W. A. metal brokers, Liverpool, Dec. 14.—*Stiscns*, J. C., *Cooper*, W. and E. makers and dealers in wines, pickles, and sauces, Bristol, Dec. 6. Debts paid by W. and E. Cooper.—*Taylor*, W. and S. slaters and plasterers, Halifax, Dec. 15.—*Tilley*, T. and W. commission agents, Watling-st. Dec. 13. Debts paid by T. Tilley.—*Wadron*, E. H. and T. A. scythe manufacturers, Belbroughton, Jan. 1. Debts paid by T. A. Waldron.—*Wetherman*, I. and M. A., berlin wool, millinery, and lace dealers, Bristol, Sept. 29.—*Whitaker*, R. and *Lewis*, H. wine and spirit merchants, Halifax, Dec. 15.—*Windrum*, W. and J. bleachers and dyers, Leicester, June 30.

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1,009	1835	5,000	1,225	8	11	6,225	8	11
1,140	1835	3,000	757	1	11	3,757	1	11
1,368	1836	5,000	1,101	13	4	6,101	13	4
1,650	1837	2,500	508	0	0	3,008	0	0

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FOR THE SOLICITOR, THE MAGISTRATE, AND THE LAWYER.

VOL. XX.—NO. [illegible] SATURDAY, JANUARY 8, 1853.

Money, Mortgages & Loans.

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President Mr. MORRIS.
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The Treasurer will lay before the Meeting a statement of the unpaid Fines and Subscriptions.
The Secretary will read a Report of the proceedings of the Society during the past half year.
Members who have been absent from six successive meetings of the Society without notice must show cause at the Meeting why their names should not be erased from the list of Members.
97. Should the decision in Thorogood v. Bryan, 16 L. J. Rep. (N. S.) C. P. 308, be reversed on Appeal? See Bigby v. Hewitt, 19 L. J. Rep. (N. S.) Ex. 297.
Affirmative—Mr. MILNE and Mr. A. PARKER. *Negative*—Mr. BOMPAS and Mr. BRANDT.
For Tuesday, January 18th, 1853.
President—Mr. HOWLETT.
91. Has an innkeeper a lien on his guest's chariot for the board and lodging of his guest? Turrell v. Crowley, 18 Law J. Rep. (N. S.) Q. B. 185.
Affirmative—Mr. POWELL and Mr. HAYE. *Negative*—Mr. COOTON and Mr. PAINT.
For Tuesday, January 25th, 1853.
President—Mr. HARRIOTT.
101. Should every person who declares that he has a conscientious objection to an oath be permitted to give his evidence in the form which he declares to be most binding on his conscience?
Mr. LOWE is appointed to open the debate and Messrs. CLARKE HINDLEY and GODDEN to speak upon the question.
68, Lincoln's-inn-Fields. J. W. HOWLETT, Secretary.

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Bank Stock	224½	224½		224½	225½	225
3½ Per Cent Reduced Annuities	101½	101½	101½	101½	101½	100½
3 Per Cent Consols Annuities	shut				⅝	100⅝
Consols for Account	100⅝	⅛	100⅜	⅛	100⅜	⅛
New 3 Per Cent Annuities						
New ½ per Cent Annuities	104⅝	104⅝	104⅝	104⅝	104⅝	104⅝
Long Annuity (exp Jan 5 1860)		6¼	6¼		6¼	
Do 30 yrs (exp Oct 10 1859)		6¾		6¾	6¾	6¾
Do 30 yrs (exp Jan 5, 1860)						
India Stock						
India Bonds 1 000l	83	83	80	83	83	79
Do do (under 1,000l)		83	80			82
South Sea Stock						
Do do New Annuities					102¾	
Exchequer Bills, 1000l June	72pm	72pm	69pm	72pm	73	
Do do 500l June	72pm		69pm		73	
Do do Small June	72pm	72pm	69pm	72pm	73	

* Premium † 100l for opening ‡ 100l for opening
§ 100l Div ‖ 100l for opening

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS

BANKS —On the 29th ult at Bicton, the wife of W L Banks, esq solicitor, of a son

PENNING —On Monday, the 3rd inst at Dunstable, Beds, the wife of C S Penning, esq of a daughter

RAYMOND On the 1st inst at 18 the Grove, Clapham-common, the wife of John Raymond, esq barrister-at-law, of a daughter

ROWSELL —On the 4th inst the wife of Nicholas Henry Rowsell, esq of Loxley-road, Kennington, and Verulam-buildings, Gray's-inn, solicitor, of a son

MARRIAGES

LOWDALL, James John, esq of Lincoln's-inn barrister-at-law to Jessica Matilda, daughter of the late Samuel James Arnold, esq and widow of the late Dr Herbert Mayo, F R S. on the 1st inst at Marylebone Church

WHITTLE, William, of Westwell, to Mary, only daughter of the late Mr Weller Norwood, solicitor, Charing, on the 3rd inst at Charing, Kent

DEATHS

JARVIS Edward Kem esq solicitor, Hinckley, Leicestershire, on the 1st inst aged 47

SCOTT, Jane, relict of the late Joseph Scott, esq solicitor, formerly of London, on the 4th inst at Newport, Isle of Wight aged 88

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LEGAL INTELLIGENCE.

THE COMMISSIONERS IN LUNACY.—There has just been printed, by order of the House of Lords, a paper containing the report made to the Lord Chancellor by the Commissioners in Lunacy, of visits to insane persons during the six months ending the 4th of August last. Dr. Turner made 138 visits, saw 6,287 patients, and travelled 3,873 miles. Dr. Hume made 152 visits, saw 5,511 patients, and travelled 5,694 miles. Mr. Gaskell made 137 visits, saw 7,708 patients, and travelled 4,676 miles. Mr. Procter made 100 visits, saw 5,515 patients, and travelled 3,869 miles Mr. Mytton made 148 visits, saw 7,988 patients, and travelled 3,619 miles; and Mr. Campbell made 121 visits, saw 7,670 patients, and travelled 4,329 miles.

THE CONSERVATIVE LAND SOCIETY.—In addition to the Ealing rectory estate, this society has just purchased another estate in Middlesex, close to the Hounslow station, on the South-Western Windsor line. At the meeting of the executive committee, on Tuesday, Viscount Raneleigh and Colonel Brownlow Knox, M P. were re-elected chairman and vice-chairman of the society for the present year

CONTESTED ELECTION PETITIONS.—On Saturday a corrected alphabetical list was printed by order of the House of Commons, of election petitions for the present session The number of members petitioned against is 182, of which number eight cases are invalid or withdrawn, leaving 124 It seems that seven of the members have been appointed to offices under the new administration.

The Lord Chancellor will receive the judges, Queen's counsel, &c, on Tuesday next, the first day of Hilary Term, at twelve o'clock, at his Lordship's residence in Upper Brook-street

BENEFICES.—A parliamentary paper which has just been issued contains several abstracts from the latest returns made by the archbishops and bishops in pursuance of 1 & 2 Vict c. 106, s 53 From these it appears that the total number of benefices in England and Wales was 11,728 in 1850, and upon 8,211 of these there was a glebe house. It also appears that 6,182 clergymen were resident in the respective parsonage houses, 664 in the houses appointed by the bishop in his licence, and 1,218 within the limits of the benefice, there being no parsonage house, making the total number resident 8,077. The total number exempted from residence was 1,861; but of these 529 performed the duties of their parishes The principal grounds of exemption are residence at other benefices, official chaplaincies, and offices and masterships in the universities and public schools The number exempted by license, on the ground of infirmity and other causes, was 674, of whom 176 were doing duty in their parishes. Number non-resident without licence or exemption 917, of whom 522 were doing the duties in their parishes. The number of sequestrations was 51, and from 357 benefices no return was received.

LONDON AND COUNTY REAL AND LIFE ASSURANCE COMPANY.—On Wednesday the first annual general meeting of the policy and share holders was held. The report of the directors stated, that four calls of 5s. each had been made, and that the consideration of 250l., to be paid to the originators of the company, was postponed to the second annual meeting In the life department 494 policies, insuring the sum of 47,867l 5s. 8d., were completed, on which the annual premiums are 1,702l 8s. 5d. In the fire department there were effected 515 assurances, covering 52,291l, on which the annual income is 550l 9s. 7d. The auditors reported that the total income of the company since its formation in October, 1851, has been 6,268l 11s 7½d., and the outlay, including all preliminary expenses, 5,754l 19s. 10½d., leaving a general balance of 449l 11s. 9d. The directors have as yet received no compensation.

DIARY OF SALES BY AUCTION, DURING THE NEXT WEEK,

ADVERTISED IN THE "LAW TIMES"

DAYS.	PLACE	AUCTIONEERS	WHEN ADVERTISED.	PROPERTY.
Friday, Jan 14	Mart	Rosehill & Horne	January 3	Leasehold Property in Lower George-street, Richmond
Ditto	Ditto	Ditto	Ditto	Leasehold Messuage—Policies of Assurance

ALLSOPP'S PALE ALE, "in Bottle," may be had, in the highest perfection, at MARRIAGE, RANSOM, STORRS, 155, Upper Thames-street, Agents. Price 18s. per dozen. Also in Casks of 18 gallons and upwards, at 16s. per gallon. These Ales may be fully relied on, as the Casks are filled direct from ALLSOPP'S and Co.'s extensive Stores.

IMPERIAL HOTEL, COVENT GARDEN. S. A. BACON begs respectfully to inform Families and Gentlemen their Patronage is solicited to the above well-known HOTEL, which from its central situation and proximity to the Courts of Business and Amusement, will be found most convenient, quiet and airy. Bed-rooms on the ground floor, and every attention to the comfort of those who favour him with their support. Wines and Spirits of the finest quality. He trusts with economical charges and strict attention to merit a share of public patronage.

N.B. A third Stamp for Barrooms.

SALTER'S HOTEL, Victoria-street, Holborn-bridge, London.—J. W. SALTER begs to acquaint the Profession and Families visiting Town, that he has just been completing considerable alterations and improvements in his Hotel, and he has also added several Rooms adjoining, with social Sitting Rooms attached (for the use of Families), the whole of which he has newly furnished, and will be found to possess every comfort. All charges are most moderate, and the strictest attention paid to Gentlemen's Plated moderate charges for Servants. A Night Porter in constant attendance.

BRITISH COLLEGE OF HEALTH, NEW-ROAD, LONDON.—HOMŒOPATHIC SYSTEM OF MEDICINE.—Morison's Pills, the Vegetable Universal Medicine, is a certain cure for any curable disease, which fact is proved by the experience of all the Members of the British College of Health.

CAUTION.—No Genuine can be supplied to authorized to sell the medicine.

SCARLETT'S MOCK TURTLE SOUP.—SCARLETT and SON respectfully inform the public in general that the Mock Turtle made by them, of unacknowledged delicious quality and flavour, is by many pronounced equal to the real.

No. 26, KING WILLIAM STREET, near the Statue, London-bridge.

N.B. The Soup is sufficiently portable to be sent to any part of the country for 6d. per quart.

BEDDING.—ECONOMY, DURABILITY and COMFORT.—The GERMAN SPRING and FRENCH MATTRESSES make the most elastic and softest bed. A price list of every description of bedding sent free. Bedsteads—Arabian, four-post, French, and other styles, in birch, mahogany, &c.; patent iron and brass bedsteads on the most improved principles. Pillows, cots, &c. Bed-room furniture of every description. Eider-down quilts and duvets, in silk and other cases.

J. and S. STEELE, Bedding, Bedstead, and Bedroom Furniture Manufacturers, 13, Oxford-street, London.

WAREHOUSING FURNITURE and valuable PROPERTY.—Parties Leaving Town and Changing their Residences Furniture, Plate, Books, and other valuable Property carefully REMOVED and WAREHOUSED at the North London Depository, Pratt-mews, King's-cross. Established 1830. Separate Rooms for Parties. The building is secure from fire and damp, and lighted by gas-pipes. An inspection is requested. Advances if required.

TO BARRISTERS, SOLICITORS, and others. Loss of Offices, Counting Houses and Chambers at [illegible] Furniture Mart, Nos. 1 and 2 Water-street corner of Little and Big Friars, who may be seen the largest Stock of new and [illegible] LITERARY and BOARD-ROOM FURNITURE in London. Office Fittings Fire-proof Safes Deed-Boxes Iron [illegible] Cabinets, embracing every article from the Master to the Clerk's [illegible] Table, to the Desk and Stool of the Copying Clerk. Also a large stock of well-seasoned Household Furniture.

MECALL and CO.'s NEW PATTERN TOOTH BRUSH and PENETRATING HAIR-BRUSHES. The tooth brush possesses the highly important allie of searching through all the fissures, and cleansing in the most extraordinary manner has never been loose, its Penetrating hair-brushes, with natural unbleached Russia bristles, which will not [illegible] like the imperfect clothes-brush that clears luxuriously in one [illegible] the usual time, the new velvet-brush and numerous [illegible] useful articles are kept in stock.

At MECALL'S, BIRCH LEY, and Co.'s only establishment 140 a, Oxford-street [illegible] Corner Holles-street.

CAUTION.—Beware of the word "from Mecall's," adopted by some houses.—Mecall's Alkaline Tooth Powder 2s. per box.

WATCHES! WATCHES! WATCHES! Sale 20 per cent. by purchasing your Watches direct from the Manufacturer at the Wholesale Trade Price.

GOLD WATCHES, extra jewelled, with all the recent improvements £3 15

Ditto with the Three-quarter Plain Movement, and Stouter Cases 4 10

SILVER WATCHES with same movements as the Gold 2 0

Ditto with the Lever Escapement, 8 holes jewelled 2 15

A Lever of every description of Watch in the same proportion. A Written warranty for accurate performance is given with every watch, and a twelvemonth's trial allowed. Handsome Morocco cases for same to [illegible]. Instructions supplied with Watches suitable for Australia.

Mr. Hawke's catalogue, and the Trade supplied in any quantities on very favourable terms.

Handsome Fine Gold Albert Chains £1 10

Ladies ditto ditto 1 15

Sent carefully packed, post-free, and registered on receipt of Post-office Order or Banker's Order for 1s. extra, payable to DANIEL ELLIOTT HAWKE, Wholesale Watch Manufacturer, 27, City-road, near Finsbury-square, London.

LAST IN WALKING AND COMFORT TO THE FOOT.

HALL & CO. PATENTEES of the LEATHER-CLOTH, or PANNUS CORIUM BOOTS AND SHOES FOR LONDON FIRST Peculiarly soft and easy.

Wellington-street, Strand, leading to Waterloo-bridge, London.

The Leather-cloth, or Pannus Corium Boots and Shoes are the softest and easiest ever worn: they yield to the action of the foot without the least pressure, or any clumsy or painful effect, and are extensively acknowledged to be the most valuable relief for all who suffer from Corns, Bunions, Gout, Chilblains, or any tenderness of the feet. They resemble the finest leather, and are cleaned with ordinary blacking.

Superior Vulcanized India-rubber Over-shoes, or Galoshes which prevent sliding and keep the Feet thoroughly dry and warm. An account of may be obtained by sending an old boot or shoe.

Portable Waterproof Dresses for Ladies and Gentlemen, which can with convenience be carried in the pocket. Ladies Cloaks, with Hoods like Gentlemen's Cloaks, compelling Cape, Overalls, and Hood, like the suit, Over coats, &c.

KEATING'S COUGH LOZENGES.—A CERTAIN REMEDY for disorders of the pulmonary organs—in difficulty of breathing—in endless nights of pain—in indigent consumption (of which cough is the most positive indication)—they take no unceasing effect. In asthma, and in relative cough, they have never been known to fail.

Prepared and sold in boxes, 1s. 1½d., and tins, 2s. 9d., 4s. 6d., and 10s. 6d. each, by THOMAS KEATING, Chemist, &c., No. 79, St. Paul's-churchyard, London. Sold retail by all Druggists and Patent Medicine Vendors in the Kingdom.

IMPORTANT TO SINGERS AND PUBLIC SPEAKERS.

"St. Paul's Cathedral, 20th Nov., 1849.

"Sir,—I have much pleasure in communicating your success to those who may be distressed with hoarseness. They have relieved me relief on several occasions when scarcely able to sing from the effects of catarrh. I think they would be very useful to clergymen, barristers, and public orators.

"I am, Sir, yours faithfully,

"To Mr Keating" "THOMAS FRANCIS, Vicar-Choral."

CLERICAL, MEDICAL, and GENERAL LIFE ASSURANCE SOCIETY, Established 1824.

Empowered by Letters of Incorporation.—The Assured may reside in any part of the world, without extra charge, and in all cases by payment of a small Premium.

Policies effected without the risk of Forfeiture.

The small share of Profit divisible in future among the Shareholders being now provided for, without interfering on the interest made by the regular business, the Assured will hereafter derive all the benefits attributable from a Mutual Office, with, at the same time, complete freedom from liability, secured by means of an ample Proprietary Capital—thus combining in the same Office all the advantages of both systems.

The Assurance Fund already invested amounts to £80,000l., and the Income exceeds £26,000l. per Annum.

CREDIT SYSTEM.—On Policies for the Whole of Life, one half of the Annual Premiums for the first five years may remain on credit, and may either continue as a debt on the Policy, or may be paid off at any time.

LOANS.—Sums are advanced on Policies which have been in existence five years and upwards to the extent of nine-tenths of their value.

BONUSES.—FIVE BONUSES have been declared; at the last, in January, 1848, the sum of 181,125l. was added to the Policies, producing a Bonus varying with the different ages from 24½ to 56 per cent on the Premiums paid during the five years.

PARTICIPATION IN PROFITS.—Policies participate in the Profits in proportion to the number and amount of the Premiums paid between every division so that if only one year's Premium be received prior to the Books being closed for any division the Policy on which it was paid will obtain its due share. The books close for the next division on 30th June 1853, therefore those who effect Policies before the 30th June next will be entitled to one year's additional share of Profits over later Assurers.

APPLICATION OF BONUSES.—The next and future Bonuses may be either received in Cash, or applied, at the option of the Assured, in any other way.

NON PARTICIPATING.—Assurances may be effected for a Fixed Sum at considerably reduced Rates, and the Premiums for term Policies are very lower than at most other Safe Offices.

PROMPT SETTLEMENT OF CLAIMS.—Claims paid thirty days after proof of death, and all Policies are indisputable, except in cases of fraud.

INVALID LIVES may be Assured at Rates proportioned to the increased risk.

POLICIES are granted on the Lives of persons in any station, and of every age, and for any sum, in one life from 50l. to 10,000l.

PREMIUMS may be paid yearly, half-yearly, or quarterly, but if a payment be omitted from any cause, the Policy can be revived within four days months.

The Accounts and Balance Sheets are at all times open to the inspection of the Assured, or of persons desirous to Assure.

A copy of the last Report, with a Prospectus and Forms of Proposal, can be obtained of any of the Society's Agents, or will be forwarded free by addressing a line to

GEORGE H. PINCKARD, Resident Secretary.

92, Great Russell-street Bloomsbury, London.

*** The usual Commission allowed to Solicitors and Agents.

WANTED to PURCHASE—HOUSEHOLD FURNITURE, BOOKS, MUSICAL INSTRUMENTS &c. in large or small quantities for which the full value will be given (in Town or Country). Valuations for administration made free of charge where the effects are purchased.

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BROUGHAM CARRIAGES, New and Second-hand.—Upwards of Twenty of the above fashionable Vehicles at unusually low prices. At CATTELL'S 149, Long-acre. Carriages of any description taken in exchange, and parties waited upon with drawings, &c. to any part of the kingdom at the moderate charge of one coach-fare, as sold no business be transacted.

CAUTION.—To Tradesmen, Merchants, Shippers, Outfitters &c.—Whereas it has lately come to my knowledge that some unprincipled person or persons have for some time past been imposing upon the public by selling to the trade and others various articles, under the name of BOND'S PERMANENT MARKING INK. This is to give notice that I am the original and sole Proprietor and Manufacturer of the said article and do not employ any traveller, or authorize any person to represent themselves as coming from my establishment for the purpose of selling the said Ink. This caution is published by me to prevent further imposition upon the Public and secure an injury to myself.

E. M. BOND, Sole Executrix and Widow of the late JOHN BOND, 58 Long-lane West Smithfield London.

CURTIS IN THE BALANCE AND FOUND WANTING.

THE Analytical Sanitary Commissioners having analysed the Cocoa of every Dealer in London of any importance which is manufactured in London or not, have declared that only four samples were genuine, being the best, being free from husk and all refuse. They have expressed regret that in the five samples they found to be genuine the husk or shell of the nut, which they state to be mixed comparatively with this, should so generally be worked up with the nut.—*The Lancet* of May 11, 1851. The husk or shell of the nut is that which must on that by excluding them as we do we necessarily enhance the cost of the article. We request the favour of Cocoa drinkers to make trial of our PURE GRANULATED COCOA in packets at 1s per lb. Their confidence will not be misplaced. It is now drank at the table of the first families in all parts of the kingdom.

HANDCOCK and DAVIES 61 HIGH HOLBORN.

A NEW DISCOVERY.—MR. HOWARD, Surgeon Dentist to the Queen, has invented an entirely NEW DESCRIPTION of ARTIFICIAL TEETH fixed without springs, wires or ligatures. They so perfectly resemble the natural Teeth as not to be distinguished from the original by the closest observer; they will NEVER CHANGE COLOR or DECAY, and will be found very superior to any yet before used. This method does not require the extraction of roots or any painful operation, and will give support and preserve teeth that are loose, and is guaranteed to restore articulation and mastication; and that Mr. Howard's improvements may be within the reach of the most economical, he has fixed his charges at the lowest scale possible. Decayed teeth rendered sound and useful in mastication.

52 Fleet-street. At home from Ten till Five.

MESSRS. POULSON and COMPANY'S REGISTERED PARDESSUS of the AUSTRALIAN and LLAMA WOOLLEN CLOTHS (Cap 65), for WALKING or RIDING. This is an improved Style of Coat, of a light convenient Form which admits of its being worn either over or without the ordinary Coat. It is neatly and handsomely made, care being bestowed in its construction to impart to it that graceful and appropriate character which, in a first-rate garment, has so great a claim to public favour. It is produced in all colours with silk sleeve linings, at the very moderate price of 2 guineas and, in winter wear, richly lined and quilted, 2½ and 3 guineas. The improved WINTER GUINEA TROUSERS are also ready for selection, from a choice variety of Patterns. In addition only of the POULSON and COMPANY Merchant Tailors, and Sole Patentees of the United Australian Wool Cloth the best material ever invented for all Sporting, Riding, and Travelling purposes.

94 Regent-street.

Just published New Edition price 1s. or by post, for 1s 6d.

THE SCIENCE of LIFE or, How to Live, and What to Live For, with ample Rules for Diet, Regimen, and Self-Management together with Instructions for securing perfect Health, Longevity and that sterling state of Happiness only attainable through a judicious observance of a well-regulated course of life. By a Physician.

Also, in the same Author, price 6d., by post, 8d.

A MEDICAL TREATISE on NERVOUS DEBILITY and CONSTITUTIONAL WEAKNESS with Practical Observations, Illustrated with Anatomical Plates, in Health and Disease. This work, emanating from a qualified member of the medical profession, the result of many years practical experience in safety and to the numerous classes of persons who suffer from the various disorders acquired in early life. In its pages will be found the causes which lead to ruin or misery, the symptoms which indicate their presence and the means to be adopted for their removal.

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BEST WALLSEND SCREENED COALS, 20s. PER TON.

Newcastle Coals, per ton.

Inland [illegible]

E. and W. STURGE, Coal Merchants, [illegible]

E. and W. STURGE respectfully inform their Friends and the Public generally that their present prices of Coals are [illegible] and they solicit a strict attention is given to all orders intrusted to them. [illegible]

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Established 1808.

THE SANS-PLI SHIRT, as shown in the Great Exhibition, Class 30, No. 30, is a garment made entirely without gathers. These manifestos to the shirt having hitherto been considered indispensable, but, like everything else where the ingenious mind is directed to getting rid of complication, simplicity is proved to be the attribute of perfection. It may be confidently claimed for the society of fit and great ease and comfort.—From the Morning Herald.

At WILLIAM REID'S 51, Conduit-street, Regent-street. Printed flannels for dressing-gowns, cravats, and hosiery in every variety.

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Also Sole Wholesale Warehouse of the new double-faced CLOTH REVERSIBLE GARMENTS, protected by Her Majesty's Royal Letters Patent.

SHIRTS.—FORD'S EUREKA SHIRTS are not sold by any houses in drapery, and can therefore be obtained only at 38 Poultry. Gentlemen in the country or abroad, ordering through their agents, are requested to observe on the interior of the collar-band the stamp, "FORD'S EUREKA SHIRTS, 38, POULTRY," without which none are genuine. They are made in two qualities: first quality 40s. the half-dozen, second quality 30s. the half-dozen. Gentlemen who are desirous of purchasing shirts in the very best manner in which they can be made are solicited to inspect them. The most unique and only perfectly-fitting shirts. Coloured shirts, for boating, shooting and ordinary wear, 22s. the half-dozen. List of prices and instructions for measurement post free, and patterns of the new coloured shirtings free on receipt of six stamps.

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SCOTT and CO. FIRST CLASS MERCHANT TAILORS (from H. S and D. Nicoll's) 156, REGENT-STREET (corner of Beak-street), LONDON and PAVILION HOUSE, BRIGHTON.

INVENTORS of the PALLIAMENT, a great improvement on the Talma, the DOMETTE MORNING COAT, and the PALMA a new equestrian or walking CLOAK-COAT.

All the new styles in Over Coats for the coming season, and the greatest novelties in Angolas and Scotch Tweeds for Trousers.

LADIES RIDING HABITS, LIVERIES, &c.

At the most moderate prices for cash.

One pattern Promenade Coat at parts Inclusive.

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THE VERSATIO, or REVERSIBLE COAT. Within the attention of the Legal and Clerical Professions.—EDMINTON and SON, 66, Strand, opposite the Adelphi London. The importation of this patented invention consists in the material and its application, viz., the double purpose of using two in one without trouble, one side presenting a gentlemanly frock-coat, the other a riding or shooting coat in any texture or colour required. Its over-garments or paletots this happy discovery offers still more useful advantages to the wearer one surface exhibiting a graceful and elegant walking coat, while its counterpart is conveniently adapted for the rougher purposes of travelling skilfully designed in cloth, and perfect in both its capacities. In these various properties the public must recognise a union of novelty and certainty not hitherto accomplished. Gentlemen supplied sending their height and size round the chest over the waistcoat. Price from 70s. to 70s. London, EDMINTON and SON, Tailors, 66, Strand.

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"96 Minories, London, July 8th 1852.

"Messrs. Thos. Milner and Son,

"Gentlemen—At the destructive fire in Haydon-square, on the 15th instant in which our entire stock of oils, turpentine, coatings, canvas, &c. was destroyed the Books and Papers in our Milner's Safe were preserved uninjured. The heat was only dispersed at the time evening, and from the severe trial it had undergone, we expected everything within it to be consumed.

We have great pleasure in testifying to the utility of your Safes, and in strongly recommending them to the public, and will thank you to send us another of the same size.

We are gentlemen, yours respectfully,

"(Signed) "COLNAGHI and POTTER."

MILNER'S PHŒNIX SAFE WORKS, LIVERPOOL the most extensive and complete in the world. The Safes alluded to above was eleven days and nights in the ruins, and may now be seen at the LONDON DEPOT, 47A, MOORGATE-STREET, CITY, near the Bank of England.

SPECTACLES AND EYE-GLASSES adapted to suit every condition of near and distant sight by means of SMITH'S OPTOMETER, which determines accurately the exact focal distance of the Glasses required, thereby effectually preventing any injury to the Sight. Clergymen, Barristers, and public Speakers, will find great convenience in the use of PANTOSCOPIC SPECTACLES, as they enable the wearer to look through them at near objects, and over them at those at a distance.

TELESCOPTS of all kinds and of the best construction, combining portability with a large and clear field of view.

OPERA GLASSES, with improved Compensating Adjustments.

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WHEN are SPECTACLES REQUIRED?—When the eyes water or become so much fatigued by short exercise as to be obliged often to frequently closed or rubbed by viewing different objects.

When objects cannot be seen without removing them to an increased distance.

When the letters of a book appear to blend with one another.

When a new light is required than was formerly. For example—

When the candle is placed between the eye and the book.

When much difficulty is found in threading a needle.

When the eyes appear as if they had a mist before them.

When black specks seem floating in the sight.

When any of the above indications arise, all dilatation should be laid aside, a responsible and skilful optician consulted and a pair of Pantoscopic Spectacles purchased. THOMAS HARRIS and SON'S CRYSTAL SPECTACLES if taken on the first approach of decay will certainly restore for progress and preserve the sight to the extreme of age.—Best Ruled Steel with Crystals, 10s.; Silver ditto, 15s.; Gold ditto 2l. 2s.; Steel Spectacles with glasses, from 5s. Sent post free, and exchanged if not approved of. Thomas Harris and Son, Opticians to the Royal Family, 52, Great Russell-street London.—Caution.—Opposite the British Museum Gates. Established Seventy Years.

LEADING CASES in the COMMERCIAL LAW of ENGLAND and SCOTLAND; selected and arranged for the Use of Students, with Notes, by SIMEON KERR, Esq., Advocate, Barrister-at-Law, and Chief Clerk in the Law Department of the Privy Council. Part I. Preliminary Notes.—In Monthly Parts, royal 8vo, price 2s. each.

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30	250	1	6	1,250	1	6
35	254	3	6	1,254	3	6
40	259	6	11	1,259	6	11
45	267	11	10	1,267	11	10
50	281	12	7	1,281	12	7

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No. of Policy.	Issued In.	Sum Assured.	Additions.			Total.		
		£.	£	s.	d.	£	s.	d.
812	1834	4,000	1,080	14	8	5,080	14	8
1,090	1835	5,000	1,225	8	11	6,225	8	11
1,191	1835	3,000	737	1	11	3,737	1	11
1,398	1836	5,000	1,101	13	4	6,101	13	4
1,650	1837	2,500	598	0	0	3,098	0	0

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JOURNAL OF PROPERTY.

MONEY MARKET.

English Funds.	Sat.	Mon.	Tues.	Wed.	Thurs.	Fri.
Bank Stock	220	220	220	220	..	220
3 per Cent. Reduced Annuities	101½	101½	101½	101	100½	100½
3 per Cent Consols Annuities	¼	100½	100½	100	100	99½
Consols for Account	100½	..	100½	100	99½	..
New 3½ per Cent. Annuities	..	..	..	..	..	..
New 3½ per Cent. Annuities	104½	104½	104½	104½	104	103½
Long Annu (exp. Jan 5, 1860)	6¾	..	6¾	6¾	.	7¼
Do 30 yrs (exp. Oct. 10 1859)	..	..	6¾	..	.	6¾
Do 30 yrs. (exp. Jan. 5, 1860)	6¾	..	6¾	.	.	6¾
India Stock	.	..	..	..	.	274
India Bonds (1,000l)	..	.	81	81	.	75
Do do (under 1,000l.)	83	..	.	.	79	75
South Sea Stock	..	.	.	.	110¾	..
Do do New Annuities	..	.	.	.	.	.
Exchequer Bills, 1000l. June	67*	.	70*	72*	70*	
Do do. 500l. June	67*	.	70*	67*	67*	
Do. do. Small, June	67*	.	70*	67*	70*	

* Premium. † 100l Ex div

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS

RENNING.—On Monday, the 3rd inst., at Dunstable, Beds, the wife of C. S. Renning, Esq. of a daughter
GODFREY.—On the 9th inst. at Langley, Bucks, the wife of Charles Godfrey Price, Esq. of the Inner Temple, of a daughter.

MARRIAGES

PAIRE W. S. Esq. of Furnival's-inn, solicitor to Annette Sarah third daughter of the late Francis Peter Falgnon of Soho, on the 12th inst at St Stephen's Hammersmith
YORKE, Major Joseph Robertson 1st Deputy Judge Advocate General, Bengal Army, to Julia Ann Wilks daughter of the late Lancelot Blackett, Esq of Hartley and youngest sister of Mr. L. P. Blackett, merchant of Headingley, near Leeds, on the 5th inst. at Clifton, near Worcester
WOODHOUSE, Robert Esq of 17, Walton-street Grosvenor-place, barrister-at-law, son of the late Robert Woodhouse, Esq Professor of Astronomy in the University of Cambridge, to Ellen Harry, daughter of the Rev. S. Holder son and niece of the Hon. Mr Baron Alderson on the 4th inst at Risby, near Bury St. Edmund's

DEATHS

BRIGHT, Edward, Esq one of Her Majesty's Justices of the Peace for the borough of Malton, on the 15th ult. aged 73
ENGLEHEART, William Mayby, solicitor, second son of Nathaniel Brown Engleheart, Esq of Doctors' Commons and Blackheath, at his father's residence, on the 8th inst aged 38
SAWYER Ann, relict of Henry Sawyer, of Enfield, solicitor, on the 5th inst aged 78
SHARMAN, Alexander, Esq solicitor, on the 9th inst at Bedford, aged 51

THE QUEEN v. DR. NEWMAN.—The new trial in this celebrated case will take place in the ensuing term. It stands the last but one in the list of new trials—No. 20 in the cause paper It is understood that the expenses attending the proceedings of this affair will amount to about 10,000l. The present Attorney-General is for Dr. Newman.

ILLNESS OF LORD DENMAN.—We regret to announce that, by a communication just received from Nice, where the above noble lord has been staying for some time past, it appears that he is in a very dangerous condition of health, and not expected to recover. He had been attacked with a second paralytic fit, and, when the despatch left, was considered almost in extremis. His Lordship's eldest son has left London to be in attendance upon his venerable parent.

DIARY OF SALES BY AUCTION, DURING THE NEXT WEEK,

ADVERTISED IN THE "LAW TIMES."

DATE	PLACE	AUCTIONEER.	WHEN ADVERTISED	PROPERTY.
Tuesday, Jan 13	Mart	D Smith and Son	January 15	Two hold Farms in the vicinity of Usk.
Thursday, Jan. 20	Ditto	Dawson, John	January 8	Valuable Farm at Wellham
Ditto	Ditto	Moore & C.	January 15	Four Residences near the Commercial-road
Ditto	Ditto	Ditto	Ditto	Valuable Leasehold Estates, Bromley, Mile-end, &c &c

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A MEDICAL TREATISE on NERVOUS DEBILITY and CONSTITUTIONAL WEAKNESS, with Practical Observations, Illustrated with Anatomical Plates, in Health and Disease. This work, emanating from a qualified member of the medical profession, the result of many years' practical experience, is addressed to the numerous classes of persons who suffer from the various disorders acquired in early life. In its pages will be found the causes which lead to their occurrence, the symptoms which indicate their presence, and the means to be adopted for their removal.

London: JAMES GILBERT, 49, Paternoster-row; HANNAY, 63, Oxford-street; MANN, 39, Cornhill; and all booksellers.

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"96, Minories, London, July 26, 1852.

"Gentlemen,—At the destructive fire in Haydon-square, on the 15th instant, in which our entire stock of oils, turpentine, cordage, canvas, &c. was destroyed, the Books and Papers in our Milner's Safe were preserved uninjured. The Safe was only dug out of the ruins this evening, and, from the severe trial it had undergone, we expected everything within it to be consumed.

"We have great pleasure in testifying to the utility of your Safes, and in strongly recommending them to the public, and will thank you to send us another of the same size.

"We are, gentlemen, yours respectfully,

"COUDRO and POTTER."

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DEFENDER, FIRE and LIFE ASSURANCE COMPANY, 24, Moor-bridge-street, Blackfriars.

A BONUS equal on the average to FORTY PER CENT. upon the 2½ premiums paid previously to 1851, was declared at the Ordinary General Meeting, held on the 23rd January instant.

Prospectuses and full information may be had at the Company's Offices, or of any of the Agents.

Respectable active Agents wanted. The usual Commission to Solicitors and others.

JOHN MURRAY, Managing Director.

The attention of CLERGYMEN, BARRISTERS, PERSONS, and PROPRIETORS of every description, is invited to the Prospectus and Tables of the

OAK MUTUAL LIFE ASSURANCE and LOAN COMPANY,

No. 49, Moorgate-street, London. Completely registered pursuant to Act of Parliament, 7 & 8 Vict. cap. 110.

Any number of copies for distribution may be obtained by personal application at the head office, or by addressing a letter to

G. MANNERS COODE, Secretary.

EQUITY and LAW LIFE ASSURANCE SOCIETY, No. 26, LINCOLN'S INN FIELDS, LONDON.

TRUSTEES.

The Right Hon. the LORD HIGH CHANCELLOR.
The Right Hon. Lord MONTEAGLE.
The Right Hon. the LORD CHIEF BARON.
The Hon. Mr. Justice COLERIDGE.
The Hon. Mr. Justice ERLE.
NASSAU W. SENIOR, Master in Chancery.
CHARLES PURTON COOPER, Esq. Q.C., LL.D., F.R.S.

The Dividend for 1852 will be payable at the Office daily (Wednesdays excepted) on and after the 15th inst. between the hours of Eleven and Two.

January 12, 1853.

SCOTTISH UNION INSURANCE COMPANY (FIRE and LIFE.)

Instituted 1824, and Incorporated by Royal Charter.

No. 37, CORNHILL, LONDON; EDINBURGH and DUBLIN.

The large Paid-up Capital and Accumulations of Premiums, carefully invested, afford the most absolute security to the Assured with this Corporation, which has been Twenty-seven Years Established.

Governor—His Grace the Duke of HAMILTON and BRANDON.

The advantages to Insurers with this Office will be found all that can be desired, whether considered in point of—

SECURITY,
MODERATE RATES OF PREMIUM,
LIBERAL CONDITIONS, or the
LARGE PERIODICAL ADDITIONS made to the LIFE POLICIES as appears from the following TABLES, SHOWING THE ADDITIONS TO POLICIES OF 1000l. which have been Seventeen complete Years in existence.

Age When Assured.	Additions.	Total Sum payable in case of Death.
	£ s. d.	£ s. d.
30	220 1 6	1,220 1 6
35	254 2 6	1,254 2 6
40	259 6 11	1,259 6 11
45	287 11 10	1,287 11 10
50	291 12 7	1,291 12 7

Averaging upwards of 1½ per Cent. per Annum.

EXAMPLES OF BONUS TO POLICIES OF LARGER AMOUNT.

No. of Policy.	Issued in.	Sum Assured.	Additions.	Total.
		£	£ s. d.	£ s. d.
812	1834	4,000	1,080 14 8	5,080 14 8
1,080	1835	5,000	1,225 0 11	6,225 8 11
1,190	1835	3,000	757 1 11	3,757 1 11
1,308	1836	5,000	1,101 13 4	6,101 13 4
1,650	1837	2,500	508 0 0	3,000 0 0

The next Division of Life Profits will take place in December, 1856, being an interval of Five years.

The Bonus may be applied, at the option of the Assured, in any of the following ways:

I. It may be added to the sum Assured; or
II. Applied in Reduction of Future Premiums; or
III. Surrendered for a Present Payment in Cash.

Fire Insurances at the reduced rates.

LONDON BOARD OF DIRECTION.

President—Right Hon. the Earl of MANSFIELD.
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George Ramsay, Esq., Manager of the Company.

F. G. Smith, Esq. Secretary.

Forms for Proposals and Prospectuses, containing all the necessary particulars, may be had at any of the Company's Offices, and of the Agents throughout the country.

The usual commissions to Solicitors transacting direct with the Office, 37, Cornhill. F. G. SMITH, Secretary.

THE YORKSHIRE FIRE AND LIFE INSURANCE COMPANY.

Established at York, 1824, and empowered by Act of Parliament. Capital, £500,000.

TRUSTEES.

Ralph Creyke, Esq., Rawcliffe Hall.
John Swann, Esq., Askham.
Leonard Thompson, Esq., Sheriff Hutton Park.

BANKERS.—Messrs. Swann, Clough, and Co. York.

ACTUARY and SECRETARY.—Mr. W. L. Newman, York.

The attention of the public is particularly called to the terms of this Company for LIFE ASSURANCES, and to the distinction which is made between male and female lives.

Extract from the Table of Premiums for insuring 100l.

Age next birthday.	A MALE.	A FEMALE.	Age next birthday.	A MALE.	A FEMALE.
	Whole Life Premiums.			Whole Life Premiums.	
	£ s. d.	£ s. d.		£ s. d.	£ s. d.
10	1 7 6	1 5 4	46	3 11 6	3 3 2
13	1 9 3	1 7 0	50	4 1 9	3 13 3
16	1 11 3	1 8 10	53	4 11 6	4 2 6
20	1 14 4	1 11 6	56	5 4 0	4 14 0
23	1 17 0	1 13 8	60	6 6 0	5 12 0
26	2 0 3	1 16 2	63	7 4 0	6 9 6
*30	2 3 0	1 19 9	66	8 4 0	7 10 8
33	2 8 6	2 2 10	70	10 0 4	9 7 6
36	2 13 0	2 6 4	73	11 11 2	11 2 6
40	2 19 0	2 12 0	76		13 1 9
43	3 5 5	2 17 2	80		15 12 10

* EXAMPLE.—A gentleman whose age does not exceed 30, may insure 1,000l. payable on his decease, for an annual payment of 22l. 10s., and a lady of the same age can secure the same sum for an annual payment of 19l. 17s. 6d.

Prospectuses, with the rates of premium for the intermediate ages and every information, may be had at the Head Office in York, or of any of the Agents.

FIRE INSURANCES

are also effected by this company, on the most moderate terms.

AGENTS.

Edinburgh.—M'Intosh and Ducat, W.S. 68, Great King-street; D. S Poddie, George-street.

Glasgow.—Peter White, 20, Buchanan street; William Lang, 20, St. Vincent-place; John Carmichael, 5, Dixon-street; William Robertson, Trongate Branch of the City of Glasgow Bank.

Agents are wanted in those towns where no appointments have been made. Applications to be made to Mr. W. L. NEWMAN, Actuary and Secretary, York.

Agent for London, Mr. THOMAS S. NOBLE, Solicitor, 5, St. John street, Bedford-row.

ALBERT LIFE ASSURANCE COMPANY.

Principal Office, 11, Waterloo-place, Pall-mall, London.

Indisputable Policies.

Assurances, Annuities, and Endowments granted, and every other mode of provision for families arranged.

Half the Annual Premiums for the first three years may remain on credit for any period until death, on payment of interest at five per cent. per annum.

Parties allowed to go to or reside in most parts of the world without extra premium.

Naval and Military Lives not in active service Assured at the ordinary rate.

Policies forfeited by non-payment of premium surrendered, at any time within six months, on satisfactory proof of health and the payment of a trifling fine.

Policies on the life of another secured, notwithstanding the part of the world to which the Assured may go.

HENRY WILLIAM SMITH, Actuary and Secretary.

NATIONAL PROVINCIAL LIFE OFFICE, 34, MOORGATE-STREET, LONDON.

Chairman.—ROBERT KEATING, Esq., M.P.

Solicitor.—EDWARD KELLY HARRIS, Esq., 43, Lincoln's-inn-fields.

PROGRESS OF THE SOCIETY.

New Business.	Amount of New Assurances completed.	Annual Income thereform.
	£ s. d.	£ s. d.
Half-Year ending December 1852	85,941 0 0	1,934 6 1
Half-Year ending December 1851	33,682 0 0	1,067 2 7
Excess of the past half-year over the corresponding half-year of 1851	52,016 0 0	1,867 3 6

The Directors are prepared to receive applications from persons of undoubted respectability for the appointment of Agents in those towns where the Society is not already represented.

Prospectuses and every information forwarded free on application.

J. W. SPRAGUE, Manager.
January 1, 1853. EDMUND CLINCH, Secretary.

BRITANNIA LIFE ASSURANCE COMPANY. Established August 1, 1837.

Empowered by special Act of Parliament, 5 Vict. cap. 9.
Col. ROBERT ALEXANDER, Blackheath-park, *Chairman*.

ADVANTAGES OF THIS INSTITUTION.

A TABLE OF INCREASING RATES OF PREMIUM, especially adapted to the securing of Loans or Debts.

HALF-CREDIT RATES, whereby half the Premium only is payable during the first seven years.

SUM ASSURED PAYABLE AT SIXTY, OR AT DEATH, if occurring previously.

ORPHANS' ENDOWMENT BRANCH, affording the means of having Children Educated and Started in Life by securing Annuities, to commence at the Parent's death, and to be paid until a son shall attain his twenty-first, or a daughter her twenty-fifth year of age.

BRITANNIA MUTUAL LIFE ASSOCIATION,

Empowered by her Majesty's Royal Letters Patent.

ANNUAL DIVISION OF PROFITS.

Policy-holders participate in PROFITS after FIVE or SEVEN ANNUAL PAYMENTS, according to the table selected.

Premiums calculated for EVERY THREE MONTHS difference of age.

HALF-CREDIT POLICIES granted on terms unusually favourable: the unpaid half-premiums being liquidated out of the profits.

At the Annual General Meeting on the 27th April last, a reduction of 30 per cent. was made in the current year's premium on all participating policies.

A Board of Directors in attendance daily at Two o'clock.

Age of the Assured in every case admitted in the Policy

Medical Attendants remunerated in all cases for their Reports.

(PROPRIETARY.) Extract from the Half-Credit Rates of Premium.

Age.	Half Prem. First 7 Years.	Whole Prem remainder of Life.
	£ s. d.	£ s. d.
30	1 1 9	2 2 6
40	1 3 2	2 18 4
50	2 2 2	4 4 5
60	3 6 8	6 13 4

(MUTUAL.) Extract from the Table with Particulars in Profits, after Seven Yearly Payments.

Age.		Annual Premium.	Half Yearly Prem.	Quarterly Prem.
Yrs.	Months.	£ s. d.	£ s. d.	£ s. d.
30	0	2 7 3	1 4 2	0 12 3
	3	2 7 6	1 4 4	0 12 4
	6	2 7 10	1 4 6	0 12 5
	9	2 8 2	1 4 8	0 12 6

1, Princes-street, Bank, London, 1st Nov. 1852.

F. R. FOSTER, Resident Director.
ANDREW FRANCIS, Secretary.

CLERICAL, MEDICAL, and GENERAL LIFE ASSURANCE SOCIETY.

Advantages Offered.

EXTENSION OF LIMITS OF RESIDENCE. The Assured may reside in most parts of the world, without extra charge, and in all parts by payment of a small extra Premium.

Mutual System without the risk of Partnership.

The small share of Profit divisible in future among the Shareholders being now provided for, without intrenching on the amount made by the regular business, the Assured will hereafter derive all the benefits obtainable from a Mutual Office, with, at the same time, complete freedom from liability, secured by means of an ample Proprietary Capital thus combining in the same Office all the advantages of both systems.

The Assurance Fund already invested amounts to 850,000l. and the Income exceeds 136,000l. per Annum.

CREDIT SYSTEM.—On Policies for the Whole of Life, one-half of the Annual Premiums for the first five years may remain on credit, and may either continue as a debt on the Policy, or may be paid off at any time.

LOANS.—Loans are advanced on Policies which have been in existence five years and upwards, to the extent of nine-tenths of their value.

BONUSES.—Five Bonuses have been declared; at the last, in January 1852, the sum of 131,127l. was added to the Policies, producing a Bonus varying with the different ages from 2½ to 5 per cent. on the premiums paid during the five years.

PARTICIPATION IN PROFITS.—Policies participate in the Profits in proportion to the number and amount of the Premiums paid between every division, so that if only one year's Premium is received prior to the Books being closed for any division, the Policy on which it was paid will obtain its due share. The books close for the next division on 30th June, 1856, therefore those who effect Policies before the 30th June next, will be entitled to one year's additional share of Profits over later Assurers.

APPLICATION OF BONUSES.—The past and future Bonuses may be either received in Cash, or applied, at the option of the Assured, in any other way.

NON PARTICIPATING.—Assurances may be effected for a Fixed Sum at considerably reduced Rates; and the Premiums for term Policies are lower than at most other Sale Offices.

PROMPT SETTLEMENT OF CLAIMS. Claims paid *thirty* days after proof of death, and all Policies are *indisputable*, except in cases of fraud.

INVALID LIVES may be Assured at Rates proportioned to the increased risk.

POLICIES are granted on the Lives of persons in any station, and of every age, and for any sum on one Life, from 50l. to 10,000l.

PREMIUMS may be paid yearly, half yearly, or quarterly, but if a payment be omitted from any cause, the Policy can be revived within *fourteen* months.

The Accounts and Balance Sheets are at all times open to the inspection of the Assured, or of *persons desirous to assure*.

A copy of the last Report, with a Prospectus and Forms of Proposal, can be obtained at any of the Society's Agents, or will be forwarded free by addressing a line to

GEORGE H. PINCKARD, Resident Secretary
29, Great Russell-street, Bloomsbury, London.

*** The usual Commission allowed to Solicitors and Agents.

COUNTRY RESIDENCES and ESTATES.—Messrs. GREEN, 37 Old Broad-street, beg to inform their Nobility and Gentry that their ESTATE REGISTER is now published, and may be had upon application, by post or otherwise.—Auction Offices, 37 Old Broad-street, January, 1850.

TOWN HOUSES.—Messrs. GREEN, 37 Old Broad-street, beg to call the attention of Noblemen, Gentlemen, and others requiring Town Residences to their TOWN RESIDENCE REGISTER, which may be examined on application at their Estate and Auction Offices, 37, Old Broad-street.

ISLE OF WIGHT.—To be SOLD, with Possession, the Leasehold Estate of FRITHOLLS-LAND, an eligible Marine RESIDENCE, known as "Fyne Hall," containing nine bed rooms, dressing-room, three or four sitting-rooms, good kitchen, and other domestic offices, with coach-house, stabling, and other requisite outbuildings, productive frontage to the sea, and about five miles from Ryde.

Apply to Mr J RIDPATH, [illegible]

LAW [illegible]

MR. HODGSON will SELL by AUCTION, at his GREAT ROOMS, [illegible] next JANUARY [illegible] MATERIALS of the LIBRARY of a BARRISTER, [illegible] comprising the Law Journal Reports from [illegible] Law Times, Legal Observer to 1851, [illegible] Chitty's Reports in Law and Equity, Bells of the Reports in Lords, [illegible] Chitty's Statutes, Bells of the Reports in Equity, [illegible] Chitty's Statutes

THE LAW TIMES,

FOR THE LEGISLATOR, THE MAGISTRATE, AND THE LAWYER.

VOL. XX.—No. 512. SATURDAY, JANUARY 22, 1853. Double Number—Price 1s. 6d.

Money, Wanted and to Lend.

MONEY.—£100,000 to be advanced on approved Landed Security, either in one Sum or in several Sums of not less than 10,000*l.* each, at a low rate of Interest.
Woodbridge, 21st Jan. 1853. MEADOWS and BROOKE.

MONEY WANTED.—The Tees Conservancy Commissioners are desirous to receive TENDERS for LOANS, in sums of not less than 500*l.* to be secured on mortgage of the Tolls of the River Tees, for the term of five or seven years, bearing interest at the rate of 3*l.* 10*s.* per cent. per annum.
For particulars, apply to Mr. LEONARD JACKSON, of Stockton-upon-Tees, the Secretary of the Tees Conservancy Commissioners.
Stockton, January 12, 1853.

MONEY.—WANTED TO BORROW £3000, at 4½ per Cent. Interest, on security of Property in the Borough of Southwark, of the improved Yearly Value of 432*l.* The Property consists entirely of Business Premises, held for a term of Fifty-six Years and a Half from the 22nd December, 1851, if certain Lives should so long live, and is Renewable from time to time for the full term, on payment of the Expenses of Renewal. The Money would be taken for Five Years certain.
Apply by Letter, post paid, to Messrs HOLMER and ROBINSON, Solicitors, 36, Bridge-street, Southwark.

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TO ARTICLED CLERKS.—A Young Man about to enter upon his Legal Studies in Chambers wishes to meet with an Articled Clerk who is desirous quietly and steadily to study for his Profession, and who will live and read with the writer of the above. Apply by Letter to "A" (No. 512), LAW TIMES Office, 29, Essex-street, Strand.

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LAW.—An efficient MANAGING CLERK and good DRAUGHTSMAN (who has recently had the conduct of an extensive Country Practice) wishes for EMPLOYMENT, with or without the assistance of the Principal, as Conveyancing or Managing Clerk.
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LAW.—An Experienced CONVEYANCER and GENERAL LAWYER, aged 28, well acquainted with the routine of a Country Office, capable of conducting business without superintendence, and accustomed to advise Clients, WANTS a CLERKSHIP with or without a view to the purchase of a Partnership. Salary 90*l.* Unexceptionable references given; and none need apply whose respectability will not bear investigation.
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Clerk of the Peace's Office, Liverpool, 19th Jan. 1853.

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For detailed Prospectuses, address, 25, Easthourne-terrace, near Kensington-gardens.

MR. CROCKFORD begs to inform the Profession, that at the suggestion of many Solicitors he has made arrangements for the most prompt and perfect PRINTING of BILLS and PROCEEDINGS in EQUITY, as required by the new Rules.—The Compositors and Readers in the Printing-office of a Legal Journal being familiarised with the abbreviations used in offices, as well as with legal words and phrases, they will be enabled to print documents from the draft, without requiring a fair copy, and more easily and correctly than it can be done where these advantages are not found. A complete supply of uniform types, paper, and other apparatus, will be kept for the purpose, and arrangements made to secure correctness, speed, and secrecy.
LAW TIMES Office, 29, Essex-street, Sept. 17, 1852.

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APPEAL to the BENEVOLENT and HUMANE, more especially to the JUDGES, BARRISTERS, and other MEMBERS of the LEGAL PROFESSION. This appeal is made on behalf of a Lady, the Wife of a Member of the Irish Bar, who, by a series of continued and overwhelming misfortunes, with her helpless family, all females, reduced to a state of great distress. She has been from time to time compelled to part with her furniture, bed-clothing, even her own and children's wearing apparel, to provide food necessary for their support. The last remaining relative died about two months since. Some kind persons have been exerting themselves to raise a fund to place the lady in a position to support her young and helpless children. By birth a gentlewoman, and having received a superior education, she is capable of conducting a school. An opportunity now offers; but as her friends have not been able to raise funds sufficient to provide the indispensable requisites, they are obliged to have recourse to the present appeal. It is earnestly hoped that it may come under the notice of some benevolent persons, whom it has pleased Providence to bless with the means as well as the desire of doing good. Doubtless amongst the numerous and respectable body the English Bar consists of, some charitably-disposed members will be found, who, feeling for the unhappy situation of the family whose distressing case is now laid before them, will, by their timely aid, contribute to alleviate their sufferings, and prevent the others so fearful alternative of their being obliged to become inmates of the workhouse.
Reference has been kindly permitted to, and contributions received and acknowledged with gratitude, in Dublin, by Dr. R. L. NIXON, 3, Grenville-street, and the Rev. Dr. STUART, 25, Upper Temple-street.

CAUTION.—To Tradesmen, Merchants, Shippers, Outfitters, &c. Whereas it has lately come to my knowledge that some unprincipled person or persons have for some time past been imposing upon the public by selling to the trade and others a spurious article, under the name of BOND'S PERMANENT MARKING INK. This is to give notice, that I am the original and sole Proprietor and Manufacturer of the said article, and do not employ any traveller, or authorise any person to represent themselves as coming from my Establishment for the purpose of selling the said Ink. The caution is published by me to prevent further imposition upon the public, and serious injury to myself.
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Part XXV. for September, 1852, price 5*s.* 6*d.* of
CONCISE PRECEDENTS in MODERN CONVEYANCING, with Practical and Explanatory Notes. By WILLIAM HUGHES, Esq. Barrister-at-Law, Author of "The Practice of Sales," "Practice of Mortgages," "The New Stamp Act," &c.

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86. Composition deed between a debtor and his creditors, where a flat of bankruptcy has been issued against the former, the latter agreeing to accept a dividend of ten shillings in the pound, to be secured by bills of exchange drawn by the debtor and accepted by his surety.
87. General release to a debtor who has compounded with his creditors, and paid the full amount of the composition.
88. Form of an agreement, by a lessee consenting to an apportionment of the rents, and also agreeing to join in the conveyance to a purchaser.
89. Assignment of a leasehold dwelling-house by the original lessee to a purchaser for the residue of an absolute term of ninety-nine years; the lessor and an incumbrancer also concurring for the purpose of apportioning the rent to be payable in respect of the assigned premises.
90. Mutual covenants by two purchasers of leasehold property, held under one lease for the apportionment of the rents, with mutual powers of distress by way of indemnity.
91. Bond of indemnity from a vendor to a purchaser against a mortgage debt which is supposed to have been paid off, but there is no proof of such payment.
92. Bond by a purchaser of leaseholds from the lessee, for indemnifying the latter from the rent and the covenants of the lease.
93. Bond from two sureties for the purpose of assuring merchants the amount of value of goods supplied to a tradesman, not exceeding 500*l.*
94. Bond with two sureties for the faithful discharge of the duties of an attorney's clerk.
95. Bond with two sureties for the faithful discharge of the duties of the chief clerk or manager of a business.
96. Bond with two sureties for the faithful discharge of the duties of an assistant or shopman.
97. Bond of indemnity to a tenant paying rent to his landlord, where the title to the property is disputed.
98. Bond by a legatee, on receiving his legacy, to indemnify executors in case of a deficiency of assets.
99. Bond by a tenant for life, who has granted a lease for fourteen years, that in case of his decease during the term, the reversioner shall, upon the lessee's request, either confirm the original lease, or grant him a new lease of the premises, to endure as long as the original term, and under the same rent and covenants.
100. Bond by a purchaser to a vendor of an estate charged with a legacy of 300*l.* payable to a minor on attaining twenty-one, to secure the due payment of such legacy.
101. Bond given by an infant to the purchaser of his estate, in case one of the vendors, an infant, attaining twenty-one, should refuse to execute the conveyance.
102. Bond from an executor to indemnify a bond debtor who pays off a bond debt due to the testator, such bond having been lost or mislaid.
103. Bond, with two sureties, to secure the balance of a banking account.
104. Bond of indemnity to trustees, advancing part of trust money to husband on I wife, which had been limited in marriage settlement, upon trust for the benefit of the husband and wife, and issue of the marriage, with an absolute limitation in favour of the husband upon failure of such issue, no issue having been born, and there being no prospect of any.
105. Form of a post obit bond.
106. Defeasance of a warrant of attorney to accompany the foregoing security.
107. Post obit bond in consideration of the release of a debt.
108. Memorandum of the delivery of a post obit bond, sealed up in an envelope, but the custody of a depositary, to be kept so sealed up during the lifetime of the party upon whose decease it is to become payable, unless sooner redeemed.
109. Covenant from bankers not to sue sureties on their bond to secure the balance of the banking account of the principal, until the latter, on his surety, shall omit to pay the same after three calendar months notice.
110. Bond by an intended husband to the trustees of the marriage-settlement to enable the wife to make a will of all such personal property as shall devolve upon her during the marriage.
111. Bond given by a builder and two sureties for the due performance of a contract to build a dwelling-house according to a specified plan.
112. Bond of resignation of a living.
113. Form of a caveat by an executor to the bequest of a leasehold estate.
114. Assent to agency fee, and assignment of leasehold property by indenture, by an executor to a legatee, the legatee covenanting to indemnify the former against the rents and covenants of the lease.
115. Miscellaneous forms of recitals, arranged alphabetically.

London: JOHN CROCKFORD, LAW TIMES Office, 29, Essex-street.

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

The Queen has been pleased to grant the office of her Majesty's Solicitor-General for Scotland to Robert Handyside, *Esq.*, advocate.

Mr. Corballis, Q.C., has been appointed as law adviser at Dublin Castle. This appointment will give very general satisfaction. Mr. Corballis is a Roman Catholic gentleman of moderate politics, who had been a steady colleague of the late venerated Archbishop Murray at the Board of National Education.

PROCEEDINGS OF LAW SOCIETIES.

BIRMINGHAM LAW STUDENTS' DEBATING SOCIETY—Established 1848.

At the annual general meeting, held on the 5th Jan. inst., at the Philosophical Institution, Cannon-street, C. T. Saunders, Esq. in the chair, the report having been read by the secretary, from which it appeared that the members of the society had been engaged in the study of "Chitty on Contracts," "Williams on Personal Property," and the current examination questions, and in the discussion of moot points of a jurisprudential and legal character; that the ordinary fortnightly meetings had been held without one omission, and that the average attendance of members had much increased; that the society at present consists of 111 honorary members and twenty-seven ordinary members; that the library had been augmented during the past year by the purchase of Petersdorf's Abridgment of the Common Law Reports, fifteen vols. and seven text books upon various branches of the Law, and that several other works decided upon would be placed in the library as soon as published:

It was moved by Thomas Martineau, Esq. seconded by Mr. C. E. Matthews, and resolved: "That the report of the proceedings of the past year now presented by the committee be received and adopted." It was moved by Mr. M. A. Fitter, seconded by Mr. Francis Sanders, and resolved unanimously: "That the best thanks of this meeting be presented to Arthur Ryland, Esq. for his kind exertions to procure the use of the Law Library for the society's meetings." In pursuance of a resolution adopted at a special meeting of the society, held on the 8th December last, the chairman then presented to Mr. M. A. Fitter "Townsend's State Trials," as an acknowledgment of the important services he had rendered to the society during his long connection with it.

The following officers were elected for the ensuing year:—Committee—C. T. Saunders, Esq. honorary member; Mr. M. A. Fitter, Mr. G. J. Johnson, Mr. Francis Sanders, Mr. John Neve, ordinary members. Hofforary secretary, Mr. J. G. Johnson, 64, Little Charles-street; hon. corresponding secretary, Mr. Francis Sanders, 80, Waterloo-street; hon. librarian, Mr. J. Neve, 5, Old-square.

NOTICES OF NEW LAW BOOKS.

Forms of Declarations, Pleadings, and other Proceedings in the Superior Courts of Common Law; with the Common Law Procedure Act, 1852, and the New Rules of Practice of Hilary Term, 1853, with Notes. By Henry Greening, Esq. Special Pleader. 12mo. Second edition. London: Butterworths.

This work, comprising, as it does, almost all the common forms of pleadings, is calculated to be of very considerable utility to the practitioner. It has one great merit in our eyes, in not being overloaded with precedents rarely if ever used, and therefore forming anything but one of the formidable bulky volumes, with corresponding prices, which the practising lawyer bemoans his fate in being compelled to purchase.

Mr. Greening's selection appears to have been carefully and judiciously made, and the notes he has occasionally appended are at once concise and practical.

The book is quite worthy of the learned author's reputation as a pleader; and we can with pleasure recommend it to such of our readers as are engaged in the preparation of every-day pleadings in ordinary actions.

LEGAL INTELLIGENCE.

Speedy Execution.—In the course of business in the Bail Court, on Wednesday, Erle, J. stated, that in all cases of verdicts against acceptors of bills of exchange, makers of promissory notes, and drawers of checks, execution would issue in four days without special application to the judge; but in all other cases, and where the parties were only secondarily liable, the execution would not issue until fourteen days.

Settling Cases out of Court.—In the Ex. on Monday, on the first case in the special paper being called on, *Huggins* reminded the court that this was a case which had stood over by their leave on his application, in order that the parties might have an opportunity of settling it. As he had not received any further instructions, he was led to believe that the case had been arranged. The Chief Baron.—That may be so, but I cannot help remarking upon the impropriety of the parties abstaining from giving information of the fact to the court. Where cases stand over for the convenience of suitors with a view to a settlement, and they are arranged, it would be but decent if one of the parties would condescend to give notice to one of the judges' clerks, in order that the cause may be removed from the paper, and the loss of valuable time in preparing for the argument be avoided. I trust that, for the future, intimation will be given to the officer of the court in all such cases.

An Ex-Judge in the Docks.—John William Molloy, an old man, who declares that he was formerly Solicitor-general at Bermuda, and subsequently Judge of the Supreme Court at Newfoundland, has been sent to prison from the Middlesex sessions for twelve months, for fraudulently obtaining five shillings from the waiter at an eating-house on the strength of a worthless cheque. He has been in prison before for similar offences.

Parliamentary Papers.—From a return, lately published, it appears that the receipts from the sale of Parliamentary papers in eight years—from 1844 to 1851—amounted to 40,682*l.* 14*s.* 1*d.* The rent of three offices, payment of clerks, &c., in the period came to 3,728*l.* 7*s.* 11*d.*, leaving the net produce 36,959*l.* 6*s.* 2*d.*

CORRESPONDENCE.

ABOLITION OF THE NAME OF "CHANCERY."

TO THE EDITOR OF THE LAW TIMES.

Sir,—Notwithstanding that the proceedings in the courts of equity have been so greatly simplified, and the expense thereof diminished, the prejudice consequent on the evils hitherto connected with the system of *chancery suits* is such as to operate most injuriously to that branch of business. In my own experience, whenever I find it needful to advise recourse to the Court of "Chancery," so odious is the word to the ears of clients, that I try by every ingenuity to avoid the expression; and no longer since than yesterday, whilst reading to a client an opinion as to the enforcement of a claim under a will, in the course of which counsel advised that a sale might be enforced "by a suit in Chancery," I came to an abrupt conclusion at the word "enforced," and ardently wished the name of "Chancery" were changed to something more inviting. Any allusion to Chancery is calculated to convey the idea that the remedy will be both protracted and expensive.

If the change in the harmless title of "Master Extraordinary in Chancery" is considered so important as to call for a special enactment to abrogate it, surely the subject I have adverted to has a much higher claim to consideration.

I am persuaded that a change in the name of the Court of Chancery (the applicability of which does not seem very apparent) would effect much in rescuing the second tribunal in the kingdom from the obloquy that attaches to it. I am, Sir, yours, &c.

Rusticus.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

Currey.—On the 13th inst. at Sketty, near Swansea, the wife of Arthur Currey, Esq barrister-at-law, of a daughter.

Wickens.—On the 18th inst. in Queen Ann-street, the wife of John Wickens, Esq. of Lincoln's-inn, of a son.

MARRIAGES.

Bell—Shaw.—On the 18th inst. at the Cathedral, Manchester, Francis Jeffrey Bell, Esq. of Calcutta, son of the late George Joseph Bell, Esq. Professor of the law of Scotland in the University of Edinburgh, to Barbara Ann, eldest daughter of the late William Dalrymple Shaw, of Calcutta.

Chapman—Cobbold.—On the 18th inst., at St. Nicholas Church, Great Yarmouth, Stephen Remnant Chapman, lieutenant in H. M. 20th regiment, Esq., to Elisabeth Mary, eldest daughter of the late John Bampton, Esq., and widow of the late Henry Cobbold, Esq., of Ipswich.

Mason—Hyde.—On the 18th, at Claines, Oliver Mason, Esq., of Reginald's Tower, Great Malvern, to Emma Susannah, second daughter of the late John Hyde, Esq., of Worcester.

DEATHS.

Hopper.—On the 15th inst., in Princes-street, Hanover-square, aged 82, W. C. Hopper, Esq., late of Belmont, in the County of Durham, and formerly a magistrate and deputy-lieutenant of that county.

Thomson.—On the 12th inst., at South Rock, near Alnwick, David Thomson, Esq., writer to the signet, of Orkie and Annfield, Fifeshire, N. B.

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JOURNAL OF PROPERTY.

Public Sales.

On Thursday, January 20, 1853.

By Mr. Moore, at the Mart.

In 2 lots, a leasehold estate of 6 houses, and a plot of ground with the foundation and walls of another house in Farnham-place and Bath-street, Ratcliff; let at 91*l.* per annum; term 55 years; ground rent 17*l.*—for the whole, 805*l.*

In 8 lots, a leasehold estate of 36 houses, some with shops and out-buildings, also a chapel, stabling, gateway, yard, &c. in St. Leonard's and Park-streets, Bromley, Middlesex; producing 558*l.* per annum; term 65 years; rent 99*l.*—for the whole, 2850*l.*

In 3 lots, the carcases of 3 houses with shops (near Limehouse Church), in the East India-road; term 70 years; ground rent 6*l.* each—850*l.*

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2 eight-roomed residences with gardens, &c. Nos. 11 and 12, Bedford-square, Commercial-road, let at 65*l.* per annum; term 46 years; ground rent 9*l.*—615*l.*

In 3 lots, 3 seven-roomed houses with shops and gardens, situate Nos. 1 to 3, Artichoke-place, Mile End-road, let at 105*l.*; term 65 years; ground rent 30*l.*—940*l.*

2 newly-built dwelling-houses, 67 and 68, Park-street, Mile End; annual value 50*l.*; term 78 years; ground rent 5*l.* 15*s.*—500*l.*

MONEY MARKET.

English Funds.	Sat.	Mon.	Tues.	Wed.	Thurs.	Frid.
Bank Stock	..	225	226	224½	223	226½
3 ℘ Cent. Reduced Annuities	100⅝	100⅝	100⅝	100⅝	100⅝	100
3 ℘ Cent Consols Annuities..	99⅝	99⅝	99⅝	99⅝	99	99⅜
Consols for Account	99⅝	99⅝	99⅝	99⅝	99⅝	99⅝
New 3 ℘ Cent. Annuities	..	..	..	..	..	..
New 3½ per Cent. Annuities ..	103⅛	103⅛	103⅛	103⅛	103	103⅛
Long Annu. (exp. Jan. 5, 1860)	6⅝	..	6⅝	6⅝	..	6⅝
Do. 30 yrs. (exp. Oct. 10, 1859)	..	6⅝	..	..	..	..
Do. 30 yrs. (exp. Jan. 5, 1860)	6⅝	6⅝	6⅝	6⅝	..	..
India Stock	..	..	..	270	..	273
India Bonds (1,000*l.*)	75	75	77	..	..	..
Do. do. (under 1,000*l.*)	..	75	..	81	70	..
South Sea Stock	..	..	..	..	111	..
Do. do. New Annuities	..	..	..	..	..	..
Exchequer Bills, 1000*l.* June	63*	61*	60*	63*	60*	..
Do. do. 500*l.* June ..	67*	..	60*	63*	60*	..
Do. do. Small, June..	64*	..	60*	60*	60*	..

* Premium.

The Law of Divorce.—A very important measure will be introduced into the House of Lords immediately on the re-assembling of Parliament, by Lord Brougham, by which the present tedious system of divorce will be abolished, and a new statute framed, doing away entirely with the enormous fees which are now paid, thereby bringing the law within the reach of the poor. By the new law, the proceedings in the Ecclesiastical Court, and also the action at law, which are now necessary, will be abolished.

DIARY OF SALES BY AUCTION, DURING THE NEXT WEEK,

Advertised in the "Law Times."

Date.	Place.	Auctioneer.	When Advertised.	Property.
Tuesday, Jan. 25.	Mart.	Chinnock and Galsworthy.	January 22.	Absolute Reversion to the Sum of 1200*l.*
Saturday, Jan. 29	Ridleys' Sale-rooms, Brighton.	Ridley and Sons.	January 15.	Premises known as Hunt's Cabinet Upholstery Establishment, St. James's, Brighton.

TO BARRISTERS, SOLICITORS, and others.—PURNESS your OFFICES, Counting-House and Chambers at PRIEST'S noted Furniture Mart, Nos. 1 and 2, Water-street, corner of Tudor-street, Blackfriars, where may be seen the largest Stock of New and Second-hand LIBRARY and OFFICE FURNITURE, Office and Counting-house Fittings, Fire-proof Safes, Desks-Screens, Iron Doors, &c. in great variety, embracing every article from the Master in Chancery's splendid Table, to the Desk and Stool of the Copying Clerk. Also an immense Stock of well-conceived Household Furniture.

SALTER'S HOTEL, Victoria-street, Holborn-bridge, London.—J. W. SALTER begs to acquaint the Profession and Families visiting Town, that he has been making considerable alterations and improvements in his Hotel; and he has also added several front Sitting-rooms, with quiet Bed-rooms attached (for the use of Families), the whole of which he has newly furnished, and will be found to possess every comfort. All charges are most moderate, and the strictest attention paid to cleanliness. A fixed moderate charge for Servants. A Night Porter in constant attendance.

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THE PRACTICAL STATUTES OF THE SESSION of 1852. Edited, with explanatory Notes, copious Index, &c. by WM. PATERSON, Esq. Barrister-at-Law. Price 9s. 6d. cloth; 11s. half-calf; 13s. calf.

NOTE.—This work contains all the Statutes *verbatim* that can ever be required to be used by the English Lawyer, omitting the Irish, Scotch, and Colonial Statutes, so that the entire of the practical new law of the Session is comprised in a small volume, which can be easily carried in the pocket or bag. It is made of further utility to the Profession by a very copious Index.

Like volumes have already appeared containing the *Practical Statutes of the Session* of 1850, price 7s. 6d.; and 1851, price 7s.

The volume for 1849 is in the press; and it is intended to issue the previous Statutes uniform with these, but excluding all the repealed Statutes and parts of Statutes, and adding Notes of all the Cases decided upon the construction of the Statutes contained in them, thus presenting the existing law with the judicial interpretation of it. Thus, the volume for 1849 will contain the new Bankruptcy Act, with all the Cases decided upon its construction.

The following Statutes will be given entire in the volume for 1852:—

Commons Inclosure Act.
Municipal Corporations Act Amendment Act.
Protection of Inventions Act, 1851 (Extension of Term.)
Copyright Amendment Act.
Poor Relief Act Continuance Act.
Loan Societies Act Amendment.
Ecclesiastical Jurisdiction Act.
Stock-in-Trade Act.
Application of Highway Rates to Turnpike Roads Act.
Property-Tax Continuance Act.
Act for Re-assembling Parliament.
Wills Act Amendment Act.
Registration of Births, Deaths, and Marriages Act.
Apprehension of Deserters from Foreign Ships Act.
Industrial and Provident Societies Act.
Protestant Dissenters Act.
Appointment of Overseers Act.
General Board of Health Act (No. 1 and No. 2.)
Disabilities Repeal Act.
Passengers Act Amendment Act.
Differential Dues Act.
Property of Lunatics Act.
School Sites Acts Extension Act.
Militia Act.
Enfranchisement of Copyholds.
County Courts Improvement Act.
Trustees Act Extension Act.
Pharmacy Act.
Corrupt Practices at Elections.
Excise Summary Proceedings.
Woods, Forests, and Land Revenues Act.
Metropolitan Sewers Act.
Nisi Prius Officers Act.
Militia Ballots Suspension Act.
Common Law Procedure Act.
Secretary of Bankrupt's Office Abolition Act.
Commons Inclosure Acts Extension Act.
Masters in Chancery Abolition.
County Rates Act.
Patent Law Amendment Act.
Metropolis Water Supply Act.
Metropolitan Burials Act.
Improvement of the Jurisdiction of Equity Act.
Suitors in Chancery Relief Act.

London: JOHN CROCKFORD, 29, Essex-street, Strand.

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20	1	1	9	2	3	6	30	0	2	7	3	1	4	2	0	12	2
40	1	9	6	3	18	4		3	2	7	6	1	4	4	0	12	4
50	2	2	6	4	5	0		6	2	7	10	1	4	6	0	12	5
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"COUBRO and POTTER."
MILNER'S PHŒNIX SAFE WORKS, LIVERPOOL [illegible] tensive and complete in the world. The Safe [illegible] eleven days and nights in the ruins, and [illegible] LONDON DEPOT, 47A, MOORGATE-STREET [illegible] of England.

On Thursday, price 8*s.* 6*d.* or [illegible]
WISE and EVANS' LAW [illegible] Half-year ending January 1. By R. [illegible] Esqrs. Barristers-at-Law.
This work gives the whole of the Law decided [illegible] last Half-year, comprising every Case in all [illegible] the various subjects, arranged, alphabetically [illegible] may find in a moment, amid the hurry of [illegible] the latest Law on any subject in which he may [illegible] assurance that no Decision or Statute can [illegible] (Continued half-yearly.)
LAW TIMES OFFICE, 29, Essex-[illegible]

ITALIAN SILK UMBRELLAS are superseding every other description for elegance and durability, are made on the premises under Mr. Cheek's immediate inspection, and the silk warranted superior to every other material. 19s. and 21s.—Golden Perch, 232, Oxford-street

N.B. Ladies' silk, 6s.; alpaca, 4s.; gingham, 2s.; and carriage umbrellas, 6s.

THE ROYAL TURKISH TOWELS.—Under the Patronage of her Majesty the Queen, and which received the Prize Medal at the Great Exhibition. The Brown Linen combines the advantages of a flesh-brush with the qualities most desirable in a towel. The White Cotton is the softest Towel ever made, and absorbs moisture without the necessity of using friction. To be had of all respectable Linendrapers.

IF YOU DESIRE really WELL-POLISHED BOOTS, use BROWN'S ROYAL MELTONIAN BLACKING. It renders them beautifully soft, durable, and waterproof, while its lustre equals the most brilliant patent leather. Price the same as common blacking. Made only by E. BROWN, the inventor and sole manufacturer of the Te Quisha Parisian Polish for Dress Boots and Shoes, and Waterproof Varnish for Hunting Boots.

MANUFACTORY, 25, BROAD-STREET, GOLDEN-SQUARE.

Patronised by the Court and Nobility, and to be had at all the principa shops throughout the kingdom.

THE VERSATIO, or REVERSIBLE COAT —Worthy the attention of the Legal and Clerical Professions.—EDMISTON and SON, 69, Strand, opposite the Adelphi, London.—The importance of this patented invention consists in the novelty of the material and its application, viz., the double purpose of forming two in one without trouble, one side presenting a gentlemanly morning coat, the other a riding or shooting coat in any texture or colour desired. In over garments or paletots this happy discovery offers still more useful advantages to the wearer, one surface exhibiting a graceful and elegant walking-coat, while its counterpart is conveniently adapted for the rougher purposes of travelling, skilfully designed in cloth, and perfect in both their capacities. In these varying properties the public must recognise a union of novelty and usefulness not hitherto accomplished. Gentlemen supplied sending their height and size round the chest over the waistcoat. Price from 50s. to 70s.

London: EDMISTON and SON, Tailors, 69, Strand.

PATENT REVERSIBLE OVER-COATS, &c. which obtained the Great Exhibition Prize Medal.—W. BERDOE, 96, New Bond-street, and 69, Cornhill (only).—Novelty, utility, economy, all unite in commending this invention to general adoption: the Patent having two perfect and totally dissimilar faces, can be worn either side outwards. Thus each Garment, at the cost of ONE, being equivalent to TWO. For Over-coats of every kind, the New Angleses and all other Capes, Shooting and Morning Coats, this discovery is especially appropriate; also for LADIES' CLOAKS, MANTLES, &c. A variety of the Materials and Garments kept for selection; also one of the largest stocks in London of superior Over-coats of every description; Capes, Shooting-jackets, Youths' Over-coats, &c. all guaranteed to resist any amount of Rain.

BY HER MAJESTY'S ROYAL LETTERS PATENT.

THE LADIES' CARRIAGE STEP, which was so universally admired at the Great Exhibition for its novelty, simplicity of action, and utility, having all the advantages of the inside Step, being free from dirt. This Step can be applied to any carriage already built.

DAVID DAVIES and SON have also finished for inspection, a Double Brougham, with their Patent Wheel Plate, by which means the carriage is much shorter; also the front wheels are higher, which makes the draught easier.

To be seen at the Manufactory for Improvements on Carriages, 15, Wigmore-street, Cavendish-square.

GREAT EXHIBITION PRIZE MEDAL, AWARDED TO CAISTOR FOR SADDLES AND HARNESS.

CAISTOR'S much-admired SADDLES combine elegance and lightness with strength and durability. They are roomy in the Seat, and bring the Rider as close as possible to his Horse. They are well adapted for the Field, Park, or Road.

Price, complete, 4l. 14s. 6d.

Horse Clothing, Blankets, Brushes, Sponges, and every other Stable requisite, of the best Quality, at the lowest Prices.

A List of Prices sent free by Post, or may be had on application at CAISTOR'S, 7, Baker-street, where the Prize Saddles and Harness may be seen.

Goods Carriage-free to any part of the United Kingdom.

"TRIED IN THE BALANCE AND FOUND WANTING."

THE Analytical Sanitary Commissioners having analysed the Cocoa of every dealer in London of any importance, whether manufactured in London or not, have declared that only four samples were genuine, ours being the best, being free from husk and all refuse. They likewise expressed regret that, in the few samples they found to be genuine, the husk or shell of the nut, which they state to be, as food, comparatively worthless, should so generally be worked up with the nut.—*Vide The Lancet* May 31, 1851. The husk, &c. form about one sixth of the whole nut, so that by excluding them, as we do, we necessarily enhance the cost of the article. We request the favour of Cocoa drinkers to make trial of our PURE GRANULATED COCOA, in packets at 1s. per lb. Their confidence will not be misplaced. It is now drank at the table of the first families in all parts of the kingdom.

HANDFORD and DAVIES, 61, HIGH HOLBORN.

AMERICAN CLOCK WAREHOUSE, 545 and 546, NEW OXFORD-STREET, where will be found the largest assortment of those superior Time-pieces, American Clocks, ever imported into this country, made by the oldest and most celebrated Manufacturers in the United States. All our clocks are warranted to keep correct time. The prices are—for Thirty-hour Clocks, 14s. 18s. and 25s.; for Eight-day Clocks, 30s. and 35s.

Also, the CHILD'S VELOCIPEDE, a new American Invention for the amusement and exercise of children. It combines the Pony and Carriage, and by the graceful and easy exercise promotes muscular development of the arms and chest. It is recommended by the medical faculty, and approved by all who have seen it. Together with every variety of American Goods.

Sold wholesale and retail by the Manufacturers and Importers, ROGERS and Co. 545 and 546, New Oxford-street.

THE PARIS CHOCOLATE COMPANY, distinguished by the Patronage of Her Majesty the Queen, and the unanimous award of both "Council" and "Prize Medals" at the Great Exhibition of 1851. BREAKFAST CHOCOLATES in ½ and ¼lb. Tablets, plain, from 1s. 4d. to 2s. per lb; with vanilla, from 2s. to 2s. per lb. A Chocolatiere, manufactured after the most approved Parisian model, will be presented to every purchaser of a 14lb box of Tablets; and consumers of smaller quantities may obtain the same at cost price, 2s. 9d. HONEY CHOCOLATES, a combination of the purest heather honey with the mildest French cocoa, in pots, 1s. 2d. CHOCOLATE BONBONS, unanimously pronounced an unrivalled dessert. FANCY CHOCOLATES. As medallions, railway pastilles, penny sticks, rotundas, cigars, &c. CHOCOLATE POWDER, loose and in packets, 1s. per lb. and upwards. FRENCH SYRUPS, in bottles, from 1s. 2d. to 2s. 3d. each, prepared from the choicest fruits, and, when mixed with cold water, form an anti-alcoholic drink not to be surpassed; peculiarly adapted for evening and juvenile parties, and extensively used with puddings, for flavouring jellies, creams, &c. CHOCOLATE BONBONS, in fancy boxes, 1s., 1s. 3d., 2s., and 2s. 6d. each. FRENCH CONSERVES, in fancy boxes, 6d. each. Travellers by sea and land, who need a portable supply of the most sustaining food and beverage, will find the above articles invaluable, as they require no preparation, and are warranted to keep good in any climate. Agents wanted for vacant towns.

Sold wholesale and retail by the principal Grocers, Confectioners, and Druggists in the Kingdom. Chocolate Mills, Isleworth. Wholesale Depot, 23, Pudding-lane, City. West-end Agent Mr. John Hatfield, 221, Regent-street. Post-office orders and applications for samples to be addressed to Samuel Sanders, Wholesale Depot.

BRITISH COLLEGE OF HEALTH, NEW-ROAD, LONDON.—THE HYGEIAN SYSTEM OF MEDICINE.—Morison's Pills, the Vegetable Universal Medicine, is a certain cure for any curable disease, which fact is proved by the experience of all the Members of the British College of Health.

CAUTION.—No chemist or druggist is authorised to sell the medicine.

RUPTURES.—BY ROYAL LETTERS PATENT.

THE MOC-MAIN LEVER TRUSS is allowed by upwards of 200 Medical Gentlemen to be the most effective invention in the curative treatment of Hernia. The use of a steel spring, so often hurtful in its effects, is here avoided; a soft bandage being worn round the body, while the requisite resisting power is supplied by the Moc-Main Pad and Patent Lever, fitting with so much ease and closeness that it cannot be detected, and may be worn during sleep. A descriptive circular may be had, and the Truss (which cannot fail to fit) forwarded by post, on the circumference of the body two inches below the hips being sent to the Manufacturer, Mr. WHITE, 228, Piccadilly, London.

An Umbilical Truss on the same principle.

Every description of Riding Belts, Elastic Stockings, Spinal Corsets, Supporters and Suspenders, on new and approved principles, with every kind of Surgical Bandages.

PILLS.

DR. KING'S TRUE SARSAPARILLA PILLS, for purifying the blood, scurvy, and all low states of system, skin diseases, nervous complaints, gout, rheumatic gout, weak nerves, loss of appetite, stomachic and liver complaints, nervous head and face ache, sore legs, and general debility. They are invaluable to the military, naval, and commercial man, and tourists, not only on account of their virtues, but their portability. Their advantages over any liquid preparation are manifold: 1stly. Because no solution of Sarsaparilla, however carefully prepared, can resist an inherent fermentation, which it will, and does undergo, rendering it entirely useless; 2ndly. "Two Pills contain as much Pure Sarsaparilla as a Tablespoonful of the Strongest Essence, and more to be depended upon;" 3rdly. They have been prescribed in an extensive practice for nearly sixty-seven years, and their virtues well tested. They are beneficial for both sexes, and will keep in any climate. A 2s. 9d. box is equal to a 16s. bottle of Sarsaparilla. Sold by most respectable medicine vendors in the Kingdom, and by the sole Proprietor HENRY HIDES, 10, Hungerford-street, Strand, in boxes at 1s. 1½d., 2s. 9d., 4s. 6d., 11s. and 22s. A considerable saving is effected by taking the larger boxes; hence, a 2s. 9d. contains three 1s. 1½d. boxes, a 4s. 6d. contains seven, and so on increasing.

DR. KING'S GOUT PILLS.—Gout relieved in a very short time and really *cured* by a newly-discovered principle in "SARSAPARILLA." The Proprietor of Dr. King's True Sarsaparilla Pills, upon finding so many severe and chronic cases of Gout and Rheumatic Gout truly cured by "Dr. King's Sarsaparilla Pills," determined upon relating a very old and well-tried Gout Pill, which Dr. King prescribed for nearly sixty-seven years, *with* the said "Dr. King's Sarsaparilla Pills," for the cure of gout and rheumatism and all cases of a rheumatic character, such as tic-douloureux, face-ache, lumbago, and pains in the loins and joints; and the benefit from such a combination of these two prescriptions has been really wonderful. Dr. King's Gout Pills may be taken without the slightest fear of injuring the system. They are free from opium and mercury, and consist chiefly of pure Sarsaparilla.

N.B.—Their mode of action is by really purifying the fluids of the body, and causing the poison of gout to be driven off from the system, not by violent purging, but by a gentle increase of the secretion of the kidneys.

Sold in boxes at the same price as Dr. King's True Sarsaparilla Pills, by most respectable vendors in the United Kingdom, and by the Sole Proprietor, HENRY HIDES, Hungerford-street, Strand. Neither of the Pills are genuine without the proprietor's name (in full) upon the stamp, to imitate which is libel.

Boxes sent by post by inclosing postage stamps for the amount of box required.

LEGAL INTELLIGENCE.

LUMLEY *v.* GYE.—This case came on on Wednesday before Mr. Justice Erle, in judges' chambers. It will be remembered that an action was brought by Mr. Lumley, of Her Majesty's Theatre, against Mr. Gye, of the Opera-house, Covent-garden, to recover damages in regard to Mdlle. Wagner having been prevented fulfilling her engagement at Her Majesty's Theatre. Subsequently applications were made to the Court of Exchequer (in which court the action was brought), on the part of the defendant, to plead and demur under the new Act at the same time. Since the matter was last before the public, it has been deemed advisable to discontinue the action in the Exchequer, and a new trial has been commenced, of a similar character, in the Court of Queen's Bench; and on Tuesday afternoon an application was made to Mr. Justice Erle in reference to the new action. The summons called upon the plaintiff to show cause why he should not elect between the last count and the first two counts of the declaration, or one of them, and why one of them should not be struck out, on the ground of a violation of the rule of Hilary Term, 4 Will. 4, against the use of several counts for the same subject-matter of complaint. Mr. Willes appeared in support of the application, instructed by Mr. Tamplin, attorney for the defendant; and Mr. Templer, instructed by Messrs. Lewis, for the plaintiff. Mr. Justice Erle, after hearing the learned counsel, declined to make an order as prayed, and directed the costs of the application should be costs of the cause.

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BIRTHS, MARRIAGES, AND DEATHS.

MARRIAGES.

CROSSE—MICHELL.—On the 20th inst. at St. Margaret's, Westminster, Hammond A. Crosse, son of the late W. Crosse, Esq. solicitor, and grandson of the late Hammond Crosse, Esq. of Kensington, to Harriette Arabella, second daughter of E. Michell, Esq. of St. Paneras.

FULLERTON—DYSON.—On the 20th inst. at St. John's Church, Oxford-square, the Rev. Arthur Fullerton, of Thrybergh Rectory, Yorkshire, to Augusta, second surviving daughter of the late Thomas Dyson, Esq. of Bedford-row, solicitor.

DEATHS.

COOKE.—On the 20th inst. at his residence, 32, Elm-grove, Hammersmith, aged 55, John Athanasius Cooke, Esq. barrister-at-law.

JONES.—On the 21st inst. at Beaumaris, Anglesey, aged 69, John Jones, Esq. for nearly forty years town clerk of that borough, and upwards of thirty-eight years treasurer of the county of Anglesey.

JOURNAL OF PROPERTY.

Public Sales.

On Tuesday, January 25, 1853.

By Messrs. CHINNOCK and GALSWORTHY, at the Mart.

A leasehold villa residence, No. 11, Abbey-road, St. John's Wood, held for a term of 99 years from Midsummer 1840, at a ground rent of 30*l.* per annum, 780*l.*

East-street, Walworth.

Lot 1.—A freehold private dwelling-house, No. 15, East-street, Walworth, for 345*l.*

Lot 2.—A freehold private dwelling-house, No. 14, East-street, Walworth, for 300*l.*

Wellington-road, St. John's Wood.

Lot 1.—An excellent semi-detached villa residence, No. 8, Wellington-road, St. John's Wood, held for an unexpired term of 67 years, at a peppercorn rent, and of the value of 70*l.* for 910*l.*

Lot 2.—The adjoining semi-detached villa to the preceding lot, in the occupation of G. Stevenson, esq. at the rent of 58*l.* per annum, held for an unexpired term of 67 years, at a ground rent of 30*l* per annum, 300*l.*

MONEY MARKET.

English Funds.	Sat.	Mon.	Tues.	Wed.	Thurs.	Fri.
Bank Stock	227	227½	226½	..	227½	227½
3 per Cent. Reduced Annuities	100	100½	100½	100⅝	100⅝	100⅝
3 per Cent Consols Annuities..	99⅝	99½	99⅝	99⅝	99⅝	99⅝
Consols for Account	99⅝	99½	†	99½	99½	99⅝
New 5 per Cent. Annuities	..	..	..	..	..	..
New 3½ per Cent. Annuities ..	103⅜	103½	103½	103½	103½	103⅝
Long Annu. (exp. Jan. 5, 1860)	..	6⅝	6⅝	6	6⅛	6⅛
Do. 30 yrs. (exp. Oct. 10, 1859)	..	..	6⅜	..	6⅜	..
Do. 30 yrs. (exp. Jan. 5, 1860)	..	6⅜	6⅜	..	6⅜	..
India Stock	..	..	..	..	272	272
India Bonds (1,000*l.*)	..	71	71	67	67	70
Do. do. (under 1,000*l.*)	..	67	71	..	71	71
South Sea Stock	..	..	110	109⅝	..	..
Do. do. New Annuities	..	..	..	..	..	..
Exchequer Bills, 1000*l.*	58*	61*	57*	61*	57*	61
Do. do. 500*l.*	58*	..	61*	57*	57*	61
Do. do. Small.....	58*	61½	61*	57*	57*	61

* Premium. † 99½ for opening.

DIARY OF SALES BY AUCTION, DURING THE NEXT WEEK,

ADVERTISED IN THE "LAW TIMES."

DATE.	PLACE.	AUCTIONEER.	WHEN ADVERTISED.	PROPERTY.
Tuesday, Feb. 1.	Windmill Inn, Alford	Winder and Mason	January 15	Modern Mansion, model Farmstead, &c.
Thursday, Feb 3.	Mart.	Marsh	Jan. 15 and 29	Periodical Sale.
Ibid.	Ibid.	Ibid.	January 29	Freehold Manor of Great Hanney, in Essex.
Ibid.	Ibid.	Ibid.	Jan. 15 and 29	Next Presentation to Vicarage of West Malley.
Ibid.	Ibid.	Ibid.	January 29	Freehold Manor of Marchington.
Ibid.	Ibid.	Ibid.	Ditto	Reversion to one-fourth part or share of the Sum of 50,000*l.* Consols.
Ibid.	Ibid,	Ibid.	Ditto	Reversion to one-fourth part or share of the Sum of 22982*l.* 14s. 9d. Consols.
Ibid.	Ibid.	Ibid.	Ditto	Absolute reversion to the Sum of 23808*l.* sterling. Four 100*l.* shares in the Thames Plate Glass Company
Ibid.	Ibid.	Ibid.	Ditto	A Policy of Assurance for 1000*l.*
Ibid.	Ibid.	Ibid.	Ditto	A Policy of Assurance for 600*l.*
Ibid.	Ibid.	Ibid.	Ditto	Absolute Reversionary Interest.
				Absolute Reversion.
				Periodical Sale.
				Freehold.

DEFENDER FIRE and LIFE ASSURANCE COMPANY, 84, New Bridge-street, Blackfriars.

A BONUS equal on the average to FORTY PER CENT. upon the life premiums paid previously to 1851, was declared at the Ordinary General Meeting, held on the 3rd January instant.

Prospectuses and full information may be had at the Company's Offices, or of any of the Agents.

Respectable active Agents wanted. The usual Commission to Solicitors and others.

JOHN KELDAY, Managing Director.

The attention of CLERGYMEN, BENEVOLENT PERSONS, and EMPLOYERS of every description, is invited to the Prospectus and Tables of the

OAK MUTUAL LIFE ASSURANCE and LOAN COMPANY,

No. 49, Moorgate-street, London. Completely registered pursuant to Act of Parliament, 7 & 8 Vict. cap. 110.

Any number of copies for distribution may be obtained by personal application at the head office, or by addressing a letter to

C. MANNERS COODE, Secretary.

EQUITY and LAW LIFE ASSURANCE SOCIETY, No. 26, LINCOLN'S INN FIELDS, LONDON.

TRUSTEES.

The Right Hon. the LORD HIGH CHANCELLOR.
The Right Hon. Lord MONTEAGLE.
The Right Hon. the LORD CHIEF BARON.
The Hon. Mr. Justice COLERIDGE.
The Hon. Mr. Justice ERLE.
NASSAU W. SENIOR, Master in Chancery.
CHARLES PURTON COOPER, Esq. Q.C., LL.D., F.R.S.
GEORGE CAPRON, Esq.

The Dividend for 1852 is in course of payment at the Office daily (Wednesdays excepted) between the hours of Eleven and Two.

January 16, 1853.

NATIONAL PROVINCIAL LIFE OFFICE, 34, MOORGATE-STREET, LONDON.

Chairman.—ROBERT KEATING, Esq., M.P.

Solicitor.—EDWARD KELLY HARRIS, Esq., 52, Lincoln's-inn-fields.

PROGRESS OF THE SOCIETY.

New Business.	Amount of New Assurances completed.	Annual Income therefrom.
	£ s. d.	£ s. d.
Half-Year ending December 1852	86,841 0 0	2,994 6 1
Half-Year ending December 1851	33,622 0 0	1,087 2 7
Excess of the past half-year over the corresponding half-year of 1851	53,219 0 0	1,907 3 6

The Directors are prepared to receive applications from persons of undoubted respectability for the appointment of Agents in those towns where the Society is not already represented.

Prospectuses and every information forwarded free on application.

J. W. SPRAGUE, Manager.
January 1, 1853. EDMUND CLINCH, Secretary.

ENGLISH and CAMBRIAN ASSURANCE SOCIETY, 9, New Bridge-street, Blackfriars, London.

The distinctive features of this Society are—LOW RATES of PREMIUM, and PROFOSALS for every description of LIFE ASSURANCE entertained for any Sum from 20*l.* to 5,000*l.*

The subjoined Table shows the advantages offered by this Society resulting from Low Premiums:—

Age at entry.	Annual Premium by Northampton Rates to assure 1,000*l.*	Annual Premium by English and Cambrian Rates to assure 1,000*l.*	Showing an Annual Saving of	Enabling a person to assure for	Giving an immediate Bonus of
	£ s. d.	£ s. d.	£ s. d.	£	£
20	21 15 10	16 12 6	5 3 4	1,310	310
30	26 13 5	20 12 6	6 0 11	1,293	293
40	33 19 6	27 11 8	6 7 10	1,195	195
50	45 6 0	30 14 2	5 11 10	1,140	140

LOANS granted upon real and personal security, on Terms peculiar to this Office, and highly beneficial to the borrower.

ASSURANCES "declined" by other Offices accepted on equitable terms.

INDUSTRIAL CLASSES.—Special Tables to suit the "Industrial" Classes, by taking the payments weekly, monthly, or otherwise.

HALF-PREMIUM ASSURANCES.—Policies will be granted on payment of one-half of the usual Premium, with Interest upon the Balance during the term of seven years.

EMIGRANTS.—Policies effected upon the Lives of Emigrants at a very moderate additional charge to cover the risk of the voyage.

MEDICAL REFEREES paid by this Society for their Professional Reports.

The usual Commission allowed to parties introducing business to this Society, and to Agents an additional 5 per cent. upon the first year's premium.

Prospectuses and full particulars may be obtained on application to

WILLIAM HENRY KINGSFORD, Resident Manager.

BRITANNIA LIFE ASSURANCE COMPANY. Established August 1, 1837.

Empowered by special Act of Parliament, 4 Vict. cap. 9.
Col. ROBERT ALEXANDER, Blackheath-park, *Chairman.*

ADVANTAGES OF THIS INSTITUTION.

A TABLE OF INCREASING RATES OF PREMIUM, especially adapted to the securing of Loans or Debts.

HALF-CREDIT RATES, whereby half the Premium only is payable during the first seven years.

SUM ASSURED PAYABLE AT SIXTY, OR AT DEATH, if occurring previously.

ORPHANS' ENDOWMENT BRANCH, affording the means of having Children Educated and Started in Life by securing Annuities, to commence at the Parent's death, and to be paid until a son shall attain his twenty-first, or a daughter her twenty-fifth year of age.

BRITANNIA MUTUAL LIFE ASSOCIATION.

Empowered by her Majesty's Royal Letters Patent.

ANNUAL DIVISION of PROFITS.

Policy-holders participate in PROFITS after FIVE or SEVEN ANNUAL PAYMENTS, according to the table selected.

Premiums calculated for EVERY THREE MONTHS' difference of age.

HALF-CREDIT POLICIES granted on terms unusually favourable: the unpaid half-premiums being liquidated out of the profits.

At the Annual General Meeting on the 27th April last, a reduction of 20 per cent. was made in the current year's premium on all participating policies.

A Board of Directors in attendance daily at Two o'clock.

Age of the Assured in every case admitted in the Policy.

Medical Attendants remunerated in all cases for their Reports.

(PROPRIETARY.) Extract from the Half-Credit Rates of Premium.

Age	Half Prem. First 7 Years.	Whole Prem. remainder of Life.
	£ s. d.	£ s. d.
20	1 1 0	2 2 0
40	1 9 2	3 18 4
50	2 2 4	4 5 0
60	3 6 8	6 13 4

(MUTUAL.) Extract from Table with Particulars in Profits, after Seven Yearly Payments.

Age.		Annual Premium.	Half-Yearly Prem.	Quarterly Prem.
Yrs.	Months.	£ s. d.	£ s. d.	£ s. d.
20	0	2 7 8	1 4 2	0 12 3
	3	2 7 6	1 4 4	0 12 4
	6	2 7 10	1 4 6	0 12 5
	9	2 8 2	1 4 8	0 12 6

1, Princes-street, Bank, London, 1st Nov. 1852.

H. B. FORTER, Resident Director.
ANDREW FRANCIS, Secretary.

DEFECTIVE and UNMARKETABLE TITLES ASSURED, and rendered MARKETABLE and MORTGAGEABLE, by the LAW PROPERTY ASSURANCE and TRUST SOCIETY.

Annuities and Endowments granted, and Fidelity Guaranteed.

WILLIAM NEILSON, Actuary and Secretary,
30, Essex-street, Strand, London.

PROFESSIONAL PROTECTION.—SOLICITORS, MEDICAL PRACTITIONERS, and Others,

secured a Provision in the event of Permanent Sickness or Disability from following their ordinary Occupation, by payment of a trifling Annual Premium to the LAW PROPERTY ASSURANCE and TRUST SOCIETY.

Healthy and DISEASED LIVES Assured on Advantageous Terms.

WILLIAM NEILSON, Actuary and Secretary,
30, Essex-street, Strand, London.

LEASEHOLDS rendered as MARKETABLE and MORTGAGEABLE as FREEHOLDS, by the LAW PROPERTY ASSURANCE AND TRUST SOCIETY.

Healthy and DISEASED LIVES Assured, Redemption of Mortgages and Loans, &c.

WILLIAM NEILSON, Actuary and Secretary,
30, Essex-street, Strand, London.

REDEMPTION of MORTGAGES and LOANS, so that Mortgaged Property may pass Unencumbered

to Families on the Parent's Death, by the LAW PROPERTY ASSURANCE and TRUST SOCIETY.

Lives Assured at Low Rates.—Loans.—Leaseholds Assured, so as to be Equal to Freeholds.—The Value of Mortgages Guaranteed.—Healthy and DISEASED LIVES Assured.—Mortgages and Loans Redeemed.—Leaseholds Assured, so as to be Mortgageable as Freeholds.

WILLIAM NEILSON, Actuary and Secretary,
30, Essex-street, Strand, London.

IMMEDIATE and DEFERRED ANNUITIES, on very Advantageous Rates, granted on Healthy and Invalid Lives, by the LAW PROPERTY ASSURANCE and TRUST SOCIETY.

Life Assurance in all its Branches; Assurance of Leaseholds.

WILLIAM NEILSON, Actuary and Secretary,
30, Essex-street, Strand, London.

THE YORKSHIRE FIRE AND LIFE INSURANCE COMPANY.

Established at York, 1824, and empowered by Act of Parliament.
Capital, £500,000.

TRUSTEES.

Ralph Creyke, Esq., Rawcliffe Hall.
John Swann, Esq., Askham.
Leonard Thompson, Esq., Sheriff Hutton Park.
BANKERS.—Messrs. Swann, Clough, and Co. York.
ACTUARY and SECRETARY.—Mr. W. L. Newman, York.

The attention of the public is particularly called to the terms of this Company for LIFE ASSURANCES, and to the distinction which is made between male and female lives.

Extract from the Table of Premiums for insuring 100*l.*

Age next birthday.	A MALE.	A FEMALE.	Age next birthday.	A MALE.	A FEMALE.
	Whole Life Premiums.			Whole Life Premiums.	
	£ s. d.	£ s. d.		£ s. d.	£ s. d.
10	1 7 6	1 5 4	46	3 11 6	3 3 2
13	1 9 3	1 7 0	50	4 1 9	3 13 3
16	1 11 3	1 8 10	53	4 11 6	4 2 6
20	1 14 4	1 11 6	56	5 4 0	4 14 0
23	1 17 0	1 13 8	60	6 6 0	5 12 6
26	1 19 3	1 16 2	63	7 4 0	6 9 6
*30	2 5 0	1 19 9	66	8 4 0	7 10 8
33	2 8 6	2 2 10	70	10 0 4	9 7 6
36	2 12 0	2 6 4	73	11 11 2	11 2 6
40	2 19 9	2 12 0	76		13 1 9
43	3 5 3	2 17 2	80		15 12 10

* EXAMPLE.—A gentleman whose age does not exceed 30, may insure 1,000*l.* payable on his decease, for an annual payment of 22*l.* 10*s.*; and a lady of the same age can secure the same sum for an annual payment of 19*l.* 17*s.* 6*d.*

Prospectuses, with the rates of premium for the intermediate ages and every information, may be had at the Head Office in York, or of any of the Agents.

FIRE INSURANCES

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Thursday, June 3	Thursday, Dec. 1.
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Periodical Sale for Thursday, February 3.

MR. MARSH has received instructions to include in his next Periodical Sale of Reversions, Life Interests, &c. appointed to take place at the MART, on THURSDAY NEXT, FEBRUARY 3, at TWELVE, the REVERSION to a ONE-FOURTH PART or SHARE of the SUM of 5000*l.* CONSOLS, standing in the name of the Accountant-General, and receivable on the Decease of a Lady, aged 54, provided the Vendor, a Gentleman, aged 34, survives her, and she leaves no issue. The Lady has been married Ten Years, and has never had any issue. Also the BENEFIT of SURVIVORSHIP in the remaining THREE SHARES of the above Sum.

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Periodical Sale for Thurday, February 3.—Shares in the Thames Plate-Glass Company.

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Particulars may be obtained at the Mart; of THOMAS LOUGHBOROUGH, Esq., Solicitor, 23, Austinfriars; and at Mr. MARSH'S Offices, 2, Charlotte-row, Mansion-house.

Periodical Sale for Thursday, February 3.—A Policy of Assurance for the Sum of 600*l.* in the Law Life Office.

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By order,
CHARLES AUGUSTIN SMITH, Secretary.
Lecomas-hill, Greenwich, Feb. 4, 1853

LAW STUDENTS' DEBATING SOCIETY. This Society meets at the Law Institution, Chancery-lane, every Tuesday evening, at Seven o'clock, for the discussion of Legal and Jurisprudential Questions.

QUESTIONS FOR DISCUSSION.

For Tuesday, February 8th, 1853

President—Mr. CURTIS.

92. The time tables of a railway company contain a notice that the company will not be responsible for the trains not arriving at the times fixed in the tables, nor for any loss or damage occasioned thereby. A train having, through a defect in the engine, arrived at its destination late after the time named in the time tables, is the company liable in damages to a passenger who has been injured by the delay? See 15 Jurist, pt. 2, 260; 16 do. pt. 2, 457.

Affirmative—Mr. GALLAND and Mr. WENTWORTH *Negative*—Mr ESDON and Mr. HYDE.

For Tuesday, February 15th, 1853.

President—Mr GALLAND

LXII. Will it be right in Parliament to authorise the opening of the New Crystal Palace at Sydenham on Sundays?

Mr. ROWLETT is appointed to open the debate, and Messrs. E. J KENT, HUGHES, and J. WALKER to speak upon the question.

For Tuesday, February 22nd, 1853.

President—Mr. HAYMAN.

93. A yearly tenant gives a written acceptance of a three months' notice to quit given him in writing. Is the tenancy legally determined at the end of the three months? *Bessel v. Landseer*, 7 Q. B. 638; 15 Jurist, pt. 1, 1096; 2 Wms. & W. 193.

Affirmative—Mr. PRESTWARD and Mr. ARMSTRONG *Negative*—Mr. DAVIDSON and Mr. RAWLINSON.

J. W. ROWLETT, Secretary, 68, Lincoln's-Inn-fields.

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SHIRTS.—FORD'S EUREKA SHIRTS are not sold by any hosiers or drapers, and can therefore be obtained only at 38, Poultry. Gentlemen in the country or abroad, ordering through their agents, are requested to observe on the interior of the collar-band these words, "FORD'S EUREKA SHIRTS, 38, Poultry," without which none are genuine. They are made in two qualities: first quality, 40s. the half-dozen; second quality, 36s. the half-dozen. Gentlemen who are desirous of purchasing shirts in the very best manner in which they can be made are solicited to inspect these, the most unique and only perfectly-fitting shirts. Coloured shirts, for boating, shooting, still ordinary wear, 42s. the half-dozen. List of prices and instructions for measurement post free, and patterns of the new self-acting shirtings free on receipt of six stamps.
RICHARD FORD, 38, Poultry, London (late 165, Strand.)

MESSRS. POULSON and COMPANY'S REGISTERED PARDESSUS of FINE AUSTRALIAN and LLAMA WOOLS (6 & 7 VICT. Cap. 65), for WALKING or RIDING.—This is an improved Style of Coat, of a light convenient form, which retains of its long warm either over or without the ordinary Coat. It is easily and handsomely made, care being bestowed in its construction to impart to it that graceful and appropriate character which, since its first introduction, has so greatly recommended it to public favour. It is produced in all colours, with silk sleeve linings, at the very moderate price of 3 guineas, and, for winter wear, richly lined and quilted, 3½ and 3 guineas.—The Improved WINTER GUINEA TROUSERS are also ready for selection, from a choice Variety of Patterns. The London only of H. POULSON and COMPANY, Merchant Tailors, and Sole Patentees of the Undyed Australian Wool Cloth, the most material ever invented for all Sporting, Riding, and Travelling purposes.
94, Regent-street.

WHEN are SPECTACLES REQUIRED?—When the eyes water, or become so much fatigued by short exercise as to be obliged to be frequently closed or relieved by viewing different objects.
When objects cannot be seen without removing them to an increased distance.
When the letters of a book appear to blend with one another.
When more light is required than was formerly. For example.—
When the candle is placed between the eye and the book.
When much difficulty is found in threading a needle.
When the eyes appear as if they had a mist before them.
When black specks seem floating in the sight.
When any of the above indications arise, all affectation should be laid aside, a respectable and skilful optician consulted, and a pair of "Pantoscopes" purchased. THOMAS HARRIS and SON'S CRYSTAL SPECTACLES, if taken on the first approach of decay, will certainly retard its progress, and preserve the sight to the extreme of age.—Best Pebble fitted with Crystals, 15s.; Silver ditto, 1l.; Gold ditto, 2l. 2s.; Steel Spectacles with glasses, from 2s. Sent post free, and exchanged if not approved of.
THOMAS HARRIS and SON, Opticians to the Royal Family, 52, Great Russell-street, London. Caution.—Opposite the British Museum Gates. Established Seventy Years.

HATS for INDIA.—ELWOOD'S PATENT AIR-CHAMBER HATS are the best adapted for all tropical climates, being manufactured on a new and scientific principle, by which the head of the wearer is thoroughly protected from the heat of the sun, and perfect ventilation and coolness obtained. This principle is applicable to all kinds of hats, helmets, chakos, hunting caps, &c. May be obtained of the following old-established hatters:—Ashmead and Tyler, 7, Mount-street, Grosvenor-square; Bowler, 19, Royal Exchange; Bailey, 45, Fleet-street; Beardmore, 60, New Bond-street; Briggs, 98, Gracechurch-street; Chatting, 5, Newgate-street; Cole, 24, Bridge-street, Westminster; Donaldson, 33, Warwick-street, Regent-street; Jupp, 228, Regent-street; Lee, 1, Ball-court; Locke, 6, St. James's-street; Skelton, 144, Regent-street; Preedy, 2, Fleet-street; Threadkell, 74, Fleet-street; Reynolds, 125, Strand; Manser and Allenders, Liverpool; or wholesale of the Manufacturers, J. ELLWOOD and SONS, Great Charlotte-street, Blackfriars, London.

LOANS IN CONNECTION WITH LIFE ASSURANCE.
PELICAN LIFE INSURANCE COMPANY.
Established 1797.
NOTICE.—The Directors are prepared to receive Proposals for Loans on approved Securities, in sums of not less than 500l. coupled with one or more Policies of Insurance to be effected in the Pelican Office.
Applications to be made to the Secretary, at the Chief Office of the Company, No. 70, Lombard-street.

DEFENDER FIRE and LIFE ASSURANCE COMPANY, 24, New Bridge-street, Blackfriars.
A BONUS equal on the average to FORTY PER CENT. upon the life premiums paid previously to 1851, was declared at the Ordinary General Meeting, held on the 3rd January instant.
Prospectuses and full information may be had at the Company's Offices, or of any of the Agents.
Respectable active Agents wanted. The usual Commission to Solicitors and others.
JOHN KELDAY, Managing Director.

The attention of CLERGYMEN, BENEVOLENT PERSONS, and Rate-payers of every description, is invited to the Prospectus and Tables of the
OAK MUTUAL LIFE ASSURANCE and LOAN COMPANY,
No. 40, Moorgate-street, London. Completely registered pursuant to Act of Parliament, 7 & 8 Vict. cap. 110.
Any number of copies for distribution may be obtained by personal application at the head office, or by addressing a letter to
C. MANNERS COODE, Secretary.

ALBERT LIFE ASSURANCE COMPANY.
Established 1838.
Principal Office, 11, Waterloo-place, Pall-mall, London.
Indisputable Policies,
Assurances, Annuities, and Endowments granted, and every other mode of provision for families arranged.
Half the Annual Premiums for the first five years may remain on credit for any period until death, on payment of interest at five per cent. per annum.
Parties allowed to go to or reside in most parts of the world without extra premium.
Naval and Military Lives not in active service Assured at the ordinary rate.
Policies forfeited by nonpayment of premium revivable at any time within six months, on satisfactory proof of health, and the payment of a trifling fine.
Policies on the Life of another secured, notwithstanding the part of the world to which the Assured may go.
HENRY WILLIAM SMITH, Actuary and Secretary.

LAW REVERSIONARY INTEREST SOCIETY, for the Purchase of Reversionary Property and Life Interests, and for the Sale of Life Annuities, Endowments, and Reversionary Gifts.—Offices, No. 5, Lincoln's-inn-fields, London.—Capital, 250,000l. in 5000 shares of 50l. each.—Provisionally registered pursuant to Act of Parliament 7 & 8 Vict. c. 110.

TRUSTEES.
The Right Hon. the Lord Chief Baron.
The Hon. Mr. Justice Coleridge.
The Hon. W. C. Spring Rice.
Nassau W. Senior, Esq. Master in Chancery.
John Ellis Clowes, Esq. Temple.

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Chairman—Russell Gurney, Esq. Q.C.
John Ellis Clowes, Esq. Temple.
John M. Clabon, Esq. 21, Great George-street.
Henry Charles Chilton, Esq. 7, Chancery-lane.
John Clerk, Esq. barrister-at-law, Temple.
Daniel A. Freeman, Esq. 34, Old Jewry.
John Gregson, Esq. 6, Angel-court.
Richard W. Jennings, Esq. Doctors'-commons.
Kenneth Macaulay, Esq. Q.C., M.P. Temple.
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Nassau W. Senior, Esq. Master in Chancery.
Nassau J. Senior, Esq. barrister-at-law, Lincoln's-inn.
Alfred H. Shadwell, Esq. 13, Austin-friars.
C. Rankin Vickerman, Esq. Grays-inn.

AUDITORS.
Thomas W. Capron, Esq. Alexander Edgell, Esq.
R. J. Galnsford, Esq.

ACTUARY.
J. J. Sylvester, Esq. M.A. F.R.S.

BANKERS.
Messrs. Moore, Fleet-street.

SOLICITORS.
Messrs. Capron, Brabant, Capron, and Dart, Saville-place, New Burlington-street.

This Society is instituted for the Purchase of Reversions, Life Interests, and every other kind of Property, whether vested or contingent, depending upon the duration of human Life, and for the Grant of Life Annuities, Endowments, and Reversionary Payments.
The Shares on which the Deposit has been already paid considerably exceed half the amount of the capital. The Deed of Settlement will shortly be ready for signature, and the Society will commence business early in February, 1853.
Applications for the remaining Shares to be addressed to Messrs. J. W. and C. Peppercorne, Brokers, 2, Exchange-buildings, or to the Directors, at the Offices of the Society, No. 5, Lincoln's-inn-fields, London.

BRITANNIA LIFE ASSURANCE COMPANY. Established August 1, 1837.
Empowered by special Act of Parliament, 4 Vict. cap. 9.
Col. ROBERT ALEXANDER, Blackheath-park, *Chairman.*
ADVANTAGES OF THIS INSTITUTION.
A TABLE OF INCREASING RATES OF PREMIUM, especially adapted to the securing of Loans or Debts.
HALF-CREDIT RATES, whereby half the Premium only is payable during the first seven years.
SUM ASSURED PAYABLE AT SIXTY, OR AT DEATH, if occurring previously.
ORPHANS' ENDOWMENT BRANCH, affording the means of having Children Educated and Started in Life by securing Annuities, to commence at the Parent's death, and to be paid until a son shall attain his twenty-first, or a daughter her twenty-fifth year of age.
BRITANNIA MUTUAL LIFE ASSOCIATION.
Empowered by her Majesty's Royal Letters Patent.
ANNUAL DIVISION OF PROFITS.
Policy-holders participate in PROFITS after FIVE or SEVEN ANNUAL PAYMENTS, according to the table selected.
Premiums calculated for EVERY THREE MONTHS' difference of age.
HALF-CREDIT POLICIES granted on terms unusually favourable: the unpaid half-premiums being liquidated out of the profits.
At the Annual General Meeting on the 27th April last, a reduction of 20 per cent. was made in the current year's premium on all participating policies.
A Board of Directors in attendance daily at Two o'clock.
Age of the Assured in every case admitted in the Policy.
Medical Attendants remunerated in all cases for their Reports.

(PROPRIETARY.) Extract from the Half-Credit Rates of Premium.			(MUTUAL.) Extract from Table with Particulars in Profits, after Seven Yearly Payments.			
Age.	Half Prem. for First 7 Years.	Whole Prem. from remainder of Life.	Age.	Annual Premium.	Half-Yearly Prem.	Quarterly Prem.
	£ s. d.	£ s. d.	Yrs. Months.	£ s. d.	£ s. d.	£ s. d.
20	1 1 9	2 3 6	30 0	2 7 3	1 4 2	0 12 3
40	1 9 2	2 18 4	3	2 7 6	1 4 4	0 12 4
50	2 2 6	4 5 0	6	2 7 10	1 4 6	0 12 5
60	3 4 4	6 13 4	9	2 8 2	1 4 8	0 12 6

1, Princes-street, Bank, London, 1st Nov. 1852.
E. R. FOSTER, Resident Director.
ANDREW FRANCIS, Secretary.

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PURCHASERS of the FIRST or SECOND EDITIONS of Mr. REES'S COMMON LAW PROCEDURE ACT, are informed that the SUPPLEMENT is now ready, containing all the New Rules and Orders of Hilary Term, 1853; the New Table of Fees, and the New Orders relating to the Admission of Attorneys, and the Examination of Articled Clerks, with Explanatory and Practical Notes, Forms, and copious Index, and Marginal References to the pages of the 1st and 2nd Editions of Mr. Rees's Procedure Act, to which the various rules, &c. relate. Price 4s.
CROCKFORDS, Law Stereo Office.

ALLSOPP'S PALE ALE, in Bottle, may be had, in the highest perfection, at NATHANIEL BARTTY'S STORES, 152, Upper Thames-street.—Quarts, 7s. per dozen; Pints, 4s. per dozen. Also in Casks of 18 gallons and upwards. The quality of these Ales may be fully relied on, as no other Pale or Burton Ales than ALLSOPP'S are supplied from these stores.

TROUT and GRAYLING FLIES, the very choicest Quality, and can be selected from the largest Stock in the World, 2d. each, or 1s. 6d. per dozen. Fly rod, 7s.; best plain Otto, 10s.; with Two Tops, Winch Fittings, &c. 20s.; no better made; 20 yards Patent Line, 2s. 6d. Catalogues and Guides gratis.
JOHN CHEEK, Golden Perch, 102, Oxford-street.

PURCHASERS of PIANOFORTES will find it greatly to their advantage to visit Messrs. COCKS and Co.'s PIANOFORTE SALOON, 6, New Burlington-street, where they will find a variety of superior instruments of all prices, equally remarkable for their purity of tone and facility of touch, manufactured under the personal superintendence of Messrs. C. and Co. from the most durable materials, and warranted not to be affected by any climate. Also many excellent grands, semi-grands, &c. by Broadwood, Collard, and others, a little used. A list of prices and drawings, also testimonials, to be had, gratis and postage free, of ROBERT COCKS and Co., Pianoforte Manufacturers and Music Publishers to the Queen, 6, New Burlington-street, London.

THE ROYAL TURKISH TOWELS.—Under the Patronage of her Majesty the Queen, and which received the Prize Medal at the Great Exhibition. The Brown Linen combines the advantages of a flesh-brush with the qualities most desirable in a towel. The White Cotton is the softest Towel ever made, and absorbs moisture without the necessity of using friction. To be had of all respectable Linendrapers.

BRITISH COLLEGE OF HEALTH, NEW-ROAD, LONDON.—THE HYGEIAN SYSTEM OF MEDICINE.—Morison's Pills, the Vegetable Universal Medicine, is a certain cure for any curable disease, which fact is proved by the experience of all the Members of the British College of Health.
CAUTION.—No chemist or druggist is authorised to sell the medicine.

A NEW DISCOVERY.—MR. HOWARD, Surgeon-Dentist, 52, Fleet-street, has introduced an entirely NEW DESCRIPTION of ARTIFICIAL TEETH, fixed without springs, wires, or ligatures. They so perfectly resemble the natural Teeth as not to be distinguished from the original by the closest observer; they will NEVER CHANGE COLOUR or DECAY, and will be found very superior to any teeth ever before used. This method does not require the extraction of roots or any painful operation, and will give support and preserve teeth that are loose, and is guaranteed to restore articulation and mastication; and that Mr. Howard's improvements may be within the reach of the most economical, he has fixed his charges at the lowest scale possible. Decayed teeth rendered sound and useful in mastication.
52, Fleet-street. At home from Ten till Five.

KEATING'S COUGH LOZENGES.—A CERTAIN REMEDY for disorders of the pulmonary organs—in difficulty of breathing—in redundancy of phlegm—in indolent consumption (of which cough is the most positive indication) they are of unerring efficacy. In asthma, and in winter cough, they have never been known to fail.
Prepared and sold in boxes, 1s. 1½d., and tins, 2s. 9d., 4s. 6d., and 10s. 6d. each, by THOMAS KEATING, Chemist, &c., No. 79, St. Paul's-churchyard, London. Sold retail by all Druggists and Patent Medicine Vendors in the Kingdom.
IMPORTANT TO SINGERS AND PUBLIC SPEAKERS.
"St. Paul's Cathedral, 20th Nov., 1849.
"Sir,—I have much pleasure in recommending your Lozenges to those who may be distressed with hoarseness. They have afforded me relief on several occasions when I scarcely able to sing from the effects of catarrh. I think they would be very useful to clergymen, barristers, and public orators.
"I am, Sir, yours faithfully,
"To Mr. Keating." "THOMAS FRANCIS, Vicar-Choral."

ANOTHER TESTIMONIAL IN FAVOUR OF
DR. LOCOCK'S PULMONIC WAFERS
for ASTHMA, CONSUMPTION, COUGHS and COLDS.
From Mr. A. Scott, 48, Trongate, Glasgow.
"Dec. 23, 1852.
"I am glad to say that the demand for Dr. Locock's Pulmonic Wafers has commenced this season very briskly. I believe I have in stock every Cough Medicine which has been advertised, either in times past or present; but there is not one of them which has gained the same popularity as your Wafers. In severe Coughs, Asthma, and where there is a tendency to Consumption, the working classes, and others who cannot well afford it, prefer to pay 2s. 9d. for a box of Pulmonic Wafers, to boxes of similar size which cannot be got for a much smaller sum. I think this is an unmistakeable proof of their efficacy.
A. Scott, 48, Trongate, Glasgow."
To SINGERS and PUBLIC SPEAKERS they are invaluable for strengthening and clearing the voice. They have a most pleasant taste.—Price 1s. 1½d., 2s. 9d., and 11s. per box. Sold by all medicine venders.

RUPTURES.—BY ROYAL LETTERS PATENT.
THE MOC-MAIN LEVER TRUSS is allowed by upwards of 200 Medical Gentlemen to be the most effective invention in the curative treatment of Hernia. The use of a steel spring, so often hurtful in its effects, is here avoided; a soft bandage being worn round the body, while the requisite resisting power is supplied by the Moc-Main Pad and Patent Lever, fitting with so much ease and closeness that it cannot be detected, and may be worn during sleep. A descriptive circular may be had, and the Truss (which cannot fail to fit) forwarded by post, on the circumference of the body two inches below the hips being sent to the Manufacturer, Mr. WHITE, 228, Piccadilly, London.
An Umbilical Truss on the same principle.
Every description of Riding Belts, Elastic Stockings, Spinal Carotic Supporters and Suspenders, on new and approved principles, with every kind of Surgical Bandages.

NOTICES OF NEW LAW BOOKS.

The New Rules and Orders of Hilary Term 1853; *The New Table of Fees in the Common Law Courts; and the New Rules for the Admission of Attorneys and Examination of Articled Clerks; with Notes, References, Forms, and copious Index.* By R. MALCOLM KERR, Esq. Editor of "Kerr's Common Law Procedure Act," &c. London: Crockford.

This comprehensive little book is a necessary addendum to the Procedure Act, which without it is useless and unintelligible. Mr. KERR has not only introduced many explanatory notes, and some new forms, and he has given marginal references to the sections of the Procedure Act, and the pages both of the first and second of his editions of it, to which each of the new orders applies, so that the practitioner is enabled to refer readily, and to read the Act with the rules that carries it out. Thus it serves to make both the editions of this book complete for the use of the practitioner.

The Lawyer's Pocket Book for 1853. London: Crockford.

In courts it continually happens that reference is required to be made to the Almanac for the past, as well as to that of the present year, to ascertain the moon's rising, the dates and days, &c. This is here given, in addition to all that sort of information wanted by Lawyers in courts or in business, such as a complete Table of Stamps, Tables for Calculating Interest, Time Tables at Common Law, Equity, and Bankruptcy; Interest Tables, Regal Table, and such like facts and figures. This is printed in a small pocket volume, bound in cloth, and sold for *sixpence*.

PROMOTIONS, APPOINTMENTS, &c.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

COMMISSIONS SIGNED BY LORD-LIEUTENANTS.

COUNTY OF DORSET.—Lieut.-Col. Sir Henry Bayly, K.H.; Rear-Admiral Joseph Gulston Garland,; John Scott Bankes, Esq; John Tatchell Bullen, Esq.; Charles Parke, Esq.; George Cartwright, Esq.; Robert Hassell Swaffield, Esq.; William Eliot, Esq.; Herbert Williams, Esq. to be deputy-lieutenant.

(*Substituted for the Gazette of Tuesday, January* 11.)

COUNTY PALATINE OF DURHAM.—Richard Lamb, Esq. to be deputy-lieutenant.

COUNTY OF ROSS. — Sir Alexander Mackenzie, Bart.; Sir Kenneth Mackenzie, Bart.; Keith Wm. Stewart Mackenzie, jun. Esq.; Louis Mark Mackenzie, Esq.; James Falconer Gillanders, Esq.; Wm. Cruickshank Robertson, jun. Esq.; Kenneth Mackenzie, jun. Esq.; John Andrew Shaw Mackenzie, Esq.; and John St. John Munro, jun. Esq., to be deputy-lieutenants.

COUNTY OF INVERNESS.—The Right Hon. Lord Saltoun; Colonel John Gordon; Arthur Forbes, Esq.; John Frederic Baillie, Esq.; Æneas William Mackintosh, Esq.; George Rainey, Esq.; Thomas Porter Banel Biscoe, Esq.; the Hon. Simon Fraser; Captain William Fraser Tytler, younger; Captain John Grant, younger; Evan Montague Baillie, Esq. younger; Patrick Grant, Esq.; and William Simpson, Esq., to be deputy-lieutenants.

JOURNAL OF PROPERTY.

Public Sales.

On Monday, February 31, 1853.

By Messrs. JOSEPH PARSONS and SON, Auctioneers. Brighton, No. 9, in Marine-square.

A freehold lot at 60*l.* per annum, by order of the Court of Chancery, for 1147*l.*

MONEY MARKET.

ENGLISH FUNDS.	Sat.	Mon.	Tues.	Wed.	Thurs.	Frid.
Bank Stock	227½	228½	228½	228½	228½	227½
3 ℔ Cent. Reduced Annuities	100½	100½	100½	100	99½	100
3 ℔ Cent Consols Annuities..	99⅝	99½	99½	99½	99½	99½
Consols for Account	99⅝	99½	99½	99⅝	99⅝	99½
New 3 ℔ Cent. Annuities	..	..	..	..	..	..
New 3½ per Cent. Annuities..	103½	103½	103	103½	103½	103½
Long Annu. (exp. Jan. 5, 1860)	6⅛	6⅛	6⅛	..	6⅛	6⅛
Do. 30 yrs. (exp. Oct. 10, 1859)	..	..	..	..	..	..
Do. 30 yrs. (exp. Jan. 5, 1860)	6⅛	..	..	..	..	..
India Stock	271½	..	..	271½	267	..
India Bonds (1,000*l.*)	..	69	70	..	68	..
Do. do. (under 1,000*l.*)	70	69	..	68	68	..
South Sea Stock	..	..	110⅜	..	..	..
Do. do. Old Annuities	..	..	..	..	..	90½
Exchequer Bills, 1000*l.*	57*	57*	55*	56*	55*	..
Do. do. 500*l.*	57*	..	..	..	55*	..
Do. do. Small	57*	61⅛	60*	55*	55*	..

* Premium.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

HEDGE.—On the 27th ult. at the Knoll, Kingston-hill, Surrey, the wife of Edward Hedge, Esq. barrister-at-law, of a son, stillborn.

MARRIAGE.

LAWFORD—POPE.—On the 1st inst. at St. Leonard's Church, Exeter, Lindsay Bowring Lawford, Esq. of Lincoln's-inn, barrister-at-law, to Susan Parr Sarti, third daughter of the late William Parr Pope, Esq. of Exeter,

DEATHS.

WHITEHOUSE.—On the 30th ult. at Mountfield-house, Musbury, Devon, the residence of her son-in-law, W. T. Hallett, Esquire 50, Caroline, the wife of Richard Whitehouse, Esq. of the Middle Temple, barrister-at-law.

THE GAZETTES.

Bankrupts.

Gazette, Feb. 1.

BETTERIDGE, JAMES, tea-dealer, Oxfordshire, Feb. 11, at eleven, March 10, at twelve, Basinghall street. Off. as. Bell. Sols. Hill and Matthews, St. Mary Axe. Petition, Jan. 17.

LANGDALE, JOHN, lucsman, Feb. 14 and March 7, at twelve, Liverpool. Off. as. Morgan. Sols. Robinson and Atkinson, Hull and Beverley, and Evans and Son, Liver-pool. Petition, Jan. 29.

MASON, JOSEPH FREDERICK, draper, Dover, Kent, Feb. 15 and March 15, at two, Basinghall-street. Off. as. Groom. Sols. Sole and Co. Aldermanbury. Petition Jan. 28.

SUMNER, MILES, brewer, Liverpool, Feb. 14 and March 7, at eleven, Liverpool. Off. as. Cazenove. Sols. Francis and Almond, Liverpool. Petition, Jan. 22.

WILLIAMS, EDWARD, block manufacturer, Feb. 14 and March 7, at eleven, Liverpool. Off. as. Morgan. Sol. Roby, Liverpool. Petition, Jan. 27.

Gazette, Feb. 4.

BAKER, JOSEPH, coal merchant, Old Brentford, Feb. 12, at one, March 18, at twelve, Basinghall-street. Com. Goulburn. Off. as. Nicholson. Sols. Dimmock and Burbey, 9, Suffolk-lane. Petition, Feb. 1.

DAVIES, THOMAS, grocer and draper, Aberavon, Glamorganshire, Feb. 17 and March 17, at eleven, Bristol. Com. Stephen. Off. as. Miller. Sol. Prideaux, Bristol. Petition, Jan. 24.

DAVISON, WILLIAM, gun maker, Newcastle-upon-Tyne, Feb. 16, at eleven, March 16, at one, Newcastle-upon-Tyne. Com. Ellison. Off. as Baker. Sols. Ingledew and Daggett, Newcastle-upon-Tyne; and Williamson, Hill, and Williamson, 10, Great James-street, Bedford-row. Petition, Feb. 2.

ENSER, GEORGE, and PEARCE, GEORGE, grocers, tea dealers, and cheesemongers, 207, Bethnal-green-road, Feb. 16, and March 16, at twelve, Basinghall-street. Com. Fonblanque. Off. as. Graham. Sol. Chidley, 19, Gresham-street, City. Petition, Dec. 29.

MARSH, GEORGE, draper, Carnaby-street, Golden-square, Feb. 15, at half past eleven, March 15, at one, Basinghall-street. Com. Fonblanque. Off. as. Stansfeld. Sols. Ashurst and Son, 6, Old Jewry. Petition, Jan. 22.

OWEN, ROBERT, tailor and draper, Manchester, Feb. 14 and March 7, at twelve, Manchester. Off. as. Pott. Sol. Clarke, Leeds. Petition, Jan. 31.

PEARCE, NATHANIEL, stationer and printer, 8, Silver-street, Wood-street, Cheapside, Feb. 9 and March 15, at half-past one, Basinghall-street. Com. Fonblanque. Off. as. Stansfeld. Sol. Peddell, 142, Cheapside. Petition, Jan. 28.

SKELTON, WILLIAM, jun. blacksmith, Fowey, Cornwall, Feb. 10, at one, March 8, at eleven, Exeter. Com. Bere. Off. as. Hirtzel. Sols. Bishop, Fowey; and Bishop and Pitts, Exeter. Petition, Jan. 26.

STONE, HENRY, harness maker, 117, Edgeware-road, Feb. 11, at eleven, March 19, at one, Basinghall-street. Com. Goulburn. Off. as. Pennell. Sol. Hopgood, 14, King William-street, Strand. Petition, Jan. 29.

BANKRUPTCIES ANNULLED.

Gazette, Feb. 1.

HUNT, RICHARD, hosier, Kingston-upon H[illegible] Oct. 6.

Gazette, Feb. 4.

BASIRE, JAMES, brickmaker and engraver, 4, Red Lion-square, and North Hyde, near Southall, Middlesex, Dec. 2.

Dividends.

BANKRUPT ESTATES.

Official Assignees are given, to whom apply for the Dividends.

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Assignments for the Benefit of Creditors.

Gazette, Jan. 25.

Adshead, G. H. draper, Newcastle-upon-Tyne, Jan. 6.—Trusts. G. Booth and L. Roberts, merchants, Manchester. Sol. E. Brookes, Manchester.—*Birks*, J. tea and coffee dealer, Huddersfield, Yorkshire, Jan. 8. Trusts, W. Birks, farmer, Edlington, near Doncaster, and J. Terley, tea dealer, Huddersfield. Sol. W. Barker, Huddersfield.—*Cary*, J. boot and shoe maker, Ipswich, Jan 17. Trusts. H. C. Bond, and W. and A. J. Turner, leather cutters, Ipswich. Sol. S. B. Jackaman, Ipswich.—*Day*, E. grocer, Edgware-road Jan. 12. Trust, J. I. Travers, wholesale grocer, St. Swithin's-lane. Sol. M. Travers, Throgmorton-street—*Johnson*, C. B. miller, merchant, and farmer, Wortwell, Norfolk, and Mendham, Suffolk, Jan. 18. Trusts. T. L. Taylor, Esq. Starston; H. L. Hudson, gentleman, and W. Cann, bank agent, both of Redenhall. Sols. Harveys and Haulsons, Harleston.—*Wilkinson*, T. stone mason, Manchester, Jan. 11. Trusts. J. Rhodes, stone merchant, Windy Bank, near Littleborough, Lancaster; and G. Lomas, corn dealer, Manchester. Sols. Slotter and Tooke, Manchester.

Gazette, Jan. 28.

Adams, E. draper, Addington-place, Camberwell, Surrey, Jan. 17. Trusts. A. Calcicott, and J. P. Foster, warehousemen, Wood-street, Cheapside. Sols. Reed, Langford, and Marsden, Friday-street, Cheapside.—*Bate*, W. butcher, Camelford, Cornwall, Jan. 18. Trusts. T. H. Avery, merchant, Boscastle, and B. Jeffery, yeoman, Lanteglos, by Camelford. Sol. W. D. King, Camelford.—*Bellry*, J. bookseller, Mumps, Oldham, Jan. 1. Trust. J. Halliday, public accountant, Manchester. Sol. H. Wheeler, Middleton, near Manchester.—*Johnson*, W. B. printer, bookseller, and stationer, Beverley, Yorkshire, Jan. 17. Trusts. J. Tiffet, gentleman, and D. Boyes, innkeeper, both of Beverley. Sol. T. Crust, Beverley.—*Meanwell*, W. mercer and draper, now or late of Goole, Yorkshire, Nov. 20. Trust. W. Stanliffe, farmer, Rawcliffe. Sol. J. Wilson, Goole.—*White*, J. and *O'Donnell*, W. cloth merchants, Leeds, Jan. 4. Trusts. J. Jubb, Batley. W. Ibbotson, Yeadon, and J. Wilby, Cossit, cloth manufacturers. Sols. J. Prest, and F. Ferns, both of Leeds.—*Wills*, J. W. builder, Alverstoke, Southampton, Jan. 15. Trusts. H. Dashwood, timber merchant, and S. Blake, brewer, both of Gosport. Sols. J. and E. Hoskins, Gosport.

Partnerships Dissolved.

Gazette, Jan. 25.

Brasher, C., and E., F. M. and *Jones*, W. brewers, Chester, as regards F. M. Brasher, Jan. 15. Debts paid by remaining partners.—*Bunbury*, A. and *Shuttleworth*, M. A. keepers of a school, Liverpool, Jan. 22.—*Cooper*, J. and J. builders, Castle Bromwich, Dec. 21.—*Danby*, C. and T. fringe manufacturers, Coventry-street, and New Bond-street, Dec. 31. Debts paid at Coventry-street, by C. Danby, and at New Bond-street, by T. Danby.—*Everard*, E., W. and J. E. bankers, King's Lynn, as regards E. Everard, Dec. 31.—*Fearnley*, J. *Heaton*, C. and *Donisthorpe*, J. machine woolcombers, Bradford, Jan. 19. Debts paid by Heaton and Donisthorpe.—*Fogarty*, P. S. and *Okell*, J. grocers, Liverpool, Jan. 14.—*Goldz*, G. and J. farmers, Warminghurst and Goring, Sept. 29.—*Hanna*, R. *Lewis*, T. and *Jeremiah*, R. iron founders and iron dealers, Llangafelach, Jan. 19.—*Hodges*, B. *Colyer*, C. and *Hodges*, T. farmers, Vincent, Isle of Thanet, Jan. 6.—*Jarratt*, J. R. H. and *De la Crouse*, J. T. news agents and tobacconists, Water-lane and Tower-street, Jan. 20.—*Myerscough*, T. *Rawson*, J. N. and *Steele*, J. counterpane and bedquilt manufacturers, Manchester and Bolton, Jan. 15. Debts paid by Myerscough.—*Pattison*, W. *Davison*, T. *Greener*, J. and *Elliot*, W. iron founders, Hexham, as regards Greener, Dec. 31.—*Richardson*, W. and *Robinson*, G. brick and tile manufacturers, Kingswinford, Jan. 22. Debts paid by Richardson. *Ridge*, J. *Shackels*, J. and *Ridge*, W. booksellers and stationers, Newark-upon-Trent, Dec. 31.—*Roper*, W. and *Parker*, J. smallware dealers, Manchester, Jan. 19. Debts paid by Parker. *Shreeve*, G. and *Chilwell*, E. die sinkers, Birmingham, Dec. 25. Debts paid by Shreeve.—*Thackray*, M. and W. booksellers and stationers, and agents and collectors of rents, Manchester, June 24. Debts paid by W. Thackray.—*Thompson*, J., H. and J. ship and insurance brokers, Cornhill, April 30. Debts paid by J. and J. Thompson. *Walton*, T. *Cape*, T. *Walton*, J. and *Shaw*, W. general Manchester warehousemen, Manchester, Jan. 21. Debts paid by T. Walton, J. Walton, and W. Shaw.—*Wivell*, A., *Finley*, E., *Rogers*, T., and *Didier*, A. artists, Birmingham, Jan. 24.

Gazette, Jan. 28.

Ball, S. and *Oppenheim*, A. merchants, Manchester, Jan. 1.—*Banks*, R. and *Butler*, T. coal and lime dealers, Toll-end and Sea-brook, Tipton, and Hallend, Westbromwich, Jan. 25. Debts paid by Banks, at Toll-end and Sea-brook, and by Butler, at Hallend.—*Banks*, R. S. and A. S. upholsterers and general dealers, Chippenham, Jan. 20. Debts paid by A. S. Banks.—*Barker*, T. H., *Haslett*, J. and *Barker*, F. cloth and blanket merchants, Leeds, as regards Haslett, Jan. 1.—*Bernouilli*, E. and E. and *Greener*, F. W. merchants, Oct. 11.—*Bradford*, J. and *Carson*, J. tobacconists, Liverpool, Jan. 21.—*Clayton*, J. M., *Myers*, S., *Kenny*, C., *Hurst*, D. W. S. and H. W. printers, Tavistock-street, Covent-garden, Feb. 11.—*Christie*, P., *Hunt*, R. and *Burk*, J. brewers, Huddersfield, as regards Hunt, Jan. 26.—*Fairbairn*, W., T. and W. A. engineers, Manchester, as regards W. Fairbairn, Dec. 31.—*Fletcher*, H., *Woolley*, R., *Sutton*, J. and *Heywood*, A. power-loom manufacturers, Manchester, Jan. 17. Debts paid by Heywood.—*Fothergill*, T., R. and R. ironmasters, Aberdare, Abernant, and Taff Vale, July 16. Debts paid by Richard Fothergill.—*Fothergill*, T., R. and R. Carleon tin works, Carleon, July 16. Debts paid by T. Fothergill.—*Galpin*, W. and *Strawson*, H. chemists, grocers, and tobacconists, Crowkerne, Dec. 16, 1851.—*Gem*, R. W. jun. and *Docker*, W. attorneys and solicitors, Birmingham, Jan. 1. Debts paid by Gem, Docker, and Sutton, Birmingham.—*Giles*, F. and *Stones*, J. and J. ironmasters, Tipton and Rowley Regis, Jan. 27.—*Hrisch*, J. D. and *Deeglore*, H. G., timber merchants, Little Windmill-street, Piccadilly, Dec. 31.—*Holliday*, J., *Wise*, J., *Farridge*, R. J., and *Jackson*, R., merchants, Canton and Shanghai, Hong Kong, Manilla, and Manchester, as regards Jackson, Jan. 26.—*Hollingsworth*, N., *Tyerman*, C. R., *Johnston*, J., solicitors and attorneys, Gresham-street, as regards Johnston, Jan. 17.—*Isaacs*, A. *Phillips*, H., cigar manufacturers, Shoreditch, Jan. 26.—*Jay*, C. and G. fishmongers, Norwich, Jan. 20. Debts paid by C. Jay.—*Jordan*, L. J. and H. J. vendors of patent medicines, Berners-street, Oxford-street, Jan. 27.—*Lever*, T. and *Barratt*, B., cotton waste dealers, Little Bolton, Jan. 24. Debts paid by Lever.—*Mulliner*, G. N. and *Heigate*, G., lightermen, Wapping, High-street, Jan. 15.—*Oates*, R., and *Smith*, J., stone masons, Halifax, Jan. 25. Debts paid by Oates.—*Owen*, C. and *Lepick*, W., britannia metal manufacturers, Sheffield, Jan. 25.—*Parsons*, J., and *Gill*, C. G., ironmongers, Leicester, Jan. 24. Debts paid by Parsons.—*Partington*, J., *D'Orville*, E. and *Schunk*, H. E. bleachers, Butterworth, Rochdale, April 8. Debts paid by Schunk.—*Partington*, J., *D'Orville*, E. and *Schunk*, M. bleachers, Butterworth, Rochdale, Dec. 1850, to Jan. 1851.—*Prendiville*, J. and D. flour and provision dealers, Birkenhead, Jan. 25. Debts paid by J. Prendiville.—*Richardson*, J. jun. and *Danby*, J. R. wine and spirit merchants, Liverpool, Jan. 21.—*Rose*, T., *Higgins*, I. and *Rose*, W. iron-masters, Bradley-field Ironworks, near Bilston, as regards W. Rose, Jan. 29. Debts paid by T. Rose and Higgins.—*Sales*, E. and *Thomas*, J. drapers, grocers, mercers, and hatters, Tenby, Jan. 1.—*Schlesinger*, J. and *Bamberger*, Z. merchants, Old Jewry, Jan. 1.—*Stocks*, B. and J. woolstaplers and leather manufacturers, Leeds, Dec. 31.—*Way*, F. and *Locke*, G. straw-hat warehousemen, Goldsmith-street, Foster-lane, Jan. 1. Debts paid by Locke.

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MR. LEREW will SELL by AUCTION, at the MART, on THURSDAY, FEBRUARY 17, at THREE, in ONE, in Ten Lots, by order of Mr. Radford, the well-built long LEASEHOLD ESTATE, comprising a handsome detached Villa, and Two Private Residences, 16 and 17, Camden-street North; and 21, Georgiana-street, near the East and West India Dock Road; in Lots, held separately and direct at Peppercorns; also, Three genteel Residences, 12, 13, and 14, Pratt-street, Camden Town, held direct at the trifling ground-rent of 8l. on the three; also, capital Business Premises, 105, Drummond-street, Euston-square; together with well-secured long leasehold improved Ground-Rents, amounting to 31l. per annum.

May be viewed by permission, and Particulars of Sale had, of JOHN KERSEY, Esq. 24, Euston-square; at the Mart; and of Mr. LEREW, Auctioneer, Cardington-street, Hampstead-road, near the Euston Station.

KENSINGTON.—Valuable Freehold Estates, producing 160l. per annum.

MR. ORPWOOD will SELL by AUCTION at the MART, on WEDNESDAY, FEBRUARY 16, at TWELVE, in Four Lots, Four substantial FREEHOLD HOUSES, SHOPS, and PREMISES, 51 and 52, High-street, Kensington, respectively let on lease, at 51l. and 65l. a year; and 15 and 16, King-street adjoining occupied by tenants at 30 and 17 years standing. May be viewed by tenants' leave, and printed Particulars obtained on the premises; at the Auction Mart; of Messrs. C. and C. H. CLARK, Solicitors, 36, Finsbury-place; and Mr. ORPWOOD, Estate Valuer, Artillery-place, Finsbury-square.

LEADENHALL-STREET, NEAR CORNHILL.—Important Freehold Property, Land-tax Redeemed.—To Public Companies, Capitalists, &c.

MESSRS. ELLIS and SON are directed to SELL by AUCTION, at GARRAWAY'S, on TUESDAY, FEBRUARY 22, at TWELVE, in One Lot (unless an acceptable offer be previously made by private contract) the capital and extensive PREMISES, 145, Leadenhall-street, comprising a spacious Mansion, with extensive arched vaults, large space of Ground at the back, and a Suite of capital modern Offices in the front court, the whole about 150 feet in depth. The above property is situate in one of the most important localities in the City, and is admirably adapted to a Public Company, or offers a very eligible opportunity for Investment, as a large and secure rental may be obtained by its being appropriated to first-class Mercantile Offices, now much required. Immediate possession may be had. To be viewed by permission. Printed particulars may be had fourteen days prior to the sale, of J. TRUPPY, Esq. Solicitor, 2, Winchester-buildings, Winchester-street; at GARRAWAY'S; and of Messrs. ELLIS and SON, Auctioneers and Estate Agents, 38, Fenchurch-street.

VALUABLE LINCOLNSHIRE ESTATES and POLICIES of ASSURANCE, which will be offered for SALE by AUCTION by Mr. BROODEN at the SARACEN'S HEAD, in the City of Lincoln, on FRIDAY, the 18th day of FEBRUARY, at FOUR, P. M. precisely.—The MANOR of GREETHAM, extending over Twenty-three Parishes, together with excellent Residences, Farmsteads, Public-house, Cottages, and 590 acres, 3 roods, 27 perches of first-rate Wold Land, all in a Ring Fence, and within Five Miles of Horncastle; also an ESTATE at WADDINGTON, consisting of almost substantial Residence, very extensive Farm Buildings, and 304 acres, 3 roods, 18 perches of high, dry, and deep-soil Heath Land, with a proportion of Arable and Pasture, extending from the brow of the Hill to the River, all in a Ring Fence, and within Four Miles of Lincoln, together also with several Cottages, Gardens, and Two excellent Arable Closes, called "Broadgate," containing together 4 acres, 1 rood, 18 perches, in the Village; and the undermentioned Life Policies:—

Office.	Present Age if Life Assured.	Annual Payment.	When due.	Amount Assured.	Bonuses.
				£	£
London Life Association		Originally 25l. but now only 7l. 10s.	1st July.	1000	
Ditto		Originally 90l. but now only 30l. 14s.	Ditto	3000	
Ditto	38	Originally 74l. but now only 22l. 4s.	Ditto	1000	
Law Life Assurance Society		128l. 17s. 6d.	6th April.	3000	1140
Ditto		67l. 18s. 4d.	... ...	2000	1174
Yorkshire	42	26l. 12s. 4d.	December.	1000	

The two Estates will be offered in Two separate Lots; and if not so sold, Greetham will be divided and offered in Three Lots, and Waddington in Eight. Each Policy will be sold separately.

Detailed Particulars, with Lithographic Plans, and all further information, may be obtained of Mr. THOMAS GRANTHAM, of Stainfield, near Wragby; Mr. H. B. CAMPBELL, Solicitor, Nottingham; or at my Office in Lincoln.

RICHARD CARLISLE.

10th January, 1852.

DESTRUCTIVE FIRE IN HAYDON-SQUARE.—MILNER'S HOLDFAST SAFES—the strongest Safeguards extant against Fire, Robbery, or Violence—of all sizes, at the Depot, 47A, MOORGATE-STREET, CITY.

"95, Minories, London, July 26, 1852.

"Messrs. Thos. Milner and Sons,

"Gentlemen,—At the destructive fire in Haydon-square, on the 15th instant, in which our entire stock of oils, turpentine, coordage, canvas, &c. was destroyed, the Books and Papers in our Milner's Safe were preserved uninjured. The Safe was only dug out of the ruins this evening, and, from the severe heat it had undergone, we expected everything within it to be consumed.

"We have great pleasure in testifying to the utility of your Safes, and in strongly recommending them to the public, and will thank you to send us another of the same size.

"We are, gentlemen, yours respectfully,

"COUZENS and POTTER."

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LONDON:—Printed by JOHN CROCKFORD, of 29, Essex-street Strand in the City of Westminster, at his Printing-office, 35, Fetter-street, New Turnstile, in the Parish of St. Giles, Bloomsbury, and Published by the said JOHN CROCKFORD at 29, Essex-street aforesaid, on Saturday, the 7th of February, 1852.

THE LAW TIMES,

FOR THE LEGISLATOR, THE MAGISTRATE, AND THE LAWYER.

VOL. XX.—No. 515. SATURDAY, FEBRUARY 12, 1853. Price 1s.

Money, Wanted and to Lent.

MONEY.—MORTGAGE.—60,000*l.* principally "Trust Money," to LEND, in convenient sums, on Freehold Land security of adequate value, for a term of years if required, at a low rate of interest.
Apply to Messrs. YARDBOUGH and WILKINSON, Solicitors, 44, Lincoln's-inn-fields, London.

MONEY, at 3*l.* 10*s.* per cent.—30,000*l.* to be LENT, upon eligible Freehold Security, either altogether or in sums of about 10,000*l.* or upwards.
Letters to be sent to the LAW TIMES Office, addressed "D. M." Solicitor, Lancashire.

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LAW.—ARTICLED CLERK.—A Gentle- man, of respectable family and connections, who has served about Half his Clerkship in an office in a large provincial city, wishes to be ASSIGNED for the remainder of his Term to a SOLICITOR of respectable Practice in London or the neighbourhood, in whose office he would be glad to make himself useful. A reasonable Premium will be paid (if required), and most respectable References given.
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LAW TIMES Office, 29, Essex-street, Sept. 17, 1852.

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THE FIELD; or COUNTRY GENTLEMAN'S NEWSPAPER, of Saturday, February 12, contains, with Illustrations of "Going Up" and "Coming Down" in Surrey, a Letter from Mr. Jorrocks, X.M.F.H. to Jupiter Pluvius—The Law of the Turf—A List of the York and Ainsty Rounds—A List of the Royal Yacht Squadron—and all the Home and Foreign and Sporting News of the Week, with the Town and Country Grain and Cattle Markets. The FIELD is published at Four o'clock every Saturday Morning, in time for all the early Morning Mails, at the Office, 4, Brydges-street, Covent-garden, price Sixpence.

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On the 19th of February will be published, 4 vols. 8vo. Four Guineas, cloth, (dedicated by permission to her Majesty the Queen,) the Third Edition of

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LEEDS BOROUGH SESSIONS.—NOTICE IS HEREBY GIVEN, that the NEXT GENERAL QUARTER SESSIONS OF THE PEACE FOR THE BOROUGH OF LEEDS, in the County of York, will be holden before THOMAS FLOWER ELLIS, Esq., Recorder of the said Borough, at the COURT HOUSE, in Leeds aforesaid, on FRIDAY, the 4th day of MARCH next, at Nine of the clock in the Forenoon; at which time and place all Persons summoned as GRAND JURORS; and also all Prosecutors, Witnesses, Persons bound by Recognizances, Police Officers, and Constables, are required to attend.
And Notice is hereby also given, that all Persons summoned to the said Court of Quarter Sessions as PETTY JURORS, are required to give their attendance at the place aforesaid, at Half-past Nine of the clock in the forenoon of the said 4th day of March next.
And Notice is hereby also given, that all Appeals will be tried and all Proceedings under the Highway Acts will be heard at the opening of the Court, on the Second Day of the said Sessions, and that the List of such Appeals will be called over by the Clerk of the Peace, at Half-past Nine of the clock in the Forenoon of the said Second Day; and that all Appeals in which the Parties shall not then appear, by themselves or Counsel, will be struck out. And that all such Appeals and Proceedings as aforesaid as shall not be disposed of on the Second Day of the said Sessions will be taken as soon as the Criminal Business of the said Sessions shall be concluded.
And Notice is hereby also given, that all Appeals to be entered for Trial at the said Sessions must be entered with the Clerk of the Peace before the opening of the Court on the Second Day of the said Sessions, unless the contrary shall be allowed by the Court on motion by Counsel, or in case of absence of Counsel by Attorney, on special grounds stated and duly verified.
And Notice is hereby also given, that all Appellants against Orders of Removal to which the statute 11 & 12 Vict. c. 31, is applicable, are required at the time of entering the Appeal with the Clerk of the Peace to file with him a Copy of the Order of Removal, of the Notice of Chargeability, of the Statement of the Grounds of Removal, and of the Grounds of Appeal. By Order,
JAMES RICHARDSON, Clerk of the Peace for the said Borough of Leeds.
Clerk of the Peace's Office, No. 11, Albion-street, Leeds, 4th February, 1853.

WAREHOUSING DEPARTMENT, BAZAAR, BAKER-STREET, and KING-STREET.—Furniture, Pictures, and other Property received for Safe Keeping in this department, which has been built fire-proof, is thoroughly ventilated, and free from damp.
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[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

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COUNTY OF SALOP.—Charles Spencer Lloyd, Esq. to be deputy-lieutenant.

COUNTY OF CARNARVON.—The Rev. James Vincent Vincent; Robert Lloyd Jones Parry, Esq.; Thomas Love Duncombe Jones Parry, Esq.; and Isaac Walker, Esq. to be deputy-lieutenants.

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COUNTY OF STAFFORD.—William Matthews, Esq.; and Edward Bagnall Dimmock, Esq., to be deputy-lieutenants.

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BERKS.—John Jeane Coney, Esq. to be deputy-lieutenant.

GLOUCESTERSHIRE.—Thomas Gambier Parry, Esq.

The Attorney-General has appointed Thomas Hull Terrell, Esq. to represent him as counsel in all cases relating to charities in the Courts of Chancery, the office lately held by Mr. James, Q. C.

NEW SHERIFFS.

At the Court at Windsor, Feb. 7, 1853, present the Queen's most excellent Majesty in council, the following gentlemen were appointed sheriffs for the year 1853:—

Bedfordshire.—Henry Littledale, Esq. Kempston-grange.

Berkshire.—Head Pottinger Best, Esq. Donnington Castle.

Buckinghamshire.—Abraham Darby, Esq. Stoke-court.

Cambridgeshire and Huntingdonshire.—William Whitting, Esq. Manea and Thorney-abbey.

Cumberland.—Francis Baring Atkinson, Esq. Rampsbeck-lodge.

Cheshire.—John Hurleston Leche, Esq. Cardenpark.

Derbyshire.—Sir John Harpur Crewe, Bart. Calke-abbey.

Devonshire.—Edmund Bastard Henry Gennys, Esq. Whitleigh-hall.

Dorsetshire.—William Bragge, Esq. Sadborow.

Durham.—Frederick Acklom Milbank, Esq. Hart.

Essex.—John Gurdon Rebow, Esq. Wivenhoe-park.

Gloucestershire.—John Raymond Barker, Esq. Fairford-park.

Herefordshire.—Will. Money Kyrle, Esq. Homme-house.

Hertfordshire.—Sir Thomas Gage Saunders Seabright, Bart. Beechwood-park.

Kent.—Francis Colville Hyde, Esq. Syndale-house, Ospringe.

Leicestershire.—Frederick Wollaston, Esq. Shenton.

Lincolnshire.—Joseph Livesey, Esq. Stourton-hall.

Monmouthshire.—Henry Bailey, Esq. Nant-y-Glo.

Norfolk.—Daniel Gurney, Esq. North Runcton.

Northamptonshire.—Cary Charles Elwes, Esq. Great Billing.

Northumberland.—Walter Selby, Esq. Biddleston.

Nottinghamshire.—Thomas Spragging Godfrey, Esq. Balderton.

Oxfordshire.—James Morrell, jun. Esq. Oxford.

Rutlandshire.—John Parker, Esq. Preston.

Shropshire.—Algernon Charles Heber Percy, Esq. Hodnet-hall.

Somersetshire.—Francis Henry Dickinson, Esq. Kingweston.

Staffordshire.—Edward Buller, Esq. Dilhorne-hall.

County of Southampton.—John Shelley, Esq. Avington-house, near Winchester.

Suffolk.—The Right Hon. John Lord Henniker, Thornham-hall.

Surrey.—Thomas Grissell, Esq. Norbury-park, Leatherhead.

Sussex.—Francis Barchard, Esq. Horsted-place.

Warwickshire.—Sir William Edmund Cradock Hartopp, Bart. Four-oaks-hall, Sutton Coldfield.

Westmoreland.—John Wakefield, Esq. Sedgwick-house, Kendal.

Wiltshire.—Francis Leyborne Popham, Esq. Littlecot.

Worcestershire.—Charles Noel, Esq. Bell-hall, near Belbroughton.

Yorkshire.—Andrew Montagu, Esq. Melton-park, Doncaster.

WALES.

Anglesey.—Richard William Pritchard, Esq. Erianell.

Brecon.—Postponed.

Carnarvon.—Robert Vaughan Wynne Williams, Esq. Llandudno.

Carmarthen.—The Hon. William Henry Yelverton, Whitland-abbey.

Cardigan.—Lewis Pugh, Esq. Aberyswith.

Denbigh.—Pierce Wynne Yorke, Esq. Dyffryn Aled.

Flint.—Whitehall Dod, Esq. Llanerch.

Glamorgan.—Richard Hill Miers, Esq. Ynispenllwch.

Montgomery.—John Naylor, Esq. Leighton-hall.

Merioneth.—Thomas Arthur Bertie Mostyn, Esq. Kylan.

Pembroke.—Adrian Nicholas John Stokes, of St. Botolph's, Esq.

Radnor.—Jonathan Field, of Esgairdrainllwyn, Esq.

Richard Foster, of Castle, in the county of Cornwall, Esq., has been appointed sheriff of the county of Cornwall.

The Queen has been pleased to appoint John Talbot Clifton, of Lytham-hall, Esq. to be sheriff of the county palatine of Lancaster for the year ensuing.

NOTICES OF NEW LAW BOOKS.

The People and the Parish; The Common Law and its Breakers. By J. TOULMIN SMITH, Esq. Barrister-at-Law. Stevens and Norton.

THIS tract has been prepared for publication by Mr. TOULMIN SMITH, for the purpose of calling public attention to the nature and consequences of the "Churchwardens Election Bill," which he ably contends is an attack by ecclesiastics upon the common-law rights and liberties of the people, in parishes and other municipal institutions, as recognised and guaranteed by the common law of England.

With regard to the statements of the learned author, very different opinions will be formed; but he has done good service to the public in submitting to its consideration an important measure, in which all persons are deeply interested, and which ought not to be passed through Parliament *sub silentio*, and without its being freely and fully discussed by the laity.

Criminal Process; or, a View of the Proceedings taken in Criminal Prosecutions, &c. By HENRY DEARSLEY, Esq. Barrister-at-Law. London: Benning.

THIS little book is designed to teach the law student the elements of the *practice* of the criminal law—not what is crime, but how crime is prosecuted and punished; tracing the whole proceeding from the arrest of the criminal to his trial, including the Examination before Magistrates, *Habeas Corpus*, the Criminal Courts, Principals and Accessories, Indictments, Arraignment, Pleadings, Jury, the Trial, the Evidence, the Verdict and the Judgment, and afterwards of the Writ of Error and the Criminal Appeal. It is a very compact, clear, and correct description of the criminal law in action, and should be read by the student as the best introduction to that necessary branch of legal knowledge.

The Law Magazine, No. 98. London: Butterworths.

THIS is the Legal Quarterly, and as such represents what may be termed the literature of the law. It does not consist of heavy and dry treatises on practice, but it handles all those topics connected with the progress of the law, upon which every Lawyer would desire to be well informed. Thus we have in this number very able papers on Finance, on Marine Insurance, on Law Reform and its Prospects, on Commissions, Commissioners and the Bar, on the Peculiarities of Maritime Liens, and on the Ecclesiastical Courts now awaiting their dissolution. We see that in this *The Law Magazine* fully adopts the views we have here asserted, namely, that all civil jurisdiction should be taken from these Courts, which, with a reform in their organization to adapt them to the lessened business, should be strictly limited to their proper function of Ecclesiastical Courts; *i. e.* their jurisdiction over the Church of England and its Clergy. The Report of the Committee on Juvenile Criminals is reviewed with much care; and "The Common Law Procedure Act," and the decisions upon it, are again examined. We observe that the Quarterly Reviewer says of Mr. Kerr's second edition of the Procedure Act, "We have now carefully examined all the editions of this important statute, and we are bound to give the palm to Mr. Kerr"

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MONEY MARKET.

ENGLISH FUNDS.	Jan. 25	Jan. 26	Jan. 27	Jan. 28	Jan. 29	Jan. 31
Bank Stock	..	253½	257	256	256	255
3 per Cent. Reduced Annuities	100	100	100½	100	100	100½
3 per Cent. Consols Annuities	99½	99½	99½	99½	99½	99½
Consols for Account	99½	99½	99½	99½	99½	99½
New 5 per Cent. Annuities	..	..	..	..	..	..
New 2½ per Cent. Annuities	103½	103½	103½	103½	103½	103½
Long Annu. (exp. Jan. 5, 1860)	..	6½	6½	6½	..	6½
Do. 30 yrs. (exp. Oct. 10, 1859)	..	..	..	..	..	..
Do. 30 yrs. (exp. Jan. 5, 1860)	..	..	6½	..	..	..
India Stock	..	260	..	..	..	260
India Bonds (1,000*l.*)	..	..	..	66	..	..
Do. do. (under 1,000*l.*)	66	..	66	65	..	66
South Sea Stock	..	111	..	..	..	..
Do. do. Old Annuities	..	..	..	..	..	..
Exchequer Bills, 1000*l.*	55p	55p	54p	55p	55p	..
Do. do. 500*l.*	55p	55p	..	54p	..	..
Do. do. Small	55p	55p	54p	54p	57p	..

p Premium.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTH.

GOUGH.—On the 27th ult. at Horsford, the wife of E. H. Gough, Esq. solicitor, of a son.

MARRIAGES.

BAKER—GRIFFITHS.—On the 1st inst. at the parish church, Child's Wickham, Gloucestershire, John Howard Baker, Esq. of Birmingham, solicitor, to Ashley Elizabeth Moss, only child of Nathan Charles Griffiths, Esq. of Child's Wickham.

BLACKBURN—SMILES.—On the 5th inst. at the parish church, Paddington, Joshua Blackburn, Esq. of Brockwell-hall, near Dulwich, Surrey, and of Lincoln's-inn, barrister-at-law, to Mary Ann, second daughter of the late Edward Smiles, Esq. of Newcastle-upon-Tyne.

CARVER—SMITH.—On the 8th inst. at St. Mary's, Cheltenham, E. B. Stirling Carver, Esq. late lieutenant 31st Regiment, to Kate Rosalind, eldest surviving daughter of the late John Smith, Esq. of the city of Dublin, barrister-at-law.

WILDE—CHAPMAN.—On the 3rd inst. at St. George's, Hanover-square, the Hon. Thomas Montague Carrington Wilde, younger son of the Right Hon. Lord Truro, to Emily, second daughter of Charles Chapman, Esq. of Balham-hill, Surrey.

DEATHS.

BOWLES.—On the 3rd inst. at his chambers, Mitre-court, Temple, John Thomas Bowles, Esq. barrister-at-law, of Lincoln's-inn.

ROUPELL.—On the 6th inst. at Brighton, aged 82, Frances Browne, widow of the late George Boone Roupell, Esq. one of the Masters in Chancery.

GAINES.—On the 9th inst. at Kennington-house, Kennington-lane, aged 46, Ralph Parkinson Gaines, Esq. solicitor.

BRITISH COLLEGE OF HEALTH, NEW-ROAD, LONDON.—THE HYGEIAN SYSTEM OF MEDICINE.—Morison's Pills, the Vegetable Universal Medicine, is a certain cure for any curable disease; which fact is proved by the experience of all the Members of the British College of Health.

CAUTION.—No chemist or druggist is authorized to sell the medicine.

RUPTURES.—BY ROYAL LETTERS PATENT.

THE MOC-MAIN LEVER TRUSS is allowed by upwards of 200 Medical Gentlemen to be the most effective invention in the curative treatment of Hernia. The use of a steel spring, so often harmful in its effects, is here avoided; a soft bandage being worn round the body, while the requisite resisting power is supplied by the Moc-Main Patent Lever, fitting with so much ease and closeness that it cannot be detected, and may be worn during sleep. A descriptive circular may be had, and the Truss (which cannot fail to fit) forwarded by post, on the circumference of the body two inches below the hips being sent to the Manufacturer, Mr. WHITE, 228, Piccadilly, London.

An Umbilical Truss on the same principle.

Every description of Riding Belts, Elastic Stockings, Spinal Corsets Supporters and Suspenders, on new and approved principles, with every kind of Surgical Bandages.

IF YOU DESIRE really WELL-POLISHED BOOTS, use BROWN'S ROYAL MELTONIAN BLACKING. It renders them beautifully soft, durable, and waterproof, while its lustre equals the most brilliant patent leather. Free the same as common blacking. Made only by R. Brown, the inventor and sole manufacturer of the Ice Guinea Parisian Polish for Dress Boots and Shoes, and Waterproof Varnish for Harness Boots.

MANUFACTORY, 28, BROOK-STREET, GOLDEN-SQUARE.

Patronised by the Court and Nobility, and to be had at all the principal shops throughout the kingdom.

ITALIAN SILK UMBRELLAS are superseding every other description for elegance and durability, are made on the premises under Mr. Cheek's immediate inspection, and the silk warranted superior to every other material. 18s. and 21s.—Golden Perch, 132, Oxford-street.

N.B. Ladies' sticks, 6d.; alpaca, 1s.; gingham, 2s.; and carriage umbrellas, 5s.

SCARLETT'S PORTABLE MOCK TURTLE SOUP.—SCARLETT and SON respectfully inform the Public in general that the MOCK TURTLE made by them, of acknowledged "delicious" quality and flavour, is by many pronounced equal to the real.

Forwarded to all parts of the country, free of package, on the receipt of a post-office order for one pound. 2s. 6d. per quart.

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ENFRANCHISEMENT of COPYHOLDS.—

DEFECTIVE and UNMARKETABLE TITLES ASSURED, and rendered MARKETABLE and MORTGAGEABLE, by the LAW PROPERTY ASSURANCE and TRUST SOCIETY.

Annuities and Endowments granted, and Equity Guaranteed.

WILLIAM NEILSON, Actuary and Secretary.

30, Essex-street, Strand, London.

DEPOSIT POLICIES, combining the Advantages of Savings Banks with Life Assurance, granted by the LAW PROPERTY ASSURANCE and TRUST SOCIETY.

Diseased and Healthy Lives Assured.—Annuities and Loans granted.

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EMPLOYERS GUARANTEED AGAINST LOSSES by CLERKS and SERVANTS, either with or without Life Policies, by the LAW PROPERTY ASSURANCE and TRUST SOCIETY.

Reversionaries of Life Assurance, Annuity, and Endowment.

WILLIAM NEILSON, Actuary and Secretary,

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ENDOWMENT AND EDUCATION

ASSURANCES granted on advantageous terms by the LAW PROPERTY ASSURANCE and TRUST SOCIETY.

Defective Titles to Property assured; Immediate, Deferred, and Increased Annuities granted; and every species of ordinary Life Assurance business transacted.

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NATIONAL PROVINCIAL LIFE OFFICE,

24, MOORGATE-STREET, LONDON.

Chairman.—ROBERT KEATING, Esq., M.P.

Solicitor.—EDWARD KELLY HARRIS, Esq., 32, Lincoln's-inn-fields.

PROGRESS OF THE SOCIETY.

New Business.	Amount of New Assurances completed.	Annual Income therefrom.
	£ s. d.	£ s. d.
Half-Year ending December 1852	85,941 0 0	2,053 6 1
Half-Year ending December 1851	33,652 0 0	1,087 2 7
Excess of the past half-year over the corresponding half-year of 1851	52,016 0 0	1,847 3 6

The Directors are prepared to receive applications from persons of undoubted respectability for the appointment of Agents in those towns where the Society is not already represented.

Prospectuses and every information forwarded free on application.

J. W. SPRAGUE, Manager.

January 1, 1853. EDMUND CLINCH, Secretary.

ENGLISH and CAMBRIAN ASSURANCE SOCIETY, 9, New Bridge-street, Blackfriars, London.

The distinctive features of this Society are:—LOW RATES of PREMIUM, and PROPOSALS for every description of LIFE ASSURANCE entertained for any Sum from £25 to 5,000.

The subjoined Table shows the advantages offered by this Society resulting from Low Premiums:—

Age at entry.	Annual Premium by Northampton Rates to assure 1,000*l.*	Annual Premium by English and Cambrian Rates to assure 1,000*l.*	Showing an Annual Saving of	Enabling a person to assure for	Giving an immediate Bonus of
	£ s. d.	£ s. d.	£ s. d.	£	£
20	21 15 10	16 12 6	5 3 4	1,310	310
30	26 13 5	20 12 6	6 0 11	1,203	203
40	33 19 6	27 11 8	6 7 10	1,195	195
50	45 6 0	39 14 2	5 11 10	1,140	140

LOANS granted upon real and personal security, on Terms peculiar to this Office, and highly beneficial to the borrower.

ASSURANCES "declined" by other Offices accepted on equitable terms.

INDUSTRIAL CLASSES.—Special Tables to suit the "Industrial" Classes, by taking the payments weekly, monthly, or otherwise.

HALF-PERIODIC ASSURANCES.—Policies will be granted on payment of one-half of the usual Premium, with Interest upon the Balance during the term of seven years.

EMIGRANTS.—Policies effected upon the Lives of Emigrants at a very moderate additional charge to cover the risk of the voyage.

MEDICAL REFEREES paid by this Society for their Professional Reports.

The usual Commission allowed to parties introducing business to this Society, and to Agents an additional 5 per cent. upon the first year's premium.

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WILLIAM HENRY KINGSFORD, Resident Manager.

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White, Thomas, Esq. Bedford-row.
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Wreteskey, the Hon. Walter, Lincoln's Inn.

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SOLICITORS.

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Robert Curling, Esq. Frederick's-place, Old Jewry.

BONUS.—Policies effected (on the profits scale) prior to the 31st December, 1853, will participate in FOUR-FIFTHS OF THE PROFITS to be declared at the close of the year 1853; and appropriated by addition to the policy, reduction of premium, or payments in cash, as the Assured may desire.

Extensive licence to travel.

Appearance before the Board dispensed with.

Proposals for Loans on Life Interests, &c. and for sale of Reversions entertained.

Prospectuses, &c. may be had at the Office, or will be forwarded on application to JOHN KNOWLES, Actuary and Secretary.

LAW REVERSIONARY INTEREST SOCIETY, for the Purchase of Reversionary Property and Life Interests, and for the Sale of Life Annuities, Endowments, and Reversionary Payments.—Offices, No. 5, Lincoln's-inn-fields, London.—Capital, £26,000, in 4000 shares of £25 each.—Provisionally registered pursuant to Act of Parliament 7 & 8 Vict. c. 110.

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The Hon. Mr. Justice Coleridge.
The Hon. W. C. Spring Rice.
Nassau W. Senior, Esq. Master in Chancery.
John Ellis Clowes, Esq. Temple.

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Nassau J. Senior, Esq. barrister-at-law, Lincoln's-inn.
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C. Rankin Vickerman, Esq. Grays-inn

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R. J. Gainsford, Esq. Charles Jellicoe, Esq.

ACTUARY.

J. J. Sylvester, Esq. M.A. F.R.S.

BANKERS.

Messrs. Hoare, Fleet-street.

SOLICITORS.

Messrs. Capron, Brabant, Capron, and Dart, Saville-place, New Burlington-street.

This Society is established for the Purchase of Reversions, Life Interests, and every other kind of Property, whether vested or contingent, depending upon the duration of human Life, and for the Grant of Life Annuities, Endowments, and Reversionary Payments.

The Shares on which the Deposit has been already paid considerably exceed half the amount of the capital. The Deed of Settlement will shortly be ready for signature, and the Society will commence business early in February, 1853.

Applications for the remaining Shares to be addressed to Messrs. J. W. and C. Peppercorne, Brokers, 3, Exchange-buildings, or to the Directors, at the Offices of the Society, No. 5, Lincoln's-inn-fields, London.

BRITANNIA LIFE ASSURANCE COMPANY. Established August 1, 1837.

Empowered by special Act of Parliament, 4 Vict. cap. 9.

Col. ROBERT ALEXANDER, Blackheath-park, *Chairman.*

ADVANTAGES OF THIS INSTITUTION.

A TABLE OF INCREASING RATES OF PREMIUM, especially adapted to the securing of Loans or Debts.

HALF-CREDIT RATES, whereby half the Premium only is payable during the first seven years.

SUMS ASSURED PAYABLE AT SIXTY, OR AT DEATH, if occurring previously.

ORPHANS' ENDOWMENT BRANCH, affording the means of having Children Educated and Started in Life by securing Annuities, to commence at the Parent's death, and to be paid until a son shall attain his twenty-first, or a daughter her twenty-fifth year of age.

BRITANNIA MUTUAL LIFE ASSOCIATION.

Empowered by her Majesty's Royal Letters Patent.

ANNUAL DIVISION OF PROFITS.

Policy-holders participate in PROFITS after FIVE or SEVEN ANNUAL PAYMENTS, according to the table selected.

Premiums calculated for EVERY THREE MONTHS' difference of age.

HALF-CREDIT POLICIES granted on terms unusually favourable: the unpaid half-premiums being liquidated out of the profits.

At the Annual General Meeting on the 27th April last, a reduction of 20 per cent. was made in the current year's premium on all participating policies.

A Board of Directors in attendance daily at Two o'clock.

Age of the Assured in every case admitted in the Policy.

Medical Attendants remunerated in all cases for their Reports.

(PROPRIETARY) Extract from the Half Credit Rates of Premium.			(MUTUAL.) Extract from Table with Particulars in Profits, after Seven Yearly Payments.				
Age next birthday.	Half Prem. First 7 Years.	Whole Prem remainder of Life.	Age.	Annual Premium.	Half-Yearly Prem.	Quarterly Prem.
	£ s. d.	£ s. d.	Yrs. Months.	£ s. d.	£ s. d.	£ s. d.
30	1 1 0	2 2 0	30 0	3 2 3	1 4 2	0 12 3
40	1 9 2	2 18 4	3	3 2 7	1 4 4	0 12 4
50	2 2 6	4 5 0	6	3 2 10	1 4 6	0 12 5
60	3 6 8	6 13 4	9	3 2 2	1 4 8	0 12 6

1, Princes-street, Bank, London, 1st Nov. 1852.

E. R. FOSTER, Resident Director.
ANDREW FRANCIS, Secretary.

THE YORKSHIRE FIRE AND LIFE INSURANCE COMPANY.

Established at York, 1824, and empowered by Act of Parliament.

Capital, £500,000.

TRUSTEES.

Ralph Creyke, Esq., Rawcliffe Hall.
John Swann, Esq., Askham.
Leonard Thompson, Esq., Sheriff Hutton Park.

BANKERS.—Messrs. Swann, Clough, and Co. York.

ACTUARY and SECRETARY.—Mr. W. L. Newman, York.

The attention of the public is particularly called to the terms of this Company for LIFE ASSURANCES, and to the distinction which is made between male and female lives.

Extract from the Table of Premiums for Insuring 100*l.*

Age next birthday.	A MALE.	A FEMALE.	Age next birthday.	A MALE.	A FEMALE.
	Whole Life Premiums.			Whole Life Premiums.	
	£ s. d.	£ s. d.		£ s. d.	£ s. d.
10	1 7 6	1 5 4	46	3 11 6	3 3 2
12	1 9 5	1 7 0	50	4 1 0	3 13 2
16	1 11 5	1 8 10	53	4 11 6	4 2 6
20	1 14 4	1 11 0	56	5 4 0	4 14 0
23	1 17 0	1 13 8	60	6 6 0	5 12 8
26	2 0 3	1 16 2	63	7 4 0	6 9 6
*30	2 5 0	1 19 9	66	8 4 0	7 10 8
33	2 8 6	2 2 10	70	10 0 4	9 7 6
36	2 13 0	2 6 4	73	11 11 2	11 2 6
40	2 19 9	2 12 0	76		13 1 9
43	3 5 3	2 17 2	80		15 12 10

* EXAMPLE.—A gentleman whose age does not exceed 30, may insure 1,000*l.* payable on his decease, for an annual payment of 22*l.* 10*s.*; and a lady of the same age can secure the same sum for an annual payment of 19*l.* 17*s.* 6*d.*

Prospectuses, with the rates of premium for the intermediate ages and every information, may be had at the Head Office in York, or of any of the Agents.

FIRE INSURANCES

are also effected by this company, on the most moderate terms.

AGENTS.

Edinburgh.—M'Intosh and Ducat, W.S. 68, Great King-street; D. S. Peddie, George-street.

Glasgow.—Peter White, 20, Buchanan street; William Isaac, 20, St. Vincent-place; John Carmichael, 5, Dixon-street; William Robertson, Trongate Branch of the City of Glasgow Bank.

Agents are wanted in those towns where no appointments have been made. Applications to be made to Mr. W. L. NEWMAN, Actuary and Secretary, York.

Agent for London, Mr. THOMAS S. NOBLE, Solicitor, 5, St. John street, Bedford-row.

DEFENDER FIRE and LIFE ASSURANCE COMPANY, 24, New Bridge-street, Blackfriars.

A BONUS equal on the average to FORTY PER CENT. upon the life premiums paid previously to 1851, was declared at the Ordinary General Meeting, held on the 3rd January instant.

Prospectuses and full information may be had at the Company's Offices, or of any of the Agents.

Respectable active Agents wanted. The usual Commission to Solicitors and others.

JOHN KELDAY, Managing Director.

The attention of CLERGYMEN, RESPECTABLE PERSONS, and EMPLOYERS of every description, is invited to the Prospectus and Tables of the

OAK MUTUAL LIFE ASSURANCE and LOAN COMPANY,

No. 49, Moorgate-street, London. Completely registered pursuant to Act of Parliament, 7 & 8 Vict. cap. 110.

Any number of copies for distribution may be obtained by personal application at the head office, or by addressing a letter to

G. MANNERS COODE, Secretary.

ALBERT LIFE ASSURANCE COMPANY.

Established 1838.

Principal Office, 11, Waterloo-place, Pall-mall, London.

Indisputable Policies,

Assurances, Annuities, and Endowments granted, and every other mode of provision for families arranged.

Half the Annual Premiums for the first five years may remain on credit for any period until death, on payment of interest at five per cent. per annum.

Parties allowed to go to or reside in most parts of the world without extra premium.

Naval and Military Lives not in active service Assured at the ordinary rate.

Policies forfeited by nonpayment of premium reviveable at any time within six months, on satisfactory proof of health, and the payment of a trifling fine.

Policies on the Life of another secured, notwithstanding the part of the world to which the Assured may go.

HENRY WILLIAM SMITH, Actuary and Secretary.

SHIRTS.—FORD'S EUREKA SHIRTS are not sold by any hosiers or drapers, and can therefore be obtained only at 26, Poultry. Gentlemen in the country or abroad, ordering through their agents, are requested to observe on the interior of the collar-band the stamp, "FORD'S EUREKA SHIRTS, 26, Poultry," without which none are genuine. They are made in two qualities: first quality, 40*s.* the half-dozen; second quality, 30*s.* the half-dozen. Gentlemen who are desirous of purchasing Shirts in the very best manner in which they can be made are solicited to inspect these, the most unique and only perfectly-fitting shirts. Coloured shirts, for boating, shooting, and ordinary wear, 27*s.* the half-dozen. List of prices and instructions for measurement post free, and patterns of the new coloured shirtings free on receipt of six stamps.

RICHARD FORD, 26, Poultry, London (late 165, Strand.)

AMERICAN CLOCK WAREHOUSE, 545 and 546, NEW OXFORD-STREET, where will be found the largest assortment of those superior Time-pieces, American Clocks, ever imported into this country, made by the oldest and most celebrated Manufacturers in the United States. All our clocks are warranted to keep correct time. The prices are—for Thirty-hour Clocks, 14*s.* 18*s.* and 22*s.*; for Eight-day Clocks, 30*s.* and 35*s.*

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Yrs.	Months.									
30	0	2	7	8	1	4	2	0	13	3
	3	2	7	6	1	4	4	0	12	4
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HALF-CREDIT RATES, whereby half the Premium only is payable during the first seven years.

SUM ASSURED PAYABLE AT SIXTY, OR AT DEATH, if occurring previously.

ORPHANS' ENDOWMENT BRANCH, affording the means of having Children Educated and Started in Life by securing Annuities, to commence at the Parent's death, and to be paid until a son shall attain his twenty-first or a daughter her twenty-fifth year of age

BRITANNIA MUTUAL LIFE ASSOCIATION.

Empowered by her Majesty's Royal Letters Patent.

ANNUAL DIVISION OF PROFITS.

Policy-holders participate in PROFITS after FIVE or SEVEN ANNUAL PAYMENTS, according to the table selected.

Premiums calculated for EVERY THREE MONTHS' difference of age.

HALF-CREDIT POLICIES granted on terms unusually favourable: the unpaid half-premiums being liquidated out of the profits

At the Annual General Meeting on the 27th April last, a reduction of 30 per cent. was made in the current year's premium on all participating policies.

A Board of Directors in attendance daily at Two o'clock.

Age of the Assured in every case admitted in the Policy.

Medical Attendants remunerated in all cases for their Reports.

(SECRETARY.)
Extract from the Half-Credit Rates of Premium

Age next birthday.	Half Premium for First 7 Years	Whole Premium for remainder of Life.
	£ s. d.	£ s. d.
30	1 1 9	2 3 6
40	1 9 2	2 18 4
50	2 2 4	4 7 8
60	3 6 8	6 11 4

(MUTUAL.)
Extract from Table with Particulars in Profits, after Seven Yearly Payments.

Age.	Annual Premium.	Half-Yearly Prem	Quarterly Prem.
Yrs. Months.	£ s. d.	£ s. d.	£ s. d.
30 0	2 7 3	1 4 3	0 12 3
3	2 7 5	1 4 4	0 12 4
6	2 7 10	1 4 6	0 12 5
9	2 8 3	1 4 8	0 12 6

1, Princes-street, Bank, London, 1st Nov. 1852.

E. R. FOSTER, Resident Director.
ANDREW FRANCIS, Secretary.

THE YORKSHIRE FIRE AND LIFE INSURANCE COMPANY.

Established at York, 1824, and empowered by Act of Parliament.

Capital, £500,000.

TRUSTEES.

Ralph Creyke, Esq., Ravcliffe Hall.
John Swann, Esq., Askham.
Leonard Thompson, Esq., Sheriff Hutton Park.

BANKERS.—Messrs Swann, Clough, and Co. York.

ACTUARY and SECRETARY.—Mr W. L. Newman, York.

The attention of the public is particularly called to the terms of this Company for LIFE ASSURANCES, and to the distinction which is made between male and female lives.

Extract from the Table of Premiums for Insuring 100*l.*

Age next birthday.	A MALE.	A FEMALE.	Age next birthday.	A MALE.	A FEMALE.
	Whole Life Premiums.			Whole Life Premiums.	
	£ s. d.	£ s. d.		£ s. d.	£ s. d.
16	1 7 6	1 4 4	46	3 11 6	3 3 2
20	1 9 3	1 7 0	50	4 1 9	3 13 3
25	1 11 3	1 8 10	55	4 11 6	4 2 6
30	1 14 4	1 11 6	60	5 4 0	4 14 0
35	1 17 0	1 13 6	65	6 6 0	5 12 6
36	2 0 3	1 16 2	68	7 4 0*	6 9 6
*36	2 5 0	1 19 9	66	9 4 0	7 10 8
38	2 8 6	2 2 10	70	10 9 4	9 7 6
39	2 13 0	2 6 4	73	11 11 8	11 2 6
40	2 19 8	2 10 0	76		12 1 9
43	3 6 7	2 17 2	79		15 12 10

* EXAMPLE.—A gentleman, whose age does not exceed 30, may assure 1,000*l.* payable on his decease, for an annual payment of 22*l.* 16*s.*; and a lady of the same age can secure the same sum for an annual payment of 19*l.* 17*s.* 6*d.*

Prospectuses, with the rates of premium for the intermediate ages and every information, may be had at the Head Office, in York, or of any of the Agents.

FIRE INSURANCES

are also effected by this company, on the most moderate terms.

AGENTS.

Edinburgh.—M'Intosh and Dunn, W.S. 68, Great King-street; D. S. Peddie, George-street.

Glasgow.—Peter White, 20, Buchanan street; William Laug, 92, St. Vincent-place; John Carmichael, 5, Dixon-street, William Robertson, Trongate Branch of the City of Glasgow Bank.

Agents are wanted in those towns where no appointments have been made. Applications to be made to Mr. W. L. NEWMAN, Actuary and Secretary, York.

Agent for London, Mr. THOMAS S. NOBLE, Solicitor, 5, St. John street, Bedford-row.

LOMBARDIAN BUILDING SOCIETIES.—

These Societies have advanced 150,000*l.* on House Property. Loans to any amount can be obtained almost immediately. Solicitors would find them a very ready means of obtaining Loans for their Clients.

Apply to Mr. WILLIAM LAWLEY, Manager, 17, South-street, Manchester-square.

PARTICIPATION IN PROFITS.

GLOBE INSURANCE, Cornhill and Pall-mall, London.

Established 1803 (empowered by Special Acts of Parliament) for FIRE, LIFE, ANNUITIES, and the PURCHASE of REVERSIONS and LIFE CONTINGENCIES.

JAMES WM. FREshfield, Esq., M.P., F.R.S.—*Chairman.*
FOWLER NEWTON, Esq.—*Deputy-Chairman.*
GEORGE CARE GLYN, Esq., M.P.—*Treasurer.*

Capital—One Million sterling—the whole Paid-up and Invested.

New Tables of Life Premiums on a just and liberal basis are adopted by the GLOBE INSURANCE, combining the *Plan of Participation* with those principles of Solidity and Security which have distinguished the Company from its formation.

Two Scales of Premium—*Participating* and *Non-Participating.*

Two-Thirds of Profits divided in Bonus every Seven Years.

One-third of the Premium may remain *Unpaid* as a debt upon the policy—and other facilities afforded to Insurers.

Insurances taken to the extent of 10,000*l.* on a Single Life.

Every Class of Fire and Life Insurance Business transacted.

Prospectuses with full Tables and Details, and Last Forms, may be had at the Offices of the Company, or of any of the Agents.

(By Order of the Board).
WILLIAM NEWMARCH, Secretary.

NATIONAL PROVINCIAL LIFE OFFICE, 24, MOORGATE-STREET, LONDON.

Chairman.—ROBERT KEATING, Esq., M.P.

Solicitor.—EDWARD KELLY HARRIS, Esq., 52, Lincoln's-inn-fields.

PROGRESS OF THE SOCIETY.

New Business.	Amount of New Assurances completed.	Annual Income therefrom
	£ s. d.	£ s. d.
Half-Year ending December 1852	85,941 0 0	2,934 6 1
Half-Year ending December 1851	33,692 0 0	1,087 2 7
Excess of the past half-year over the corresponding half-year of 1851	52,018 0 0	1,847 3 6

The Directors are prepared to receive applications from persons of undoubted respectability for the appointment of Agents in those towns where the Society is not already represented

Prospectuses and every information forwarded free on application.

J. W. SPRAGUE, Manager.
EDMUND CLINCH, Secretary.

January 1, 1853.

ENGLISH and CAMBRIAN ASSURANCE SOCIETY, 9, New Bridge-street, Blackfriars, London.

The distinctive features of this Society are—LOW RATES of PREMIUM, and PROPOSALS for every description of LIFE ASSURANCE entertained for any Sum from 25*l.* to 5,000*l.*

The subjoined Table shows the advantages offered by this Society resulting from Low Premiums:—

Age at entry.	Annual Premium by Northampton Rates to assure 1,000*l.*	Annual Premium by English and Cambrian Rates to assure 1,000*l.*	Showing an Annual Saving of	Enabling a person to assure for	Giving an immediate Bonus of
	£ s. d.	£ s. d.	£ s. d.	£	£
20	21 15 10	16 12 6	5 3 4	1,310	310
30	26 13 5	20 12 6	6 0 11	1,303	203
40	33 19 6	27 11 8	6 7 10	1,195	195
50	45 6 0	39 14 2	5 11 10	1,140	140

LOANS granted upon real and personal security, on Terms peculiar to this Office, and highly beneficial to the borrower.

ASSURANCES "declined" by other Offices accepted on equitable terms.

INDUSTRIAL CLASSES.—Special Tables to suit the "Industrial" Classes, by taking the payments weekly, monthly, or otherwise.

HALF-PREMIUM ASSURANCES.—Policies will be granted on payment of one-half of the usual Premium, with Interest upon the Balance during the term of seven years.

EMIGRANTS.—Policies effected upon the Lives of Emigrants at a very moderate additional charge to cover the risk of the voyage.

MEDICAL REFEREES paid by this Society for their Professional Reports.

The usual Commission allowed to parties introducing business to this Society, and to Agents an additional 5 per cent. upon the first year's premium.

Prospectuses and full particulars may be obtained on application to WILLIAM HENRY KINGSFORD, Resident Manager.

THE ROYAL EXHIBITION.—Valuable

newly-invented very small powerful WAISTCOAT POCKET GLASS, the size of a walnut, to discern minute objects at a distance of from four to five miles, which is found to be invaluable to SPORTSMEN, GENTLEMEN, and GAMEKEEPERS. Price 10*s.* 10*d.* sent free.

TELESCOPES.—A new and most important INVENTION in TELESCOPES, possessing such extraordinary powers, that some 34 inches, with an extra eye-piece, will show distinctly Jupiter's moons, Saturn's ring, and the double Stars. They supersede every other kind, and are of all sizes, for the waistcoat pocket, Shooting, Military purposes, &c.

Opera and Race-course Glasses, with wonderful powers; a minute object can be clearly seen from ten to twelve miles distant.

Invaluable newly invented preserving Spectacles, invisible and all kinds of Acoustic Instruments for relief of extreme Deafness.

Messrs. S. and B. SOLOMONS, Opticians and Aurists, Albemarle-street, Piccadilly, opposite the York Hotel.

WHEN are SPECTACLES REQUIRED?—

When the eyes water, or become so much fatigued by short exercise as to be obliged to be frequently closed or relieved by viewing different objects.

When objects cannot be seen without removing them to an increased distance.

When the letters of a book appear to blend with one another.

When more light is requisite than was formerly. For example.—

When the candle is placed between the eye and the book.

When much difficulty is found in threading a needle.

When the eyes appear as if they had a mist before them.

When black specks seem floating in the sight.

When any of the above indications arise, all alleviation should be laid aside, a responsible and skilful optician consulted, and a pair of "Preservers" purchased. THOMAS HARRIS and SON'S CRYSTAL SPECTACLES, if taken on the first approach of decay, will certainly retard its progress, and preserve the sight to the extreme of age.—Best Blued Steel with Crystals, 15*s.*; Silver ditto, 1*l.*; Gold ditto, 2*l.* 2*s.*; Steel Spectacles with glasses, from 3*s.* Sent post free, and exchanged if not approved of.

THOMAS HARRIS and SON, Opticians to the Royal Family, 52, Great Russell-street, London, Caution.—Opposite the British Museum Gates. Established Seventy Years.

SHIRTS.—FORD'S EUREKA SHIRTS are

not sold by any hosiers or drapers, and can therefore be obtained only at 38, Poultry. Gentlemen in the country or abroad, ordering through their agents, are requested to observe on the interior of the collar-band the stamp, "FORD'S EUREKA SHIRTS, 38, Poultry," without which none are genuine. They are made in two qualities: first quality, 40*s.* the half-dozen; second quality, 35*s.* the half-dozen. Gentlemen who are desirous of purchasing Shirts in the very best manner in which they can be made are solicited to inspect these, the most unique and only perfectly-fitting shirts. Coloured shirts, for boating, shooting, and ordinary wear, 37*s.* the half-dozen. List of prices and instructions for measurement post free, and patterns of the new coloured shirtings free on receipt of six stamps.

RICHARD FORD, 38, Poultry, London (late 195, Strand.)

IN BANKRUPTCY.—TWO VALUABLE POLICIES in the LAW LIFE ASSURANCE OFFICE for 2,000*l.* and 1,000*l.*

MR. J. FULLER is directed by an Order of

Court to SELL by AUCTION at the MART, Bartholomew-lane, City, on WEDNESDAY, MARCH 2, at TWELVE, A VALUABLE POLICY in the LAW LIFE ASSURANCE OFFICE, effected by Mr. Charles Olliver, whose age was 48 in February, 1848, for the sum of 3,000*l.* subject to an annual premium of 92*l.* 5*s.* Also a Policy for 1,000*l.* in the same office, subject to the annual payment of 32*l.*

Printed Particulars and Conditions may be had of S. C. HAMILL, Esq., Solicitor to the Estate, 50, Wellbeck-street; at the Mart; also of Messrs. A'BECKETT and SYMPSON, 7, Golden-square; and of Mr. J. FULLER'S Offices, 181, Albany-street, Regent's-park.

GRAPHIOLOGY.—Miss Crisson, British and

Foreign Academy, Manchester, still discerns the CHARACTERS of individuals from their HANDWRITING. Her delineations are minute and detailed, filling four pages of a sheet of paper. Fee, 5*s.* in stamps, with Age and Profession of writer.

BASS'S EAST INDIA PALE ALE.—That

large portion of medical men who use and recommend this celebrated Ale as supplied from our stores, are info med that the October brewings are in excellent condition, in casks from 18 gallons upwards, in the usual Wine Bottles and IMPERIAL PINTS; a good stock of last season's Ale can still be selected from. Much bear being sold for Bass's which is not brewed by them, every Bottle sent from our Stores is sealed and labelled, and every Cork branded with our names, BERRY, BROTHERS, and Co., 3, St. James's-street, London.

IF YOU DESIRE really WELL-POLISHED

BOOTS, use BROWN'S ROYAL MELTONIAN BLACKING. It renders them beautifully soft, durable, and waterproof, while its lustre equals the most brilliant patent leather Price the same as common blacking. Made only by E. BROWN, the Inventor and sole manufacturer of the Du Guiche Parisian Polish for Dress Boots and Shoes, and Waterproof Varnish for Hunting Boots.

MANUFACTORY, 25, BROAD-STREET, GOLDEN-SQUARE.

Patronised by the Court and Nobility, and to be had at all the principal shops throughout the kingdom.

ITALIAN SILK UMBRELLAS are super-

seding every other description for elegance and durability, are made on the premises under Mr. Clark's immediate inspection, and the silk warranted superior to every other material. 19*s.* and 21*s.*—Golden Perch, 192, Oxford-street

N.B. Ladies' silk, 6*s.*; alpaca, 5*s.*; gingham, 2*s.*; and carriage umbrellas, 8*s.*

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largest assortment of those superior Time-pieces, American Clocks, ever imported into this country, made by the oldest and most celebrated Manufacturers in the United States. All our clocks are warranted to keep correct time. The prices are—for Thirty-hour Clocks, 14*s.* 18*s.* and 25*s.*; for Eight-day Clocks, 30*s.* and 35*s.*

Also, the CHILD'S VELOCIPEDE, a new American invention for the amusement and exercise of children. It combines the Pony and Carriage, and by the graceful and easy exercise promotes muscular development of the arms and chest. It is recommended by the medical faculty, and approved by all who have seen it. Together with every variety of American Goods.

Sold wholesale and retail by the Manufacturers and Importers, ROGERS and Co. 545 and 546, New Oxford-street.

BY HER MAJESTY'S ROYAL LETTERS PATENT.

THE LADIES' CARRIAGE STEP, which

was so universally admired at the Great Exhibition for its novelty, simplicity of action, and utility, having all the advantages of the Inside Step, being free from dirt. This Step can be applied to any carriage already built.

DAVID DAVIES and SON have also finished for inspection, a Double Brougham, with their Patent Wheel Plate, by which means the carriage is much lighter; also the front wheels are higher, which makes the draught easier.

To be seen at the Manufactory for Improvements on Carriages, 15, Wigmore-street, Cavendish-square.

DINSDALE, 314, OXFORD STREET, LONDON.

Immediately opposite Hollen-street, Cavendish-square Established 1760.

KAY DINSDALE, 314, Oxford-street, Saddler

and Harness Manufacturer to Her Most Excellent Majesty the Queen, His Royal Highness Prince Albert, Her Royal Highness the Duchess of Kent, and the Royal Family, respectfully invites the Nobility and Gentry to honour him by an inspection of a very superior Stock of

SADDLERY, HARNESS, WHIPS, HORSE CLOTHING,

And every requisite for the Stable, warranted of the best materials and workmanship. The Silver and Brass Mountings for the Harness cannot be surpassed for elegance and durability. The Ladies' Saddles have every improvement to conduce to the comfort of the Lady, and the Gentlemen's Saddles are such as are used by the first horsemen in the kingdom. The prices are very moderate

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BRITISH COLLEGE OF HEALTH, NEW-

ROAD, LONDON.—THE HYGEIAN SYSTEM OF MEDICINE.—Morison's Pills, the Vegetable Universal Medicine, is a certain cure for any curable disease, which fact is proved by the experience of all the Members of the British College of Health.

CAUTION.—No chemist or druggist is authorised to sell the medicine.

PILLS.

DR. KING'S TRUE SARSAPARILLA

PILLS, for purifying the blood, purify, and all low states of system, skin diseases, nervous complaints, gout, rheumatic pains, weak nerves, loss of appetite, stomachic and liver complaints, nervous head and face ache, sore legs, and general debility. They are invaluable to the military, naval, and commercial man, and tourists, not only on account of their virtues, but their portability. Their advantages over any liquid preparation are manifold: 1stly. Because no solution of Sarsaparilla, however carefully prepared, can resist an inherent fermentation, which it will, and does undergo, rendering it entirely useless; 2ndly. The Pills contain as much Pure Sarsaparilla as a Tablespoonful of the Strongest Essence, and more to be depended upon; 3rdly. They have been prescribed in an extensive practice for nearly sixty-seven years, and their virtues well tested. They are beneficial for both sexes, and will keep in any climate. A 2*s.* 9*d.* box is equal to a 10*s.* bottle of Sarsaparilla. Sold by most respectable medicine vendors in the Kingdom, and by the sole Proprietor HENRY HIDES, 10, Hungerford-street, Strand, in boxes at 1*s.* 1½*d.*, 2*s.* 9*d.*, 4*s.* 6*d.*, 11*s.* and 22*s.* A considerable saving is effected by taking the larger boxes; hence a 2*s.* 9*d.* contains three 1*s.* 1½*d.* boxes, and a 4*s.* 6*d.* contains seven, and so on increasing.

DR. KING'S GOUT PILLS.—Gout relieved in a

very short time and really *cured* by a newly-discovered principle in "SARSAPARILLA." The Proprietor of Dr King's True Sarsaparilla Pills, upon finding so many severe and chronic cases of Gout and Rheumatic Gout truly cured by "Dr. King's Sarsaparilla Pills," determined upon mixing a very old and well-tried Gout Pill, which Dr. King prescribed for nearly sixty-seven years with the said "Dr King's Sarsaparilla Pills," for the cure of gout and rheumatism and all cases of a rheumatic character, such as sic-dolorosa, face-ache, lumbago, and pains in the loins and joints; and the benefit from such a combination of these two prescriptions has been really wonderful. Dr. King's Gout Pills may be taken without the slightest fear of injuring the system. They are free from opium and mercury, and consist chiefly of pure Sarsaparilla.

N.B.—Their mode of action is by really purifying the fluids of the body, and causing the poison of gout to be driven off from the system, not by violent purging, but by a gentle increase of the secretion of the kidneys.

Sold in boxes at the same price as Dr. King's True Sarsaparilla Pills, by most respectable vendors in the United Kingdom, and by the Sole Proprietor, HENRY HIDES, Hungerford-street, Strand. Neither of the Pills are genuine without the proprietor's name (in full) upon the stamp, to imitate, which is libel.

Boxes sent by post by inclosing postage stamps for the amount of box required.

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THE Profession have received a Circular, issued by Three of the Law Publishers, *in which* many of the Reports, and a large number of Text Books are reduced to prices unprecedented "in the annals of the Law publishing business." Of the policy of this, the value of every Gentleman's Library to mere waste paper, or the honesty of the transaction on the part of those who have already received the price of One Shilling per Sheet for most of the Reports in such libraries, the Profession are fully capable of judging; but in order to prevent any misrepresentation on the subject, the undermentioned Booksellers respectfully announce that they are fully prepared to supply *any of the books* WHICH ARE TO BE OBTAINED of the same, or, in *some instances*, at considerably lower, prices:—

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NEW AND SECOND-HAND LAW BOOKSELLERS.

London, February 1853

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The High Prices at which the Reports of our Legal Proceedings have been published has long been a crying evil among the Profession, but they were to some extent reconciled to it on the ground that Law Reports at all times produced a higher price in the market than any other description of second-hand books; and for many years this was strictly true, as it was *only the second-hand* copies which came into the market by the death or retirement of their previous owners that could be obtained at reduced prices, and they were usually purchased and sold, not by the Law Publishers, but by Booksellers who resold them to the Profession at reasonable prices, the Publishers being satisfied with the amounts generally received at the time of the Publication of each part of the Reports and the occasional sale at *full price* of any of the remaining copies. They have now, however, by offering the remainder of each of these works (although it is well known that some of them *they have not got* at little more than waste paper prices, at one fell swoop reduced every Law Library in the kingdom to at least one fourth of its previous value. Under these circumstances, and also in consequence of the very high prices (one shilling per sheet and upwards) at which the Reports are now published, the undermentioned booksellers, at the request of numerous Gentlemen in the Profession, are making arrangements for publishing all the decided cases under the title of the "EQUITY and COMMON LAW REPORTS," which it is intended to have reported by Gentlemen of standing at the Bar, printed the same size and equally well as, but with fuller pages than, the present Reports, at one-half the cost, and within *a reasonable period* after the decisions are pronounced; and as it is intended only to print as nearly as possible the number subscribed for, and by that means insure the purchasers against the possibility of a large loss on resale, Gentlemen desirous of participating in the advantages to be obtained are requested to communicate their intention forthwith to one of the undermentioned Booksellers, who have every reason to expect the sanction of all the Judges to the undertaking, which will be commenced at the beginning of next Easter Term.

Should the above scheme meet with the support which is confidently expected, the Publishers will endeavour as opportunities offer to bring out Treatises on the most useful legal subjects not only at reduced prices, but *actually* giving the Law as it stands *at the time of publication*. At present they offer the following Works, viz.—

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THE LAW TIMES,

FOR THE LEGISLATOR, THE MAGISTRATE, AND THE LAWYER.

Vol. XX.—No. 518. SATURDAY, MARCH 5, 1853. Price 1s.

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BOROUGH OF LIVERPOOL, to wit.—GILBERT HENDERSON, Esquire, Recorder.—The COURT OF QUARTER SESSIONS OF THE PEACE FOR THE BOROUGH will be held in the NEW ASSIZE COURTS in the said Borough on TUESDAY, the 15th day of MARCH instant, at Ten o'Clock in the Forenoon.

WRIGHT, Clerk of the Peace.

Clerk of the Peace Office, Liverpool, 1st March, 1853.

BOLTON BOROUGH SESSIONS.—NOTICE IS HEREBY GIVEN, that the NEXT GENERAL QUARTER SESSIONS OF THE PEACE FOR THE BOROUGH OF BOLTON, in the County Palatine of Lancaster, will be held before ROBERT HAYNES ARMSTRONG, Esq., Recorder of the said Borough, at the POLICE-OFFICE, Bowker's-Row, within the said Borough, on THURSDAY, the 31st day of MARCH instant, at Ten o'Clock in the Forenoon, at which time and place all Jurors, Constables, Police Officers, Prosecutors, Witnesses, Persons bound by Recognizances, and others having business at the said Sessions, are required to attend.

JOHN GORDON, Clerk of the Peace.

Clerk of the Peace Office, Bolton, 3rd March, 1853.

PURSUANT to a Decretal Order of the High Court of Chancery made in a cause GREGORY against MOURLEY, the CREDITORS of WILLIAM EATON MOURLEY, late of Derby, in the County of Derby, deceased, Solicitor (who died in or about the month of January, 1852), are by their Solicitors, on or before the 4th day of April, 1853, to come in and prove their debts at the Chambers of the Master of the Rolls, in the Rolls-yard, Chancery-lane, Middlesex, or in default thereof they will be peremptorily excluded from the benefit of the said Decree.—MONDAY, the 18th day of April, 1853, at TWELVE o'clock at noon, at the said Chambers, is appointed for hearing and adjudicating upon the claims.—Dated this 18th day of February, 1853.—GREGORY, FAULKNER, and Co., 1, Bedford-row, London.

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LAW STUDENTS' DEBATING SOCIETY. This Society meets at the Law Institution, Chancery-lane, every Tuesday Evening, at Seven o'clock, for the discussion of Legal and Jurisprudential Questions.

QUESTIONS FOR DISCUSSION.

For Tuesday, March 8th, 1853.

President—Mr. HOWLETT.

LXIII. Does the case of *Rivers*, who was found guilty of the murder of his wife, sentenced to death, and afterwards reprieved, show the necessity for a Court of Criminal Appeal?

Mr. HAYLEY is appointed to open the debate, and Messrs. DIXON, HANBURY, and CHEATLE, to speak upon the question.

For Tuesday, March 15th, 1853.

President—Mr. BADDELEY.

95. A. having contracted in writing for the sale of his real estate at B., dies, having by his will, made in 1850, devised all his estate at B. to C. He also by his will makes a general devise of trust estates, and a bequest of all his personal estate to D. Is C. entitled to the purchase money of the estate? *Wall v. Bright*, 1 Jac. & W. 494; *Eardley v. Shepherd*, 1 Jac. & W. 495, cited; *Druse v. Fenne*, 1 Y. & C. 563.

Affirmative—Mr. GI[redacted]TONE and Mr. BEADE. *Negative*—Mr. FLUX [redacted] and Mr. FALKNER.

For Tuesday, March 22nd, 1853.

President—Mr. FREELAND.

96. Was it competent to the counsel for the defendant in the case of *M'Donnell v. Grant*, 18 L. T. Rep. 241, to ask the witness whether a letter, not produced, had been written to him charging him with forgery, and which he had answered by a letter produced?

Affirmative—Mr. BOMPAS and Mr. SHEPPARD. *Negative*—Mr. WINKARIS and Mr. HAFFORD.

For Tuesday, March 29th, 1853.

President—Mr. CURTIS.

LXIV. That the recently-established French empire is the form of government the best suited to the condition of the people of France.

Mr. HARMAN is appointed to open the debate, and Messrs. BYDDORD, TAYLOR, and CROWTHER to speak upon the question.

J. W. HOWLETT, Secretary, 68, Lincoln's-inn-fields

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THE LEGISLATOR.

CHANCERY SUITORS' FURTHER RELIEF BILL.

ABSTRACT OF LORD ST. LEONARDS' BILL.

1. THE Lord Chancellor may, where the object can be effected by transfers or entries in the books and accounts, direct that instead of an actual sale or purchase of stock the same may be considered as effected according to the Stock List of the day at the Bank of England.

2. A "Stock-Exchange Account" to be kept by the Accountant-General, for the purpose of recording all such transactions.

3. No brokerage to be charged, except where sales or purchases are actually effected. Power to Lord Chancellor to order payment of 1-16th per cent. in respect of every transaction heretofore chargeable with brokerage, to the Suitors' Fee Fund.

4. An annual account to be kept of all moneys remaining uninvested for two years; same to be then considered as invested in Three per Cents., unless notice not to invest same from some competent party.

5. Funds, the dividends of which have not been received, for fifteen years may be transfered to the Suitors' Fee Fund Account.

6. Rights of suitors to stock or dividends transferred not to be affected, but to be satisfied out of the Suitors' Fee Fund; and, when necessary for such purposes, the Lord Chancellor may impose fees in relation to proceedings, and direct their collection by means of stamps, and alter, diminish, or abolish such new fees.

7. At expiration of every five years, investigations and transfers to be made of accounts the dividends of which have not been received for fifteen years.

8. Dividends, &c. arisen and to arise from the moneys placed out to provide for Chancery officers, to be transferred to Suitors' Fee Fund.

9. If at any time it shall appear to the Lord Chancellor that the fees on proceedings shall be sufficient to answer the charges for the time being on the Suitors' Fee Fund, and that the fees payable by suitors shall already have been reduced as far as may be deemed expedient in the due administration of justice, it shall be lawful for him by order to direct that any part, not required for the purposes aforesaid, of the dividends shall be applied in payment of the salaries of the judges of the said court, or any of them, in relief of the Consolidated Fund, charged therewith by the 15 & 16 Vict. c. 87, s. 16, and such salaries shall thereupon cease to be payable out of the Consolidated Fund.

10. In lieu of brokerage on any transfer of stock for identifying transferor, a sum not exceeding one guinea, whatever may be the amount transferred.

11. Stamp duties now payable on powers of attorney for sums not exceeding 20*l.*, or dividends above 3*l.* and not exceeding 5*l.*, repealed, and in lieu thereof a stamp of 5*s.* on the vellum, &c.

12. Such duties to be under the management of Commissioners of Inland Revenue.

13. Lord Chancellor may direct the Accountant-General to act on powers of attorney in receipt of further moneys becoming payable.

14. Compensation allowances to officers may be applied in making good moneys improperly withheld or abstracted by parties entitled to such allowances, with interest and costs.—such order to overreach any assignment made after 10th Feb. 1853, of the same, whether voluntary or not.

15. Payments may be made out of the funds in the bank for work done and for expenses of carrying this Act into effect.

16. Orders made under this Act may be annulled, altered, or renewed.

17. "Lord Chancellor" to include "Lord Keeper" or "Lords Commissioners of Great Seal" for time being.

Imperial Parliament.

HOUSE OF LORDS.

LAW OF EVIDENCE.

FRIDAY, Feb. 25.—Lord BROUGHAM, after presenting a petition for the extension of the County Courts jurisdiction, took occasion to advert to the effect of the change in the law making the parties themselves competent witnesses, as it bore upon the conduct of inquiries before election committees. He had hoped originally a year or two ago, that this important alteration would operate to prevent bribery and corruption at elections; but he must confess that the event had disappointed that expectation, for he believed there had hardly ever been a general election in this country at which more bribery and corruption had prevailed than at the last—he might go further and say, so much had prevailed upon no former occasion. But he would fain hope still, that when the operation of the Act compelling the parties themselves to be examined before election committees came home to them by actual examination, and by the results of that examination, it would have its salutary effect in deterring from the commission of the grievous offence to which he referred. But he was bound to add that, though he had no doubt this would be its operation ultimately, if not immediately, upon the parties themselves and their immediate agents, another change in the law of evidence would be required to give complete and full effect to it—viz., the adoption of the provision contained in the new Evidence Bill which he had brought in before the late recess, and which was now on the table, compelling persons to answer questions, although the answers might tend to criminate themselves; not, of course, enabling any person to take advantage of that immediately in that proceeding, but protecting the party from the effects of his self-crimination in all proceedings afterwards, except indictment for perjury.

REGISTRATION OF ASSURANCES.

THURSDAY, March 3.— The LORD CHANCELLOR moved the second reading of the Registration of Assurances Bill, and proceeded, at much length, to explain the details of the measure, which he declared would add materially to the transferable value of land, to the amount of rent, and to the security of purchases.—Lord ST. LEONARDS followed with a still longer speech, in which he expressed the regret he felt in opposing the Bill. He was convinced, however, that the plan now proposed would add materially to the expense of transferring land, expose deeds of great value to imminent risk of being lost, and prove, in practice, a complete failure.—Lords CAMPBELL and BEAUMONT supported the Bill strongly, and it was ultimately read a second time without a division.

LAW OF EVIDENCE (SCOTLAND) BILL.

This Bill was read a third time, and passed. Lord BROUGHAM said that it gave him great satisfaction that this bill had passed their Lordships' House, and he hoped that it would soon become law. It made the Scotch Law of Evidence identical with the English law, except in one particular, wherein it was an improvement upon the law of England.

HOUSE OF COMMONS.

ECCLESIASTICAL COURTS.

THURSDAY, March 3.—Mr. COLLIER moved for a select committee to inquire whether the ecclesiastical courts might not be advantageously abolished, their jurisdiction over all matters not purely ecclesiastical transferred to other existing tribunals, and new courts established for the purpose of dealing speedily and effectually with matters purely ecclesiastical; and whether the jurisdiction of the Court of Admiralty might not be advantageously transferred to local tribunals. The hon. and learned gentleman made an able, and necessarily long, statement of the abuses of the courts under the present system, and urged the necessity of speedy legislation upon the subject, irrespective of the report of the commission, which did not seem likely to make its appearance.—Mr. HUME seconded the motion.—Mr. BETHELL was sorry to say that he was not able to dispute any portion of Mr. Collier's statement. There could be no doubt as to the necessity for reform; the question was as to the mode. And, without wishing to cause any unnecessary delay, he urged Mr. Collier to withdraw his motion until they were in possession of the report of the commission referred to, and to trust to the Government for the rest.—Sir B. HALL was satisfied with the assurance thus given, and urged the withdrawal of the motion. —Mr. M'GUIRE described the state of the ecclesiastical courts in Ireland, where they were doubly odious, and he hoped that they would be included in any measure for reform.—Dr. PHILLIMORE, on the part of himself and the profession to which he belonged, without agreeing to the abolition of the courts, expressed himself eager for their reform.—Sir A. COCKBURN hoped before long to see all the courts under one common procedure; but he was for cautious measures; and on the part of the Government asked for a short time for deliberation.—Mr. J. D. FITZGERALD, addressing himself to the Irish part of the question, wished to be informed as to the intention of the Government.—Lord PALMERSTON assured the hon. member that Ireland would not be omitted from any legislation upon the subject.—Mr. WHITESIDE and Mr. BOUVERIE contributed some observations.—Mr. COLLIER was contented to withdraw his motion, and leave the question in the hands of the Government.

THE NEW BILL ON "JEWISH DISABILITIES."—The bill of Lord John Russell, "For the relief of Her Majesty's subjects professing the Jewish religion," was issued on Thursday by order of the House of Commons. In this bill, bearing the names of Mr. Wilson Patten, Lord John Russell, and Viscount Palmerston, there are six clauses, to the effect that in the abjuration oath, when administered to Jews, the words "upon the true faith of a Christian" are to be omitted. Persons professing the Jewish religion are to make a declaration. Such persons are not to hold certain offices in the State, or in the Church, nor are they to present to benefices in right of office. Further, it is proposed to enact that Jews are not to advise in the appointment to offices in the Established Church.

COURT PAPERS.

Equity Courts.

Lord Chancellor's Court.

The Lord Chancellor, by order of Court, has ordered that the Easter vacation for the present year shall commence on the 21th March next, and terminate on the 2nd April next.

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THE PRACTICAL STATUTES OF THE SESSION of 1852. Edited, with explanatory Notes, copious Index, &c. by WM. PATERSON, Esq. Barrister-at-Law. Price 9s. 6d. cloth; 11s. half-calf; 12s. calf.

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Like volumes have already appeared containing the *Practical Statutes of the Session* of 1850, price 7s. 6d; and 1851, price 7s.

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The following Statutes will be given entire in the volume for 1852:—

Commons Inclosure Act.	Property of Lunatics Act.
Municipal Corporations Act Amendment Act.	School Sites Acts Extension Act.
Protection of Inventions Act, 1851 (Extension of Term.)	Militia Act.
Copyright Amendment Act.	Enfranchisement of Copyholds.
Poor Relief Act Continuance Act.	County Courts Improvement Act.
Loan Societies Act Amendment.	Trustees Act Extension Act.
Ecclesiastical Jurisdiction Act.	Pharmacy Act
Stock-in-Trade Act.	Corrupt Practices at Elections.
Application of Highway Rates to Turnpike Roads Act.	Excise Summary Proceedings.
Property-Tax Continuance Act.	Woods, Forests, and Land Revenues Act.
Act for Re-assembling Parliament.	Metropolitan Sewers Act.
Wills Act Amendment Act.	Nisi Prius Officers Act.
Registration of Births, Deaths, and Marriages Act.	Militia Ballots Suspension Act.
Apprehension of Deserters from Foreign Ships Act.	Common Law Procedure Act.
Industrial and Provident Societies Act.	Secretary of Bankrupt's Office Abolition Act
Protestant Dissenters Act.	Commons Inclosure Acts Extension Act
Appointment of Overseers Act.	Masters in Chancery Abolition.
General Board of Health Act (No. 1 and No. 2.)	County Rates Act.
Disabilities Repeal Act.	Patent Law Amendment Act.
Passengers Act Amendment Act.	Metropolis Water Supply Act.
Differential Dues Act.	Metropolitan Burials Act.
	Improvement of the Jurisdiction of Equity Act.
	Suitors in Chancery Relief Act.

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Ditto	Red Lion Inn, Hampton.	Cain. J.	Ditto	Leasehold Property near Hampton, Middlesex

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(PROPRIETARY.) Extract from the Half-Credit Rates of Premium.

Age.	Half Prem. First 7 Years.	Whole Prem. remainder of Life.
	£ s. d.	£ s. d.
30	1 1 8	2 2 6
40	1 9 2	2 16 4
50	2 2 6	4 5 0
60	3 6 8	6 13 4

(MUTUAL.) Extract from Table with Particulars in Profits, after Seven Yearly Payments.

Age.		Annual Premium	Half-Yearly Prem.	Quarterly Prem.
Yrs.	Months.	£ s. d.	£ s. d.	£ s. d.
30	0	2 2 3	1 4 2	0 12 3
	3	2 7 6	1 4 4	0 12 4
	6	2 7 10	1 4 5	0 12 5
	9	2 8 2	1 4 6	0 12 6

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When the eyes appear as if they had a mist before them.

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Lifehold Estate, Covent-garden.

MR. LEREW will SELL by AUCTION, at the MART, on THURSDAY, MARCH 10, at TWELVE, (by order of the Mortgagee), all that FREEHOLD HOUSE and PREMISES, desirably situate and being 15, Upper Wellington-street, Covent-garden, for the Life of a Gentleman now aged 66, let to a most respectable Tenant, at the low Rent of 55l. per Annum. Also a certain POLICY of INSURANCE for 225l. effected on the said Life in the Hand-in-Hand Assurance Company.

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ELIGIBLE INVESTMENT.—Two long Leasehold Private Dwelling-houses, on the Bishop of London's Estate, Paddington.

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Long Leasehold private Dwelling-houses, eligibly situate at Westbourne-green, Paddington, and Kensington-park, Notting-hill.

MR. GEORGE DEEKS is instructed to SELL by AUCTION, at the MART, on THURSDAY, the 10th MARCH, at TWELVE for ONE, in Four Lots, a capital Dwelling-House, 28, Waverley-road, Westbourne-square, Paddington, let at 45l. per annum; Two ditto Houses, 2 and 6, Orchard-street, leading out of Waverley-road aforesaid, let at 35l. per annum each. Also a compact Dwelling-house, 5, Lonsdale-terrace, in Portobello-road, Kensington-park, of the estimated rental of 30l. per annum. May be viewed. The whole held under separate Leases for above Ninety years unexpired, at low ground-rents, and forming, though small, most desirable investments.

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MR. J. CAIN will SELL by AUCTION, at the RED LION INN, HAMPTON, on THURSDAY, the 10th of MARCH, 1853, at TWO for THREE o'Clock (unless previously disposed of by Private Contract), Four Pretty semi-detached Leasehold Villa Residences, known as Exmouth Cottages, Brick-built, and Slated Roofs, each containing Three Bed Rooms, Two Sitting Rooms, Kitchen, Scullery, Larder, Wash-house, &c. Frontage 18 feet by a depth of 100 feet. Held on Lease for Sixty Years, at a Ground-rent of Three Guineas per annum each house. The Leaseholder having the option of purchasing the Copyhold within the first Ten Years' and part-building. One is let to a respectable tenant at 25l. per annum, and the other three are at the same estimated value. Gravelly soil, and good supply of pure spring water; situate a short distance from the Twickenham Railway Station, and Omnibuses pass the door to and from London daily.

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MR. HODGSON will SELL by AUCTION at his GREAT ROOM, 192, Fleet-street, on FRIDAY, MARCH 11, valuable LAW BOOKS, including the Library of the Hon. E. J. Best, late Chief Justice of Demerara, by order of the Executors; also the Libraries of two Solicitors deceased, among which are Hoffman's Statutes to 1852, Law Journal Reports to 1852, Burge's Colonial Law, 4 vols. Bacon's, Comyn's, and other Abridgements, Series of the Reports in Law and Equity, Treatises and Books of Practice. To be viewed and Catalogues had.

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MR. V. J. COLLIER has received directions to SELL by AUCTION, at the MART, on WEDNESDAY, MARCH 23, at TWELVE, in Eleven Lots, EXTENSIVE FREEHOLD PROPERTY, comprising a considerable portion of the picturesque and rapidly improving town of Ventnor, in the midst of the beautiful scenery of the Undercliff, Isle of Wight; comprising numerous excellent Residences, the Ventnor Road and Paths, a good number of Dwelling-houses, Shops, and Cottages, and a large surface of unimproved Building Ground in the best part of the town. Nearly the whole of the property is let on leases (40 in number) for three lives, renewable for ever on payment of a fine of two years' rent on the fall of each life; and the remainder is let for a term of 999 years, except a small portion, which is on leases for lives, on the dropping of which a considerable reversion will accrue. The entire property is let at ground-rents amounting to nearly 600l. per annum, which rental is for the most part undoubtedly secured on property of great value, in addition to the land, the liability to repair being borne by the several lessees which derive from the dropping of lives, 120 in number. Also several Parcels of Valuable Building Ground in the same delightful neighbourhood, forming eligible sites for the erection of Villa Residences and Dwelling-Houses of a Secondary Class.—Particulars and Plans may be obtained of Messrs. BRIDGES, MASON, and BRIDGES, Solicitors, 23, Red Lion-square; of Messrs. RICKARDS and WALKER, Solicitors, 26, Lincoln's-inn-fields; of W. E. RATCLIFFE, Esq., Solicitor, Ryde and Ventnor; at the Mart; and of Mr. V. J. COLLIER, 3, Moorgate-street.

MESSRS. RIDLEY and SON are instructed by the Devisee of the late Mr. Samuel Stacey, to offer, at their ESTATE AUCTION ROOM, 185, NORTH-STREET, BRIGHTON, on THURSDAY, MARCH 17, at TWELVE for ONE, in Eight Lots, the following VALUABLE PROPERTIES, well deserving the attention of Capitalists and parties in quest of Brighton residences:—viz., A Freehold Residence, 31, Cannon-place, Kemp-town, Kniff's-road, just completed a heavy cost in a most substantial and decorative manner, and rendered fit for the immediate reception of a gentleman's family, or for an Academy, having a large School-room, and a capital Raquet-court. A Freehold Residence, 4, Cheriton-street, Marine-parade, in the occupation of Mr. J. Cook. Two Freehold Residences, 6 and 7, Grafton-street, Marine-parade, the former in hand, the latter on lease to a gentleman. A Freehold House, 4, Charlotte-street, St. James's-street, let to Mr. Dean. A Freehold House, No. 7, Clarence-place, let to Miss Paul. A Freehold House and Shop, being No. 28, North-street, in the occupation of Mr. Charles Thompson, stationer. A valuable Estate (copyhold of inheritance), viz.: Two Houses and Shops, 13 and 16, West-street, in the respective occupations of Messrs. Gander and Cranston, at 30l. per annum each. Also, Seven Tenements and several Workshops in the rear called Shuter's-gardens, producing about 90l. per annum. A small Leasehold, comprising Three Tenements, Nos. 1, 5, and 7, Telegraph-street, near the College, let to weekly tenants at 3s. each, held for 97 years from Michaelmas, 1822, at 12l. per annum.

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Reversionary Life Interest.—Important Sale.—A Net Income of £2000 per annum, arising out of extensive Freehold Estates in Yorkshire, receivable upon the decease of a Gentleman aged 58, during the life of his son, aged 24, with Life Policies on the latter of ample amount.—Preliminary Advertisement.

MESSRS. CHINNOCK and GALSWORTHY have been favoured with instructions to SELL by AUCTION, at the AUCTION MART, Bartholomew-lane, in MAY next, the above very valuable and important REVERSIONARY LIFE ESTATE, left under the will of the late Duke of Leeds, comprising an income of 13,841l. per annum, arising out of extensive Freehold Estates in the North and West Ridings of Yorkshire, consisting of numerous capital Farms, known as Cusworth, Cross Tenants, Sickleholme, Potter-thrumpton, East Appleton, Langthorne Farms, in the North-Riding; East-hill, Thorpe-Salvin, Wales, Wakefield, South Anston and Deep-carr, Dinnington, Todwick, and Conisboro Farms, in the West Riding; with excellent Homesteads, several capital Residences, numerous Cottages, and other valuable property. Also the Tithes of the Clayton and the Corn and Hay Tithes of West Appleton Estates in the North Riding; together with the Wales Colliery and the Barnsley and Wakefield Estates, with the Collieries forming part thereof, in the West Riding. The whole property is subject to certain Annuity charges and Pensions relief to the sum of 2,948l. per annum, thus leaving a net income of 9,893l. per annum, receivable upon the death of a gentleman, aged 58, during the life of his son, aged 24, with Policies of ample amount on the Life of the latter.—Particulars of Sale will be published early, and may be obtained at the Mart; of G. G. KIRBY, Esq., 11, Waterloo-place; and of Messrs. CHINNOCK and GALSWORTHY, Auctioneers and Land Surveyors, 20, Regent-street, Waterloo-place, London.

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Particulars, with Plans, may be obtained, on and after March 16th, of Messrs. WALKER and HARRISON, Solicitors, 3, Southampton-street, Bloomsbury; at the Auction Mart, London; at the George Inn, Cranbrook; the King's Head, Staplehurst; Bell Inn, Maidstone; and of Messrs. CHINNOCK and GALSWORTHY, Auctioneers and Land Surveyors, 20, Regent-street, London.

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THE LAW TIMES,

FOR THE LEGISLATOR, THE MAGISTRATE, AND THE LAWYER.

VOL XX.—No. 519. SATURDAY, MARCH 12, 1853. Double Number—Price 1s. 6d.

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JOHN FISHER, Clerk of the Peace.

Clerk of the Peace Office Liverpool, 1st March 1853.

TO CREDITORS.—Creditors, Executors, and others interested in Estates in the county of Lincolnshire of Mr EDWARD ROE, Late Ancaster, Grocer, Draper, and Tallow Chandler, are requested to call on or send their Names, Addresses, and Particulars of their Claims, to the undersigned, Messrs. Hall and Co., Solicitors, Ancaster, on or before the 31st day of March next, when a Meeting will be held for the purpose of receiving such Claims, and giving directions for the Payment of the Debts.

Dated this 5th day of March 1853.

BOOK-KEEPING.—KAIN'S SYSTEM.—A FURTHER EDITION of this Work, as applicable to Solicitors, is now ready, and may be had of the Author, at his Office, 3, Quality-court, Chancery-lane, price 1*s.* 6*d.*; also in a variety of other forms adapted to Merchants, Tradesmen, Lawyers, Auctioneers, and others, and will be found most effective, easy and simple.

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Law Times Office 29, Essex-street Sept 17 1852

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THE GENERAL HIGHWAYS ACT, with the subsequent Statutes relating to Highways; the Cases decided, to Easter Term, 1853, the Forms and Practical Notes. By WILLIAM COOPER, Esq. (of Lincoln). Price 10*s.* 6*d.* cloth, 12*s.* limp, 13*s.* bound. (Shortly.)

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NOTICES OF NEW LAW BOOKS.

A Practical Treatise on the Law of Evidence. By THOMAS STARKIE, Esq., Q. C. Fourth Edition, by GEORGE MORLEY DOWDESWELL, and JOHN GEORGE MALCOLM, Esqrs. Barristers-at-Law. London: Stevens and Norton.

WHEN we first made acquaintance with *Starkie on Evidence*, it consisted of four large volumes, and cost us several pounds. It has now attained to the honour of a fourth edition, and it is reduced to a single volume of no inordinate bulk, thus reversing the process by which successive editions of law books are usually swollen from dwarfs to giants.

The cause, however, of this decline in bulk is not altogether to be attributed to editorial conscience or publishing calculations; it has been the necessary consequence of the changes in the law of evidence, which have swept away whole chapters from the treatises, and weeks of labour from the student. Indeed, to such simplicity has that law been reduced that the only marvel is how near a thousand large pages could be filled with it. We think that the able editors of this new edition might have carried their excisions considerably further, and reduced the bulk of the volume by 250 pages at least. Every practitioner knows the value of portability in all books of practice, but more especially is it desired in a treatise on evidence which is to be used in courts, and therefore to be carried about in boxes and bags.

This, however, is merely a matter of convenience, and does not affect the question with which alone we are concerned—the merits of the work as a law book. These are already established by the judgment of the Profession, which has declared its approval in the most emphatic manner, by a call for four editions. Every reader knows Starkie by name, and many, probably, have proved its value by repeated reference to it. We need not say that a new edition is necessary even to those who possess the former one, for such have been the changes in the law that it will not be safe to use a book that does not contain them. Messrs. Dowdeswell and Malcolm have discharged well their task of adapting the treatise of the author to the changed state of the law. They have brought to their work learning, diligence, and care, and produced a book which must continue to be, as it has been so long esteemed, the authority with the Lawyer, and the text-book of the Student.

The Law Digest; a General Index to all the Law decided and enacted during the Half-year ending December, 1853. By EDWARD WISE and D. T. EVANS, Esqrs. Barristers-at-Law. Part XVI. London: Crockford.

THIS digest has some peculiar features. It was designed to supply to the Practitioner a sort of index to all the law of the half-year, so arranged that he might find in a moment, amid the greatest hurry of an office or a court, what is the latest law decided by the courts, or enacted by Parliament, on any subject on which he may be seeking information, and with certainty that no case could escape his notice and thus give an advantage to a better-informed opponent. It differs from other digests in this; that it contains references to *all* the reports, every other digest being only partial in its selections, and therefore not to be relied upon as giving *all* the law; it adds the statutes and new rules and orders, and it appears half yearly, which is a convenient interval to save the practitioner the perplexity and trouble of too frequent references, which would be no better than referring to so many indexes to the reports, and at the same time places in his hands a sort of general index to the whole law sufficiently often for any purpose of practice. Its extensive use by the Profession is the best proof that it has supplied the information they want in the manner most convenient to them, for it has now been published regularly for eight years.

Tudor's Chancery Statutes and Orders. Crockford. Mr. Tudor has rendered this work much more useful by the addition of all the Orders of the Court issued since its publication, of some Forms, and also of an Appendix, containing notes of all the decisions on the Statutes and Orders up to the present time, arranged under the different sections, so as to render them very convenient of reference for the practitioner.

LEGAL INTELLIGENCE.

SPRING ASSIZES.

HOME CIRCUIT.—*Maidstone, March* 6.—The gaol calendar is heavy, there being more than a hundred prisoners for trial. On the civil side nineteen causes are entered, six of which are special jury cases.

MIDLAND CIRCUIT.—*Derby, March* 9.—The cause list contains an entry of four causes only, but the calendar is a heavy one. The number of persons charged is fifty-two, including Thomas Morgan, who was committed in July last upon a charge of bribery at the late election for this borough. Among the other offences charged there is one case of murder, one of manslaughter, one of rape, one of assault with intent, one of administering noxious things with intent to procure abortion, three cases of an abominable nature, two of violent assault, one of arson, four of burglary, one of forgery, one of uttering counterfeit coin, one of stealing post letters, and one of perjury. The remainder are chiefly cases of larceny.

OXFORD CIRCUIT.—*Worcester, March* 9.—The cause list contains an entry of six causes, of which three are marked as special juries. The calendar contains the names of thirty-six prisoners, of whom two stand charged with murder, two with manslaughter, one with cutting and wounding, five with robbery, one with shooting with intent to murder, one with burglary, one with bigamy, one with housebreaking, one with horse-stealing, one with assault with intent, &c., one with throwing a stone at a railway engine, one with embezzling, one with cheating at cards, and the rest with petty larcenies.

NORTHERN CIRCUIT.—*Durham, March* 2.—The learned judges on this circuit opened the courts at ten o'clock, Mr. Justice Cresswell trying the criminal calendar, and Mr. Baron Martin sitting in the civil court. There are thirty-four prisoners for trial, of whom one is charged with murder, one with manslaughter, ten with burglary, three with cutting and wounding, eight with assault and robbery, one with perjury, one with bigamy, one with concealment of birth, two with false pretences, and the rest with larceny. The cause list contains ten entries.

NORTHERN CIRCUIT.—*York, March* 9.—The business of the assize appears to be extremely light in both the criminal and civil courts. The calendar contains the names of sixty-eight prisoners, one of whom is charged with murder, four with manslaughter, six with rape, four with shooting at with intent to do some grievous bodily harm, nine with burglary, six with perjury, two with night poaching, two with sheep-stealing, twenty-two with assault and robbery, and the rest with different offences. The cause-list contains an entry for the West Riding of twenty-seven causes, seven of which are marked for special juries. The East and North Ridings list is not yet published.

NORFOLK CIRCUIT.—*Huntingdon, March* 8.—This morning, at eleven o'clock, Lord Campbell and the Chief Baron proceeded to deliver the gaol, there being no civil business. The calendar, too, was light, containing only nineteen prisoners, the principal charges being three cases of arson, one of felony, one of malicious injury to the person by throwing vitriol on a female, and one of abduction, all the rest being ordinary larcenies.

THE COURT OF CHANCERY.—The annual accounts respecting the Court of Chancery were printed on Tuesday, by order of Parliament. The payments on the Suitors' Fund, for the year ending Oct. 2, 1852, were 138,339*l.* 18*s.* 5*d.*: the stock was 3,83,556*l.* 16*s.* 1*d.* On the Suitors' Fee Fund account, in the year ending Nov. 24, the payments in salaries, compensations, &c. amounted to 132,951*l.* 16*s.* 3*d.*; the fees, &c. were, in the year, 135,347*l.* 14*s.* 6*d.*; the excess of fees above the charges for the year ending Nov. 25, 1852, 3,255*l.* 18*s.* 3*d.* The fees received in the several offices were considerable. In the Masters' offices the fees in the year were 35,816*l.* 6*s.* 2*d.*; in the Registrar's offices 13,584*l.* 19*s.* 6*d.*; in the Report office, 3,054*l.* 2*s.* 9*d.*; in the Affidavit office, 10,556*l.*; in the Examiner's offices, 700*l.* 2*s.* 6*d.*; in the Subpœna office, 39*l.* 16*s.* The fees received by the taxing-masters were 29,654*l.* 9*s.* 11*d.*, and by the record and writ clerks, 13,869*l.* 18*s.* 11*d.* The fees paid into court during the period from Nov. 25, 1851, to Nov. 24, 1852, were 136,838*l.* 8*s.* 8*d.*

ASSURANCE CHRONICLE.

EQUITY AND LAW LIFE ASSURANCE SOCIETY.—The annual general meeting of this society was held at the offices, 26, Lincoln's-inn fields, on Friday the 11th inst., George Lake Russell, Esq. in the chair. It appeared by the report of the directors that 4817*l.* 7*s.* 7*d.* had been received for new premiums on assurances in 1852; that the expenses of management had been diminished, while the losses by death were 2000*l.* below those of the preceding year, and less by upwards of 1600*l.* than the amount received for new premiums. The receipts for the year exceeded the charge by upwards of 17,000*l.*, and the investments had increased in the same period nearly 22,000*l.* The retiring directors and auditors were re-elected.

JOURNAL OF PROPERTY.

MONEY MARKET.

ENGLISH FUNDS.	Sat.	Mon.	Tues.	Wed.	Thurs.	Fri.
Bank Stock	..	226	226½	226½	shut	..
3 per Cent. Reduced Annuities	100½	100⅝	100⅝	100⅝	shut	..
3 per Cent. Consols Annuities	99⅝	99⅝	99⅝	99⅝	99⅝	99⅝
Consols for Account	99⅝	99⅝	99⅝	99⅝	99⅝	99⅝
New 5 per Cent. Annuities	..	..	..	..	..	..
New 3½ per Cent. Annuities	103½	103⅝	103½	103⅝	103⅝	103½
Long Annu. (exp. Jan. 5, 1860)	6⅝	6⅝	6⅝	6⅝	shut	..
Do. 30 yrs. (exp. Oct. 10, 1859)	..	..	6⅝	..	shut	..
Do. 30 yrs. (exp. Jan. 5, 1860)	..	..	..	..	..	..
India Stock	shut	..	..	..	266¾	..
India Bonds (1,000*l.*)	..	50	48*	48	50	47
Do. do. (under 1,000*l.*)	..	50	..	..	..	..
South Sea Stock	..	..	..	..	..	..
Do. do. Old Annuities	..	..	99⅛	99⅛	..	..
Exchequer Bills, 1000*l.*	13*	10*	18*	13*	13*	18*
Do. do. 500*l.*	..	..	18*	13*	13*	18*
Do. do. Small	..	..	12*	..	13*	18*

* Premium.

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WILL FRIGHTEN, BUT NOT KILL.—CHINESE GONGS.—One Hundred powerful full-toned Chinese Gongs, just landed by Hewett and Co., the celebrated Chinese Merchants. One, for 4*s.* will effectually frighten a Thief; one, for 6*s.* will appal a Burglar; one, for 8*s.* will alarm the Country for Miles round.
To be had only at HEWETT and Co.'s, 16, Fenchurch-street, City; and at Baker-street Bazaar.

BERDOE'S VENTILATING WATERPROOF LIGHT OVER-COATS are the best, and perfectly unobjectionable protection, as they effectually resist any amount of rain WITHOUT CONFINING PERSPIRATION, the fatal objection to all other waterproofs—as too many have found to their cost, all air-tight materials being utterly unfit, and dangerous for clothing. They are thoroughly respectable, and adapted for general use at ALL times, equally as for RAINY weather. Price 42*s.*
W. BERDOE, 96, New Bond-street, and 69, Cornhill (only.)

ITALIAN SILK UMBRELLAS are superseding every other description for elegance and durability, are made on the premises under Mr. Chuck's immediate inspection, and the silk warranted superior to every other material. 18*s.* and 21*s.*—Golden Fords, 132, Oxford-street
N.B. Ladies' gilts, 6*s.*; alpaca, 8*s.*; gingham, 2*s.*; and carriage umbrellas, &c.

IF YOU DESIRE really WELL-POLISHED BOOTS, use BROWN'S ROYAL MELTONIAN BLACKING. It renders them beautifully soft, durable, and waterproof, while its lustre equals the most brilliant patent leather. Price the same as common blacking. Made only by R. BROWN, the inventor and sole manufacturer of the Ne Quidem Perfidus Polish for Dress Boots and Shoes, and Waterproof Varnish for Hunting Boots.
MANUFACTORY, 24, BROAD-STREET, GOLDEN-SQUARE
Patronised by the Court and Nobility, and to be had at all the principal shops throughout the kingdom.

MOAT'S PILLS, by Mr. Moat, Surgeon and Apothecary, No. 344, Strand, formerly with the late Mr. Morison, the Hygeist, the Recipe for whose Pills he held for sixteen years.—MOAT'S PILLS, the best family medicine, being the only preparation adapted for general use by a qualified practitioner; there is no adoption of any theory, real or pretended, neither is there any discrepancy in the profession implied by their use. Mr. Moat's position is a guarantee that he has avoided the errors which unqualified persons have fallen into when, looking only after profit, they have retired out of their callings. Mr. Moat can refer to hundreds of respectable London tradespeople who use and recommend Moat's Pills as their family medicine. A box of pills sent by post for sixteen postage stamps. Foreign houses deal with an easy liberal terms. Directions for use with each box in English, French, German, Welsh, Spanish, or Dutch.

DIARY OF SALES BY AUCTION, DURING THE NEXT WEEK,

ADVERTISED IN THE "LAW TIMES."

DATE.	PLACE.	AUCTIONEER.	WHEN ADVERTISED.	PROPERTY.
Thursday, March 17	Estate Auction-room, 155, North-street, Brighton	Tilley and Sons	March 5 and 12	Freehold Residence, 21, Cannon-place, King's-road, Brighton

ALL POLICIES INDISPUTABLE.

SOVEREIGN LIFE ASSURANCE
COMPANY, 62, St. James's-street, London.

Advances made on real and on unexceptionable personal security where the parties are resident in London or its immediate vicinity.

E. D. DAVENPORT, Sec.

LOMBARDIAN BUILDING SOCIETIES.—These Societies have advanced 120,000l. on House Property. Loans to any amount can be obtained almost immediately. Solicitors would find them a very ready means of obtaining loans for their Clients.

Apply to Mr. WILLIAM LEWIS, Manager, 17, South-street, Manchester-square.

DEFENDER FIRE and LIFE ASSURANCE
COMPANY, 26, New Bridge-street, Blackfriars.

A BONUS equal on the average to FORTY PER CENT. upon the life premiums paid previously to 1851, was declared at the Ordinary General Meeting, held on the 3rd January instant.

Prospectuses and full information may be had at the Company's Offices, or of any of the Agents.

Respectable active Agents wanted. The usual Commission to Solicitors and others.

JOHN KELDAY, Managing Director.

ALBERT LIFE ASSURANCE COMPANY.
Established 1838.

Principal Office, 11, Waterloo-place, Pall-mall, London.

Indisputable Policies.

Assurances, Annuities, and Endowments granted, and every other mode of provision for families arranged.

Half the Annual Premiums for the first five years may remain on credit for any period until death, on payment of interest at five per cent. per annum.

Parties allowed to go to or reside in most parts of the world without extra premium.

Naval and Military Lives not in active service Assured at the ordinary rate.

Policies forfeited by nonpayment of premium revivable at any time within six months, on satisfactory proof of health, and the payment of a trifling fine.

Policies on the Life of another secured, notwithstanding the part of the world to which the Assured may go.

HENRY WILLIAM SMITH, Actuary and Secretary.

RAILWAY PASSENGERS' ASSURANCE
COMPANY. Empowered by special Act of Parliament.
Offices, 3, Old Broad-street, London.

Insurances against railway accidents can now be effected with this Company not only for single and double journeys, and by the year, as heretofore, but also for terms of years and for life, as follows:—

To insure 1,000l. for a term of five years, premium £3 10 0
" " ten " 6 0 0

To insure 1,000l. for the whole of life, by annual premiums on the following decreasing scale:—

For the first five years, annual premium			£1 0 0
" next five	"	"	0 15 0
" next five	"	"	0 10 0
" remainder of life	"	"	0 5 0

To insure 100l. for the whole term of life, by single payment, according to age, viz.:—

Above 20,	under 25,	£1	1	0	Above 45, under 50,	£0	16	6
" 25,	" 30,	1	0	6	" 50, " 55,	0	15	0
" 30,	" 35,	1	0	0	" 55, " 60,	0	13	6
" 35,	" 40,	0	19	0	" 60,	0	12	0
" 40,	" 45,	0	16	0				

The above premiums include the stamp duty, which is payable to Government by the Company.

The total amount insured by any of the above modes will be paid in case of death by railway accident while travelling in any class carriage on a railway in the kingdom, and proportionate compensation in the event of personal injury.

WILLIAM J. VIAN, *Secretary.*

3, Old Broad-street, London, March 1853.

THE PARIS CHOCOLATE COMPANY,
distinguished by the Patronage of Her Majesty the Queen, and the unanimous award of both "Council" and "Prize Medals" at the Great Exhibition of 1851. BREAKFAST CHOCOLATES in ¼ and ½lb. Tablets, plain, from 1s. 4d. to 3s. per lb.; with vanille, from 3s. to 6s. per lb. A Chocolatiere, manufactured after the most approved Parisian model, will be presented to every purchaser of a 14lb box of Tablets; and consumers of smaller quantities may obtain the same at cost price. 2 oz. HONEY CHOCOLATES, a combination of the purest heather honey with the choicest French cocoa, in pots, 1s. 3d. CHOCOLATE BONBONS, unanimously pronounced an unrivalled dessert. FANCY CHOCOLATES in medallions, railway pastilles, penny sticks, cakes, &c., &c. CHOCOLATE POWDER, loose and in packets, 1s. per lb and upwards. FRENCH SYRUPS, in bottles, from 1s. 3d. to 2s. 6d. each prepared from the choicest fruits, and, when mixed with cold water, form an anti-alcoholic drink not to be surpassed; peculiarly adapted for evening and juvenile parties, and extensively used with pastilles for flavouring jellies, creams, &c. CHOCOLATE BONBONS, in fancy boxes, 1s., 1s. 3d., 2s., and 2s. 6d. each. FRENCH CONFITS, in fancy boxes, 6d. each. Travellers by sea and land, who need a portable supply of the most sustaining food and beverages, will find the above articles invaluable, as they require no preparation, and are warranted to keep good in any climate. Agents wanted for vacant towns.

Sold wholesale and retail by the principal Grocers, Confectioners, and Druggists in the Kingdom. Chocolate Mills, Isleworth. Wholesale Depot, 35, Budding-lane, City. West-end Agent Mr. John Harrold, 221, Regent-street. Post-office orders and applications for Agencies to be addressed to Samuel Sanders, Wholesale Depot.

PILLS.

DR. KING'S TRUE SARSAPARILLA
PILLS, for purifying the blood, scurvy, and all low states of system, skin diseases, nervous complaints, gout, rheumatic gout, weak nerves, loss of appetite, stomachic and liver complaints, nervous head and face ache, sore legs, and general debility. They are invaluable to the military, naval, and commercial man, and tourist, not only on account of their virtues, but their portability. Their advantages over any liquid preparation are manifold; lstly, Because no solution of Sarsaparilla, however carefully prepared, can resist an inherent fermentation, which it will, and does undergo, rendering it entirely useless; 2ndly, "Two Pills contain as much Pure Sarsaparilla as a Tablespoonful of the Strongest Essence, and more to be depended upon;" 3rdly, They have been prescribed in an extensive practice for nearly sixty-seven years, and their virtues well tested. They are beneficial for both sexes, and will keep in any climate. A 2s. 9d. box is equal to a 10s. bottle of sarsaparilla. Sold by most respectable medicine vendors in the Kingdom, and by the sole Proprietor HENRY RIDES, 10, Hungerford-street, Strand, in boxes at 1s. 1½d., 2s. 9d., 4s 6d., 11s. and 22s. A considerable saving is effected by taking the larger boxes; hence, a 2s. 9d. contains three 1s. 1½d. boxes, a 4s. 6d. contains seven, and so on increasing.

DR. KING'S GOUT PILLS.—Gout relieved in a very short time and really cured by a newly-discovered principle in "SARSAPARILLA." The Proprietor of Dr. King's True Sarsaparilla Pills, upon finding so many severe and chronic cases of Gout and Rheumatic Gout truly cured by "Dr. King's Sarsaparilla Pills," determined upon mixing a very old and well-tried Gout Pill, which Dr. King prescribed for nearly sixty-seven years, with the said "Dr. King's Sarsaparilla Pills," for the cure of gout and rheumatism and all cases of a rheumatic character, such as tic-doloureux, face-ache, lumbago, and pains in the limbs and joints; and the benefit from such a combination of these two prescriptions has been really wonderful. Dr. King's Gout Pills may be taken without the slightest fear of injuring the system. They are free from opium and mercury, and consist chiefly of pure Sarsaparilla.

N.B.—Their mode of action is by really purifying the fluids of the body, and causing the poison of gout to be driven off from the system, and by violent purging, but by a gentle increase of the secretion of the kidneys.

Sold in boxes at the same price as Dr. King's True Sarsaparilla Pills, by most respectable vendors in the United Kingdom, and by the Sole Proprietor, HENRY RIDES, Hungerford-street, Strand. Neither of the Pills are genuine without the proprietor's name (in full) upon the stamp, to imitate which is libel.

Boxes sent by post by inclosing postage stamps for the amount of box required.

NATIONAL PROVINCIAL LIFE OFFICE,
24, ROCHESTER-STREET, LONDON.
Chairman.—ROBERT KNATCHBULL, Esq., M.P.
Solicitor.—EDWARD KELLY, HARRIS, Esq., 32, Lincoln's-inn-fields.
PROGRESS OF THE SOCIETY.

New Business.	Amount of New Assurances completed.	Annual Income therefrom.
	£ s. d.	£ s. d.
Half-Year ending December 1852	51,941 0 0	2,134 6 1
Half-Year ending December 1851	53,052 0 0	1,967 2 7
Excess of the past half-year over the corresponding half-year of 1851	52,016 0 0	1,947 3 6

The Directors are prepared to receive applications from persons of undoubted respectability for the appointment of Agents in those towns where the Society is not already represented.

Prospectuses and every information forwarded free on application.

J. W. SPRAGUE, Manager.
January 1, 1853. EDMUND CLINCH, Secretary.

EQUITY and LAW LIFE ASSURANCE
SOCIETY, No. 26, LINCOLN'S INN FIELDS, LONDON.
TRUSTEES.
The Right Hon. the LORD HIGH CHANCELLOR.
The Right Hon. Lord MONTEAGLE.
The Right Hon the LORD CHIEF BARON.
The Hon. Mr. Justice COLERIDGE.
The Hon. Mr. Justice ERLE.
NASSAU W. SENIOR, Esq. Master in Chancery.
CHARLES PURTON COOPER, Esq. Q.C., LL.D., F.R.S.
GEORGE CAPRON, Esq.

POLICIES IN THIS OFFICE ARE INDISPUTABLE, EXCEPT IN CASES OF FRAUD.

"Free Policies" are issued, at a small increased rate of Premium, which remain in force although the Life assured may go to any part of the World.

Policies do not become void by the Life assured going beyond the prescribed limits,—so far as regards the interest of Third Parties,—provided they pay the additional Premium, so soon as the fact comes to their knowledge.

Parties Assuring within Six Months of their last Birthday are allowed a proportionate diminution in the Premium.

The Tables are especially favourable to young and middle-aged Lives, and the Limits allowed to the Assured, without extra charge, are unusually extensive.

Eighty per cent. of the Profits are divided at the end of every Five years among the Assured. At the first Division, to the end of 1849, the addition to the amount assured averaged above 50 per cent. on the Premiums paid.

THE YORKSHIRE FIRE AND LIFE
INSURANCE COMPANY.
Established at York, 1824, and empowered by Act of Parliament.
Capital, £500,000.
TRUSTEES.
Ralph Creyke, Esq., Rawcliffe Hall.
John Swann, Esq., Askham.
Leonard Thompson, Esq., Sheriff Hutton Park.
BANKERS. Messrs. Swann, Clough, and Co. York.
ACTUARY and SECRETARY.—Mr. W. L. Newman, York.

The attention of the public is particularly called to the terms of this Company for LIFE ASSURANCES, and to the distinction which is made between male and female lives.

Extract from the Table of Premiums for Insuring 100*l*

Age next birthday	A MALE. Whole Life Premiums.	A FEMALE. Whole Life Premiums.	Age next birthday.	A MALE. Whole Life Premiums.	A FEMALE. Whole Life Premiums.
	£ s. d.	£ s. d.		£ s. d.	£ s. d.
10	1 7 6	1 5 4	46	3 11 6	3 3 2
13	1 9 3	1 7 0	50	4 1 9	3 13 3
16	1 11 3	1 8 10	53	4 11 6	4 2 6
20	1 14 4	1 11 6	56	5 4 0	4 14 0
23	1 17 0	1 13 8	60	6 6 0	5 12 6
26	2 0 3	1 16 2	63	7 4 0	6 9 6
*30	2 5 0	1 19 9	66	8 4 0	7 10 8
33	2 9 6	2 2 10	70	10 0 4	9 7 6
36	2 13 0	2 6 4	73	11 11 2	11 2 6
40	2 19 9	2 12 0	76		13 1 9
43	3 5 3	2 17 2	80		15 12 10

* EXAMPLE.—A gentleman whose age does not exceed 30, may insure 1,000*l* payable on his decease, for an annual payment of 25*l*. 10*s*.; and a lady of the same age can secure the same sum for an annual payment of 19*l*. 17*s*. 6*d*.

Prospectuses, with the rates of premium for the intermediate ages, and every information, may be had at the Head Office in York, or of any of the Agents.

FIRE INSURANCES
are also effected by this company, on the most moderate terms.

AGENTS.
Edinburgh.—M'Intosh and Dical, W.S. 68, Great King-street; D. S. Peddie, George-street.
Glasgow.—Peter White, 20, Buchanan street; William Lang, 20, St. Vincent-place; John Carmichael, 5, Dixon-street; William Robertson, Temporary Branch of the City of Glasgow Bank.

Agents are wanted in those towns where no appointments have been made. Applications to be made to Mr. W. L. NEWMAN, Actuary and Secretary, York.

Agent for London, Mr. THOMAS S. NOBLE, Solicitor, 5, St. John street, Bedford-row.

BRITANNIA LIFE ASSURANCE
COMPANY. Established August 1, 1837.
Empowered by special Act of Parliament, 4 Vict. cap. 9.
Col. ROBERT ALEXANDER, Blackheath-park, *Chairman.*

ADVANTAGES OF THIS INSTITUTION.

A TABLE OF INCREASING RATES OF PREMIUM, especially adapted to the securing of Loans or Debts.

HALF-CREDIT RATES, whereby half the Premium only is payable during the first seven years.

SUM ASSURED PAYABLE AT SIXTY OR AT DEATH, if occurring previously.

ORPHANS' ENDOWMENT BRANCH, affording the means of having Children Educated and Started in Life by securing Annuities, to commence at the Parent's death, and to be paid until a son shall attain his twenty-first, or a daughter her twenty-fifth year of age.

BRITANNIA MUTUAL LIFE ASSOCIATION
Empowered by her Majesty's Royal Letters Patent.

ANNUAL DIVISION OF PROFITS.

Policy-holders participate in PROFITS after FIVE or SEVEN ANNUAL PAYMENTS, according to the table selected

Premiums calculated for EVERY THREE MONTHS' difference of age.

HALF-CREDIT POLICIES granted on terms unusually favourable: the unpaid half-premiums being liquidated out of the profits.

At the Annual General Meeting on the 27th April last, a reduction of 30 per cent. was made in the current year's premium on all participating policies.

A Board of Directors in attendance daily at Two o'clock.

Age of the Assured in every case admitted in the Policy.

Medical Attendants remunerated in all cases for their Reports.

(PROPRIETARY.)
Extract from the Half-Credit Rates of Premium.

Age.	Half Prem. for First 7 Years.	Whole Prem remain for of Life.
	£ s. d.	£ s. d.
30	1 1 0	2 2 0
40	1 9 2	2 18 4
50	2 2 6	4 5 0
60	3 0 8	6 16 4

(MUTUAL.)
Extract from Table with Particulars in Profits, after Seven Yearly Payments.

Age.		Annual Premium.	Half-Yearly Prem.	Quarterly Prem.
Yrs.	Months.	£ s. d	£ s. d.	£ s. d.
30	0	2 7 3	1 4 2	0 12 3
	3	2 7 6	1 4 4	0 12 4
	6	2 7 10	1 4 6	0 12 5
	9	2 8 2	1 4 8	0 12 6

1, Princes-street, Bank, London, 1st Nov. 1852. E. R. FOSTER, Resident Director. ANDREW FRANCIS, Secretary.

DINING TABLES.—To be SOLD, a SET of Spanish Wood TABLES, in good condition. Also an excellent Mahogany SIDEBOARD, and a SET of Mahogany CHAIRS, covered with Morocco.

Apply at No. 32, Little Moorfields, Finsbury.

SCARLETT'S PORTABLE MOCK TURTLE
SOUP.—SCARLETT and SON respectfully inform the Public in general that the MOCK TURTLE made by them, of acknowledged "delicious" quality and flavour, is by many pronounced equal to the real.

For sale to all parts of the country, free of package, on the receipt of a post-office order or stamps. 2s. 6d. per quart.

20, King William-street, London-bridge.

SHERRY.—H. Swansborough, Wine Merchant, 50 Lincoln's-inn-fields, informs those who may be wanting the PURE SHERRIES that he can offer them. Wines from the principal Vineyards of Jerez do, in Pipettes, free from adulteration, at prices too often paid for inferior articles. From among these, the following are recommended for ordinary use:—Light Dinner Sherry, 20s. per dozen; superior Pale, or Golden ditto, 30s.; extra dry Pale, 42s. All other Wines at equally moderate prices.

The Railway Carriage paid to all parts of the Country.

BASS'S EAST INDIA PALE ALE.—That large portion of medical men who use and recommend this celebrated Ale as supplied from our stores, are informed that the October brewings are in excellent condition, in casks from 18 gallons upwards, in the usual Wine Bottles and IMPERIAL PINTS; a good stock of last Season's Ale can still be selected from. Much beer being sold for Bass's which is not brewed by them, every Bottle sent from our Stores is sealed and labelled, and every Cask branded with our names, BERRY, BROTHERS, and Co., 3, St. James's-street, London.

WANTED to PURCHASE.—HOUSEHOLD
FURNITURE, BOOKS, MUSICAL INSTRUMENTS, &c., in large or small quantities, for which the full value will be given (in Town or Country.) Valuations for administration made free of charge where the effects are purchased.

Address, post paid, to Mr. T. THOMAS, 35, Leicester-square.

BEDDING.—ECONOMY, DURABILITY and
COMFORT.—The GERMAN SPRING and FRENCH MATTRESSES make the most elastic and softest bed. A price list of every description of bedding sent free. Bedsteads—Arabian, four-post, French, and other styles, in birch, mahogany, &c.; patent iron and brass bedsteads on the most improved principles. Cribs, cots, &c.; bed-room furniture of every description. Eider-down quilts and duvets, in silk and cotton cases.

J. and S. STEER, Bedding, Bedstead, and Bedroom Furniture Manufacturers, 13, Oxford-street, London.

MONEY TO ANY AMOUNT ON HOUSE
AND OTHER PROPERTY FOR SALE.—Wanted to Purchase, every description of Household Furniture, Books, Plate, China, Paintings, Pianos, and other effects, in large or small quantities, for which the best prices will be given. Manufacturers, Tradesmen, and others, requiring immediate cash upon their stocks or other property for Sale, the highest price will be advanced at a few hours' notice. Moderate for valuation or removal within twenty miles of London. Extensive store-rooms for warehousing furniture, on which the full value will be lent.

Apply to Mr. G. SMITH, 28, Rosoman-mews-road, Clerkenwell, near King's-cross.

N.B.—Old Houses bought to pull down.

HEAL and SON'S ILLUSTRATED
CATALOGUE of BEDSTEADS, sent free by post, contains designs and prices of upwards of ONE HUNDRED different Bedsteads, in Iron, Brass, Japanned Wood, Polished Birch, Mahogany, Rosewood, and Walnut-tree Woods. Also their priced List of Bedding. Their new ware-rooms enable them to keep one of each design fixed for inspection They have also, in addition to their usual stock, a great variety of the best designs of PARISIAN BEDSTEADS, both in wood and iron, which they have just imported.

HEAL and SON, Bedstead and Bedding Manufacturers, 196 (opposite the Chapel), Tottenham Court-road.

SHIRTS.—FORD'S EUREKA SHIRTS are not sold by any hosiers or drapers, and can therefore be obtained only at 38, Poultry. Gentlemen in the country or abroad, ordering through their agents, are requested to observe on the interior of the collar-band the stamp, "FORD'S EUREKA SHIRTS, 38, Poultry," without which none are genuine. They are made in two qualities: first quality, 40s. the half-dozen; second quality, 30s. the half-dozen. Gentlemen who are desirous of purchasing Shirts in the very best manner in which they can be made are solicited to inspect these, the most unique and only perfectly-fitting shirts. Coloured shirts, for boating, shooting, and ordinary wear, 27s. the half-dozen. List of prices and instructions for measurement post free, and patterns of the new coloured shirtings free on receipt of six stamps.

RICHARD FORD, 38, Poultry, London (late 185, Strand.)

AMERICAN CLOCK WAREHOUSE, 545
and 546, NEW OXFORD-STREET, where will be found the largest assortment of those superior Time-pieces, American Clocks, ever imported into this country, made by the oldest and most celebrated Manufacturers in the United States. All our clocks are warranted to keep correct time. The prices are for Thirty-hour Clocks, 14s. 18s. and 22s.; for Eight-day Clocks, 30s. and 35s.

Also, the CHILD'S VELOCIPEDE, a new American invention for the amusement and exercise of children. It combines the Pony and Carriage, and by the graceful and easy exercise promotes muscular development of the arms and chest. It is recommended by the medical faculty, and approved by all who have seen it. Together with every variety of Articles in Goods.

Sold wholesale and retail by the Manufacturers and Importers, ROGERS and Co. 545 and 546, New oxford-street.

GAS CHANDELIERS and BRACKETS.
The increased and increasing use of gas in private houses has induced WILLIAM S. BURTON to collect from the various manufacturers all that is new and choice in Brackets, Pendants, and Chandeliers, adapted to offices, passages, and dwelling-rooms, as well as to have some designs exclusively for him; these are now ON SHOW in one of his TEN LARGE ROOMS, and present, for novelty, variety, and purity of taste, an unequalled assortment. They are mounted in plain figures, at prices proportionate with those which have tended to make his establishment the largest and most remarkable in the kingdom, viz. from 12s. 6d. (two light) to Fifteen Guineas.

WILLIAM S. BURTON has TEN LARGE SHOW ROOMS, all completely distinct, exclusive of the shop, devoted to the show of only DISH COVERS, HOT-WATER DISHES, STOVES, and FENDERS, and a FURNISHING IRONMONGERY (including Cutlery, Electro-plate, Plated, and Japanned Wares, Iron and Brass Bedsteads, Culinary Utensils, and Stoves) that purchasers may easily and at once make their selections.

Catalogues, with Engravings, sent (per post) gratis, 2, Newman-street, and 4, and 5, Perry's-place.

DR. LOCOCK'S WAFERS.—THE FAMILY REMEDY FOR WHOOPING COUGH
AND OTHER CURE OF A VIOLENT ATTACK OF ASTHMATIC WAFERS.—
DR. LOCOCK'S [illegible] Lane, Leeds, Nov. 29, 1853.

From Mr. H. Squire, Chemist, Ware, Herts.

"Gentlemen,—Mr. Squire has a large box of Dr. Locock's Pulmonic Wafers. I frequently [illegible] persons who tell me they are distressed violent and distressing [illegible] night: to such persons I say, if you take Wafers. I frequently [illegible] going to bed it is almost certain you will [illegible] excessively by coughing the [illegible] of the night; and I do not know [illegible] a couple of Locock's Wafers [illegible] portion have been disappointed. Yours truly, never caught [illegible] Wafers. [illegible] EDWARD SQUIRE. Instance [illegible]

LOCOCK'S WAFERS give instant relief, and a rapid cure of [illegible] and all disorders of the breath and lungs. [illegible] have a most pleasant taste. Price 1s. 1½d., 2s. 9d. and 11s. per box. Sold by all respectable Chemists and Medicine Vendors.

Just published.

THE PRACTICAL STATUTES for 1849,

(in continuation of the Series of "Practical Statutes.") The design of this work is to give all the statutes and parts of statutes of any practical utility, with Notes of all the Cases decided on their construction, thus presenting the very law, as it is—the words of the statute with the construction put upon them by the Judges. It omits all Scotch, Irish, Colonial, Expired, and Repealed Statutes, so that the whole law is contained in a small compact volume, that may be conveniently carried in the bag or pocket. Edited by C. J. B. HERTSLET, Esq., Barrister-at-Law. Price 10s. 6d. cloth. The following are the statutes contained in this volume, with Notes of all the Cases decided on them.

Board of Inland Revenue Act.	Protection of Women Act.
Commons Inclosure Act.	House of Lords Costs Taxation Act.
Overseers (Cities and Boroughs) Act.	Stamps, &c. Allowances Act.
Larceny Acts Amendment Act.	Boroughs Relief Act.
Out-Door Paupers Act.	Inclosure Act (Extension of Powers Act).
Distraining for Rates Act.	Turnpike Acts Continuance Act.
Petty Sessions Act.	Pilotage Act.
Defaces in Leases Act.	Treasury Instruments Act.
Navigation Act.	Customs Act.
Passengers Act.	Cruelty to Animals Prevention Act.
Highways (Annual Returns) Act.	Metropolitan Sewers Act.
Silver Coinage Act.	General Board of Health Act.
General and Quarter Sessions Courts Procedure Act.	Admiralty Jurisdiction in the Colonies Act.
Tamworth Towns Union Act.	Drainage of Lands Act.
Rivers for Schools Act.	Small-Debts Act Amendment Act.
Carriers Acts Amendment Act.	Poor Law Union Charges Act Amendment Act.
Chichester Harbour Act.	Bankrupt Law Consolidation Act.
Equity Exchequer Pupil Society Act.	Joint-Stock Companies Act (1849) Amendment Act.
Poor Rates (Cities and Boroughs) Act.	Petty Bags, &c. Offices Amendment Act.
[illegible] Act.	[illegible] Act.
[illegible] Act.	[illegible] Act.
[illegible] Act.	[illegible]

THE LAW TIMES,

FOR THE LEGISLATOR, THE MAGISTRATE, AND THE LAWYER.

VOL XX.—No. 520. SATURDAY, MARCH 19, 1853. Price 1s.

THE Party who Advertised about two years ago for INFORMATION of ELIZABETH SHEPHERD, late of Bath, and who emigrated to Canada about Forty Years ago, will obtain it by addressing A. M'DONALD, care of THOMAS MUSSEN, Esq. Montreal, Canada.

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BOOK-KEEPING. — KAIN'S SYSTEM. — A FOURTH EDITION of this Work, as applicable to Solicitors, is now ready, and may be had of the Author, at his offices, 8, Brownlow-street, Holborn, price 3*s.* The system is equally applicable to merchants, tradesmen, laundresses, and others, and will be found most efficacious and simple.

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WARWICKSHIRE SESSIONS.—NOTICE IS HEREBY GIVEN, that the GENERAL QUARTER SESSIONS of the PEACE for the WARWICK DIVISION of the said county, will be held at WARWICK, on MONDAY, the 4th day of APRIL next, at ELEVEN o'clock in the Morning, and will commence with the County Business, and at Two o'clock the Trial of Prisoners will be proceeded with. On Tuesday, the 5th, at Ten o'clock in the Morning, Motions and Appeals will be heard.

The said Quarter Sessions will be held, by adjournment, for the Coventry Division of the said County at Coventry, on Wednesday, the 6th day of April, at Eleven o'clock in the Morning; and as soon as the preliminary Business is disposed of, the Court will hear Motions and Appeals. The Trial of Prisoners will commence in St. Mary's Hall as soon as any Bills are found and returned by the Grand Jury.

Stratford-upon-Avon, 16th March, 1853. WM. O. HUNT, Clerk of the Peace.

BOROUGH of HYTHE, COUNTY of KENT. NOTICE IS HEREBY GIVEN, That a GENERAL COURT of QUARTER SESSIONS of the PEACE of and for the said Borough and the Liberties thereof, will be holden before HENRY PLUMTRE GIPPS, Esq., Recorder of the said Borough, at the TOWN HALL of and in the Borough aforesaid, on TUESDAY, the 29th day of MARCH instant, at the hour of TWO o'clock in the Afternoon, and whereof all persons bound to recognizance, or who have any other business there, are required to take notice.

At the same time and place will also be holden, before the said Recorder, the Court of Record of the said Borough and its Liberties, for the trial of Civil Actions, and for the dispatch of other business usually transacted in such Court.

ST. PIERRE BUTLER HOOK, Clerk of the Peace and Registrar of the Court of Record.

Hythe, 17th March, 1853.

N.B. Persons having Traverses to try at the said Sessions are to give eight days' notice of trial; and the like notice is to be given in all cases of Appeal, unless otherwise directed by Act of Parliament.

BOROUGH OF DOVER, in the County of Kent.—LAMB, Mayor.—NOTICE IS HEREBY GIVEN, that the COURT of QUARTER SESSIONS of the PEACE of and for the said Borough, and the Liberties thereof, will be holden before WILLIAM HENRY BODKIN, Esq. Recorder of the said Borough, at the NEW SESSIONS HOUSE of and in the said Borough, on TUESDAY, the 12th day of APRIL next, at the hour of NINE o'clock in the Forenoon, at which time and place all persons bound by recognizance, or that have any other business to do at the said Session, are hereby required to attend.

The Grand Jury will be called and sworn at Ten o'clock in the morning; but Appeals and any other Business not requiring a Jury will be called on at Nine o'clock precisely; and Notice of every Appeal intended to be heard, must be given to the Clerk of the Peace Two clear Days at least before the Session.

LEDGER, Clerk of the Peace.

Dover, 19th March 1853.

N.B.—Persons having Traverses to try at the said Session, are to give eight days' notice of trial; and the like notice is to be given in all cases of appeal, not provided for by the 12 and 13 Vict. c. 45, or by any other Act of Parliament.

LANCASHIRE EASTER SESSIONS. NOTICE IS HEREBY GIVEN, That the GENERAL QUARTER SESSIONS of the PEACE for the County Palatine of Lancaster, will be held at the CASTLE of LANCASTER on MONDAY the 4th day of APRIL next, at TEN o'clock in the Forenoon; and by Adjournment at the following places and times, viz.:

At the Court House in Preston, on Wednesday the 6th day of April next, at Ten o'clock in the Forenoon.

At the New Bailey Court House in Salford, near Manchester, on Monday the 11th day of April next, at Ten o'clock in the Forenoon.

And at the Court House in Kirkdale, near Liverpool, on Tuesday the 19th day of April next, at Twelve o'clock at Noon, on which day County Business alone will be transacted; and the Court will then adjourn to Wednesday Morning at Ten o'clock for the transaction of the ordinary Business.

And that all Business relating to the Assessment, Application, or Management of the County Stock or Rate, will commence at such Sessions respectively at Twelve o'clock at Noon of the first day thereof.

All Business arising within the Hundred of Lonsdale is transacted at Lancaster; within the Hundreds of Amounderness, Blackburn, and Leyland, at Preston; within the Hundred of Salford, at Salford; and within the Hundred of West Derby, at Kirkdale.

All Appeals are entered with the Clerk of the Peace, and Motions made to the Court respecting them, on the first morning of the Sessions at each of the above-named places, except at Kirkdale, when such Proceedings are to take place on the second morning. And the trial of such Appeals takes place at Lancaster on the first day, at Preston not earlier than Friday the third day; at Salford on Wednesday the third day; and at Kirkdale not earlier than Friday the fourth day.

GORST and BIRCHALL, Dep. C. P.

Clerk of the Peace's Office, Preston, 16th March, 1853.

N.B. The Attorneys engaged in Prosecutions at the said Sessions are requested to take Notice that all Indictments for Indictments are required to be sent to the Clerk of the Peace's Office four days at least before the said Sessions respectively.

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The *Irish Jurist*, the received organ since

a careful and searching review—"Mr. Seston, thus commences useful work on a very important subject, has compiled a very work is not written to-day from the minutes thus:—'This author has very carefully collated the late of yesterday.' The ones in force in this country; shown what with the previous they vary or correspond; and not only has in what particulars with reference to our statutes, but has also through this labour to the English ones; pointing out what part it with reference from the English, and showing by parallel code are copied differences. This was a most useful undertaking, their substantial practitioner to see at a glance what bearing will enable the have on the Irish sections."—*In Legal Mag.* "Irish authorities

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THE LEGISLATOR.

Imperial Parliament.

HOUSE OF LORDS.

PRIVATE BILLS.

TUESDAY, March 15.— On the motion of Lord REDESDALE, it was ordered "that this House will receive petitions for private Bills on the first sitting day after the recess at Easter, provided such petitions be lodged at the Private Bill-office on or before Monday, the 21st March, to which time the reception of such petitions was limited for the present session by the order of the 7th Dec. last.

OFFENCES AGAINST WOMEN AND CHILDREN.

Lord ST. LEONARDS observed, that he had on a former occasion, when moving the second reading of one of the Bills he had laid before their lordships for the amendment of the law, expressed his anxiety to prevent and punish the commission of offences and assaults by husbands against wives, and against children of tender years by adults; but he was very happy to see that a Bill had been introduced in another place to confer greater powers on magistrates and courts of justice for the punishment of such offences; and he hoped some steps would be made by the exercise of those powers of summary convi tion and of indictment, to put an end to a class outrages which certainly were a disgrace to country.

ATTORNEYS AS EXAMINERS.

On the order of the day being read for going committee on this Bill, the LORD CHANCELL served, that he had received a petition fr Metropolitan and Provincial Law Associati reference to one of the clauses of this Bill required that the examiners should be appoi the class of barristers. The petitioners all this was a grievance to them, as solicitors eligible to the office; but he wished to subject had been very carefully considered place, and that it would have been i make any other regulation, unless Par adopted a principle different from th been acted upon in all analogous cases. the examiners were now so extensive be impossible to obtain fit persons to from any other class than that of b solicitors were mistaken if they su slur was intended to be cast upon. The Bill then went through committee.

MERCANTILE LAW. ask a question

Lord BROUGHAM said he wished Their lordon a subject of very great impo led among the ships knew that great anxiety still greater in mercantile classes in England, Ireland, respect- Scotland and in the trading to g to mercantile ing the difference in the laws of bankruptcy and and trading operations and the es. A conference insolvency in these different s attended by dele- was held last November, wh owns in England, gates from all the great tr result was, that a Ireland, and Scotland, and cessor of the noble deputation waited on the ade, who stated their lord opposite at the Boar amendments required views as to the alterati ty for inquiry. There in the law, and as to the of the noble earl who was a great desire on the sident of the Board of them filled the high offi ion of inquiry into the Trade, to appoint a c mmittee into the differences law of partnership, and the various parts of the which existed betw to the Bankrupt Laws. United Kingdom in similating those laws re- Now, the possibility ted and examined.——The quired to be thoroughly that the subject had been Earl of ABERDEEN Her Majesty's Government, under the consider the committee which sat in and, after the re ion of the President of the 1851, and the last year, it was thought proper Board of Trade i issue a commission to inquire to advise the Chancellorship. The Government was into the law ect was one which required the aware that t deepest consid t 17.—Lord ST. LEONARDS again

THURSDAY House the difficulties which would impressed upo codify the statutes, and wished attend on ose the Lord Chancellor proposed to to know wh ter.——The LORD CHANCELLOR pursue and secured, at a moderate expense, replied th experienced members of the Bar the serv the task, and now that inquiry had to supp he surprised to find that much been seen done private individuals towards had al statutes. codify

HOUSE OF COMMONS.

AMENDMENT OF THE BOARD OF HEALTH.

FRIDAY, March 11.—In reply to a complaint from Sir GEORGE PECHELL, that the wishes of the inhabitants of towns were not sufficiently attended to by the Board of Health in bringing the Health of Towns Act into operation, Sir WILLIAM MOLESWORTH stated that the subject is under the serious consideration of the Government; and that it is their intention to amend the constitution of the board, and to make certain alterations in the Act itself. He hoped before long to bring in a measure on the subject that would give satisfaction to the public.

THE ATTORNEYS' CERTIFICATE BILL.

WEDNESDAY, MARCH 16.—Lord R. GROSVENOR said he had discovered an error in the bill which he introduced the other day for the repeal of the duty on attorneys' certificates. It was, therefore, necessary for him to ask permission—which the House never refused under similar circumstances—to introduce a new bill. He moved that the order of the day for the second reading of the bill be discharged.—The motion was agreed to.——Lord R. GROSVENOR then rose to move for leave to bring in the new bill; when The CHANCELLOR of the EXCHEQUER rose suddenly, amid considerable laughter, to object.——Lord R. GROSVENOR.—Surely, the right hon. gentleman will not take advantage of me.——The SPEAKER said the motion could not be made without notice, if any member of the House objected to it.——The CHANCELLOR of the EXCHEQUER had no intention to take advantage of the noble lord, but he thought that a bill relating to taxation ought not to be introduced without notice.——The SPEAKER.—It was a bill for taking off a tax, and might be introduced with the consent of the House. At the same time it could not be done without notice if one member objected.——Lord R. GROSVENOR.—No one could object.——The CHANCELLOR of the EXCHEQUER. — There is one member of the House, at least, whose duty it is to see that all proceedings relative to the taking off of taxes should be conducted with as much regularity as those which refer to laying them on. I must request the noble lord to give notice of his motion, but I will offer no opposition to it. [The bill has since been brought in.]

LAW OF PARTNERSHIP.

THURSDAY, March 17.—Mr. EWART begged to ask the President of the Board of Trade, whether it is intended that the inquiries of the commission on the law of partnership shall extend to the practicability of assimilating the laws of the whole United Kingdom on that important subject.—Mr. CARDWELL said it was intended that the inquiry should extend to the different laws on the subject of partnership which existed in other parts of the United Kingdom.

THE CODIFICATION OF THE STATUTE LAW.

Mr. V. SCULLY asked the Attorney-General whether the codification of the statute laws, proposed to be made by the present Government, under the superintendence of the Lord Chancellor of England, will embrace the statute laws of Ireland and Scotland as well as of England: and whether it is intended that the Lord Chancellor of Ireland and the Lord Advocate of Scotland, and members of the Irish and Scottish Bars, as well as of the English Bar, shall assist in conducting such codification.—The ATTORNEY-GENERAL replied that the scheme of the Lord Chancellor did comprehend the consolidating of the Acts relating to Ireland and Scotland. The present arrangements were of a preparatory and provisional character, and no member of the Irish or Scotch Bars had yet been called in to assist; but eventually it was part of the scheme of the Lord Chancellor to call in such aid.

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

COMMISSIONS SIGNED BY LORD LIEUTENANTS.

LANCASHIRE.—Joseph Noel Walker, Esq. to be Deputy-Lieutenant.

HUNTINGDONSHIRE. — Richard Hussey Hussey, Esq.; John Linton, Esq.; George Thornhill, Esq.; Philip Pillard, Esq.; David Veasey, Esq. to be Deputy-Lieutenants.

NEW PARISH.—ST. HELEN'S, PRESCOT.—The chapelry of St. Helen's in the parish of Prescot, has been by Order in Council, under 1 & 2 Vict. c. 106, duly constituted a separate and distinct parish and benefice for all ecclesiastical purposes.

DAYS OF SALE BY AUCTION, DURING THE NEXT WEEK,

ADVERTISED IN THE "LAW TIMES."

	PLACE.	AUCTIONEER.	WHEN ADVERTISED.	PROPERTY.
y, Mar. 23	Mart	Hammond & Bilbert	March 12	Valuable Freehold, Tooting, Surrey.
ittoo	Ditto	Ditto	Ditto	Freehold Premises, Clerkenwell.
ittoo	Ditto	Ditto	Ditto	Freehold Land at Cliffe, near Rochester.
ittoo	Ditto	Collier, V. J.	March 5	Freehold Property in the town of Ventnor.

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LEGAL INTELLIGENCE.

THE CIRCUITS.

HOME.—*Lewes, March* 15.—The commission for the county of Sussex was opened here on Monday, and to-day both courts proceeded to business. Mr. Baron Alderson presided in the Crown Court, and Mr. Justice Coleridge on the civil side. The cause list is very meagre, only five common jury cases being set down for trial. The gaol calendar is heavier numerically, and also with regard to the quality of the offences, than is usual at the Spring Assizes.

NORFOLK.—*Cambridge, March* 10.—On the civil side there is an entry of seven causes, one of which only is marked for trial by a special jury. The calendar contains the names of nineteen prisoners, and embraces—one case of felony, three of arson, three of wounding, one of robbery, one of burglary, one of embezzlement, two of bigamy, one of forgery, one of concealment of birth, one of false pretences, and one charge of larceny.

NORFOLK.—*Norwich, March* 15. — The learned judges of assize arrived in the city of Norwich yesterday afternoon by train from Cambridge, and, having opened the commission for the county and city, attended divine service at the cathedral. The entry of causes is an average one, the two lists comprising ten common jury and two special jury causes. The calendar for the city contains fourteen prisoners, and that for the county fifty-one prisoners.

NORTHERN.—*York, March* 10.—To-day the North and East Riding cause list was published, and it contains an entry of eighteen causes, six of which are marked for special juries. This is an unusually large list for these ridings, and slightly compensates the bar for the West Riding list, which is miserable both in the number and character of the causes.

MIDLAND.—*Leicester, March* 12.—The commissions for the county and borough of Leicester were opened this afternoon before the Lord Chief Justice Jervis. The county calendar contains the names of twenty-three prisoners. The charges include one case of manslaughter, two cases of cutting and wounding, two of administering drugs with intent to procure abortion, one of an unnatural offence, one of bigamy, one of libel, one of perjury, one of forgery, one of arson, two of burglary, and one of night-poaching.

OXFORD.—*Stafford, March* 12.—The commission of assize for this county was opened on Saturday. The calendar contains the names of 102 prisoners, five of whom are charged with murder. One case is that of child murder, and another is the tragical event which took place in October last, at the Ash Flates, near Stafford, where an aged couple, of the name of Blackburn, were cruelly murdered, and their bodies subsequently burned. The other cases in the calendar are principally of a very serious nature.

WESTERN.—*Dorchester, March* 12.—The commission for holding the assizes for the county of Dorset was opened here on Thursday afternoon by Mr. Justice Crompton. Although the magistrates held an adjourned sessions last week, there were seventeen prisoners for trial, but there was no case of a serious nature. The cause list contained three cases.

WESTERN. — *Winchester, Feb.* 28. — This circuit commenced on Saturday, when the commission was opened in this city by Mr. Justice Erle and Mr. Justice Crompton. The criminal business is very heavy, there being about 120 prisoners for trial; three prisoners are charged with murder, thirteen with cutting and wounding, ten with robbery, five with burglary, and four with rape. One man is charged with stealing gold on board the *Lady Flora* on her voyage from Melbourne. The cause list is very light, there being only seven causes, but one of them is an action against a clergyman for a libel.

WESTERN, *Exeter, March* 14.—The commission for holding the assizes for the county of Devon was opened in this city on Saturday evening by Mr. Justice Crompton. Yesterday both the judges attended divine service at the cathedral, and this morning the business of the assizes commenced, Mr. Justice Erle sitting at Nisi Prius, and Mr. Justice Crompton presiding in the Crown Court. The cause list contained only eight cases, three of which are to be tried by special juries. The calendar is extremely heavy, there being fifty-four prisoners for trial, most of whom are charged with very serious offences. There are four charges of murder, several cases of arson, attempts to murder, and other serious outrages.

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"COBBO and POTTER."

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BRITANNIA LIFE ASSURANCE COMPANY Established August 1, 1837.

Empowered by special Act of Parliament, 4 Vict. cap. 9.

Col. ROBERT ALEXANDER, Blackheath-park, *Chairman.*

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A TABLE OF INCREASING RATES OF PREMIUM, especially adapted to the securing of Loans or Debts.

HALF-CREDIT RATES, whereby half the Premium only is payable during the first seven years.

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Policy-holders participate in PROFITS after FIVE or SEVEN ANNUAL PAYMENTS, according to the table selected.

Premiums calculated for EVERY THREE MONTHS' difference of age.

HALF-CREDIT POLICIES granted on terms unusually favourable: the unpaid half-premiums being liquidated out of the profits.

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Age of the Assured in every case admitted in the Policy.

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(PROPRIETARY.)
Extract from the Half-Credit Rates of Premium

Age.	Half Prem. for First 7 Years. £ s. d.	Whole Prem. remainder of Life. £ s. d.
30	1 1 9	2 3 6
40	1 9 3	2 18 4
50	2 2 6	4 5 0
60	3 6 8	6 13 4

(MUTUAL.)
Extract from Table with Particulars in Profits, after Seven Yearly Payments.

Age.		Annual Premium. £ s. d.	Half-Yearly Prem. £ s. d.	Quarterly Prem. £ s. d.
Yrs.	Months.			
30	0	2 7 8	1 4 2	0 12 3
	3	2 7 6	1 4 4	0 12 4
	6	2 7 10	1 4 6	0 12 5
	9	2 8 2	1 4 8	0 12 6

1, Princes-street, Bank, London, 1st Nov. 1852.

R. B. FOSTER, Resident Director.
ANDREW FRANCIS, Secretary.

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5. The Court will not grant an attachment for non-performance of an award pending an action brought on the award; nor allow the Plaintiff to wave the action in order to apply for the attachment. *Badley* v. *Loveday*, *T.* 37 *Geo.* 3. 81

6. An order for the diſcharge of an inſolvent under the lord's act, *ſ.* 16. cannot be made by a Judge in Term time, though ſummonſes were taken out in vacation, and the order only delayed till the beginning of Term by an irregularity in the affidavit. *Haſkins* v. *Morris*, *M.* 38 *Geo.* 3. 92

7. The Court will give leave in the firſt inſtance to enter up judgment on a verdict reduced by an award. *Higginſon* v. *Neſbitt* *M.* 38 *Geo.* 3. 97

8. The Court will not order a bail-bond to be delivered up to be cancelled, becauſe the place where the affidavit to hold to bail was ſworn is not mentioned in the jurat. *Symmers* v. *Waſon*, *M.* 38 *Geo.* 3. 105

9. A Defendant by perfecting bail above was held to wave all objections ariſing from the bank act, 37 *Geo.* 3. *c.* 45. to the ſufficiency of the affidavit on which he was held to bail. *Chapman* v. *Snow*, *M.* 38 *Geo* 3. 132

10. But length of time ſeems to be no ſuch waver. *Fenwick* v. *Hunt*, *M.* 38 *Geo.* 3. *B. R.* 133 *n.*

11. The Court will not allow a Defendant to ſtrike out the entry of a judgment of *nolle proſequi* entered by the Plaintiff on one of the counts of the declaration after it has been demurred to. *Milliken* v. *Fox and Another*, *M.* 38 *Geo.* 3. 157

12. Nor will the Court in that ſtage of the proceedings determine a queſtion of coſts reſpecting ſuch a count. *ib.* *ib.*

13. *C.* by virtue of an order from *B.* to receive all money due to him on a particular account, obtains three out of four inſtalments due from *A.* to *B.* on that account; theſe payments are afterwards queſtioned by *B.* who brings his action againſt *A.* for the whole ſum, and at the ſame time *C.* demands the fourth inſtalment: An application to the Court by *A.* to ſtay proceedings in the action againſt him by *B.* on his paying the fourth inſtalment to ſuch perſon as they ſhould appoint, was refuſed. *Macdonald* v. *Paſley*, *M.* 38 *Geo.* 3. 161

14. If a party proceed againſt a Defendant by action and indictment for the ſame aſſault, the Court will not compel him to make his election. *Jones* v. *Clay*, *H.* 38 *Geo.* 3. 191

15. Defendant before the action commenced quitted the kingdom, leaving another in poſſeſſion of his houſe and goods; Plaintiff having ſerved a ſummons to appear at the houſe, diſtrained the goods to compel an appearance; and held regular. *Sir Wm. Staines, Knt. and Another* v. *Johnſtone*, *H.* 38 *Geo.* 3. 200

16. The Court will not, by putting off a trial or other indirect means, compel a party to conſent to a commiſſion for the examination of witneſſes in *Scotland*. *Calliand* v. *Vaughan*, *H.* 38 *Geo.* 3. 210

17. Where contradictory verdicts have been found on a policy of inſurance, and a third action brought againſt another under-writer, the Court will not put off the trial to enable him to apply to a Court of Equity for a commiſſion to examine witneſſes in *Scotland* to the ſame facts which were given in evidence on the laſt trial. *ib.* *ib.*

18. At leaſt if he has obtained time to plead on the uſual terms. *ib.* *ib.*

19. It is not ſufficient to ſtick up a notice of declaration in the office, if the Defendant's laſt place of abode be known; for it ought to be ſerved there. *Holſten* v. *Culliford*, *H.* 38 *Geo.* 3. 214

20. To *aſſumpſit* on a bill of exchange, the Court will not allow a Defendant to plead the general iſſue, and that the bill was given on a ſtock jobbing tranſaction contrary to 7 *Geo.* 2. *c.* 8. *Shaw* v. *Everett*, *H.* 38 *Geo.* 3. 222

21. Nor the general iſſue and alien enemy to a declaration on a policy of inſurance. *Angerſtein* v. *Vaughan*, *H.* 38 *Geo.* 3. *ib. n. a.*

22. The

22. The Court will not reſtrain a Defendant from pleading the ſtatute of limitations on ſetting aſide a regular interlocutory judgment. *Maddocks* v. *Holmes and Others*, *E.* 38 *Geo.* 3. 228

23. A Defendant muſt take advantage of an irregularity in the writ before appearance. *Fox and Another* v. *Money*, *E.* 38 *Geo.* 3. 250

24. Payment of money into Court is an admiſſion of a legal demand only. *Ribbans* v. *Crickett*, *E.* 38 *Geo.* 3. 264

25. The Court will not make a rule on a Plaintiff who brings an action on a bond, to allow an officer of the ſtamp-duties to inſpect the bond, becauſe the Defendant ſuſpects it to be forged. *Chetwynd* v. *Marnell*, *Executor*, *&c.* *E.* 38 *Geo.* 3. 271

26. The Court will not allow a Plaintiff to ſign judgment, becauſe the Defendant refuſes to pay for half the paper-books delivered to the judges; this caſe being within the rule, *H.* 35 *Geo.* 3. *Fulham* v. *Bagſhaw*, *T.* 38 *Geo.* 3. 292

27. Plaintiff cannot ſign judgment for want of a plea without demanding one, though Defendant has neglected to take the declaration out of the office. *White* v. *Dent*, *M.* 39 *Geo.* 3. 341

28. Taking out a ſummons before a judge to ſtay proceedings on the bail-bond is a waver of any irregularity in the notice of declaration. *Davis*, *One*, *&c.* *Aſſignee of the Sheriff* v. *Owen and Another*, *M.* 39 *Geo.* 3. 342

29. So taking any ſtep in a cauſe is a waver of any irregularity. *ib.* 344

30. If a Defendant be ſuperſedeable for want of judgment being entered up in time, but not actually diſcharged, he cannot be detained in an action on the judgment. *Pierſon* v. *Goodwin*, *M.* 39 *Geo.* 3. 361

31. If notice of a writ of inquiry to be executed at a particular hour and place be continued, the notice of continuance need not expreſs any hour or place. *Jones* v. *Chune*, *One*, *&c.* *H.* 39 *Geo.* 3. 363

32. The Court of *C. B.* will not ſtay proceedings in an action on an attorney's bill brought ſubſequent to the order of a Judge of another Court for its taxation, but previous to that taxation having taken place. *Steventon*, *One*, *&c.* v. *Watſon and Others*, *H.* 39 *Geo.* 3. *Page* 365

33. Where judgment has gone by default on a promiſſory note, no irregularity previous to the judgment can be ſhewn as cauſe againſt referring the note to the prothonotary. *Pell* v. *Brown*, *H.* 39 *Geo.* 3. 369

34. Service of a declaration in ejectment on one of two tenants in poſſeſſion is good ſervice on both. *Doe ex dem J. Bailey* v. *Roe*, *H.* 39 *Geo.* 3. 369

35. A Defendant cannot demand a bill of particulars till after appearance. *Kitchen* v. *Blanchard*, *H.* 39 *Geo.* 3. 378

36. The mere acknowledgment of the wife of the tenant in poſſeſſion that ſhe has received a declaration in ejectment, will not bind her huſband. *Goodtitle ex dem. Read* v. *Badtitle*, *H.* 39 *Geo.* 3. 384

37. Service of a declaration in ejectment on a perſon appointed by the Court of Chancery to manage an eſtate for an infant, is not ſufficient. *Goodtitle ex dem. Roberts and Wife* v. *Badtitle*, *H.* 39 *Geo.* 3. 385

38. The Defendant may rule the Plaintiff to enter the iſſue, and move for judgment as in caſe of a nonſuit in the ſame Term. *Peeters* v. *Throgmorton*, *E.* 39 *Geo.* 3. 387

39. The Court will not on motion ſtrike out a part of a plea which contains double matter. *Griffiths* v. *Eyles*, *E.* 39 *Geo.* 3. 413

40. The Court will not put off a trial on account of the abſence of a material witneſs, if by his evidence the defence of ſlavery is intended to be eſtabliſhed. *Robinſon* v. *Smyth*, *T.* 39 *Geo.* 3. 454

41. A replication taking iſſue on a plea of payment to debt on an annuity bond, muſt be ſigned by a Serjeant. *Ellis and Wife* v *Govey*, *T.* 39 *Geo.* 3. 469

42. In an order to enlarge the time for pleading, the firſt and laſt days are both reckoned incluſively. *Freeman* v. *Jackſon*, *E.* 36 *Geo.* 3. 479

43. If

4. If the damages given by a verdict be reduced by an award, under an order of *nisi prius*, which has been made a rule of court, the party is entitled to have the postea delivered to him without any application to the Court. *Grimes* v. *Naish*, *E.* 36 *Geo.* 3. *Page* 480

PREMIUM,

See INSURANCE, No. 2.

PRISONER,

See INSOLVENT.
PRACTICE, No. 30.
WARRANT of ATTORNEY, No. 1.

1. The Court will discharge a Defendant out of custody who is in execution at the suit of a Plaintiff some time since deceased, on whose part no will has been proved, nor any administration granted, and whose family on notice of a motion for the above purpose declines interfering. *Broughton* v. *Martin*, *M.* 38 *Geo.* 3. 176
2. A prisoner after judgment against him, may, notwithstanding the allowance of a writ of error, be charged in execution. *Fisher* v. *M'Namara*, *T.* 38 *Geo.* 3. 292
3. The Court has no power to discharge a Defendant out of execution on the ground of a commission of bankruptcy having been issued against him. *M'Master* v. *Kell*, *T.* 38 *Geo.* 3. 302
4. A prisoner in custody on mesne process is supersedeable, unless a copy of the declaration be delivered before the end of the Term after the process is returnable. *Blyth* v. *Harrison*, *T.* 36 *Geo.* 3. 535

PRISONER AT WAR,

See ALIEN ENEMY, No. 2.

PRIVILEDGE,

See ATTORNEY, No. 1, 2.

PRIZE.

1. If goods, the produce of *Spain*, purchased for *British* subjects resident here, by a neutral agent resident in *Spain*, partly before hostilities between the two countries, partly after, and shipped for *England* on board a neutral vessel ostensibly bound for *Ostend*, be taken by a *British* privateer, they are lawful prize, though the ship will be restored. *Louisa Margaretha*, Henslop, 3d *April* 1781. *Page* 349 *n.*

PRIZE MONEY.

1. It seems that nothing but a power of attorney or a will complying with the provisions of 26 *Geo.* 3. *c.* 63. and 32 *Geo.* 3. *c.* 34. will warrant a payment to third persons of money due from the public to sailors or marines. *Macdonald* v. *Pasley*, *M.* 38 *Geo.* 3. 161

PROCESS,

See AMENDMENT, No. 1, 2,
EXECUTION, No. 2. 3.
VARIANCE, No. 2, 3, 4, 5. 7.

1. If a *capias per continuance* be *teste*'d on the same day as the original *capias*, a new original *capias* may be sued out to warrant it, though such new original bear *teste* before the cause of action accrued. *Davis, One, &c. Assignee of the Sheriff* v. *Owen and Another*, *M.* 39 *Geo.* 3. 342

PROHIBITION.

1. The Court of Common Pleas has no power to issue an original writ of prohibition to restrain a Bishop from committing waste in the possessions of his see. *Jefferson* v. *The Bishop of Durham and Others*, *M.* 38 *Geo.* 3. 105
2. At least at the suit of an unInterested person. *ib.*
3. It seems that no Court of Common Law has that power. *ib.*
4. But it may be doubtful whether the Court of Chancery has not? *ib.*

PROMISE.

1. If one person make a promise to another for the benefit of a third, that third person may

maintain an action upon it. *Marchington* v. *Vernon and Others, G. H. Sittings, T.* 27 *Geo.* 3. *B. R.* *Page* 101 *n.*

PROMISES
TO PAY THE DEBTS OF THIRD PERSONS,
See FRAUDS, Statute of.

PROMISSORY NOTE,
See LORDS ACT, No. 1.
BILLS of EXCHANGE.

R

RECOGNIZANCE,
See AMENDMENT, No. 2.
BAIL, No. 17, 18.

RECOVERY,
See COMMON RECOVERY.

REFERENCE,
See COSTS, No. 1.

REGISTRY,
See SHIP, No. 1.

RELEASE,
See BOND, No. 2.
EXECUTOR and ADMINISTRATOR, No. 4.

RENT,
See PAYMENT, No. 1.

REPLEVIN.

1. The action on the case against the Sheriff for taking insufficient pledges in replevin, ought to be brought in the name of the person making cognizance where there is no avowant on the record. *Page* v. *Sir John Eamer Knt. and Another, H.* 39 *Geo.* 3. 378

2. A replevin bond may, under the 11 *Geo.* 2. *c.* 19. be assigned to the avowant only, and he may bring his action upon it without joining the party making cognizance. *Archer and Others, Assignees, &c.* v. *Dudley and Others, E.* 22 *Geo.* 3. *B. R.* *Page* 381 *n.*

3. The Court will not stay proceedings in an action of replevin unless upon payment of the rent in arrear, together with all costs, though the arrears were tendered before with costs up to that time. *Hopkins* v. *Shrole, H.* 39 *Geo.* 3. 382

4. The condition of a replevin bond is not satisfied by a prosecution of the suit in the county court, but the plaint, if removed by *re. fa. lo.* into a superior court, must be prosecuted there with effect, and a return made if adjudged there. *Gwillim* v. *Holbrook, E.* 39 *Geo.* 3. 410

RIGHT, WRIT OF,
See NONSUIT, Judgment as in case of, No. 1, 2.

1. The Court will not permit the *mise* joined in a writ of right to be tried by a jury, instead of the grand assize, though both parties desire it. *Galton* v. *Harvey, H.* 38 *Geo.* 3. 492

S

SALE,
See FRAUDS, Statute of, No. 2.
SHIPS, No. 1.

SERVICE,
See PRACTICE, No. 34. 36, 37.

SHERIFF,
See ATTACHMENT.
BAIL, No. 9.
ESCAPE.
REPLEVIN.
VENDITIONI EXPONAS.

2. Bail muſt therefore be put in within four days from the former period. *Page* 478

SURETY,

See GUARANTY.

T

TENANTS,

See LANDLORD AND TENANT.

TENDER.

If Defendant bring money into Court on a plea of tender, Plaintiff may take it out, though he reply that the tender was not made before action brought. *Le Grew* v. *Cooke, M.* 39 *Geo.* 3. 332

TIME,

See GUARANTY, No. 1.
MARKET, No. 1.
PRACTICE, No. 42.

Reaſonable time is a queſtion of law. *Sheibell* v. *Fairbain, E.* 39 *Geo.* 3. 388

TITHES,

See EVIDENCE, No. 10.

1. If a compoſition for tithes be made by *A.* as proprietor, and he leaſe them to *B.* whoſe intereſt is afterwards put an end to by *A.* before any alteration is made in the compoſition, *A.* cannot determine it without ſix months notice. *Wyburd* v. *Tuck, T.* 39 *Geo.* 3. 458
2. If *A.* execute a leaſe of tithes to *B.* on a day ſubſequent to their ſeverance, but previous to their being carried away by the landholder, *B.* cannot maintain an action on the 2 & 3 *Ed.* 6. *c.* 13. as the right to the tithe veſted in *A.* immediately on ſeverance. *ib.* *ib.*
3. *Qu.* Whether if one only of two joint tenants execute an aſſignment of a leaſe of tithes, the perſon claiming under that leaſe can ſupport an action for not ſetting them out? *Wyburd* v. *Tuck, T.* 39 *G.* 3. *P.* 458

TOLL,

See MARKET, No. 2.

If toll be merely *claimed* of the individual members of a corporation exempt from toll, an action will lie on the writ *de eſſendo quietum de Theolonio* in the name of the corporation. *The Mayor, &c. of London* v. *The Mayor, &c. of Lynn, E.* 36 *Geo.* 3. 487

TRADE,

See SUBJECT, No. 1, 2.

1. Under the treaty concluded in 1795 between this country and the United States of *America*, confirmed by 37 *Geo.* 3. *c.* 97. it is not neceſſary that the trade conceded to the *Americans* by the 13th article ſhould be direct from *America* to the *Britiſh* ſettlements in the *Eaſt Indies*. *Marryat* v. *Wilſon in Error, E.* 39 *Geo.* 3. 430
2. It may be carried on circuitouſly through any country in *Europe*, including *Great Britain. ib.* *ib.*

TRADING ILLEGAL,

See ILLEGAL CONTRACT, No. 5.
INSURANCE, No. 10.
PRIZE, No. 1.

TREATING ACT.

1. It being contrary to the 7 & 8 *Will.* 3. *c.* 4. for a candidate to furniſh proviſions to *any* voter, after the *teſte* of the writ, an innkeeper cannot recover againſt a candidate for proviſions ſo furniſhed at his requeſt. *Ribbans* v. *Crickett, E.* 38 *Geo.* 3. 264

TREES,

See COMMON.
EXECUTORS and ADMINISTRATORS, No. 3.

TRESPASS,

See EXECUTORS and ADMINISTRATORS, No. 3.
PLEADING, No. 24.

INDEX TO THE PRINCIPAL MATTERS.

TRIAL.

See PRACTICE, No. 1, 2, 16, 17, 18, 40.

TROVER.

See BANKRUPTCY, No. 1, 9.

TRUSTEE.

See PLEADING, No. 5. 8.

1. If a perſon jointly intereſted with an infant in a leaſe, obtain a renewal to himſelf only, and the leaſe prove beneficial, he ſhall be held to have acted as truſtee, and the infant may claim his ſhare of the benefit. *Ex parte Grace, H.* 39 *Geo.* 3. *Page* 376

2. But if it do not prove beneficial, he muſt take it upon himſelf. *ib.* *ib.*

V

VARIANCE.

See EVIDENCE.

MISNOMER, No. 1, 2, 3.

1. The Plaintiff, a ſailor, declared for 52*l.* 10*s.* for run-money, and gave in evidence a note for 52*l.* 10*s.* for run-money, with an additional ſtipulation written after ſignature of the note, for a pint of rum *per* day, and it was held no variance. *Bayliſs* v. *Cobbold, E.* 37 *Geo.* 3. 7

2. The Court will not ſet aſide proceedings for irregularity where the Plaintiff ſues out a *quare clauſum fregit* againſt two, and declares againſt one only. *Spencer* v. *Scott, E.* 37 *Geo.* 3. 19

3. In caſes of proceſs not bailable, the writ may be againſt ſeveral Defendants, and the declaration againſt one only. *Stables and Another* v. *Aſhley and Others, E.* 37 *Geo.* 3 49

4. In caſes of bailable proceſs it is otherwiſe. *ib.* *ib.*

5. Arreſt by the name of "*Weſton*;" declaration *de bene eſſe* againſt "*Wiſon*," ſued by the name of "*Weſton*;" and held regular. *Symmers* v. *Waſon, M.* 38 *Geo* 3. 105

6. Evidence of a houſe ſituate in the pariſh of *M.* will ſupport an averment of a houſe at [illegible] 7. [illegible] for trial for the county of [illegible] declaration is delivered in the [illegible] two, is, in ſuch. *Rogers* v. *Jenkins, M.* 39 *Geo.* 3. 383

VENDITIONI EXPONAS.

The Court refuſed to grant an attachment againſt the Sheriff, becauſe he had returned to a writ of *venditioni exponas* that part of the goods levied remained in his hands for want of purchaſers. *Leader* v. *Danvers, M.* 39 *Geo.* 3. 359

VENUE.

1. In an action on a promiſſory note, the Court will not change the venue from *London* to the county where it was made, on the Defendant's ſtating that all his witneſſes live there. *Evans* v. *Weaver, E.* 37 *Geo.* 3. 20

2. But if his affidavit ſhew the number of his witneſſes, and that a ſerious inconvenience would ariſe from bringing them up, it will. *ib.* *ib.*

3. The Court will not change the venue in an action on a deed to the county where it was executed on the ground of the Defendant's witneſſes reſiding there, if from the pleadings it does not appear neceſſary to produce many witneſſes from that county unleſs a queſtion ſhould be raiſed of which a fair trial cannot be expected there. *Watt* v. *Daniel, E.* 39 *Geo.* 3. 425

VERDICT.

See NEW TRIAL.
PRACTICE, No. 43.

Where a general verdict has been given on two counts, one of which is bad, and it appears by the Judge's notes that the jury calculated the damages on evidence applicable to the good count only, the court will amend

SHIP,

See FREIGHT.

1. The indorſements on the certificate of regiſtry required by 7 & 8 *Will.* 3. *c.* 22 & 26. *Geo.* 3. *c.* 60. *ſ.* 16. need not be recited in the deed of aſſignment of a ſhip under *ſ.* 17. of the latter act. *Capadoſe* v. *Cadnor*, *E.* 36 *Geo.* 3. *Page* 483

SHERIFF,

See ATTACHMENT, No. 1.
BAIL, No. 9.
ESCAPE.
REPLEVIN, No. 1.
VENDITIONI EXPONAS.

SLANDER,

See LIBEL.

SLAVERY,

See PRACTICE, No. 40.

SMUGGLING.

1. If goods prohibited from being ſold in this country by 11 & 12 *Will.* 3. *c.* 10. are taken out of a warehouſe, and put on board a veſſel as if for exportation, but in fact with a view to be relanded, they are liable to be ſeized, though no actual attempt to reland them has been made. *Wilſon* v. *Saunders*, *E.* 38 *Geo.* 3. 267

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See EXCISE, No. 1, 2.

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STAYING PROCEEDINGS,

See ANNUITY, No. 10.
BOND, No. 1.
PRACTICE, No. 28. 32.
REPLEVIN, No. 3.

SUBJECT.

1. A natural born subject of this country, admitted a citizen of the United States of *America*, either before or after the declaration of *American* independence may be considered a subject of the United States, so as to be entitled to any commercial privileges granted to the subjects of the United States by treaty. *Marryatt* v. *Wilson in Error*, E. 39 *Geo.* 3. 430
2. Even though the subjects of this country be prohibited from exercising those privileges. *ib.* *ib.*

SUGGESTION,

See COURTS, No. 1, 2, 4.

SUPERSEDEAS,

See PRACTICE, No. 30.
PRISONER, No. 2. 4.

1. A writ of error operates as a supersedeas from the time of the allowance, not from the time of service. *Gravall* v. *Simpson*, E. 36 *Geo.* 3. 478